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INDIAN ENERGY SOLUTION CONFERENCE

GOLDEN NUGGET HOTEL & CASINO

LAS VEGAS, NEVADA

AUGUST 6, 2008

10:18 A.M. - 11:25 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

RIGHTS OF WAY AFTER THE SECTION 1813
ROW STUDY AND REPORT

Moderator: Isaac Warren, Esq.

Speaker: Ahmed Kooros, PhD
Kooros Research

Reported by: KEVIN WM. DANIEL, NV CCR 711
RDR, CRR, CBC, CCP

1 PROCEEDINGS

2 MR. WARREN: We'll go ahead and get started
3 here. If I could ask everybody to move up front here.
4 I think we'll go ahead and get started. We have a
5 small group here. I'll use the microphone.

6 DR. KOOROS: Here's a microphone.

7 MR. WARREN: I think as we all know that
8 there's going to be an additional need for interstate
9 energy transportation, and that's really the basis of
10 this conversation for the next hour or so. As we're
11 all familiar, and we passed out a handout by
12 Dr. Kooros here, a study was performed, Section 1813
13 right-of-way study was performed and essentially in
14 response to the Energy Policy Act of 2005. And
15 perhaps the two takeaways from this, and there were
16 multiple takeaways, is that we should leave
17 negotiations as they are and allow the parties to
18 negotiate.

19 However, perhaps more importantly, the
20 report also stated that Congress has the power to
21 condemn lands if it's in the best interests of the
22 general populace. And so this is something that we
23 have to keep our eye on when looking at right-of-way
24 negotiations. Essentially whether we are in a private
25 negotiation or if the Federal Government looks to

1 condemn the land, we still have to come up with a
2 valuation of this land.

3 Today we have Dr. Kooros here who has for
4 years, I'll let him give a bit of a background, but
5 he's been a good friend of CERT's and performed a
6 number of very studious studies on the valuation, the
7 proper valuation and how rights-of-way differ from
8 regular real estate, and how a regular real estate
9 appraisal does not fit the mold for Indian Country
10 rights-of-way.

11 So this conversation will focus on how do we
12 move forward after this study and what are the proper
13 techniques to move forward and value our
14 rights-of-way.

15 And with that, I'll give it to Dr. Kooros.

16 DR. KOOROS: Thank you very much. Good
17 morning to all of you. It's a very cozy and very
18 friendly gathering.

19 I joined the Council of Energy Resource
20 Tribes on July 17th, 1979, and at first, in fact,
21 responsibility which was assigned to me was the
22 right-of-way issue. Of course, in addition to that,
23 energy was the most important issue those days,
24 especially the Carter administration was very much
25 interested in knowing how much energy, what kind of

1 energy the Indian Tribes had and to what extent they
2 could, the Tribes could contribute to the energy
3 dependence policy that he was pursuing. And, of
4 course, CERT was extremely active in those days.

5 In order to provide some numbers,
6 unfortunately BIA had no idea what, how many leases
7 were available in those days, who was actually doing
8 anything on the Tribes, even the names of the, you
9 know, of the developers. The names were not totally
10 completely available.

11 So anyway, just a great deal of
12 responsibility actually was assigned to the Council of
13 Energy Resource Tribes in order to be able to come up
14 with names of things, anything related to land and
15 land properties.

16 Now I was involved because of my connection
17 with OPEC. When I came here I was actually the
18 Minister of Oil and Development of Iran, and I was
19 representative of Iran at OPEC in those days, so I was
20 very much -- I was called, as a matter of fact,
21 probably that's how you know me, I was called,
22 considered Indian OPEC representative.

23 I accepted that, but I was kicked hard by a
24 number of newspapers. In fact, the editorial of
25 Denver Post called, said that this guy is a

1 representative of Gadhafi who's exchanging, who's
2 coming here to exchange Russian missiles with the
3 Indian barrels of oil, and I had enormous amount of
4 problems, my children, quite frankly, enormous amount
5 of problems because we lived in a very conservative
6 area of Denver. They had enormous amount of problems
7 because of the fact that father actually was a
8 representative of, you know, Gadhafi. Thank God
9 everything passed by and they noticed that I wasn't a
10 representative of Gadhafi.

11 But anyway, one of the things which was,
12 became extremely important, in fact was assigned to
13 me, was the right-of-way negotiations with the Navajos
14 and ARCO on the one hand, and the Transwestern
15 Pipeline's right-of-way issue with the Hopi -- no, not
16 the Hopi, Laguna Indian Tribe.

