

**NAVAJO NATION CASE STUDY**  
**EL PASO NATURAL GAS COMPANY**

**I. INTRODUCTION**

The Departments of the Interior and Energy, recognizing that there is insufficient time to conduct a statistically reliable analysis of energy rights-of-way across tribal lands, has requested that the Navajo Nation and other Indian nations submit case studies that may shed light on the four issues specifically identified in section 1813 of the 2005 Energy Policy Act ("2005 EAct"). The Navajo Nation has expressed its views on this anecdotal approach<sup>1</sup> and has urged that the threshold issues of (1) whether a problem exists and (2) whether energy consumers are materially affected by right-of-way consideration paid to Indian nations should also be addressed in the Departments' report to the Congress.

Notwithstanding its reservations about the case study approach, the Navajo Nation has agreed to assist the Departments' researchers by providing illuminating case studies. It seemed appropriate for the Navajo Nation to provide the El Paso Natural Gas ("EP") case study, because section 1813 of the 2005 EAct was a direct result of EP's attempts to circumvent the tribal consent requirement for rights-of-way under current law. In persuading the Congress to require the study, EP apparently convinced certain key congressional delegates that the Navajo Nation was about to cause a major disruption of energy transmission into California (and its military bases)<sup>2</sup> and that the Navajo

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<sup>1</sup> See "Recommendations of the Navajo Nation in Response to Notice of Public Scoping Meeting on Energy Policy Act 2005" submitted March 7, 2006 by Navajo Nation Attorney General Louis Denetsosie, such Recommendations included in this submission.

<sup>2</sup> Conversation with Rep. Rick Renzi (Arizona) (Apr. 26, 2006).

Nation's bargaining position with EP would significantly and adversely affect consumers.<sup>3</sup>

The Navajo Nation found these representations most disturbing and ironic, for several reasons. First, there was indeed a major manipulation of natural gas supplies that caused quite significant economic disruption of the Arizona and California economies. But that disruption was caused, in significant part, by EP, along with Enron and other market manipulators.<sup>4</sup> No Indian nation had anything to do with the California energy crisis of 2001. EP's representations to Congress are tantamount to the pot calling the porcelain tea cup black. Second, as EP knows, the Navajo Nation itself is served by natural gas provided from the EP line. The users include public and BIA boarding schools, law enforcement facilities, health care facilities, and some of the few residences that have gas service. EP thus attributes a boundless irrationality to the Navajo Nation's decision makers by suggesting that they would terminate natural gas deliveries from the EP system. Third, Navajo soldiers have served valiantly and in numbers exceeding their proportion to the larger society in the armed conflicts of the United States. The suggestion that the Navajo Nation would do something to cut off needed utility service to federal military bases as retaliation for EP's trespass on Navajo lands dishonors that extraordinary service, and nearly equates the Navajo Nation to a terrorist threat. As the attached resolution of the Intergovernmental Relations Committee of the Navajo Nation Council emphasizes, the Navajo Nation will not use its treaty-based right-of-way

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<sup>3</sup> E.g., Conversation with Marnie Funk, Communications Director, Senate Committee on Energy and Natural Resources, and Michael Connor, Democratic Counsel, Senate Committee on Energy and Natural Resources (April 27, 2006).

<sup>4</sup> See, e.g., Federal Energy Regulatory Commission, Report Submitted to the United States Congress at 1, 17 (Dec. 27, 2005) (stating that EP and others had agreed to FERC-facilitated settlements of over \$6.3 billion for damages incurred by consumers during the "Market Manipulation Period" from January 2, 2000 to June 20, 2001; EP's contribution was reportedly \$1.45 billion).

powers to harm other Americans.

This case study will first provide a narrative history of the various agreements between EP and the Navajo Nation. That first section will describe the pertinent terms of those agreements, while respecting any right to confidentiality under those agreements or rights of the Navajo Nation to protect confidential and proprietary business information. This case study will conclude with a summary of the published positions of EP and the Navajo Nation in the negotiations, taken from EP's web site. EP and the Navajo Nation have entered into a confidentiality agreement governing the current negotiations, and so this case study will not reflect any progress in those negotiations.

## **II. CHRONOLOGY AND DESCRIPTION OF AGREEMENTS**

### **A. INTRODUCTION**

EPNG constructed its original pipeline system across Navajo lands in 1951. For an unbroken period of over a half century, EPNG has contractually bound itself to limited terms of years for its compressor station leases and its rights-of-way. During that same extended period of time, EPNG has repeatedly and consistently acknowledged that Navajo Nation consent is required as a condition for any grant of a right-of-way over Navajo lands. These facts are reflected in documents within the custody of the Department of the Interior and are summarized below. For the convenience of the Departments of Energy and Interior, these documents are reproduced in the accompanying Appendix.

