

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

The Yakama Nation

v.

Project No. 2114-115

Public Utility District No. 2  
of Grant County, Washington

ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued July 23, 2003)

1. On June 4, 2003, the Confederated Tribes and Bands of the Yakama Nation (Nation) filed a Request for Reconsideration and Clarification of the Commission's May 27, 2003 Order (May 27, 2003 Order) denying the Nation's April 30, 2003 Motion to Disclose Alleged *Ex Parte* Communications (April 30, 2003 Motion).<sup>1</sup> The Nation contends that the May 27, 2003 Order was based on "dubious logic," because it found that the Nation's assertion of allegedly improper off-the-record communications lacked the specificity necessary to determine whether there existed a violation of Rule 2201.<sup>2</sup> As explained below, the Commission denies the Nation's reconsideration request.

2. In the April 30, 2003 motion, the Nation asserted it had learned through an unnamed source that a delegation of Wanapum Indians visited the Commission's offices in February or March of this year, where supposedly "the delegation received a private audience with one or more FERC decisional employees, including Commissioner(s) and staff member(s)," while the Commission was considering rehearing requests in the subject complaint proceeding. The Nation further stated that this unnamed source was present at a meeting where "the Wanapum Indians discussed both the Yakama Nation and the Priest

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<sup>1</sup>The Yakama Nation v. Public Utility District No. 2 of Grant County, Washington, 103 FERC ¶ 61, 241 (2003).

<sup>2</sup>18 C.F.R. § 385.2201.

Rapids Project during the meeting with the decisional employee(s)." Apparently based on information from its unidentified source, the Nation concluded the meeting "quite probably was subject to disclosure under Rule 2201 . . . and may have tainted the Commission's review" of its pending rehearing request in this docket.<sup>3</sup>

3. As described in the Commission's May 27, 2003 Order, upon receipt of the Nation's April 30 Motion, the Commission's ethics staff conducted an agency wide survey of Commission offices to determine whether the Commissioners and members of their staffs, or responsible program offices had met with a Wanapum delegation in the first few months of 2003, and possibly discussed the merits of a contested proceeding.

4. In response to the survey, with the exception of Commissioner Brownell's office, no office or individual reported any meeting with the Wanapum delegation. On or about February 10, 2003, Commissioner Brownell and one of her assistants met with a delegation of Wanapum Indians and representatives from the Public Utility District No. 2 of Grant County, Washington (PUD). As described in the May 27, 2003 Order, PUD staff talked about the status of their relicensing of Priest Rapids (application due this fall) and about a new style of turbine they have been testing. The Wanapum representative explained the history of the Wanapums and their relationship with the PUD. There were no discussions about the instant proceeding. Under these circumstances, the February 10, 2003 discussions described by Commissioner Brownell's office were not subject to the notice and disclosure provisions of Rule 2201, because they were not relevant to the merits of any contested on-going on-the-record proceeding.<sup>4</sup> Accordingly, as the Nation has brought nothing new to the Commission's attention, there is no need to reconsider the Commission's May 27, 2003 Order in this docket.

5. The Nation accuses the Commission of "dubious logic" by denying its original request for lacking specificity. Actually, the Commission went beyond what was required here to address allegations of *ex parte* communications by having its staff conduct a survey, and by providing the information described above, notwithstanding that the Nation's April 30, 2003 Motion failed to identify its source. The Commission takes

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<sup>3</sup>On April 16, 2003, the Commission issued an order on rehearing. Yakama Nation v. Public Utility District No. 2 of Grant County, Wash., 101 FERC ¶ 61,197 (2002), reh'g denied, 103 FERC ¶ 61,073 (2003), appeals pending sub nom. Public Utility District No. 2 of Grant County, Wash. v. FERC, No. 03-1112 (D.C. Cir. April 24, 2003) and The Yakama Nation v. FERC, No. 03-71805 (9th Cir. April 29, 2003).

<sup>4</sup>See 18 C.F.R. § 385.2201(b), (c)(4).

seriously and is obligated to investigate allegations of potential violations of its rules. The Commission has investigated the Nation's allegations and found no violations of Commission rules. Therefore, there is nothing more the Commission need do.

The Commission orders:

For the reasons stated herein, the Nation's Request for Reconsideration is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.