17 There is a caricature here on Page 13 or so.
18 One of my old friends, actually his name is Dan, but
19 anyway, this was the result, you know, as a result of
20 negotiations.

21 To me, rights-of-way negotiations and
22 rights-of-way issue is more a question of sovereignty.
23 Not really -- the financial side of it may not be all
24 that important, but the important part of that is of
25 rights-of-way issue, as far as I was concerned. In

1 fact, I assigned that task to myself at the time.

2 It's a question of sovereignty.

3 An entity has a piece of land, Indian,
4 whatever it is, and someone wants to encumber that
5 land for its purposes. Then I have the right as that
6 entity, Tribe, to decide on the value of the property
7 according to the most advanced or the most acceptable
8 principle.

9 In those days, unfortunately, BIA used to
10 come in to the picture with one of these studies that
11 real estate people will do, with all kinds of pictures
12 of the land, mostly despicable, mostly very negative
13 as far as the value of the land is concerned. In
14 other words, they would show piles of garbage in here,
15 barren land. You could hardly see anything except
16 sense of disgust as far as the land was concerned.

17 They would come in to the Tribe with a
18 \$50 bill to the office of the, whatever, BIA, with a
19 \$50 bill and say, "When can I come in and get the
20 Tribal Council resolution accepting this
21 right-of-way?" And this happened many times in the
22 past.

23 So when I looked at the Arco-Navajo case, I
24 went into that to see what it is, what does this
25 pipeline do and what kind of nature the other pipeline

1 of Transwestern Pipeline across the Laguna Reservation
2 was concerned.

3 And I said to myself, there must be a
4 positive rate of return as far as this entity's
5 concerned. It's a business entity. You have a
6 pipeline, and that land has some value or else -- see,
7 let me interrupt myself, parenthetically say that the
8 companies, when they have a project like a pipeline,
9 they have to submit two reports to the utility
10 company, utility entity of the state where the
11 pipeline is in order to get, actually to get the rate,
12 their rate, I mean the state's rate determined. And
13 the companies have to have a very detailed statistical
14 or, you know, actually proper valuation of the
15 pipeline, the cost of it, and also the cost of the
16 alternative pipeline, and that's how they get -- I
17 mean, without the second pipeline, the alternative,
18 they're not going to get anything. I mean, the
19 utility authorities would not give any rate or
20 anything to the company.

21 So in other words, as -- when the companies,
22 the Tribe get the rates from the utility authority,
23 they have to have two studies. They have to present
24 two studies to the utility authority, one the
25 so-called, the optimal route; the second one's for the

1 second-best line.

2 I said to myself, why is it that the
3 companies come to the Indian Tribes with that kind of
4 appraisal, which has nothing except dirt, piles of
5 this and that, doesn't show really the innate value of
6 the land in any form, but when they go in to the
7 utility authorities, they have to be extremely
8 methodical, scientific, with good numbers of the value
9 of the pipeline going through that part of the
10 reservation and this alternative.

11 I said to myself, the economists were not
12 stupid when they talked about the alternative or the
13 opportunity cost of alternative activities. This is a
14 fundamental from the days, days of Marshal and beyond
15 that, great commerce. We had a tremendous, you know,
16 very, very important law in economics which is the law
17 of comparative advantages, the law of opportunity
18 cost. I said why not apply that opportunity cost
19 concept to this thing?

20 We did it. We asked the companies in both
21 cases, very specifically, we said, "Fine, you have
22 something right now you file with the Interior with
23 \$50. Why don't we go and look at the alternative of
24 the line that you have and see what it is, what would
25 happen, and give you the opportunity to stay on the

1 land or go around the reservation." Two very concrete
2 and extremely relevant. The Tribe is a sovereign
3 entity. It can give, grant or deny a right-of-way
4 contract.

5 We negotiated very strongly, I mean the
6 Tribal committee, with people representing ARCO for
7 quite a bit. Finally, ARCO accepted the principle,
8 the application of the principle of the opportunity
9 cost and alternative routes. In other words -- and
10 then, of course, that went all the way to FERC, and
11 FERC also accepted that, went through, you know,
12 utility authorities, which were responsible as far as
13 ARCO was concerned. They accepted that.

14 So a fundamental principle of economics,
15 quantitative economics was established, was applied,
16 and became actually the rule to go around. And you
17 could not in any way dispute the result of that, which
18 replaced that procedure, which replaced actually that
19 old-fashioned way of the way that BIA used to do.

20 This was March of 1980, '81. The Laguna was
21 finished, the second case, in 1982. And it became a
22 standard to apply and to accept all across Indian
23 reservations.

