

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:  
Transcript of Presentations and Comments made at the  
March 7, 2006 Scoping Meeting**

NOTE: Due to technical problems with the audio system, several presentations made on March 7, the first day of the meeting, were not recorded. Although the following presentations were not recorded verbatim, the speakers' talking points are available at <http://1813.anl.gov> under the heading "March 2006 Public Meeting Presentations and Comments" at the Documents tab: Abe Haspel, Edison Electric Institute, Council of Energy Resource Tribes, FAIR Access to Energy Coalition, and Affiliated Tribes of the Northwest Indians.

The March 7 transcript begins with the presentation by the Affiliated Tribes of the Northwest Indians in progress. Presentations that are not available are the introductions, an overview of the pre-scoping survey results, and comments by Senator Ben Nighthorse Campbell.

Many proper names in the transcription have been spelled phonetically. We apologize for spelling errors.

FEMALE SPEAKER: ...standards, and this is so critically important because of the unique and different uses for different tribal lands and for the, excuse me, the history of those lands.

We do have some recommendations for the study. First of all, improve tribal land record systems. Tribal record systems should be computerized and have GPS capabilities. We saw the beautiful system that the Ute Tribe showed you this morning. That system was bought and paid for by the tribe in conjunction with its energy partners. That is not something that most tribes have.

What most tribes have is a box and I've been hired by a number of tribes to look at their energy right-of-ways and what they give me is a box and in that box they say here is a copy of our treaty and here's six different changes that the federal government has imposed to that treaty, and then the box has probably 300-400, in some cases up to 1,000, documents. And I would say about ten percent of those documents are illegible. They're so smeared - - I mean some of these documents are more than 100 years old and they're the original documents in this box. So the improvement of tribal systems for tribal record

keeping is critical and would certainly improve the ability to renew and otherwise be able to analyze right-of-ways.

Improve access to these tribal land records. Make sure the tribes themselves can access the records of their own lands and also make sure that the energy company seeking to do business with them have the same access to information.

Improve the efficiency, accuracy and standards for the appraisals for tribal lands and the policies for sharing of appraisal information. Encourage and fund the drafting and consideration of tribal regulations for trespass, for right-of-way negotiation procedures, standard form right-of-way language, and compensation standards. Encourage and fund tribal land use planning so we know what parts of reservations are appropriate for energy corridors and which should be reserved for cultural or religious or other purposes. Encourage and fund tribal assistance to allottees, improve probating of Indian estates, and encourage tribes in industry to work together as partners because that's who this is going to work.

The last thing we want to do is look at the fourth element of the study which is an analysis of relevant national transportation energy policies. First of all, you have regulated utilities and then you also have unregulated utilities. For regulated utilities, the rates to consumers include the cost of facilities. For profit utilities have an established rate of profit. Consumers, including tribal consumers, pay all the costs of the facilities. The facilities on tribal right-of-way have minimal cost, especially when compared to the benefits of tribal energy development. Non-Indian consumers have the benefit of the bargain for the creation of the Indian reservations. You get to live in the United States of America. Tribes should also see the benefit of their bargain.

For unregulated entities and merchant transportation energy businesses, there is no limit on your profits. Consumers bear the burden of paying those energy company profits. Why should tribal income from right-of-way negotiations be limited when energy company profits are not limited?

In conclusion, we have fairly extensive comments in writing. Please see those if you want more information. Lastly, tribes have the inherent authority to govern their lands and the federal duty of trust applies here. There's also a public duty to keep the promises made to Indian tribes. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Our next presenter, the DOI lands assessment gentleman had a family emergency, so he will not be presenting today, so our last presenter today will be Sonya Tetnowski [ph] from the Tribal Affairs - - she's the Tribal Affairs Officer for the Bonneville Power Association, and Susan - - sorry, Susan Starovich [ph] from the Western Area of Power Administration. They're going to share that time.

SONYA TETNOWSKI: [speaking in native language] I'm honored to be here today. My name is Sonya Tetnowski. I'm a Makah tribal member and my Indian name is Sunfire. Let me get the presentation rolling. There we go. Thank you. I'm happy to see many friendly faces. Tribal leadership industry, individual landowners, I'm glad you're all here today.

I'm going to be covering a few things, a little bit about who Bonneville is, the history of tribal acquisitions for the Bonneville Power Administration, some examples of creative negotiations that we've had recently and historically, and just our comments for the Section 1813 of the Policy Act.

Bonneville is a federal agency under the Department of Energy that markets wholesale power and operates and markets transmission services in the Pacific Northwest. The power comes from 31 federal hydro projects and one non-federal nuclear plant, and some other small non-federal power plants. About 40% of the electric power used in the Northwest comes from BPA. BPA's transmission service system accounts for about three-fourths of the region's high voltage grid and includes major transmission links to other regions.

As a self-financed agency which pays for its cost through power and transmission sales, both power and transmission are sold at cost and BPA repays any borrowing from the U.S. Treasury with interest.

BPA customers include publicly owned and investor owned utilities, as well as some large industries. BPA's revenues earnings helped to fulfill its responsibilities that include low cost and reliable power and investments in energy conservation renewable development.

BPA owns and operates about 70% of the high voltage transmission lines in the Northwest. Currently we operate about 15,000 circuit miles of high voltage lines across 300 square miles in Oregon, Washington, Idaho, Montana and small portions of Wyoming, Nevada, Utah and California.

Part of the history of the tribal acquisitions that I wanted to share with you today is that Bonneville has about 899 tracks across tribal lands impacting about 16 tribes. I have them listed below. Of the 16 tribes, the eight tribes highlighted have 224 easements that have or will expire between 1999 and 2050. BPA has successfully negotiated 64 of these easements to date.

As Mr. Lester of CERT mentioned earlier, there are ways to include tribes as part of the solution and as I go through the next three examples, these are ways in which we've been able to creatively negotiate with tribes for solutions that benefit both the tribe and the Bonneville Power Administration.

The Squalli [ph] Indian Tribe 2003 MOA BPA agreed to move two lines of transmission off tribal property, one line with perpetual rights and one line with a 50 year easement that expired. The agreement to move an additional 6/10<sup>th</sup> of a mile of line in the future when the tribes obtain funding. Part of what this did for both the tribe and Bonneville is it allowed us to transfer about 186 acres from the government back to the tribe. So both the tribe and the government were able to find a reasonable solution. As tribes continue to look at new ways to regain portions of their tribal land, this is an opportunity that Bonneville saw for us to do that.

The Confederated Tribes of Umatilla Indian Reservation 2003 MOA, part of this negotiation was compensation based on a cost per linear foot. This was a combination of goods, services, as well as monetary benefits and services. We were able to negotiate a 20-year easement which was granted. We were in trust pass [ph] at the time. We entered into negotiations with the Umatilla Tribe, but we were able to gain the 20-year easement, as well as a 20-year option.

The third example I wanted to share with all of you is that with the Confederated Tribes of Warm Springs. It was established in 1968. Among part of the other terms and conditions, BPA agreed to pay estimated loss for future mean annual increment of - - had to say that slow, otherwise I was going to mess it up - - of forest growth paid at five year intervals, and this was a perpetual right-of-way which was granted.

The reason I wanted to share with you those three previous examples is these are opportunities for us to continue to work with tribes to find solutions, and as the other presenters today, there are many examples where this type of process is working. Mr. Lester, Mrs. Shaff [ph], Ms. Shaff, both gave examples today about where the tribes and industry, as well as government, have found reasonable solutions to this challenge.

Our comments to the Energy Policy Act is that we would like to continue to see - - include - - be a part of the process to think about the historical rates of compensation. As I gave you those three examples, we have many, many more within the Bonneville Power Administration of ways where we found reasonable solutions and where we have had many, many challenges.

BPA supports the use of fair market value as a preferred approach to determine compensation, but want the criteria developed that would allow the flexibility to negotiate for considerations other than monetary.

BPA perverse always to have perpetual easements, but understands that many tribal governments are unwilling to commit beyond 20 years. So consideration relative to the term of the easement will need to be addressed.

Again, my name is Sonya Tetnowski. I'm the Tribal Affairs Officer for the Bonneville Power Administration. If you have any questions, I'm here for the next two days, and I thank you for this opportunity to comment. Susan?

[APPLAUSE]

SUSAN STARCEVICH: Hi. My name is Susan Starcevich. I know my last name is a mouthful and most people murder it. I represent Western Area Power Administration. I'm a realty specialist and I provide the interface for Western with other

federal land management agencies and also with BIA. And similar to BPA in obtaining right-of-ways on Indian lands, we have gotten creative. Western, like BPA, is within the Department of Energy. We have facilities in 15 western states. We have a little over 17,000 miles of transmission line and it is inevitable that we will cross Indian lands. Many of our right-of-ways were actually gotten in the '40s and '50s through agreements between Bureau of Reclamation and Bureau of Indian Affairs, and most of those had 50 year terms which means they have expired or are due to expire in the near term.

Now we are in trespass in many instances on Indian lands. Not because we haven't attempted to negotiate rights, we have attempted, but we're making limited progress for a number of reasons. Timeframes can exceed what we consider reasonable. Some of our negotiations have already gone on for longer than five years and are approaching a ten-year mark and we still have not successfully obtained a renewal. Some of our negotiations involve much more than fair market value. They could involve things like energy infrastructure, a share of the energy revenues, which, as we heard earlier today, are not owned by the transmission companies. There's also the premise that's kicked around the last couple of years that the Indians will charge \$1.00 less than the cost to go around them for a new right-of-way or for a renewal. Those make our jobs somewhat difficult and make the process pretty long term.

So what we'd like to see - - what we'd like to recommend to this work group is - - is a couple of things. Since it takes so long to negotiate a right-of-way across Indian lands, we'd like to see this process streamlined and that streamline include developing some timeframes for any procedures and deadlines for responses. We'd like to be a little

radical and throw out the possibility of failure to respond could also be deemed as concurrence.

So in conclusion, I'd like to just recap our issues. Valuation techniques whether it's fair market value or something in addition to fair market value; perpetual versus term limits. As a federal agency, we have obtained rights-of-ways that have term limits on Indian lands where we're obligated through our mission to have perpetual rights-of-ways. Negotiation time is a big issue, like I said. Some of our negotiations are approaching the ten-year timeframe and just having response deadlines.

Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Okay. We're going to start with the open comment period and go until lunch. And I'm going to give you a couple - - I'm going to have Perry Richardson from Questar [ph] Corporation, Bill Barrett from the Barry Corporation, Maxine Nachez [ph] from the Ute Indian Tribes, Ted Bland from the Blackfoot Tribe and Cherry Creek Investments. If you want to jump back toward the back of the room and we'll set you up to start speaking. Questar Corp., Perry Richardson, will speak first. I'm going to - - while those guys and ladies step back to the back, I'm just going to remind you this is a - - it will be a five minute public comment time. I'll give you a two-minute warning, a one minute warning, 30-second and thank you very much. And remember that this is about respecting that all opportunities are made available for people to speak. So sticking to your time as our presenters have done - - thank you very much to our presenters for being so efficient with their time and sticking to the time. It's rare that that actually happens so I thank you very much.

[BACKGROUND CONVERSATIONS]

FEMALE SPEAKER: Okay. Folks can come up front. We'll just have you line up and then you can come up to the podium if you'd like. We also can bring that stand mike up here, so if you want to not behind a podium, that's fine too. Okay. Yeah. If I call - - I have about 12 names in front of me - - if I call this name and you aren't here, you'll get put back in the list for after lunch. And the signup for speaking will also be left open until we start back up again at 1:00 o'clock but - - yeah, they can go up. Perry Richards from Questar. Okay. Bill Barrett, from the Barry Corporation.

MALE SPEAKER: [Indiscernible].

FEMALE SPEAKER: Okay. It just said Barrett - - Bill Barrett/Barry Corp.

MALE SPEAKER: [Indiscernible].

FEMALE SPEAKER: Okay. So it's the Price is Right. Come on down.

[Laughs] And then Maxine Nachez. Maxine, are you going to speak first? Okay. Great. It's like a long walk. Feel like we're at a wedding. You know what? If the presenters could come up actually up front to - - Bob, you want to send them up here? You can speak here. If you want to speak at the podium you can [Indiscernible]. I'm just going to [Indiscernible]. So now I've got whoever is from the Barry Petroleum, Blackfeet Tribe, Ted Bland, Cherry Creek Investments, Colorado State Senator, Jim Isgar [ph]. If y'all want to just come up, that will be great. Okay, Maxine.

MAXINE NACHEZ: Well good morning and thank you for this opportunity to address this distinguished body.

FEMALE SPEAKER: [Indiscernible].

MAXINE NATCHEES: Good morning. My name is Maxine Natchees. I'm Chairman of the Ute Indian Tribe Business Community of Ft. Duchesne, Utah. Our reservation is located in northeastern Utah.

I'd like to begin by stating that policies regarding rights-of-way across Indian lands clearly have consequences for tribal sovereignty and self-determination. Access is an asset. Reduction in tribal control over assets is an alienation uptaking and, by definition, it is the reduction in sovereignty. Expansion of tribal control over tribal assets enhance sovereignty and self-determination. Research shows that self-determination is the only federal policy that has produced broad sustained positive results in Indian country. In addition, by law the federal government has a responsibility for the protection of the tribes and their properties, including protection from encroachments by the states and private citizens.

Let me make this clear. The tribal consent requirement to granting or renewing rights-of-way does not impede energy transportation. There are hundreds of thousands of rights-of-way in Indian country, but there are only a handful of disputes that could not be resolved through negotiations. The concern of industry has been that long-term terms of right-of-way of expiring and they are finding that tribes are no longer subscribing to undervalued right-of-way as set by the BIA in the past. The response by industry has been to legislate rather than to negotiate. This is why Section 1813 is in the Energy Bill.

The truth is many tribes stand ready and feel a strong sense of patronism to assist this nation in relieving our dependency on foreign energy. Indeed many tribes are working hard to assure that tribal mineral resources are produced efficiently and promptly.

On March 19<sup>th</sup>, 2003, the Committee on Indian Affairs of the United States Senate held a hearing on the Native American Energy Development and Self-Determination Act of 2003. In his opening remarks, Senator Ben Nighthorse Campbell, then the Chairman of the Committee, noted the importance of the tribal energy mineral stake. He stated Indian owned energy resources are still largely undeveloped. Excuse me. 1.181 million acres are being explored or in production. Fifty million more acres of energy resources are underdeveloped. There are 90 tribes that own significant energy resources both renewable and nonrenewable and they want to develop them.

The Department of the Interior testified at this same hearing noted that production from tribal land constituted ten percent of the total federal onshore production of energy minerals. In 2001, production from tribal land was 13.1 million barrels of oil, 285 million cubic feet of gas, and 29.4 million tons of coal. Over the past 20 years, Indian lands have contributed 11% of United States coal production and onshore oil and gas production. The Department of Energy estimated that tribal lands hold 890 million barrels of oil and natural gas liquids and 5.6 trillion cubic feet of natural gas.

So based on these figures, and several years have passed since this data was collected, it's clear that end of the day tribes are the solution and not the problem. The most significant provision in Title 5 of the Energy Policy Act is the creation of the opportunity for tribes to enter into a tribal energy resource agreement, TERA, with the Department of Interior. Once a tribe enters into a TERA it has the authority to enter into leases, business agreements, and rights-of-way affecting energy development. Without the review and approval of the Secretary of the Interior, if a TERA is properly structured,

there should be greater certainty and efficiency in the development of energy resources on tribal lands.

Finally, if it were the intent of congress to take away tribal consent, as written in 25 Part 169.12, then why would the TERA provision be written as such in the Energy Bill if tribes did not have the authority to regulate commerce on their reservation homelands? Just as significantly, tribes must be allowed to manage our surface estate which is a tribal asset. The Ute Tribe entered into agreements with producers operating on the [Indiscernible] reservation that provided a fair return to the tribe for surface use on their reservation, and also assure that energy producers and transporters get fair return on their investment.

In short, the current system works on the Uintah Reservation. We ask that those conducting this study not be misled into thinking that there is a problem that needs to be fixed. Tribes and energy companies can work cooperatively and successfully under the existing rights.

Over the last three years, the Ute Tribe has leased over 300,000 acres into the marketplace and this year the tribe will lease another 10,000 acres. My time is up, but in short I just want to tell you the system works. We do not need a fix. We do not need to have our sovereignty encroached on and eroded as it is in the process. So thank you.

[APPLAUSE]

FEMALE SPEAKER: From Barry Petroleum, Perry Richard. I'm going to give you one more shot. I don't know if you - - okay, Barry Richard, Barry Petroleum, Blackfeet Tribe, Cherry Creek Investment, Colorado State Senator Jim Isgar.

MALE SPEAKER: You had it partially right. I did work for Bill Barrett at one time. Maxine took a lot of my comments. I think you were tapped into my inner thoughts. When I first saw this Bill I was asked to comment on it and of course I had mixed emotions because I'm a producer. I'm one of those people that likes to drill oil and gas wells and get it into a marketplace and feel like that's our obligation to do that.

