

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:
Transcript of Presentations and Comments made at the
April 18, 2006 Public Meeting**

BOB MIDDLETON: ...the Western Governors' Association, and past chairman of the Natural Resources Committee for the National Governors' Association, so he understands natural resource issues and energy issues very well. With that, I'd like you to welcome Governor Bill Owens to say a few words.

GOV. BILL OWENS: Let me just welcome all of you to Colorado, tell you how pleased we are to be the location for this very important conference, this very important subject. Because most of you are from out of state, I want to tell you that we're proud of what we have in Colorado. We're proud of the fact that of all 50 states, Colorado is the second best educated in terms of the number of our folks who have college degrees. This is the highest percentage of technology graduates per thousand of any state in the country. If you look at our tort system, you look at our tax system, you look at many of the advantages. It's one of the reasons why Colorado has done so well.

We also believe in partnerships in Colorado. We believe in partnerships with our sovereign tribes which we're proud to share a geographical area with. We've worked well over the years with our tribes here in Colorado, and we try to be partners on issues of public policy. That's why I think what you're going to be discussing over the next couple of days is such an important subject. With \$70 oil, I think we all as Americans, as well as those in our tribes, understand clearly some of the challenges that we're facing as a country as well as on our tribal lands. It's the reason why the Energy Policy Act of 2005 was passed. It's the reason why there are so many provisions in it which hopefully

encourage more domestic production, as well as conservation. And it also has that famous Section 1813, which is why we're here today.

Ladies and gentlemen, this is a very important subject. It's very, very important because it deals with tribal sovereignty. It also deals with issues as well that are important to those of us who aren't Indians. And I guess what I'd encourage you to do is work as partners on this issue. I understand, I think, both sides of it. I understand how as the governor of a state, I don't like it when the federal government tries to license and move pipelines, transmission lines, tries to exert its sovereignty over us as a state. I deal with that challenge almost every day in terms of federal/state relations. As leaders of sovereign tribes, I understand also the tension sometimes that comes as we jointly occupy adjacent geographical spaces, and there are some challenges. Here's what I've learned in 25 years in elective office, and that is that Americans and Indians are very fair peoples. That generally speaking, we work very well together. We've done that in Colorado, and we're doing that in so many ways nationally. But we also, when either side gets too much power, we typically balance things out. And I guess what I would hope for today, based on the 1813 discussion, is balance. Hopefully, it shouldn't take years to site, for example, a pipeline. I understand—I used to be chairman of the Aurora Planning Commission. That's the third largest city in Colorado, and I have a lot of planning experience based on that, served two terms as chairman of that Planning Commission. So I understand that you can't hurry some of these decisions, but I also understand that there is a public interest involved in terms of trying to be fair, trying to be timely.

I am hoping as a result of these conferences that are being held around the country and the study that's going to go in before the August 7 deadline that you all, representing

the various interests in this room, can give to the Congress some good advice on how to kind of bring these sometimes countervailing opinions together. How can we respect tribal sovereignty with also understanding that there are other issues as well? How can we be fair to the tribes but also fair to the consumers who are dependent upon the pipelines, transmissions lines that come through tribal lands?

We're all trying to do this in a way that's fair, and again, many of these rights are actually given by federal statute. And I think the best way to work on this issue is to try to work it out in a way that's best for both parties, because obviously we hope that the federal government doesn't need to step in and start to set in place strictures that would be unfair to one side or the other.

I hope you also have a chance while you're here to enjoy Colorado. You're within about a mile of three major sports venues. Colorado has one of the few cities that has five major league sports. Three hundred days of sunshine a year. We still have skiing up in the mountains. And so while I know you have a lot of work to do over the next few days, I hope you also have a chance to enjoy the centennial state while you're here. Thank you very much.

BOB MIDDLETON: Thank you, Governor Owens. Well, I guess we're going to get to the meat of the meeting now. First I have to apologize. Abe Haspel, the Assistant Deputy Secretary, was intending on being here this morning to welcome everybody, but unfortunately he was pulled into some other hot issues that we have going on in the Department of the Interior. Of course, everyone's aware that Secretary Norton has left us and Governor Kempthorne has been named to come in as Secretary, and Abe's been asked to handle part of that transition. Right up until yesterday, he was planning on being

here, but unfortunately couldn't make it. But he wanted me to express his gratitude for everyone who is here.

As we mentioned in the first meeting, we do have a very aggressive timeline. We need everybody's help to help us pull together the report that we need to get to Congress by August 7th. So we're looking for two and a half to three days of meetings, of a lot of input from you. Everything that you provide us is going to be pulled in as part of the report we're pulling together, so having your input is a very valuable thing. Without it, things may be lacking from the report.

With that, I'd like to turn this over to Dave Meyer, who is going to do a brief presentation of essentially how we got here and where we're going. With that, David?

DAVID MEYER: Thank you, Bob. I'm going to give you a little context just to get us started. Much of this material is, I expect, familiar to many of you already, so this discussion won't take that long. Let's go to the next one.

The Section 1813 directs the Department of Energy and the Department of the Interior to report to the Congress on four subjects related to energy rights-of-way on Indian lands. One concerns history rates of compensation paid for such rights of way. The second item is appropriate standards and procedures for determining fair compensation. We are also to give attention to tribal self-determination and sovereignty interests, and finally, to take into account relevant national energy transportation policies.

The primary context for this study under the Department of Energy, it's my boss, Kevin Kolevar, myself, and Rollie Wilson. Rollie is the tribal liaison at FERC and he has been detailed to DOE to help us with this. Some of you don't know Rollie, so Rollie stand up so the people can see you. We're very glad to have his help on this work. From

the Department of the Interior, Bob mentioned Abe Haspel, who is not here today. Bob Middleton and Darryl Francois. Darryl, would you—he's out of the room. Okay. Also we have Liz Hocking from Argonne. Liz, would you stand briefly so that people know who you are? Thank you. And finally, we have the Keystone Center, from a local organization here, is helping us with facilitation, Jody and Mike. And also we have assistance from FERC, Van Button. I haven't seen Van here today. I don't think he was able to make this trip. Also, Interior has engaged historical research associates to help with some of the historical cases studies that we want to look at.

Now, Bob mentioned the importance of your submitting additional information to us. That is, we want very much to take into account information that you have pertinent to these four topics. We want to take that into account as we prepare this report to Congress. But we need it no later—absolutely no later than the 15th of May. To submit the comments, there are two email—well, submit it to this email site and then it will get passed on to the rest of the team, in terms of who needs it. For updates on the status of the study, there is a website here, 1813.anl.gov that Argonne is managing for us. So I encourage you to take advantage of these. If you have questions, comments, whatever, here is an email address for Darryl and another one for Rollie. I'll give you folks a second to take that information down. Okay.

Now, in terms of the data needs and information gaps, we especially need information about the areas of transmission lines and pipelines on tribal lands. We need information on the relative costs of rights-of-way in relation to wholesale and consumer prices, and the tribal and industry methods for determining right-of-way compensation, and the terms—the lengths of the terms—for the right-of-way lease agreements. We

have other needs as well. That is, we are very interested in situations where tribal energy development is associated with right-of-way development, because that appears to change the context considerably. We are interested in right-of-way conditions. That is, conditions attached to the agreements to protect cultural values, sensitive species, and other concerns. And also then the characteristics specific to rights-of-way grants versus expansions versus renewals. There's a lot of heterogeneity, a lot of variety, in these cases out there, and we want to be sure that we are sensitive to that.

In terms of an overview of our study plan and the process, clearly we are focusing very much on pipeline rights-of-way and electric transmission rights-of-way. We have conducted pre-scoping and scoping sessions to survey the issues. We are now, in moving on into the second stage, of collecting the relevant information, and both the scope and the substance of the study is being developed from meetings such as this one. The opportunities to provide feedback are principally through this meeting and the next two and a half days. We certainly welcome additional submissions through the 15th of May. There will be a 30-day review period on the draft report that we will issue in June. We will have three and perhaps more, depending on interest and arrangements that we will have to make, but we will have tribal consultations on the draft report, and as staff time allows, we will try to make ourselves available to meet with groups individually.

Moving on to the specific topics, the four topics on the historic compensation, we find that case studies and surveys are the most practical options available to us to gather information in the time available. We will hear today from tribes and industry organizations and others on several of those case studies and surveys, but we certainly welcome additional submissions on this subject.

In terms of the standards and procedures, the existing process is based on 25 CFR Part 69 for bilateral negotiations. We will hear today and tomorrow about standards and procedures that have been used, but there are additional possibilities here that we would like to hear about from people, from both the tribal perspective and industry perspective. And you'll hear a lot in the next couple of days about fair market value, public land valuation, sales comparison, sharing of benefits, percent of throughput—a bunch of these concepts that are involved in some of these other—the methods that are in use or could be used.

On tribal self-determination and sovereignty, there has been a great deal of information that has been supplied in the comments that we have received thus far. We expect we will probably continue to get additional information. The DOE and DOI staff are knowledgeable about federal tribal relationships, and they will develop a concise statement for this study. DOI's Division of Indian Affairs will be consulted, and the areas of the law that have been cited to us are listed here.

National energy transportation policies, we have reviewed both the new law that is the Energy Policy Act of 2005, and addressed and analyzed various existing policies, particularly Title V of the Energy Policy Act. DOE and DOI both have tribal energy policies in place. EAct—the Energy Policy Act—Section 368, I'll be discussing that briefly at a later stage in this meeting. The National Energy Policy has some relevance to this. That's a document that the Bush Administration issued in May of 2001. That document does speak to energy transportation concerns. As recently as the 2006 State of the Union address, the President stated the need to move energy efficiently for the benefit of consumers and the general economic welfare.

In terms of timeline for the study, May 1-15, we will post a new register study—federal register notice—calling for comments by the 15th of May. For the 30 days after the 15th of May, DOE and DOI will prepare the draft, and we plan to issue the draft on June 15. That will then lead to a period of open review of the draft. We're looking at locations now—possible locations now—for meetings with the tribes for consultation in relation to the draft. So the comments would be due to us on July 24, and then after the 24th of July, we would deal with the comments, make revisions to the study, and deliver the study to the Congress. So that's a very tough schedule to meet. We appreciate your inputs, and we will be very, very much in need of your inputs.

A couple more points. The data and information you provide to us, ideally it needs to be releasable to the public. So if you submit anything that you don't want released to the public, identify it very clearly in that way. But to be of most value to us, it has to be something that we can cite readily in our report and make available, or put it in an appendix or something of that kind.

Another concern is that when you submit information to us, tell us where it comes from. Tell us what is the basis for this information, how was it collected, and try to give us your sense of why it needs to be given weight or should be given weight in this report.

Two more points. There is a sign-up sheet out front there for those who would like to make presentations but are not listed on the agenda presently. So there is that opportunity, and we encourage people to take advantage of it. Secondly, there is a copy of a "Dear Tribal Leader" letter regarding some upcoming meetings concerning Section 368 of the Energy Policy Act. That's a letter that I want just to bring to your attention.

So with that, I'm going to—okay. Well, let's pause for questions. There may be questions that people have about the process here.

BOB MIDDLETON: And [inaudible], we're going to transcribe again this meeting, as we did the last meetings, so please wait for a microphone and please identify yourself with your question so that we make sure that we capture it correctly. Too early in the morning?

NANCY IVES: Hi, I'm Nancy Ives with the Fair Access to Energy Coalition. And I may have missed this, but did you said whether or not there's a call-in number for people outside of this meeting who are unable to attend to listen to the proceedings, like there was at the last meeting?

BOB MIDDLETON: Yeah. At this meeting, we had some difficulties with the contract, and we did not. We were unable to establish a call-in number for this meeting, so we're not going live anywhere other than where we are now.

DEAN SUAGEE: Hi, Dean Suagee, Hobbes, Straus, Dean & Walker. And it's just a simple question: Your Power Points, I presume they're going to be posted on that website. How soon are they going to be up there?

BOB MIDDLETON: They will be posted, and I anticipate we'll be able to get them up by the beginning of next week. Liz, do you have any—is there any—by Friday? Which is another good point. Make sure that we do have copies of your Power Points if you are making a presentation.

LISA CAMERON: Hi, my name is Lisa Cameron. I'm an economist with Deloitte working with the Fair Coalition. My question is, you were talking about your data needs, and as an economist, I thought that there were some data issues that perhaps

weren't addressed in the different bullets that you listed. And I was wondering if you would be gathering information on the costs to companies and to energy—fulfillment of national energy needs in general of pipelines needing to route around tribal trust lands and of pipelines and transmission lines that were frustrated because there was no other place to go but tribal trust lands, and they were unable to satisfactorily negotiate a settlement with the tribes?

BOB MIDDLETON: I believe some people will be making some presentations on consumer costs today, so we will be capturing some of that information. I think our focus really has been on actually consumer costs for pipelines across Indian lands, and I don't know whether we have collected any information on the costs of going around tribal lands. One of the difficulties being which pipeline, which electric utility line do you select unless it's already occurred.

LISA CAMERON: Right.

BOB MIDDLETON: So, but if you have information or any suggestions on that, we'd be very glad to hear that and we'd love to be able to take a look at that information.

LISA CAMERON: Okay. Thank you.

DARRYL FRANCOIS: Bob, could I just interrupt for just a second. This is Darryl Francois. Since we're in such a large room, it would help when you have a question if you could stand. Someone may want to get with you later to talk and so on. It'd be nice if they have face recognition with those speaking. Thank you.

SONYA TETNOWSKI: Sonya Tetnowski with Bonneville Power Administration. I just had a quick question about the criteria associated with the development of information that you're trying to gather. There's instances, at least with

our agency, where we've had MOAs. Is that kind of the information where we've provided, in addition to monetary compensation, additional services from the agency. Are those the kinds of materials you're looking for in addition to just the economics associated with—that the one lady talked about a moment ago with the cost of the right-of-way? I just want to make sure that there's a clear understanding about the kinds of paper that you're asking us for, so that when we walk out of the room and start submitting it before May 15th, it's what you need to write the report.

SPEAKER: You know, my own—and I'll have other people speak to this too—my own reaction is that I think we're looking for as much information as we can get. And particularly when there's in-kind compensation or other kinds of compensation, we need to make sure we capture that information, because Congress needs to know that there are other ways that the economics work out, rather than just strict dollars and cents. And David, do you have any?

DAVID MEYER: No, I think you got it there.

SPEAKER: Okay.

MARCO GONZALEZ: Hi, my name is Marco Gonzalez [ph]. I'm an attorney with the Fair Coalition. I wanted to know—you were quoted in The Houston Chronicle saying that the federal government wasn't aware of a large number of disputes. And so I'm wondering, what is the Department of Interior—what have they done to determine that, and what is the plan outside of this meeting to determine that?

BOB MIDDLETON: We're trying to gather that information and really sort of get an idea of what the universe is of rights-of-way that may have issues. The last meeting, we heard from a number of tribes and companies that, in fact, many renewals on

rights-of-way have already taken place and without an issue being raised. But this is all part of the information that I believe we need to provide to Congress. They need to have a clear understanding of how big this issue is, geographically where it may be an issue, and we need to provide this to them. So we're looking, and we're working with tribes, and we're working—talking with companies. We're talking with industry groups. Industry groups have put out surveys. Tribes are providing information, and we're trying to identify this universe of rights-of-way that may need some additional review and where we can allow us to sort of quantify the universe of rights-of-way that may be coming up within the next few years that may in fact have issues with it. We're open—again, this is another data point we're looking for, and we're open to anyone in the room that may have suggestions on how we can collect this information, other than what we're trying to do right now with surveys, etc., or if you have any specific knowledge, please let us know.

CAROL HARVEY: I'm Carol Harvey, and I just wanted to make a quick statement. In regard to the Section 1813 study comments and testimony that had been submitted to date, not one party has identified a particular tribe as charging excessive right-of-way costs or demonstrated a specific negative impact on consumer burner tip prices. Generalized and oblique references were made to tribes, but not one single, specific, verifiable case was identified. Those parties included the Arizona Corporation Commission, Arizona Public Service Company, Association of Oil Pipelines, Avista Utilities, City of Toppenish, Marlene Dawson, Edison Electric Institute, Fair Access to Energy Coalition, which is a lobby group for El Paso Natural Gas Company, Idaho Power Company, Interstate Natural Gas Association of America, Kinder Morgan Energy

Partners, New Mexico Oil and Gas Association is the only one that did make specific—not specifically identifying anyone, but is the organization that initially brought up the issue. Chris A. Paul [ph], Plains Pipeline, Public Service Company of New Mexico, Salt River Project, Sempra Energy, the State of Colorado Honorable Governor Bill Owens’ statement, the State of Colorado State Senator Jim Isgar, the State of Colorado Office of Consumer Counsel, the Western Area Power Administration, and the Western Business Round Table.

I also wanted to note that in the Committee on Energy and Natural Resources hearing, January 2005, before Pete Domenici, the following parties spoke, and not one of them addressed the issue of excessive tribal right-of-way costs. The speakers were from the Wilderness Society, the Committee of Chief Risk Officers, Louisiana Department of Natural Resources, Western Organization of Resource Councils, Fundamental Analysis for American Electric Power, Honorable Jeff Bingaman, U.S. Senator from New Mexico, Natural Resources Defense Council, Energy Information Administration, Dow Chemical, Calpine Corporation, Consumer Federation of America, American Gas Association, Minerals Management Service, and Canna [ph] Gas Storage, Inc., Honorable Pete Domenici, U.S. Senator from New Mexico, Natural Gas Council and the American Gas Association, Independent Petroleum Association of America. NMOGA was the only one that brought up the issue in its testimony, orally and written. Department of Transportation, National Commission on Energy Policy, Interstate Oil and Gas Compact Commission, FERC, Natural Gas Supply Association, U.S. Geological Survey, American Public Gas Association, Nuclear Energy Institute, Advance Resources International, NYMEX, Department of the Interior, Alaska Division of Oil and Gas, State of Alaska,

Council for Energy Efficiency Economy, Questar Corporation, Honorable Bill Richardson, Governor, State of New Mexico, Harvard University Kennedy School of Government, the U.S. Coast Guard, the Center for Liquefied Natural Gas, Commodity Futures Trading Commission, National Association of Regulatory Utility Commissioners, National Commission of Energy Policy, Dominion Transmission, National Ocean Industries Association, PPM Energy, Portland, Oregon, Domestic Petroleum Council, Coal Utilization Research Council. And in regard to the issue, NMOGA did bring it up and was concerned, but it didn't specifically name anyone.

Also at the Congressional Hearing on Natural Gas and Heating Oil for American Homes, November 2, 2005, the following parties spoke, and not one of them identified excessive right-of-way costs as a major problem. We had the Honorable Joseph T. Kelleher from FERC. We had the Honorable Reuben Jeffrey, the Chairman of the Commodity Futures Trading Commission. We had Mark Maddox, the Principal Deputy Assistant Secretary from the Department of Energy. We had Donald Mason on behalf of the National Association of Regulatory Utility Commissioners. We had Stephen Ewing, who is the Vice-Chairman of American Gas Association, who was the incoming chairman at that time. We had Mary Ann Manoogian, who is the Director of New Hampshire Office of Energy and Planning; Dorothy Tucker, a consumer; Charles Davidson, Chairman of Noble Energy; Skip Horvath, President of Natural Gas Supply Association; Bob Slaughter, the President of National Petrochemical and Refiners Association. Mr. Phillip D. Wright, who is the Senior Vice-President for Gas Pipeline for Williams Pipeline Company, specifically stated that pipeline transportation and storage is the smallest part of the cost of natural gas delivered to residential and commercial

customers, typically, about 10% of the total retail cost of natural gas. No reference was made to a negative impact due to tribal issues. Mr. Brian Castelli, the Alliance to Save Energy—the list goes on and on.

Aside from NMOGA having brought up the issue in January 2005 to the Senate Energy Committee, and aside from the Fair Access Coalition, their lobbying group, and the International Right-of-Way Association, which all began in January 2005, prior to that time, no one had made any complaints against tribes for charging excessive right-of-way costs for either issuance of rights-of-way, for renewals of rights-of-way, for extensions of rights-of-ways. And I think this is an issue specifically related to a company that has the market power and the political power to go to Congress and ask for help. Thank you.

BOB MIDDLETON: Thank you, Carol. Would you please make sure that we have that paper that you read from so we can capture it. Thank you.

JODY: If we could just focus. I know there's a lot that wants to be said today, and I want to make sure that it's all said, but I think for now just focusing on what DOE and DOI, their process, how they're addressing the different issues. And then we'll—I'd like to get—so we can get more comments on the table, but just make sure what you all know what their process is.

HOLLYANNA PINKHAM: [First sentence indiscernible—speaking in Native American dialect.] Good morning, my name is HollyAnna Pinkham. I'm also known as Sound of a Woman Working. I'm from Yakama Nation. I'm a right-of-way specialist, and primarily I work out in the field. My concern is that Yakama Nation has been working on a mapping program through the GIS, which I work out of. We've been

mapping our reservation, both closed area and ceded territory, since the early '70s. But since 1998, we have discovered that there are issues with our land, the parcels and right-of-way, and we've been working on this since then, and that has been over seven years that we've been working on this issue.

My concern is that historically, the Department of Interior has been interested with making sure that the right-of-way issues have been following policies and procedures. I've been discovering that that hasn't been happening, and I also have documentation that shows the blatant disregard for allottees' [ph] signatures or thumbprints, or whatever you want to call it. There has been no attempt to get signatures from those allottees or from the tribe, and it's in black and white. This policy's been in place for many, many years, long before I was even born.

So if this issue has been in existence, and the policies and procedure has been in place for longer than I've been alive, and then this study and this act has come into place and this short timeline that you're wanting to conduct studies and get feedback from tribes. I've been in this job for three years. I honestly don't know how you're going to do this with as many different areas as you're looking at—pipelines, energy—and those are only two entities that you had to deal with rights-of-way.

I'm also discovering that these same utility companies that you're focusing on, the pipelines and energy, when they're piggybacking—which is not supposed to be allowed—through tribal trust property, has also established their lines [ph], thinking that there's going to be roads built in certain areas, and then the road doesn't get built because they're jumping the gun, putting the cart before the horse, and the road doesn't get built. And the road never gets built, and so they are intentionally trespassing. And I have much

documentation from the field because I compare and contrast TSRs with what's actually out in the field, and I'm finding that these lines don't even—they're not even in existence where they say they have an easement for or a right-of-way for. And this disregard for their own words, you have a compliance issue in place that is so big that, you know, we're trying to fix something and we haven't even fixed what's broken already.

So I have very big concerns for these companies—and I'm not saying all of them are bad. Some of them do work with us. But I don't see where—at least speaking only for my tribe—where we have inhibited any rights-of-way or easements. We have actually worked with companies who haven't even renewed for 10 to 15, even 20 years. So they've been trespassing for a long time. I do know where some of this motivation comes from, and I think that that needs to be taken into perspective. Whose motivation is it? Why are they doing this all of a sudden now? Is it because now we're standing up for our rights, and we're looking at pressing trespass charges against them, and they don't want to pay because obviously they're a business. They need to conduct business. We also want them to conduct the business, but they have to follow the rules like everybody else.

