February 5, 2007

Office of Indian Energy and Economic Development
Attention: Section 1813 Row Study
Room 20-South Interior Building
1951 Constitution Avenue, NW
Washington, D.C 20245

Subject: Section 1813 Comments

To Whom It May Concern:

Public Service Company of New Mexico (PNM) has reviewed the December 21, 2006, report issued by the Departments of Energy and Interior titled: "Draft Report to Congress, Energy Policy Act of 2005, Section 1813, Indian Land Rights of Way Study." PNM appreciates the effort put into the report by federal officials, however PNM is very concerned about the findings and recommendations of the report related to right of way costs on Native American lands.

PNM is the largest provider of electric and natural gas services in New Mexico. PNM owns and operates electric and natural gas lines facilities on lands owned by 17 different tribes. PNM is facing over 90 right of way renewals on these tribal lands within the next 15 years. Therefore, PNM has a very keen interest in the final outcome of this process, particularly as it relates to right of way renewals for existing gas and electric facilities on tribal lands.

PNM is concerned that the final report basically concludes that there is "no problem" regarding acquisition and renewal of tribal rights of way. PNM strongly disagrees with this position. PNM believes that serious problems exist, particularly on right of way renewal matters. Right of way renewals are of utmost concern to PNM and others in the industry due to recent trends which have seen renewal costs skyrocket, negotiating times prolonged, and length of right of way terms significantly reduced.

PNM disagrees with the report's general conclusion that the current right of way approval process for renewals is working well. As I stated in an earlier letter to you, when PNM and other utility companies pay huge multiples of appraised fee value for shorter and shorter terms, in the face of questionable tribal trespass statutes, the system needs revamping. Furthermore, the alternative is usually a very costly "build around" option or discontinuance of use of the electric and /or gas line. And when PNM's financial staff concludes that PNM will need to seek rate increases in the five to six percent range if current right of way cost trends hold, this is problematic. Utility companies are faced with keeping consumer rates fair and reasonable. In business terms, this means creating efficiencies that equate to best practices to hold costs down. Increasing the cost of tribal right of way renewals exacerbates this problem.

PNM appreciates the fact that Section 8.2 of the final report offers some hope for industry. This section suggests that in right of way renewal matters which may have a significant regional or national impact, Congress may step in to resolve issues on a case by case basis. This is an important recommendation, albeit a cumbersome and difficult remedy to enact when certain tribes and utility companies cannot agree on important and critical right of way renewals.

Along this line of thinking, PNM requests that staff include a recommendation which mandates that Congress will reopen and re-study the tribal right of way cost issue again in a reasonable time from now. PNM believes that in the next few years, escalating right of costs will become an even larger issue for industry. Industry will, no doubt, accumulate significant documentary data reflecting such rising right of way renewal costs.

As PNM has publicly stated in regional and national public hearings, PNM again requests that the federal report contain the following compromise recommendation regarding right of way on tribal lands. This compromise recommends status quo for new right of way projects (i.e. let tribes and industry negotiate best deal possible), however for renewals, more certainty must be brought into the process. Specifics of this compromise solution are stated as follows:

NEW PROJECTS

For all new right of way projects, maintain the status quo. In other words, the tribes and utility companies shall continue to negotiate agreements on their own with no outside interference or arbiter. Full tribal consent must be obtained. If a tribe and utility are unable to reach agreement, then the company has the possible option to build around the tribe. If the build around option is not feasible, then the company must find a way to live with the situation in view of the company's obligation to serve its customers.

RIGHT OF WAY RENEWALS

For all right of way renewals where a company has utility lines in the air or in the ground, the federal approval process should be modified so that if both parties are unable to reach agreement on right of way renewal terms, then a neutral appraisal shall be obtained for the right of way corridor and the company shall pay a multiple of the appraised value for a term of 25 or more years.

PNM believes that the above compromise recognizes the unique sovereign status of the tribes, and affords companies some degree of certainty for right of way renewals. Such element of certainty is virtually nonexistent today for right of way renewals. Each tribe is uniquely different in the manner it values, negotiates for and approves right of way renewals. Therefore a company never really knows what it must budget for or pay for upcoming right of way renewals until the final tribal council vote is taken on the right of way renewal. This system needs to be changed.

In closing, I will say that although PNM is disappointed about the general conclusion of the study report, I would hope that the window will remain open for Congress to revisit this issue in the near term. It is important to industry, and it is important to the ratepayers and energy users in this country that more certainty be brought into the right of way renewal process.

Thank you very much for your time and consideration.

Sincerely,

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