

[CHAIRMEN'S PROPOSED CONFERENCE REPORT]

NOVEMBER 17, 2003

1 **TITLE V—INDIAN ENERGY**

2 **SEC. 501. SHORT TITLE.**

3 This title may be cited as the “Indian Tribal Energy
4 Development and Self-Determination Act of 2003”.

5 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**
6 **GRAMS.**

7 (a) IN GENERAL.—Title II of the Department of En-
8 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-
9 ed by adding at the end the following:

10 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

11 “SEC. 217. (a) ESTABLISHMENT.—There is estab-
12 lished within the Department an Office of Indian Energy
13 Policy and Programs (referred to in this section as the
14 ‘Office’). The Office shall be headed by a Director, who
15 shall be appointed by the Secretary and compensated at
16 a rate equal to that of level IV of the Executive Schedule
17 under section 5315 of title 5, United States Code.

18 “(b) DUTIES OF DIRECTOR.—The Director, in ac-
19 cordance with Federal policies promoting Indian self-de-
20 termination and the purposes of this Act, shall provide,
21 direct, foster, coordinate, and implement energy planning,
22 education, management, conservation, and delivery pro-
23 grams of the Department that—

1 “(1) promote Indian tribal energy development,
2 efficiency, and use;

3 “(2) reduce or stabilize energy costs;

4 “(3) enhance and strengthen Indian tribal en-
5 ergy and economic infrastructure relating to natural
6 resource development and electrification; and

7 “(4) bring electrical power and service to In-
8 dian land and the homes of tribal members located
9 on Indian lands or acquired, constructed, or im-
10 proved (in whole or in part) with Federal funds.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) The table of contents of the Department of
13 Energy Organization Act (42 U.S.C. prec. 7101) is
14 amended—

15 (A) in the item relating to section 209, by
16 striking “Section” and inserting “Sec.”; and

17 (B) by striking the items relating to sec-
18 tions 213 through 216 and inserting the fol-
19 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Adminis-
tration.

“Sec. 214. Establishment of security, counterintelligence, and intelligence
policies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.”.

20 (2) Section 5315 of title 5, United States Code,
21 is amended by inserting “Director, Office of Indian
22 Energy Policy and Programs, Department of En-

1 ergy.” after “Inspector General, Department of En-
2 ergy.”.

3 **SEC. 503. INDIAN ENERGY.**

4 (a) IN GENERAL.—Title XXVI of the Energy Policy
5 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read
6 as follows:

7 **“TITLE XXVI—INDIAN ENERGY**

8 **“SEC. 2601. DEFINITIONS.**

9 “For purposes of this title:

10 “(1) The term ‘Director’ means the Director of
11 the Office of Indian Energy Policy and Programs,
12 Department of Energy.

13 “(2) The term ‘Indian land’ means—

14 “(A) any land located within the bound-
15 aries of an Indian reservation, pueblo, or
16 rancheria;

17 “(B) any land not located within the
18 boundaries of an Indian reservation, pueblo, or
19 rancheria, the title to which is held—

20 “(i) in trust by the United States for
21 the benefit of an Indian tribe or an indi-
22 vidual Indian;

23 “(ii) by an Indian tribe or an indi-
24 vidual Indian, subject to restriction against

1 alienation under laws of the United States;
2 or

3 “(iii) by a dependent Indian commu-
4 nity; and

5 “(C) land that is owned by an Indian tribe
6 and was conveyed by the United States to a
7 Native Corporation pursuant to the Alaska Na-
8 tive Claims Settlement Act (43 U.S.C. 1601 et
9 seq.), or that was conveyed by the United
10 States to a Native Corporation in exchange for
11 such land.

12 “(3) The term ‘Indian reservation’ includes—

13 “(A) an Indian reservation in existence in
14 any State or States as of the date of enactment
15 of this paragraph;

16 “(B) a public domain Indian allotment;
17 and

18 “(C) a dependent Indian community lo-
19 cated within the borders of the United States,
20 regardless of whether the community is
21 located—

22 “(i) on original or acquired territory
23 of the community; or

24 “(ii) within or outside the boundaries
25 of any particular State.

1 “(4) The term ‘Indian tribe’ has the meaning
2 given the term in section 4 of the Indian Self-Deter-
3 mination and Education Assistance Act (25 U.S.C.
4 450b), except that the term ‘Indian tribe’, for the
5 purpose of paragraph (11) and sections 2603(b)(3)
6 and 2604, shall not include any Native Corporation.

7 “(5) The term ‘integration of energy resources’
8 means any project or activity that promotes the loca-
9 tion and operation of a facility (including any pipe-
10 line, gathering system, transportation system or fa-
11 cility, or electric transmission or distribution facility)
12 on or near Indian land to process, refine, generate
13 electricity from, or otherwise develop energy re-
14 sources on, Indian land.

