

April 25, 2006

Mr. Darryl Francois  
Office of Indian Energy and Economic Development  
1849 C Street, NW, Mail Stop 2749-MIB  
Washington, DC 20240

RE: Section 1813 ROW Study

These comments on the Section 1813 ROW Study are hereby submitted by Carol Harvey, a Navajo citizen and attorney. They were presented at the April 18-20, 2006, Public Scoping Meeting on the Section 1813 ROW Study (“Section 1813 Public Meeting”).

### **Summary**

The issue of tribes charging excessive right-of-way costs resulting in a significant negative impact on transportation charges and consumer burner tip prices was never publicly raised prior to January 2005. It was first raised by the New Mexico Oil and Gas Association (“NMOGA”) at the Natural Gas Conference before the Committee on Energy and Natural Resources, United States Senate, January 24, 2005. At that time, NMOGA pleaded for Congress to pass legislation allowing for the condemnation of tribal lands by pipeline and gathering companies for energy rights-of-way.

Prior to NMOGA’s cry for help, the predominant and prevailing view was that expressed by the Interstate Natural Gas Association of America (“INGAA”), a national, non-profit trade association that represents the interstate natural gas pipeline industry operating in the United States, as well as comparable pipeline companies in Canada and Mexico:

***Pipeline transportation and storage is the smallest part of the cost of natural gas delivered to residential and commercial customers – typically about 10 percent of the total retail cost of natural gas. (Emphasis added.)***

Testimony of Phillip D. Wright, Senior Vice President, Gas Pipeline for Williams Pipeline Company, on behalf of the Interstate Natural Gas Association of America, Before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, United States

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House of Representatives, regarding Natural Gas and Heating Oil for American Homes, November 2, 2005.

INGAA concurs in the complete lack of public written or oral assertions or documentation of tribal excessive right-of-way costs negatively impacting consumer burner tip prices prior to NMOGA's assertion. While INGAA stated it performed such a study in 1998, it was neither published nor made available to the public. Such a study from the last century, given all of the federal regulatory changes between then and now, can hardly be considered as credible today.

While NMOGA and El Paso Corporation (who is negotiating with the Navajo Nation over the renewal of an expired 900 mile pipeline) lobbied for legislation condemning tribal lands for energy right-of-ways, Senator Domenici, Chairman of the Senate Committee on Energy and Natural Resources, was not willing to go so far. He supported legislation for a study of the issue of energy rights-of-way on tribal lands.

It is a grave injustice to the country's 560 sovereign Tribes, from the St. Regis Mohawk to the Morongo Band of Indians, from the Eastern Shoshone and Northern Arapaho Tribes to the Jicarilla Apache Nation, to put them on the defensive on this matter when no example, other than the negotiations between the Navajo Nation and El Paso Corporation ("El Paso") has been provided documenting a problem with tribal consent for right-of-ways across their lands. El Paso's Manager, Land Department, concurs in the complete lack of public written or oral assertions or documentation of tribal excessive right-of-way costs negatively impacting consumer burner tip prices prior to NMOGA's assertion. El Paso is a prominent member of NMOGA.

This injustice is compounded given the lack of tribal technical expertise in this area. Tribes across the country are having to retain consultants and outside counsel at significant expense to assist them in protecting their rights. Surely, this is not what Congress intended when it responded to the sole concerns of El Paso. El Paso's market and political clout should not foreshadow the tribal sovereign rights of over 560 recognized Tribes in the United States.

Nor should El Paso's philanthropy of Forty Five Thousand Dollars (\$45,000) per year over a ten year period (Four Hundred Fifty Thousand Dollars (\$450,000) to the Navajo Nation be given much weight when considering its philanthropy for 2004 alone was Three Million Five Hundred Twenty Seven Thousand Three Hundred Fifty Four Dollars (\$3,527,354). Also, Congress and the Tribes with which it conducts business should investigate compliance with tribal employment ordinances, rather than rely on El Paso's self-proclaimed magnanimous present employment record of 23 Navajos. While companies may employ low level salaried employees in the local tribal area, it does not carry over to corporate headquarters.

El Paso's cry for a legislative fix does not belong in Congress. Such political maneuvering and abusive influence only distances the relationship between tribal mineral and

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land owners and energy companies in a time when cooperation is essential and fundamental for further tribal energy development and a reduction in foreign imports. The Section 1813 Study process is only serving to alienate tribes from energy companies which will restrict access to tribal energy resources, along with exacerbating an already existing tribal mistrust and suspicion of energy companies and their trustee, the federal government.

This was dramatically demonstrated by the tribal response to the 'drive-by-shooting' by certain Colorado political representatives who called for the outright condemnation of tribal lands for energy right-of-ways. The Tribes present at the Section 1813 Public Meeting walked out on Colorado State Senators Shawn Mitchell and Greg Brophy, and Colorado State Representative Cory Gardner, along with Jeff Crank, candidate for the U.S. House of Representatives. These politicians did not participate in the Section 1813 Public Meeting at all. They arrived, suited up, en masse, delivered strikingly similar statements endorsing condemnation of tribal lands, and left en masse, immediately thereafter.

Our tribal land is sacred.  
Our tribal land is our homeland.  
Our tribal land is our sustenance.  
Our tribal land is the essence of tribal sovereignty.

Is all of this worth bailing out one Fortune 500 company with the market and political clout to impose its legislative remedy and whose Chief Executive Officer receives an annual salary alone equal to the disputed annual compensation being sought by the Navajo Nation for a 900 mile pipeline?

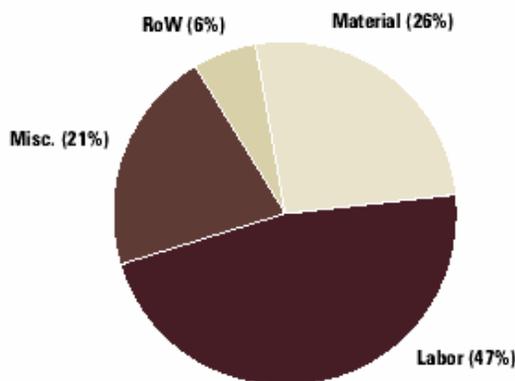
### **Pipeline Transmission Costs**

From my research, I have found that for natural gas transmission pipeline construction costs, right-of-way acquisition costs are approximately **3-6%** of the total costs. Labor is the big factor at 47% and material at 26%. Miscellaneous costs account for the remainder at 21%. In regard to natural gas consumer costs, **transportation costs are reported to reflect anywhere from 6-19% of total costs.** Distribution costs - for bringing the gas from within the local area to the user's facility accounts for 47% of the cost and the cost of the gas itself - for 34%. Also, natural gas accounts for 19-23% of United States electric power generation, such that natural gas prices are also affected by other energy costs (e.g., coal).

As summarized by Nathan Parker in his study of natural gas transmission pipeline costs, right of way costs are of relative small importance to total pipeline costs. *See* "Using Natural Gas Transmission Pipeline Costs to Estimate Hydrogen Pipeline Costs," Nathan Parker, Institute of Transportation Studies, University of California, Davis. *See also* "Pipeline Cost Estimation" by Marco Marquez and Spencer Guy.

