

**WHITE EARTH BAND OF OJIBWE**  
**TITLE 23: UTILITIES CODE**

|   |    |
|---|----|
| DIVISION A .....  | 4  |
| CHAPTER 1. GENERAL PROVISIONS.....                        | 4  |
| §1.01. Short Title.....                                   | 4  |
| §1.02. Findings .....                                     | 4  |
| §1.03. Purpose .....                                      | 5  |
| §1.04. Interpretation of the Code.....                    | 6  |
| §1.05. Territory, Persons and Property Affected.....      | 6  |
| §1.06. Definitions .....                                  | 6  |
| §1.07. Sovereign Immunity .....                           | 7  |
| CHAPTER 2. TRIBAL UTILITY COMMISSION .....                | 8  |
| §2.01. Creation of Commission.....                        | 8  |
| §2.02. Number and Selection of Commissioners.....         | 8  |
| §2.03. Terms of Office.....                               | 8  |
| §2.04. Vacancies.....                                     | 9  |
| §2.05. Resignation.....                                   | 9  |
| §2.06. Removal .....                                      | 9  |
| §2.07. Offices of Tribal Utility Commission.....          | 9  |
| §2.08. Compensation of Commissioners .....                | 9  |
| §2.09. Quorum .....                                       | 9  |
| §2.10. Majority Vote .....                                | 9  |
| §2.11. Tribal Utility Commission Executive Director ..... | 9  |
| §2.12. Tribal Utility Commission Account Established..... | 10 |
| CHAPTER 3. POWERS AND DUTIES OF COMMISSION.....           | 10 |
| §3.01. Jurisdiction and Powers of Commission .....        | 10 |
| §3.02. Accounting Systems .....                           | 12 |
| §3.03. Annual Reports by Utilities .....                  | 13 |
| §3.04. Depreciation Rates and Practices .....             | 13 |
| §3.05. Right of Entrance; Inspection.....                 | 13 |
| §3.06. Production of Records.....                         | 13 |

|   |    |
|---|----|
| §3.07. Rules of the Commission.....   | 14 |
| §3.08. Commission Employees and Expenses .....  | 14 |
| §3.09. Bonds.....   | 15 |
| §3.10. Records of the Commission .....  | 15 |
| CHAPTER 4. DUTIES OF PUBLIC UTILITIES .....   | 15 |
| §4.01. Duty to Serve All within all the Service Territory.....                          | 15 |
| §4.02. Duty to Establish Reasonable and Non-Discriminatory Charges for Services.....    | 16 |
| §4.03. Duty to Follow Prescribed System of Accounts .....                               | 16 |
| §4.04. Duty to Obey and Comply with Orders of the Commission.....                       | 16 |
| §4.05. Duty to Maintain Service During Cold, & Extreme Heat Weather Conditions.....     | 16 |
| §4.06. Utility Customer Suits .....   | 16 |
| DIVISION B.....   | 17 |
| CHAPTER 1. ELECTRIC UTILITIES.....  | 17 |
| § 1.01 Statement of Policy.....   | 17 |
| §1.02. Definitions .....  | 17 |
| §1.03. Information on Reservation Easements .....                                       | 18 |
| §1.04. Assigned Service Areas.....  | 18 |
| §1.05. Enforcement of Chapter .....   | 19 |
| §1.06. Terms by Which Facilities of One Utility May Cross Those of Another Utility..... | 19 |
| CHAPTER 2. ELECTRIC UTILITY RATES AND TARIFFS.....                                      | 19 |
| §2.01 Electric Utility Ratemaking and Service Standards .....                           | 19 |
| §2.02. Application for Changes in Tariff Rates; Public Notice to Customers.....         | 22 |
| §2.03. Hearing by Commission on Proposed Change or Rates.....                           | 23 |
| §2.04. Factors in Establishing Rate Adjustments .....                                   | 23 |
| §2.05. Non-Interference with Federal Programs.....                                      | 23 |
| §2.06. Just and Reasonable Rates.....   | 24 |
| DIVISION C.....   | 25 |
| TELECOMMUNICATIONS COMPANIES.....   | 25 |
| DIVISION D .....  | 25 |
| PIPELINE UTILITIES .....  | 25 |
| DIVISION E.....   | 25 |
| GAS UTILITIES.....  | 25 |