### **B. RIGHTS-OF-WAY**

At all times, EPNG sought and received Navajo Nation consent to its pipeline construction. By letter dated March 3, 1953, Navajo Chairman Sam Akeah responded to EPNG's request for Navajo consent, stating: "you are hereby granted permission to proceed with construction of the Blanco-Gallup Products line in accordance with your survey across a portion of the Navajo

reservation” and explaining that “[y]our application was explained to the Advisory Committee of the Navajo Tribal Council at its meeting in February 1953, and the Committee approved a motion on February 11 granting authority to the Chairman of the Tribal Council and the Area Director to approve the right of way in accordance with the regulations . . . .” App. 1. Similarly, on December 24, 1958, Navajo Chairman Paul Jones informed the BIA General Superintendent that “[t]ribal consent is hereby given for El Paso Natural Gas Company to construct the two additional lines” requested by EPNG in the Aneth area of the Navajo Reservation. App. 3. Navajo Nation consent was requested and granted on July 6, 1961 and January 30, 1962 for EPNG’s line (no. 601298) to Southwest Forest Industries. App. 4, 5. The BIA Route Sheet for such rights-of-way reflect the BIA’s practice of routing applications through the Navajo Nation’s legal department and its Chairman before acting, App. 7, and its checklist includes as step one “Tribal Consent.” App. 8. EPNG’s letter seeking federal permission to construct that line enclosed the “[w]ritten consent of the Chairman of the Navajo Tribe.” Letter from Gober C. Wright, Jr., to Glenn R. Landbloom, BIA Superintendent (June 28, 1961), App. 9. Likewise, Navajo Chairman Raymond Nakai recited in a memorandum dated September 27, 1963 that “El Paso Products Pipeline Company has requested permission to construct various battery ties to pipeline laterals over tribal lands” and stated “[t]ribal consent is hereby given to permit El Paso Products Pipeline Company to construct the above laterals and battery ties . . . .” App. 11-12.

EPNG’s plans called for numerous segments of gathering lines in the Aneth area of the Reservation, where royalties from oil and gas production would directly benefit the Navajo treasury. EPNG and the Navajo Nation therefore executed a more general consent document on August 14, 1958, to cover this particular gathering system, and it was approved by the BIA on August 15, 1958.

App. 13-16. In 1962 EPNG needed to extend this gathering system to the McCracken Mesa, an area of the Reservation then withdrawn under federal legislation authorizing a land exchange with the Navajo Nation, and so it obtained the consent of the Navajo Nation to those lines, as well, by letter dated January 12, 1962, from the Chairman of the Navajo Tribal Council to the BIA General Superintendent. App. 17-18. That consent was expressly given “pursuant to the conditions to the consent granted on August 14, 1958.” App. 18. EPNG had previously dealt with McCracken Mesa lands under separate applications, submitting therewith “[w]ritten consent of the Chairman of the Navajo Tribal Council.” Letter from Gober C. Wright, Jr., to Glenn R. Landbloom, BIA Superintendent (Dec. 20, 1961), App. 19.

EPNG’s right-of-way supervisor sought an easement to construct a lateral pipeline by letter dated June 24, 1965 under 25 C.F.R. § 161.25(d), and so wrote to the BIA Superintendent that, “[i]n keeping with the provisions of this Section, we submit the following: . . . 2. Consent of The Navajo Tribal Council.” App. 21. In response to EPNG’s request for authorization to relocate a portion of its right-of-way in the Arizona portion of the Reservation, Chairman Nakai stated in a July 18, 1966 memorandum to the BIA’s Navajo Area Office that “[t]ribal consent is hereby granted . . . .” App. 23.

