

lands and resources. Through several Executive Orders and a Presidential Memorandum,¹⁷ 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.

12. We are including in Part 2 of the Commission's regulations, "General Policy and Interpretations," a statement of our policy on these matters.¹⁸ It applies to all of the Commission's program areas.¹⁹ For the hydroelectric licensing program, the policy applies to all licensing proceedings, regardless of which process is used. The policy statement was developed from our review of the written policies of other Federal agencies concerning the trust responsibility and government-to-government consultation.²⁰

¹⁷ Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (issued November 6, 2000); Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (issued May 14, 1998); Presidential Memorandum, Government-to-Government Relations with Native American Tribal Governments (issued April 29, 1994), reprinted at 59 FR 22,951; Executive Order 12875, Enhancing the Intergovernmental Partnership (issued October 26, 1993).

¹⁸ 18 CFR 2.1(c)(2003).

¹⁹ The Commission's program areas include hydroelectric, oil pipeline, electric power, and natural gas programs. The Commission issues licenses and oversees compliance with those licenses for non-federal hydroelectric projects pursuant to Part I of the Federal Power Act (FPA), the Public Utility Regulatory Policies Act (PURPA), and the Energy Policy Act of 1992 (EPAct). Under the Interstate Commerce Act and the EPAct, the Commission regulates the rates and practices of oil pipeline companies engaged in interstate transportation. The Commission's electric power authority is outlined by Part II of the FPA, the PURPA, and the EPAct. The Commission's electric power responsibilities include: approving rates for wholesale electric sales of electricity and transmission in interstate commerce for private utilities, power marketers, power pools, power exchanges and independent system operators; overseeing the issuance of certain stock and debt securities, assumption of obligations and liabilities, and mergers; reviewing the holding of officer and director positions between top officials in utilities and certain other firms they do business with; reviewing rates set by the federal power marketing administrations; conferring exempt wholesale generator status; and certifying qualifying small power production and cogeneration facilities. The Natural Gas Act (NGA) of 1938, the Natural Gas Policy Act of 1978, the Outer Continental Shelf Lands Act, the Natural Gas Wellhead Decontrol Act of 1989, and the EPAct are the primary laws the Commission administers to oversee the natural gas pipeline industry. Under the NGA, the Commission regulates both the construction of pipeline facilities and the transportation of natural gas in interstate commerce.

²⁰ We reviewed the policies of other independent agencies, including the Federal Communications

13. The policy statement recognizes the unique relationship between the Federal government and Indian tribes as defined by treaties, statutes, and judicial decisions. It acknowledges the Commission's trust responsibilities. It states that the Commission will endeavor to work with the 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 trust responsibilities, the statutes governing the Commission's authority,²¹ and in the Commission's environmental and decisional documents. It notes that the Commission functions as a neutral, quasi-judicial body and as such is bound by the Administrative Procedure Act and Commission rules regarding off-the-record communications.²² It states that the Commission will assure tribal issues and interests are considered in making decisions. The policy statement also establishes a tribal liaison position. For the hydroelectric program, it states that the Commission will notify tribes before or at the time the licensee files its notice of intent, and will consider comprehensive plans prepared by tribes or intertribal organizations.

14. The tribal liaison will seek to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. The tribal liaison will work with the tribes during Commission proceedings, to ensure that the tribes' views are appropriately considered at every step of the process. The tribal liaison will act as a guide for the tribes to Commission processes, and will strive to ensure that consultation requirements are met.

IV. Environmental Analysis

15. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement

Commission, FCC No. 00-207 (June 8, 2000), 16 FCC Rcd 4078; 2000 FCC LEXIS 3245; 20 Comm. Reg. (P&F) 1316; the Federal Emergency Management Agency, "Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Government" (Sept. 25, 1998), 64 FR 2096 (Jan. 12, 1999); the Environmental Protection Agency, Memorandum to all EPA Employees from Christine Todd Whitman, EPA Administrator, dated July 12, 2001; and the Nuclear Regulatory Commission, Memorandum to NRC Commissioners from William D. Travers, Executive Director for Operations, dated February 2, 2001. These documents may be found on FERRIS in Docket No. RM02-16-000.

²¹ These are primarily the Federal Power Act, the Natural Gas Act, the Public Utilities Regulatory Policies Act of 1978, the Interstate Commerce Act, the Outer Continental Shelf Lands Act, National Environmental Policy Act, and Section 106 of the National Historic Preservation Act.

²² 18 CFR 385.2201 (2003).

for any action that may have significant adverse effect on the human environment.²³ The Commission has categorically excluded certain actions from this requirement because they would have no significant effect on the human environment.²⁴ Included among the exclusions are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended.²⁵ This policy statement is procedural in nature and therefore falls under this exception. Consequently, no environmental analysis is necessary.

V. Regulatory Flexibility Act

16. The Regulatory Flexibility Act of 1980 (RFA)²⁶ generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.²⁷ Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this policy statement will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

17. The OMB requirements require that OMB approve certain information collection requirements imposed by agency rules.²⁸ However, this policy statement contains no information reporting requirements, and therefore is not subject to OMB approval.

VII. Document Availability

18. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

19. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document

²³ National Environmental Policy Act, 42 U.S.C. 4321-4370a, 7101-7352.

²⁴ 18 CFR 380.1, *et seq.*

²⁵ 18 CFR 380.4(a)(2)(ii).

²⁶ 5 U.S.C. 601-612 (2000).

²⁷ Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to Section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation" 15 U.S.C. 632(a).

²⁸ 5 CFR 1320.