|  |    |
|--|----|
| DIVISION F .....   | 25 |
| WATER COMPANIES .....  | 25 |
| DIVISION G .....   | 25 |
| HEATING UTILITIES .....  | 25 |
| DIVISION H .....   | 25 |
| OTHER PUBLIC UTILITIES .....   | 25 |
| DIVISION I .....   | 26 |
| CHAPTER 1. HEARING PROCEDURES .....                                  | 26 |
| §1.01. Rules and Regulations .....                                   | 26 |
| §1.02. Depositions .....   | 26 |
| §1.03. Subpoena; Witnesses .....                                     | 26 |
| §1.04. Oaths; Contempt; Examiner's Powers .....                      | 26 |
| §1.05. Testimony and Production of Records; Perjury .....            | 26 |
| §1.06. Rehearings Before Commission .....                            | 27 |
| §1.07. Conclusive Effect of Orders and Decisions of Commission ..... | 27 |
| §1.08. Effective Date of Orders and Decisions .....                  | 27 |
| §1.09. Decisions of Commission; Rescission or Amendment .....        | 27 |
| §1.10. Appeal From Decision of Commission .....                      | 28 |
| §1.11. Judicial Review .....   | 28 |
| §1.12. Stay on Judicial Review; Bond .....                           | 29 |
| §1.13. Appeal to Tribal Court of Appeals .....                       | 29 |
| CHAPTER 2. CIVIL ENFORCEMENT .....                                   | 29 |
| §2.01. Purpose .....   | 29 |
| §2.02. Civil Action for Penalties .....                              | 30 |
| §2.03. Violation of This Title or Commission Order or Rule .....     | 30 |
| §2.04. Cumulative Fines .....  | 30 |

## DIVISION A

### 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 economic activity and persons engaged in business activities on lands within the jurisdiction of the Tribe, including the provision of utility services, is an inherent and essential part of the sovereign authorities of the White Earth Band of the Ojibwe Indians. This power is within the retained sovereignty of the Tribe over the White Earth Reservation, established pursuant to the Treaty with the Chippewa of the Mississippi of 1867, 16 Stat. 719, 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 White Earth Reservation Business Committee 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. The White Earth Reservation consists of tribal trust land, individual Indian trust and allotted lands, and tribal and non-Indian fee lands within the exterior boundaries of the White Earth Reservation. Utility lines, pipelines, telecommunications, and other rights-of-ways have been granted to utilities across the White Earth Reservation. 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. As a result, every utility that operates within the Reservation enters into voluntary contractual relationship 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.
3. 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. Tribal members and non-members within the boundaries of the White Earth Reservation are entitled to reliable, safe, affordable, and environmentally sound utility services, which are a necessity of modern life. 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. In addition, the generation, transmission, distribution, conveyance and delivery of certain utility services such as electricity, natural gas and propane are inherently dangerous and environmentally risky activities that can have a substantial and direct negative impact on public health and safety within the White Earth Reservation. Tribe recognizes that the State of Minnesota also retains concurrent jurisdiction over the state regulated utilities that also operate within the Reservation. This concurrent jurisdiction does not prevent the Tribe from exercising its sovereign authority to regulate utilities within the Reservation or from setting policy related to utility services.

§1.03. Purpose

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:

1. to ensure that all retail consumers of utility services and commodities within the Reservation have adequate, safe and reliable utility services at reasonable rates, consistent with the Tribe's laws and policies, as may be adopted from time to time, related to utility services;
2. 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 efficient and healthy reservation environment, including protection of the land, animals, and plants of the Reservation environment from adverse impacts of utility operations;
3. to ensure utility services are provided in a manner that reduces carbon emissions, promotes the use of renewable resources, and complies with the Tribe's energy and economic development policy goals as may be adopted from time to time;
4. to regulate utility services, utility infrastructure and equipment owned and controlled by the Tribe;
5. to avoid unnecessary segmentation of utility service within the Reservation among multiple utilities owned or controlled by non-tribal members;
6. to avoid duplication of facilities that may increase the costs of service to the Tribe, Tribal Members, and non-members;
7. 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;
8. to regulate all utilities located, operating or providing services within the Reservation to the extent permitted by federal law, including with respect to: tribal utility policies and standards; rates; utility easements; safety; reliability, environmental protection, connection

of service; disconnection and reconnection of service; deposit and overdue payment charges; and other utility activities; and

9. to prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services.

