

DEVILS LAKE SIOUX LAW AND ORDER CODE

TITLE 17: UTILITIES

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DEVILS LAKE SIOUX LAW AND ORDER CODE

TITLE 17: UTILITIES*

CHAPTER ONE LEGISLATIVE FINDINGS, PURPOSE AND SCOPE

§17-1-101. Legislative Findings.

- (1) **Sovereign Power to Regulate Utilities.** The power to regulate utilities is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of the Devils Lake Sioux Tribe except where it has been limited or withdrawn by federal law. The Tribe is a federally-recognized sovereign Indian tribe, organized and governed pursuant to a Constitution and ByLaws ratified April 14, 1944, and approved by the Secretary of the Interior on February 14, 1946, as amended from time to time thereafter. Pursuant to the Constitution and ByLaws, as amended, the Tribal Council is the governing body of the Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Council in Article VI, Sections 1, 3, 4, 6, 8, 9, 10, 12 and 13 of the Tribal Constitution, which authorize the Council to represent the Tribe and to negotiate with federal, state and local governments and with private persons and to make decisions not contrary to the Constitution and existing federal laws, to regulate and license all business and professional activities conducted upon the Reservation, to enact ordinances to regulate the conduct and domestic relations of the members of the Tribe and Indians from other tribes on the Reservation, to administer any funds within the control of the Tribe, to make expenditures from available funds, to deposit to the credit of the Tribe all tribal funds, to manage, lease or otherwise deal with tribal lands and tribal resources, to engage in any business that will further the economic well-being of tribal members, to purchase and to otherwise acquire land and other property for or on behalf of the Tribe, to manage, lease, permit, sell, or otherwise deal with tribal lands, interest in lands, or other tribal assets, and to prepare and present budgets to tribal members.
- (2) **Need For Adequate Utility Regulations.** As both the Indian and non-Indian populations within the boundaries of the Reservation increase, and as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate utility regulations grows ever more serious. Inasmuch as the Reservation is checkerboarded with both trust land and nontrust land, and inasmuch as both trust land and nontrust land are crisscrossed by electric lines, telephone lines, pipelines, rail lines and rights of way of both investor-owned and nonprofit utilities, adequate protection of utilities, the Tribe, tribal members and nonmembers requires that the Tribe regulate all utilities operating within the Reservation.

