

August 31, 2006

Office of Indian Energy and Economic Development
Attn: Section 1813 ROW Study
Room 20 – South Interior Building
1951 Constitution Avenue, NW
Washington, DC 20245

Re: Comments on Draft Report to Congress (August 8, 2006)

Dear Sirs:

I appreciate the opportunity to submit the following comments on the Draft Report.

A. Executive Summary

The Executive Summary of the Draft Report will be extremely important. Yet, the Departments of Interior and Energy (“Departments”) have prevented tribes from providing any meaningful comments on this critical portion of the report by not including it in the Draft Report. This Summary must address several key issues, many of which have already been raised in the Draft Report:

1. The tribal consent requirement derives from the inherent sovereignty of tribes, federal statutes, federal regulations, and is supported by the federal government’s policy of tribal self-determination. Draft Report § 2.4.
2. Tribal constitutions and ordinances strongly support tribal decision-making regarding energy ROWs and natural resource management on tribal land versus federal regulation.
3. **The data referenced in the Letter from Carol Harvey (April 25, 2006) on the complete lack of authority of problems prior to the current reports by industry’s lobbyists, FAIR, Interstate Natural Gas Association of America and Edison Electric Institute (“EEI”) must absolutely have a dominant place in the Executive Summary.**
4. It is important to document that the industry groups do not represent the viewpoints of all energy companies, let alone their diverse members. For example, Rob Roberts, ROW Manager, Public Service Company of New Mexico (“PNM”), emphatically stated that PNM has no desire

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for Congress to enact legislation authorizing condemnation of tribal lands through eminent domain proceedings.

5. The Departments must explain why tribes reject ‘market value’ principles. The nomenclature ‘fair market value’ or ‘market value’ is simply not applicable to tribal land, as there is no open competitive market for tribal lands and there is no willing buyer and seller with no compulsion to buy or sell.

6. The Departments found (i) “no evidence that the requirement of tribal consent has contributed to any emergency situation regarding energy;” and (ii) existing law provides the federal government with competent authority to address any emergency situation that might arise in the future. Draft Report § 3.2.1.

7. Determining ROW compensation through open negotiation is “consistent with the long-standing expressions of tribal sovereignty and self-determination in the federal-tribal relationship.” Draft Report § 4.1.

8. Issues surrounding compensation to tribes for energy ROWs are not consequential for consumers. Draft Report § 4.3.

9. It is unlikely that difficulties arising from ROW negotiations in the future “could lead to significant cost impacts for energy consumers or to significant threats to the physical delivery of energy supplies.” Draft Report § 4.4.2.

B. Options

Listing “options” without recommendation or analysis is very harmful to tribes. It is very easy for the lay public to misinterpret these options or to apply them out of context. Most parties will not review the report in its entirety and will only read a summary with options that may appear to be supported by the Departments’ since they included them in the Report. They are great sound bites for the media and industry lobbyists, but extremely detrimental to tribes.

The precise reason specific options cannot be set out is detailed in Section 5.3.2 of the Draft Report: energy ROWs vary in location, ownership, type, duration, size, renewal rights, and valuation methods.

Option 4.4.2(a)

This Option should be the Departments’ ‘recommendation’ to Congress.

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Option 4.4.2(b)

A new statute or an amendment to the 1948 Act only invites opportunity for mischief and should be discarded as an option. Any time a statute is open for amendment, each interest group takes it as an opportunity to raise its individual agenda.

Option 4.4.2(c)(1)

Option 4.4.2(c)(1) 'passes the buck' for Congress' directive to the Departments to recommend appropriate standards and procedures for determining fair and appropriate compensation.

