



UTE MOUNTAIN UTE TRIBE

P.O. Box 248
Towaoc, Colorado 81334-0248
(970) 585-3751

May 15, 2006

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

RE: Comments of the Ute Mountain Ute Tribe on Section 1813 Right of Way Study

Dear Mr. Francois:

These comments, along with the two accompanying Tribal Council Resolutions, are submitted on behalf of the Ute Mountain Ute Tribe ("Tribe") in response to the Department of Energy and Department of Interior's request for comments regarding the Study being conducted pursuant to section 1813 of the Energy Policy Act of 2005 ("Study"). Section 1813 of the Energy Policy Act of 2005 requires the Secretaries of Energy and Interior ("Secretaries") conduct a Study of issues regarding energy rights-of-way on tribal land. Congress specifically identified four issues to be included in this Study:

- (1) an analysis of historic rates of compensation paid for energy rights-of-way on tribal land;
- (2) recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy rights-of-way on tribal land;
- (3) an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy rights-of-way on tribal land; and
- (4) an analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy rights-of-way on tribal land.

Analysis of historic rates of compensation paid for energy rights-of-way on tribal land.

With regards to the Study's "analysis of historic rates of compensation paid for energy rights-of-way on tribal land" the Tribe has the following comments.

First, how far back in time will the Study go to determine "historic rates of compensation?" Until the last quarter of the 20th century, Tribes played a limited role, and in some cases no role whatsoever, in the determination of compensation for rights-of-way granted across their lands. Instead, the Federal Government or the applicant seeking the right-of-way informed the Tribe what rate of compensation the Tribe would receive for a right-of-way across its lands. There was little or no negotiation between the parties. As a result, compensation received by Tribes, in many cases, was woefully inadequate.

As Tribes became more sophisticated and began to understand the true economic value attached of their lands, the compensation they received increased in many instances. Contrary to the assertions of some, this rise in compensation is not a result of Tribes now demanding exorbitant compensation. Instead, this rise in compensation is indicative of raising the unconscionable low compensation rates historically received by the Tribes. It is disingenuous to use the pittance Tribes historically received for rights-of-way across their lands to attack the amount of compensation Tribes are now receiving.

Second, Congress directed the Secretaries to study "energy rights-of-way." What is included in the term "energy rights-of-way?" Is it limited to large oil and gas pipelines crossing Indian lands? Does it include electric transmission and distribution lines, gas gathering lines, etc.. The answer to this question is more than academic. This Tribe, for very good reasons, treats individual rights-of-ways on the reservation differently. For example, a pipeline right-of-way crossing Tribal land and providing no other benefit to the Tribe will be treated differently than a right-of-way bringing natural gas or electricity to individuals on the reservation. There needs to be a determination as to what is meant by "energy rights-of-way" in this Study. Failure to do so will result in an "apples and oranges" comparison among rights-of-ways.

Finally, clarification is needed as to what is meant by "tribal land." Does the term "tribal land" only include trust lands within the boundaries of Indian reservations? Does it include Tribal trust lands off the reservation? Tribal fee lands within the reservation? Tribal fee lands outside of reservation boundaries?

Recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy rights-of-way on tribal land.

The Tribe believes the appropriate standards and procedures for determining fair and appropriate compensation is through negotiation between the two parties resulting in

an agreed upon level of compensation. To do otherwise, is to interject non-market forces circumventing the negotiation process between the parties. Imposing standards and procedures for determining fair and appropriate compensation applicable on non-tribal land to Tribal lands fails to recognize that Tribal lands are unique. Indian Tribes are sovereign nations, not private landholders. Unlike private lands, Tribal trust land can't be sold. Unlike private landowners, Tribes provide essential governmental services to people. These Tribes rely on money raised from the use of their lands, including rights-of-way, to pay for these services.

Any attempt to remove the requirement of tribal consent for the granting of rights-of-way is a direct attack at the heart of tribal sovereignty. The tribal consent requirement is a critical aspect of tribal sovereignty allowing tribes to negotiate acceptable terms relating to tribal jurisdiction, environmental protection, and cultural concerns, as well as compensation.

An assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy rights-of-way on tribal land.

