

May 15, 2006

Attn: Section 1813 ROW Study  
Office of Indian Energy and Economic Development  
1849 C St., NW, Mail Stop 2749  
Washington, DC 20240 (sent via email to IEED@bia.edu)

Dear Sir or Madam:

Thank you again for the opportunity to comment on the implementation of section 1813 of the Energy Policy Act of 2005. This section requires the Department of the Interior (DOI) and the Department of Energy (DOE) to provide Congress with a study regarding energy rights-of-way on Tribal lands. Idaho Power submitted earlier comments on January 20, 2006.

As mentioned in our previous comments, Idaho Power Company (IPC or 'Company') is an integrated electric utility company based in Boise, Idaho that serves approximately 450,000 customers in a 24,000 square mile service territory in southern Idaho and eastern Oregon. The Company has a vested interest in this issue, as we have critical high-voltage transmission infrastructure crossing the Fort Hall Indian Reservation in Southeastern Idaho. The operation of these lines is integral to meeting electrical needs of the Company's entire customer base. These lines are also an integral component of the interconnected Western electricity grid.

Idaho Power has a long history of working with Native American Tribes. We recognize the sovereignty of the Native American Nations and hold a strong commitment to maintain a working relationship with Tribes with an interest in our business practices, such as the Shoshone-Bannock Tribes.

### **Scoping Meetings**

Idaho Power representatives attended and participated in both scoping meetings sponsored by the DOI and DOE held in Denver, Colorado earlier this year. We have also been a party to numerous conference calls and informal discussions with other industry representatives, including the Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA). Idaho Power representatives also met informally with several Tribal and industry representatives while attending the scoping meetings on a number of occasions in an attempt to develop a process for finding common ground between the parties. We hope that these discussions might lead to compromises that will help to mitigate this serious problem. Idaho Power pledges to continue to search for solutions that will benefit both the Tribes and the industry. However, it is clear that the distance between the interests of the two parties is significant.

Industry representatives are strongly convinced that the recent right of way settlement costs are exorbitant, with shorter terms at higher costs. Conversely, the Tribes seem to see the settlements as reasonable and more in line with the compensation that they should have been receiving for several preceding decades. If a solution is not reached between the parties and no significant action is taken

by the DOI, DOE or Congress, Idaho Power feels that the industry will continue to pay the much higher fees in the near-term. This means continued protracted negotiations, accusations of trespass, delayed projects and maintenance and ultimately, higher costs to the nation's energy users. While the Tribes will benefit financially from this short-term situation, Idaho Power fears that in the long-term, the industry is increasingly reluctant to site any new facilities on tribal lands and are actively considering alternatives to existing facilities on tribal lands. Our industry cannot continue to invest millions of dollars to maintain or develop new energy infrastructure on rights of way that provide no certainty of renewal and no certainty of reasonable renewal costs. The long-term security of these lines must be more definitively guaranteed to protect the reliability and availability of the national power grid.

## **Recommendations**

As mentioned in our previous comment letter, the costs of rights-of-way on private, state and Federal lands are all determined through some estimate of market value. Utilities routinely secure transmission line easements in perpetuity or purchase the property in fee on private lands, according to the estimated fair market value or some percentage thereof. In the State of Idaho, easements are also the typical method of securing transmission line rights-of-way, thereby securing a permanent right to occupy the property. On Federal lands administered by the Forest Service (USFS) and the Bureau of Land Management (BLM), rights-of-way are typically in the form of permits, with specified time frames that generally range from 20 to 50 years. The cost of these permits is determined from a defined schedule, depending upon the county in which the line is located.

In dramatic contrast, the costs of rights-of-way over Tribal lands are not determined by a consistent established process, instead being left only to bargaining negotiations that begin with some % of the cost to build around (if there is an alternative to do so). The situation is exacerbated by the shrinking terms of the negotiated rights-of-way toward twenty or even ten-year periods.

What is needed is a standard process based on the same market value determinations that occur on private, state and federal lands, at least as a baseline. The unique characteristics of Tribal lands could be recognized either within this process itself, or by additional consideration at some reasonable documented and verified process.

While IPC understands that the agencies do not plan to make specific recommendations from the study, we suggest that they provide a wide array of alternatives for future consideration and discussions between Tribes, the industry and the agencies.

## **Conclusion**

In conclusion, Idaho Power appreciates the DOE and the DOI for their ambitious effort to complete this study by the statutory deadline. We strongly urge the agencies to seriously consider the case study information being supplied by the industry through EEI and INGAA. We further support the verification process of these data and other data submitted by the Tribes through the consultancy process agreed upon with the agencies. IPC believes that the study will provide a positive basis for

continuing a discussion with the Tribes and the Federal government on the issues associated with compensation for rights of way across Tribal lands.

Sincerely,

A handwritten signature in cursive script that reads "Pat Hasenoehrl".

Pat Hasenoehrl  
General Manager of Corporate Services  
Idaho Power Company