24 I left for various reasons -- personal, of
25 course -- CERT in 1995. By then 116 cases, mostly

1 renewal cases, came before the Tribes and I was, had
2 the honor to lead those activities, and they all were
3 done on the basis of the opportunity cost, which is a
4 well established principle of economics, quantitative
5 economics, I should say.

6 And it is now being applied in various
7 cases. I don't forget what the Chairman of the Board
8 of ARCO said the day that the two sides actually
9 signed the agreement, mutual agreement, and I'll never
10 forget what the head of, the Chief Executive Officer
11 of Transwestern Pipeline Company said when he signed
12 on behalf of the company with Laguna, that "I have
13 learned something, the way that negotiations have to
14 be conducted and to be consummated."

15 These were the most beautiful moments of my
16 life to see that sovereignty became the rule.
17 Sovereignty -- right-of-way numbers, of course, are
18 all there, you know. You can, you can have your
19 pipeline this way and zigzag different ways and the
20 costs will change, these things can change, but the
21 fact that the companies became -- actually, first of
22 all, they understood that the Tribes had actually
23 applied a principle which has been taught in colleges
24 and universities for years, for centuries.

25 Secondly, that the Indian Tribes actually

1 were talking about real issues, and there's a
2 scientific way of doing that. So to me, sovereignty
3 actually -- sovereignty of the Tribes was respected,
4 was adhered to, and it was applied. And as a matter
5 of fact, so far as I know, the relationship with those
6 companies and the Tribes became so extremely friendly,
7 to the extent that ARCO actually, at the end of
8 negotiations, when they signed, the Chairman of the
9 Board signed, he said, I have something to offer. I'm
10 going to -- ARCO is going to be the first company
11 which is going to sponsor what is known as the Spirit
12 Award Dinner, an occasion that would, you know, bring
13 in all the companies active on Indian reservations to
14 participate in a dinner so that some sums of money
15 would be mobilized, collected and mobilized, and for
16 what purpose? For education. And it was a program
17 which actually contributed to education of a good
18 number of Indian students.

19 So, my feeling is that if the question of
20 sovereignty of the Indian Tribes, for whatever reason
21 is actually adhered to, accepted, usually the
22 relationship -- this is my 20-odd years of experience
23 on Indian reservation -- the relationship has become
24 ever more, you know, more stronger than in the past.

25 Now, there are negotiations, I understand,

1 in the Tribes and the companies in the recent past
2 which have come to a deadlock. Why is that? Of
3 course, one could, you know, make guesses and so
4 forth. Since I'm an outsider, I would not want to
5 make any certain statements. The opportunity cost
6 concept I now show is technically correct, is
7 mathematically precise, quantitatively also to the
8 point.

9 You know, you can put, come to the last dime
10 as the companies actually submit their proposals to
11 the utility authorities to establish their rates.
12 It's an engineering actually kind of process, and a
13 line, a pipeline, a mile of pipeline has a cost to the
14 point, to the cent, and the detouring of that also has
15 a cost, which is to the point. There are no guesses
16 in here, whereas the old-fashioned of \$50 on the table
17 of the BIA person so that a resolution could be passed
18 by the Council is gone. I mean, those are all
19 fantasies of the past, which have all been uprooted
20 and no longer acceptable.

21 As I said, in the recent past, there has
22 been bit of problem and to the point that is, you
23 know, what do you call it, the Congress became
24 involved and so forth. What is it called?

25 MR. WARREN: The studies?

1 DR. KOOROS: Yes, Energy Act. Part of
2 Energy Act, Section 1813 of the Energy Act, which is
3 of course which was intended to deny the Indian Tribes
4 actually the right to decide for themselves. And I'm
5 delighted that so far the Congress has favored and
6 sided with the Tribes.

7 The claim was made -- if I have to stop, let
8 me know. I am going beyond my time -- the claim was
9 made that Indian Tribes or decisions had caused
10 calamity and has undermined the energy security of
11 America. This is, these are the title issues that
12 they said. The energy security of America has been
13 undermined, one company complained -- claimed --
14 because of the way Indian Tribes have been negotiating
15 for their right-of-way.

16 I went over, myself over 116 different cases
17 that I had, and I tried to -- and then, of course,
18 this section, whatever it is, had asked the Department
19 of Energy, Department of Interior, and consumers
20 actually to render judgment as far as the accuracy of
21 what Indian Tribes have done. And the claim was
22 actually that whatever Indians have done has
23 undermined the energy security of America.