What I'd like to tell you is a little bit about my experience with doing business with the Northern Ute Tribe. I can't say that I have experience with doing business with many tribes, but I've had a very, very favorable experience with the Northern Ute Tribe. Our company has invested probably \$175 million over the past two and a half years. So that requires a lot of drilling. That's over 200 wells. Every well requires a flow line which requires a right-of-way. We have to set compressor stations; we have to set gas plants. I mean it's business as usual on the Northern Ute reservation.

And I just want to tell you that when I first saw this thing, as I had mentioned earlier, I had mixed emotions. I'm very, you know, I feel very strongly. I've fought a lot of condemnation rights from homebuilder associations and all sorts of things, so immediately I was very defensive. Any time it's an erosion of your private rights or ownerships you get a little bit defensive.

So I naturally, you know, started trying to understand the issue a little bit further and I think it just boils down to effective negotiations and any transaction - - I'm not going to try to lecture to any of the business people in here because you're very effective at your negotiations in your business, but for any transaction to go through you have to have a willing seller and a willing buyer and you have to have fair market considerations on both sides of the table. I think that that's what we've tried to achieve and we've tried

to achieve a lot of trust in the relationship and if you don't have those components you won't perpetuate the business.

So I just want to go on record by saying that I don't think the system is broken right now. We've been very, very effective in our development efforts on the Northern Ute Tribe. They've been very, very supportive. If there are other tribes in this room, I would urge you to kind of monitor their model. It's working very well. I think they're benefiting from the efforts. We felt it was very important for them to have a vested interest in the stake. I think someone mentioned earlier that behavior is driven by some type of motivation. In this case it's having a vested interest.

So anyway, I'd just like to say that the relationship's been good and we haven't been held up on any right-of-ways that have been going through in an expeditious fashion. You know, I can't say that we've had any problems whatsoever. So I'm - - I guess an example the oil and gas producer from a public company has been doing very well on tribal lands and we appreciate the relationship and look forward to further business. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Okay, Richard.

PERRY RICHARDS: Hi. My name is Perry Richards. I'm Vice President for Questar [ph] Gas Management Company and I'd like to just kind of take a little bit of your time this morning to discuss our relationship with the Northern Ute Tribe. Questar is a little bit of a unique company in that we have - - we're an energy company. We deal in all the different aspects. We have an exploration and production company. We also

have a midstream gathering processing company. We have a FERC regulated natural gas pipeline company, as well as a local distribution public utility regulated pipeline as well.

In each of these areas of our business we deal with the Northern Ute Tribe. We have a whole lot of right-of-ways that go across Northern Ute Tribal lands dealing not only with the wells that we drill, but also the various levels of pipelines and facilities that we put in along those lines.

And we've had a long relationship with the Northern Ute Tribe going back many, many years. Recently we had the opportunity within the last year or so, because we have such all different types of businesses, we went in and negotiated a global access concession type agreement with the Northern Ute Tribe. Did it basically as the gentleman from Barry Petroleum talked about, we had a willing seller and a willing buyer. And we were able to do that on all of our businesses so that we didn't have to deal with each one separately, and I found that the tribe was very amenable and very willing to do business and to allow us to conduct our business on their lands under this concession agreement.

Our concern today is that, you know, from our perspective we have gone in and successfully worked by the game rules today and negotiated an agreement and a deal with the tribe. We'd hate to see that rules changed and which would - - who knows what that would lead to going forward. We - - as a continuation, we've - - in our dealings with the tribe we've also since that time have put together other business arrangements with the tribe where we are jointly going in and helping to develop the assets associated with their - - with their lands, both from a mineral perspective on our exploration and production side, as well as putting in pipelines on tribal lands.

One of the things we've been trying to do is stay ahead of the curve. In the Uwina [ph] Basin down there there's a lot of activity going on and we've been able to jointly put a joint venture together with the tribe where we're putting in gathering systems and pipelines to help facilitate the natural gas getting out of the region and across the - - wherever it needs to go across the country.

So again I would just like to reiterate that we think the current model and the current way things are running are very satisfactory and we've had a very satisfactory experience with the tribe. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Bland, Cherry Creek Investments, Colorado State Senator.

TED BLAND: Blackfeet Tribe. Morning. My name is Ted Bland. I'm a member of the Oil and Gas Committee with the Blackfeet Tribe which is located in North Central Montana, the Eastern Rocky Front. We're in what I consider and our committee considers an emerging nation. We are in the process of leasing up considerable tracts of land to large EMP companies. We additionally have had production on the reservation since the early '40s. We have one - - two major pipelines that run across the reservation, just are in the process of finalizing a right-of-way agreement with one of the pipelines.

And it's very interesting. We were able to negotiate this agreement based on market conditions that exists today and the pipeline company recognized what the fair value of tribal lands is and was. And what I see today and what I'm seeing proposed with 1813, and this is me personally speaking, not necessarily the tribe, is somebody trying to steal the sovereignty of Indian nations and it's tragic that this could happen in the 21<sup>st</sup> century.

There's an old rule in the business world – if it isn't broke - - if it isn't broke, don't fix it. Maybe I've got it wrong or backwards, but it isn't broke, ladies and gentlemen. We do - - we work together; we recognize what the needs of the industry are, the industry recognizes the needs of the tribes, and quite frankly from what I'm hearing today frightens me. Of the many, many - - and I don't know how many thousands or hundred thousand right-of-way negotiations that have taken place, I'm only aware of two that have been a bust. One was Yellowstone up in Montana and what the El Paso and Navajo. And I'm sorry. Two out of 100,000 is a pretty good percentage.

And it's kind of like the baby Spunky got their feelings hurt because somebody challenged them. I'm here to tell you these people in industry, the Native Americans will challenge you now but they'll challenge you in a fair way, they'll challenge you to think like an Indian and, you know, that's really something that we all should do as an industry person because it is Indian land and there are cultural and sacred things that have happened on that land and it's important that they recognize that.

I hope that the Committee, DOI and the DOE, understand what they're hearing today. I hope they take it to heart and take it to congress. I'm in agreement with the last three speakers. It's working fine right now. We don't need a change. Thank you.

[APPLAUSE]

FEMALE SPEAKER: If I could have the Colorado Association of Commerce, Chuck Berry, Stan Denson, and the Confederated [Indiscernible] Tribes come up and be the next three.

JIM NOTEBOOM: My name is Jim Noteboom. I'm an attorney for the Warm Springs Tribe out in Oregon. I too am unconvinced of the need for legislation, but if

there is a need for legislation, I'd like to describe a process that took place about 100 years ago when congress in one of the great debates of the last century resolved virtually each and every one of the issues raised by consumers and utilities today in a fair fashion and in a fashion that has stood the test of time both in protecting Indian tribes and protecting utilities and their customers. That was the debate that took place between 1910 and 1920 over the Federal Power Act.

The Federal Power Act governs the licensing of projects on federal sites or Federal Reserve sites by the Federal Energy Regulatory Committee, then the Federal Power Commission. And it provides specifically for the use of Indian lands in connection with those projects.

The concept under the Federal Power Act is that Indian lands can be used for the development of federal power projects, but only with the consent of the tribe. So the tribe can make an initial determination that no, that is not how it wants to commit its lands. But then if it does decide to commit its lands, it enters into an agreement with the developer and the tribe, under the Federal Power Act, is entitled to reasonable annual charges, and those annual charges can be set by FERC or the Federal Power Commission. And those charges are - - can be readjusted after the first 20 years of the license and each ten years thereafter. The license expires in 50 years and it can be renewed. The tribe can't stop the renewal, but it can renegotiate or have FERC set the new compensation.

And I submit that that situation is very analogous to the situation here. What to me is really the critical part of this is that what is reasonable annual compensation just like we're talking about what's fair and reasonable here. Well here's the approach that the congress took and FERC in implementing it, and that is to say that the tribes are

entitled to drive a portion of the economic value of its lands for the development of hydro power resources. Now all other lands off of the reservation can be condemned by the utility under the Federal Power Act and those persons get the fair market value of their lands, but they are entitled to no allocation of the economic benefit of their lands for the development of the power site. And so they get value as rangelands or agricultural lands, whatever it is.

The Federal Power Act treats Indian tribes uniquely different in that regard, and it provides that the tribes - - value that they receive will take into account the value of the lands for the development of the energy project. The only other entity under the Federal Power Act that is entitled to the use of its facilities or lands on the basis that includes that economic value are government dams. If it's a government dam, a Bureau of Reclamation dam or whatever, they get also a portion of the economic value.

And the concept here is that it's more like a joint venture than the condemnation of an easement. You have the landowner contributing the value of the land and you have the utility contributing capital and taking risk, and they share in that. And so the Federal Power Commission developed a methodology called the sharing of net benefits methodology in which it determined the cost of the power at the proposed site, and then the next best alternative available to the utility and it said that is the benefit of it. Now we will share it between the tribal landowner and the developer. And they came up with an appropriate, rationally based means of dividing that compensation. And that has worked for now 86 years, and it's worked fine. And in fact, what it has tended to do is tended to make the tribes and the utilities act as joint venture partners. And so instead of fighting, they have a mutual interest in seeing this thing be successful.

The concept though or the key concept is that the tribes are entitled to decide where to commit their resources and if they do, they're entitled to a portion of the business value of that particular piece of land. And so you can't compare the standard appraisal methodologies and come out with a fair situation. Anything less is going to generate a war between the utility and the tribe. Utilities should look towards partnerships with tribes and we've seen that - - we've done - - Warm Springs had done that with the Bonneville Administration. When they wanted to put a line across the reservation, the alternative route was \$8 million. Don Hodel was the BPA administrator, later Secretary of Interior. He said we'll split that with you. We'll give \$4 million. They gave us \$4 million. A lot more than we would have otherwise got entitled with, and we now have a great relationship with BPA. Thanks.

[APPLAUSE]

FEMALE SPEAKER: My apologies. I don't think I was clear. So the next - - Shawn Castle from Cherry Creek Investments, Chuck Berry from the Colorado Association of Commerce, Stan Denson, Colorado Petroleum Association, Confederated Tribes of the [Indiscernible] and Kootenia Bueller [ph]. Okay. I'm just going to keep calling names. Cedric Black Eagle, Deidra Garcia [ph] from Denver Metro Chamber of Commerce, Jim Cleary from the El Paso Corporation.

MALE SPEAKER: [Indiscernible].

FEMALE SPEAKER: Yep.

MALE SPEAKER: [Indiscernible].

FEMALE SPEAKER: Yeah, you won't lose your place.

JIM CLEARY: I'm Jim Cleary, President of El Paso Western Pipelines, and I've come to speak to you today about an important issue concerning our nation's energy security and its future. Let me begin by thanking the representatives of the U.S. government for their attendance and public service, and I'm happy to have this opportunity to speak to you and thanks for listening.

Let me also thank our friends and stakeholders from the various sovereign Indian tribes that are represented here. For more than 50 year my company has successfully and respectfully done business with Native American tribes whose lands our pipelines cross. Our experience has been as broad as it is deep. Today El Paso's pipelines traverse the lands of over 11 tribes. We're proud of that history of mutual respect and mutual benefit.

Over the decades, El Paso has been privileged to employ hundreds of Native Americans in highly skilled positions. Over that same period, we've invested millions of dollars in scholarship programs and other support for tribal governments and Native American communities, and we do this because we strongly believe that sovereign tribes in El Paso are reciprocal stakeholders to each other.

But I'm concerned. As President of El Paso's Western Pipelines, which transport gas from some of the most prolific and fast growing supply regions in the country to some of the highest growth marketplaces in the country, I want to focus on a significant threat to our ability to continue to operate our existing pipeline systems as well as construct new and necessary energy infrastructure.

[END OF SIDE A – TAPE THREE]

[BEGINNING OF SIDE B – TAPE THREE]

JIM CLEARY: ...tribes in exchange for their consent to existing and planned energy infrastructure.

As you know, the Federal Energy Regulatory Commission issued a Certificate of Public Convenience and Necessity authorizing an interstate pipeline company to construct, own and operate a pipeline across a specific route. FERC permits us to charge only fair and reasonable rates. El Paso and other interstate pipelines don't own the natural gas that is transported through our system; rather we're like the trucker simply hauling gas on an open access basis. What this means is that we generally pass through the cost of doing business, including the cost of our right-of-way to consumers.

Now the Natural Gas Act provides us the right to use eminent domain to acquire rights-of-way to construct lines. In the past as we've come for right-of-way renewals with tribes we are able to negotiate payments that were similar to prices paid to other landowners or a reasonable premium. But more recently tribal demands for pipeline right-of-way payments are vastly exceeding the fair market value of properties; often 50 to 100 times or more fair market value that we see from non-Indian landowners. Given the lack of standards, the lack of guidelines, this is a development that threatens our ability to continue to construct infrastructure.

So what do we do? Some say there are no problems. Some say eminent domain is the only answer. El Paso believes there is a middle ground. There is room for compromise. As a businessman, someone who must make the payroll, who pays taxes, who must serve customers and look for opportunities to invest hundreds of millions of dollars into our business each year, what we need is certainty, predictability and clarity.

In my view, the best way to achieve these values is a clear and objective standard for value in tribal right-of-way. Only a standard would protect all stakeholders, consumers, tribes and companies and arbitrary outcomes. A standard can provide all of these attributes and pay proper respect to tribal sovereignty. El Paso does not object if tribes receive a reasonable premium to fair market value to reflect the unique sovereignty of tribal governments if that's what congress decides.

But make no mistake. Congress must decide. Unless congress acts, we are left with the prevailing chaotic, unpredictable and inefficient process that leaves tribes, companies and consumers at the mercy of whim [ph]. Thank you.

[APPLAUSE]

CEDRIC BLACK EAGLE: [Indiscernible]. My name is Cedric Black Eagle. I'm the Vice Chairman of the Crow Tribe and I would like to thank the Department of Energy and the Department of Interior for allowing us this opportunity to voice our concerns.

And many of you in Indian country believe - - feel the same way as we do and the possibility of eliminating the requirement for tribal consent under the existing law is a major threat to tribe's ability to protect and manage what little homeland we have left. Many tribes have given and given to the United States and I think we are at a point where we should be making our demands heard. The Crow Tribe is progressively working on developing our energy resources to contribute to its nation's energy needs; already contributing 30 year relationship with Westmoreland Coal, more than 100 million tons of coal for electricity in the upper Midwest as we have contributed to that. Several - - we have several billion tons of coal, several trillions cubic feet of coal bed methane that we want to develop.

Working on - - we are currently working on a large coal fired power plant and need new transmission lines to the Pacific Northwest, but we would not want to force right-of-ways through other tribe lands as I think currently being considered. Many major existing right-of-ways are on the Crow reservation and we are working on our first renewal now.

Each tribe is in the best position to address the complexity and unique issues on their reservations. For example, protecting culturally sensitive areas, pristine traditional areas off - - will be off limits, protect cultural sites on existing right-of-ways and these were never considered 50 years ago when the Bureau of Indian Affairs allowed the right-of-ways to be put in place. Protect tribal jurisdiction over right-of-ways on reservations, the taxation issues, the tribal employment rights issues for tribal jobs, implementing scholarships for technical education as part of the negotiation process, protect tribal sovereignty in dispute resolution tailor this for the situation, provide for access to corridors, address expansions and other uses for the right-of-ways, protect interests of individual tribal members, allottees.

We have a lot of acres of allotments that allottees that have a vested interest in information for those allottees requiring public forums requires same offer if the tribe has negotiated, facilitate their concerns through knowledge and coordination and education. Consider how right-of-ways will help a tribe's energy development plan and the best way to promote the goals of Energy Policy Act is to develop a partnership with industry. Do not - - we don't need to change the existing law that some of you have already said. Tribes are willing and able to help solve the country's energy needs and that is the forefront. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Okay. While Brian walks up here, the next couple of people - - excuse me, Doug Edderson [ph], Hastle Weeks [ph] and Alan Works [ph]. Try that again, Doug Edderson from Sonosky Chambers, Kassel Weeks from East Shoshone Business Council, and Alan Works from Enterprise Products.

BRIAN UPTON: My name is Brian Upton [ph]. I'm a staff attorney with the Confederated Salish and Kootenai Tribes. I'm here in the absence of our tribal Chairman, James Steel, Jr.

I'd like to make four main points on behalf of the Salish and Kootenai Tribes. First point is that this Section 1813 study should acknowledge Indian tribes as sovereign governments. A number of people have made that point so I won't reiterate it much further other than to say great nations like great men should keep their word. The study should reflect that any action that would divest the tribes of their right to control rights-of-way on Indian land would be an abrogation of our treaty and I believe most of the other treaties the tribes have in this room.

My second point is that the Section 1813 study should acknowledge Indian tribes as landowners and land managers. The Flathead Reservation is located in the west central portion of western Montana. It's about 1.3 million acres of mountains, streams, rivers, pasture land and a variety of echo systems. Today we're proud to report that just over 800,000 acres, or almost 60% of the reservation land base, is again owned and managed by the tribes after the allotment era. In reacquiring this land the tribes prioritized and we aggregate our purchases so that we can cost effectively protect and manage our property both for economic development purposes and others

. Federal law imposes significant management burdens on all trust lands. I think most of the people in this room, especially those that work for tribes, are well aware of that. The tribes need authority to direct and control establishment of energy rights-of-way on these lands in order to assure that we can continue to effectively protect and manage them because we are the ones on the front line to do that.

