UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alliance for Tribal Clean Energy Docket No. RM24-__-000

PETITION FOR EXPEDITED RULEMAKING TO ADOPT COMMERCIAL READINESS AND WITHDRAWAL PENALTY RULES FOR TRIBAL ENERGY DEVELOPMENT ORGANIZATIONS

Pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission" or "FERC"),[1] the Alliance for Tribal Clean Energy (the "Alliance") respectfully requests that the Commission initiate an expedited rulemaking proceeding to defer the requirement that federally recognized Indian tribes and Tribal-owned energy development organizations (collectively, "Tribal Nations")[2] post commercial readiness deposits and partially exempt Tribal Nations from the withdrawal penalty rules in the *pro forma* Large Generator Interconnection Procedures ("LGIP"), or in the alternative, adopt another process for Tribal Nations seeking to develop generation projects on Tribally controlled land to satisfy these interconnection requirements. The Alliance respectfully requests that the Commission provide a 30-day comment period on this Petition and expedite these changes.

I. EXECUTIVE SUMMARY

The Commission in Order Nos. 2003 and 2023 sought to "facilitate market entry for generation competitors"[3] and "ensure that interconnection customers are able to interconnect to

[1] 18 C.F.R. § 285.207.

[2] For convenience, this Petition uses the term "Tribal Nations" to refer to Indian tribes developing energy projects on Tribe-controlled lands but proposes a more specific definition of "Tribal Energy Development Organizations" in the proposed rules in Attachment A.

[3] *See Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at P 12 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶

the transmission system in a reliable, efficient, transparent, and timely manner."[4] To achieve those goals, the Commission established standardized procedures, among which are requirements that interconnection customers post commercial readiness deposits to reserve their interconnection queue positions and pay withdrawal penalties in the event they later withdraw from the queue. These requirements, while no doubt reasonably intended to limit the number of speculative interconnection requests, are unnecessarily harsh and indeed unachievable for Tribal Nations, and when applied to such entities, unreasonably undermine their ability to develop what are plainly *non-speculative* energy projects.

Put simply, as to the relatively small group of Tribal Nations seeking to develop and deploy energy projects on Tribe-controlled lands, the commercial readiness deposit requirements and withdrawal penalty provisions represent a solution in search of a problem. Tribal projects that advance to the point of seeking interconnection are not speculative. They are not undertaken to take a big risk in hopes of making a big profit. They are not motivated to take advantage of fluctuations in the market. They are pursued to self-serve Tribal needs for electricity to advance the goals of lower electricity rates, revenue for Tribal governments, Tribal economic development, and Tribal self-sufficiency.

The Alliance therefore petitions the Commission to institute a rulemaking and adopt the limited and narrowly tailored revisions proposed herein to remove the virtually insurmountable and plainly unnecessary barriers to Tribal energy development on Tribe-controlled land.

Tribal Nations are a discrete and unique category of interconnection customer. Due to a legacy of wrongful discrimination, dislocation and dispossession, and centuries of disregard of or

61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[4] *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at P 3 (2023), *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

illegal performance under nearly 400 treaties (primarily, but not exclusively, by the federal government), Tribal Nations are among the poorest and most economically disadvantaged groups in the country. These conditions persist, despite Treaty rights, casinos, and incentives such as those offered through the Inflation Reduction Act, because of Tribal Nations' structural exclusion from the capital markets. And although Tribal lands have some of the best energy production potential in the country,[5] Tribal Nations pay some of the highest electricity rates. According to the Department of Energy ("DOE"), 56% of Tribal members pay electricity prices that are higher than—and often more than double—the national average.[6]

And while Tribal Nations are eager—indeed, desperate—to change their economic predicament and energy circumstances, they find themselves stymied by unworkable and unduly burdensome rules that fail to account for Tribal Nations' unique organizational structures and funding constraints – among them, the Commission's rules requiring all interconnection customers, regardless of station or circumstance, to post commercial readiness deposits and pay withdrawal penalties should they determine they no longer can move forward with their project.

Until recently,[7] Tribal Nations as a whole have been largely excluded from developing utility scale generation and therefore have not participated as generation owners in the wholesale

[5] A 2018 National Renewable Energy Laboratory study found that Tribal lands can account for 6.5% of the nation's utility scale renewable generation potential, while only making up 5.8% of the land area in the contiguous United States. Anelia Milbrandt, Donna Heimiller, and Paul Schwabe, *Techno-Economic Renewable Energy Potential on Tribal Lands, National Renewable Energy Laboratory*, NREL/TP-6A20-70807 (July 2018), at v-vii, available at: www.nrel.gov/docs/fy18osti/70807.pdf (noting that Tribal lands could produce 1 GW of wind energy and 61 GW of solar PV) ("NREL Study").

[6] "Tribal Electricity Access and Reliability Congressional Report – Listening Session II," Wahleah Johns et al., Department of Energy Office of Indian Energy (July 28, 2022), at 34, available at: https://www.energy.gov/sites/default/files/2022-07/ie-congressional-listening-session-2_july2022.pdf.

[7] As discussed further below, the Inflation Reduction Act ("IRA") created new funding opportunities and tax incentives for Tribal energy development, including the expansion of DOE's Tribal Energy Loan Guarantee Program ("TELGP"). *See* The Future of Tribal Energy Development: Implementation of the Inflation Reduction Act and the Bipartisan Infrastructure Law, Senate Hearing 118-26 (Mar. 29, 2023), transcript available at https://www.congress.gov/event/118th-congress/senate-event/333941/text.

power markets. As a result, Tribal Nations are in a fundamentally different place than all other developers who have participated in these markets for decades. For instance, unlike all, and certainly at least the overwhelming majority of large generation developers, Tribal Nations have to rely on *philanthropy* to fund their pre-development activities. This is because unlike traditional developers, Tribal Nations do not have significant capital on hand and they cannot secure guaranties from corporate parents, or letters of credit from creditworthy financial institutions, or new equity investors, or traditional tax equity or debt financing in anything close to the time it typically takes for traditional energy developers (i.e., entities in the business of building power plants rather than husbanding distressed communities) to do so. Certainly then, as compared with other generation developers, Tribal Nations are financially disadvantaged, less familiar with the process and requisite skills necessary for large scale infrastructure development, and unreasonably burdened by federal requirements that impose barriers to entry to energy development.

The Commission has acknowledged this concrete problem confronting Tribal Nations seeking to develop their own energy infrastructure.[8] Without immediate redress, the Commission will, no doubt inadvertently, perpetuate the same intertwined historical and economic conditions that have for too long deprived Tribal Nations of energy sovereignty and self-sufficiency.

And while these circumstances alone justify looking at Tribal Nations as a distinct type of interconnection customer, Tribal Nations are also unique in that the Commission owes them a "trust responsibility" amounting to the "moral obligations of the highest responsibility and trust"

[8] *SAGE Development Authority*, 182 FERC ¶ 61,180, at P 20 (2023); *Hopi Utilities Corporation*, 185 FERC ¶ 61,149 (2023).

to protect Tribal sovereignty, economic security, and development of their own lands.[9] The Commission does not advance these goals by functionally excluding Tribal Nations from developing competitive generation.

In sum, Tribes must overcome a double whammy, the first attributable to their unique structural, historical, and economic circumstances; and the second caused by interconnection barriers making the consequences of the first all the more severe. Tribal Nations cannot post commercial readiness deposits to reserve their spot in the queue when they are often only able to secure funding once a project has already executed an interconnection service agreement and/or a power purchase agreement (which itself usually requires an interconnection service agreement). As Commissioner Clements accurately presaged in her concurrence to Order No. 2023, the Commission's commercial readiness deposit and withdrawal framework may rectify the problem created by traditional utility and independent power developers who have been shown sometimes to submit speculative interconnection requests, but it "act[s] as a barrier to projects serving or developed by Tribes."[10] Commissioner Clements encouraged further inquiry into the rules for projects developed by or serving Tribal Nations and other disadvantaged communities.

This Petition, then, presents an opportunity for the Commission, by deferring the time by which Tribal Nations must post commercial readiness deposits, and partially exempting Tribal Nations from withdrawal penalties, to take into account the ineluctable fact that not all generation developers were created equal and placed on a level playing field, to reasonably acknowledge that there are in fact different kinds of generation developers and interconnection

[9] *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831); *Seminole Nation v. United States,* 316 U.S. 286, 296–97 (1942).
[10] Order No. 2023, 184 FERC ¶ 61,054, Commissioner Clements Concurring, at PP 38, 40.

customers with differing histories and market positions, and truly to redress these circumstances and thereby advance its trust responsibility to Indian Tribes.[11]

If adopted, the reforms proposed herein would advance Tribal sovereignty consistent with the federal government's trust responsibility and further the Commission's interconnection policy goals to "prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the amount and variety of new generation that would compete in the wholesale electricity market."[12]

As discussed further below, the Alliance requests that the Commission expedite these changes and provide a 30-day comment period for this Petition. The Alliance appreciates the Commission's consideration of this request on behalf of all Tribes.