24 So I went on to do some studies of my own to
25 see what really was the impact of Laguna, the impact

1 of Navajos, the impact of Hualapai, the impact of all
2 these different 116 cases been on energy security. I
3 found out, as you see on Page 14, that's one section
4 of it. The impact, the collective impact -- you see
5 that table. The collective impact of all the cases
6 was 0.0011 cent per kilowatt hours. This is the
7 impact of those activities, of those things, that
8 table, table on Page 14, the bottom of the page.

9 And it was also 0.039 cents per Mcf -- I
10 repeat, 0.039 per Mcf. And also for oil was 0.236
11 cents per kilowatt. I said to myself, what is the
12 impact of that on me?

13 Glenda, do you know how many Mcf of gas you
14 use every year?

15 MS. ARCHULETA: No.

16 DR. KOOROS: No. Is there anyone who would
17 know how many kilowatt hours of electricity you use
18 every month?

19 MR. WARREN: A thousand.

20 DR. KOOROS: You see? Do you know how many
21 gallons of gasoline you use every year? You don't.

22 So this whole question of whatever Indians
23 did is undermining the security of America is totally
24 false. Because we don't know how many Mcf of gas we
25 use, how many kilowatt hours of electricity we use.

1 I challenged the Department of Interior and
2 also Department of Energy to come up with any numbers.
3 They didn't. They haven't. And I only hope Indian
4 Tribes would be treated properly.

5 Again, as I said, you know, right-of-way
6 issue, like any other issues, they are actually the
7 sovereignty of the Indian Tribes, and I have the
8 feeling Indian Tribes have brought to the attention of
9 their people a great deal of cohesion and scientific
10 consideration as far as dealing with these individual
11 issues are concerned.

12 And as I said, it has strengthened, my
13 feeling is, going around the country, it has -- just
14 this particular thing has strengthened Tribal
15 sovereignty and the value of the land, for whatever
16 purpose it is. To me, that is -- and also, this has
17 been brought to the attention of the ones who actually
18 deal within the Tribes, that land is not for
19 encumbrance alone. Land is for a number of other
20 reasons, and all those factors have to be taken into
21 account in order to have actually a solid assessment
22 as far as their relationship of Indians, the
23 relationship with the Indian Tribes, and those
24 companies, gas companies who come to the Indian
25 reservation.

1 Thank you.

2 DR. KOOROS: I'm most humble to express
3 anything for that gratitude.

4 MR. WARREN: Is there a question up front?
5 Any other questions?

6 DR. KOOROS: You have a question?

7 UNIDENTIFIED VOICE: No. I was just wanting
8 your contact information.

9 DR. KOOROS: Well, my phone number I think
10 is there. 303-694-2999.

11 UNIDENTIFIED VOICE: Can you repeat the
12 number?

13 DR. KOOROS: 303-694-2999.

14 MR. WARREN: Dr. Kooros, if you have the
15 time, maybe briefly explain kind of the process you go
16 through for a renewal and for the beginning of
17 negotiation, where the Tribe should start, where you
18 might be able to help out, and any advice or input for
19 those Tribes that are beginning to look at renewals
20 and renegotiations.

21 DR. KOOROS: Thank you, yes. That's a good
22 point.

23 The first thing that I do when I, you know,
24 that assignment is made to me, I ask the Tribe --
25 either the Governor or the President of the Tribe --

1 to establish a working committee, and it becomes a
2 working committee of the Tribe, and I will be actually
3 assigned to, assigned to the committee as a source for
4 calculations, this and that.

5 So we will go through the committee, we'll
6 go through with myself, we go through the
7 calculations, actually the analysis of the case and
8 the calculations. I take them to different places
9 like utility authorities of the states where the
10 pipeline actually is to go, to get actually
11 information that they need related to the pipeline
12 from the company.

13 Sometimes these things are confidential.
14 Other times, they are published. Oddly enough, some
15 of -- you can find most of the data actually
16 published. May not be totally accurate, but it's very
17 close, maybe very close. Then we would get together
18 with the committee and the Governor or the President
19 or the Chairman of the Tribe to go through these data,
20 sift through the data.

21 I see to it that every one of the
22 reservation, there is a, in here, name of the
23 committee, the members of the committee. I see that
24 those people work along, all of us together, so that I
25 will not be the only one who would know the

1 information. Those committee members will also know
2 the information, bit by bit, you see. So in case I'm
3 run over, they can continue the deal, you see.

4 This is a legacy that we do, we establish
5 that the Tribes establish their own negotiation
6 committee. I want -- I want really that to be an
7 Indian enterprise, not an enterprise of an outsider
8 who comes into the picture.