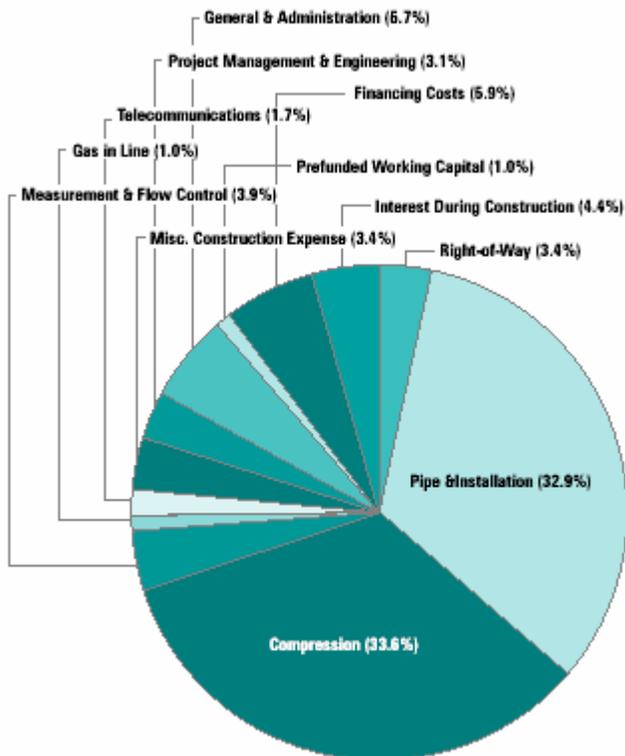
Also, North Baja Pipeline, LP owned by PG&E Gas Transmission Northwest Corporation, in its comments to the Arizona Corporation Commission, Utilities Division, stated the following:

... [a] large majority of gas cost to an Arizona utility is for the commodity itself. The pipeline transportation costs are a much smaller component of overall cost.



**Source:** R.W. Beck, Inc., Oil & Gas Bulletin, Oil and Gas Services, Natural Gas Transmission, Pipeline Construction Cost, 2006

Chart 5 – Cost Breakdown, US



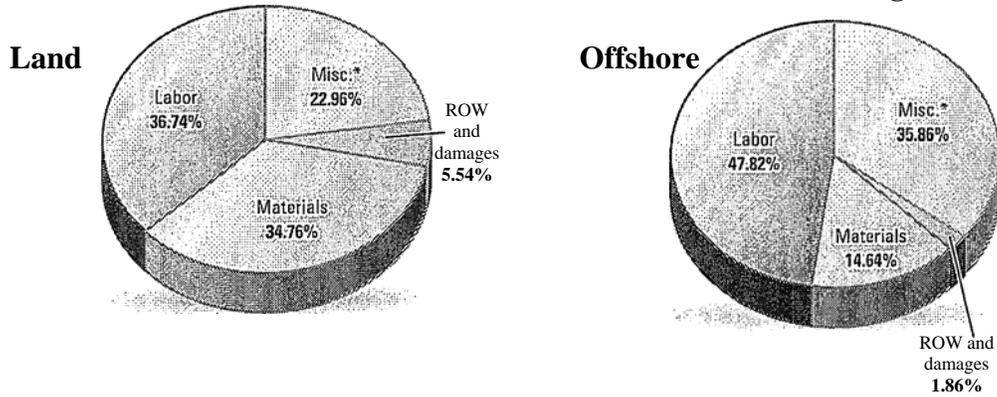
**Source:** R.W. Beck, Inc., Oil & Gas Bulletin, Oil and Gas Services, Natural Gas Transmission, Pipeline Project Development Process, 2006

*Costs for owner contingency, tax, debt service reserve and sponsor development costs can add an additional 10% to 20% to total project costs.*

Right-of-way costs reported by R.W. Beck, Inc. are in line with those reported below in the Oil & Gas Journal, "U.S gas carriers see 2004 net jump; construction plans rebound," September 12, 2005, based on data from the U.S. Federal Energy Regulatory Commission ("FERC").

**PIPELINE CONSTRUCTION COSTS----ESTIMATED**

**Fig. 3**

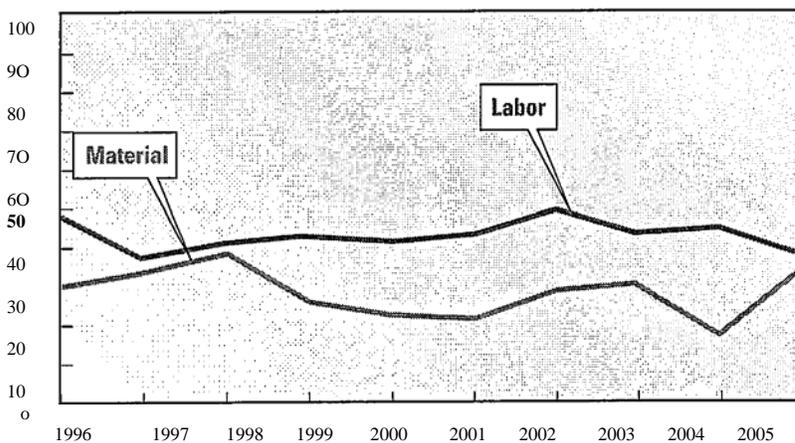


Generally includes surveying, engineering, supervision, administration and overhead, interest, contingencies and allowances for funds used during construction (AFUDC), and regulatory filing fees.

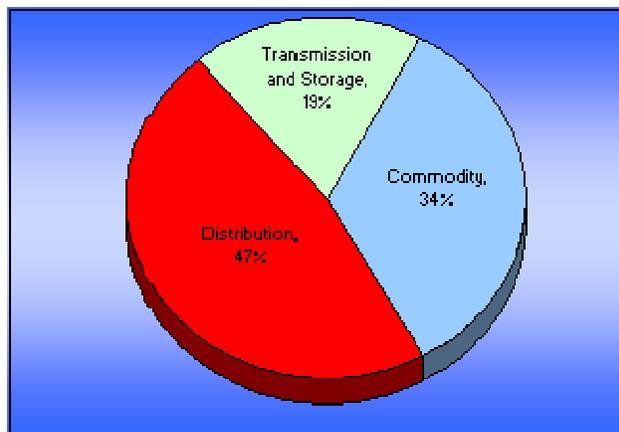
Source: US FERC construction-permit filings July 1, 2004, to June 30, 2005.

**MAJOR COST COMPONENTS 10 YEARS**

**Fig.4**



Source: US FERC.



**Source:**  
**Energy**  
**Information**  
**Administration**

### **Components of Residential Natural Gas Prices**

#### **Factors Influencing Rising Natural Gas Prices**

As stated by Vice-Chairman Robert F. Bennett in a hearing before the Joint Economic Committee, on October 6, 2004, on The Long-Run Economics of Natural Gas:

We know the proximate causes for the run up in the cost of natural gas. A few years after prices were deregulated in the 1980s the Congress passed laws that in effect encouraged its use to produce electricity, sharply increasing demand. At the same time, the production from extant wells began to decline and environmental restrictions made the exploration and drilling of new wells more difficult. It doesn't take an economist to see that policies that increase demand and decrease supply will sharply increase prices.

