

## §2.1c

## 18 CFR Ch. I (4–1–07 Edition)

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 Preserva-

tion 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 Administrative Procedure Act and the Commission's rules concerning off-the-record communications, as well as the nature of the Commission's licensing and certificating processes and of the Commission's review of jurisdictional rates, terms and conditions, place some limitations on the nature and type of consultation that the Commission may engage in with any party in a contested case. Nevertheless, the Commission will endeavor, to the extent authorized by law, to reduce procedural impediments to working directly and effectively with tribal governments.

(e) The Commission, in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources.

(f) The Commission will seek to engage tribes in high-level meetings to discuss general matters of importance, such as those that uniquely affect the tribes. Where appropriate, these meetings may be arranged for particular tribes, by region, or in some proceedings involving hydroelectric projects, by river basins.

(g) The Commission will strive to develop working relationships with tribes and will seek to establish procedures to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. To assist in this effort, the Commission is establishing the position of tribal liaison. The tribal liaison will provide a point of contact and a resource for tribes for any proceeding at the Commission.

(h) Concurrently with this policy statement, the Commission is issuing certain new regulations regarding the licensing of hydroelectric projects. In this connection, the Commission sets

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forth the following additional policies for the hydroelectric licensing process.

(i) The Commission believes that the hydroelectric licensing process will benefit by more direct and substantial consultation between the Commission staff and Indian tribes. Because of the unique status of Indian tribes in relation to the Federal government, the Commission will endeavor to increase direct communications with tribal representatives in appropriate circumstances, recognizing that different issues and stages of a proceeding may call for different approaches, and there are some limitations that must be observed.

(j) The Commission will seek to notify potentially-affected tribes about upcoming hydroelectric licensing processes, to discuss the consultation process and the importance of tribal participation, to learn more about each tribe's culture, and to establish case-by-case consultation procedures consistent with our *ex parte* rules.

(k) In evaluating a proposed hydroelectric project, the Commission will consider any comprehensive plans prepared by Indian tribes or inter-tribal organizations for improving, developing, or conserving a waterway or waterways affected by a proposed project. The Commission will treat as a comprehensive plan, a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission. *See generally* 18 CFR 2.19.

[Order 635, 68 FR 46455, Aug. 6, 2003]

### STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS UNDER THE FEDERAL POWER ACT

AUTHORITY: Sections 2.2 through 2.13, issued under sec. 309, 49 Stat. 858; 16 U.S.C. 825h, unless otherwise noted.

#### § 2.2 Transmission lines.

In a public statement dated March 7, 1941, the Commission announced its determination that transmission lines which are not primary lines transmit-

ting power from the power house or appurtenant works of a project to the point of junction with the distribution system or with the interconnected primary transmission system as set forth in section 3(11) of the Act are not within the licensing authority of the Commission, and directed that future applications filed with it for such licenses be referred for appropriate action to the Federal department having supervision over the lands or waterways involved.

[Order 141, 12 FR 8471, Dec. 19, 1947. Redesignated by Order 147, 13 FR 8259, Dec. 23, 1948]

#### § 2.4 Suspension of rate schedules.

The Commission approved and adopted on May 29, 1945, the following conclusions as to its powers of suspension of rate schedules under section 205 of the act:

(a) The Commission cannot suspend a rate schedule after its effective date.

(b) The Commission can suspend any new schedule making any change in an existing filed rate schedule, including any rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, contained in the filed schedule.

(c) Included in such changes which may be suspended are:

(1) Increases.

(2) Reductions.

(3) Discriminatory changes.

(4) Cancellation or notice of termination.

(5) Changes in classification, service, rule, regulation or contract.

(d) Immaterial, unimportant or routine changes will not be suspended.

(e) During suspension, the prior existing rate schedule continues in effect and should not be changed during suspension.

(f) Changes under escalator clauses may be suspended as changes in existing filed schedules.

(g) Suspension of a rate schedule, within the ambit of the Commission's