My third point is that the Section 1813 study should acknowledge that tribal governments are competent governments fully capable of negotiating rights-of-way agreements that reflect the values of the local tribal community. Our tribal council has established 15 tribal government agencies and nine enterprises with over 2,000 employees. There are approximately 7,000 tribal members on our reservation and there's approximately 26,000 reservation residents. So it's about two-thirds non-Indian.

Our tribe has assumed management of almost all the federal programs and services and functions that the federal government has offered. In 2004, Harvard University's Kennedy School of Government recognized our self-governance successes by awarding us an honoring nations program high honors award.

With regard to energy rights-of-way on our reservation it's important to note that the tribes have compacted with the United States to assume on the Flathead Indian Reservation management functions for a regional electrical utility called Mission Valley Power. We provide the power to all the reservation residents, non-Indian and Indian alike, and we understand some of the concerns. We have to negotiate rights-of-way on behalf of that utility, as well as granting rights-of-way on behalf of other utilities with whom we've worked.

My fourth point is that the Section 1813 study should include a discussion of the significant successful negotiations for energy rights-of-way that have occurred on the Flathead Indian Reservation. I'd like to spell out a few of them. For background, we have a long history establishing these rights-of-way on the Flathead Reservation. We host right-of-way for 1,600 miles of state and local public roads, 40 miles for a national railway line, 325 miles for 11 regional electrical transmission lines and 56 miles for one regional refined fuels pipeline, and then thousands of miles more for local electrical distribution lines through Mission Valley Power.

A first example of rights-of-way involve the excellent relationship that the state and the tribes have for establishing, constructing and operating state owned rights-of-way for road and highways to the Flathead Reservation. Currently the state has over 40 state highway projects under design with an anticipated value in excess of \$200 million and the tribes participate in the environmental review, the right-of-way acquisition, design and the construction phases of all of these projects, and it's gone quite well. I think everybody with the Montana Department of Transportation would tell you the same.

These aren't energy rights-of-way, but I bring them up because to facilitate these conveyances, we've negotiated numerous complex transactions through both sale and exchange with private parties and state parties. We've done appraisals. We do environmental assessments, relocation assistance, production of documents and recordation, and the tribe's fairly sophisticated in dealing with all of these problems and resolving them in a successful manner.

Along the way it's also very important for everybody in this room to note we've been able to restore ownership of two significant prehistoric spiritual sites to the tribes so

that the sites can be appropriately managed and cared for in turpituity [ph] and we've also jointly created with the state a successful wetlands mitigation bank in consultation with not only the state, but also federal agencies.

These are some of the fruits that we bear when we successful work with both governments and other companies, and we think it's important to note that those are the types of things that we won't be able to do if the consent for rights-of-way is taken away from us. I agree with the other speakers that you've already heard from Indian country and from some of the energy producer companies as well too that there isn't a problem here that needs to be fix, and we hope that the study bears that out.

We are involved with the electrical transmission lines through BPA and we're currently in the process of renewing those and we've got a very good working relationship with BPA and we're currently negotiating a number of different lines simultaneously because that will be most efficient for both the tribes and BPA.

And lastly I'd like to make a comment about the Yellowstone pipeline which also went through the Flathead Indian Reservation. While operational, that line incurred leaks of more of twice the industry average and at least eight of those leaks were on the reservation resulting in a release of more than 170,000 gallons of gas to lands and waters. Yeah, I'm almost done. While operational, it was very difficult for us to negotiate remediation with the right-of-way, but since termination we are much more productive in negotiating resolution.

I think I'm going to get cut off, but what I'd like to say is that we'd like to host this group or any of the working groups up on the reservation to give everyone a firsthand

look at what we've been able to do on the reservation with energy companies. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Doug Hastle.

DOUG ENDRESEN: Thank you. My name is Doug Endresen. Let me say first good morning to tribal leaders, elders and others. I'm with the Sonosky Chambers firm and I'll be very brief. We filed comments on behalf of the Shoshone-Bannock Tribes, as well as the Pueblos of Sandia, Isleta, Zia and the affiliated tribes. So I just want to make three brief points about consent and then about the arguments that we've heard this morning about why the consent requirement should be changed.

First, consent is the most fundamental principle of federal Indian law that to use Indian land, the tribe's consent must be secured. That principle has been in place since 1823. Much of the country was settled based on it. It's the foundation of the Self-Determination Policy. That's why it's so essential to the future of Indian tribes. It's what has permitted the tribe's territory and its land over which sovereignty extends territory, not simply land.

Second, consent is what from a lawyer's perspective allows the tribe to say these are the factors that are important to us when a company wants to cross the reservation. These are the environmental concerns from the path the company seeks. These are the cultural concerns. These are the problems that were created by the unfair payments that we received over the last 50 years. These are the utility service needs that the tribe and the people of the tribe have. The tribe's power to consent and to withhold consent permits the tribe to identify these factors, evaluate them, prioritize them and weigh them.

Third, consent permits the negotiation process to work. We all know that if consent isn't required, there's little to negotiate. Discussions then are simply a step - -  
[REMAINDER OF THIS TAPE WAS INAUDIBLE]

[NEW TAPE]

MALE SPEAKER: Test one, two. Testing one, two, three, four. This is a test.  
We are going live shortly.

MALE SPEAKER: Hello, everybody. If we can take seats, please? If you'd like to continue conversations, feel free to step outside by the registration desk.

[LONG PAUSE]

MALE SPEAKER: Thank you all. We're ready to get started again and continue with the public comment period. I'd like to thank everybody for the meetings this morning. I thought they were very informative. I thought they were - - everybody represented their viewpoint very well. I know I learned quite a bit.

We have a little bit of a housekeeping note. For the formal presentations that we had this morning, because of the time constraints we had, we really cut short some of the folks' opportunities to give a full presentation, and one of the things that we were planning on doing with the formal presentations this morning is that we are of course are audio taping them and we were going to migrate the audiotape to a digital format so that we can put them up on the website as streaming audio.

So after the formal adjournment of the meeting this afternoon, we are going to continue on and give anyone who made formal presentations this morning the opportunity to complete in todo their presentation so that we can get a correct audiotape

of it so that we can make it available on the website for those who weren't able to be in attendance at the meeting.

Right now what we're going to do is bring Jody Erickson who is over here back to start again with the opportunity for us to continue our formal presentations. Thank you.

JODY ERICKSON: Okay. One reminder for folks there are some overlap in the back and when side conversations are going on sort of back by the coffee the people in the back in their chairs are having a hard time hearing, so if you want to step outside if you've got a conversation step outside. You can go hang out with the women at the registration. They're, you know, CIA trained so they'll over hear your conversation for you. Just kidding. But if you could just step outside, that would be great.

Okay. And PowerPoints are going to be on the web that we - -

MALE SPEAKER: [Indiscernible].

JODY ERICKSON: If you have a PowerPoint for your five minutes or if you have - - did a PowerPoint this morning, if you could make sure that Janelle Schmidt up here gets access to that so we can make sure that it's posted on the web.

Okay. The plan for this afternoon is to finish up the people who signed up for the open comment period and probably that means that the work session one conversation is going to get put off to tomorrow. The value of that is I think that it will be in line with the other one for us sitting down tonight and synthesizing what we heard today from the issues, concerns, questions, and possible paths forward both from - - from the presentations, from the open comment period, from the post-it note exercise in the back which also includes individual conversations that people may have had with the three people who are available for individual conversations, and then bring those back to you

tomorrow and say here's what we heard. Is that the full range, the universe of issues, is that the universe of alternatives, and have the conversation tomorrow delve deeper into those issues.

So I just want to warn you that that session is probably going to get pushed off because we want to make sure that all of you who signed up to speak get to speak.

Okay. So starting back at the list, at the top of the list when we started this morning, I'll read off three names and then you guys will speak, and then I'll read off three more. So Sean Castle, Cherry Creek Investments; Chuck Berry, Colorado Association of Commerce; Stan Dempsey, Colorado Petroleum Association. The Confederated Tribes of the Umatilla Queen [ph] Bill Quint [ph]. You can sit at the table or you can just stand. Okay. Okay. Jump right on.

STAN DEMPSEY: Sure. Good afternoon. My name is Stan Dempsey and I'm President of the Colorado Petroleum Association, and I'm here today representing our association on this matter. Our association is a mix of [Indiscernible] gas industry in Colorado. The Colorado Petroleum Association strongly supports Section 1813 language containing this year's - - last year's Energy Bill.

This language directs a study on right-of-way access for companies who are currently on tribal land or who plan on traversing tribal land because federal law does not allow for condemnation of right-of-way longer than 20 years. This issue is reoccurring and has become more problematic over time as prices for accessing existing right-of-ways have gone up dramatically without an objective criteria for determining whether the cost is warranted.

The Colorado Petroleum Association and the rest of the oil and gas industry are working hard to meet the needs of the market through exploration and production for oil and gas delivery as well as refining into a final product. Working to meet that demand can be frustrated by multiple factors and obviously as supplies tighten and demand can't be met, prices must rise and consumers ultimately pay higher prices. Frankly, this isn't good for the average consumer who notices a spike in prices, nor is it good for our members who are struggling to meet demand.

We support reforms that help ensure that our members can predict costs and delivery product as inexpensively as possible. That is why we support reforms to valuation of rights-of-way across tribal land. As I understand current practice, when a right-of-way is up for renewal or one is being initiated, there's no standard for objectively determining what price accurately reflects the use of the land.

The Colorado Petroleum Association believes that this should be changed and that the outcome of this study should be a recommendation to congress that they pass legislation which would establish a standard for objectively evaluating and ultimately determining the price the right-of-way across tribal land. This outcome would benefit consumers by ensuring that the costs associated with the accessing tribal land is not unwarranted and would benefit my members by ensuring a predictable and equitable method for price settings established.

Thank you very much for the time for us to present our particular viewpoints, and thank you for coming to Colorado. Thank you very much.

[APPLAUSE]

SEAN CASTLE: Good afternoon. I'm Sean Castle and I live in Douglas County, Colorado, and I want to thank you for taking time to come out to Colorado and hear from people who are impacted by higher energy prices every month through our utility bills.

The cost of energy impacts me in two ways; first as a consumer, and second as a financial consultant and owner of Cherry Creek Investment Advisors, as well as two other companies. I'm here today because I know you're taking testimony that will form the basis of a study that will hopefully make recommendations to congress on reforming how rights-of-ways are valued across tribal lands. I know this sounds like an esoteric issue for a regular Coloradoan to testify on, but our utility bills are getting out of hand. Any reform that is fair to all parties and that will ease my heating bills I'm going to be for and I think most Americans will be for.

As I understand the process right now, energy companies have pipelines across tribal lands and every 20 years the terms of the leases are renegotiated. This seems fine except that there is no objective method for determining what is a fair price for the use of the land. I recently heard of one case where the price to renew an existing right-of-way went from \$40 million over a 20 year period to over \$1 billion the next 20 years without any change in operation.

As a consumer and business owner I can tell you this will cost all of us higher utility bills. As a financial consultant and small business owner, this type of increase will hurt the economy, and small businesses in particular. There is an appropriate role for congressional action in this area and it involves establishing standards for the fair treatment of tribes and companies on right-of-way agreements. Action in this area will

ensure that people are treated equitably whether they are a tribal landowner or energy consumer.

I hope the outcome of this hearing is a recommendation for objective standards for evaluating rights-of-way on tribal land that will determine what is a fair price to charge the consumer for encroachment on tribal land. If that can't be the option, I believe congress needs to consider condemnation authorization on tribal lands. Thank you for your time.

[APPLAUSE]

JODY ERICKSON: Sorry. I'm going to read off a few more names. Chuck Berry you're not [Indiscernible]. These are - - I'm being told these are in most part alphabetical order by organization I believe. Correct? Okay. Denver Metro Area Chamber of Commerce, Deidra Garcia; Alan Works Enterprise Products; Interstate Natural Gas Association, Joan Dreskin; The Jicarilla Apache Nation, Levy Prescott. Levi Pesata. Okay.

BILL QUAEMPTS: Good afternoon, everyone. Those other two speakers only used five minutes, so I've got ten minutes up here. My speech probably a little longer than five minutes, maybe six, so I hope you'll bear with me. Good morning, friends, or as John Wayne used to put it – how. Long time ago an Indian raised his hand and asked a question and we have to put up with it forever.

Anyway, my name is Bill Quaempts. I'm a Board of Trustees member for the Confederated Tribes of the Umatilla Indian Reservation in northeast Oregon. This meeting has been called because energy companies claim there's been a recent spike in compensation paid for energy rights-of-ways across Indian country. I'm here to tell you

that we contributed to that spike which was long overdue. I'm not here to apologize for it because I'm proud we made that happen. I'm here to explain it so that your departments and congress do not use our success in correcting and injustice as a basis for yet another taking of our treaty reserve homelands.

CTR historically occupied over six and a half million acres in northeastern Oregon, southwestern Washington. 1855 we negotiated a treaty with the federal government. That reserved our reservation for our exclusive use and our reservation was inconveniently located where the bi - - excuse me, bisected by the Oregon Trail. For that reason, our reservation is crisscrossed by an inter [Indiscernible] railroad natural gas pipelines. I'm here to address that pipeline.

In 1955, Northwest Pipeline Company negotiated with the Bureau of Indian Affairs for the right-of-way through our reservation for the construction of two distribution lines. The CTR and landowners whose land was crossed by those right-of-ways were paid less than \$2,200.00 for a 20-year right-of-way from 1955 to 1975. In '75, Northwest Pipeline again renewed their right-of-way for another 20 years. Again, the BIA handled the negotiations. Total compensation paid to our tribe and Indian landowners was \$15,200.00 for that 20-year right-of-way term. 1980, the pipeline expanded its mainline by adding another line within the same right-of-way. Our tribe and affected landowners were paid \$21,700.00 for that additional 30-inch pipeline within that right-of-way. Those two right-of-way pipelines were set to expire the same time in December 15<sup>th</sup> of 1995.

In total, the tribe - - our tribe and its members were paid \$38,100.00 for 40 years from 1955 to 1995 for all three pipelines. Less than 1,000 a year. These 23 miles of

pipeline run through the heart of our reservation, right through our principal tribal residential housing, as well as our tribal governmental compound, tribal school and other community buildings. The 1955, 1975 and 1980 rights-of-way were negotiated on behalf of CTR and its members exclusively by BIA. We didn't have the staff to address it in those days.

In addition, despite the fact that the '55, '75, and 1980 right-of-way agreements authorized reimbursement for lost agricultural production on the lands burdened by that pipeline construction or operation, no such claims were ever made by the tribe or on behalf of the tribe. This change in 1995 when Northwest approached the BIA Umatilla Agency Officer personnel to renew the natural gas pipeline right-of-way. BIA and superintendent referred them to our tribe to negotiate for that renewal.

We assembled tribal natural resource staff, financial and legal staff to analyze that renewal proposal and directed negotiations to seek equitable terms for new 20-year right-of-way agreement, as well as overdue compensation for the previous four years. As a result, our tribe negotiated a new 20-year right-of-way agreement with Northwest Pipelines for about \$2.7 million with annual contributions of \$2,000.00 for the tribal scholarship fund and Northwest Pipeline commitment to fully comply with tribal utility tax code and with authorization for the tribe and affected landowner to submit claims for lost agricultural production back to 1955. Upon submission of appropriate documentation, a total of \$128,961.19 was paid to the landowners for loss of agriculture.

I've got 30 seconds here and I've still got a lot to say. I came a long ways here to say this and 40 years of injustice just getting five minutes is kind of ludicrous.

[APPLAUSE]

BILL QUAEMPTS: It is important both Departments of Interior and Energy understand the history of each right-of-way across our reservation to understand why we did what we did. We would acknowledge that this a high price, but it is also for the low compensation that we've had and lost agriculture for 40 years that in our '95 agreement we ensured that the pipeline companies were made aware that they were to comply with our laws and everything.

And this is not only about economics. That very pipeline blew up and severely blew up, and if it would have been in our residential area, it would have been devastating. So, you know, there's not only economy we're talking about. Our tribe is elected and we have to provide the health and safety to the people, not only Indians that reside on our reservation because of the half of the reservation that we - - we only have a half - - half of that is owned by non-Indians. So this is not just an Indian issue.

And excuse me for taking up too much of your time for this long trip and hopefully on my next trip I'll be able to say what I need to say. Yes, everybody wants to speak I know it, but this is very important and I would like to say thank you for the opportunity, but it was not much of an opportunity.

[APPLAUSE]

DEIDRA GARCIA: Good afternoon. I'm Deidra Garcia. I need to clarify something. Although I am a member of the Denver Metro Chamber of Commerce, I'm not here representing them today. I'm representing myself and I do want to say good afternoon and thank you for having me. Thank you for giving me, a resident of Colorado and a small business owner, a chance to give my opinion on something that I probably wouldn't normally have the option of participating in.

I'm both a consumer of energy and the owner of a commercial construction company here in Colorado. We are heavily impacted by the cost of energy in my business and any additional cost or increases to the cost of energy impact not only my jobs, but what I must charge my customers. High costs of energy impact the economy and these costs should not be driven subjectively.

