

September 1, 2006

Attn: Section 1813 ROW Study  
Office of Indian Energy and Economic Development  
1849 C St., NW, Mail Stop 2749  
Washington, DC 20240 (sent via email to IEED@bia.edu)

Dear Sir or Madam:

On August 7, 2006, the Department of Energy and the Department of the Interior submitted a Draft Report in response to Section 1813 of the Energy Policy Act of 2005 (the "Draft Report"). Idaho Power Company ("Idaho Power" or the "Company") has reviewed the Draft Report and offers the following written comments for consideration by the Departments.

As mentioned in our previous comments in January and May of 2006, Idaho Power is an integrated electric utility company based in Boise, Idaho that serves approximately 450,000 customers in a 24,000 square mile service territory in southern Idaho and eastern Oregon. The tribal right-of-way issue is of critical importance to Idaho Power, as the Company has multiple high-voltage transmission lines crossing the Fort Hall Indian Reservation in Southeastern Idaho. The operation of these lines is integral to meeting the electrical needs of the Company's entire customer base. These lines are also an integral component of the interconnected Western electricity grid.

Idaho Power has a long history of working with Native American Tribes. We recognize the sovereignty of the Native American Nations and hold a strong commitment toward maintaining a positive working relationship with all Tribes with which the Company does business.

Idaho Power appreciates the Departments' extensive efforts in organizing and facilitating the Section 1813 process, and preparing the Draft Report. There have been many different parties with many different viewpoints involved in Section 1813 process, and the Departments have managed the process professionally.

With regard to the specific provisions of the Draft Report, Idaho Power supports the Departments' listing of options for future action by the parties and Congress regarding tribal rights-of-way. While Idaho Power clearly disagrees with some of the options listed, such as maintaining the status quo for tribal right-of-way renewals, the listing of options provides the parties and Congress with specific alternatives to consider in addressing the tribal right-of-way issue. Idaho Power strongly believes that providing the list of options in the Draft Report is a key and indispensable component in providing a complete and effective report to Congress as contemplated in Section 1813.

Idaho Power does have one fundamental concern regarding the Draft Report. We believe the body of the Draft Report fails to highlight the magnitude of the increases in tribal right-of-way fees that are the driving force behind the entire Section 1813 process. The Draft Report makes reference to above-market tribal right-of-way fees, but does not sufficiently describe the magnitude and trend of the fee increases. Idaho Power offers the following information in support of its comments:

- Tribal right-of-way renewal fees have skyrocketed in recent years. Idaho Power recently found it necessary to agree to pay extensive multiples of fair market value for a right of way across tribal and allotted lands. In addition, the permit period was less than half that of the previous permit terms. To put the cost of the permit renewal in perspective, the contract amount was equivalent to approximately twenty-eight percent of Idaho Power's total capitalization of transmission line land and land rights made outside of reservation lands.
- Under current regulations, there are no limits to what Tribes can charge to renew transmission line rights-of-way. The only practical limit on tribal right-of-way fee demands is the cost to the utility of relocating its facilities, which in many cases would be prohibitively expensive, not to mention wasteful and disruptive to the provision of electric service.
- In addition to the skyrocketing fees, tribal right-of-way renewals often take years to negotiate. Utilities are required by regulation to minimize their costs of service, which results in long and drawn out efforts to renew tribal rights-of-way. This represents a tremendous and wasteful burden on the utility and the Tribes, requiring time and effort that would be much better spent in service to their customers or tribal members.
- The concern about trespass actions by Tribes is very real. Tribal land use rules typically outline very harsh penalties for trespass, including eviction. Despite tribal claims in the Section 1813 hearings that utilities would not be forced to remove facilities from tribal lands, trespass and possible eviction are often raised as leverage in the right-of-way negotiation process.
- The Draft Report assumes that a completed negotiation is a successful negotiation. This may be true for negotiations where both parties have reasonable options and are attempting to reach a mutually agreeable solution. However, those principles do not apply to negotiations under the existing tribal right-of-way rules. The "negotiations" typically involve renewal payments that one of the parties considers excessive, and they feel they are operating under the express or implied application of trespass sanctions and even eviction if agreement is not reached. There are no guidelines or restrictions that would temper such demands. The result is imposition of a dramatically increased renewal fee for a significantly shorter time period. This process should not be viewed as a successful negotiation.

The reality is that the current tribal right-of-way process is *broken*, and must be fixed. Large numbers of tribal right-of-way renewals are coming due throughout the west and expectations are for even higher tribal fee demands. Action must be taken now to correct this problem and bring sensible limits to a process that has gotten entirely out of hand.

As stated in the Draft Report, "Section 1813 directs the Departments to develop recommendations for appropriate standards and procedures for determining fair and appropriate compensation for energy ROWs on tribal lands." This direction is significant because currently there *are no* standards or procedures determining tribal right-of-way compensation. Furthermore,

the existing process allowing for unrestricted tribal requirements for right-of-way compensation is far from “fair and appropriate”. In fact it is unfair for one party to extract a maximum possible payment without regard for fair market value, for a public service facility that provides electric power for the common benefit of the entire West. Not only is this unfair to the utility and its customers who bear the exorbitant right-of-way expense, it is unfair to the thousands of landowners who have granted permanent easements for the same facilities for fair market value.

Fortunately, there is a very clear and effective solution for this severe problem. The Uniform Appraisal Standards for Federal Land Acquisitions (Federal Land Acquisition Standards), and the Uniform Standards of Professional Appraisal Practice (USPAP) represent long-standing, widely accepted, objectively based standards for valuing federal and other lands. The Federal Land Acquisition Standards and USPAP would provide an eminently “fair and appropriate” standard for valuing tribal rights-of-way. To the extent that some tribal lands may differ from others, the Federal Land Acquisition Standards and USPAP already have extensive internal valuation guidelines in place which are specifically designed to properly value differing characteristics of real property. And to the extent that the Tribes’ claim that there are unique factors that bear on the valuation of tribal lands such as set forth in section 1.3.3 of the Draft Report, Idaho Power believes that flexibility can be added to the valuation standards to accommodate these considerations, such as allowing tribal right-of-way fees up to 3 times or perhaps 5 times the Federal Land Acquisition Standards and USPAP valuation.

Idaho Power does not believe that establishing objective valuation criteria for tribal right-of-way renewals as described above would violate the Tribes’ right of consent. Consent was provided for the original installation of the utility facilities and the Tribes have clearly stated in the Section 1813 hearings that they have no intent of causing the removal of the utility facilities from reservation lands.

In closing, it is important to emphasize that Idaho Power’s objections to the draft report do not reduce our commitment to work with the Tribes in any way we can to resolve this critical issue. We remain fully committed to maintaining and enhancing our relationship with our Tribal neighbors and customers.

Sincerely,

Pat Hasenoehrl  
General Manager of Corporate Services  
Idaho Power Company