- (3) **Demonstrably Serious Impact of Utility Activities Upon the Economic Security, Health and Welfare of the Tribe and Tribal Members.** The rural nature of the Reservation, the fact that many homes of tribal members, especially HUD financed homes, are "all electric," that is, heated solely by electricity, the lack of any other practical heat source for many tribal members and nonmembers, the fact that 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, the lack of practical transportation of many elderly tribal members and nonmembers during the harsh, subzero winter months, the fact that tribal economic enterprises furnish the majority of jobs for both tribal members and nonmembers on the Reservation, the high cost of electricity within the Reservation, the urgency of minimizing the cost of electricity to the Tribe, tribal members and nonmembers and to economic enterprises owned by the Tribe and tribal members, all evidence the demonstrably serious impact of utility activities upon the economic security, health and welfare of the Tribe and tribal members.
 - (4) **Lack of State Jurisdiction.** The State of North Dakota lacks jurisdiction to regulate utilities within the Reservation for the reason that state regulation of such utilities interferes with the right of the Tribe and tribal members to make their own laws and be ruled by them and for the additional reason that utility regulation is preempted by the Tribe and the federal government with respect 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) **Unconstitutionality of State Utility Regulation Within the Reservation.** As applied, the statutes of the State of North Dakota purporting to regulate electric utilities operating within the Reservation and purporting to grant jurisdiction to the State Public Service Commission regulating utilities within the Reservation unconstitutionally deny utilities, the Tribe, tribal members and nonmembers equal protection under both state and federal law because they (a) exempt from regulation of the State Public Service Commission the rates, contracts, services rendered, adequacy, or sufficiency of facilities, or rules and regulations of any rural electric cooperative corporation or association or any utility owned and operated by the State or by any city, county, township or other political subdivision of the State, (b) delegate to incorporated municipalities the right to issue franchises to electric utilities, and (c) exempt from the requirement of obtaining a certificate of public convenience and necessity any electric utility operating within the limits of any municipality which is a political subdivision of the State, but (d) do not grant similar exemptions to any utility operating within the limits of the reservation of any federally-recognized Indian tribe and (e) do not delegate to any federally-recognized Indian tribe the right to issue franchises to electric utilities.
 - (6) **Failure of State Law to Regulate Electric Utilities Not Operated for Profit Within the Reservation.** Statutes of the State of North Dakota purporting to regulate electric utilities operating within the Reservation and purporting to grant jurisdiction to the State Public Service Commission are altogether inadequate in protecting either the
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Tribe, tribal members, nonmembers or any such utility because such statutes exempt from state regulation the rates, contracts, services rendered, adequacy, or sufficiency of facilities, or rules and regulations of any electric utility that is not operated for profit, and yet purport to authorize the State Public Service Commission to prevent extension of service to the Tribe, a tribal member or a tribal member's business on trust land, or to a tribal business on trust land, by an electric utility operating for profit within the Reservation. Such service may be denied under state law if a rural electric cooperative corporation or association objects to the proposed extension of service and the investor owned utility does not prove to the satisfaction of the Commission that such extension of service is required by public convenience and necessity. Such extension of service may be denied regardless of whether such service economically benefits the Tribe or tribal member or whether extension of such service will provide the Tribe or tribal member a more secure source of electrical power. Such application of state law results in no state legal controls whatsoever over whether any rural electric cooperative corporation or association operating within the Reservation charges excessive amounts for electricity or service, or discriminates against the Tribe or tribal members and nonmembers, and unconstitutionally deprives the Tribe, tribal members and nonmembers from choosing electric service from whichever electric utility is most economically beneficial and provides the most secure source of electrical power.

- (7) **Failure of State Law to Designate Service Area Boundaries of Electric Utilities.** Statutes of the State of North Dakota purporting to regulate electric utilities operating within the Reservation and purporting to grant jurisdiction to the State Public Service Commission are altogether inadequate in protecting the Tribe, tribal members, nonmembers or any such utility because such statutes fail to make any designation of service-area boundaries for any electric utilities, resulting in wasteful duplication of investment, facilities and service of utilities, a confused intermingling of electric power lines of different electric utilities which crisscross tribal and individually owned trust land within the Reservation and inherently provide many tracts of trust land with a choice of service of different electric utilities, and yet purport to authorize the State Public Service Commission to prevent extension of service to the Tribe or a tribal business on trust land or to a tribal member or tribal member's business on trust land by an electric utility operating for profit within the Reservation if a rural electric cooperative corporation or association objects to the proposed extension of service and the investor owned utility does not prove to the satisfaction of the Commission that such extension of service is required by public convenience and necessity. Such extension of service may be denied regardless of whether adequate facilities exist for service by one of several different electric utilities and regardless of whether extension of such service will economically benefit the Tribe or tribal member or whether extension of such service will provide the Tribe or tribal member a more secure source of electrical power. Such application of state law to designate service boundary area for electric utilities violates tribal sovereignty and federal law by authorizing excessive charges for electric energy for tribal members and the Tribe who must bear the ultimate cost of such duplication, and unconstitutionally deprives both the Tribe and tribal members from choosing electric service from the electric utility which is most economically beneficial and provides the most secure source of electrical power all in violation of tribal sovereignty and federal law.

