

**WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 011-21-038

WHEREAS, the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the White Earth Reservation Business Committee (WERBC) is the duly authorized governing body of the White Earth Band, and

WHEREAS, the WERBC supports strong and sustainable business development within the White Earth Nation, through entrepreneurship and workforce development to address high unemployment, high poverty, and limited economic diversification, as vital to the well-being of White Earth Band members, and

WHEREAS, numerous grant funding, financing, and partnering opportunities exist for implementing the Band's Renewable Energy Independence that will allow our tribal nation to provide for substantial control of its energy future, and

WHEREAS, the adoption of the Utilities Code, which includes the establishment of a Tribal Utility Commission (TUC), is a key step to the success of the White Earth Nation's energy future and independence, and

WHEREAS, the White Earth Reservation Business Committee seeks to place this matter before the Band membership for public comment pursuant to Resolution No. 011-16-017A, now

THEREFORE BE IT RESOLVED, that the White Earth Reservation Business Committee hereby invokes Resolution No. 011-16-017A and begins the thirty (30) day initial review period contemplated in that Resolution.

BE IT FURTHER RESOLVED, that the White Earth Reservation Business Committee hereby directs the Executive Director to post this Resolution and the attached White Earth Utilities Code to the places listed in Resolution No. 011-16-017A for a period of fifteen (15) days in order to solicit public comment and input from Band members.

BE IT FINALLY RESOLVED, that the White Earth Reservation Business Committee shall review all comments and input received in accordance with such public posting and make decision regarding a final version of the White Earth Utilities Code within the timeline contemplated by Resolution No. 011-16-017A.

We do hereby certify that the foregoing resolution was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a regular meeting of the White Earth Reservation Business Committee held on July 20, 2021 in Mahnomen, Minnesota.



Michael A. Fairbanks, Chairman



Leonard Alan Roy, Secretary/Treasurer

WHITE EARTH BAND OF OJIBWE
TITLE 23: UTILITIES CODE

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CHAPTER 1. GENERAL PROVISIONS

§1.01. Short Title

This Title shall be known as the White Earth Band of Ojibwe Utilities Code.

§1.02. Findings

1. The power to regulate utilities is an inherent and essential part of the authority of the Tribe. This power is within the retained sovereignty of the Tribe except to the extent it has been limited or withdrawn by federal law. This Title is enacted pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, which authorizes the Tribal Council to enact laws; raise revenue; manage the Tribe's finances; promote and protect public welfare, safety, and cultural and political sovereignty of the citizens of the White Earth Nation; establish subordinate boards; and manage the government, lands, waterways, resources, transportation, business enterprises, and other assets of the White Earth Nation.
2. Tribal members and non-members within the boundaries of the White Earth Reservation need reliable, safe, and environmentally sound utility services. The economic security, health and welfare of the Tribe, tribal members, and non-members depend on public utilities, because many homes of tribal members, especially HUD financed homes, are "all electric," that is, heated solely by electricity due to the lack of a practical heat source for some tribal members and nonmembers; the health and very lives of many tribal members and nonmembers are dependent upon an assured flow of electricity during the harsh, subzero winter months; there is a lack of practical transportation for many elderly tribal members and nonmembers during the harsh, subzero winter months such that many of them are dependent on reliable utility service; and utility costs have a substantial financial impact on tribal government operations, tribal members and non-members, and economic enterprises.
3. The Reservation is checker-boarded with both trust land and non-trust land, and both trust lands and non-trust lands are crossed by utility lines, pipelines, rail lines, and rights-of-way of a number of investor-owned and nonprofit utilities. Every utility that operates within the Reservation enters into voluntary consensual relationships with the Tribe, Tribal Members and non-members, to provide services, operate facilities, and construct and erect pipelines, transmission lines, poles, towers, and other improvements upon and across Reservation lands. Utilities enjoy existing easements across Reservation lands and are expected to seek additional easements, the regulation and granting of which are within the sole jurisdiction of the Tribe. The services, rates, policies, procedures, and practices of every utility operating within the Reservation have a substantial impact on the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation.
4. The State of Minnesota lacks jurisdiction to regulate utilities within the Reservation because state regulation of such utilities interferes with the right of the Tribe and tribal members to make their own laws and to be ruled by them. The Tribe has the right to regulate utilities

within the Reservation. It also has the right to provide utility services to all Tribal Members and non-members within the Reservation, as well as to all HUD homes of tribal members; other homes and businesses of tribal members financed in whole or in part by the Tribe or the federal government; all tribal buildings and businesses of the Tribe financed in whole or in part by the Tribe or the federal government; and all Bureau of Indian Affairs or other federally owned or operated buildings.

5. Tribal members and the Tribe are immune from state taxes and fees for all utility services provided to them within the Reservation, yet utilities operating within the Reservation have for many years illegally collected taxes and fees with respect to utility services provided to both tribal members and the Tribe within the Reservation. The taxes and fees collected by the State of Minnesota are used for state programs that are not necessarily in accordance with the Tribe's interests or values. Illegal collection of state taxes and fees is unlikely to stop absent tribal regulation of utilities within the Reservation.
6. The Tribe has determined that regulation of utilities, to the extent permitted by federal law, is necessary to promote and protect the interests of the Tribe. Further, the regulation by the Tribe of utilities within the Reservation is a necessary and proper exercise of the sovereign authority of the Tribe and is an essential governmental function of the Tribe. Regulation by the State of Minnesota or any municipality or political subdivision of the State of utilities located, operating, or providing services within the Reservation is an infringement upon the right of the Tribe to make its own laws and be governed by them and thereby imperils the Tribe's political integrity and right of self-governance.

§1.03. Purpose

1. The Tribal Council hereby declares it to be in the public interest that all utilities located, operating or providing services within the Reservation be regulated as herein provided. The purposes of this Title include:
 - a. to ensure that all retail consumers of utility services and commodities within the Reservation have adequate and reliable utility services at reasonable rates, consistent with the financial, economic, and operational requirements of utilities operating within the Reservation;
 - b. to ensure that utility services are provided in a manner that will not harm but rather will protect the interests of existing and future tribal members in a productive and healthy reservation environment, including protection of the land, animals, and plants of the Reservation environment from adverse impacts of utility operations;
 - c. to allow the Tribe to provide utility services and to own and control utility infrastructure and equipment;
 - d. to avoid unnecessary segmentation of utility service within the Reservation among multiple utilities owned or controlled by non-tribal members;
 - e. to avoid duplication of facilities that may increase the costs of service to the Tribe, Tribal Members, and non-members;

- f. to minimize disputes between utilities owned or controlled by non-tribal members that may result in inconvenience or diminished efficiency of services provided to the Tribe, Tribal Members, and non-members within the Reservation;
 - g. to regulate all utilities located, operating or providing services within the Reservation to the extent permitted by federal law, including with respect to rates; utility easements; safety; connection of service; disconnection and reconnection of service; deposit and overdue payment charges; and other utility activities; and
 - h. to prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services.
2. The regulation of utilities within the Reservation by the Tribe pursuant to this Title shall be deemed exclusive and shall preempt all other regulatory authority with respect to all utilities located, operating, or providing services within the Reservation.