Option 4.4.2(c)(2)

The BLM ROW compensation schedule referenced in Option 4.4.2.c.(2) has been criticized by many commentators:

Prior to 1986, the BLM and the USFS used various market approaches (appraisals, negotiations, percentage of land estimated value, and permittee investment percentages) to determine the fair market valuation of lands. Both agencies, however, found these methods inconsistent, unpredictable, and subject to appeal, which slowed the process of permit authorization. Starting in 1986, both the BLM and United States Forest Service (USFS) decided to utilize a system of ROW valuation known as the 'linear fee rent method.' This method requires the two agencies to evaluate the fair market value (as defined in the 1973 Interagency Land Acquisition Conference) based upon a rent schedule taking into account inflation determined by the GDP-deflator.

In 1996, the Office of the Inspector General for the Department of the Interior and the Government Accounting Office (GAO) evaluated the rent schedule and found that the two agencies were not receiving fair market rent. In 1999, both agencies announced that they would begin developing policies to change the manner in which they determined rent for right-of-way access across Federal lands... House Report 107-563, H.R. 762, Reasonable Right-Of-Way Fees Act of 2003. *See also* U.S. Forest Service: Fee System for Rights-of-Way Program Needs Revision (Letter Report, 04/22/96, GAO/RCED-96-84).

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GAO's review found that: (1) Forest Service fees for rights-of-way for oil and gas pipelines, power lines, and communications lines are typically below fair market value; (2) Forest Service fees for rights-of-way are generally less than those charged by nonfederal landowners; (3) options available to the Forest Service for revising its fee determination system include using a new fee schedule based on recent appraisals and local market data, using a new fee schedule with the flexibility to disregard it when its fees are below fair market value, and using site-specific appraisals only; and (4) many rights-of-way users would be willing to pay fair market value for Forest Service rights-of-ways if the Forest Service would improve the administration of its rights-of-way program.

Legislation to effect changes in the valuation of rights-of-way on federal lands included HR 3258: "Reasonable Right-Of-Way Fees Act of 2001," April 11, 2002, and H.R. 762: Reasonable Right-of-Way Fees Act of 2003. The issue was finally addressed in Section 367 of the Energy Policy Act of 2005 (the "Act") directing the Secretary of the Interior to update the per-acre rental fee schedule found in 43 CFR 2806.20. This update is to be completed not later than one year after the date of enactment of the Act, which occurred on August 8, 2005. The Act requires that the BLM revise the per-acre rental fee-zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone.

The Departments state the BLM rate schedule could be adapted to tribal lands without any analysis of how this would be done or without any commentary regarding the controversy surrounding this approach. The BLM recognizes that a rental fee schedule is not a market value approach based on the discussion regarding H.R. 762:

The Department of Justice has also advised us of its concern with the characterization of the fee schedule as "fair market rental value" ... "Fair market value" and "rental value" are terms of art within both the appraisal profession and case law and the bill should not confuse the terms. Any market value determination of value requires an analysis of what is happening in the marketplace as opposed to the establishment of a fee schedule as provided for by H.R. 762.

The current linear ROW rental schedule is based on the following three factors:

1. An average land value for the linear ROW facility, using county boundaries and zones (based on market data in 1986, each county in the lower forty-eight states was placed in one of eight land valuation categories or zones);

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2. An impact adjustment factor of either 80% (generally for roads and oil and gas pipelines) or 70% (generally for electric transmission and telecommunication lines) based on the type of linear ROW facility to be authorized; and
3. An interest rate (6.41%) for converting the land value to a dollar-per-acre annual rental for each land value zone.

In addition, the current linear ROW rental schedule has been adjusted annually since 1986 using the annual percentage change in the Implicit Price Deflator, Gross National Product Index (IPD).

The BLM and FS implementing regulations of 1986 state "that at such time that the cumulative change in the IPD index exceeds 30% the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures." This threshold was exceeded in 1995 and the cumulative change in the IPD index was at 45% for calendar year 2002.

