

**Title XLIV  
(44)  
UTILITY CODE**

**ORDINANCE NO. 2022-44-001**

**Standing Rock Sioux Tribal Code of Justice**



**RESOLUTION NO. 001-23**

**Approved December 8, 2022  
by  
Standing Rock Sioux Tribal Council**

## **RESOLUTION NO. 001-23**

### **RESOLUTION TO ENACT STANDING ROCK TRIBE UTILITY CODE, TITLE XLIV (44) OF THE STANDING ROCK TRIBAL CODE.**

**WHEREAS**, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

**WHEREAS**, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 5, shall post all proposed ordinances introduced at a Tribal Council Meeting for not less than ten days prior to final adoption by the Tribal Council. All enacted ordinances shall be made available to the Local District Councils; and

**WHEREAS**, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], is empowered to promote and protect the health, education, and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economics advancement of the Tribe and its members; and

**WHEREAS**, the Standing Rock Sioux Tribal Council received a proposed Standing Rock Tribe Utility Code which recognizes and asserts the Tribe's authority to provide a regulatory framework for all utilities located, operating, or providing services within the Standing Rock Indian Reservation; and

**WHEREAS**, the Standing Rock Tribe Utility Code will promote self-determination, encourage economic development and self-sufficiency and facilitate the control and use of the Tribe's resources; and

**WHEREAS**, the proposed Standing Rock Tribe Utility Code was introduced at Tribal Council and posted for no less than ten days for public comment pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 5; and

**WHEREAS**, the Tribal Council desires to adopt and enact Title XLIV the Standing Rock Tribe Utility Code, attached hereto, to create a regularly framework for all utilities located, operating, or providing services within the Reservation.

**NOW THEREFORE BE IT RESOLVED**, the Tribal Council hereby approves the enactment of Ordinance #2022-44-001 approving and adopting Title XILV (44) Standing Rock Tribe Utility Code: and

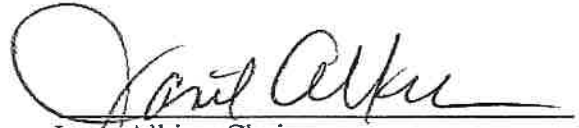
**BE IT FURTHER RESOLVED**, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.


## CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 12 constituting a quorum, were present at a meeting thereof duly and regularly, called, noticed, convened and held on the 3<sup>rd</sup> day of JANUARY, 2023, and the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

DATED THIS 3<sup>rd</sup> DAY OF JANUARY, 2023.

ATTEST:

  
Janet Alkire, Chairwoman  
Standing Rock Sioux Tribe

  
Susan Agard, Secretary  
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

**TITLE XLIV (44)**  
**ORDINANCE No. 2022-44-001**

**STANDING ROCK TRIBE UTILITY CODE**

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- § 44-1-102 Purpose
- § 44-1-103 Findings
- § 44-1-104 No Waiver of Sovereign Immunity
- § 44-1-105 Establishment of the Standing Rock Utility Commission
- § 44-1-106 Effects and Duration of the Commission
- § 44-1-107 Mission of the Commission
- § 44-1-108 Amendments

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- § 44-2-101 Control of Operations
- § 44-2-102 Organization of the Commission
- § 44-2-103 Commission Meetings
- § 44-2-104 Commission Committees
- § 44-2-105 Standard of Care
- § 44-2-106 Allocation Plan
- § 44-2-107 Compensation and Reimbursement
- § 44-2-108 Commission General Powers and Duties
- § 44-2-109 Power of Commission to Establish Rates
- § 44-2-110 Power of Commission to Regulate Services
- § 44-2-111 Accounting Systems
- § 44-2-112 Annual Reports by Utilities
- § 44-2-113 Depreciation Rates and Practices
- § 44-2-114 Right of Entrance; Inspection
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- § 44-2-117 Hearings; Examiner
- § 44-2-118 Appointment of Examiner; Power of Examiner
- § 44-2-119 Rules of the Commission
- § 44-2-120 Commission Employees and Expenses
- § 44-2-121 Bonds
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## ARTICLE I GENERAL PROVISIONS

§ 44-1-101	Definitions
§ 44-1-102	Purpose
§ 44-1-103	Findings
§ 44-1-104	No Waiver of Sovereign Immunity
§ 44-1-105	Establishment of the Standing Rock Utility Commission
§ 44-1-106	Effects and Duration of the Commission
§ 44-1-107	Mission of the Commission
§ 44-1-108	Amendments

### **SECTION 44-1-101: DEFINITIONS**

**Civil Trespass** - means owning or operating Utility Personal property on the Standing Rock Indian Reservation that is not subject to a valid Lease, Right-of-Way, Service Line Agreement, Utility Permit or any other necessary agreement with landowners not the Tribe on the Reservation.

**Commission** - means the Standing Rock Utility Commission established pursuant to this Title and Ordinance.

**Commissioner** - means one of the members of the Standing Rock Utility Commission.

**Commission Meeting** – means scheduled, announced and noticed meetings of the Standing Rock Utility Commission.

**Commission Members** - means those person(s) appointed by the Standing Rock Utility Commission to govern and manage the affairs of the Standing Rock Utility Commission pursuant to this Title and Ordinance.

**Corporation** - means a private or public corporation incorporated under the laws of any nation, state or tribe.

**Director** - means the Commission Director acting in his official capacity.

**Electric Utility Services** - means the delivery of electric energy or power generated on the Reservation to an agreed-upon point of delivery. This includes all activities incident to the delivery of electric energy, including, but not limited to, development of infrastructure, asset acquisition, construction, and/or the operation of electricity service infrastructure (e.g., generation, transmission, distribution and control area services) as may be required to effectuate delivery of electricity generated to the end user.

**Governing Ordinance** - means local law set forth by the Standing Rock Tribal Council authorizing the establishment of the Standing Rock Utility Commission, as described herein.



**Lease** - means a Real Property interest granted for a specified purpose and duration in accordance with applicable tribal law in Title XLII and 25 C.F.R. § 162.

**Municipality** - means any town, city, or other local government, however organized, but shall not include the Tribe.

**Person** - means any individual, group of individuals, corporation, partnership, association, state, Municipality, commission, political subdivision of a state, interstate body, the federal government or any federal agency or any other entity, but does not include the Tribe, or other Standing Rock Tribal Entities or instrumentalities as may be determined by Tribal Council.

**Rates** - means the charges established in rate schedule(s) for services provided to a customer.

**Real Property** - means land and interests in land. Utility Personal Property shall not be deemed to be Real Property for purposes of federal or other law.

**Reservation** - means all those lands on and within the exterior boundaries of the Standing Rock Reservation.

**Right-of-way** - means a real property interest granted for a specified purpose and duration in accordance with applicable tribal law and 25 C.F.R. § 169.

**Service Line Agreement** - means an agreement between the Tribe or other landowner and a Utility allowing the Utility limited access to land to supply customers with Utility Services as set forth in 25 C.F.R. § 169.51-169-56.

**Standing Rock Sioux Tribe Constitution** - means the Constitution of the Standing Rock Sioux Tribe

**Standing Rock Utility Commission** - means the Standing Rock Utility Commission established pursuant to this Governing Ordinance.

**Tribal Council** - means the Standing Rock Tribal Council authorized under the Constitution of the Standing Rock Sioux Tribe to approve and implement this Ordinance.

**Tribal Utility Commission Account** - means the account in federally insured financial institution established pursuant to this Title.

**Tribe** - means the Standing Rock Sioux Tribe.

**Utility** - means any entity owning Utility Personal Property or providing any Utility Service to retail or wholesale customers on the Reservation.

**Utility Permit** - means (i) a written agreement executed between the Tribe and a Utility, (ii) that grants a revocable privilege to operate, maintain and utilize Utility Personal Property on the Reservation but does not transfer any Real Property, (iii) that is for a specified purpose and

duration and may contain other provisions and (iv) that is used when a Lease or Right-of-way is not required under federal law.

**Utility Personal Property** - means (i) any of the following that are used to provide a Utility Service and which are permanently or temporarily affixed to land on the Reservation: infrastructure, equipment, poles, wires, transformers, circuit breakers, switches, electrical busses, concrete pads, pipelines, compression stations, pumps, conduits, communication towers, or other facilities and (ii) any gas, water, power communication data or similar commodities or products passing through or being delivered within the Reservation.

**Utility Service** - means any of the following services or products: telecommunications, natural gas, propane electricity, internet, cable, water, and other similar services formally identified in writing as a Utility Service by the Commission.

#### **SECTION 44-1-102: PURPOSE**

The purpose of this **Governing Ordinance** is to:

1. Establish the Standing Rock Utility Commission and to set forth the terms governing the activities of the Standing Rock Utility Commission.
2. Recognize and assert the authority of the Tribe to provide a regulatory framework for all Utilities located, operating, or providing services within the Reservation.
3. To provide all retail consumers of Utilities with adequate and reliable services at reasonable rates that are consistent with the financial and economic requirements of such Utilities.
4. Promote self-determination, encourage economic development and self-sufficiency, and facilitate and control the use of the Tribe's resources on the Tribe's Reservation.

#### **SECTION 44-1-103: FINDINGS**

The Tribal Council hereby makes the following findings:

1. The Standing Rock Sioux Tribe is a sovereign Indian tribe organized pursuant to the Standing Rock Constitution. The Standing Rock Tribal Council, as the governing body of the Tribe, has the constitutional authority to enact this ordinance pursuant to the Standing Rock Tribe Constitution, Article IV §§ 1(c), 1(m), and 1(n). The power to regulate utilities is an inherent and essential part of the authority of the Standing Rock Sioux Tribe.
2. Formation of the Standing Rock Utility Commission will enable the Standing Rock Sioux Tribe to provide oversight, regulation, and control of all Utilities operating on the Reservation as permitted by law and provide tribal members and non-members residing on

the Reservation with access to essential utility services at reasonable rates, terms, and conditions.

3. Development of a comprehensive regulatory framework is necessary to regulate the use of tribal resources by Utilities, to assist in the determination of supplying Utilities to the Tribe and its members, assure proper recording of land rights, assure Utilities are not evading applicable laws related to payments for their commercial use of Tribal property, to prevent Utility infrastructure and operation from causing ecological and environmental damage to land, water, air, resources and safeguard human health and safety from Utility operations in accordance with tribal law.
4. The Tribe finds that every Utility which operates within the Reservation, has commercial dealings or contracts with residents of the Standing Rock Reservation or with the Tribe, provides Utility Services, or operates or owns pipelines, transmission lines, poles, towers, or other improvements used for Utility purposes on the Reservation is deemed to have entered into a consensual relationship with the Tribe to provide essential governmental services which are integral to the Tribe's ability to govern itself, control its resources, develop its economy and therefore are subject to tribal law and jurisdiction.
5. The Tribe finds that the States of North Dakota and South Dakota lack jurisdiction to regulate utilities within the boundaries of the Standing Rock Sioux Reservation. State regulation of such Utilities providing services on the Reservation interferes with the Standing Rock Tribe's authority to self-govern and manage business on the Reservation.

#### **SECTION 44-1-104: NO WAIVER OF SOVEREIGN IMMUNITY**

The Standing Rock Sioux Tribe and the Standing Rock Utility Commission 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 entity, including the Commission, except that after exhaustion of administrative remedies as provided herein, 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 attorney fees and expense incurred in bringing such action, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorney fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence or in any other respect.

