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November 21, 2016

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Re: Comments on September 22, 2016 Proposed Rule – Appraisals and Valuations of Indian Property (RIN 1093-AA20); Docket ID No. DOI-2016-0005

Dear Ms. Appel:

The American Gas Association ("AGA") and the Interstate Natural Gas Association of America ("INGAA") submits these comments on the Department of the Interior's ("DOI") proposed regulations concerning Appraisals and Valuations of Indian Property (the "Proposed Rule"), published in the Federal Register on September 22, 2016. This Rule was proposed in response to Section 305 of the Indian Trust Asset Reform Act ("ITARA"), P.L. 114-178, which was signed into law on June 22, 2016.

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent—just under 69 million customers—receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States' energy needs.

INGAA is a trade organization that advocates regulatory and legislative positions of importance to the natural gas pipeline industry in North America. INGAA is comprised of 24 members,

representing the vast majority of the interstate natural gas transmission pipeline companies in the United States and comparable companies in Canada. INGAA's members, which operate approximately 200,000 miles of pipelines, provide an indispensable link between natural gas producers and natural gas consumers in the residential, commercial, industrial and electric power sectors. INGAA's members are committed to providing safe and reliable transportation services to their diverse customers, without undue discrimination, and to maintaining a high level of customer service.

Many AGA and INGAA member companies transport natural gas in underground pipelines via rights-of-way on Indian lands administrated by the Bureau of Indian Affairs ("BIA") within the Department of Interior. These rights-of-way across Indian lands are, and will continue to be, necessary for natural gas distribution and transmission pipelines both to expand service to new customers and to improve service to existing customers—including customers who are tribal members on tribal lands. These lands play a crucial role in helping to meet America's energy needs.

While AGA and INGAA appreciates the DOI's desire to streamline the appraisal process for certain transactions—*e.g.*, inter-tribal land transactions, allotment transactions, and Indian land consolidation—AGA and INGAA have several concerns about the Proposed Rule's effect on land projects and rights-of-way that serve the public's energy needs. In these comments, we highlight four aspects of the DOI's Proposed Rule that merit revision. AGA and INGAA believe that these suggested revisions will promote the DOI's goal of streamlining and clarifying the process of appraisal of Indian lands, to the mutual benefit of and fairness to Indian landowners, energy transporters, and energy consumers.

I. DOI Should Revise The Proposed Rule So It Does Not Apply To Rights-of-Way.

A. <u>Proposed Revision</u>:

Rights-of-way transactions have their own statutory scheme, including how compensation is to be calculated. *See, e.g.*, 25 U.S.C. §§ 311–321 (statutes authorizing rights-of-way which benefit the public, including public highways, railroads, telegraph and telephone lines, and oil and gas pipelines); *see also* 25 U.S.C. § 325 (requiring the Secretary to determine "just" compensation for rights-of-way). Therefore, AGA and INGAA propose the following language (in underscored italics) be added to PR 43 C.F.R. § 100.102 to recognize that the regulation does not apply to rights-of-way.

§ 100.102 Does this part apply to me?

> This part applies to anyone preparing or relying upon an appraisal or valuation of Indian property, <u>*with the exception of rights-of-way*</u>.

B. **Rationale For Proposed Revision:**

Without AGA's and INGAA's proposed revision, the Proposed Rule would conflict with existing federal statutes governing rights-of-way across Indian lands. *See, e.g.*, 25 U.S.C. §§ 311 (highways); 312 (railroads); 318a (roads); 319 (telephone and telegraph lines). Indeed, in recognition of the importance of natural gas and oil to the nation's economy, in 1904, Congress passed 25 U.S.C. § 321 which specifically authorizes the granting of rights-of-way for oil and natural gas pipelines. These statutes have not been repealed and remain in full force and effect. Under this existing right-of-way framework, the Secretary of the Interior ("Secretary") has non-delegable duty to determine just compensation for rights-of-way. 25 U.S.C. § 325 ("No grant of a right-of-way *shall* be made without the payment of such compensation as the Secretary of the Interior *shall determine* to be just.") (emphases added); *see also Rastelli v. Warden, Metro. Corr. Ctr.*, 782 F.2d 17, 23 (2d Cir. 1986) ("The use of a permissive verb—'may review' instead of 'shall review'—suggests a discretionary rather than mandatory review process.").