The BLM ROW compensation schedule is under current review under an Advance Notice of Proposed Rulemaking, Update of Linear Right-of-Way Rental Schedule, April 27, 2006. The uncertainty regarding the Linear Right-of-way Rental Schedule is reflected in the following BLM questions:

The BLM is particularly interested in receiving comments on the following questions:

1. What available published information, statistical data, or reports should BLM use to update the current linear right-of-way rental fee Zone Values?
2. What, if any, other terms, e.g., impact adjustment or rate of return, used in the 1987 rental formula should BLM update, clarify, or revise? Should the one-year Treasury Rate (rate of return) used in the current formula, i.e., 6.41 percent, be revised to reflect the current rate? If yes, should the rate be updated annually?
3. What, if any, provisions should BLM include in the proposed regulation to provide relief from large, unexpected increases in individual rental payments?
4. How should the number of rental zones be changed in the new linear right-of-way rental schedule, if at all?
5. Should the new linear right-of-way rental schedule split some states and counties into more than one zone?
6. Should the new linear right-of-way rental schedule apply to BLM-administered lands in Alaska?

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The BLM further solicits public comments on other approaches for updating the 1987 linear right-of-way rental schedule. Other suggestions will be considered inasmuch as they may facilitate updating the current schedule. *See* Fed. Reg. April 27, 2006 (Volume 71, Number 81, Pages 24836-24838).

Option 4.4.2(d)

Option 4.4.2(d) provides an easy out to industry at every turn. They can simply refuse to cooperate in tribal right-of-way negotiations and request arbitration.

Option 4.4.2(e)

No authority within the Draft Report supports including condemnation of tribal lands as an appropriate option. This option can only be characterized as a draconian method for the expropriation of tribal lands. Further, using appropriations acts to accomplish condemnation would be **wholly unconscionable** and should be deleted as an option.

C. Ancillary Issues

1. If the federal government does not wish to value non-economic uses such as conservation, natural lands preservation or other aspects, that does not mean that an equivalent standard should be imposed on tribes. Congress has recognized in a myriad of statutes the value of tribal lands for sacred purposes. See also the Letter and DVD on Navajo Culture submitted by Carol Harvey which was screened at a Public Scoping Meeting. The letter is available for viewing under the April 2006 Public Meetings and Presentations on the Section 1813 website.
2. The Departments must acknowledge the historic undervaluation of ROWs which has the impact of overstating the increase in costs today.
3. Voluntary surveys by tribes were verified by the Departments but those of industry were not. Those of industry not so verified have **no** place in this Congressional study. There is no way to ascertain whether they limited their survey as did the Departments to electric transmission lines and natural gas and oil pipelines. Given the voluminous mergers of companies in the last five years, any data prior to that may simply not be relevant today (e.g., a statement by Amoco, Burlington, Conoco or Texaco would simply not be credible today as an ongoing problem since their circumstances have changed dramatically due to the industry mega-mergers, buyouts and dissolutions.) See page 47 of the Draft Report summarizing certain information that was not independently “assessed.” That information should be deleted from the final Report. On page

48, the 1998 INGAA survey must be accurately described as a draft report that was never issued, but is being raised now.

4. Anecdotal references by industry also have no place in this Study (e.g., their unverified assertion of retaliation by tribes is demeaning to tribes). Industry was certainly not afraid to present its unverified position to its legislators. (Draft Report § 5.3.3).

5. The words 'indicated' or 'could' or 'would' or 'will', where unsubstantiated, must be rephrased. For example, in Section 1.3.2, the first sentence must be rephrased: "Several energy industry parties indicated that the statutory and regulatory requirement that tribes consent to energy ROWs on tribal lands resulted in increased energy ROW costs, including costs from longer negotiation periods." These statements should be qualified continuously throughout the document as mere contentions, and clearly delineated as substantiated by independent investigation or not. Similarly, the first sentence in Section 1.3.4 is problematic. While industry has commented that uncertainty is created and consumer energy costs impacted, they have not provided verifiable documentation to this effect. See also the third sentence of Section 1.3.5 regarding the use of the words 'generally discourage'; and 'could' in § 1.3.6 (paragraph 1), §1.3.7 (paragraphs 1, 6, and 7); and §4.2, paragraph 5. Also, in Section 1.3.8, paragraph 2 is simply unsubstantiated by the record and is at most the biased opinion of one company.