#### **SECTION 44-1-105: ESTABLISHMENT OF THE COMMISSION**

The Standing Rock Utility Commission (**Commission**) is hereby established. The Tribal Council shall appoint the Commission Members and the Commission shall be operated and governed in accordance with the provisions of this Governing Ordinance, the Standing Rock Sioux Tribe Constitution as well as any subsequent amendments to this Governing Ordinance.

Consistent with the requirements of Section 201 (**Commission Administration**) in this **Governing Ordinance**, the Tribal Chair shall appoint and Tribal Council shall approve four members of the Tribal Council to act and function as the Members of the Commission.

#### **SECTION 44-1-106: EFFECTS AND DURATION OF THE COMMISSION**

Upon adoption by the Tribal Council, this Governing Ordinance, including its provisions, attachments and any subsequent amendments become effective immediately, and the duration of the **Commission** is perpetual.

#### **SECTION 44-1-107: MISSION OF COMMISSION**

The Commission's mission is to regulate Utilities located, operating, or providing services within the Reservation for the benefit of the Standing Rock Sioux Tribe and its members, and in furtherance of promoting the general welfare of the Standing Rock Sioux Tribe and its members.

#### **SECTION 44-1-108: AMENDMENTS**

This Governing Ordinance is subject to amendment by the Tribal Council. The Commission Members shall maintain an updated version of this Governing Ordinance, which shall incorporate all enacted amendments, along with such explanatory notes as the Commission deems appropriate.

### **ARTICLE II COMMISSION ADMINISTRATION**

- § 44-2-101 Control of Operations
- § 44-2-102 Organization of the Commission
- § 44-2-103 Commission Meetings
- § 44-2-104 Commission Committees
- § 44-2-105 Standard of Care
- § 44-2-106 Allocation Plan
- § 44-2-107 Compensation and Reimbursement
- § 44-2-108 Commission General Jurisdiction and Powers
- § 44-2-109 Power of Commission to Establish Rates
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- § 44-2-117 Hearings; Examiner
- § 44-2-118 Appointment of Examiner; Power of Examiner
- § 44-2-119 Rules of the Commission

- § 44-2-120 Commission Employees and Expenses
- § 44-2-121 Bonds
- § 44-2-122 Records
- § 44-2-123 Standing Rock Utility Commission Account Established
- § 44-2-124 Service Line Agreements, Leases, and Rights-of-Way
- § 44-2-125 Indemnification of Commission Members and Employees
- § 44-2-126 Reports to Tribal Council

#### **SECTION 44-2-101: CONTROL OF OPERATIONS**

The Tribal Chairperson shall appoint and Tribal Council shall approve four members of the Tribal Council, consisting of the Tribal Chairperson, and the Chair of the Judicial, Economic, and Health Education and Welfare Committees to serve on the Standing Rock Utility Commission..

#### **SECTION 44-2-102: ORGANIZATION OF THE COMMISSION**

1. The affairs of the Commission shall be managed by a Commission composed of four persons. The Commission members shall be appointed by the Tribal Chairperson and approved by the Tribal Council. A Resolution of the Tribal Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.
2. Commissioners shall meet the following qualifications:
  - a. Sound judgment and knowledge and understanding of management, business administration, public administration, regulated industries and similar or related areas of importance to the operations of the Commission;
  - b. Expertise, experience or knowledge of public utility systems of the types under the regulatory authority of the Commission;
  - c. Qualities of integrity, judgment, and sensitivity unique to Indian cultural, economic and social conditions and the goals of the Standing Rock Sioux Tribe and the Commission;
  - d. Knowledge of the organization and entities, governmental and private, that may be involved and provide assistance to the Commission.
3. The Commission shall elect from among its members a Chair, Vice-Chair, a Secretary, and a Treasurer; and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.
4. The Tribal Council may remove any Member, by a two-thirds majority vote of Tribal Council after a hearing in which 10 days prior notice is provided. At the hearing, the Commissioner shall have the right to be heard, represented by Counsel at his/her own expense, and present evidence and witnesses on his/her behalf. Tribal Council's decision to remove a Commissioner is final. Tribal Council may temporarily remove a

commissioner for egregious behavior pending a hearing for permanent removal pursuant to the procedures specified herein.

5. Terms. The Commission shall serve four year terms which shall coincide with their respective term of office on the Tribal Council. For

A resignation shall be effective upon receipt of written notice by the Commission Chair or Tribal Council, unless the notice specifies a later time of effectiveness. If a vacancy occurs, a replacement Commission Member shall be appointed by the Tribal Chairperson and approved by the Tribal Council to fill the vacancy and shall serve for the unexpired term of his or her predecessor.

#### **SECTION 44-2-103: COMMISSION MEETINGS**

1. The regularly scheduled meetings of the Commission shall be established for each fiscal year in advance. The Commission shall meet at least once during each quarter of the fiscal year at such dates, times and places as the Members shall determine. In addition to the quarterly meetings, additional regularly scheduled meetings shall be held at such times as shall from time to time be fixed by the Chairperson. Special meetings of the Commission for any purpose or purposes may be called at any time by the Commission, the Chairperson, or by a majority of Members then in office.
2. Commission Members may participate in a meeting through the use of a conference telephone, electronic video screen communication, or other communications equipment, so long as all Commission Members participating in such meeting can hear one another and arrangements are made for public participation at regularly scheduled meetings and, where time permits, any special meetings.
3. Participation in a meeting pursuant to this paragraph constitutes presence in person at that meeting if all of the following apply:
  - a. Each Commission Member participating in the meeting can communicate with all of the other Commission Members.
  - b. Each Commission Member is provided the means of participating in all matters before the Commission, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Commission.
  - c. The Commission adopts and implements some means of verifying both of the following:
    - i. A person representing himself or herself to be a Commission Member communicating by telephone, electronic video screen, or other communications equipment is a Commission Member entitled to participate in such meeting.
    - ii. All votes were made by such Commission Member and not by another person.

4. **Notice.** Notice of regularly scheduled and special meetings shall be given to the Commission Members not less than six days prior to the meeting if delivered by first-class mail or not less than four days prior to the meeting if the notice is delivered personally, by telephone, by facsimile or by electronic mail; provided, however, that notice of special meetings shall not be sent solely by electronic mail. If mailed, such notice shall be deemed given when deposited in the United States mail, with first-class postage thereon prepaid, addressed to the Commission Member.
  - a. The notice requirements contained in this Section may be waived in writing by any Commission Member with respect to that Commission Member, either before or after the meeting. The attendance of any Commission meeting without, as soon as reasonably practicable, protesting the lack of notice of such meeting shall constitute a waiver of notice by him or her. All waivers shall be made part of the minutes of the meetings. Waivers of notice for meetings shall be governed by the provisions of described herein.
5. **Quorum.** A quorum for any Commission Meeting shall be three of the Commission Members then in office. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of a Commission Member, provided that any action taken is approved by the required number of Commission Members, as specified in this Governing Ordinance. A majority of the Commission Members then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.
6. Commission Members who have recused themselves on a particular matter will not be counted for purposes of determining whether a sufficient vote exists for purposes of actions taken by the Commission on that matter.
7. In the case of an emergency situation involving matters upon which prompt action is necessary and in which it is not practicable to convene a regular or special meeting of the Commission, the Chairperson, or a majority of Commission Members then in office may call an emergency meeting or special executive session of the Commission consistent with the standards in the Commission's Open Meeting Policy then in effect. During a meeting prior to the emergency meeting, or at the beginning of the emergency meeting, the Commission shall determine if an emergency exists under those standards.
8. Notice of an emergency meeting or special executive session shall be given to the Commission Members as soon as practicable and before the meeting is to be held. Such notice shall be delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, by facsimile, by electronic mail or by other electronic means and shall be deemed given at the time. The notice requirements of this section may be waived in writing by any Commission Member with respect to that Commission Member, either before or after the meeting. The attendance of any Commission Member at an emergency meeting without, as soon as reasonably practicable, protesting the lack of notice of such emergency meeting shall

constitute a waiver of notice by him or her. All waivers shall be made part of the minutes of the emergency meeting.

#### **SECTION 44-2-104: COMMISSION COMMITTEES**

The Commission may designate committees to serve at the pleasure of the Commission. Appointments to such committees shall be made annually by a two-thirds vote of the Commission Members then in office.

#### **SECTION 44-2-105: STANDARD OF CARE**

General - Commission Members shall perform the duties of the Commission, including duties as a Commission Member of any committee of the Commission on which the Commission Member may serve, in good faith, in a manner that such Commission Member believes to be in the best interest of the Tribe and its members and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

1. Reliance - In performing the duties of a Commission Member, a Commission Member shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
  - A. Counsel, independent accountants or other persons as to matters that the Commission Member believes to be within such person's professional or expert competence; or
  - B. A committee of the Commission upon which a Commission Member does not serve, as to matters within its designated authority, which committee the Commission believes to merit confidence, so long as, in any such case, the Commission Member acts in good faith, makes any reasonable inquiry when the need therefore is indicated by the circumstances and acts without knowledge that would cause such reliance to be unwarranted.
2. No Liability- A person who performs the duties of a Commission Member shall have no liability to the Commission, any other Commission Member or any other person based upon any failure or alleged failure to discharge that person's obligations as a Commission Member, including, without limiting the generality of the foregoing, any actions or omissions that exceed or defeat a public purpose to which the Commission, is dedicated.
3. Self-Dealing Transactions - The Commission shall not approve a transaction to which the Commission is a party and in which one or more of the Commission Members or their employers has a material financial interest.

#### **SECTION 44-2-106: ALLOCATION PLAN**

The Commission shall not conduct any activity for profit. All revenues of the Commission shall be allocated in accordance with an Allocation Plan approved by the Tribal Council.



#### **SECTION 44-2-107: COMPENSATION AND REIMBURSEMENT**

Commission Members may be reimbursed for expenses incurred in attending its meetings. All decisions relating to compensation and reimbursement shall be in accordance with the Allocation Plan approved by the Tribal Council as set forth in Section 206 above.

#### **SECTION 44-2-108: COMMISSION GENERAL JURISDICTION AND POWERS**

Subject to applicable laws, regulations, Standing Rock Sioux Tribe Constitution and solely in furtherance of the mission set forth in this Governing Ordinance, the Commission's jurisdiction and powers include the following:

1. The general jurisdiction of the Commission shall extend to and include:
  - a. Telecommunications companies, including transport and transit carriers, engaged in the furnishing of telecommunications services including cable, wired, and wireless companies engaged in the transmission of images, data, messages, conversations by voice or electronic means, whether by land based or wireless technologies;
  - b. Communications providers, enhanced service providers, broadband carriers, and other telecommunications and non-telecommunications involved in the delivering of information, whether by common carriage or private networks;
  - c. Pipeline utilities engaged in the transportation of gas, oil, or other fuels;
  - d. Electric utilities engaged in the generation and distribution of light or power;
  - e. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas;
  - f. Water companies for the storage and distribution of water for domestic or other beneficial use;
  - g. Heating utilities engaged in the distribution of heat; and
  - h. All other utilities that operate, maintain or control any equipment or facilities within the Reservation and /or use rights-of-way on the Reservation.
2. The general powers of the Commission shall include:
  - a. Investigate methods and practices of Utilities subject to the provisions of this Title.
  - b. Require utilities or other related 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 timetables in effect and used by such Utilities 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. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties have agreed concerning a matter, the Commission may issue its order without a hearing.
- f. Employ and fix the compensation of Rate experts, engineers, and all other expert expenses for Rate increase application hearings, investigations, and proceedings hereunder. 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.
- g. Be authorized to file reports, hold hearings, and promulgate regulations for energy conservation, conversion, Rate reform, and Utilities within its jurisdiction.
- h. Promulgate and enforce rules and regulations consistent with this Title.
- i. Employ and consult with such advisors regarding its duties as it may deem necessary.
- j. Require by regulation the filing of any forms or reports necessary for implementation of this Title.
- k. 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.
- l. Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.
- m. Negotiate Utility Permits and recommend their approval to the Tribal Council.