§1.04. Interpretation of the Code

This Code shall be liberally construed and applied to carry out its purpose and intent.

§1.05. Definitions

In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

1. "Commission" means the Tribal Utility Commission created and established under this Title.
2. "Commissioner" means one of the members of the Commission.
3. "Corporation" means a private or public corporation incorporated under the laws of any nation, state or tribe, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency, but shall not mean any tribal entity created under Title 23 of this Code.
4. "Director" means the Tribal Utility Commission Director acting in his official capacity.
5. "Municipality" means any town, city, or other local government, however organized, but shall not include the Tribe.
6. "Rate" means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any utility for any service, product, or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.
7. "Reservation" means the White Earth Reservation.
8. "Service" means the furnishing by any utility of any service product or commodity, and the installation, removal, or repair of equipment or facilities for delivering or measuring the service product or commodity of any utility.
9. "Tribal Council" means the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa

Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984). The Tribal Council is also known as the White Earth Reservation Business Committee.

10. "Tribal Utility Commission Account" means the account in a federally-insured financial institution established pursuant to Title 23, Chapter 3, Section 16.
11. "Tribe" means the White Earth Band of Ojibwe.
12. "Tribal Member" means an enrolled member of the White Earth Band of Ojibwe.
13. "Trust Lands" or "Trust Property" means all land or real property under the jurisdiction of the Tribe which is held for the White Earth Band of Ojibwe by the United States for the benefit of the Tribe and the members of the Tribe, and any additional lands acquired for the Tribe by the United States for the benefit of the Tribe or members of the Tribe.
14. "Utility" means any person, corporation or other legal entity, its lessee, trustee, and receiver, now or hereafter located, operating or providing services within the Reservation, or maintaining, or controlling within the Reservation, equipment or facilities for furnishing at retail price telecommunications services; pipeline utilities engaged in the transportation of gas, oil, coal, and water; electric utilities engaged in the generation and distribution of light, heat, or power; gas utilities engaged in the distribution of natural, synthetic, or artificial gas; water companies for the storage and distribution of water for domestic or other beneficial use; heating utilities engaged in the distribution of heat; and all other utilities which operate, maintain, or control any equipment or facilities used to provide a public utility service within the reservation.

CHAPTER 2. GENERAL PROVISIONS

§2.01. Territory, Persons and Property Affected

To the extent not prohibited by federal law, this Title shall apply to the following:

1. The White Earth Reservation within the historical boundaries of the Reservation established in Section 16, of the Act of June 18, 1934 (48 Stat. 984), including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;
2. All persons and property within any geographical area referred to in Subsection (1) that are subject to the jurisdiction and governmental power of the Tribe.

§2.02. Intent of Tribe to Preempt State Law

The White Earth Band of Ojibwe, not the State of Minnesota or its political subdivisions, has exclusive jurisdiction over utilities operating within or maintaining, or controlling any equipment or facilities within the Reservation for furnishing at retail price any utility service product or commodity to any customer. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over utilities, Tribal Members and non-Tribal Members within the Reservation, and the land, water, and air of the reservation. In order to provide for the equitable regulation of utilities within the Reservation and protection of the Tribe, Tribal Members and nonmembers within the Reservation, it is the express intent of the Tribal Council that this Title shall preempt any law enacted by the State of Minnesota or local jurisdictions purporting to regulate utilities within the Reservation.

§2.03. Sovereign Immunity

The White Earth Band of Ojibwe, and all its constituent parts, including the Tribal Utility Commission established pursuant to this Title, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tribal Utility Commission, except that after exhaustion of administrative remedies as provided in Chapter Fourteen, a party aggrieved by a decision of the Commission may petition the Tribal Court for review of such decision. Nothing in this Title, nor any petition to the Tribal Court, nor any enforcement action taken pursuant to this Title, including the filing of suit by the Commission for the collection of penalties, or interest, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect.

CHAPTER 3. TRIBAL UTILITY COMMISSION

§3.01. Creation of Commission

The Tribe hereby creates and establishes, pursuant to this Title, the Tribal Utility Commission, a governmental agency and subordinate subdivision of the Tribe.

§3.02. Number and Selection of Commissioners

The Commission shall comprise five voting members appointed by the Tribal Council. At least three Commissioners shall be members of the White Earth Band of Ojibwe. Each member of the Commission must be a resident of the White Earth Reservation and remain so throughout his or her term of office.

§3.03. Terms of Office

Commissioners shall serve three year terms and shall hold office until their successors have been appointed and have qualified; provided however, the first Commission shall have terms of office as described in Section 4.

§3.04. First Commission

Two Commissioners appointed to the first Commission shall serve terms of three years. Two Commissioners appointed to the first Commission shall serve terms of two years. The remaining Commissioner appointed to the first Commission shall serve a term of one year.

§3.05. Vacancies

If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the Council shall declare his or her position vacant and shall appoint another person to fill the position. The term of office of any person appointed to replace an initial Commissioner shall be for the balance of any unexpired term for such position.

§3.06. Resignation

Any Commissioner may resign by delivering a written resignation to the President of the Commission, or in the case of a resignation by the President, to the Vice-President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Commissioner's resignation under this Section or removal under Section 7 below shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

§3.07. Removal

A Commissioner may be removed by the Tribal Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance, or nonfeasance or for misconduct in office, but, except as

provided below in this Section, only after a hearing before the Tribal Council, and only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his or her behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. A decision on removal by the Tribal Council shall be final.

§3.08. Officers of the Commission

1. The President of the Commission shall be appointed by the Tribal Council from among the members of the Commission and shall hold office for a term of two years. No Commissioner may serve as President for more than two consecutive terms. The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.
2. The Vice President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Whenever the President is unable to preside or fulfill his duties as President, the Vice President shall do so, and when so acting, shall be clothed with all of the powers and duties of the President.
3. The Secretary Treasurer of the Commission shall be the Tribe's Secretary Treasurer and shall perform the functions assigned.

§3.09. Duties of President

The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

§3.10. Offices of Tribal Utility Commission

The Commission shall be provided with suitable office space, necessary office furniture, stationery, books, maps, office technology, communications equipment, and office supplies, the expense thereof to be paid by the Tribe pursuant to appropriations for such purposes.

§3.11. Compensation of Commissioners

Compensation of Commissioners, if any, shall be determined by the Council and shall be paid from the General Fund of the Tribe.

§3.12. Quorum

Three Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten days in any one instance.

§3.13. Majority Vote

All questions rising in connection with the action of the Commission shall be decided by majority vote.

