

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:
Transcript of Presentations and Comments made at the
March 8, 2006 Scoping Meeting**

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

DAVID MEYER: Okay we're going to get started here. Well good morning ladies and gentlemen. We're very glad to see you this morning at the second day of our conference here. Kevin Kolevar from the Department of Energy is able to join us this morning. Kevin is the head of DOE's office of electricity delivery and energy reliability, and he is a person of considerable experience in energy matters and prior experience on the hill in terms of how you know, things are done in the Senate and in the House, yeah, so he's a man of considerable experience and we're very glad to have the opportunity to have him here to speak briefly to you, and he'll be here for the rest of the day also, so Kevin why don't you take over?

KEVIN KOLEVAR: Thank you David. Good morning. As David mentioned I'm Kevin Kolevar. I'm the Director of the Office of Electricity Delivery and Energy Reliability, and I want to thank all of you for being here today. If you haven't heard of our office it shouldn't come as a surprise. We are a relatively new office. We were created by an act to Congress merging two former offices in the fall of 2004, and I've been on this position, in this role for just about a year, and I have to tell you that this is new territory for us. The Energy Policy Act of 2005 gave the office of electricity a host of new responsibilities and statutory requirements that we are working, in a diligent matter, to carry out meeting the deadlines we have and providing a quality product at the end of those deadlines. Of course this is one of the responsibilities that was given to the Office of Electricity. One that we take very seriously, and because of that it's the reason I want

to thank all of you and give a truly heartfelt thank you for joining us today. The fact is that we rely on all of you and will rely on all of you through the remainder of the time that it takes us to produce this report. For your thoughtful and considered, and I understand as was evident yesterday, very passionate input into this process. We need if we are going to produce a fair objective and thoughtful report to meet the requirements set on us by the Energy Policy Act, so thank you for that. I'm not going to talk long this morning. I'll tell you that, of course as this is a scoping meeting, the purpose of it is to hear your thoughts and views, and consistent with that I intend to do little talking and a lot of listening, but I will be walking around here today and one thing that I would ask is that if you see me walking around come up and grab my elbow, introduce yourself to me, I'd like to get to know more of the people in the crowd and start to begin the development of relationships that I think will serve us well not only in the completion of the report that we have here today, but give some of the other responsibilities that were laid on our office I expect that most of us in this room are going to have the opportunities to cross paths in a business fashion in the future, so again Thank you very much for attending today. I look forward to hearing what kind of comments were given forth.

JODY ERICSON: Good morning. Jody Erickson from the Keystone Center. Kathleen Rutherford is my colleague. She is going to help us out today as well. Briefly about today, my role is a little bit different today. Yesterday was all about the time clock. Today—yesterday really was about getting all of your different perspectives and presenting as many as we could to hear really the full range of perspectives that were in the room, and I'm pretty impressed with the range that was able to communicate to all of you, so I'm really, I'm really grateful for what you all were able to hear yesterday, and

Mike Hughes' [ph] notes are all up on the wall, so you are welcome to go back and see what he recorded. Today is going to be more direct. We are going to focus more on each element of the study and drill down into a little more detail about what the issues are, what the concerns are, what the alternatives are, or what possible paths forwards there are, and what the concerns maybe are about each of those possible paths forward. Today is more of a discussion format. We 're going to have some free floating mics, so raise your hand and I'm going to be able to point you out. I won't remember everybody's names, so, bear with me on that one. I'll put you out, and it's most important today, the ground rules of being respectful to each other, and allowing everyone to be able to be heard, and that postponing judgment and allowing for different perspectives to be reflected. Because this is scooping and it's still scooping we're just scooping on a little deeper level today it's important that we don't, that we hear everybody, so not talking too long, not interrupting people, side conversations, take them outside. I think they are very useful so do take them outside. We still have the four different ways you're going to provide input today. Obviously the verbal during discussion, microphones will be moving around. Two, is the individual conversations. Van Button is still around; go ahead and raise your hand Van, and Darryl in the back also, so if you want to sort of have a quick conversation with them they can jot some things down on a post-it-note, which is the third way to communicate today. If you hear something today that you think is important, or you didn't hear something and you don't want to grab the microphone and stand up in front of all of these people, write it down on a post-it-note and stick on the post-it pads out back, and the fourth way is through a written comment form, which is out front at the registration table. Those four ways still are in existence. Anything that is said today is

going to get incorporated into how this study unfolds, but today we are going to do more of a discussion format, which is what one of the speakers yesterday had said, she thought this was going to be more of a discussion and today is the discussion, so we're going to get started. We'll go section by section. Quickly reviewing sort of how we synthesize down, distilled all the things that we heard yesterday into the four elements. Yep. There are two handouts. One was the agenda for today, which is a little bit different than the one you were handed because we moved the work session on historic analysis onto today. The other handout is the draft summary of day one. They are the issues that we, the synthesis, of things that we heard yesterday by element. We heard a lot of things yesterday, and all really good. What we wanted to do today though was really focus on these four elements and the issues and concerns, and alternatives that were specific to these elements. The issues are very often sort of the context, a little bit of a context. The concerns are the things that – concerns that people had that the study will need to address in some way, either explicitly or implicitly, and then there's alternative paths forward, and what we're going to do is we're going to quickly review by elements each of the issues and the concerns and see if we got at the suite that you all mentioned yesterday or that you know about, and then focus more on the alternative paths forward because I think there's concerns and issues about each possible paths forward that we would like to collect, so that's what our today is going to look like. We have about an hour and a half per section, so I want to be able to drill down as to much detail as we possibly can. At the end of today we're going to talk about what the next set of meetings might look like, where they might be, when they might be, so you all are aware of that, and so we can have a good idea of what's going to be best. Did you need a copy? You have a question.

MALE SPEAKER: No I just wondered, will we have an opportunity to comment on what you're talking about [indiscernible] before we get started?

JODY ERICSON: No. What you'll comment on it as we go through it. Section by section.

MALE SPEAKER: What if you have a preliminary comment about one little problem [indiscernible].

JODY ERICSON: You are welcome to raise it if you want. What I'd really like to do is –

DAVID MEYER: -- could we get a mic to you here?

JODY ERICSON: Sure.

MALE SPEAKER: Your structure—yesterday people weren't allowed to talk for as long as they felt they needed to to communicate their message. I can tell you through your analysis of issues you've missed a fundamental point, and I don't see it picked up in any of the four subjects you've identified, and that is whether or not there's a problem and a quantification of the cost to the consumer of tribes exercising their consent, and we think, and apparently it wasn't heard by you yesterday, but we think that that justifies an additional sub-group. The statute does not limit the analysis to just these four issues it's to include these four issues, and since the whole underpinning of this study, and potential legislative reform, is based upon the assumption that consumers are having to pay an unreasonable amount for electricity or their energy based upon the exercise of tribal consent, this study is going to be fundamentally flawed and of no value to Congress or to consumer groups or anyone else unless there is a detailed analysis by the departments as to whether there is any significant increase in cost to consumers or not, and I don't know

how you are going to address it but it's certainly not reflective in what you've set forth here and it's critical.

JODY ERICSON: So let me – [applause]. There is a part on here. I'm not finding it off the top of my head about consumer costs so I think the, what you raise, something that's outside of this is great. What I would like to do is give you actually a second to read through this because there is a part in there about consumer – now it may not get exactly what you address, so.

MALE SPEAKER: It doesn't deal with exactly –

JODY ERICSON: - okay, okay. So I want to give you actually a couple of seconds to look at this before we dive in section by section, and Darryl's handing them out so if you are missing one—okay, and I'm going to go ahead and comment in the back?

CAROL HARVEY: My name is Carol Harvey and I'm speaking for myself again today, but something that concerns me, and I hope, you know, people that are concerned will address, is that tribes are basically being asked to help develop a formula to condemn their lands. You know it is being expressed in many different ways but to me it is very cunning and very baffling, but basically what we're going to do is participate in a task force to determine a methodology to allow for the condemnation of our lands. You know basically we're going to come up with a formula of how to determine fair market value for tribal Rights-of-Ways, and that's essentially what condemnation is. There's you know, an appraisal and a determination of what the fair market value is and so I'm very concerned you know, about what we're being asked to do and that we clearly understand, and at least note our objection that while we are participating our objective is not to come

up with a formula for the condemnation of our lands, and I also wanted to add a second thing, is many times many non-Indian people don't understand how present and how important our you know, native religion and customs are, and so I do Navajo story telling, my family has a whole lineage of medicine men from the Navajo tribe, and I'm am more then willing to – I do stories with dolls that I have made of the creation of the Navajo world, how it evolved, how it was created to be a place of harmony and beauty by first man and first woman, and I'd be very willing—the reason I developed all these dolls and do the storytelling is so that my grandchildren won't forget any of these stories. I have four grandchildren and starting from their birth we are following Navajo faith traditions, you know, a party for their first laugh, you know, blessing of salt, you know just different things that go along the course of being a Navajo, and so if anyone is willing, you know, I'm more then willing to do a presentation so that people can understand the significance of the Navajo nation to Navajo people. That it's not just something about words, you know, it's our belief system, it's our faith system. Thank you.

MALE SPEAKER: Thank you for those comments. I think we need to step back and clarify a little bit about why we're here. Congress has asked the Department of Energy and Department of Interior to address at least four subject matters that they've asked us to do in Section 1813. We're trying to do this in an inclusive manner as we possibly can. The intent here is not to have any preconceived notions of where we are going with this but we do want everybody to have a voice in this process. We felt these open sessions were the best way for us to allow that to occur. We want everybody in this room to be a partner as we are developing the information Congress asked us to develop.

We are focusing in on the four specific points that Congress asked to bring forward although we are open to inclusion of other ideas as we move through this process, so that is why we are asking folks to be involved in this, and we have a limited amount of time to do this, it's a very aggressive schedule that we have in place, we're going to do the best job we absolutely can do with the resources we have available, and we ask all of you to partner with us in that effort. We have another question here.

JODI ERICSON: This gentleman over here on the right and then.

CHUCK HEISSER [ph]: Chuck Heisser on behalf of the Northern New Tribe. I wanted to just pick up on Tom's point because I looked very carefully at the list prepared last night and it seems to me the most fundamental issue that's not on the list is the essential question whether there is a problem here that would require change of decades of law and policy of interior. Yesterday not just Indian tribes but also industry said there wasn't a problem, and the basis for that, as I understood the discussion, was that the law has been in place since at least 1934 that are 100's of 1000's of Indian Rights of Way. As far as we understood there are two problems that have attracted, one, there was interruption when he was trying to talk about it, but Yellowstone Pipeline on the Flathead Reservation in the 1990's and the problem we have now the El Paso and the Navajo issue that might or might not be resolved, we don't know. I didn't hear the other side ever object to that formulation. That is the set of facts. What I did hear is people say things are harder to deal with now than they were five years ago. These negotiations are harder. So to me we need another issue on her. Tom is quite right, the statute says including the four, and I would expect both groups, both the tribe folks but also the industry folks, who said there was no problem, to be able to address that and similarly those on the other side who

believe that there is a major problem here, they should be on a group to discuss this because this first part of the report ought to describe facts. It ought to describe how many rights of way are out there, how many problems there have been, and to the extent that people think that there are negotiations harder now than Congress can determine whether that should justify an amendment of a law that has been in place for 60 or 70 years or maybe longer in some cases, but that is an essential starting point that is not on the list that was made numerous times yesterday.

MALE SPEAKER: Thank you Chuck, and actually we did hear that comment. We did discuss it last night and if it's not on the list here it's our oversight, something dropped off because we realize it is important, an important topic and we did capture it yesterday as we heard everybody speak, but I also want to be clear about what we passed out this morning, that's why it says draft on the top. We synthesized all the information we heard and we're here today to say okay, here's what we heard is there anything that we're missing, and so we appreciate these comments being brought up. We'd like to sort of try and do this in an orderly fashion if we can. If that concept, if everybody believes that that concept can't be captured within one of the four elements adequately then we're open to discussions to making it a fifth element, so hopefully we can get to that as we move through today.

JODY ERICSON: So Bob just stole the words right out of my mouth about this is draft, this is just a starting point. The purpose of today was to make this more inclusive and include everything that you need to include on it, so this is what today is for, so I'd like to try and do it a little more systematically but I'm going to have this gentlemen jump in and then I'd like to jump in.

BOB MIDDLETON: Could you please introduce yourself also please?

KASSEL WEEKS: My name is Kassel Weeks. I'm with the Eastern Shoshone Business Council. One of the reasons I'm down here is to protect our sovereignty, and in order to protect our sovereignty we have to deal with government to government. Right now what I'm seeing here is economy is being tied in with our sovereignty. Everything that we're discussing now is to the consumer. Consumer. Consumer. Consumer. The tribes, when they are asserting their sovereignty, what they are doing is building up economy on their own. But the government—but the way I see it now is Congress is just saying that the sovereignty should be tied in with the consumer and you're just basically equaling that out. I'm here to protect our sovereignties and the consumer doesn't really have the right to tell us how to manage our sovereignty. If we are going to have a market place for tribes and that's how we base our consumer needs, that's how we're going to base how we're going to rate our gas and our oil, but once you start tying all of this economy with the sovereignty we're losing ground here somewhere, and I don't agree with what's going on here today, and I don't agree with what Congress is doing by legislating our sovereignty, and that's what's happening now, and I'm not going to stand here and have you base your, you know, your questions—I don't know who came up with these questions, might have been Congress but it should have been the tribes that should have been asking the questions and putting the items on the agenda not Congress because this is our sovereignty people, we're fighting for it right now and we're going to lose it with the Bush Administration the way that we're going. Thank you.

BOB MIDDLETON: Thank you for those comments.

JODI ERICSON: Okay, what I'd like to do is—go ahead Bob.

BOB MIDDLETON: I was thinking that we are getting comments that are specific to some of the topic areas that we need to talk, and we do have an opportunity of talking about all of these in detail. We have an hour-and-a-half that we've set-aside for each of these specific areas. We're willing to listen, to talk, to build upon what we've developed. We have heard a lot yesterday. A lot of information. We tried to synthesize it down into the four components that Congress asked us to look at. We have captured all the information that was mentioned yesterday via audio tape, we will transcribe it and make it available on the website and we will also transcribe all of the written notes that we have taken, so all of this is going to be available to everybody on the website for review. However we would like to take an opportunity of trying to take a step down and look specifically at some of the issues that Congress to look at, and I asked those of you in the audience to also step back and take a look at the position that both of our departments are in, and as Congress has asked us to do a job and asked us to do it in a very aggressive timeframe, and what we're trying to do is the best job that we can and include as many people as we can in this process, so that when we do prepare this, and of course after we prepare the draft report we are going to have another series of meetings that allow people to review that draft report, we want to make everybody have the ability to say we participated and we were heard, and that's what we're trying to do at these stages, so if we could let Jody step forward, start working through the agenda on the specific issues I think at the end of the day we'll see that we'll come out with, at least from this days session, a better product and add to the product that we've provided you this morning. Thank you.

JODI ERICSON: So after this process today we're going to have future meetings. We will put together, as Bob said, meeting summaries and recordings of all the things that have happened today. There will be a future set of meetings. What that exactly is going to be I think as the information unfolds today that will dictate exactly what those meetings are going to be, so we will have future meetings, what they are going to be exactly on we'll get to toward the end of the day as the information unfolds. If we get a lot of information today it will show us what we need to meet about the next set. So let's go into the analysis of historic rates. What I'd like to do is quickly see if the issues raised by participants is the suite for specifically for an analysis of historic rates section and also briefly into the concerns that were raised, and the reason for that is briefly on those two because I think as we look at the alternative paths forward what I would like to hear is concerns about each one and I think that you'll have the similar concerns about each path, so I think that spending more time on the alternative paths forward and the concerns about each one would be the best time to spend that the next hour, but briefly on issues raised by participants this is sort of a context in which this sits. Is there more that needs to be added to this list of issues that are raised through the context? Say again?

FEMALE SPEAKER: [indiscernible]

JODI ERICSON: Yep, we're on the first section of the handout. The analysis of historic rates issues raised by participants. There is five bullet points right there. I have a gentlemen right here.

WAYNE BLADH: My name is Wayne Bladh. I'm the attorney for the Jicarilla Apache Nation, and I wanted to get clarification really on this point under issues of reports of recent escalating costs of rights of way. There were anecdotes conveyed to the

group yesterday about escalating costs, and those anecdotes need to be converted into real numbers. They need to be converted into actual dollar costs. In addition to that it's essential that those costs associated with rights of way on tribal land be put into some kind of meaningful context otherwise Congress will have no way to use those numbers in terms of shaping policy, and the numbers associated with costs for rights of way on tribal land not only have to be put into context of what other rights of way costs are they also have to be put into context of what other operating costs of these utilities are, whether we're talking about a pipeline or an electric power company. How significant in their total cost structure is this cost associated with rights of way on tribal land? Are we talking about 10% of their annual operating costs? Are we talking about 1%? Are we talking about a 1/10th of a percent? That information is essential to give to Congress or this information will be completely useless in terms of shaping policy.

JODI ERICSON: Good. Other issues that need to be raised? This is just a list that we started. There is no agreement that this is "the" list. We are not looking to get agreement that this is the perfect list, so other issues that are not, to the context, that are not here? Right behind you.

TOM SHIPPS: My name is Tom Shipps. I'm the attorney for the Southern Ute Indian Tribe. Following up on what Mr. Bladh said for the Jicarilla Apache Tribe and also the previous comments I think going to the importance of this cost issue is also the recognition of the limited time that you have to complete this study, and it may be that if you looked at what Margie's presentation was yesterday on the different types of rights of way and the different purposes that rights of way there may be some information that's easier for you to obtain and to roll into this issue of cost to the consumer than others. In

one sub-group of Rights-of-Way and that may very well have been what would cause this study to take place is Interstate Pipelines or transmission facilities that are FERC regulated and perhaps certificates of public convenience. At least with regard to that sub-group it seems to me that you probably have, and FERC probably has filings that indicate at some level, maybe not in sufficient detail, what the costs have been for Tribal Rights-of-Way Acquisitions and how those have been rolled into tariffs and into costs, and it may very well be that the applicants for those tariffs, the companies themselves, have actually stipulated that these are fair and appropriate rates that should be rolled into the cost of the consumer. I mean that's information that you may not be able to get at for all sub-groups of Rights of Way but at least for those for which you have FERC certificates of public convenience that break out should be made, and so again just a supplemental comment.

JODI ERICSON: Thanks Tom. And Tom I think what I did is I just added that as an alternative path forward was to look at what FERC has. And the issue—I just wanted to say he's jumping right into concerns because the adequacy of time to complete a thorough analysis is one of the concerns. Issue on the right.

PAT HARRINGTON: I'm Pat Harrington from Idaho Power Company. It sounds like most of the commenter here have an interest in including as much information as we can into this information analysis. I would just like to perhaps resolve at this meeting that both on the tribal side and on the utility side, both sides would commit to disclosing and submitting all information available relating to their Right-of-Way renewals. It sounds like in terms of providing transparency and complete information that would be one key issue to try to resolve today is, is everybody committed to disclosing the information as

fully as possible even where confidentiality restrictions may apply to the agreement. I think there for the benefit of the tribes and the utilities, and we can get agreement on that point then I think that will lead to much fuller and more complete disclosure of information.

JODI ERICSON: Great. We've got someone out there jumping on to the concerns. We've got one here and then one right here.

DEAN SUAGEE: Dean Suagee, Hobbs, Straus, Dean and Walker. There's an issue that I think ought to be, ought to be identified. I was thinking of it when I looked down the list for that would go most logically under the topic for sovereignty implications. It was an issue that was raised yesterday that I think there are implications that go into both this analysis of historic rates and valuation standards, and that's – and you could, you know, place mark this issue by the statement that the gentlemen from Navajo Nation Oil and Gas Company suggested yesterday, we ought to over turn Cotton Petroleum. There is some other cases as well but Cotton Petroleum is the case that said even though a tribe can tax these assets, these resources, so can the state and how I think that factor fits into both the analysis of historic rates and valuation standards is we should know how much energy, the holders of Rights of Way are paying to state tax commissions and other state agencies because that goes into the bottom line for how much it costs to do business on these Rights of Way across tribal lands, so I just, I didn't see that issue listed and I just wanted to get it on the record.

