



PUEBLO OF LAGUNA

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Office of:

The Governor
The Secretary
The Treasurer

May 15, 2006

Mr. Darryl Francois
Attn: 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C St. NW, Mail Stop 2749-MIB
Washington, D.C. 20240

Mr. David Meyer
Attn: 1813 ROW Study
Office of Electricity Delivery and Energy Reliability
Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

RE: Section 1813 Indian Energy Rights of Way Study

Dear Mr. Francois and Mr. Meyer:

On behalf of the Pueblo of Laguna, a federally-recognized Indian tribe located in the State of New Mexico, I hereby submit the following written comments concerning the Indian Energy Rights of Way Study, mandated by the Energy Policy Act of 2005, Public Law 109-58, Title XVIII, Section 1813 (referred to as the "Section 1813 Study"). This letter and the attached documents shall serve as a supplement to comments previously submitted on the Pueblo's behalf, dated January 20, 2006.¹

The Pueblo of Laguna reservation, located 45 miles west of Albuquerque, consists of over 560,000 acres in Cibola, Sandoval, Bernalillo and Valencia Counties, upon which the Pueblo have worked in cooperation with more than five different energy companies and granted rights of way in excess of 700 miles. With nearly 30 rights of way granted across the Pueblo lands, the Pueblo have received unbelievably low prices in return for the use of valuable, yet limited, tribal lands.² Out of nearly 30 rights of way, 13 are set to expire within the next ten years, one is in trespass and five have expired. The average term of the right of way across Pueblo lands is 40 years. One of the three companies alone has over 130 miles of electric lines within the Laguna reservation and has provided electric service to the Pueblo for over 50 years.

¹ Comments submitted by Jill Grant, Nordhaus Law Firm, on behalf of the Pueblo of Laguna (January 20, 2006). Available at <http://1813.anl.gov/documents/docs/Comments/index.cfm>

² The Pueblo have received a total of approximately \$300,000 for rights of way granted by the Tribe to three different energy companies for the purpose of electric distribution lines since 1952. See Existing Pueblo of Laguna Electric Line ROWS, Prepared by Red Mountain Energy Partners, May 12, 2006 (Attachment 1). See also Existing Pipelines Across Laguna Pueblo Lands, Prepared by Thelma Antonio (April, 2006) (Attachment 2).

However, their easement on Pueblo lands expired in 2002 and, to avoid the interruption of services to consumers, the Pueblo elected not to impose any sanctions on the company for trespass and instead willingly worked in earnest to negotiate and extend the right of way. The company has been able to use the right of way for nearly 50 years at a fixed cost of \$1. The Pueblo look forward to continuing negotiations for extending that right of way.

With the expiration of a number of other rights of way on our lands fast approaching, the Pueblo must uphold the responsibility it has to its approximately 8,000 members to negotiate fair and reasonable prices for granting the use of its lands. The Preamble of the Pueblo of Laguna Constitution immediately sets forth the Pueblo's commitment to "[P]rotect our Pueblo self-government and our rights, *including land* and water rights, liberties, benefits". The Pueblo have developed good working relationships with the companies to which it has granted use of Pueblo lands and look forward to negotiating with them in the future on extending such rights of way. As such, the Pueblo are extremely concerned with the nature and extent of the Department of Energy and Department of Interior ("the Departments") joint study of rights of way on Indian lands, particularly Pueblo lands.

Concerns with the Section 1813 Study

In the more than four years that Congress debated and considered the comprehensive energy legislation leading up to the passage of the Act in August, 2005, the issue of Indian energy rights of way did not arise until the tail end of the process. The Pueblo believe the Section 1813 study arose primarily in response to the impasse in negotiations between the another tribe and an energy company over the renewal of 900 miles of rights of way for the company's pipelines that cross tribal lands. This is not representative of all rights of way in Indian Country. Furthermore, the Pueblo believe that the rights of all tribes should not be eliminated based on that single dispute.

The Pueblo are especially concerned that the nature and scope of the study has not yet been defined by the Departments. The Departments vaguely described their intent in conducting the study, methodologies that will be used to develop the report after collection of data, and how information will be used after the report is complete. The study raises serious concerns for the Pueblo as well as many other tribes. The universe of energy rights of way in Indian country is vast and complex. As a result, the study has required the Pueblo to expend time and valuable resources to participate in the study and ensure that our concerns are received, despite not knowing whether the Departments will even give our information and comments full consideration in the process of the study.