9 So the Tribal members actually go from step
10 one to step two to step three, and so forth. So they
11 would sit out, negotiate and I would not negotiate,
12 with the people from the company. Made a tremendous
13 impact when the Navajos went through their negotiation
14 with ARCO, when the Pueblo Laguna went through its
15 negotiation with Transwestern Pipeline Company, and
16 the Laguna's negotiation committee went through its,
17 their negotiation with El Paso. El Paso had 30-inch
18 pipeline, gas pipeline that crossed some of those
19 reservations, and they -- in Arizona, New Mexico part.
20 And very soon I noticed that I was not needed. I said
21 thank God. I did my job, and I walk away. But we go
22 all the way through, so long as I'm needed to make
23 some footnotes here and there.

24 I want the Indian Tribes actually to do it
25 themselves, because it's their land. They know more

1 about their lands better than I do. So that's what we
2 do.

3 The negotiation committee and for me or, you
4 know, someone to be assigned to that, to those
5 committee, to collect the information, make it
6 available to the committee, and go through these
7 committees so that every step should be -- actually,
8 every step you take should be quantifiably acceptable,
9 you know. You establish everything to be predicated
10 upon it actually, foundation, which are not easily
11 objectible. That's what I do.

12 Any other questions? Yes.

13 MS. BALDWIN: So when you work with the
14 committee because a lot of people have a hard time
15 calculating figures, and even in land appraisal people
16 don't understand when there's such an emotional ties
17 to the land it's priceless, and when you try and show
18 these numbers based on industry standards or using a
19 fair market value appraisal, to convince them is
20 always really hard.

21 DR. KOOROS: I didn't find it hard. I've
22 been through 116 different cases, mostly, 113 renewal
23 and three, you know, first time. I didn't find
24 anything like that. I didn't find myself at all
25 superior to anyone. We were all at the same level.

1 We were talking.

2 Of course, you have to provide the
3 information in such a way that it would be digestible,
4 acceptable, and readily explainable, you see. You
5 can't go over the head of everything. And I can tell
6 you, it is not a very hard task. The numbers are
7 there, you know, and we just go -- you have to be
8 patient initially, but I have -- I'm delighted to see
9 the progress that the committee, negotiation
10 committees made as we progressed through the different
11 cases.

12 Now, there might be some who still feel
13 probably they cannot negotiate with the Tribes
14 directly. I think they are not -- they haven't
15 explored the possibility. They have not actually
16 given the opportunity to the company in power, so to
17 speak of the Tribes to come forward to discuss.

18 And I have -- I must also say, this, very
19 emphatically, that I found the people I negotiated
20 with -- I mean the Tribes committee -- negotiated with
21 on the energy side, they're very understandable,
22 understanding. They had great deal of understanding.

23 As I said, said here, the Executive
24 Director, Chief Executive Director of Transwestern
25 Pipeline Company said, I have yet to see anything

1 better than what I have, the experience that I had
2 with the Laguna people. That they are fair, this and
3 that, everything. But numbers. Not thinking.

4 MR. WARREN: Just one more question. On
5 average, I know they'll vary from renewal to renewal
6 and from valuation to valuation, but do you have an
7 understanding of an average length of time by the time
8 you meet the committee and by the time you come out
9 with results with the committee?

10 DR. KOOROS: We continuously amend the
11 numbers, as we go forward, yes. For instance as an
12 example, the Tribe, Lagunas' negotiation with El Paso
13 for that 30-inch pipeline lasted a lot longer than
14 others because of the way that, of course, they did
15 their, disposed of their -- we have to actually redo
16 numbers, yes.

17 I also remember in negotiations that the
18 Hualapai people had with Arizona Public Service
19 Company, who was -- of course in those days their lead
20 lawyer was now called Senator Kyle. Pretty strong man
21 to deal with, but he was, of course, very seldom
22 appeared.

23 The Tribe actually was very, very much, you
24 know, up-to-date. Arizona Public Service Company has
25 a tendency to question a lot, to demand a great deal,

1 as an energy company, and the Tribe continued to bring
2 new data, up-to-date data.

3 I mean, but a pipe, a mile of pipeline, the
4 costs of a mile of pipeline is not going to change
5 that much from one month to another month to a year
6 and another year, so anyway, that was how it was.

7 I never forget the day that I was -- yes, I
8 never forget the day that I was in with a great Indian
9 leader, and he had a representative from -- I forgot
10 the name of that transmission company across -- well
11 anyway, since I don't know the name, I don't remember
12 the name, I should not mention a name. It was a
13 handshake, which I do remember, just -- yes? What is
14 the question, sir?