JODI ERICSON: So, let me see –

DEAN SUAGEE: -- it's the issue of double taxation. You know, which goes into the tribes ability to perform sovereign functions within it's land but the costs, you know, the costs the energy companies have to pay the state commissions are double.

MALE SPEAKER: Do you know how easily available that data is?

JODI ERICSON: I've got a gentleman right up front.

MALE SPEAKER: Well the data about Cotton Petroleum is actually fairly well known. In fact was recited in the Supreme Court's opinion about how many millions of dollars the state took out of the Jicarilla Apache Nation in taxes and how many tens of thousands the states spent for the civilized society that the Jicarilla's have, so I think that information might be readily available, but at any rate I wanted to talk about the last bullet point, the status quo is fine point, and by the way the Navajo Nation is quite confident that the Departments of Interior and Energy will do a fair careful study and we want to assist in that, and in terms of the status quo is fine, we will do an economic study of the sample Rights-of-Way through our land inducing the case that's the most public now, which is the El Paso Rights-of-Way. It's our at least tentative belief that if we got everything we wanted in the negotiation, and we don't expect to, that the California consumer would have seen a greater increase in the price of one first class United States postage stamp then they would see in a monthly gas bill, so that's the kind of information that we do want to present to the departments so that Congress will have that context for this study. Finally in terms of our willingness to open our files basically, Navajo Nation does agree with Justice Hugo Black that not only should great countries like great men keep their word but also we ought to comply with our contracts, and we expect the people who contract with us will comply with their contracts. Some of those contracts say we

will go after our 20-year term is expired and we will leave the title to the improvements to the Navajo Nation. We expect people to comply with that contract. We also expect the Navajo Nation to comply with its contractual obligations, some of those are confidentiality provisions in contracts and we will not open up our records in violation of our contracts, that's just not an option for us, but to the extent that we can help with objective economic studies from people whose credentials have been recognized by the Federal Court, we will do that and we hope to continue this dialogue with the departments. Thank you.

MALE SPEAKER: Thank you Paul. Thanks Navajo Nation for that participation, and any thoughts you may have on alternative paths forward so that we can gain some way of this information that we need I'd appreciate it. I think –

JODY ERICSON: -- the lady in the back and then the gentleman right here, and then I think I'm going to move us along.

JEANETTE WOLFLEY: Jeanette Wolfley with the Shoshone-Bannock Tribes. This is related to the, I think the issue that Pat Harrington of Idaho Power brought up about disclosing all information as related to the negotiations of Rights-of-Ways. One of the items I think that is missing from the list here is what is the increased capacity of mega watt-hours by the company? In other words what is being transmitted across the reservations by the company? You know we have historical data of the under valuation of the negotiation of, you know, dollar amount per rod for what the tribes get but we don't have any idea of what the mega watt hours is being transmitted across reservations by various energy companies, and I think that is an important factor that needs to be added here to the historical part.

MALE SPEAKER: Thank you.

JODY ERICSON: Gentleman right here and then man sitting in the front.

MALE SPEAKER: [INAUDIBLE] Natural Gas. I agree with Mr. Ships. I think getting FERC data would be really important to this process, and I would further urge that the Department of Energy use its administrative subpoena powers. There's absolutely no reason why we shouldn't have complete and accurate data from all sides if people are concerned about retaliation, as I've heard from both sides, let's have the Department of Energy do what it legally can do, which is to go out get the information, figure out what the rates are and have a complete record. As far as my friend Mr. Frye goes, I don't want to respond on the specific issues of what rate increases might be to consumers because of course we're covered by confidentiality agreement, but I would say that to the extent of a lot of what we're talking about today is currently private information, prospectively FERC could do a subpoena to get this information, figure out what tribes are being paid, figure out what companies are paying, and get that on the record. What are we afraid of?

JODY ERICSON: Great. I have someone right up front so, and then right over there.

NANCY ESCHIEF-MURRILLO: Shoshone-Bannock Tribes. I'm looking at the historical rates write up. It doesn't really indicate who is saying what. It says fears, anxiety, and concerns about past history. Who is indicating that? Is that the tribes? Or the industry? Or who? I think there needs to be some specificity here. Likewise on the reports of the historic on re-evaluation, Ms. Wolfley had indicated the concern there but are there going to be written reports provided or you are just merely taking the information that you retrieve from this session? Will there be written reports that you'll acquire?

MALE SPEAKER: We're going to take the information we gather in these two sessions and turn it into an overall outline that we anticipate using in future meetings that we think are going to be necessary to fully investigate and clarify each of these individual issues. We didn't attribute these comments because we are working as a participatory group, and our intent was simply to capture the issues that were raised by all of the participants and so we didn't want to put attributions down.

JODY ERICSON: So I think in this case it's really – what we're trying to do is here's what everyone in the room there's a feeling, so that – it's really supposed to be a general, it's not supposed to be attributed—it's not a finger pointing game it's sort of what the study is going to have to cover is the issue.

MALE SPEAKER: It's not a finger pointing game it's a delivery of communication.

JODY ERICSON: Okay.

MALE SPEAKER: It needs to be known.

JODY ERICSON: The testimony that was made yesterday as well as today will be transcribed, so there will be a written transcription of this.

MALE SPEAKER: Along that same line we heard industry talking about fears or prospective activities. Our concerns, and why we don't have trust in the government or the industry is history, and that's true but we heard industry say is that they are afraid of the future and that's not on here.

JODY ERICSON: Thank you. This gentleman over here.

PAT HARRINGTON: Yes, Pat Harrington again from Idaho Power. Again we've heard comments yesterday and emphasized again today on the issue of is the

process broken currently and again I believe it is critical to address that perhaps most important issue of this entire proceeding, to have a full disclosure of information and in terms of contractual obligations of the two parties those benefit only the utility and the tribes, the parties two biggest contracts, so those two parties can easily agree in furtherance of the purposes of this proceeding to waive any confidentiality requirement without injuring any third parties in terms of tribal Rights of Way costs, and I'm not arguing that's its going to benefit one side or the other but I think that is a critical element of the entire proceeding here is to get the proper information on the table for a proper review, and if we want to focus on increased customer costs let's add that to the equation also but we've got to have the base information to have a complete review.

JODY ERICSON: What I'd like to do – I think people have really sort of started moving toward different paths forward, so I would like to move from the issues and concerns into the alternative paths forward and talk about the concerns per alternatives because I think more concerns and more specific concerns are going to come out as we move through each one of these possible alternatives, and I'd like to get to all of them so that we get the concerns and things of all of them. I have a lady in the back and a gentleman toward the front.

FEMALE SPEAKER: It looks like from the outline that the presumption is that this will go forward in the form of case studies, so I just wanted to reiterate that opinions have been expressed, I believe yesterday and in the written statements, that the case study is not the most appropriate way to go, but as if we were looking at case studies as an available path I just wanted to reiterate the concern that any case study that is simply a snapshot in time will not adequately take into account all of those concerns that were

raised that are in this outline concerning the past as well as the moving forward, the negotiations, and that any case study would have to pick not only just pick a particular issue but would have to move back in time as well.

JODY ERICSON: Yep, there is no presumption that the case studies—these are just the things that we had heard, so there is no presumption that they’ll be case studies, these are just the things we heard so we wanted to talk them through. Gentleman up front.

WAYNE BLADH: Wayne Bladh for the Jicarilla Apache Nation. I’ve been looking through the list here—

MALE SPEAKER: -- could you identify yourself please? I’m sorry.

WAYNE BLADH: Yes, Wayne Bladh for the Jicarilla Apache Nation. One of the themes that came through very clearly yesterday was that of the idea of a Rights of Way is—you can look at it in a very narrow legal sense of a document that lawyers would agree is a Rights-of-Way. That it creates a specific relationship between the land owner and the person who holds the Rights-of-Way, but a broader sense of what a Rights-of-Way is about is allowing one person to use the land of another person for some purpose, and I don’t see anything in here that addresses the theme that came through yesterday that there are different kinds of relationships that can exist between a tribe as land owner and government and an industry participant, whether we’re talking about a pipeline company or an exploration production company or an electric transmission company. If what we are trying to look at here is the relationship between tribal governments and industry that is most conducive to energy development, energy production, energy deliverability, fair prices to consumers, and also the tribal sovereignty issues of economic development, self determination then we have to look at a broader

range of relationships. Is that part of what the departments are going to look at? Or are you only looking at what a lot of the speakers yesterday made very clear, is an antiquated relationship? The traditional Rights-of-Way is an antiquated relationship between a tribe and industry partners, is that going to be included, and the more creative the more modern relationships that align the economic interest of the tribe with its industry partners, are those going to be evaluated as methods for accomplishing the energy policies of the United States? Where is that in the issue list here?

MALE SPEAKER: That's a good point and I think we need to clarify that. The way I actually see that is that it would be part of some of the recent history, because some of those changes are occurring right now, so we need to be able to capture that on some of the recent Rights of Way and renewals that are occurring, but in addition that could be part of our valuation, standards and procedures, the recommendations that move forward so we can capture it there also.

JODY ERICSON: In the back and then up in the front.

MEG HUNT: Meg Hunt the Edison Electric Institute. I would like to – we believe that while there may be some utility in particular case studies to get into real depth on some of the issues involved, we think that it's probably helpful to have a more complete picture of the variability of what's happening out there and we would reiterate our proposal, our willingness to survey our member companies as to renewal transactions to help facilitate that discussion and the sense of what's really happening out there.

MALE SPEAKER: Thank you Meg, and for those of you that are following along, we did capture the thought in the volunteer third-party surveys as an alternative to

move forward, so if any others would like to participate in that that would be where you could jump in.

JODY ERICSON: Right toward the front and then I'm going to drop in one-on-one.

NANCY IVES: Hi, I'm Nancy Ives with the Fair Access to Energy Coalition , and just would like to reiterate our support for the case study approach. We believe it's an efficient method to analyze historical rates within the time allotted for the study. We believe it's a good way to put a face on the inequities of the past be that tribal or industrial. It makes a more interesting report. It better illustrates the issue for the public. There is no reasonable alternative in our view. It can be rigorous using data from tribes and –

[GAP IN TAPE]

MALE SPEAKER: -- tribe. I have a few concerns about both historical compensation and also the testimony that was provided. We are allowing a lot of the industry and corporations to give testimony here. The way we see this is that it should be directive tribal government to the US government. We are in negotiations with a lot of Rights-of-Ways on our reservation and we feel that this is giving us, the corporations of an unfair advantage when you allow testimony for them. This should be done directly with the tribes. Secondly, the historical compensation, through history we are very leery of the word compensation. For the Crow Tribe for instance, you look at a major hydro facility that's right in the middle of our reservation, Yellowtail Dam. In the past we were compensated roughly close to \$5 million, and since that dam has been in our reservation the government has made well over \$600 million. Now if you see this as fair and just I

don't see the picture. Back then the Bureau was the one to make all the negotiations for us but right now we have people, professionals, that are at the caliber level that we are very proud of and they can do most of our negotiating. A lot of these people have gained prominence in contemporary society. They are very prominent and we have a lot of trust in them, so we will not, we won't be yielding to the old way of negotiations. Last, a lot of these Rights of Way are going through a lot of areas that have both cultural and historical significance to our people. Once you put a dollar value on our culture it loses some of its validity and for us our culture is priceless. I just wanted to make some of those comments. Thank you.

JODY ERICSON: So let's—what I'd like to do is talk specifically about each one of these possible paths forward. So the sampling of case studies we've started here. The concerns of the case studies—one question I have is if you are going to do a sampling of case studies what is the criteria for selecting those cases? How do you pick a case over a different case? What is the suite of cases needed to include?

MALE SPEAKER: Maybe one practical approach is to go through, on the utilities side at least, the third party EEI representative to pick and chose which ones best represent the status quo from our standpoint, and I suppose the tribes could do the same, and that might be a good betting process to practically get a good set of case studies, and I do think the more information the better both in terms of surveys and case studies. I think definitely when in doubt we should invite more information rather than less.

JODY ERICSON: So the selection criteria for you would be the industry would come up with a set and tribes would come up with a set? Okay. One proposal. Other proposals or thoughts about how would you select a suite of cases? Up here in the front.

WAYNE BLADH: Wayne Bladh for the Jicarilla Apache Nation. Before you get to the issue of trying to select cases to study, and first let me say the Jicarilla Apache Nation does not think that a case study approach is at all appropriate, however, before you even get to that question if you are going to look at case studies, there has to be some clarification on the scope of what Rights of Way you're going to be looking at. We heard yesterday about an enormous range of different kinds of Rights of Way. There are interstate and pipeline Rights of Way that are regulated by FERC. There are gas gathering or oil gathering pipelines at the production level. There are gas distribution lines to consumers. Those are completely different kinds of animal. Before you even think about selecting case studies you have to explain—and Congress didn't give us any help here, they used a term, Energy Rights of Way, without clarification, any idea of what that's supposed to mean? Are the two departments really going to study Rights of Way from the wellhead to the burner tip for natural gas, or from the power plant to the consumer for electricity? Every different kind of Rights-of-Way that is out there? We need to have that clarified early on in this process or we're going to be wasting a lot of time thinking about or trying to study Rights of Way that really are not what Congress wanted to hear about. How is that going to be narrowed down to a workable set of issues?

JODY ERICSON: So what do you think the set of issue are? And this is – I want to reiterate this, we are not presuming case studies but the question is if we did case studies do you study one part or do you study all of them, how would you narrow it down?

MALE SPEAKER: And let me amplify that. I mean we are putting these pathways forward as options, and we want to discuss these and make some

determinations whether it would be an effective option or not, but in addition as we analyze this we are looking towards this group that has the expertise to provide us the pros and cons of going with these different options or to clarify if we do use a specific option or want to further investigate it, what information you can provide and what we need to gather to make it an effective option to use.

WAYNE BLADH: Well again it goes back to the point that has been made earlier. What is the problem that we're trying to study? Is there a perceived problem as to every kind of Rights-of-Way from well head to burner tip or is there some segment in there that someone thinks is a problem area that ought to be investigated. This is such a huge, huge topic with so much difference in the relevant factors if we are trying to look at a restructuring of the relationship between tribes, United States Government, and industry on this very important issue. How are we going to do this in the short amount of time that is left unless the departments can provide some focus here, try to get some understanding of what you think Congress thought they were asking for, and then focusing on that.

MALE SPEAKER: We were hoping you had that answer.

WAYNE BLADH: I don't think they had a clue.

JODY ERICSON: Gentleman right up front.

MALE SPEAKER: Wait. We need to record the session. Please identify yourself.

SMILEY ARROWCHIS: My name is Smiley Arrowchis. I'm the Vice Chairman for the Northern Ute Tribe. I think the bottom line to this whole issue before you do anything is to go back and review each and every tribe that you've got in the United States, see what they come under, and then see how their land status, because you are dealing with a set of, a group of lands that are totally removed, and in essence under the

governments point of view you have a government to government relationship, so in some circumstances puts us in a category of a country. You have a state within a state and a government within a government, and they recognize that, so they've got to go back and look – I think the whole issue has to look at the land status and if Congress allowed a profit making organization and a business to come in and pull the rug from underneath the policies that are here now then we've got a problem because you are dealing with nations, sovereign nations, and then, so I think they have to go back and look at the land status and see what it is because if the land status is as it looks like it is then it's a taking and we're back into the 18th Century's, you know, where the tribe and it's members were nothing better than a coyote running around to be shot, and so I think you've got to go back and review that. It's the only thing you can do. Then you start working forward because if you are going to just take it then why are we sitting here? That's what it is, it's a taking. Thank you.

JODY ERICSON: In the back.

KASSEL WEEKS: Name is Kassel Weeks; I'm with Eastern Shone Business Council. When you was talking about case studies because this is one of the things that I was going to bring out in my statement I made earlier, just yesterday, but one them was how [indiscernible] affairs messed up on some of their land status records and what we came across was some of those were incorrect, some of their debt data's were all off, some of their lands were 15 feet off land status, and we came across an article, a lease, that was signed by the President of the United States Mr. Roosevelt that gave Reesal Tribal [ph] lands on our resolution to a white lady, and this white lady was married to a person that was running the Department of Interior of that time. That was in 1934. I think

it was 1954, but anyway we found out that some of this mineral rights that's under this land that's going to this non-Indian and that was according to Bill Rein affairs [ph] he said that was right, but we found out in documents that there is no record of those mineral rights. That's supposed to be going to the tribes. That sounds like, that's why we're very leery of this study because Bureau of Indian Affairs' records is really off and how are we going to base Rights-of-Ways on poor data management. When you see the Nyogems [ph], that's what their called to the BA's using that, but some of these are FIFI land [ph] on some reservation land, and we're trying to figure out how did non-Indian people manage to get FIFI the mineral rights under this land because it belongs to Indian Tribes, and we're trying to figure that out and that's one problem we're running into, so that has to be, in your records that has to come out, and this is clear back to history that we're looking at and so, and your going to present this to Congress now—a year isn't enough, two years isn't enough, we're looking at almost 10, 20 years that we need to do studies because these case studies in each reservation is different, and each one of them is detrimental to each of the tribes and you need to take that all case studies together. That's going to take your whole life time just to read but Congress is not doing that so, that's one of the questions I have, you know, is if Bureau of Indian Affairs is going to do this along with Department of Interior you need to have your facts straight, you need to have all of your documents straight before you present this. Make sure all of your land status is right, and if you have to resurvey then do it. Thank you.

JODY ERICSON: So let me ask the question, because there are lots of people who said no case studies, so what's the alternative? So if it's not a case, if you are not going to do a historical analysis using case studies what's the alternative? One of the ones

that you all mentioned yesterday was reviewing existing databases, so what is the alternative?

CAROL HARVEY: My name is Carol Harvey and I just wanted to state that Congress has put the DOI and the DOE in a real difficult position because they are in a trust relationship with tribes. They're our fiduciary and yet we're having to be in an adversarial position because so many tribes are apposed to Section 1813, so I just wanted to state that's a real difficult line to tread because they've been told to do this study, that tribes are not certain, you know, that can adequately or properly or really even needs to be done, and I just wanted to remind the DOI and the DOE of their trust responsibility to Indian Tribes, which I haven't really heard anything about from their standpoint in the last two days. Thank you.

MALE SPEAKER: You know I believe actually when Abe was speaking earlier on in the meeting setting the stage; he made the point that both secretaries take their trust responsibilities very seriously. I know in all of the dealings with secretary's office that we've had that was one of the major points that they put forward. The second major point is that we needed full and open consultation, and of course Congress also required us to consult with a number of entities of that have an interest in this issue, so trust responsibilities are well known and we are taking them very seriously.

JODY ERICSON: So what's the alternative? Back there.

WAYNE BLADH: Wayne Bladh for the Jicarilla Apache Nation. I think the alternative has to recognize the fact that Congress may or may not have even understood what they were asking the two departments to do, and the information that's been provided to the departments, both through written comments—from the whole range, not

just the tribes certainly but the whole range of players here, prior to yesterday and during the meetings yesterday indicates that this set of issues is much more complicated than Congress possibly could have understood at the time they said bring us back a study with recommendations in 12 months, and the responsible thing for the two departments to do based on the information that you've received already and that you'll continue to receive over the next few months is to go back to Congress and say, any rationale policy making in this area has to first get the facts straight, and that's going to require a complete inventory of the kinds of Rights of Way that are at issue here in a much more thorough study of the economic impacts, the energy availability issues, the energy priced to consumers, all of those issues. The two departments cannot possibly provide Congress with a meaningful report by August, and that's what the departments need to tell Congress, and in terms of the case studies approach, I think the recommendation should be a case study approach would result in legislation by anecdote and that is not a good way to make policy. What needs to be done is a thorough inventory of all of the Rights of Way at issue so that Congress can make decisions based on something meaningful and reliable not just anecdotes.