The complexity and number of EPNG’s pipelines on the Navajo Nation created an onerous administrative burden on both EPNG and the Navajo Nation. By the 1970s, the Navajo Nation and the BIA had apparently decided to grant rights-of-way that would expire contemporaneously, on March 9, 1986. See, e.g., Grant of Easement for Right-of-Way (Feb. 15, 1973) (establishing a term for the Tocito Dome meter station to end on March 9, 1986), App. 25; Grant of Easement for Right-of-Way and Supplements nos. 1 through 15 (Sept. 28, 1979) (term for rights-of-way nos. 73632, et

al., to end on March 9, 1986), App. 29, 34-64. Thus, in a letter dated February 23, 1981, David L. Larson, EPNG's Principal Counsel, suggested that, in exchange for Navajo approval of various pending applications and for expedited approval of later applications, EPNG would agree to have all rights-of-way expire as of March 9, 1986 and to commence negotiations for new terms in January 1982. The Navajo Nation saw merit in that suggestion and limited its consent to EPNG's rights-of-way so that all would expire on March 9, 1986 and extensions for all could be renegotiated at the same time. See Memorandum from Frank E. Paul, Vice Chairman, to Daniel Deschinny, Navajo Land Administration (August 24, 1981), App. 65.

Negotiations for renewing the rights-of-way concluded with an agreement dated January 29, 1985 which recites that "it will ease the administrative burdens of both parties if all existing El Paso rights-of-way on Navajo land are consolidated into a single right-of-way easement grant with a term of twenty (20) years." App. 66. It evidenced in section 1 the consent of the Navajo Nation to the "renewal of all existing El Paso pipeline rights-of-way for a term of twenty (20) years . . . [to] commence on the date the United States, through the Bureau of Indian Affairs, grants the associated right-of-way easement(s) on behalf of the Navajo Nation, or on March 9, 1986, whichever date shall first occur." App. 66-67. It further evidenced Navajo Nation consent to the issuance of eight additional rights-of-way in paragraph 10 "for an identical twenty (20) - year term." App. 70. BIA approved the grant of easements on October 18, 1985. See Amendment No. 1 to the January 29, 1985 Agreement, at Whereas ¶ 1, App. 78. This limited term was acknowledged by EPNG repeatedly. See, e.g., Letter from Wayne C. Stephens, EPNG Director of Right-of-Way and Attorney in Fact, to the Navajo Nation (Mar. 27, 1991) ("El Paso renewed its rights-of-way across the Navajo Nation for a term of twenty (20) years."), App. 90. The BIA understood this basic term

of the agreement, as well. See Letter from Dale V. Underwood, BIA Acting Area Real Property Management Officer, to Wayne Stephens (Oct. 22, 1985) (“The easements will be covered by El Paso’s January 29, 1985, Agreement with the Navajo Tribe and will expire on October 17, 2005.”), App. 92.

On January 12, 1989, through the above-mentioned Amendment no. 1 to the 1985 Agreement, EPNG and the Navajo Nation agreed on terms to allow EPNG to build additional pipelines. The amendment expressly incorporated the terms and conditions of the 1985 Agreement and pegged the compensation to the Navajo Nation for the additional lands on the number of years remaining for the new rights-of-way divided by the 20 year term provided in the 1985 Agreement. App. 79. EPNG and the Navajo Nation further amended the January 29, 1985 Agreement on August 7, 1989, December 11, 1990, and September 28, 1995, by Amendments nos. 1, 2, 3, and 4, respectively. App. 94-158. The BIA approved them on February 16, 1989, September 1, 1989, January 7, 1991, and October 24, 1995, respectively. App. 79, 96, 106, 150. Those federal approvals and grants either incorporated by reference the 2005 expiration date or explicitly specified that the easement was for “a term of years ending October 17, 2005.” App. 78, 106, 128, 149. After amendments to the Navajo Nation Code in 1988 invested the Resources Committee of the Navajo Nation Council with the power to consent to rights-of-way on behalf of the Navajo Nation, see 2 N.N.C. § 695 (1995), the consent of the Navajo Nation was expressed in resolutions of that Committee. In the resolution approving Amendment No. 4 to the 1985 Agreement, No. RCS-214-95 (Sept. 14, 1995), that consent was conditioned on EPNG’s compliance with Standard Terms and Conditions, which include EPNG’s compliance with “Title 25, Code of Federal Regulations, Part 169” and which provides that “[a]t the termination of this right-of-way, the Grantee shall peaceably

and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted.” See Resolution No. RCS-214-95 at Exhibit “C” thereto at ¶¶ 1(a) and (11) (App. 130, 132). The federal grant of easement incorporated those requirements. Grant of Easement for Right-of-Way, no. 930623 (Oct. 13, 1995), at 3, ¶ (F), App. 148, 150.

EPNG reaffirmed the terms and conditions of the 1985 Agreement in a Land Exchange Agreement in 1993, also. The 1993 agreement (erroneously styled as a second Amendment no. 4 to the 1985 Agreement) provides in paragraph 8 that all other terms and conditions, with the exception of the consideration provisions of the above-mentioned rights-of-way, including the expiration date, shall be governed by the January 29, 1985 Rights-of-way Agreement between the Nation and El Paso . . . ” App. 167.