15 MR. GREY: My name is Steve Grey, and I --
16 in your study, I wonder if there's one factor that
17 might be possibly there that makes rights-of-way more
18 difficult for some cases than others.

19 One of the things that I do with the Navajo
20 Nation is I chair their Telecommunication Regulatory
21 Commission. Navajo has extensive health communication
22 network out there spread across more than 7,000 square
23 miles. We deal with probably about 30 different
24 providers at any one time. And we deal with
25 right-of-way issues and leases constantly.

1 We don't seem to have the issues surrounding
2 right-of-way with telecommunications as it does with
3 energy. It is a slower -- it is a slow process, but
4 it still moves forward. And I'm wondering if what --
5 in your study, is one of the factors possibly because
6 in energy, like pick a transmission line, it's
7 crossing across Indian land, and it doesn't really
8 touch the actual Indian people. Versus a
9 telecommunication effort like a phone, you know, the
10 individual Indian person will actually get a phone, in
11 this case say the wireless phone. So then there's a
12 benefit, a direct benefit to the individual, so the
13 community as a whole is more willing to negotiate the
14 process to let -- to get over those stumbling blocks.
15 In your study, did you find things where that would --
16 there was a distinction of a clearly benefit that
17 pushed things along a lot quicker?

18 MR. LESTER: I think what he's talking about
19 is the difference between a transmission that's
20 throughput and a system that is for distribution to
21 local services. And there is a difference between
22 those two.

23 DR. KOOROS: There is a difference as far
24 as, if you look at the proper two projects, but to me,
25 I mean I believe that there's also a way of actually

1 finding out through various statistical analyses how
2 people feel, individual people feel about a given
3 activity, you see.

4 After all, major works that, for instance
5 Department of Energy does, which impacts people, is on
6 the basis of the statistical analysis that Energy
7 Information Administration is doing for the Department
8 of Energy, or any other activities. I mean, as far as
9 usually you see, for instance, the cities make
10 studies, but to what extent they are reliable of
11 course depends on the integrity of that institution
12 which is making the study.

13 The only thing that I can submit to you is
14 that your entity ought to actually carry a statistical
15 analysis of the given, you know, just going through
16 people, seeing how they feel about establishing this
17 kind of phone or the other kind of phone.

18 Now, it could put quite a bit of burden on
19 you to get that. It's easy for me, it was easy for me
20 to deal with five or six or seven people and for us to
21 move together, yes. But it is, for you it's a
22 cumbersome thing and just, all I can say is what other
23 cities do, what other entities do to get the, to get
24 information, the kind of information that would
25 actually result in, you know, would give satisfaction

1 to the customers.

2 I'm not very convincing I suppose. But
3 that's the way that other cities do, other entities
4 do. You may want to adopt the same kind of procedure.

5 Is that okay?

6 MR. GREY: I was just trying to make the
7 distinction that we still deal with rights-of-way and
8 leases. We still do. We just don't have a major --
9 it's not a major issue like we went to Congress
10 because we're negotiating over here. And I'm saying
11 in your study, it seems like because what you're
12 providing the Telecom, it's directly impacting the
13 individuals. You know, whereas over here with energy,
14 like a transmission line, you know, running across,
15 it's not touching the individual. It will come back
16 and inure to the government.

17 DR. KOOROS: But it touches the people. If
18 you get \$5 million to \$6 million -- no, it would touch
19 the people if you get \$5 million or \$6 million from a
20 negotiation session, rather than \$50 that BIA wants to
21 give you. Because that money would go into the
22 treasury of the Tribe for the good of the people.
23 Whether or not it would be distributed properly, of
24 course that's a different story.

25 As I said, I was not -- the only way I would

1 suggest that you may want to pursue what other cities,
2 entities do, you know, governmental entities have
3 done.

4 By the way, I forgot to -- the name that I
5 wanted to mention was Ruben Snake, who shook hands
6 with the Chairman of the Board of Nebraska Public
7 Power Company. And he told him that I've never had
8 that kind of experience in my life. It was the
9 greatest moment of my life. Just wanted to mention
10 that as a fact. I'm not convincing.

11 MR. GREY: That's okay. I'm good.

12 DR. KOOROS: But I would suggest -- any
13 other questions?

14 MR. CASTILLO: My name is Robert Castillo,
15 and I just wanted to follow up a little bit on the
16 gentleman's comment. I think that what he's saying
17 could fit into your economic analysis. If there is a
18 direct benefit to the local people, there can be a
19 dollar value assigned to that and incorporated into
20 the evaluation.

