

Nancy Ives
Executive Director



January 19, 2006

VIA FEDEX
and E-MAIL (ieed@bia.edu)

Section 1813 ROW Study
Office of Indian Energy & Economic Development
U.S. Department of the Interior
1849 C Street, N.W.
Mailstop 2749-MIB
Washington, DC 20240

Re: Comments About Congressionally Mandated Study of Energy
Rights-Of-Way on Tribal Lands

Dear Sir or Madam:

The Fair Access to Energy Coalition (FAIR) is a broad-based, non-partisan group formed to ensure the movement of energy across tribal lands on reasonable terms. FAIR's membership includes energy providers, industry professionals, consumer groups and consumers. FAIR offers the following comments in response to the Department of the Interior's December 29 request for public comments published in the *Federal Register* at 70 Fed. Reg 77178. (Dec. 29, 2005).

FAIR applauds the efforts of the Department of the Interior and the Department of Energy to respond to the mandates of Section 1813 of the Energy Policy Act of 2005. The study that the departments will produce will greatly assist Congress in determining whether existing law is adequate to assure that the fair market value of energy rights-of-way across tribal lands are paid by holders of the rights-of-way and received by tribal governments. Section 1813 addresses a significant issue affecting energy transportation and energy consumers across the country. It deserves the full study the Congress requests.

FAIR has reviewed the proposed work plan published in the *Federal Register*. We believe this plan is well designed with the statutory deadline of August 7, 2006 clearly in mind. Although the plan does not specifically address the Office of Management and Budget, FAIR assumes that the draft report of the Departments will be reviewed by OMB. The Departments should confirm with OMB leadership that OMB agrees with the proposed timeline and will review the draft report in time to meet the statutory deadline.

FAIR stands ready to assist with each of the seven steps identified in the work plan as they progress. FAIR offers the following comments on specific steps:

Step 1 – FAIR’s membership consists of prominent members of the energy industry, governmental entities, and affected businesses and consumers. We are eager, therefore, to share with the Departments contact information for our members or other reliable data sources for pre-scoping phone calls.

Step 2 – As was the case with the December 15, 2005 consultation letter to tribal leaders, this step misstates the statutory scope of analysis of historical rates. Specifically, both the consultation letter to the tribes and the Federal Register notice propose to contract with a DOE laboratory to prepare an analysis of historical rates of compensation “for pipelines crossing Indian land”. Section 1813 of the Energy Policy Act requires an analysis of the historical rates of compensation “for energy rights-of-way on tribal land.” “Energy rights-of-way” consist of more than “pipeline” rights-of-way, including, at least, electric transmission; “tribal land” is a subset of “Indian land”. (See Section 2601(12)). The Departments’ study should reflect the specific scope of analysis contemplated by Congress and mandated by the statute.

FAIR believes that a case study approach is an appropriate way to illustrate and analyze historical rates of compensation. We would be pleased to provide case studies and relevant data for review by the chosen DOE laboratory. We urge the Departments to structure the process to identify cases to be studied and acquire pertinent data as early as possible to ensure time for thorough evaluation and analysis.

Step 3 – FAIR looks forward to participating in the two-day nationwide scoping meeting.

Step 4 – FAIR looks forward to participating in the workshops for each of the three working groups established at the nationwide scoping meeting. FAIR suggests the workshops be scheduled far enough in advance of the May 2006 date for circulation of the draft study to allow time to incorporate contributions from the work groups.

Step 5 – FAIR requests that it also receive copies of the draft report prepared by the agencies, in addition to the copies that are sent to the tribes.

Step 6 – This step contemplates consultation meetings over a two to three month period with tribes at which agency officials will present the draft report and receive written and oral comments. It is unclear whether other members of the public will receive notice of these consultation meetings and be provided an opportunity to attend and also provide written and oral comments. If this is not the case, FAIR suggests that a simultaneous, similar opportunity be given to non-tribal entities. Section 1813 requires consultation not just with tribes, but also with the energy industry, appropriate government entities and affected businesses and consumers. (Section 1813(a)(2)).

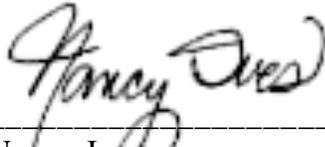
FAIR wishes to reiterate that its desire to participate equally in these consultation meetings should not be perceived as a request to extend the statutory deadline of August 7, 2006. FAIR is willing to participate at locations chosen by the agencies on a time frame that matches that contemplated by Step 6.

Step 7 – FAIR applauds the Agency’s fidelity to the deadline established by the Act.

General Comment -- FAIR trusts that the Departments have considered the applicability of the Federal Advisory Committee Act to the steps outlined in the work plan.

On behalf of its members, FAIR appreciates this opportunity to comment on your proposed plan of work. If you have any questions about our comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Nancy Ives". The signature is written in a cursive, flowing style.

Nancy Ives
Executive Director
FAIR ACCESS TO ENERGY COALITION