Although I'm not an expert, I've done a little bit of research on the subject on the issue of rights-of-way across tribal country and it concerns me that even though the maximum amount of time you can have a right-of-way across tribal lands is 20 years, there is no objective method for determining the price of that right-of-way. This is particularly unfair when we discuss historic existing rights-of-way which cannot be easily rerouted and have almost no negative impact on the use of the tribal land.

I want to be clear that when I say unfair I'm speaking as a consumer and as a small business owner. As a small business owner I know price shouldn't be driven arbitrarily. I know that the prices I have to charge my clients must be both competitive and defensible. If my prices are three or four or 100 times greater than those of my competitors, my clients no longer see me as credible. Instead, they see me as dishonest and someone who is trying to take advantage of them and exploit their need for my services - - their position of being in need for my services.

Arbitrary predatory pricing is particularly dangerous when we're dealing with an issue so important to our economy as energy. That being said, I also don't think that Native American tribes should be treated unfairly. They should be compensated for the value of the land used to transport energy across our country. However, I simply feel that both parties to the negotiation should bring forth a credible basis for determining the

amount of that compensation. One party gouging the other is not only a poor business practice, but it also has a negative effect on people like myself.

The National Director of the Small Business Administration in his speech last year said that small business is responsible for 91% of the jobs in this country. When you cripple small business with exorbitant prices, you cripple the country. Therefore, when you make your final recommendation to congress, I would ask you to remember that this issue impacts everyone who must pay a utility bill and also has impacts on regional economies, as well as our national economy.

I hope you will include in your final recommendation to congress that they pass legislation which establishes an objective, defensible and fair method for valuating rights-of-way across tribal land. The injection of objectivity into this process is fair to both sides. To companies that access to use the land is fair to tribes because they can be confident that they are being compensated equitably for the encroachment on their land. And most importantly, it's fair to consumers and business owners like myself. Thank you for your time and attention.

[APPLAUSE]

ALAN WORKS: Thank you. My name is Alan Works. I'm the Director of Land with Enterprise Products Company, a Houston based energy gathering, transmission and processing company and we operate in 28 states. We impact eight tribes in terms of our rights-of-way, and I come to you as a practitioner in the rights-of-way acquisition. In a sense that it is not my place to determine what's the best business interest or the best business practice for our company to involve in joining into a contract with a tribe, but in my 25 years of negotiation with tribes in terms of acquisitions and renewals, it has

concerned me over the incremental cost that had come about in the most recent years. Cost raised incrementally in small portions over those first 15 years in the business that I was able to negotiate and once I finish my comments I hope I will still be able to deal with those people and those negotiators for the tribe in the same manner that I have in the past.

Because I come not as bringing forth there is a great injustice going on here, but I come forth and say that in disagreement that there is an issue. As Mr. Lester says it's not broke, don't fix it, or there's nothing to deal with here. There is a discussion point and what we can gain from this exchange of ideas and conversations the first time that energy has come together with this many tribes to discuss the issues before us today.

Most recent speaker here just a momentarily ago in terms of talking about the making up for the retribution of the practices in regard to the low cost of acquisition with the Northwest Pipeline. I would submit to you that pipelines were originally acquired in the '50s at \$.50 to a \$1.00 per rod, the unit price, and that was on off-reservation on private properties and on reservation. We have not gone back and negotiated with those private rights-of-way for renewals for the idea or the concept of buying right-of-way easements is you pay a picture in time the value and set a value on those rights-of-way and you pay for that.

And you're allowed that value - - the companies allowed that value on private rights-of-way for perpetuity, whereas on Native American lands, as you're aware, we're back negotiating that. So consequently, as these exponentially raise - - these prices exponentially raise, we are concerned. Time gets away in just a short time, doesn't it?

I'd like to address just a couple of comments that the Senator made in terms that this was a private issue between one energy company and with one tribe. I would suggest to you that there be many more discussions if there's some mechanism by which companies can come forward. I watched this morning as two companies addressed issues and found that there was not an issue on their exploration and development side, whereas their transmission side has expressed other concerns about the incremental increase or exponential increase of rights-of-way.

So there needs to be a mechanism in how we bring forth this information to understand that there are stories out there. Do we go to the point of interjecting condemnation and infringing upon your sovereign rights? Not at all. Hopefully from this dialogue we can establish a mechanism on how we can justifiably reach a point by which we can come to an agreement.

This is a very difficult task and I applaud the DOE and the DOI for implementing this process. I hope at the end of this process that we are able to sit down at the table as one and come to the mechanism by which we can establish reasonable means for which we can say this is a fair market value for your rights-of-way whether it's four times or what it might be, but not that it's 40 times. Thank you.

[APPLAUSE]

JOAN DRESKIN: My name is Joan Dreskin. I'm General Counsel of the Interstate Natural Gas Association of America, also known as INGAA. INGAA is the Trade Association for interstate natural gas pipelines in the U.S. Interstate natural gas pipelines transport natural gas from producing regions such as the San Juan Basin in New Mexico, the Permian Basin in West Texas, the Gulf of Mexico, underground to serve

local utilities which in turn serve homes and businesses, as well as we serve major industry and power plants.

Natural gas serves approximately a quarter of this nation's energy supplies and it flows virtually through all through high, large diameter pipelines. A number of our members pipelines cross Native American lands, particularly in the west and because our pipelines can travel over 1,000 miles, the same pipeline may cross several tribes' lands.

Interstate pipelines have always been prepared to compensate Native American tribes fairly in terms of paying a price comparable to what the easement would have cost on third party private land or on federal government land. Pipelines have even been prepared to pay a premium for crossing Native American land. And you head earlier because we don't own the commodity, the natural gas itself that flows through our pipeline, it's impossible for us to trade the sale of that commodity in exchange for an easement.

The interstate pipeline industry has an incentive to pay Native American tribes fairly for the use of their land. Pipelines will be on their land for many years. So pipeline owners strive to maintain a good and neighborly relationship with the tribes and respect tribal sovereignty and respect the land that we've been granted the right to use.

I'm glad to hear from others this morning that some tribes are having successful stories renegotiating easements with their pipelines; however, I'm here to tell you that I've heard from many of our members that the pipeline industry is seeing increasing difficulty in negotiating new but more important renegotiating existing right-of-ways. And so this is not just a one pipe, one tribe issue.

And now in our experience, Native American tribes are demanding many, many multiples fair market value and we can argue later what fair market value is for that land based upon what third party comparables would be and even compared to giving a premium. This issue, as we identified, reflects a difficult tension between two competing interests – the sovereignty of Native American lands and the need to ensure that this nation has a reliable, affordable system of infrastructure that can serve our consumers.

The interstate pipelines industry is concerned with the lack of an objective standard for resolving disputes over the valuation of pipeline right-of-ways. If negotiations break down, there's no objective metric to determining what the right-of-way should be, and moreover there's no objective third party that can help resolve the dispute.

Pipelines transport gas that heat homes and businesses. If pipelines cannot predictably renegotiate easements, they find themselves in the precarious situation of not being able to serve homes and businesses that rely on that natural gas service. We are prepared to participate with the groups including the Native American tribes, Department of Interior, Department of Energy, and the Federal Energy Regulatory Commission in looking for alternative ways for achieving a fair result for both Native Americans and Americans infrastructure stakeholders. The industries want an objective standard for valuing right-of-ways when negotiations break down that would provide Native Americans with a fair return and provide the interstate pipeline industry with the ability to deliver immediate gas supplies to consumers at reasonable costs. Thank you.

[APPLAUSE]

LEVI PESATA: I am Levi Pesata. I am the President of the Jicarilla Apache Nation Indian Tribe in northwestern New Mexico. We appreciate the opportunity to comment on Section 1813 the Energy Rights-of-Way study that's being discussed today. Jicarilla Apache Nation has been part of the energy producing industry for over 50 years. There are over 2,000 active natural gas wells on our reservation that produce about 22 million NCF of natural gas every year. That natural gas goes to consumers all over the west.

That gas is collected from the wells and sent to processing plants located off our reservation through a network of pipelines referred to as the gas gathering system. The gas gathering system on the Jicarilla Apache Reservation totals about 3,000 miles of pipe. Every one of these sections of pipe was placed under our land with the written permission and consent of the Jicarilla Apache Nation. That consent has been provided in agreements the Jicarilla Apache Nation negotiated and entered into with different pipeline companies. Based on those agreements, the BIA granted rights-of-way to the pipeline companies.

Back in the '50s, the '60s and the '70s, those rights-of-way were for a fixed term of 20 years. When the rights-of-way were about to expire, we negotiated with the pipeline companies for an extension for another 20-year term. We always have reached agreements with these companies. We have never shutdown a pipeline company or interrupted the flow of natural gas.

In 1995 most of the pipeline rights-of-way were about to expire. Our tribal council decided that we would never be able to manage our natural resources in the best way if we did not have more control over the gas gathering systems on our reservation

and more control over how they operate. Therefore, we informed the pipeline companies that we would consent to a renewal of their rights-of-way but only for ten years. Not for 20 years. We also informed them that we were not committing to any additional renewals after the ten-year period expired.

The pipeline companies agreed to those terms. The ten-year term of those rights-of-way will expire at the end of this year. We are in active negotiations with the pipeline companies about what will happen next. We have entered into written confidentiality agreements for those negotiations. So I cannot disclose what we are discussing in those negotiations.

Negotiation as we know - - negotiating as we know is an accepted business practice in our country; however, what I can tell you is that the Department of Energy and Department of Interior is that we are trying to agree on terms for operating those gas gathering systems so that more gas is produced from the land and sent to consumers all over the west. Natural gas production is our bread and butter. It provides almost all of the operating funds for our tribal government. It is possible that renewing the rights-of-way may be a good solution, but it is also possible that other arrangements will work better to increase this production. That question will be answered by negotiations between the Jicarilla Apache Nation and the pipeline companies.

So that is a short description of the energy rights-of-way on the Jicarilla Apache Reservation. I have two questions for Department of Interior and Department of Energy. Will the study you are preparing include the natural gas gathering systems on the Jicarilla Apache Reservation and other reservations? If you are going to study this gathering system, what information do you have that indicates that there's some kind of problem

with how we have worked with the pipeline companies for the past 50 years? What information do you have that indicates that the Jicarilla Apache Nation is just restrict in the supply of natural gas to consumers?

If you do not have any proof that we are interfering with natural gas companies or supplies or natural gas deliveries, then what is the purpose of this study? We know that some pipeline companies want to eliminate the requirement of tribal consent for rights-of-way on tribal land. Press reports say that El Paso Natural Gas wants to pay \$200 million for a 20-year right-of-way over Navajo land, but the Navajo Nation wants \$400 million. They are \$200 million apart. What - - that comes to just \$10 million per year for the 20 year right-of-way. Where is the proof that this \$10 million a year is going to stop El Paso Natural Gas from delivering natural gas to consumers?

I'm done already? Okay. Let me just conclude. And the only thing in conclusion that I'd like to say is that the Department of Interior and Department of Interior, you know, if they're going to investigate all these things then there should be everything that involves the natural gas operation that is investigated. We have companies that make, you know, large amount of money, corporations that make a large amount of money and all these things have to be in there. All this data have to be in there so that the report is accurate and not distorted or bias. And, you know, it's been said over and over here that, you know, tribes need to control their land and they have sovereign - - they're sovereign nations and the federal government does have a responsibility.

And I will conclude my remarks with a question. Because of this issue being addressed today, will the United States government once again breach the highest responsibility they have to Indian tribes by condemning Indian land so that energy

companies and oil and gas companies can have unconditional access to these lands? I think it's been said over and over again that, you know, there's a lot of issues there are unique to Indian tribes that I think gas companies and private companies don't understand. Thank you.

[APPLAUSE]

JODY ERICKSON: I believe this is Chuck Berry behind me, so let me read off a few more names, and I really need you to actually stay to five minutes so that people can - - other people can engage in this opportunity as well. Independence Institute, the Morongo Bend of Mission Indians, Seamorris Lyons [ph], Jack Johnson, NCAI, and National Federation of Independent Business.

CHUCK BERRY: Good afternoon. My name is Chuck Berry. I served as Speaker of the Colorado House of Representatives for eight hours from 1991 to 1998, and I'm currently the President of the Colorado Association of Commerce and Industry, which is Colorado's State Chamber of Commerce and Colorado's Manufacturers Association, and I've served in this position for about five and a half years.

I want to join the others in welcoming DOE and DOI to Colorado and thank you for taking time to hear our views on Section 1813 of last year's Federal Energy Act that requires a study of potential reforms to right-of-way agreements across tribal lands, and I hope that today's testimony provides you with some assistance.

For the past 40 years my association, commonly known as CASI, has been the voice of business in Colorado and among our members are virtually all of Colorado's large private sector manufacturers, as well as many midsize manufacturers and companies that supply manufacturers across the state. Colorado's manufacturers are

vitaly interested in reasonable and dependable energy supplies in order to produce their products in an economical manner. And so I'm here today to urge the Departments of Energy and Interior to help bring reform on how rights-of-way are evaluated across tribal lands.

Based on the information that we have been presented, CASI is concerned about the lack of objective methods for valuing the right-of-way compensation across tribal lands which leads to sometimes inflated and overvalued land prices, unreasonable terms in the agreements between tribal governments and lessees, and the potential for disruption in the ownership of the pipeline. Because there is no objective method for determining right-of-way valuations, it is our understanding that costs can be driven from several arbitrary factors.

The cost of energy to Colorado manufacturers is such a driving force for many of their internal business decisions such as how many employees they can hire, what kind of benefits they can provide, and most importantly what prices they charge to their consumers. As such, it is important that the federal government develop some certainty with respect to the right-of-way negotiation process. The method to value and acquire rights-of-way for federal, state and private entities is consistent throughout the nation and we believe the same consistency should be applied to negotiations across tribal lands.

It is our position that DOE and DOI should make a strong recommendation to congress that they pass legislation laying out an objective pricing standard for rights-of-way across tribal land. Through this mechanism, we believe that equity to both tribes and consumers can be ensured and that energy prices that impact a broad section of

businesses, as well as residential consumers, will not be impacted by arbitrary negotiating tactics.

Finally, CASI respectfully requests the DOE and DOI support assurances through legislation or otherwise that cost for all energy exploration and development and transportation infrastructure rights-of-way on tribal lands bear a resemblance to regional market costs through consistently applied pricing mechanisms which are tied to recognized fair market value property valuation methodologies and principles.

Thank you again for coming to Colorado and for allowing me to present my association's position on this very important issue. It is our belief that if this approach, if implemented, would be fair to all parties involved with the right-of-way negotiation process, including perhaps most importantly the consumers of energy. Thank you.

[APPLAUSE]

JON CALDERA: I'm Jon Caldera. I'm the President of the Independence Institute. Wanted to talk a little bit in the larger scope on this issue. The Independence Institute is a free market public policy think tank. In fact, our major concern is that of the right of owners, particularly property owners. We for the last 20 years have taken strong positions on the importance of states' rights, the importance of the free marketplace, but also on the importance of the sovereignty of tribal nations. We feel that this is an important aspect to the American way of life, particularly in the way that it gives competition to other forms of government.

On tribal nations we have different tax policies. We have different regulatory policies that offer a different point of view from the way that the rest of the United States does business. We feel that is incredibly important and that sovereignty is paramount.

That being said, we take a look very strongly on the issues of eminent domain. We have in fact embarked on a project we call our property rights project. We want to make sure that eminent domain abuses are limited; that there is an education about the dangers of eminent domain abuse. You don't need to look much farther than Suzette Kilo in the Kilo case of a woman whose home was taken so that another private individual could put up a hotel in that process.

All that being said, we recognize, as the founders of the country recognize, that there is a legitimate role for eminent domain; that there is a role for true public purpose where a private property needs to be forfeited for public purpose. What are these public purposes? Of course we know of roads, we know of bridges, we know that there are waterways and dams, but then there's a more nebulous area when it comes to private use of public property. That's where we become very, very concerned. That's where we want to make sure that urban renewal authorities don't go outside their bounds in order to confiscate private property and give it to another private individual.

What about the other private infrastructure uses? How it is that we define true public purpose? Well public purpose is something that is a roadway, that is a waterway. Does it matter if government owns that road or if there is a private individual that owns that road? Not really. In our point of view it is absolutely important that private organizations that have true public purpose uses have the ability to put in their infrastructure. Private toll roads, private waterways, private telecommunications, private power lines, these infrastructure uses are used by all sorts of different organizations, all sorts of different products. These are true public uses. In fact, waterways is probably a pretty good analogy to what we're dealing with today.

Now on waterway, sometimes geography says water is going to go in this direction. If we're going to build a waterway, there's really only one way to do this because water flows downward. That's why having proper and imminent domain use is so important here. The difference is that right-of-way for power lines, gas lines, telecommunication lines simply are not the same as a hotel or as a restaurant or a convention center that is a private organization.

There's also another issue. We talk about the Suzette Kilo case and imminent domain abuses. They go from private to private, but in this case these tribal lands are actually owned by the federal government and kept in trust for the benefit of tribal nations. This is government held land, not private land.

I think it's worth talking a little bit about what the solutions to these - - these problems are. First and foremost, it is crucial that as it is on private land, that there be a standard mechanism for determining the value of - - [CHANGE OF TAPE]

JON CALDERA: ...about how to grow your infrastructure, how to increase the size of the capacity of your business if you don't know the variables or even a range of those variables. If you cannot do accurate business projections, then you cannot do business and business will not get done. I think for the long-term vitality of tribal nations, that needs to get done.