15 “(6) The term ‘Native Corporation’ has the
16 meaning given the term in section 3 of the Alaska
17 Native Claims Settlement Act (43 U.S.C. 1602).

18 “(7) The term ‘organization’ means a partner-
19 ship, joint venture, limited liability company, or
20 other unincorporated association or entity that is es-
21 tablished to develop Indian energy resources.

22 “(8) The term ‘Program’ means the Indian en-
23 ergy resource development program established
24 under section 2602(a).

1 “(9) The term ‘Secretary’ means the Secretary
2 of the Interior.

3 “(10) The term ‘tribal energy resource develop-
4 ment organization’ means an organization of 2 or
5 more entities, at least 1 of which is an Indian tribe,
6 that has the written consent of the governing bodies
7 of all Indian tribes participating in the organization
8 to apply for a grant, loan, or other assistance au-
9 thorized by section 2602.

10 “(11) The term ‘tribal land’ means any land or
11 interests in land owned by any Indian tribe, title to
12 which is held in trust by the United States or which
13 is subject to a restriction against alienation under
14 laws of the United States.

15 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**
16 **MENT.**

17 “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

18 “(1) To assist Indian tribes in the development
19 of energy resources and further the goal of Indian
20 self-determination, the Secretary shall establish and
21 implement an Indian energy resource development
22 program to assist consenting Indian tribes and tribal
23 energy resource development organizations in achiev-
24 ing the purposes of this title.

1 “(2) In carrying out the Program, the Sec-
2 retary shall—

3 “(A) provide development grants to Indian
4 tribes and tribal energy resource development
5 organizations for use in developing or obtaining
6 the managerial and technical capacity needed to
7 develop energy resources on Indian land, and to
8 properly account for resulting energy produc-
9 tion and revenues;

10 “(B) provide grants to Indian tribes and
11 tribal energy resource development organiza-
12 tions for use in carrying out projects to pro-
13 mote the integration of energy resources, and to
14 process, use, or develop those energy resources,
15 on Indian land; and

16 “(C) provide low-interest loans to Indian
17 tribes and tribal energy resource development
18 organizations for use in the promotion of en-
19 ergy resource development on Indian land and
20 integration of energy resources.

21 “(3) There are authorized to be appropriated to
22 carry out this subsection such sums as are necessary
23 for each of fiscal years 2004 through 2014.

1 “(b) DEPARTMENT OF ENERGY INDIAN ENERGY
2 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE
3 PROGRAM.—

4 “(1) The Director shall establish programs to
5 assist consenting Indian tribes in meeting energy
6 education, research and development, planning, and
7 management needs.

8 “(2) In carrying out this subsection, the Direc-
9 tor may provide grants, on a competitive basis, to an
10 Indian tribe or tribal energy resource development
11 organization for use in carrying out—

12 “(A) energy, energy efficiency, and energy
13 conservation programs;

14 “(B) studies and other activities sup-
15 porting tribal acquisitions of energy supplies,
16 services, and facilities;

17 “(C) planning, construction, development,
18 operation, maintenance, and improvement of
19 tribal electrical generation, transmission, and
20 distribution facilities located on Indian land;
21 and

22 “(D) development, construction, and inter-
23 connection of electric power transmission facili-
24 ties located on Indian land with other electric
25 transmission facilities.

1 “(3)(A) The Director may develop, in consulta-
2 tion with Indian tribes, a formula for providing
3 grants under this subsection.

4 “(B) In providing a grant under this sub-
5 section, the Director shall give priority to an applica-
6 tion received from an Indian tribe with inadequate
7 electric service (as determined by the Director).

8 “(4) The Secretary of Energy may issue such
9 regulations as necessary to carry out this subsection.

10 “(5) There are authorized to be appropriated to
11 carry out this subsection \$20,000,000 for each of
12 fiscal years 2004 through 2014.

13 “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE
14 PROGRAM.—

15 “(1) Subject to paragraph (3), the Secretary of
16 Energy may provide loan guarantees (as defined in
17 section 502 of the Federal Credit Reform Act of
18 1990 (2 U.S.C. 661a)) for not more than 90 percent
19 of the unpaid principal and interest due on any loan
20 made to any Indian tribe for energy development.

21 “(2) A loan guarantee under this subsection
22 shall be made by—

23 “(A) a financial institution subject to ex-
24 amination by the Secretary of Energy; or

1 “(B) an Indian tribe, from funds of the In-
2 dian tribe.

3 “(3) The aggregate outstanding amount guar-
4 anteed by the Secretary of Energy at any time under
5 this subsection shall not exceed \$2,000,000,000.

6 “(4) The Secretary of Energy may issue such
7 regulations as the Secretary of Energy determines
8 are necessary to carry out this subsection.

9 “(5) There are authorized to be appropriated
10 such sums as are necessary to carry out this sub-
11 section, to remain available until expended.