6. The fact that over a five year period only three companies have characterized the negotiation or renegotiation of tribal ROWs as a material issue should be front and center in the Study along with the names of the three companies, and whether they still exist or have been the subject of a merger, buyout or dissolution.

7. Whether market value principles do not reflect the proposed use of the ROW or the value of the ROW to the grantor is completely irrelevant. The numerous tribal transactions reflecting these very principles demonstrate that these principles, if ever applicable, are not legally mandated and have been supplanted in the current energy environment. Draft Report § 4.2, paragraph 2. For example, retail building space rents are conventionally predicated on percentage rents, which typically fluctuate with the fortunes of the business rather than reproduction costs. Thus a degree of uncertainty and price volatility is a necessary and sufficient condition of choice and competition, the defining attributes of a market.

8. The Case Studies are of limited value given the location, purpose, breadth, scope, variety, duration, time negotiated, and vast number of tribal right-of-ways. Merely laying out raw numerical data does not give the average reader information to document whether the compensation referred to is just or appropriate or not. The small sampling on which the Draft

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Report relies is inherently unreliable. A sampling that small cannot yield findings that are valid for tribes or energy companies overall.

9. Also, all references to 'fair market value' or 'market value' or 'fair' must be qualified. Ultimately, these can only be determined in litigation, if at all, as they have a subjective component.

10. The Departments must emphasize their duty as a trustee to tribes, versus their duty to the public interest. Over the last half of a century, only one single company challenged the federal regulations issued by the DOI regarding tribal right-of-ways. The agency appeal, Transwestern Pipeline Co. v. Acting Deputy Ass't Secretary, Interior Board of Indian Appeals, 12 IBIA 49 (1983), was decided in favor of the Navajo Nation. The subsequent suit against the Secretary of the DOI to overturn the decision was settled by an agreement reached between Transwestern and the Navajo Nation. Transwestern is now considered one of the best energy partners of the Navajo Nation. No challenge was ever made by an industry coalition as has frequently been done to challenge the DOI's regulatory authority in the leasing and royalty area. As a member of the American Petroleum Institute's ("API") Subcommittee on Exploration and Production Law for a decade, the process used was to form an industry group under the auspices of the API or the Independent Petroleum Association of America ("IPAA") to determine if there was a consensus to pursue such a claim. One of the first issues addressed was whether a claim had been timely raised. In this instance, no reputable trade group has taken the position asserted by FAIR, a partisan lobbying group primarily funded by El Paso and Enterprise Energy Products.

At the Natural Gas Conference before the Committee on Energy and Natural Resources, United States Senate, January 24, 2005, aside from NMOGA, none of the Senators, speakers or organizations whose testimony is set forth in Attachment 2 hereto raised the issue of excessive tribal right-of-way costs. NMOGA's position was not supported by the entirety of its members. It is my understanding that members have questioned the position taken by it, given the lack of consensus among its members.

Set forth below is the list of participants.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, New Mexico, Chairman

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LARRY E. CRAIG, Idaho	JEFF BINGAMAN, New Mexico
CRAIG THOMAS, Wyoming	DANIEL K. AKAKA, Hawaii
LAMAR ALEXANDER, Tennessee	BYRON L. DORGAN, North Dakota
LISA MURKOWSKI, Alaska	RON WYDEN, Oregon
RICHARD BURR, North Carolina	TIM JOHNSON, South Dakota
MEL MARTINEZ, Florida	MARY L. LANDRIEU, Louisiana
JAMES M. TALENT, Missouri	DIANNE FEINSTEIN, California
CONRAD BURNS, Montana	MARIA CANTWELL, Washington
GEORGE ALLEN, Virginia	JON S. CORZINE, New Jersey
GORDON SMITH, Oregon	KEN SALAZAR, Colorado
JIM BUNNING, Kentucky	