Nothing in Section 305 of ITARA or any other provision in ITARA alters or abrogates the Secretary's duty to determine just compensation for rights-of-way under 25 U.S.C. § 325. Therefore, ITARA and 25 U.S.C. §§ 311–321, must be read together to give effect to each of them while preserving their sense and purpose. This means that the Secretary still is required to determine just compensation for rights-of-way and renewals;[1] the Proposed Rule does not excuse the Secretary's duty in this respect. *Watt v. Alaska*, 451 U.S. 259, 267 (1981).

AGA and INGAA are concerned that the Proposed Rule, as written, could be misconstrued to apply to initial rights-of-way and renewals, which would create a conflict with the existing statute that require an active determination by the Secretary and DOI to review and approve just compensation for a right-of-way in order to protect the public interest on federal lands (in the absence of an eminent domain power which public entities and utilities possess over other land). The Proposed Rule suggests or implies that appraisals submitted from "qualified" appraisers will be deemed as "final" for purpose of the transaction which they are submitted *without* any participation by the Secretary and DOI in assuring just compensation in connection with rights-of-way or renewals. PR 43 C.F.R. § 100.301. Such an outcome is inconsistent with the existing statute—25 U.S.C. § 325—which *mandates* the Secretary's participation in the determination of just compensation for rights-of-way and related renewals. Therefore, AGA and INGAA respectfully request the Department adopt our proposed language to revise the Proposed Rule to avoid this conflict.

[1] This includes rights-of-way for natural gas gathering, distribution, and transmission, which benefit the general public.

II. In The Alternative, Should DOI Not Exclude Rights-Of-Ways, The Proposed Minimum Qualifications Should Require A Fair Market Value Standard For Rights-of-Way And Renewals To Public Entities, Public Utilities, and Gas Gathering, Distribution, and Transmission Companies.

A. Proposed Revision:

In the alternative, should DOI determine that the Final Rule applies to rights-of-way transactions, AGA and INGAA believe that DOI should revise the Proposed Rule to apply a fair market value standard for rights-of-way and renewals to public entities, utilities, and gas gathering, distribution, and transmission companies. The Proposed Rule identifies three "qualifications" for qualified appraisers. PR 43 C.F.R. § 100.101. They are: (1) the appraiser must hold a current Certified General Appraiser License in the state in which the subject property is located; (2) the appraiser must be in good standing with the appraiser regulatory agency of the state in which the subject property is located; and (3) the appraiser must comply with the Uniform Standard of Professional Appraisal Practice (USPAP) rules and provisions applicable to appraisers. PR 43 C.F.R. § 100.200. Appraisals and valuations meeting this proposed criteria are considered final and binding without any further review or evaluation by the DOI. PR 43 C.F.R. § 100.301(a).

AGA and INGAA respectfully suggest the following language (in underscored italics) be added to the Proposed Rule to avoid a potential conflict with current law and to protect the public interest, as Congress intended. *See, e.g.*, 25 U.S.C. §§ 311–321 (statutes authorizing rights-of-way which benefit the public, including public highways, railroads, telegraph and telephone lines, and oil and gas pipelines).

§ 100.200 What are the minimum qualifications for qualified appraisers?

(a) An appraiser must meet the following minimum qualifications to be a qualified appraiser under this part:

(1) The appraiser must hold a current Certified General Appraiser license in the State in which the property appraised or valued is located;

(2) The appraiser must be in good standing with the appraiser regulatory agency of the State in which the property appraised or valued is located; and

(3) The appraiser must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) rules and provisions applicable to appraisers (including but not limited to Competency requirements applicable to the type of property being appraised or valued and Ethics requirements). This includes competency in timber and mineral valuations if applicable to the subject property. *In cases where the property will be acquired or used by a state, municipality, public utility, public entity, or owners and operators of natural gas gathering, distribution or transmission lines for the public use, for example as a new right-of-way or a renewal of an existing right-of-way, the appraiser*

must value the property in accordance with the law governing a determination of fair market value.[2]

B. Rationale for Proposed Revision:

There are three reasons why the Proposed Rule should be revised.