12 “(6) Not later than 1 year from the date of en-
13 actment of this section, the Secretary of Energy
14 shall report to Congress on the financing require-
15 ments of Indian tribes for energy development on In-
16 dian land.

17 “(d) FEDERAL AGENCIES-INDIAN ENERGY PREF-
18 ERENCE.—

19 “(1) In purchasing electricity or any other en-
20 ergy product or byproduct, a Federal agency or de-
21 partment may give preference to an energy and re-
22 source production enterprise, partnership, consor-
23 tium, corporation, or other type of business organi-
24 zation the majority of the interest in which is owned
25 and controlled by 1 or more Indian tribes.

1 “(2) In carrying out this subsection, a Federal
2 agency or department shall not—

3 “(A) pay more than the prevailing market
4 price for an energy product or byproduct; or

5 “(B) obtain less than prevailing market
6 terms and conditions.

7 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**
8 **TION.**

9 “(a) GRANTS.—The Secretary may provide to Indian
10 tribes, on an annual basis, grants for use in accordance
11 with subsection (b).

12 “(b) USE OF FUNDS.—Funds from a grant provided
13 under this section may be used—

14 “(1) by an Indian tribe for the development of
15 a tribal energy resource inventory or tribal energy
16 resource on Indian land;

17 “(2) by an Indian tribe for the development of
18 a feasibility study or other report necessary to the
19 development of energy resources on Indian land;

20 “(3) by an Indian tribe (other than an Indian
21 Tribe in Alaska except the Metlakatla Indian Com-
22 munity) for the development and enforcement of
23 tribal laws (including regulations) relating to tribal
24 energy resource development and the development of

1 technical infrastructure to protect the environment
2 under applicable law; or

3 “(4) by a Native Corporation for the develop-
4 ment and implementation of corporate policies and
5 the development of technical infrastructure to pro-
6 tect the environment under applicable law; and

7 “(5) by an Indian tribe for the training of em-
8 ployees that—

9 “(A) are engaged in the development of en-
10 ergy resources on Indian land; or

11 “(B) are responsible for protecting the en-
12 vironment.

13 “(c) OTHER ASSISTANCE.—In carrying out the obli-
14 gations of the United States under this title, the Secretary
15 shall ensure, to the maximum extent practicable and to
16 the extent of available resources, that upon the request
17 of an Indian tribe, the Indian tribe shall have available
18 scientific and technical information and expertise, for use
19 in the Indian tribe’s regulation, development, and manage-
20 ment of energy resources on Indian land. The Secretary
21 may fulfill this responsibility either directly, through the
22 use of Federal officials, or indirectly, by providing finan-
23 cial assistance to the Indian tribe to secure independent
24 assistance.

1 **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**
2 **OF-WAY INVOLVING ENERGY DEVELOPMENT**
3 **OR TRANSMISSION.**

4 “(a) LEASES AND BUSINESS AGREEMENTS.—Subject
5 to the provisions of this section—

6 “(1) an Indian tribe may, at its discretion,
7 enter into a lease or business agreement for the pur-
8 pose of energy resource development on tribal land,
9 including a lease or business agreement for—

10 “(A) exploration for, extraction of, proc-
11 essing of, or other development of the Indian
12 tribe’s energy mineral resources located on trib-
13 al land; and

14 “(B) construction or operation of an elec-
15 tric generation, transmission, or distribution fa-
16 cility located on tribal land or a facility to proc-
17 ess or refine energy resources on tribal land;
18 and

19 “(2) such lease or business agreement described
20 in paragraph (1) shall not require the approval of
21 the Secretary under section 2103 of the Revised
22 Statutes (25 U.S.C. 81) or any other provision of
23 law, if—

24 “(A) the lease or business agreement is ex-
25 ecuted pursuant to a tribal energy resource

1 agreement approved by the Secretary under
2 subsection (e);

3 “(B) the term of the lease or business
4 agreement does not exceed—

5 “(i) 30 years; or

6 “(ii) in the case of a lease for the pro-
7 duction of oil resources, gas resources, or
8 both, 10 years and as long thereafter as oil
9 or gas is produced in paying quantities;
10 and

11 “(C) the Indian tribe has entered into a
12 tribal energy resource agreement with the Sec-
13 retary, as described in subsection (e), relating
14 to the development of energy resources on tribal
15 land (including the periodic review and evalua-
16 tion of the activities of the Indian tribe under
17 the agreement, to be conducted pursuant to the
18 provisions required by subsection (e)(2)(D)(i)).