In the longer run I think it's important that we embark on a much larger conversation, which is that of ownership of these tribal lands. Will individuals at some point be able to say this land is my land as Suzette Kilo said about her land, and at which point if there is a negotiation for that land, that person has the same protections that the

Constitution has for procedure and compensation. I think it is vitally important that a standard for the pricing of right-of-way be met and agreed to.

I want to thank you very much.

[APPLAUSE]

MAURICE LYONS: Good afternoon. My name is Maurice Lyons. I'm the Chairman for the Morongo Bank of Mission Indians in California. We're a small tribe with big problems. Our tribe is located between two mountain ranges in a pass and we control the pass and every - - everybody that wants to go into L.A. or southern California itself has to come through our pass. So we've got quite a few problems. It has been the historic abuse of Morongo lands by utility companies.

The government's unwillingness to - - to do their trust responsibilities for more than 100 years the state and federal agencies public and private utilities they've all come through; they've all wanted their little piece of Morongo because that's the path of least resistance. They come to us and they say we're going through but we're going to congress and get it changed. Well they tried that once and they went around. We stopped them, but it's that kind of mentality on the outside coming to us when we're - - we're a small tribe and they know it so they think that they can just go ahead and bully us, but we're not going to let that happen. It's not going to work that way anymore.

Morongo is crossed by at least seven high-powered utility lines. We have natural gas pipeline going through, aqua duct carrying water to southern California, fiber optic facilities go through, railroad, Interstate 10 goes through without any - - really any - - they didn't ask us. They just did it. It's just a horrible situation.

The first time they did it was a 230-kilobit electric transmission line built on Morongo in 1945. It was not licensed by then the Federal Power Commission until 1954. This is a good one. Morongo was never consulted about construction of that line. Once the line was in and licensed, they have PC - - FPC fixed the annual rate to pay Morongo was \$5.00 a mile. Thirty dollars a year for that right-of-way.

So we are having problems. We're probably not the only ones, but we're a small tribe and we will - - we would welcome the - - we suggest that our reservation be used as a case study for this purpose to report to the congress and we would welcome them to come and see what has happened on our reservation. I thank you.

[APPLAUSE]

JODY ERICKSON: Sorry, Jackie, for calling you Jack. National Federated Independent Business, Navajo Nation Louise, Navajo Nation Oil and Gas and Colorado Oil and Gas.

JACKIE JOHNSON: Good afternoon. I'm Jackie Johnson. I'm the Executive Director of the National Congress of American Indians and for those of you who don't know, National Congress of American Indians is the largest and oldest advocacy organization in Washington, D.C.

I'm going to narrow my comments because we've heard from so many esteemed tribal leaders on their concerns of substance with a proposed study, but to narrow mine down more about process. This meeting is a scoping meeting and a scoping meeting under the BIA consultation process and policy basically says this is a meeting where we discuss how we're going to proceed and to ensure that there's meaningful dialogue between the parties involved.

And I think that we need to talk about how that meaningful dialogue and exchange happens. It's kind of part of the theory and philosophy of Title 5 initially. Title 5 encouraged better cooperation between the tribes and the energy partners, and we see that this study would - - conflicts with that intent and purpose of Title 5 and when it was originally construed to put together.

But as far as with the concerns of the process, first of all, NCAI is joined with CERT, and David Lester's here, joined CERT in a letter and we'd like our comments to stand, but we're concerned that Section 638 of the Energy Policy isn't included under this consultation under Section 1813. And this is a tremendous big issue when we have the Secretary of Agriculture, Commerce, Defense, Energy and Interior to designate respective authorities on the corridors of Indian land to touch 11 western states and we believe that this needs to be included in the tribal consultation process.

For Section 1813, we have serious concerns about the case study approach and we've heard here, as Chairman Morongo volunteering, and we know that there - - under a case study approach, depending upon how you pick those studies. Today we've also heard that there seems to be not as significant of an issue on this - - for many of the energy companies as might have been expected and, therefore, a case study could actually pick a few, you know, depending upon the broadened approach - - or how the broad the approach could be could skew what the results could be in the report and we're very concerned about the need for having analysis of the broadened approach to be truly reflective of the issues in Indian country.

We have serious concerns about having four separate working groups. We in Indian country know as tribal leaders we have to put on a million hats a day and we have

to deal with education, healthcare and a number of other issues. We propose that perhaps instead of having four separate working groups, that we combine them to having two working groups, and we take the first two sections that's proposed, the historic rates and procedures for rates, and combine them together and we take the next three and four, implications for tribal sovereignty and implications for national energy policy and combine those together. And that may be able to help with the resource issues on the tribes to be able to engage in a very meaningful way.

We have - - believe that the critical condition of the tribal consent requirement is a fundamental aspect of tribal sovereignty, but we also heard from Southern Ute about how a lot of good points on how the exercise of tribal sovereignty and tribal consent led to greater energy developments that benefit the National Energy Policy and that's another reason why we think that those two grouping together may be a good grouping.

We propose that the Departments jointly request an extension from congress for at least an additional year, that to give us the time to have the meaningful conversations and be able to get the tribal governments and accurate feedback on this draft report. And we also are concerned about need more information about the use to evaluate the national laboratory to conduct the analysis. We want to make sure that this national laboratory is disinterested parties, but have an understanding of both groups – the tribes and the private contractors and energy. And we have reason to be concerned because we want to make sure that the tribal positions are fairly and adequately represented.

My five minutes are up, but we have more submitted in our written submittal.  
Thank you.

[APPLAUSE]

GREG SCHNACKE: Thank you. My name is Greg Schnacke. I'm the Executive Vice President of the Colorado Oil and Gas Association. We represent a large community of oil and gas companies in the state including production gathering, processing, pipeline and refining interests. I want to thank you for spending the time to come to Colorado and hear our views on right-of-way reform across tribal land.

One of the most crucial steps in the energy development process is the delivery of adequate and affordable oil and natural gas supplies to the consumer. Transportation services are an important step that must be achieved in a reasonable manner to meet consumer demand. Impediments to affordable pipeline transportation services have a direct negative impact on consumers. Section 1813 of last year's Energy Bill recognizes that problem and attempts to address it through the study that you are hearing testimony on today.

My testimony is brief and COGA's request is simple. We would like the result of this study to be a recommendation to congress that legislation be passed which would establish objective criteria for determining fair costs for rights-of-way across tribal land. Many of my members have had rights-of-way across tribal lands for decades; however, moving their pipelines from the existing routes would be expensive and unnecessary should they be subject to arbitrary costs that are being charged for renewing the right-of-way.

Legislation establishing a standard that is equitable and objective is an appropriate solution. If such legislation were passed, it would be good for consumers, tribes and the companies who have invested millions of dollars of risk capital developing our national

pipeline system. Driving up the cost of energy arbitrarily serves no useful purpose and continued delivery of these vital energy products must continue at reasonable prices.

Thank you and thank you for coming to Denver.

[APPLAUSE]

PAUL FRYE: I'm Paul Frye. I'm speaking on behalf of industry. It's a peculiar industry. I represent the Navajo Nation Oil and Gas Company and we operate on the Navajo Nation and we operate just like any other oil and gas company out there. We deal with rights-of-way with the Navajo Nation government and we recognize that that's messy. Democracy is messy. Adhering to a Constitution is messy. Adhering to treaties is messy. It's not neat. It's not like Mussolini's Italy.

The Navajo Nation Oil and Gas Company was formed by a person who now represents Questar and that's Peterson's former Chairman of the Navajo Nation and he recognized the Navajo Nation was not getting what it should be getting from its mineral resources, so we set up a company and our good friend from giant industry spoke earlier. His pipeline that supplied the two refineries with crude oil, that right-of-way expired. The Navajo Nation could have shot him in the foot and the Navajo Nation in the foot as well by saying okay. That's it. We'll see you later.

But that's not what we did. With the Navajo Nation we sat down with giant, we negotiated a deal, we own the pipeline, we have an agreed upon tariff and that's how we make some money and that's who we keep our partner in business, and that's the wave of the future. This notion of going back to the 19<sup>th</sup> century and okay we're going to impose this on the tribes if they don't like, that's not the way to go. That's going to depress

energy production in Indian country, it's going to increase costs to the consumer, and it's going to dishonor this country.

I've heard people come up here and say well I don't have any interest in the energy business, but I don't like my utility bill this year. Well what's the solution? Gosh. Tribes must be making some money. Let's take it from them. That's the easy way. That's not the right way to do it.

In fact, I've got a solution that's going to save you a lot more money and is going to be fair, and it's going to be let's go to congress and get cotton petroleum reversed so the states are not taking money away from tribal communities without sending it back. By the way, congress has already studied this. We've got a leg up and it was studied in 1969 and I think the Attorney General for the Navajo Nation will go into that in greater detail. Thank you.

[APPLAUSE]

LOUIS DENETSOSIE: Good afternoon. I'm Louis Denetsosie Associate Attorney General for the Navajo Nation. I threw away my watch ten years ago so I don't know what five minutes is.

The Navajo Nation is very unique and due to that it's vitally interested in the subject of right-of-ways across Indian land. Navajo Nation signed its treaties in 1840 and 1868. That's been construed by the U.S. Supreme Court in Williams v. Lee and we've got the right to exclude nonmembers from the reservation. We have the largest land base. We're about the size of West Virginia and we have the greatest need on our reservation due to federal neglect and state discrimination. Ninety percent of our people do not have

natural gas, 70% have no running water, 54% have no electric service. So I find it ironic that here we're talking about rising energy bills for people in California and other places.

There are all kinds of rights-of-way that cross our reservation and some of them are in trespass right now and we have never stopped any delivery of energy resources across our land. In fact, we're fighting very hard right now to restart up the Mohavi [ph] generating station and supply them with water and coal and we've never denied them a drop of water or an ounce of coal for the 30-40 years that they've been on our reservation.

Navajos, as have other Indian tribes, always answer the call when there's a legitimate case of national peril, you know, witness the coat talkers and all our Indian soldiers in Iraq, some of them women. If there becomes a national energy problems, you know, let the Indian tribes know, you know, but listen very carefully to the remarks of esteem council for fair. He's not saying that the sky is falling. He's saying that the sky might fall and that's what I hear.

I do see an emerging consensus here. I think many have said - - the majority have said that there is no problem with the present system. It works and we thank you all for the respect for tribal sovereignty. I'm glad that people are not seeking imminent domain authority over tribal lands. That would be a return to the confiscatory policies of the past and I see the objective standard as being the same way that is being sought to be imposed.

There already is a study that was done by congress in 1969. The Navajo Nation has been down this road before as been Morongo. People tried to impose right-of-ways on our reservation without our consent. Congress did provide a report after two years of study, not using the case method, not using flip charts, and they said that do not grant

rights to Indian land without full consent of the tribes and they found that circumvent tribal consent would violate property rights, democratic principles, law and good government.

We also have been reminded to be weary of the law of unintended consequences. Congress at that time found that voiding tribal consent would subject the government to costly and protracted litigation in the Court of Claims. So does that sound like Cobell [ph] to me? DOI and DOE both have trust duties to the Indian tribes. DOE has an American Indian policy. We suggest DOE review that. It was approved in the former Bush administration, and we believe DOE and DOI should inform congress as most here have testified that there is no issue here and that the conclusion of the 1969 congressional reports still apply.

[APPLAUSE]

JODY ERICKSON: The Office of the Colorado Governor, Owen Drew Bolin, Office of Senator Wayne Allard, the Oneida Tribe, Gerald Danforth and Kinder Morgan [Indiscernible].

DREW BOLIN: Good afternoon. Thank you for coming to Colorado as well. My name is Drew Bolin. My role is Director of the Governor's office of Energy Management and Conservation. Governor Owens wasn't able to be here himself, but I do have a letter from Governor Owens we would like to submit as testimony. The main intent of the letter is to go ahead and suggest that as you undertake your study that there is a way to figure out an objective valuation for the rights-of-way on tribal lands. So I wanted to be here in an official capacity but I also have some personal thoughts too.

Couple of things. The first bill this year in Colorado that was signed by the governor that was passed by our state legislature and signed by the governor was a Bill HP1200 and what it was was it was to go ahead and increase the amount of dollars that would go to LIEAP, low energy - - or low income energy assistance program, and as you all know energy prices have gone up very, very dramatically and a lot of the low income people are not able to afford those energy bills. So last year the appropriation was \$7 million and this year it was raised all the way to \$20 million.

And why that's important is that even those dollars are far from helping all those that qualify need it. They are having - - they are struggling with the price of their energy bills and many of them aren't making it which is a real tragedy. But what's important though is that those dollars are used to help those high energy prices and the high energy prices are clearly a function of a number of moving parts and clearly one of them is the fluctuation of natural gas prices and energy prices overall, but it is also the fluctuation of the infrastructure too. So that's something to consider.

On a personal basis I'm a little bit in a strange situation as an individual whereby my family and I we own a farm in Colorado and there is a wind [ph] farm that is going to be going up near our farmland and there is an energy company that is negotiating rights-of-way over our own land, so I empathize a great deal.

What's fascinating is that I've been learning that the spread of the prices that are being offered for those rights-of-way. The ones that are being offered to us are very low and in perpetuity, but as I've learned more about this just as an individual I'm shocked at the wide range of negotiations. In fact, what will probably happen is the neighboring landowners next to ours if they're a better negotiator they'll probably get more money or

if we're less of a good negotiator we'll get probably less money instead of more money. But that seems like madness. There's this huge swing of price fluctuations in rights-of-way and it just seems like madness.

So in an official capacity I do want to submit Governor Owens' letter encouraging the study as you undertake it to go ahead and consider a way to provide or figure out a way to provide an objective and a cooperative evaluation progress that you can recommend to congress and for congress to consider. It would benefit not only the landowners and give the tribes more certainty, and also respect frankly the encroachment on sovereign land. That certainty is important, but also in a larger society about all of the low-income homes that are struggling with their high-energy prices.

So again thank you for coming to Colorado and thank you for taking this testimony.

[APPLAUSE]

ANDY MERRITT: Good afternoon. I'm Andy Merritt, State Director for Senator Wayne Allard, and let me just start off by thanking you all for coming out here from Washington, D.C. and welcoming everyone to Colorado. I'm sure you would rather have a hearing here than in D.C. anyway.

The Senator wanted to thank you for getting out of Washington, D.C. and doing hearings like this out in the field and specifically in Denver. Getting out of D.C. allows people on both sides of the issue the opportunity to make their case which may not have been able for some people here if this had been held in Washington, D.C.

I also would like to present a letter from Senator Allard, which I will give you for the record. Let me just briefly paraphrase this letter that Senator Allard is sending.

Senator supported this Section of last year's Energy Bill because he believes that a study is necessary to determine an objective method for the valuation of rights-of-way across tribal land. An objective valuation method will ensure that consumers and tribes are in the position to ensure that the price that is being charged and passed on to consumers and the amount that is being received by the tribes are fair to both the tribes and the end consumer.

At this point, we have no such method for object evaluation and Senator Allard understands that determining one will be a very difficult task; however, this study should play a crucial role in outlining a recommendation for congress on what such a method should look like. This is important for consumers and tribes and it is our hope that this study can make such a recommendation to congress.

Thank you again for coming out here and thank you to all those who have come to testify and give your input. Senator really believes this is the way the system should work. Thanks.

[APPLAUSE]

JODY ERICKSON: David Cornman, Rob Robertson, the Public Service Company of New Mexico, the Pueblo of Isleta, thank you, and the Pueblo Sandia.

DAVE CORNMAN: Good afternoon. My name is Dave Cornman [ph]. I'm with KMEP, Kinder Morgan West Coast Operations. I'm glad to be here today. We operate some 4,000 miles of refined petroleum products pipelines on the west coast. We are a common carrier pipeline, public utility in most of the areas that we do business. We certainly are on tribal lands and allotted lands in a number of the places that we do

business. We've developed a very close working relationship with all of the tribes on which whose land we operate.

We've also developed partnering agreements in many of those areas as well so that there is some profit sharing associated with the products that we ship through their lands. We've worked really hard to maintain those working relationships, these close relationships with tribal lands and with allotted - - allottees as well and we're very proud of the successes that we have enjoyed in working with our neighbors and our partners over those years.

We certainly believe in and support tribal sovereignty. We have no qualms with that whatsoever. Recently we have in fact worked very closely with some of our partners in renewing some of the easements that we have typically 20 year easements both with tribal lands and allotted lands, and temporary construction easements for some of the replacements of some of our existing pipelines. These negotiations were difficult. They were very difficult, but ultimately got done in a reasonable time and actually kept us on schedule with our projects. Ended up in resulted in ten-year renewals for compensation on allotted lands and temporary construction easements.

But we are here today dealing with a congressionally mandated study to evaluate compensation across rights-of-way across tribal lands. We think we should take the opportunity to improve the process. We're not going to say the process is broke. We don't think it's broke. We think it worked well. I just said that it worked well, but while we're here and since this study is going to be in progress, I think we ought to take the opportunity to find out whether improvement is possible. It may not be; it may be.

