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Mr. Daryl Francois  
Office of Indian Energy and Economic Development  
Bureau of Indian Affairs  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Mr. David Meyer  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Avenue, NW  
Washington, D.C. 20585

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

Submitted via e-mail to: [IEED@bia.edu](mailto:IEED@bia.edu)

Subject: Section 1813 Comments

Dear Mssrs. Francois and Meyer:

Arizona Public Service Company (“APS”) appreciates the opportunity to submit comments on the “Draft Report to Congress: Energy Policy Act of 2005, Section 1813, Indian Land Rights-of-Way Study” (“Draft Report”), issued by the Department of Energy (“DOE”) and Department of Interior, Bureau of Indian Affairs (“BIA”) on August 7, 2006. It is evident that DOE and BIA have undertaken an extensive effort in a relatively short amount of time to compile the information contained in the report. APS is concerned, however, that the Draft Report does not reflect a full understanding of the scope of the emerging issue that DOE and

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BIA were tasked to examine. In addition, APS is concerned that certain sections of the Draft Report do not contain a full summary of the facts relating to specific rights-of-way. APS therefore is providing additional information to ensure that the report is complete and accurate.

APS is the largest electric utility in Arizona and serves more than 1 million customers in 11 of the state's 15 counties. The APS service territory is one of the fastest growing in the country and covers federal, state and tribal lands. APS continually evaluates where it needs both new and upgraded transmission facilities to serve its customers needs. Many of the transmission lines constructed and operated by APS cross tribal lands pursuant to federally granted rights-of-way.

APS supports the comments submitted by the Edison Electric Institute ("EEI") and incorporates them by reference. Like EEI, APS is concerned that the draft report does not reflect a full understanding by DOE and BIA of the potential scope and impact of this emerging issue. APS has a number of rights-of-way on tribal lands that will be up for renewal over the next several years. It will be critical to the ability of the Company to continue to provide reliable service at reasonable rates that those rights-of-way be renewed in a timely and fair manner.

### **Comments on Specific Sections**

#### **1. Section 5.4.4.b, Navajo Nation: Arizona Public Service 500-kV Line**

The Draft Report, in Section 5.4.4.b (pages 41-42) and the Appendix at pages 126-131, summarize information relating to a right-of-way held by APS for a 500 kV transmission line that crosses the Navajo Nation. While the Draft Report and Appendix present part of the history relating to this right-of-way, APS is concerned that DOE and BIA may not have obtained complete information.

APS owns, operates, and maintains a 500 kV transmission line across Northern Arizona pursuant to an agreement with Southern California Edison ("SCE").<sup>1</sup> The initial right-of-way was approved by the Navajo Nation Council in 1966 and issued in 1967.<sup>2</sup> In December 1991, consistent with the terms of the grant of right-of-way, APS submitted to the BIA for the Navajo Nation a payment of \$108,176.47, or \$6.98 per rod for renewal of the right-of-way associated with the 500 kV line and the Moenkopi Switching Station.<sup>3</sup> As the

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<sup>1</sup> Although APS owns, operates and maintains the transmission line, SCE has the rights to all of the capacity on the line.

<sup>2</sup> Navajo Nation, Resolution of the Advisory Committee of The Navajo Tribal Council, Approving Right-of-Way for 500kV Transmission Line, June 16, 1966, Navajo Nation Resolution Number ACJN-109-66; Bureau of Indian Affairs, Grant of Right-of-Way, APS Map G-23159, Pg. 1, R.E. Kilgore, Assistant Area Director, March 22, 1967.

<sup>3</sup> The payment was calculated as follows: 5280 feet per mile, 66 feet in a rod, Miles 193.79, Cost \$108,176.47. Miles 193.79 193.79x5280/66=15,503.20; \$108,176.47/15,502.20=\$6.98.

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Draft Report noted, APS submitted a payment similar to the one that it paid for the initial grant,<sup>4</sup> but indicated its willingness to discuss other considerations for renewal.

The Navajo Nation initially rejected the payment submitted by APS and asked the BIA to return the check to APS. APS resubmitted the payment to the BIA in March 1992 and the check was cashed without being returned to APS.<sup>5</sup> Shortly thereafter, officials of the Navajo Nation (as well as of the Hopi Tribe) indicated that they wished to renegotiate the rights-of-way. Following initial meetings initiated by officials from APS and SCE, the Navajo Nation indicated that it would contact APS and SCE when the Nation was prepared to continue those discussions.

## **2. Section 5.6.2, The Hopi Tribe**

### *a. Right-of-way History*

Section 5.6.2 of the Draft Report (pages 49-50) summarizes information provided by the Hopi Tribe relating to a right-of-way on the Hopi Reservation that is held by APS and for the same 500 kV transmission line discussed above that crosses the Navajo Nation. Because the information in the Draft Report is incomplete and, in at least one instance, incorrect, APS is providing the following additional information.

In 1966, APS obtained a 25-year right-of-way, with a right of renewal, across the Hopi Reservation. The right-of-way was 97.53 miles in length and 200 feet wide and the Company paid the Hopi Tribe \$755.00 *per mile*, for a total payment of \$36,818.33. This payment was approved by the Hopi Tribe through the following documents:

Executive Order Boundary of 1882 (H-18-66): Payment was approved by the Hopi Tribal Council, July 11, 1966, Resolution H-18-66 upon a unanimous vote 10 to 0. The Grant was approved by the Bureau of Indian Affairs, Keams Canyon, Arizona, on December 28, 1966, in compliance with the "Act of Feb. 5, 1948 (62 STAT 17) and Departmental Regulations 25 CFR 161."<sup>6</sup> Payment of \$21,688.28 was made by APS on October 12, 1966.