For over a half-century, EPNG has always sought Navajo Nation consent to the grant or extension of easements for rights-of-way in accordance with the 1948 Act and implementing federal regulations and with fundamental Navajo sovereign rights under treaty and federal common law. During that extended period of consensual dealings, the Navajo Nation has exchanged valuable consideration for EPNG’s consistent agreements to limited terms of its rights-of-way.

### **C. COMPRESSOR STATION LEASES**

EPNG’s conduct and contractual commitments respecting its ancillary facilities are just as consistent. Compressor stations on Navajo lands were originally authorized by business site leases, which all provide for a twenty-five year primary term, one right to renew for an additional twenty-five year period, and the obligation of EPNG to deliver up the premises to the Navajo Nation upon expiration of the agreement. For example, section 2 of the compressor plant lease of 40 acres of Navajo Nation land in New Mexico, approved under BIA contract no. 14-20-603-1512 (Jan. 17,

1956), states that the term “shall be for a term beginning with the date of approval by the Secretary of the Interior or his duly authorized representative and continuing for twenty-five (25) years unless sooner terminated as hereinafter provided.” App. 176. Section 5 of that lease agreement provides that the lessee EPNG “is hereby granted by Lessor an option to renew this lease for an additional term not exceeding twenty-five (25) years . . . .” App. 177. In section 8, EPNG agreed to “peaceably and without legal process deliver up the possession of the leased premises exclusive of the improvements which remain its property unless otherwise provided . . . .”<sup>5</sup> App. 179. EPNG and the Navajo Nation amended that agreement in March 1966 to add 13.29 acres to the leasehold, and specified that the terms of the original lease were “ratified and confirmed by the parties hereto.” App. 186.

A second compressor plant lease for three separate tracts on the Navajo Reservation, approved under BIA contract no. 14-20-603-1513 (Jan. 19, 1956), has the same limited extension option and surrender of the premises language as the above-described January 17, 1956 Agreement. See App. 193, 195. That lease was amended four times by EPNG and the Navajo Nation, in June 1956, March 1959, July 1965, and October 1967. All four of the amendments recite the 25-year term of the original agreement and expressly ratify and confirm the terms of the original agreement. App. 200-01, 204-05, 210-11, 214-15. All four were approved by the Department. App. 201, 205, 212, 215. As recently as April 4, 1996, EPNG acknowledged in a letter to the Navajo Nation Department of Justice that its rights under this lease would expire on March 27, 2006. See App. 217.

A third compressor plant lease for the Leupp station was approved under BIA contract no.

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<sup>5</sup> Concerning the ownership and disposition of improvements on tribal land after the expiration of a lease generally, see Banner v. United States, 238 F.3d 1348, 1356 (Fed. Cir. 2001); United States v. Pilot Oil Co., 54 F. Supp. 532, 534 (D. Wyo. 1944).

14-20-603-1514 (Jan. 17, 1956). Sections 2 and 5 of that lease stipulate a term of “twenty-five (25) years” with an “option to renew this lease for an additional term not exceeding twenty-five (25) years.” App. 220-21, In section 8 of that lease, EPNG again agreed to surrender possession of the premises upon the expiration of the lease. App. 222a. The Leupp lease was amended by the parties five times, in June 1956, October 1957 (twice), March 1961, and July 1969. App. 231-51. All five of those amendments recite the 25-year term of the original agreement and expressly ratify and confirm the terms of the original agreement. All were approved by the Department. App. 233, 242, 245, 251, 253. In addition, EPNG subleased the premises in August 1958, and the sublease properly provides that its term shall “not exceed[ ] the term of the primary lease and extensions thereof.” App. 256. By letter dated May 4, 1981, EPNG invoked its right to renew the leases “for a term of twenty-five (25) years effective upon our notice of renewal of December 9, 1980.” App. 263. Its December 9, 1980 letter confirmed that “[a]ll other terms and conditions will remain the same” including, *inter alia*, the requirement that EPNG surrender possession after the expiration of the extended term on December 9, 2005. App. 265.