First, as explained more fully above, rights-of-way are governed by their own statutory framework which requires the Secretary of the Interior to determine just compensation for rights-of-way. 25 U.S.C. § 325 ("No grant of a right-of-way *shall* be made without the payment of such compensation as the Secretary of the Interior *shall determine* to be just.") (emphases added). Nothing in Section 305 of ITARA or any other provision of ITARA alters or abrogates the Secretary's duty to determine just compensation for rights-of-way under 25 U.S.C. § 325.

In this respect, for over a century, and certainly at the time of the enactment of 25 U.S.C. § 325 to the present, the United States Supreme Court has made clear that just compensation is fair market value and has set forth specifically how fair market value is determined. *See United States v. Miller*, 317 U.S. 369 (1943); *United States v. 50 Acres of Land*, 469 U.S. 24 (1984); *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9-10 (1984); and their progeny.[3] There is a long and storied jurisprudential history by the U.S. Supreme Court rejecting other appraisal approaches as compensation that is "just," and defining the process of determining just compensation through a fair market value approach. *Id*.

The proposed revision is appropriate for this reason alone.

Second, the Proposed Rule is inconsistent with how the DOI consistently has treated rights-of-way and renewals over federal lands for more than a century. In this respect, fair market value has been and remains the standard that the federal government uses when it sells or leases federal lands for public use. *See, e.g.*, 30 U.S.C. § 185(l) (for rights-of-way for pipelines through federal lands, "the holder of a right-of-way or permit . . . shall pay annually in advance the ***fair market rental value*** of the right-of-way or permit, as determined by the Secretary or agency head."); 43 U.S.C. § 1764(g) ("The holder of a right-of-way shall pay in advance the ***fair market value*** thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way . . ."); 43 U.S.C. § 1716 (authorizing the Secretary to dispose of public lands/interest and

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[2] Federal courts have consistently defined fair market value as:

> Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Uniform Appraisal Standards for Federal Land Acquisitions at 30 (based upon compendium of United States Supreme Court cases defining market value as cited therein).

[3] The legal authority for this principle is recited in detail in the Uniform Appraisal Standards for Federal Land Acquisitions.

requiring an appraisal of land that reflect "nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions" which requires a fair market value determination); 43 U.S.C. § 931c (Department "is authorized to grant permits, leases, or easements, in return for the payment of a price representing the ***fair market value of such permit, lease, or easement . . . through appraisal*** . . . from the date of any such permit, lease, or easement to States, counties, cities, towns, townships, municipal corporations, or other public agencies for the purpose of constructing and maintaining on such lands public buildings or other public works."); 16 U.S.C. § 803(e) (licensees under the Federal Power Act "shall pay to the United States ***reasonable annual charges*** in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this subchapter . . . ."); 43 C.F.R. § 2201.3-1 ("A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the ***market value*** of Federal and non-Federal properties involved in an exchange.") (all emphases added); *see also* 2016–2017 Memorandum of Understanding Template Between Indian Tribe and DOI Office of Special Trustee ("Real estate appraisal services shall be provided in accordance [with] . . . Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)," which requires valuation at fair market value).[4]

Third, the Proposed Rule appears to ignore the public policy rationale expressed in the above-referenced legal authority to protect public rights-of-way and renewals over federal lands from exploitation. An outcome which permits any appraisal or valuation to be binding—regardless of whether it constitutes just compensation, and hence fair market value—for public rights-of-way and renewals potentially would have severe adverse impacts upon states, local governments, public utilities, and other public entities acting in the public interest, and the many gas and electricity consumers which rely on such natural gas. These adverse public policy impacts do not appear to have been thoroughly vetted or considered in connection with the Proposed Rule.

Whether for state highways, municipal roadways, government-owned water systems, or essential public utilities such as natural gas, failure to acknowledge the protection of the public need for rights-of-way and renewals by permitting more than fair market value for public use of federal lands for the public good would be inconsistent with existing statutes, DOI regulations, and over one hundred years of case law regarding compensation for public uses. The United States Supreme Court long has held that fair market value is the governing standard for valuing land when used for the public good. *New York v. Sage*, 239 U.S. 57, 61 (1915); *United States v. Toronto, Hamilton & Buffalo Nav. Co.*, 338 U.S. 396, 402 (1949) ("[T]he balance between the public's need and the claimant's loss has been struck, in most cases, by awarding the claimant

