

Public Scoping Meeting
§1813 of the Energy Policy Act of 2005
Study on Indian Land and Rights of Way
March 7-8, 2006



Introductory Comments
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Development Corporation
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Affiliated Tribes of NW Indians

- 57 Tribes in Alaska, California, Idaho, Montana, Nevada, Oregon, Washington
- The Economic Development Corporation is a subsidiary which houses the Energy Program
- <http://www.atntribes.org>

1. Tribal Self-Determination and Sovereignty Interests

Any discussion of tribal rights of ways must be understood in the context of the history of Indian Reservations.

Tribes have “inherent sovereignty”



Indian Reservations are the subjects of Treaties and other Federal Laws

- It is common knowledge that Treaty promises have not been kept and every treaty ratified by Congress has been breached by the U.S. government.
- We like to believe the shameful histories of the treatment of Indian tribes and usurpation of Indian lands and harm to culture, religions and ways of life are stories from our past.
- Any attempt to treat Indian lands inconsistently with the purposes for which they were created, or inconsistently with laws, ordinances, or resolutions of authorized Indian governments is an insidious continuation of that shameful history.

Indian Reservations have a different “Highest and Best Use” than Non-Indian lands

Comparison- a “Military Reservation” is not for public use and energy rights of ways must avoid them. These are lands that were created for and are used for a different purpose than other lands of the United States.

- The purpose of an Indian reservation is as a homeland for Indian people and this should be its “Highest and Best Use” for purposes of appraisals.
- Indians have a right to not sell their land, or to sell their limited land rights for a value different from off-reservation lands.
- Each Reservation is unique.

2. Analysis of Historical Rates of Compensation – Rights of Ways Were Granted in Different Contexts

■ When was Right of Way Granted?

Type of law:

- Prior to 1871
- 1871 to 1948
- 1948 to present - Standardization
- New Mexico Pueblos, certain Oklahoma lands, Alaska

■ What is “Indian Land”- Types of Indian Lands

- Trust lands on and off Reservations
- Tribal Fee Lands within Reservations
- Tribal Fee lands outside Reservations
- Allotted Lands
- Tribal off-reservation rights

■ Types of Rights and Uses

- Easements
- Rights of Ways
- Licenses
- Permits
- Leases

■ Terms and Conditions

- Length of Term
- Environmental Obligations
- Transferability
- Right to Renew
- Uses for Rights of Ways

Care must be taken to understand the subject of the review!

Analysis of Historical Rates of Compensation

- Sheer number of public facilities on reservations shows a general success on behalf of energy and other companies.
- Many successful arms length negotiations.
- Many tribes working in partnership with energy companies
- Recommendation: Surveys of entities holding a large number of tribal rights of ways. We believe this will show that generally tribal rights of ways are not more difficult to acquire than others.
- Concern exists that it is not too difficult, but that in the past, laws and procedures for protection of tribal interests have been disregarded
- Likely long standing practice of under-valuation of tribal rights of ways - See "Site Visit Report of the Special Master to the Office of Appraisal Services in Gallup New Mexico and the Bureau of Indian Affairs Navajo Realty Office in Window Rock Arizona"
- Recommendation: Surveys of tribes with large number of energy rights of ways to determine their satisfaction with past compensation rates

3. Recommendations for Appropriate Standards to Determine Fair and Appropriate Compensation

- Good standards already exist:
 - Fair Market Value is the minimum
 - Tribe may negotiate compensation and terms and conditions above this amount
- These are appropriate standards, as a floor is established, and tribes may apply their sovereign right to manage their lands as they see fit.
- Allows for individual tribes to apply individual standards

ATNI-EDC Recommendations:

- Improve tribal land record systems – computerized systems with GPS capabilities
- Improve access to tribal land records
- Improve efficiency, accuracy, and standards for the appraisals for tribal lands, and policies for sharing of information
- Encourage and fund drafting and consideration of tribal regulations: trespass, right of way negotiation procedures, standard form right of way language, compensation standards
- Encourage and fund tribal land use planning
- Encourage and fund tribal assistance to allottees
- Improve probating of Indian estates
- Tribes and Industry work best as partners!

4. Relevant National Energy Transportation Policies

- Regulated Utilities:
- Rates to customers include costs of facilities.
- For-profit utilities have established rate of profit.
- Consumers, including tribal consumers, pay costs of all facilities.
- Facilities on tribal Rights of way have minimal cost, especially when compared to the benefits of tribal energy development.
- Non-Indian consumers have the “benefit of the bargain” for the creation of Indian reservations. Tribes should also see the benefit of their bargain.
- Unregulated Entities/Merchant Transportation Energy Businesses:
- No limit on profits.
- Consumers bear the burden of paying energy company profits.
- Why should tribal income from right of way negotiations be limited when energy company profits are not limited?

Conclusion

- Please see our written comments.
- Tribes have inherent authority to govern their lands
- Federal Duty of Trust
- Public duty to keep promises made to Indian Tribes