§3.14. General Procedures of the Commission

The Commission shall in all cases conduct its proceedings in the manner most conducive to the proper dispatch of business and to the ends of justice. No Commissioner shall participate in any hearing or proceeding in which such Commissioner has any direct personal pecuniary interest. The Commission may make or amend such general rules or orders as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as closely as possible to those in use in the Tribal Court of the White Earth Band of Ojibwe. Any party may appear before the Commission and may be heard in person or by attorney. Every vote and official action of the Commission shall be entered into a record and its proceedings shall be published upon the request of any interested person. Every Commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the Commission.

§3.15. Tribal Utility Commission Director

The Council shall appoint a Tribal Utility Commission Director who shall be a full time paid employee of the Tribe and shall be subject to all applicable provisions of the personnel policies and procedures manual of the Tribe. The Director shall have primary responsibility for the day-to-day operation of the Commission, pursuant to delegation of authority by the Commission, including supervision of all Commission employees. The Director shall not be a member of the Commission.

§3.16. Tribal Utility Commission Account Established

1. There is hereby authorized and directed to be established an account in a federally insured financial institution to be known as the Tribal Utility Commission Account.
2. The Tribal Utility Commission Account shall be an interest-bearing account and the funds therein may be invested and reinvested as approved by the Council.

3. No monies shall be released or expended from the Tribal Utility Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.
4. All fees, penalties, interest, charges, or other monies collected by the Commission in the administration and enforcement of this Title shall be deposited in the Tribal Utility Commission Account.

CHAPTER 4. POWERS AND DUTIES OF COMMISSION

§4.01. Jurisdiction and Powers of Commission

1. The general jurisdiction of the Commission shall extend to and include:
 - a. Telecommunications companies engaged in the furnishing of telecommunications services, including telegraph and telephone companies engaged in the transmission of messages or conversations by voice or electronic means;
 - b. Pipeline utilities engaged in the transportation of gas, oil, coal, and water;
 - c. Electric utilities engaged in the generation and distribution of light or power;
 - d. Gas utilities engaged in the distribution of natural, synthetic or artificial gas;
 - e. Water companies engaged in the storage and distribution of water for domestic or other beneficial use;
 - f. Heating utilities engaged in the distribution of heat; and
 - g. All other utilities that operate, maintain, or control any equipment or facilities within the Reservation.
2. Nothing in this Title shall prohibit the Commission from making any order affecting rates, contracts, services rendered, adequacy or sufficiency of facilities, of any utility owned and operated by any state or by any political subdivision of any state or any utility that is not operated for profit.
3. The Commission shall have power to:
 - a. investigate all methods and practices of utilities or other persons subject to the provisions of this Title;
 - b. require utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Commission not contrary to law;
 - c. require filing of reports, rates, classifications, schedules, time tables, standards, guidelines, or other internal utility documents in effect and used by such utilities or other persons and all other information desired by the Commission relating to investigations or any of the duties assigned to the Commission by this Title;
 - d. compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the Tribe, in any court having jurisdiction over the parties or over the subject matter, including but not limited to the Tribal Court;

- e. hold hearings on good cause shown or on its motion, and to provide notice thereof prior to a hearing that is reasonable given the nature, scope, and importance of the hearing;
- f. require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services supplied by any utility by any firm or corporation owned or controlled directly or indirectly by the utility or any affiliate, subsidiary, parent, or associate thereof, or any corporation whose controlling stockholders are also controlling stockholders of the utility, before permitting the value of such materials or services to be included in valuations or cost of operations for rate-making purposes; provided, however, that if unreasonable profits have been made in any such transactions, valuations of such materials and services may be reduced accordingly;
- g. employ and fix the compensation of rate experts, engineers, cultural resource specialists, and all other expert help, and assistance for rate increase application hearings, investigations, and proceedings relating to utilities;
- h. retain and use the services of only the tribal attorneys or other attorneys designated by the Tribal Council upon a contract approved by the Tribal Council and the Secretary of the Interior;
- i. employ and use the services of only the tribal accountants or other accountants designated by the Tribal Council upon a contract approved by the Tribal Council;
- j. cooperate with and receive technical and financial assistance from the United States or any state for any purposes relating to utilities subject to the jurisdiction of the Commission, including the authority to file any reports, hold hearings, and promulgate regulations required for any such purposes;
- k. promulgate and enforce rules and regulations consistent with this Title, generally applicable procedural rules of the Tribe, and the Constitution;
- l. require by regulation the filing of any forms or reports necessary for implementation of this Title;
- m. examine under oath either orally or in writing any agent, officer, or employee of any utility subject to regulation under this Title, or any other witness with respect to any enforcement action authorized by this Title;
- n. delegate to an individual Commissioner, or to the Director or other members of the Commission staff or Tribal staff, such of its functions as may be necessary to administer this Title efficiently; provided that the Commission may not delegate its powers to promulgate rules and regulations, to hear or rule upon any complaints filed with the Commission pursuant to this Title, or to take any action reserved to the Commission by this Title;
- o. adopt by regulation a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records;

- p. adopt rules and regulations in furtherance of the purposes of this Title pursuant to Chapter 4, Section 10; and
 - q. exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provision in this Title.
4. Except as provided in this Title, the Commission may exercise one or more of the above powers, in its discretion, and may, by appropriate rule or regulation issued after notice and hearing, assume regulatory authority over one or more classes of utilities within the Reservation. Failure to exercise one or more powers delegated under this Title shall not be deemed a waiver of or a limitation on the Commission's ability to exercise such powers in the future.
 5. The Commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate, in accordance with the provisions of this Title, every utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the Commission.
 6. The Commission shall supervise all rates, tariffs, and charges of all utilities located or operating within the Reservation. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce all rates, tariffs, and charges of all utilities. Whenever the Commission, after hearing, shall find any existing rates, tariffs, charges, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this Title, the Commission by order shall fix reasonable rates, joint rates, wheeling rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.
 7. Whenever the Commission shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The Commission shall, pursuant to regulations promulgated in accordance with Chapter 4, Section 10, and after a public hearing, prescribe rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any utility. On demand and tender of rates, such utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules and regulations.

§4.02. Accounting Systems

1. The Commission shall establish a system of accounts to be kept by utilities subject to its jurisdiction. A utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the Commission. Where optional accounting is prescribed by a federal agency or authority, the Commission may prescribe which option is to be followed.
2. Every utility engaged directly or indirectly in any business other than that of a utility shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all the other business, in which case all the provisions of this Title shall apply to the books, accounts, papers, and records of the other business.
3. Every utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the Commission and to comply with all directions of the Commission relating to these books, accounts, papers, and records.

§4.03. Annual Reports by Utilities

1. The Commission may require any utility to file annual reports in such form and content, having regard for the provisions of this Title, as the Commission may require, and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed. The Commission may require that reports be verified by an officer of the filing utility.
2. The Commission may require that the financial statements in the annual report of a utility be examined by an independent certified public accountant and the accountant's opinion thereof included in the annual report filed with the Commission. The Commission may require the examination and audit of all utility accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission.