As recognized by the Arizona Corporation Commission, the following factors are also at play:

- Continued fundamentally tight supply-demand balance in natural gas markets
- Fast growing demand from electric generation sector
- Flat domestic production despite high rig counts
- High oil prices - the entire "energy basket" has risen
- National economic strength
- "Demand destruction" in the industrial sector has reduced demand flexibility
- Weather
- Coal and nuclear power plant outages
- Coal delivery disruptions from the Powder River basin, impacting electric generation

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- Low hydroelectric resources in the Pacific Northwest, impacting electric generation
- Active hurricane season, including Cindy, Dennis, and Katrina
- Beginning in January 2006 increased costs as a result of the El Paso pipeline rate case.

See Attachment 1, "Causes and Impacts of Rising Natural Gas Prices," Bob Gray, Arizona Corporation Commission, September 8, 2005.

### **Components of Natural Gas Prices**

The price of natural gas paid by consumers is based primarily on the volume of gas delivered and is made up of three parts:

- transmission costs - for moving the gas by pipeline from its source to the customer's local area - 19%
- distribution costs - for bringing the gas from within the local area to the user's facility - 47%
- the cost of the gas itself - 34%. See Energy Information Administration, DOE.

It is important to note that different end user groups experience different prices: residential, commercial, industrial consumer or electric utilities.

### **Temporary Price Fluctuations**

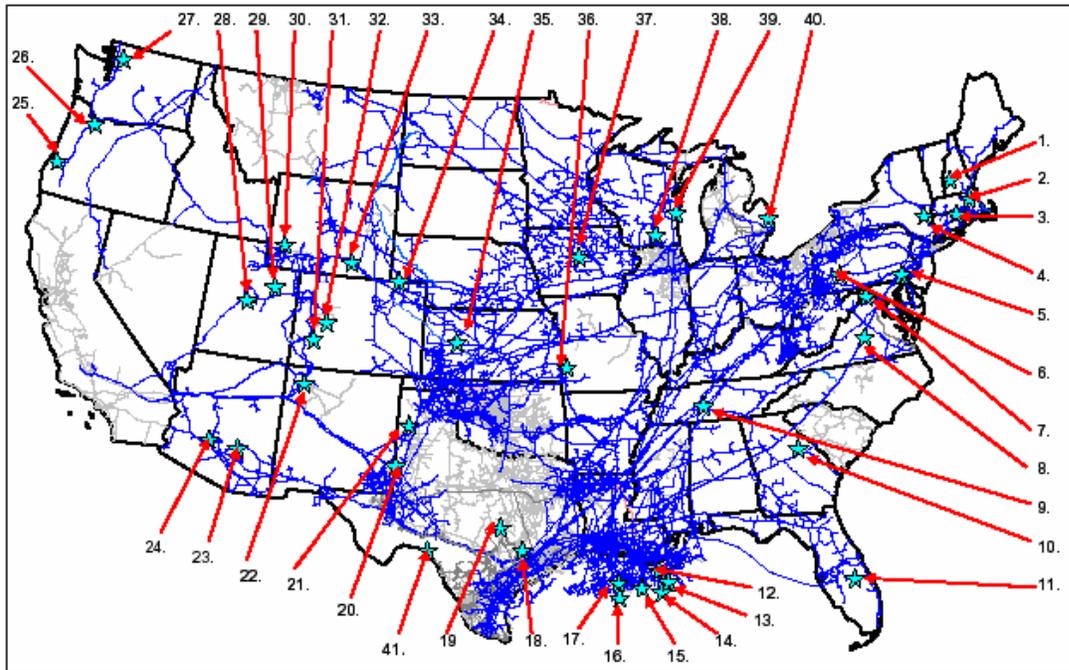
Prices might go up temporarily because:

- Prolonged or severe winter weather increases demand in the high-consumption winter months
- Diminished volumes of natural gas in storage reduce volumes that can be withdrawn and, especially in the early months of the heating season, make operators cautious about removing gas from their diminishing inventory
- Constraints may occur along the pipeline delivery system
- Operational difficulties restrict supplies to customers (e.g., production valves freeze, equipment breaks down).

**Numerous Projects Have Been Completed and Are Underway**

Notwithstanding the criticism leveled at tribes, numerous projects within the United States have been successfully completed and are underway, as demonstrated by the map below. The lack of infrastructure is attributable to many different factors, including area saturation.