JODY ERICSON: I had a gentleman right back there and then up in the front. Sorry one in the corner.

LUKE WETHERS: Luke Wethers with Giant Industries Arizona Inc. out of Scottsdale. I've been sitting here listening to the comments back and forth between the parties and every point that one side makes the other party has a counter point just the opposite, which is equally valid, and this can be very difficult to reach a compromise in any session of any sort where both parties are going to be happy I think. What we're

going to end up doing today on each of these points on both pages is we're going to be beating each other up with friendly banter going back and forth. Congress has put the cart before the horse I think. I think we're looking at addressing individual trees within the forest and I think what we need to do, or what Congress needs to do, is to sit down and Congress needs to address the fundamental issues first before any of these discussions really have no real value to it, and that fundamental issue, I think and I'm not an attorney but I think the fundamental issue is that Congress believed that the American publican rights exceeded the sovereign rights of the Indian Nations, and Congress has to decide that otherwise none of these other points are really going to have any meaning whatsoever.

JODY ERICSON: I'm sorry I missed someone in the back, and then up toward the front.

BRIAN UPTON: Brian Upton with the Confederated Salish and Kootenai Tribes responding to your question about what an alternative would be to a case study evaluation. I think the answer to that is what a number of people have mentioned yesterday and today. There has to be some effort to make a comprehensive report of historical rates. That endeavor, opting for that endeavor over a case by case study I think is the only way we're going to actually get to the question that some people are raising as to whether or not there is a problem with Rights of Way in Indian Country, but in addition to that I think one of the fundamental flaws of a case by case study approach is it's going to make the ultimate report just highly vulnerable to charges that it's a flawed document. People are going to have credible charges that there's a certain amount of subjectivity and bias into how case studies get chosen and what gets included in the

report, and I think that undermines the value of the report that Congress is requesting. That being said, if the departments do opt to do a case by case, or excuse me a case study approach, I think the Salish and Kootenai Tribes would be interested in being one of those case studies because of the diversity of Rights-of-Way experiences on the reservation, but as I said I think the answer to your question is a comprehensive survey of historical rates is really the way to go. Thank you.

JODY ERICSON: And how you get there, are you talking about the inventory this other gentleman talked about?

BRIAN UPTON: [indiscernible] is going to be difficult but I think that effort has to be made. I think skirting the effort because it's a difficult methodology to achieve, like I said, will end up in a document that is not going to be as affective as what Congress and some folks may have anticipated.

JODY ERICSON: Okay. There are two gentlemen upfront, David, [indiscernible]. Okay. These two right here. And there's at least two – the review of existing databases and the literature search are not necessarily case studies, the third volunteer is doing surveys might be somewhere in there, but I really want to know what—if you are not going to do a case study what are you going to do? How are you going to achieve the historical analysis of rates?

LOUIS DENETSOSIE: We also commented in the written statement that we submitted that we were opposed to the case study method. If you do proceed to go forward with it I think you have to put a disclaimer on there saying that this method is very vulnerable as to it's credibility because we're taking into account anecdotes, assumptions, hearsay, and all those kinds of things, and I think that any proposal that is

made will be subject to challenge by the Indian Tribes in Congress, so I think the only way that you will come up with some kind of a credible study is something that is agreed to by both industry and the tribes, and maybe use the recent best case example of successful negotiation maybe as an alternative that we look at but I haven't really thought about the implications of that, but that's something that we could look at.

JODY ERICSON: We got David and then there is one right here.

MALE SPEAKER: There's a – I think if we, an alternative to the case study would be to gather the data around the issues that both the tribes and industry are pointing to. Industry it seems, if I could summarize it, how I heard it, is that the principle fears are on two elements. One is the Tribals are asking so much that the price of energy gets too high and it harms the consumer and it harms American competitive posture in the global economy, so I think a study to see what are the factors that is driving this volatile market and where is the real price escalation coming from? Whether it's coming from transportation distribution or some other factor. I know that in Colorado our prices have gone very high not because there is an Indian Tribe in between the gas supplies and Denver but because the pipeline capacity going through California was increased and now the companies can either sell it here or in California and we are now paying California prices minus the transportation, and so our prices have more than doubled. Not because of Indians but because of the market. Also what if a tribe decided, well 20 years ago we agreed to have a pipeline today we want that pipeline taken out, and I would disrupt the market. Let's look at those two principles, you know, and those seem to be the two critical components and then the second area, which I heard from the Tribes, is that the Tribes ability to extract value from – they bestow value to the company when they

sign the Rights-of-Way, and they want to share in that benefit, and that share of the Tribes take promotes the goals of Federal Indian Policy, so it does promote public policy because the goal is, as the government has said, the goal for economic development on reservations is for the Tribes to reach economic parity with the rest of America. Our economies would have to grow 3% faster than the US economy for 50 years for us to reach parity, and so we have a public good being promoted by current policy.

JODY ERICSON: Over here and then.

BEN NIGHTHORSE CAMPBELL: I spoke yesterday a little bit but I've enjoyed listening to a lot of the dialogue although I don't agree with a great deal of it, but I certainly do associate a lot of my comments with that of Mr. Lester who has been around Indian Energy for the majority part of his life. I have to tell you from a broader picture I really worry, number one, that Indian Tribes are going to be used as scapegoats. I liken it a little bit to the agriculture in America, the amount you pay for a steak in downtown New York is not what the farmer gets, and it's the same, I think, with Indian Energy everybody knows there is record profits being made now by almost all Energy Companies regardless of whether its oil or natural gas or coal, or you name it, they are making record profits. You read about it everyday in the paper. Indian Tribes are not making record profits but they want to share in somehow elevating their lifestyles and it just seems to me that we've, this whole study, Indian people feel they were not included in the discussion the first place about 1813, and I think because of that there has already been some seeds of distrust sown. I worry those seeds of distrust are going to grow, and when you, when some people in an effort to find a solution offer as part of the solution subpoenaing Tribal records, for instance, I can tell you that that is a non-starter, as many

other things are, and Tribes will fight those things tooth and nail because they are not companies, they are not corporations, they are nations. Can you subpoena Frances' records? Or can you subpoena Great Britain's records? You can't do it, and when this study is narrowly defined just to deal with Indian Tribes and not military reservations, not state ground, and so on there's no question that Tribes rightfully feel that they've been blindsided. I don't have to tell you that Congress is not the seat of all wisdom, and many times they pass things that fly in the face of fairness. We often say, and I think I can say with some authority being here 22 years, that there is something called the law of unintended consequences, and that is you pass something because somebody comes in and said this will be a good deal for America, people want this, people using quote unquote as if that's the generic term for everybody. That's not the way it works though. And very often when you put the thing in legislation the tail comes around and you find out you might have helped in one area and you hurt in a whole lot of other areas. You probably know that we're going through and have gone through for the last six or seven years, a real serious discussion about Indian Tribes that were cheated from payments on timbering and mining and other things, and finally Indians got fed up with it and that is the—the result is the Cobell Case, and everybody in this room is aware of the Cobell Case. The amount of money the Federal government is going to have to come up to satisfy the Cobell Case is going to be in the billions, the absolute billions, and the disparity between the plaintiffs and the government is still a long way away but there is no question, in anybody's mind, the Indian's mind or the government's mind that the government owes them the money. Well if we are going to do some kind of a case study then it would seem to me part of that case study also ought to include all the money the

Tribes were cheated out of years ago as the Crow representative talked about. [applause]

Is the case study going to include the, you know, \$.50 a rod that they were given years ago when the BI was doing the negotiating, and if it's going to be included in that is there going to be a recommendation when this whole study is done that the Federal government repay the Tribes for the money that the Bureau did not see fit to include the Tribes that have gotten. When the Bureau is writing the agreements the Tribes had very little input in that years ago. They kind of took what the Bureau told them to take and that was it, well they are not doing that anymore I can tell you. Now they know how to defend themselves pretty well, and I have a hunch that what we're going to end up is a Cobell of the Energy Movement in Indian Country if we don't proceed very carefully, and I just wanted to make those comments before I unfortunately have to leave a little bit early, but, I do worry about that lack of trust. If I were a Tribe myself, and making all these decisions for instance, and we know the majority Rights-of-Ways have been worked out to a pretty good degree for the companies and for the Tribes too, and this whole thing, the reason we're sitting here, really was the result of really one energy company, one tribe disagreement that I think could have been worked out and avoided this whole thing, it wasn't, but it could have been, but, if we are going to really involve the whole Tribal on moving this thing then there is a lot of things that are going to be have to be taken into consideration that you just don't factor in when you deal with the private sector. One speaker spoke about the cultural affect, the religious affect, and so on. That may not be important to other people but it's what Indians believe every minute of the day and it takes on a whole different context of meaning when Indian people do Indian negotiating. They are not going to sell out their heritage, they saw too much of that taken by force,

and I just have a hunch that this is going to cause an awful lot of distrust. You know I mentioned if I were a tribe all by myself and two companies came to me and said Tribal chairman we want to put a Rights-of-Way across your reservation, and one of the companies had a very good working relationship with other tribes and maybe had done some business on our reservation too, and had a record of working well with tribes and the other company did not and was very adversarial and had gone to Congress and initiated this study, which is feeling more seeds of distrust, who am I going to go with? Well obviously the company that has sensitivity to the Tribes and wants to work with them. What I worry about is that in some cases, frankly the folks that have really precipitated this whole darn discussion of 1813 are going to do themselves some damage too when it comes to time to work with other tribes to try to get authority to put pipelines on their reservation, so --

JODY ERICSON:-- so if there's -- I think what we're trying to do here is to figure out how to do this study in a way that builds trust, and so the question still remains is what are the alternatives? One gentleman talked about the one that is down on this list last, which is use recent best case examples as successful negotiations, so other folks what, how can we create this study, develop this study so that it builds trust so that it is representative of what's happening out there—

BEN NIGHTHORSE CAMPBELL: -- well the trust should have been built before 1813 was introduced. Thank you.

JODY ERICSON: I've got about four other people, so, gentleman Gray and then in the back and then up here.

GAYLORD SIOW: Thank you Senator for those words. My name is Gaylord Siow; I'm from the Pueblo Laguna in New Mexico. You know the, if the analysis of the historic compensation rate is going to be limited to pipelines then the report itself must be similarly limited. There can be no valid assumption that all energy Rights of Way have been compensated in the same manner as the pipeline. The departments have provided no guidance on what kind of energy related pipelines are to be studied. You ask the question of what types of alternatives paths forward. Maybe those questions need to answered by the departments, as they are our trustees.

JODY ERICSON: Okay. There was a new person in the back and then up-front, two upfront.

TERRY FREDRICKS: My name is Terry Fredricks. I'm with Inner Tribal Accounts on Utility Policy. I'm from the Fort Berthold Reservation in North Dakota. A couple of things I'd like to comment on is, one thing I would like to see—I don't know if you have any type of legal or Tribal entity working with you in disseminating this information. It might make it a little easier and clearer and keep some blocks down, I guess, so to speak with your drafting this. Last week I was invited to Senator Gordon's roundtable in North Dakota, and this was on energy and it included about 55 or 60 people from all around the State of North Dakota. I was the only Tribal representative there at that meeting, and as, you know, as there is a lot of coal, there's a lot of oil up in, up north there and they were looking at how they were going to develop that and get ahead of the game because we have enough coal under the lands up there to basically survive the country for 200 years. A lot of that coal is on Tribal land, and also we have—I represent about, Indian Nations in Nebraska, South Dakota, in North Dakota, Minnesota, Montana,

and this is a region, and at the end of the day there are some things that I would like to be able to do. Because we have about 17,000-- I'm going to talk about the wind because I do a lot of work in the wind energy development. We have over 17,000 times the amount of wind we need and we have access of that. I would like to be able to go, or the Tribes, and negotiate or partner with WAPA, be recognized by the Federal government, Federal buildings, to go out and sign for a power purchase agreement, where it might be in Washington or whatever state, but we'd like to be able to have fairness and getting that across the wires through teaming and partnering at the end of the day, when this is all done. We should be able to do that and be recognized and also be protected. You know when it comes to our power purchase agreements and these rates and willing charges and all of this other stuff. There's a various types of energy, I understand now, I'm just talking to this one area but these are things that we are working for in behalf of the tribes and it will take you know, when you sign the power purchase over in Washington how are we going to get it there? We'd like to have the opportunity to team up and partner with WAPA in that region or elsewhere. Thank you.

JODY ERICSON: One over here and one over here and then in the back.

JOHN JURRIUS: John Jurrius with Jurrius [indiscernible] Group representing Northern Ute Tribe or Ute Indian Tribe at the Uintah and Ouray Reservation. Mr. Bladh had earlier brought up a scope. Again we think scope is going to, needs to be established in this study whether it's roads, well heads, midstream, regulated, transmission lines because depending upon scope, for instance, the UNO Tribe might be negotiating through put fees, per acre fees, fees by the acre rod, MCF, MM BTU, by the barrel, percentage of production, concession fees, we might get overriding royalty fees, working interest

participation, capacity and lines regardless of transmission or pipelines. We might get an allocation of drilling rigs for other projects, equity participation in those programs, financing made available to us, and it all depends on the scope of what type of project it is, so I think scoping is an interesting issue. The second thing in trying to be on point to the question here is when we talk about case studies and we talk about history – I've now made a living for 15 years assisting tribes, and when I think of case study I think of history and I can already tell you that case study in Indian Country is just going to illuminate a travesty, and then I start looking at what we're really talking about and we're talking about an emerging market. Tribes, maybe for 10 years, but it would be more confined in my opinion for the last five years the Tribes have really been deploying their assets and receiving real value, and everybody that knows me will laugh so I'll say it this way, I'm not a scholar but I would think that a scholar would say in regards to why would you attempt to study an emerging market in it's infancy because it's not going to demonstrate what fair market value is, and, so that leads me to the point of the only way to do an accurate study is to do a complete survey. That sounds all encompassing but a complete survey is, could focus on those Rights-of-Ways that the Tribes feel represent market value over the last five to ten years where Tribes have truly either started dealing with their surface because Rights-of-Way renewals have come to a termination and a renewal period or Tribes have just through self determination, started to deploy their land base. So, scope, a little bit concerned about studying an emerging market in it's infancy but the only way to do this is a complete survey to ensure that you can test the four corners of an emerging market. Thank you.

JODY ERICSON: Nancy here in the front and then the two in the back.

NANCY ESCHIEF-MURILLO: Shoshone Bannock Tribes. A lot of concerns were raised yesterday and today and one of the things that I'm very disgusted with is the inability of our trustees to have a government-to-government relationship with our tribe. I talked with you Mr. Middleton about that and you said well there is so many tribes to have a government to government that you've got to just do it in this sort of forum. However this forum is not a government to government. We require, at home, the Fort Hall Business Council [ph], to speak with the person that can make the decisions, and here we are in Colorado talking among various individuals on a government-to-government basis. I just don't really see this being really substantive to what we need to say with our trustees, DOE, and DOI. Secondly on the amount of escalating costs for the Rights of Way, shorten terms; we will be continuing to negotiate more. I believe the Shoshone bannock Tribes, we don't want to see a case study, we want to go ahead and continue to negotiate, and we want to build partnerships with these energy folks. We're looking at some energy development on our reservation, and it seems like this is just a means to satisfy some minuet group of whoever. And the escalating costs? Just look at our consumption, computers on all day, TVs on all night, computers on day and night, look at all of these lights in this room. We're a consumption monger of this world and we need to stop that. We need to have more conservation. Tribes have the ability to provide energy resources. Tribes have provided this nation with lands and now we're looking at giving more to this great nation, which our people have fought for too, I just find it shameful actually. If it seems to us that this may be a done deal and we're just going through some motions. Is it a done deal?

MALE SPEAKER: The answer is no. Very straight forward.

JODY ERICSON: There is two in the back.

KASSEL WEEKS: My name is Kassel Weeks with the Eastern Shoshone Business Council again. I'm going to say little paragraph I got from the report I was going to do yesterday and then I'm going to say another statement. It's not only the fact that the Tribes appear to be the low man in these federal regulations. The Tribes are not given justice when with the theft of our oil and reservation and no federal official is ever charged with anything. Okay. Let's just say—I went to a meeting with the Western, it was the governor's Western Water Council and they was dealing with EPA Water Quality, subject was, that's what the subject was. There was an Indian leader who was from the Quapaw Tribe, and what the discussion there was it was with the Oklahoma Rider that happened into that [indiscernible]. The Tribes was working with the Water Quality, with the state, to get the water qualities standards done and it took them almost 10 years to do it. Well all it took was just one rider to destroy all of that and now it has put the Tribes in a real bad situation, so if we go through this whole process with this, what we're doing today, I'm in agreement with Mr. Campbell Night Horse, with Congress, they don't really sometimes vote in the best interest of the American people and with the Tribes. What I'm afraid of is we go through this whole process and get everything done when it's going to Congress let's make it a single issue of legislation and not be combined with other issues where someone can slap in a rider and destroy everything that we're doing here. That's what I'm always afraid of, these riders. Sometimes the benefit but most of the time I always see it destroyed, so that is one thing we need to discuss too. Make sure that everything that we do here is going to be hurt by the Congress and it's going to be a single legislation issue, and all the Tribes be present

when we know they are going to vote. I also have, Ms. Valeria Atkinson, if it's already with the lady if she can speak. She is our council lady from our tribe, would that be all right?

JODY ERICSON: uh-hum [affirmative]

VALERIA ARKINSON: [speaking in native language] I'm Valeria Arkinson. I'm a member of the Eastern Shoshone Tribe of the Wind River Reservation in Fort Washakie, Wyoming, and I feel it a great honor to be here today to stand up and to say something on behalf of the Indian people sovereignty. I would like to let you know that on my reservation we have two tribes, the North Arapaho [ph] and our Eastern Shoshone Tribe, and we do have a lot of problems with the Rights of Way and I feel that this meeting that we're having, I really feel that this is only a very small portion of the Indian Tribes of the United States. As I understand we have about 571 or 73 Tribes that are recognized by the Federal government. Also I know that there is other people that are still in the process that are being recognized by the Federal government and I strongly feel that this study that is being done for the Rights of Way for big companies on our reservation is something that is very detrimental to our Indian Tribes because I feel that the government has always hoodwinked our Indian people and I feel that we do not have the trust that we should have in working with a state to state government, and I also feel that there is a lot of Tribes that have different status's, for instance the Wood River Tribe, the Eastern Shoshone—

[GAP IN TAPE]

FEMALE SPEAKER: United States Government. I don't feel that there are many tribes here represented. I feel that if you want an alternative I'll give you that alternative,

and that alternative is to call off this study and go to the individual tribes one by one, and then you will have your full in depth study to turn into Congress. I feel that the Indian people have always gotten the short end, and I feel that this is also the same thing that is happening to our nations, our Indian nations. Somewhere--somewhere along the line the Indian people are slowing but surely losing sovereignty because sometimes we do not understand what you want from us. Sometimes in good faith we say yes, but in actuality we are doing harm to our Indian nation, so today I feel that if this study goes forward, the way you are demonstrating here-- I noticed where people, Indian people are talking like Mialda [ph] here, Mr. NightHorse Campbell—he was talking and right now you jumped in and interrupted his speech, and I don't know if he finished it or not, but I think that is how the government is to the Indian people. The real Indian people. The grass level roots people. The people that make the decisions. The Tribal leaders are the ones that make the decisions, and we are governed by our general councils on our reservation. We are here as Tribal leaders to see what we can do for the benefit of our Indian Tribes. As Tribal leaders we are responsible for the welfare and the wellness of our tribes, so that is what I would like to say today, and I say that if you need an alternative you need to call this study off here and go the Indian Tribes. Thank you.