Alex Flint, Staff Director
Judith K. Pensabene, Chief Counsel
Bob Simon, Democratic Staff Director
Sam Fowler, Democratic Chief Counsel
Lisa Epifani, Counsel
Deborah Estes, Democratic Counsel

STATEMENTS

Alberswerth, David, Program Director, The Wilderness Society
Anderson, Bob, Executive Director, Committee of Chief Risk Officers
Angelle, Scott, Secretary, Louisiana Department of Natural Resources
Barlow, Eric, Western Organization of Resource Councils
Barnett, Keith, Vice President, Fundamental Analysis for American Electric Power
Bingaman, Hon. Jeff, U.S. Senator from New Mexico
Buccino, Sharon, Senior Attorney, Public Lands Program, Natural Resources Defense Council
Campbell, Elizabeth, Director, Natural Gas Division, Energy Information Administration
Chapman, Gary, Senior Commercial Manager, Dow Chemical
Connelly, Jeanne, Vice President, Federal Relations, Calpine Corporation
Cooper, Mark, Director of Research, Consumer Federation of America
Cooper, Roger, Executive Vice President, American Gas Association
Cruikshank, Walter, Deputy Director, Minerals Management Service
Davies, Philip, Vice President and General Counsel, EnCana Gas Storage, Inc.
Domenici, Hon. Pete V., U.S. Senator from New Mexico
Downes, Larry, Chairman, Natural Gas Council and the American Gas Association
Fuller, Lee, Vice President of Government Relations, Independent Petroleum Association of America

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Gallagher, Bob, President, New Mexico Oil and Gas Association
Gerard, Associate Administrator for Pipeline Safety, Department of Transportation
Grumet, Jason, Executive Director, National Commission on Energy Policy
Hansen, Christine, Executive Director, Interstate Oil and Gas Compact Commission
Harvey, Steve, Deputy Director, Market Oversight and Assessment, Federal Energy Regulatory Commission
Horvath, Skip, President and CEO, Natural Gas Supply Association
Houseknecht, Dave, Research Geologist, U.S. Geological Survey
Kalisch, Bert, President and CEO, American Public Gas Association
Kane, John, Senior Vice President of Governmental Affairs, Nuclear Energy Institute
Kuuskraa, Vello, President, Advanced Resources International, Inc.
Levin, Robert, Senior Vice President, New York Mercantile Exchange (NYMEX)
Lonnie, Thomas, Assistant Director for Minerals Realty and Resource Protection, Bureau of Land Management, Department of the Interior
Myers, Dr. Mark D., Director, Alaska Division of Oil and Gas, State of Alaska
Nadel, Steve, Executive Director, American Council for Energy Efficiency Economy
Rattie, Keith, Chairman, CEO, and President, Questar Corporation
Richardson, Hon. Bill, Governor, State of New Mexico
Robinson, Mark, Director, Office of Energy Projects, Federal Energy Regulatory Commission
Rosenberg, William, Senior Fellow, Kennedy School of Government, Harvard University
Scott, Captain David, Chief, Office of Operating and Environmental Standards, U.S. Coast Guard
Sharples, Richard J., Executive Director, Center for Liquefied Natural Gas
Shilts, Richard A., Director, Division of Market Oversight, Commodity Futures Trading Commission
Showalter, Marilyn, President, National Association of Regulatory Utility Commissioners
Stuntz, Linda, Member, National Commission of Energy Policy
Sypolt, Gary, President, Dominion Transmission
Theriot, Nolty, Director, Congressional Affairs, National Ocean Industries Association
Van Alderwerelt, Senior Vice President, PPM Energy, Portland, OR
Whitsitt, William, President, Domestic Petroleum Council
Yamagata, Ben, Executive Director, Coal Utilization Research Council (CURC)

Also, on November 2, 2005, the Subcommittee on Energy and Air Quality held a hearing on Natural Gas and Heating Oil for American Homes. The parties listed below testified. It is important to note that on this occasion when the parties testifying had the opportunity to address their energy concerns, not one party raised the issue of a negative impact on gas prices due to tribal right-of-way charges. ***The Federal Energy Regulatory Commission, in fact, stated that transportation costs are a relatively small component of gas prices.***