**Figure 1. Locations of Natural Gas Pipeline Construction Projects Completed in 2004**  
(Map keyed to Table 2)

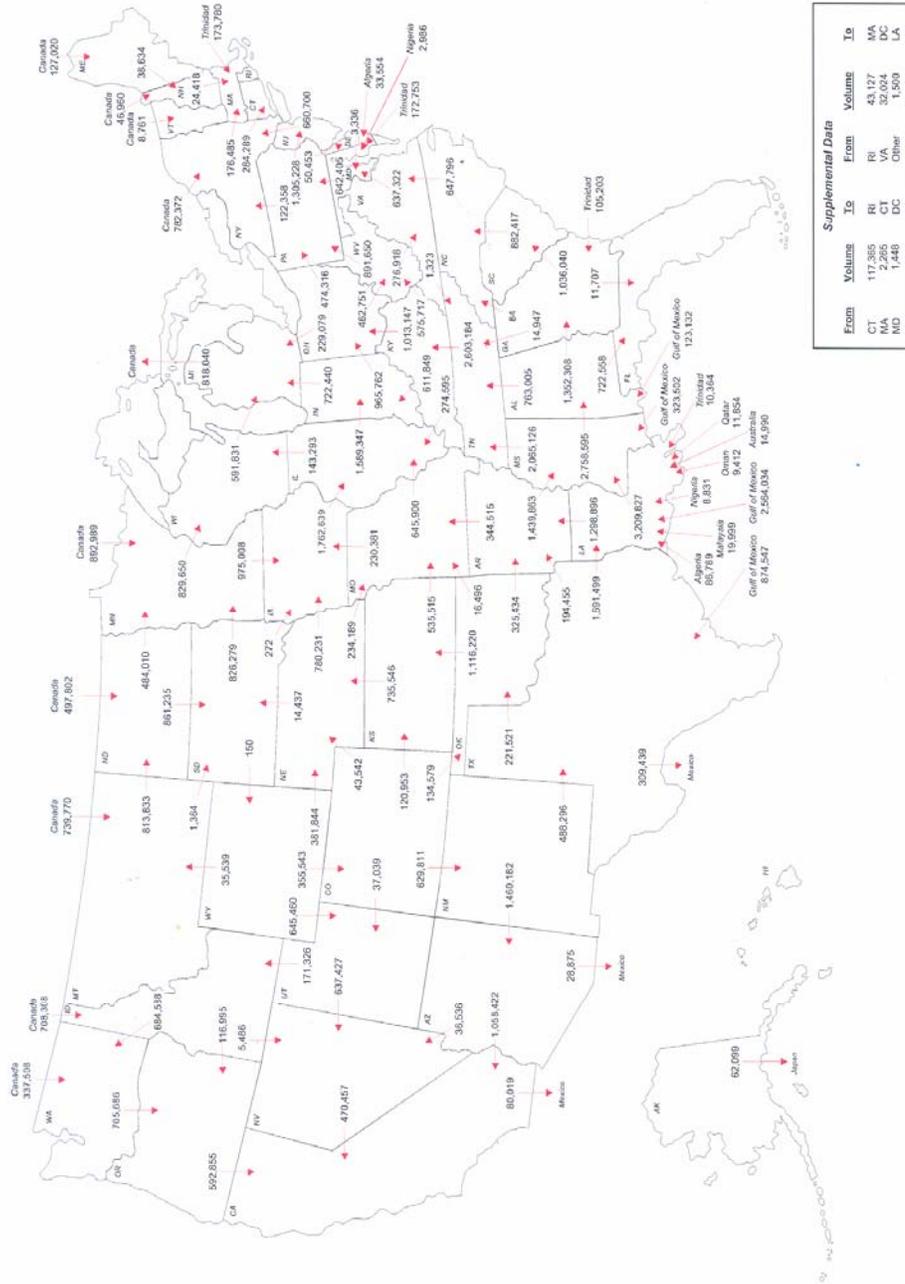


Source: Energy Information Administration, Office of Oil and Gas, Natural Gas Pipeline Construction Database.

**Gas Supply and Disposition**

As can be seen from the map below, gas produced from tribal lands in New Mexico, Arizona, Utah, Colorado, and Wyoming are destined for markets in California and Texas.

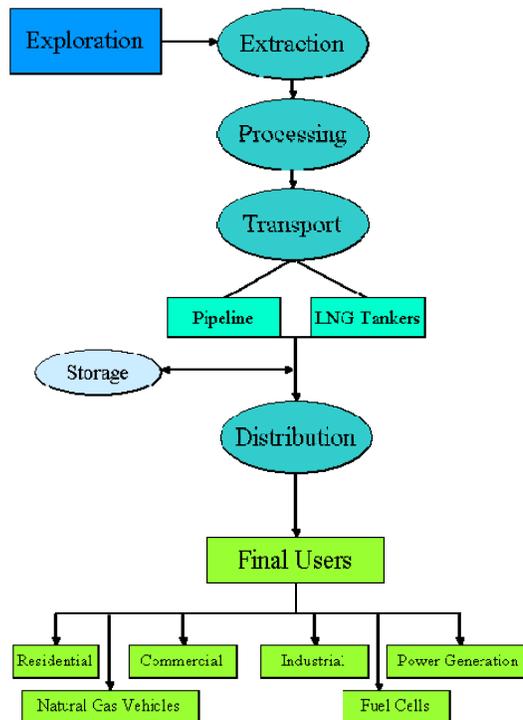
Figure 8. Interstate Movements of Natural Gas in the United States, 2004  
 (Million Cubic Feet)



Source: Energy Information Administration (EIA), Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Disposition."

### Other Costs in Natural Gas Chain

The natural gas industry is large, capital intensive and highly concentrated. Many costs are involved in getting natural gas to end-users, as reflected by the graph below.



Source: UNCTAD Secretariat

### Attributing Increased Natural Gas Prices to Increased Tribal Right-of-Way Charges Is Overly Simplistic

As demonstrated by the foregoing multiplicity of factors affecting rising gas prices, attributing increased natural gas prices to increased tribal right-of-way charges is overly simplistic.

### The Gold Rush Is On

It is imperative that tribes comprehend the extent of their natural resources.

According to the Department of the Interior, only a quarter of the oil resources and less than a fifth of the natural gas resources on tribal lands have been developed. The Bureau of Indian Affairs estimates there are almost 90 Indian

reservations with energy resource potential, including oil and gas, coal and coalbed methane, wind and geothermal.

At the same time, 14.2 percent of all Native American homes on reservations have no access to electricity, compared to just 1.4 percent of all U.S. households. The problem is even more acute on the Navajo Reservation, where 37 percent of homes don't have electricity. In addition, Indian households spend four percent of their income on electricity -- twice the average for all U.S. households; this in spite of higher rates of unemployment and poverty in Indian Country. *See* Senate Energy & Natural Resources Committee News Releases, February 14, 2003.

*See also* Infrastructure on Native Lands, "Expanding Natural Gas Pipeline Infrastructure to Meet the Growing Demand for Cleaner Power," Final Report of The Keystone Dialogue, dated March 2002.

As the infrastructure of natural gas production becomes a strategic factor in U.S. energy policy, so does the strategy of integrating the Indian tribal nations' and Alaska natives' resource base into America's energy future. Tribal nations and Alaska natives own significant energy assets. For example, roughly 10 percent of natural gas reserves in the U.S. are located on Indian reservations. Much of this resource has not been fully developed. Tribal nations and Alaska natives will thus play an important role in meeting the forecasted demand for natural gas in the U.S.

Throughout the Rocky Mountain region, for instance, tribal natural gas resources are proving up in greater quantities than expected. The development of these resources, and with it the need for expanded infrastructure, has engaged tribes in a manner that offers both risks and rewards. Those tribes owning natural gas resources within their land base are active partners in this new era of energy resources development. Indian tribes that are party to this development and those whose lands are adjacent to it--often enhance the value of their land base by negotiating the cost of a pipeline right-of-way. In this regard, tribal participants are dealing from the vantage point of self-governing sovereign nations. This unique status poses particular challenges for would-be developers of natural gas pipeline infrastructure that involves tribal resources.

Prior to 1982, the federal government, under its trust obligation to tribal nations, negotiated and approved rights-of-way on behalf of Indian tribes. With the passage of the Indian Mineral Resources Act in 1982, tribes were granted the right to negotiate right-of-way terms on their own behalf, subject to final approval by the federal government under their trust obligation to tribal nations. This period of tribal energy resources development ushered in the need for increased tribal participation in both the developmental and negotiating process.

Thus, with respect to pipeline infrastructure, the direct involvement of tribal nations and Alaska natives is of increasing importance. Those same native groups that control significant energy resources also hold large expanses of land, particularly in the Rocky Mountains, the Southwest, the West, and Alaska. A single right-of-way negotiation may concern 50, 100, or even 200 miles of a pipeline route.

Tribal negotiations, however, involve a process that is unfamiliar to even the most seasoned right-of-way negotiator. The legal concept of eminent domain, for example, does not apply if a proposed pipeline route crosses tribal land. Only an act of Congress can amend or repeal this legal restriction. Absent such a dramatic step, infrastructure developers and tribal representatives negotiate an agreement that is considered mutually beneficial to both parties--bearing in mind that a right-of-way through tribal land may be the most cost effective and perhaps only pipeline route.