#### **SECTION 44-2-109: 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 hearings, 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 schedule 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.

#### **SECTION 44-2-110: POWER OF COMMISSION TO REGULATE SERVICES**

Whenever the Commission shall find, after hearing that the rules and regulations, practices, facilities or services 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 or regulations, services or methods to be observed, enforced or employed and, after hearing, shall fix the same by its orders, rule or regulation. On demand, such utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules and regulations.

#### **SECTION 44-2-111: 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 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.

#### **SECTION 44-2-112: ANNUAL REPORTS BY UTILITIES**

The Commission may require any Utility to file annual reports in such form and content 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 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.

#### **SECTION 44-2-113: DEPRECIATION RATES AND PRACTICES**

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

#### **SECTION 44-2-114: 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 necessary therefore. The Utility shall have the right to be present during the examinations and inspections

#### **SECTION 44-2-115: PRODUCTION OF RECORDS**

The Commission may require, by Order, any Utility to produce at a reasonable time and place as the Commission designates the records, accounts, books or papers of the Utility relating to its business or affairs within the Reservation, pertinent to any lawful inquiry regardless of whether the records are kept within or outside of the Reservation.

#### **SECTION 44-2-116: INVESTIGATION**

The Commission, upon complaint or its own initiative and whenever it may deem necessary in the performance of its duties or exercise of its authority, may investigate and examine the condition and operation of any Utility. In conducting the investigation, the Commission may proceed with or without a hearing, but it shall make no order without affording the affected parties notice and an opportunity for a hearing.

#### **SECTION 44-2-117: 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 by appointment in accordance with Section 218. Reasonable notice of all hearing shall be given to interested parties as determined by the Commission.

#### **SECTION 44-2-118: 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.

#### **SECTION 44-2-119: 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 (a) internal operational procedures of the Commission and its staff; (b) interpretation and application of this Title as may be necessary; (c) supervision and regulation of the Rates, charges, tariffs, rules and regulations and all other requirements of Utilities; (d) the finding of any reports or other information required or necessary to implement this Title; and (e) the process for inspections, investigations, hearings, enforcement actions and other powers granted to the Commission. Such written rules and regulations, when properly promulgated by the Commission, shall have the force of law.

1. **Hearings.** Commission Rules shall provide for hearings for all interested persons or parties upon reasonable notice, and their right to be represented by Counsel and present oral or written testimony.
2. **Approval of Rules and Regulations.** No rule or regulation of the Commission shall be of any force or effect until and unless the rule has been officially approved by the Commission and bears 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. **Judicial Notice.** 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.

#### **SECTION 44-2-120: COMMISSION EMPLOYEES AND EXPENSES**

1. The Commission may employ such Persons 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 approval of the Tribal Council by resolution, the Commission may utilize Tribal employees to exercise the duties and responsibilities set out in this Title.
3. The Commission may delegate responsibilities to the Tribal employees by rule as may be necessary to administer this Title efficiently, consistent with the limitations of this Title.

4. The Commission is prohibited from paying salaries, expenses and incidentals related to the operation of the Commission which exceed the amount of the Commission's budget for any fiscal year. The Commission shall comply with the same process required of Tribal Programs to submit a line-item proposed budget to Tribal Council for each fiscal year.

#### **SECTION 44-2-121: 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 therefore to provide 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 Commission Account as authorized in the Commission budget.

#### **SECTION 44-2-122: RECORDS**

The books, records and property of the Commission, including current financial and operating statements, shall be kept on file in the main office of the Commission and shall be available for inspection at all reasonable times by authorized representatives of the Commission and, upon notice to the Tribal Council.

Information regarding the Commission and its operations must be kept confidential including information received by the Commission that is subject to a confidentiality obligation. Information considered by the Commission as non-confidential shall be publicly available at requesting recipient's expense. With the exception of records relating to the business of a named particular Utility, any records of the Commission are public records of the Tribe. For reasonable business purposes only, such records shall be available for public inspection and copying during the Commission's regular business hours. Copies may be obtained by payment of such copying costs as may be established by rule of the Commission. However, the names and other identification of any Utility appearing in such records shall be redacted prior to release of such copies unless this Title otherwise allows release of such information.

Financial Statements & Annual Reports shall be prepared as soon as reasonably practicable after the close of the fiscal year. Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Commission that such statements were prepared without audit, under generally accepted accounting principles, from the books and records of the Commission. Financial Statements, books, records, and property of the Commission shall be available for inspection at all reasonable times by authorized representatives of the Commission and the Tribal Council.

The Commission shall keep or cause to be kept a minute book that shall be available for public inspection during the Commission's normal business hours and shall contain:

1. The record of all meetings of the Commission, including:
  - a. The date, place, those attending the proceedings thereof (other than members of the public).
  - b. A copy of the notice of the meeting and when and how given.
  - c. Waivers of notice of meeting.
  - d. Written consents to hold meeting.
  - e. Written approvals of minutes of meeting
  - f. All meeting Minutes, including Minutes of committee meetings of the Commission.
2. A current copy of this Governing Ordinance and subsequent amendments.

Every Commission Member shall have the right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of the Commission. No Commission Member shall use or disseminate any non-public information obtained as a result of any such inspection, or otherwise in his or her capacity as a Commission Member, for his or her own personal gain, to the detriment of the Commission or to the detriment of any competitors of any entity with which the Commission Member is affiliated except in connection with the enforcement of a tariff, contract or applicable law and consistent with the Commission policy regarding confidential information.

#### **SECTION 44-2-123: 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 Standing Rock Tribal Utility Commission Account.
2. The Standing Rock Tribal Utility Commission Account shall be an interest-bearing account and the funds therein may be invested and reinvested as approved by Resolution of the Tribal Council.
3. No monies shall be released or expended from the Standing Rock Tribal Utility Commission Account except upon written resolution of the Tribal 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 appropriate resolution.

#### **SECTION 44-2-124: SERVICE LINE AGREEMENTS, LEASES, AND RIGHTS-OF-WAY**

The Commission shall, consistent with the authority granted and delegated by the Tribal Council:

1. Negotiate terms upon which the Tribe will consent to any required Leases or Rights-of-Ways and recommend such terms for approval by the Tribal Council;
2. Negotiate terms of Service Line Agreements and recommend such terms for approval by the Tribal Council;
3. Negotiate terms of Utility Permits and recommend such terms for approval by the Tribal Council; and

4. Administer records related to Utility Personal Property to prevent Civil Trespass and to encourage Utilities to obtain appropriate Service Line Agreements, Leases, Rights-of-Ways or Utility Permits.

#### **SECTION 44-2-125: INDEMNIFICATION OF COMMISSION AND EMPLOYEES**

The Commission shall indemnify any current or former officer, employee, or Commission Member from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Commission. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee, or Commission Member may be entitled to receive.

#### **SECTION 44-2-126 214: REPORTS TO TRIBAL COUNCIL**

The Commission shall file an annual report with the Tribal Council with respect to matters addressed by the Commission and matters the Commission anticipates will be addressed in the future. The Commission may file quarterly reports to upon the request of Tribal Council to update the Tribal Council on any significant changes which may have occurred since the proceeding annual report or on any significant developing matters.

### **ARTICLE III**

#### **UTILITIES**

##### **CHAPTER 1: DUTIES OF UTILITIES**

- |            |   |
|------------|---|
| § 44-3-101 | To provide adequate service                                   |
| § 44-3-102 | Reasonable charges for services and commodity of Utility      |
| § 44-3-103 | System of accounts  |
| § 44-3-104 | To pay interest on customer deposits                          |
| § 44-3-105 | Prohibition against unreasonable preferences or advantages    |
| § 44-3-106 | To observe orders of the Commission                           |
| § 44-3-107 | Prohibition against disconnection service during cold weather |
| § 44-3-108 | To be liable for improper action                              |

#### **SECTION 44-3-101: TO PROVIDE ADEQUATE SERVICES**

1. Each Utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference.



2. Every Utility shall furnish, provide and maintain such service, instrumentalities, equipment, and facilities as will promote the safety, health, comfort, and convenience of its customers, employees, and the public.
3. For purposes of this Title, 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.

#### **SECTION 44-3-102: REASONABLE CHARGES FOR SERVICES OF UTILITY**

Unjust and unreasonable Rates or charges made, demanded, or received by any Utility for any product, commodity or service is prohibited and unlawful and shall be subject to any remedy provided for herein, with proper notice and right to be heard.

#### **SECTION 44-3-103: SYSTEM OF ACCOUNTS**

When the Commission prescribes the forms for accounts and records to be kept by any Utility, it 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 that are supplemental or explanatory to the accounts and records prescribed by the Commission.

#### **SECTION 44-3-104: TO PAY INTEREST ON CUSTOMER DEPOSITS**

A Utility may require a customer pay a deposit for service in accordance with Commission rules. A Utility may be required pay interest on all customer deposits for service held by such Utility at a Rate to be determined by the Commission.

#### **SECTION 44-3-105: PROHIBITION AGAINST UNREASONABLE PREFERENCE OR ADVANTAGE**

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 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 a greater or lesser compensation for any service rendered or to be rendered than it charges, demand, collects, or receives from any other Person 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.

#### **SECTION 44-3-106: 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 relating to or affecting its business as a Utility and shall take all necessary and proper action to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.

**SECTION 44-3-107: PROHIBITION AGAINST DISCONNECTING SERVICE DURING COLD WEATHER**

The Commission shall promulgate regulations setting out procedures for and limitations on disconnection of residential Utility customers who are unable to pay their Utility bill during winter months. Such regulations shall include the following:

1. A definition of "winter months" as being November 1st through March 31st.
2. Coverage of any Utility customer whom the Utility knows or has reason to know:
  - a. whose household income is less than 185% of the federal poverty level;
  - b. is bedridden or is otherwise suffering the effects of a serious, life-threatening disease; or
  - c. for whom the disconnection of Utility service would have other serious life-threatening effects.
3. 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; provided that for the purpose of this Subsection the term "customer 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 shall be the average monthly income of the customer computed on an annual calendar year basis.
4. A provision that the 10% figure in Subsection 3 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.
5. A provision that a customer's household income does not include any amount received for energy assistance.
6. 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 2.
7. A provision that the customer receives, 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.