#### §1.04. Interpretation of the Code

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

#### §1.05 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.

#### §1.06. 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. "Company" means a private or public corporation incorporated under the laws of any nation, state or tribe, a limited liability company, a joint venture, a partnership, a municipality, an association, a non-profit cooperative whether incorporated or not, a joint stock association, a business trust, or any federal, state, tribal or municipal political subdivision or agency, but shall not mean any tribal entity created under Title 23 of this Code.
4. "Executive Director" means the Tribal Utility Commission Executive 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 all lands within the exterior boundaries of the White Earth Reservation, established pursuant to the Treaty with the Chippewa of the Mississippi of 1867, under the

jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the 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 generating, delivering or measuring the service product or commodity of any utility.
9. "RBC" means the White Earth Reservation Business Committee, 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).
10. "Tribal Utility Commission Account" means the account in a federally-insured financial institution established pursuant to Title 23, Division 2, Chapter 2, Section 2.13.
11. "Tribe" means the White Earth Band of Ojibwe.
12. "Tribal Court" means the courts of the White Earth Band of Ojibwe.
13. "Tribal Member" means an enrolled member of the White Earth Band of Ojibwe.
14. "Tribal Lands" means all land or real property which is held by the United States in trust for the benefit of the White Earth Band of Ojibwe or, individual Indians, or land held in fee by the Tribe or individual Indians within the Reservation, and any additional lands acquired for the Tribe by the United States for the benefit of the Tribe or members of the Tribe.
15. "Utility" means any Company providing Utility Services within the Reservation.
16. "Utility Services" means: i.) providing telecommunications, natural gas, electricity, water, sewer, or heat at retail; ii) constructing, operating, maintaining or controlling equipment or facilities for furnishing telecommunications, natural gas, electricity, water, sewer or heat; iii) engaged in the transportation of gas, oil, coal, and water; iv) the generation, transmission, distribution of electricity, heat, natural gas, or water, whether at retail or wholesale; v) 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.

#### §1.07. 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 Division I, 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 attorney's fees and expenses incurred in bringing such action, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorney's fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect.

## **CHAPTER 2. TRIBAL UTILITY COMMISSION**

### **§2.01. Creation of Commission**

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

### **§2.02. Number and Selection of Commissioners**

1. The Commission shall comprise of five voting members appointed by the Tribal Council.
2. At least three Commissioners shall be members of the White Earth Band of Ojibwe.
3. All members of the Commission must be residents of the White Earth Reservation and maintain residency during their term of office.
4. The Tribal Council shall designate a Commissioner to serve as the Chair of the Commission.
  - a. The Chair shall preside over all Commission proceedings; sign all Commission documents, decisions, orders, notices, or other papers approving execution on behalf of the Commission; and ensure that the Commission's polices and duties are properly executed.
5. The Tribal Council shall designate a Commissioner to serve as the Vice Chair of the Commission.
  - a. The Vice Chair shall be clothed with all of the powers and duties of the Chair if the Chair is unable to unable to preside or fulfill the duties of the Chair.

### **§2.03. Terms of Office**

1. Of the initial members of the Commission appointed under this Title, three members shall be appointed for a term of office that will expire in three years and two members shall be appointed for a term of office that will expire in two years. Each respective successor shall be appointed in accordance with Section 2.02 and this Section of this Chapter.
2. Members of the Commission shall be appointed for a term of office of 3 years, and shall continue to serve until their successor is appointed and qualified, notwithstanding any provision to the contrary in this Chapter.



§2.04. Vacancies

If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the position shall be vacant and the RBC shall appoint another person to fill the position. The term of office as a result of a vacancy, shall be for the balance of the unexpired term.

§2.05. Resignation

Any Commissioner may resign by delivering a written resignation to the Chair of the Commission, or in the case of a resignation by the President, to the Vice-Chair of the Commission. Such resignation shall be effective upon confirmation of receipt by the Chair of the Commission, unless otherwise provided by the terms thereof. A Commissioner's resignation under this Section or removal under Section 2.06 below shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

§2.06. Removal

A Commissioner may be removed by the Tribal Council for neglect of duty or for malfeasance, misfeasance, or for misconduct in office.

