



February 15, 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:

Thank you for the opportunity to comment on the implementation of section 1813 of the Energy Policy Act of 2005. This section requires the Department of the Interior (DOI) and the Department of Energy (DOE) to provide Congress with a study regarding energy rights-of-way on Tribal lands.

Idaho Power Company (IPC or 'Company') 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 Company has a vested interest in this issue, as we have critical high-voltage transmission infrastructure crossing the Fort Hall Indian Reservation in Southeastern Idaho. The operation of these lines is integral to meeting 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 to maintain a working relationship with Tribes with an interest in our business practices, such as the Shoshone-Bannock Tribes.

Pre-scoping phone calls

These calls are proposed as a mechanism to initiate the study and discuss the various aspects of the report. The participants will comprise the *pre-scoping work group* "that will provide detail and direction for subsequent stages of the work." IPC recommends that the industry stakeholder calls be conducted jointly among the oil, gas and electric utility conference calls. IPC understands that the Edison Electric Industry (EEI) has agreed to facilitate the calls on behalf of the electric utility industry to assure consistent handling of the issues related to electric utilities.

IPC also recommends that pre-scoping calls go to all interested electric utilities that have or contemplate transmission lines across Tribal lands. At a minimum this list should include Avista, Bonneville Power Administration, Public Service of New Mexico, PacifiCorp, Southern Company, Florida Power and Light, American Electric Power, Arizona Public Service, Portland General Electric, Southern California Edison, American Transmission

Company, Northwestern Energy, Sierra Pacific, Pacific Gas and Electric and Idaho Power Company.

The calls should also include the relevant representatives from regional organizations such as the Western Electric Coordinating Council (WECC), State Public Utility Commissions and the national regulator of the utility industry, the Federal Energy Regulatory Commission (FERC).

Two day nation-wide scoping meeting

This meeting includes presentations from affected groups on each of the subjects to be covered by the study (February 2006) and formation of the work groups. IPC supports the decision to hold this meeting, which will help address stakeholder concerns and perspectives for all to observe. It will also lay a foundation for the subsequent work groups. IPC requests that EEI coordinate presentations by all affected electric utilities. We recommend that the scoping session be divided into segments with presentations geared to each of the four proposed topics.

We suggest that experts in the appraisal field be invited to present accepted methodologies for determining a consistent approach to valuing rights-of-way across Tribal lands. National organizations, such as the Appraisal Institute, could present the nationally accepted standard of the Uniform Standards of Professional Appraisal Practice (USPAP).

Workgroup workshops between February and May 2006

IPC supports the formation of work groups and suggests that the DOE and DOI include representatives from organizations such as the WECC and FERC, as well as nationally recognized attorneys and real estate appraisers.

The Energy Policy Act requires that the study address the following four subjects:

1. An analysis of historical rates of compensation;

To achieve this objective, the study includes a “Proposal to Contract with a National Lab regarding the analysis of historical rates of compensation.”

The Lab is to “prepare an analysis of historical rates of compensation for pipelines crossing Federal lands.” Hopefully, the omission of electrical transmission lines was inadvertent. Information should include both pipeline and electrical transmission rates. Historical information should also include current and recent information regarding rates of compensation over Tribal lands.

The study contemplates a case-study approach, rather than a more comprehensive attempt to collect a broad spectrum of information throughout the industry. IPC recommends a broader approach to the collection of information to ensure a representative sample of what the various Tribes and utilities are facing. Perhaps the National Lab or another independent research or accounting firm could collect a broader, statistically valid sample of data that represent a true picture of compensation.

It appears that the topic of the data collection regarding rates of compensation will not be a work group. This may be an oversight, but IPC recommends that there be a work group to

work with DOE, DOI and the Lab on the data collection framework, process, protection of data confidentiality, and to advise on other issues that arise regarding the collection of data.

IPC agrees that the primary issue is with Tribal lands, as no power of eminent domain exists on these properties. Without an eminent domain alternative, there are few if any limits to the amount of compensation discussed in negotiations between Tribes and utilities.

To be meaningful, the rates of compensation over Tribal lands should be contrasted with those over non-Tribal lands outside of the reservation, including Federal, state and private lands. Otherwise, there is no perspective given to what utilities, ratepayers and Tribes are negotiating.

