

Federal Energy Regulatory Commission

§ 2.1c

party, the public, or the staff, or prescribing an informal public conference for initial discussion and consultation with the Commission, a Commissioner, or the Staff, concerning the matter(s) raised. In the absence of a notice of proposed rulemaking, any conferences or procedures undertaken pursuant to this section shall not be deemed by the Commission as meeting the requirements of the Administrative Procedure Act with respect to notice of rulemakings, but are to be utilized by the Commission as initial discussions for advice as a means of determining the need for Commission action, investigation or study prior to the issuance of a notice of proposed rulemaking to the extent required by the Administrative Procedure Act, 5 U.S.C. 553.

(c) [Reserved]

(d) A person may not invoke this policy as a means of advocating ex parte before the Commission a position in a proceeding pending at the Commission and any such filing will be rejected. Comments must relate to general conditions in industry or the public or policies or practices of the Commission which may need reform, review, or initial consideration by the Commission.

[Order No. 547, 41 FR 15004, Apr. 9, 1976, as amended by Order 225, 47 FR 19054, May 3, 1982]

§ 2.1b Availability in contested cases of information acquired by staff investigation.

Pursuant to the Commission's authority under the Natural Gas Act, particularly subsection (b) of section 8 thereof, and under the Federal Power Act, particularly subsection (b) of section 301 thereof, upon request by a party to the proceedings, or as required in conjunction with the presentation of a Commission staff case of staff's cross-examination of any other presentation therein, all relevant information acquired by Commission staff, including workpapers pursuant to any staff investigation conducted under sections 8, 10, or 14 of the Natural Gas Act, and sections 301, 304 or 307 of the Federal Power Act, shall, without further order of the Commission, be free from the restraints of said subsection (b) of section 8 of the Natural Gas Act, and subsection (b) of section 301 of the Federal

Power Act, regarding the divulgence of information, with respect to any matter hereafter set for formal hearing.

[58 FR 38292, July 16, 1993]

§ 2.1c Policy statement on consultation with Indian tribes in Commission proceedings.

(a) The Commission recognizes the unique relationship between the United States and Indian tribes as defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their lands and resources. Through several Executive Orders and a Presidential Memorandum, departments and agencies of the Executive Branch have been urged to consult with federally-recognized Indian tribes in a manner that recognizes the government-to-government relationship between these agencies and tribes. In essence, this means that consultation should involve direct contact between agencies and tribes and should recognize the status of the tribes as governmental sovereigns.

(b) The Commission acknowledges that, as an independent agency of the federal government, it has a trust responsibility to Indian tribes and this historic relationship requires it to adhere to certain fiduciary standards in its dealings with Indian tribes.

(c) The Commission will endeavor to work with Indian tribes on a government-to-government basis, and will seek to address the effects of proposed projects on tribal rights and resources through consultation pursuant to the Commission's trust responsibility, the Federal Power Act, the Natural Gas Act, the Public Utility Regulatory Policies Act, section 32 of the Public Utility Holding Company Act, the Interstate Commerce Act, the Outer Continental Shelf Lands Act, section 106 of the National Historic Preservation Act, and in the Commission's environmental and decisional documents.

(d) As an independent regulatory agency, the Commission functions as a neutral, quasi-judicial body, rendering decisions on applications filed with it, and resolving issues among parties appearing before it, including Indian tribes. Therefore, the provisions of the