- (8) **Illegal Collection of State Taxes By Utilities.** Despite the fact that both tribal members and the Tribe are immune from state taxes for all utility services provided them within the Reservation, electric utilities operating within the Reservation have for many years illegally collected the 2% state gross receipts tax and state income tax upon utilities with respect to services provided to both tribal members and the Tribe within the Reservation. Such illegal collection of state tax cannot be expected to stop unless tribal regulation of such utilities prohibits it as a matter of tribal law.
- (9) **Consensual Relations Between Utilities Operating Within the Reservation and the Tribe, Tribal Members and Nonmembers.** The Council finds that every utility which enters and operates within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe, to provide services, operate facilities, construct and erect pipelines, transmission lines, poles, towers and other improvements upon and across Reservation lands owned by Indians, non-Indians and the Tribe. The Council further finds that the services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe. The Council further finds that regulation of such utilities located, operating or providing services upon the Reservation is an essential governmental function of the Tribe and that regulation of every such utility located, operating or providing services upon the Reservation by the State of North Dakota or any municipality or political subdivision of the State is an infringement upon the right of the Tribe to make its own laws and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe.

§17-1-102. **Purpose.**

The Council hereby declares it to be in the public interest that all utilities located, operating or providing services within the Reservation be regulated as hereinafter provided in order to provide all retail consumers of utility services and commodities within the Reservation with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of such utilities and their need to construct facilities to provide such services and commodities or otherwise to obtain utility supplies, to avoid unnecessary duplication of facilities which increase the costs of service to the consumer and to minimize disputes between utilities which may result in inconvenience or diminished efficiency in service to such consumers. The purpose of this legislation shall also be to regulate all utility policies located, operating or providing services within the Reservation with respect to matters other than rates, including connection of service, disconnection of service, re-connection, deposit and overdue payment charges and to prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services. 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.

§17-1-103. Benefits of Tribal Government.

Among the benefits provided by the tribal government to all utilities located, operating or providing services within the Reservation are the following:

- (1) The provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;
- (2) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and
- (3) the orderly development and protection of the Reservation lands, resources and communities.

§17-1-104. Territory, Persons and Property Affected.

This Title shall apply to the following:

- (1) The Devils Lake Sioux Reservation, 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, within the boundaries of the Reservation as established in Article IV of the Treaty of February 19, 1867, and such other lands, islands, waters, or any interests thereafter added to the Reservation at any time, to the extent not prohibited by federal law.
- (2) All persons and property within any geographical area referred to in Subsection (1) above that is subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal law.
- (3) Final adjudication by a court of competent jurisdiction that this Title does not apply to land, persons or property in specific circumstances shall not affect its application to land, persons or property in any other circumstances.

CHAPTER TWO
GENERAL PROVISIONS

§17-2-101. 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 10, Chapter Four 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.

The provisions of this Title shall not be applicable to any sale of natural, manufactured or mixed gas or electricity by a utility to another utility for resale within the Reservation. No person shall be deemed to be a utility if he furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a utility if he furnishes service to occupants of a manufactured home or trailer park owned, leased or operated by such person. No person shall be deemed to be a utility if he produces or furnishes his services to less than 25 persons.

- (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) "Service" means the furnishing by any utility of any service product or commodity; the installation, removal, or repair of equipment or facilities for delivering or measuring the service product or commodity of any utility.
- (8) "Tribal Utility Commission Account" means the account in a federally-insured financial institution established pursuant to §17-3-116.
- (9) "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 Reservation equipment or facilities

for furnishing at retail 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 within the Reservation. The provisions of this Title shall not be applicable to any sale of natural, manufactured or mixed gas or electricity by a utility to another utility for resale within the Reservation. No person shall be deemed to be a utility if he furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a utility if he furnishes service to occupants of a manufactured home or trailer park owned, leased or operated by such person. No person shall be deemed to be a utility if he produces or furnishes his services to less than 25 persons.

§17-2-102. Intent of Tribe to Preempt State Law.