II. IDENTITY AND INTERESTS OF PETITIONERS

The Alliance is a 501(c)(3) nonprofit organization that supports Tribal Nations' pursuit of energy sovereignty through the development, ownership, and operation of microgrids and utility scale generation. Since its inception, the Alliance has offered no-cost capacity-building support to more than fifty Tribes seeking to develop energy projects. Currently, the Alliance aids over eighty Tribes with more than eight gigawatts of clean energy in development. The reforms proposed herein would remove significant impediments to Tribal energy development, and ensure Tribal Nations can realize the associated reliability, economic, and energy security benefits.

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[11] *See, e.g.*, *Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, Order No. 635, 104 FERC 61,108, at P 11 (2003) ("The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their lands and resources.").

[12] Order No. 2023, 184 FERC ¶ 61,054 at P 2; *see* Order No. 2003, 104 FERC ¶ 61,103 at P 11 (the *pro forma* rules are designed to "minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.").

III. COMMUNICATIONS

Please address all notices and communications regarding this matter to the following:

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IV. BACKGROUND

A. Background on the Commission's Large Generator *Pro Forma* Interconnection Procedures.

The Commission in Order No. 2003[13] directed public utilities to enact interconnection reforms designed to "prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the amount and variety of new generation that would compete in the wholesale electricity market."[14] The Commission codified those reforms in a uniform set of large generator interconnection procedures and an interconnection agreement, known as the *pro forma* LGIP and *pro forma* Large Generator Interconnection Agreement ("LGIA"), in order to "(1) limit opportunities for Transmission Providers to favor their own generation; (2) facilitate market entry for generation competitors by reducing interconnection costs and time; and (3) encourage needed investment in generator and transmission infrastructure."[15]

The Commission recently amended the *pro forma* LGIP and *pro forma* LGIA in Order No. 2023 in an attempt to reduce the significant size of the interconnection queue, which the

[13] Order No. 2003, 104 FERC ¶ 61,103 at P 11.
[14] Order No. 2023, 184 FERC ¶ 61,054 at P 2; *see* Order No. 2003, 104 FERC ¶ 61,103 at P 11.
[15] Order No. 2003, 104 FERC ¶ 61,103 at P 12.

Commission attributed to "speculative interconnection requests that contribute to interconnection study backlogs, delays, and uncertainty, and, in turn, unjust and unreasonable Commission-jurisdictional rates."[16] Among other things, Order No. 2023 instituted a cluster study process, increased site control requirements, required commercial readiness deposits, and imposed withdrawal penalties if an interconnection customer exits the queue or does not reach commercial operation.[17]

Although the Commission determined these reforms to be generally just, reasonable, and not unduly discriminatory, Commissioner Clements acknowledged that further changes may be necessary to address equity and fairness related to generation resources serving, or developed, by Tribes. In her concurrence, Commission Clements noted that "[w]hile the commercial readiness deposit and withdrawal framework adopted in this final rule hold the potential to make interconnection processes more efficient, they may act as a barrier to projects serving or developed by Tribes in cases where such projects adopt unique ownership and financing structures."[18] To that end, she encouraged "further inquiry into whether certain projects developed to serve Tribal communities or disadvantaged communities may have other characteristics that uniquely demonstrate commercial readiness as alternatives to the new deposit requirements," as well as "other measures that may allow such projects to overcome any unique barriers that they face."[19]

This petition seeks to resolve the barriers faced by Tribal Nations posed by unduly burdensome commercial readiness deposits and withdrawal penalties by proposing a limited and

[16] Order No. 2023, 184 FERC ¶ 61,054 at P 48.
[17] *Id*. PP 47, 67, 177, 502, 594, 690.
[18] Order No. 2023, Commissioner Clements Concurrence at P 38.
[19] *Id*. P 40.

narrowly tailored alternative process to the commercial readiness and withdrawal framework that ensures Tribal Nations are not prevented from entering the market for competitive generation and interconnecting in a reliable, efficient, transparent, and timely manner.[20]

B. Tribal Nations in the United States Today.

1. Tribal Nations are Sovereign Entities to which FERC has a Unique Political Relationship and Trust Responsibility.

There are 574 federally recognized Tribes in the United States, 347 of which are in the contiguous 48 states.[21] The unique legal and political relationship between Tribes and the United States government is grounded in the Constitution[22] and has been molded by centuries of historical and legal whiplash in federal Indian policies, often to the detriment of Tribal Nations. The Indian Commerce Clause, federal treaties, agreements, federal laws, and seminal Supreme Court decisions have shaped this relationship, which commenced with the dispossession of Tribal lands and has culminated in the federal government owing the "moral obligations of the highest responsibility and trust" to Tribal Nations.[23] This "trust responsibility" vests the federal government with a fiduciary duty to ensure the welfare of Tribes and their members.[24] FERC has acknowledged this trust responsibility in its Tribal Consultation Policy, and Congress recognized it in the 1992 amendments to the Federal Power Act.[25]

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[20] *Id*. P 3.

[21] *See* Notice, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed. Reg. 944 (Jan. 8, 2024).

[22] U.S. Const., Art. I, Sec. 8, Cl. 3 ("Indian Commerce Clause").

[23] *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831); *Seminole Nation v. United States,* 316 U.S. 286, 296–97 (1942).

[24] Tribal Self Governance of 1994, 108 Stat. 4270 (codified at 25 U.S.C. §§ 458aa-458hh); *see also Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, Order No. 635, 104 FERC 61,108 (2003).

[25] 16 U.S.C. § 803.

Since before the founding of the United States and until 1871, the United States and its predecessor European colonizers entered into hundreds of treaties with Indian tribes. At the heart of those treaties was a nation-to-nation (now characterized as "government-to-government") relationship between the treating parties. In 1831, the U.S. Supreme Court characterized Tribal Nations as "domestic dependent nations."[26] This relationship – political in nature, although substantially diminished in many ways – continues to this day. Over the last almost 200 years, Tribes' political status has been acknowledged, diminished, almost extinguished, promoted, but now elevated by all branches of the federal government.[27] This political status is not to be confused with treatment as ethnic or racial minority status. Today, the federal government can – and does – create different rules for Tribal Nations that would not otherwise be permissible under the 5th Amendment.[28]

Today, Tribal Nations' federally recognized status cements the formal government-to-government political relationship between the Federal government and a particular Tribe, and qualifies recognized Tribes to be treated as political entities under federal Indian law principles. FERC itself has recognized Tribes' sovereign status, holding that Tribes, as well as Tribally chartered enterprises, are governmental entities exempt from Part II of the Federal Power Act.[29]

Notwithstanding that Tribal sovereignty is central to progressing Tribal self-determination, the relationship between Tribes and the federal government has at times involved

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[26] *Cherokee Nation*, 30 U.S. at 17.

[27] *See, e.g.,* Indian Reorganization Act of 1934; Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" 65 Fed. Reg. 67249 (Nov. 9, 2000); *Haaland v. Brackeen*, 599 U.S. 255 (2023).

[28] *See Morton v. Mancari*, 417 U.S. 535, 555 (1974) (as a general matter, any "special treatment" of Indians that "can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians . . . will not be disturbed"); *see also United States v. Sandoval*, 231 U.S. 28, 46 (1913); *Haaland v. Brackeen*, 599 U.S. 255 (2023); *see* generally Title 25 of the United States Code; 25 U.S.C. 3502(d) (authorizing federal energy procurement preference based on tribal ownership of energy projects).

[29] *See Hoopa Valley Tribe & Hoopa Valley Public Utility District*, 174 FERC ¶ 61,102, at PP 12, 14 (2021).

horrific acts by the federal government, including termination, relocation, and assimilation. President Biden recently described such acts as "attacks on Tribal sovereignty" resulting in "lasting damage to Tribal communities, Tribal economies, and the institutions of Tribal governance."[30] Tribal Nations are still suffering the consequences of those actions, while federal laws have more often than not perpetuated, rather than redressed, the consequences of federal hostility.

In recent years, however, the federal government, including the Commission, has prioritized Tribal self-determination by supporting Tribal sovereignty, self-governance, and the revitalization of Tribal economies by encouraging the growth of Tribal institutions. For example, the Indian Tribal Energy Development and Self-Determination Act of 2005 provided more flexibility and autonomy for Tribal management of energy resources,[31] and was later amended to implement further beneficial changes, including directing the Department of the Interior to provide technical assistance to Tribes planning energy resource development programs.[32] Congress also reaffirmed the federal trust responsibility, codifying in 2016 that "the responsibility of the United States to Indian tribes includes a duty to promote tribal self-determination regarding government authority and economic development."[33]

Recent administrations have also committed to furthering the federal government's trust responsibility. In 2013, President Obama signed Executive Order 13647, establishing the White House Council on Native American Affairs in order to "ensure that the Federal Government

[30] Executive Order 14112, "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination," 88 Fed. Reg. 86021 (Dec. 11, 2023) ("Executive Order 14112").

