



The Confederated Tribes of the Colville Reservation
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September 1, 2006

VIA ELECTRONIC MAIL

Office of Indian Energy and Economic Development
IEED@bia.edu
Attn: Section 1813 ROW Study
Room 20, South Interior Building
1951 Constitution Ave., NW
Washington, DC 20585

Dear Sir:

Pursuant to the notice published in the *Federal Register* on August 9, 2006, the Confederated Tribes of the Colville Reservation (collectively “the Tribe”) submits for your review and consideration the following comments on the Draft Report (“Draft Report”) required by section 1813 of the *Energy Policy Act of 2005* (the “EPAAct,” Pub.L.109-58). While the Tribe has serious concerns with many aspects of the Draft Report, it is mindful of the hard work and effort made by the Department of Energy and the Department of the Interior (collectively the “Departments”) in fulfilling their responsibilities in carrying out the study and drafting the report.

As a preliminary matter, the Tribe is concerned that the comment period for responses to the Draft Study is too short for adequate tribal comments. We believe an additional 60 days comment period would be appropriate under the circumstances and would afford the Tribe, as well as other Tribes and interested parties across the country, ample opportunity to review and comment on the Draft Report.

The Tribe understands that Congress mandated the Departments to conduct the section 1813 study and draft a report based on its findings and conclusions. The Draft Report makes two key findings regarding the impact on energy consumers and potential threats to national energy security as a result of the exercise of tribal consent in rights-of-way (“ROW”) negotiations. Unambiguously, the Draft Report concludes that there is no or negligible impact to the consumer and no threat to national energy security. Nonetheless, and for reasons unexplained, the authors of the Draft Report feel constrained to make a similarly unambiguous recommendation to Congress that no action is warranted at this time. Rather, the Draft Report offers up “options” the Congress might consider if it is so inclined. Respectfully, the Tribe is of the opinion that as written, the Draft Report is unresponsive to Congress and fails to accurately represent the findings and conclusions of the Departments.

In addition to questions regarding the valuation of energy products that rely on ROW on tribal lands—and the related issue of fair value and compensation to the tribal landowner—the Tribe

also believes that the Departments fail to fully comprehend that tribal lands cannot be equated with any other type of estate for purposes of valuation. The lands that each Tribe holds as its own are, almost without exception, hugely diminished from the original estate of that Tribe. What lands remain serve as each Tribe's economic base, national homeland, and patrimony for future generations.

Therefore, unlike a free market in fee simple lands that relies on the concept that any given acre of land is in essence a fungible commodity, Indian lands are quite unique. Because of the sad history of Indian tribal land losses, each remaining acre is precious and, in a very real sense, irreplaceable. When trust lands on an Indian reservation lose their unique tribal character and are committed to a non-tribal purpose—for example when they are subordinated to the use by an energy company for a right of way—the reservation is diminished and the Tribe cannot simply purchase comparable acreage and have them added to its land base.

Here at the Colville Reservation, our people have seen our lands diminished so that the United States' economy could benefit from our mineral resources, while we remained impoverished. Our lands have been diminished for the creation of a huge hydro-electric project from which we did not benefit for generations, and from which we still do not receive fair compensation for our lands used or burdened by that project. Though we live in a land of hydro-electric "plenty" our people pay some of the highest utility rates in the region. The Draft Report should address these issues fairly and fully.

We also think that the Draft Report does little to address the Tribe's real concerns about the environmental impacts of many energy rights of way, or the cultural impacts these ROW's have on our most sacred spaces. One has only to travel to the San Juan Basin, to the homelands of our southern neighbor Tribes, to see the permanent impact these ROW's have on Indian lands. Similarly, our own lands are forever scarred by the Grand Coulee Dam, Chief Joseph Dam, and their associated transmission lines. We face significant costs associated with these ROW's, including potential fire hazards from downed lines, maintenance vehicles, and associated activities, damage to cultural artifacts, and damage to our homeland. These factors should all be considered by the Draft Report.

In addition, the Tribe is of the opinion that the Draft Report fails to fully recognize that Indian Tribes, as sovereign governments with rights and responsibilities, have the inherent authority to use and dispose of their lands for the benefit of their people as they see fit, and without that use or disposition interrupted by the U.S. Government, a private sector entity, or anyone else. Given the contributions Indian Tribes and Indian people have made to this great nation., we should retain the right to bargain for the best and highest compensation for every use of tribal lands, including ROW's. At the end of the day, the Draft Report must acknowledge that these are our homelands and we have the fundamental right to dictate who may enter, and at what cost.

Finally, the Draft Report fails to note, except in passing, the poverty rates that continue to plague most Tribes, the unemployment rates, and the lack of alternative resources for economic development that most Tribes face. Unlike the rest of the United States, Tribes cannot simply pack their bags and move to areas with more robust economies.

We believe that some of the “options” geared to private, voluntary actions that might be undertaken by tribes and the energy sector may hold promise, but we vehemently disagree with the notion that the United States Congress—or any other entity—may simply impose a formula upon Indian country for the calculation of energy ROW across tribal lands without recognizing that a taking of tribal property and rights is once again being proposed for the “greater good” of energy company profits, and mainstream access to energy resources.

Thank you for this opportunity to provide these comments. Please direct any questions to James R. Bellis, Reservation Attorney, at 509-634-2385.

Sincerely,

MICHAEL MARCHAND
Chairman
Colville Business Council

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