BOB MIDDLETON: Thank you for those comments. I'd like to say that as far as the timeline issue that you raised, of course, it was built into the law in the Energy Policy Act in 2005 that we had to provide this report to Congress by August 7th. I know it's an aggressive schedule, but we are on track to be able to do that. We have to work hard, and of course we have to ask everybody's help in order for us to meet those deadlines, but we are going to be working as diligently as we can to make sure that we get something to Congress by the August 7th deadline.

I would like you to also, if you wouldn't mind, if you could email us at one of the contact numbers some of the information, some of the documentation that you have on the Yakama rights-of-way, we would appreciate that, because that's good information for us to have.

Also, I will also reiterate what Jody said. We have plenty of time for open mike. We want everybody's comments. That's part of our process here. We're going to try to over communicate with everyone, if that's possible. This time, right now, we're trying to reserve for any questions you may have on the process or questions on the types of information and data that we're trying to gather. Any other questions?

TIM MCCLIVE: Bob, my name is Tim McClive. I'm chief economist of the Edison Electric Institute. We represent the investor-owned utilities in the United States. I'd like to briefly address the first point of the—not the previous speaker, but the speaker before that. The fact that the numerous parties did not cite specific tribes is not surprising to me. These negotiations and these settlements are confidential business arrangements between the two parties, and I don't think it's appropriate that parties would have been named or would be named in public.

But that does raise a general question. As we have talked with our members, we have become aware of many, many circumstances, many situations where the cost of the renewal has gotten very, very high. But how would we be able to present that information or represent that information without violating confidentiality requirements in the contracts?

BOB MIDDLETON: It's a very difficult issue that we've been wrestling with for a number of months now, because the proprietary information that we in fact need to

demonstrate to Congress—specifically, what the issues are—is tough to come by. Obviously, the way that we could do it would be to aggregate data in such a way that it can't be individually identifiable to a company or to a tribe. However, that presents other issues because, of course, we would need the ability to go in and actually verify that information. And there may be ways for us to sign confidentiality agreements that would allow us to take information that's provided by either tribes or associations and then delve into it a little bit more, make sure that we're comfortable that the summaries represent the fact base that's presented. And, in fact, this is what we're trying to do with a number of the tribes that have volunteered to work with us, and Historical Research Associates is currently doing that—taking a look at the summaries and then delving into the information, assuring themselves that it adequately reflects what the summary says. And then we'll be trying to use that information in a non-identifiable way. But we, again, are open to any suggestions that people have on how we can handle that proprietary data issue, because it's significant.

WAYNE BLADH: Wayne Bladh with the Jicarilla Apache Nation. If I understood the schedule correctly, you've allowed about 10 calendar days for consultation with the tribes. Could you elaborate on how you're going to consult with 400-plus tribes in 10 days?

BOB MIDDLETON: Well, we're going to try and do it on a regional basis. We are going to identify the areas, the cities where we think we'd have the best opportunity to have tribes participate. Right now, our game plan is we anticipate having a one-day meeting in each of these cities where we'll give a basic overview, because we'll have the draft report out at that time, respond to some questions, and then immediately go into

government-to-government consultations with the tribes that would like to sign up and do that. Also have an open mike opportunity for tribes that won't mind giving us their opinion in the group, as a whole. We did this with the tariff regulation when we went out and did nine cities—well, actually 10 cities—in a week, week and a half. We think it worked very well. Now, of course, we're going to have to be flexible because some cities we may have 50 tribes that may want to talk to us, and so we're going to have to make sure that we adjust for that. But as we're developing our timeframes, and we're nailing down the cities, and we're getting the contracts for the hotels, we hope at that point we'll have enough input to realize what the demand is going to be on our time when we get to that city. This will all be part of the process that we'll be developing. The whole goal is for us to remain flexible so we make sure that everybody has an opportunity to talk with us.

CAROL HARVEY: In regard to item number 2, where you're talking about data that can be researched, I wanted to reference the following. It's important to note that no specific claims or substantiation for claims of tribal right-of-way charges significantly impacting consumer burner tip prices were raised in any of the following important natural gas proceedings or studies. Expanding natural gas pipeline infrastructure to meet the growing demand...[end of tape]

CAROL HARVEY: ...It was supported by numerous parties, the American Gas Association, BP, CMS Energy, Columbia Gas Transmission, Dominion Energy, Dynegy, Enron, the Interstate Natural Gas Association of America, the U.S. Department of Transportation Office of Pipeline Safety, the U.S. Department of Energy Office of

Energy Efficiency and Renewable Energy, and the U.S. Department of Energy Office of Fossil Energy. This report discussed the need for improving state colder [ph] communication including tribes, coordinating the pipeline review process including tribes, and recommended a meeting hosted by DOE between all players to discuss infrastructure on tribal lands. Even though the report contained a specific section on eminent domain at page 32, no recommendation was made to seek eminent domain over tribal lands.

Second, balancing natural gas policy, fueling the demands of a growing economy, September 2003, National Petroleum Council Study.

Number three, the pressures on natural gas prices, Joint Economic Committee, Chairman Robert F. Bennett, October 6, 2004. The New Mexico Pipeline Study, October 7, 2004. While this study referenced the need for communication with tribes, no recommendation of eminent domain over tribal lands was raised.

Next, changes in U.S. natural gas transportation infrastructure in 2004 by the Energy Information Administration, examining in detail the level of growth that occurred within the U.S. natural gas transportation network during 2004. The Senate Energy and Natural Resources Committee natural gas conference for the Independent Petroleum Association on behalf of IPAA and its numerous—probably over 50—organizations presented testimony on February 16, 2005 in which this issue was not raised at all. And I won't go through that list of organizations that they were representing, but it is at least more than 50 entities.

The Natural Gas Forum, what utilities and consumer groups are doing to prepare customers for the winter ahead, September 8, 2005, the Arizona Corporation

Commission, where they listed the number of impacts on prices to natural gas that are occurring, and not one of them referred to transportation costs or tribal right-of-way renewals or issuance.

Natural gas market conditions and unisource [ph] natural gas spills, February 24, 2004, Arizona Corporation Commission. The Republican Policy Committee, November 2004, how Congress should help the nation's natural gas supply needs. I visited the websites of the American Gas Association, the American Petroleum Institute, the Independent Petroleum Association of America, the Natural Gas Supply Association, the Domestic Petroleum Council, the International Association of Drilling Contractors, and the National Petrochemical and Refiners Association and found not any references to this issue, other than a INGA report talking about infrastructure costs and recommending communication with tribes.

In visiting the websites of the following leading natural gas federal and state agencies, not one reference was found to the issue of excessive tribal charges for rights-of-way, other than that raised by the current El Paso Navajo Nation right-of-way matter: Department of Energy, Department of Interior, Federal Energy Regulatory Commission, Commodity Futures Trading Commission, The National Association of Regulatory Utility Commissions.

In reviewing articles of the following leading natural gas magazines, not one reference was found to the issue of excessive tribal charges for rights-of-way, other than that recently raised in the Oil and Gas Journal by the current El Paso Navajo Nation right-of-way matter. And that's looking in the Oil and Gas Journal, were they have annual studies of pipeline economics, also R.W. Beck [ph], who is a specialist in this area. In

fact, in reviewing the Fair Coalition's websites, the only article cited relates to the El Paso Navajo Nation right-of-way negotiating matter.

And so, in conclusion, I just want to say it's a grave injustice to tribes, from the St. Regis Mohawk to the Morongo Band of Indians, from the Eastern Shoshone and Northern Arapaho Tribes to the Hickory Apache Nation, to put them on the defensive on this matter when no example, other than the negotiations between the Navajo Nation and El Paso, has been provided documenting a problem with tribal consent for rights-of-way across their lands. This injustice is compounded given the lack of tribal technical expertise in this area. Tribes across the country are having to retain consultants and outside counsel to assist them in protecting their rights. Surely, this is not what Congress intended when it responded to the sole concerns of El Paso. El Paso's market and political clout should not foreshadow the tribal sovereign rights of over 560 recognized tribes in the United States. Our tribal land is sacred. Our tribal land is our homeland. Our tribal land is our sustenance. Our tribal land is the essence of tribal sovereignty. Is all of this worth bailing out one Fortune 500 company with the market and political clout to impose its legislative remedy, and whose Chief Executive Officer receives an annual salary alone equal to the annual compensation being sought by the Navajo Nation for a 900-mile pipeline?

And I wanted to list all of those data sources because I have tried to research different avenues to try and find when this issue arose and in what context. Thank you.

BOB MIDDLETON: And again, you'll provide us the written comments?

SPEAKER: I gave the copy of that to David, and she's going to email that so it can get posted with the other comments.

SPEAKER: You can go ahead first.

KASSEL WEEKS: My name is Kassel Weeks. I'm with the Eastern Shoshone Business Council. I'd like to introduce Valeria Arkinson. She's our council lady for our Eastern Shoshone Business Council too. What I'd like to say is, this is our time as tribal people because this is a very serious issue, and we need to have all the time in the world to discuss this issue, as it's been going on since the white man put his foot on the eastern shores. It's been happening that long.

One of the questions I'd like to ask is the costs. I seen a newspaper where the energy companies are discussing about going around the reservations, and I know there was an issue with confidentiality with the agreements. But what I'd like to know is are they going to have data, and are they going to have the cost concerns of how much it will cost for them to go around the reservations, and what are the permitting processes on that? I'd like to compare that to what they're going to do to the Indian people. I don't see that in here. I'd like to see that.

One of the things—and when you talk about national security, homeland security in the U.S., it isn't fair to apply that to Indian tribes. Right now, we're having our troops over in Iraq fighting. And I have a lot of respect for our troops. They're dying for our cause over there. What's that important, with homeland security over in the U.S., and that's what the companies are concerned about. Why don't they take the troops in Iraq and put them on the gas and pipelines over there and protect that area? And that's not fair to me. And that's one of the questions.

One of the questions I also have is Bureau of Indian Affairs, their documentation into land deals. We have a situation on one of the Indian reservations where they're

trying to put a bridge across a river, but when we checked into it, we found out that the Bureau of Indian Affairs gave us pictures that was showing us another area, and the area that they wanted to build a bridge was almost 200 yards away. I mean, if we're going to base all our data on Bureau of Indian Affairs information, theirs isn't even correct. And we're going to have to straighten that out first, get that done first before we start going with these issues. Because we're going to end up having pipelines in peoples' lands, you know, they'd be off about 5 or 15 feet away. That's the issue I have with the Bureau of Indian Affairs, and Department of Interior should be aware of that too.

And we also have the same problem with the water lines. We just had a situation here lately with a water line that was put in for a utility system for our water treatment plant. And under the direction of the Bureau of Indian Affairs, we found out there was no rights-of-way for those either. And they dug through peoples' lands and went through their yards and everything, and we found out there was no right-of-way.

And here we're talking about companies trying to come in with, you know, just clearly on their side of their issues. And they have that power to go to the President of the United States and make those claims and issues. But you've got to have data on both sides—good, accurate data—in order to make these decisions.

I think—I guess another thing is the Enron event that happened a few years ago. I was doing some research into that, and Enron was also putting a lot of gas lines and pipelines through peoples' lands, and they didn't even have a right-of-way for them either. And the President of the United States defended Enron on this, too. So I'm just trying to ask, we need the time to get this thing done correctly.

And I also want to know—I went to a meeting in the Minnesosee [ph] group with the Minnesosee coalition that has Missouri River, and their consultation was, Army Corps of Engineers that deal with the tribes on that river already made their decision, but they just went to the tribes for the consultation. So all they were doing was just pulling their legs. They were just saying, “Well, we consulted with the tribes, but we already made that decision before. That was just a process.” Is this what’s going to happen to this too? Thank you.

BOB MIDDLETON: Well, all I can say is that we’re making every effort to talk with the tribes, talk with the tribal leaders, talk with tribal representatives so that we do have the most accurate information available in the perspective of the tribes. I think you know us, you know the folks that are with the Department of Energy, and we’re trying our hardest to make sure this is a fair and balanced effort, to collect the information and provide Congress with the information that they requested of us. That’s what this meeting is all about, and this is what all of our comment periods have been about. So hopefully, people feel that their comments that they’re sending in are being fairly evaluated, that we are consulting with not only tribes but with all of the energy industries and other interested parties, so that we make sure that we do provide a report to Congress that is fair and accurate. We’re going to go one more question before we have a break.

JOAN DRESKIN: Hi, my name is Joan Dreskin. I’m with the Interstate Natural Gas Association. This is a followup to the gentleman from the Jicarilla Apache Tribe. I noted that you had a period for tribal consultations yet my question is, will there be a similar consultation with industry, and will the tribal consultations be limited to the tribes, or can other people attend as well?

BOB MIDDLETON: Yeah. We have a responsibility to the tribes to have government-to-government consultations, and we plan on doing those with the regional meetings. But we are also planning on having at least one national meeting where all participants will be able to provide comments on the draft report. Right now, we're trying to decide whether it would be more effective to have one or two meetings, but that hasn't been finalized yet.

Okay, with that—

SPEAKER: Bob, just one more?

SPEAKER: Marco [ph].

MARCO GONZALEZ: She actually covered that, but just as an aside, when will the transcript of both the previous hearings and this hearing be available? And can you just refresh our memory, because I know that there were some technical difficulties that were experienced in terms of what you captured, so that, you know, we can all look forward to it.

BOB MIDDLETON: Right. We captured the information of the last meeting—the beginning of the meeting on flipcharts and notes. However, we had intended on having tapes where we were going to do streaming audio so that the presentations in the morning would be made available on the website. Unfortunately, we had an AV problem with the single recorder that they had and we lost that information. We did gather any of the written comments that people were speaking from, so we do have that, and I believe that's posted on the website already. As far as transcription goes, we are transcribing it right now. We, in fact, are going to be making a call, because we had the same question this morning as to when it was going to be available for posting. And we're going to call

and determine that today, and we'll provide that information as soon as we know about it. The same is going to be going with this. And as you can imagine, if we're going to have two to two and a half days of talking, having somebody listen to that and transcribe it into electronic format takes a little while, but we're spending money and we're doing it as quickly as we can, because we want to make sure this information gets out.

Okay, let's take a quick break. Now please, everybody, be back in 15 minutes. David Lester's next on board. He's a great speaker. I'm sure you want to hear him.

SPEAKER: And we're missing one panelist, so give us one second. Let's start with David Lester from CERT.

DAVID LESTER: Thank you very much. The Council of Energy Resource Tribes is honored to speak this morning. It's an organization of 57 U.S. Indian tribes and four First Nation treaty tribes of Canada, formed in 1975 to provide the tribes a tool to change the policy and practice of energy development in Indian country so that the development could benefit the tribal members and tribal economy so that they could better protect their physical environment and protect their spiritual and cultural community as well.

It's no secret that Indian tribes have been part of the American energy industry for over 100 years. The tribes in Oklahoma—and if anyone wants the documentation on that, just read Angie Debo's [ph] "And the Waters Still Flow." Since that hundred years, Indian policy has moved widely—almost a 180—in terms of not only the actual programs that implemented the policy, but the very philosophy of the policy itself. Up until 1970, when President Nixon announced a national policy of Indian self-determination, the

Indian policy was essentially to destroy the Indian tribe as an economic, political, and cultural community in order to free the Indian, to allow the Indian to assimilate into a higher culture, a higher civilization.

We're not going back to those days, and I don't believe America wants us to. The federal government did not give us our rights to self-government, to be separate and distinct self-governing peoples. We claimed that same right that the founders of the United States Republic claimed, that it is a right that God gave us. In fact, it's an obligation that we were given by the Creator when he formed us.

Our lands are not commodities. There is no market for Indian lands. What do they mean to us? They're our spiritual foundation. Most tribes, except for those that were caught up in Andrew Jackson's removal policy, still live in the lands that the Creator gave them. The physical landmarks are the topography of their mythology. Indeed, we live in our holy land. We don't have to travel the oceans to visit the places that give us spiritual meaning. In addition, our lands provide us the means by which we can practice our culture, provide us the plants and the animals that we need for our ritual and ceremony, that connect us to our ancestors and connect us to our fellow creatures—our brothers and sisters that fly and crawl on the land with us and grow as plants. We are all siblings of the same Mother and Father.

But that land provides us our sustenance, and we have an obligation—a reciprocal obligation—to make sure that the land is cared for so that future generations, not only of our people, but of all the nations of creation have the same blessings that have been handed down to us. And our lands are the means by which we can feed ourselves and clothe ourselves and provide for the physical necessities of our people.

The energy tribes are working hard to become a part of the American energy industry. We do not envision a future of continual adversarial confrontations with industry. We seek partnerships with industry, because our populations are growing twice as fast as the U.S. population is growing, and our economies are growing three times as fast as the national economy, and the infrastructure that—the energy industry structure to serve us is woefully inadequate to support our growth. And so we're seeking to have our energy needs met, just as our resources are being moved to meet the resource needs or the energy needs of our fellow Americans.

This study is forcing Indian tribes to divert their scarce resources to this very serious endeavor, and we take this exercise very seriously. But we are deeply offended by the assertions that have been made based on suppositions that tribes' intentions are to disrupt the marketplace and to threaten American security. As a former speaker said, it's our nieces and nephews and our sons and daughters, our grandchildren, who are in the front lines in Iraq right now. We know who they are. They're not some anonymous kid. And we have fought, and we will continue to defend this land, because that's part of the obligations that we received when we were created.

The energy tribes' own domestic economies are so deeply tied to the well-being of the American energy markets that it would be suicide for us to try to disrupt those markets, and to put America in danger for material gain is absurd. But these issues that have been raised are a dagger at the very heart of our right to be who we are and to become the peoples that the Creator intended when he made us. And it is a direct assault on the only Indian policy that has worked—the policy of self-determination and the acknowledgment of tribal rights to self-government, the control of our land base.

We're working to make this study as accurate and as fair as possible, because we have an undying faith, in spite of the history—and everyone knows that history of broken promises, treaties, you know. We still have faith that the America that believes in justice for all will see that Indian tribes have contributed far more to the prosperity of other Americans than we have received in return. But our population growth and the advancement of our people have made it time for America to open the door and to keep that door open for us to become integrated—full partners—in the American economy.

That's our message, and that's our efforts with this study—is to demonstrate the value of pursuing, and as our leader says, to “stay the course” of Indian self-determination. Thank you.

JODY: Thank you, David. Margie. I think you're next.

MARGIE SCHAFF: Good morning, everybody, and welcome back to Denver. It's nice to have you here in my home town. I want to thank you again for giving me the opportunity to address this group. I'm here to give a little bit of an update on what kind of progress we have been able to make since our last meeting. The Affiliated Tribes of Northwest Indians Economic Development Corporation is the group that I represent. I am their energy policy analyst. We are also a group of many Indian tribes all pretty much in the Pacific Northwest. We also have 57 tribal members. We were asked to collect information on tribal rights-of-way, and we were provided a list of questions regarding those rights-of-way that we were to ask the tribes for. We did send out a request to our tribal members, as well as to a number of other tribal groups that I assumed would be interested in responding to this kind of a request. The information requests were not sent to all tribes by the Department of Interior or Department of Energy. They are working

with a number of tribes individually but, to my knowledge, there hasn't been a "Dear Tribal Leader" letter go out that is asking all tribes for this kind of information. We at ATNIEDC are not really in a position to gather this kind of information from all the tribes. We have no staff. We have a very small amount of precious funding that we're using in part for this, but we still have to save a lot of that funding—what there is—for other serious policy matters that affect the Pacific Northwest Tribes. There is a huge expense in finding and compiling and analyzing this data, as you can imagine. So what we have done is try to facilitate the role of creating a flow of information. We did ask the tribes to look at their right-of-way data and to provide as much information as they could, using the kind of information that Interior and Energy have asked for. It's likely that that information will go directly back to Interior and Energy. It will not come through ATNIEDC, so if anybody's out there thinking that I've got all the tribal data, think again, because it's basically going to be the tribes dealing directly, through comments, with the Department of Interior and the Department of Energy.

We did, when we sent out this request, receive a number of concerns back from the tribes that we contacted. Many of them were concerned that the request came from us and it didn't come from the federal government whom they have a government-to-government relationship with. And many of the tribes, of course, as we heard in the last meeting, object to a case study approach, because it will not be representative of all the tribal right-of-way issues, and it may lead to a representation of only the extreme cases. So the tribes really didn't know how to reply and respond to a request for information that was kind of a case study approach in nature.

The other problem is that unless there is a 638 contract—and for those of you that don't know what that means, it's basically the tribe's ability to take a service that is provided by the Bureau of Indian Affairs and take over that service under a contract with the federal government. So unless there is a 638 contract, the right-of-way data is already held by the Department of Interior. So the Department of Interior is asking ATNI to ask the tribes to get information that's already held by the Department of Interior, so it's been a little bit of a difficult issue. There are also a number of tribes that do have 638 contracts and that are working and managing their own right-of-way offices and realty offices. As you heard this morning from the Yakama Tribe, for example, they do have a 638 contract, and they have been very helpful in working to gather that information. I expect that tribes like Yakama—and there are a number of others you'll probably hear about later today—will provide that information directly to Interior and Energy. They might send me a copy, so what I will probably do as ATNI is submit a report before the comment period expires with whatever information I've been given and try to relay the context for that information.

The other comment that I've received a lot is that allottees were not included in the scope of this study, and that the allottees have been very responsive to this. I've been getting a number of calls from allottees that have been expressing their frustration, and I think that that is something that probably—I've been encouraging them to provide their comments directly back to Interior and Energy, but I can tell you that we are going to have a lot of allottees that have something to say.

Another concern, of course, is the one that we all know about, is that a lot of this data—at least the part that’s going to be helpful—is confidential, and so how to deal with that confidential situation is also going to be a challenge.

Some of the other—I wanted to go through a little bit some of the other initial comments I received back in talking with the tribes in trying to create this ability for tribes to have a good idea of what information is being requested. The first and probably most important and loudest comment I have heard back is that tribes want to create partnerships, and if they already have them, to improve them, and that this study and right-of-way study is an opportunity to create those new long-term business relationships and to make the ones that we have better. Because so many tribes already have a number of energy companies on their lands, but they don’t have good relationships with them, or they have very little, if any, relationship with them at all. And this is an opportunity to get that dialogue going and to create long-term relationships and to work together for the benefit of everybody.

That being said, though, there are, of course, limits to what tribes are willing to do. Any abrogation of consent would be a violation of many of the tribes’ treaties, and we’ve heard that back loud and clear. Any abrogation or recommendation for the abrogation of consent would also be a breach of the federal government’s trust responsibility. There has been a lot of comment that there is an absurdity in the argument that Indian country is financially harming the energy companies or consumers. Just look—you know, in developing this, I kind of went in and went on the internet and typed in “poverty and Indian country,” and the statistics that you find are appalling. I won’t spend my entire talk talking about them, but clearly, Indian country is a place that has a

number of very poor Americans. Less than a quarter of the tribes have casinos, so that means three-quarters of them don't. Many of the tribes have natural resources; many of the tribes don't. So that land is really, truly their most important and most longstanding asset. Because once their natural resources are gone, once casino gaming is gone, you know, hundreds of years from now, their land will still be there. When you have an asset like land, or if you have an asset like natural resources, what you can do is use portions of that resource and turn the resource from a natural resource into another kind of resource that has a long-term value. We have many examples of tribes here that are doing a great job of that.

But the absurdity that Indian country is financially harming energy companies, when energy companies clearly have had record profits, and the regulated utilities that are the pipeline companies and the utility companies have pretty much a guaranteed profitability, has struck a chord certainly in Indian country.