We believe that, at a minimum, the study should take into consideration all rights of way negotiations that tribes have entered into, not just those over the past five (5) years. The Departments should also consider the *future* value of a right of way, not just the past or the current economic value of the right of way. The study should also consider the economic impacts on the tribes, not just on the energy consumers. The Pueblo herein emphasize the following five principles that should be considered and upheld by the study:

- Tribal sovereignty;
- Rights of way as binding contracts;
- Tribes are each unique, separate entities;
- Tribes have certain rights as property owners that must be recognized; and
- The timeframe of the study has limited the ability of the Departments to have meaningful government-to-government consultation with tribes; and

The Pueblo fully support the Tribal Principles³ considered and adopted by numerous tribes and tribal organizations.⁴ In particular, the Pueblo would like to emphasize the importance of upholding tribal sovereignty and consent in the process of determining whether or not to grant a right of way running through the reservation. Federal law and policy have maintained that a critical component of tribal sovereignty is the ability of tribes to determine how best to use their own land. This should be fully considered, and upheld, by the Section 1813 study. The Pueblo lands were specifically set aside for the purpose of making a permanent and viable homeland for the members of the Pueblo. These lands exist for the benefit of the Pueblo and its members – the purpose of which is separate from state and federal lands, which exist for the public benefit. Furthermore, tribes, as sovereign governments, should continue to have the right to approve rights of way across tribal lands and set fees for use of land.

Second, rights of way agreements should not enable outside, private companies to demand rights in perpetuity or to side-step tribal consent for use of such lands. Energy companies have raised such ideas in arguing that rights of way on tribal lands cost significantly more than other rights of way. In reality, Indian lands have historically been significantly undervalued for purposes of rights of way.⁵ Furthermore, rights of way agreements should be considered as binding contracts that expire just the same as any other contract. The Pueblo strongly oppose any change to its current right to consent to the use of its tribal lands.

Third, the Study fails to consider the fact that each tribe and negotiation is different because of the fact that each tribe is unique and has its own cultures and traditions. While a company may negotiate with one tribe, it must recognize the fact that the next tribe has a different governing structure, priorities, obligations to its membership, and experience in negotiating rights of way. In addition, for a number of different reasons, Indian lands are vastly different from non-Indian lands. As a result, any attempt to compare Indian land values to non-Indian land values is unrealistic, and patently unfair to the individual tribes. For example, the history of Pueblo lands is much different than other lands granted under Executive Order or by Act of Congress.⁶

³ Section 1813 Right of Way Study – Tribal Principles (Attachment 3).

⁴ The Pueblo have adopted a resolution in support of the Tribal Principles, Pueblo of Laguna Resolution #27-06.

⁵ *Id.*

⁶ New Mexico Pueblos held land in fee simple under Spanish land grants, which were not formally designated as reservations. In 1846, the United States agreed to recognize land grants made by the Spanish and Mexican governments under the Treaty of Guadalupe Hidalgo.

Comments on Section 1813 Study

May 15, 2006

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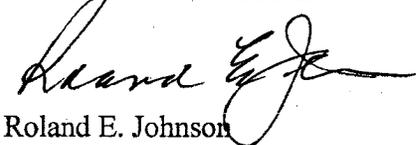
Fourth, the study must consider the tribes' rights as property owners. One of the basic fundamental rights as a United States citizen is the right to own property, as stated under the Fifth Amendment in the Constitution of the United States. Similarly, such rights of tribes, as sovereign governments, must be recognized in this study.

Finally, the Pueblo specifically request the Departments for an extension from Congress in which to complete the study and issue a report. The Pueblo are concerned that the Departments have given tribes a very small window of opportunity within which to participate in the study. The shortened timeframe is not sufficient enough to conduct the study and issue a report that will provide meaningful information to Congress, as intended by the Act. Furthermore, the Departments' goal of July 1st for releasing a draft of the study to tribes for comment only permits tribes just over one week, if released on time, in which to fully review the draft report and prepare additional comments before the Departments hold consultation sessions the week of July 10, revise the report, and submit on August 7th. This presents a limited opportunity for tribes to fully participate in the final study and report to Congress on an issue of great importance to all tribes.

Thank you for allowing the Pueblo an opportunity to submit comments on this important study. The results of this study could greatly impact Indian Country and is of great concern to the Pueblo. Please contact either myself, at (505) 552-6654, or Kimberlee Dunlop of Holland & Knight, LLP, at (202) 862-5966, if you need any additional information.

