

**TITLE 21
TRIBAL UTILITY CODE
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TITLE 21
TURTLE MOUNTAIN TRIBAL UTILITY CODE

CHAPTER 21.01
Findings, Purpose and Scope

21.0101 **Findings.**

1. Sovereign Power to Regulate Utilities. The power to regulate all public utilities is an inherent and essential part of the authority of any American Indian Reservation tribal government. This power is an aspect of the retained sovereignty of the Turtle Mountain Band of Chippewa Indians, an American Indian Tribe, limited only to the extent that such power has been specifically limited or withdrawn by federal law.
2. The Turtle Mountain Band of Chippewa Indians is a federally recognized sovereign Indian tribe, organized and governed pursuant to a Revised Constitution and Bylaws approved by the Secretary of the Interior on June 16, 1959, as amended from time to time thereafter.
3. Pursuant to the Constitution and Bylaws, as amended, the Tribal Council is the governing body of the Tribe.
4. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Council in Article IX, Sections (a), (b), and (c) of the Tribal Constitution, which delegate general governmental powers and authorize the Council to, among other powers delegated, the following powers pertinent herein: (1) to represent the Tribe; (2) to negotiate with Federal, State and local governments and with private persons; (3) to regulate and license all business and professional activities conducted upon the reservation; (4) to enact ordinances to remove from the Reservation any persons or entities whose presence may be injurious to the peace, happiness or welfare of the members of the Band; (5) to enact ordinances to regulate the conduct and domestic relations of the members of the Tribe; (6) to manage, lease, permit or otherwise deal with Tribal Land, interest in lands and other lands or assets under tribal jurisdiction; and (7) to engage in any business that will further the economic well-being of tribal members.
5. Need For Adequate Utility Regulations. As both the Indian and non-Indian populations within the boundaries of the Reservation increase, and as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate utility regulations grows ever more serious. Inasmuch as the Reservation is checker boarded with both trust land and non-trust land, and inasmuch as both trust land and non-trust land are crisscrossed by electric lines, telephone lines, pipelines, rail lines and rights of way of both investor-owned and nonprofit utilities, adequate protection of utilities, the Tribe, tribal members and nonmembers requires that the Tribe regulate all utilities operating within the Reservation.
6. Demonstrably Serious impact of Utility Activities. Upon the Economic Security, Health and Welfare of the Tribe and Tribal Members. The rural nature of the Reservation causes the development and maintenance of all public utilities within the Reservation to be more difficult and expensive than in urban areas of the United States. It is in the best interest of all members of the Tribe to assure the fair and equitable delivery of all 'public utility service to every member of the Tribe throughout the entire jurisdictional area of the Turtle Mountain Indian Band. The need for regulatory and/or ownership control over the various public utilities servicing the Reservation is enhanced by the fact that many homes of tribal members, especially HUD financed homes, are located in diverse rural sites; that many of these homes are "all electric," that is, heated solely by electricity; that there is a very limited supply of other practical heat sources for many tribal members and nonmembers; that the

health and very lives of many tribal members and nonmembers are dependent upon an assured flow of electricity and access to telephone communications during the harsh, sub-zero winter months regularly experience on the Reservation; that there is a lack of practical transportation for many elderly tribal members and nonmembers during the harsh, subzero winter months; that tribal economic enterprises which are dependent upon access to public utilities, furnish the majority of jobs for both tribal members and nonmembers on the Reservation-all combine to make the regulation of the supply and delivery of public utility services of prime governmental importance to the people and business located within the jurisdictional boundaries of the Turtle Mountain Band of Chippewa Indians. And all evidence the demonstrably serious impact of utility activities upon the economic security, health and welfare of the Tribe, tribal enterprises and tribal members.