Another comment, of course, is that the Indian right-of-way cost, as an element of consumer energy cost, is very, very small. I will let Carol Harvey talk about this later because she has done some excellent work here, but by and large, 10% of the cost to consumers comes from transportation costs for utilities; 3.4% of the transportation costs comes from rights-of-way. That's not Indian rights-of-way, that's all rights-of-way everywhere. If Indian lands are 5% of the lands used, then 5% of that 3.4% of that 10% maybe comes from Indian lands.

And then, of course, the other comment that we've had that directly impacts how Indian lands have or have not created issues with consumers is that there has been a historical financial abuse of Indian country by these energy companies over the long

term. I mean, we have examples of perpetual easements purchased for pennies. We have 50-year rights-of-way granted by the BIA for a dollar. These examples will go on and on, and I'm sure that you're going to get a number of those that you hear about.

Other problems with rights-of-way exist as well. For example, we found a lot of areas where once they actually went out and GPS'd the rights-of-way, they found the facilities weren't even on them, they were somewhere else. And then the concern is that if, in fact, there is ever a consideration that the tribal consent is removed and BIA is put back in charge of this, there is the real concern that BIA has been proven to have an inability to act as a trustee for tribal resources, at least currently. I mean, I know BIA and the Department of Interior are working very hard to improve their trust relationship, but they don't have computer systems in place. They don't have the technical ability to handle these issues right now. So who is going to do it if the tribes aren't going to do it? Who is going to do it?

So those are just some of the initial comments that we've received, and I think that you can probably expect a lot of data and information to come from a number of the tribes. I will certainly do what I can if there are tribes in the room that would like to send your information to me. I will do what I can to package them up and get them in to the departments prior to the comment period.

So I thank you very much, and I guess there's a chance for questions later on if anybody has them, or meet me out in the hall or whatever. Thank you very much.

JODY: Great. Thanks, Margie.

JOAN DRESKIN: Good morning. My name is Joan Dreskin. I'm with the Interstate Natural Gas Association of America, the trade association that represents

interstate natural gas pipelines. INGA represents 28 member companies with 72 pipelines located throughout the U.S. and Canada. INGA members transport natural gas beneath the ground to hundreds of local utilities throughout the U.S. that, in turn, serve homeowners and businesses, and directly to industrial plants, as well as electric power generators. We only transport the gas; we don't own the gas within our systems. America's citizens, both on and off reservations, depend on interstate gas pipelines to deliver them the energy that supplies heat and cools our houses and homes and keeps the lights on in their homes and businesses.

To accomplish this energy need, interstate pipelines need an objective, consistent, accountable, and uniform standard for valuing right-of-way across tribal lands. At present, many rights-of-way occur without strife, and a fair price was paid by the pipeline and obtained by the tribe. But there have been other negotiations that have been extremely difficult, where tribes feel, in retrospect, that they were underpaid, and companies feel they overpaid. Further, there are a few negotiations that developed into companies and tribes, ending up at loggerheads due to the lack of a legal process or mechanism in place that provides for an established metric for determining an appropriate right-of-way compensation fee and an ultimate decision-maker if and when negotiations break down.

INGA hopes in the future the vast majority of right-of-way negotiations will result in a meeting of the minds between the tribe and the pipeline, but that will not always be the case. It's in these instances that the 1813 study should focus. INGA believes that the 1813 study should provide sufficient information to the Congress so that the desired valuation tools and a decision-oriented process can be put in place if and when the parties

come to a loggerhead. This will only be for those instances where a meeting of the minds does not occur. An objective valuation metric will provide the tribes with a fair and just return, and at the same time provide the interstate natural gas pipeline industry with the ability to deliver natural gas to consumers at reasonable costs.

The interstate pipeline industry is experiencing increasing difficulty in negotiating both new and renewal rights-of-way with Native American tribes. Our members primarily in the West have said through us that negotiating both the new and the renewal rights-of-way is an increasing problem for all pipelines. In other words, it's not just an isolated problem for one energy company and one tribe. To illustrate this point, in 1998, the INGA Foundation, our research arm, conducted a study of easements across Native American lands. The report was based on a survey of linear facilities, interstate gas pipelines, electric power transmission, highway owners, telecommunication networks, and water systems crossing tribal lands, and the information aggregated to protect the identities of the respondents. While the Foundation offered the assurance of anonymity, many companies chose not to participate due to the concern that it would ruin or harm the relationship with their tribe. The study was ultimately not published due to our members' concern over the repercussions from the tribes of making the study public and the impact of the study—what it could have—on future right-of-way negotiations. When you only have a 10- to 15-year easement and you have to go back into renegotiate, we had a tremendous concern that the study would cause major concerns and problems.

Recently, however, with the enactment of Section 1813 and DOE and DOI's request for information and data on historic right-of-way compensations, our members decided that it's important to make the survey's conclusions public. They see a

continuing and concerning trend toward increasing demands for right-of-way payments and increasing demands to shorten right-of-way terms. Accordingly, we will be releasing the study's conclusions with our comments, and we're also in the process of collecting the new data from our members on both their historic and their most recent right-of-way negotiations—the questionnaire that was sent out to you as well.

Briefly, let me talk about the '98 survey and tell you what some of the results we saw. It was prepared by an outside consultant, and they collected Native American right-of-way data across 15 states and identified approximately 2,500 miles of existing right-of-way easements on Native American land. U.S. data was collected, as I said, from companies with assets in 15 states, being Arizona, California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wisconsin—no surprise. Most mileage-based data came from interstate gas pipelines and electric transmission companies. Thirty-two Native American tribes were identified in the study, but two Native American tribes represent a significant portion of the mileage involved in those transactions.

The study observed—and I have six points to raise—a significant number of Native American easements for existing right-of-way will expire in the next 20 years. That study was 1998.

Two, right-of-way payments to Native American tribes on tribal land are escalating in the 1990s at a rate far in excess of historical trend since the '50s. These payments are far in excess of either independent or in-house appraisals.

Three, lump-sum payments to Native American tribes for renewal of right-of-way easements that are not directly related to the size of the easement appear somewhat

common. The payment size has escalated from \$2,500 in the 1970s to \$250,000 in the '90s. These payments range from educational scholarships to signing bonuses once the easement is renegotiated, and I fully expect that those payments are going up as well.

Four, data on annual payments to tribes for continuing right-of-way usage indicate that some recent—that being pre-1998—annual payments exceed \$1,700 per mile per year. For a 20-year easement, that would be \$34,000 per mile, at which point the energy company would need to come back and renegotiate the easement again.

Five, the average tribal lands' right-of-way payments during the 1990s, which was approximately \$76,000 per mile, is almost 70 times higher than average payments during the 1980s, which was approximately \$11,000 per mile. Today, we know of tribes' demands of \$400,000 to \$500,000 per mile.

Six, the lowest tribal lands' average payment for more recent new projects and new rights-of-way in the 1990s are over 110 times more expensive than the 1980s average and 50% higher than for projects completed earlier in the '90s. As I noted before, these results of the study will be included with our comments, and we're also committed to updating our data in response to the more recent questionnaire. Our members are responding to the data and we hope to have the data complete within the next month, and we'll be sure to meet the May 15th deadline. But as with the '98 study, our members have asked that we submit the data results in a format that's detailed enough to be helpful to DOE and DOI, yet does not provide with such specificity that it would identify easily the tribe and the interstate pipeline by name or fact pattern. Each of our members continue to strive to work cooperatively with their tribe or tribes and do not

want to do anything that would endanger that relationship, and we'll be working over the next month to deal with this internal conflict we have.

In conclusion, we feel strongly that DOE and DOI should spend the majority of their time between now and August 7th on the second point of the Congressional required analysis. That is to say that Congress should be given a wide range of options in developing both a valuation standard and a process for decision making when the pipeline and the tribe's negotiations break down and an impasse results. If the pipeline and the tribe can reach agreement, as we've done successfully in the past, the valuation standard and the decision-making process would not be triggered. But the effects of the existence of the valuation standard and decision making process would bring negotiated rights-of-way to a mean average over time, and we think that would be helpful, even to those tribes that currently feel like they've been underpaid. Thank you.

JODY: Thanks, Joan.

BOB MIDDLETON: Hello. Is this on? Okay. Actually, I'd just like to take a couple minutes and talk about the other study that we are performing at this time using Historical Research Associates. Historical Research Associates is a consultant company that specializes in looking at historical data and doing historical data analysis. They're very familiar with working with tribes and working with the Bureau of Indian Affairs and looking at the information and data that is collected and is part of the type of historical data analysis that we're trying to do here. They've just started the study, but I thought I would give you an update.

You know, in the earlier "Dear Tribal Leader" letters that we sent out that also included the federal registered notice we published, we talked about our approach of

using case histories and asked all parties involved if they could provide us some information on case histories that they think would be representative of the universe of rights-of-way that we need to provide Congress information on. Last month at the meeting we held here in Denver, we had four tribes that volunteered to help us with that—essentially work with Historical Research Associates, provide the data that they need to take a look at the summary information on case studies for historical rates of compensation. It was the Northern Ute Tribe, the Southern Ute Tribe, Navajo Tribe, and Morongo. And I'd like to personally thank all four of those tribes for stepping forward and helping us with collecting that information.

Historical Research Associates went to the Northern Ute Tribe last week and worked with Chet Mills who is our superintendent in BIA out there, as well as with the tribal representatives, and for two and half days had an opportunity of gathering what they referred to me as lots of very good, detailed information on the rights-of-way across Northern Ute Reservation. So again, thanks to the Northern Ute because it was a very effective effort.

We're also looking forward to having the same level of effort and the same effect with the other three tribes I mentioned, Southern Ute, Navajo, and Morongo. We are planning on having the study completed by the May 15 deadline so we can incorporate it into the draft report as we pull it together. All of that information, the raw information that's collected obviously at a level where no proprietary information would be evident in aggregate, will be available on the website at that time, or immediately following that website when we have a chance to look at the study.

One thing that—and Rollie, did we mention this about the proprietary information yet?

SPEAKER: [inaudible]

BOB MIDDLETON: Okay. We want to be clear that—because we asked people to send us in comments to our email addresses—that we are not asking people to send us confidential information, because if you do, it becomes a government record and is FOIA-able. So we want to be clear that we are not asking anyone to send us confidential or proprietary information. However, we are looking for any kinds of information that could be done in the aggregate where we wouldn't be able to get the details—the specific details. And if we need to follow up, we will follow up with you and try and assure ourselves that the representative data represents the facts of the summary or the information that is provided. With that—

JODY: Great. Thanks.

BOB MIDDLETON: Oh, actually—oh, we're going to do Qs and As, right?

JODY: We'll do Qs and As. Before we do that, I just want to thank the panelists for doing what I was hoping. They did not use their whole 20 minutes, which means we're going to go to lunch a little early, which means everything slides a little early, which allows the plenary session at the end of today to be longer, which it was my hope that you all had more time to talk amongst each other in the room at the end of today. So thank you, panelists, for being a little short.

This is a very tough issue. This is not the ideal process for many of you. You all in the room didn't put the legislation together. Some of you didn't want it. Some of you wanted more. So this is a tough issue. You're in a tough place, because you all didn't

put the legislation together. You're not at the place where you're coming up with solutions yet. This is just about the study. So this panel and the panel earlier this afternoon is going to be about the work to get the study done, to get the study done right. So we're going to do Q and A for the folks who are up here, specifically on the work they've done, and then we'll—because there's more work going on.

TOM SHIPPS: Jody, Tom Shipps representing Southern Ute Indian Tribe. Bob, you used a term I hadn't heard before. If, in fact, a tribe had a contract that it viewed as being a mistake that was confidential and they turned it over to you, then I guess it would be a FOIA-able foible. Sorry about that, I couldn't resist.

I have a question for Joan with regard to INGAA. You indicated the need, or the desire on the part of your membership for this objective established metric, and in the course of your conversation, you also talked about the need for this, as I understood it, not just with respect to renewals of rights-of-way, but also with respect to new rights-of-way. Is it the position of your organization that in the absence of tribal consent, that there should be condemnation of tribal lands for new rights-of-way?

JOAN DRESKIN: We are not at that point asking for that. I do have some larger concerns that our membership has not addressed about there being a need for energy in this country and that there is a large part of the west that is Indian land, and there may be a need to go over Indian land. We haven't reached that as an organization, but I struggle that a tribe could stop a needed infrastructure going through which would benefit the entire United States. But at this point, our membership has not addressed that. I do think that when I talked about new rights-of-way, I think that if a pipeline goes into a new—to

a tribe, that the metric would form some basis for what an appropriate right-of-way fee should be, if and should the tribe decide to go forward with it.

CAROL HARVEY: I wanted to make a comment in response to INGAA where they were talking about, you know, their objective is to provide natural gas to not only Native Americans but also to American consumers. There was an article—a lengthy article—page 1 of The Houston Chronicle on Sunday and later on the full page of page 15, on the El Paso Navajo dispute. And so, in that article, I wanted to read a quote regarding, you know, this desire to provide natural gas to Native Americans and to citizens. Anyway, it talks about how—here it is. Okay.

Source of revenue growth. “More than a third of the residents on the Navajo reservation have no access to electric power, according to a 2000 study by the U.S. Energy Information Administration. That compares with about 1% nationwide. Unemployment in the Navajo Nation population 250,000 hovers around 40% to 45%, and the average family income is well below the poverty line.” And, you know, El Paso, the gas that’s being transported across the Navajo reservation, I also have maps showing that it’s going to primarily, you know, California. But again, the concern of, you know, making that distribution available to native peoples is very important, because, you know, if you’re talking about one-third of Navajos not having access, you know, to natural gas, to running water, or to electricity, that’s a serious concern.

The other thing I wanted to add is that the International Right-of-Way Association has put out a request for a proposal to come up with a valuation methodology for tribal lands for rights-of-way, and that organization, two prominent members are El Paso and Enterprise. And so it would appear—you know, I would like to see that proposal such

that we can evaluate it also. But I wanted to note that this issue is going forward on the industry side, and I want to be sure that the tribal part also is addressed, because the Right of Way magazine issue for March and April of 2005 refers to energy negotiations with tribes for rights-of-way as a “nasty surprise.” And it also talks about the extortion being practiced by Native Americans in a legal presentation given to the Right-of-Way Association by Sempra’s attorney. So I think it is a matter of grave concern where tribes are being accused of extortion, you know, in public documents that are available on the internet without any substantiation whatsoever, and when native tribes are shown with being at very extreme poverty levels, unemployment levels.

You know, El Paso, it’s mentioned in this article here, that they have 23 Indian employees on the, you know, reservation stuff. I want to know, what is their total employment level, and what are the grades of native population employed by El Paso? I worked in the energy industry for 23 years in Houston, and I never met another Native American professional during that entire time. And so it is of extreme concern to me that companies talk about, “Well, we employ 23 people on the Navajo reservation and add to the economic value of that reservation.” And that, “Over the last 10 years, we have contributed \$450,000 to the Navajo tribe,” when El Paso’s philanthropic arm this year alone contributed \$4 million to various groups. \$45,000 [sic] is pennies out of their philanthropy. So to, you know, put that forward as a benefit to Navajo peoples for the 900-mile pipeline is just not justifiable to me. Thank you.

JODY: We’ve got—we only have about 15 minutes scheduled for some Q and A, so let’s go ahead and—yes, sir.

RON GROVES: One more comment. My name is Ron Groves [ph] from the Ute Indian Tribe. One of the comments that I'd like to hear from either Mr. Bob Middleton is, you're talking about rights-of-way just for oil and gas mineral extraction or whatever going across the Indian lands. But really, Mr. Middleton, you have failed the Indian tribes also, not only looking at resources, but other resources that go across the reservations, like Department of Transportation—highways that go across the reservations who have never paid toll, have never paid any kind of income to Indian tribes, yet they collect federal fees to go across interstate—to go across reservations, and the states benefit from these.

And again, addressing INGA, why are you only looking at one view of only what you're doing across the Indian reservations? I mean, for American tribes to get a foothold through what they have on their reservation, I mean, you're pushing us back. You're coming up with data that's not solutions. It may be a solution for companies that you work for who are gaining and benefiting. And the general population of America, they get a slanted view of Native Americans. I mean, you know, I mean, you see commercials that have nothing to do with Indians. It may have, you know, you have nothing there to portray Indian tribes as Indians out there who are struggling. I mean, the comparison to what Americans are in downtown Denver to downtown Gallup or Window Rock. I mean, if you show those comparisons how natural gas or interstate pipelines and this and that—I mean, Indian tribes can make a documentary and most companies would probably have to pay and that.

But Mr. Middleton, though, that was my address to you, is that you only look at one part of Indian economic development or Indian rights-of-way acts. You should look at all of them. Thank you.

SPEAKER: And Bob, I'd like to respond too.

BOB MIDDLETON: Thank you for your comments. Of course, you know, Congress, when they put forward the Energy Act, put Section 1813 forward, they specifically asked us to look at energy rights-of-way. And there are tens of thousands of different types of energy rights-of-way across Indian lands, and that's what we're focusing in on. Highways—there may be an issue there, but it's not in our purview, and Congress did not ask us to take a look at that. So, I mean, from our perspective, that's the simple answer to why we're looking at energy rights-of-way.

But in addition, you did mention economic development, and of course, I'm Director of the Office of Indian Energy and Economic Development. And we are working diligently in my office to try and find opportunities for economic development for tribes, as well as individual Indian entrepreneurs. And so I welcome the Ute tribe to come in and talk with us sometime so we can talk a little bit about economic development, but it's just not part of this forum right now.

JOAN DRESKIN: I wanted to respond, as well, to two parts of that. And the first is, our pipelines were put in, some of them 50 years ago, and we have been paying what we believe to be, on most circumstance—I'm not saying always—but fair right-of-way fees, often multiple times what the fair value of that land was. We positioned our pipes on part of tribal land that was the appropriate place on the reservation to put it. We were very conscious of the cultural and historic value of that land and have maintained that

land to respect the tribes. When you talk about wanting partnerships with energy companies, we're very concerned as energy companies of the risks now of not only being on Indian land now, but in the future ever going on Indian land. We're concerned because when we put our pipelines in, we wanted to have some idea of what the risk was. And we did so upon the belief that the values and the rights-of-way would track some portion upon some metric, and we found that they don't. And in the future, we are very concerned about ever going on tribal lands because we don't see this problem curing itself without this objective metric or some discipline to the process. And so when you want partnership—and we do too—and we'd like to take it out of, as David said, we'd love to take it out of the newspapers and the theatrics and work with the tribes, but we really—and these kinds of meetings leave us with a tremendous amount of unease, especially when there is a term for rights-of-way that is so much shorter than the life of these facilities, so.

HOLLYANNA PINKHAM: HollyAnna Pinkham, Yakama Nation, right-of-way specialist. I have four comments. The first one is for Margie. My tribal council has asked me to offer my services to your task force if you want it. The second thing is for Joan. Regarding this report on the right-of-way issues for gas companies through Indian country, I'd be more than happy to see that report if you could provide it. Because first of all, a couple years ago with the negotiations with the gas company that goes through Yakama Reservation, first of all, the reservation is checkerboarded. Tribal trust fee, tribal fee, for example. The company came to the negotiation table obviously to intimidate the tribe, showing up with six different attorneys from their organization, including their manager and whoever else was representing the gas company. And this

was supposed to be an informal meeting. They failed to even negotiate with us. They came to us to tell us what they were going to give us, which was typical of most utility companies and any other entity that is requesting a right-of-way, and this is the attitude that we are familiar with. And so, granted, maybe some utility company somewhere else in the United States is paying higher fees. I would like to see who they are and know who they are, because as far as I know, I haven't seen any proof that Native American communities as a whole are getting paid any more than their neighboring fee property who is non-Native.

The second thing, in dealing with that gas company, is we were trying to negotiate an extension of their services, not only to the Native community, but also to the local school districts, the local farmers who provide agriculture, where you get your apples, your hops and such from. And so we were trying to also service non-Natives within our closed part of our reservation, also the open part of the reservation as well. And those services were not wanting to be provided. So I think that the attitudes from some utility companies or other entities who have to deal with right-of-way issues in Indian country have provided for the attitude that we now give them back, because we are now standing up for our rights and we're not going to take it anymore. Because there are industries out there who say they're going to give us this much, when they give the neighbor this much, and that's not fair.

The other thing I'd like to address is that I have looked out there for organizations on the internet that provide some sort of association to, I don't know, create a unified front for Native American right-of-way issues. I haven't found that. I've spoken to a couple of other people, and I think there's a necessity and a need for tribes to organize

and create their own indigenous rights-of-way association. So if anybody knows of that, could you let me know? If not, let's make one.

JOAN DRESKIN: We cannot condone rude behavior, so your comments regarding the companies treating you poorly or without respect, I mean, that's part of this learning process. I think if companies are serious about being in partnership, they've got to respect each other, and I apologize for that part.

I think the objective metric, though, would have benefited you as well, because if an energy company comes in and says, "This is what I'm willing to offer you," if there is an objective valuation metric out there that shows that you should have been getting more, you would have benefited. You could have pointed to that and said, "You know what? We don't like your demands, and look at what I should have been getting." So I think my solution would have worked for you as well.

CHRIS DACECHEENEY: Ya [ph] tay [ph]. My name is Chris Dacecheeney [ph]. I am from Navajo. I'm a tribal attorney with Dine Power Authority, which is a power enterprise. I want to say, [indiscernible—speaking a Native American dialect.] And what I'm saying is good morning to all the people here who are my people, then also my relatives, and then also the leaders that are here, and then my elders. It's a proper way, in our way, to greet one another.

As I said, I work for the tribal enterprise that works on power, and what I want to do is talk about something we call a Navajo hooshoong [ph], which is a balance. And there's a lot of negative as far as what we're talking about, and thanks to the industry partners, and I know you're probably sitting up there by yourself, which is, you know, the position that you're in right now is just what it is. What I want to talk about is this whole

idea of—you mentioned risks and costs and all those things. I work for an enterprise that we actually have to work with industries like yourselves, and it's not all about just the risks. It's about—there's a balance, I think, between the groups and the industries, and with DPA, what we're looking at is, we actually have to go back to and renegotiate and talk about independent of what you're presenting here today. And so there's a whole different element which I want to call the positive side of what we're talking about, which tribes have the ability, have the resources, and have now the knowledge to work on this. I mean, I do that today.

And with regards to these right-of-way issues, I just can't agree with the fact that you're saying that these risks—because I know there are pipeline rights-of-way—excuse me, not pipeline but power rights-of-way that are coming through Navajo now that I'm dealing with, I see, I have visibility on, and it's not what you're projecting. It is not what you're talking about. And to go back to your historical analysis, Bob, and you'd mentioned it yourself, something about 50 years—what you forget in that whole description is that those were done with people who are outsiders, belladonnas [ph], or people outside of the communities. They were done with nontribal representatives that we have here today. So you can't say that that was a fair process back then. I know because I know the history of the power and the rights-of-way.