21 DR. KOOROS: Right. That's correct. Thank
22 you.

23 MR. IRVIN: Well, I had one basic question,
24 you know. I've been involved with negotiating teams
25 for our Tribe, and is it a standard that every time we

1 sit down at a table we're not talking to the right
2 people?

3 DR. KOOROS: That is, really sometimes is
4 the case. Sometimes it is the case, that's right. In
5 fact, most often it is the case. That is right.

6 I have to tell you, initially, we have to
7 talk to the land man of a given company, who knew
8 nothing about anything. And we said, "If you want
9 actually your case, your application to be approved,
10 why don't you bring someone else. The company, Tribe
11 actually has a high standard. Probably vice president
12 would be acceptable." He said, "Vice president of the
13 company?" I said, "Yes. It has to be at that level.
14 We negotiate at that level."

15 MR. LESTER: My name's David Lester, and I
16 think one of the things that does enter into the --
17 changes a bit of the equation for a municipality from
18 a tribe is that if the company is not a Tribal company
19 that's providing the phone service or the electricity
20 service, then that company brings the taxation
21 authority of the State onto the reservation.

22 Whereas the City has exclusive tax revenue
23 from that, and so the City not only gets the franchise
24 fee, but also taxes the assets. Whereas the Tribe
25 doesn't have control of the tax base, and that has to

1 be part of the equation as well. Because as was
2 discussed, it's very difficult to provide full
3 governmental services when someone else has your tax
4 base.

5 I'm not sure how that works out in the
6 negotiating process at that distribution level, but
7 I'm sure that that has to become a factor in the
8 negotiations.

9 DR. KOOROS: I have to submit that during
10 all my years of negotiation or discussions with the
11 Indian Tribes, I tried not to get involved with their
12 domestic issues. There's only one issue that I -- I
13 mean, it was beyond my domain of responsibility to go
14 into a lot of other issues, such as the ones that you
15 are suggesting to deal with.

16 Notwithstanding the fact that that is a very
17 crucial issue, but the thing before me at that time
18 was to bring the negotiation committee to a point when
19 they could sit directly with the company and talk
20 about that pipeline. Now whether or not that was
21 enough, I thought at that time that was more than
22 enough -- I mean, it was just enough time, because to
23 get involved with all of the issues, that's the reason
24 I'm rather ignorant as far as your question, you know,
25 the importance of the question is concerned because if

1 I wanted to move on to other issues, then we would end
2 up in a deadend.

3 I thank you very, very much.

4 MR. WARREN: Thank you.

5 (Applause)

6 MR. WARREN: I did want to have one wrap-up
7 question if you have the time. That would be great.
8 I know we have a couple of representatives from P&M
9 and also Southern California Edison and a couple of
10 Tribal representatives, and the general question that
11 I have is, if you're out there with right-of-way
12 renewals, renegotiations, what issues are you facing
13 right now today? Any problems, hurdles, obstacles,
14 what would you change? Any input anybody could give
15 to their current renewal or renegotiation and how that
16 process is going?

17 DR. KOOROS: Can I make a point? I found
18 the Southern California Edison people the best. I
19 mean, they're all good, but they were more
20 understanding, easy to communicate with, very easy. I
21 mean, there's numbers you can't dispute. And also,
22 you know, New Mexico, Arizona -- I mean, New Mexico
23 Energy Authority, I found them both very willing to
24 sit across the table from Indian representatives, and
25 the day that finally the Arizona Public Service

1 conclusion was that the policy for Tribal consent for
2 rights-of-way through Tribal lands did not require any
3 change, that the status quo was adequate.

4 The study also noted that, though, that
5 Congress, through its plenary powers in Indian affairs
6 retains the authority on a case-by-case basis to
7 condemn Indian lands for any purpose. And when
8 Congress condemns or takes Indian land, used through
9 its plenary powers, the Tribe has no recourse, because
10 the Constitution vests Congress with full authority
11 over Indian affairs. And so the courts have ceded to
12 Congress that plenary power.

13 There are times in our history as Indian
14 Tribes when that power was used in a near despotic
15 manner, and the compensation that we received for the
16 land was inadequate, and in many cases the taking of
17 the lands was inappropriate, but the Congress had the
18 authority to do so.

