

# Minnesota Public Utilities Commission Tribal Engagement/Consultation Policy

## Policy Statement

The Minnesota Public Utilities Commission (Commission) seeks to foster and facilitate a positive government-to-government relationship with federally recognized Tribal Nations in Minnesota.

Recognizing the unique legal relationship between the State of Minnesota and the Tribal Nations in Minnesota, the Commission requires, to the extent possible, that the principles outlined in this document be considered in matters affecting federally recognized Tribal Nations in Minnesota before the Commission. The policies in this document shall guide meaningful interaction between Tribal Nations in Minnesota and the Commission, to the extent possible under existing law.

A unique government-to-government relationship exists between federally recognized Tribal Nations in Minnesota, the State of Minnesota and the United States federal government. The U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders, as well as political, legal, moral, and ethical principles have recognized the right of Tribal Nations to self-governance and self-determination. Tribal Nations in Minnesota exercise inherent sovereign powers over their members and territory.

Minnesota Executive Order 19-24, *"Affirming the Government-to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation"* was signed by Governor Tim Walz on April 4, 2019. The Order updated a previous Executive Order issued by the preceding administration and reaffirms the government-to-government relationship between the State of Minnesota and Tribal Nations in Minnesota. While the Order did not specifically require the Commission to operate under the principles set out in the directive, the Commission is determined to honor the spirit of the order while performing its duties, to the extent possible.

## Purpose and Scope

The Commission processes many docket in a judicial-like manner that relate to land use, telecommunications, electric service, natural gas distribution, utility service territory, utility

rates, and other issues that impact the lives of Tribal Nations in Minnesota and their members. With this in mind, the purpose of establishing this policy is to encourage and ensure meaningful engagement of Tribal Nations in the Commission's regulatory process and procedures through clear communication, including notification on matters that affect Tribal Nations in Minnesota and their members.

The participation of Tribal Nations in Minnesota in matters before the Commission can result in a more fully developed record and can help ensure that those impacted by a decision of the Commission have an opportunity to have their opinion considered in the decision making process.

This policy does not waive or diminish any tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. This policy does not waive or diminish any rights or protections afforded American Indian persons under federal, state, or Tribal law.

This policy does not waive or diminish the Commission's responsibility to uphold laws, rules, directives, or other legal requirements or obligations imposed by state or federal law.

This policy is not intended and does not create any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable against the Commission, its officers or employees, or its subdivisions or any other persons. Nothing in this policy prohibits or limits the Commission from asserting any rights or pursuing any administrative or judicial action under state or federal law to effectuate the public interest as required by state law.

It is the right of American Indian tribes to determine their own future. Tribal Nations in Minnesota possess all of the inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements or an act of Congress. American Indian tribes, through elected tribal governments, have the right to operate as self-governing nations.

## **Consultation Between the Commission and Tribal Nations**

Consistent with the directive of Executive Order 19-24, the Commission intends to engage in meaningful and timely consultation with Tribal Nations. The form of this consultation must be unique due to the Commission's quasi-judicial role. Unlike many state agencies, the Commission is not a policy-making body and administers a limited number programs. The Commission's primary mission is as an independent, quasi-judicial agency that adjudicates disputes and regulatory issues. Further, communications by and with the Commission are also limited by Minnesota Statutes Chapter 13D, Section 216A.037 and Minnesota Rules Part 7845, governing open meeting requirements, ex parte communication limitations, and the Commission's Code of Conduct. These statutes and rules exist to ensure the transparency and

neutrality of the Commission's decision-making process, and all consultation must be handled pursuant to these limitations. This Plan describes a process of consultation and engagement with Tribal Nations that is consistent with the Commission's structure and limitations.