§4.04. Depreciation Rates and Practices

The Commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion in respect of utility property, and every utility shall conform its depreciation, amortization, or depletion accounts to the rates and methods fixed by the Commission.

§4.05. Right of Entrance; Inspection

The Commissioners and duly authorized officers and employees of the Commission, during regular business hours, may enter upon any premises of a utility for the purpose of making examinations and tests and to inspect the accounts, books, papers, and documents, of any utility for the purpose of exercising any power or duty provided for in this Title, and may set up and use on the premises any apparatus and appliance necessary therefor. Such utility shall have the right

to be represented at the making of the examinations, tests, and inspections. The utility and its officers and employees, shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the Commissioners and any person or persons designated by the Commission for such duties.

§4.06. Production of Records

The Commission may require, by order served on any utility in the manner provided herein for the service of orders, the production, at a reasonable time and place as the Commission may designate, of any books, accounts, papers, or records of the utility relating to its business or affairs within the Reservation, pertinent to any lawful inquiry and kept by such utility in any office or place within or without the Reservation, or, at its option, verified or photostatic copies in lieu thereof, so that an examination thereof may be made by the Commission or under the direction of the Commission.

§4.07. Investigation

The Commission, upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the condition and operation of any utility or any part thereof. In conducting such investigations, the Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties notice and an opportunity for a hearing. The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the Commission while engaged in any such hearing, investigation, or proceeding shall, upon appropriate order of the Commission, be paid by the utility being investigated or involved in such hearing or proceeding. A utility liable for such costs and expenditures shall receive appropriate notice and opportunity to demand a hearing before the Commission on such costs.

§4.08. Hearings; Examiner

The Commission may, in addition to the hearings specifically provided for under this Title, conduct any other hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Title. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under Section 9, below. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Commission. Whenever it shall appear to the satisfaction of the Commission that all of the interested persons have agreed concerning the matter at hand, the Commission may issue its order without a hearing.

§4.09. Appointment of Examiner; Power of Examiner

The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Title with respect to any such hearing.

§4.10. Rules of the Commission

1. The Commission shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers, including but not limited to rules and regulations relating to:
 - a. internal operational procedures of the Commission and its staff;
 - b. interpretation and application of this Title as may be necessary to carry out its duties and exercise its powers;
 - c. supervision and regulation of the rates, wheeling rates, charges, tariffs, rules, regulations, practices, equipment, appliances, facilities, service, depreciation rates and practices, accounting systems, annual reports, and all other aspects of all utilities;
 - d. any reports or other information required by, or necessary to implement, this Title; and
 - e. the conduct of inspections, investigations, complaints, hearings, enforcement actions and other powers of the Commission authorized by this Title.
2. The Commission's rules shall provide for hearings for all interested persons upon reasonable notice, and shall ensure their right to present oral or written testimony.
3. No rule or regulation of the Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Tribal Secretary and in the office of the Clerk of the Tribal Court. The copy shall bear the signature of at least three Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Title.
4. The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all rules and regulations of the Commission promulgated pursuant to this Title.

§4.11. Commission Employees and Expenses

1. The Commission may employ such persons or entities and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.
2. Upon the approval of the Council by resolution, the Commission may utilize regular Tribal staff to exercise the duties and responsibilities set out in this Title.
3. The Commission may delegate to the Tribal staff by rule such of its functions as may be necessary to administer this Title efficiently, consistent with the limitations of this Title.

4. The total amount disbursed by the Treasurer in any one fiscal year for the payment of salaries, expenses, and incidentals of the Commission shall not exceed the amount in the Commission budget for that fiscal year. The Commission shall submit to the Tribal Council a line item proposed budget for the next fiscal year not later than May 1st of each year. After its approval by the Tribal Council, such budget shall be the official budget of the Commission.
5. The Commission may require that a utility include a charge in its rates for the purpose of recovery of the cost of regulation of the utility by the Commission.

§4.12. Bonds

1. The Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible therefor, to give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.
2. The premiums on any bonds required of the Commission members, officials, and its employees shall be paid from the Tribal Utility Commission Account as authorized in the Commission budget.

§4.13. Records of the Commission

1. The Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission, including minutes of all meetings of the Commission.
2. Such records shall be maintained at the offices of the Commission and shall not be removed from that location absent the consent of the Commission by formal resolution.
3. Such records shall be subject to audit any time upon the direction of the Tribal Council, and shall be audited not less than once each year by an independent auditor selected by the Council.
4. The records of the Commission are public records of the Tribe. Such records shall be available for public inspection and copying during the Commission's regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission.
5. The Commission shall establish regulations needed to protect confidential, trade secret, and proprietary records.

CHAPTER 5. DUTIES OF PUBLIC UTILITIES

§5.01. Duty to Provide Adequate Service

Each utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference. Every utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as will promote the safety, health, comfort, and convenience of its customers, employees, and the public. For purposes of this Title, the time of service shall be deemed adequate if it is established within 90 days after a person within the service area requests service. Upon application by a utility and upon a showing by the utility of good cause, the Commission may extend this period by no more than an additional 90 days.

§5.02. Duty to Establish Reasonable Charges for Services and Commodities

Each utility shall establish charges for services and commodities that are reasonable. Unjust and unreasonable rates or charges made, demanded, or received by any utility or by any two or more utilities for any product, commodity or service, are prohibited and unlawful.

§5.03. Duty to Follow Prescribed System of Accounts

When the Commission shall have prescribed the forms for accounts and records to be kept by any utility for any of its business, it thereafter shall be unlawful for such utility to keep any accounts or records of such business other than those prescribed by the Commission and those prescribed by or under authority of the United States, with the exception of such accounts and records as shall be explanatory of and supplemental to the accounts and records prescribed by the Commission.

§5.04. Duty to Pay Interest on Customer Deposits

A utility may require from a customer a deposit for service in accordance with Commission rules, subject to the utility's duty to pay interest on all customer deposits held by such utility at a rate to be determined by the Commission.

§5.05. Duty to Prohibit Unreasonable Preferences or Advantages

No utility shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or to any particular character of traffic or service in any respect whatsoever, nor subject any particular person, firm, corporation, company, or locality, or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect. No utility, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand, collect, or receive from any person, firm, company, or corporation, a greater or lesser compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, company, or corporation for doing a like and contemporaneous service under the

same or substantially similar circumstances and conditions. Nothing in this chapter shall prohibit a utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the authority under which such utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the Commission.