The Devils Lake Sioux Tribe, not the State of North Dakota 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 any utility service product or commodity to any customer. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over Indians and non-Indians on the reservation. In order to provide for the equitable regulation of such utilities and protection of such utilities, the Tribe, tribal members and nonmembers within the Reservation, it is the express intent of the Council that this Title shall preempt any law enacted by the State of North Dakota or local jurisdictions within the State purporting to regulate such utilities located, operating or providing services within the Reservation.

§17-2-103. Sovereign Immunity.

The Devils Lake Sioux Tribe, and all its constituent parts, including the Tribal Utility Commission established pursuant to this Chapter, 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 the decision of the Commission may petition the Tribal Court for review of the decision by the Commission. Nothing in this Title, nor any such 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 the any such claim arises out of the same transaction or occurrence, or in any other respect.

CHAPTER THREE
TRIBAL UTILITY COMMISSION

§17-3-101. 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.

§17-3-102. Number and Selection of Commissioners.

The Commission shall comprise five voting members appointed by the Council. At least three Commissioners shall be members of the Devils Lake Sioux Tribe. Each member of the Commission must be a resident of the Fort Totten Indian Reservation and remain so throughout his term of office.

§17-3-103. 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 §17-3-104.

§17-3-104. 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.

§17-3-105. 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 position vacant and shall appoint another person to fill the position. Terms of office of all persons appointed to replace the initial Commissioners shall be for the balance of any unexpired term for each such position.

§17-3-106. Resignation.

Any Commissioner may resign by delivering a written resignation to the 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 §17-3-108 below shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

§17-3-107. Removal.

A Commissioner may be removed by the 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 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-Treasurer. A decision on removal by the Council shall be final.

§17-3-108. President of the Commission.

The 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. No Commissioner may serve as President for two consecutive terms.

§17-3-109. 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.

§17-3-110. Offices of Tribal Utility Commission.

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

§17-3-111. 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. All fees received or charged by the Commission for any act or service rendered by the Commission in its official capacity, shall be accounted for and paid over monthly to the Tribe and shall be credited to the General Fund of the Tribe.

§17-3-112. 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.

§17-3-113. Majority Vote.

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

§17-3-114. 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 nearly as possible to those in use in the Tribal Court of the Devils Lake Sioux Tribe. 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.

§17-3-115. 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. 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.

§17-3-116. Tribal Utility Commission Account Established.

- (1) There is hereby authorized and directed to be established an account in 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 FOUR
POWERS AND DUTIES OF COMMISSION

§17-4-101. Jurisdiction and Powers of Commission.

- (1) **General Jurisdiction of the Commission Over Utilities.** 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 for 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 which operate, maintain or control any equipment or facilities within the Reservation.

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.

- (2) **Powers of Commission With Reference to Utilities.** 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 copies of reports, rates, classifications, schedules, and time tables in effect and used by such utilities or other persons and all other information desired by the Commission relating to such investigations and requirements to be filed with the Commission.

- (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 of the parties or of the subject matter, including the Tribal Court.
 - (e) Hold hearings on good cause shown or on its motion, and to provide notice thereof prior to hearing. Such notice shall be reasonable in view of the nature, scope, and importance of the hearing, but may not be less than provided for in Title 2, Chapter Six of this Code. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties have agreed concerning the matter at hand, the Commission may issue its order without a hearing.
 - (f) Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services applied for any utility by any firm or corporation owned or controlled directly or indirectly by the utility or any affiliate, subsidiary, parent, associate 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. If unreasonable profits have been made in any such transactions, evaluations of such materials and services may be reduced accordingly.
 - (g) Employ and fix the compensation of rate experts, engineers, and all other expert help and assistance for rate increase application hearings, investigations, and proceedings relating to utilities, subject to Subsections (h) and (j). 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.
 - (h) Retain and use the services of only the tribal attorneys or other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the Interior.
 - (i) Employ and use the services of only the tribal accountants or other accountants designated by the Council upon a contract approved by the Council.
 - (j) Cooperate with and receive technical and financial assistance from the United States or any state for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the Commission. The Commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.
 - (k) Promulgate and enforce rules and regulations consistent with this Title.
 - (l) Employ and consult with such advisors regarding its duties as it may deem necessary.
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- (m) Require by regulation the filing of any forms or reports necessary for implementation of this Title.
- (n) 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.
- (o) 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, or to hear or rule upon any complaints filed with the Commission pursuant to this Title.
- (p) 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.
- (q) Adopt rules and regulations in furtherance of the purposes of this Title pursuant to §17-4-110.
- (r) Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.