Existing federal law, treaty provisions, and policies prevent third parties from using tribal lands without the consent of Tribes. As stated above, the Tribal consent requirement is a fundamental aspect of tribal sovereignty and a critical element of a Tribe's control over its lands. The right to determine who will be on our lands and under what conditions they may remain is of paramount importance to the Tribe!

On April 10, 2006, the Tribal Council of the Ute Mountain Ute Tribe passed Resolution No. 2006-57. A copy of this Resolution is attached for inclusion in the record. This Tribal Council Resolution spells out in specific detail the Tribe's findings that the "intent of the energy rights of way study on Indian lands and its potential policy implications are inconsistent with Federal Indian law and policy; the Federal trust responsibility to Indian tribes, the Indian Reorganization Act; and Title V. of the Energy Policy Act of 2005." In addition, the Resolution memorializes the Tribe's objection "to any findings of the study supporting the erosion of Tribal Sovereignty." See, Resolution No. 2006-57.

On April 26, 2006, the Tribal Council again addressed the issue of this Study when passing Resolution No. 2006-59. The purpose of this Resolution is to adopt, along with other Tribes throughout Indian county, Tribal Principles to be incorporated in the Study. A copy of this Resolution is attached. These 10 Tribal Principles address self-determination and sovereignty interests implicated by the Study. See, Resolution No. 2006-59.

Finally, the Department of Energy has identified self-determination and sovereignty interests implicated by the Study in its January 2006 "American Indian and Alaska Natives Tribal Government Policy." In its Policy Principles, the Department of Energy recognizes "Tribal governments as sovereign entities with primary authority and

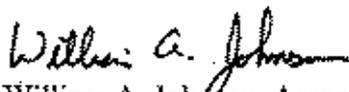
responsibility for the protection of the health, safety and welfare of their citizens" with the Department recognizing "the right of each Indian nation to set its own priorities and goals in developing, protecting, and managing its natural and cultural resources." See, Department of Energy, Policy Principles, January 2006 "American Indian and Alaska Natives Tribal Government Policy." The Tribe expects the Department of Energy to abide by these Policy Principles in preparing this Study.

An analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy rights-of-way on tribal land.

Any analysis of energy rights-of-way across Indian lands must begin with the Treaties between the two sovereigns (the individual Tribe and the Federal government). In addition to these Treaties, the following documents paint the appropriate backdrop for this Study: U.S. Constitution, Supreme Court decision, Indian Reorganization Act, Executive Order 13175, Title V. of the Energy Policy Act of 2005, and DOE/DOI Tribal Energy Policies.

If you have any questions regarding these comments of the Ute Mountain Ute Tribe, please contact William A. Johnson at (970) 564-5642.

Sincerely,



William A. Johnson, Associate General Counsel
Office of the General Counsel, Ute Mountain Ute Tribe

DATE: April 10, 2006

RESOLUTION NO. 2006-57

**RESOLUTION
UTE MOUNTAIN TRIBAL COUNCIL
REFERENCE: SECTION 1813 OF THE ENERGY POLICY ACT OF 2005**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Tribe, approved June 6, 1940, and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Ute Mountain Ute Tribal Council exercised in this Resolution; and

WHEREAS, Section 1813 of the Energy Policy Act of 2005, Public Law 109-58, directs the Secretaries of Energy and Interior to "jointly conduct a study of issues regarding energy rights of way on tribal lands" in consultation with Indian tribes, and other affected parties; and

WHEREAS, the report of the findings of the study by the Secretaries is due to Congress no later than August 8, 2006; and

WHEREAS, the intent of the study and potential policy implications are inconsistent with Federal Indian law and policy; the Federal trust responsibility to Indian tribes; the Indian Reorganization Act; and Title V of the Energy Policy Act of 2005; and

WHEREAS, the possibility of unilateral condemnation by the United States of tribal lands for purposes of facilitating energy rights of way undermines a basic tenet of tribal sovereignty, a Tribe's control over its lands; and

WHEREAS, existing Federal law, treaty provisions, and policies that prevent third parties from using tribal lands without the consent of the Tribe must be preserved; and

WHEREAS, the compensation historically received by the Tribe for certain rights of ways has been woefully inadequate; and

WHEREAS, Federal law and policy must not be changed to deprive the Tribe of active management and control of its lands; and

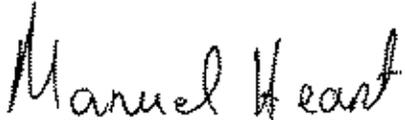
WHEREAS, tribes play, and will continue to play, a vital role in the energy development of the United States.