[4] Even the BIA's recent right-of-way regulations acknowledge that appraisals and valuations conducted or approved by the federal government in connection with the appraisal/valuation of lands held in trust for individual Indian landowners or Indian tribes must utilize "fair market value" and must be in compliance with "Departmental policies regarding appraisals, including third-party appraisals." 25 C.F.R. § 169.114. Department policies included compliance with the Uniform Appraisal Standards for Federal Land Acquisitions (which itself sets forth fair market value as the appropriate standard). *See, e.g.*, 2016–2017 Memorandum of Understanding Template Between Indian Tribe and DOI Office of Special Trustee.

the monetary 'market value' of the property taken."); *United States v. Miller*, 317 U.S. 369, 379 (1943) (seller is entitled to fair market value, not a valuation enhanced by the imminence of the project for which the land is taken); *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9–10 (1984) (fair market value is the standard for most cases when federal property is dedicated to a public use).

When the federal government grants property rights in rights-of-way and related renewals to public service entities—be it any state, local government, public utility, other public agency or natural gas gathering, distribution, or transmission pipelines which use the property to serve the public good—there is no reason to abrogate the long-established fair market value requirement. Certainly, ITARA does not state that DOI should depart from a fair market value standard. Permitting above-market valuations in these circumstances would allow Indian tribes, without monitoring by the Secretary or the DOI, to attempt to take advantage of the public interest by exploiting their presence on federal trust land—which is the very situation that eminent domain laws and regulation of public utilities are designed to protect against. *See, e.g.*, *Bauman v. Ross*, 167 U.S. 548, 574 (the compensation to the "owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; *to award him more would be unjust to the public*.") (emphasis added); *Bloom Twp. High Sch. v. Ill. Commerce Comm'n*, 309 Ill. App. 3d 163, 175 (1999) ("The theory behind the regulation of public utilities is the protection of the public and the assurance of adequate service . . . ."). In fact, public entities are prohibited by existing constitutional and established jurisprudence from paying more than just compensation and fair market value for property that is for public use and for the public benefit. *See, e.g.*, *Redevelopment Agency v. Gilmore*, 38 Cal. 3d 790, 809 (1985) (Mosk, J., concurring) (a payment above just compensation and fair market value could be an unconstitutional windfall and prohibited by law); *Los Angeles Cty. Metro. Transp. Auth. v. Cont'l Dev. Corp.*, 16 Cal. 4th 694, 716 (1997) (payments are required to be "just to the public" and not only the landowner); *accord*, *United States v. Commodities Corp.*, 339 U.S. 121, 123 (1950); *compare* California Constitution Art. I, § 19 (private property may only be taken with payment of just compensation) *with* California Constitution Art. XVI, § 6 (public entities are prohibited from making gifts or overpaying).

Therefore, if the DOI does not revise the Final Rule so that rights-of-way transactions are excluded, to protect the vital public interests that these entities serve, AGA and INGAA urge, in the alternative, that DOI revise PR 43 C.F.R. § 100.200 to require that appraisers adhere to the qualification that their appraisals and valuations use fair market value for rights-of-way and renewals by the entities that benefit the public interest identified above.

III. DOI Should Revise The Proposed Rule To Apply Only Where The Statutes Expressly Require An Appraisal/Valuation For A Transaction.

A. Proposed Revision:

The Proposed Rule is worded too broadly and, without further qualification, could apply to transactions never expressly contemplated under ITARA.

A plain reading of Section 305 of ITARA explicitly limits its application—and the automatic approval of a qualified appraiser's appraisal—only to those Indian land transactions "for which the appraisal or valuation *is required*." 25 U.S.C. § 5635(c)(2) (emphasis added). Yet, as written, 43 C.F.R. § 100.300 would require an appraisal or valuation to be submitted—and therefore apply the automatic approval of appraisals and valuations—for *all* "transactions requiring Secretarial analysis and approval under titles 25 and 43 of the CFR." PR 43 C.F.R. § 100.300.

To resolve this issue, AGA and INGAA, therefore, request the DOI to revise PR 43 C.F.R. §§ 100.300 and 100.301 to avoid this conflict, and urge the following revisions (additional language in underscored italics, deleted language in strikeout):

§ 100.300 Must I submit an appraisal or valuation to the Department?