## Annual Consultation

The Commission will consult with each Tribal Nations in Minnesota on prior to September 1 of each year. By October 1 of each year, these priorities will be submitted to the Office of the Governor and Lieutenant Governor for review. The Commission's Tribal Liaison will coordinate with Tribal Nations to schedule annual consultations. Each annual consultation will be attended by one or more Commissioners as determined by the Commission Chair. Consultation for these purposes is defined as an enhanced form of communication that emphasizes trust, respect, and shared responsibility. The consultations will be an open and free exchange of information, ideas, and opinions among parties, which should lead to mutual understanding and appreciation. Consultation is most effective when it is seen and understood as a process for continuous input and discussion. Meaningful consultation is based on open communication and coordination that acknowledges and considers the views of all participants, and then seeks agreement on how to provide continuing assistance. The process of tribal consultation is equal in importance to the product.

## Specific Issues Consultation

The Commission will also engage in consultation with [Tribal Nations in Minnesota](#) on specific issues outside of the Annual Consultation. Specific Matter Consultation may be initiated by a Tribal Nation or group of Tribal Nations, or by the Commission. Consultation of this type may be initiated by sending a written request to the Tribal Liaison including the following information:

- Identify the subject issue(s) for attention;
- Include the applicable program(s), policy, rule, regulation and/or statute;
- Include impact or potential impact to Indian people or Tribal Nation(s);
- Identify the affected and potentially affected Tribal Nation(s)

The Commission may also initiate specific Matter Consultation. This consultation may be initiated by the Tribal Liaison sending a written request with aforementioned information to the Tribal Nation's designated contact.

It will be Commission policy to conduct timely communication and meaningful consultation, as outlined within this policy, when it is possible that new rule adoption or other policy changes may significantly affect Tribal Nations, or where one or more Tribal Nations has communicated to the Commission that such action will significantly affect them.

## Consultation Process

Consultation will be handled pursuant to the limitations required by the Commission's code of conduct and ex parte rules. To ensure that the Commission and Tribal Nations have shared expectations, these limitations include:

- Where the topic of consultation involves a docketed matter before the Commission Commissioners will not be able to participate in the consultation, but the consultation can be held with Commission staff.
- If Commission staff participate in a consultation for a docketed matter before the Commission and the Tribal Nation is a party or participant at the time the consultation takes place, Commission staff will be required to make an ex parte report describing the consultation and the ex parte report must be filed in the docket.
- During consultation, the Commission is able to share information and assist Tribal Nations in understanding how to participate in the Commission's process, but the Commission and its staff cannot advocate for Tribal Nations or provide advice on what actions to take.

The Commission will acknowledge receipt of a Tribal consultation written request within 5 calendar days after receipt of the request and within 14 days the Commission will make arrangements to hold the consultation. After the consultation is held, the Commission will accurately record a narrative summary of the ideas exchanged during the consultation process including any actual or possible outcomes of the consultation, and the Tribal Nations involved in the process may respond as they deem appropriate.

The Commission will make its best effort to meet this Consultation Process, recognizing that specific issues and circumstances may require adjustment. The Commission will inform the Tribal Nation(s) involved as soon as possible if adjustments are required.

This Consultation Process will be reviewed with the Tribal Nations in Minnesota no less than once every two years to assure that it is successfully meeting the needs of the Commission, Tribal Nations in Minnesota and the state.

## Tribal Engagement in Disputed Matters before the Commission

In addition to the consultation process described above, the Commission also commits to improve its overall engagement with Tribal Nations. Engagement for purposes of this policy is defined as an enhanced effort on behalf of Commission staff, managers, and Commissioners, to ensure Tribal Nations are given timely notification of dockets and issues being reviewed and considered by the Commission that could affect Tribal Nations and/or their members. Ensuring

Tribal Nations are aware of the matters before the Commission will allow the Tribal governmental leaders and Tribal members to be involved at the beginning of the regulatory review process. Notification as early as possible will help ensure that Tribal input will be a part of the information gathering process helping to more fully develop the public record on an issue.

The Commission commits to:

- Maintaining a list of preferred contact information for each Tribal Nation in order to facilitate ease of communication.
- Maintaining documentation and information for Commission staff about the location of Tribal Nations and how that information relates to regulated utility services.
- Notifying Tribal Nations and their representatives of dockets before the Commission that may affect the interests of Tribal Nations.
- Assisting and advising Tribal Nations on how to effectively participate in Commission proceedings, short of providing legal advice.
- Designating a Tribal Liaison to help facilitate any interactions between staff, management, or Commissioners.
- Providing status updates to Tribal Nations of matters before the Commission, if asked by Tribal leaders.

