

**Presentation**  
**by**  
**FAIR Access to Energy Coalition**  
**Public Scoping Hearing on Sec. 1813 Study**  
**Departments of Energy and the Department of the Interior**  
**Denver, Colorado**  
**March 7, 2006**

Members of the Department of Energy and the Department of the Interior, my name is Nancy Ives and I am the Executive Director of the FAIR Access to Energy Coalition. Thank you for the opportunity to speak to you today on behalf of consumers, homeowners, businesses, trade associations, energy companies and taxpayer groups.

Every day millions of Americans turn on lights, cook meals, and adjust thermostats, secure in the knowledge that the power they need will be readily available and reasonably priced. Unfortunately, that confidence is being undermined today by record-high energy bills.

The Federal Reserve recently reported that American families are losing ground—their buying power is actually less than it was five years ago. Consumers who are facing record prices at the gasoline pump, who have suffered through utility black-outs in the recent past, and who are fervently hoping that the National Energy policy will address these problems, should not be burdened with additional costs due to the lack of a fair process to negotiate rights-of-way on Indian lands

FAIR is a broad-based, non-partisan group that is seeking a solution to ensure the movement of energy across tribal lands on reasonable terms. Energy rights-of-way crossing tribal lands are part of our national energy transportation infrastructure. FAIR believes that ensuring the reliable and cost-effective delivery of energy to millions of people benefits communities, consumers, workers, national security and ultimately, the nation's economy as a whole.

FAIR recognizes that finding a solution will involve reconciling two important, long-standing national policies: on the one hand, the policy of promoting tribal self-governance and self-determination; on the other hand, the policy of ensuring America's energy security and protecting the American consumer while respecting tribal sovereignty.

FAIR respects tribal sovereignty and fully supports the tribes' ability to obtain fair market value for their energy infrastructure rights-of-way. You don't need to look far for these standards. You have employed fair market value standards in countless settings; for example, federal land managers today are using uniform appraisal standards available to offices such as the Bureau of Land Management and the U.S. Forest Service.

What characteristics should these standards have? Objectivity, Uniformity, Reliability, Transparency, Accountability, and Consistency. Additionally, FAIR does not oppose a

policy that would require payments over and above fair market value to compensate for the unique sovereignty and governmental interests that are implicated in this issue. But in conducting this study, the Departments should strike an appropriate and reasoned balance between Native American sovereignty and the energy security of consumers. Such a process is fundamental to protecting our national energy resources and ensuring the reliable and cost-effective delivery of energy to all Americans.

Let me be clear. FAIR strongly supports self-determination of Native American tribes. We respect tribal sovereignty and we believe that tribal self-governance deserves great weight in this analysis.

I've recently traveled around the country, talking to energy infrastructure stakeholders and have discovered many who are fearful of retaliation by tribal interests. As a result, you may not see many in this room today. For every stakeholder who is here, I submit that there are many more who are not in attendance because they are too afraid to speak. This is partly due to the fact that the benefits of good public policy are often diffused and the voice of consumers is much harder to organize than the voice of tribes. As you proceed with this study, I encourage you to develop a process to encourage those voices to be heard.

FAIR's goal is to help develop a fair and sound public policy solution that results in equitable valuation for energy rights-of-way on tribal land so that reliable energy services can be delivered to consumers at affordable rates. Let me briefly describe the current system and why it needs to be fixed:

Tribal negotiations today are governed by the 1948 General Right of Way Act. As interpreted by the Department of the Interior, the Act provides qualifying sovereign Indian nations the right of consent before any new right-of-way is granted or before any renewal may be approved.

Since the passage of the 1948 Act, thousands of miles of natural gas pipelines, electricity transmission lines, and oil pipelines have been constructed on Indian lands with the consent of the tribes. As our nation's energy needs grow, new rights-of-way must be obtained, and existing rights-of-way must be renewed as they expire. But existing law does not provide for an equitable process to determine the appropriate amount of compensation that should be paid for such rights-of-way.

Currently, negotiations with tribes have resulted in some tribes demanding inflated compensation, unreasonable terms, transfer of infrastructure ownership to them and compensation up to several hundred times fair market value. Ultimately, the American consumer bears the financial burden of these oppressive demands.

Not only will Americans pay more to their utility companies for the electricity and natural gas they use in their own homes, they will face increased costs at the grocery store, at the bus stop, even at the movie theater. Small businesses operating on razor-thin profit margins can't absorb these skyrocketing energy costs, as evidenced in

Southern California two years ago. If left unchecked, ALL Americans, including tribal members, will ultimately pay more as a result of these unbalanced right-of-way contracts.

And FAIR doesn't stand alone.

On March 2, Colorado's consumer advocate, Jim Greenwood with the Office of Consumer Counsel wrote the Department of Energy and the Department of the Interior on behalf of his organization in strong support of the Congressionally mandated study and stressed the importance of establishing fair and balanced standards for all parties concerned. Let me read the following excerpt from his letter to the Departments:

"The OCC recognizes that providing energy to consumers at just and reasonable rates is paramount to the economic well-being of the State of Colorado in specific and the nation in general...(our) philosophy would be to compensate the various tribes for the use of the ROW under fair and reasonable terms while at the same time providing reliable energy services to consumers at affordable rates."

"...it is the opinion of the OCC that the study results that provide for the establishment of a standard covering ROW terms that are fair for Native American tribes and consumers alike is of utmost importance...and is a goal that would benefit all parties."

Additionally, there are many more letters that I won't take the time to read today that have been sent to the Departments advocating for fair and balanced standards on behalf of consumers, homeowners and business groups.

All in all, this is a rare moment in history and presents a unique opportunity for public policy reform. Homeowners, businesses, the energy industry, tribes and the general public all have an opportunity to participate in this study that will provide Congress with an unprecedented historical perspective on an issue that has major importance to our country.

FAIR commends the Departments of Energy and the Interior for their hard work to advance the principles of this study as outlined in the Energy Act of 2005. We appreciate the opportunity to speak before you today and will continue to work with our members toward our shared goal of fair and equitable standards concerning rights-of-way on tribal lands. The consumers and ratepayers, on whose behalf FAIR is acting, deserve no less.

Thank you very much. I would now like to introduce Tom Sansonetti, a legal adviser to the FAIR Access to Energy Coalition, who has vast experience in rights-of-way issues having served, among other capacities, as the Solicitor of the Department of the Interior and most recently as the Assistant Attorney General of the United States for Environment and Natural Resources.

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