So the bottom line, I think, for us is that with regards to economic development, the knowledge is here already. And what the people are asking and saying to you is that the process is here for us to give to you. It's already here. And to have it unilaterally one side is something that I know won't benefit our enterprise, and it won't benefit our people. I work for an enterprise and Paul Fry [ph] can talk to you about what the Navajo

Nation is talking about. I work with him. I work for his boss, Louis Denetsosie who is our AG, and we support wholly what the Nation is talking about in this regards. I mean, I have ownership in this whole process. I am Navajo. I am from the community. I know. I see the El Paso gas facility. It looks like a fort, you know? You talk about, you know, working with the communities. You guys have your own little compound over there. There's no love/hate relationship. I mean, it's just you and us. So this whole process about, you know, integrating and learning and all this stuff. What we're trying to tell you is there is way, and these people here have the answer for you already. You know, I'm not an expert. I just know I work really hard for my people.

In conclusion, what I want to say with regards to the enterprise is, again, there is already a process. We recognize there are challenges. We recognize there are obstacles. You know, I went to school with that guy right there, Troy. He's from El Paso, I think. You sat in the same class with me, you know? And what I want to say is there is already a process, you know, and to have that balance come together is what we're looking for. It's not, you know, one up on each other. It's not to take away from anybody, but to say the process is here. Listen to the experts, and you know, I don't—I just really can't see why the whole thing has to be on the negative. There is a positive, and the positive is there is a process. We recognize the challenges, and we're actually working through it right now, especially on the power side. Thanks.

GARY COLLINS: Yes. My name is Gary Collins. I'm an Arapaho tribal member from Wind River. A couple comments which would echo some of the ones that have already been said.

Of the 560 nations in this country, there is a fair amount of nation building going on, and that is, establishing more succinctly the issue of sovereignty. We really have to have the sovereignty from the tribal perspective to do the kinds of things we do in our economic development efforts. Part of that sovereignty issue, we need to recognize the individual tribal owners, the allottees. Not just the tribes, but the allottees. They are significant as well in the trust responsibility and the trust lands that they own. The oil and gas and water is all part of the mixture of nation building. And when that occurs, then we all can be winners of that, but the tribes very much are now looking at participating in joint ventures, in different kinds of deals, rather than them being in a passive royalty position. That is, again, nation building. That creates opportunities for tribal members, as was explained, to do more things for themselves, because we have a hidden agenda that's small, and that's our youngsters. At Wind River, there's 3,000 Arapaho tribal members of 6,000 who are less than the age of 18. So I don't want any of those kids asking me why didn't I do something when I could. And that's why we're all here.

So the passive royalty issues and the past agreements of maybe taking a few dollars per rod or a few dollars per acre for the next 50 years, those days are over. So when we come to the table to negotiate different kinds of opportunities, we have that in the back of our mind. We've already given up 49 years of freebie. So as that moves forward, we need to be part of the action rather than not. As I've said before and I've articulated to many of you, we would rather be at the table than on the menu, and that's what we are today. So in the study, that I would suggest to Bob Middleton and others, not necessarily take a look strictly at rights-of-way. Other kinds of value which would be

something like a joint venture. For example, commonly in the oil and gas industry, of a four-part partnership, one part puts up the land, the other three parts puts up the money. The issue is, we have the land. We also have the water. We've also got the integrity to move forward. We just need the capital to go with that. And that's where we're looking at opportunities in the future.

So the right-of-way issue is something that is bringing many concerns to the table, but the sovereignty and the nation building of the tribes is extremely important. If we went to Botswana or some other place, Cuba, and did a business deal, we'd have to abide by those customs and those kinds of things that are already there. The tribes are not a part of another government. We're sovereign. We're not part of the United States government. We're citizens, but we're still sovereign in our own right, and we're exercising more of that as we move forward. Thank you.

JODY: Still focusing on work that's ongoing, the specific projects that are ongoing.

SPEAKER: Jody, I have two that are lined up already.

JODY: Okay. I've got one right here.

JOHN JURRIUS: Good morning. John Jurrius, Ute Tribe with Uintah and Ouray reservation. Joan, I just felt compelled to make some comments in regards to your statement that industry was nervous about partnerships with Indian country. I've made my living for the last 20 years representing industry in Indian country and I hadn't seen any of that nervousness.

I also want to state that in our last meeting, we brought our partners like Questar, Bill Barret, Barry. We certainly have partnerships with Kerr-McGee, Dominion, EOG,

the list goes on and on. And so you might want to make public who those nervous members are, because they line up a hundred deep to do business with us and form partnerships with Indian country, so I'm not sure where your facts are from, but at least through the Rocky Mountains, I haven't seen that. Thank you.

JOAN DRESKIN: I'd like to quickly respond. If a tribe wants to form for a new right-of-way a partnership with an energy company, then everyone goes into the partnership with eyes wide open. The concern that we have is that with a right-of-way that's already there and that's up for renewal, that the tribe will say, "You know what? Now I want to own that pipeline you have. I want you to give me part of the ownership." I think that's a very different circumstance and I know that the Utes have entered into new partnership deals, and I think that they may be different.

PAUL FRYE: I'm Paul Frye. I represent the Navajo Nation. And I also had a reaction, Joan—and by the way, we respect the fact that you're taking all this heat up there on behalf of industry. I also had a reaction, though, to your notion that your members—and I understand there are 22 member companies—were real nervous about even siting new projects on Indian land, and I think that's because they're approaching it wrong. They're approaching the whole problem in a 19th century mentality. The Navajo Nation, frankly three or four days ago—whenever Friday was—we just did a very large oil and gas deal with a real partner, and we're all going to make a whole lot of money. And this follows up on a similar nine figure kind of deal that we did about a year and a half before this. And we have real partners who come at it not from a point of view that the federal government, if indeed it can put the Indian nations under their thumb for us, but it's a real true partnership and negotiation.

I had one question. Tom Shipps addressed what I think was a question for your organization and membership, and if I understood correctly, your organization has not taken a position on whether if a treaty, for example, prohibits entry without consent, whether your organization would favor Congress, in essence, violating another treaty. So you haven't taken a position one way or the other?

JOAN DRESKIN: No. Correct. We're data gathering.

PAUL FRYE: Okay.

JOAN DRESKIN: We have not taken any positions on any of those legal questions that you raise.

PAUL FRYE: How about—this is my followup question to Tom's. Does your organization take—or any member—take a position with respect to honoring your own contracts or the contracts of your members if, for example, a contract freely entered into with an Indian nation says, "We will leave after 20 years," do you think your member organizations should abide by such contracts? Thank you.

JOAN DRESKIN: I would certainly hope so.

PAUL FRYE: Okay.

LYNELLE HARTWAY: Good morning, my name is Lynelle Hartway. I work for the Hopi Tribe. I first had a question for Mr. Middleton, and it's based on some of the discussion that's been ongoing. There has been a couple of mentions of aggregate information and putting together of information, in part in order to avoid confidentiality concerns, and then there has been discussion of a verification process. My question is, what is that verification process? What will it be?

BOB MIDDLETON: Hello? Okay. Right. The—you know, obviously, if people provide us information in aggregate, we'd like the opportunity so that when we represent this as a summary of information to Congress, that we feel confident that the supporting data is there that, in fact, sustains that summary. One of the things we're doing is with HRA with the four tribes that we're working with is the tribes have very kindly provided access to their data files where, when the summary is presented, we have an opportunity of going in and taking a look at the supporting information to make sure that everything tracks. Now in some cases, that information is provided in redacted form, which is fine. We don't really need to know names, but we get to look at the terms and conditions that support the summary information. And so that's what we're trying to do.

LYNELLE HARTWAY: So if information is not verifiable in that context, is it not going to be included in the study?

BOB MIDDLETON: Well, it could be provided to us and we can provide it to Congress as being represented by an association or being represented by a tribe, and we will, you know, provide that as part of the information that we've collected as part of this effort. But then we can't put it forward as being validated unless we have an opportunity of doing that.

LYNELLE HARTWAY: Thank you. The second part of what I wanted to make comments—it's not directly a question, it's more just some concerns. I spoke last time we met about context, and what I'm hearing about some of the information that is going to be collected and is now part of the design study is actually raising some more of those concerns.

My concern about the type of information that's being focused on for the study is how that aggregate information, or the types of information that are focused, will include context. Some of the issues that have been brought up today include the provision of services. So, for instance, in the question of context, how will the information garnered reflect the costs of transmission, for instance, versus the costs of provision of service on the same lands? So if the costs of a transmission line across a certain number of lands is x dollars, will included in the information also be the actual costs to the consumer of the provision of services for electricity, for instance? Because as brought up, I believe, by Carol, there is a great differentiation in the amount of services provided, for instance, to Indian country and also the costs paid by those consumers in Indian country for the same services that are paid by those outside of Indian country. And I think that context is important if you're trying to actually evaluate what are the costs to industry versus what are the costs to people who provide that access.

I also wanted to know whether or not included in the context is the lack of information available, for instance, from the Bureau who is, by law, placed with the duty of keeping that information. Is that lack of information going to be included in the context of the study? As well as the costs—the context of the costs of any particular type of right-of-way versus the types of land that it runs over. As brought up a couple of times about the concerns of allottees, a lot of industry persons who have spoken talk about Indian land as if there was only one type. And so my concern is if you're talking about a study that looks at the costs of a total right-of-way, for instance 50 miles, is the context of those types of lands going to be included? If you have one right-of-way that runs across reservation land that's one type, it's simply trust land that's owned in conjunction by the

entire tribe versus that right-of-way being broken down for a private fee, tribal-owned fee, allottee fee, allottee trust—all the different types of lands that could be included within that right-of-way, and the subsequent cost of that right-of-way and how those two things are related.

BOB MIDDLETON: I think we have to point out, though, that the study itself refers to energy rights-of-way on tribal lands. And although there may be some costs associated with tribes that may negotiate that right-of-way because of the allottees that they also are providing compensation to, I think that's how we will be addressing it, as an overall cost of the right-of-way across tribal land.

As far as the question you raised about the costs of providing the service and whether that's going to be incorporated into the study, to be honest about it, I think this is the first time that's been raised. We'll have to sit down and talk with all of the folks that are helping us with the study. However, we would appreciate it if you could make sure that you've provided that to us in writing so that we can capture that information. And if you have any suggestions, we'd love to have an opportunity to take a look at that also.

JODY: Right. And a lot of people have mentioned examples of things, and I think DOE and DOI would love that information. So if you're mentioning an example, to provide that example to DOE/DOI and let them know when that is.

Do you have a quick followup? I've got six people who want to speak, and I think that's probably going to take us to our time, so.

LYNELLE HARTWAY: Just to follow up on the request for further information, the information about the utilities available on tribal lands, the costs of those, those are actually already Energy Department studies.

BOB MIDDLETON: Okay.

LYNELLE HARTWAY: So you should have those already.

BOB MIDDLETON: Then we will put it upon our Department of Energy partners to provide that.

MELISSA SWIFTING: I have a followup comment. My name is Melissa Swifting [ph]. I'm an attorney with Karchman [ph] Associates, and I'm here representing the Morongo Band of Mission Indians, which is one of the case study tribes that is going to be included in the 1813 study. My concern is that the inclusion surveys such as the INGAA 1998 survey and any updates that they're going to do and submit with their comments to the Department of Energy and Department of Interior will not be able to be verified. There is no verification of that data that is going to be provided by INGAA. Joan said that INGAA members are reluctant to disclose where these rights-of-way are or what they all include or what the actual costs for them are. So we have no reference or no way to verify that the information they're providing is correct. The tribes who are participating in the case study and others, are providing their historical documents and opening up their offices to support that data that they provide. And I have great concern that data that is going to be provided by energy industry is not going to be verifiable and will unduly influence the Department of Energy, the Department of Interior, and ultimately Congress.

BOB MIDDLETON: Joan, did you want to say anything? Then I'll follow up. Again, this is very similar to some of the information that may be provided as a survey from some of the tribal organizations or tribes themselves. We will collect that information. We're in an information collecting mode. However, when we pull the

report together, we will have to couch that information that we provide to Congress in terms of “as represented by” this organization or this organization, unless we actually have an opportunity to verify the data like we’re doing with the individual studies, the case history studies that we’re doing with some of the tribes. I mean, we can’t put it forward as essentially gospel unless we have an opportunity to look at the supporting information. However, we can present it as being presented to us as part of the study.

KASSEL WEEKS: My name is Kassel Weeks with the Eastern Shoshone Business Council. One of the reasons I brought up the homeland security is that our tribes back on the Wind River Indian reservation, both the Eastern Shoshone and the Northern Arapaho tribes, are working along with companies that have their pipelines on the reservation. It’s called, I think it’s called Fremont [ph] County Pipeline Association. What this does is—we’re doing our part to protect the security of the United States, and then we work along with all the counties that surround the reservation and with all the oil companies and gas companies that’s on the reservation. And we have workshops and, you know, just to protect those pipelines. So we’re doing our part in security. And so the reason I was asking about confidential stuff is that I used to work in the Wind River Environmental Quality Commission. It’s an environmental program, and I was the only one that was allowed to have a booklet on the information on the pipelines, because that’s security. So we’re doing our part on it. So if you need an example, I think the Wind River Environmental Quality on the Wind River Indian reservation can supply you with that information as an example. Because a lot of this stuff, to me, comes out of the 9/11 event, and a lot of things are coming out of that now, since tribes are the ones that’s being

made—we're put on the line for a lot of these issues with the Bush Administration cutting a lot of programs, plus this energy policy coming about.

Another thing we need to look at is environmental justice. The environment justice within the EPA is the protection of the weakest, the poorest, less politically able to protect themselves from intrusion by the domain or stronger society. I think that's another area we need to look to is on the EPA side, try to bring that into our discussions.

Another issue too is taxes. On the Wind River Indian reservation, we're taxed about three to four times higher than regular counties, and it's taxed on these pipelines too. And that needs to be discussed is how much of a disparity is there right there, when you're trying to compare with counties and states and federal. Indian tribes, we have severance taxes, but that comes into play with these right-of-way issues too, so that needs to be covered. So I think that's one of the issues that you need to discuss too. Thank you.

SPEAKER: Thank you.

JODY: I'm going to put Kassel on the spot. So Kassel, do you have that information to provide to DOE/DOI?

KASSEL WEEKS: What I could do is go back home, and I'll work with the Fremont County Pipeline Association, and maybe they can give an example of how tribes are working to keep the nation secure. So I think I can provide that.

SPEAKER: Thank you.

TY VICENTE: Good afternoon. My name is Ty Vicente [ph], the vice-president for the Jicarilla Apache Nation, northern New Mexico. What I'm kind of concerned about is the fact of gathering all this information, given the short time of gathering all this

information, covering all these tribes. I don't think—my personal opinion—that this is going to happen in the correct, timely manner, because there's going to be some tribes that will probably be holding back this information, insufficient data, and I think it will probably go to the following year, the next year. But I'd like to give you a little bit of information on the Jicarilla, that we have oil and gas on our reservation up in northern New Mexico in the Four Corner area. We too have a constitution, and by the United States giving us the right to govern ourselves...[tape ends]

TY VICENTE: We take our resources—of course, our number one resource is our people—our children. But our next resources are our natural resources, and we too govern that very strictly on the Jicarilla.

We are very concerned about right-of-way. We have these energy companies that come in and doing business on the Jicarilla. We have not yet come across any negative negotiation with these companies. We've done due diligence in negotiating with these companies, and we're doing very good in our negotiating with these companies. So I don't see where—sometimes I look at the Indian country, how it really impacts the consumer in the United States. The Indian nations across the United States is a very small part of the energy whole of the United States, where the United States is getting all the oil and gas from foreign countries and offshore drilling from neighboring countries. But yet, the Indian country—the reservations—are but a small part of the whole. And we too would like to remind the federal government that we do stand on our sovereignty to govern ourselves, to be proud as an Indian nation to do our share to uphold the Constitution of the United States and do our share in negotiating with these energy

companies in providing our own resources as our revenues to operate our own reservation governments. So we are proud to be part of this. And like I say, I'd be very interested to find out—this too will be another chapter in the federal government next year, the following year, for future people to read about how the federal government has dealt with this issue on rights-of-way. Is it going to be fair? And how do you determine fair to which side is going to say it's fair? So I hope something comes out of here—of this meeting—on this right-of-way issue that will be strictly fair to both sides, both parties. Thank you.

JODY: We have five minutes left, so there are going to be people who are going to get missed. I'm just going to let you know.

JIM NOTEBOOM: My name is Jim Noteboom. Oh, I'm sorry.

FIDELIA ANDE: Nech [ph] mites [ph] tee [ph]. That means good morning, my people. My name is Fidelia Ande [ph], but my given name is Tum [ph] Sus [ph] Ni [ph]. And I have a lot of reservations about what's going on in this bill. I heard Tom talk about survey and right-of-way and appraisal values and everything. That how in the past, it was never right. And I think today, even in 2006, that the BIA and the government on the hill there is in complete denial of its own rules and regulations that they didn't follow in the last 150 years, and I think I stated that the last time I came. And they've always tried to make a wrong a right, and they haven't even progressed in that. A lot of us Indian people on different reservations have suffered through that. Until they can get themselves right, how are they going to get us right?

And a long way around it is, we have right-of-way issues on our reservation, as you heard Holly say that we're a checkerboard reservation. We have a lot of non-Indians

that own land within our reservation. And that's been one of my concerns too, when it comes to appraisal or anything on the Indian reservation, they get undercut, and our neighbor who has the same value of land, they get twice the value. And I never can see how they come to that determination, and that's one issue I would like to have followed through, is why is our appraisals lower than the neighbors that are non-Indians?

And another thing too, we all would like to see economics come to our reservation and thrive in it, because we're here to represent our tribal members, which is 10,000 of ours, and our elders, our children, and those yet unborn. And those yet unborn, we do not want to leave them in this kind of condition, because our forefathers had looked ahead for us, and I would like our children to enjoy what I was able to enjoy.

As you know, the Colville tribe defeated a mining progress on their tribe a couple weeks ago, which I was related with because I watched that very closely. And I heard testimonies of other tribes with mining, how illness had come upon them through mining on their reservation, and they didn't look ahead to the health of their people, but they looked at the almighty dollar. None of us as Indian people valued the almighty dollar in the past because we lived in harmony off the land, the water, whatever the Creator provided for us. The almighty dollar never meant anything. But since the coming of the treaty and the invasion of them, we have to look forward to that dollar every day for our enrolled members. And that's why creating enterprises, creating jobs, creating a per capita for our people—and the only way we can do it is by economics and our enterprises and the different timber resources that we have.

And right now, we have a—we're a very traditional tribe, and like all of you, and we look to our culture and our Indian foods. We value it very much. But now we have

people that come in from the other side of the mountain that are invading our huckleberries, that, you know, sell it for \$40 to \$45 a gallon. And they're stripping our huckleberry patches badly. And that's, you know, a right-of-way issue too, onto our lands, where our culture—where we preserve our culture and our foods. And we have a lot of disrespect for that—our cultural foods—and that's another thing that's an issue with me.

The Wanapum [ph] band that lives up there—they're up there by the Hanford [ph]—we just met with Hanford here last week. And Hanford has been a problem to us too, because the downwind of the Hanford since it was created, I think it was back in the early '30s or '40s there, and the impact that it has on the health of some of our Indian people, our foods, and some people down the river that, you know, non-Indians too it affected. But the Wanapum band are under the umbrella of the Yakama Nation. And they're little band, they're right there by the dam there, the Wanapum Dam, and off to the right there is a little village. But they get free electricity year round. And, you know, I always questioned that, you know, as—being part of the Yakama Nation, under the umbrella of the Yakama Nation, it should have followed through the Yakama Nation. They all should have got free electricity.

And I believe that's what we need to look forward to in the negotiation process, for what's good for our people. What's good for one should be good for all. And that's part of the situation that we're in right now. And I'm very leery of people when they come to you, with, like you heard Holly say, they come up front gung-ho with their lawyers and everybody, and it's not even a negotiation process. It's just like an introductory, but yet they intimidate you with all this formality stuff, with lawyers and

everything. And I'm telling you now, as we're sitting here, that turns a tribe off. It turns a tribe off when you come in there all gung-ho and think that we don't know what we're talking about today, because I'll tell you we do. We're not like we were back in the early 1800's. And our elders back then even knew what the future was going to hold for the generations to come, otherwise they wouldn't have made the treaties the way they did. And they're not—and the treaties that we made are not negotiable. They're there. They're written in blood for our people. And they gave up lands so that the non-Indians could live in harmony as our neighbors. However, it hasn't been so.

So I would like to bring this to your attention. And the right-of-way issue just doesn't consist of the power lines, like you heard earlier. It consists of water. It consists of fishing. It consists of our foods. It consists of everything that we're in tune with, with our Creator. It's a right-of-way issue. Because we're here to protect the lands, as we were taught. And that's what we're here to do. And as a tribal leader, I have a—I'm on the tax commerce committee. I'm a chairman of that, and it's very true how we pay in to federal taxes, but yet we don't get anything out of that. As employees—employees pay into federal taxes, our tribal employees, and a lot of you pay into federal taxes, but we never see any of that come back to us like in roads or anything like that, police force, and all that stuff. Right now, our police force has diminished, and we've only had to settle with a few police officers because of the cutbacks. And when I was in NCAI, I was very alarmed by how some of the people had presented themselves to me that's up there on the hill, that's supposed to be representing us. To me, that's all they were thinking the back of their mind, is what we call termination. This is another termination era, just coming at us in another way.

So we have to be very careful in the steps that we take. And you, as representatives up there of us as Indian people, if our people on the hill had to be educated by all the tribes in the United States, could they learn that in 10 days? I don't think so. And they always do that to Indian country. They expect you to do something within 30 days, 60 days, or 90 days. That's the same thing they did on Brack [ph]. And I said the same thing back in the last meeting. What you intend for us to do in 30 days that you couldn't do in 150 years. So this much I leave with you. Thank you.

JODY: Thanks. We need to go to lunch. I apologize to those folks who wanted to speak but didn't get an opportunity, but there will be questions and answers following the next session. I want to ask one question before I send you all to lunch. At the moment, the way it is on the agenda is that we're going to come back, do the rest of the ongoing work, and then do caucuses. And the reason for that was I was figuring, and we were thinking, that you would want to hear all the work that was going on before you did any kind of caucuses. But I want to check in with you about that, whether you'd rather caucus right at lunch and then hear the rest? I'm just asking. I was just asking, so I got the question—I asked and I got the question answered. So the agenda stands as is. So folks, go to lunch. We'll see you back here. We will start right at 12:45, and then we're going to take off. Oh, we're going to put the video up. It'll be about 15 minutes, and then we're going to put a video up that shows about the history of Navajo lands? Yeah. Carol will give you a two-second version. So if you want to stick around during lunch, go grab lunch and come back. We'll show a video.

CAROL HARVEY: I produced a video on Navajo history and culture. It's just something I had done probably three years ago—I had longer hair, curlier hair—for my

grandchildren. It talks about the sacred land of the Navajo, the deities that live in different places on our reservation, the gifts that those deities have given to all people, not just Navajos. Dine means five-fingered one. We don't discriminate based on race or ethnicity. We distinguish all of us as human beings. And so I did this video to pass on that heritage and culture, so I wanted to make that available to anyone that's interested. I know it's kind of difficult because it's the lunch hour and we all need to eat. There may be another time that this video can be shown, but I at least wanted to make it available to people.

JODY: Thanks everybody.