§5.06. Duty to Obey and Comply with Orders of the Commission

Every utility shall obey and comply with each requirement of every order, decision, direction, rule, or regulation made or prescribed by the Commission in any manner in any way relating to or affecting its business as a utility, and shall do everything necessary or proper in order to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

§5.07. Duty to Maintain Service During Cold Weather

Every utility that provides service required to heat residences shall maintain such service during cold weather. The Commission shall promulgate regulations setting out procedures for and limitations on a utility's disconnection of utility customers who are unable to pay for utility service during cold weather. Such regulations shall include the following:

1. a definition of "cold weather";
2. a process for identification of utility customers:
 - a. whose household incomes are less than 185% of the federal poverty level;
 - b. who are bedridden, suffer from a significant disability, or who are inflicted with a serious, life-threatening disease, or
 - c. for whom the disconnection of utility service would have other serious, life-threatening effects;
3. an energy assistance program funded through utility rates to be used to pay for utility services required to heat the residences of customers identified in Subsection 2 in the event that such customers are unable to pay for such services;
4. verification of customer income by an energy assistance program, unless the customer is automatically eligible as a recipient of any form of public assistance that uses income eligibility in an amount at or below the income eligibility in Subsection (2)(i);
5. a provision that eligible customers receive from the energy assistance provider or other entity budget counseling and referral to weatherization, conservation, or other programs likely to reduce the customer's consumption of energy and need for energy assistance; and
6. other provisions that in the Commission's discretion are required to avoid cold weather disconnections.

§5.08. Duty to Be Liable for Improper Action

If a utility does, causes to be done, or allows any act, matter, or thing prohibited by this Title, or if a utility fails to do any act required by this Title, such utility shall be liable to the person affected thereby for all loss, damages, and injury caused thereby or resulting therefrom. Any person may bring an action in Tribal Court to recover for such loss, damage, or injury. If the finder of fact finds that such act or omission was willful, the Court, in addition to the actual damages, may award punitive damages. No recovery under this Section shall affect in any manner a recovery by the Tribe of any fine or penalty provided for in this Title or the power to punish for contempt.

CHAPTER 6. ELECTRIC UTILITIES

§6.01. Definitions

In this chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

1. "Assigned service area" means the geographical area in which the boundaries are established as provided in this Chapter within which a specified electric utility shall provide electric service to customers on an exclusive basis.
2. "Customer" means a person contracting for or purchasing electric service at retail from an electric utility.
3. "Electric service" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.
4. "Electric line" means lines for conducting electric energy used for distributing electric energy directly to retail customers.
5. "Electric utility" means any person, his lessee, trustee, and receiver, separately or jointly, now or hereafter operating, maintaining or controlling within the White Earth Reservation equipment or facilities for providing electric service at retail and which falls within the definition of "utility" under this Title, and includes but is not limited to facilities owned by a municipality or by a cooperative electric corporation or association.

§6.02. Utility to Furnish Information on Reservation Easements

Within 180 days of the effective date of this Title, each electric utility providing service on the Reservation shall provide to the Commission a list of all easements it owns on the Reservation and a copy of each such easement.

§6.03. Public Policy Regarding Assigned Service Areas for Electric Utilities

In order to encourage the rational development of coordinated Reservation-wide retail electric service within the limited geographic scope of the Reservation, to eliminate or avoid unnecessary

duplication of electric utility facilities, to limit the cost and complexity of utility regulation by the tribe, and to promote economical, efficient, and adequate electric service to residents of the Reservation, the Tribe may, subject to Sections 4 and 6, designate all land within the Reservation boundary as a single service area or may divide such lands into the least number of service areas possible taking into account cost and any practical limitations that may prevent the creation of a single service area. Within 180 days of the effective date of this Title, the Commission shall establish regulations implementing the provisions in this Chapter.

§6.04. Assigned Service Areas

1. Within 60 days following the effective date of this Title, or when requested in writing by an electric utility and for good cause shown, whichever first occurs, and at such further time as the Commission may fix by order, each electric utility providing service on the Reservation shall file with the Commission a map or maps showing all its electric lines within the Reservation as they existed at the time of the request, and also showing all residences, businesses, and all other facilities on the Reservation receiving its service, together with an address list of residences, businesses, and other facilities within the reservation served by the utility. Upon such filing, it shall be conclusively presumed that any facility not included on such maps was not being served by the filing utility on the effective date of this Title.
2. On or before twelve months following the effective date of this Title, the Commission shall, after notice and hearing, establish assigned service area or areas within the Reservation and shall prepare or cause to be prepared a map or maps to show accurately and clearly the boundaries of the assigned service area of each electric utility providing electric service or maintaining an electric line within the White Earth Reservation.
3. To the extent that the Commission divides areas within the Reservation into more than one service area and the boundaries of such service areas are not clearly defined on the maps required by Subsection (a), the boundaries of each assigned service area shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on the effective date of this Title, provided that these boundaries may be modified by the Commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines, and shall be modified to take account of pre-existing contracts; and provided further that at any time after the effective date of this Title, the Commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after appropriate notice and hearing as provided for in this Title.
4. In those areas where, on the effective date of this Title, the existing electric lines of two or more electric utilities are so intertwined that the provisions of this Section cannot reasonably be applied, the Commission shall determine the boundaries of the assigned service areas for the electric utilities involved in such manner as will best promote the interests of the Tribe.

§6.05. Exclusive Service Rights

Except as provided under this Chapter, each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area, and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

§6.06. Modification of Assigned Service Areas; Purchase of Utility Facilities

1. Upon an order of the Commission that expands the assigned service area of an electric utility within the Reservation, such utility shall thereafter furnish electric service to its assigned service areas and purchase facilities owned by an electric utility that previously served the assigned service area.
2. The electric utility acquiring facilities in a newly assigned service area shall pay to the electric utility formerly serving the area the appropriate value of its properties within the area. In the event the electric utilities involved are unable within 90 days to agree as to the terms of the payment, the electric utility charged with acquiring additional facilities shall file an application with the Commission requesting that the commission determine the appropriate terms for the exchange or sale. After notice and hearing, the Commission shall determine appropriate terms and value of the facilities within the annexed area, and the transfer shall be made as directed by the Commission. In making that determination the Commission shall consider the original cost of the property, less depreciation, loss of revenue to the utility formerly serving the area, expenses resulting from integration of facilities, and other appropriate factors.
3. Until the determination by the Commission under Subsection (b), the facilities shall remain in place and service to the public shall be maintained by the owner. However, the owning electric utility serving the annexed area shall not extend service to any additional points of delivery within the annexed area, unless the Commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

§6.07. Service Extensions

1. Notwithstanding the establishment of assigned service areas for electric utilities as provided for in this Chapter, customers who require electric service with a connected load of 2,000 kilowatts or more shall not be obligated to obtain electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the Commission so determines after consideration of the following factors:
 - a. the electric service requirements of the load to be served;

- b. availability of an adequate power supply;
 - c. the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
 - d. the proximity of adequate facilities from which electric service of the type required may be delivered;
 - e. the overall public convenience, necessity and interest;
 - f. the preference of the customer;
 - g. any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements and the public convenience and necessity;
 - h. whether the proposed service interferes with existing services provided by the electric utility in whose service area extension is requested; and
 - i. duplication of services is not deemed unreasonable by the Commission.
2. Any electric utility may extend electric lines for electric service to its own utility property and facilities.