19 “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
20 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
21 tribe may grant a right-of-way over tribal land for a pipe-
22 line or an electric transmission or distribution line without
23 approval by the Secretary if—

1 “(1) the right-of-way is executed in accordance
2 with a tribal energy resource agreement approved by
3 the Secretary under subsection (e);

4 “(2) the term of the right-of-way does not ex-
5 ceed 30 years;

6 “(3) the pipeline or electric transmission or dis-
7 tribution line serves—

8 “(A) an electric generation, transmission,
9 or distribution facility located on tribal land; or

10 “(B) a facility located on tribal land that
11 processes or refines energy resources on tribal
12 land; and

13 “(4) the Indian tribe has entered into a tribal
14 energy resource agreement with the Secretary, as de-
15 scribed in subsection (e), relating to the development
16 of energy resources on tribal land (including the
17 periodic review and evaluation of the Indian tribe’s
18 activities under such agreement described in sub-
19 paragraphs (D) and (E) of subsection (e)(2)).

20 “(c) RENEWALS.—A lease or business agreement en-
21 tered into or a right-of-way granted by an Indian tribe
22 under this section may be renewed at the discretion of the
23 Indian tribe in accordance with this section.

24 “(d) VALIDITY.—No lease, business agreement, or
25 right-of-way relating to the development of tribal energy

1 resources pursuant to the provisions of this section shall
2 be valid unless the lease, business agreement, or right-of-
3 way is authorized by the provisions of a tribal energy re-
4 source agreement approved by the Secretary under sub-
5 section (e)(2).

6 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

7 “(1) On issuance of regulations under para-
8 graph (8), an Indian tribe may submit to the Sec-
9 retary for approval a tribal energy resource agree-
10 ment governing leases, business agreements, and
11 rights-of-way under this section.

12 “(2)(A) Not later than 180 days after the date
13 on which the Secretary receives a tribal energy re-
14 source agreement submitted by an Indian tribe
15 under paragraph (1), or not later than 60 days after
16 the Secretary receives a revised tribal energy re-
17 source agreement submitted by an Indian tribe
18 under paragraph (4)(C), (or such later date as may
19 be agreed to by the Secretary and the Indian tribe),
20 the Secretary shall approve or disapprove the tribal
21 energy resource agreement.

22 “(B) The Secretary shall approve a tribal en-
23 ergy resource agreement submitted under paragraph
24 (1) if—

1 “(i) the Secretary determines that the In-
2 dian tribe has demonstrated that the Indian
3 tribe has sufficient capacity to regulate the de-
4 velopment of energy resources of the Indian
5 tribe;

6 “(ii) the tribal energy resource agreement
7 includes provisions required under subpara-
8 graph (D); and

9 “(iii) the tribal energy resource agreement
10 includes provisions that, with respect to a lease,
11 business agreement, or right-of-way under this
12 section—

13 “(I) ensure the acquisition of nec-
14 essary information from the applicant for
15 the lease, business agreement, or right-of-
16 way;

17 “(II) address the term of the lease or
18 business agreement or the term of convey-
19 ance of the right-of-way;

20 “(III) address amendments and re-
21 newals;

22 “(IV) address the economic return to
23 the Indian tribe under leases, business
24 agreements, and rights-of-way;

1 “(V) address technical or other rel-
2 evant requirements;

3 “(VI) establish requirements for envi-
4 ronmental review in accordance with sub-
5 paragraph (C);

6 “(VII) ensure compliance with all ap-
7 plicable environmental laws;

8 “(VIII) identify final approval author-
9 ity;

10 “(IX) provide for public notification of
11 final approvals;

12 “(X) establish a process for consulta-
13 tion with any affected States concerning
14 off-reservation impacts, if any, identified
15 pursuant to the provisions required under
16 subparagraph (C)(i);

17 “(XI) describe the remedies for
18 breach of the lease, business agreement, or
19 right-of-way;

20 “(XII) require each lease, business
21 agreement, and right-of-way to include a
22 statement that, in the event that any of its
23 provisions violates an express term or re-
24 quirement set forth in the tribal energy re-

1 source agreement pursuant to which it was
2 executed—

3 “(aa) such provision shall be null
4 and void; and

5 “(bb) if the Secretary determines
6 such provision to be material, the Sec-
7 retary shall have the authority to sus-
8 pend or rescind the lease, business
9 agreement, or right-of-way or take
10 other appropriate action that the Sec-
11 retary determines to be in the best in-
12 terest of the Indian tribe;

13 “(XIII) require each lease, business
14 agreement, and right-of-way to provide
15 that it will become effective on the date on
16 which a copy of the executed lease, busi-
17 ness agreement, or right-of-way is deliv-
18 ered to the Secretary in accordance with
19 regulations adopted pursuant to this sub-
20 section; and

21 “(XIV) include citations to tribal
22 laws, regulations, or procedures, if any,
23 that set out tribal remedies that must be
24 exhausted before a petition may be sub-

1 mitted to the Secretary pursuant to para-
2 graph (7)(B).