## **SECTION 44-3-108: LIABILITY FOR IMPROPER ACTION**

If a Utility fails to comply with any requirements of this Title, such Utility shall be liable to the Person affected thereby for all loss, damages, and injury caused thereby or resulting therefrom. Any Person may bring an action in Tribal Court to recover for such loss, damage, or injury. If the finder of fact finds that the act or omission was willful, the Court in addition to the actual damages, may award punitive damages. No recovery under this Section shall affect in any manner a recovery by the Tribe of any fine or penalty provided for in this Title or the power to punish for contempt.

## **CHAPTER 2. ELECTRIC UTILITIES**

§ 44-3-201	Definitions
§ 44-3-202	Utility to furnish information of Utility Personal Property
§ 44-3-203	Public policy regarding assigned service areas for Electric Utilities
§ 44-3-204	Assigned service areas
§ 44-3-205	Exclusive service rights
§ 44-3-206	Service extensions
§ 44-3-207	Enforcement of chapter
§ 44-3-208	Terms by which facilities of one Utility may cross those of another Utility
§44-3-209	Use by one Utility of the facilities of another Utility

## **SECTION 44-3-201: DEFINITIONS**

In this Chapter, except where otherwise specifically provided for, 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 price from an electric Utility
3. "Electric service" means electric service furnished to a customer at retail price 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 phase to phase or less used for distributing electric energy directly to customers at retail price.
5. "Electric Utility" means any Utility providing electric service.

## **SECTION 44-3-202: UTILITY TO FURNISH INFORMATION ON UTILITY PERSONAL PROPERTY.**

Upon request of the Commission, an Electric Utility shall provide within 30 days information requested by the Commission related to Utility Personal Property.

**SECTION 44-3-203: 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 price, 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 Standing Rock Sioux Reservation may, subject to this Chapter, be divided into geographic service areas within which a specified Electric Utility shall provide electric service to customers on an exclusive basis.

**SECTION 44-3-204: ASSIGNED SERVICE AREAS.**

1. At such 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 on the effective date of this Title and all places on the Reservation receiving its service.
2. On or before twelve months following the effective date of this Title, the Commission shall, after notice and hearing, establish the assigned service areas or area 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.
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. 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 be reasonably 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.

**SECTION 44-3-205: EXCLUSIVE SERVICE RIGHTS.**

Except as provided under this Chapter, each Electric Utility shall have the exclusive right to protect electric service at retail price 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 price 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 areas 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. Within 180 days of the effective date of this Title, the Commission shall establish regulations regarding the transfer of the exclusive right to provide service to a particular service area.

#### **SECTION 44-3-206: SERVICE EXTENSION.**

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 § 44-3-204, any Electric Utility may extend electric lines for electric service to its own utility property and facilities.

#### **SECTION 44-3-207: 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.

#### **SECTION 44-3-208: 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.

## **SECTION 44-3-209: 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 on Electric Utility of the conduits, wires, poles, pipes or other equipment or any part thereof on, over or under any street 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 3. ELECTRIC UTILITY RATES AND TARIFFS**

- § 44-3-301 Changes in tariff Rates; notice to Commission
- § 44-3-302 Hearing by Commission on proposed change of Rates
- § 44-3-303 Factors in establishing Rate Adjustments
- § 44-3-304 Non-interference with federal programs
- § 44-3-305 Reasonable Rates
- § 44-3-306 Testing meters; gas; electric--RESERVED
- § 44-3-307 Publishing of schedules
- § 44-3-308 Rate preference prohibited
- § 44-3-309 Valuation of Electric Utility property--RESERVED

## **SECTION 44-3-301: CHANGES IN TARIFF RATES; NOTICE TO COMMISSION**

1. 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.
2. Once a type of electric service is established which is relied upon by customers on the Reservation, Utilities shall continue providing such electric service to its customers on the Reservation under the previously established service conditions until the Utility provides notice to the Commission and an Order of the Commission approves changes to such service pursuant to the complaint procedures in Article Four. Unless a service interruption is a result of force majeure and service is restored as soon as practicable, or unless service is discontinued pursuant to another provision of this code, failure of a Utility to continue providing service relied upon

by customers may result in an Order of the Commission that establishes fines or penalties in relationship to the discontinuation. Knowing failure to comply with this provision may result in civil liability for injuries or damages resulting from discontinuation of service.

#### **SECTION 44-3-302: 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, 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, regulations, rule or practice is just and reasonable shall be upon the Electric Utility making application thereof. 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 in 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. Any Utility may, at its own expense, notify customers of the date and place of a Rate change hearing.

#### **SECTION 44-3-303: FACTORS IN ESTABLISHING RATE AND 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 of classification of service provided to customers outside the boundaries of the Reservation and within the State. 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 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 or any other provision of this Title relating to tribal regulation of electric Utilities within the Reservation.

#### **SECTION 44-3-304: NON-INTERFERENCE WITH FEDERAL PROGRAMS.**

In establishing rate 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. The burden of proving any alleged interference with federal obligations or any other obligations protected by this clause shall be on the Electric Utility claiming any such interference. The Utility must prove claim of interference by clear and convincing evidence supported by account records, relevant contracts, relevant federal regulations and laws, all relevant federal loan documents, certified accountings, and any other documentation consistent with industry standards.

#### **SECTION 44-3-305: REASONABLE RATES**

Every Rate made, demanded, or received by any Utility or by 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 customer.

#### **SECTION 44-3-306: [RESERVED]**

#### **SECTION 44-3-307: 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 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 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 products, as well as any contracts, or 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 be 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 prescribed in the schedule 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 the prescribed in the schedules. Every Utility shall keep copies of the schedules open to public inspection under rule and regulations as the Commission may prescribe.

#### **SECTION 44-3-308: 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.

#### **SECTION 44-3-309: VALUATION OF ELECTRIC UTILITY PROPERTY [RESERVED]**

#### **CHAPTER 4--TELECOMMUNICATIONS COMPANIES [RESERVED]**

#### **CHAPTER 5--PIPELINE UTILITIES [RESERVED]**

#### **CHAPTER 6--GAS UTILITIES [RESERVED]**

#### **CHAPTER 7--WATER COMPANIES [RESERVED]**

#### **CHAPTER 8--HEATING UTILITIES [RESERVED]**

#### **CHAPTER 9--OTHER PUBLIC UTILITIES [RESERVED]**

### **ARTICLE IV**

#### **REGULATION PROCEDURES**

- § 44-4-101 Complaints
- § 44-4-102 Excessive or discriminatory charges; reparation
- § 44-4-103 Standards; classifications
- § 44-4-104 Decisions of Commission; rescission or amendment
- § 44-4-105 Effective date of orders and decisions
- § 44-4-106 Conclusive effect of orders and decisions of Commission
- § 44-4-107 Rehearing before Commission
- § 44-4-108 Subpoena; witnesses; fees; mileage
- § 44-4-109 Oaths; contempt; examiner's powers
- § 44-4-110 Depositions
- § 44-4-111 Testimony and production of records; perjury
- § 44-4-112 Copies of documents as evidence
- § 44-4-113 Orders and findings in writing
- § 44-4-114 Public records
- § 44-4-115 Transcription to be kept
- § 44-4-116 Appeal from decision of Commission
- § 44-4-117 Judicial review

- § 44-4-118 Stay of judicial review; bond  
§ 44-4-119 Appeal to Standing Rock Supreme Court

### **SECTION 44-4-101: COMPLAINTS**

1. The Commission shall proceed, with notice, to investigate, as necessary, any complaint made against any Utility, by a Utility, the Tribe, the Commission, or 15 consumers of the particular Utility, that any of the Rates, tolls, tariffs, charges or schedules or any joint Rate, regulation, measurement, practice, act or omission affecting or relating to production transmission, delivery or furnishing of any service is in any respect unreasonable, insufficient, or unjustly discriminatory or that any service is inadequate and cannot be obtained, or that any Utility is in violation of any requirements of this Title. The Commission may dismiss any complaint without hearing if in its opinion a hearing is not in the public interest.
2. The Commission shall 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.
3. The Commission shall give the Utility and the complainant ten days' notice of time and place when and where the hearing will be held and such matters to be considered and determined. Both the Utility and complainant shall be entitled to be heard and to be represented by counsel.
4. Notice shall also be given to the Tribal Council, any affected Municipality within the boundaries of the Reservation, and to any other Persons the Commission shall deem necessary. The notice under this section may be combined with the notice under subsection 3 above, but the notice shall not be less than ten days.
5. Service of notice of all hearings, investigations or proceedings pending before the Commission and of complaints, reports, orders and other documents shall be made personally or by mail as provided in this Title.
6. The Commission may, in its discretion, when complaint is made of more than one Rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at times it may prescribe.
7. **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. At the conclusion of the summary investigation, if the Commission is satisfied that sufficient grounds exist to warrant a formal hearing as to the matters investigated, it shall set a time and place for hearing.
- c. Notice of the time and place of 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 and observed 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.

**SECTION 44-4-102: 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, after notice and a hearing has been given as required by this Title, that the Utility has charged an excessive or discriminatory amount for such product or service, in excess of the schedules, Rates and tariffs on file with the Commission, or that the Utility has discriminate under such schedules against the complainant, the Commission may order that Utility make due reparation to the complainant therefore, with interest from the date of collection, if no discrimination will result for such reparation.

**SECTION 44-4-103: STANDARDS; CLASSIFICATIONS.**

The Commission, after providing notice and a hearing, or upon its own motion or 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.

#### **SECTION 44-4-104: 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 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 decision shall have the same effect as an original order or decision.

#### **SECTION 44-4-105: EFFECTIVE DATE OF ORDERS AND DECISIONS**

Every decision made by the Commission constituting an order or decisions 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.

#### **SECTION 44-4-106: 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.

#### **SECTION 44-4-107: 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.

#### **SECTION 44-4-108: 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.

#### **SECTION 44-4-109: OATHS; CONTEMPT; EXAMINER'S POWERS**

The Commission or 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.

#### **SECTION 44-4-110: DEPOSITIONS**

The Commission or any party to the proceeding 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.

#### **SECTION 44-4-111: TESTIMONY AND PRODUCTION OF RECORDS; PERJURY**

No Person shall be excused from testifying or from producing any books, document, paper, or account in any investigation or inquiry by, or hearing before the Commission when ordered to do so, upon the grounds that the testimony or evidence required may tend to incriminate the person or subject the person to penalty or forfeiture; but no Person shall be prosecuted, punished, or subject to any forfeiture or penalty for or account of any act, transaction, or matter 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 the testimony.

#### **SECTION 44-4-112: COPIES OF DOCUMENTS AS EVIDENCE**

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

#### **SECTION 44-4-113: ORDERS AND FINDINGS IN WRITING**

Every order, finding, authorization, or certificate issued or approved by the Commission under any provisions of this Title shall be in writing and filed with 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.

#### **SECTION 44-4-114: PUBLIC RECORDS**

All decisions, transcripts, and orders of the Commission shall be public records.

#### **SECTION 44-4-115: TRANSCRIPTION 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.

#### **SECTION 44-4-116: APPEAL FROM DECISION OF COMMISSION**

Any party to any proceedings 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 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.