EPNG’s Window Rock compressor station lease, approved under BIA contract no. 14-20-603-3206 (June 13, 1957), has the same twenty-five year term, the same one-time option to renew for an additional twenty-five years, and the same requirement to surrender the premises in sections 2, 5 and 8 as the previously described leases. App. 266, 268, 269-70. So does EPNG’s Dilkon compressor plant site lease, approved under BIA contract no. 14-20-0603-7699 (May 22, 1963), App. 276, 277, 278. That lease was amended three times to allow EPNG to use additional Navajo lands, in January 1964, March 1966, and February 1967. App. 286-99. All three amendments recite the limited term, and ratify and confirm the terms and conditions of the original lease. App. 286-87,

291-92, 296. All were approved by the Department. App. 287, 292, 297.

EPNG's White Rock compression station lease on Navajo lands was approved under BIA contract no. 14-20-0603-8995 (Dec. 14, 1965). That lease also provides for a term of twenty-five years, a one-time right to renew for an additional twenty-five years, and the requirement that EPNG deliver up the premises peaceably upon the expiration of the term or extended term, in sections 2, 4 and 7. App. 300, 301, 302

As shown above, EPNG's conduct and contracts respecting leases of Navajo lands for ancillary facilities mirrors in all relevant respects its conduct and contracts respecting its rights-of-way. All of the contracts were accompanied by Navajo Nation consent, and all have definite and limited temporal terms.

### **III. COMPENSATION TERMS**

This section of the case study summarizes the compensation terms of agreements with EP from the 1950s to 1995, and compares such terms of the 1985 and 1995 agreements with the initial bargaining positions of both EP and the Navajo Nation as reflected in EP's public website. As one might expect, the compressed time frame for performing this case study, the age of many of the agreements, and the difficulty of compiling and analyzing the financial terms of the agreements has resulted in a less-than-ideal narrative. However, we believe it is accurate and will illustrate an important series of transactions.

The consideration for an 8 5/8" gas pipeline in 1962 consisted of two checks, one for \$4,149.63 and a second for \$240.76. App. 4. A 1961 memorandum from the Acting Chairman of the Navajo Tribal Council to the BIA General Superintendent suggests that consideration for this line was pegged at \$1.00 per rod. App. 6. A 1958 tribal Consent from 1958 for EP's Aneth Gathering

system (also for smaller diameter pipelines) uses that same figure. App. 15. A 1961 letter from EP to the BIA Superintendent in 1961 shows that consideration for a “purely lateral pipe line” was also to be \$1.00 per rod, although that consideration was refunded to EP when it was determined that the land was federal, not tribal, land. App. 19-20.

A 1973 Grant of Easement for Right-of-Way (hereinafter, generically, “Grant”) reflects consideration of \$50.00 for a meter station property of .344 acres for about 13 years. App. 24-25. A Grant in 1979 reflects consideration of \$10.00 for 30" pipelines totaling 6,309.303 rods for about 7 years. App. 28-29. By 1972, EP was depositing amounts equivalent to \$2.00 per rod for rights-of-way renewal. App. 33 Thus, the consideration reflected in Supplements 1-15 of Rights-of-Way 73632, 58273, and 59306 – uniformly the sum of \$10.00<sup>6</sup> – cannot be considered reliable.

At EP’s suggestion, all rights-of-way expired on the same date (March 9, 1986), and EP and the Navajo Nation executed a comprehensive right-of-way agreement on January 29, 1985 for a twenty-year term to be effective on the date of the BIA grant or March 9, 1986, whichever occurred earlier. The BIA Grant was dated October 18, 1985, so the Agreement became effective then. The consideration for the 1985 Agreement is stated therein: a \$2,000,000 signing bonus plus twenty (20) annual payments of \$1,350,000.00, to be escalated on the basis of the Consumer Price Index (“CPI”). APP. 67-68. That figure was equivalent to an annual payment of about \$2,550,000 on October 17, 2005, when EP’s rights-of-way expired. More pipelines were added by EP from 1985 through 2005, as described below, and EP also seeks new leases on its six compressor sites in the current

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<sup>6</sup> See Supplements 1-15, respectively at App. 34 (20,566.242 rods), 36 (4.248 miles), 38 (54 rods), 40 (7.454 rods for meter station), 42 (258.098 rods), 44 (3,201.527 rods), 46 (5,201.115 rods), 49 (19,577.709 rods), 50 (2,830.473 rods), 52 (4,915.279 rods), 54 (2,210.018 rods), 56 (8,071.726 rods), 59 (20,632.716 rods), 61 (906.752 rods), 63 (5,517.918 rods).

negotiations.