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The Honorable Joseph T. Kelliher

Chairman
Federal Energy Regulatory Commission
Washington, DC

“The Commission regulates the transportation component of interstate transportation rates for natural gas and crude oil petroleum products. *These costs are relatively small, the transportation component for natural gas can be approximately 6 percent of its delivered cost while it is approximately 1 percent of the delivered cost for petroleum products.*” (Summary, page 1.) (Emphasis added.)

“Regarding natural gas, of the total delivered charge of approximately \$17.00 per thousand cubic feet estimated by EIA to the Mid-Atlantic this winter, the interstate transportation portion from the production area would be about one dollar, or about 6 percent.” (Page 6.)

No reference is made to a negative impact due to natural gas pipeline transportation charges.

The Honorable Reuben Jeffery, III

Chairman
Commodity Futures Trading Commission
Washington, DC

Testimony regarding oversight of energy futures and options markets.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Mark R. Maddox

Principal Deputy Assistant Secretary
Office of Fossil Energy
Department of Energy
Washington, DC

References the supplies of natural gas being thoroughly disrupted as a result of Hurricanes Katrina, Rita and Wilma and diminished supplies of Canadian gas due to the expanding Alberta oil sands industry’s heavy consumption of natural gas.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

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Mr. Donald L. Mason

Commissioner
Public Utilities Commission of Ohio
Columbus, OH
On behalf of: National Association of Regulatory Utility Commissioners

“NARUC believes that any Federal policy on natural gas will be sustainable only if that policy includes “the triad” of conservation and efficiency; increasing supply; and diversification of energy sources.”

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Robert D. Stibolt

Senior Vice President, Strategy, Portfolio & Risk Management
SUEZ Energy North America, Inc.
Houston, TX

Presentation related to liquefied natural gas.

“We can talk for a long time about the reasons for higher prices, but when demand is increasing and supply is steady or dropping, it makes no difference whether you are buying and selling toast or helicopters or natural gas – prices are going to increase.”

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Stephen E. Ewing

Vice Chairman, DTE Energy
Incoming Chairman
American Gas Association
Washington, DC

“As a result of the precarious balance between supply and demand, the Department of Energy’s Energy Information Administration has recently projected that the nation’s households will see their winter natural gas bills rise somewhere between 30% and 67% depending principally on location and weather.”

Recommendations included:

- (i) Increasing Low Income Home Energy Assistance Program (“LIHEAP”) funding.

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- (ii) Increasing natural gas supplies by opening restricted off-shore areas; providing adequate funding and staff for the federal offices involved in permitting; expanding procedures for producers to access lands and production areas; and increasing US LNG capacity.
- (iii) Efficient use of different forms of energy.
- (iv) Fuel diversity for electric generation facilities.
- (v) Consumer education and conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Ms. Mary Ann Manoogian

Director

New Hampshire Office of Energy and Planning

Concord, NH

Recommendations include funding of LIHEAP, funding State Energy Programs and the Low-Income Weatherization Assistance Program, and consumer energy conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Ms. Dorothy Tucker

Consumer

Medford, MA

Recommended funding consumer fuel assistance programs.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Charles D. Davidson

Chairman, President, and CEO

Noble Energy, Inc.

Houston, TX

On behalf of Domestic Petroleum Council, Independent Petroleum Association of America, and the International Association of Drilling Contractors.

Recommendations: Restore production shut-in as a result of Hurricanes Katrina and Rita; improve and speed processing of energy permitting; lease offshore areas; and remove prohibitions on offshore exploration, development and production.