MIKE HUGHES: Okay. So those of us who are from Denver and who work downtown had our skepticism about your ability to get into any place that could feed you and get back here. So, well done. We didn't quite meet the start time, but that's all right. You got to eat and stand outside in the wind. Welcome back. I haven't had the opportunity to speak to you yet today, so let me just do a very quick introduction, and then I'll tell you about the plans for this afternoon and our flexibility with them, and away we'll go. So we're starting a little bit later than the agenda had planned, and so I'll say a word about that in just a second.

My name is Mike Hughes, and from the introductions this morning, very quickly, those of you who were paying attention, that went by fast, I'm with the Keystone Center. And it's our objective to help you have a meeting that is as successful as it might be, given the tough timeframe that you're under and the work that needs to be done between now and August 7th.

I want to say a couple words about the agenda and its contribution to that hard work, and then we'll get started. We had planned—perhaps can still accomplish—four presentations. And again, the reason for these presentations is to give you a sense for how people have taken up the charge to try to make this study happen. So different organizations, different individual tribal governments or other institutions, organizations, nations have picked up the gauntlet that's been thrown down and said, "You know what? We're going to make this study as good as it can be, and here's what we're going to do." So they're going to report about that in a few minutes.

If time permits, depending on how efficient they are with their time, given what we've lost, we may do some questions and answers at the end, followed by these things: An opportunity for those of you who would wish to, to step back with those who are in your same organization or series of organizations, those of you who are like minded in some way, to spend some time together in a caucus. To meet and talk about what you've heard so far today and to develop some reaction to it or some thoughts about it, and then come back, and then we're going to have a plenary session. At that moment, I'm going to use about the halfway point of this room, and those of you who are on this side of that half, I'm just going to have you do this with your chairs—move them to the back sides of these tables. Because the wisdom, notwithstanding these three bright people up there, isn't up there. The wisdom—what goes into this study, if it's going to make it successful—is in here. And so the plenary is going to be an opportunity for you to share that wisdom with each other and to talk in here.

So after the caucuses, we'll flip the chairs. Anybody on this half of the room, this side, and then we're going to talk in there. And that's what I want to get to, is the

opportunity for you to react to what you've heard, to give your thoughts about what is going to make this study successful. and we'll do that hopefully for an hour, maybe a little more, depending on how things fly.

There's one thing that I need to ask you for to make this part of the agenda successful in order to get to the caucuses, which we think are important, and the plenary, which we think is important. At the end, if there is time permitting for questions, they actually be questions of these speakers. I want to ask you to save commentary or discussion for the plenary when we can really have the discussion.

These folks who are going to talk, we've got the first three who are in front of you: Meg Hunt from the Edison Electric Institute, Lisa Cameron and Jay Shepard from the Fair Coalition. They will then dismount the stage, and the next speakers from the Morongo and Red Willow case studies will take the stage and give you a sense of how they're doing their work to contribute to the study. Again, time permitting, questions and answers, but only that, caucuses, and then discussion.

As far as caucuses are concerned, they are self-organizing. We want to reserve this room for tribal conversation. And so if you want to have a tribal caucus or be part of one, you'll stay here. Others, we're going to allow you to self-organize. So you might find three or four like-minded people and go sit downstairs on one of those nice comfy couches with the high backs, or go sit in the coffee shop, or as you like. Okay? So questions about the agenda for this afternoon? Good. So please give your attention to the folks up here. We're going to start with Meg Hunt from the Edison Electric Institute. Meg?

MEG HUNT: Okay. The Edison Electric Institute appreciates the opportunity to make a presentation in this second meeting regarding the Section 1813 tribal fee study. We learned a great deal from the scoping session in March, and we look forward to a productive learning session here as well.

For those of you who were not here in March, EEI is the trade association of United States shareholder-owned electric utility companies. Our U.S. members serve 71% of all electric utility customers in the nation and generate almost 60% of the electricity produced by U.S. generators. In providing these services, EEI members have received or are seeking right-of-way grants for transmission and distribution facilities across tribal lands. In addition, many existing grants will require renewal over the next decade and beyond.

In March, EEI volunteered to survey its member companies in an effort to develop a useful set of information to contribute to this study of compensation practices for rights-of-way across tribal lands. Conducting the survey has presented a few challenges. One, the information is highly sensitive, confidential business information. Two, some of the information is subject to legal confidentiality agreements between particular companies and tribes. Companies were deeply concerned about how participation in the survey would affect ongoing tribal relationships, and the time between the March meeting and this one was very short, in terms of generating extensive data on compensation practices.

In conducting the survey, EEI attempted to address these practicalities by avoiding questions that would present the most direct confidentiality problems, agreeing to aggregate the data so as to avoid identification of either the individual tribe or the

company, and concentrating survey questions on renewal transactions within the past five years. We concentrated on renewal transactions inasmuch as those transactions seemed to generate the most concern during the last meeting, as opposed to the siting of new facilities. Companies are increasingly choosing to route new facilities around tribal lands rather than submit to the uncertainties of the existing process for negotiating compensation, particularly with respect to renewals.

We did not attempt to survey comprehensively our members on previous compensation rates. This had as much to do with the apparent sketchiness of the older data as with the shortness of the time available for conducting the initial survey. We also were not certain that the older data would be especially useful in the absence of a better understanding of the comparative value of the dollar in the year in which those transactions would have been finalized and some certainty as to the methodologies used to calculate those fees. To the extent that we have become aware of older data, we have found nothing to suggest that tribes were compensated less than the compensation paid to private landowners. Eighteen companies have engaged with EEI on the tribal fee issue. The preliminary response rate on the survey was 40%. This appears to be a reflection of the sensitivity of the issues and the relationships involved. It also reflects that in a few instances of no response, the relevant renewals transactions were completed 10 to 15 years ago or are yet to occur. For our members, the number of right-of-way renewal transactions recently completed appear to pale in comparison to the number of transactions that will be up and coming in the next 5, 10, and 15 years. We have one company that will have 99 renewals over the next 15-year period. We hope to be able to document that ratio when final survey results are in, but it is already apparent, however,

that with the shorter terms now being adopted by tribes for right-of-way grants, it is entirely possible for a company to remain in a state of perpetual negotiation for decades to come, with all of the uncertainty and risk associated with that process.

In general, the preliminary data from the survey suggests some broad trends. One, permit periods or easement durations are declining substantially. Two, renewal negotiations are taking longer to complete. Three, the methodologies used are not those intended to calculate the value of the land being used, nor are they consistent with the widely-accepted practices used by the federal government or in the private section. Compensation being paid upon renewal is substantial multiples over the fair market value of comparable land, despite being only a permit or a lease for a specific term of years. I'd like to elaborate on some of these—and again, this is preliminary data results.

With respect to declining duration, whereas original right-of-way easements appear to have been granted for 50 years, recent renewals are 30% to 70% shorter on average. Fully 67% were for a term of 20 to 25 years. The nation's electricity grid is taking on the characteristics and permanence of the nation's interstate highway system or its rail network. The shorter duration for right-of-way grants on tribal lands runs counter to that dynamic. Railroad rights-of-way typically are in perpetuity, and right-of-way grants across federal lands are heading back in the direction of long duration in recognition of the nation's need to rely on the permanence of these linear facilities. In building and maintaining the nation's interstate highway system, no one advocates that every 20 years, the continued existence of a particular segment of an interstate highway should be re-debated, with the possible outcome that the pavement will be ripped out or returned to green pastures. It should be no different for transmission infrastructure.

With respect to methodologies, preliminary data from the survey suggests that methodologies for renewal transactions are departing from the traditional and widely-accepted method generally used for valuing rights-of-way, and are not consistent with the uniform standard of professional appraisal standards. Two different methodologies were most often substituted: The build-around cost and the throughput cost. Under the build-around cost, the fees charged were based on the cost for a company to build around the reservation, including the costs of land acquisition, labor, material, and permitting. This approach essentially asks the utility to pay a large portion of the replacement cost of the facilities upon renewal.

Under the throughput valuation method, fees appear to be based on a portion of the presumed profit or revenue derived from a line. This approach seeks to capture for a tribe some portion of business value, rather than recovering for the value of the land used for the right-of-way. It is my understanding that U.S. courts have tended to reject methodologies that seek to substitute business value for land value as a measure of fair compensation. We are concerned about what the impact would be on our national energy market's costs of security if every landholder along the line tried to levy such a tax on energy transport. It clearly would not be in the public interest.

EEI and its member companies continue to believe that land values and the fair market valuation of such is the appropriate baseline or setting compensation. As a baseline, it affords a degree of certainty and predictability to the outcome of a negotiation. It also assures that tribal lands are not being undervalued in relationship to comparable lands owned by others, including state and federal governments. EEI member companies recognize the unique characteristics of tribal land and are willing to

pay a premium above fair market value and hope a process can be developed for determining that premium.

With respect to protracted negotiations, preliminary data from survey responses indicate the average negotiation on a renewal takes 28 months, with a significant number taking three years or longer. This not only increases the level of uncertainty associated with the longterm reliability of the line, but adds significantly to the cost of the renewal process. More than 75% of survey respondents expressed a high degree of dissatisfaction with the renewal process, even those where the resulting agreement was viewed as being within an acceptable range in terms of actual compensation.

Another aspect to consider as to the uncertainties associated with the renewal process is that potential costs associated with renewal of existing rights-of-way on tribal lands must be estimated and documented by utility companies, and that risk is evaluated by rating agencies and financial institutions. Without some sort of standard process or limit to the negotiated settlement, utilities face what they consider to be an unreasonable risk.

In conducting the survey, we also became aware of several instances where companies have elected to terminate negotiations and move their facilities off tribal lands when no meeting of the minds on fair, reasonable compensation appeared likely between the tribe and the company.

On compensation, the preliminary data tends to show that compensation of renewable agreements always exceed the fair market value of comparable lands. If fair market value is typically seen as the easement value, which would be 50% of the fee simple value, and the approximate life of a line is 60 years, then the multiple is 10 times

in about 67% of the cases. We cannot provide additional detail on a preliminary basis, in that we have needed to go back and ask some supplemental questions to understand better the calculations on the multiples of fair market value. We hope our final survey results will address those issues and that we will be able to provide some data also on issues related to access and facility maintenance.

In conclusion, electric utilities are looking for reasonable fees and conditions for rights of way based on objective assessments of comparable nearby land value and the nature of the use and location of the rights-of-way. Our companies are not seeking eminent domain authority, and they are willing to pay a premium above the fair market value, but would like a fair process for reaching that result. Utilities seek stability and certainty that right-of-way fees and conditions will not change dramatically over time and that the companies can continue to rely on existing rights-of-way to serve their customers, including the tribes and their members. These outcomes are important to maintain investor confidence in the electric utility industry and preserve access to the capital needed for expanding the nation's electricity infrastructure.

The industry is at a crossroads at this point in time. The costs of providing electricity and assuring the reliability of the nation's grid infrastructure have escalated dramatically. These rising costs—whether for fuel to generate electricity, the installation of new pollution control technologies to address air emissions or water quality issues, or for rising labor and health care needs—have not yet been felt by the American consumer. At the same time, the industry is anticipating for the first time in decades the need to site new major multi-state transmission lines, as well as the need to add new base load generation. This will require a new investment in the billions of dollars. Already, the

anxiety about how these costs will be borne by electricity consumers is being reflected in the public debate. Public utility commissions, governors, state legislators, and electricity consumers are scrutinizing utility costs closer than they ever have in the past and may not be prepared to accept them, however legitimate they are. As a result, companies are under enormous pressure to control costs, including those associated with the acquisition and maintenance of rights-of-way.

EEI hopes that this study can serve as a vehicle for a dialogue and for reaching agreement between the tribes, our companies, and the Departments of Interior and Energy on a framework through which the tribal objectives of fair compensation and our members' need for a transparent, predictable, and objective measure for compensation can be met. We further note that the text of Section 1813 specifically requires the report to include recommendations to Congress. We believe that this is an aspect of the study that should not be overlooked and look forward to participating in the discussion about what those solutions or recommendations might be. EEI believes that it is in the longterm interest of our members, the tribes, and the federal government to work towards a resolution of those issues, and we intend to work constructively towards that end.

MIKE HUGHES: Meg, thank you. Okay, the Fair Coalition is next. Lisa, you're up first, so I'll give you the floor. I'll turn this on for you.

LISA CAMERON: Thank you.

MIKE HUGHES: Don't you just love when people watch you—other people work on their computer? Okay.

LISA CAMERON: Okay, ready to start. I'll just use the mike. Okay. Seems like it's working.

Hi, my name is Lisa Cameron. I'm an economist working with the Fair Coalition, and I'm very pleased to have the opportunity to speak with you here today and to provide you with an economic perspective on appropriate standards for rights-of-way fees on tribal trust lands.

Just to provide you with some brief biographical information, I'm a Ph.D. economist with extensive experience in gas, oil, and electricity issues. In fact, I wrote my thesis over a decade ago on the emergence of competition in generation. I've been an economic consultant for the past 10 years, and before that I was teaching at Carnegie Mellon in the business school, where I focused on microeconomic theory and regulatory policy. I've written numerous articles on energy industry economics in academic and professional journals.

So I want to start off with an executive summary of what economic—standard economic analysis has to say about this issue. The key policy question that we all need to keep in the back of our minds or in the front of our minds is how do we reduce the overall cost of meeting the nation's energy needs. And the more efficient we can make the process of meeting those energy needs, the greater is the size of the pie that's available for all Americans to share. So we don't want to waste money in meeting those energy needs, because that's less money to be spent on health care, on education, and a bunch of other desirable goods that we want to be devoting resources to in the U.S. economy.

So an important step for increasing the efficiency of how we meet our energy needs is introducing more transparent cost base standards for rights-of-way fees on tribal lands, just as we're discussing here today. And the reason that we want to do this is because it's going to improve firm investments—firm investment incentives. It's going

to remove a significant source of risk that's faced by companies and increase project viability. And it's going to reduce upward pressure on consumers' rates.

So I now want to spend the rest of my time kind of giving you the support for my conclusions. And the outline of where I'm going is, first I'm going to briefly talk about the economics of transportation infrastructure. Then I'm going to talk about current standards for rights-of-way fees on U.S. private lands and on federal, state, and municipal lands. And then I'm going to talk about the economic impact of the current gap in standards for determining rights-of-way fees on tribal trust lands.

As we all know, energy transporters serve a vital economic function. Natural gas and oil pipelines transport the commodity from producing areas to end users, and electric transmission lines carry power from generators to load. These are very capital-intensive facilities, typically subject to regulation at the state and/or federal levels. A very important aspect of regulation is that rates are constrained, and those rates are constrained to be based on the cost of service. And the reason that this is done is to protect consumers. In addition, however, this is not a one-way street. Utilities—these pipelines, these transmission lines—are also provided with the opportunity to recover their costs from rate payers, including the cost of capital. And the reason that this is done, from a public policy perspective, is to provide firms with the incentive to continue to make efficient investments.

Another aspect of regulation that supports infrastructure investment for these energy transporters is the standards for rights-of-way fees on private lands. As we all know, energy transporters have long had the right of eminent domain to obtain required easements for projects deemed to be in the public interest, for example, pipelines that

have received a certificate of necessity from the FERC. And the landowner is compensated for what he loses. He's compensated for the loss in market value of the land impacted by the easement. And the easements are typically provided, it's my understanding from rights-of-way professionals, these easements are typically provided in perpetuity.

Now, even off private lands, we find that similar standards for rights-of-way fees apply in various areas where energy transporters do not have the right of eminent domain, and that includes state lands, federal lands that are administered by the Bureau of Land Management, the U.S. Forest Service, or the National Park Service, and also municipal lands. So in these areas, even though the energy transportation companies do not have the right of eminent domain, the standard is still that rights-of-way fees approximate the lost value of the property.

So why do we have these standards in place in private lands and in these more sovereign lands, in state, federal, and municipal lands? Basically, these standards create public benefits. Landowners are made whole. Compensation is based on the market value of the property. In addition, the compensatory ROW fees that are paid do not reflect monopoly prices for the land. And what does that mean? That means energy transporters have economically desirable incentives for meeting consumer demand. Energy infrastructure can follow least cost routes. It doesn't have to route around private lands, because those private lands are too expensive to locate on.

Now, of course, a lack of standards—it follows from economic logic that a lack of standards is going to raise the cost of meeting national energy needs. And as we've been discussing, tribal trust lands do lack transparent, efficient standards for determining

rights-of-way fees that apply all across these various sovereign entities. And as a result, some tribes may be overpaid or underpaid relative to the compensatory amount—the amount that they're losing when easements for these energy transporters are required on their lands.

Now both underpayment and overpayment increase the cost of meeting our national energy needs. Both of them are inefficient. But I think that we can all agree that it's important to have standards in place so that no underpayment takes place, right? We all want everybody to be compensated for the value of the land that's taken as a result of the easement. So, given that that's uncontroversial, what I want to do then is focus on the overpayment case.

So how does a lack of standards raise costs? Economics tells us that when there's no standard in place, when one party has all the cards, then that party is going to have every incentive to engage in hold out. We know that there are some tribal lands that are strategically located between energy producers and end users, or in the transmission case, between generators and load. And those—and tribal lands in that situation, as any party with that power, have the incentive to capture much of the public benefit associated with the project, and tribes can hold out for just below build around costs, as any party would who had these same sovereign abilities. Unfortunately, the current policy defeats the purpose of the compensatory rights-of-way fees that we've enforced along the rest of the project route, and it's enabling tribes to appropriate the entire public benefit of the project up to the cost of build around.

So now I want to talk about another case in which lack of standards raises the costs of meeting our energy needs, and that's renewals. For incumbent infrastructure

providers—infrastructure that’s already in the ground—companies are going to be willing to operate at least as long as the price is greater than or equal to the average variable costs. So that enables tribes to charge renewal fees that leave companies with no more than this margin, and companies are trapped. They might never have built these lines if they had foreseen the current regime in which the ability to hold up investors is able to be exercised. And so for new entrants, this is going to create enormous uncertainty, and otherwise beneficial projects can become financially nonviable, perhaps because they have to route around the tribal trust lands, or because this uncertainty on the horizon increases their cost of capital.

So what are the negative impacts of this lack of standards? Companies are going to abandon proposed lines when the tribal demands render lines unprofitable or too risky to be viable, or build around is too expensive. Companies are going to have the incentive, as Meg discussed in detail, to choose more costly routes to bypass tribal trust lands. Companies and tribes are going to wind up devoting a significant portion of their resources to lengthy negotiations and renegotiations, as in the case of the company that Meg discussed that has 99 renewals on its horizon. And the result is that we’re going to have—is too little transportation infrastructure that’s being built at too high an economic cost.

On the renewal side, it’s been argued that many transporters can simply pass on the increased tribal rights-of-way fees on to consumers. Now, in the cases where that ability exists, what’s happening is that tribes can use the rate-making methodology—the cost of service rate-making methodology—to harm consumers—this rate-making methodology that was put in place to essentially protect consumers. On the other hand, if

the increased rights-of-way fees cannot be passed through, then transporters are going to face reduced returns, lose the ability to attract capital, and underinvestment raises the long run costs of meeting national energy needs for all consumers.

Now I'd like to point out some ways in which tribes can benefit from more transparent, efficient standards for rights-of-way fees. As Meg discussed, and as subsequent speakers will also provide input on, high costs, uncertainty, and delays associated with the current regime signals to infrastructure investors, "Don't build here. Don't invest here. Don't create jobs here." More efficient, more transparent standards are going to contribute to an improved climate for development on tribal trust lands and ensure that no tribe receives less than compensatory value for its rights-of-way, which we all agree is an important goal to achieve.

So I want to thank you for allowing me to present these arguments, and I would now like to recap. So basically we know that energy transportation infrastructure plays a vital role in our economy, and transparent, cost-based standards for rights-of-way fees on tribal trust land are in the public interest, because they're going to reduce the overall cost of meeting national energy needs. They're going to improve companies' investment incentives. They're going to remove a significant source of investor uncertainty and thereby increase project viability, and they're going to mitigate upward pressure on rates.

So that wraps up what I had to present today, and again, I'd like to thank you very much for taking the time to listen.

SPEAKER: Lisa, thank you...

JAY SHEPARD: [Inaudible] on behalf of FairCoalition. I have had 38 years of experience in land acquisition issues dealing with both high pressure natural gas

pipelines, petroleum pipelines, 4 kV through 500 kV electric transmission lines, communication lines and so on. I have had experience working with several -- most state and federal agencies, Bureau of Land Management, Bureau of Indian Affairs, Native American Tribal Councils, California Coastal Commission, state and federal forest services.

For my first slide, determination of land rights fees. There are several accepted methods to establish fair market values of real property. When establishing fair values for the purchase of land rights it is common practice to obtain the services of an independent MAI appraiser. An MAI appraiser is someone who is designated by the appraisal institute as an expert in appraising values. Membership designation is held only by those appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential, farm, and other types of properties, and who advise clients on real estate investment decisions. They are required to pass a rigorous series of examinations and have a minimum of 6,000 hours of experience, all meeting the criteria set forth by the Appraisal Institute.

Fair market values are normally determined by evaluating sales of comparable properties based upon the highest and best use of the property. That's not necessarily the current use. The highest and best use of property is determined based upon an evaluation of community general plans, special use districts, zoning, proposed development on the property, and so on. The value of an easement right of way crossing real property is then valued as a percentage of the total land rights as granted or negotiated for, and further, as described as in an easement document based on an MAI appraisal. Moreover, easements on private lands are almost always granted in perpetuity. Fee land rights owned in

perpetuity are understood by the professional land agent as actual ownership of all of the rights that run with owned land. In other words, a person owning fee title to a parcel of land owns all the rights to that particular parcel, use of the land consistent with zoning restrictions, air above the land, mineral rights, rights to grant to others, etc.

While this is the standard method of valuing land rights on private lands, it does not apply to tribal land trusts. In my experience with no formal standards imposed, the easement fees asked by public utilities for -- of public utilities by tribal counsels have been many times far in excess of any determinable fair market value by multiples as much as 400%. In addition, these rates are for temporary rights with fixed expiration dates. It is important for everyone to follow a fair, independent, and recognized formal method for determining fees paid by utilities for rights of way crossing tribal lands. It is also important that easement grants be given in perpetuity, rather than for temporary periods of time in order to secure the reliability of the country's electric transmission and natural gas system grids, as discussed further below.

Land rights in perpetuity versus temporary land rights. Fee land rights owned in perpetuity as previously described are understood by the professional land agent as actual ownership of all the rights that run with owned land. On the other hand, land rights with definable termination dates are really rights to use the land as compared to actual ownership of any certain land rights on that particular parcel of land. Considering a utility easement for example, the utility invests significant amounts of capital funds for the construction of facilities within utility owned rights of ways. The cost of this investment is returned to the utility over many years, in some cases 20 years or more. In

today's business environment, it is irresponsible for a utility to invest these enormous sums in rights of ways with temporary use rights.

Utilities that accept temporary rights in the past 35, 30 to 50 years, are now finding that these temporary rights are expiring and utilities must once again pay for these same rights, or, if necessary in some cases, relocate and rebuild off trust lands at great expense to the consumer. In many cases, existing facilities within temporary easement land rights are seen by landowners as opportunities to negotiate for enormous rents far in excess of fair value for continued temporary rights. In many cases, relocation of the utility is not a viable option due to the length, cost, environmental impacts, and existing customers, etc. A negotiated imbalance is thus created. Undesirable environmental impacts are significant.

