



FILED

10/27/25

04:09 PM

R2202002

October 20, 2025

The Honorable Valarie Kao
California Public Utilities Commission
Administrative Law Judge Division
Room 5105
505 Van Ness Avenue
San Francisco, CA 94102-3214

RE: Comments on CPUC Revisions to the Tribal Consultation Policy

We thank the California Public Utilities Commission (“CPUC”) for seeking tribal input and for the opportunity to provide comments in response to the proposed revisions. The CPUC issued ruling R.22-02-002 with proposed modifications to the CPUC’s Tribal Consultation Policy (“Consultation Policy”). We generally approve of the updated goals, objectives, and procedures identified within the Policies and the intention behind the proposed improvements.

Importantly, however, we propose that the goals and procedures must be further clarified, especially those which impact formal government-to-government consultation. As a telling example of the need for these changes, we recently requested formal consultation with CPUC on an important, time-sensitive project we are developing with California Energy Commission (“CEC”) and Federal Emergency Management Agency (“FEMA”) grant funds. Aside from a brief reply acknowledging our government-to-government consultation request, the CPUC has been otherwise nonresponsive, despite several attempts from us to simply set a date for the meeting. A viable Consultation Policy needs to address this type of situation. We have some recommendations, which we detail below.

While we agree with many of the identified goals in Section 2 of the proposed Consultation Policy, additional details are needed to inform critical issues that will impact tribal projects and tribal utility related entities.

First, we propose amending “Recognize and respect Tribal sovereignty, including respect for the consultation policies adopted or established by Tribes” to “Recognize and respect Tribal sovereignty, *including respect for federal laws applicable to Indian Country and tribal laws and regulations impacting a tribe’s jurisdictional lands*, and respect for the consultation policies adopted or established by Tribes.” Respect for sovereignty is not possible if state consultations ignore federal law, which governs the distinction between state and tribal authorities, or ignores tribal laws and regulations, which have authority on the tribes’ lands and which may or may not

be consistent with state laws and regulations. While we acknowledge the applicability of various laws across multiple jurisdictions may not always be clear, meaningful consultation may help narrow or resolve issues of applicable laws.

Second, clarification is needed between the informal or formal portions of the Consultation Policy. For example, a whole section on informal consultation would be helpful as well as a second section on formal consultation. We have the following questions that could be answered in this policy:

- a) The goal “[T]o institutionalize the Commission’s policy of early, often, and meaningful consultation with California Native American Tribes with the intent of collaborative problem-solving and partnership” appears to align closer with “informal” consultation. Should this goal be changed to “[T]o institutionalize the Commission’s policy of early, often, and meaningful consultation with California Native American Tribes *to further informal consultation in order to achieve* collaborative problem-solving and partnership.
- b) An additional goal should then be added, “[T]o formalize the steps, timelines, and procedures for formal government to government consultation.” These essential elements are missing from the Consultation Policy. Any formal consultation should 1) be initiated quickly and proceed on an expedited or agreed upon timeline, 2) have clearly identified representatives, 3) have a defined scope or request, 4) be private unless agreed upon, and 5) any resulting policy or issuance by the CPUC or the tribe should be subject to agreed-upon notice or confidentiality provisions. Our recent request for formal consultation has gone unanswered except for an acknowledgement. A requirement for a seven-day response for a proposed meeting time is recommended.
- c) It is not now clear in the Consultation Policy what the boundaries are for tribal interaction with the CPUC, its Commissioners, and other officials during informal and formal consultation. What confidentiality obligations apply to each of these contacts? What notice provisions (to third parties) apply? Our recommendation is for *ex parte* rules not to apply to informal or formal interactions with tribal nations. They would not apply for government-to-government relations with, for example, the State of Nevada; therefore, they should not apply to interactions with tribes.
- d) During informal consultation, the CPUC should give heightened consideration to the views and recommendations of tribes and tribally chartered or tribally owned entities. In such instances, the perspectives of tribes and their representatives should carry greater weight than those of non-tribally owned companies or third-party entities (*e.g.* utilities) seeking to conduct business or provide services within Indian Country. This approach recognizes a government-to-government relationship between the state and tribe, the sovereign interests at stake, and the consideration of tribal self-determination and economic development priorities.
- e) Clear definitions for informal and formal consultation are necessary with the clear distinction being that for formal consultation, either the CPUC or an official tribal leader has requested formal government-to-government consultation in writing.

Third, when is it CPUC’s intent for tribes to be formal parties to regulatory processes? This may be contrary to tribal sovereignty if the regulatory process impacts utility matters under the tribe’s jurisdiction. A proposed alternative is for tribes to be involved in these matters through discussions during formal government-to-government consultation.

Fourth, the goal “To encourage collaboration between the Commission and its regulated entities on tribal consultation as to Commission regulated programs and projects” is unclear. What is the intended meaning of this goal?

Fifth, we propose to amend “Support Tribal efforts toward energy sovereignty” to “Support Tribal efforts toward *water, land, communications, cultural resource*, and energy sovereignty.” This change reflects the regulatory authority of the CPUC which is broader than just “energy.”

Sixth, the goal, “Protect Tribal cultural resources...” should be improved to include a statement that tribal cultural resources are located both on and off reservations. Tribal off-reservation consultation is more important than on-reservation consultation as the tribe already has full and exclusive jurisdiction over activities on the reservation.

Seventh, Section 3 Subsection (e) describes the CPUC’s process for initiating consultation (informal or formal?) with tribes. The Consultation Policy provides a two-step procedure for initiating consultation with the first step being the assessment of whether a proposed CPUC action has tribal impacts and the second step (assuming such impacts were identified) being the planning and timing of consultation based on key milestones associated with the action. To ensure that tribes have ample opportunity to participate in the decision-making process of an action that will have tribal impacts, tribes should be notified of such actions and impacts as early as possible. Therefore, we recommend adding a step in the consultation initiation process which requires the CPUC to notify tribes by describing the proposed action and potential impacts immediately upon a positive impact(s) finding.

Lastly, in addition to these specific comments, the Tribal Consultation Policy should include a documentation requirement to ensure the State captures how tribal input was considered and integrated into its final decisions. Tribes must have access to consultation records and a clear pathway to resolve disputes when concerns are not addressed, or tribal consent is not obtained.

Thank you for considering our comments. Please let me know if you require additional information or if you would like to discuss any of these recommendations in more detail. I would be happy to make myself or any members of my staff available as we work together to develop a more robust and meaningful Consultation Policy.



Brandin Paya
Tribal Chairman
Paskenta Band of Nomlaki Indians
22580 Olivewood Avenue
Corning, CA 96021