In that vein, we would like to see this study consider three possible areas of potential improvement. Number one, fair market value. These words are important and those words I think we think could be better defined with respect to an objective standard. Again, everybody said it, a lot of people have said it, an objective standard for dealing with compensation - - for compensation for rights-of-way across tribal lands.

Number two, the study might give consideration to having easements be in perpetuity. As someone once said today or maybe a couple of people did, most of our easements across private lands are in perpetuity. It may or may not be the right way to go, but one of the things that it would provide business certainly is more certainly in recovery of the capital that we build into these large projects.

And then finally number three, the study might evaluate provisions for dispute resolution, particularly in the area of fair compensation for utility rights-of-way across tribal and allotted lands. Thank you very much for being here today.

[APPLAUSE]

Hello. I am Rob Roberts. I manage the right-of-way department for Public Service Company of New Mexico based in Albuquerque. We're also known as PNM. PNM is the largest gas and electric provider in New Mexico. We are a regulated utility in New Mexico. We have right-of-way agreements, transmission, for gas and electric lines on 17 different tribes in New Mexico.

I have been negotiating with our tribal neighbors for the last 20 years and have quite a bit of experience in doing so. By and large I think we have very good relationships with our tribal friends and neighbors. When it comes to cultural concerns with our lines, we work well with them. When it comes to environmental concerns, we

work well with them. I also think on the service aspect where we have distribution lines on the tribal lands we try to do the best job we can in getting people hooked up with gas and electric services. The negotiations that I've been involved in have gone well overall in the last 20 years.

But I would like to say I am concerned about a trend that I've seen the last ten years, particularly the last five years, for rights-of-way renewals. I'm seeing a rapidly escalating demands from the tribes for right-of-way renewals and where we are paying multiples, large multiples in some cases, of appraised values. We are also seeing shorter terms for rights-of-way agreements. Now in the old days we would give 50-year right-of-way agreements and I'm the first to admit now I do not think that is realistic in today's time to get a 50-year right-of-way agreement.

But we are also hearing - - I'm seeing in some discussions I have with tribal leaders of five to ten year right-of-way agreements and I also think that is too low. You spend yourself in eternal negotiations with the tribes and I think it exasperates the resources of industry and the tribes themselves. And so we would like to see more certainty brought into the process for renewals in terms of what is paid for those and in terms of term. And 20 to 25 years I think is not unreasonable and that is what we would like to see happen.

I would like to propose kind of a compromise I guess in how we approach rights-of-way with the tribes in the future. And by that I mean for new projects I say let's leave the process the way it is. We have - - as the utility, we have the option to either design around the tribe if we want or negotiate a deal with the tribe if we want. We have that option to do that and I have no problem with leaving the current process and the

regulations the way they are, but for renewals I do think we need a little bit more certainty.

And what I would like to propose is for renewals we have what I'm calling a multiple appraisal process where perhaps you have the tribe appoint and appraiser, we appoint an appraiser, they appoint a neutral appraiser and whatever that appraised value is we then would pay a multiple of what the appraised value was – two, three, four times, we're open to suggestions on that. That brings certainty to the table for what the cost would be for renewals.

We have a lot of money invested in these pipes in the ground and lines in the air and unlike new projects that might be on the drawing board, we don't have the luxury or the option to maybe design around or go around. And I just would like to see the certainty brought to the table not only in what the cost would be, but also in what the terms would be. We are not for eroding the sovereignty rights of the tribes.

I'm a full believer in sovereign rights of the tribes. We do not want to get condemnation rights on tribal lands. We are just looking for like I said before more certainty in the renewal process for existing facilities on tribal property. Thank you.

[APPLAUSE]

ROBERT BENAVIDES: Good afternoon. My name is Robert Benavides and I am the Governor of the Pueblo of Isleta. The Pueblo of Isleta and our ancestors have lived in the same region what is now Arizona, New Mexico, Colorado and Utah. For thousands of years we've lived in these areas. We've adopted to major climate changes and survived through the - - through three colonial governments. Through it all our lands have been central to our existence and identity as people.

Our ceremonies and religion are what defined us as Isleta people and our traditional practices have persisted throughout our history, even through religious persecution by Spanish priests. Our land plays an important role in our religion ceremonies. This is part of the reason we have fought so hard to remain on the same land, and any time we do anything on our areas like pipelines, anything that we have to do for infrastructure anything we have to go through tribal leaders so that we make sure that we don't disturb religious sites.

We also depend on land for other resources. We have used our land for farming, timber and grazing. Today we also pursue other economic development opportunities in all cases. We use our land in a way that respects the ceremonial significance. At times throughout history the United States has shown very little regard for the significance of our land and has done little or nothing to protect it. In the 1800's the BIA granted rights-of-way for roads, canals without doing anything to prevent the destruction of our ceremonial and historic sites caused by this development. The government has used Isleta land for military testing and training without taking adequate steps to clean up the land.

As the Governor of the Pueblo, I am responsible along with the rest of our tribal government for protecting our land and our people. The tribal government knows the history of the Pueblo and understands the significance of the land. Tribal self-determination policy recognizes that we best suited to make decisions about the use of our tribal land and resources. This policy works. It reflects the difficult lessons learned throughout decades of destructive Indian policy during which tribes lost vast amounts of

land. It is critically important by - - to tribal sovereignty that we as tribal government can continue to decide how to use the little land we have left.

Respecting tribe sovereign status as governments is also the best way to address the national energy transportation policies that the energy companies are concerned about. Increased access to energy and a long term security [Indiscernible], stability of energy infrastructure when tribes are acknowledged as government partners we can help ensure energy excess is secured in a way that benefits the country as a whole. And energy right-of-way that are supported by tribal governments will be far more stable in the long term than if tribal governments are ignored, dismissed or treated as obstacles.

Along with that, I'd also like to add that Indian country, Indian land is not owned by the federal government. It's not federal government land. It's our land. It's only held in trust by the federal government.

You know, last year I read in an article where one of the gas companies really made a big profit in money and it's hard for me to believe that looking at that map up there that was shown on the screen there's two land basis that are pretty good size, pretty large, but on the other hand I see nothing but little spots of ink up there. Now if that's causing inflated prices in light bills and gas bills, I don't think so. You know, we need to reevaluate what's going on. And I think the federal government has a trust responsibility to the Indian people and it's high time that they go ahead and stand up to that trust responsibility which they haven't done for so many years. Thank you.

[APPLAUSE]

JODY ERICKSON: The Pueblo of Zia, Sanya [Indiscernible] Indians and Salt River Project.

LYNN TRUJILLO: Wow, Governor Benavidas. You're a tough act to follow. Good afternoon. My name is Lynn Trujillo and I am General Counsel for Sandia Pueblo. I'm here representing Governor Lawrence Guterrez. Originally we had - - I wasn't going to speak although today we've heard a lot about fairness and what fair is. And it's interesting to hear that I think most of the presenters who are non-Indians are the ones who are talking about what fair is. And so what I wanted to do was to come up here and share a couple of examples of - - and ask you whether or not these negotiations were fair.

The Pueblo of Sandia is located north of Albuquerque and consequently we're a major transmission route for energy resources. We have several electric right-of-ways and one major gas line running through the reservation. And when the Pueblo was approached to grant these right-of-ways, the Pueblos always gave their permission.

Now I wasn't alive back then when these rights-of-ways were negotiated, so I don't really know who was at the table for the Pueblo. Perhaps the federal government. But in terms of these three situations I want to present to you what the federal government or whoever it was on our behalf negotiated for us. We have a transmission line and substation for approximately five acres. It was for a 50-year term. The tribe received \$10,000.00 for that transmission line. There was also another transmission line for about approximately 44 acres of land for 50-year term. The tribe received \$931.00 as compensation for that line. Another transmission line that crossed our land was for about 45 acres, 50-year term. They did a little bit better in this situation. They got about \$14,000.00.

So we've heard a lot about fairness and I ask you whether or not it was fair and who was gouged in this situation with regard to these negotiations. Because of our

location within the Albuquerque metropolitan area, a lot of these transmission lines are up for renewal. And our land fortunately is valued highly in terms of real estate standards, but I want to point out that our situation is different and that we're unique in many ways. We are not like many of the other Indian reservations, and so one size fits all is not the solution here. And I think you need to hear that again. One size fits all is not the solution here.

And so originally like I said before I wasn't going to speak, but I felt like I had to say something on behalf of our Pueblo because of all the fairness and the talk that we were hearing about, so I just like to thank you for your time.

[APPLAUSE]

PETER PINO: My name is Peter Pino. I'm the tribal administrator for the Pueblo of Zia. As governor in 2004, I'd been working for my own tribe since 1973, long before it was cool to work for an Indian tribe.

I want to give you a break. You've been sitting on those chairs for a long time. I always like to know my audience when I address a group. I like for all the government representatives, federal government representatives to please stand and see how many of you are out there. Stand. Okay. Thank you. Industry representatives can you please stand? Tribal representatives can you please stand. Thank you. Consumers can you please stand? Consumers can you please stand? You were all supposed to stand.

The point that I'm trying to make is that we are in a difficult situation and we can't be playing cowboys and Indians. We can't be playing pilgrims and Indians. We can't be playing we and they. We're in this game together. We've been here together for 514 years. Haven't we learned anything? We need to leave our egos in the doorway if

we're going to come and negotiate and we talked about negotiating rights in those right-of-ways. We're in a situation where we all have to compromise and negotiate how we get out from this situation so that we can all make for a win-win situation.

We have six pipelines going through the Zia Indian Reservation. Many of you don't know where that's at, so I have to explain. We're 35 miles northwest of Albuquerque, New Mexico. One of 19 present Pueblos within the state of New Mexico. Population of about 820 people. 1890 the population of Zia was 97. Not 9,700 but 97. When the Spaniards first came into the region in 1540, the population of Zia occupying five different villages depending on what historical document you read, numbers from about 10,000 to about 15,000 people.

I can come before you today and speak my language and I'll do that at the end of my presentation because that's who I am, our tradition, our culture, our song, our dance happens on our Holy land. The last stronghold that we have in the Pueblo is our land. So, therefore, when we benefit from the rewards of that land offering to us of Mother Nature providing to us, we have to not look at just one individual. We have to look at the entire tribal population.

You talk about individuals; you talk about tribes. Individuals you're trying to grab all the gusto you can in your lifetime. Tribes we don't have to grab all the gusto in our lifetime because there will be somebody - - when Peter's not here there will be somebody here presenting ten years from now, 20 years from now, and I appreciate what our forefathers was able to give to us.

I'm getting the sign that two minutes. I never realized that five minutes was a short time. It probably shoots your stereotype of Indians. We're supposed to be people

of a few words. Right? And all of us as Indian people are struggling to make a presentation in five minutes because we're talking about our life. Four is a sacred number that was indicated earlier - heart, mind, body, spirit. I'm going to address for the one minute that I have left the spiritualness - - the spirits fear of all of us. We all have a heart. We all have a mind. We all have a body. We also have a spirit and maybe addressing the spirit may be able to bring us to some kind of conclusion when this entire process is done. I'm going to say this in my native language, my first language.

[speaking in native language]

PETER PINO: I heard a child cry in the back of the room. I feel that the spiritual world has heard me. Thank you.

[APPLAUSE]

JODY ERICKSON: Little break. Get up. Take a walk. Ten minutes. Be back here five to 3:00. Folks we are going to go ahead and get started. Sorry. I was waiting on some key folk. Okay. We have a few more folks. We're going to start with the Shoshone-Bannock so let me call a few more names. You all know who's coming up. So Salt River Project, the San [Indiscernible] Band, I can't say this name. Sorry about that. Mark Ramano [ph] and the Southern Ute Indian Tribe Clement Frost. That's okay.

Good afternoon. I'm Nancy Eschief-Murillo. I'm Vice Chairman of the Ft. Hall Business Council the Shoshone-Bannock Tribes. We have a short presentation and as you can well see we're a peach treaty tribe. We have 544,000 acres of which 120 is cultivated and 245 is grazing. We are an IRA tribe. We have about 5,000 members. Rights-of-way across the reservation. This is a speed-reading contest so you can take the first four and I'll read the last. Okay?

Today there are about 27 energy related rights-of-way including natural gas pipelines, power transmission lines, and a fuel line. Historically the BI grossly undervalued rights-of-way. Companies willingly entered the reservation reaping economic benefit for over 100 years, plus the Oregon Trail was one of the first rights-of-way that they didn't get any trespass permits from us. BI negotiated and granted companies rights-of-way with limited input from tribes and allottees. Our reservation is about allottees and tribal members oh 97%.

Compensation was minimal compared to the acreage being acquired and the length or time granted. An outrageous example is 1980 Idle [ph] Power Company was granted by the BIA two perpetual roads across tribal allottee lands. We had no involvement in that. In 1941 the Utah Power Company was granted a 50 year 26 mile right-of-way for a mere 50 cents per rod. Annual payment was to be reappraised after five years but that never was completed. 1963 Intermountain Gas was granted a 50 year at a \$1.23 per rod. Salt Lake Pipeline Company in '63 \$1.93 per rod.

Rights-of-way impact tribal sovereignty. Tribal control of our lands is a fundamental attribute of tribal sovereignty. Tribal consent for companies to enter and cross reservation roads, lands is equally an aspect of sovereignty. Tribal self-determination has moved control of resources and lands into tribal lands in tribal hands. I'm glad you wrote - - direct tribal involvement in rights-of-way negotiations enable tribes to obtain a fair deal for the lands utilized by these energy companies.

As governments, tribes must be given the opportunity to negotiate their own deals with these companies without interference by the federal government setting any standards for compensation. Negotiation of rights-of-way, the rights-of-way agreements

enable the tribes to create an economic opportunities for the tribal community including educational scholarships, energy assistance, grants to poverty level people that we have of, and providing general governmental services. We still have a 50% to 70% unemployment rate on our reservation.

In conclusion, the Shoshone-Bannock Tribes of the Ft. Hall Indian Reservation oppose any change in policy or law that undermines tribal or landowners consent for rights-of-way. Current law requires that tribes be paid no less than market value for rights-of-way across their lands, which we support. We oppose the case study approach because it is limited in nature. Each tribe and reservation is unique, as has been already professed. We oppose any actions by the federal government to condemn tribal lands. To even consider the condemnation of tribal lands is contrary to the Indian Energy Self-Determination Act of 2005.

I welcome all the people here to America. And tribal leaders, let's stand strong. Thank you.

[APPLAUSE]

JOHN FELTY: Good afternoon, everybody. My name is John Felty. I work for Salt River Project in Phoenix, Arizona. I don't have a seventh inning stretch for you. I'm usually comic relief but everybody's been doing a pretty good job.

I just wanted to add a couple of additional comments to what I think has been a well covered general topic that we've been talking about today, but first I'd like to add I appreciate the intelligent discussion of this complex and emotional issue and it just makes me feel pretty good to be in America and to see how we can approach something as complex and delicate as this.

SRP as a company works very hard to make sure that we do things above and beyond the regular standards. We have always made a concerted effort to compensate private and tribal landowner interests for our rights-of-way at a market rate or above market rate in such a way that we work to ensure that there's no question that we've done the very best job possible.

One question that continues to be an issue for us is that we recognize that the system as it is in place today has a lot of benefits for both the tribes and the companies with some level of certainty. We don't necessarily disagree at all that the tribes should have the ability to make a judgment call whether they want a facility within the tribal lands and whatever benefits or aspects of that exist. We are concerned about some of the historic facilities and the renewals that may exist and we ask you all to think about this problem in a deep and thoughtful manner.

One other item that I think has not been touched or touched sort of obtusely is just the rights-of-way process itself. I am one of the people that has been in the trenches on this. I've knocked on people's doors to get service line agreements. I've stretched the very definition of right-of-way so that we could get people's air conditioners turned on in the middle of summer in Phoenix, which is no fun. And I don't believe this is - - it's on the tangential edge of this, but the process itself is cumbersome and I've heard many comments that getting power to community members has been problematic, and I think my own perspective is it's part of the situation that the tribe has to deal with too. How do you accomplish some of these tasks that even the energy companies are looking at?

Anyway, I thank you very much for listening to me and I would certainly be willing to talk to anybody one on one about any thoughts they might have. Thank you.

[APPLAUSE]

JODY ERICKSON: The Southern Ute Indian Tribe, St. Regis Mohawk, Tri State Utility.

CLEMENT FROST: Good afternoon. My name is Clement Frost. I'm the Chairman of the Southern Ute Indian Tribe. Southern Ute Reservation is located in the southwest Colorado and the northern San Juan Basin. Our reservation is blessed with substantial natural resources and natural gas reserves, and since the early 1950's our tribe has been actively involved in its development. We also have several major interstate natural gas pipeline and electrical transmission lines that cross portions of our reservation.

Over the course of the last 60 years we have consented to the issuance of thousands of energy related rights-of-ways. We are frankly surprised and disappointed that congress has ordered this study. The companies that call for the study have used scare tactics and half-truths. They claim that tribes have abused their freedom from condemnation of lands by charging too much for energy related rights-of-ways. They also claim that the compensation we receive for rights-of-ways across our lands has driven energy prices for consumers to unreasonable levels.