Land uses. In most cases existing gas and electric transmission facilities were constructed many years ago in rights of way that when constructed crossed open land such as farm, desert, forest, and vacant non-developed land. Numerous alternative alignments were available. Those same rights of way today have been encroached upon by community urbanization, and lands once wide open now are fully developed. Essentially, alternative alignments are extremely few if they exist at all. Many existing land uses and regulations prohibit the construction of gas or electric transmission facilities. Local community councils and boards are beholden to the voters and, to be blunt, most community citizens do not want new major gas or electric transmission facilities or rights of ways passing through their neighborhoods. Unfortunately, [indiscernible] is still very much alive.

Natural habitat that was once plentiful many years ago is seriously impacted over the last 30 to 40 years as a result of urbanization and it is becoming scarcer every day. Constructing new facilities in order to replace existing lines that now occupy temporary rights of ways, such as those crossing Native American or military reservation lands, is compounding the problem of this vanishing habitat. Economically forcing the relocation of existing facilities is potentially very detrimental to existing habitat and endangered species. Natural resources required to construct new facilities are required to fabricate new steel pipe and/or electric transmission facilities, a highly energy intensive process, and unnecessary if existing facilities currently cross Native American or military reservation lands that can economically remain in their existing rights of ways.

I've just been given the two minute warning here. I'm gonna quickly go to my conclusion and an example that I want to share.

In the year 2000, a Southern California company proposed and began the permit process for the construction of a new 30 minute, or 30 mile, it's approximately 120 towers, \$360 million 500 kV electric transmission line between a substation in Northern San Diego County to another substation in Southern Riverside County. The purpose of the transmission line was to ensure regional energy reliability and to bring needed electrical energy to San Diego County from renewable energy resources and to be able to transmit electrical energy north to Los Angeles in order to help minimize summer peak brownouts and potential outages. In 2002 the PUC halted the project, stating that it was too expensive and unneeded, despite utility and independent projections identifying expected energy shortages by the year 2010.

The primary and alternative alignments for this project passed through a San Diego Native American reservation. The reservation is south of the community, a community in Riverside, and adjacent to national forest lands. The level of existing urbanization and forest service refusal to grant approval for any new utility rights of way through forest service parklands forced the proposed alignments through the reservation. Efforts to negotiate between the tribal counsel and the utility proved fruitless. The correct forum did not exist between the two for either party to successfully conclude any negotiations.

In 2005, the utility proposed and began studies and preliminary design work in order to file permit applications for a new 500 kV electric transmission line from Imperial County California, north to Southern Los Angeles County. This project has been titled the Sunrise Project and, if approved, will be approximately 125 miles in length. The cost is \$1.4 billion, and it will traverse the California Anza-Borrego Desert State Park. The need for this project is to serve the projected growth of San Diego County and Southern California in the year, or by the year, 2010, and to take advantage of renewable energy development in Imperial County. Once constructed, this project will have cost Southern California consumers \$1.04 billion more than the initial proposed project, will be 95 miles longer, and require some 500 electric transmission towers. It's approximately 380 towers more than the original proposal.

In order to ensure that natural gas and electric transmission and other similar projects that benefit a tribe, public, and national interests of the United States receive fair and impartial evaluations of good faith negotiations, it's important that they occur, and it is vital that formal review and approval processes are in place for proposed projects

crossing tribal lands. In the void or lack of transparent fair and equitable utility transmission rights of way evaluation standards, the United States can expect significant increases in already high costs of energy and increasingly significant decreases of system reliability in energy delivery to the customer. Fair evaluation standards will help lower and keep existing energy rates affordable and reduce the overall cost of fulfilling our country's energy needs. Thank you.

MALE SPEAKER: I was [indiscernible] make sure to -- thank you. We'll trade places now. I want to make sure as you're exiting the stage that we're always connecting this back to the study that's being written. Jay, is that a case study you're providing to the authors?

MALE SPEAKER: Yes.

MALE SPEAKER: Okay.

MALE SPEAKER: [Inaudible] .

MALE SPEAKER: Probably not. So we'll figure out how we get any questions answered, but --

SPEAKER: [Inaudible].

MALE SPEAKER: Responses we're definitely not doing. Well, if there are legitimate, I don't understand that. Can you answer the question for me? We -- we may find a place to do that in a minute. But responses we're definitely not doing. That's the plenary. We're gonna do that after the caucuses. So you will have a chance to say what you need to say, but this isn't -- this is not a tit-for-tat debate. This is questions you have for these folks and we may find a place for them. So, while these folks are taking the stage we're gonna give them their same time, and then we're gonna do the caucuses, and

then we're gonna come back and you can say what you thought about that and offer different perspectives, and away we go.

So, as they're getting set up it is -- I'm -- I'm struck by the dramatic difference in ways of seeing the value of something. You know, between Lisa's comments on the economics and David's comments on the -- on the value of -- of sovereign land, I mean, it's -- it's an extraordinary range of ways of seeing the world. And it's not surprising that you're -- that you're -- we're all right here trying to sort that out. That's a -- that's quite a divide to try to bridge.

So, again, while they're getting set up we'll do this. We'll give you a chance to actually have some conversations, digest the information you've gotten. We'll flip half the chairs around and then you really can say what you need to say in response, make whatever commentary you need to make. If there are questions of fact that you need to explore, we'll figure out how we do that.

Okay. Have I filled enough time like a stand-up comedian up here? Okay. Gentlemen, if you would introduce yourselves. The agenda had the last speakers named, but your names don't appear. So if you would introduce yourselves, because their agendas don't tell --

JOHN MUNCY: My name is John Muncy. I'm a tribal member with the Morongo Band of Mission Indians. Today I'm a -- I'm a Tribal Council member also, so I'm here as a representative.

TOM SHIPPS: Hi, I'm Tom Shipps. Can you hear that? I'm Tom Shipps. I'm an attorney for the Southern Ute Indian Tribe. I also serve as Special Counsel for the Ute Mountain Ute Indian Tribe.

BOB ZAHRADNIK: I'm Bob Zahradnik. I'm the Operating Director for the Southern Ute Growth Fund. We manage several billion dollars worth of non-trust assets for the tribe. These are outside investments other than trust lands.

MALE SPEAKER: Okay. Thank you very much.

JOHN MUNCY: First off, I'd like to thank the DOE and DOI for allowing Morongo to participate in the case study. As I said before, I'm a member of Morongo and a council member. This is a presentation by our tribe on the issues concerning rights of way on tribal lands. In today's proceedings we are faced with two basic questions. Should the rights of 567 tribal governments throughout the United States be suspended for El Paso Natural Gas, a single utility company? Second, and equally important, should the Secretary of the Interior be empowered to seize portions of our reservations without the consent of the people who own that land in order to turn it over to corporations for their own profit? Hold on.

MALE SPEAKER: While John's sorting that out, I have decent eyesight, and I'm having trouble. So, if you're back there and you're having trouble, there are dozens of seats right here. So please feel free to move and find a way to look in, and get all you can get out of this. I do wave my arms around, but I promise not to hit you if you sit in the front row. It's moments like this when you want Bill Gates here to go, "See what havoc you've wreaked on our lives by giving us this thing. Stop it!" We're just trying to get rid of the automatic -- it's flipping the slides automatically. Yeah, down there. There you go. That's it.

JOHN MUNCY: Thank you.

MALE SPEAKER: Yeaaaa! Thank you.

JOHN MUNCY: Any questions? Let me get back to that second question real quick. Where is that at? Okay. Yeah. The second question, should the Secretary of the Interior be empowered to seize portions of our reservations without the consent of the people who own that land in order to turn it over to corporations for their own profit? These are the questions that your report to Congress must answer. It's not a question of national security, ratepayers' interests, renewable resources, or any of the other false claims that backers of 1813 have tried to put forward. This is a matter of some basic fundamental issues, imminent domain, the consent of the governed -- pardon me. Okay. Back to the matters of -- the basic matters -- the basic fundamental issues, imminent domain, consent of the governed, fairness, and the value of a federal promise to uphold tribal sovereignty.

My tribe knows something about these issues that we would like to share with you. Here's a photo of our reservation. We have just over 1,000 members, many of whom grew up here and call the reservation home. We have a lot of experience with what happens when rights of way are ran through our reservation without the consent of the people who live there. And we have significant experience in producing the mutual benefits that can be achieved when consent is required and utility companies and tribal governments cooperate. This was the promise given at the founding of this great nation. These same principles helped the establishment of our reservation in 1876 by President Ulysses Grant. But by the beginning of the 20th century, a different ethic was in place. The business of the Bureau of Indian Affairs was business, big business. The reservations were being carved up for rights of way to benefit railroads, water and highway developers, and energy companies.

Sure, a lot of Indians would be hurt in the process, the government knew that. But, hey, the government promised the survivors would be grateful in the end. Here are the government's words to read for yourself. This was a very real federal policy. The consent of tribal governments was not required for any right of way on tribal lands. I do not want to speak these words myself, but taking a moment to read them may help you to understand the way we view these issues, what our experience has been, and how the lives of my parents, and grandparents, and great grandparents were affected by these attitudes.

MALE SPEAKER: [Inaudible].

JOHN MUNCY: Oh, really? Okay. It is one of the cruel incidents of all civilization in large masses that some, per chance a multitude, of its subjects will be lost in the process. But the unseen hand which has helped the white man through his evolutionary stages to the present will, let us trust, be held out to the red pilgrim in his stumbling progress over this same rough path. This hardly used race may fall by the wayside and be trodden underfoot. Its subjects will be lost in the process. It was in that spirit that the first right of way for power lines was driven through our reservation in 1914, a 90 kilovolt line erected without permission, consultation, or even official authorization. Years later, compensation for this intrusion was set at \$5.00 a year, later increased to \$5.29. That's less than one and a half cents per day.

That was just the beginning. The rights of way that were subsequently imposed on the Morongo Reservation included a maze of electric, gas, water, and fiber optic lines, as well as railroads and highways. As with the first of those power lines, the rule for much of this period was to build first and get approval later. By the 1940s, the BIA had

evolved what its commissioner called the Policy of Ruthless Benevolence. As a result, when the first 230 kilovolt transmission line was driven across our reservation in 1945, we were not consulted, but we were compensated, this time with payments of \$31.80 a year for a right of way that was 300 feet wide and nearly six miles long. About eight cents a day.

The rules began to change in 1948 when Congress for the first time required tribal consent for rights of way and established fair market value as the minimum compensation for all tribal rights of way. This is the law that proponents of Section 1813 want to turn back, back to what they think of as “the good old days,” when tribal consent was not required and the government fixed whatever the level of compensation would be. Why undercut a basic protection that has been in place for nearly 60 years? Has the existing process of mutual negotiation and consent proven so cumbersome that the rights of tribal property owners are to be overridden and denied?

In contrast to the damage that was done to our homes before consent was required, we have been making the modern system work, and work well, for all concerned. We have good relations with Southern California Edison and the other private companies and public agencies whose rights of way cross our lands. For example, we’ve been working with Southern California Edison to ensure that there will be no disruption of delivery of services, even though their rights of way are expiring. The right of way for one 230 kilovolt transmission line expired in 1995. The easement for another 150 kilovolt line expired in 2005, but we have agreed to extend the use of both lines to 2010 when another easement will also be up for renewal. Negotiations are set to get underway on these rights in 2008.

Likewise, we successfully negotiated an agreement with Edison for the installation of a fiber optic telecommunication line in 1997, and we are already negotiating with Edison on their proposal to modify its existing single circuit 230 kilovolt lines and make room for the construction of two 500 kilovolt lines.

Undermining the tribal right of consent can only disrupt and delay these negotiations and the positive relationship we have built between Edison and Morongo. We urge the Department of Interior and Department of Energy, don't turn back the clock. Do not betray tribal good faith. The Morongo's history demonstrates a progress that can be achieved when tribal consent is required, as well as the reprehensible consequences of a system that denies this fundamental right. Preserving the status quo, preserving a fair and well-established process of mutual negotiation and consent to protect the right of tribes to defend their interests against commercial encroachment upholds the federal obligation to respect tribal sovereignty. Tribal consent is a good and lasting way to protect our lands for our children and grandchildren, and encourage tribal governments and utilities to work together for the benefit of all.

MALE SPEAKER: More slides, or are we done? Gentlemen?

TOM SHIPPS: No, we've got -- we've got more slides.

MALE SPEAKER: More slides? Okay. Cool.

TOM SHIPPS: I've never done a PowerPoint before. So I'm calling on the federal government for assistance. Well, good afternoon, and -- and thanks for having me speak. There's nothing terribly rocket science -- hello? There's nothing rocket science-like about what I'm gonna talk about. There was some discussion among tribes that are involved with this and also with the Department of Interior and Department of

Energy about approaching this issue with some kind of a classification of different kinds of tribal rights of way in mind. Next slide, please. Just as a general way of background, I think everybody in this room probably knows it, we've defined right of way as the right to use the land of another for a specific purpose. The owner of the right of way is said to own the dominant estate. The owner of the land that's burdened by the right of way is said to own the servient estate. And generally, the owner of the land, the servient estate, retains all rights and benefits of land ownership except those that may be inconsistent with a specific easement used. [Next slide]

There are lots of different ways to classify rights of way. For example, some rights of way are perpetual, that is, they can be used for so long as the right of way is needed for the specific use intended. Other rights of way are of limited duration. In many instances, in most instances, rights of way across tribal lands are ones of limited duration, either based upon statute, regulation, or negotiation. Also, I mean, there are other kinds of classifications. You hear of rights of way as being exclusive, or non-exclusive, depending upon how many different easements or parties may receive the benefit of use of an easement area.

Congress in its imminent wisdom in Section 1813 came up with a new classification, "Energy Rights of Way on Tribal Lands." [Next slide] This is an exceedingly broad term, and just by way of example, or -- I've got some examples here of energy rights of way that might be included within the scope of that definition, and with the able contribution of Wayne Broad from the Hickory Apache Nation. We've got well pipelines, well lateral pipelines that connect wells to gathering systems; gathering lines that connect oil or gas wells, or central delivery points to processing or treatment

plants; transmission pipelines from gas processing or treatment plants to end users or gas distribution systems; gas distribution system pipelines that deliver gas to consumers; oil or liquid hydrocarbon transmission lines; lines that transport carbon dioxide or water to oil and gas fields for use in tertiary recovery [next slide]; water delivery pipelines that deliver produced water from wells to water disposal facilities; electric transmission lines that connect generating stations to sub-stations or transformers; electric distribution lines that deliver electricity to consumers; road rights of way needed to access wells, or pipelines, or generating stations, or transmission or distribution facilities, or other energy facilities; roads for hauling coal; easements for trimming shrubbery or vegetation. All of these, and this is not an endless list, I'm sure many of you can come up with others, are examples of energy rights of way on tribal lands.

Obviously, Congress provided no guidance or limit on the scope of energy rights of way to be studied, however the circumstance leading to the study arose in the context of compensation negotiations related to the renewal of a FERC-regulated interstate gas transmission line crossing 900 miles of the Navajo Nation's lands.

Now, these are some factors, and part of the purpose of my presentation, and I intend to be brief, is to provide some context on how different interests may be aligned between the energy interests and the tribe, so that you can avoid the unfortunate situation that Mr. Shepard described where the consumers are now being -- having to pay a billion dollars more than they otherwise would have if they had dealt fairly with the tribe.

The factors affecting duration and compensation from a tribal perspective, will the facility located within the right of way provide utility services needed by tribal members? Another factor, will the facility contribute to the development and management of tribal

resources for economic benefit to the tribe? Another alternative or possibility, is the only benefit to the tribe the compensation to be received for consenting to the grant or renewal of the right of way?

And I would submit, based upon the experience of the Southern Ute Indian Tribe, and some other tribes, I think, in this room, is if the parties are creative, it's very, very seldom that the compensation or the benefit that could be received by the tribe would be limited to just that direct compensation. There is some other benefit that generally can be negotiated, and it's critical with respect to the ongoing renewability of a right of way that the parties attempt to identify those mutual points of interest.

Another one, you know, how is the granting of the easement going to effect tribal lands, environmental resources, cultural resources, or sacred sites. And also, what control will the tribe have with regard to retaining jurisdiction, assignability, so we'd make sure that we know who the next person is, or entity, that's gonna be operating on tribal lands. And what are going to be the factors associated with regulatory compliance? Not just with federal and state regulatory requirements, but also with tribal regulatory requirements.

From the industry's standpoint, I think some of the factors, and these are obvious, include whether or not the company is gonna save expense by going across tribal land. You know, certainly historically I suspect that the reason why some of the pipelines and electric transmission lines that we are talking about now in the context of renewals were placed on tribal land because they were the shortest route, they were a strategic route, it was simpler dealing with one landowner, even having to deal with the Bureau of Indian Affairs as it's trustee, than it was having to deal with a myriad, or thousands of other

landowners, to go across a comparable length of property. Is the acquisition of the right of way needed to provide tribal members or the tribe with vital services? I mean, I think that's something that an industry representative would want to consider bringing up in the context of negotiations with the tribe if, in fact, services are going to be provided to the tribe. And how will durational limitations or tribal compensation affect project economics? With regard to many of the historic rights of way, the length of those -- the duration of those rights of way probably exceeded the expected projected life of many of those projects.

Identifying mutual interests. Again, you know, if you're talking about necessary tribal member services, there are mutual interests related to the reliability and extended duration of the right of way. If you're talking about tribal economic development, for example, economic development through energy resource production, a tribe's energy resources. You know, there's a balance between the extended duration and the other economic interests that are at issue, and consideration of those is appropriate in negotiations. If there's no direct benefit through services other than just this compensation that's gonna be paid, then the parties really need to be creative to see if there is something that they can identify as a potential benefit. [Next slide]

Uniform policies and methodologies. There are, in fact, tribes that have adopted uniform policies and methodologies, maybe not in all contexts, but at least as to categories of rights of way. With regard to necessary tribal member services, if you're talking about running an electric distribution line to a tribal member, a tribe may very well have interest in establishing a certain kind of a system that allows that to take place. In the situation with the Southern Ute Indian Tribe, with regard to rights of way to service oil

and gas wells, or, actually, any pipeline that has less than a 10-inch diameter, for years the tribe has had a uniform policy in place that attaches a schedule, the duration is under that policy 10 years, there's a fixed rate of compensation based upon whether the land is irrigated land, forest land, non-irrigable land, and there are other provisions with regard to that uniform policy. Now, there can be exceptions to the policy. And with regard to anything over a 10-inch diameter line, the tribe has, as a matter of policy, said that consent per issuance of those rights of way will be a product of negotiation.

If there is no direct local benefit or service, you know, the compensation is gonna be based upon the highest negotiated value. And when we talk about fair market value and comparability, it's difficult for me to understand how lands that are subject to condemnation can be considered as being comparable in value to lands that are not subject to compensation. It's the, you know, there's a difference in terms of the relative powers in the negotiations the parties have. The challenge again becomes identifying interests so that neither party holds all the cards. And if companies are creative in their discussions with tribes, they will have cards that they can go ahead and talk with the tribes about. And, as Mr. Lester pointed out earlier, many of the tribes have significant economic interests that militate toward the granting of rights of way across their lands for their economic benefit. And that's really the conclusion of my discussion, but perhaps it will give you some context for Bob Zahradnik's discussion.

MALE SPEAKER: Bob, you've got four of your 20 left.

BOB ZAHRADNIK: Okay. I [indiscernible] -- I have an actual tangible example, but there's no way to present it in four minutes, so we'll just move on.

MALE SPEAKER: That is not what we were told when we --

MALE SPEAKER: I thought -- everyone -- every speaker was told they had 20 minutes.

MALE SPEAKER: That's outrageous.

MALE SPEAKER: Can you summarize the case study that you're doing?

MALE SPEAKER: No, he's got a presentation to do.

BOB ZAHRADNIK: No [inaudible] so it's fine. I'd kind of like to move from the realm of the hypothetical to an actual tangible example, but I'm not gonna try to do it in four minutes. So, okay. [Inaudible].

MALE SPEAKER: What do you want to do with your time? It's your time. How much -- how much time you got? You wanna give him 10? All right. I'm just trying to be fair to everybody and give you the amount of time you're supposed to have. So, as quickly as you can, the case study that you've got.

BOB ZAHRADNIK: Okay.

MALE SPEAKER: I'm not really sure what that is.

BOB ZAHRADNIK: Okay, as I said earlier, I'm the Operating Director for the Southern Ute Indian Tribe for the growth fund. I've been advising the tribe on energy issues for 17 years. We've addressed many of these issues, and one of the interesting things is we're on both sides of these issues. We operate utilities in the terms of -- in the form of gas gathering systems in six states, including Colorado, and both on and off tribal lands on the reservation. [Next slide]

Okay, here's an example. We've done many of these transactions, but here's an example of a situation. We're working closely with industry. I will also point out that industry is not some homogenous mass. We were working closely with some folks in

industry, and working very hard against some other folks in industry when we put this together. But, because we knew the local [indiscernible] better than some of the large corporations that were trying to -- that were dragging their feet on this work on our reservation, we were able to efficiently develop this resource in a way that benefited the consumer downstream. [Next slide]

Southern Ute Indian Reservation is a 70 by 15 mile rectangle in the northern part of the San Juan Basin. It lays right on the Colorado/New Mexico border. It's a checker-boarded reservation. The original Ute reservation was 12 million acres. The Southern Utes now have 310,000 acres of surface. The 1868 reservation was 12 million acres. [Next slide]

The reservation [indiscernible] is very mixed. It's a checker-boarded reservation. It's a 3-D checker-boarded reservation. This is a mineral ownership map. We own all the minerals in the pink, we own only the coal in the green, private landowners own all the minerals in the gray, and Uncle Sam owns the white. [Next]

The situation we faced in 1990 was the Ignacio-Blanco Field was an old declining conventional gas field. It had thousands of wells. In fact, some of the folks pushing for some of the things today had punched thousands of wells through the coal and hadn't recognized the resource value of the coal in 40 years of development. But the tribe, in 1989 and '90, started looking very hard at coal bed methane and we saw a huge resource there with potential for development. We saw some serious obstacles to development. We also saw a huge federal incentive to developing it as aggressively as we could, because there were tax credits associated with coal bed methane. They expired in 2002. Gas we didn't pull out of the ground by 2002 was a lost opportunity.

So, we put together a geologic study of the reservation, looked at the resource base. I took that, projected it into a rate forecast that we looked and talked to the midstream companies, which were El Paso and Northwest in those days, and said how fast are you gonna expand your capacity on this reservation to take away this gas? And they said, we're not. They basically said, our reservoir engineers looked at it, we don't see any value in coal bed methane and we're not gonna spend any capital, we don't take risks anyway.

So we were concerned, and we didn't want to wait 'til -- have these folks start planning to develop -- to take away capacity on the reservation two years after the wells were drilled, because that was a great harm to the tribe and to the consumers downstream who wouldn't get the benefit of those increased volumes. Although, I will tell you that in many, many years of negotiating with midstream companies and oil companies, I never heard anywhere any discussion of the benefits to consumers. This is about money. And anybody that tells you different is feeding you baloney.

We spent a lot of time talking to the operators finding out how fast they were gonna drill. We talked to Amoco, we talked to Vastar [ph], we talked to Burlington. Those guys were on top of coal bed methane, they had aggressive drilling programs, they were gonna produce a lot of gas. We wanted to get it off the reservation, we [indiscernible] collect royalties on it, we wanted to collect severance taxes on it, we wanted to sell the tax credits. So, the result was we saw a huge gap between available capacity and what was going off the reservation. [Next slide] Got one more slide.