#### **SECTION 44-4-117: 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 in the Tribal Court within thirty (30) days of the Commission's final order or decision. 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 grounds that it is against the Tribe or that the Tribe is an indispensable party and, for the limited purposes of this Title, the Tribe hereby waives the sovereign immunity of the Director, the Commission, and its members for the limited purpose of Tribal Court review of decisions of

the Director and the Commission. Such waiver of immunity is further limited to prospective, equitable relief, including declaratory and injunctive relief, and does not include money damages of any kind.

- 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 grounds; 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 proceeding.
  3. Scope of Review. To the extent necessary, 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 change the final order of the Commission only upon a finding that:
    - a. The Commission action unlawfully withheld or unreasonably delayed the rights of the parties involved;
    - b. The findings and conclusions of the Commission are found to be, by clear and convincing evidence:
      - i. Arbitrary and capricious or an abuse of discretion;
      - 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 granted by tribal law;
      - iv. 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. In order to facilitate such review, the administrative record shall be kept in complete form by the Commission.

#### **SECTION 44-4-118: 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 bond first shall have been executed

and filed with and approved by the Tribal Court, payable to the Commission, and sufficient in amount and security to insure the prompt payment by the party appealing of all damages assessed by the Commission's decision, as well as all costs and expenses related to or 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 including attorney's fees and costs, as well as damages, 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 the 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.

#### **SECTION 44-4-119: APPEAL TO THE STANDING ROCK SUPREME 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 Standing Rock Supreme Court under provisions of this Code.

### **ARTICLE X**

#### **CIVIL INFRACTIONS**

§ 44-5-101	Purpose
§44 -5-102	Prohibition of Civil Trespass
§ 44-5-103	Civil action for penalties
§ 44-5-104	Violation of this title or Commission order or rule
§ 44-5-105	Cumulative fines
§ 44-5-106	Civil Trespass Fees for Tribal Lands
§ 44-5-107	Right to Hearing and subsequent judicial review

#### **SECTION 44-5-101: 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 Standing Rock 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 Standing Rock Sioux Tribe.



#### **SECTION 44-5-102: PROHIBITION AGAINST CIVIL TRESPASS**

It is unlawful for any Utility to be in Civil Trespass within the Reservation.

#### **SECTION 44-5-103: CIVIL ACTION FOR PENALTIES**

In enforcing the civil infraction provisions of this Chapter, the 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. Except when a burden of proof is specifically referenced in other parts or chapters in this Code, the Commission in an action to secure compliance with this code shall impose such fines or fees as the Commission determines is appropriate pursuant to the Chapter, provided that the Commission shall have the burden of showing by the preponderance of the evidence that the accused, be it any utility, person, or other entity violated the applicable provision of this Title or any Order of the Commission.

#### **SECTION 44-5-104: VIOLATIONS OF THIS TITLE, 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, with the exception of Civil Trespass violations as defined herein, which violations have fees and procedures as set forth in this Title and chapter. 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.

#### **SECTION 44-5-105: ASSESSMENT AND PAYMENT OF 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.

1. Penalties and damages assessed pursuant to this Ordinance shall be due and payable upon receipt of Notice of Assessment of Penalty and Damages thereof and shall become delinquent thirty (30) days thereafter, unless the Commission specifies a different date.
2. Payments shall be by certified check made payable to the order of the Tribe.
3. Interest on any delinquent payment of penalties and damages shall accrue from the date of delinquency until paid. The interest shall be assessed at five percent (5%) above the federal prime lending rate on the date of assessment and shall continue in effect until the assessment is paid or otherwise discharged.

4. Monies collected through payment of assessments of penalties and damages, and any interest thereon, shall be deposited into such account as designated by the Tribal Council, and shall be kept in separate account until all appeals have been exhausted.

#### **SECTION 44-5-106: CIVIL TRESPASS FEES FOR TRIBAL LANDS**

The monthly fees applicable to Utilities for Civil Trespass of high voltage (over 69kV) electrical power lines and substations and interstate gas pipelines occurring on lands held in trust for Standing Rock Sioux Tribe, or other lands in which the Standing Rock Sioux Tribe has the right to consent prior to the Secretary's granting of a Lease or Right-of-way shall be \$194.00 per acre, until such schedule is changed by Order of the Commission. The commission may establish additional schedules for lower voltage electrical facilities and other types of facilities using procedures set forth herein. The Commission shall provide notice to all Utilities of any new schedules.

#### **SECTION 44-5-107: RIGHT TO HEARING AND SUBSEQUENT JUDICIAL REVIEW**

In addition to the Fees set forth in § 44-5-105:

1. Any Civil Trespass within the Reservation may result in the payment for all damages proximately caused by such Civil Trespass by payment of a penalty assessed by the Commission.
2. The amount of a penalty determined by the Commission shall be reasonable and itemized in written form prior to the issuance of any notice hereunder.
3. Penalties shall be the reasonable damage proximately caused by a trespass as determined by the Commission based upon:
  - a. Information submitted to the Commission by a landowner that the Utility is in Civil Trespass or is trespassing on landowner's lands.
  - b. The expense of enforcing this Ordinance against the Utility including attorney fees; and
  - c. All other consequential or special damages proximately flowing from the violation of this Ordinance by the Person in trespass.
4. The Tribe shall remit to landowners and allottees damages, excluding penalties and expenses incurred by the Tribe recovered from a Utility as follows:
  - a. If damages are recovered by the Tribe for trespass to multiple allotments or for a trespass to one or more allotments and Tribal trust land, the damages shall be allocated based upon the proportional acreage of the land encumbered or affected by the trespass; and,
  - b. If more than one allottee has an interest in an allotment encumbered or affected by the trespass for which damages are recovered by the Tribe, the

damages shall be distributed among the allottees based on the extent of the interest of each in the allotment.

5. Any determination of a Penalty by the Commission under this section that is not acceptable to the Utility may be appealed pursuant to a Complaint under this title.

#### **SECTION 44-5-108: RIGHT TO HEARING AND SUBSEQUENT JUDICIAL REVIEW**

Any entity who is allegedly aggrieved by a ruling of the Commission without legal justification shall be afforded a right to a hearing before the Commission, as well as a right to Judicial Review in the Tribal Court, after exhausting administrative remedies before the Commission. Hearings under this chapter are governed by Article IV and are subject to judicial review pursuant to procedures as set forth in § 44-4-117 through § 44-4-119, the failure to timely file a request for review shall be considered jurisdictional and shall deprive the reviewing entity of authority to review any alleged claim of harm.

### **ARTICLE VI**

#### **UTILITY PERMITS**

- § 44-5-101: Purpose
- § 44-5-102: Definitions
- § 44-5-103: Certificate of Site Compatibility or Route Permit Required
- § 44-5-104: Waiver of Procedures and Time Schedules
- § 44-5-105: Application for a Certificate of Site Compatibility; Notice of Filing; Amendment; Designation of a Site or Corridor
- § 44-5-106: Application for a Permit; Notice of Filing; Amendment; Designation of a Route
- § 44-5-107: Combining Application
- § 44-5-108: Factors to be Considered in Evaluating Applications and Designation of Sites, Corridors, and Routes
- § 44-5-109: Energy Conversion Facility Siting Criteria
- § 44-5-110: Transmission Facility Corridor and Route Criteria
- § 44-5-111: Decommissioning
- § 44-5-112: Light Mitigating Technology System
- § 44-5-113: Public Hearings
- § 44-5-114: Effect of Issuance of Certificate or Permit
- § 44-5-115: Advisory Committees; Appointment; Compensation
- § 44-5-116: Cooperation with State and Federal Agencies
- § 44-5-117: Unfair Tactics in Acquiring Land or Easements for a Facility; Tribal Court Actions; Cancellation of Easement; Penalty
- § 44-5-118: Easements for a Facility
- § 44-5-119: Improvement of Sites or Locations
- § 44-5-120: Rules and Regulations
- § 44-5-121: Hearing; Judicial Review

- § 44-5-122: Revocation or Suspension of Certificate or Permit
- § 44-5-123: Penalties
- § 44-5-124: Siting Process Expense Recovery; Fees
- § 44-5-125: Safety
- § 44-5-126: Approval for Temporary Operation or Variance
- § 44-5-127: Protection of Cultural or Historical Site Data

#### **SECTION 44-5-101: Purpose**

The Tribal Council finds that the Construction of Facilities within the exterior boundaries of the Reservation affects the political integrity, economic security, and health and welfare of the Tribe. Therefore, it is necessary to ensure that the location, construction, and operation of Facilities will produce minimal adverse effects on the environment, political integrity, economic security, and the health and welfare of the Tribe by providing that no Facility shall be located, constructed, and operated within the exterior boundaries of the Reservation without a Certificate or a Permit acquired pursuant to this article.

The Tribal Council hereby declares it to be the policy of the Tribe to site and/or route Facilities in an orderly manner compatible with environmental preservation, the efficient use of resources, the political integrity, the economic security, and the health and welfare of the Tribe. In accordance with this policy, Sites and Routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

#### **SECTION 44-5-102: Definitions**

In this article, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this article.
2. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the Site after the enactment of this Governing Ordinance, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a Certificate or Permit under this chapter, or on which a Facility was constructed before the enactment of this Governing Ordinance, if:
    - (1) The activities are for the construction of the same type of Facility as the existing type of Facility and the activities are:
      - (a) Within the geographic boundaries of a previously issued Certificate or Permit;
      - (b) For an Electric Energy Conversion Facility constructed before the enactment of this Governing Ordinance, within the geographic location on which the Facility was built; or

- (c) For an Electric Transmission Facility constructed before the enactment of this Governing Ordinance, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion area;
    - (3) The activities are for the construction:
      - (a) Of a new Electric Energy Conversion Facility;
      - (b) Of a new Electric Transmission Facility;
      - (c) To improve the existing Electric Energy Conversion Facility or Electric Transmission Facility; or
      - (d) To increase or decrease the capacity of the existing Electric Energy Conversion Facility or Electric Transmission Facility; and
    - (4) Before conducting any activities, the utility certifies in writing to the Commission that:
      - (a) The activities will not affect a known exclusion area;
      - (b) The activities are for the construction:
        - [1] Of a new Electric Energy Conversion Facility;
        - [2] Of a new Electric Transmission Facility;
        - [3] To improve the existing electric energy conversion or Electric Transmission Facility; or
        - [4] To increase or decrease the capacity of the existing Electric Energy Conversion Facility or Electric Transmission Facility; and
      - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and Commission orders previously issued for any part of the Facility.
  - c. Incident to preliminary engineering or environmental studies.
3. "Corridor" means the area of land where a designated Route may be established for an Electric Transmission Facility.
  4. "Electric Energy Conversion Facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
    - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
    - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
  5. "Electric Transmission Facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric Transmission Facility" does not include:
    - a. A temporary electric transmission line loop that is:
      - (1) Connected and adjacent to an existing Electric Transmission Facility that was sited under this article;

- (2) Within the Corridor of the sited Facility and does not cross known exclusion areas; and
  - (3) In place for less than one year; or
- b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 6. "Facility" means an Electric Energy Conversion Facility, Electric Transmission Facility, or both.
- 7. "Permit" means the permit for the Construction of an Electric Transmission Facility within a designated Corridor issued under this article.
- 8. "Power Emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
- 9. "Route" means the location of an Electric Transmission Facility within a designated Corridor.
- 10. "Site" means the location of an Electric Energy Conversion Facility.