Sincerely,

PUEBLO OF LAGUNA



Roland E. Johnson
Governor

Enclosures

cc: Senator Pete Domenici
Senator Jeff Bingaman
Representative Steve Pearce
Representative Heather Wilson
Representative Tom Udall
Jim Hooper, Pueblo of Laguna Chief of Operations
Aurene M. Martin, Holland & Knight LLP
Kimberlee M. Dunlop, Holland & Knight LLP

ATTACHMENT 1

Firm	ROW Type	ROW Size	Other Tribal Benefits	Multi-State Involvement	Type of Tribal Land	Initial or Renewal ROW	ROW Date	ROW Term	Status	Multiple Renewals	Type of Compensation	Areas Served Conditions	Negotiation Team	Compensation Methodology	ROW Process Satisfactoriness	Payment History
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 57.41 miles; W: 20 feet	Delivers retail electric service	No	Primarily Tribal Trust?	Initial	effective 4/10/52	50 years	Currently in trespass		Fixed price (\$1)		Internal Laguna Team; Nordhaus	Unknown	Not Satisfactory	Not Satisfactory
Public Service Company of New Mexico	115 kV Electric Transmission Line	L: 529.6 miles; W: 50 feet	Connects to Paguate substation	?	Primarily Tribal Trust?	Renewal	3/10/1978	32 years	Expires 3/10/2010	Yes	Fixed price (\$70,000)			Unknown		
Tri-State Generation & Transmission	115 kV Electric Transmission Line; Site for Paguate substation; access road to switching station	W: 50 feet; Switching station: 3 acres; Paguate substation: 3.8 acres; access road: 3.3 acres	Interconnection with CDEC electric distribution system	No	Primarily Tribal Trust?	Initial	3/10/1978	35 years	Expires 3/10/2013		Fixed price (\$70,000)			Unknown		
Continental Divide Electric Cooperative	Electric distribution line	L: 2,140 feet	Serves El Paso catholic protection station	No	Primarily Tribal Trust?	Initial	1/25/1956	17.5 years	Expired 7/28/73		None indicated			Unknown		
Continental Divide Electric Cooperative	Electric distribution line	L: 1424 feet; W: 20 feet	Serves PNM compressor station	No	Primarily Tribal Trust?	Initial	3/6/2000	11 years	Expires 3/5/2011		Fixed price (\$5000)			Unknown		
Public Service Company of New Mexico	115 kV Electric Transmission Line	L: 5.3 miles; W: 100 feet		?	?	Initial	10/31/1957	50 years	Expires 10/31/2007		Fixed price (\$592)	Across Barnabe Montano Grant		Unknown		
Continental Divide Electric Cooperative	14.4 kV Electric Distribution Line	L: 44,846 acres; W: 30 feet		No	Primarily Tribal Trust?	Initial	1/13/1959	50 years	Expires 1/13/2009		None indicated	Serves Canoncito Grade School		Unknown		
Continental Divide Electric Cooperative	14.4 kV Electric Distribution Line	L: 3.1 miles; W: 30 feet		No	Primarily Tribal Trust?	Initial	1/13/1959	50 years	Expires 1/13/2009		None indicated	Serves Presbyterian Camp		Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 8.4 miles; W: 30 feet		No	Primarily Tribal Trust?	Initial	2/16/1959	3 years	Expired 2/16/62		None indicated	Serves St. Anthony Uranium Corp		Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1.7 miles; W: 30 feet	Serves Jackpile Mine area	No	Primarily Tribal Trust?	Initial	1/13/1959	50 years	Expires 1/13/2009		None indicated			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 7 miles; W: 30 feet	Serves water well	No	Primarily Tribal Trust?	Initial	9/29/1960				None indicated			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 7 miles; W: 30 feet	Serves Jackpile Mine	No	Primarily Tribal Trust?	Initial	2/14/1962	50 years	Expires 2/14/2012		None indicated			Unknown		
Public Service Company of New Mexico	230 kV Electric Transmission Line	L: 7.7 miles; W: 100 feet		?	?	Initial	4/5/1961	50 years	Expires 4/5/2011		\$2625 (damages)	Across Barnabe Montano Grant		Unknown		