> Appraisals and valuations must be submitted to us for transactions requiring *appraisals as part of their authorizing statute.* ~~Secretarial approval under titles 25 and 43 of the CFR.~~

§ 100.301 Will the Department review and approve my appraisal or valuation?

> (a) The Department will not review the appraisal or valuation of Indian property and the appraisal or valuation will be considered final as long as:
>
> > (1) The submission acknowledges the intent of the Indian tribe or individual Indian to waive Departmental review and approval;
> >
> > (2) The appraisal or valuation was completed by a qualified appraiser meeting the requirements of this part; ~~and~~
> >
> > (3) *An appraisal or valuation of the property is expressly required by the statute authorizing the transaction; and*
> >
> > (*4*) No owner of any interest in the Indian property objects to use of the appraisal or valuation without Departmental review and approval.

B. Rationale for Proposed Revision:

Congress did not state in ITARA, and never intended, that the automatic approval of appraisals and valuations apply to *all* potential transactions under Titles 25 and 43. ITARA was limited to those transactions where statutes expressly required an appraisal or valuation. The Department's attempt to impose this automatic approval of appraisals and valuations on other transactions, such as rights-of-way and renewals of gas pipelines which are governed under 25 U.S.C. §§ 321 and 325, exceeds the Department's authority under the statute.

A review of the legislative history and the issues that Section 305 of ITARA sought to address further demonstrates that Section 305's automatic approval of appraisals only was intended to apply where the review and approval of appraisals are expressly and statutorily required to complete the transaction. Existing statutory law, including the Indian Land Consolidation Act, required the Secretary to perform appraisals before a number of tribal transactions could occur, such as situations where a tribe sought to purchase restricted lands from its own members to consolidate its land base. *See, e.g.*, 25 U.S.C. § 2204(E) (Indian land consolidation statute which requires the Secretary to perform an appraisal before a tribe can purchase from individual Indian land owners); 25 U.S.C. § 2206(o)(4) (Indian land consolidation statute requiring the Secretary to appraise the land of descendant prior to sale of interest); 43 U.S.C. § 1196 (Secretary is authorized to appraise and classify unallotted and unreserved lands). This requirement led to unacceptably long delays for even the simplest transfers of property between tribes and tribal members. It was this problem (and these delays) that Section 305's automatic appraisal approval process sought to address, as explained by the law's sponsor and author, Representative Michael K. Simpson: Section 305 permits tribes "on a voluntary basis, to obtain appraisal of their trust property without having to wait for the Department of Interior to approve them" in order to avoid "lengthy delays in selling or leasing their trust land while they wait for the Department to review and approve the appraisals." 162 Cong. Rec. H883.

For other statutes governing Indian land, Section 305's reformative intent and its automatic approval of appraisals does not serve either the Indian tribes' or the applicants' interest, and the provision does not apply. This is especially true in the situations where Congress already has addressed the standard and process for how those federal lands held in trust for Indians should be valued, such as where Congress mandated Secretarial involvement for determining just compensation for rights-of-way.

AGA and INGAA, therefore, request that the DOI revise PR 43 C.F.R. §§ 100.300 and 100.301 so that the Proposed Rule's automatic approval of appraisals is only intended to apply to those transactions which expressly and statutorily require appraisals and does not apply to other transactions.

IV. The Proposed Rule Requires OMB Review Since It Is A Major Rule Under 5 U.S.C. § 804(2) And A Significant Regulatory Action Under Executive Order 12866.

AGA and INGAA believe that the Proposed Rule is a Major Rule under 5 U.S.C. § 804(2) and a Significant Regulatory Action under Executive Order 12866, and therefore requires further

review and analysis by the Office of Information and Regulatory Affairs at the Office of Management and Budget ("OMB"). Such review requires the agency to "assess both the costs and benefits of the intended regulation and propose or adopt a regulation only upon a reasoned determination that the benefits justify its costs." Executive Order 12866, Regulatory Planning and Review (EO 12866), § 1(b)(6), 58 Fed. Reg. 51735 (Oct. 4, 1993). Yet, here it appears that neither the DOI nor the OMB has performed the required cost-benefit or impact analysis. Hence, not only has there been a failure to follow EO 12866, but there has also been a complete failure to comply with 5 U.S.C. §§ 801–808 which, *inter alia*, require the submission of the cost-benefit analysis to the Comptroller General and both Houses of Congress.