3 “(C) Tribal energy resource agreements sub-
4 mitted under paragraph (1) shall establish, and in-
5 clude provisions to ensure compliance with, an envi-
6 ronmental review process that, with respect to a
7 lease, business agreement, or right-of-way under this
8 section, provides for—

9 “(i) the identification and evaluation of all
10 significant environmental impacts (as compared
11 with a no-action alternative), including effects
12 on cultural resources;

13 “(ii) the identification of proposed mitiga-
14 tion;

15 “(iii) a process for ensuring that the public
16 is informed of and has an opportunity to com-
17 ment on the environmental impacts of the pro-
18 posed action before tribal approval of the lease,
19 business agreement, or right-of-way; and

20 “(iv) sufficient administrative support and
21 technical capability to carry out the environ-
22 mental review process.

23 “(D) A tribal energy resource agreement nego-
24 tiated between the Secretary and an Indian tribe in
25 accordance with this subsection shall include—

1 “(i) provisions requiring the Secretary to
2 conduct a periodic review and evaluation to
3 monitor the performance of the Indian tribe’s
4 activities associated with the development of en-
5 ergy resources under the tribal energy resource
6 agreement; and

7 “(ii) when such review and evaluation re-
8 sult in a finding by the Secretary of imminent
9 jeopardy to a physical trust asset arising from
10 a violation of the tribal energy resource agree-
11 ment or applicable Federal laws, provisions au-
12 thorizing the Secretary to take appropriate ac-
13 tions determined by the Secretary to be nec-
14 essary to protect such asset, which actions may
15 include reassumption of responsibility for activi-
16 ties associated with the development of energy
17 resources on tribal land until the violation and
18 conditions that gave rise to such jeopardy have
19 been corrected.

20 “(E) The periodic review and evaluation de-
21 scribed in subparagraph (D) shall be conducted on
22 an annual basis, except that, after the third such an-
23 nual review and evaluation, the Secretary and the
24 Indian tribe may mutually agree to amend the tribal
25 energy resource agreement to authorize the review

1 and evaluation required by subparagraph (D) to be
2 conducted once every 2 years.

3 “(3) The Secretary shall provide notice and op-
4 portunity for public comment on tribal energy re-
5 source agreements submitted for approval under
6 paragraph (1). The Secretary’s review of a tribal en-
7 ergy resource agreement under the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.) shall be limited to the direct effects of that ap-
10 proval.

11 “(4) If the Secretary disapproves a tribal en-
12 ergy resource agreement submitted by an Indian
13 tribe under paragraph (1), the Secretary shall, not
14 later than 10 days after the date of disapproval—

15 “(A) notify the Indian tribe in writing of
16 the basis for the disapproval;

17 “(B) identify what changes or other ac-
18 tions are required to address the concerns of
19 the Secretary; and

20 “(C) provide the Indian tribe with an op-
21 portunity to revise and resubmit the tribal en-
22 ergy resource agreement.

23 “(5) If an Indian tribe executes a lease or busi-
24 ness agreement or grants a right-of-way in accord-
25 ance with a tribal energy resource agreement ap-

1 proved under this subsection, the Indian tribe shall,
2 in accordance with the process and requirements set
3 forth in the Secretary's regulations adopted pursu-
4 ant to paragraph (8), provide to the Secretary—

5 “(A) a copy of the lease, business agree-
6 ment, or right-of-way document (including all
7 amendments to and renewals of the document);
8 and

9 “(B) in the case of a tribal energy resource
10 agreement or a lease, business agreement, or
11 right-of-way that permits payments to be made
12 directly to the Indian tribe, information and
13 documentation of those payments sufficient to
14 enable the Secretary to discharge the trust re-
15 sponsibility of the United States to enforce the
16 terms of, and protect the Indian tribe's rights
17 under, the lease, business agreement, or right-
18 of-way.

19 “(6)(A) For purposes of the activities to be un-
20 dertaken by the Secretary pursuant to this section,
21 the Secretary shall—

22 “(i) carry out such activities in a manner
23 consistent with the trust responsibility of the
24 United States relating to mineral and other
25 trust resources; and

1 “(ii) act in good faith and in the best in-
2 terests of the Indian tribes.

3 “(B) Subject to the provisions of subsections
4 (a)(2), (b), and (c) waiving the requirement of Sec-
5 retarial approval of leases, business agreements, and
6 rights-of-way executed pursuant to tribal energy re-
7 source agreements approved under this section, and
8 the provisions of subparagraph (D), nothing in this
9 section shall absolve the United States from any re-
10 sponsibility to Indians or Indian tribes, including,
11 but not limited to, those which derive from the trust
12 relationship or from any treaties, statutes, and other
13 laws of the United States, Executive Orders, or
14 agreements between the United States and any In-
15 dian tribe.

16 “(C) The Secretary shall continue to have a
17 trust obligation to ensure that the rights and inter-
18 ests of an Indian tribe are protected in the event
19 that—

20 “(i) any other party to any such lease,
21 business agreement, or right-of-way violates any
22 applicable provision of Federal law or the terms
23 of any lease, business agreement, or right-of-
24 way under this section; or

1 “(ii) any provision in such lease, business
2 agreement, or right-of-way violates any express
3 provision or requirement set forth in the tribal
4 energy resource agreement pursuant to which
5 the lease, business agreement, or right-of-way
6 was executed.