[31] Pub. L. 109-58, title V, Aug. 8, 2005, 119 Stat. 763.

[32] Pub. L. 115–325, §1, Dec. 18, 2018, 132 Stat. 4445.

[33] *See* Pub. Law 114-178, 130 Stat. 433 (June 22, 2016).

engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities."[34] The Biden Administration has also focused on reducing barriers for Tribes in federal processes.[35] Executive Order 14112, issued on December 6, 2023, aims to ensure that federal funding and other support programs are not administered in a way that leaves "Tribal Nations unduly burdened and frustrated with bureaucratic processes."[36] President Biden also tasked agencies with ensuring that federal programs "provide Tribal Nations with the flexibility to improve economic growth, address the specific needs of their communities, and realize their vision for their future" and directed agencies to "identify any statutory and regulatory changes that are necessary or may be helpful to ensure that Federal funding and support programs effectively address the needs of Tribal Nations."[37]

The Commission, too, recognizes its trust responsibility to Tribes and Tribal sovereignty.[38] In response to a series of federal efforts to ensure agencies consult with Tribes as sovereign nations,[39] the Commission in 2003 issued Order No. 635, which committed the Commission to "endeavor to work with the tribes on a government-to-government basis" to

[34] Executive Order 13647, "Establishing the White House Council on Native American Affairs," 78 Fed. Reg. 39539 (July 1, 2013).

[35] Executive Order 14112.

[36] *Id*. at 86022.

[37] *Id*.

[38] *See e.g. Public Utility District No. 1 of Snohomish County, Washington*, 146 FERC ¶ 61,197, *reh'g denied*, 149 FERC ¶ 61,206 (2014); *PacifiCorp*, 133 FERC ¶ 61,232 (2010), *order on reh'g*, 135 FERC ¶ 61,064 (2011); *Bradwood Landing LLC*, 124 FERC ¶ 61,257 (2008), *order on reh'g*, 126 FERC ¶ 61,035 (2009).

[39] Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" 65 Fed. Reg. 67249 (Nov. 9, 2000); Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments" 63 Fed. Reg. 27655 (May 19, 1998); Presidential Memorandum, "Government-to-Government Relations with Native American Tribal Governments" (Apr. 29, 1994), reprinted at 59 Fed. Reg. 22951 (May 4, 1994); Executive Order 12875, "Enhancing the Intergovernmental Partnership" 58 Fed. Reg. 58093 (Oct. 28, 1993).

"seek to address the effects of proposed projects on tribal rights and resources."[40] In 2019, Order No. 635 was amended to acknowledge the effect of treaty rights, noting that "'tribal consultation pursuant to our trust responsibility encompasses more than implementation of National Historic Preservation Act Section 106. It includes every issue of concern to an Indian tribe related to a treaty, statute, or executive order where the Commission can, through its exercise of its authorities under the FPA, fulfill its trust responsibility.'"[41]

More recently, in denying permit applications for projects to be sited on Tribal lands, the Commission committed to "assuring that Tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian Tribes or Indian trust resources."[42] Given the disparate impact of the Commission's commercial readiness deposit and withdrawal framework on the ability of Tribal Nations to develop projects on Tribe-controlled lands, the Commission can fulfill its core moral obligation to protect Tribal self-determination by acting on this Petition and removing the barriers to the interconnection of Tribal energy projects.

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[40] *Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, Order No. 635, 104 FERC ¶ 61,108 at P 13 (2003), *amended*, 169 FERC ¶ 61,036 (2019) ("Revised Policy Statement"), codified at 18 C.F.R. 2.1c (2019).

[41] Revised Policy Statement, 169 FERC P 61,036 at P 6, *quoting Hydroelectric Licensing under the Federal Power Act,* Order No. 2002, 104 FERC ¶61,109 at P 279 (2003), *order on reh'g* , 106 FERC ¶61,037 (2004); *see Western Navajo Pumped Storage 1, LLC et al.,* 186 FERC ¶ 61,120, at P 10 (2024) ("We believe that our trust responsibility to Tribes counsels a similar policy in cases involving Tribal lands[] and, accordingly, we are establishing a new policy that the Commission will not issue preliminary permits for projects proposing to use Tribal lands if the Tribe on whose lands the project is to be located opposes the permit.").

[42] *Pumped Hydro Storage LLC*, 187 FERC ¶ 61,037, at P 8 (2024). In its Equity Action Plan, the Commission recognizes barriers faced by underserved communities in having their voices heard, and seeks to address these barriers. Equity Action Plan, 2024 Update, available at: https://www.ferc.gov/equity.

2. **Socioeconomic Status of Tribal Communities.**

Many Tribal Nations are impoverished. As of 2022, the poverty rates for American Indian and Alaska Native populations reached 25%, the highest of all populations.[43] Such extreme poverty is due, in large part, to the lack of economic opportunity on reservations.[44] It is no surprise then, that the unemployment rate for American Indians continues to be multiples higher than the unemployment rate for the overall population. As of January 2022, American Indians and Alaska Natives experienced an unemployment rate of 11.1%, while the overall population experienced a rate of only 4%.[45]

Many Tribal Nations are considered environmental justice communities. They lack economic resources, access to clean water and clean energy, and suffer exposure to harmful environmental contaminants and resource exploitation. As a result, President Biden's Justice40 Initiative classifies all federally recognized Tribes as Justice40 communities to which the federal government commits to providing 40% of the benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments.[46]

Due in large part to detrimental federal policies, there has been severe underinvestment in infrastructure for Tribal communities. This is reflected in Tribes' lack of, or decaying, water and

[43] "Poverty in the United States: 2022" United States Census Bureau (Sept. 2023), at p. 5-6, available at: https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-280.pdf.

[44] "Federal Policies Trap Tribes in Poverty" Adam Crepelle, American Bar Association (Jan. 6, 2023), available at: https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/federal-policies-trap-tribes-in-poverty/#:~:text=Due%20to%20the%20lack%20of,residents%20struggle%20to%20find%20housing.

[45] "BLS Now Publishing Monthly Data for American Indians and Alaska Natives" U.S. Bureau of Labor Statistics (Feb. 14, 2022), available at: https://www.bls.gov/blog/2022/bls-now-publishing-monthly-data-for-american-indians-and-alaska-natives.htm#:~:text=The%20unemployment%20rate%20for%20American,percent%20for%20the%20overall%20population.

[46] "Justice40" The White House (last visited Aug. 2, 2024), available at: https://www.whitehouse.gov/environmentaljustice/justice40/.

electric systems, roads, and buildings. At the same time, federal Indian policy has promoted third-party energy resource extraction from Tribal Lands.[47] For instance, Tribal territory has been taken by the federal government to provide low-cost energy to others through actions such as the Pick-Sloan Flood Control Act of 1944, and even the Commission, until recently, repeatedly approved permits for pumped storage hydroelectric projects on Tribal lands without the consent of the Tribal Nation.[48] It is unsurprising, then, that many Tribes also lack reliable access to electricity[49] and experience higher electricity prices than the national average.[50]

3. **The Opportunity of Utility Scale Generation.**

Tribal Nations seek to build utility scale generation projects to help solve these problems. Tribal energy development can help redress Tribal poverty and energy inequity by facilitating economic development, generating Tribal revenue, creating jobs, and promoting self-sufficiency. However, despite the unparalleled generation potential of Tribal lands,[51] Tribes have been largely excluded from developing and owning electric generation, due in part to federal laws and

[47] "Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures," Judith Royster (Jan. 31, 2012, rev. May 2, 2012), Stanford Environmental Law Journal, Vol. 31, p. 91, at 94-95 (Tribal land has a wealth of natural resources, yet Tribal members have received less value than non-Tribal entities from those resources because federal policy largely permits only passive and lease interests), available at: https://ssrn.com/abstract=1996759.

[48] National Park Service, Pick-Sloan Plan-Part Two-Debate and Compromise, available at: https://www.nps.gov/mnrr/learn/historyculture/pick-sloan-plan-part-two-debate-and-compromise.htm (recognizing that Tribal Members were the most impacted and yet received the least benefits from the Missouri River dams); *see also Western Navajo Pumped Storage 1, LLC et al.,* 186 FERC ¶ 61,120, at P 10 (2024) ("In the past, we applied the general policy of granting permits even where issues were raised about potential project impacts without a distinction for projects on Tribal lands opposed by Tribes.").

[49] In 2022, the Department of Energy Office of Indian Energy reported that 16,805 Tribal homes were unelectrified, meaning approximately 54,209 Tribal members did not have electricity in their homes. *See* "Tribal Electricity Access and Reliability Congressional Report – Listening Session II" Wahleah Johns, et al., Department of Energy Office of Indian Energy (July 28, 2022), at 44, available at: https://www.energy.gov/sites/default/files/2022-07/ie-congressional-listening-session-2_july2022.pdf ("Tribal Electricity Access Report").