## **Responsibilities:**

Commissioners

- Approve Tribal Engagement/Consultation Policy
- At least one Commissioner attends each annual consultation
- Attend specific issue consultations pursuant to the Tribal Engagement/Consultation Policy
- Attend available Tribal State Relations Training to improve understanding of the history, culture, and organizational design of each Tribal Nation.

Commission Executive Secretary:

- Designate the Commission Tribal Liaison
- Participate as needed on consultation requests
- Attend available Tribal State Relations Training to improve understanding of the history, culture, and organizational design of each Tribal Nation.

#### Commission Tribal Liaison:

- Assure that program areas within the Commission are aware of and incorporate the Tribal Consultation Policy into their work.
- Provide for the annual consultation with the 11 federally recognized Tribal Nations in Minnesota to identify consultation issues for the coming year.
- Share priority consultation issues identified during the process with Commission Leadership teams and other appropriate staff.
- Receive consultation requests from the Tribal Nations and send Commission consultation requests to the Tribes.
- Coordinate timely implementation of the consultation process.
- Serve as the designated Commission representative on the Minnesota Indian Affairs Council when a Commissioner and/or Executive Leadership is not in attendance.
- Establish and promote effective working partnerships between Commission leadership and tribal governments.
- Maintain Tribal Nation point of contact information and Tribal Nation / Regulated Utility cross-referencing information.

#### Staff:

- Follow the Commission's Tribal Consultation Policy.
- Ensure meaningful tribal input is sought in matters where tribal interests are impacted.
- Identify any action within a program that will rise to meet the consultation criteria.
- Inform management at the Commission and the Commission Tribal Liaison of the potential need for a consultation with one or more of the Tribal Nations.
- Unit managers will attend available Tribal State Relations Training to improve understanding of the history, culture, and organizational design of each Tribal Nation.
- Commission staff may attend available Tribal State Relations Training to as recommended by their unit managers.

## Definitions:

### Consultation

Government-to-government communication in a timely manner by all parties, about a proposed or contemplated decision in order to:

- Secure meaningful tribal input and involvement in the decision-making process; and
- Advise the tribe of the final decision and provide an explanation.

### Collaboration

All parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.

**Disputed formal petitions**

Disputed formal petitions, contested cases, and other matters where Commissioners, management, and/or staff are subject to ex parte communications restrictions or code of conduct restrictions under to Minn. Stat. § 216A.037 and Minn. Rules, Chapter 7845.7000.

**Engagement**

Engagement for purposes of this policy is defined as an enhanced effort on behalf of Commissioners, managers, and Commission staff to ensure Tribal Nations have Timely Notification of dockets being processed by the Commission that would affect Tribal Nation interests.

**Minnesota Tribal Nations**

In Minnesota, the federally recognized tribes are: Bois Forte Band of Chippewa; Fond du Lac Band of Lake Superior Chippewa; Grand Portage Band of Lake Superior Chippewa; Leech Lake Band of Ojibwe; Lower Sioux Indian Community; Mille Lacs Band of Ojibwe; Prairie Island Indian Community; Red Lake Nation; Shakopee Mdewakanton Sioux Community; Upper Sioux Community; White Earth Nation.

**Tribal Sovereignty**

It is the right of American Indian tribes to determine their own future. Tribal Nations in Minnesota possess all of the inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements or an act of Congress. American Indian tribes, through elected tribal governments, have the right to operate as self-governing nations.

**Timely Notification**

Staff and managers involved in processing Commission dockets will ensure matters affecting, one or many, Tribal Nations at the beginning of the dockets' process before the Commission.

- Add Tribal government representatives to contact lists related to a given docket;
- Work with Tribal governments to ensure the most relevant person is appropriately notified at the beginning of a docket.

This policy was adopted on December 12, 2019.



Chair of the Minnesota Public Utilities Commission

Acting Executive Secretary, Minnesota Public Utilities  
Commission