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 or affect the ability to exercise such powers in the future.

- (3) **Duties of Commission.** 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.
- (4) **Power of Commission to Establish Rates.** 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.
- (5) **Power of Commission to Regulate Services.** 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 §17-4-110 and after 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.

§17-4-102. Accounting Systems.

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.

Every utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electrical service 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.

~~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.~~

§17-4-103. Annual Reports.

The Commission may require any utility to file annual reports in such form and content, having regard for the provisions of this Section, 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 the reports to be verified. The basic financial statements in the annual report of a utility may, at the direction of the Commission, 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 accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission.

§17-4-104. 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.

§17-4-105. 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, 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.

§17-4-106. 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.

§17-4-107. 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 the 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.

§17-4-108. 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 §17-4-109 below. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Commission.

§17-4-109. 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.

§17-4-110. Rules of the Commission.

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) the findings of any reports or other information required by, or necessary to implement, this Title; and (e) the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by this Title.

- (1) Such rules shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.
- (2) 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 Secretary-Treasurer of the Tribe 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.
- (3) 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.

§17-4-111. Commission Employees and Expenses.

- (1) The Commission may employ such employees 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 Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefor by the Council. The Commission shall submit to the Council a line item proposed budget for the next fiscal year not later than July 1st of each year.

§17-4-112. 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.

§17-4-113. 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 Council, and shall be audited not less than once each year by an independent auditor selected by the Council.
- (4) No records of the Commission, except the records of administrative proceedings before the Commission, which relate to the individual business of a named particular utility, shall be opened to public inspection, but shall be released only to the utility involved or persons duly authorized by the utility in writing to have access to such records.
- (5) Any records of the Commission which do not relate to the individual business of a named particular utility, and any records of administrative proceedings before the Commission, shall be public records of the Tribe and shall be available for public inspection during 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, provided, that names and other identification of any utility appearing in such records shall be rendered unreadable prior to release of such copies unless the provisions of §17-4-113(4) of this Title would allow release of such information.

CHAPTER FIVE
DUTIES OF PUBLIC UTILITIES

§17-5-101. Utility to Provide Adequate Service.

Every utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its customers, employees, and the public, and as shall be in all respects adequate, convenient, just, and reasonable, and without any unjust discrimination or preference.

§17-5-102. Reasonable Charges for Services and Commodities of Utility.

Every unjust and unreasonable rate or charge made, demanded, or received by any utility or by any two or more utilities for any product, commodity or service, is prohibited and unlawful.

§17-5-103. Standard of Service.

Every utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if accomplished within 90 days after a person requests service. Upon application by a utility, and for good cause shown, the Commission may extend the period not to exceed an additional 90 days.

§17-5-104. Violation of Prescribed System of Accounts Unlawful.

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.

§17-5-105. Customer Deposits; Interest.

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

§17-5-106. Unreasonable Preferences or Advantages Prohibited.

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.~~

§17-5-107. Orders of the Commission; Observance by Utility.

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.

§17-5-108. Disconnection During Cold Weather.