7. State Jurisdiction. The State of North Dakota lacks jurisdiction to regulate utilities within the Reservation for the reason that state regulation of such utilities directly interferes with the right of the Tribe and tribal members to make their own laws and be governed by them. State regulatory interest is also preempted by the Tribe and the federal government with respect to all homes and businesses of tribal members financed in whole or in part by the Tribe or the federal government, all tribal buildings and businesses of the Tribe financed in whole or in part by the Tribe or the federal government and all Bureau of Indian Affairs or other federally owned or operated buildings.
8. Need to Designate Service Area Boundaries of Public Utilities. The absent of Tribal regulation of the development and service of public utilities has resulted in a total failure to make any overall designation of service territory area boundaries for any of the public utilities servicing the Reservation. This has resulted in some instances, in the wasteful duplication of investment in facilities and service of utilities, while at the same time, some areas of the Reservation go with less than adequate facilities necessary to support existing and future development. Tribal members, Tribal enterprises and the Tribe must bear the ultimate cost of such duplication and lack of full area development and access.
9. Illegal Collection of State Taxes By Utilities. Despite the fact that both tribal members, Tribal enterprises and the Tribe are each exempt from state taxes for all utility services Provided them within the Reservation, The Commission herein created shall police the collection of state gross receipts taxes, excise taxes and state income tax upon the business activities of public utilities with respect to services provided to tribal members, tribal enterprises and the Tribe within the Reservation. Such collection of state tax cannot be expected to stop unless tribal regulation identifies such practices and prohibits the continuance of such practices when found to be illegal.
10. Consensual Relations Between Utilities Operating within the Reservation and the Tribe, Tribal Members and Nonmembers. The Council finds that every public utility which enters and operates within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe, to provide services, operate facilities, construct and erect pipelines, transmission lines, poles, towers and other improvements upon and across Reservation lands owned by Indians, non-Indians and the Tribe. The Council further finds that the services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which has the potential to imperil the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe to limit exposure of the Tribe, its

business enterprises and its membership from the risk of such peril. The Council further finds that regulation of such utilities located, operating or providing services upon the Reservation is an essential governmental function of the Tribe and that regulation of every such utility located, operating or providing services upon the Reservation by any State or any municipality or political subdivision of a State is an infringement upon the right of the Tribe to make its own laws and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe.

21.0102 **Purpose.**

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

21.0103 **Benefits of Tribal government.**

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

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

21.0104 **Territory, persons and property affected.**

This Title shall apply to the following:

1. The Turtle Mountain Indian Reservation and trust lands added thereto, including all lands, islands, waters, roads, and bridges or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Treaty; and such other lands, islands, waters, or any interests thereafter added to the Reservation at any time, to the extent not Prohibited by federal law.
2. All persons and property within any geographical area referred to in Subsection (1) above that is subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal law.
3. Final adjudication by a court of competent jurisdiction that this Title does not apply to land, persons or property in specific circumstances shall not affect its application to land, persons or property in any other

circumstances.

CHAPTER 21.02
General Provisions

21.0201 **Definitions.**

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

1. "COMMISSION" means the Tribal Utility Commission created and established under this Title.
2. "COMMISSIONER" means one of the members of the Commission.
3. "CORPORATION" means a private or public corporation incorporated under the laws of any nation, state or tribe, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, a limited liability company or partnership, or any political subdivision or agency.
4. "DIRECTOR" means the Tribal Utility Commission Director acting in his official capacity.
5. "MUNICIPALITY" means any town, city, or other local government, however organized, but shall not include the Tribe.
6. "RATE" means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any utility for any service product or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.
7. "SERVICE" means the furnishing by any utility of any service product or commodity; the installation, removal, or repair of equipment or facilities for delivering or measuring the service product or commodity of any utility.
8. "TRIBAL UTILITY COMMISSION ACCOUNT" means the account in a federally-insured financial institution established pursuant to Section 21.0316.
9. "UTILITY" means any person, corporation or other legal entity, its lessee, trustee, and receiver, now or hereafter located, operating or providing services within the Reservation, or maintaining, or controlling within Reservation equipment or facilities for furnishing at retail telecommunications services; pipeline a bulk storage utilities engaged in the transportation or distribution of gas, oil, coal, and water; electric utilities engaged in the generation and distribution of light, heat, or power; gas utilities engaged in the distribution of natural, synthetic, or artificial gas, whether by pipeline or bulk distribution to storage tanks; water companies for the storage and distribution of water for domestic or other beneficial use; heating utilities engaged in the distribution of heat; and all other utilities which operate, maintain, or control any equipment or facilities within the Reservation. No person shall be deemed to be a utility if he furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a utility if he furnishes service to occupants of a manufactured home or trailer park owned, leased or operated by such person. No person shall be deemed to be a utility if he produces or furnishes his services to less than twenty-five (25) persons.