Finally, they suggest that our lands should be treated the same way as the land the private citizens for valuation purposes. These claims that underpin the study are inaccurate and misleading. While we do not support the study, but now that it's here we urge you to set the record straight as our trustee. We also request that you recommend that the condition of tribal consent to issuance of rights-of-way remain in place as it has since at least 1934.

First, I'm here today to tell you that we have not abused our power to control our land. At least in recent decades our dealing with energy companies have been the result of negotiated contracts that the energy companies have signed with their eyes wide open. The legal teams and executives of these large companies knew full well that we have - - that we consented only to fixed term - - if they consented to only fixed term they would have to negotiate again when those terms ended. How can they blame us for entering into contracts that they help draft and that they signed?

Second, they should be ashamed for the unsupported claim that we are the cause for unreasonable energy prices. The cost of rights-of-ways across tribal lands is the insignificant fraction of the cost of energy today. We suspect that when the average consumers receive its energy bill in California each month, tribal compensation involves several pennies out of the several hundred dollars the consumer is required to pay. Those pennies are the cost of a nation keeping its promise to Indian people. Those pennies are the price paid for our sovereignty. Those pennies represent nothing when measured against the lands and resources that the nation has taken from Native Americans. Your duties in this study require you to quantify the cost that consumers pay and we urge that you do so. The facts will show that these companies have exaggerated the impact of our power to consent. The sky is not falling and congress should know that.

Third, our lands are not the same as those as private landowners. Tribal governments have tremendous responsibility toward their members. We fund police departments, court systems, schools, hospitals, environmental programs, water treatment plants. All the other things that no one else funds. We use the compensation from rights-of-way to pay for infrastructure and services that other citizens take for granted. The

suggestion that our compensation should be limited to what private citizens receive ignores the difference in our status. We are governments with real needs and the right-of-way compensation helps fund those needs. The huge publicly traded Wall Street companies that seek to remove our power to consent to use our lands have no right to ignore the difference between tribes and individual landowners.

Fourth, Indian tribes are part of the solution to our nation's energy, not the problem. We would like to give you - - I would like to give you an example that I hope you use in your case studies. In the mid late 1980's coal bed methane gas became a reproducible resource from our lands that major companies that provided gathering [ph] transportation facilities across our reservation including Northwest Pipeline and El Paso Natural Gas did not want to invest in a pipeline and facilities needed to develop that resource.

Public Service Company of Colorado owned the third major company, West Gas, which provided gathering and treating services on our reservation. Public Service Company decided to sell West Gas however the pipeline rights-of-way owned by West Gas were set to expire in several years. Our tribe wanted to own West Gas so that we could expand its system to serve coal bed methane volume. Public Service Company wouldn't even let us in in their data room. We reminded Public Service Company that we had the power to consent or withhold consent to renewal of their rights-of-way and we directed them to disclose that fact to any potential buyer. Only then did they talk to us seriously.

To make a long story short, we formed a joint venture with the Stephens Group from Little Rock, Arkansas and we purchased the West Gas System in 1994 for approximately \$87 million. The system at that time delivered approximately 125,000

MTF per day through this system and us purchasing that system we have invested more than the \$145 million in system improvements. As a result of our investment, California consumers have been able to use coal bed methane from our lands as a major fuel source.

Our company, Red Cedar Gaterin [ph] Company has provided consumers an increased of more than 1.7 trillion cubic feet of gas to the nation than would have been available without our acquisition and investment. We were able to add to the nation's energy supply only because we had the power to consent or not to consent to energy related rights-of-ways. Think what the price of natural gas to California consumers would have been without these significant resources.

In conclusion, we will reluctantly participate in this study because congress has asked for it. The timeframe for completing a comprehensive analysis are too short to do the subject justice. Nevertheless, as you proceed we urge that the study be fair and not one simply ghost written by energy industry. We must rely upon you, our trustee, to protect our sovereignty rights and to tell congress the truth about these matters. You and congress should both insist that the current law remain in place unless the current system is really broken. The system isn't broken and the nation's promises to us should not be broken. Thank you.

[APPLAUSE]

JODY ERICKSON: Mark Romaro [ph], Mesa Grande Tribe - - yeah, Mesa Grande Tribe. Southern Ute - - sorry, we got that. St. Regis Mohawk James Ransom, Tri State Utilities Ute Mountain Tribe. White Mountain Apache Tribe. Watching for folks to stand up. Okay.

JIM RANSOM: Hello. My name is Jim Ransom. I'm Tribal Chief of the St. Regis Mohawk Tribe in Upstate New York. I wanted to thank DOI and DOE for the opportunity to present. I wanted to start by saying I've enjoyed hearing the success stories today. They can serve as the blueprints for tomorrow.

I wanted to make four points. First, the Section 1813 study on Indian land rights-of-way should not be viewed as strictly a western issue, but as a national issue. In the Northeast, amongst the Hoh and Shoshone, the Mohawk, Oneida, Anadaga [ph], Cayuga, Seneca and Tuscarora, we have equally valid concerns, issues and questions that this study needs to address.

Secondly, the recommendations for appropriate standards and procedures for determination fair and appropriate compensation to Indian tribes for grants, expansions and renewals of energy rights-of-way on tribal lands must give deference to tribal input. We must not lose sight that these are Indian lands that we are talking about. Who better to determine what is fair and appropriate than the tribes themselves whose land is the subject of the rights-of-way? It is only recently that tribes have developed their skills to positively assert themselves in the negotiations on rights-of-ways on tribal lands. Now that we have caught up to everyone else, the study should not be used to change the rules and put us back down the economic abyss.

Third, as this study is planned out, it has to be built on a bedrock foundation of tribal consent. Tribes must be clear. Tribal consent is nonnegotiable and should not be revisited in the context of this study. History shows that there is a power - - that there is powerful evidence that tribes have always been honorable in their dealings with those

requesting rights-of-way, many times to our disadvantage. This history must be part of the study.

Finally, this study must not be one-sided. Yes it must examine the fears of the larger society, but it must also examine the inequities facing tribes. Our tribe is currently in negotiations with an electrical utility over rights-of-ways on our tribal lands.

Originally entered into in 1949, the utility obtained a 99-year right-of-way without secretary approval for the sum of \$1.00. In the current negotiations, the utility is holding our community hostage. It attempted to deny new home connections until we signed. It is denying new business and commercial connections. It's also refusing to connect our new senior citizens center until we sign. Examples such as this from Indian country must be part of the data and information gathering for this study. Thank you.

[APPLAUSE]

JODY ERICKSON: So round two, Tri State Utility, Ute Mountain Tribe, Warm Springs Tribe, Jim Noteboom, Lori Goodman, [Indiscernible] Citizens Against Ruining Our Environment. Okay.

[BACKGROUND CONVERSATIONS]

AMY MIGNELLA: Good afternoon, everybody. My name is Amy Mignella. I'm an attorney with the White Mountain Apache Tribe in Arizona. Many of my comments throughout the day that I jotted down have already been addressed. I'm happy to say everybody's done a very good job of covering a lot of different ways of looking at this proposal for a study of this issue, but there's a few things that I do want to add that are specific to my client and then also just general observations as a native to the state of Arizona.

First of all, let me just address this issue of consumer impacts of energy related matters on Indian reservations. My tribe - - not my tribe, my client, the White Mountain Apache Tribe, chose a few years ago to intervene in a rate case that was the last rate case filed by a serving utility which is an off-reservation electric cooperative and has no affiliation with the tribe, but serves both the reservation and the surrounding communities.

The rate that was proposed by this electric cooperative initially consisted of significant reductions for those in the classes that consumed the largest amounts of electricity and enormous increases for everyone at the bottom end of the rate spectrum. And that obviously hit the hardest to those who were the smallest level consumers, almost all of whom at the very bottom were reservation residents and many of whom lived at or below the poverty level.

Had we not intervened in that case, none of the residential customers would have benefited from the ultimate rate that was put in place. We were able to absolutely reverse what was filed so that what was originally upside down became something much more fair so that all residential consumers, many of whom are fairly affluent people who only live in their homes part of the year off reservation, did not have to pay significant increases during those times.

So for anyone who suggests again that what tribes do really only is a disadvantage to the general consumer, I think you need to be more careful and consider the specifics of what work is being done. We were very proud of what we were able to accomplish in that scenario and the expense to the tribe of having us go through that they were able to

recoup within the first year that those rates were in effect. So it was very cost effective for them as well.

The State Residential Utility Consumer Office, which would ordinarily represent residential consumers, only has the resources to undertake the largest groups of residential consumers in the state, which is the larger metropolitan areas where the tribe is not located. So again the off-reservation customers, residential customers, would not have had any representation were it not for the tribe intervening on behalf of that rate classification.

I would just also like to note that some of the references to what's a fair market value might want to broaden their consideration of how that's determined. The State of Arizona is currently in the process of completing a study that will be released I hear in the next couple of weeks that's supposed to examine the economic impacts of visitors to the state's Indian reservations. In other words, what tourism itself has as an economic value. My client has a very unique reservation with respect to its topography and plants and animal life that's located there and includes several endangered species. We are visited heavily by people from all over the world for that reason. It's also one of Arizona's only two ski resorts. So the fact that it's a large tract of undeveloped land and the fact that it's an Indian reservation does give it a unique value that is not equal for better or for worse, however you need to look at it, it will not be the same as appraising a parcel that is individually held off the reservation.

In closing, I would just like to say that I think that the historical context again of each of these scenarios needs to be understood in detail because otherwise it will be much

too easy to conclude things that are very grossly inaccurate about what has happened and what might be a better trend for the future.

I'd also like to note just as a personal remark that I think it's amazing that anyone who's representing a tribe as a tribal member here today or actual tribal official, which I am not either, can say that the system is not broken when they are also listing for you repeated examples of extreme under valuation of their own property. So please keep that in mind. Thank you.

[APPLAUSE]

JODY ERICKSON: Okay. Third round on Tri State Utility or the Ute Mountain Tribe. Okay. Warm Springs Tribe, Jim Noteboom, Western Business Round Table, Dean Swagey [ph], Hobstrous, Dean and Walker, Skip Arnold, Energy Outreach of Colorado.

LORI GOODMAN: Hi. My name is Lori Goodman and I represent Dine CARE, [Indiscernible] Citizens Against Ruining our Environment from the Navajo Reservation, and we represent the community people that are impacted by energy extractive on our lands.

And I also want to say that a lot has been said here that was on my list so I don't need to repeat that, and I really want to stress that this is the way that we come to consultation. This is the way that we come to agreements and I think this is a great way for industry people and travel people to come together so that we learn from each other and I think that's very important thing happening right here because we get to see each other's reality.

With that said, and as our Attorney General from the Navajo Nation has already said, Navajo Nation exports 1,200% more energy than it consumes. We export over 700,000 BTUs and while our tribe consumes 52,000 BTU. And part of the cost when the study is made needs to take into account the true cost to the people, the community people.

In our case we have Exxon making \$36 billion profit and yet the community [GAP IN TAPE] their water has been contaminated so our people have to travel to Cortez, Colorado making 100 mile round trip to get clean drinking water. So these are costs that need to be taken into consideration.

So it turns out our Navajo community people pay \$22.00 for a thousand gallons of water while we sell that same amount of water to the energy companies for seven cents for the same amount of water, and as we're talking about fairness we need to be talking about these issues here. And with all the energy development and there's a third power plant coming in the four corners, we have to take the health impacts. We have the broken promise study done by Commission on Racial Justice came out and said that 71% of native people are more impacted by asthma and, you know, these statistics need to be taken into account.

And then as I respectfully disagree with the pipeline company that was saying that, you know, they give a fair price. Two years ago in the San Juan Basin the right-of-way that they were paying and wanting was \$1,000.00 per rod for white ranchers and \$20.00 a rod for the Navajos. Now where is the fairness in that? And so this is what we need to take into consideration. This is the reality going out there.

So fair and just compensation can be worked via consultation. I'm afraid this is beginning to much like okay we're under the gun, we're almost out throughout this administration; let's throw in some more stuff and take those rights away from the Indians, you know, they're making money. Well excuse me. We're not making any money. I just gave you statistics. On Navajo, 37% of the population are living in poverty. This is from the 2000 study census. And so where is that money going? Well we have Enron. Maybe we should be regulating Enron. We should be regulating Exxon that just made \$36 billion in profit this year. So something needs to be regulated. I don't think it's adding more - - regulating more Indian lands.

And also tribes have different needs. One shoe doesn't fit all. And so in this study - - in doing this study, you know, we need to study both tribes and also the energy corporation. We want to know exactly how much money is being made and who's making it? And this we need for all consumers, you and I, all taxpayers so that one doesn't bear the burden of the cost. On the Navajo Reservation Indian health service is only 70% funded. We have a 20% vacancy rate for doctors and nurses and yet there is call for just in the San Juan Basin 10,000 more oil and gas wells to be developed, and then we have transmission lines running and as has been said, you know, our people don't even have electricity. In fact, where these transmission line runs, the Navajo people are using solar. I mean we need to be checking into that. Thank you.

[APPLAUSE]

JODY ERICKSON: Western Business Round Table, Skip Arnold from the Energy Outreach of Colorado, Bruce Prichard, Continental Divide Electric Coop, Terry Fredericks, Intertribal Council on Utility Policies.

DEAN SUAGEE: I'm Dean Suagee. I'm an attorney with the firm Hobbs, Straus, Dean and Walker. We've helped a couple of our tribal clients in participating in this process, and I only signed up to make a statement to pick up on a couple of issues on a subject that I don't think - - I heard a couple of people sort of hint at but not really say, and so I wanted to make a few comments about the sovereignty implications of energy rights-of-way on tribal lands.

We've heard a number of energy industry representatives say that they support the concept of tribal sovereignty, and I sincerely hope that that's more than rhetoric. The gentleman from the Umatilla Reservation, the tribal council member, who said one of his - - when he was running out of time said the pipeline blew up. It would have been a real disaster if that had been in a residential community, and what the point that I think he was trying to get to is that for a tribal government, dealing with the implications of the rights-of-way for energy infrastructure for transmission lines for pipelines and for other facilities is more than just a bargain for the cost, you know, the value of the land, the value of the use of land.

There's also responsibilities of tribal governments that go along with that. Sovereignty is not just power. Sovereignty is also a set of responsibilities. I tend to think of it as a set of, you know, four different kinds of responsibilities. You have responsibilities to, you know, tribal members and other residents of their reservation, people who did business there. They're human beings. You have responsibilities to future generations. You have some responsibilities to the [Indiscernible] of ancestors and other kinds of sacred places. And you have responsibilities to the non-human beings that with whom we share the earth.

Tribes as governments have some responsibilities for dealing with the implications of transmission lines and pipelines, and, you know, to some extent - - to some extent this is recognized in federal environmental and cultural resources laws that, you know, tribes can operate program within the framework of those laws, you know, to assume responsibility for protecting those kinds of resources. You know, federal funding for those kinds of environmental and cultural resource programs is generally inadequate.

The sovereignty implication that I want to suggest is that, you know, over the last 25 years we've had a - - we have this body of case law in which the Supreme Court and other federal courts have chipped away at what we used to think the basic principles of tribal sovereignty were, and so as the gentleman from the Navajo Nation Oil and Gas Company said - - suggested, we should ask congress to overrule - - to overturn Cotton Petroleum. Well there are a batch of other cases that I think we ought to ask them to look at, but for those of you who don't remember Cotton Petroleum, that was the case that said well while the Jicarilla Apache tribe can tax this oil and gas on the dry from trust lands, so can the state. It's not preempted by operation of federal law. It is getting to the point where tribes can't - - tribes have very limited options for raising tax revenue to support tribal governments and about the only legal handle we have left is the power to grant or withhold consent for rights-of-way. And if you're suggesting taking away that power, that's - - you're really asking for a battle.

That's all I want to say. Thank you.

[APPLAUSE]

JODY ERICKSON: Skip Arnold, Energy Outreach of Colorado, Bruce Pritchard, Continental Divide Electric Coop, Terry Fredericks, Intertribal Council on Utility Policy, Carol Harvey, Lynelle Hartway, Hopi Tribe. The Yakama Nation.

BRUCE PRITCHARD: Good afternoon, ladies and gentlemen. My name is Bruce Pritchard. I currently work for Continental Divide Electric in Grants, New Mexico. I phrase it that way because my boss sent me up here to meet with Tri State, but he also said come down and see what's going on at this meeting. He didn't say that I should get up and say anything, so I may get home and find out that I'm unemployed.

Continental Divide has approximately 23,000 meters. We probably serve as best as I recall about 48% of those are members of the Navajo Nation or the various Pueblos that we serve. We are a rural electric cooperative and one of the principles of rural electric cooperatives is one member, one vote. And that being said, as we deal with the various pueblos and tribes, we have in the last five years, as someone mentioned, I believe it was the gentleman from B&M, getting right-of-ways, obtaining right-of-ways, renewing right-of-ways has become more and more difficult.

Part of the problem is the case that's the Navajo Nation, the Corbelle [ph] Case, that has created a problem in dealing with BIA. In fact, most of my comments are really directed towards BIA rather than the tribes. I found that when Continental Divide when we sit down with the tribes or the pueblo we can usually work out a solution that we're all satisfied with. It's when we have to deal with BIA and their regulations that we run into problems.