[50] In fact, the Department of Energy Office of Indian Energy reported that 56% of Tribal members experience higher electricity prices than the national average, while approximately 35% pay prices that are double or more than the national average. *See* Tribal Electricity Access Report at 34.

[51] NREL Study at v-vii.

policies that have historically limited Tribal Nations' ability to leverage economic tools that are available to other developers. As a result, Tribal energy developers must often dispose of a controlling interest in their projects, and the associated economic benefits, as a condition of securing a partner who will post the capital necessary to stay in the queue.

Providing an avenue for Tribes to maintain majority ownership of projects on Tribe-controlled lands by limiting commercial readiness deposits and withdrawal penalties would represent a reversal of past Indian energy policies and help Tribes achieve economic self-sufficiency consistent with federal policies promoting Tribal sovereignty and self-determination. It can also generate significant and lasting income for Tribes and their members.[52] By developing and owning their own projects, Tribes can offset high energy bills disproportionately borne by Tribal members, create jobs, train their workforces, and increase social services.[53]

4. **Tribes' Unique Organizational and Funding Structures.**

None of these lasting benefits will be realized if the interconnection rules continue to disregard Tribes' unique sovereign status, organization, and financial structures. Tribal Nations are a special class of interconnection customer. Unlike other sovereign entities such as states, Tribal governments do not have significant tax revenue to run their governments and provide

[52] SAGE Development Authority, Request of Sage Development Authority for Prospective Tariff Waiver, Shortened Comment Period and Expedited Action, Docket No. ER23-1065-000, at 18-19 (Feb. 7, 2023) ("SAGE Waiver 1") (discussing SAGE's plans to use funds from the project for community projects addressing disparities in public health or other issues); *see also* Reuters, "Why Native American Tribes Struggle to Tap Billions in Clean Energy Incentives," V. Volcovici (Sept. 8, 2023), available at: https://www.reuters.com/sustainability/climate-energy/why-us-tribes-struggle-tap-billions-clean-energy-incentives-2023-09-08/.

[53] *See* SAGE Development Authority, Request of Sage Development Authority for Prospective Tariff Waiver and Expedited Action, Docket No. ER24-387-000, at 5, 16 (Nov. 13, 2023) (repeating SAGE's intention to use income from the project for project to address public health and other community issues) ("SAGE Waiver 2"); Hopi Utilities Corporation, Request of Hopi Utilities Corporation for Prospective Tariff Waiver, Shortened Comment Period and Expedited Action, Docket No. ER24-396-000, at 22 (Nov. 13, 2023) (explaining that Hopi Utilities Corporation was created by the Hopi Tribe to "bring equity, income, and justice to the community through investment in electric power infrastructure.") ("HUC Waiver 1").

government services, let alone finance energy infrastructure. This is due to the fact that Tribal land is held in trust by the federal government and therefore not taxable;[54] Tribal unemployment rates are high, depriving Tribes of taxable income; and legal constraints limit Tribal taxing authority.[55] For instance, although Tribal Nations are sovereigns with the right to levy taxes on economic activity on their reservations, state governments are able to impose taxes on transactions involving a non-Tribal entity on Tribal lands.[56] This severely cuts into Tribal tax revenue and presents a dilemma: levy their own tax in addition to the state, resulting in double taxation, or forgo that tax revenue altogether. Both solutions repress economic activity on Tribal lands. This practice, combined with the inability of Tribes to collect property taxes from lands that are held in trust, severely limit the ability of Tribes to finance large-scale infrastructure or commercial projects.

Tribes attempt to navigate these limitations by raising revenue primarily from federal programs and by establishing Tribal corporations, which then generate revenue to provide government services. But unlike the relatively stable revenue streams enjoyed by states, Tribal revenues from the federal government are unpredictable and vulnerable to change as national priorities change. Tribal enterprises also typically lack the capital to build utility scale

[54] A brief explanation of the types of Tribal lands is available on the U.S. Department of Interior's website. *See* Fee to Trust Land Acquisitions, U.S. Department of Interior Indian Affairs, available at: https://www.bia.gov/bia/ots/fee-to-trust#:~:text=Trust%20land%20is%20not%20subject,land%20for%20services%20they%20provide.

[55] "Taxation in Indian Country: An Overview of the Causes of Tax Inequity in Indian Country and Modern Reform Efforts," Andrew Huff, Center for Indian County Development, Federal Reserve Bank of Minneapolis (April 2023), at 2-5 (discussing constraints on Tribal tax authority, increasing costs of doing business on Tribal lands because of taxes by both the Tribal government and state government), at 8 (noting that uncertainty on how tax laws are applied means that Tribal communities continue to be underdeveloped), available at: https://www.minneapolisfed.org/research/cicd-policy-discussion-papers/taxation-in-indian-country-an-overview-of-the-causes-of-tax-inequity-in-indian-country-and-modern-reform-efforts.

[56] *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (upholding state cigarette tax on non-Tribal members at Tribal retailers and finding that a Tribal tax on cigarettes did not preempt the state tax).

generation and the access to the capital markets necessary to finance such projects. In fact, Tribes experience numerous structural obstacles to accessing the capital necessary to build utility scale generation, including lack of collateral, inflexible banking regulations, inadequate economic bases, and lack of financial institutions on or near Tribal lands.[57]

One barrier to raising capital is the fact that the federal government is the legal owner of trust land in Indian Country, holding over 56 million acres of land in trust.[58] Because Tribal governments do not hold property rights on trust lands, they cannot use such lands as collateral, nor can they borrow against it.[59] At the same time, the rates at which Tribes can borrow money are significantly higher than state and municipal governments. A 2022 survey found that Tribes pay 100% more than states and local governments for their municipal debt.[60] Tribal Nations thus not only often lack the necessary capital and collateral to finance large scale energy infrastructure, but they confront higher borrowing costs in the rare instance they can secure funding.

Moreover, while the IRA created programs to support Tribal energy development (reflecting Congress's concession that Tribes face significant barriers to accessing capital) these

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[57] *See generally* "The Report of the Native American Lending Study," Community Development Financial Institutions Fund, U.S. Department of Treasury (Nov. 2001) ("Native American Lending Study Report") at 5-6 (listing economic barriers to capital), available at: https://www.cdfifund.gov/sites/cdfi/files/documents/2001_nacta_lending_study.pdf; "Financing Native Nations: Access to Capital Markets," Jenny Small Review of Banking and Financial Law, Vol. 32 (2012-2013) (reviewing American history leading to Tribal poverty and lack of access to capital markets), available at: https://www.bu.edu/rbfl/files/2013/10/Small.pdf. On Tribal Reservations, the market is largely absent. Instead, "border towns" such as Gallup, New Mexico, enjoy the surge of economic activity due to the lack of basic services such as grocery stores on Reservations, themselves.

[58] Institutions and Economic Development on Native American Lands, Jordan K. Lofthouse, George Mason University Dept. of Economics, Working Paper No. 19-46, at 5-6 (Sept. 2019), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3503072.

[59] Native American Lending Study Report at 5 (listing economic barriers to capital).

[60] "Native American Government Borrowing Costs: Evidence from Municipal Bond Markets," Loftus, McCoy, Zhang, at 4, 8-9 (July 2022), available at: https://www.brookings.edu/wp-content/uploads/2022/06/Loftus-et-al_2022-7-10-LMZ.pdf.

programs do not fund pre-development expenses, such as the commercial readiness deposits necessary to maintain a place in the interconnection queue. In fact, DOE's Tribal Energy Loan Guarantee Program is intended to provide Tribes with the capital to build projects,[61] but *does not* make funding available in the pre-development phase or early in the interconnection process.[62] The practical impact is that a Tribe can only access project funding at the construction stage once the project has already been substantially de-risked.

Similarly, while the IRA established Direct Pay, which makes tax-exempt entities, including Tribes, eligible for a direct payment of clean energy tax credits, which can defray the cost of clean energy investments, these tax credits are not available to fund pre-development expenses. Under the Direct Pay paradigm,[63] Tribal governments, which historically could not receive clean energy tax credits such as the Investment Tax Credit and the Production Tax Credit[64] because they are not required to pay federal taxes, may now receive tax credits equal to the amount of their tax liability as if they had paid taxes. However, because Tribes cannot obtain tax credits until the projects are placed in service, no additional funds are available for pre-development expenses.

Commercial developers, on the other hand, have ready access to the capital markets and can rely of a mix of equity and debt to finance the development of a generation project. Typically, the debt or equity used to finance predevelopment activities of commercial developers

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[61] *See e.g.* 25 U.S.C. § 3502(c).

[62] Federal Loan Guarantees for Tribal Energy Development Projects, DOE Solicitation Number 89303018RLP000005 (May 25, 2022), at 30 (Loan Guarantee Solicitation Announcement), available at: https://www.energy.gov/sites/default/files/2022-10/DOE-LPO_TELGP_Solicitation_30Sept22.pdf. DOE does not issue a loan until the NEPA process is complete, which is later in the process.