The Commission shall promulgate rules governing disconnection of residential utility customers who are unable to pay for utility service during cold weather to include the following:

- (1) Coverage of customers whose household income is less than 185% of the federal poverty level;
- (2) A provision that a customer who pays the utility at least 10% of the customer's income or the full amount of the utility bill, whichever is less, in a cold weather month cannot be disconnected during that month;
- (3) A provision that the 10% figure in Subsection (2) above must be prorated between energy providers proportionate to each provider's share of the customer's total energy costs whenever the customer receives service from more than one provider;
- (4) A provision that a customer's household income does not include any amount received for energy assistance;
- (5) Verification of income by the local energy assistance provider, unless the customer is automatically eligible as a recipient of any form of public assistance, including energy assistance, that uses income eligibility in an amount at or below the income eligibility in Subsection (1); and
- (6) A provision that the customer receive, from the local 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. For the purpose of Subsection (2), the "customer's income" means the actual monthly income of the customer except for a customer who is normally employed only on a seasonal basis and whose annual income is over 135% of the federal poverty level, in which case the customer's income is the average monthly income of the customer computed on an annual calendar year basis.

CHAPTER SIX
ELECTRIC UTILITY FRANCHISES

§17-6-101. 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.
- (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 at a design voltage of 25,000 volts face to face or less used for distributing electric energy directly to customers at retail.
- (5) "Electric utility" means any person, his lessee, trustee, and receiver, separately or jointly, now or hereafter operating, maintaining or controlling within the Fort Totten Indian Reservation equipment or facilities for providing Electric Service at retail and which falls within the definition of "utility" under this Title, and includes facilities owned by a municipality or by a cooperative electric corporation or association.

§17-6-102. Public Policy Regarding Assigned Service Areas for Electric Utilities.

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated Reservation-wide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient and adequate electric service to residents of the Reservation, the Fort Totten Indian Reservation may, subject to Section §17-6-103, be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

§17-6-103. Assigned Service Areas.

- (1) Within 30 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 shall file with the Commission a map or maps showing all its electric lines within the Reservation as they existed on the effective date of this Title, showing all places on the Reservation receiving its service. After 30 days from the effective date of this Title, unless a customer whose place being served is shown on such map or maps, it shall be

conclusively presumed that such customer was not being served 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 the assigned service area or areas of each electric utility 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 Fort Totten Indian Reservation.
- (3) To the extent that it is not inconsistent with the legislative policies of this Chapter and existing service as shown on the map or maps provided pursuant to Subsection (1), 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 the contracts provided for under this Section; 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) Contracts between an electric utility and any customer, and between utilities, which are executed on or before six months after the effective date of this Title designating customers and areas to be served by the electric utilities, when approved by the Commission, shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The Commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.
- (5) 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 legislative policy of this Title.

§17-6-104. 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.

§17-6-105. Service Extensions.

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.

Notwithstanding the provisions of §17-6-103, any electric utility may extend electric lines for electric service to its own utility property and facilities.

§17-6-106. Enforcement of Chapter.

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.

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.

§17-6-107. 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.

§17-6-108. 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 SEVEN
ELECTRIC UTILITY RATES AND TARIFFS

§17-7-101. 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 Fourteen below.

§17-7-102. Hearing by Commission on Proposed Change of Rates.

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. 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. 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. 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.

§17-7-103. 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 State Public Service Commission for the same type or classification of service provided to customers outside the boundaries of the Reservation and within the. The Commission may adopt such state 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, its agencies or political subdivisions, 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 of any tariff, rate, joint rate, wheeling rate, fare, toll, schedule, or classification established by the State Public Service Commission under this Section

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.

§17-7-104. 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.

§17-7-105. 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 energy conservation and renewable energy use. Any data as to reasonableness should be resolved in favor of the consumer.

§17-7-106. Testing Meters; Gas; Electric. [RESERVED]

§17-7-107. Publishing of Schedules.

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.

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 general or special order direct.

Except as provided in Chapter Five, 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 upon January 1, 1990, may be contingent until schedules are filed.

Every utility shall keep copies of the schedules open to public inspection under rules and regulations as the Commission may prescribe.