***Recommendation:** The DOE should convene a series of meetings--with representatives from tribal nations, Alaska natives, industry, and federal and state governments--to address special issues associated with gas infrastructure development on tribal lands. This will open a dialogue regarding pipeline siting and operations and energy exploration. This dialogue would be an important first step in building and improving relationships among pipeline developers, affected tribal nations, Alaska natives, interested agencies, and other stakeholders.*

### **Section 1813 Study Comments and Testimony**

Of the parties submitting comments or testifying (listed below) in response to the Section 1813 Study, not one party identified a particular tribe as charging excessive right-of-way costs or demonstrated a specific negative impact on consumer burner tip prices. Generalized and oblique references were made to tribes, but not one single, specific, verifiable case was identified.

Arizona Corporation Commission

Arizona Public Service Company (Karilee S. Ramaley)

Association of Oil Pipe Lines (Michele F. Joy)

Avista Utilities (Donald J. Malisani)

City of Toppenish (William Rogers)

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Dawson, Marlene

Edison Electric Institute (Thomas R. Kuhn)

Fair Access to Energy Coalition (Nancy Ives) (Lobby group for El Paso)

Idaho Power Company (Pat Hasenoehrl)

Interstate Natural Gas Association of America

Kinder Morgan Energy Partners (Ron McClain)

New Mexico Oil and Gas Association (Bob Gallagher)

Paul, Chris A.

Plains Pipeline (Michael Jones)

Public Service Company of New Mexico (Rob Roberts)

Salt River Project (John M. Felty)

Sempra Energy (James P. Avery)

State of Colorado, Governor Bill Owens

State of Colorado, State Senator Jim Isgar

State of Colorado, Office of Consumer Counsel

Western Area Power Administration (C. Shane Collins)

Western Business Roundtable (James T. Sims)

**Introduction of Condemnation of Tribal Lands for Right-of-Ways by New Mexico Oil and Gas Association, Natural Gas Conference, Senate Energy and Natural Resources Committee, January 24, 2005**

It is important to note that at the Natural Gas Conference before the Committee on Energy and Natural Resources, United States Senate, January 24, 2005, aside from NMOGA, none of the Senators, speakers or organizations whose testimony is set forth in Attachment 2 hereto raised the issue of excessive tribal right-of-way costs.

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Set forth below is the list of participants and the reference to this issue by NMOGA in their oral testimony and their written submission.

The Nordhaus Law Firm is a member of NMOGA. Our hope was that we would have input on NMOGA's policies for the benefit of the Jicarilla Apache Energy Corporation and other tribal clients. No meetings have been held by NMOGA on this subject. As such, we have had no input, even as a member of the Legal Committee, but strongly disagree with their position.

#### COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, New Mexico, Chairman

LARRY E. CRAIG, Idaho	JEFF BINGAMAN, New Mexico
CRAIG THOMAS, Wyoming	DANIEL K. AKAKA, Hawaii
LAMAR ALEXANDER, Tennessee	BYRON L. DORGAN, North Dakota
LISA MURKOWSKI, Alaska	RON WYDEN, Oregon
RICHARD BURR, North Carolina	TIM JOHNSON, South Dakota
MEL MARTINEZ, Florida	MARY L. LANDRIEU, Louisiana
JAMES M. TALENT, Missouri	DIANNE FEINSTEIN, California
CONRAD BURNS, Montana	MARIA CANTWELL, Washington
GEORGE ALLEN, Virginia	JON S. CORZINE, New Jersey
GORDON SMITH, Oregon	KEN SALAZAR, Colorado
JIM BUNNING, Kentucky	

Alex Flint, Staff Director  
Judith K. Pensabene, Chief Counsel  
Bob Simon, Democratic Staff Director  
Sam Fowler, Democratic Chief Counsel  
Lisa Epifani, Counsel  
Deborah Estes, Democratic Counsel

#### STATEMENTS

Alberswerth, David, Program Director, The Wilderness Society  
Anderson, Bob, Executive Director, Committee of Chief Risk Officers  
Angelle, Scott, Secretary, Louisiana Department of Natural Resources  
Barlow, Eric, Western Organization of Resource Councils  
Barnett, Keith, Vice President, Fundamental Analysis for American Electric Power  
Bingaman, Hon. Jeff, U.S. Senator from New Mexico  
Buccino, Sharon, Senior Attorney, Public Lands Program, Natural Resources Defense Council  
Campbell, Elizabeth, Director, Natural Gas Division, Energy Information Administration  
Chapman, Gary, Senior Commercial Manager, Dow Chemical  
Connelly, Jeanne, Vice President, Federal Relations, Calpine Corporation

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Cooper, Mark, Director of Research, Consumer Federation of America  
Cooper, Roger, Executive Vice President, American Gas Association  
Cruickshank, Walter, Deputy Director, Minerals Management Service  
Davies, Philip, Vice President and General Counsel, EnCana Gas Storage, Inc.  
Domenici, Hon. Pete V., U.S. Senator from New Mexico  
Downes, Larry, Chairman, Natural Gas Council and the American Gas Association  
Fuller, Lee, Vice President of Government Relations, Independent Petroleum Association of America  
Gallagher, Bob, President, New Mexico Oil and Gas Association  
Gerard, Associate Administrator for Pipeline Safety, Department of Transportation  
Grumet, Jason, Executive Director, National Commission on Energy Policy  
Hansen, Christine, Executive Director, Interstate Oil and Gas Compact Commission  
Harvey, Steve, Deputy Director, Market Oversight and Assessment, Federal Energy Regulatory Commission  
Horvath, Skip, President and CEO, Natural Gas Supply Association  
Houseknecht, Dave, Research Geologist, U.S. Geological Survey  
Kalisch, Bert, President and CEO, American Public Gas Association  
Kane, John, Senior Vice President of Governmental Affairs, Nuclear Energy Institute  
Kuuskraa, Vello, President, Advanced Resources International, Inc.  
Levin, Robert, Senior Vice President, New York Mercantile Exchange (NYMEX)  
Lonnie, Thomas, Assistant Director for Minerals Realty and Resource Protection, Bureau of Land Management, Department of the Interior  
Myers, Dr. Mark D., Director, Alaska Division of Oil and Gas, State of Alaska  
Nadel, Steve, Executive Director, American Council for Energy Efficiency Economy  
Rattie, Keith, Chairman, CEO, and President, Questar Corporation  
Richardson, Hon. Bill, Governor, State of New Mexico  
Robinson, Mark, Director, Office of Energy Projects, Federal Energy Regulatory Commission  
Rosenberg, William, Senior Fellow, Kennedy School of Government, Harvard University  
Scott, Captain David, Chief, Office of Operating and Environmental Standards, U.S. Coast Guard  
Sharples, Richard J., Executive Director, Center for Liquefied Natural Gas  
Shilts, Richard A., Director, Division of Market Oversight, Commodity Futures Trading Commission  
Showalter, Marilyn, President, National Association of Regulatory Utility Commissioners  
Stuntz, Linda, Member, National Commission of Energy Policy  
Sypolt, Gary, President, Dominion Transmission  
Theriot, Nolty, Director, Congressional Affairs, National Ocean Industries Association  
Van Alderwerelt, Senior Vice President, PPM Energy, Portland, OR  
Whitsitt, William, President, Domestic Petroleum Council  
Yamagata, Ben, Executive Director, Coal Utilization Research Council (CURC)

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**STATEMENT OF BOB GALLAGHER, PRESIDENT,  
NEW MEXICO OIL AND GAS ASSOCIATION**

Mr. Gallagher. Mr. Chairman, Senator Bingaman, I appreciate very much the opportunity to be with you today and applaud your efforts. You make us proud back in New Mexico, and I appreciate the opportunity.