19 In the history of western civilization, as I
20 understand it, one of the major thrusts of the history
21 of western civilization, the question confronting the
22 people and the governments was how to tame the beast
23 of tyranny that the, you know, the doctrine of
24 sovereignty resting with royalty created in the
25 political system.

1 And we still live with that in Indian
2 affairs to a degree that other Americans do not. Many
3 of the national parks were taken from, the lands were
4 taken from the Tribes to create the national parks.
5 Mesa Verde was, lands were taken from the Utes.
6 Glacier Park, taken from the Blackfeet. The dams on
7 the Missouri, taking the heartland of many Tribes
8 along the Missouri.

9 Acts of Congress. The acts of Congress made
10 it legal, ethical and moral to remove the Tribes from
11 the East to Oklahoma, with no recourse. Now we're
12 here in the 21st century, we don't expect that the
13 American people would stand for wholesale ethnic
14 cleansing as they did in the 19th century.
15 Nevertheless, we're still sitting with that problem,
16 and the study noted that Congress has that authority.

17 My question is, how can the industry and the
18 Tribe sit down so that we can work out, if it comes to
19 that, what would be reasonable compensation, fair
20 compensation to Tribes if Congress moves with that
21 authority to take our land.

22 We can't stand for the old method, because
23 we got pennies an acre under the old system, and in
24 some cases no compensation at all, when they could
25 show that they engaged in just war against the Tribe.

1 And so I think there's a need for some
2 serious dialogue between the pipeline and the
3 transmission line industries and Indian Tribes to
4 create some framework that would prevent the
5 revisitation of injustice to Indian people in the name
6 of national, you know, needs, requirements. And
7 that's something that I pose as something for us to
8 ponder and think about and how to move forward along
9 that line. It would take the creative thinking from
10 industry and the Tribes so that we could go to
11 Congress and explain to them that they've got to put a
12 bridle on that authority that they have, to deal
13 fairly with Indian Tribes on those questions.

14 MR. WARREN: With that said, unless there
15 are any other questions or comments or issues.

16 UNIDENTIFIED VOICE: So there was a final
17 decision on the 1813?

18 MR. LESTER: Yes. The final report was
19 delivered to Congress.

20 UNIDENTIFIED VOICE: And it's all done now?

21 MR. LESTER: It's all done. It's the status
22 quo. ATNI is the result of it, Tribal consent was
23 affirmed as good policy.

24 MR. WARREN: Anyone else?

25 MR. GREY: Steve Grey again. I would just

1 follow up with what Mr. Lester was saying. I agree
2 with him. Probably as somebody noted earlier, they
3 said it's, maybe they used the word of "war." It's a
4 different war today, you know. It's now done with
5 attorneys and courts, you know.

6 (Laughter)

7 So, you know, to establish your position,
8 but I would say one of the first things that I have
9 seen, and I'll go back to the telecommunication
10 portion because that's what I -- that's what our
11 commission does, you know, is it works in that
12 industry. Is what we see -- what I always tell the
13 companies that come in, I say, The first thing you
14 need to do is understand how we -- in this case
15 Navajo -- do business. Just don't even talk about
16 anything. Try to send your negotiating team to
17 understand. I mean, you know, because sometimes they
18 send -- obviously they always send bright people, you
19 know, that come and -- but they look at everything
20 very generic as how they do business with the rest of
21 the country. And what we, I tell them is that step
22 back, learn how we do business, and that helps. The
23 more you understand the other side, the closer you get
24 to getting through those negotiation portions you've
25 got to do. I would say that's one thing you've got to

1 do.

2 MR. LESTER: That caused me to think of one
3 other thing that I think we should bear in mind.

4 Since most of the rights-of-way for
5 throughput, high-voltage lines and interstate
6 pipelines have a 20-year time frame for their -- on
7 the right-of-way. What we find is that we have one
8 group of executives who learn through the negotiations
9 to work with the Tribe, but by the time the
10 rights-of-way expired, we have another generation of
11 executives who are back at square one. Because the
12 information and knowledge was not institutionalized in
13 the company. And they come back in with the same
14 thing that we should do business in Indian Country the
15 same way we do it everywhere else. And they have to
16 go through the learning process, which is very
17 frustrating for them and for the Tribal negotiating
18 team. If somehow the industry could figure out how to
19 institutionalize the experience and the knowledge so
20 that we start, not at square one again, but we pick it
21 back up where we left it off 20 years earlier.

22 MR. WARREN: Any other thoughts or input?
23 With that said, thank you for coming to this session,
24 and thanks again to Dr. Kooros, and we'll see you at
25 lunch.

1 (Proceedings adjourned at 11:29 a.m.)

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