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June 21, 2006

Mr. Daryl Francois
Office of Indian Energy and Economic Development
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U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

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

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C Street, N.W.
Mail Stop 2749-MIB
Washington, DC 20240

Re: "Notice of May 15, 2006 Deadline for Submitting Information and Comments"
Relating to Energy Policy Act of 2005 Section 1813 Study of Energy Rights-of-
Way on Tribal Lands, 71 Fed. Reg. 26483 (May 5, 2006)

EI Survey

As a result of the pre-scoping conference calls for the Section 1813 study and the scoping meeting conducted by DOE and BIA in March 2006, EEI undertook a survey of its member companies to develop a useful set of information to contribute to the study. The results of this survey were included in our May 15, 2006 comments. Since that filing, and in conjunction with the verification process with DOE, EEI continued to survey and interview its member companies, including both those which had responded to the survey and those which had not done so. The tables and discussion presented herein are the final results of this data effort.

EEI has 75 members. Of these, 28 were identified as having jurisdictional territories that overlap in some part with tribal reservation lands, and 20 were identified as having rights

of way across tribal reservation lands. Eight (40%) of the latter group had renewal transactions within the past 5 years and over 60% have expiring rights-of-way that will require renewal sometime in the next 15 years. One of the eight companies declined to provide information regarding their two renewals during the past five years.

Returns were received for twenty renewal transactions, including some in which the renewal of multiple rights-of-way expiring at slightly different times were consolidated into a single transaction. Seven of the twenty renewals “fell outside” of the five-year window that EEI had requested because they were completed in 2000 and earlier and one renewal is still not finalized. Survey results for both sets - the entire group and the twelve that were completed during 2001-2005 - are presented herein.

Overview of Survey Results:

In general, the data from the survey continue to strongly support the following conclusions with respect to renewal transactions for rights-of-way across tribal land:

- Permit periods or easement durations are declining.
- Renewal negotiations often take an unreasonably long time to complete.
- In most cases, the methodologies used to set fees are not those intended to calculate the economic value of the land being used.
- Compensation being paid is substantial multiples over fair market value.

Shorter permit or easement periods:

Term of Length of Right-Of-Way Agreements – full data set				
	Response Rate (#)	Average	Median	Range
Previous ROW	20	43 years	50 years	20 – 50 years
Renewed ROW	20	28 years	25 years	10 – 50 years

Term of Length of Right-Of-Way Agreements – “2001-2005” data set				
	Response Rate (#)	Average	Median	Range
Previous ROW	12	48 years	50 years	20 – 50 years
Renewed ROW	12	31 years	25 years	20 – 50 years

Protracted Negotiations:

Length of Negotiation Period – full data set				
	Response Rate (#)	Average	Median	Range
Renewed ROW	20	25 months	14 months	6-102 months

Length of Negotiation Period – “2001-2005” data set				
	Response Rate (#)	Average	Median	Range
Renewed ROW	12	23 months	13 months	6-102 months

Valuation Methodologies:

More than half of the renewals in the full data set resulted from methodologies that are not based on land value. In five, the tribal negotiators wanted fees based on the utility’s cost of “building around” the reservation. In one, the tribal negotiators used a methodology intended to capture the “throughput” value of the ROW. In three, the tribal negotiators sought fees that were based on the prices observed in other recent ROW renewals. In one, the tribe simply stated its price per rod with no accompanying analysis or justification of the value. In addition, two that were ostensibly set at “appraised value plus a premium” resulted in very high premiums above fair market value.

About half of the renewals in the “2001-2005” data set also resulted from methodologies that are not based on land value. In two, the tribal negotiators wanted fees based on the utility’s cost of “building around” the reservation. In one, the tribal negotiators used a methodology that attempted to capture the “throughput” value of the ROW. And in two, the tribal negotiators sought fees that were based on the prices observed in other recent ROW renewals. In addition, one that was ostensibly set at “appraised value plus a premium” resulted in a very high premium above fair market value.

Sharply Increased Fees:

Renewal Fees as a Multiple of Fair Market Value – full set Setting easement value at 50% of fee simple land value				
	Response Rate (#)	Average	Median	Range
All ROW	19	115	12	1– 1,625
Without outlier	18	31	10	1 -150

Renewal Fees as a Multiple of Fair Market Value – full set Setting easement value at 70% of fee simple land value				
	Response Rate (#)	Average	Median	Range
All ROW	19	83	8	1– 1,161
Without outlier	18	23	7	1 -107

Renewal Fees as a Multiple of Fair Market Value – “2001-2005” data set Setting easement value at 50% of fee simple land value				
	Response Rate (#)	Average	Median	Range
All ROW	12	31	8	1– 150

Renewal Fees as a Multiple of Fair Market Value – “2001-2005” data set Setting easement value at 70% of fee simple land value				
	Response Rate (#)	Average	Median	Range
All ROW	12	22	6	1– 107

- In the full data set, when easements are assessed at 50% of the fee simple value of the land, utilities are paying market value in two cases, between 2 and 4 times the market value in five cases, 5-10 times the market value in two cases, 11-25 times the market value in five cases, and between 65 times and 1,625 times the market value in the remaining five cases.
- In the full data set, when easements are assessed at 70% of the fee simple value of the land, utilities are paying market value in three cases, between 2 and 4 times the market value in four cases, 5-10 times the market value in three cases, 11-25 times the market value in four cases, and between 45 times and 1,200 times the market value in the remaining five cases.
- In the “2001-2005” data set, when easements are assessed at 50% of the fee simple value of the land, utilities are paying market value in two cases, between 2 and 4 times the market value in four cases, 11-25 times the market value in three cases, and between 65 times and 150 times the market value in the remaining three cases.
- In the full data set, when easements are assessed at 70% of the fee simple value of the land, utilities are paying market value in three cases, between 2 and 4 times the market value in three cases, 5-10 times the market value in one case, 11-25 times the market value in two cases, and between 45 times and 110 times the market value in the remaining three cases.

Renewal Costs as Multiple of Previous ROW Costs:

Renewal Costs as Multiple of Previous ROW Costs – full set				
	Response Rate (#)	Average	Median	Range
All ROW	11	863	227	10 – 3,812

Renewal Costs as Multiple of Previous ROW Costs – “2001-2005” data set				
	Response Rate (#)	Average	Median	Range
All ROW	5	779	227	18 – 2,767

Renewal Costs on a \$ per Mile Basis:

Renewal Costs on a \$ per Mile Basis – full data set				
	Response Rate (#)	Average	Median	Range
Unadjusted	18	\$727,400	\$146,200	\$12,800 - \$7,300,000
Normalized	18	\$1,366,000	\$318,900	\$12,800 - \$10,400,000

Renewal Costs on a \$ per Mile Basis – “2001-2005” data set				
	Response Rate (#)	Average	Median	Range
Unadjusted	11	\$893,700	\$140,500	\$12,800 - \$7,300,000
Normalized	11	\$1,494,900	\$280,900	\$12,800 - \$10,400,000

ROW Fees are an Emerging Issue:

The renewal cases are an early warning of an emerging national problem for utilities and tribes. EEI received 20 renewal cases from seven member companies to us in response to our survey, 12 of which were completed in the past 5 years. As explained above, these comprise 91% of the 22 renewals. of which we are aware. However, our member companies have identified 271 additional renewals across tribal reservations over the next fifteen years.

Thank you for allowing us to supplement our data submission in response to issues resolved during our verification process with the Department of Energy.

Sincerely,

A handwritten signature in black ink that reads "David K. Owens". The signature is written in a cursive style with a large, stylized 'D' at the beginning.

David K. Owens