

**Governor Bill Owens  
Before the Joint Hearing  
of the U.S. Departments of Energy  
and the Interior  
Regarding the  
Energy Policy Act of 2005  
Section 1813 Indian Land Rights-of-Way Study  
Denver, Colorado  
April 18, 2006**

Good morning. Let me welcome all of you to Colorado and thank the United States Departments of Energy and the Interior for convening this important national hearing in our state.

A special greeting to our representatives from the federal government as well the leaders of the two sovereign Indian nations, the Southern Ute and Ute Mountain Ute Tribes, which call Colorado home. For more than seven years it has been my pleasure and privilege to work constructively with these two tribes on matters of mutual interest and concern. I also wish to acknowledge the leadership that Colorado's Lieutenant Governor, Jane Norton, is playing as chair of the Colorado Commission on Indian Affairs in strengthening the relationship with the Southern Ute and Ute Mountain Ute Tribes.

The genesis for today's hearing is the Energy Policy Act of 2005, which Congress passed overwhelmingly and which President Bush signed last August. Colorado

and other energy-producing states especially welcomed the passage of this long-awaited legislation.

The Energy Act benefits all Americans by strengthening domestic exploration and production, thereby lessening our dependence on foreign energy sources.

The Act likewise helps consumers from all walks of life by fostering new investment in energy generation, production and transmission, and by encouraging federally-supported research and development of cleaner, more efficient technologies.

I am particularly pleased that the Indian Land Rights-of-Way Study – known as Section 1813 – was included in the final version of the Energy Act. As you all know Section 1813 calls for a study of how we approach right-of-way negotiations between tribal governments and energy-transmission providers. The study must balance the interests of the tribes, especially tribal sovereignty, and the transmission companies on behalf of the citizens we all represent.

The Section 1813 study process can lead to the establishment of clear, consistent, and fair valuation Right-of-Way standards. Such standards must balance the

sometimes competing interests of tribes and transmission companies – in negotiating rights-of-way on public lands that are held in trust by the federal government for the benefit of individual tribes.

At a time when energy prices are once again approaching an all-time high, the issues that the Section 1813 study seeks to address have never been more important – or more timely. The Energy Policy Act signed last year mandates completion of this Section 1813 study by August 7<sup>th</sup> of this year.

There is no better time to ask the fundamental question that led Congress to mandate this study. Simply put, is the current approach to negotiating and assessing the value of energy rights-of-way on Indian trust lands the best we can do?

The weight of the evidence suggests we can do better – much better – than the current approach. Right-of-way negotiations between federally-recognized Indian tribes, on the one hand, and federally-approved electrical transmission providers and natural gas, crude and petroleum products pipelines, on the other – are increasingly measured not by months, but by years.

These protracted and costly negotiations stand in sharp contrast to right-of-way agreements on all other categories of public lands, whether controlled by federal, state or local governments. Everyone loses from such delays – tribal governments and the citizens they serve, energy companies and their shareholders, energy cooperatives and their members, and above all energy consumers. The public deserves better.

Congress must pay careful attention to the findings of the Section 1813 study and seek ways to work with all stakeholders to reduce and eliminate unnecessary delay and conflict – and the resulting higher costs – that the current trust land negotiating process has come to symbolize.

At the same time, the Section 1813 “study process” ought to develop credible public policy options for establishing – once and for all – truly objective standards for how trust land energy rights-of-way are valued. Here again, the current approach can result in unnecessary friction between tribes and the industry that is caused by a breakdown in federal public policy.

In the absence of objective valuation standards – such as the fair-market value appraisal that is used as the benchmark for energy-related rights-of-way across

other kinds of public and private fee lands – the negotiating parties often talk past one another because there is no standard valuation method.

The current standard-less environment for assessing right-of-way valuation fails everyone because it does not protect anyone. In some cases, regulated energy transmission companies and pipelines are able to “pass through” these additional costs directly to consumers in higher rates.

But passing it through doesn’t make it right and, in fact, harms energy consumers both on and off tribal trust lands.

Even in cases where transporters cannot pass through these costs, the public will be harmed whenever projects that provide net benefits to the public are rendered unprofitable.

From the tribes’ perspective, the absence of a consistent and reasonable valuation standard can result in some undeniable short-term financial gains. Yet in the long run, it can sometimes have tragic unintended consequences. Lack of Right-of-Way valuation standards – and lengthy delays in negotiations – can actually encourage

energy transmission companies and pipelines to bypass Indian trust land and avoid building critical energy infrastructure on Indian Reservations.

Establishing a fair and objective valuation standard would help correct this injustice and foster increased energy-related infrastructure development on Indian Reservations at a time when such public and private investments have never been more important.

Any delay in completion of the Section 1813 study on Right-of-Way standards is manifestly against the interests of all parties. The Congress and the President saw the necessity of identify Right-of-Way valuations standards by August of this year. I say, the sooner the better.

The current approach to right-of-way negotiations on Indian trust land is hurting energy infrastructure development. This is an important and growing problem throughout the Western United States. It is emphatically not a mere disagreement between one or two Indian tribes and a handful of energy companies.

The state of Colorado firmly believes that any use of another's land for public good requires fair and just compensation. And, such standards should be uniform across the country. All parties will benefit by a fair and efficient approach.

Again, I appreciate your time this morning and will be following the Section 1813 study process with great interest. Thanks again for your time this morning.

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