§6.08. Tribal Purchase of Electric Utility Property

1. Any public utility operating within the Reservation under a license, permit, right, or franchise shall be deemed to have consented to the purchase by the Tribe, for just compensation of its property operated within the Reservation under such license, permit, right, or franchise. The Tribe may purchase the property upon notice to the public utility as herein provided.
2. Whenever the Commission is notified by the Tribe or the public utility that the Tribe has, pursuant to law, determined to purchase the property of the public utility, and that the parties to the purchase and sale have been unable to agree on the amount to be paid and received therefor, the Commission shall set a time and place for a public hearing, after not less than 30 days' notice to the parties, upon the matter of just compensation or the matter of the property to be purchased. Within a reasonable time the Commission shall, by order, determine the just compensation for the property to be purchased by the Tribe. In determining just compensation, the Commission shall consider the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors. Commission expenses arising out of the exercise of its jurisdiction under this section shall be paid by the Tribe.
3. The Tribe may acquire the property of a public utility by resolution of the Tribal Council after a public hearing for which at least 30 days' published notice shall be given. Such resolution shall become effective when ratified by a majority of the qualified electors voting on the question at a special election to be held for that purpose, not less than 60 nor more than 180 days after the resolution of the Tribal Council.
4. Nothing in this chapter may be construed to preclude the Tribe from acquiring the property of a public utility by eminent domain proceedings; provided that damages to be paid in

eminent domain proceedings must include the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors.

§6.09. Enforcement of Chapter

1. If any electric utility violates or threatens to violate any of the provisions of this Chapter or interferes with or threatens to interfere with the system of any other electric utility, the Commission, after complaint, notice, and hearing, shall make its order restraining and enjoining such electric utility from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the Commission shall prescribe such terms and conditions as it shall deem reasonable and proper.
2. Nothing herein contained shall be construed to prohibit or limit any person whose property or business has been injured by reason of a violation of this Chapter by any electric utility, from bringing an action for damages in Tribal Court to recover damages.

§6.10. Terms by Which Facilities of One Utility May Cross Those of Another Utility

Whenever public convenience and necessity requires that an electric distribution or transmission line of any electric utility cross a line of another electric utility, and the electric utilities have failed to agree upon the terms and conditions or compensation for the same, the Commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation on which the crossing shall be permitted.

§6.11. Use by One Utility of the Facilities of Another Utility

Whenever upon hearing, after due notice, the Commission has found that the public convenience and necessity requires the use by one electric utility of the conduits, wires, poles, pipes or other equipment or any part thereof on, over or under any street or highway and belonging to another electric utility, and that such use will not result in irreparable injury to the owner or other users of such equipment, nor any substantial detriment to the service, and that such electric utilities have failed to agree upon such use or terms and conditions or compensation for the same, the Commission, by order, may direct that such use be permitted, and prescribe reasonable compensation and reasonable terms and conditions for such joint use. If such use is directed, the electric utility to which the use is permitted shall be liable to the owner or other users of such equipment for such damages as may result therefrom to the property of such owner or other users thereof.

CHAPTER 7. ELECTRIC UTILITY RATES AND TARIFFS

§7.01. Changes in Tariff Rates; Notice to Commission

No change shall be made by any electric utility in any tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, classifications, or service which have been filed and published by any electric utility pursuant to this Title, except after 30 days' notice to the Commission. Such notice shall state plainly the changes proposed. The Commission, for good cause shown, may allow changes upon less than the notice herein specified either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. Except as provided in this Chapter, any action by the Commission on a request for changes in tariff rates by an electric utility shall be in conformance with the complaint procedures in Chapter 14, below.

§7.02. Hearing by Commission on Proposed Change or Rates

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, rule, or regulation, increasing or decreasing or resulting in an increase or decrease in any rate, shall be filed with the Commission, the Commission may suspend by motion such rate, classification, contract, practice, rule, or regulation, provided that the period of suspension thereof shall not extend more than 11 months beyond the time when such change otherwise would go into effect. Upon complaint or upon its own initiative without complaint, the Commission may order a hearing, upon due notice, concerning the propriety of such rate, classification, contract, practice, rule or regulation. A utility must, at its own expense, notify customers of the date and place of a rate change hearing.
2. On such hearing, the Commission shall establish the rates, classifications, contracts, practices, rules, or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.
3. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, regulation, rule, or practice is just and reasonable shall be upon the electric utility making application therefor.
4. All such rates, classifications, contracts, practices, rules, or regulations not so suspended, on the expiration of 30 days after filing the same with the Commission, or of such lesser time as the Commission may grant, shall go into effect and be the established and effective rates, classifications, contracts, practices, rules, and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, to alter or modify them.

§7.03. Factors in Establishing Rate Adjustments

In reaching its decision on any request for change in tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, or classifications of an electric utility, the Commission may adopt, in whole or in part, those rates approved or allowed by the Minnesota Public Utilities Commission or adjacent rural electric cooperative for the same type or classification of service

provided to customers outside the boundaries of the Reservation. The Commission may adopt such state or rural electric cooperative rates on an interim basis pending full investigation and collection and analysis of data relevant to such rates. Nothing in this Section shall be construed to be a consent to jurisdiction of the State or its agencies and political subdivisions, or to the jurisdiction of a rural electric cooperative, with respect to the regulation of utilities within the boundaries of the Reservation, such jurisdiction residing exclusively with the Tribe and the Tribal Utility Commission pursuant to the provisions of this Title. The interim adoption by the Commission under this Section of any tariff, rate, joint rate, wheeling rate, fare, toll, schedule, or classification established by the Minnesota Public Utilities Commission or a rural electric cooperative shall not affect or in any way limit implementation and enforcement by the Commission of any other provision of this Title relating to tribal regulation of electric utilities within the Reservation.

§7.04. Non-Interference with Federal Programs

In establishing rates under this Chapter for any rural electric cooperative or similar entity operating or providing service within the Reservation; the Commission shall take into consideration the obligations of such electric utilities to the federal government, including the Rural Electrification Administration, and the requirements under federal law applicable to such obligations. Any rates established by the Commission with respect to cooperative electric utilities shall be established so as not to interfere with any federal loan requirements or other federal regulations relating to such electric utilities.

§7.05. Reasonable Rates

Every rate made, demanded, or received by any utility, or by any two or more utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. To the maximum reasonable extent, the Commission shall set rates to encourage tribal self-sufficiency with regard to electricity supply by means of energy conservation and on-Reservation renewable energy generation, and to limit the adverse environmental impacts of utility operations. Any disagreement as to reasonableness should be resolved in favor of the consumer and Tribal policy.