As I said, we talked to Williams, we talked to El Paso, and they said we're not gonna do anything about this coal bed methane, we don't believe in it, it's a flash in the

pan, it's not gonna happen. We went then to another small company called West Gas, cut a deal with them, gave them blanket rights of way on the reservation to induce them into building take away capacity, and they went ahead and started building additional capacity. The interesting thing about it was they were a very small company, but they had the vision to go forward.

Four years later, Public Service Company of Colorado says, well, we're going back to our [indiscernible] business, says, we're selling West Gas. And that's where this got interesting, because the same folks that were unwilling to put in capital before were now bidding to buy West Gas. And we really didn't want to be hostages to these folks that didn't seem to know how to manage the resource or manage their assets on our reservation. [Back one slide]

MALE SPEAKER: I might exceed my capabilities.

BOB ZAHRADNIK: Sorry, back to that curve. There we go. Okay. So again, to set the stage, it's 1990 and here we are. This is the conventional production on the reservation. This is the coal bed methane wave that was coming. We saw it coming, a lot of operators saw it coming, the midstream companies didn't see it coming. In fact, Northwest Pipeline farmed out all their coal bed methane rights, 'cause they thought it was a flash in the pan and really wasn't gonna amount to much. But, we wanted to see this happen, we helped make it happen. The way we did it was we bought West Gas and formed a company called Red Cedar. [Next slide]

Well, the key thing, the crux move on all this, was finding a partner. We didn't have any money. I told you earlier, we're managing several billion dollars worth of

assets. We knew this was gonna go for \$80 or \$100 million. We didn't have the money.

[End Side A – Begin Side B]

BOB ZAHRADNIK: But in those days we couldn't do it. We found a partner that had the vision to work with the tribe and partner with the tribe. It was a company called Stevens Corporation, and John Jurious [ph], who now works for the Ute Tribe, was representing them. He convinced them that going and working with the tribe on the reservation as a partner was a smart thing to do. [Next slide] But I will tell you that before we talked to Stevens we talked to Williams and El Paso and said, hey, partner with us and we'll buy this and work together and you'll be a partner with the folks that issue your rights of way. And they said, well, we're not interested. They just didn't get it.

So, basically, we were fairly green at the acquisitions business. We'd been working acquisitions in E&P and were successful in that point, but we didn't know what this midstream stuff was worth. There was an auction, first round bid -- or the first -- after the first round we were eliminated from bidding. And we went back and thought about that and said, well, let me think about this. There's six years left on their right of way that they're trying to sell. They're selling something that they really don't own if they're telling people that it's more than six years. So we wrote a letter to Public Service Company of Colorado. In that letter we said, we assume that the people that beat us out in the first round have made their bids contingent upon the tribe extending the right of way beyond the six years that's left, and why would we do that? I mean, they're bidding against us. Why would we create value for you? And we got a call back and said, well, amazing enough, you're in the second round of the bidding. And we said, well, who else is in the second round of the bidding? They said you are the second round of the bidding.

So we cut that and we sat down, we negotiated a fair value for it. We paid them 87 million bucks. And, as I said, the tribe really didn't have that money. We took 25% of that deal, Stevens took 75% of that deal, and Stevens guaranteed the loan. That's how we got in the business. And Stevens really gave us a leg up on this and got us moving. [Next slide] So we bought it for 87 million bucks, we have a reserve forecast and a rate projection that we believe, okay? And that's a big problem with these midstream companies. They're not very good at reservoir engineering. They don't understand the reserves behind their systems, and we did. And we aggressively began, in cooperation with Stevens, expanding the system. [Next slide]

MALE SPEAKER: Bob, on that you might point out that 42 year extension on the rights of way, too.

BOB ZAHRADNIK: Oh, yeah, let's go back. A key thing was, we looked at reservoir engineering's field life projections, and when we partnered with Stevens we gave the joint venture a 42 year right of way, because it made sense for the tribe. Heck, we're in business with them now. So, we had a 25% interest, Stevens sold that four years ago for a fat- four years later- for a fat profit. We exercised our right to go to 40%. When they sold out we bought another 11%. Now the tribe's a 51% owner in Red Cedar. Red Cedar is now the biggest gathering system in Colorado. [Next slide]

The key point is here, is this -- oh, go back one. Uh-oh, we have to go back again. Okay. This is the thru-put through Red Cedar since we bought it in 1994, okay? We bought it, it was 150 million cubic feet of gas a day, peaked at just under 700 million. The field's declining, it's dropped off a little bit, but we expanded that system to build to a 700 million a day peak, another fundamental different between us and most midstream

companies, which won't build for that peak. They'll stop construction here and kind of shave that peak and spread it out. That's 1.7 trillion cubic feet of gas that went down the pipeline to these poor huddling masses in California yearning for gas two cents an mcf cheaper, so that they continue to live the most energy inefficient lifestyle on the planet.

[Next slide]

How did we get there? We put our money where I mouth was. We took the profits from Red Cedar and we reinvested in the company. We did it very aggressively. This is our reinvestment in Red Cedar by year. [And next slide] The total is over \$180 million, so the tribe has taken- and the tribe has 51% of that- so the tribe's taken \$90 million bucks, put it back into the system, aggressively expanded the system, and made it work very well. [Next slide]

We have 1,200 miles of pipe, we've got compressor stations everywhere. We operate on private lands. And if people tell you that it costs the same to operate on private lands as it does on tribal lands, they're simply lying. You have right now the right of condemnation on private lands, but it's not a practical thing to use. People have 10 acre tracts. Are you gonna go and condemn and got to court with 1,000 people? No. That's why they wanna go across tribal land, and that's why they want the right of condemnation on tribal land, 'cause it's one court case instead of 1,000. [Next slide]

So what we've done in 12 years is we expanded that from a system with 220 miles of pipe to one with more than 1,200. We went from three compressor stations to 26. We went from six compressor units to 88. We went from a 21,000 installed horsepower to 139,000 installed horsepower. We took the existing plant, took it from 100 million a day to 240. Some outside industry partners came in, actually now it's

Kinder Morgan and Enterprise on the Coyote plant, 50/50. That plant moves a quarter of a billion cubic feet of gas a day. And then we have another deal with Enterprise where we move gas from the eastern portion of the reservation into New Mexico to be treated. This gas is gathered, compressed, treated for removal of carbon dioxide and water, then sent down the pipeline to California. [Next slide]

Okay. Bottom line is this -- you know the tribe's involvement in this substantially helped the consumers at the other end of the line. We've got a lot of other stories like this, don't have time to talk to you about 'em. This is actually the Red Cedar story, or, again, this says Red Willow. Red Willow is a lot more fun. It's an E&P company that's six times the size of this company. But, this is a tangible example of how industry partners that have the sense to work with an Indian tribe were able to -- generated benefit for those industry partners. We've had three partners in this thing in twelve years. First was Stevens, it was KN, now it's Kinder Morgan's the 49% owner. I've been on that Board for twelve years. I'm now the chairman. We've never had a split Board vote. We can work with industry if industry is willing and smart enough to come in here and work a partnership that's beneficial to both sides of the issue. That's all I got.

MALE SPEAKER: We'll see you back here at 3:45. See you back here at 3:45 for the plenary.

MALE SPEAKER: Those of you who were on this half of the room you can have the same table, you'll just be on the opposite side of it. So, come on in, have a seat. There's coffee and tea, and cookies, and the like, water. For those of you who are

looking for neither sugar or caffeine, there's water. Yeah, that's right. That's barely sustenance.

Again, I know that these are very long days and you've been sitting in a room where people have been flipping the lights on and off at you and -- nonetheless, with what energy you have left for the day, we have an hour. Out of the conversations you had in caucus, out of the observations you've made simply sitting there and listening and taking it all in thus far- and, again, we still have more time next couple of days- but given where we are at this point in the agenda, from your caucuses or by your own observation, your best advice, your thinking about the right way to make sure that this study is as thorough, thoughtful, on target as possible, I'm gonna open the floor and you get to talk to each other about the state of this study and what you would do to get it right, and whatever else came up in your conversation that you want to share. So, the floor is open. Looks like the caucus, doesn't it?

MALE SPEAKER: We're gonna bring microphones around as each of you decide to take the floor.

MALE SPEAKER: Hi, how're you doing?

MALE SPEAKER: Good.

MALE SPEAKER: Well, one thing that I think, is that there's a lot of energy- no pun, I guess it is a pun intended- there's a lot of energy on this, a lot of activism, a process going that really is gonna be over, unless the deadline is extended, gonna be over about 100 days from now. That doesn't seem -- that's never seemed -- Bob will perhaps remember when we met in October, it didn't seem to me then it was enough time to do the study. But I think for the departments to do any justice to the study they should seek

an extension from the committees. And I -- so I'd just throw that out at least as my view and see if there's push back one way or another on it. It's just not gonna be useful if you don't.

MALE SPEAKER: So I will ask the agency staff if you want to jump in, great, if you just want to take this in, that's fine, as well. So, come on up here in front.

JOHN WALTERS: I'm John Walters. I'm the Senior Civil Engineer for Agua Caliente Band of Cahuilla Indians in Palm Springs. One of the things that I've observed here as far as procedure on the study goes is that there's really of lack of focus from on the study for the given amount of time that is here. There's a lot of -- there's a lot of counter-punctual counterpoints of areas that are included in this on a very, very, broad, broad scale with right of way. I think there has to be a distinction made between the alignment issues on right of way and the use issues on right of way. I don't see those being clearly defined in here. I think that the use and alignment issues are being blended in a relatively -- what I can see so far at least from the presentation on the appraisal and the economic elements are really a little bit disjointed and not coordinated.

We're talking about something more than a direct economic impact when alignments and right of ways are taken out of reservations. So I would, just as a general point here, I think that the study should begin by identifying do we really have a problem here? What are the problems that are coming out from the utility side when they're dealing with an Indian nation? And what are the real issues that are there? I mean, are we looking at a large amount of, what I would say, challenging renewals are? What kind of -- what sort of weight do those actually carry in the broader scheme of where we're at on right of way negotiations and on use negotiations? So I think that lack of focus

should be identified fairly, very, soon in this process, because, again, you've got such a short period of time to respond to. And that's about all I've got right now. Thank you.

MALE SPEAKER: Okay. Thank you. Again, for those of you who are just coming in and getting settled in, the question is comments that came out of your caucus, your observations on the day, and your best advice to those who are preparing the study based on the kinds of things you've heard and thought about thus far. What's your best advice for getting it right, again, either from your caucus or from your own observations individually of the day?

FEMALE SPEAKER: Thank you for the opportunity to make a statement. I think something that's very important I mentioned to Bob Middleton during the lunch hour, our law firm is a member of the New Mexico Oil and Gas Association. We're also a member of the Legal Committee of the New Mexico Oil and Gas Association, and they never poll their membership on what the Association's position should be. So I think when they submit their comments that, you know, Bob says there's nothing they can do about that. I think they need to have an asterisks in their report that it is not the unanimous position of their Association. We have not gotten one single e-mail as a member of NMOGA on this Section 1813 study. The same thing is true with IPAA, because they have Indian members also. And I'm sure that a lot of these organizations are not noting in their comments to the government that they do not have a unanimous position. And I think it's incumbent upon them ethically to have to state that to the government, or you're gonna think that's the position of NMOGA. And our law firm is a member of NMOGA and we do not share the position that they have taken, and we have

not had any opportunity through any meetings, or through any requests, for public input from NMOGA to provide our side of the story.

MALE SPEAKER: Yes, Associations should be communicating with your members, members, you should be communicating with your Association so that the most accurate reflection of those views are forwarded as part of the study. Next one's up here. And, again, Dale's got another microphone if we've got the next hand, feel free, please.

DON CLARY: My name's Don Clary. I represent the Pechanga Tribe. That's the tribe that was alluded to in Jay Shepard's presentation earlier with regard to the Valley-Rainbow line.

MALE SPEAKER: I'm not sure it's coming through.

DON CLARY: It's not?

MALE SPEAKER: Okay, hit it loud.

DON CLARY: I'll try to hold it this way.

MALE SPEAKER: There you go.

DON CLARY: I represented the Pechanga Tribe in the Valley-Rainbow proceeding. And I think the presentation implied that the Pechangas' opposition to the Valley-Rainbow line was the result of a dispute as to the compensation to be paid for the line. And nothing could be further from the truth. The fact is that the Valley-Rainbow line's experience illustrates why tribes must remain sovereign in this area and must control the use of right of way on their reservations.

The proposed line passed within a few feet of the Great Oak, one of the tribe's most sacred sites. The tribe indicated that this was unacceptable, but the company, which

was SDG&E, continued to attempt to move forward with the line, which, unfortunately initially was not included within their reservation. However, after months of anxiety, and thousands of dollars, what we believe should have been unnecessary costs, the tribe was able to bring the land into trust and protect the sacred site. However, it was about this same time that the California Public Utilities Commission issued its decision, which you can all look up, that this right of way was not even needed by the utility.

Again, this is not a case, and it think it insults the tribe to suggest that it was, where a tribe unreasonably refused for commercial reasons to negotiate a right of way with the utility. What it was was an example of why a tribe cannot cede their sovereignty over this type of land on their reservation so that they can protect these types of resources. And a concern that we have is that if a matrix such as what's been described is adopted, what leverage, or what ability, will a tribe have to protect these cultural and historic resources? We just don't think we can do that. And that's why the fundamental principle is the tribe must remain sovereign in these areas.

MALE SPEAKER: Keep going. And, again, I'm gonna talk -- I wanna get to new hands, so if those of you who have spoken can hold back just a second, we'll try to get new voices in. So please, go ahead, and then -- finally got a taker back here.

FEMALE SPEAKER: [Indiscernible], Yakima Nation.

MALE SPEAKER: Please. I'm just setting up the next one, so, sorry. I'm sorry.

FEMALE SPEAKER: All right. I would like to talk about something positive. I talked with Marian Walcott from Bonneville Power Administration, and working with her, this is an example of a positive step forward where many steps were taken backwards with a previous employee. Sometimes there are just people who do not mesh quite well

with both sides of negotiations. And we had one particular person who wasn't meshing well with our tribe, with our tribal members, both tribal trust properties and allottees. And so I had called other people to talk to to see if there was somebody we could talk to within the organization who was willing to listen, because we had felt that there was -- that the person that was representing the company, Bonneville, was not listening. They were not hearing us, they had no desire to hear us. They just were stonewalling, basically.

And so, in speaking with Marian, I was able to sit down and discuss with her other issues besides monetary negotiations, because we had some great concerns that were non-monetary. Access to own inroads that were being accessed illegally where desecration of our petroglyph and pictographs or archeological sites was taking place, or dumping sites were starting to spring up everywhere, both on fee land and tribal land. And these problems were issues on both tribal and non-tribal members within the reservation. And so those kind of things, you know, if you -- if both sides can just listen to each other, that can create an open communication between both parties.

And there are a lot of times with a lot of different utilities where I personally feel like they're just -- they don't give a damn. And that's the attitude that they give, that's the attitude that they perceive, and, you know, that just doesn't work. You know, everybody's human, everybody has a home, and you're talking about peoples' home, and you're talking about culturally significant sites, you're talking about history, you're talking about tradition and culture.

And so from the other side of the line, if you have somebody there that is actually willing to listen, that's the person you need to send. The people who don't know

anything, if they're willing to learn, that's the person you want to send to the table to negotiate with the tribe, especially when you're dealing with areas where historically neither side has wanted to listen to the other. And that's [indiscernible] we're gonna have change. And I don't -- and I've heard a lot of things about where tribes are being, you know, they were not conducive to the utility companies so that they can conduct business. I haven't seen that. And so it kinda feels like you're attacking all tribes that -- because, you know, and I can say the same thing about utilities. Well, you haven't worked with us, so why should we work with you? I think it's about changing attitudes, changing perspective. If you're willing to respect each other, that's what I want.

MALE SPEAKER: Nice. Thank you. Please.

PAUL FRYE: I'm Paul Frye again for the Navajo Nation. The first couple of comments suggested to me that the agencies need to think real hard about verification. If the New Mexico Oil and Gas Association isn't polling its members, it may be representing of you that isn't adopted even by a majority of its members. And if the poster child that industry was able to bring to us today regarding Pechanga has been misrepresented, we're -- thank God we had somebody from the band here to correct the record. But I'm not -- I think there, you know, the tribes are always gonna be scrutinized. We're gonna have people coming in from HRA and looking at our source documents. Where's the countervailing force with respect to the industry representations? Thank you.

CAROL HARVEY: Yeah. Oh, okay, I'm Carol Harvey, and just following on that also, it was reported in a news media article, you know, in the press, and I have a copy of the article, that El Paso had retained the Fair Coalition as their lobbyist, and it

was just recently formed. And I think they should represent that and let us know that that is the case. They do have other members and I have a list of their membership. It's, you know, The Association of Commerce and Industry of New Mexico, The Arizona Chamber of Commerce and Industry, Arizonans for Electric Choice and Competition, California Chamber of Commerce, Tucson Southern Arizona Black Chamber of Commerce, Independent Petroleum Association of American, New Mexico Oil and Gas Association, and then El Paso Corporation and Enterprise Products.

And, you know, most of these other, you know, small consumer groups are not gonna be able to fund the effort that Fair is doing. And I think it's real important to let everybody know that they were retained by El Paso as their lobbying firm. Thank you.

MALE SPEAKER: Please.

CAROL HARVEY: Or at least that was what was reported in the press.

DAVE ANDERSON: Hello, my name's Dave Anderson, I'm with El Paso. And I just want to clarify a couple of things. Number one, Tom Shipp, you made an absolutely brilliant point. It's not right when either the scales are tilted towards the tribes, or towards industry. And I agree with you 100% on that. But I did want to talk a little bit about the Southern Ute situation, the Red Cedar situation, if you will. I was on the other side of the negotiating table, and, basically, let me tell you what happened.

We were about one year away -- we had 14 miles of mainline transmission and 70, 80 miles of gathering assets -- midstream assets, if you will. It was all going to expire within one year. Basically, we were given the ultimatum -- well, let me back up. We were trying to sell the assets, all right? Sell to third parties. Basically, the Southern Utes, Red Cedar, were telling other parties, "Their right of way is expiring in a year or two.

You're gonna have use of the assets for a year or two, and then nothing." It came down to the point where expiration date was coming up and we were ready to cut the lines. We were ready to go ahead and just sever all our gathering assets. At that time, the Southern Utes came and offered us pennies on the dollar for our gathering systems. At that point we ended up selling it to them. I think Williams had a similar experience. Basically I wanted to say, this was not a cooperative agreement, as the Red Cedar folks made it sound out to be. We had a gun to our head, and we did what we had to do. Really, that's all I want to say. Thank you.

MALE SPEAKER: We can all be in the same room and not have the same experience, can't we?

MARGIE SCHAFF: Hello, everybody. I'm Margie Schaff. Over the past couple of months a lot of the tribes that are interested in this activity have been kind of working together, and we have really wanted to come to terms with some principles that we felt were very important, not only to us, but to industry, and also to held DOE and DOI do this study correctly. And what we attempted to do is put down a set of 10 principles. And what we hope to do is -- and I'm gonna present these to you today, or at least kind of read through them. Or, if you want, we can just wait and I'll have copies tomorrow if that's a better way to do it.

MALE SPEAKER: Why don't we do both. Read them and then we'll get prints. All right?

MARGIE SCHAFF: So what we hope to do is obtain your support for these principles, as well. Because I think what we need to do at this point is find common ground. You know, we have spent a lot of time working in this room trying to get our

point across. And we're having a lot of effort and a lot of trouble being -- and a lot of money being spent by all sides to try to prove our particular point. And if we'd change the focus on this a little bit and try to find a way to say where do we agree on things, and what kind of things can we begin to build on to create a better relationship in the long term and for the future. Because I think that there is opportunity here for all of us.

And, you know, this is business, folks. You know, sometimes people are gonna lose out on a deal. That's just too bad, that's the American Way, as my dear friend Dan here just said, you know. And that's okay. We all -- but we all have to go in there and work together to make it happen, and to negotiate, and to use the best tools we all have in our toolbox. So, anyway, these principles have already been approved by seven tribes. They were kind of just put in final draft form a week ago, and so for seven tribes to approve 'em in a week, that's pretty darn good. I expect we're gonna get many, many more tribes to approve these principles, and I hope that when the tribes you're doing business with comes to you and says we've approved these principles, we want you to approve 'em as well, we hope that you'll consider that and do that. And I think we're also open to having some real discussion about this. If you want to add a principle, if you think that there are things that we can negotiate about these principles to improve them, I think that's fair game and that's open.

But, anyway, I'll go ahead and read through them if that's a good time for it now. And tomorrow I'll have copies available for everybody.

First one, is Tribal Sovereignty and Consent. The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that has been established in federal law and policy for over 200 years. The

tribal consent requirement to the use of tribal land should be honored and preserved. And basically what we're saying here is there should not be a right of eminent domain on tribal lands.

Conditions to Consent. The tribal consent requirement includes the power of tribes to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.

Number three, No Negative Effects. Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy cost to consumers. The tribal consent requirement for right of ways has not had a noticeable negative effect on the availability or cost of energy to consumers.

Number four, Preservation of Tribal Jurisdiction. No right of way agreement or other business arrangement that permits third party use of tribal lands should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.

Number five, Restricted Duration of the Right of Way. Federal law and policy should not be changed to require perpetual rights of ways or automatic renewals of rights of way, because such changes would deprive tribes of management and control of their lands.

Number six, Negotiated Compensation. Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives tribes a fair share of the economic benefits produced by the use of their lands. Such revenues sustain tribal governments and cultures.

Number seven, National Security. Indian Nations are an integral component of energy security of the United States, not a threat to their security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations, even in cases where tribal rights of ways have expired.

Number eight, Industry Partnerships' Best Practices. Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission, and distribution.

Appropriate Deference. As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision making should remain a fundamental component of Federal Indian Energy Policy.

Number ten, Alotees Experience. The creation of a federal administrative valuation process for fixing tribal right of way compensation would be an affront to tribal sovereignty and, as shown by the disastrous federal management of Indian allottee resources, would be a mistake.

So, those are our principles, and we have tribal governments all over the country right now working to pass these, not only tribal governments, but also tribal organizations and other tribally affiliated groups, allottee groups, and so forth. So, we would like to sit down with industry, and we would like to hear your comments on these. And, of course, just by having me read them it's pretty tough for you to get any comments back. But we hope this starts a dialogue, and we hope this starts steps in the right direction to find common ground, find where we do agree on things, come up with a list of things that we

do agree on, and find ways to move better together in the future toward an economy that will benefit all of us.

MALE SPEAKER: So I stepped out for just a second to see if we would test the resources of the Hyatt to actually get copies for today, and it seems that we would. So we'll get the copy now and take the original and, if you don't mind, and we'll get copies for you. We'll have them in the morning. Thanks. Okay. Please.