§2.07. 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.

§2.08. Compensation of Commissioners

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

§2.09. Quorum

Three Commissioners shall constitute a quorum of the Commission. At a meeting at which there is no quorum, the meeting must adjourn for a period not exceeding ten days in any one instance.

§2.10. Majority Vote

Every finding, order, or decision approved by a majority of the members of the Commission shall be deemed to be the finding, order, or decision of the Commission.

§2.11. Tribal Utility Commission Executive Director

The members of the Commission, acting jointly, shall hire an Executive Director to assist the Commission to perform the duties and exercise the powers granted under this Code and any laws enacted by the Tribe or State. The Executive Director shall be responsible for the supervision and

direction of the Commission staff and for the necessary administrative activities of the Commission, subject only to Commission direction and approval. In furtherance thereof, the Executive Director may organize the Commission staff into such departments or divisions as deemed necessary or appropriate, and may delegate and assign to one or more staff member or members the supervision and direction of any such department section or division.

§2.12. 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. 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 3. POWERS AND DUTIES OF COMMISSION**

§3.01. Jurisdiction and Powers of Commission

1. The Tribal Utility Commission shall have general supervision of all Utilities providing Utility Services on the Reservation, except as otherwise provided in this Code or any other law.
2. The Commission shall have power to:
  - a. Hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Code, or by any other Titles relating to utilities subject to such rules and regulations as the Commission may establish, consistent with due process.
    - i. Investigation and inquiries by the Commission may include but is not limited to examining the reasonableness, prudence, or efficiency of any aspect of the utility's operations, costs, management, decisions or functions that may affect the adequacy, safety, efficiency or reliability of utility service or the reasonableness or prudence of the costs underlying rates or charges for utility service and operation on the Reservation.
    - ii. Hearings shall be held consistent to due process.
    - iii. In the conduct of any investigation, inquiry or hearing the provisions of the Commission's procedural rules shall apply.
  - 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. 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.
  - f. 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.
  - g. Promulgate and enforce rules and regulations consistent with this Title, generally applicable procedural rules of the Tribe, and the Constitution.
  - h. Require by regulation the filing of any forms or reports necessary for implementation of this Title.
  - i. 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.
  - j. 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.
  - k. Adopt rules and regulations in furtherance of the purposes of this Title.
  - l. Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provision in this Title.
3. 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.
  4. The Commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate, in accordance with the provisions of this Code, every utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the Commission.
  5. 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.

- a. 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 under this Title, 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.
6. After environmental review, the Commission has the power to approve the siting of facility locations for generation, pipelines, transmission/distribution power lines, cell towers, fiber/broadband lines, storage and other facilities related to the provision of Utility Services.
7. The Commission has the authority to negotiate and make recommendations for RBC consent to Utility leases and easements.

### §3.02. 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.

§3.03. 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.

§3.04. 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.

§3.05. 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.

§3.06. 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.

§3.07. Rules of the Commission

1. The Commission shall promulgate internal operational procedures of the Commission and its staff to carry out the orderly performance of its duties.
2. The Commission shall promulgate such written rules and regulations as are necessary to carry its duties and powers to implement the provisions of this Code, including but not limited to rules and regulations relating to:
  - a. interpretation and application of this Title as may be necessary to carry out its duties and exercise its powers;
  - b. 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;
  - c. any reports or other information required by, or necessary to implement, this Title; and
  - d. the conduct of inspections, investigations, complaints, hearings, enforcement actions and other powers of the Commission authorized by this Title, consistent with due process; provided that 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.

§3.08. 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.

§3.09. 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.

§3.10. 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 4. DUTIES OF PUBLIC UTILITIES**

§4.01. Duty to Serve All within all the Service Territory

Each utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference to all within the service territory. Every utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as will promote the safety, health, 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.

§4.02. Duty to Establish Reasonable and Non-Discriminatory Charges for Services

Every rate made, demanded, or received by any public utility shall be just and reasonable. Rates and services shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory.