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No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. R. Skip Horvath

President
Natural Gas Supply Association
Washington, DC

Natural Gas Supply Association projects upward pressure on wholesale natural gas prices as a result of relatively flat production, hurricane-related production losses, and an increase in seasonal heating demand, regional gas constraints and the need for energy conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Bob Slaughter

President
National Petrochemical & Refiners Association
Washington, DC

Testimony related to home heating oil market. Recommendation: open up outer continental shelf.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Phillip D. Wright

Senior Vice President, Gas Pipeline
Williams Pipeline Company
Tulsa, OK
On Behalf of: Interstate Natural Gas Association of America

“Pipeline transportation and storage is the smallest part of the cost of natural gas delivered to residential and commercial customers – typically about 10 percent of the total retail cost of natural gas.” (Emphasis added.)

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Brian Castelli

Executive Vice President and COO
Alliance to Save Energy

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Washington, DC

“While the hurricanes have highlighted the problem the fundamental causes are not going away so quickly. Energy prices are soaring because American’s gluttonous energy consumption is outstripping supply.” (Emphasis added.)

No reference is made to a negative impact due to natural gas pipeline transportation charges.

It is also important to note that no specific claims or substantiation for claims of tribal right-of-way charges significantly impacting consumer burner tip prices were raised in any of the following important natural gas proceedings or studies:

A. “Expanding Natural Gas Pipeline Infrastructure to Meet the Growing Demand for Cleaner Power,” Final Report of The Keystone Dialogue, dated March 2002, supported by the parties shown in Attachment 4 hereto, including the American Gas Association; BP Energy; CMS Energy; Columbia Gas Transmission Corporation; Dominion Energy; Dynegy; Enron; Interstate Natural Gas Association of America; U.S. Department of Transportation, Office of Pipeline Safety; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy; and the U.S. Department of Energy, Office of Fossil Energy. This Report discussed the (i) need for improving stakeholder communication (p.23), including tribes; coordinating the pipeline review process, including tribes (p. 27); and recommended a meeting hosted by DOE between all players to discuss infrastructure on tribal lands, including tribes (p. 30). Even though the Report contained a section on Eminent Domain (p. 32), no recommendation was made to seek eminent domain over tribal lands.

B. “Balancing Natural Gas Policy: Fueling the Demands of a Growing Economy,” September 2003, National Petroleum Council Study. The Summary contained no reference to tribes or energy-related right-of-ways on tribal lands.

C. “The Pressures on Natural Gas Prices,” Joint Economic Committee, Chairman Robert F. Bennett, October 6, 2004. Chairman Bennett’s statement contained no reference to tribes.

D. “New Mexico Pipeline Study,” October 7, 2004. While this Study referenced the need for communication with tribes, no recommendation of eminent domain over tribal lands was raised.

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E. “Changes in U.S. Natural Gas Transportation Infrastructure in 2004,” Energy Information Administration, Department of Energy, examining in detail the level of growth that occurred within the U.S. natural gas transportation network during 2004. In addition, it includes a discussion and an analysis of recent gas pipeline development activities and an examination of additional projects proposed for completion over the next several years.

F. Senate Energy and Natural Resources Committee Natural Gas Conference, Independent Petroleum Association of America (IPAA) on behalf of IPAA, and its Cooperating Associations (specifically including the Colorado Oil and Gas Association, the New Mexico Oil and Gas Association, and the Ohio Oil and Gas Association), and the US Oil & Gas Association, 2005.

G. Testimony Of Lee Fuller, On Behalf Of The Independent Petroleum Association of America Before: Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, U.S. House of Representatives, February 16, 2005

For:

The Independent Petroleum Association of America, The International Association of Drilling Contractors, The International Association of Geophysical Contractors, The National Stripper Well Association, The Petroleum Equipment Suppliers Association, The Association of Energy Service Companies and California Independent Petroleum Association, Colorado Oil & Gas Association, East Texas Producers & Royalty Owners Association, Eastern Kansas Oil & Gas Association, Florida Independent Petroleum Association, Illinois Oil & Gas Association, Independent Oil & Gas Association of New York, Independent Oil & Gas Association of Pennsylvania, Independent Oil & Gas Association of West Virginia, Independent Oil Producers Association, Tri-State Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, Indiana Oil & Gas Association, Kansas Independent Oil & Gas Association, Kentucky Oil & Gas Association, Louisiana Independent Oil & Gas Association, Michigan Oil & Gas Association, Mississippi Independent Producers & Royalty Association, Montana Oil & Gas Association, National Association of Royalty Owners, Nebraska Independent Oil & Gas Association, New Mexico Oil & Gas Association, New York State Oil Producers Association, Northern Alliance of Energy Producers, Ohio Oil & Gas Association, Oklahoma Independent Petroleum Association, Panhandle Producers & Royalty Owners Association, Pennsylvania Oil & Gas Association, Permian Basin Petroleum Association,

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Petroleum Association of Wyoming, Tennessee Oil & Gas Association, Texas Alliance of Energy Producers, Texas Independent Producers and Royalty Owners, Virginia Oil & Gas Association, and Wyoming Independent Producers Association.

H. Natural Gas Forum – What Utilities and Consumer Groups Are Doing to Prepare Customers for the Winter Ahead, September 8, 2005, Arizona Corporation Commission.

I. “Natural Gas Market Conditions and Unisource Natural Gas Bills, February 24, 2004,” Arizona Corporation Commission.

J. “How Congress Should Help the Nation’s Natural Gas Supply Needs,” Republican Policy Committee, November 16, 2004.

In visiting the websites of the following leading natural gas trade associations, no references were found on the issue of excessive tribal charges for right-of-ways. This is not to be unexpected as members of certain of these groups have provided written testimony that they have been able to readily obtain rights-of-way for Exploration and Production operations on tribal lands.

- A. American Gas Association
- B. American Petroleum Institute
- C. Independent Petroleum Association of America
- D. Natural Gas Supply Association
- E. Domestic Petroleum Council
- F. International Association of Drilling Contractors
- G. National Petrochemical & Refiners Association

While the Interstate Natural Gas Association of America has a 2005 study regarding infrastructure costs, exercising eminent domain over tribal lands was not a recommendation. Also, in its July 2004 study, “An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas Market: Adverse Consequences of Delays in the Construction of Natural Gas Infrastructure” not one comment is made addressing tribes.

In visiting the websites of the following leading natural gas federal and state agencies, not one reference was found to the issue of excessive tribal charges for right-of-ways other than that raised by the current El Paso-Navajo Nation right-of-way matter:

- A. Department of Energy, Energy Information Administration

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- B. Department of Interior
- C. Federal Energy Regulatory Commission
- D. Commodities Futures Trading Commission
- E. National Association of Regulatory Utility Commissioners.

In reviewing articles of the following leading natural gas magazines, not one reference was found to the issue of excessive tribal charges for right-of-ways other than that recently raised in the Oil & Gas Journal by the current El Paso-Navajo Nation right-of-way matter:

- A. Oil & Gas Journal. *See* “US gas carriers see 2004 net jump; construction plans rebound,” Sept. 12, 2005” “US construction plans slide; pipeline companies experience flat 2003, continue mergers,” August 23, 2004; “Construction plans surge on prospects for gas use,” February 2, 2004.
- B. “Pipeline Economics,” 2006, Annual U.S. Pipeline Study based on Oil & Gas Journal’s annual Pipeline Economics Report.
- C. R.W. Beck, Inc., Oil & Gas Bulletin, Oil and Gas Services.

11. The discussion of the EEI analysis of ROW compensation (pages 44-46) must be predicated with a statement that “fair market value of the land” as EEI’s benchmark assumes that this is the appropriate measure of compensation for tribal lands. This assumption is not shared by tribes. **It is imperative to determine if the original compensation which is being multiplied by EEI was “just compensation” in the first place. If it was not, then the multiplier effect would overstate the increase in costs and provide damaging and erroneous information to Congress and the public.**

Thank you for this opportunity to submit comments.

Very truly yours,

Carol Harvey