#### **SECTION 44-5-103: Certificate of Site Compatibility or Route Permit Required**

- 1. A utility may not begin Construction of an Electric Energy Conversion Facility or an Electric Transmission Facility within the exterior boundaries of the Reservation without first having obtained a Certificate or a Permit from the Commission pursuant to this article. The Facility must be constructed, operated, and maintained in conformity with the Certificate or Permit and any terms, conditions, or modifications of the Certificate or Permit. A Certificate or Permit may be transferred, subject to the prior approval of the Commission, to any person who agrees to comply with its terms, conditions, and modifications.
- 2. If a Power Emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated Route, the owner of the line shall give telephonic notice to the Commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the Commission a request to approve the relocated Route.
- 3. Certificates and Permits shall have a term of 30 years. The Commission may renew the Permit for an appropriate period of time upon request of the Permit holder.

#### **SECTION 44-5-104: Waiver of Procedures and Time Schedules**

- 1. Any utility which proposes to construct an Electric Energy Conversion Facility or an Electric Transmission Facility within the exterior boundaries of the Reservation may make an application to the Commission for a waiver of any of the procedures or time schedules set forth in this article.
- 2. The application must contain:

- a. A description of the type of Facility addressed in the application, including the purpose and the technology to be employed.
  - b. A description of the products to be produced or transmitted by the proposed Facility.
  - c. The capacity and design of the proposed Facility.
  - d. The location of the proposed Facility and a map showing the location of the proposed Facility.
  - e. A description of the general area to be served by the Facility.
  - f. The anticipated time schedule for major events.
  - g. Any plans for future expansion of the proposed Facility.
  - h. The need for the proposed Facility based on the present and projected demand for the product or products to be produced by the proposed Facility, including the most recent system studies supporting the analysis of the need.
  - i. Any reasonable alternative methods of serving the need.
  - j. Justification for any deviations from the applicant's most recent ten-year plan that the proposed Facility may present.
  - k. The estimated total cost of Construction of the Facility.
  - l. Any specific provisions of law that the applicant requests the Commission waive or modify, with a separate justification for each provision.
  - m. The factual basis demonstrating that the proposed Facility is of such length, design, location, or purpose that it will produce minimal adverse effects.
  - n. The nature of the emergency justifying immediate authority, if the application is based on an emergency situation.
3. The Commission, upon a finding that the proposed Facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, upon a finding that a demonstrable emergency exists, may issue an order waiving specified procedures and time schedules required by this article, including, but not limited to, applications, notices, and hearings, and may forthwith issue a Certificate or a Permit, with such conditions as the Commission may require.

**SECTION 44-5-105: Application for a Certificate of Site Compatibility; Notice of Filing; Amendment; Designation of a Site or Corridor**

1. An application for a Certificate must contain the following information:
  - a. A description of:
    - i. The type of energy conversion Facility proposed;
    - ii. The gross design capacity;
    - iii. The net design capacity;
    - iv. The estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based;
    - v. The number of acres that the proposed Facility will occupy; and
    - vi. The anticipated time schedule for:
      1. Obtaining the Certificate;
      2. Completing land acquisition;
      3. Starting Construction;
      4. Completing Construction;
      5. Testing operations;
      6. Commencing commercial production; and

7. Beginning any expansions or additions.

- b. Copies of any evaluative studies or assessments of the environmental impact of the proposed Facility submitted to any federal, regional, state, or local agency.
- c. An analysis of the need for the proposed Facility based on present and projected demand for the product or products to be produced by the proposed Facility, including the most recent system studies supporting the analysis of the need.
- d. A description of any feasible alternative methods of serving the need.
- e. A study area that includes the proposed Facility Site, of sufficient size to enable the Commission to evaluate the factors addressed in Section 44-5-108.
- f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
- g. A map identifying the criteria that provides the basis for the specific location of the proposed Facility within the study area.
- h. A discussion of the criteria evaluated within the study area, including exclusion areas, selection criteria, policy criteria, design and Construction limitations, and economic considerations.
- i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, Construction, and operation of the proposed Facility.
- j. The qualifications of each person involved in the Facility Site location study.
- k. A map of the study area showing the location of the proposed Facility and the criteria evaluated.
- l. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the Site area.
- m. A discussion of present and future natural resource development in the area.
- n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the Commission. The information must provide the location of the proposed facilities, the proposed Site, and the criteria evaluated.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by Commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GID/Cad files, the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of the imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data



must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the Commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon Commission approval.

2. The applicant shall file an original and four copies of an application with the Commission. The applicant shall provide additional paper copies upon Commission request.
3. After determining that the application is complete, the Commission shall serve a notice of filing of the application on such persons and agencies that the Commission may deem appropriate and shall publish a notice of filing of the application in the Teton Times and Corson/Sioux County News-Messenger.
4. A copy of the application shall be furnished to any person or agency, upon request to the Commission within thirty days of either service or publication of the notice of filing.
5. Within thirty days following service of the notice of filing of a complete application by the Commission, the applicant shall provide a copy of the Commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested Site or Corridor. For purposes of this subsection, the owner of record means the owner identified by the Tribe to receive the real estate tax statement.
6. The Commission may allow an applicant to amend its application at any time during the pendency of an application. A rehearing may be required if the Commission determines that a proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.
7. The Commission may designate a Site or Corridor for a proposed Facility following the study and hearings provided for in this article. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to Sections 44-5-109 and 44-5-110, and the considerations set out in Sections 44-5-109 and 44-5-110 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a Certificate or no later than three months after the filing of a completed application for a Certificate. The time for designation of a Site or

Corridor may be extended by the Commission for just cause. The failure of the Commission to act within the time limits provided in this section shall not operate to divest the Commission of jurisdiction in any certification proceeding. The Commission shall indicate the reasons for any refusal of designation. Upon designation of a Site or Corridor, the Commission shall issue a Certificate with such terms, conditions, or modifications deemed necessary.

8. When a Certificate is denied and the Commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
  - a. The reapplication must be heard as specified in Section 44-5-113.
  - b. The utility shall indicate its acceptance or rejection of the suggested modification.
  - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
  - d. Include a filing fee and any additional fees as specified in Section 44-5-124.
  - e. Reapplication must be made within six months of the order denying an application.

**SECTION 44-5-106: Application for a Permit; Notice of Filing; Amendment; Designation of a Route**

1. An application for a Permit for an Electric Transmission Facility within a designated Corridor must be filed no later than two years after the issuance of the Certificate and must contain the following information:
  - a. A description of the following:
    - i. The type of Facility proposed.
    - ii. The purpose of the Facility.
    - iii. The technology to be deployed.
    - iv. The type of product to be transmitted.
    - v. The source of the product to be transmitted.
    - vi. The final destination of the product to be transmitted.
    - vii. The proposed size and design and any alternate size or design that was considered, including:
      1. The width of right of way;
      2. The approximate length of Facility;
      3. The estimated span length for electric facilities;
      4. The anticipated type of structure for electric facilities;
      5. The voltage for electric facilities;
      6. The requirement for and general location of any new associated facilities;
      7. The estimated distance between surface structures for pipeline facilities;
      8. The pipe size for pipeline facilities;
      9. The maximum design operating pressure and temperature for pipeline facilities;
      10. The maximum design flow rate for pipeline facilities; and
      11. The number and general location of compressor or pumping stations.
  - b. The anticipated time schedule for accomplishing major events, including:

- i. Obtaining the Certificate compatibility;
  - ii. Obtaining the Permit;
  - iii. Completing right-of-way acquisition;
  - iv. Starting Construction;
  - v. Completing Construction;
  - vi. Testing operations; and
  - vii. Commencing operations.
- c. A copy of each evaluative study or assessment of the environmental impact of the proposed Facility and any responses received following the submission of each report to any state or federal agency.
- d. An analysis of the need for the proposed Facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
- e. A description of any feasible alternative methods for serving the need
- f. The width of a Corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate width is determined by the Commission.
- g. A study area that includes a proposed Corridor of sufficient width to enable the Commission to evaluate the factors addressed in Section 44-5-108.
- h. A discussion of the factors in Section 44-5-108 to aid the Commission's evaluation of the proposed Route.
- i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
- j. Identification and map of the criteria that led to the proposed Route location within the designated Corridor, including exclusion areas, selection criteria, policy criteria, design construction limitations, and economic considerations.
- k. A discussion of the relative value of each criteria and how the applicant selected the proposed Corridor location, giving consideration to all criteria and how the location, Construction, and operation of the Facility will affect each criteria.
- l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a Route location in the proposed Corridor and the Construction and operation of the Facility.
- m. The qualifications of each person involved in the Corridor location study.
- n. A map identifying the criteria that led to the proposed Route location within the designated Corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.
- o. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the Site area.
- p. A discussion of present and future natural resource development in the area.
- q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the Commission. The information must provide the location of the proposed facilities, the proposed

Corridor and Route, and the criteria evaluated. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by Commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83). UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the Commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon Commission approval.

2. The applicant shall file an original and four copies of an application with the Commission. The applicant shall provide additional paper copies upon Commission request.
3. After determining that the application is complete, the Commission shall serve a notice of filing of the application on such persons and agencies that the Commission may deem appropriate and shall publish a notice of filing of the application in the Teton Times and Corson/Sioux County News-Messenger.
4. A copy of the application shall be furnished to any person or agency, upon request to the Commission within thirty days of either service or publication of the notice of filing.
5. An application for an amendment of a Permit shall be in such form and contain such information as the Commission shall prescribe.
6. The Commission shall designate a Route for the Construction of an Electric Transmission Facility following the study and hearings provided for in this article. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the

information provided in the application, the criteria established pursuant to Sections 44-5-109 and 44-5-110, and the considerations set out in Section 44-5-108 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a Route may be extended by the Commission for just cause. The failure of the Commission to act within the time limit provided in this section shall not operate to divest the Commission of jurisdiction in any Permit proceeding. Upon designation of a Route the Commission shall issue a Permit to the applicant with such terms, conditions, or modifications deemed necessary.

#### **SECTION 44-5-107: Combining Application**

A utility may file a separate application for a Certificate or a Permit, or combined into one application.

#### **SECTION 44-5-108: Factors to be Considered in Evaluating Applications and Designation of Sites, Corridors, and Routes**

1. The Commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of Sites, Corridors, and Routes:
  - a. Available research and investigations relating to the effects of the location, Construction, and operation of the proposed Facility on public health and welfare, natural resources, and the environment.
  - b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
  - c. The potential for beneficial uses of waste energy from a proposed Electric Energy Conversion Facility.
  - d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed Site or Route be designated.
  - e. Alternatives to the proposed Site, Corridor, or Route which are developed during the hearing process and which minimize adverse effects.
  - f. Irreversible and irretrievable commitments of natural resources should the proposed Site, Corridor, or Route be designated.
  - g. The direct and indirect economic impacts of the proposed Facility.
  - h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed Site, Corridor, or Route.
  - i. The effect of the proposed Site or Route on existing scenic areas, historic and cultural sites and structures, and paleontological or archaeological sites.
  - j. The effect of the proposed Site or Route on areas unique because of biological wealth or because the areas are habitats for rare and endangered species.
  - k. Problems raised by federal agencies, other state agencies, and local entities.