Gathering lines, i.e., those of small diameter and not the main transmission line, were allowed for \$65 per rod in 1989 on a CPI-adjusted basis for about 17 years under Amendment No. 1 to the 1985 Agreement. App. 79. The 1985 Agreement was amended several times thereafter. For example, EP agreed to pay an additional \$671,270 for twelve miles of loop lines in 1989 under Amendment No. 2, for a term of about 16 years. App. 95. The actual amount of the payment was \$707,585.70. See App. 104. In Amendment No. 3, EP agreed to pay an additional \$5,232,797.58 for an additional 88 miles of looped line right-of-way for a term of about 15 years. App. 104-05. In Amendment No. 4, EP agreed to pay another \$4,404,813.74 for three projects totaling 12,767.574 rods, for a term of ten years. App. 123-24. This represents approximately \$345 per rod for a ten-year term, or \$690 per rod for a twenty-year term. On a CPI-adjusted basis, that equates to \$890 per rod for a twenty-year term as of October 17, 2005, when the right-of-way expired.

Additional consideration was required and provided for the six compressor site leases which either have expired or will expire soon. The January 1956 lease called for payment of \$10,000 for twenty-five years, and the option for renewal until 2006 called for payments of \$10.00 per acre per year on an inflation-adjusted basis using 1956 as the base year. App. 176-77. If EP is not in default, it has the right to remove the improvements within 15 months from the date of expiration of the lease term, after which time the improvements become the property of the Navajo Nation. App. 178. Therefore, any renewal of EP's rights now must take into consideration the value of these improvements, because either their removal by EP, or their ownership by the Navajo Nation, may well have significant economic implications for EP and its share holders. This lease was amended in 1965 by increasing the acreage by 13.248 acres and increasing the compensation by \$2,020.48.

App. 185.

A second compressor site lease executed in January 1956 has the same essential terms, with the consideration being a total of \$25,000. App. 191. It, too, was amended to add land for a disposal pond and to add consideration of \$2,500.00. App. 200. Another amendment in 1965 added an airstrip for an additional \$1,455.00. See App. 207, 210. See also App. 214-15 (Amendment No. 4 for adjacent land and additional compensation).

A third compressor station lease was executed in January 1956, with the same essential terms and consideration of \$15,000. It was amended later in 1956, 1957 (twice) and 1960 to add lands for ingress and egress, for an airstrip and for an addition to the compressor station, for an additional \$2,500.00, \$2,550.00, \$3,560.00, and \$5,110.14, respectively. App. 231, 236, 243, 249. The files reflect that EP renewed this third lease for the additional 25 years, to expire December 9, 2005, for \$87,946.56, presumably the CPI adjusted amount called for under the original lease. App. 263.

A fourth compressor station lease was executed in 1957, with the same terms as the above, and consideration of \$20,411.25. App. 266. A fifth, executed in 1963, called for a payment of \$10,000, with the same provisions regarding consideration for the one twenty-five year extension permitted and the removal of, or transfer of title to, the improvements. App. 276-78. The sixth and final one, executed in 1965, required payment of \$15,000, and contained the same terms regarding lease term extension, and removal or conveyance of improvements. App. 300-02.

The EP website, and the materials it distributes directly or through intermediaries, offer a simplistic and false picture of the facts of the current negotiations. EP's original offer to the Navajo Nation was for less than it paid in 1985 in real terms and approximately 20% of the rate it paid in 1995. EP's \$6.9 million per year offer highlighted on its website represents less than 50% of the rate

it paid in 1995. By comparison, the Navajo Nation's published (by EP) offer of \$22 million per year represents an increase of 57% over the rate agreed to in the 1995 agreement on an inflation adjusted basis. EP does not disclose at all the contractual provisions governing the present and future disposition or ownership of compressor stations. The Navajo Nation has concluded right-of-way transactions with both Enterprise (which acquired EP's gathering lines) and EP competitor Transwestern Pipeline Company on terms based on the same per-rod calculations as the Nation has proposed to EP.

As demonstrated by the accompanying report by Charles J. Cicchetti, Ph.D., the consumer would not notice if EP accepted the Nation's published offer and passed along all of those costs to the consumer. As the attached legislation of the Navajo Nation Council emphasizes, the Navajo Nation will take no steps to jeopardize national energy security or to disturb market forces to the detriment of other Americans. EP, by falsely portraying the Navajo Nation as a threat to national energy security and consumers alike, has succeeded in getting Congress to unknowingly intercede in a business negotiation, to secure a competitive advantage for EP over Transwestern and perhaps others. The study should reflect these facts and recommend that the Congress affirmatively embrace the consent principle that is embodied in current law and that has proved successful for over fifty years.