[63] Internal Revenue Code, 26 U.S.C. § 6417; *see* Direct Pay Through the Inflation Reduction Act, The White House (last visited Aug. 2, 2024), available at: https://www.whitehouse.gov/cleanenergy/directpay/.

[64] Internal Revenue Code, 26 U.S. Code §§ 45, 48; Inflation Reduction Act, Pub. L. No. 117-169, Title I, §§ 13101-1302, Aug. 16, 2022, 136 Stat. 1906-1913.

will come from equity available at the parent level of companies whose primary business is generation development or from loans that can be based on the strength of the business enterprise. These predevelopment options are not available to Tribes, which do not have access to equity capital, cannot access what limited funding exists (such as government grants) at this stage of project development, and which cannot raise debt until they have completed sufficient pre-construction activities, including obtaining the contractual right to interconnect their project.

Given that Tribal Nations do not have access to tax revenue, rate-based assets, general corporate funds, corporate parent guaranties, working capital, equity infusions, general corporate debt, and financing from traditionally rated financial institutions, they must pursue capital from non-traditional sources, including philanthropy and small government grants. Securing equity infusions or partnering with a well-funded developer require Tribal Nations to cede control and ownership of their projects, negating the very reason Tribes seek to own generation in the first place—sovereignty and the self-determination to direct the outcome of economic decisions for the betterment of the Tribes. Moreover, because Tribes lack the necessary collateral, taking on debt to pay pre-development costs is cost-prohibitive, and often not an option. Tribes are at a further disadvantage because Tribal land is heavily regulated, and Tribes incur higher compliance and transaction costs to build utility scale generation than non-Tribal developers on non-federal lands.[65]

As noted, in the enacting the IRA, Congress recognized the significant barriers Tribes face in accessing funding to develop and construct utility scale generation and created programs to assist Tribes in amassing the necessary funding and financial resources. But Tribal Nations will not be able to avail themselves of these programs without reforms to the commercial

[65] For example, development on Tribal lands requires compliance with the National Environmental Policy Act and Bureau of Indian Affairs (BIA) approval, which can take years and is costly.

readiness deposit and withdrawal penalty framework. Indeed, had Congress anticipated the adoption of new commercial readiness deposits, it is conceivable that federal programs would have been written so as to permit the use of federal funds for pre-development activities.

V. PETITION

The Alliance hereby respectfully petitions the Commission to conduct a rulemaking to defer when Tribal energy development organizations submit commercial readiness deposits and partially exempt such organizations from withdrawal penalties. The Commission should instead adopt limited and narrowly tailored commercial readiness and withdrawal penalty rules for Tribal Nations that are just, reasonable, and not unduly discriminatory in light of Tribes' unique organizational structures and financial barriers.

A. Commercial Readiness Deposits and Withdrawal Penalties Frustrate Tribal Nations' Ability to Submit Interconnection Requests and are Unreasonable Barriers to Entry.

The Commission's current interconnection rules—while well intentioned—unfairly deprive Tribal Nations of the ability to develop utility scale generation. Tribal Nations neither submit speculative interconnection requests nor, due to pervasive, historical discrimination, do they have access to the same financial resources as non-Tribal developers necessary to post security deposits and pay withdrawal penalties as the cost of market entry. And yet the Commission's rules apply equally to both. In so doing, the Commission not only punishes Tribal Nations for a problem not of their making (the submission of speculative interconnection requests), but *preferences* non-Tribal developers by ensuring that one of the few ways Tribal Nations can develop projects is by selling the controlling interests to such developers in exchange for the capital necessary to stay in the queue. The Commission's rules are therefore unjust, unreasonable, and unduly discriminate against Tribal Nations.

Order No. 2023 instituted commercial readiness deposits in order to deter speculative[66] interconnection requests. By requiring interconnection customers to post commercial readiness deposits, the Commission sought to discourage developers from the flooding the interconnection queue, and to encourage non-viable projects to withdraw earlier in the interconnection process, thereby lessening the likelihood of delays and restudies.[67] Such deposits are intended to demonstrate a developer's commitment to reaching commercial operation.[68] At the same time, the Commission also imposed withdrawal penalties for interconnection customers that leave the queue after the commencement of the initial cluster study, with increasing penalties throughout the duration of the interconnection process. Similar to the commercial readiness deposits, withdrawal penalties are assessed "to remedy the issues regarding speculative interconnection requests, including study delays from overcrowded interconnection queues and the harms to the function of the interconnection queue" that can occur when customers withdraw, by incentivizing customers to submit requests for those proposed facilities that they believe are commercially viable, remain in the queue as long as that is true, and by offsetting costs experienced by other customers directly affected by the withdrawal.[69]

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[66] Order No. 2023 explains that speculative interconnection requests are exploratory requests "pursuant to which interconnection customers seek to secure valuable queue positions as early as possible, even if they are not prepared to move forward with the proposed generating facility." Order No. 2023, 184 FERC ¶ 61,054 at P 47. According to the Commission, such generating facilities are often not commercially viable, and thus, the interconnection customer ultimately withdraws from the queue. *Id*.

[67] *Id*. P 691.

[68] *Id*. P 699. The commercial readiness deposits increase throughout the interconnection process from twice the study deposit at the beginning of the process to 10% of the network upgrades identified in the cluster study or restudy, as applicable. A final deposit of 20% of the estimated cost of network upgrades is due when the LGIA is executed or the interconnection customer requests to have the LGIA filed unexecuted. *Id.* P 714

[69] *Id*. PP 781-782. The amount of the withdrawal penalties roughly tracks the amount of the commercial readiness deposits, ranging two times actual costs of the studies performed to 10% of the identified network upgrade costs. *Id. See also pro forma* LGIP, § 3.7.1.1 (a)-(c). If withdrawal occurs after the LGIA has been executed, or if the customer requests that the LGIA be filed unexecuted, the interconnection customer will pay a withdrawal penalty equal to 20% of the network upgrade costs. *See pro forma* LGIP, § 3.7.1.1(d).

The problem is not the Commission's commercial readiness and withdrawal penalty framework, but that these requirements are required of *all* interconnection customers, irrespective of their ability to raise capital, secure corporate parent guarantees, or bank with creditworthy financial institutions, and without regard to the impact on the sovereignty and self-determination of Tribal Nations. Plainly, the interconnection rules were not written for Tribes seeking to develop projects; they were written for a different kind of developer—vertically integrated utilities, traditional independent power producers, and other developers who have existing capital and the financial wherewithal to fund pre-development costs. For those developers, the Commission's commercial readiness and withdrawal penalty framework may have its intended effect of reducing the interconnection backlog while still permitting viable projects to move forward. But for Tribal Nations, who have different motives and underlying purposes for developing projects and lack the resources to post security deposits and pay withdrawal penalties, the consequences will be more total: the inability to develop utility scale projects on Tribal-controlled lands, irrespective of the Tribal Nation's commitment to developing a particular project and whether the project is otherwise viable.

The withdrawal penalties are likewise an unreasonable burden that deter commercially viable Tribal energy projects from entering the queue. As with commercial readiness deposits, Tribes simply do not have the funds to cover withdrawal penalties in the predevelopment phase, placing Tribes in the untenable position of electing not to submit an interconnection request, or risk potentially severe economic consequences in the event their projects cannot move forward due to reasons outside their control. Because of the significant time, effort, and expense inherent in Tribally developed generation, Tribal Nations intend to move forward with any project for which an interconnection request is submitted. When a Tribal Nation's project is forced to

withdraw, it is most likely for reasons outside the Tribe's control and that cannot be otherwise mitigated—such as a change in laws or a permit denial—and not as part of a speculative development strategy.

The Commission already has evidence from recent proceedings illustrating the unique barriers Tribal Nations confront when trying to build utility scale generation.[70] Two Tribal energy development organizations, SAGE Development Authority ("SAGE") and the Hopi Utilities Corporation ("HUC"), sought Tariff waivers because the short timeframe within which both Tribes had to submit financial security was not compatible with their organizational and funding structures.[71] Had they not secured waivers, HUC and SAGE would have been unable to advance in the queue, significantly delaying or terminating otherwise viable projects at their outset.[72] Unfortunately, another tribal energy development organization, the Oceti Sakowin Power Authority ("OSPA"), actually had to withdraw two projects from the SPP queue because they could not post the $18 million and $14.5 million required in financial security in the 15-day

[70] *SAGE Development Authority*, 182 FERC ¶ 61,180, at P 20 (2023); *SAGE Development Authority*, 186 FERC ¶ 61,006, at P 21 (2024); *Hopi Utilities Corporation*, 185 FERC ¶ 61,149, at P 19 (2023); *Hopi Utilities Corporation*, 186 FERC ¶ 61,100, at P 19 (2024).