7 “(D) Notwithstanding subparagraph (B), the
8 United States shall not be liable to any party (in-
9 cluding any Indian tribe) for any of the negotiated
10 terms of, or any losses resulting from the negotiated
11 terms of, a lease, business agreement, or right-of-
12 way executed pursuant to and in accordance with a
13 tribal energy resource agreement approved by the
14 Secretary under paragraph (2). For the purpose of
15 this subparagraph, the term ‘negotiated terms’
16 means any terms or provisions that are negotiated
17 by an Indian tribe and any other party or parties to
18 a lease, business agreement, or right-of-way entered
19 into pursuant to an approved tribal energy resource
20 agreement.

21 “(7)(A) In this paragraph, the term ‘interested
22 party’ means any person or entity the interests of
23 which have sustained or will sustain a significant ad-
24 verse environmental impact as a result of the failure
25 of an Indian tribe to comply with a tribal energy re-

1 source agreement of the Indian tribe approved by
2 the Secretary under paragraph (2).

3 “(B) After exhaustion of tribal remedies, and in
4 accordance with the process and requirements set
5 forth in regulations adopted by the Secretary pursu-
6 ant to paragraph (8), an interested party may sub-
7 mit to the Secretary a petition to review compliance
8 of an Indian tribe with a tribal energy resource
9 agreement of the Indian tribe approved by the Sec-
10 retary under paragraph (2).

11 “(C)(i) Not later than 120 days after the date
12 on which the Secretary receives a petition under sub-
13 paragraph (B), the Secretary shall determine wheth-
14 er the Indian tribe is not in compliance with the
15 tribal energy resource agreement, as alleged in the
16 petition.

17 “(ii) The Secretary may adopt procedures
18 under paragraph (8) authorizing an extension of
19 time, not to exceed 120 days, for making the deter-
20 mination under clause (i) in any case in which the
21 Secretary determines that additional time is nec-
22 essary to evaluate the allegations of the petition.

23 “(iii) Subject to subparagraph (D), if the Sec-
24 retary determines that the Indian tribe is not in
25 compliance with the tribal energy resource agree-

1 ment as alleged in the petition, the Secretary shall
2 take such action as is necessary to ensure compli-
3 ance with the provisions of the tribal energy resource
4 agreement, which action may include—

5 “(I) temporarily suspending some or all ac-
6 tivities under a lease, business agreement, or
7 right-of-way under this section until the Indian
8 tribe or such activities are in compliance with
9 the provisions of the approved tribal energy re-
10 source agreement; or

11 “(II) rescinding approval of all or part of
12 the tribal energy resource agreement, and if all
13 of such agreement is rescinded, reassuming the
14 responsibility for approval of any future leases,
15 business agreements, or rights-of-way described
16 in subsections (a) and (b).

17 “(D) Prior to seeking to ensure compliance with
18 the provisions of the tribal energy resource agree-
19 ment of an Indian tribe under subparagraph (C)(iii),
20 the Secretary shall—

21 “(i) make a written determination that de-
22 scribes the manner in which the tribal energy
23 resource agreement has been violated;

1 “(ii) provide the Indian tribe with a writ-
2 ten notice of the violations together with the
3 written determination; and

4 “(iii) before taking any action described in
5 subparagraph (C)(iii) or seeking any other rem-
6 edy, provide the Indian tribe with a hearing and
7 a reasonable opportunity to attain compliance
8 with the tribal energy resource agreement.

9 “(E) An Indian tribe described in subparagraph
10 (D) shall retain all rights to appeal as provided in
11 regulations issued by the Secretary.

12 “(8) Not later than 1 year after the date of en-
13 actment of the Indian Tribal Energy Development
14 and Self-Determination Act of 2003, the Secretary
15 shall issue regulations that implement the provisions
16 of this subsection, including—

17 “(A) criteria to be used in determining the
18 capacity of an Indian tribe described in para-
19 graph (2)(B)(i), including the experience of the
20 Indian tribe in managing natural resources and
21 financial and administrative resources available
22 for use by the Indian tribe in implementing the
23 approved tribal energy resource agreement of
24 the Indian tribe;

1 “(B) a process and requirements in accord-
2 ance with which an Indian tribe may—

3 “(i) voluntarily rescind a tribal energy
4 resource agreement approved by the Sec-
5 retary under this subsection; and

6 “(ii) return to the Secretary the re-
7 sponsibility to approve any future leases,
8 business agreements, and rights-of-way de-
9 scribed in this subsection;

10 “(C) provisions setting forth the scope of,
11 and procedures for, the periodic review and
12 evaluation described in subparagraphs (D) and
13 (E) of paragraph (2), including provisions for
14 review of transactions, reports, site inspections,
15 and any other review activities the Secretary
16 determines to be appropriate; and

17 “(D) provisions defining final agency ac-
18 tions after exhaustion of administrative appeals
19 from determinations of the Secretary under
20 paragraph (7).