SCOTT DACY: Scott Dacy. I wanted to just find out, is there anybody from the federal side that's willing to respond to Mr. Frye's comment? It would be very helpful to us to understand what the situation is. And we had a presenter here earlier that held herself as an economist, presented us with some findings, but didn't explain where the data came from at all. We understand that the Morongo tribe, which has openly been willing to show what it is that's going on on their reservation, is now having contractors come onto the reservation to verify what it is that they're proposing be included in the report. I'd just like to find out from the Federal Government is anybody taking a look at what the other side is presenting? And if Mr. Frye could get an answer to his question, I think that'd be invaluable to all of us.

MALE SPEAKER: So, let me -- before we go to the next microphone let me ask Bob, or anybody else who's among the federal representatives, to just say a word about what, if anything, you'll do to verify the information you're getting, how do you balance these countervailing stories from exactly the same case?

MALE SPEAKER: I think -- is this on? David, did you want to speak to it? I think, as I mentioned earlier on, I think the question came up in another context. We're in an information gathering mode, and we're going to be given information that we're

able to verify, and we're gonna be given information that's gonna be presented by parties involved in these discussions. When we pull the report together, we're gonna clearly identify those studies and those areas where we think we've got verified information and we're gonna indicate other studies that -- as information that has been provided to us by parties and represented as being presented by these parties. I think that, you know, we very much appreciate the tribes' agreement to allow us to come in and verify some of the case studies that are being pulled together, and we have heard from industry sector saying that they, in fact, also will try and do the same thing, provide us the information that we need to do some verification. But, we're definitely not going to just take information provided to us at face value and give it to Congress and say this is information that have verified when we haven't.

MALE SPEAKER: Bob, it may also help to say something about the review process once there is a draft, and some of the meetings you talked about earlier this morning, or that the agencies referred to earlier this morning. You'll actually be able to review, hopefully, you'll actually review the draft itself and comment on it and -- so it may help to add that, too.

MALE SPEAKER: [Inaudible].

MALE SPEAKER: Before I give the mike back to Bob, I want to reinforce his point that we will distinguish very clearly between information that has been verified by third parties and other kinds of information that is available. That we -- we are not likely to -- not -- I don't mean that we will dismiss material out of hand, but we will note very clearly the differences of this kind.

MALE SPEAKER: The plan as we have it right now is that following this meeting we, meaning the federal partners and others that were helping us, are gonna caucus and make a determination as to how quickly we can pull together the final report. Our plan right now, and I think it's -- I'm leaning towards the idea that I think we can do this effectively, is pull together a final report and -- or, not a final report, a draft report, and make it available to everyone to review around July 1st. And then our intent is that once people have a chance to review that is to have regional meetings, and I think we're shooting for four regional meetings now, the period between July 10th and July 19th, where we will have tribal consultations, four meetings of tribal consultation, and at least one open meeting where everyone can participate. And we'll use that as a opportunity for us to gather information on the draft report that we have pulled together. And then, very quickly take all that information, pull it into our final report to Congress with all of the viewpoints that'd be expressed on the draft report, and provide it to Congress by August 7th. That right now is our game plan. We think we'll have -- people will have adequate opportunity to review what we have pulled together and provide comments back to us.

MALE SPEAKER: Okay, lots of hands going up. Darryl's gonna choose by the microphone who goes next and we're gonna go to that side first.

SHENAN ATCITY: Good afternoon. I'm Shenan Atcity, I'm a partner with Holland & Knight here representing the Jicarilla Apache Nation. I also represent the Mescalero Apache Tribe, the [Indiscernible] Nation, and other energy resource and large land-based tribes who are very concerned with this particular issue. Just to follow up on the question that was raised, my question related to some of the same points in that -- in

some of the presentations this morning. In particular, how do you weigh, and how is the Federal Government going to assess a hypotheses that's doctrinally in conflict with the legal issues at hand? That being, the treatment of trust lands, the status of trust lands, the protectorate responsibility that the Federal Government has over tribal trust lands, the purpose of treaties to make permanent and viable homelands for Indian people- permanent, yes, that means permanent- the enforcement of the Non-Indian Intercourse Act. All of those legal doctrinal principles, how do you weigh that when you have a methodology that says here's fee lands, here's state lands, here's federal lands? All of these are aligned, tribes are an odd duck, we need to change the law. I think that's wrong, and I hope the department will exercise it's trust responsibility and see that tribal lands, tribal trust lands are not fee lands under any circumstances. And we cannot start from that type of paradigm. That's my first comment.

Secondly, just to pick up on what Mr. Chambers was saying, short of a full blow extension, given the scope of the issues that have been presented, and that will be presented, perhaps it would be prudent for the departments to request a clarification of the scope of the study. We have met with the people who drafted this, we have met with Senator Domenichi, and, you know, quite frankly, he told us this was not his intent. He did not intend this broad, huge, scope. So, I'm wondering if that is something on the table that the departments can consider. With that, I will end my comments. Thank you.

MALE SPEAKER: Well, as we, I mean, as we're raised up a number of times, we have been given orders, direct orders by Congress, in the Energy Policy Act of 2005, to provide this study to them within a one year time period. And we are working diligently to try and do that, do that with all of the cooperation of everyone in this room

and everyone who attended our March meeting, as well as others who have submitted written comments and verbal comments to us in other [indiscernible]. At this time, we think that it is an aggressive schedule, but we think that we are on track to be able to provide Congress with what they asked for under the Law. And we are going to be working diligently to try and do that. Perhaps as we get a little farther into this we may need to reconsider that, but at this time we feel that we have an opportunity to provide congress with what they asked and a very good job of doing it. And that's what we're gonna try and do.

LISA CAMERON: Hi, I'm Lisa Cameron. I'm the economist that was addressed earlier in the discussion. And I just wanted to talk about -- I just wanted to respond directly to the comments made by the gentleman earlier. I was not providing an empirical case study. I was saying given the rules that are in place the way they are today, this is what we can expect to happen from an economic perspective. This is the incentive that the parties have, and there are economic consequences to the incentives that the parties have in this matter. Moreover, I believe that there are numerous case studies presented by INGAA, EEI from their surveys, as well as a gentleman -- the gentleman who is formerly from SDG&E who spoke earlier in my session, and there will be people tomorrow talking about how the economic implications of the way the game has been set up have actually been borne out, that we see that tribes are charging up to build around cost in many cases. This is just the economic consequences of the way the rules have been set up. It's not an -- I did not provide an empirical study, I was just explaining how the rules of the game can be expected to be played out.

MALE SPEAKER: Okay. Next speaker's up here.

TIM MCCLIVE: Tim McClive from EEI, and that's Edison Electric Institute. I want to address the four case studies that HRA, Historical Research Associates, is doing. We heard presentations today, I believe both of them are in the group of four. Frankly, I was a little disappointed that neither of the two cases addressed renewal negotiations or methodologies which are current. It seemed that the first case was talking about what was coming up starting in 2008, and that second case was talking about a business arrangement. So I hope that the, at least the other two HRA studies will focus on methodologies for renewal terms and -- terms, you know, terms and agreements.

But also, in terms of all four, I also hope that -- I assume, I should say, that the department will make sure that all of the parties involved in these cases are contacted so that the other side's data can be verified, to quote something I just heard a few minutes ago. Because it's important if there're going to be case studies and they're going to be verifiable, then all the data, all the information, has to be there. On top of that, these are four case studies which seem to have come up through the tribal side of the table. Perhaps HRA should also look for four which are recommended by the gas and electric side of the table.

The second broad point that I want to make is that I hope that by the time these meetings are ended this week there will be some commitment by the DOI to encourage solutions. Margie represented some principles. I think the gas and electric and oil and trusts would also like to propose some kind of forward looking solution and that they should be encouraged to be in place by May 15th, and that the DOI will include them in a draft report.

MALE SPEAKER: Okay. I'm going on, we got hands in both corners.

MALE SPEAKER: Let me -- actually let me do a quick response to that because, you know, when all of this started --

MALE SPEAKER: -- that will adequately represent the universe of energy rights of way out there that will allow us to do the best job we can to provide Congress with the information that they ask for. So, we very much welcome any opportunities that EEI or others may want to bring forward with case histories. At the March meeting, to be honest, the tribes stepped forward and said we'll be willing to do that. And so that's why we have these four case studies, because they volunteered it. And they're volunteering to allow us to verify the information that they're providing. We welcome the opportunity to do that from any other people that may have an idea of good case studies out there that will allow us to adequately represent the request for information that Congress asked us for.

FEMALE SPEAKER: I just had one comment about the question that came up earlier. Is this, you know, how big a problem is this and is this a one energy company problem? We pulled during our break eight energy companies that were in our room, and 185 rights of way are up for renewal within the next 15 years. So we certainly would like to come up with some sort of agreement with the tribes before then, whether their principles, or we would prefer some objective measure for when failures of negotiations occur, but we see this as an increasing problem. And you talk about the cost to consumers, and it isn't much. Well, if right of way fees continue to outpace things the way they're going, then the cost to consumers is going to be huge.

And I apologize if there was any indication from some, certainly not from me, about questions on patriotism. That's not what we're talking about. We're talking about

that there is no objective standard, and we need one. Because the solution is not to be forced to sell our energy assets to companies -- to tribes.

CAROL HARVEY: I'm Carol Harvey and I was on the American Petroleum Institute subcommittee on expiration and production law when I worked for Conoco for probably 12 years. I was also active in the Independent Petroleum Association of American, probably for six years. And what the government needs to realize is that when I was on those groups, such as Edison Electric or INGAA, these regulatory groups, if a company was adamantly opposed to a position, the trade association did not take it. And I don't see that occurring here. You know, we're members of IPAA and NMOGA, and we're not even being asked. And I don't know if INGA has polled its membership and gotten its approval to take the positions it's taken, or Edison Electric, or -- you talk about, well, you're looking, like, you know, 41% of your companies are responding, but I can tell you when I was involved in API and IPAA, they did not go public with a position as an association if there was strong, adamant opposition.

MALE SPEAKER: Do we need to do a response? Can we do that?

MALE SPEAKER: Quick response?

MALE SPEAKER: Just, yeah, if you would, please.

FEMALE SPEAKER: [Inaudible] INGA this is data for a board level as of two weeks ago and our Board [inaudible] completely [inaudible] this initiative and feels that it is an industry wide problem. Truly it's concentrated in the west, because that's where most of the reservations are for where our pipelines go. And we are going to provide data. We have full commitment from our Board. As I said, we do have some confidentiality issues.

SPEAKER: [Inaudible].

FEMALE SPEAKER: Our members are our Board. We have one vote per company, and our members are 100% behind it as every single one of them is behind this initiative.

MALE SPEAKER: I would say the same thing for [inaudible]. This is an issue that our Board of Directors is aware of. This is an issue that our Board of Directors has brought to us.

MALE SPEAKER: Yeah, I wanted to respond to the suggestion that the case studies are not responsive to issues that have been raised in our discussions. I'd like to point out that at the first public scoping meeting, and even before that, the assertion has been that for tribes to retain the power to consent to the grant or renewals of rights of way has an adverse affect upon the availability in cost of energy to consumers. The Red Cedar case study, in particular, was -- and not the one that was referenced by Mr. Anderson with regard to El Paso, but the one dealing with Public Service Company and West Gas, was intended to demonstrate that because of the inadequate response of interstate pipeline companies to making available to consumers energy resources that would sustain California, it was only as a result of the power to either grant or withhold consent to right of way grants that the tribe ultimately obtained the ability to acquire significant assets that subsequently were used to assist in the development of energy products for consumers.

And the other aspect of the Red Cedar case study that's important is that methodologies that the gentlemen referred to concerned that the case studies don't relate to methodologies, if what he's talking about is the price per [indiscernible] per right of

way, I guess the point is, that's not the methodology. The methodology that has to be employed is a creative one where parties are able to go ahead and identify mutual interests in ways that facilitate, in the tribes' case, long term tribal policies in an effort to develop economically.

With regard to the El Paso situation, which was not discussed in the Red Cedar case study, it is true that the Southern Ute Indian tribe in negotiations with El Paso, with regard to both the gathering system and an interstate pipeline system that was set to expire, did use its negotiating power to ultimately acquire, for several million dollars I might add, the gathering components of El Paso facilities that were set to expire in a year and become valueless. In addition to that, in those negotiations the tribe granted and extended beyond its normal uniform policy an extended renewal of the interstate pipeline that -- with the principle asset and the principle concern that El Paso had in those negotiations, and I was unaware, notwithstanding the fact that both parties signed contracts and closed the deal, that that was such an unfavorable position for El Paso. We thought that we had come to a mutual agreement. And I guess what you would have preferred, that you would have been able to condemn our lines instead of the other.

Thank you.

MALE SPEAKER: Next? More?

LYNELLE HARTWAY: An overall concern that I have, as well as- oh, Lynelle Hartway from the Hopi Tribe- as well as offering for best advice, is a lot of what I'm hearing here is a lack of clarity about what exactly the methodology is going to be for the preparation of the study after the collection of the information. So, you're collecting information and you'll take it in. So then the question is, as far as I'm concerned, what is

the methodology that is going to be used by the Departments of Interior and Energy in the development of the study? For the Hopi Tribe's purposes, I have difficulty in recommending to the tribe's council whether or not to relay this information and use it in any way, shape, or form without knowing then what is going to happen to it once it is used, or knowing what will be the use of that information. I think that's what is missing here. We're all presenting some information, and obviously everybody has what seems to me incredible different perceptions about the baseline information. And so perhaps what we need for the preparing of the study is a clearly expressed methodology for what will happen to the information once it reaches the Departments.

MALE SPEAKER: I'll look and see if there's a taker.

MALE SPEAKER: I think the first thing we will do, we would want to recognize the diversity of the points of view that we have heard. And that is one of the important messages, I think, is to convey areas where there is agreement, where there is some degree of consensus on, say, some of the points that Margie, on her list. If there is some growing agreement with respect to those kinds of principles, or if on the industry side there are starting to be some degree of agreement about what a compensation methodology would look like. Just pieces that could be put on the table, that kind -- we would note them. We would not necessarily give any endorsement to them, but these are building blocks through which some degree of progress can be made. We are not likely to present to the Congress a single point of view as being a bottom line if the basis for it really doesn't seem to be there from what we have heard. We're not going to -- I don't see us papering over some of these differences.

I think, yeah, I think it is important for the Congress to get that breadth of view about this subject. And a lot of what we say in the report will be very much dependent on the information that we get. And also I would say that anything that is submitted won't be simply lost. The submissions themselves will be available in electronic form. If somebody wants to know, you know, here's what we wrote in the report, where did that come from, what was the basis for it? Well, it'll be available, that -- and this will be publicly available. So there will be kind of layers to what we present to the Congress, and what we make available to -- all of it will be made available to the public.

MALE SPEAKER: So as we begin to move toward 5:00, I see at least one more hand. I just want to give you a quick heads up, lots of hands in the back corner. Good. Okay, right here.

MALE SPEAKER: I guess I've got the mike. Let me come back to my point of beginning and react to Bob's time case, which I understand you do probably need 'til July 1st to write a draft report. I think it's just out of the question to give that to the tribes on July 4th, July 1st- I guess a Freudian slip. July 4th is a Tuesday, so July 1st actually is a Saturday and it starts a four-day weekend. So we're really talking about getting the tribes a report, unless everyone's gonna read it over the Fourth of July holiday, on the 5th, and you're gonna start meetings on the 10th. And that doesn't give time for consultation with tribes or anybody else. I mean, I think industry should be as troubled as this as I am. I think you probably need 'til July 1st, and I think you need two or three more months then to get some comments and do a redraft, because probably the draft will change with some comments. So I strongly urge an extension of time on this study.

CRAIG RICHARDSON: My name is Craig Richardson. I'm general counsel of El Paso. I guess I'd like to make a few points. One, thank you for the opportunity to listen to you today. We -- I always feel like I learn a lot from you all, and I'm better off after the meeting than I was before. And it reinforces that sense of humility that I know I bring, and my company brings, to this very complicated question. So, thank you.

Second, I think we as an industry probably owe some response to the list of principles that we've heard today. They're very thoughtful, they're very careful, and we welcome that opportunity to, as the invitation was, to find common ground. We think we owe that to you, and I think as, for at least this member of the industry, we will definitely begin a conversation about what we can do to offer a similar set of principles, and perhaps something will emerge from that conversation.

Lastly, I guess I'd like to respond to the sort of image that you may be left with that there's not a lot of creative folks over on the energy side of the house, and that we're very wooden thinkers. Without going into any details or discussing the tribe, I would say this, we are very proud of the creative approach that we have considered and proposed in this area. We have proposed giving stock to relevant tribes. We have proposed collaborative projects that involve generating free electricity off of our pipeline to relevant tribes. We have proposed things that involve other than showing up once every 20 years and telling the tribe how much we love them, but being more continuously involved in the life of the tribe -- education grants, tuition, you name it. So, the notion that we're not being very creative when we've heard from the other side that cash is king is sort of ironic. Thank you.

CAROL HARVEY: I'm Carol Harvey again, and while I worked for Conoco I had just great opportunities. I got to go to Luanda Angola, which is in West Africa, during the civil war. You know, when I traveled there we had to travel in convoys with AK-47 guards, and Conoco wanted to be there. They didn't say, oh, this is a difficult environment, don't go, Carol. So we went and negotiated a deal in Luanda Angola with a South African company that required incoming President Nelson Mandela's approval, and also required President Dos Santos' approval of Angola. And we didn't say, oh, that's a dangerous, uncertain, risky environment, we're not going to Angola. I was excited, I was thrilled to go to Angola. When I got to the compound there were all these kitties running around. I said why do they have all these cats, and they said because there are cobras, Carol, and if you see a dead cat then you're gonna know there's a cobra around. You know, we weren't talking about, you know, oh, we can't go there.

I went to Indonesia during riots. You know, Conoco loved Indonesia. We had tremendous projects there. I went to Russia and had to fly to Arkongolos [ph] on a Aeroflot jet. And when I -- there was nobody to put your bags on the airplane. When we got to the airport there was just windows all broken out. I loved it.

You know, we're forgetting the excitement of the energy business. I got to work in Russia, I had the Calgary office, I had the Gulf of Mexico, the Deep Water Gulf of Mexico, Casper, Denver, Ventura, Anchorage, Midland, Oklahoma City, the Gulf of Mexico, international drilling contracts, Africa, Asia, Europe. You know, it's a fun, exciting business to be in. And we are losing all of that because of this thing of, well, there's uncertainty and risk.

During the Persian Gulf War I had to advise Reading & Bates, you can't stop drilling. Get some political risk insurance. Conoco isn't gonna let you stop drilling. I see this person laughing, because it's the truth. It's the truth. We didn't say oh, there's the Persian Gulf War going on we have to stop everything.

And here we're talking about you're just going to some American tribes and trying to negotiate some right of ways. And El Paso may be saying they're cooperative on one hand, but the other hand is telling me we went around 10 reservations because we didn't want to deal with them. So, it's either one or the other, you know.

But this is a fun, exciting, challenging business to be in. And a lot of money can be made. And the gold rush is on. You know, the BIA, the Department of Interior reports that 25% of oil reserves on Indian lands are not developed. The same thing this true, the percentage I think is 40% on our gas resources. We have oil, we have gas, we have 90 reservations identified that have natural resources on them. We want to be a part of the game, you know. And start coming to us in that way. You know, we aren't some - you know, we aren't the Angolans carrying AK-47s around our reservation. And I really -- I've only been working on the Indian tribal side for 14 months. But I am dying to see the same vigor and enthusiasm in natural gas resource exploration and production.

What I have seen instead and, you know, El Paso confirmed, I saw the BIA approve one deal with a tribe 400,000 acres for a seismic option for \$2.25 an acre granted in 1993. They get to pick, cherry pick, they get to do their seismic work and then cherry pick the leases. Since 1993 to the present, they have only taken three leases of 640 acres. We have 300,000 acres of a tribe tied up with one company that has no drilling obligation and no responsibility. I looked at a deal when I first started working. I went up to, you

know, Wyoming. I cried. I read this deal with this company. It was so unconscionable. It was 100,000 acre deal with a whole mile around that 100,000 where they were gonna do a seismic option and then they could pick the leases. No drilling obligation, nothing. And I asked the BIA, I asked them, what are the bonus amounts that are being given for federal and state leases in this area, so I could try and evaluate the bonus offer that they had agreed to. They didn't have anything. Our law firm paid a consulting firm \$150 and we got a map in a day and a half that showed us that acreage in that Wind River Basin was going from anywhere to \$50 to \$1,450 per acre. That's the kind of information we need. I love this business. It's fun. It's exciting.

FEMALE SPEAKER: More? I think we've got one more speaker? Okay, two more speakers. And then we're gonna wrap this up for today.

FEMALE SPEAKER: I just wanted to echo the very positive things that was said earlier about how much we appreciate the opportunity to have this dialogue in this and how much we learn from you through this process. I did want to go back to the case study discussion about verification. And I think it got a little bit lost that we think that in verifying those case studies you need to all talk to all parties to the transactions that are involved in those case studies and would be willing to facilitate that if any of our companies are involved. We also appreciate Margie putting some principles on the table for us to react to, and certainly would like to engage in that discussion.

MALE SPEAKER: [Indiscernible] reservation. I'd like to just stand here and cry [indiscernible] you know, do a lot of crying for, you know, for all the years that's -- has been happening. Carol Harvey just hit it right on the spot. There's a lot of leases and right of ways that the Bureau of Indian Affairs has done that's really been unjust. And

with the energy companies that's here right now, we're not your enemies. Most of our fighting forces are in Iraq, too, fighting for their world under the Bush administration. Bush administration's the one that got the energy policy in together.

She's saying that's it's an exciting time for all tribes to get together and to just deal fairly with energy companies. And the way that things are, we look like we're being made the bad guys here. We're not the bad guys. We're trying to make a fair -- you keep saying market value for the Indian people. You're gonna have to realize that there's a lot of things that happen on reservations that you need to know about. You need to know the history of the reservations. You need to know the unjust stuff that's been done on the reservations. And if you can see that part on our side, then you can understand where we're coming from.

I guess there's a lot of things I did like to say, but, you know, our time's running short here. But I think this is a good time for all of us to speak, all of us to put it on the table. Let's put our fists on table. Let's make sure everything's right when they go through these processes. Like I'm saying, we're not your enemies. And that's the way it seems like to me sometimes that energy companies when they want to get something for less. They come over to us and they say [indiscernible] that's a good deal we got with you guys. Let's just keep it the way it is. You know, I said, no, no more. Tribes are now beginning to stand -- tribes are beginning to stand, beginning to speak out. And just to -- you know, I think a fair deal to us is good if the energy companies can work with us, it's good. But if you want to fight, then we're gonna fight. And I don't wanna see that happen, so thank you.

FEMALE SPEAKER: Thank you. I'm gonna let David close this out. But I just want to -- before I do that I want to thank you all. I think this was a very good conversation. I think the last three or four comments is a great place to wrap up for today. We've got a whole day for tomorrow, and if we get through the presentations early we can go to lunch early and we can make this session again, the plenary session, a little bit longer, which is what I'd really like to do, but. So, David.

MALE SPEAKER: Well, I think this plenary discussion has been very helpful. It has -- people have articulated some of the fundamental issues and it's been done in a way that all can hear. I think that's very useful. So I thank you all for your opinions, your contributions, and we look forward to meeting with you tomorrow.

FEMALE SPEAKER: All right, 9:00 a.m. The presentation -- DOE's presentation's on the table outside if you didn't get it. We'll make sure the principles are copied for tomorrow. Oh, we're out of copies.