

January 20, 2006

Office of Indian Energy and Economic Development  
MS 2749, ATTN: Section 1813 Study  
1849 C Street NW  
Washington, DC 20240

Dear Comment Recipient:

On December 29, 2005 notice was published at 70 Federal Register 77178 relating to section 1813 of the Energy Policy Act of 2005, Pub. L. 109-58. Section 1813 mandates a study and report on issues related to granting, expansion and renewal of energy rights of way on and across Indian tribal lands. This letter serves as the Lac Courte Oreilles Band of Lake Superior Ojibwe's submission response to the notice.

The study required by Section 1813 takes place in a context that is not mentioned in the Federal Register notice. Energy companies proposed an amendment to the Senate Energy Committee during its consideration of the Energy Act of 2005. The amendment would have authorized the Secretary of the Interior to condemn tribal lands for energy rights of way without tribal consent.

The Lac Courte Oreilles Band of Lake Superior Ojibwe opposes any change in policy or law that undermines tribal consent for any alienation of tribal land, including rights-of-way across tribal lands.

Current law requires that Tribes be paid no less than fair market value for rights-of-way across their lands. The Indian Reorganization Act of 1934 "prevents the sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets without the consent of the tribe". Subsequently in 1948, Congress reaffirmed the tribal consent requirement for rights of way on tribal lands. Thus, standards and procedures are in place

for determining compensation with tribal consent. The Department of the Interior cannot insinuate itself into private negotiations and override tribal decisions on rights of way for energy purposes.

Tribal consent requirement is a fundamental aspect of tribal sovereignty. Indian tribes hold no power that is more vital to their continued existence than the power to control their remaining lands that bring these concerns to the forefront of Congressional consideration.

The joint letter dated December 15, 2005; from James E. Cason, Associate Deputy Secretary at DOI and Kevin M. Kolevar, Director of the Office of Electricity Delivery and Energy Reliability at the DOE requested comments from tribes on departmental process and procedure as outlined in the study. The Tribal Governing Board is doubtful that a full and fair study of the issues presented can be accomplished in the time allotted.

Conducting only three regional tribal consultation meeting in the months of May through mid-July is insufficient to be able to get an accurate feedback from tribal governments on the draft report.

In addition, since each Tribe and each reservation in the United States is unique in its history, culture, and politics, a case approach probably will not give a representative sample or produce meaningful results that could be used to determine national policy.

In short, tribes have reason to question whether a National Laboratory will consider tribal concerns fairly and we need to know more specific information.

As stated, because of the tremendous policy and legal implications that might ensue from this study, we believe that time allotted is far too short to produce a quality product that would be useful to Congress and not be potentially detrimental to tribal interests. Federal law and policy on tribal consent for rights-of-way over tribal lands is well established.

Sincerely,

Louis Taylor  
Tribal Chairman  
Lac Courte Oreilles Band of Lake Superior