JODY ERICSON: I had another gentleman right there. Oh, I was actually pointing at him with the fleece. Oh, okay. Go ahead. In the far back. Thank you.

UPTUZ MON [ph]: My name is Uptuz Mon. I am with the Navajo Nation. You heard our attorney general yesterday that we recommend a status quo, and for the past two days I have been listening to these two sides, and I really, really appreciate Santu's [ph] comments, which are close to real reality. Yesterday you saw a map, and you saw

the dots, and you saw the shaded area. Look at those dots and look at the shaded area, that shaded area is the Navajo Nation. You can see it very clearly. You can see that there are hundreds, even thousands of Rights of Way on the Navajo Nation, and I want [indiscernible] to process at least, if not thousands at least hundreds of those I was involved, so when you look at this first dealing in this criteria, and Mr. Wayne Blood mentioned that, the complexity of the Rights-of-Way is such that you need to make distinction with three different types of Rights-of-Way. Energy Rights-of-Way is whole bundle of Rights-of-Way. You need to isolate what you need to study otherwise this study will be for error, you know? The second point is that you have to start from somewhere, as senator mentioned, what historic rates? Historic rates from zero, so it's starts from zero and close to zero, so what are you looking? Everybody has had that Bureau of through Rights-of-Way. You heard the conservation figures, so there is no history. It was zero for [indiscernible] Rights-of-Way. If that is the way you have start? You have to set some time limits from where onward you want to study if you have to do study, but we don't think is not necessary, you know, so if you want to do that. The other thing that we have submitted in our comments that look at the individual tribe, and you heard in past two days each tribe is different. Navajo Nation might be in the unique position. We have each and every type of Rights-of-Way, whether those are power lines, slurry pipelines, [indiscernible] lines, every type of Rights-of-Way we have dealt with in the past years, so what I do suggest is that criteria should be, if there is study, it should be based upon individual tribes, case by case. Not bundling the whole thing. Not mixing up the free land in the [indiscernible], and so you need to look at that individual tribe.

Thanks for your time.

JODY ERICSON: Thank you.

JIM LOKO [ph]: My name is Jim Loko, and I represent the One Strength Tribes [ph], and for the past 30 years on behalf of the tribes I have been dealing with energy representatives, and the energy industry comes in basically two different flavors. The first one are companies that look for mutual benefit in their dealings with the tribe, sensitive to the tribe, and they develop partnerships with the tribe, and we've had the fortunate experience of dealing with some of those. The other energy industry representatives are those that play hardball, they use their political influence, they frankly don't treat their customers any better than they treat the Indians, and that they try to use raw political power to gain their ends. We all know how this legislation came about, and it was that latter group of energy industry people. They couldn't get the condemnation authority they wanted. They didn't have enough clout to get that but they did have enough clout to get this piece of legislation. Well if they want to fight, they are going to have a fight from Indian Country. We will not stand for a piece of legislation that was generated in part as the continuing effort to separate Indians from their land. Those of us who have been in the business here for decades have seen attempt after attempt to do that. It puts our trustees in a very awkward position because they could be portrayed now as the stooges of this class of energy industry representatives. Instead what they ought to do is take the opportunity and say the focus of this is not going to be how the Indians are taking advantage of these utilities but righting the injustices that have taken place in the past with these folks. If that were the focus of these efforts, righting the injustices that bid against the tribes we would feel a lot more comfortable in our participation here. Unless

you can convince us that that is going to be part of the effort here we are just going to fight you every step of the way.

ROBERT BENAVIDES: My name is Robert Benavides; I'm the governor of Isleta Pueblo. I just want to say that you know you keep asking what the solution is, and yesterday's comments were pretty good, I think. You know there were positive, there were negative but overall I think most of the comments that were made were pretty positive yesterday, and one of the positive comments that was made yesterday was to leave things as they are. I see something happening here that I don't like, and it's eroding the relationships between the companies and the Indian people within the Indian country, and the solution is you know we need to leave it status quo. Because one company and one tribe can't get along, you know, it's not right to go ahead and change it. They need to find a solution so they can come to agreement on whatever their problems are in negotiations, and if they don't do that, you know, don't drag everybody else into your problems. Let's leave things alone and let's try to work together. But on the other hand I just wonder if the Federal Government would have listened to, say my tribe, if I had gone to Congress. If they would have given me the opportunity to have this meeting set up? You know. We're a state within a state and the Federal Government has a trust responsibility. They have to recognize us as who we are, and I don't see that here today, and I haven't seen this in or read about this throughout history. This is, this is the way we've been treated for so many years and it still continues today and it's really a shame. Thank you.

JODY ERICSON: Thank you all for contributing to the thinking on the analysis of historical rates. What I heard was that case studies are incredibly complex so that

doing a case study analysis has severe challenges, how you select those cases. I also heard alternatives of volunteering to survey from EEI, the possible surveys of both tribes and of the industry, possibly doing a best case examples of successful negotiations as well, so I just wanted to reflect back to you that's briefly what I heard as alternatives and ways, and the challenges as well as, challenges to the sovereignty, that the status quo is actually working, so what is this study going to do, is that going to affect that status quo.

MALE SPEAKER: Before we wrap this session up I want to take the opportunity to thank people for the very candid and honest statements that you've made. I appreciate those expressions, but I do want to address this question about the integrity of the study. I can tell you that I have a career in public service for 30 years and I would not be standing here before you today if this thing was a done deal. Let me stop with that.

JODY ERICSON: We'll take a 15-minute break.

MALE SPEAKER: Wait a minute, before we get going. I guess we need to maybe have a little bit more of a discussion on this because the intent of this one-and-a-half-hour session was to see whether we can in fact identify alternative pathways forward or a pathway forward that will allow us to respond to what Congress asked us to do. I don't see us there. I don't see – I see people saying that various alternatives at various problems but my question now to you is, is there anybody in the room that thinks there is an alternative that will allow us to provide this information to Congress within the timeframe that they've asked us to do it in?

SMILEY ARROWCHS: Vice Chairman of the Northern Ute Indian Tribe. Don't fix what isn't broken. It's that simple. If you want to fix something you are going to have to fix it by a case-by-case basis, and there's no way that across the board it's going to

suit. You are going to damage and hurt more tribes and tribal people on reservations trying to do a blanket fix then anything else, so the solution is don't fix what isn't broken. Repair areas that need repairing and then study those areas.

MALE SPEAKER: Okay. Then my next question is whether anybody thinks that it would be a value to have further discussions along these lines in the form of another meeting in about a month? Is there anybody that thinks that would be of value?

JODY ERICSON: I got one, two, three, and four.

MALE SPEAKER: Like I was saying before it's not just going to take just a month or a year, two years, three years, four years, it's going to take more than that. Like I was saying it's going to take a lifetime. I'm in agreement with my council lady from the Northwestern Shona, Valerie Atkinson. They need to go to each tribe because we are government to government. Talk to each tribe and see what each tribe thinks. Just to put it into one blanket legislation or how that's going to happen it's – you need to deal with tribes separately, not with just putting everybody—the way I see it right here in Indian isn't Indian. That's what I'm seeing right here. That's what I see. We are Indians but we are separate in our governments. That's what I'm seeing, and I'm agreement with you need to stop the study and let's just find out where everybody stands. Let's have a great big meeting with all tribal leaders, all [indiscernible] recognized tribes and the tribes that are just forming to see what the deal is and then from there maybe that would be a solution, but to carry on, it sounds like to me that you're not even listening to us. You just want to go ahead and keep doing what their doing. That's the way I see it. Thank you.

JODY ERICSON: So there's two other people right here. Gentleman with this hand up back in the back and then right here.

MALE SPEAKER: Eric, Mike's got him. Tom wanted to speak also.

[indiscernible] DOSS [ph]: Good morning, I'm Doss with the Navajo Nation. Whether the study should go forward or whether you plan to have another session. You need to ask Congress whether they want to [indiscernible] tribal sovereignty. If that is the case then the study can go forward other words the study doesn't make any sense. If Congress wants to infringe on tribal sovereignty then as Senator Campbell said yesterday, legislation will need to follow the study. They need to [indiscernible] steal tribal land by energy companies, and it's not going to stop here today folks. Today is your surface land Rights-of-Way. Tomorrow it will be our oil and gas because, and coal resources, because we are charging too much. Thank you.

JODY ERICSON: Tom and then over here.

TOM SHIPPS: I'm Tom Shipps. Southern Ute Indian Tribe. I appreciate both of you gentleman indicating that you are committing to making this study fair as best as you can within the time frames that have been allotted to you, and I take you at your word on that. As Senator Campbell indicated earlier there is reason for distrust. Not of your gentleman's integrity but of this process and the way it's been established. That being the case, unless the departments are willing to go back to Congress and request an extension of this study or to indicate that the parameters are much more complex than Congress may have recognized at the time that we passed it you really have no alternative but to go forward with this study, and I don't think that you can do it given the timeframe that you have and the resources available to you in any way other than in a case study, as inadequate as that is. I think that whatever study you come out with, if that's what you do, has to have the appropriate disclaimers that it's not fair. I think if you turn to what

Mr. Jury [ph] has said earlier part of the difficulty here is the incredible scope or the potential scope of the study that you've been asked to make. It's energy related Rights-of-Way, which includes everything from the distribution from the local co-op to go ahead and serve the tribal member who doesn't have electricity to gathering lines and quite frankly kind of macroeconomic engineering with regard to a development of a tribes resources and trying to come up with partnerships in that regard to these interstate pipelines that may have no relationship whatsoever to an Indian Tribe, other than the fact that they took the cheapest and the shortest route to go ahead and get to California, and so those, they are not having a handle on the scope makes this study very difficult. That having been said again, Perhaps then your case studies need to go ahead, because that is what Congress has told you to do, on various case studies including the case studies of where tribes have been ripped off historically to go ahead and deal with this as well as recent studies or recent cases of situations where there have been successful partnerships in Indian country, but I honestly don't see how you have any choice but to go forward. Unless you go back to Congress and you request an extension, and quite frankly from Indian country's perspective that may be a very dangerous prospect for you to do because the first opportunity that these gentleman from El Paso are going to take is to go back to Congress and ask for some congressional initiative and this study goes on for two or three years they are going to find somebody that's going to introduce that rider back in congress, so maybe actually in some ways the study you prepare, if you can get it done in the limited timeframes you've been provided, and you can make sure that it is, to the extent you've been handcuffed, a fair statement may actually serve Indian country more beneficially than going back and asking for the extension, so we're – I think my

comments indicate we're in as much a dilemma about this and what's best for Indian country as you are trying to do a fair study that will provide Congress meaningful information.

JODY ERICSON: This gentleman over her and then Amy over here.

PETER PINO: I'm Peter Pino, Tribal Administrator for the Pueblo Zia. There's been some discussions about [indiscernible] how the pipelines should be studied, and I've been listening all morning to the discussion here. That's a question that was never answered by Congress. I think we could go back to El Paso and Navajo and look at that pipeline, and what kind of pipeline was it, or is it, and then take that as the pipelines to be studied, and then go to the Federally recognized tribes and get one such pipeline that is on that reservation and study that. For those that do not have those kinds of pipelines you don't study anything on that reservation. I think if we do that then you are comparing apples to apples and not apples to oranges. Although we are all talking about energy pipelines there are apples and oranges within those pipelines but I think if we're going to study similarities we should study the pipelines that are similar to the El Paso and Navajo pipeline that has brought this issue to the forefront. If we do the study I think there needs to be some assurance from the Federal Government that the consent of pipelines and renewals have to be protected. That has to be a requirement. We can't erode that that's there now. The sovereign powers of the tribe, we can't erode that. If we could get some commitment from the Federal Government that that's not going to be part of the issue. The right to condemn tribal property can't be a right that can be given up. That's a foundation that has taken many years to build up. We can't afford this issue to erode that foundation, and I think if we can have those kinds of insurances I think we can really

look at this issue of get into a win-win situation. This thing is not going to be resolved in the next five, six months. It's going to take some more time. This didn't happen in five, six months. It took many years to develop. There are other issues that have taken many years that it took to develop. I will use one example, and that is the human remains of our forefathers in the state of Colorado, in the Mesa Verde [ph] area. The tribe and the federal government have been talking about those issues for about 13 years. We're finally going to be [indiscernible] the release of our forefathers this spring, and it takes—at first I was really frustrated because it was just taking too long, I thought, but to do it right it took that many years to be able to come to some agreement so that everybody feels good at heart, mind, body and spirit. You can't just function from the heart. You can't just function from the mind you've got to function from all four, and if you do that then it takes a lot longer, and we start treating each other with dignity, respect, and honor, and that's what we need to do. Sometimes I feel that the issues or concerns and resources really belong to people, to the tribal members. They don't belong to the attorneys. Many times when we go forth with a lot of arguing in the courts, and a lot of speakers, -- I don't mean to be disrespectful, but I feel that we have to live with the decisions. We have to be the ones at the local levels that have to explain to our Tribal Membership, to explain to Mother Earth, to the spiritual world that the situation that we find ourselves in, so I think we need to be heard. We can't be cut off when we're trying to make a presentation. If you are really sincere in trying to get to the heart of this issue we need to have really some genuine discussion. Our elders have always said you have to pound on the desk, on the table, and speak in loud voices before you can find a solution. The solution will come but if we don't allow ourselves that time and that effort that solution is not going to come. I

think this is a process that we've started and it's going to take many years to complete it, and I'm one of not being in a rush, so I think I support the desire to hold additional meetings in the future, and I think if we are really sincere, again, working from the heart, mind, body, and spirit I think we can all be able to find a solution.

JODY ERICSON: [INAUDIBLE]

AMY MIGNELLA: I'm Amy Mignella. I'm with the White Mountain Apache Tribe from Arizona, and one thought that occurred to me in response to Mr. Middleton's clip a few moments ago, is that next week is scheduled set of individual meetings between Arizona Tribes and their congressional representatives in Washington. This is a meeting that is held every year and is scheduled to address any scope of issues that the tribes think are a priority, so I would encourage any Arizona tribes that are here today to submit information if they are not attending, if they don't have representatives attending those meetings, to submit information on their tribes behalf so that those who are attending, and who may also comment in person and have a dialogue about it, that the representatives see that there is some support. In addition, obviously all the non-Arizona Tribes could also submit things to their representatives and reference those conversations, or reference this set of meetings and the issues that they feel need some additional attention, because obviously the folks who are organizing this meeting are staff people, you know, they are not congressional representatives who have the authority to extend the timeline, although they can certainly make comments relating to that, but I think that next week it represents a good opportunity as well timed and something for people to consider. Thank you.

JODY ERICSON: Right here and then there.

PAUL FRYE: I'm Paul Frye for the Navajo Nation. Question is can we complete this study in some fashion by August 7th, and it occurred to me that, of course we're looking at you as you know a couple of consultants that are helping and a couple of staff people, and you know, what can the United States do in five months? Well you know we can do incredible things. We're the most powerful country on the face of the earth, so if we wanted to do, if this was really a priority we would get it done and get it done in a scientifically credible and reliable way, and the Navajo Nations comments, written comments that we submitted yesterday noted that Congress had actually provided a template for this type of study back in 1967 when the Committee on Government Operations said to the Bureau of Indian Affairs, which has records presumably of all approved Rights-of-Way, run them down for us, and they had specific types of information that they wanted, which we listed here, and what they found was there were 2700 grants of Rights-of-Way in year and 4700 that were still pending, and so there's a wealth of information there, and the question is is there a will to do this study in the manner that Congress thought it was appropriate to do back in 1967-69, and if so, I think the Bureau of Indian Affairs has a lot of information that could inform the study. Thank you.

JODY ERICSON: One in the back.

DARIEN CLOUD [ph]: My name is Darien Cloud with the Trow Tribe [ph]. I would like to make a recommendation on your next meeting. If I could have meetings with tribes, you know, specific, because right now as this meeting is going we're bringing in—I'll give you a little scenario of what we're doing here. We're bringing in the predator saying how do you want to eat your prey, and the US Government saying I'll

cook it for you. You know I want to hold you to your trusted responsibility as government-to-government tribes. The heading to this, it says, Indian Rights-of-Ways. It doesn't say Industrial Rights-of-Way, and so your next recommendation for your next meeting I would recommend that you would consult with Indian Tribes because like I said you are bringing in the predator saying how do you want to eat your prey.

JODY ERICSON: I'd like to let you take a break. Okay, just real quick.

MALE SPEAKER: I think this is a really critical part of 1813 is providing the right amount of information for Congress to evaluate, and by the way I think 1813 is a very good idea and we should dispel the notion that it is just one utility driving all of this. I don't know if that started or not but I think it's a very timely exercise. I know that all the electric utilities at Idaho Power worked with are in the west, at least are very concern about this issue. Prices are increasing exponentially and I think it is something very appropriate and timely to address. Also we would support a meeting in a month and I think in the meantime it would be incumbent on the industry side and the tribal side to provide the information that they can in that timeframe. There is basically two groups involved here and those two groups have all the information we're talking about. I think it is a broad scope but by virtue of the comments and examples, and information that is submitted we'll find that the key issues are transmission lines Rights-of-Way and pipeline Rights-of-Way, and the issue will be how much have prices increased, what's the going level, not that that's good, bad, or indifferent but I think that's what the charges to the agencies is just to supply that information to Congress, and I think it can be done. I think by doing our best within the next month we can reassess and determine if there's anything further to do beyond that. Thanks.

JODY ERICSON: Thank you all. Let's take a 10-minute break, so 35 past. We're going to start on the second work session. Based on our timing we may bring this one a little bit over lunch. But our second work section is on sovereignty and tribal self-determination. You might want to hang for this one. We thought we'd start with the easy one.

So the sovereignty and self-determination, sort of summary of concerns and issues, are on the backside of the draft summary page. Folks are still coming in. Come on back folks.

So my question about the sovereignty piece, this was just our attempt to start talking about the concerns that we heard about sovereignty and self-determination. So if you want to take a quick look at the list and let me know are these all the concerns and issues about the sovereignty and self-determination piece about the study? Okay, I've got two people in the middle. Say again? Does my agenda say something different? I thought my agenda said—oh—does your agenda say something different? We're doing tribal self-determination. I think we changed it up. [BACKGROUND CONVERSATION] Oh yeah, the issues list is actually out of order from the agenda. Right. So my apologies for that. The issues list is out of order from the agenda. The sovereignty self-determination piece is on the backside. So the question is are the concerns and issues listed there is that the suite of concerns about sovereignty? Gentleman upfront.

MALE SPEAKER: The basic problem I have with the way you are identifying this set of issues—

JODY ERICSON: -- go ahead and say your name.

WAYNE BLADH: I'm sorry. Wayne Blahd with the Jicarilla Apache Nation. There's a suggestion that certainly from the last two bullet items there that there's a conflict or a potential conflict between sovereignty and self-determination issues and things like the consequences to small businesses, consumers, etc. Again, one of the themes that was conveyed yesterday, and I think considerable detail, is that there are lots of examples where the exercise of Tribal sovereignty and self-determination have actually benefited consumers, and benefited businesses by increasing the supply and availability of energy, so the assumption that somehow sovereignty and self-determination are in compatible with or inconsistent with or undermining these other concerns is really not a fair description of what the issues are related to sovereignty.

JODY ERICSON: So adding the sovereignty actually has a benefit as well for energy supply? Okay. Okay. So this is—Bob's just reminding me that this is a list of what we heard so what we're going to do is we're going to be in this session be adding to that list, not necessarily subtracting but adding the benefit that sovereignty creates a benefit of energy supply.

MALE SPEAKER: The mic is not on. Keep talking into it. Okay.