#### **SECTION 44-5-109: Energy Conversion Facility Siting Criteria**

The following criteria must guide and govern the preparation of the inventory of exclusion areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a Site for a Facility.
  - a. Parks; memorial parks; sacred and cultural sites, archaeological sites, historic sites, landmarks, and markers; monuments, natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
  - b. Forests; forest management lands; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
  - c. Hardwood draws and woodlands.
  - d. Areas where unique or rare animal or plant species would be irreversibly damaged.
2. **Additional exclusion areas for wind energy conversion facilities.**
  - a. The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility, in each case such areas created around the center point of the base of the turbine:
    - i. One and one-tenth times the height of the turbine from the nearest edge of an interstate, Bureau of Indian Affairs (BIA), or state roadway right of way;
    - ii. One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained tribal roadway;
    - iii. One and one-tenth times the height of the turbine from the nearest edge of railroad right of way;
    - iv. One and one-tenth times the height of the turbine from the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
    - v. One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind lease, option or an easement agreement with the permittee of the wind energy conversion facility.
3. **Selection criteria.** A Site may be approved in an area only when it is demonstrated to the Commission by the applicant that any significant adverse effects resulting from the location, Construction, and operation of the Facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
  - a. With respect to wind energy conversion facilities:
    - i. The impact of sound levels within one hundred feet of an inhabited residence or a community building exceeding fifty (50) dBA, unless waived in writing by the owner of the occupied residence or the community building.

- ii. The impact of shadow flicker at any inhabited residence or a community building exceeding thirty (30) hours per year, unless waived in writing by the owner of the occupied residence or the community building.
  - b. The impact upon agriculture:
    - i. Agricultural production.
    - ii. Family farms and ranches.
    - iii. Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
    - iv. Surface drainage patterns and ground water flow patterns.
    - v. The agricultural quality of the cropland.
  - c. The impact upon the availability and adequacy of:
    - i. Law enforcement.
    - ii. School systems and education programs.
    - iii. Governmental services and facilities.
    - iv. General and mental health care facilities.
    - v. Recreational programs and facilities.
    - vi. Transportation facilities and networks.
    - vii. Retail service facilities.
    - viii. Utility services.
  - d. The impact upon:
    - i. Local institutions.
    - ii. Noise-sensitive land uses.
    - iii. Light-sensitive land uses.
    - iv. Rural residences and businesses.
    - v. Aquifers.
    - vi. Human health and safety.
    - vii. Animal health and safety.
    - viii. Plant life.
    - ix. Areas critical to the life stages of threatened or endangered animal or plant species.
    - x. Temporary and permanent housing.
    - xi. Temporary and permanent skilled and unskilled labor.
  - e. The cumulative effects of the location of the Facility in relation to existing and planned facilities and other industrial development.
  - f. The impact upon military installations, assets, and operations.
- 4. **Policy criteria.** The Commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The Commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
  - a. Less intrusion into and impact on human, animal, and plant life and habitat.
  - b. Energy conservation through location, process, and design.

- c. Training and utilization of available labor from the Reservation for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the region.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the Facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. The extent of outreach to and use of feedback from residents of the Reservation.
- j. A commitment of a portion of the energy produced for use on the Reservation.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.
- n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

#### **SECTION 44-5-110: Transmission Facility Corridor and Route Criteria**

The following criteria must guide and govern the preparation of the inventory of exclusion areas, and the Corridor and Route suitability evaluation process. Exclusion areas may be located within a Corridor, but at no given point may such an area or areas encompass more than fifty percent of the Corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a Route for an Electric Transmission Facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
  - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
  - b. Tribal parks and recreational areas; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
  - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
  - d. Areas where animal or plant species that are unique or rare to the region would be irreversibly damaged.
2. **Selection criteria.** A Corridor or Route shall be designated only when it is demonstrated to the Commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the Facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
  - a. The impact upon agriculture:
    - i. Agricultural production.
    - ii. Family farms and ranches.



- iii. Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
    - iv. Surface drainage patterns and ground water flow patterns.
  - b. The impact upon:
    - i. Sound-sensitive land uses.
    - ii. The visual effect on the adjacent area.
    - iii. Extractive and storage resources.
    - iv. Wetlands, woodlands, and wooded areas.
    - v. Radio and television reception, and other communication or electronic control facilities.
    - vi. Human health and safety.
    - vii. Animal health and safety.
    - viii. Plant life.
    - ix. Areas critical to the life stages of threatened or endangered animal or plant species.
- 3. **Policy criteria.** The Commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The Commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
  - a. Less intrusion into and impact on human, animal, and plant life and habitat.
  - b. Location and design.
  - c. Training and utilization of available labor from the Reservation for the general and specialized skills required.
  - d. Economies of construction and operation.
  - e. The extent of outreach to and use of feedback from residents of the Reservation.
  - f. A commitment of a portion of the transmitted product for use on the Reservation.
  - g. Labor relations.
  - h. The coordination of facilities.
  - i. Monitoring of impacts.
  - j. Utilization of existing and proposed rights of way and Corridors.
  - k. Other existing or proposed transmission facilities.

#### **SECTION 44-5-111: Decommissioning**

- 1. Wind Facility Decommissioning.
  - a. Definitions. In this Section 44-5-111, the following definitions shall apply:
    - i. "Capacity Factor" means the ratio of the actual output generated by a Facility for a period of time, to the output that could be produced at the nameplate generating capacity of that Facility.
    - ii. "Certificate of Operation" means an affidavit executed by the owner certifying to the Commission a Facility's:
      - 1. Nameplate generating capacity;
      - 2. Annual Capacity Factor;

3. Annual megawatt hour output; and
  4. Monthly megawatt hour output.
- iii. "Commercial Solar Energy Conversion Facility" means a solar energy conversion Facility that has a total nameplate generating capacity equal to or greater than five hundred kilowatts, including its solar modules, racking, anchors, bolts, foundations, bases, transformers, cables, lines, substations, concrete, fences, Facility access roads, towers, and all areas disturbed by the Construction, operation, maintenance, or decommissioning activities.
  - iv. "Commercial Wind Energy Conversion Facility" means a wind energy conversion facility with one or more wind turbines that has a total nameplate generating capacity equal to or greater than five hundred kilowatts, including its wind turbines, towers, bases, blades, transformers, cables, lines, substations, concrete, fences, Facility access roads, and all areas disturbed by the Construction, operation, maintenance, or decommissioning activities.
  - v. "Construction" means any clearing of land, excavation, or other action that would affect the environment of the Site of a Facility, but does not include activities incident to preliminary engineering or environmental studies.
  - vi. "Decommissioning Plan" means a plan filed with the Commission that includes:
    1. The anticipated life of the Facility;
    2. A decommissioning cost estimate, excluding salvage offsets that reduce decommissioning cost;
    3. A description of the method used for determining the decommissioning cost estimate;
    4. The anticipated manner in which the project will be decommissioned;
    5. A description of any expected effects on present and future natural resource development; and
    6. A detailed plan of financial assurance sufficient to ensure decommissioning.
  - vii. "Facility" means a Commercial Solar Wind Conversion Facility or Commercial Solar Energy Conversion Facility, depending on the circumstances.
  - viii. "Owner" means a person who holds a Certificate, or if no Certificate was issued, a person who owns a Facility or part of a Facility.
- b. Decommissioning responsibility. The owner is responsible for decommissioning the Facility and for all costs associated with decommissioning.
  - c. Abandonment and useful life – Certificate of Operation.
    - i. After Construction of a Facility is complete, the owner shall annually file a Certificate of Operation with the Commission for that Facility by April first of each year.
    - ii. With respect to a Commercial Wind Energy Conversion Facility, if no energy is generated by one or more wind turbines for the time period

- specified in the Certificate of Operation, a written explanation for the nongenerating wind turbines must accompany the Certificate of Operation.
- iii. A Facility is presumed to be at the end of its useful life if its annual Capacity Factor is less than ten percent for two consecutive years.
  - iv. A Facility is presumed to be abandoned if, after commencement of Construction and prior to completion, a period of twenty-four consecutive months has passed with no significant Construction.
  - v. A presumption under this section may be rebutted by filing a plan for Commission approval outlining the steps and schedule for continuing Construction or operation of the Facility or wind turbine.
- d. Decommissioning period. The owner shall begin decommissioning within twelve months after abandonment or the end of its useful life. Decommissioning must be completed within twenty-four months after abandonment or the end of its useful life unless the Commission approves a plan specifying the steps and schedules to return the Facility to operation.
- e. Decommissioning requirements.
- i. Decommissioning the Facility includes:
    - 1. With respect to wind energy conversion facilities, dismantling and removal of all towers, turbine generators, transformers, fencing, overhead cables, inverters, transformers, substations and other equipment;
    - 2. With respect to solar energy conversion facilities, dismantling and removal of all panel racking, photovoltaic modules, supports, anchors, towers, fencing, overhead cables, inverters, transformers, substations, and other equipment;
    - 3. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
    - 4. Removal of foundations, buildings, and ancillary equipment to a depth of four feet [121.92 centimeters];
    - 5. Site restoration and reclamation to the approximate original topography that existed prior to Construction of the Facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and
    - 6. Grading and restoring topsoil of areas disturbed by the Facility, and reseeding according to natural resource conservation service recommendations, unless the Commission approves an owner request signed by the applicable landowner, identifying the surface features the landowner prefers to remain in place, and the reason the landowner prefers those features to remain.
  - ii. The Commission may waive a decommissioning requirement upon receipt of a request signed by the applicable landowner and finding good cause that the requirement be waived.
- f. Decommissioning plan.
- i. Prior to the commencement of operation of a Facility, the Owner must have an approved Decommissioning Plan.

- ii. The Commission shall make a determination on the Decommissioning Plan no later than sixty days after the Decommissioning Plan is deemed complete by the Commission.
  - iii. A decommissioning cost estimate for a Facility:
    - 1. Must be made by a professional engineer licensed by the state of North Dakota and at the Owner's expense;
    - 2. May include a decommissioning cost estimate, including salvage value, in addition to the decommissioning cost estimate, excluding salvage value;
    - 3. Must be updated and filed with the Commission ten years after initial approval of the Decommissioning Plan and then continue to be updated and filed with the Commission every five years until decommissioning is complete.
  - iv. The Commission may at any time require the Owner to file an updated Decommissioning Plan.
- g. Financial assurance.
- i. Prior to commencement of Construction of a Facility, the Owner shall provide financial assurance equal to five percent of the estimated cost of Construction of the Facility (excluding, for the avoidance of doubt, the cost of turbines, panels or other equipment included in the Facility), that may be used to decommission the Facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the Owner that the Facility is commercially operational and receipt of financial assurance pursuant to subsection ii below, the Commission shall return or release said financial assurance provided to the Commission.
  - ii. Prior to commencement of operation of a Facility, the Owner shall provide financial assurance that is acceptable to the Commission and sufficient to ensure complete decommissioning.
  - iii. Financial assurance may be in the form of a performance bond either as, or combination of, cash escrow held by a federal insured financial institution, a surety bond, irrevocable letter of credit, guarantee, parent guarantee, or another form of financial assurance that is acceptable to the Commission to cover the anticipated costs of decommissioning.
  - iv. The Commission may allow the Owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.
  - v. The Commission may accept a guarantee or parent guarantee if:
    - 1. The Owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
    - 2. The Owner or parent guarantor has or is one of the following:

- a. A current rating in the “A” category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States Securities and Exchange Commission, that is acceptable to the Commission. If an organization has different ratings among various rating organizations, the Commission shall accept the higher of the ratings;
  - b. A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater; or
  - c. A utility as defined by Section 44-1-101.
- vi. The total amount of an outstanding guarantee for decommissioning may not exceed twenty-five percent of the Owner's tangible net worth in the United States.
- vii. The combined total amount of an outstanding guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the Owner's and parent guarantor's combined tangible net worth in the United States.
- viii. If any financial assurance is modified, canceled, suspended, or revoked, the Owner shall immediately notify the Commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
- ix. The Commission may require additional financial assurance upon a finding that the current financial assurance for a Facility is not sufficient to ensure complete decommissioning.
- h. Failure to decommission. If the Owner does not complete decommissioning, the Commission may take action to complete decommissioning, including action to require forfeiture of a bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Commission may take such action as may be necessary to decommission a Facility, including the exercise by the Commission, Commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the Facility.
- i. Waiver. The Commission may grant a waiver of any requirement described in this Section 44-5-111 for a Facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.