I think the answer to affordable natural gas is easy: available natural gas makes natural gas affordable. I think you can sum it up in three words: "access, access, and access."

If our industry does not have access to Federal lands and waters, our country does not have affordable natural gas, nor will we be able to meet the growing demand. I believe it is that simple...

We would also encourage having some help, Mr. Chairman, on transportation. Pipeline companies presently have no condemnation authority on Indian lands, and as such, we have trouble with right-of-ways both before and with----

The Chairman. Thank you very much.

Mr. Gallagher. I hear the buzzer. Thank you, Mr. Chairman. I appreciate the opportunity.

**Prepared Statement of Bob Gallagher, President,  
New Mexico Oil and Gas Association**

**INCREASING DOMESTIC NATURAL GAS SUPPLY AND INFRASTRUCTURE: AN  
INDIAN COUNTRY FOCUS**

**Executive Summary**

Over the last half century natural gas companies have built hundreds of miles of gas pipelines that transport New Mexico gas over the land of Indian Nations. This infrastructure has created numerous on-going, steady, high paying jobs for Indian people and has resulted in millions of dollars of tax and other revenue to state and local governmental entities. The success of the New Mexico natural gas industry is reliant upon the cost effective transportation of natural gas supplies across Indian Country.

The financial position of today's natural gas companies serving New Mexico and transporting gas across Indian Country has changed dramatically due to rapidly growing competition in the western gas market and the ever increasing land costs associated with transporting gas across Indian land.

Given the economic realities of the natural gas industry, the companies operating in and serving New Mexico are at a crossroads: either control cost of service, of which right-of-way costs are a component, or face the prospect of losing significant market share, threatening the viability of the companies, and thereby limiting the resources available for investment in New Mexico and Indian Country. The industry's preference is to work with the Indian Nations to develop an even stronger long-term natural gas infrastructure that balances the interests of

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industry, Indian Country and New Mexico. To achieve this objective, help is needed in controlling the exponential growth of right-of-way costs in Indian Country.

The New Mexico Oil and Gas Association respectfully seeks your assistance in developing win-win investment strategies that build on the value of the current natural gas infrastructure and that multiply that value for the benefit of the natural gas industry and consumers in the West.

**Congressional Hearing on Natural Gas and Heating Oil for American Homes, November 2, 2005**

On November 2, 2005, the Subcommittee on Energy and Air Quality held a hearing on Natural Gas and Heating Oil for American Homes. The parties listed below testified. It is important to note that on this occasion when the parties testifying had the opportunity to address their energy concerns, not one party raised the issue of a negative impact on gas prices due to tribal right-of-way charges. This is critical support for Tribes which demonstrates that the issue of tribal right-of-way costs is a single pipeline problem raised by a company with enough market and political clout to bring this issue to the forefront, El Paso.

*The Federal Energy Regulatory Commission, in fact, stated that transportation costs are a relatively small component of gas prices.*

The Honorable Joseph T. Kelliher  
Chairman  
Federal Energy Regulatory Commission  
Washington, DC

“The Commission regulates the transportation component of interstate transportation rates for natural gas and crude oil petroleum products. *These costs are relatively small, the transportation component for natural gas can be approximately 6 percent of its delivered cost while it is approximately 1 percent of the delivered cost for petroleum products.*” (Summary, page 1.) (Emphasis added.)

“Regarding natural gas, of the total delivered charge of approximately \$17.00 per thousand cubic feet estimated by EIA to the Mid-Atlantic this winter, the interstate transportation portion from the production area would be about one dollar, or about 6 percent.” (Page 6.)

No reference is made to a negative impact due to natural gas pipeline transportation charges.

The Honorable Reuben Jeffery, III  
Chairman  
Commodity Futures Trading Commission  
Washington, DC

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Testimony regarding oversight of energy futures and options markets.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Mark R. Maddox  
Principal Deputy Assistant Secretary  
Office of Fossil Energy  
Department of Energy  
Washington, DC

References the supplies of natural gas being thoroughly disrupted as a result of Hurricanes Katrina, Rita and Wilma and diminished supplies of Canadian gas due to the expanding Alberta oil sands industry's heavy consumption of natural gas.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Donald L. Mason  
Commissioner  
Public Utilities Commission of Ohio  
Columbus, OH  
On behalf of: National Association of Regulatory Utility Commissioners

“NARUC believes that any Federal policy on natural gas will be sustainable only if that policy includes “the triad” of conservation and efficiency; increasing supply; and diversification of energy sources.”

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Robert D. Stibolt  
Senior Vice President, Strategy, Portfolio & Risk Management  
SUEZ Energy North America, Inc.  
Houston, TX

Presentation related to liquefied natural gas.

“We can talk for a long time about the reasons for higher prices, but when demand is increasing and supply is steady or dropping, it makes no difference whether you are buying and selling toast or helicopters or natural gas – prices are going to increase.”

No reference is made to a negative impact due to natural gas pipeline transportation charges.

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Vice Chairman, DTE Energy  
Incoming Chairman  
American Gas Association  
Washington, DC

“As a result of the precarious balance between supply and demand, the Department of Energy’s Energy Information Administration has recently projected that the nation’s households will see their winter natural gas bills rise somewhere between 30% and 67% depending principally on location and weather.”

Recommendations included:

- (i) Increasing Low Income Home Energy Assistance Program (“LIHEAP”) funding.
- (ii) Increasing natural gas supplies by opening restricted off-shore areas; providing adequate funding and staff for the federal offices involved in permitting; expanding procedures for producers to access lands and production areas; and increasing US LNG capacity.
- (iii) Efficient use of different forms of energy.
- (iv) Fuel diversity for electric generation facilities.
- (v) Consumer education and conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Ms. Mary Ann Manoogian

Director  
New Hampshire Office of Energy and Planning  
Concord, NH

Recommendations include funding of LIHEAP, funding State Energy Programs and the Low-Income Weatherization Assistance Program, and consumer energy conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Ms. Dorothy Tucker

Consumer  
Medford, MA

Recommended funding consumer fuel assistance programs.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Charles D. Davidson

Chairman, President, and CEO  
Noble Energy, Inc.

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Houston, TX

On behalf of Domestic Petroleum Council, Independent Petroleum Association of America, and the International Association of Drilling Contractors.

Recommendations: Restore production shut-in as a result of Hurricanes Katrina and Rita; improve and speed processing of energy permitting; lease offshore areas; and remove prohibitions on offshore exploration, development and production.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. R. Skip Horvath

President  
Natural Gas Supply Association  
Washington, DC

Natural Gas Supply Association projects upward pressure on wholesale natural gas prices as a result of relatively flat production, hurricane-related production losses, and an increase in seasonal heating demand, regional gas constraints and the need for energy conservation.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Bob Slaughter

President  
National Petrochemical & Refiners Association  
Washington, DC

Testimony related to home heating oil market. Recommendation: open up outer continental shelf.