DEAN SUAGEE: Hobbs, Straus, Dean, and Walker. This – I started to raise this issue in my statement yesterday about the responsibilities that go along with sovereignty, and I wanted to elaborate on that. You know as the gentleman from the Umatilla Tribes said yesterday he referred to the experience of the pipeline blowing up. Emergency preparedness, capability to respond to emergencies, to deal with contamination, to deal with environmental impacts and impacts on cultural resources. These are things that tribes have responsibilities to do as sovereigns, and it's important to note that in the

Federal Statutory Law sets a framework for tribes to assume some of these responsibilities within the framework of federal law such as The Clean Water Act, The Clean Air Act, The Community Emergency Response Right to Know Act, and The Cultural Resources Statute such as the National Historic Preservation Act and The Native Americans Greens Protection and Procreation Act. I can give you this in writing. I see it's hard for you to get all of this down. Those federal programs, although they provide some funding to tribes, the amount of funding is generally not adequate. This interfaces with that issue, the issue of case, you know, case law over the last couple of decades or so that has been chipping away at the, what we used to think were the basic principles and tribal sovereignty and federal lending law, rendering it risky for tribes to assert regulatory and tax and jurisdiction, and this is an area that you know, Congress clearly as the authority to clear up and to expressly affirm tribal, you know, tribal sovereign powers. Any rate that's the point, that's the basic set of issues to get out here. That there are responsibilities that go along with Rights-of-Way for energy facilities. That there's a framework of federal law that provides some recognition of tribal sovereign powers. There's a body of case law that invites litigation to challenge tribal sovereignty and Congress could clear this up and affirm tribal authority.

RON GROWS [ph]: Ron Grows with the Ute Indian Tribe [ph] from UNO Reservation in Utah. You are talking about many different issues with sovereignty and self-determination. One of the things that the federal government has forgot, whether it's the Bureau of Indian Affairs or whether it's Department of Energy or Department of DLM or Oil, Gas, and Mining, different things, they don't talk to one another. Even though they may be on an Indian's reservation they don't talk to one another. They don't

keep accurate files. So particularly with the UNO Reservation we went out and accumulated the infrastructure for a reservation, what we have, and what sustains us in life. Those things are commodities, what Noni Indians [ph] call utilities and different things that they monopolize throughout America, big companies and different things like that. When Indian tribes are emergent as companies, as a solid player in America the government always forgets, or always reminds us that we have not given up our fiduciary responsibility for certain assets that is owned and controlled by the Bureau of Indian Affairs or Anterior Department. If they could do that I think we would truly be a real government that the United States Government could say yes they are one nation of many on this United States. It could be factual to the standup parts. For instance, in 1964,65 you hear of the upper and lower Colorado Agreements in a Colorado basin called Essential Ute Water Project. The Indian tribe helped initiate that program. We did a lot of inner course acts with the federal government and the BLM, BOR. Certain things like that. And we gave up and conceded a lot of different things to states and to counties and to other entities that value water. The tribe has a deferral agreement. We let the states in the upper and lower Colorado develop and we went and developed later on, that's why it's called the deferral agreement. That's one point of interest that the Department of Energy and the other departments should look before they jump to conclusions. With Indian sovereignty there are many different approaches that we try to take as India tribes, which will best benefit all of us. As my colleague have spoken to us one incident like Cotton case, 500 plus Indian tribes got to be penalized, and how do we remedy the act? We can't unless we go back and review the case, but seems like Congress don't ever want to do that because hey, that's one for America, and one for less more responsibility I

have to take care of. What really in turn that we are talking about is 1813, how does it best assure negotiations in Rights-of-Ways? Well, turn it around the other way. Indian Tribes negotiate with companies, oil and gas companies, utility companies. Tribes are not guaranteed that these companies will not defunct, and that's one of the things that Indian tribes have to understand. That when we negotiate El Paso may disintegrate and becomes Williams or some other company, so how does Indian tribes get the value that they have initially wrote the contract for. Let's say certain Indian tribes and Enron. I know one tribe in this state of Colorado, millions of dollars, but they could not recoup, so how do you address 1813 for Indian tribes that's only going one way. It's really interesting that we talk about 1813 for El Paso and utilities but there is not assurances for Indian tribes other than their negotiation skills. The federal government failed again to say this company is credible. What kind of assets do they have? And this is the kind of operation that every Indian community or Indian reservation has to deal with when they negotiate. Some of these tribes, some of these non-Indian companies that come onto reservations aren't credible. They leave and they flight without paying their fair share or what they've done and the next company who buys there contracts say, hey, that's then this is not negotiation. So it doesn't really help the Indian tribes when we look at 1813. I mean federal government itself does even recollect how many Indian negotiations, government-to-government relationships they have. They have to come back to Indian tribes today and ask them. Let me show you records. Let me see what you have done with this. I mean, one of the things that you are trying to do here is like states do. States ask for payment in lieu of taxes for all federal lands within that state. You can't do that to Indian tribes because we have [BREAK IN TAPE] – to have a legislation of having mayor's or

governors or certain things within our community because it's up to the tribes to do that because we're not like a county where we vote in mayors and city counsels. The government itself has failed to understand Indian rights and policies, so when we talk about jurisdiction and sovereignty they go together. If you start separating them then we become like regular Americans who have very little rights and have to advocate through governors or other means. But as government-to-government relationship, true relationship, as it's been spoken here with many tribes you have to sit down with every tribe and every nation and speak with them, and talk to them, and say what is best for it. We can talk about incidents in the northwest over fisheries. That's an asset. Water. There are four major things on Indian reservations that we really, really respect, and sometimes it has been spoken about here. And those things-- and each tribe has its unique, uniqueness about them and why they were put here on this earth. Because each one of them has a creation story and why they were hear. It's called ethnocentrism. Each tribe thinks they are better because of their legends but that is a different issue. But sovereignty, what we're talking about, is responsibility of those who said to their children Mr. Indian, please I will take care of you. I will nurture you. Then when we are being nurtured you are asking us, well you're not playing fair. I own the minerals really. I own these rights for you. You cannot stand up by yourself. That's why you have the Department of Energy and the other department standing there. It isn't the representative of the United States, the president standing there. So you really, really have to understand as many of our colleagues have said. You are not listening to us. What you really want to do is not—and it's coming to that point, and I see many Indian tribes have seen it and going to go that way. National Congress and the American Indians have failed. Cert [ph]

has failed. Indian tribes have to talk to each other, who have minerals, and start saying we have to unionize. We have to make some kind of organization here because the government has failed in our past. The industry has failed when they back out of their rights and duties what they sign the agreement with. When we have companies like Enron who play major players and some Indian reservations, and fail to pay their fair share. Those kind of things we are looking at, so 1813 was flawed in the beginning because when you talk about case study I think United States Government and each department don't look to each other to say what have you done with Indian tribes, what success stories have we got to make them feel to be apart of America. And every time that we do somebody is always there to kick our leg out. Thank you.

JODY ERICSON: Thank you. There's one in the back.

FEMALE SPEAKER: I just wanted to make a couple of comments about the inclusion of the concerns and issues, and the sovereignty and self-determination. I believe yesterday there was some discussion about the costs that tribes may pay monetarily for the grants of Rights-of-Way but I also believe that there should be listed in the concerns and issues of tribes the cost to their sovereignty that may be included in the grants of a Right-of-Way. For instance, the Ninth Circuit Court [ph] have at least one case in which is says that a particular type of Rights-of-Way grant given for a particular term may actually divest lands of it's status as Indian land. Therefore removing it from the sovereign control of the tribe that granted the Rights-of-Way, so changes in the grants of Rights-of-Way and how they are done is connected to how, for instance, the courts may have decided that tribes may loss aspects of their sovereignty and the granting of those Rights-of-Way, and that should be a concerning issue that is stated. There are also a

couple of unfortunate generalizations contained in the concerns and issues. The fifth down, given sovereignty, there is no formal dispute resolution process. I think that is an unfortunate characterization. There are dispute resolution processes tribes have individually have developed those, and perhaps a better characterization may be that if you are looking at a renewal there may have been no dispute resolution process included in the contract but that's not due to sovereignty that's due to the contract, and it's not sovereignty that is the issue it's sovereign immunity, which are different. Then also the lack of tribal uniform commercial codes is also a generalization that is untrue. Many tribes have commercial codes. They have adopted them. That is a tribe by tribe basis, so that too reveals some of the complexity issues that could be ignored in a broad sweep here and that individual tribes have commercial codes, individual tribes have dispute resolution processes, and you're also talking about individual contracts and whether or not those Rights-of-Way included a dispute resolution process, which by the way if the tribe wasn't involved in negotiating that original agreement it's hardly the tribes fault.

JODY ERICSON: Okay. Thank you.

MALE SPEAKER: Congress asked for recommendations from the two departments, and I would like to recommend that the study include possible recommendations that really derive from Dean and Council for the Hopi have just said. One I think we need to recognize that increasing tribal sovereignty in many cases increases energy production on Indian lands, and that is true with Navajo, it's true with Southern Ute, it's true with Jicarilla, it's true with Northern Ute, and the other case studies that we know of, and I think the recommendation could be to Congress a couple of things. Get rid of impediments to energy production on Indian land, and state taxation

without a corresponding investment in tribal infrastructure or government services is one of those, so that would be a reversal of Cotton Petroleum. The other thing that Council for the Hopi just raised are the Night Circuit Cases dealing with Rights-of-Way and whether particular types of grants do or do not allow the retention of sovereign rights over those lands. Congress actually tried to address this issue in 1951 and the Indian country statute where it defined Indian country as all reservation lands including Rights-of-Ways passing through those reservation lands, and it did that to correct a couple of Supreme Court decisions that tried to determine jurisdiction on the basis of very fine points of easement law, so what happened is the indictment [ph] in the straight case the court sort of back tracked, I think, inadvertently on Congress's determination in 1951 that Rights-of-Way were part of the tribal land base and should remain so, so I think part of the recommendations could include consideration of recognition by Congress that these easements retain their sovereign status as Congress tried to, I think, to provide in 1951.

JODY ERICSON: Other thoughts about the range of issues on the sovereignty? Things to include or things to clarify so they are not as general?

MALE SPEAKER: Jody, before you go forward. Our audio people are telling us that they encourage the speakers to speak very directly into the microphone so that your words can be recorded, and also the microphones are picking up some of the side conversations in the back and so if you can take those conversations to the room beyond that, that would be very helpful. Thank you.

JODY ERICSON: Or if you want to speak do come forward and you can speak. Over here and then over here.

MARGIE SCHAFF: I'm Margie Schaff, Affiliated Tribes of Northwest Indians, and I see some real glaring oversights here and I also see some nit picks, I guess I'd like to correct. Some of the—first of all the three glaring oversights I would also like to agree with Dr. Swaggey that the tribal obligation to govern without a tax base is clearly a sovereignty issue that needs to be bulleted here. The second one is we need to have some legal context for Indian lands, including the treaties and other laws because like I said yesterday ever analysis of this has to consider the legal context in which this study is being asked to be created. Then the last one that I think is a glaring kind of missing big bullet is the DOE and DOI trust responsibility, and the layers of issues that trust reform is may or may not impact this issue. Then I also agree with the counsel from the Hopi Tribe that the sovereignty formal dispute bullet needs to be revised. Then the second one also, the lack of tribal uniform commercial codes, and maybe I missed something in law school, but a uniform commercial code is basically a law that addresses the sale of goods and it does not address the sell of real estate, so I don't really understand how that has anything to do with it, but I think there was a commentary yesterday about a lack of tribal regulation on some reservations. Certainly some reservations have regulations that do deal directly with Rights-of-Ways, things like trespass and penalties for trespass, negotiation processes, and compensation methodologies that all could be part of tribal law that would give energy companies an assurance of when they go to do a business deal with the tribe that they know what the set requirements are and that have some criteria that were drafted by the particular tribe for the use of their lands. Thank you.

JODY ERICSON: Good. Over here and then John.

DAN PRESS [ph]: Dan Press from Vanas Filman [ph]. I'd like to build on some of Margie and Paul's comments. I think the challenge for the two agencies is to figure out some recommendations that are really constructive and that tribes and industry can support. Clearly a recommendation that seeks to impose some kind of mandated formula for how Rights-of-Ways should be compensated would pulverize the parties and I don't think it would be constructive, but I think the principle that strengthening self-determination, strengthening sovereignty actually helps everybody. It is some thing that we have seen over the year. If you go back and look at federal policies since the self-determination act was passed that's really what they've done and it's worked. Back in the late 70's, early 80's there were problems in the oil patch. Congress didn't try and take authority away from the tribe what they did was they passed the Indian Minerals Development Act, which gave the tribes greater flexibility and greater authority to negotiate. The more tools you have when you are in negotiations the more likely you are to reach a result that the parties agree to, and we kind of touched upon it. But I think there's a need for looking at legislation that would allow both the Bureau, probably more so than the tribes, to approve agreements that are not the old standard agreements. Just like the Minerals Development Act got tribes out of the old process of being pass of royalty holders. There is need for legislation to make it clear that tribes can then negotiate agreements that are simply, where they are not simply passive leasers but can be equity owners or others in the agreement. And secondly the experience has shown that you want to strengthen tribal capacity. It may be naive at this point to think that Congress would appropriate money to help drive staff up in this area, but clearly that would help, and the other thing that has been done is to help create model documents. Viro [ph] I know has

been in the business in creating model UCC's. My experience has been with the Tero program, and the Tero program developed model documents. Back in those days there weren't disputes between industry and tribes. Nobody tried to dictate what the results should be, but the federal government provided some funding to develop model documents that tribes could adopt if they wanted that put processes in place where everybody knew what the rules are. Now clearly the dispute between Navajo and El Paso is not caused by a lack of capacity and lack of understanding but there are other cases where helping the tribes strengthen their capacity through model documents could help, so I would recommend that the report seek some constructive recommendations, strengthening tribal sovereignties, strengthen self-determination, and I think those are recommendations tribes and industry will find very helpful and we can agree on.

JODY ERICSON: Okay. Great. Thank you. John.

[INAUDIBLE]: Ute Tribe. Again I think there is a glaring whole in this section as well. Sovereignty that provides the ability to be self-determined. Provides the ability for tribes, as governmental funding continues to dry up, to drive up their underlying economic engines, and just as minerals are an asset, access is an asset, and when you look at municipalities and their ability to regulate one tax on one end of the municipality for the benefit of some expense at the other. Tribes are trying to manage all of their assets so that they can meet an overall economic model of providing the health, safety and welfare to provide the government as well as forts membership, and so when you start regulating those assets they need those assets so they can become self-determined and run those economic engines, and those economic engines should be part of this study because whether it be Navajo, Jicarilla, Southern Ute, Northern Ute or other tribes you will find

out that they are some of the largest drivers of local G&P in these report areas of the west. I believe Laplata [ph] County would tell you the only reason they are getting several hundred million dollar hospital is because of the Southern Ute's driving that G&P, and all these assets drive together, and so tribes cannot become self determined if their assets are regulated or stripped away. Thank you.

JODY ERICSON: Okay, other things about this—we've been hearing that sovereignty is helping with economic development. That there's some clarity about a couple of the points that it's not-- that the formal dispute resolution there are some formal dispute resolution processes, and some of that is because it is not included in the contract that there might not be a dispute resolution process but the lack of tribal uniform code, that there are some tribes that have sort of business codes and business rules that regulate how business is done. That there have been things, some missing things, which is the economic driver piece. That there is an infrastructure that needs to be created and maintained. That having self-determination over those assets, tribal assets, allows for that to happen. Other things about sovereignty for this particular study; issues or concerns?

WAYNE BLADH: Wayne Bladh with Jicarilla Apache Nation. This is an issue, again came up yesterday. It may not technically be a question of sovereignty in a narrow sense but it goes to contracts. Many of the tribes have granted or consented to Rights-of-Way over the years after an extensive process of negotiating specific terms, and negotiating specific contractual provisions, including that the Rights-of-Way, had a specific term, and at the end of that term there was no guarantee that the Rights-of-Way would be renewed. That was the contractual deal. That's what the parties agreed to, and I think the departments in Congress need to look at what they would be doing in

abrogating those contractual agreements that the parties voluntarily entered into. Presumably the energy companies on the other side of those agreements were savvy enough and sophisticated enough to know that they only had a right to use tribal land for an agreed period of time and they planned accordingly in terms of their investments and what they expected to get in return from that contractual relationship. Is it in fact appropriate for Congress to now step in and change what those contractual agreements were? What is the federal policy that is being accomplished by abrogating those contractual agreements?

JODY ERICSON: Okay.

DEAN SUAGEE: Hobbs, Straus, Dean, and Walker. I just wanted to close the loop on the discussion of the Rights-of-Way cases. I see people, you know, people are not familiar with federal Indian law sort of looking with a look of puzzlement on their faces, and I just want to summarize some of this to you know. The counsel for the Hopi Tribe mentioned the Nine Circuit Case that ruled that Rights-of-Way was the legal equivalent of fee land for jurisdictional purposes. Well there are actually about three nine circuit cases that do that. Those are built-- those rely on straight versus A-1 contractors, which is a 1997 case that held a Rights-of-Way for public highway with the legal equivalent of fee land. What's the significance of it being fee land? Well that goes back to Montana versus United States 1981 case in which the court announced, you know, general proposition that tribes don't have inherent sovereignty over non-conducted non-members on fee land while they said more generally only non-members but the case only involved fee land with two exceptions. They had to formulate two exceptions because there was a body of case log, prior case log that acknowledged, recognized the tribes do have inherent

sovereignty over non-Indians in lots of situations, so they formulated these two exceptions. One is where there are consensual relations and the second is where the conduct of the tribe is seeking to regulate threatens the political integrity, the economic security, or the health and welfare of the tribe. Those cases dealt with—I mean Montana came up in the context of fee land the straight extended that proposition to Rights-of-Way over trust land for a highway. The later cases extended that proposition for Rights-of-Way for other purposes such as a railroad and electric transmission lines. I think it's – two points that I want to make about this is that this is one of the reasons why tribal consent and the power to withhold consent is so important for the preservation of tribal sovereignty in this area is that consensual relations is the second exception of the Montana General Proposition, and that's about the only legal handle that tribes have left in negotiating new Rights-of-Way, or the renewal of Rights-of-Way. That's why under existing law consent is so important to tribes for preserving sovereignty. The second point I want to make about this is that all of this is built upon the doctrine that the Supreme Court has formulated often referred to as implicit divestiture or judicial divestiture of tribal sovereign powers, and that's a doctrine that is based on the notion that if congress hasn't made clear what the scope of tribal powers are it's up to the courts to figure it out by interpreting, you know, whatever indications they can find of what Congress intended because Congress is recognized to have [indiscernible] power. When Congress has spoken the court is supposed to go along with what congress says, and that's what, when the court decided *Durra versus Raina* [ph] in 1990 and how the tribes that had been implicitly divested of criminal jurisdiction over non-member Indians Congress over turned that decision by enacting legislation, and a couple of years ago in

United States versus Lara [ph] the court confirmed that Congress does in fact have the power to overturn court decisions interpreting the scope of tribal sovereign powers, and that's really where we are at here. What we are suggesting is that if the recommendations go to Congress to acknowledge, to recognize a firm, to strengthen tribal sovereignty in the area regulating the conduct on Rights-of-Way on trust lands then that would be in affect overturning a line of cases that many of us think were wrongly decided in the first place, and there would be benefits. There would be mutual benefits. Energy companies doing business on tribal lands would have certainty and they would have, they would be released on the potential burden of double taxation and double regulation.

JODY ERICSON: Thank you. Other thoughts about sovereignty or gentlemen if you have specific questions like prior that you need them to answer? Other thoughts about sovereignty.

TROY IDLE [ph]: Troy Idle, Apache Natural Gas. One of the major issues that Congress and Executive Branch have addressed over the years that is a problem in terms of travel sovereignty is the fact that you prevent any sort of a perpetual Rights-of-Way deal between a tribe and a company, so the tribe doesn't have that choice, it's been stripped away from the tribe, and I just want to say for the record that some of us probably would not be here today if we didn't find ourselves in this constant artificially legally imposed limit by Congress and Executive Branch to force us to have to come back every 20 years or however many years it would be with the legal cap. I think it was actually up to 50 years. But if we could barter in good faith for permanent easements, permanent Rights-of-Way, and if tribes were given the sovereign power to do that that could address a lot of what we're here about today. That could be done, I believe, with a

regulatory change or it could be done through subsequent legislation but either way the way the law works now tribes are not treated as sovereign entities and it's important to know that the world has changed. We could be bargaining right now to have this problem done for all time on some deals if it were not for that artificial legal distinction and intrusion derogation of sovereignty. Thank you.