For example, we have four projects for distribution lines to serve anywhere from 280 to 300 people, but yet in trying to comply with the rules and regulations that BIA has

imposed upon us, these projects have almost come to a complete stop simply because gaining the consents from the allottees, BIA can't tell us where to find those people, they continue to insist that we get a majority and yet we can't find a majority to get them. They've suggested that we send registered mail, but that doesn't seem to satisfy some of the individuals at BIA. So consequently, there are approximately 300 families on the Navajo trust and allotment lands that do not have electricity that we would like to serve simply because of that.

Another situation that we have is the appraisal process. The Navajo Nation has granted - - not granted, has done an appraisal, has - - we've gone through the resource committee that the Navajo Nation has and followed all of the steps. The Navajo Nation has appraised the land at a certain value. When that was sent to the BIA offices they - - that didn't follow the procedure that BIA had and, consequently, we have to go back and get an appraisal from another individual who wants about \$5,000.00 to do an appraisal on a one mile stretch of line. Even though all they're going to do is attach to our application for right-of-way. There needs to be some sort of a recognition between the tribe and the BIA as to what the fair proper method of doing appraisal is.

Compensation - since we're a rural electric cooperative and I say it one member, one vote, we feel like the electric lines distribution lines, the electricity we provide to those members of the various pueblos and the Navajo Nation there is some value for electricity that should be taken into account for compensation, not just dollar value for compensation. BIA is very narrow-minded in my opinion as to what compensation should be.

And lastly, renewal. We're in the process of renewing right-of-ways - - 50 year right-of-ways with the Acoma Pueblo and the Laguna Pueblo. The BI - - with the Acoma Pueblo we have offered various improvements and to do things that will make the system more reliable and including installing substation for over a million dollars, yet BIA - - we are held up because of BIA's insistence upon dollar value compensation.

Lastly, I'd like to thank all of you for being here allowing us to voice these feelings, opinions and concerns that we have that are might - - might create a dialogue between all of us. I hope that this will take care of all of the many problems that we have. I don't think the system is necessarily broke, but I do think it needs some modification.

[APPLAUSE]

CAROL HARVEY: My name is Carol Harvey and I'm here today as a Navajo citizen. I have oil and gas experience of over 25 years having worked for Conoco, Inc. for 17 years and for Oxy EGO Resources and CMS. During that time I rose to the position of senior counsel and was responsible for most domestic and international exploration and production. I was responsible for West Africa, Congo, Angola, Gabone [ph] for Indonesia, for our polar lights project in Russia, for Western Europe and for Canada. So I have, you know, insight into how negotiations are conducted within the oil and gas industry, and I agree with the speaker this morning who talked about legislating versus negotiating, that many times it's much easier for energy companies to go to Washington, D.C. to talk to either the BIA or to their congressman to resolve situations they're having with tribes, and I would like to see it reversed. You know, that those negotiations occur with tribes.

I see the Navajo Nation, you know, which is my homeland, as a great gift. The Navajo people from 1860 to 1868 during the Navajo American war fought for that land. Ten thousand Navajos were imprisoned at Ft. Sumner in New Mexico. Twenty-five percent of those Navajos that were imprisoned died. The state of New Mexico wanted to relocate the Navajos to Oklahoma and, you know, but for our fighting for that land we would not be there.

During the treaty negotiations between the United States and the Navajos, Barbensita [ph] who is one of the Navajo leaders, addressed General William Tecumseh Sherman and this is in the war records information, and he said that the four lands area had been given to the Navajos by first woman and first man, and that as long as we lived within that area we would thrive. And Ft. Sumner was just an example when we left that area how we failed to thrive.

Manulito [ph] in 1867 after seven years of holding out against the U.S. Calvary surrendered. He had a handful of warriors with him. They had now bow and arrows. They only had wrist guards left. They were emaciated and they were starving. They finally had to give in because of - - [GAP IN TAPE]

CAROL HARVEY: ...many issues need to be addressed including poverty, unemployment, lack of education or the inability to apply education that we receive, health, suicide. Native American males are four times more likely to kill themselves than non-Natives. Resolution of colonial trauma issues including substance abuse, domestic violence, child abuse, gangs, crime, incarceration, inadequate housing, civil rights, the lack of affordable access to utilities, schools and healthcare facilities. We are fighting for our very survival today.

I have a poem here which I wanted to read because it expressed many of the ideas and the emotion I have on this subject. We survived or we died in battle, in massacres, in prison of war camps, in forced marches, in cruel removal, in boarding schools, in relocation to cities, in termination of our tribes, in jails, in shame and despair, our deotees [ph] mocked, we survived or we died. We survived or we died. Our heroism forgotten in lives shattered by colonialism, stifled by oppression, shamed by assimilation, silenced by subjection, we survived or we died. We survived or we died our valor overlooked in lives filled with hatred, in lives filled with bigotry, in lives filled with apathy, in lives with filled with oblivion. We survived or we died. We survived or we died our courage dismissed, unable to mourn the loss of lives, land and resources and culture, our continuing genocide. We survived or we died. We survived or we died our strength ignored. We are voices out of the darkness. We are voices of honor. We are voices of truth. We are voices of life. We are voices of hope. Hear our pain. Hear our suffering. Hear our anguish. Hear our despair. In a perpetual state of grief we survived or we died.

I am so pleased to see many tribal leaders here today because I want us to survive. I want my children to be able to go home to Anafutaw [ph] and Talucachuka [ph], Arizona and to have their native heritage and culture still in tact. Thank you.

[APPLAUSE]

FIDELIA MANINICK ANDY: [speaking in native language] I have just said good afternoon. My Indian name is Tongue [Indiscernible]. My white man given name is Fidelia Maninick Andy [ph]. I'm from the Confederated Tribes and Bands of the Yakama Nation, the Treaty of 1855 under Isaac Stephens, and on behalf of the Yakama Nation I would like to read the foregoing. The Yakama Nation is located in central

Washington and encompasses over 1,300,000 acres. The tribal population is approximately 10,000. There are a variety of industries on the reservation including farming orchards, manufacturing, forest products, game and hunting and fishing. Also there are several major power lines running through the reservation – Bonneville Power Administration, Benton REA and Pacific Corp are the primary owners of the power lines which generally run across tribal individual Indian lands.

Historically the lessees have enjoyed a decided advantage in the negotiation of right-of-way. We have a lot of situations where landowners were paid near pennies in return for approval of a long-term right-of-way. As an example, an elder was paid \$70.00 for a 50-year lease by BPA. She received \$1.20 per year while BPA made millions of dollars for using her lands. This is not a unique situation. Many of the BPA right-of-ways have expired and there are ongoing negotiations for new agreements.

Meanwhile, BPA continues to use right-of-way without agreeing to pay trespass damages or new compensation. Is this justice? The answer has to be no. The Yakama Nation realizes the importance of continued usage of right-of-way; however, adequate compensation and reasonable terms and conditions must be part of negotiations for new agreements. Meaningful value must be realized by the nation. The Yakama Nation realizes that many of the Indian nations share these sad experiences. Like my fellow tribal leaders, the Yakama Tribal Council is committed to realizing the greatest benefit to the nation for the use of its lands.

On behalf of the Yakama Nation, I ask that the study be fair, objective and include the perspective of Indian nations and the historical negative trends which have

been established in the area of rights-of-way terms. Compensation and usage, the voice of Indian people must be heard if the study is to have a meaningful value.

I recommend attention and caution is taken when negotiating. Number one, fair market value, while there are many issues to take into consideration, both modern and tribal, I would recommend lineal footage value in lieu of fair market value to reduce costful [ph] complications both now and in the future.

And - - number two is perpetual should be eliminated from any right-of-way agreement now and in the future. And number three, piggybacking of subcontracting right-of-ways should not be permitted nor tolerated in any form. Any entity that [Indiscernible] subcontractors are - - excuse me, or allows piggyback and would result in immediate forfeit of the right-of-way agreement or contract.

And also require an accounting of power and energy traveling through and within tribal lands the past, present and future accounting would also play a role in negotiations with preference power to tribal utilities featuring the industrial commercial development and assisting in energy self-sufficiency. If this situation were to arise of a possible transfer of operations, current operators are to give the tribe first opportunity to take over existing facilities and the infrastructure within the tribes usual in the custom areas.

And also open the possibility to develop and funding and utilize travel utilities of tribal contractors to perform operations and maintenance functions on transmission lines. The creation of new programs such as scholarships, internships, local jobs creation and training, subcontract with tribal preference promoting local economic development, voluntarily compliance with TERA in assisting in facing the challenges of leading inherent tribal values in unique identity while maintaining traditional and cultural values.

Other issues that need to be reinforced are continued efforts to minimize the damage to the land, water and air, while attempting to maintain a natural state of the environment, respecting traditional values all while recognizing there's a delicate balancing act between development and traditional cultural values. Liaison between the BPA and the Yakama Nation for all issues between both parties. This is the recommendation that we have and I thank you very much that we're up against the government that has made regulations [ph] over the last past 150 years and they're regulations they don't even follow themselves, yet they impose it on us. Thank you.

[APPLAUSE]

TERRY FREDERICKS: Good afternoon. My name is Terry Fredericks. I'd like to start with I'm representing the Intertribal Council on Utility Policy which I'm the Vice President of that group there, but I want to start more on a personal side. I'm a member of the three affiliated tribes – the Mandan, the Hidatsa and the Arikara Nation up in Fort Berthold, North Dakota.

We're a large land based tribe and this is a very close issue for me here because some things are, you know, to fight for and some things are to die for, and to me this is kind of an artery to the reservations and to our energy needs and what we have and what a lot of our ancestors have died for. And people need to know that - - understand if you're not native, you're not indigenous, you know, you need to understand what that means and that goes back to our history and stuff.

Up on Fort Berthold we're, you know, one of many tribes that was flooded for hydropower. I had a lot of my grandpas and my grandmas and my aunts and uncles pass away at young ages because they took them from their homelands and forced them up

onto the rocks and told them to be farmers when there was now welfare back then, but it created all these problems. And so from small pox - - I mean one devastation to the next and it's still not healing because we never got our free electricity we're supposed to get; we're still fighting for our hospital, our school, our whole infrastructure.

When I go to work, as an example, I drive over 102 miles one-way. So that's at the tribal office. And so they just really split up our reservation and took, you know, made things real hard.

We have about one million acres and when they flooded that it took about one million acres away from us, so I wanted to make that apparent. You know, [Indiscernible] as it did downstream and upstream from us. We have approximately ten years ago 8,000 members. Today we have a little over 12,000 and we're growing, so we also have to remember that for the future.

Qualifications, you know, in all this stuff is a big part of this, you know, is are we qualified. Yes, we are I believe. We need to learn from the past and we need to build to the future our - - those federal responsibilities they need to be there because under intertribal coo - - well first of all I want to go back to crossing our reservation we have pipelines, you know, gas lines, transmission lines, distribution lines, roads, all this stuff falls under this and right-of-ways, and I believe that we've negotiated over time and negotiated them properly and in good faith and I believe not just our tribe, but all tribes are qualified today because we not only have worked with non-Indian engineers and lawyers and doctors, but also Indian engineers, lawyers and doctors. So I think, you know, qualification is the main thing. Can we do this? Yes we can with respect to our culture and our ancestors and Mother Earth.

Under intertribal coo, I'm the Vice President of that, we are working developing wind energy on eight tribes basically and actually we represent several other tribes because we are working from power purchase agreements, the green tags, we are negotiating distribution, all these issues I mean we're working - - we're right in the middle of that now. This directly affects our future and tribal ownership and where we're going, and that's why, you know, we need to make sure and learn from the past and let's move so that we are taking care of our future and we are respected as a people because we are indigenous. Thank you.

[APPLAUSE]

LYNELLE HARTWAY: Good afternoon. My name is Lanelle Hartway and I'm Assistant General Council of the Hopi Tribe. Hopi is located in northeastern Arizona. It is a reservation with a significant land base. And after listening to a lot of comments, there are just a few remaining things that I thought were important to bring out about the issues we're facing here.

Of the groups that the Department of Interior and Department of Energy are required under Section 1813 to consult with, the Hopi Tribe, like many tribes, is all four of them. They are the tribal government. They are and contain the appropriate governmental entities that have authority over these regulatory issues. They are a part of the energy industry. They produce and move energy through the country. And they are a user of the electricity and they are the owners of businesses that use electricity. They are not separate from any of the energy issues, industry issues, or perspectives. They are an - - are and together with all of them.

Any analysis of the historic rates paid for rights-of-way in Indian country need to consider not only the particularized facts of each individual tribe, which has been pointed out, but also needs to include the totality of the circumstances regarding each of those rights-of-way and the situation in its total on each reservation.

And I try to give some example of what I mean by this. On Hopi, the major electrical utility provider in Arizona has a 500kb transmission line that runs across a significant portion of the Hopi Reservation. It was originally put there under a 20 right-of-way agreement, the total sum of which that was paid to the tribe under that agreement was \$700.00. The term of that original 20 years has expired and there are issues as to whether or not it was renewed. Rather than go into those, what I will say is that if the renewal term is according to that original agreement, the only thing that would be due the tribe for that renewal is an additional \$700.00 for 20 years.

At the same time, that utility provider under the intricacies of Arizona law is only mandated to provide electrical power to certain parts of Arizona. Under the rest of Arizona, it is not mandatory and what that means is they can provide for a fee to extend any electrical line. Now given that what you may have read, the Hopi Tribe joined in with the written comments submitted by Sunowski Chambers, and in those comments it mentioned the lack of electricity generally found on Hopi. Hopi is among that area where the utility provider is not mandated to provide, so we often end up having to pay a fee to get electrical lines extended to provide basic utility services to individual homes. And in so doing, we often waive any right-of-way fee because we want those lines. We want electrical power. The Hopi Tribe is a government responsible for providing basic services to its people including electricity.

So the effect is that we waive the right-of-way fee, and then pay a per foot fee to put down the electrical lines, so in effect we pay the utility provider for the right-of-way across Hopi lands. [APPLAUSE]

This is what I mean by the totality of the circumstances. It is not just the one right-of-way agreement, the 500kb line; it is the totality of the relationships that the tribe has developed over the years and the circumstances that it faces in dealing with its day to day issues as a government entity.

And as an additional concern, on that 500kb line the terms of current statutory law and regulatory requirements state that the Department of Interior is required to review every five years the amount of compensation paid under that right-of-way. For the first 20 years that was never done, nor do we expect it to be done if that current right-of-way is found to have been renewed.

So there is a significant question in the design of the study has to take into account that under current law and policy if consent is removed and granted to, for instance, the Department of Interior, whether or not they have met their current responsibilities to tribes over the course of the 60 or so years they've had to try to do that. Thank you.

[APPLAUSE]

JODY ERICKSON: Instead of going back through the list and reading the people who had not come, I'm just going to open it up. For those of you who had signed up and don't remember getting called or people who at this point feel that they want to get up and speak, I'd like to open it up. I have no more people on my list so I just want to open it up to if there's anyone would like to take the five minutes at the end. Okay. Okay.

I want to remind you that on your way out as you've been listening to all these and as you start thinking about what you heard today, if you want to jot down a post-it note of an idea you thought was important that you've heard today, and idea you didn't hear today on any of the four elements, jot it down on a post-it note. The process for tonight is we are going to get together and sort of synthesize the issues that we heard, the concerns that we heard, the questions that we may have heard, any possible paths forward so that we can bring that back to all of you and start there for each work session. And the work session will look at that suite or that universe of issues and say yes that is in fact it or what you add, what you modify to it. That's what our work will be tomorrow. We will do all four work sessions so we will be starting bright and early and on time. So please be here on time.

So I'm going to let Abe wrap up, but just before I let him do that I just want to say that we - - when we adjourn today, we're going to take a few minutes and let people kind of back out of the room and then whoever did their presentation this morning, we're going to tape their full presentation so that you'll have that on the website and things, so, you know, if you want to stay and see the Hopi Tribe's presentation a second time we're going to tape it so we have the full thing. I just wanted to let you know once we've adjourned that will happen. It will just be a repeat.

ABE HASPEL: Well it's been a very long day and I want to compliment you all on still being here. We started early. A lot of you didn't move out of your seats. It shows how passionate many of you feel about this topic and what we are attempting to scope today.

We received a lot of insightful, thoughtful, and important comments from you all, both sides. We have taken it down. We're listening. We'll be back with you tomorrow to take the process forward in terms of how we actually begin to do this report. It is mandated by congress. We will be giving them a report. What the report says at this point is anybody's guess. There are so many views here and so many ideas that I hope that you come tomorrow fresh with ideas of how to help us actually fill in the sections because that's ultimately what we have to do and then it will up to congress as to how they use the information.

I will, however, commit that the report will be fair. It will recognize the views that were presented today from both sides. It is not going to be a white wash one way or the other. I don't think congress is asking us to do this report in a way that is necessarily going to lead to one result or the other. That's why they asked for analysis, assessments and ultimately recommendations.

So with that, I hope you all have a very pleasant evening. I look forward to seeing you all tomorrow. I believe we start at 8:30 according to the agenda. Excuse me, 8:00 o'clock. Too early, but hopefully we'll see you all bright eyed, bushy tailed and ready to work. Thank you again for all your help today. We look forward to seeing you tomorrow.

[END OF RECORDING]