First, to the extent that rights-of way are not excluded from the Final Rule, the Proposed Rule requires further review and cost-benefit analysis because it will result in a major increase in the costs of rights-of-way for state and local governments and public utilities (both publicly and privately owned), which will adversely affect industry and potentially millions of consumers and taxpayers nationwide. 5 U.S.C. § 804(2)(B); EO 12866, § 2(f). As the Department and Congress are aware, the costs of rights-of-way on Indian lands have increased significantly over the last several decades. *See, e.g.*, Energy Policy Act of 2005, Section 1813 Indian Land Rights-of-Way Study: Report to Congress, Departments of Energy and Interior (2007) ("Section 1813 Report"). This Report confirmed that public utilities were paying compensation for rights-of-way significantly in excess of fair market value and that renewals of these rights-of-way had "resulted in tens of millions of dollars in additional costs to . . . utilities and their customers." *Id*. at 39. These increased costs are directly borne by state and local governments, natural gas and electric utility consumers, and taxpayers. Indeed, one local utility reported that ratepayers' electricity rates could increase as much as 5% if the full costs of rights-of-way were passed along. *Id*. at 39–40. The Proposed Rule only exacerbates this problem by failing to make clear that fair market value—the standard for just compensation under 25 U.S.C. § 325—is the appropriate standard for appraising and valuing rights-of-way for public entities and utilities. This materially raises the costs of rights-of-way for the economy, consumers, state and local governments, public utilities, and industry. The DOI has failed to account for these significant costs and, therefore, a thorough cost-benefit analysis is warranted.

Second, to the extent that rights-of way are not excluded from the Final Rule, the Proposed Rule also requires further review and a thorough cost-benefit analysis because they will have an aggregate annual effect on the economy of well over $100 million. 5 U.S.C. § 804(2)(A); EO 12866, § 2(f). Yet, here again, the Department has failed to take into account the cumulative financial effect that the Proposed Rule will have on the cost of rights-of-way nationwide. One industry trade group reported that the average cost per mile for a public utility right-of-way renewal between 2001 and 2005 was nearly ***$1.5 million per mile***, with that number growing exponentially each succeeding year. *See* Section 1813 Report at 68. Given these staggering renewal rates and the thousands of miles of rights-of-way across the nation—many of which come up for renewal each year—coupled with the fact that the Proposed Rule does not specify fair market value for valuing rights-of-way in the public interest for public entities and utilities, the costs associated with the Proposed Rule will well exceed the $100 million threshold. Indeed, the true cost of these significantly increasing rights-of-way fees is likely in the hundreds

of millions, if not billions.[5] Natural gas and electric transmission customers, including homes and businesses, industrial consumers, and power generators, will bear the cost of these increasing fees. The Department clearly has failed to consider this cumulative effect on the economy, consumers, state and local governments, public utilities, and industry.

In light of these significant effects, many of which have been overlooked, AGA and INGAA requests that the Department and OMB conduct a full Regulatory Impact Analysis in order to understand fully the costs and benefits associated with the Proposed Rule. Only then, after a reasoned determination that the Proposed Rule's benefits justify its costs, can the Proposed Rule be fairly evaluated.

* * *

Thank you for the opportunity to comment on the Proposed Rule. While AGA and INGAA appreciate the steps being taken to expedite the appraisal process for certain transactions involving Indian land, the comments and proposed revisions offered above will provide necessary clarification to protect important national, state and local public interests. The revisions will continue to allow the federal government to have a say on public rights-of-way and renewals on and across Indian lands by public utilities and entities, natural gas gathering, distribution, and transmission companies providing economic, environmental, social, and many other benefits to Indian tribes and energy consumers for the public benefit.

If you have any questions, please do not hesitate to contact AGA or INGAA.

Respectfully submitted,

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[5] For example, recently, the renewal of rights-of-way over approximately four miles of land of an Indian tribe cost a single utility company more than $437 million. *See* Supplement to Exhibit 1, FERC Application, dated May 31, 2013, Docket No. EC13-114-000.