#### **SECTION 44-5-112: Light Mitigating Technology System**

##### **1. In this section:**

- a. “Aircraft Detection Lighting System” means a sensor-based system designed to detect aircraft as they approach a wind energy conversion facility; this system automatically activates obstruction lights until they are no longer needed.

- b. "Light-Mitigating Technology System" means Aircraft Detection Lighting System, lighting intensity dimming solution technology, or a comparable solution capable of reducing the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the facilities.
  - c. "Wind Energy Conversion Facility" means any plant, addition, or combination of plant and addition, designed for or capable of generation by wind energy conversion exceeding one-half megawatt of electricity.
2. Every Wind Energy Conversion Facility for which the Commission issues a Certificate must be equipped with a functioning Light-Mitigating Technology System.
  3. The Commission may grant a waiver of this chapter for a Wind Energy Conversion Facility designed for or capable of generating no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.
  4. To allow proper conspicuity of a turbine at night during Construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented.
  5. Owner shall provide written notice to the Commission upon implementation of light-mitigating technology in compliance with this chapter.
  6. Owner is solely responsible for any costs associated with the implementation, operation, and maintenance of each Light-Mitigating Technology System.

#### **SECTION 44-5-113: Public Hearings**

1. The Commission shall hold a public hearing in each district in which any portion of a Site, Corridor, or Route is proposed to be located in an application for a Certificate or a Permit. If the Commission determines there is an emergency that would prevent an in-person hearing in the district in which any portion of a Site, Corridor, or Route is proposed, a remote public hearing may be held. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to Sections 44-5-109 and 44-5-110, and the factors to be considered pursuant to Section 44-5-108. If the Commission determines there are no adequate facilities to conduct a public hearing within the district in which any portion of a Site, Corridor, or Route is proposed to be located in, the public hearing must be held in the nearest adequate location. When more than one district is involved, the Commission may hold a consolidated hearing in one or more of the affected districts. A hearing for any district shall not be consolidated if five or more affected landowners in such district file a petition with the Commission within ten days of the publication of the notice of hearing.
2. The Commission shall not be required to hold a public hearing on an application for the transfer of a Certificate or a Permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the Teton Times and Corson/Sioux County News-Messenger. If requested by any interested person and good cause has been shown therefor, the Commission shall hold a public hearing. Where more than one district is involved, the Commission may hold a consolidated hearing in one or more of the affected district.
3. One or more public hearings shall be held at a location or locations determined by the Commission concerning the following matters:

- a. A substantial or material change in the criteria established pursuant to Sections 44-5-109 and 44-5-110.
  - b. A substantial or material change in the rules adopted pursuant to Section 44-5-120.
  - c. The revocation or suspension of a Certificate or Permit.
4. Notice of a public hearing shall be given by the Commission by service on such persons and agencies that the Commission may deem appropriate and twice by publication in the Teton Times and Corson/Sioux County News-Messenger, once at least twenty days prior to such hearing and a second time within twenty days prior to such hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a Certificate, a Permit, a transfer or amendment of a Certificate or Permit, or a waiver shall be given at the expense of the applicant. In an emergency the Commission, in its discretion, may notice a hearing upon less than twenty days.

#### **SECTION 44-5-114: Effect of Issuance of Certificate or Permit**

The issuance of a Certificate or a Permit shall be the sole Site or Route approval required to be obtained from the Commission by the utility.

#### **SECTION 44-5-115: Advisory Committees; Appointment; Compensation**

1. The Commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate Sites or Corridors considered for designation must be composed of as many persons as may be appointed by the Commission.
2. Committee meetings must be scheduled at the discretion of the Commission. All meetings of an advisory committee must be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings must be conducted in an informal manner by the Commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.
3. Members of advisory committees are entitled to be reimbursed for any necessary expenses deemed appropriate by the Commission.
4. All members of an advisory committee serve at the pleasure of the Commission.

#### **SECTION 44-5-116: Cooperation with State and Federal Agencies**

The Commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this article and in furtherance of the statement of policy contained herein.

**SECTION 44-5-117: Unfair Tactics in Acquiring Land or Easements for a Facility; Tribal Court Actions; Cancellation of Easement; Penalty**

1. Any person employed by a public utility to acquire easements for a Facility subject to this article shall not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the Facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a Site or Route of a Facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the Tribal Court.
3. Upon a determination by the Tribal Court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the Tribal Court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The Tribal Court shall award costs and reasonable attorney's fees to the plaintiffs when the Tribal Court rules in favor of the plaintiffs.
4. Upon a determination by the Tribal Court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with such person or persons utilizing such unfair tactic, the Tribal Court shall cause a copy of its memorandum opinion or order to be filed with the Commission.
5. Upon receiving a copy of a memorandum opinion or order issued by the Tribal Court pursuant to this article, the Commission may revoke or suspend the Permit issued with respect to the Route affecting the aggrieved landowners. If a Permit has not been issued with respect to a Site or Route affecting the aggrieved landowners, the Commission may refuse to issue a Permit for such portion of the Route.

**SECTION 44-5-118: Easements for a Facility**

Any easement for an Electric Transmission Facility as defined in this article acquired contractually by a utility after the enactment of this Governing Ordinance, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amounts including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by Capital One on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July first and all following annual installments shall fall due on July first. The option provided herein shall not apply to any easement providing for compensation of less than five thousand dollars. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time



of sale of the real estate to which the easement attaches shall accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of the owner's option to choose annual installments.

#### **SECTION 44-5-119: Improvement of Sites or Locations**

Utilities that have acquired an Electric Energy Conversion Facility Site or electric transmission line Route in accordance with the provisions of this article may proceed to construct or improve such Site or Route for the intended purposes at any time; provided, that if such Construction and improvement commences more than four years after a Certificate or Permit for the Site or Route has been issued, then the utility must certify to the Commission that such Site or Route continues to meet the conditions upon which the Certificate or Permit was issued.

#### **SECTION 44-5-120: Rules and Regulations**

The Commission shall adopt rules and regulations in conformity with the provisions of this article and to prescribe methods and procedures required therewith.

#### **SECTION 44-5-121: Hearing; Judicial Review**

Any party aggrieved by the issuance of a Certificate or Permit from the Commission, certification of continuing suitability filed by a utility with the Commission, or promulgation of a final order by the Commission, may request a rehearing by the Commission. The hearing must be conducted pursuant to Section 44-4-113. There is a right of appeal to the Tribal Court from any adverse ruling by the Commission pursuant to Section 44-4-117.

#### **SECTION 44-5-122: Revocation or Suspension of Certificate or Permit**

A Certificate or Permit for the construction of an Electric Transmission Facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the Certificate or Permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this article or rules or regulations issued pursuant to this article by the Commission.
4. A determination by the Tribal Court pursuant to Section 44-5-117.

#### **SECTION 44-5-123: Penalties**

1. Any person who willfully engages in any of the following conduct is subject to a civil penalty in an administrative actions brought by the Commission not to exceed ten thousand dollars for each such violation for each day the violations persist:
  - a. Begins Construction of an Electric Energy Conversion Facility or an Electric Transmission Facility without having been issued a Certificate or Permit pursuant to this article.

- b. Constructs, operates, or maintains an Electric Energy Conversion Facility or an Electric Transmission Facility other than in compliance with the Certificate or Permit and any terms, conditions, or modifications contained therein.
- c. Violates any provision of this chapter or any rule adopted by the Commission pursuant to this article.
- d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a Certificate or Permit issued pursuant to this article.

The civil penalty provided for in this subsection may be compromised by the Commission. The amount of the penalty when finally determined by the Commission or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action brought by the Commission in the Tribal Court.

- 2. Notwithstanding any other provision of this article, the Commission, by injunctive procedures, without bond or other undertaking, may proceed against any person who willfully engages in any conduct described in subsection 1. No liability shall accrue to the Commission or its authorized representative in proceeding against any person pursuant to this section.

#### **SECTION 44-5-124: Siting Process Expense Recovery; Fees**

- 1. Every applicant under this article shall pay to the Commission an application fee:
  - a. An applicant for a Certificate shall pay an amount equal to five hundred dollars for each one million dollars of investment in the Facility.
  - b. An applicant for a Certificate shall pay an amount equal to five thousand dollars for each one million dollars of investment in the Facility.
  - c. An applicant for a waiver shall pay the amount which would be required for an application for a Certificate for the proposed Facility. If a waiver is not granted for a proposed Facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a Certificate or Permit for the proposed Facility.
  - d. An applicant requesting an amendment to a Certificate or Permit or for a transfer of a Certificate or Permit shall pay an amount to be determined by the Commission to cover anticipated expenses of processing the application.
  - e. An applicant certifying to the Commission under Section 44-5-102, subsection 2 shall pay an amount to be determined by the Commission to cover anticipated expenses of processing the application.
  - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
  - g. If an application fee is less than twenty-five thousand dollars, an applicant may agree to pay additional fees that are reasonably necessary for completion of the Site, Corridor, or Route evaluation and designation process.
- 2. At the request of the Commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the Electric Energy Conversion Facility Site, Electric Transmission Facility Corridor, or Electric Transmission Facility Route evaluation

and designation process by the Commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed Facility or ten thousand dollars for each one million dollars of investment in a proposed Electric Transmission Facility.

3. A siting process expense recovery fund is established. The Commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the Commission to pay expenses incurred in the siting process. The Commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.
4. Every applicant under this article shall pay to the Commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited in the siting process expense recovery fund.

#### **SECTION 44-5-125: Safety**

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of Construction of the generation.

#### **SECTION 44-5-126: Approval for Temporary Operation or Variance**

1. The Commission may approve temporary operation of facilities or a temporary variance from approved Construction, operation, or maintenance of facilities upon a showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the Tribe or the environment.
2. The Commission may issue a temporary approval or variance without the necessity of notice, publication, or hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.

#### **SECTION 44-5-127: Protection of Cultural or Historical Site Data**

The Commission may limit access to, and release of, information that contains data that specifically identifies the location of cultural, archaeological, historical, or paleontological sites.