[71] *See* SAGE Waiver 1, Docket No. ER23-1065-000, at 2, 6-9 (explaining that SAGE cannot make large financial commitments in a matter of days because it "primarily relies on multiple large and small contributors and philanthropic organizations."); SAGE Waiver 2, Docket No. ER24-387-000, at 2-3, 7-9 (repeating SAGE's difficulty in obtaining funding by the Tariff-proscribed timeline); HUC Waiver 1, Docket No. ER24-396-000, at 2-4, 12-13 (explaining that HUC will not be able to receive a letter of credit before the payment date, despite being "fully and diligently engaged with both financial institutions and philanthropic organizations."); Hopi Utilities Corporation, Request of Hopi Utilities Corporation for Prospective Extension of Tariff Waiver, Shortened Comment Period and Expedited Action, Docket No. ER24-905-000, at 2-4, 12-13 (Jan. 12, 2024) (requesting an extension of the tariff waiver because although "HUC has been actively engaged with potential funding partners since early December. . . no potential partner was willing to commit to providing an LOC without knowing HUC's project's place in APS's interconnection queue.").

[72] It is not just the timeline for posting commercial readiness deposits that is problematic, but also the rules for posting security. For example, SAGE had to pay its financial security in cash because its preferred bank—a Tribally owned financial institution—did not meet SPP's debt rating requirements for issuing a letter of credit. *See* SAGE Waiver 1, Docket No. ER23-1065-000, at 6-7(noting that SAGE had to post cash for Financial Security One because its bank did not meet certain requirements); SAGE Waiver 2 Docket No. ER24-367-000, at 2, 7, 9 (reiterating SAGE's difficulty in obtaining a letter of credit, and thus posting cash for Financial Security Two).

time frame mandated by SPP's tariff.[73] OSPA's projects would have deployed 250 MW of renewable energy, bringing jobs, economic growth, and reliable electricity. Now, those projects are indefinitely delayed, costing the Tribes millions of dollars and depriving them of a critical economic lifeline.[74] And, while a handful of Tribes are well resourced, most of the 574 federally recognized Tribes are not, as evidenced by the disproportionate poverty rates among Indian Tribes.

While the Commission granted waivers permitting SAGE and HUC to continue in the interconnection queue, waivers do not fix the underlying problems, and the resources associated with securing a waiver from FERC's rules further strain the finances of cash-strapped Tribes. FERC waivers generally require hiring specialized attorneys at a time when Tribal funds could and should be spent completing pre-development activities, not seeking waivers from FERC. It is simply not practical to expect, or require, Tribal energy developers to apply for tariff waivers *each time* a new project enters the queue.[75]

B. Adopting A Narrowly Tailored Alternative Commercial Readiness Deposit and Withdrawal Penalty Framework for Tribal Nations is Just, Reasonable, and Not Unduly Discriminatory or Preferential.

1. Tribal Nations are not Similarly Situated to Other Generation Developers.

As set forth throughout the body of this Petition, Tribal Nations are not similarly situated to other generation developers and therefore warrant specialized interconnection rules.[76] Tribal

[73] Oceti Sakowin Power Authority, Comments of the Oceti Sakowin Power Authority, at 9-10 Docket No. RM22-14 (Oct. 13, 2022).

[74] *Id*.

[75] FERC has likewise opined that complaints are an "inadequate and inefficient means to address interconnection issues." Order No. 2003, 104 FERC ¶ 61,103 at P 10.

[76] Applying the same rate to differently-situated customers can result in undue discrimination. *See accord, e.g., Ark. Elec. Energy Consumers, et al. v. FERC*, 290 F.3d 362, 368 (D.C. Cir. 2002) ("applying the same rate to two groups

Nations are sovereign nations to which the federal government owes a trust responsibility,[77] and they do not have access to the capital necessary to post commercial readiness deposits and withdrawal penalties.

Tribes have a unique responsibility to govern their own communities, make and enforce laws, and most importantly, decide how to develop and use assets to advance Tribal economic interests.[78] It is for that reason that the Commission in recent orders has applied its trust responsibility, explaining that it must "assur[e] that Tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian Tribes or Indian trust resources."[79] As it applies to interconnection, the Commission should consider the disproportionate adverse impact of its commercial readiness deposit and withdrawal penalty framework on Tribal Nations, and take action to ensure that Tribal Nations have equal access to the interconnection queue.

In addition to the trust responsibility owed to Tribal Nations, they are also distinct in other respects from non-Tribal developers that lack significant resources. Tribal Nations have limited access to funding for pre-development expenses, and, as discussed above, Tribal Nations do not enjoy the economic privileges inherent to other utility scale generation developers.[80] For

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of dissimilarly situated customers may violate section 205's prohibition against undue discrimination"); *Elec. Consumers Resource Council v. FERC*, 747 F.2d 1511, 1515 (D.C. Cir. 1984).

[77] DOE Order 144.1, "Dep't of Energy American Indian Tribal Government Interactions and Policy" (Jan. 16, 2009), *see also* Order No. 635, 104 FERC 61,108 at P 11 ("The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their lands and resources."); Executive Order No. 14112 (the administration "is committed to protecting and supporting Tribal Sovereignty and self-determination, and honoring our trust and treaty obligations to Tribal Nations").

[78] *See supra* 9-13 (discussing the federal government's trust responsibility and Tribal Nation's sovereignty).

[79] *Pumped Hydro Storage LLC*, 187 FERC ¶ 61,037, at P 8 (2024). In its Equity Action Plan, the Commission recognizes barriers faced by underserved communities in having their voices heard, and seeks to address these barriers. Equity Action Plan, 2024 Update.

[80] *See supra* 13-21 and accompanying notes.

instance, they lack tax parity with states, and because vast swaths of Tribal land are owned by the federal government in trust, Tribes cannot tax trust land or use it to secure financing for utility scale generation project. Tribal Nations face higher borrowing costs than other developers, and for historical reasons do not possess the relationships with funders or rated financial institutions necessary to secure funding. The few federal programs that exist to fund Tribal energy projects do not provide financing for pre-development activities, such as entering and staying in the interconnection queue. Therefore, most funding for Tribal energy projects is only available once a project has secured interconnection rights and has an interconnection service agreement, creating a negative feedback loop in which Tribal Nations cannot secure funding until they get an interconnection service agreement, and cannot get an interconnection service agreement without funding.

2. **Tribal Energy Projects are Not Speculative.**

Tribal Nations are not submitting speculative interconnection requests. Indeed, by their very nature, Tribal energy projects are not speculative. They submit interconnection requests for projects on Tribal-controlled lands for the purpose of pursuing economic development, offsetting high energy bills disproportionately borne by their members, creating jobs, and generating revenue for Tribal services, not to achieve outsized economic gains or take advantage of evolving market rules. While the Commission may have reasonably been concerned about developers flooding the queue with interconnection requests for multiple projects in jurisdictions across the country in the hopes of identifying the most profitable location or securing an off-taker, the governance structure, financial limitations, and fundamental purpose of Tribal energy development means that when a Tribal energy project enters the interconnection queue, it does so with the intention of pursuing that project to completion. There is no evidence that Tribal

Nations submit speculative interconnection requests or contributed to the interconnection queue harms prompting the Order No. 2023 reforms.

In point of fact, most Tribal Nations lack the resources to simultaneously pursue multiple projects across the country in the hopes to finding the most favorable site. Tribes use whatever limited resources they have available to create a Tribal corporation to develop and operate generation projects, secure support for the project from the Tribal Council, determine the best place to site a project on Tribe-controlled lands, gain site control, ensure cultural resource protection, conduct project feasibility studies, pursue necessary permits, and begin design and engineering work.[81] Developing a project on trust land comes with additional hurdles, including in some cases Bureau of Indian Affairs approval.[82]

Tribal Nations thus lack the resources, let alone the inclination, to submit speculative interconnection requests. Deferring when Tribal energy developers submit financial security and partially exempting Tribes from withdrawal penalties ensures that non-speculative Tribal projects are not uniquely burdened in the interconnection process.

3. **Proposed Rules for Tribal Energy Development Organizations.**

The Alliance proposes that the Commission adopt rules to defer when Tribal Nations must submit the commercial readiness deposits and partially exempt them from withdrawal penalties. To be clear: Tribal Nations are not seeking special treatment. They are simply

[81] *See, e.g.*, HUC Waiver 1, Docket No. ER24-396, at 9-11 (stating that the Hopi Tribe created a corporation to manage electric power systems and services, identified and selected a site for its proposed generation project consistent with feasibility and cultural assessments); SAGE Waiver 1 Docket No. ER23-1065, at 5, 11 (stating that SAGE Development Authority was created by the Tribe to oversee the development of the proposed wind facility and seeks to implement Tribal values and has made significant developments in its project, including site control, completed environmental, biological, and cultural studies, and installed meteorological towers).

[82] *See* Leasing on Individual Indian and Tribal Lands, U.S. Department of Interior, Bureau of Indian Affairs, available at: https://www.bia.gov/service/leasing.

requesting that the Commission no longer inadvertently prevent Tribal Nations from participating in the interconnection process to an equal extent as other generators in the wholesale market.