21 “(f) NO EFFECT ON OTHER LAW.—Nothing in this
22 section affects the application of—

23 “(1) any Federal environment law;

24 “(2) the Surface Mining Control and Reclama-
25 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

1 “(3) except as otherwise provided in this title,
2 the Indian Mineral Development Act of 1982 (25
3 U.S.C. 2101 et seq.) and the National Environ-
4 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

5 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as are necessary for each of fiscal years 2004
8 through 2014 to implement the provisions of this section
9 and to make grants or provide other appropriate assist-
10 ance to Indian tribes to assist the Indian tribes in devel-
11 oping and implementing tribal energy resource agreements
12 in accordance with the provisions of this section.

13 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

14 “(a) IN GENERAL.—The Secretary shall conduct a
15 review of all activities being conducted under the Indian
16 Mineral Development Act of 1982 (25 U.S.C. 2101 et
17 seq.) as of that date.

18 “(b) REPORT.—Not later than 1 year after the date
19 of enactment of the Indian Tribal Energy Development
20 and Self-Determination Act of 2003, the Secretary shall
21 submit to Congress a report that includes—

22 “(1) the results of the review;

23 “(2) recommendations to ensure that Indian
24 tribes have the opportunity to develop Indian energy
25 resources; and

1 “(3) an analysis of the barriers to the develop-
2 ment of energy resources on Indian land (including
3 legal, fiscal, market, and other barriers), along with
4 recommendations for the removal of those barriers.

5 **“SEC. 2606. FEDERAL POWER MARKETING ADMINISTRA-**
6 **TIONS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) The term “Administrator” means the Ad-
9 ministrator of the Bonneville Power Administration
10 and the Administrator of the Western Area Power
11 Administration.

12 “(2) The term “power marketing administra-
13 tion” means—

14 “(A) the Bonneville Power Administration;

15 “(B) the Western Area Power Administra-
16 tion; and

17 “(C) any other power administration the
18 power allocation of which is used by or for the
19 benefit of an Indian tribe located in the service
20 area of the administration.

21 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY
22 DEVELOPMENT.—Each Administrator shall encourage In-
23 dian tribal energy development by taking such actions as
24 are appropriate, including administration of programs of
25 the Bonneville Power Administration and the Western

1 Area Power Administration, in accordance with this sec-
2 tion.

3 “(c) ACTION BY THE ADMINISTRATOR.—In carrying
4 out this section, and in accordance with existing law—

5 “(1) each Administrator shall consider the
6 unique relationship that exists between the United
7 States and Indian tribes;

8 “(2) power allocations from the Western Area
9 Power Administration to Indian tribes may be used
10 to meet firming and reserve needs of Indian-owned
11 energy projects on Indian land;

12 “(3) the Administrator of the Western Area
13 Power Administration may purchase non-federally
14 generated power from Indian tribes to meet the
15 firming and reserve requirements of the Western
16 Area Power Administration; and

17 “(4) each Administrator shall not pay more
18 than the prevailing market price for an energy prod-
19 uct nor obtain less than prevailing market terms and
20 conditions.

21 “(d) ASSISTANCE FOR TRANSMISSION SYSTEM
22 USE.—(1) An Administrator may provide technical assist-
23 ance to Indian tribes seeking to use the high-voltage trans-
24 mission system for delivery of electric power.

1 “(2) The costs of technical assistance provided under
2 paragraph (1) shall be funded by the Secretary of Energy
3 using nonreimbursable funds appropriated for that pur-
4 pose, or by the applicable Indian tribes.

5 “(e) POWER ALLOCATION STUDY.—Not later than 2
6 years after the date of enactment of the Indian Tribal En-
7 ergy Development and Self-Determination Act of 2003,
8 the Secretary of Energy shall submit to Congress a report
9 that—

10 “(1) describes the use by Indian tribes of Fed-
11 eral power allocations of the Western Area Power
12 Administration (or power sold by the Southwestern
13 Power Administration) and the Bonneville Power
14 Administration to or for the benefit of Indian tribes
15 in service areas of those administrations; and

16 “(2) identifies—

17 “(A) the quantity of power allocated to, or
18 used for the benefit of, Indian tribes by the
19 Western Area Power Administration;

20 “(B) the quantity of power sold to Indian
21 tribes by other power marketing administra-
22 tions; and

23 “(C) barriers that impede tribal access to
24 and use of Federal power, including an assess-
25 ment of opportunities to remove those barriers

1 and improve the ability of power marketing ad-
2 ministrations to deliver Federal power.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 \$750,000, which shall remain available until expended and
6 shall not be reimbursable.