No reference is made to a negative impact due to natural gas pipeline transportation charges.

Mr. Phillip D. Wright

Senior Vice President, Gas Pipeline  
Williams Pipeline Company  
Tulsa, OK  
On Behalf of: Interstate Natural Gas Association of America

*“Pipeline transportation and storage is the smallest part of the cost of natural gas delivered to residential and commercial customers – typically about 10 percent of the total retail cost of natural gas.” (Emphasis added.)*

No reference is made to a negative impact due to natural gas pipeline transportation charges.

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Mr. Brian Castelli

Executive Vice President and COO  
Alliance to Save Energy  
Washington, DC

*“While the hurricanes have highlighted the problem the fundamental causes are not going away so quickly. Energy prices are soaring because American’s gluttonous energy consumption is outstripping supply.” (Emphasis added.)*

No reference is made to a negative impact due to natural gas pipeline transportation charges.

**International Right of Way Association Supports Condemnation of Tribal Lands**

The International Right Of Way Association set up a Native American Issues Subcommittee which first met November 3, 2004. Their agenda included: renewal of easements, appraisal methodology across allotted land and the timing of the granting of BIA instruments. The Subcommittee members met with NMOGA and planned to meet with Doug Lords, Native American Office of Special Trustee. At their Subcommittee meeting they also had the following presentations:

**Options for Indian License Renewals – Jim Powers, Attorney**

Topics included:

- Condemnation of allotted versus tribal lands
- No grant of ROW shall be made without consent of proper Tribal officials
- Companies need to examine if pipeline was there prior to the land becoming tribal
- Congress has granted exceptions to the requirement of tribal consent
- Legal action against Department of the Interior and lobbying the BIA to eliminate “with the consent” language.

**Energy Conference – Alan Wurtz**

Pete Domenici is holding an Energy Conference in Washington, D.C. the week of January 24. Several issues were discussed with NMOGA and attempts to get on Energy Conference Agenda. Items possibly to be tagged into energy bill are language on Appraisal Methodology, Eminent Domain, and Exemption for Real Estate Licensing.

At their April 2005 meeting the following discussion occurred:

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Native American- Jon Taylor, Alan Wurtz, David Anderson. General update on the Legislative activity performed by some Companies. Committee discussed January meeting with Swimmer and Holly in January in Washington, DC. **Dual methodology appraisal RFP has been circulated to appraisers.**

The Subcommittee includes the following members:

David Anderson, El Paso  
Alan Wurtz, Enterprise Products  
Ken Clagett, Land Acquisition Group  
Jon Taylor, Sempra Energy Utilities  
Tim Suttle, TEPPCO Crude Pipeline, Oklahoma City, OK  
Edwin Peck, PREConsultants, The Woodlands, Texas  
Kerry Briggs, Briggs Field Services Inc., Houston, Texas  
Marvin L. DeJear, St. Paul, Minnesota  
Brian Green, ENOGEX, Inc., Oklahoma City, OK  
Dan Houlihan, Enbridge Energy Group, Houston, Texas  
Paulette Trepri, Houston, Texas

Counsel for Sempra, James C. Powers, Nossaman, Guthner, Knox & Elliott LLP, Los Angeles, CA. *See* Attachment 3 for his presentation, "Utility Rights-of-Way over Indian Land," and his reference to the current process as "extortion."

**No Substantiation for Claims of Tribal Right-of-Way Charges Significantly Impacting Consumer Burner Tip Prices Results in Grave Injustice to Tribes**

I. It is also important to note that no specific claims or substantiation for claims of tribal right-of-way charges significantly impacting consumer burner tip prices were raised in any of the following important natural gas proceedings or studies:

A. "Expanding Natural Gas Pipeline Infrastructure to Meet the Growing Demand for Cleaner Power," Final Report of The Keystone Dialogue, dated March 2002, supported by the parties shown in Attachment 4 hereto, including the American Gas Association; BP Energy; CMS Energy; Columbia Gas Transmission Corporation; Dominion Energy; Dynegy; Enron; Interstate Natural Gas Association of America; U.S. Department of Transportation, Office of Pipeline Safety; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy; and the U.S. Department of Energy, Office of Fossil Energy. This Report discussed the (i) need for improving stakeholder communication (p.23), including tribes; coordinating the pipeline review process, including tribes (p. 27); and recommended a meeting hosted by DOE between all players to discuss infrastructure on tribal lands, including tribes (p. 30). Even though the Report contained a section on Eminent Domain (p. 32), no recommendation was made to seek eminent domain over tribal lands.

B. “Balancing Natural Gas Policy: Fueling the Demands of a Growing Economy,” September 2003, National Petroleum Council Study. The Summary contained no reference to tribes or energy-related right-of-ways on tribal lands.

C. “The Pressures on Natural Gas Prices,” Joint Economic Committee, Chairman Robert F. Bennett, October 6, 2004. Chairman Bennett’s statement contained no reference to tribes.

D. “New Mexico Pipeline Study,” October 7, 2004. While this Study referenced the need for communication with tribes, no recommendation of eminent domain over tribal lands was raised.

E. “Changes in U.S. Natural Gas Transportation Infrastructure in 2004,” Energy Information Administration, Department of Energy, examining in detail the level of growth that occurred within the U.S. natural gas transportation network during 2004. In addition, it includes a discussion and an analysis of recent gas pipeline development activities and an examination of additional projects proposed for completion over the next several years.

F. Senate Energy and Natural Resources Committee Natural Gas Conference, Independent Petroleum Association of America (IPAA) on behalf of IPAA, and its Cooperating Associations (specifically including the Colorado Oil and Gas Association, the New Mexico Oil and Gas Association, and the Ohio Oil and Gas Association), and the US Oil & Gas Association, 2005.

G. Testimony Of Lee Fuller, On Behalf Of The Independent Petroleum Association of America Before: Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, U.S. House of Representatives, February 16, 2005

For:

The Independent Petroleum Association of America, The International Association of Drilling Contractors, The International Association of Geophysical Contractors, The National Stripper Well Association, The Petroleum Equipment Suppliers Association, The Association of Energy Service Companies and California Independent Petroleum Association, Colorado Oil & Gas Association, East Texas Producers & Royalty Owners Association, Eastern Kansas Oil & Gas Association, Florida Independent Petroleum Association, Illinois Oil & Gas Association, Independent Oil & Gas Association of New York, Independent Oil & Gas Association of Pennsylvania, Independent Oil & Gas Association of West Virginia, Independent Oil Producers Association, Tri-State Independent Petroleum Association of Mountain States, Independent Petroleum Association of

New Mexico, Indiana Oil & Gas Association, Kansas Independent Oil & Gas Association, Kentucky Oil & Gas Association, Louisiana Independent Oil & Gas Association, Michigan Oil & Gas Association, Mississippi Independent Producers & Royalty Association, Montana Oil & Gas Association, National Association of Royalty Owners, Nebraska Independent Oil & Gas Association, New Mexico Oil & Gas Association, New York State Oil Producers Association, Northern Alliance of Energy Producers, Ohio Oil & Gas Association, Oklahoma Independent Petroleum Association, Panhandle Producers & Royalty Owners Association, Pennsylvania Oil & Gas Association, Permian Basin Petroleum Association, Petroleum Association of Wyoming, Tennessee Oil & Gas Association, Texas Alliance of Energy Producers, Texas Independent Producers and Royalty Owners, Virginia Oil & Gas Association, and Wyoming Independent Producers Association.