NOW, THEREFORE BE IT RESOLVED that the Tribal Council finds the intent of the energy rights of way study on Indian lands and its potential policy implications inconsistent with Federal Indian law and policy; the Federal trust responsibility to Indian tribes; the Indian Reorganization Act; and Title V of the Energy Policy Act of 2005; and

BE IT FURTHER RESOLVED that the Tribal Council hereby strongly objects to any findings of the study supporting the erosion of Tribal Sovereignty; and

BE IT FINALLY RESOLVED that the Chairman of the Tribe is authorized to sign this Resolution and to take such further action as may be necessary to carry out the intent of this Resolution.

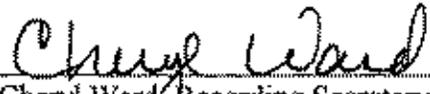
The foregoing Resolution was duly adopted this 10th day of April, 2006.



Manuel Heart, Chairman
Ute Mountain Ute Tribal Council

CERTIFICATION

This is to certify that there was a quorum of 6 Tribal Council Members present at the official meeting of the Ute Mountain Ute Tribal Council held on April 10, 2006, that 5 voted for this Resolution, that 0 opposed, that 0 abstained, and that this Resolution was, therefore, duly adopted.



Cheryl Ward, Recording Secretary
Ute Mountain Ute Tribal Council

DATE: April 26, 2006

RESOLUTION NO. 2006-59

**RESOLUTION
UTE MOUNTAIN UTE TRIBAL COUNCIL
REFERENCE: ADOPTION OF TRIBAL PRINCIPLES:
SECTION 1813 RIGHT-OF-WAY STUDY**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Ute Tribe, approved June 6, 1940, and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Ute Mountain Ute Tribal Council ("Tribal Council") exercised in this Resolution; and

WHEREAS, Section 1813 of the Energy Policy Act of 2005, Public Law 109-58, requires the Departments of Energy and Interior to jointly prepare a study on the compensation practices and policy implications associated with the issuance of tribal consent for energy related rights-of-way crossing tribal lands ("Right-of-Way Study"); and

WHEREAS, the Right-of-Way Study is a matter of great importance to the Tribe and to all tribes and may have significant implications regarding future legislation and tribal sovereignty; and

WHEREAS, under longstanding law, the consent of the governing body of a tribe must be obtained as a condition for the grant or renewal of a right-of-way across tribal lands; and

WHEREAS, the tribal consent requirement is a critical aspect of tribal sovereignty that allows tribal governments to negotiate acceptable terms, including those related to tribal jurisdiction, environmental and cultural resources, duration, and compensation, for the use of tribal lands; and

WHEREAS, the Tribal Council has reviewed the attached Tribal Principles and has determined that these principles should be incorporated in the Right-of-Way Study.

NOW, THEREFORE BE IT RESOLVED that the Tribal Council of the Ute Mountain Ute Tribe hereby approves the attached Tribal Principles.

BE IT FURTHER RESOLVED that the Tribal Council directs that a copy of this Resolution be forwarded to the Departments of Energy and Interior for inclusion in the record related to the Right-of-Way Study.

BE IT FINALLY RESOLVED that the Chairman of the Tribe is authorized to sign this Resolution and to take such further action as may be necessary to carry out the intent of this Resolution.

The foregoing Resolution was duly adopted this 26th day of April, 2006.



Manuel Heart, Chairman
Ute Mountain Ute Tribal Council

CERTIFICATION

This is to certify that there was a quorum of 6 Tribal Council Members present at the official meeting of the Ute Mountain Ute Tribal Council held on April 26, 2006, that 5 voted for this Resolution, that 0 opposed, that 0 abstained, and that this Resolution was, therefore, duly adopted.



Cheryl Ward, Recording Secretary
Ute Mountain Ute Tribal Council

**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 laws 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.