Specifically, the Commission should adopt a definition of Tribal Energy Development Organization[83] and then: (1) permit Tribal Energy Development Organizations to defer paying commercial readiness deposits until the LGIA execution phase, including to the extent applicable in any transition rules, (2) exempt Tribal Energy Development Organizations from paying the withdrawal penalty required in *pro forma* LGIP section 3.7.1.1(a), and (3) permit Tribal Energy Development Organizations withdrawing during the applicable timeframes in *pro forma* LGIP sections 3.7.1.1(b), and 3.7.1.1(c), and during any transition process as applicable, to pay a penalty equal to the actual study costs incurred by the withdrawing customer at the time of withdrawal, capped at $150,000.[84]

Since Tribal energy projects are not speculative, commercial readiness demonstrations are not required to deter speculative requests by Tribal Energy Development Organizations. The Alliance understands, however, that all projects that enter and remain in the queue should be ready to proceed with interconnection. Therefore, Tribal Energy Development Organizations

[83] The Alliance proposes that the Commission base the definition of Tribal Energy Development Organization contained in the Energy Policy Act of 2005. 25 U.S.C. § 3501(12). A Tribal Energy Development Organization is:

(1) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to 25 U.S.C. § 5124 or 25 U.S.C. § 5203; or

(2) any organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under 25 U.S.C. § 3502 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of 25 U.S.C. § 3504.

Indian Tribe as used herein means any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[84] Attachment A hereto outlines the proposed rule changes.

should be permitted to demonstrate commercial readiness through the alternative, non-financial means detailed further in Attachment A, such as the adoption of a Tribal Council resolution approving the development of a project or allocating financial or staff resources to a project; submitting an application for government grants, loans, and other federal and state funding opportunity; conducting one or more necessary studies; submitting a permit application; hosting community engagement meetings; or by securing a letter of intent to procure power from the project, or a similar commitment, from an offtaker.[85]

Tribal Energy Development Organizations start from a fundamentally different place than all other generation developers. The proposed commercial readiness criteria are tailored to the unique political, cultural, and financial aspects specific to Tribal energy development. These criteria, such as the requirement that Tribal Energy Development Organizations obtain Tribal Council approval for their projects, represent real and concrete indicia that a Tribe is serious about its project, and is willing to invest the significant time, resources, and money necessary to bring the project to fruition.

Interconnection rules must be just, reasonable, and not unduly discriminatory or preferential. These proposed changes satisfy this standard and would ensure that Tribal Energy Development Organizations are not uniquely hindered in the interconnection queue. They are narrowly tailored and limited to addressing Tribal Energy Development Organizations and will reduce the undue interconnection barriers faced by Tribal Nations seeking to develop generation on their controlled lands, while increasing the competitive market for generation. In the alternative, the Commission should adopt an alternative process by which Tribal Energy

[85] *See* Attachment A.

Development Organizations can satisfy the commercial readiness deposits and withdrawal penalty requirements, consistent with the principles set forth in this Petition.

4. Adopting the Proposed Reforms Is Just and Reasonable, and Would Further the Commission's Interconnection Policy Goals.

Upon instituting the *pro forma* LGIP and LGIA, the Commission acknowledged that "[i]nterconnection plays a crucial role in bringing much-needed generation into the market to meet the growing needs of electricity customers," and "relatively unencumbered entry into the market is necessary for competitive markets."[86] Although many of the Commission's revisions to the *pro forma* LGIP and LGIA promote these goals, the Commission should further consider the needs and capabilities of Tribal Energy Development Organizations, which lack the access to viable sources of funding to maintain their spot in the interconnection queue under the Commission's existing commercial readiness and withdrawal framework.

The fact of the matter is that Tribal Energy Development Organizations do not have a "relatively unencumbered" opportunity to enter the market but instead confront significant, if not insurmountable, barriers to entering and navigating the interconnection queue. By delaying the imposition of commercial readiness deposits until Tribal developers execute interconnection agreements and by reducing the punitive impact of withdrawal penalties, the Commission would further its goals of bringing more generation to market, ensuring just and reasonable rates, and increasing the opportunities for economic development.[87]

And, as explained in Order No. 2003, the *pro forma* LGIP and LGIA are intended to "encourage needed investment in generator and transmission infrastructure."[88] This sentiment

[86] Order No. 2003, 104 FERC ¶ 61,103 at P 11.
[87] Order No. 2023, 184 FERC ¶ 61,054 at P 2; *see* Order No. 2003, 104 FERC ¶ 61,103 at P 11.
[88] Order No. 2003, 104 FERC ¶ 61,103 at P 12.

still rings true today. It is no secret that the United States is experiencing resource adequacy uncertainty due to an unprecedented amount of load growth and the premature retirements of dispatchable resources.[89] By erecting barriers for Tribal Energy Development Organizations in the interconnection process, there is less opportunity for energy development at a time when the United States needs it most. Revising the *pro forma* interconnection rules so that Tribal energy projects can enter and remain in the queue would bring more energy projects online to meet the nation's resource adequacy needs.

The proposed amendments are also not inconsistent with the Commission's goal of deterring speculative interconnection requests.[90] There is no evidence that Tribal Energy Development Organizations are the cause of the queue problems Order No. 2023 seeks to address. In fact, it is just the opposite. Tribal Energy Development Organizations are fully committed to developing their projects, as evidenced by the charters creating Tribal Energy Development Organizations,[91] the significant commitment of time and financial resources in the early pre-development phase to site the project at the best location, and through the numerous additional unique hurdles Tribes must go through to raise funds from philanthropy and the federal government. Tribes do not undertake generation development lightly.

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[89] Since the last decade there have been over 177 GW of combined retirements, and 72 GW of retirements have been planned for the next decade. *See* "The Future of Resource Adequacy" Department of Energy (Apr. 2024), at 3, 7, available at: https://www.energy.gov/sites/default/files/2024-04/2024%20The%20Future%20of%20Resource%20Adequacy%20Report.pdf.

[90] Order No. 2023, 184 FERC ¶ 61,054 at PP 37, 490, 704.

[91] For example, the Hopi Utilities Corporation is a 100% tribal-owned corporation chartered by the Hopi Tribal Council to rebuild the Hopi Tribe's economy by constructing, managing, and operating electric power systems on the Hopi Reservation. HUC Waiver 1, Docket No. ER24-396-000, at 9- 10 (detailing HUC's charter and purpose). OSPA was similarly chartered to "collectively overcome past challenges they have faced when trying to develop their renewable energy resources on their own for the benefit of their Tribes and to promote Tribal economic development and their self-sufficiency" by undertaking the "planning, financing, development, acquisition, construction… operation or maintenance of power generation and transmission facilities." Corporate Charter of Oceti Sakowin Power Authority, at 3, available at: https://www.ospower.org/wp-content/uploads/2016/05/Oceti-Sakowin-Power-Authority-Corporate-Charter-Ratified-as-of-May-2016.pdf.

To be clear, the Alliance is only proposing that Tribal Energy Development Organizations delay commercial readiness deposits. Since the commercial readiness deposits are cumulative, the effect will be to defer when Tribes submit commercial readiness to the LGIA execution phase.[92] Therefore, Tribal Energy Development Organizations would submit security deposits when such deposits are tied to constructing the necessary network upgrades and interconnection facilities.[93] Moreover, because Tribal Energy Development Organizations can demonstrate commercial readiness through alternative means, the proposed amendments demonstrate that Tribal interconnection customers are ready to proceed, and are timely completing the necessary steps to ensure commercial viability throughout the interconnection process.[94]

Moreover, exempting Tribal Energy Development Organizations from the withdrawal penalties imposed if a project withdraws during the initial cluster study is just and reasonable because there is likely to be a cluster restudy regardless of whether a Tribal customer withdraws. Exempting Tribal Energy Development Organizations from the first withdrawal penalty will therefore have limited to no impact on other interconnection customers.[95] The Commission can thus adopt the Alliance's proposal while still minimizing the impact of project withdrawals on the remainder of the interconnection queue.

For Tribal Energy Development Organization projects that withdraw after the cluster restudy begins or after the facilities study begins,[96] the Alliance proposes that the Commission

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[92] *Pro forma* LGIP, § 11.3.

[93] Order No. 2023, 184 FERC ¶ 61,054 at P 715 ("We agree that tying the LGIA deposit to network upgrade cost estimate sends a more accurate cost signal to the interconnection customer and better aligns the LGIA deposit to its function of ensuring that network upgrades are paid for and constructed").

[94] *Id*. PP 691, 699.

[95] *Pro forma* LGIP, § 3.7.1.1(a).

[96] *Pro forma* LGIP, § 3.7.1.1(b)-(c).

permit Tribal Energy Developers to pay a withdrawal penalty equal to their actual study costs at the time of withdrawal, capped at $150,000.[97] This will ensure that remaining generators are compensated for the impact of the project's withdrawal while not establishing penalties that functionally exclude Tribal Energy Development Organizations from the interconnection queue. Order No. 2023's exceptions to withdrawal penalties would continue to apply. A penalty cap is reasonable because it will give Tribal Energy Development Organizations certainty as to their maximum penalty exposure and permit them to plan for the funding as necessary.