§4.03. Duty to Follow Prescribed System of Accounts

When the Commission has prescribed the forms for accounts and records to be kept by any utility for any of its business on the Reservation, 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.

§4.04. 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 on the Reservation, 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.

§4.05. Duty to Maintain Service During Cold, & Extreme Heat Weather Conditions

1. During the cold weather period, a utility may not involuntarily disconnect and must reconnect any utility service of a customer whose household income is less than 185% of the federal poverty level; who are bedridden, suffer from a significant disability, or who are inflicted with a serious, life-threatening disease; or for whom the disconnection of utility service would have other serious, life-threatening effects.
2. During an excessive heat watch, heat advisory, or excessive heat warning issued by the National Weather Service is in effect, a utility may not involuntarily disconnect residential utility services in affected counties on the Reservation.
3. The Commission has the authority to adopt rules to carry out the provisions of this Section.

§4.06. Utility Customer Suits

Except as provided by Tribal law or any Federal law, any resident of the Reservation may commence an action on their own behalf against a utility operating on the Reservation to recover for such loss, damage, or injury. The Tribal Court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to apply the appropriate penalties.



## DIVISION B

### CHAPTER 1. ELECTRIC UTILITIES

#### § 1.01 Statement of Policy.

1. The RBC finds that the energy sector is a growing area of the economy in the State of Minnesota and further finds that the White Earth Tribe needs to take a leadership role in the Reservation's investment in the clean energy economy in Minnesota. To promote this interest, the RBC charges the Commission with the authority to promote clean energy generation, renewable energy standards, energy efficiency, a carbon free energy supply to ensure health, economic, and environmental benefits for tribal members.
2. The RBC finds that the protection of the public health, safety, and welfare of the Tribe and its members require policies to promote electric utility and energy company programs that provide for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers, and improve the distribution of electric energy, the reliability of electric service, the use of renewable energy, carbon free and distributed energy resources.

#### §1.02. 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. "Distributed energy resources" means small, modular, energy generation and storage technologies that connected to the local electric power grid or isolated from the grid in stand-alone applications.
4. "Electric generation" means the production of electricity.
5. "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.
6. "Electric line" means lines for conducting electric energy used for distributing electric energy directly to retail customers.
7. "Electric utility" means any Company or the Tribe that provides electric Utility Services within the Reservation.
8. "Energy Company" means any Company that constructs, operates, maintains and controls equipment or facilities that generate, transmit and/or distribute electricity within the Reservation, regardless of whether for sale or use on the Reservation.

9. "Energy storage" means the capture of energy produced at one time for use at a later time.
10. "Independent Power Producer" means a non-utility generator which owns and/or operates facilities to generate electricity for sale to a Utility or the Tribe, or for sale off the Reservation.

§1.03. Information on Reservation Easements

Within 180 days of the effective date of this Title, each Energy Company and Electric Utility operating on the Reservation shall provide to the Commission a list of all leases and easements owns on the Reservation and a copy of each such lease and/or easement.

§1.04. Assigned Service Areas

1. Public Policy. 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 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.
2. 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.
3. 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.
4. 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.

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 interests of the Tribe.

#### §1.05. 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.

#### §1.06. 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.

### **CHAPTER 2. ELECTRIC UTILITY RATES AND TARIFFS**

#### §2.01 Electric Utility Ratemaking and Service Standards

1. Consideration and determination. The Commission shall consider each standard established by subsection 3 and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this Title. For purposes of such consideration and determination in accordance with subsections 2, and for purposes of any review of such consideration and determination in any court in accordance with this Title, the purposes of this chapter supplement otherwise applicable Tribal law.