JODY ERICSON: Nancy up front.

NANCY ESCHIEF-MURILLO: Shoshone- Bannock Tribes. Nancy Murrillo. Sovereignty self-determination are some words that are very precious to us, dear to us. It's important that we have you understand the importance of that. I've heard a lot of verbiage regarding respect tribal sovereignty, respect the tribes, and I'm not quite sure within this hall that people really know what it means to respect. We can respect something five minutes ago and turn around it would be entirely different, so I'm not sure what the definition of respect is as it's meant here today. My sister in the Eastern Shoshone had indicated respect and she had displayed that through the example of Senator speaking and the interruption by the facilitator. We just do not do those to our elders, our older people, our people held in high esteem. Tribes have inherent power to manage our affairs. They've had it from the beginning. We got these new terms self-determination, sovereignty, we've always had that power to manage our affairs, and we expect to do that. Shoshone- Bannock Tribes expect to do that. We're working with the state to get retrocession of Public Law 280. We're having a difficult on that. The tribes didn't agree to Public Law 280. The membership voted and it was no. The state still did it. They still did it, and they are not offering as much service as we can do without their services because there is hardly any there to provide to the Shoshone- Bannock Tribal

memberships on our reservation. So it needs to be more communication or more—I don't know what it takes, a cattle prod or beating it into our heads or whatever it is, but I think our federal family needs to really understand what it means to be self-determined. And this whole issue of even looking at condemnation—it's an assassination on the Indian people of this nation and it can't continue. We're here to protect the interests of Indian people and our Shoshone- Bannock Tribes. If we are not at the table we don't know what's going to happen. We're always reacting to various things and we need to be participating. How can we participate? Now this is a forum for participation but I'm not sure what's going to come out of it. I'm not very pleased with this sheet of paper that brought forth the discussion points for today. The federal government we ask the federal family at your trust responsibility and your judiciary responsibility and the obligations that you have signed, predecessors have signed regarding our treaty. We want to work together. We are not looking for a handout. We want you to meet your obligations, and we want the companies to work with us. Thank you.

JODY ERICSON: Two quick things and then I have a couple of people. Nancy, what you brought up. I was very disrespectful in cutting off Campbell and I did apologize to him in person. Luckily he was still here for me to be able to do that, and I want to apologize and let you all know that it was my disrespect and I apologize for that. The other thing I wanted to say is that this sheet was just a starting place. This is not what people think is the end results or the final word, or even agreement. It was just a stepping stone to start putting together what we thought we heard, and so what we wanted to do is bring a piece of paper back to you to say did we hear it, and what you're telling us is we didn't hear everything, which is exactly what we wanted. So there is no agreement on this

piece of paper. This isn't the end product and you know you can burn it on your way out the door if you like. I'm going to put this in any kind of summary and it won't be posted anywhere. Meg over here, and then there was two in the back.

MALE SPEAKER: Jody let me add also that is one piece of paper. Two pages that at most covering a huge range of issues and we certainly did not intend that this was to be the inclusive statement of our discussion of these issues. It is simply a list of topics of concepts and we appreciate your help in refining these and helping us understand the layers of meaning here.

MEG HUNT: Meg Hung with the Edison Electric Institute. I just wanted to restate for the benefit of everybody here that DEI and our member company are not seeking condemnation of tribal land. They have not sought it and they will not seek it, and we are not asking for that. We recognize the tribal right to the consent to the use of your lands and we are here to let you know that our companies have an emerging concern about what is happening in the renewal context and to invite you in the exercise of your consent, authority, to engage with us with a dialogue to work towards a resolution of what we perceive to be an issue in a way that works both for you and for our companies. Thank you.

JODY ERICSON: Lady in the back.

IRON CATCH [ph]: My name is Iron Catch. I'm a member of the Tribal Business Committee of the Ute Indian Tribe, Fort Duchesne, Utah. I just like to make a comment since we are talking about sovereignty and self-determination. In Washington the last week of February 28th it was a Tribal Leaders Nation Legislative Summit and it had to deal with all the budget cuts that President Bush had proposed regarding the fiscal year

2007 budget, and during that time when they were lobbying we met with some congressional people. We met with Congressman Kilbey [ph], and he spelled out the sovereignty. Now I think the sovereignty is a very base of why we exists as tribes. If it wasn't for the sovereignty we wouldn't be recognized as sovereign nations, and I believe Congress do recognize us as sovereign nations. Now of course there are some new Congressmen that do not. They need to be educated. They need to be educated as to why we exists as tribes, as Tribal Nations, and I don't know some of you that are here that represent energy companies that sovereignty that we hold as Tribal Nations, and I believe this goes clear back when our Constitution was established, and this is what Congressman Kibley said, in the Constitution of the United States in the very beginning it does recognize the tribes as sovereign nations, and he spelled it out. It said, we as a Tribal Nations are the only entities that can, that the Congress recognizes, and its done back then when they did – they recognize us as the same as other governments such as French government, other governments so that's the power we hold as Tribal Nations, what gives us a right for self-determination, and gives us the right to do what we can to govern our people, and I believe we have exercised that for many, many years, and we would like to continue to exercise that right as sovereign nations as sovereign tribes, and because of that reason we have been able to do the things that we have done in the past, such as going forward with our Ute Energy Development, and negotiating with the companies, working with them in partnerships, doing the things we want to do for our people, and our oil and gas is one source of energy we have. We do not have casino. We do not have a casino on our reservation so we have to rely on oil and gas, and as our tribal chairperson already, he spoke yesterday, and he did come out with the Ute Tribe's

position as to what we're doing. I support that. I believe we are in agreement, the business committee, as far as our oil and gas development on our reservation, and regarding the Section 1813 I believe – I have an idea why those things have been included. It's because President Bush, his initiative of developing oil within the states instead of relying on foreign oil and gas. But I believe—one of the things that I think he must not forget, or you must not forget that we are sovereign and you have to deal with us because this deals with our lands, our Indian lands. The Rights-of-Ways deals with our lands. So we as the Tribal Council, we are the elected people for our tribes. We have the right to say so, and I would like to see that remain as is. Thank you.

JODY ERICSON: Someone over here.

JIM NOTEBOOM: I'm Jim Noteboom attorney for the Confederated Tribes of the Warm Springs Reservation. Part of the problem with the present Rights-of-Way system is that it fundamentally misaligns the interest of the Rights-of-Way holder and the landholder. The landlord wants to get as much rent as possible and the tenant wants to pay as little as possible, and when we are talking about a long-term relationship that's a fundamental problem. There will probably be problems arise. We believe you should be looking at mechanisms that will allow tribes and the energy companies to align their interest so that they have a unity of interest. That they are both anxious to see the utility be profitable and to transmit lots of energy across the reservation, and there are mechanisms to do that. There are probably some things that need to be done to facilitate those mechanisms but they are out there. I hope that you would not constrain yourself to looking at a simple basically landlord tenant relationship. The 20-year length is a problem. Warm Springs, I think it was two or three years ago, we went to Congress and

got an amendment of 25 USC Section 415 to give Warm Springs 99 year leasing authority because we recognize full well that some of the transactions that we wanted to enter into, some of the developments that we wanted to do were not feasible if all we had was 25-yr leasing authority, so if the tribes have the option of picking the term of the lease. That is it's not shoved down their throat then the flexibility is not a bad idea, and I think tribes generally are now sophisticated enough with regard to lengthy leases to know that there's going to have to be provisions in the agreement that will deal with changing circumstances, and we can think of ways to do that. So I think there are some a lot of good that could come out of this effort but it really would help to see sort of positive approaches by both sides to say look, what are some of the other mechanisms. I also question whether or not, to some extent looking at the case study thing, is getting the cart before the horse. If I were in your job and I knew ultimately that I had to make a recommendation to Congress I'd want to be scoping what are the fundamental issues that we need to deal with in terms of Tribal consent, in terms of utility industries need for predictability, in terms of the nations energy supply and transmission. What are those critical issues? There are probably no more than a dozen or so. Now case studies might be useful to inform the solution to each one of those issues but to sort of focus on the case studies without focusing on what is that list of a dozen critical issues that we really need to deal with seems to me to be sort of going in the wrong order.

MALE SPEAKER: Now, before you relinquish the mic could I ask you to work with us to give us the benefit of your understanding of these alternative mechanisms because I think that is an area for further inquiry that we would like to pursue? And I direct that same question to others out there who have experienced what these alternative

mechanisms, especially I would say for Rights-of-Way that are related to transit only as apposed to the development of a resource within the tribal area, and then export of that resource outside. I think it is a little more difficult to find this, to work out this partnership arrangement where we are only dealing with Rights-of-Way for transit purposes.

JIM NOTEBOOM: Let me through out a couple of methods that I think would be, that have the potential to reach a fair solution to each side. One of them is this methodology that FERC has not employed for the last 80 some years of sharing the net benefits, and what that does is an economic computation of what the benefits of a particular project are, and in that case we're talking about hydroelectric dams but the transmissions soldies [ph] are a part of an integrated system of generation, transmission, and distribution, and you can attribute their ways to attribute value to each of those to determine what the economic value of the enterprise is and then what is the fair contribution of the tribe to that ultimate value. You are certainly not entitled to all of it but there are rationale ways in which you can determine what is the fair tribal compensation for that, and if they're getting fair compensation for it and it is an agreed upon economic value that will stand the test of time. It may, as economic value increases the payments may increase. As economic value decreases the payments may decrease. We face that situation with FERC on the [indiscernible] reservation that we got when [indiscernible] prices were escalating rapidly, we got very rapidly increasing rates but then as we looked at the gas powered plants and sort of the reduce costs of alternatives we were looking at decreasing rates for the use of our land, and that was fairs. We shared in economic benefit of it. Another one that I began to think about that might work in a

situation like this, again to align the interest of the parties, is something that would be analogous to the wheeling charge on a transmission line, under the FERC order 888. Of course the owners of transmission lines now have to allow open access to other transmitters of electricity and those transmitters in return have to pay a wheeling charge for the use of those facilities. I think you could do something analogous to a wheeling charge for basically wheeling energy across Indian lands. Again what that does is it takes a look at what is the economic benefit of those Indian lands. Because the problem with-- and I heard yesterday the term sort of standard appraisal methods. If we go down that path it's just not going to work, and there are basically three standard appraisal methods, and the one that's most likely going to be applied to Indian lands is going to be similar sales off the reservation and similar leases off the reservation but for most of the reservations, particularly in the west, you are looking at lands that have a fair market value of what, couple hundred bucks an acre, not much, and so tribes are being asked to commit those lands for long period of time and even if they got the entire value of it it's still not very much money for what is clearly an enormous economic benefit to somebody. That's why they want to come across there. So if you fuse standard appraisal methods. The tribes basically get peanuts from that, and even if you give them four or five times that value it's still peanuts. You've got to look at the value of these Indian lands for energy transmission purposes, and if that's the basis of your appraisal you're going to come out with a very, very different answer and then tribes will have incentive. That truly is for them probably the highest and best use, is for energy transmission, and that to me is much more likely to result in the situation that is fair to the tribe. If we can

give the utility the necessary certainty that they know what the deal is and there's not going to be a nasty surprise at some point— [GAP IN TAPE]

SPEAKER: ...and have some real opportunities with regard to energy development, on the one hand. And the energy companies see that there are ways they can deal with tribes now that give them the necessary certainty. It's going to cost them more—I'll tell you right now—it's going to cost them more than maybe some of them would prefer, but in the long term, it will yield great benefits.

The other thing I think that I would like to see the legislation ultimately advance is that there is great energy development potential on Indian reservations in terms of wind, geothermal, thermal, hydro. There are lots and lots of opportunities here. If we can create a mechanism through this legislation that begins to develop positive relationships between energy companies and tribes, that is going to open up opportunities for both the tribes and the energy companies for further partnerships. And we've made that work at Warm Springs, where we are now co-owners of the Pelton project with Portland General Electric Company. We're exploring right now a biomass plant that is very feasible, and we're talking with PGE and other utilities about that. We're doing wind exploration, geothermal, and we have a very positive relationship. And I can tell you that from the energy company's standpoint, for example on the Pelton process, we all know how difficult relicensing can be before FERC. It's a difficult, time-consuming, expensive process. And Portland General Electric has seen a very real benefit having partnered with an Indian tribe in the FERC process. Because I tell you right now, when we're talking with state agencies, when we're talking with federal agencies, it's a very different reception that they get when the tribe is a part of that. And that's been a very

real benefit to PGE. The tribes benefit from PGE's very good management of the project, and we're learning a lot about that. And so this legislation could easily become very, very divisive. And if there's going to be a fight, we'll fight that fight. We've done it before and we'll do it again. But I would like to see this cast in terms of a way in which we can, in fact, maybe reach some positive outcomes. Now, how you structure it—I mean, I don't envy your job. This is very difficult when you're told by the Congress to go out and talk to the nation and figure out what to do, and do it in a short period of time. But I think you also ought to look at some alternate mechanisms where—there are some major, major players here, and that they obviously are going to do whatever it takes in this legislation to protect their interests. And if you could develop some mechanisms to maybe engage them in a different way or whatever, and begin to facilitate some solutions, I think that would be helpful. So that's sort of my suggestions offhand.

SPEAKER: Okay. I'm going to take a couple other comments and then send you to lunch, because I think you made a lot of points on it, Gillig [ph], because they got a response.

DELBERT FARMER: Thank you. My name is Delbert Farmer. I'm a member of the Shoshone-Bannock tribes. My position is the revenue director of our tax department. In reference to these perpetual easements, there is a case called Big Horn Electric, where the Crow tribe had a perpetual easement. And basically when that thing went to court, the judge said, "You have a perpetual easement. You basically gave away your land." And I don't think the Shoshone-Bannock tribes would want to do that. And

that is the danger of these long-term easements, is that you lose control and you may even lose ownership. Thank you.

ROBERT BENAVIDES: Is it on? Okay. I'm Robert Benavides. I'm governor of the Isleta Pueblo. And I just want to say that when I was 6 or 7 years old, I remember being in a clothing store on First Street in Albuquerque. And I was standing behind this clothing rack and the owners of this store were standing on the other side, and two Navajo—a couple came in. They were Navajo. And as they were coming in, I overheard the owners of the store say, you know, "Let's jack the price up." You know, "Here comes those Navajos. We're going to get some money out of them." And by God, if they didn't do that.

You know, I'm a federal—I'm retired. I'm a federal police officer, retired from the Bureau of Indian Affairs. I put in 25 years with civil service. And my job was to uphold the law and to enforce the law to the best of my ability. And what I'm seeing here is wrong. The federal government has ignored the trust responsibility to Indian tribes. And for them to go this far—what they should have done was, they should have met with the tribes at a government level and had a meeting with the Indian tribes to talk about this issue and to see if there could have been a solution to this problem, if there is one. And I don't see it happening. Again, the federal government has, you know, unfortunately just shunned away from their responsibility to the Indian people. They have to identify, they have to recognize us as a sovereign nation, and they haven't done that. Thank you.

MAXINE NATCHEES: Maxine Natchees, chairman of the Uintah and Ouray Tribal Business Committee in Fort Duchesne, Utah. I just wanted to add a few comments on sovereignty. Sovereignty has been with us for a long time, and when we know our

tribal histories and the U.S. history, we all know the unique relationship we have with this federal government. And part of that is how we, as tribes, exercise that sovereign right. Self-determination is an exercise of that sovereign right. It's our way of determining the destiny of our people, how we are going to protect our assets, how we are going to best manage our resources. And many tribes do not have the resources that some of the tribes have. And we have to do the best we can to meet the demands, even just to meet the quality of life for our people. And this is where we're at today—is that we are here to talk about the right to consent—right to consent because we are the landowners. This is an issue of a landowner and another party coming in who wants access to that land and to cross it. And who is in the best position to determine the value of that land? It may not seem like very valuable land to maybe the non-Indian, but we have sacred sites. We have other things that are there that is very dear to us. And so, you know, we—this is only one part. Tribal leadership knows this. This is only one aspect of the many challenges we have to face in our day-to-day decisions—just one. And it's getting bigger and bigger and bigger. It seems like every time we turn around, our sovereignty is being questioned. It's being eroded by legislation, by whatever means. And I agree with the leadership here. We have to start with a government to government relationship with our federal trustee, the U.S. government, because that's where it's all at.

And talking about the perpetual rights-of-way, yes, maybe we weren't so sophisticated back in the day when these companies first came on, but we have grown since then. We have matured. We have gained more knowledge. We have access to experts that help us. And this is very hard for the non-Indian society to accept, because we have emerged. We are a growing population. And as our young people go on to

school and get their knowledge, it's going to even change more. And it's going to be up to them to decide how we are going to protect the sovereignty that is so dear to all of us.

And I see this as a beginning point for us here. It's a point of discussion. I don't agree with how the process was done, but it's a start. At least we can have our input. Now we know what we're up against. Now we can go back home, think about it, and come forth with more strategies as a people, because this is going to be an ongoing fight throughout our future. I see that coming. Because of the resources that we have on our reservations, for the demand, in the name of national security, is what they're going to say. But we've got to protect it and protect our sovereignty, protect our tribes, protect our people, protect our land. Because, you know, we are good stewards of this land because it was given to us by our Creator, and we have to protect it.

So that's what I would like to say today, is that I would agree with future meetings, for open dialogue. And listen. Listen to us. I personally don't see a real problem here. It seems like we're on two opposite ends. As far as I'm concerned, the mechanism is there for negotiations. Let us now run our business. But I would be open to more open discussions.

SPEAKER: Thank you. I'd like to thank you all for this session on sovereignty. And I'm going to have Bob or David kind of say some closing remarks before I send you to lunch. And if you could be back here by 1, that would be fabulous. Do you have any closing?

SPEAKER: Well, once again, I think we've had a very vigorous discussion, and I appreciate some of the constructive ideas that have been put forward in terms of ways in

which we can make some of these relationships more beneficial for all. So thank you very much, and we look forward to your further participation after lunch.

SPEAKER: I know we're starting a little bit late, but it's kind of snowy and cold outside so—that's what I've been told. I haven't left the building yet, so I don't actually know that. I want to do a few housekeeping things, talk about this afternoon, talk about after this meeting. Normally, we talk about followup meetings at the very end of the meeting, but we're going to do that right now instead, because I know a lot of people are going to be taking off maybe in the middle of the afternoon, and I want to make sure that we get that said.

SPEAKER: Okay, let's cease conversation please.

SPEAKER: Okay. Briefly, about this afternoon, there are two sessions left. There is the "appropriate standard procedures for determining fair and appropriate compensation," and the "relevant national energy transportation policies," as well as some final and closing comments. We are going to do—I'm going to talk also about next steps. And then we're going to take a half-hour break and vacate the room so that there can be a tribal caucus. And then we'll come back in half an hour once I'm done with this intro and complete the meeting.

The next step following this meeting, there will be a meeting summary. The meeting summary will include the appendix of all the notes you see around—all the flipchart notes as well as the post-it notes. They'll be appended to this meeting summary and posted on the web. Following that, there will be the federal register notice and a tribal leader letter, requesting for comments on the study, or the content of the study, as

well as any process. Following that, we're going to have another set of open public meetings. We're trying to find a date, but we're looking for something.

[inaudible off-microphone question or comment]

You guys are getting a little advance notice. This date may change, but we're looking for the week of April 17 in Albuquerque. But I don't know if you want to quote me on that just in case we can't find a hotel, but that's what we're looking for the next set of open public meetings. Following those public meetings, there will be a draft. They'll draft the study. And then following that, there will be three regional tribal consultation meetings, and then there will be an open public meeting separate from those, similar to this, to review and talk about the draft. And, of course, the final thing will be the final draft.