Although these penalties are less punitive than those adopted in Order No. 2023, they are just and reasonable. Tribal Nations are generally not well resourced, so the potential loss of actual study costs (which increase as additional studies are conducted) if they withdraw appropriately incentives Tribal Energy Development Organizations to exit the queue earlier, thereby lessening harm to others in the cluster.[98] Consistent with Order No. 2023,[99] the withdrawal funds would go to other interconnection customers to defray restudy costs. And because the exemption from withdrawal penalties would only apply to Tribal Energy Development Organization, who represent a finite and small number of interconnection customers, any impact on other customers would be limited in both number and geographic scope. Moreover, the significant benefits of removing interconnection barriers and allowing

[97] The Commission should apply this same rule to a Tribal Energy Development Organization withdrawal during a transition process to the extent the rules in sections 5.1.1.1 and 5.1.1.2 apply. Amending the relevant and applicable transition process deposit and withdrawal penalty rules for Tribal Energy Development Organizations is consistent with the Commission's goal of ensuring that a transition study process is used by interconnection customers who are committed to proceeding with their proposed generating facilities. Order No. 2023, 184 FERC ¶ 61,054 at PP 859-860. Tribal energy projects are not speculative and because Tribes will pay the actual study costs if they withdraw, such penalty will incentivize a Tribe to withdraw from the transition queue if they are not in fact ready to proceed.

[98] Order No. 2023, 184 FERC ¶ 61,054 at PP 781-82.

[99] *Id*. PP 782, 798; *pro forma* LGIP, § 3.7.1.2.1.

Tribes to participate in the interconnection queue and pursue projects on Tribally-controlled lands outweighs any limited impact withdrawal may have on other customers.[100]

The Commission has previously recognized the challenges faced by other classes of entities, such as small public utilities, that lack extensive resources, and has established unique rules to facilitate their participation in the wholesale markets. For example, FERC permits waiver of certain open access and standards of conduct requirements that could otherwise pose significant burdens to small public utilities,[101] and it exempts small qualifying facilities from otherwise applicable filing requirements.[102] In the interconnection context, FERC has simplified interconnection rules for small generation facilities in light of the fact that small generators require less burdensome interconnection rules.[103] The Commission should, as with these other classes of generators, promulgate rules tailored to the unique impediments confronting Tribal Energy Development Organizations.

VI. REQUEST FOR EXPEDITED ACTION

The Commission must act swiftly to revise the interconnection rules to ensure that they are just and reasonable when applied to Tribal energy developers. In the IRA, Congress enacted

[100] *See Md. People's Counsel v. FERC*, 761 F.2d 768, 779 (D.C. Cir. 1985) (the Commission must articulate, in response to objections, its "reasons for believing that more good than harm will come from its actions").

[101] *See e.g.*, *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 4 (2011) (The Commission routinely grants waiver of the requirements to establish an OASIS and abide by the Standards of Conduct if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (other than part of an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.).

[102] *See* 18 C.F.R. § 292.601(c)(1). *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 114 FERC ¶61,102, at P 98 (2006) (exempting QFs less than 20 MW from section 205 filing requirement due to hardship for smaller QFs, "particularly those owned by individuals or small businesses.").

[103] *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 111 FERC ¶ 61,220, at P 4 (2005) (noting the rule "will be helpful to removing roadblocks to the interconnection of Small Generating Facilities"); Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 100 FERC ¶ 61,192, at PP 7-8 (2002). The Commission has also created specific rules for types of generation, recognizing that not all generation customers are the same. *See Interconnection for Wind Energy*, Order No. 661, 111 FERC ¶ 61,353 (2005) (creating unique technical criteria for wind).

programs designed to help Tribal energy developers fund and build utility scale generation. These new provisions allow Tribes to access funding and incentives that were previously unavailable to non-profit Tribal entities and mean that for the first time, Tribal Nations have a real opportunity to be the majority owner of utility scale generation. These newer programs include the Tribal Electrification Program, which provides up to $150 million for Tribes to implement projects that allow for more Tribal homes to receive zero-emission electricity,[104] and the Tribal Climate Resilience program, which allotted $225 million to support climate resilience planning to sustain Tribal ecosystems.[105] Most significantly, through the new Direct Pay mechanism, Tribal governments may receive a direct payment of funds in lieu of tax credits.[106] And, the DOE's Tribal Energy Loan Guarantee Program has also been authorized to loan up to $20 billion for tribal energy development.[107] However, each of these unprecedented funding opportunities are time-limited. For instance, the full value of the Direct Pay tax credit is only available for projects that commence construction by 2033,[108] and the DOE Tribal Loan Office's lending authority is only available through September 30, 2028.[109]

By adopting the Alliance's proposal now, the Commission will help ensure that Tribes can take full advantage of these funding opportunities. By initiating a rulemaking, the Commission will remedy the undue barriers facing Tribal energy developers in the interconnection process and ensure that all developers, including Tribal Nations, can interconnect utility scale generation.

[104] Inflation Reduction Act, Pub. L. No. 117-169, Title VIII, § 8003, Aug. 16, 2022, 136 Stat. 2089.
[105] *Id.* at § 8001, 136 Stat. 2088.
[106] Internal Revenue Code, 26 U.S.C. § 6417.
[107] Inflation Reduction Act, Pub. L. No. 117-169, Title V, § 50145, Aug. 16, 2022, 136 Stat. 2045.
[108] *See* Internal Revenue Code, 26 U.S.C. § 48.
[109] Inflation Reduction Act, Pub. L. No. 117-169, Title V, § 50145, Aug. 16, 2022, 136 Stat. 2045.

VII. CONCLUSION

For the foregoing reasons, the Alliance respectfully requests that the Commission issue a notice of proposed rulemaking to adopt commercial readiness and withdrawal penalty rules for Tribal energy developers, consistent with the facts and recommendations herein.

Respectfully submitted,

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ATTACHMENT A

PROPOSED RULES FOR TRIBAL ENERGY DEVELOPMENT ORGANIZATIONS

This attachment sets forth the interconnection requirements and provisions for Tribal Energy Development Organizations. Other than the changes set forth herein, all other interconnection requirements in the LGIP and LGIA will continue to apply to Tribal Energy Development Organizations.

Tribal Energy Development Organization is defined as:

1) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to 25 U.S.C. § 5124 or 25 U.S.C. § 5203; or

(2) any organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under 25 U.S.C. § 3502 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of 25 U.S.C. § 3504.

As used herein, Indian Tribe means any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

A. Commercial Readiness Criteria

Tribal Energy Development Organizations are exempt from the commercial readiness deposits required by *pro forma* LGIP section 3.4.2(vi), section 7.5, and section 8.1. To the extent the security deposit rules in sections 5.1.1.1 and 5.1.1.2 are applicable, Tribal Energy Development Organizations are exempt from security deposits therein.

Tribal Energy Development Organizations may demonstrate commercial readiness in non-financial ways, including through one or more of the following, correlated to when the corresponding commercial readiness is due:

Initial commercial readiness demonstration:[1]

- Tribal Council or Tribal governing body resolution approving the development of a utility scale generation project; or
- Tribal government or Tribal Energy Development Organization allocation of money or staff to support a specific utility scale generation project.

Second commercial readiness demonstration:

[1] These initial criteria would likewise apply in lieu of the security deposit for the transition process in *pro forma* LGIP, sections 5.1.1.1 and 5.1.1.2, to the extent the rules remain applicable.

- Submitted an application for government grants, loans, or other federal or state funding opportunity;

- Conducted one or more studies, including cultural studies, environmental studies, initial or ongoing project feasibility study, or pre-feasibility transmission study; or

- Hosted a community engagement meeting, workshop, or forum to discuss the proposed utility scale generation project.

Third commercial readiness demonstration:

- Submitted an application for one of the Bureau of Indian Affairs, land, water, or air permits necessary to develop the project;

- Completed a project feasibility study or technical assessment of project; or

- Received a letter of intent to purchase power, or similar commitment, from a potential off-taker.

B. Withdrawal Penalties

Tribal Energy Development Organizations are exempt from providing the withdrawal penalty required in *pro forma* LGIP, section 3.7.1.1(a). In lieu of the withdrawal penalties required in *pro forma* LGIP, sections 3.7.1.1(b) and 3.7.1.1(c), if a Tribal Energy Development Organization withdraws during the applicable timeframes in each section, it shall pay a penalty equal to the actual study costs of the withdrawing customer to date at the time of withdrawal, capped at $150,000.

If a Tribal Energy Development Organization withdraws during a transition study process in *pro forma* LGIP sections 5.1.1.1 or 5.1.1.2, as may be applicable, the withdrawal penalty shall be equal to the actual study costs of the withdrawing customer to date at the time of withdrawal, capped at $150,000.

The exceptions to withdrawal penalties delineated in *pro forma* LGIP section 3.7.1 will continue to apply to Tribal Energy Development Organizations.