2. Procedural requirements for consideration and determination. The consideration referred to in subsection 1 shall be made after public notice and hearing. The determination referred to in subsection 1 shall be:
  - a. in writing,
  - b. based upon findings included in such determination and upon the evidence presented at the hearing, and;
  - c. available to the public.
3. The following electric utility service standards are hereby established:
  - a. Cost of service. Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under this Chapter.
  - b. Time-of-day rates. The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under this Chapter.
  - c. Seasonal rates. The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.
  - d. Interruptible rates. Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member.
  - e. Load management techniques. Each electric utility shall offer to its electric consumers such load management techniques as the Commission has determined will—
    - (i) be practicable and cost-effective;
    - (ii) be reliable, and
    - (iii) provide useful energy or capacity management advantages to the electric utility.
  - f. Integrated resource planning. Each electric utility shall employ integrated resource planning. All plans or filings before the Commission to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented. Each electric utility shall

(i) integrate energy efficiency resources into utility, State, and regional plans; and

(ii) adopt policies establishing cost-effective energy efficiency as a priority resource.

g. Investments in conservation and demand management. The rates allowed to be charged by the electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

h. Energy efficiency investments in power generation and supply. The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, the Commission shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment. The rates allowed to be charged by any electric utility shall—

(i) align utility incentives with the delivery of cost-effective energy efficiency; and

(ii) promote energy efficiency investments.

i. Net metering. Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible distributed energy resource and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period. Net metering shall also include virtual net metering and aggregate net metering.

j. Fuel sources. Each electric utility shall develop a plan to minimize dependence on carbon-emitting fuel sources and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies. The Commission shall establish a renewable energy or clean energy requirement that achieves 100% carbon free electricity no later than 2050.

k. Community Distributed Energy Program. Each electric utility shall offer a community distributed energy program. For the purposes of this paragraph, the term ‘community distributed energy program’ means a service provided to any electric consumer that the electric utility serves through which the value of electric energy generated by a community distributed energy facility may be used to offset charges billed to the electric consumer by the electric utility. A ‘community distributed energy facility’ is:

(i) a solar photovoltaic, wind, landfill gas, biomass, fuel cell, gas or diesel generation system that produces electricity and allocates electricity to multiple electric consumers of an electric utility;

(ii) connected to a local distribution of the electric utility;

(ii) located either on or off the property of the electric consumers;

and

(iv) may be owned by an electric utility, an electric consumer, the Tribe or a third party.

l. Interconnection. Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves or community distributed energy facility. For purposes of this paragraph, the term “interconnection service” means service to an electric consumer or a community distributed energy facility under which distributed energy resources shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

m. Consideration of smart grid investments. The Commission shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

## §2.02. Application for Changes in Tariff Rates; Public Notice to Customers

No change shall be made by any electric utility in any tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, classifications, or service unless approved by the Commission after

the electric utility has filed an application with the Commission for such change. Upon application to the Commission, the electric utility must provide public notice of the filing to its customers. Such notice shall state plainly the changes proposed.

§2.03. Hearing by Commission on Proposed Change or Rates

1. Whenever an application 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 shall 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.

§2.04. 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 shall apply the standards established in in this Section and corresponding Section. The Commission may also adopt, in whole or in part, on an interim basis, 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.

§2.05. 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.

§2.06. Just and 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.



**DIVISION C**  
**TELECOMMUNICATIONS COMPANIES**

**[RESERVED]**

**DIVISION D**  
**PIPELINE UTILITIES**

**[RESERVED]**

**DIVISION E**  
**GAS UTILITIES**

**[RESERVED]**

**DIVISION F**  
**WATER COMPANIES**

**[RESERVED]**

**DIVISION G**  
**HEATING UTILITIES**

**[RESERVED]**

**DIVISION H**  
**OTHER PUBLIC UTILITIES**

**[RESERVED]**

## DIVISION I

### HEARINGS, ADMINISTRATIVE REMEDIES AND ENFORCEMENT

#### CHAPTER 1. HEARING PROCEDURES

##### §1.01. Rules and Regulations

The Commission has the power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Title; and in furtherance of this authority, shall adopt rules and regulations related to hearing, administrative remedies and enforcement.

##### §1.02. 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.

##### §1.03. Subpoena; Witnesses

In furtherance receive evidence 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.

##### §1.04. 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.

##### §1.05. 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.

§1.06. 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.

§1.07. 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.

§1.08. 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.

§1.09. 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.

§1.10. 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.

§1.11. 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, attorney's 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 Executive Director, the Commission, and its members for the limited purpose of Tribal Court review of decisions of the Executive 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.

§1.12. 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.

§1.13. 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 2. CIVIL ENFORCEMENT**

§2.01. 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.

§2.02. 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.

§2.03. 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.

§2.04. 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.