21.0202 **Intent of Tribe to preempt state law.**

The Turtle Mountain Band of Chippewa Indians, and not the State of North Dakota or its political subdivisions or the management or boards of directors of any corporation, has exclusive jurisdiction over utilities operating within or maintaining, or controlling any equipment or facilities within the Reservation for furnishing at retail any utility service Product or commodity

to any customer. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over Indians and non-Indians on the reservation. In order to provide for the equitable regulation of such utilities and protection of such utilities, the Tribe, tribal members and nonmembers within the Reservation, it is the express intent of the Council that this Title shall preempt any law enacted by any State or local jurisdictions within the State purporting to regulate such utilities located, operating or providing services within the Reservation.

20.0203 **Sovereign immunity.**

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

CHAPTER 21.03
Tribal Utility Commission

21.0301 **Creation of commission.**

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

21.0302 **Number and selection of commissioners.**

The Commission shall comprise three (3) voting members appointed by the Council. At Least two (2) Commissioners shall be members of the Turtle Mountain Band of Chippewa Indians. Each member of the Commission must be a resident of the Turtle Mountain Indian Reservation and remain so throughout his term of office.

21.0303 **Terms of office.**

Commissioners shall serve three (3) year terms and shall hold office until their successors have been appointed and have qualified: Provided however, the first Commission shall have terms of office as described in 21.0304.

21.0304 **First commission.**

One Commissioners appointed to the first Commission shall serve a term of three (3) years. One (1) Commissioners appointed to the first Commission shall serve a term of two (2) years. The remaining Commissioner appointed to the first Commission shall serve a term of one (1) year.

21.0305 **Vacancies.**

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

- 21.0306** Resignation.
Any Commissioner may resign by delivering a written resignation to the President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A commissioner's resignation under this Section or removal under 21.0307 below shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.
- 21.0307** Removal.
A Commissioner may be removed by the Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance or nonfeasance or for misconduct in office, but, except as provided below in this Section, only after a hearing before the Council, and only after the Commissioner has been given written notice of the specific charges at least ten (10) days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his or her behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. A decision on removal by the Council shall be final.
- 21.0308** President of the commission.
The President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one (1) year.
- 21.0309** Duties of president.
The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.
- 21.0310** Offices of tribal utility commission.
The Commission shall be provided with suitable office space, necessary office furniture, stationery, books and maps, the expense thereof to be paid by the Tribe pursuant to appropriations for such purposes.
- 21.0311** Compensation of commissioners.
Compensation of Commissioners, if any, shall be determined by the Council and shall be paid from the General Fund of the Tribe. All fees received or charged by the Commission for any act or service rendered by the Commission in its official capacity, shall be accounted for and paid over monthly to the Tribe and shall be credited to the General Fund of the Tribe.
- 21.0312** Quorum.
Three (3) Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten (10) days in anyone instance.
- 21.0313** Majority vote.
All questions rising in connection with the action of the Commission shall be decided by majority vote.

21.0314 General procedures of the commission.

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

21.0315 Tribal utility commission director.

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

21.0316 Tribal utility commission account established.

1. There is hereby authorized and directed to be established an account in a federally insured financial institution to be known as the Tribal Utility Commission Account.
2. The Tribal Utility Commission Account shall be an interest bearing account and the funds therein may be invested and reinvested as approved by the Council.
3. No monies shall be released or expended from the Tribal utility Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.
4. All fees, penalties, interest, charges, or other monies collected by the Commission in the administration and enforcement of this Title shall be deposited in the Tribal Utility Commission Account.

CHAPTER 21.04

Powers and Duties of Commission

21.0401 Jurisdiction and powers of commission.

1. General Jurisdiction of the Commission over Utilities. The general jurisdiction of the Commission shall extend to and include:
 - a. Telecommunications companies engaged in the furnishing of telecommunications services, including telegraph and telephone companies engaged in the transmission of messages or conversations by voice or electronic means, as well as video distribution systems whether by cable, local re-broadcast, or satellite distribution to the Reservation area;
 - b. Pipeline utilities engaged in the transportation of gas, oil, coal, and water;
 - c. Electric utilities engaged in the generation and distribution of light or power;
 - d. Gas utilities engaged in the distribution of natural, synthetic or

artificial gas, whether by pipeline or by bulk distribution to storage facilities;

- e. Water companies for the storage and distribution of water for domestic or other beneficial use;
- f. Heating utilities engaged in the distribution of heat; and
- g. All other utilities which operate, maintain or control any equipment or facilities within the Reservation.