One of the issues that may complicate the collection data on compensation, particularly in the case of recent settlements, is the issue of confidentiality. Some recent settlements have confidentiality provisions that will make it difficult to identify these rates. Even in settlements without confidentiality conditions, Tribes and utilities may be reluctant to share what they consider to be proprietary information. Perhaps the Tribes and utility affiliation could be kept confidential, being identified only by an alphanumeric label. Historical rates could be expressed in terms of multiples of market value. Since the Code of Federal Regulations requires appraisals, unless waived by the utility, tribe and the BIA, this information should be readily available, at least for recent settlements.

Another contrast that should be considered is the limited scope of recent agreements on Tribal lands. The latest agreements with Tribes allow for little more than routine maintenance of lines, triggering new negotiations if any upgrades or additions on these lines are anticipated. On lands outside of Tribal reservations, upgrades and additional lines are often allowed under the existing agreements.

Access to the lines is also frequently an issue on Tribal lands. Private easements typically include the right of ingress and egress to transmission lines for routine maintenance, emergency repairs, or line upgrades. On State lands in Idaho for example, similar ingress and egress rights are specified. With Federal permits, the granting of access is typically a standard stipulation. On Tribal lands access is frequently not addressed in the negotiated agreements. Conducting maintenance on Tribal lands often requires special permission from the Tribes. Otherwise access is limited to the rights-of-way corridor itself.

2. Recommendations for appropriate standards to determine fair and appropriate compensation;

On private lands, electric utilities routinely secure transmission line easements in perpetuity or purchase the property in fee, according to the estimated fair market value or some ratio thereof. In the State of Idaho, easements are also the typical method of securing transmission line rights-of-way, thereby securing a permanent right to occupy the property. On Federal lands administered by the Forest Service (USFS) and the Bureau of Land Management (BLM), rights-of-way are typically in the form of permits, with specified time frames that generally range from 20 to 50 years. The cost of these permits is determined from a defined schedule, depending upon the county in which the line is located. For private, state and Federal lands, the costs of rights-of-way are determined through some estimate of market value.

In dramatic contrast, the costs of rights-of-way over Tribal lands are not determined by a consistent established process, instead being left only to bargaining negotiations. In addition, the terms of the negotiated rights-of-way are shrinking toward a twenty or even ten-year period, further complicating the security of rights-of-way on Tribal lands.

In the case of renewing existing rights-of-way on Tribal lands, these negotiations often do not reflect 'arms length' transactions. Without an established, equitable compensation standard, the only leverage a Company has in negotiations is the option to build new facilities off the reservation. In fact, when contemplating new facilities, the Company avoids siting on Reservations for just this reason.

IPC stresses the importance of bringing a greater level of certainty to the rights-of-way for transmission lines across Tribal lands. These lines are critical for continued delivery of electrical energy through the national electrical grid. The current lack of a consistent process brings a level of uncertainty that is untenable from a national security, business and ratepayer perspective.

3. An assessment of Tribal self-determination and sovereignty interests implicated by application for rights-of-way on Tribal land;

IPC acknowledges the right of self-determination and the sovereignty of Native American Tribes. IPC is hopeful that a compromise solution can be reached that will bring some level of certainty to the process without eroding the sovereignty and self-determination rights of the Tribes.

4. An analysis of relevant national energy transportation policies;

In addressing these policies, IPC recommends including regional energy organizations such as the Western Electric Coordinating Council (WECC), State Utility Commissions and the Federal Energy Regulatory Commission (FERC) in the pre-scoping calls, the national workshop and the subsequent work group meetings.

In conclusion, Idaho Power would like to applaud the DOE and the DOI for their ambitious effort to complete this study by the statutory deadline. It is a challenging schedule and IPC pledges to work with the DOE, DOI and others to facilitate meeting the established goals. IPC supports the collaborative approach to this issue and is willing to participate at all the levels mentioned in the process, including this comment letter, the pre-scoping phone calls, the work groups and the nationwide scoping meeting, either on its own or through its representatives from the Edison Electric Institute or other industry groups. We believe that the study will provide a positive basis for continuing a discussion with the Tribes and the Federal government on the issues associated with compensation for rights of way across Tribal lands, including a resolution of identified problems.

Sincerely,

Pat Hasenoehrl
General Manager of Corporate Services
Idaho Power Company