



Recommendation 69-7

Consideration of Alternatives in Licensing Procedures

(Adopted October 21-22, 1969)

Court decisions, notably *Scenic Hudson Preservation Conference v. FPC*,¹ have emphasized that in licensing cases the Federal Power Commission must explore and give proper consideration to possible alternatives to the specific plan proposed by the applicant. This principle may in the future be applied to other licensing agencies. Since the range of possible alternatives in any case can be extensive and in some cases virtually unbounded, ways must be sought to control the scope and duration of licensing proceedings within manageable limits while meeting the requirements of the law.

Recommendation

Each agency which issues licenses, permits, or other forms of authorization, should seek to create procedures fitting its particular circumstances which will assure appropriate consideration of alternatives where necessary, and at the same time will permit effective administration of that agency's licensing functions.

Because the various agencies must deal in their licensing procedures with many diverse subject matters, the Administrative Conference cannot specify a single rule and procedure for achieving this objective. Procedural techniques which experience has shown useful in analogous situations and which an agency might consider include: (1) Guidelines embodying a rule of reason concerning the number and character of alternatives to be considered in particular types of cases; (2) rules providing a point in time beyond which the issues in a proceeding will not be expanded to include additional alternatives except under compelling circumstances; (3) techniques, such as prehearing conferences and the filing of testimony in written form before trial, which tend to promote early identification of interested parties and important alternatives; and (4) placing responsibility upon the party or other person proposing an alternative to the applicant's proposal to make an appropriate threshold showing that the alternative deserves the agency's consideration.

¹ 354 F. 2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966). See also *Udall v. FPC*, 387 U.S. 428 (1967).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Citations:

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Note: This recommendation has been largely implemented by Sec. 102 of the National Environmental Policy Act, Pub. L. 91-190.