7 **“SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.**

8 “(a) STUDY.—The Secretary of Energy, in coordina-
9 tion with the Secretary of the Army and the Secretary,
10 shall conduct a study of the cost and feasibility of devel-
11 oping a demonstration project that would use wind energy
12 generated by Indian tribes and hydropower generated by
13 the Army Corps of Engineers on the Missouri River to
14 supply firming power to the Western Area Power Adminis-
15 tration.

16 “(b) SCOPE OF STUDY.—The study shall—

17 “(1) determine the feasibility of the blending of
18 wind energy and hydropower generated from the
19 Missouri River dams operated by the Army Corps of
20 Engineers;

21 “(2) review historical and projected require-
22 ments for firming power and the patterns of avail-
23 ability and use of firming power;

1 “(3) assess the wind energy resource potential
2 on tribal land and projected cost savings through a
3 blend of wind and hydropower over a 30-year period;

4 “(4) determine seasonal capacity needs and as-
5 sociated transmission upgrades for integration of
6 tribal wind generation; and

7 “(5) include an independent tribal engineer as
8 a study team member.

9 “(c) REPORT.—Not later than 1 year after the date
10 of enactment of the Energy Policy Act of 2003, the Sec-
11 retary and Secretary of the Army shall submit to Congress
12 a report that describes the results of the study,
13 including—

14 “(1) an analysis of the potential energy cost or
15 benefits to the customers of the Western Area Power
16 Administration through the use of combined wind
17 and hydropower;

18 “(2) an evaluation of whether a combined wind
19 and hydropower system can reduce reservoir fluctua-
20 tion, enhance efficient and reliable energy produc-
21 tion, and provide Missouri River management flexi-
22 bility;

23 “(3) recommendations for a demonstration
24 project that could be carried out by the Western
25 Area Power Administration in partnership with an

1 Indian tribal government or tribal energy resource
2 development organization to demonstrate the feasi-
3 bility and potential of using wind energy produced
4 on Indian land to supply firming energy to the
5 Western Area Power Administration or any other
6 Federal power marketing agency; and

7 “(4) an identification of—

8 “(A) the economic and environmental costs
9 or benefits to be realized through such a Fed-
10 eral-tribal partnership; and

11 “(B) the manner in which such a partner-
12 ship could contribute to the energy security of
13 the United States.

14 “(d) FUNDING.—

15 “(1) AUTHORIZATION OF APPROPRIATIONS.—

16 There are authorized to be appropriated to carry out
17 this section \$500,000, to remain available until ex-
18 pended.

19 “(2) NONREIMBURSABILITY.—Costs incurred by the
20 Secretary in carrying out this section shall be non-
21 reimbursable.”.

22 (b) CONFORMING AMENDMENTS.—The table of con-
23 tents for the Energy Policy Act of 1992 is amended by
24 striking the items relating to title XXVI and inserting the
25 following:

“Sec. 2601. Definitions.

- “Sec. 2602. Indian tribal energy resource development.
- “Sec. 2603. Indian tribal energy resource regulation.
- “Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.
- “Sec. 2605. Indian mineral development review.
- “Sec. 2606. Federal Power Marketing Administrations.
- “Sec. 2607. Wind and hydropower feasibility study.”.

1 **SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.**

2 The Dine Power Authority, an enterprise of the Nav-
3 ajo Nation, shall be eligible to receive grants and other
4 assistance as authorized by section 217 of the Department
5 of Energy Organization Act, as added by section 502 of
6 this title, and section 2602 of the Energy Policy Act of
7 1992, as amended by this title, for activities associated
8 with the development of a transmission line from the Four
9 Corners Area to southern Nevada, including related power
10 generation opportunities.

11 **SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**
12 **HOUSING.**

13 (a) IN GENERAL.—The Secretary of Housing and
14 Urban Development shall promote energy conservation in
15 housing that is located on Indian land and assisted with
16 Federal resources through—

- 17 (1) the use of energy-efficient technologies and
18 innovations (including the procurement of energy-ef-
19 ficient refrigerators and other appliances);
- 20 (2) the promotion of shared savings contracts;
- 21 and

1 (3) the use and implementation of such other
2 similar technologies and innovations as the Secretary
3 of Housing and Urban Development considers to be
4 appropriate.

5 (b) AMENDMENT.—Section 202(2) of the Native
6 American Housing and Self-Determination Act of 1996
7 (25 U.S.C. 4132(2)) is amended by inserting “improve-
8 ment to achieve greater energy efficiency,” after “plan-
9 ning,”.

10 **SEC. 506. CONSULTATION WITH INDIAN TRIBES.**

11 In carrying out this title and the amendments made
12 by this title, the Secretary of Energy and the Secretary
13 shall, as appropriate and to the maximum extent prac-
14 ticable, involve and consult with Indian tribes in a manner
15 that is consistent with the Federal trust and the govern-
16 ment-to-government relationships between Indian tribes
17 and the United States.