§7.06. Testing Meters; Gas; Electric [RESERVED]

[RESERVED]

§7.07. Publishing of Schedules

1. Every utility shall file with the Commission schedules showing all rates, tolls, tariffs, and charges which it has established and which are in force at the time for any service

performed by it within the Reservation, or for any service in connection therewith or performed by any utility controlled or operated by it.

2. Every utility shall file with and as a part of the schedule all rules which, in the judgment of the Commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable, as the Commission may by order direct.
3. Except as provided in Chapter 5, no utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the utility applicable thereto when filed in the manner provided herein; nor shall any person knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility on the effective date of this Title, may be contingent until schedules are filed.
4. Every utility shall keep copies of the schedules open to public inspection under rules and regulations as the Commission may prescribe.

§7.08. Rate Preference Prohibited

Except as provided in Chapter Five, no utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

CHAPTER 8. TELECOMMUNICATIONS COMPANIES

[RESERVED]

CHAPTER 9. PIPELINE UTILITIES

[RESERVED]

CHAPTER 10. GAS UTILITIES

[RESERVED]

CHAPTER 11. WATER COMPANIES

[RESERVED]

CHAPTER 12. HEATING UTILITIES

[RESERVED]

CHAPTER 13. OTHER PUBLIC UTILITIES

[RESERVED]

CHAPTER 14. PROCEDURES

§14.01. Complaints

1. On its own motion, or upon a complaint made against any utility by the Tribe, by another utility, by the Director of the Commission, or by any 15 consumers of the particular utility, that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the production, transmission, delivery or furnishing of any utility or any service and connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, or that such utility is in violation of any of the requirements of this Title, the Commission shall proceed, with notice, to make such investigation as it may deem necessary. The Commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.
2. The Commission shall, prior to any formal hearing, notify the utility complained of that a complaint has been made, and ten days after such notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as provided in this Section.
3. The Commission shall give the utility and the complainant ten days' notice of time and place when and where the hearing will be held and such matters to be considered and determined. Both the utility and complainant shall be entitled to be heard and to be represented by counsel.
4. Notice shall also be given to the Tribal Council, any affected municipality within the boundaries of the Reservation, and to any other persons the Commission shall deem necessary.
5. Service of notice of all hearings, investigations or proceedings pending before the Commission and of complaints, reports, orders and other documents shall be made personally or by mail as provided in this Title.
6. The Commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at times it may prescribe.
7. Whenever the Commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice. If, after making the summary investigation, the Commission becomes satisfied that sufficient grounds exist to warrant a hearing as to the matters investigated, it shall set a time and place for a hearing. Notice of the time and place for the hearing shall be made as provided under this Title.
8. Whenever, upon an investigation made under the provisions of this Title, the Commission shall find rates, tolls, charges, schedules, or joint rates to be unjust, unreasonable,

insufficient, preferential or unjustly discriminatory or otherwise unreasonable or unlawful, the Commission shall determine and by order fix reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unreasonable or unlawful.

9. Whenever the Commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful; or shall find any service which can be reasonably demanded cannot be obtained, the Commission shall determine and by order fix reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate, or otherwise unlawful; and shall make any other order respecting measurements, regulations, acts, practices, or services as shall be just and reasonable.
10. A copy of any order issued pursuant to this Section shall be served upon the person against whom it runs or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

§14.02. Customer Complaints

1. Upon a complaint made by a customer that a utility is furnishing any utility or any service in connection therewith in a manner that is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, or that a utility has violated any requirement of this Title as it may apply to such customer, the Commission shall proceed, with notice, to make such investigation as it may deem necessary. The Commission has the authority to resolve customer complaints against a utility whether or not the complaint involves a violation of this Title.
2. The Commission may resolve customer complaints through informal process. The Commission may delegate its authority to investigate and resolve customer complaints to Commission staff as it deems appropriate.
3. Whenever, upon an investigation made under the provisions of this Title, the Commission finds that a utility's actions are unreasonable, insufficient, preferential, unjustly discriminatory, or unlawful, the Commission shall provide such relief as it determines is reasonable to the complaining customer.

§14.03. Reparations Upon Complaint

When complaint has been made to the Commission concerning any rate or charge for any product or commodity furnished or service performed by any utility, and the Commission has found, upon a hearing after notice given as required by this Title, that the utility has charged an excessive or discriminatory amount for such product, commodity, or service, in excess of the schedules, rates, and tariffs on file with the Commission, or has discriminated under such schedules against the complainant, the Commission may order that the utility make due

reparation to the complainant therefor, with interest from the date of collection, if no discrimination will result from such reparation.

§14.04. Standards; Classifications

The Commission, after hearing upon reasonable notice upon its own motion or upon complaint, may ascertain and fix just and reasonable standards, classifications, rules or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable rules for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any utility. Any standards, classifications, rules, or practices now or hereafter observed or followed by any utility may be followed by it with the Commission, and the same shall continue in force until amended by the utility or until changed by the Commission as herein provided.

§14.05. Decisions of Commission; Rescission or Amendment

The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the utility and after opportunity to be heard, rescind, alter or amend any order or decision made by the Commission and may reopen any case following the issuance of an order or decision therein, or the taking of further evidence or for any other purpose. Any order rescinding, altering, amending or reopening a prior order or decision shall have the same effect as an original order or decision.

§14.06. Effective Date of Orders and Decisions

Every decision made by the Commission constituting an order or decision shall be effective and enforced 20 days after it has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which the decision was made or to their attorneys, unless the Commission shall specify a different date upon which the order or decision shall be effective.

§14.07. Conclusive Effect of Orders and Decisions of Commission

In all collateral actions or proceedings before any court or administrative agency of competent jurisdiction, findings of fact contained within the orders and decisions of the Commission which have become final shall be conclusive.

§14.08. Rehearings Before Commission

1. Within 20 days after service by the Commission of any decision constituting an order or decision, any party to the proceeding and any other person aggrieved by the decision and

directly affected thereby, may apply to the Commission for a rehearing in respect to any matters determined in the decision. The Commission may grant a rehearing on any or all matters raised in the request for rehearing, if in its discretion sufficient reason exists.

2. Applications for rehearing shall be governed by general rules which the Commission may establish. If, after rehearing, it shall appear that the original order or decision is in any respect unlawful or unreasonable, the Commission may reverse, change, modify or suspend the original action accordingly. No order of the Commission shall become effective until the time for filing an application for rehearing expires or while a rehearing is pending and until ten days after any such application for a rehearing is either denied, or the Commission has announced its final determination on rehearing, whichever first occurs.
3. The grant or denial of a rehearing shall be discretionary with the Commission. A request for rehearing shall not be deemed a condition precedent to judicial review of a final administrative order or decision.