§17-7-108. 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.

§17-7-109. Valuation of Electric Utility Property. [RESERVED]

**CHAPTER EIGHT
TELECOMMUNICATIONS COMPANIES**

[RESERVED]

**CHAPTER NINE
PIPELINE UTILITIES**

[RESERVED]

**CHAPTER TEN
GAS UTILITIES**

[RESERVED]

**CHAPTER ELEVEN
WATER COMPANIES**

[RESERVED]

**CHAPTER TWELVE
HEATING UTILITIES**

[RESERVED]

**CHAPTER THIRTEEN
OTHER PUBLIC UTILITIES**

[RESERVED]

~~CHAPTER FOURTEEN~~
~~PROCEDURE ON REGULATION~~

§17-14-101. **Complaints.**

- (1) On its own motion, or upon a complaint made against any utility, by the Tribe, by another utility, by 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 Council, any affected municipality within the boundaries of the Reservation, and to any other persons the Commission shall deem necessary. The notice under this subsection may be combined with the notice under Subsection (3) above, but if combined, the notice shall not be less than ten days.
- (5) **Service of Notice.** 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) **Separate Rate Hearings.** 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) **Summary Investigations.**
 - (a) 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.

(b) If, after making the summary investigation, the Commission becomes satisfied that sufficient grounds exist to warrant a formal hearing as to the matters investigated, it shall set a time and place for a hearing.

(c) Notice of the time and place for the hearing shall be made as provided under this Title.

(8) Lawful Rates; Reasonable Service.

(a) 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.

(b) 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.

(c) 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.

§17-14-102. 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.

§17-14-103. 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.

§17-14-104. Conclusive Effect of Orders and Decisions of Commission.

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

§17-14-105. Improper Action Taken by Utility; Recovery of Damages.

In case any utility shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by any law of the Tribe or any order or decision of the Commission, such utility shall be liable to the person affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the Tribal Court shall find that the act or omission was willful, the Court, in addition to the actual damages, shall award punitive damages. An action to recover for such loss, damage, or injury may be brought in Tribal Court by any person. No recovery under this Section in any manner shall affect a recovery by the Tribe of any fine or penalty provided for in this Title or the power to punish for contempt.

§17-14-106. 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.

§17-14-107. 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.

§17-14-108. 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.~~

§17-14-109. 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.

§17-14-110. 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.

§17-14-111. 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.

§17-14-112. 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.

§17-14-113. Public Records.

All decisions, transcripts, and orders of the Commission shall be public records, subject to §17-4-113.

§17-14-114. 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.

§17-14-115. 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.

§17-14-116. Judicial Review.

(1) Right of Review of Final Commission Action.

- (a) 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 the Tribal Court. A preliminary, procedural, or intermediate Commission action is not subject to review.
- (b) 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 its immunity from such suit in Tribal Court only, subject to §17-2-103.
- (c) 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.

(2) Relief Pending Review. When the Commission finds that justice so requires, it may postpone the effective date of 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.

(3) Scope of Review. To the extent necessary to 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.;
- (iii) In excess of jurisdiction, authority, or limitations granted by tribal law;
- (iv) Without observance of procedure required by law;
- (v) In an adjudicatory proceeding only, unsupported by substantial evidence.

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.

§17-14-117. Stay on Judicial Review; Bond.

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. 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.

§17-14-118. Appeal to Tribal Appeals Court.

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 Appeals Court under the provisions of this Code.

§17-14-119. Excessive or Discriminatory Charges; Reparation.

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.

§17-14-120. 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.

**CHAPTER FIFTEEN
CIVIL INFRACTIONS**

§17-15-101. 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 the Fort Totten Indian Reservation 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 Devils Lake Sioux Tribe and not to punish such persons for violation of such laws and regulations.

§17-15-102. 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.

§17-15-103. 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.

§17-15-104. 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.