Firm	ROW Type	ROW Size	Other Tribal Benefits	Multi-State Involvement	Type of Tribal Land	Initial or Renewal ROW	ROW Date	ROW Term	Status	Multiple Renewals	Type of Compensation	Areas Served	Negotiation Team	Compensation Methodology	ROW Process Satisfactoriness	Payment History
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 6 miles; W: 20 feet	Serves Laguna Consolidated School	No	Primarily Tribal Trust?	Initial	9/14/1963	50 years	Expires 9/4/2013		None indicated			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: .9 miles; W: 20 feet	Serves Environmental Branch Sewer Lift Station/Seama	No	Primarily Tribal Trust?	Initial	4/14/1964	50 years	Expires 4/14/2014		None indicated			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1735 feet; W: 30 feet		No	Primarily Tribal Trust?	Initial	4/18/1969	50 years	Expires 4/18/2019		438 reroute			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 2.9 miles; W: 30 feet		No	Primarily Tribal Trust?	Initial	4/18/1969	50 years	Expires 4/18/2019		438 reroute			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1600 feet; W: 20 feet		No	Primarily Tribal Trust?	Initial	8/20/1975	no limit			None indicated	Serves El Paso catholic protection station		Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 14,380 feet; W: 30 feet		No	Primarily Tribal Trust?	Initial	7/20/1976	ROW	Expired 8/17/1979		None indicated	Serves Trans-western catholic protection station		Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1.4 miles; W: 30 feet		No	Primarily Tribal Trust?	Initial	12/29/1976	15 years	Expired 12/29/1991		1800			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line		Serves POL Housing Project	No	Primarily Tribal Trust?	Initial	3/17/1978	limitation			None indicated			Unknown		
Public Service Company of New Mexico	720 V Electric Service Line	L: 1.8 miles; W: 10 feet	Matt Waconda Home	No	Primarily Tribal Trust?	Renewal	1/19/1981		6/30/1905	Yes	None indicated			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 4,218 feet; W: 5 feet	Serves POL Commercial Center	No	Primarily Tribal Trust?	Initial	7/7/1981	limitation			1			Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1340 feet; W: 20 feet		No	Primarily Tribal Trust?	Initial	8/17/1984	limitation			None indicated	Serves El Paso catholic protection station		Unknown		
Continental Divide Electric Cooperative	14.4/24.9 kV Electric Distribution Line	L: 1350 feet; W: 20 feet	Serves El Paso catholic protection station	No	Primarily Tribal Trust?	Initial	8/17/1984	limitation			None indicated			Unknown		

ATTACHMENT 2

Existing Pipelines across Laguna Pueblo Lands

Firm	ROW Type	ROW Size	Other Tribal Benefits	Multi-State Involvement	Type of Tribal Land	Initial or Renewal ROW	ROW Date	ROW Term	Status	Multiple Renewals	Type of Compensation	Areas Served Conditions	Negotiation Team	Compensation Methodology	ROW Process Satisfaction	Payment History
Transwestern Pipeline	30 inch Main Transmission	57 mi length 20' Width		No	Primarily Tribal Trust?	Renewal	12/28/2002	20 years	Expires 12/27/2022	Yes	Undisclosed Sum	North to South Boundary of Reservation		Memorandum of Understanding, Method Unknown		
Public Service company of NM (PNM)	16 inch Transmission	1,207' Length 50' Width	Retail Service and Compressor Station	No	Primarily Tribal Trust?	Renewal	3/4/1991	20 years	Expires 3/03/11	yes	\$142,423.00	Rio Puerco Transmission (Sedillo)		Unknown		
Elpaso Natural Gas	16 inch Transmission	31 mi length, 50' Width	Retail Service and Compressor Plant	No	Primarily Tribal Trust?	Renewal	7/1/1973	20 years	Expires 7/28/13	Yes	\$2,000,000	Entire Length of Reservation		Unknown		
Public Service company of NM (PNM)	30 inch Main Transmission	Length Unknown, 25' Width	Retail Service	No	Primarily Tribal Trust?	Unknown	Amendatory Document 6/24/1977	50 years	Expires 06/05/25	Unknown	Unknown	Throughout Reservation		Unknown		

Existing Summary of Existing Pipelines across Laguna Pueblo Lands for Transwestern Pipeline Company

Line	Width	Length Ft.	Miles	Acres
30" main	60"	118,200	22.386	162,809
30" main/loop	75"	35,252	6.677	60,696
30" loop dev.	60"	6,636	1.257	9.14
12" EP intrent	30"	2,881	0.546	1,984
8" RP intrent	50"	150	0.028	0.172
Total		163,119	30.894	234,801

Prepared by Thelma Antonio
 Source Data: Gas Lines on the Laguna Reservation, T.J. Robinson, Laguna Agency (4/06)

ATTACHMENT 3

April 11, 2006

**INDIAN TRIBES – PARTNERS IN AMERICA’S ENERGY FUTURE
SECTION 1813 RIGHT-OF-WAY STUDY – TRIBAL PRINCIPLES**

1. **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 lands should be honored and preserved.
2. **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.
3. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy costs to consumers. The tribal consent requirement for rights-of-way has not had a noticeable negative effect on the availability or cost of energy to consumers.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land 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.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands.
6. **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 use of their lands. Such revenues sustain tribal governments and cultures.
7. **National Security.** Indian nations are an integral component of energy security of the United States, not a threat to that security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations even in cases where tribal rights-of-way have expired.
8. **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.
9. **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.
10. **Allottee 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.