§14.09. Subpoena; Witnesses; Fees; Mileage

The Commission or a Commissioner may issue subpoenas and all necessary process in proceedings pending before the Commission; and each process shall extend to all parts of the Reservation and may be served by any person authorized to serve process under this Code. Each witness who shall appear before the Commission, or at a hearing, or whose deposition is taken, shall receive for attendance the fees and mileage, if any, provided for witnesses in civil cases in Tribal Court.

§14.10. Oaths; Contempt; Examiner's Powers

The Commission or a Commissioners may administer oaths and examine witnesses in proceedings pending before the Commission. In case of failure on the part of any person to comply with any subpoena, or in the case of the refusal of any witness to testify concerning any matter on which a witness may be interrogated lawfully, the Tribal Court, on application of the Commission, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from the Tribal Court or a refusal to testify therein.

§14.11. Depositions

The Commission or any party to the proceedings may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the Reservation to be taken in the manner prescribed by law for taking depositions in civil actions in the Tribal Court.

§14.12. Testimony and Production of Records; Perjury

No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before, the Commission or any

Commissioner, or person designated by it to conduct hearings, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which the person shall have been compelled under oath to testify to, or produce documentary evidence of; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed in testimony.

§14.13. Copies of Documents as Evidence

Copies of official documents and orders filed or deposited according to law in the office of the Commission, certified by the Commission under the official seal of the Commission to be true copies of the originals shall be evidence in like manner as the original, in all matters before the Commission and in the Tribal Court.

§14.14. Orders and Findings in Writing

Every order, finding, authorization, or certificate issued or proved by the Commission under any provisions of this Title shall be in writing and filed in the office of the Commission. A certificate under seal of the Commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, shall be received as evidence in any proceeding as to the facts therein stated.

§14.15. Public Records

All decisions, transcripts, and orders of the Commission shall be public records, except those found to contain trade secret, proprietary, or trade secret information pursuant to regulations promulgated under Chapter 4, Section 13(e) of this Title.

§14.16. Transcribed Record to be Kept

A full and complete record shall be kept of all proceedings at any formal hearing of the Commission and all testimony shall be taken down by a reporter appointed by the Commission. A copy of the transcript shall be furnished on demand to any party to the proceedings upon payment of reasonable costs of reproduction.

§14.17. Appeal From Decision of Commission

Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission therein may seek judicial review therefrom in the Tribal Court. The rules of civil procedure and the civil provisions of this Code shall be fully applicable to any such judicial review.

§14.18. Judicial Review

1. Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission is entitled to judicial review thereof in Tribal Court. A preliminary, procedural, or intermediate Commission action is not subject to review.
2. An action in the Tribal Court seeking relief other than damages, attorneys fees or costs against the Commission or an officer or employee thereof shall not be dismissed nor relief be denied on the ground that it is against the Tribe or that the Tribe is an indispensable party and, for the limited purposes of this Title, the Tribe hereby waives the sovereign immunity of the Director, the Commission, and its members for the limited purpose of Tribal Court review of decisions of the Director and the Commission. Such waiver of immunity is further limited to prospective, equitable relief, including declaratory and injunctive relief, and does not include money damages of any kind.
3. Nothing herein either affects other limitations on judicial review or the power or duty of the Tribal Court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or confers authority to grant relief if any other tribal law that grants consent to suit expressly or impliedly forbids the relief which is sought.
4. When the Commission finds that justice so requires, it may postpone the effective date of an action taken by it, pending judicial review. On such conditions as may be required, and to the extent necessary, to prevent irreparable injury, the Tribal Court may issue all necessary and appropriate process to postpone the effective date of a Commission action or to preserve the status quo or rights pending conclusion of the review proceedings.
5. To the extent necessary to a decision and when presented, the Tribal Court shall decide all relevant questions of law, interpret constitutional provisions and all other tribal law, and determine the meaning or applicability of the terms of the Commission's action. The Tribal Court may:
 - a. compel Commission action unlawfully withheld or unreasonably delayed;
 - b. hold unlawful and set aside Commission action, findings, and conclusions found to be:
 - i. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - ii. contrary to any right, power, privilege, or immunity accorded by the Tribal Constitution or the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq., as amended;
 - iii. In excess of jurisdiction, authority, or limitations provided by law;
 - iv. without observance of procedure required by law;
 - v. in an adjudicatory proceeding only, unsupported by substantial evidence.
6. In making the foregoing determinations, the Tribal Court shall review the whole record before the Commission or those parts of it cited by a party.

§14.19. Stay on Judicial Review; Bond

1. In case the order or decision of the Commission is stayed or suspended by order of the Tribal Court, the order of the Tribal Court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the Tribal Court, payable to the Tribal Utility Commission, and sufficient in amount and security to insure the prompt payment by the party appealing of all damages caused by the delay in the enforcement of the order or decision of the Commission and of all monies which any person may be compelled to pay, pending appeal or review, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the Commission, in case such order or decision is sustained.
2. The Tribal Court, in case it stays or suspends the order or decision of the Commission in any matter affecting rates, also by order shall direct the utility affected to pay into Court, from time to time, there to be impounded until the final decision of the case, under such conditions as the Tribal Court may prescribe, all sums of money which may collect from any person in excess of the sum which such person would have been compelled to pay if the order or decision of the Commission had not been stayed or suspended. Upon a final determination of the Tribal Court, the Court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the utility shall fail to comply with the conditions of the stay bond, the Commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

§14.20. Appeal to Tribal Court of Appeals

Any party to an appeal to the Tribal Court who is aggrieved by the judgment in the Tribal Court upon judicial review of a final order or decision of the Commission, may prosecute an appeal to the Tribal Court of Appeals under the provisions of this Code.

CHAPTER 15. CIVIL ENFORCEMENT

§15.01. Purpose

The civil fines imposed under this Chapter are intended to be remedial and not punitive and are designed to compensate the tribe for the damage done to the peace, security, economy and general welfare of the Tribe and to compensate the Tribe for damages sustained by the Tribe by reason of violations of this Title and the costs incurred by the Tribe in enforcing this Title. The civil fines under this Chapter are also intended to coerce persons into complying with this Title and the laws and regulations of the White Earth Band of Ojibwe and not to punish such persons for violation of such laws and regulations.

§15.02. Civil Action for Penalties

In enforcing the civil infraction provisions of this Chapter, the Tribal Utility Commission shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Code. The Commission in such action shall have the burden of showing by the preponderance of the evidence that such person violated the applicable provision of this Title.

§15.03. Violation of This Title or Commission Order or Rule

Any person who violates or fails to comply with any provision of this Title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the Commission, or any part or provision thereof, shall be liable for a civil fine not to exceed \$1,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Title. The amount of the civil fine, when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the Tribal Court.

§15.04. Cumulative Fines

All civil fines accruing under this Chapter shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages; nor bar the power to punish for contempt; nor bar any criminal prosecution by the Tribal Court against any utility or any officer, director, agent, or employee thereof, or any other person.