[inaudible off-microphone question or comment]

Okay, for those of you—a couple things before I send us out. If you have signed in, double-check that your name and address and particularly your email is spelled correctly. There's a list out on the registration table. If you have not done that, it would be really useful to do that, in case we're sending out emails. Also be checking the website. When we take this half-hour break, we're going to turn off the phone. So if there are folks on the phone right now, I just want to let you know that the phone will go dead for about a half an hour, and then we'll make it live again in about half an hour. So any comments before we leave?

[inaudible off-microphone question or comment]

Three separate. They will be three different places in the country.

[inaudible off-microphone question or comment]

No, I think they will—any other questions?

[inaudible off-microphone question or comment]

Yes, it's not a proposal, it's going to happen. The tribal folks are going to stay in the room, and we're all going to take off. They're going to have a quick caucus for about half an hour and then we'll come back together. Any other thoughts or comments?

Okay. So I've got 24 past, so all of you guys can do the higher math on that.

[inaudible off-microphone question or comment]

Yeah, so let's just say 2:00? So let's—2:00 back here. And tribal folks, if you need more time, let me know, but 2:00 back here in this room otherwise. Everything else goes quiet, and we'll see you at 2:00.

SPEAKER: Hour apiece? If we sort of go without break, we can do an hour apiece on the last two sessions of the elements of the study. So on the front page, let's do the valuation standards and procedures. And again, just as a reminder, we're looking at the issues raised by participants as we sort of synthesize them just as a starting place for this conversation. And the intent is that you will say, "There are more than this," or you will clarify these pieces. We'll also look at the concerns. And it's the concerns in this particular section seem to lend themselves more to questions than to just a bullet list. And then finally, we'll look at the alternatives for how to—the different types of valuation standards and procedures.

So let's talk first, if you guys want to take a look at the first front page, the valuation standards issues raised. Is there more to this list? The certainty, the clarity, reasonableness, inclusiveness, accessibility, and all the rest. I know it's kind of tough to switch gears like that quick. Think [ph] you can help. What are we doing? We are right

now—if you'll grab that draft summary of day 1 handout that's so popular, and we're looking at the issues under the valuations and standards procedure—it's on the front page—and the concerns. And is this an adequate reflection of the issues out there about the valuation standards and procedures? Is there something missing from this list? Okay, we've got one up front.

PAUL FRYE: Thank you. I'm Paul Frye from the Navajo Nation again. I think in terms of certainty—that issue—reasonableness, the full range of business relationships. The Navajo Nation's position as set forth in our written statement is that the study should simply conclude that the American way is you get certainty through contracts. So that the proper procedures for developing compensation levels for rights-of-way are negotiations. And the proper standard for determining the worth of the right-of-way is whatever the negotiated agreement says it is. Again, the Navajo Nation has contracts. We live by them, and we expect our partners to live by the contracts as well. Thank you.

SPEAKER: Okay. Thank you. So whatever the negotiation agrees to is the value.

SPEAKER: Jodi, can I provide some additional information for a second?

SPEAKER: Sure. Bob needed his cup of coffee before his brain kicked in.

SPEAKER: Yeah. What I wanted to pass on is that while there was a caucus going on, I had a chance to talk to some of my staff who had been looking for hotel arrangements for a followup meeting. And we have tentatively signed a contract for a hotel down just north of Albuquerque for the week of April 17th. As soon as we get additional information and better definition of the contract as far as the number of blocks of rooms that are going to be available, we're going to post that information on the

website with some more specifics about telephone numbers, etc., so people can reserve rooms and know exactly where the meeting is going to take place. But I just thought I'd give everybody an early heads up that at least we tentatively have a contract in place with a hotel for that week.

SPEAKER: Thanks, Bob. So back to valuations. Other concerns or issues? I think you can look on to the concerns, and then we'll start talking about the alternative ways of doing this. Anything else on the issues? Got somebody in the back.

SPEAKER: I know we've been working together and everything, but the one thing I wanted to express about the valuation standards and procedures is that for me, it's just legal terminology for coming up with a methodology for condemnation. And so when we're giving our input, that's something that's, you know, certainly an issue. Thank you.

SPEAKER: So, the—it's the issue that this is about—say it again about condemnation, I'm sorry.

SPEAKER: Okay. That valuation standards and procedures are just a formula for condemnation of tribal lands. We'll provide input into what we think the valuation and standards should be for right-of ways on tribal lands. And, you know, that's almost coming up with the formula for condemnation for the government and industry.

SPEAKER: So your concern is that it is just a way to condemn land.

SPEAKER: Yes.

SPEAKER: Other folks?

SPEAKER: I have a couple of ideas that for additions under interests raised by participants. One is the unique nature of tribal lands.

SPEAKER: Okay.

SPEAKER: And the next is the unique nature of each tribe and different tribal lands. And then under concerns, the fifth, I think—how to standardize process for unique right-of-way situations. I think you should say, “How and whether to standardize the process.”

SPEAKER: Okay.

SPEAKER: And then I think kind of an overarching thing that I see, that this whole paragraph is kind of written in terms of a focus for cash for land, which has been a real traditional way to buy right-of-way. And I think it's very important here to look at the importance of alternative methods of reaching win-win situations so that it's not always how much you want to pay for a right-of-way. What kinds of partnerships can be worked out? What kind of industry and tribal interests can both be met by doing this in a completely different way, rather than just having cash roll in?

SPEAKER: Okay.

WAYNE BLADH: Wayne Bladh for the Jicarilla Apache Nation. The issue that whole section raises is the idea that some system of artificially-imposed price controls is appropriate for this one cost item for the utility companies, and that cost item being the costs associated with rights-of-way over tribal land. And the assumption appears to be that market forces are not appropriate, are not suitable for assigning the value to that one cost item. It seems that the Departments ought to look then at other cost items that also should not be controlled by market forces. We had a period when the price of natural gas was set by federal regulation and not by the market forces. And the history of that experiment resulted with a lot of distortions in the way the industry worked, the way

energy was developed or not developed, the way the cost of energy was distributed. Why are we returning to artificial, bureaucratically-imposed price controls for this one relatively insignificant portion of the cost structure of a utility? Why are we departing from market forces in this one area?

SPEAKER: So why depart from market forces? Why is it cost control? Other folks? And the concerns do go onto the back. There's a couple on the back page.

PAT HARRINGTON: Pat Harrington again from Idaho Power Company. Just to follow up on a couple things that were mentioned yesterday but are not included on the list. One was, I think it was the Public Service of New Mexico speaker mentioned the critical difference between new and existing facilities. So I think we need to jot that down, and that kind of ties in with the last comment.

From our company's standpoint, we think that market forces probably are appropriate in determining an arm's length negotiation for new facilities on the reservation. Both parties know going in what the pros and cons are, what their alternatives are, etc. But when you have a captive, critical public interest facility already in place on the reservation, we would agree with the comments yesterday that that is where a different valuation process is appropriate. For one thing—and we should jot this down also—there currently is no limit on what the tribes can demand. None whatsoever. What that practically works down to—and this was mentioned yesterday also—is the ultimate cost would be the cost to the utility of moving that facility. And the anecdote yesterday was the dealings with the EPA where the build-around cost was \$8 million and they paid \$4 million, and both parties apparently walked away happy. Now, most of us can't afford to do that. But the point there would be no limitation on the cost, and the

only practical limit being the cost of moving facilities. And do we really, as a national policy, want that driving the determination of existing facility renewals, is paying a cost up to the point where you actually force the utility to relocate from the reservation? And unfortunately, utilities have to look at that. That's kind of the bogey. And that's basically the comment. The other one being the emphasis—I think it was the Enterprise Institute guy mentioned yesterday—and this is understood, I suppose, by everyone—but these are critical public facilities we're talking about that benefit everybody. And that's why the idea of right-of-way acquisition has developed the way it is. For a societal benefit like this, the acquirer should have some advantageous and accessible way to develop this critical technology and infrastructure.

SPEAKER: So the first point you had about the difference between new and renewals—at least that's the term there's at—we have an alternative. I think we'll put that under the issue part. But there is an alternative on the back page that talks about separate renewable right-of-ways from new right-of-way processes.

SPEAKER: Okay, great. I missed that.

SPEAKER: I just thought I'd point that out. And then your other comments about some limit—or currently there is no limit on what tribes can demand. And then that the right-of-ways are a critical public benefit.

SPEAKER: Yeah.

SPEAKER: We've got a table up there in front, and then—

CAROL HARVEY: Carol Harvey again. I just wanted to make a very brief statement in response to the PNM speaker. In New Mexico, there is a difference in regard to gathering lines owned by companies. Those are not public facilities but

transmission lines are. So we can't assume, necessarily, that gas gathering lines which would be part of the right-of-ways at issue—those are not considered “public facilities.” You know, those are privately-owned facilities that the gas gatherers can elect what gas they want to transport, etc. So I think it's real important to clarify. In fact, there are even New Mexico cases where they specifically stated that the gathering line was a public facility, and then those cases were subsequently addressed by legislation to say that, no, gas gathering lines on the lease are not public facilities. Those are private.

SPEAKER: Okay. So gas lines are not public. Transmission lines are, in some cases.

SPEAKER: I would like to just clarify again a point that I tried to make earlier today. Indian policy goals are just as much public good as the public facilities are intended for public good. And that has been true in the United States from the first Congress to this Congress—the struggle to find good Indian policy. And so the policy goals of the Indians' self-determination and economic parity, the development of our reservation economies, is just as much a public benefit as the price of electricity is.

SPEAKER: Okay. So development of reservations and Indian policies are as beneficial, or as much a public good, as others. Okay. Other thoughts? Sure, in the back. And then we'll look at the alternatives specifically.

KASSEL WEEKS: My name is Kassel Weeks. I'm with East Shoshone Business Council. I think one of the things that they may have discussed was, you know, the Indian tribes do look at non-Indians on reservations, and the non-Indians do benefit from the tribal policies too. I guess one of the questions I have is if the energy companies are trying to push legislation to govern—to take some of our rights away, then I'm trying to

figure out how—does that give the government the right to regulate energy companies too? Because they're just as much a small tier [ph] with raising prices in all of the world, and they're making their billions and billions off of it, so I think they should be accountable to the problem too instead of making the tribes sound like we're the bad guys here. We're not. And I think that's another issue we need to look at. It should be fair for both sides. If they're going to do that to us, then we should do that to them. Start passing legislation on trying to control the oil companies and the gas companies, because to me they're doing a lot of price gouging. They've been caught on other issues with not being honest with the American people too. So it's—but we're trying to hold onto our sovereignty at the same time, but at the same time, the gas and oil companies need to be responsible for what they're doing too. So I don't know how you would put that in there, but I guess it's just a comment. Thank you.

SPEAKER: It seems like it's about fairness. If you're going to control one side, you need to control both sides on cost and price. Okay.

TOM SANSONETTI: Tom Sansonetti. For fair, in regard to alternatives, I think that in regard to this section of the study, it should be DOE and DOI's responsibility to give Congress options. They have asked for recommendations. They have asked for an analysis. And I think you're hearing a wide range of potential alternatives from the speakers today. And so, one of the alternatives would actually be to draft this portion of the analysis like you were doing a NEPA—you were doing an environmental impact statement. You lay out the alternatives. There are two subject matters we seem to be discussing. One concerns standards and the other one concerns the decision process. The standards can range all the way from no action alternatives, just like you would have in

EIS. That's the status quo; the way things are right now. Whatever the meeting of the minds is, is the equivalent of what the right-of-way is worth. You go from that to the standard that is usually used off reservation lands, which is fair market value. That is an option.

Another alternative is fair market value plus. There were fair market values, the floor that can be—the minimum that can be agreed upon. And you take into account all the unique circumstances of each individual tribe and piece of property, so it's fair market value plus. So you put out an entire range of what the standards might be. And as far as the decision process is concerned, if there is a meeting of the minds between a tribe and a company, then you need go no further. We have talked about how the great majority of rights-of-way do come to a meeting of the minds. So it's really in just those rare circumstances where there is difficulty closing the gap, whether it's between reasonable and unreasonable bargainers, that you need to come up with the methodology to close the gap. And this is whether or not the tribe is being offered an unreasonably low figure, or a company feels that they are being offered an unreasonably high demand.

And so the other things that need to be laid out are how would the decision come to closure? And since Congress isn't going to deal with closing the gap, that gap can only be closed by an entity of the executive branch or the judicial branch. So we should examine alternatives such as mediation, arbitration, court. If it's the executive branch, there are administrative law judges that could help. There is ADR, that's alternate dispute resolution groups in most of the Cabinet departments. So we could ask the executive branch through either FERC or DOI or DOE or the Department of Justice—any of those Departments could play a role in helping to close the gap in those rare instances where

there is not a meeting of the minds. And ultimately, if it can't be done in the executive branch, it should be discussed, or at least made the option possible for Congress that it be closed by the judicial branch. Those are all options that could be laid out before Congress. People will like some; they will not like others. But I think it's the job of the DOE and DOI to lay everything out for the Congress.

And lastly, I think there ought to be a chapter or a section in the report that really talks about the FERC. Because it's the Federal Energy Regulatory Commission that has got the responsibility for deciding where there roots are in the first place. And even before you get to the root, they have to decide whether or not a certificate is advisable if there is sufficient need for the pipeline, or the electric transmission line, or the petroleum pipeline, or whatever the matter is. So there's an intersection between the power that Congress has given FERC to decide who gets this regulated monopoly and where it goes. And so there is an intersection between FERC's responsibilities and the Congress and right-of-way acquisition. If they say something is supposed to go from A to B, and you're supposed to deliver a product to B, then there is naturally an intersection between that path and the right-of-ways necessary to get there, whether it's tribal land or not. So I would say that there should be at least some addressing of FERC's role in our topic in the report. Thank you.

SPEAKER: So making sure that FERC's role is described in the process. That the report needs to outline the different alternatives that are available rather than just possibly selecting one. And then you listed off several different sort of alternative dispute resolution options, executive or judicial—and I won't go over all of them, but.

CAROL HARVEY: I'm Carol Harvey. I just wanted to say that I have no detailed comment on the alternative issue. Certainly, we can lay those out, but my concern would be that there would probably be a lessening of meeting of the minds if I knew that I could go into arbitration or mediation before an executive or judicial agency and have it resolved for me. I mean, why would I go sit with the tribes and try to negotiate an agreement when I could just use one of the other alternatives? It's kind of like under minerals management services valuation regulations. You know, if you don't have an arm's length contract, go to A and go to B and go to C, and kind of different methodologies that would apply. And it's a little easier to do that in that type of setting. But in this type of setting, my concern would be that if you don't have a meeting of minds, then you have someone else available to resolve it for you by legislation. And I think that would really possibly make it more likely that companies would not come to a meeting of the minds with the tribes because they would know they have someone else to resolve the problem for them.

SPEAKER: So your concern is that the alternative would become the way. Okay. In the back.

ADELIA AMBY: Good afternoon. Adelia Amby [ph], Yakama Nation. I just want to point out to you that the list leaves off considerations of past undervaluations of right-of-ways by companies seeking renewals of these rights, or past problems with the right-of-way. And that's where we are at right now with the Yakama Nation because they're trying to renew their right-of-way for the power lines, but yet they were trespassing all this time with their—over their leases. And now we're having a hard time sitting down to negotiate that. And not only that, we have private landowners, you know,

we have people that have allotted lands. And the fractionation of those lands is what is really hurting us today because they're so small, and people don't feel like it's worth coming in to pay any attention to. When they're a holder of fractionated interest, well, that kind of hurts us today. And just like the gentleman said also yesterday, your neighbor, the ones that have the fee [ph] land, they'll go over there and they get what they want, but yet us Indians don't. So I think we need to pay a lot of attention to that. Thank you.

SPEAKER: So that how renewals address past problems, and how they fracture allotted land.

ADELIA AMBY: Pardon?

SPEAKER: What you were saying was your concern is that how renewable—when you renew a right-of-way, how that addresses past problems, past undervaluation.

ADELIA AMBY: Well, yeah, and if they're going to address the past ones.

SPEAKER: Great.

ADELIA AMBY: Okay.

SPEAKER: In the back.

KASSEL WEEKS: My name is Kassel Weeks with East Shoshone Business Council. Just recently, we had a meeting with the State of Wyoming. The State of Wyoming finally recognized the tribes as part of the Wyoming rights [ph], as part of the Wyoming people. That we just recently dealt with, and we had a good meeting with them. But one of the understandings we came to was they wanted to change the constitution—the Wyoming constitution—to include the tribes. But Valerie and I, we discussed it and we said, “Well, why do you want to change it for to include Indian

tribes? You already deal with the tribe with grants—Wyoming grants that you get, and all that.” We can go through MOAs, MOUs—MOA is like a memorandum of agreements. Memorandum of understanding—MOUs—and contractual. We could be responsible for those. But that’s one of the things that we did. And it’s the same thing here. Now with what Carol Harvey talked about, that these companies can just go right straight to those other organizations just to pass—you know, deal with that way, and leave us out. Then what’s the use of having this meeting?

And another thing, when you’re talking about fair market value, the Bureau of Indian Affairs have always used a FONSI—that’s a finding of no insignificance, with EPA rules and regulations. And they were doing that. That was standard practice for years and years and years, because they just went through tribal land, just tore it up. You know, there wasn’t any cultural findings or anything in there. But now, just recently, the Bureau of Indian Affairs got caught. There was a white rancher. His land is—he owns the surface, but the mineral rights belong to the tribes. So they drilled on his land, the oil companies did, and they ruined it. So the oil companies didn’t want to fix it, so they went to court. The BIA got caught. And now they’re going to have to do a full EIS on that—environmental impact study. And we’re going through that process right now. It’s taken almost a couple years now.

When you’re talking about fair market value, I don’t know how you put in that, with all the injustices that’s being done. And, you know, FONSI is never going to work out because they always destroy tribal lands. And in the FONSI they had right-of-ways that were piggybacked. They gave this company a right-of-way, but this company, in turn, turned around and sold another right to another company to lay down another line.

And they were getting profits that way too. I mean, there's nothing fair about it, so I just wanted to bring that out too. Thank you.

SPEAKER: So again the concern about if there is an alternative method, that you'll skip over tribal negotiations—skip over the negotiation part. And how do you find fair market value.

PAUL FRYE: Paul Frye with the Navajo Nation. I just would like the study to acknowledge that if there any alternatives presented to Congress other than the use of negotiation between willing parties, there has to be a finding that precedes that, and it's a public policy finding. And it would say that this problem merits breaking treaties, impairing property rights, and, in some cases, abrogating contractual rights—all of which violate the Constitution. I would also observe that when Congress once requested a study under the Surface Mining Control and Reclamation Act about what the definition of Indian lands was, the Department of Interior was expected to come back with a definition that said, "Indian lands, for purposes of this statute, should be X." What happened, though, in 1980 roughly, was that the study came back and it said, "Well, here are your alternatives, Congress," and it gave six alternatives. Congress was intending to pass an Indian land version of this same Act using a definition of Indian lands in 1977 once it got this recommendation. But since it didn't get a recommendation, 25 years later, we still don't have an Indian lands provision that deals with Surface Mining Control and Reclamation. So with that, thank you.

SPEAKER: So—I can't even read my own writing. Carol.