West of Executive Order Boundary of 1882 (H-19-66): Payment was approved by the Hopi Tribal Council, July 11, 1966, Resolution H-19-66, upon a unanimous vote of 10 to 0. The Grant was approved by the Bureau of Indian Affairs, Keams Canyon,

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<sup>4</sup> The original payment amount on January 13, 1967 for the right-of-way was \$109,495.31. The change in compensation between the 1967 and 1992 payment reflected changes in land allotments due to the "Walsh Decision of 1977."

<sup>5</sup> *Official Receipt*, Bill for Collection, Bureau of Indian Affairs, March 24, 1992, Receipt Number N0012656.

<sup>6</sup> Bureau of Indian Affairs, Grant of Right-of-Way, APS Map G-23519, Pg. 1, Clyde W Pensoneau, Superintendent, December 28, 1966.

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Arizona, April 20, 1967, in compliance with the “Act of Feb. 5, 1948 (62 STAT 17) and Departmental Regulations 25 CFR 161.”<sup>7</sup> Payment of \$15,130.05 was made by APS on January 13, 1967.

Resolution H-18-66 and H-19-66 both contained the following language:

...and it being further understood that the above payment is to be for the first 25 years of the term of the permit, with a second payment to be made at the commencement of the second 25 year term *in an amount equal to the above payment.*”

Consistent with the specific language of Resolution H-18-66, APS submitted a renewal payment to the Hopi Tribe through the BIA on November 25, 1991 in the amount of \$21,688.28 for the portion of the right-of-way located within Executive Order Boundary of 1882 (H-18-66: Map Area G-23519).<sup>8</sup> APS made an additional renewal payment of \$1,318.84 to the Hopi Tribe in accordance with the “Walsh Decision of 1977,” which increased the allocation of the Hopi interest in the “Executive Order Boundary of 1882.” The total renewal payment made by APS to the Hopi Tribe for this portion of the right-of-way was \$23,007.12.

Consistent with the specific language of Resolution H-19-66, APS submitted a renewal payment to the Hopi Tribe through the BIA on March 22, 1992 for the portion of the right-of-way West of Executive Order Boundary of 1882 (H-19-66: Map Area G-23173). Payment was in the amount of \$15,130.05.<sup>9</sup>

Again, APS and SCE indicated a willingness to discuss the right-of-way renewal with the Hopi Tribe. Following initial meetings initiated by officials from APS and SCE, the Hopi Tribe indicated that it would contact APS and SCE when it was prepared to continue those discussions.

b. *Other Statements*

The Draft Report, Section 5.6.2, also contains a number of statements that require modification or correction. The following paragraphs highlight the incomplete or incorrect statements and provide APS’s additional information:

- The Draft Report states that “[t]he transmission line does not provide any electricity to Hopi Reservation residents,” without noting that the line does not

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<sup>7</sup> Bureau of Indian Affairs, Grant of Right-of-Way, APS Map G-23173, Pg. 1, Clyde W Pensoneau, Superintendent, December 28, 1966.

<sup>8</sup> *Official Receipt*, Bureau of Indian Affairs, January 7, 1992, Bill No. BDH65000079, Reference Number CVH65-92-0079.

<sup>9</sup> *Official Receipt*, Bill for Collection, Bureau of Indian Affairs, March 24, 1992, Receipt Number N0012656.

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provide electricity to any residents in the State of Arizona because 100% of the capacity on the line is owned by SCE. The line is used for the sole benefit of SCE and its customers, primarily residing in California.

- The Draft Report states that the Hopi Tribe, “to encourage electrification, foregoes compensation from the electric provider for ROWs providing electrical service to the reservation.” Extension of service lines (distribution lines) by APS to customers located on tribal lands *within the Company’s service territory* are made in accordance with 25 CFR §169.22, Service lines, and the Company’s tariffs filed and approved by the Arizona Corporation Commission. A portion of the Hopi Reservation is served by APS. APS presently holds a permit for a sub-transmission 69kV power line supplying power to Keams Canyon, Arizona. That line was constructed at the request of the Hopi Tribe and is the sole source of power to Keams Canyon, Arizona.
- The Draft Report states: “Often the Tribe pays to have these distribution lines extended pursuant to the energy provider’s policy that extensions can be charged to users on a per-foot basis.” APS extends service lines to customers located on tribal lands in the same manner and pursuant to the same filed and approved Schedules applied on non-tribal lands. Those Schedules are approved by the Arizona Corporation Commission.
- The Draft Report states that “the tribe has been paid a total of \$1,510 for a 50-year, 50-mile transmission ROW....” As indicated above, APS has paid the Hopi Tribe approximately \$75,000, or \$1,500 per year, for the right-of-way.

In order to ensure a complete and accurate summary of the APS right-of-way history, APS requests that DOE and BIA include the above information in any final report. If DOE and BIA would like copies of those documents, the Company has in its possession that support the above statements, please contact me at 602-250-3626 or Jim Looney at 602-371-6298.

Sincerely,

*lsl Karilee S. Ramaley*

Karilee S. Ramaley

cc: Jim Looney