H. Natural Gas Forum – What Utilities and Consumer Groups Are Doing to Prepare Customers for the Winter Ahead, September 8, 2005, Arizona Corporation Commission.

I. “Natural Gas Market Conditions and Unisource Natural Gas Bills, February 24, 2004,” Arizona Corporation Commission.

J. “How Congress Should Help the Nation’s Natural Gas Supply Needs,” Republican Policy Committee, November 16, 2004.

II. In visiting the websites of the following leading natural gas trade associations, no references were found on the issue of excessive tribal charges for right-of-ways. This is not to be unexpected as members of certain of these groups have provided written testimony that they have been able to readily obtain rights-of-way for Exploration and Production operations on tribal lands.

- A. American Gas Association
- B. American Petroleum Institute
- C. Independent Petroleum Association of America
- D. Natural Gas Supply Association
- E. Domestic Petroleum Council
- F. International Association of Drilling Contractors
- G. National Petrochemical & Refiners Association

While the Interstate Natural Gas Association of America has a 2005 study regarding infrastructure costs, exercising eminent domain over tribal lands is not a recommendation. This study is attached given the numerous examples of federal and state impediments to infrastructure development, with recommendations regarding same. *See* Attachment 5, “Avoiding and Resolving Intergovernmental Conflicts with Interstate Natural Gas Facility Siting, Construction, and Maintenance.” Also, in its July 2004 study, “An Updated Assessment of Pipeline and

Storage Infrastructure for the North American Gas Market: Adverse Consequences of Delays in the Construction of Natural Gas Infrastructure” not one comment is made addressing tribes.

III. In visiting the websites of the following leading natural gas federal and state agencies, not one reference was found to the issue of excessive tribal charges for right-of-ways other than that raised by the current El Paso-Navajo Nation right-of-way matter:

- A. Department of Energy, Energy Information Administration
- B. Department of Interior
- C. Federal Energy Regulatory Commission
- D. Commodities Futures Trading Commission
- E. National Association of Regulatory Utility Commissioners.

IV. In reviewing articles of the following leading natural gas magazines, not one reference was found to the issue of excessive tribal charges for right-of-ways other than that recently raised in the Oil & Gas Journal by the current El Paso-Navajo Nation right-of-way matter:

- A. Oil & Gas Journal. *See* “US gas carriers see 2004 net jump; construction plans rebound,” Sept. 12, 2005” “US construction plans slide; pipeline companies experience flat 2003, continue mergers,” August 23, 2004; “Construction plans surge on prospects for gas use,” February 2, 2004.
- B. “Pipeline Economics,” 2006, Annual U.S. Pipeline Study based on Oil & Gas Journal’s annual Pipeline Economics Report.
- C. R.W. Beck, Inc., Oil & Gas Bulletin, Oil and Gas Services.

In fact, in reviewing The Fair Coalition’s website, the only articles cited relate to the El Paso-Navajo Nation right-of-way negotiations and the Section 1813 study. *See* Attachment 6 hereto. *See* Attachment 7 for The Fair Coalition’s membership. It is important to note that **not all members** of the Independent Petroleum Association of America or the New Mexico Oil and Gas Association support the position taken by these associations. At the Section 1813 Public Meeting, I noted that El Paso’s General Counsel was providing input to The Fair Coalition’s speaker, and addressed this in my public commentary.

V. In reviewing other websites related to natural gas, not one reference was found to the issue of excessive tribal charges for right-of-ways:

NaturalGas.org

## **Conclusion**

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In conclusion, a grave wedge has been drawn between Tribes, Congress and energy companies over this potential of condemnation of tribal lands for energy right-of-ways. ***Numerous tribal leaders have publicly and openly wept as they have testified on this matter, of which I do not think Congress or the public is aware.*** They feel they have been 'scapegoated' for rising natural gas prices, that they have been abandoned by their trustee, the federal government, and that they will have to literally get down on their knees before energy companies who want to exploit their homeland and who possess the market and political clout to get their way. The transcripts of the public sessions to date testify to the trauma being experienced in the Native community as a result of the threat to the treaties they entered into with the federal government, their tribal sovereignty and their tribal lands. An apology is owed to the Native community for Congress' shortsighted legislative action.

Very truly yours,

NORDHAUS LAW FIRM, LLP

Carol Harvey

- Enclosures:
- (1) Attachment 1 - Causes and Impacts of Rising Natural Gas Prices
  - (2) Attachment 2 - Natural Gas Conference before the Committee on Energy and Natural Resources, U.S. Senate, January 24, 2005
  - (3) Attachment 3 – Utility Rights-of-Way over Indian Land
  - (4) Attachment 4 – Expanding Natural Gas Pipeline Infrastructure to Meet the Growing Demand for Cleaner Power
  - (5) Attachment 5 - Avoiding and Resolving Intergovernmental Conflicts with Interstate Natural Gas Facility Siting, Construction, and Maintenance
  - (6) Attachment 6 - The Fair Coalition Website Articles
  - (7) Attachment 7 – The Fair Coalition Membership

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**Attachments are available on the internet.**

**Attachment 1**

<http://72.14.203.104/search?q=cache:wVIZ0kmcPm8J:www.cc.state.az.us/utility/gas/HNG-Staff.ppt+%22Arizona+corporation+commission+%22%26+bob+gray+%26++%22natural+gas+infrastructure%22&hl=en&gl=us&ct=clnk&cd=9>

**Attachment 2**

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_senate\\_hearings&docid=f:99609.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:99609.wais)

**Attachment 3**

[http://www.nossaman.com/db30/cgi-bin/news/JCP\\_Utility\\_Rights\\_Of\\_Ways\\_Over\\_Indian\\_Land.pdf](http://www.nossaman.com/db30/cgi-bin/news/JCP_Utility_Rights_Of_Ways_Over_Indian_Land.pdf)

**Attachment 4**

[http://72.14.203.104/search?q=cache:4GjfIIBnviYJ:www.keystone.org/GasPipelineReport-FINAL\\_VERSION-JTL.PDF+"infrastructure+on+native+lands"+&+keystone&hl=en&gl=us&ct=clnk&cd=1](http://72.14.203.104/search?q=cache:4GjfIIBnviYJ:www.keystone.org/GasPipelineReport-FINAL_VERSION-JTL.PDF+)

**Attachment 5**

[http://www.ingaa.org/Documents/Foundation%20Studies/F-2005-01%20\(Avoiding%20and%20Resolving%20Conflicts\).pdf](http://www.ingaa.org/Documents/Foundation%20Studies/F-2005-01%20(Avoiding%20and%20Resolving%20Conflicts).pdf)

**Attachment 6**

<http://www.faircoalition.org/news.aspx>

**Attachment 7**

<http://www.faircoalition.org/members.aspx>