CAROL HARVEY: I'm not sure if this is the right heading to bring this up under, but I just started representing a particular group very recently, and they're an

emerging market and didn't have information on what is a good idea for agreements and what is not. And so this issue of unconscionability is not historic. It's very recent. And I am aware of another agreement with—any oil and gas person here would know that it would not be favorable for a tribe to enter into a 400,000-acre option agreement for \$2.25 an acre. And so this issue of unconscionability is not just tied to the right-of-ways, but it's tied to the underlying agreements. And the tribes were relying on the expertise of the Bureau of Indian Affairs to guide them in these matters. And in my mind, the last agreement I saw, the first time I read it, I was appalled at the unconscionability, taking advantage of the tribe's lack of understanding of how to address oil and gas matters. And this was just last December. And so it is not a minor issue. It needs to be looked at across the board. It's from the upstream to the midstream to the downstream. And that tribes are being taken advantage of when they don't have the geological, geophysical land expertise regarding oil and gas agreements. I contacted the BIA to see if they had bonus information for this area, and they had none. And so I think there's a grave concern I have about their ability to advise tribes on negotiating energy agreements.

SPEAKER: So it sounds like there is a concern about having the tribes being taken advantage based on a lack of understanding or expertise, and then turning to BIA's expertise, which isn't fully what you're looking for. Okay. Other folks? There's someone here.

BRUNO ZAGAR: Bruno Zagar, Fond du Lac Reservation. I just wanted to make a matter of record again too. I have heard several different people talk about it, the distinctive differences of right-of-ways. And we have everything from natural gas to propane lines to oil lines, and there's either—you're dealing with either sacred sites,

sensitive environmental areas, which again, like you've heard from some of them before, that we follow NEPA procedures. Any federal dollars that are spent, we have to go through that process. And I think these distinctions need to be made when you're looking at all different types of rights-of-way. Because we have the power line that—you may have 200 feet away from that power line, which is the unusable land because of the milligauss readings, that you can't put a tribal project in because of the standards with HUD, EPA, DOI, and all of the review process we have in place. So have to make sure those distinctions are noted in every right-of-way. Thank you.

SPEAKER: So it's about distinguishing right-of-way types, what's around it. Other comments on alternatives for the standards and procedures.

SPEAKER: Any evaluation standard, if you assume first that you come to the conclusion that you can actually recommend one, should also include risk. A gentleman from Nemato [ph], I believe, talked about a pipeline that had exploded. Whether or not there is an emergency response plan, who pays for that emergency response. So that value of the risk of the pipeline, or whatever right-of-way is entered into and what the costs to the tribe could be in the event of emergency.

SPEAKER: Okay. So including cost without risk and risk management, or addressing those. Castle?

KASSEL WEEKS: Kassel Weeks again. Is cell phones included as right-of-ways too? Are we talking about physical or are we talking about—

SPEAKER: Energy.

KASSEL WEEKS: Energy. Is cell phone energy?

SPEAKER: Communication.

KASSEL WEEKS: Okay.

SPEAKER: Other thoughts on alternatives. Is this the suite of alternatives? Did we capture all the alternatives out there for how you would do it, how you would do valuations. It's on the back side. Okay. I've got someone in the back, I think, and then Tom up front.

TROY EID: Troy Eid, El Paso Natural Gas. Under the section, there are two lines here that I think are worthy of some additional attention. One is the question that was raised, should there be a premium to fair market value based on the difference between tribal lands and other types of lands. And then on the back side, additional costs not reflected in market value and across the fence for tribes to supply full governmental services.

It's El Paso's position that we ought to have a fair market value standard with a multiplier or an additional plus factor on it to reflect attributes of tribal sovereignty. We would love to entertain a discussion at some point in this process—a detailed, thorough, comprehensive discussion of what those attributes are, so that we understand and can participate in the development of the intellectual link between what is needed for a sovereign government, the additional premium that would be perhaps paid in a process, so that we can actually capture that concept. We don't support a flat fair market value standard as a company, as Jim Flurry [ph] said yesterday, our president. But we do support something above that as a premium, and we'd like to talk about that issue at some point as we get together in the weeks ahead.

SPEAKER: Next, and then Tom up front.

SPEAKER: Meg Hunt [ph] with the Edison Electric Institute. I'd also like to make an observation about fair market value and alternatives. Forgive me, I did not realize before coming to this meeting that fair market value had such a negative perception among the tribal community. We have always viewed it as one, as not an automatic reach to condemnation—that's not where our companies are—but that it was a useful tool to value lands and to provide a baseline to make sure that tribal lands were not being undervalued in relationship to everybody else. And we expect that our companies would pay above and beyond that baseline.

We don't have any preconceived notions about what the process would be for how to achieve that premium or what the methodologies would be, and we would like to entertain a discussion with you. I think there are some concepts that we will certainly go back and explore in greater detail. But we hope that you all would engage with us in the discussion about the appropriateness of fair market value as just that baseline to be protection to assure that you are not being undervalued in relationship to everybody else.

I would also like to say that our companies come into the renewal context feeling very much like they are not in a willing seller/willing buyer situation as they were when they entered the first contract to locate on tribal lands. Because in the short term, they do not have an ability to walk away from the line because of the reliability concerns and the interconnectedness of the grid. And this also crops up in their concern about the shortness of the permit period. But we will certainly come prepared to the next discussion to talk about methodologies, and we would hope that you would be willing to engage with us on fair market value on the basis that I'm talking about, as opposed to

being a predicate for condemnation because that's certainly not where our companies want to go.

SPEAKER: So I have Tom up front, and get him a mike. What I'm hearing is that for you this about a useful tool to provide a baseline, not—that you're ensuring that there's not undervaluation, and that it's not a precursor to condemnation. And that in the renewal situation, it's not necessarily a feeling of full willingness of buyer and seller, because you have preexisting dependents on that current system, and to move it takes a little while. Okay, Tom.

TOM SANSONETTI: I'm not sure that it's been mentioned directly. There was a person who spoke to this yesterday. There is an alternative right now to reaching agreement with a tribe, and that is the direct legislation that Congress could engage in with appropriate compensation for a public taking. And so it does seem to me that—you asked a question, have we missed any alternatives. That's one that does exist that Congress has, and probably an alternative that ought to be listed as a current one. And I don't know whether there is any worthwhile purpose in engaging in types of reforms of some kind of legislation that would give the kind of—almost like the God squad-type of mechanism that could be in place where the fact has been demonstrated, a true public need, that because of national policies has to deviate from existing regulations and statutes. But that is an existing alternative.

SPEAKER: So another alternative is direct legislation for appropriate compensation. Okay. Carol in the back and then right here.

CAROL HARVEY: I would just like to add two issues from my days of being an E&P attorney. One is that fair market value and premiums are very, very common in the

oil and gas industry. You know, crude oil postings traditionally had postings plus. There was never a question that that plus was not fair market value, but there has always been the issue of premiums in the oil and gas industry. And so, I don't see that—I just wanted to mention that that's not an issue uncommon to the industry.

The other thing I wanted to add is a cost that might be helpful to look in—we keep talking about the costs that tribes are imposing due to their negotiating stance—is that many gathering companies and transmission companies enter into agreements with producers to settle value issue whereby they either get—the producers either get free or low cost transportation rates. And that might be an issue that certainly they could share with us in terms of what kind of cost does that mean to the consumer. But again, that's a value they're receiving, which may lower the consideration they receive for the oil or the gas. And while MMS audited oil royalty underpayments and recovered millions and millions of dollars, the audit of gas valuation and transportation and processing allowances has not occurred, and they never occur because they simply don't have the manpower. But that's another issue that perhaps could be investigated. Thank you.

SPEAKER: So fair market value and premiums are common in oil and gas, and the costs to gathering and transmission people with their interactions with producers.

WAYNE BLADH: Wayne Bladh, Jicarilla Apache Nation. Part of the resistance that a lot of the tribes have with immediately accepting the idea of fair market value is one that has been raised under other topics. I think it's important to make sure that it's also reflected in the list of issues under fair market value. And that is that there are a lot of different ways of determining fair market value. And the way fair market value has been used frequently as to tribal land in the past is comparable sales, or basing the value

of a right-of-way on the fact that the surrounding land is grazing land. That is not the only way to determine fair market value. Other accepted methods include capitalizing the income stream, and we've had discussions previously about using that kind of approach—of determining the value of the economic activity that is taking place on the land that the right-of-way applies to, rather than looking at what the surrounding land is used for. If we are going to discuss fair market value as a benchmark, we have to be careful of what method of determining fair market value we're really looking at. And the tribes are wanting to make sure that they share in the economic value of the use of their land and not simply be compensated based on the value of surrounding land as grazing or some other relatively low value assigned through a comparable sales approach. Fair market value is not one single number.

SPEAKER: Okay. So it's hard to—be careful in determining how fair market value is determined. There's lots of different ways, and his desires to share in economic use of the tribal lands.

SPEAKER: I want to punctuate what Wayne was talking about, and that is there have been several times where it has been asserted that the tribe's price that they're asking for is an arbitrary number. And my experience of working with the tribes is they have used a scientific process calculating the numbers to arrive at just what Wayne has said—the value that the tribe has given to the project by approving it. And those are numbers that could be calculated, and that's what backs up the tribal price. It isn't an arbitrary number at all, and there's been some assertion that it is.

SPEAKER: So the number is not arbitrary. It is come to, arrived at, in scientific process. Thanks. Over here?

SPEAKER: I think if you're going to look at alternatives, one thing that we haven't mentioned here at all is non-monetary compensation. So things like land swaps or something like providing other facilities. If you're talking about an electric transmission line, the providing of a substation or other electric drops, or just any other kinds of creative, non-monetary compensation that could be included.

[inaudible off-microphone question or comment]

Sure.

SPEAKER: Okay. And for those of you that couldn't hear, David said it's including capacity or accessibility to the thing that's crossing the land. Any other thoughts about this section before we move on to the final one? Okay.

Let's go ahead and switch to the relevant national energy transportation policies. And pretty much it's just a list, not necessarily issues or concerns or alternatives. So it's just a list of the things that we had heard that come up that were related. So the final one we sort of added in, so that's why it's parentheses. We didn't add anything to anything else, but this one we just sort of added in, so it's in parentheses just so you all know we added it, you didn't necessarily hear it. So is this a suite, and for—this is probably for those people who are very well versed in the Energy Policy Act. Is this the suite of relevant policies that need to be factored, considered?

SPEAKER: I think you need to include the tribal consultation executive orders. You also need to include 25 USCA 323, which is the statute that authorizes the rights-of-way in the first place and the regulatory procedures under that statute.

SPEAKER: Can you repeat that? I didn't get it, so I'm sure Catherine [ph]—I don't know if Catherine got it.

SPEAKER: It's 25 USC 323, and I think it's 324 as well. And the regulatory procedures enacted under that.

SPEAKER: Okay, one second. So I've got 25 USC—did you say 323?

SPEAKER: 323.

SPEAKER: And 324? And executive order?

SPEAKER: Executive orders that deal with tribal consultation.

SPEAKER: Okay. Other things to add to this list? Carol.

CAROL HARVEY: Carol Harvey. I just wanted to add two things—or just really make one comment. In a recent newspaper article—probably many of you saw it because it was covered nationally—they talked about millions of dollars of royalty undervaluation due to gas royalty or gas pricing by companies. Another thing that should be looked to MMS [ph], since it has that authority, is: Are transportation allowances being correctly calculated and accounted for in regard to tribal lands? Because that certainly is an energy policy issue. And I know they've done their oil royalty audits and recovered millions of—multi-millions of dollars. But I have not seen a gas audit or a transportation cost audit or—and by looking at FERC data and MMS data, we could determine whether the transportation costs that are being claimed by gas gatherers and transmission companies—whether they're reasonable or not. They might be unreasonable to start off with. I don't know.

SPEAKER: So doing some kind of audit of gas gatherers and transmission costs.

CAROL HARVEY: International audit on transportation allowances.

[inaudible off-microphone question or comment]

SPEAKER: Did you all hear that? Do you want David to repeat it? David, why don't you repeat that into the microphone?

DAVID: MMS allows companies to take a standard allowance for transportation, and they don't audit the cost. And we know from tribal audits that their costs are much less than the allowance.

SPEAKER: Okay, go ahead.

PAUL FRYE: Paul Frye for the Navajo Nation. I would add to these lists of relevant national energy transportation policies the official policy of the Department of Energy by Admiral Watkins in 1991 that, as I understand, is still reaffirmed. That recognizes the special and unique relationship between the United States and the Indian nations in energy matters. I would also add all of the statements from President Nixon to President Reagan to the first President Bush and President Clinton—all reaffirming the tribal self-determination policy and including in those affirmations the view that tribes should be free to develop their resources as they see fit, and the federal government will assist them in doing that. And I guess I would just observe that everything that's being talked about in the Section 1813 study that relates to non-consensual rights-of-way, or terms of rights-of-way agreement, is contrary to the most recent congressional elaboration of national energy policy, and that's the Energy Policy Act of 2005 and the Indian Self-Determination Act principles that are involved there. Thank you.

SPEAKER: Okay. Over here, and then Carol.

SPEAKER: I think you also need to include the FERC rate-making policies, which could provide limitations to pass-throughs of costs for facilities. And also the FERC rate-making—the ways in which industry, income, and profit is considered.

SPEAKER: Okay. So considering FERC rate-making policies. Okay, Carol.

CAROL HARVEY: I wanted to note that it would not be difficult for this MMS audit of transportation allowances to occur. What MMS did in regard to its oil audit was it audited one major company and then they settled on a certain formula, and then many other companies also agreed to use that same formula that MMS had negotiated with that particular company. Also MMS, if it determines there's a systemic problem, can put the audit burden on the oil and gas companies and not have to do it themselves. So it could be that prior to this study being sent to Congress, MMS could look at a sampling of companies or something to determine whether tribes are, in some cases as has been pointed out, their right-of-ways may be undervalued. But the other part of this would be that if oil and gas gathering companies and transporter companies were taking greater allowances then the tribes are also being hurt financially because their royalties are lower. So I think the DOI, as our trustee, might want to bring that issue as part of the study, to make sure that we aren't being penalized in two different ways: one, by the undervaluation of tribal right-of-ways, and the other by tribal royalties being reduced by transportation allowances that are not accurate. And that's something that MMS could very easily do by looking at one company, and from there it could have an idea of, "No, there's no problem and we can get on with it—it's not an issue," or, "There is." And they have tremendous audit authorities—the penal power, penalty power—to get that information in a timely manner.

SPEAKER: So an MMS audit would not need to audit everyone. You can audit one, use that formula. Okay.

TOM SANSONETTI: Tom Sansonetti. I think we also need to include the policies that have been announced most readily in the 2006 State of the Union message and the present policies as announced by DOE Secretary Bodman and other members of administration in regard to our national energy security, the desire to get off of the dependence on foreign oil, and the importance of developing our own domestic supplies so that all Americans can have the necessary energy that need. That should be included.

SPEAKER: So there is energy reliability on the list and national energy security on the list, but not the 2006 State of the Union policies and the things mentioned by Bodman. Okay. He's got the mike in his hands, so I'm going to go there—oh sorry, the one standing in the back.

BRIAN UPTON: Brian Upton with the Confederated Salish and Kootenai Tribes. We should also probably add to this list the Tribal Self-Governance Act, one, for the general and federal and congressional objectives laid out for tribal governments. But also more importantly because there's been discussion of the BIA's role in negotiating rights-of-way. And there are a number of self-governance tribes like the Salish and Kootenai tribes that have contracted that role and responsibility, so it's relevant in that manner.

SPEAKER: Okay. Sitting down?

RON GROVES: Ron Groves [ph] with the Utian [ph] Tribe. One of the things that the Utian Tribe is concerned with is the fair market value of their oil. We're not talking about gas right now, but we're talking about oil. Some of the companies may have a monopoly from the oil head to producers to going out there and creating and manufacturing propane, gasoline, different things. They own the refineries. We're only talking about one issue with one company. But when we have various companies—

Chevron is one of them in the Oana [ph] Basin that has tribal leases, but yet they're a producer. On the other hand, they are also a refinery operator. So we're just looking at one portion of what we're talking about.

So when certain companies monopolize tribal resources, they can put a disadvantage of local income for tribes. They can shut in wells by just saying, "Well, we don't want to process your oil." We also have to standardize how oil is—the industry has maybe different values between yellow gas and black oil, black wax, and different things like that. If you're really going to make it marginal, break the back of companies for Indian tribes to even try to stabilize or to create these things, we must start off with a level playing ground. I mean, the industry—producers—are way outstripped the tribes. Now, how are you going to make that variance equal? How are you going to make producers and those who monopolize with those being a refinery—how are you going to do that? Rentals of transportation, that from the well head to the refinery. I mean that's monopolization for one company to do that. And interstate commerce, when you have national pipelines go across reservation—what is the policy for United States to say one company is monopolizing, it's gathering pipelines going in across the United States and gathering from reservations into this pipeline. As in from, say, the Midwest to these wheel hubs that they have in different locations they have across America. How do we really address that? Oil companies forget that you're ahead of the tribe, and yet you want to distance us even further. I don't know if it's qualified or quantified to sit here and talk about certain things when one part of America is really disadvantaged—the Indian tribes.

SPEAKER: Okay. So the concern is about the monopoly—monopoly of resources on tribal lands.

[inaudible off-microphone question or comment]

Okay, so the monopoly in the absence of arm's length dealings. Okay. Castle.

KASSEL WEEKS: My name is Kassel Weeks of Eastern Shoshone Business Council. We've been talking about what is fair for tribes and fair for companies. I think one of the—this is just a—since we're here to gather facts on how to go about this, I think I'm going to ask the people. Do you know who the biggest exporter of foreign oil is in the U.S.? Foreign oil? It's the United States.

SPEAKER: Okay. Any other relevant energy transportation policies? Okay. One last shot. Okay.

The final thing, we're just going to talk about next steps. And you all are getting out of here early. So the next steps are going to be the meeting summary from this meeting will be posted on the web. It'll be a short summary with all the flipcharts that you see typed up, as well as the post-it notes. There will be a transcription of what we've recorded today and yesterday, and that will also be posted on the web. A federal register notice and tribal leader letter will go out requesting your comments on the substance of the study, as well as process. There will be a public meeting—open public meeting, or set of meetings—the hope is the week of April 17th in Albuquerque. That may change, but for now that's what the tentative timing and location is. Following that meeting, the draft will get compiled and put together and be available. There will be three regional tribal consultations and a public meeting somewhere in there as well. And then the final will be completed. Question?

[inaudible off-microphone question or comment]

The question is where are the three regional meetings, and at the moment I don't think we know where they are. We haven't decided yet.

SPEAKER: But we're happy to take bids.

SPEAKER: Say that again?

SPEAKER: We're happy to take bids.

[inaudible off-microphone question or comment]

SPEAKER: So that for the regional, they do them on tribal hotels? At tribal hotels? Okay. Any other questions about process—or next steps?

BOB: Jodi, just mention that we're probably going to have these notes out by the end of next week. The transcription probably about three weeks before we have it.

SPEAKER: Bob's reminding me that the flipchart notes you see are probably going to be up by the end of next week, early the week following, but the transcription probably will take a little bit longer than that. So just to warn you, don't be looking tomorrow for these flipchart notes. Any final thoughts about the next steps as we move forward?

SPEAKER: Well, I just want to thank you all for participating. Before you pack up, we started off yesterday with 180 people, 45 speakers, not counting the presentations. Today 130 of you came back, and we found a lot by now. But I want to say that I think this was a large success in the sense that everyone got a chance to share their views. They were very constructive, something that the Interior and DOE team are going to take back to Washington and mull over and figure out how we move on.

We look forward to getting with you again in Albuquerque. We're pretty sure that's all going to come together in the week of the 17th of next month. And we're going

to move on to find a way to meet the mandate that we received from Congress. They are the trustee and we are their delegate, and we are going to try to meet their deadlines. Many of you have suggested that we speak to them about probably getting a small extension. It's something we will discuss with people who can make that decision. No one here is of a pay grade that they can make that decision, but we did hear it. And we will take these messages back to our respective Secretaries and let them know what you have all said.

And I did just want to conclude by saying both Secretaries are well aware of this meeting. We spoke to them before we came; we'll speak to them again after. This is getting the attention at the highest level, obviously, in both Departments. And with that, let me wish you all God speed and safe journey, and see you in Albuquerque in April.