Nothing in this Title shall prohibit the Commission from making any order affecting rates, contracts, services rendered, adequacy or sufficiency of facilities, of any utility, whether privately owned, or whether owned and operated by any state or by any political subdivision of any state or any utility that is not operated for profit.

2. Powers of Commission With Reference to Utilities.

The Commission shall have power to:

- a. Investigate all methods and practices of utilities or other persons subject to the provisions of this Title. In so doing, it may require copies of reports, rates, classifications, schedules, and time tables in effect and used by such utilities or other persons and all other information desired by the Commission relating to such investigations and requirements to be filed with the Commission;
- b. Require utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Commission;
- c. To 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.
- d. 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.
- e. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties have agreed concerning the matter at hand, the Commission may issue its order without a hearing.
- f. Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services applied for any utility by any firm or corporation owned or controlled directly or indirectly by the utility or any affiliate, subsidiary, parent, associate or any corporation whose controlling stockholders are also controlling stockholders of the utility, before permitting the value of such materials or services to be included in valuations or cost of operations for rate-making purposes. If unreasonable profits have been made in any such transactions, evaluations of such materials and services may be reduced accordingly.
- g. Employ and pay the compensation of rate experts, engineers, and all other expert help and assistance for rate increase application hearings, investigations, and proceedings relating to utilities, subject to Subsections (h) and (j). The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the Commission while engaged in any such hearing, investigation, or proceeding shall, upon appropriate order of the Commission, be paid by the utility being investigated or involved in such hearing or proceeding. A utility liable for such costs and expenditures shall receive appropriate notice and opportunity to demand a hearing before the Commission.
- h. Retain and use the services of tribal attorneys or other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the interior.
- i. Employ and use the services of tribal accountants or other accountants designated by the Council upon a contract approved by the Council.
- j. Cooperate with and receive technical and financial assistance from

the United States or any state for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the Commission. The Commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.

- k. Promulgate and enforce rules and regulations consistent with this Title.
- l. Employ and consult with such advisors regarding its duties as it may deem necessary.
- m. Require by regulation the filing of any forms or reports necessary for implementation of this Title.
- n. Examine under oath either orally or in writing any agent, officer, or employee of any utility subject to regulation under this Title, or any other witness with respect to any enforcement action authorized by this Title.
- o. Delegate to an individual Commissioner, or to the Director or other members of the Commission staff or Tribal staff, such of its functions as may be necessary to administer this Title efficiently; provided that the Commission may not delegate its powers to promulgate rules and regulations, or to hear or rule upon any complaints filed with the Commission pursuant to this Title.
- p. Adopt by regulation a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.
- q. Adopt rules and regulations in furtherance of the purposes of this Title pursuant 21.0410.
- r. Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.

Except as provided in this Title, the Commission may exercise one or more of the above powers, in its discretion, and may, by appropriate rule or regulation, issued after notice and hearing, assume regulatory authority over one or more classes of utilities within the Reservation. Failure to exercise one or more Powers delegated under this Title shall not be deemed a waiver or affect the ability to exercise such powers in the future.

3. Duties of Commission. The Commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate, in accordance with the provisions of this Title, every utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the Commission.
4. Power of Commission to Establish Rates. The Commission shall supervise all rates, tariffs, and charges of all utilities located or operating within the Reservation. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce all rates, tariffs, and charges of all utilities. Whenever the Commission, after hearing, shall find any existing rates, tariffs, charges, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this Title, the Commission by order shall form reasonable rates, joint rates, wheeling rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.
5. Power of Commission to Regulate Services. Whenever the Commission shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment,

appliances, facilities, service or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The Commission shall, pursuant to 21.0410 and after hearing, prescribe rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any utility. On demand and tender of rates, such utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules and regulations.

21.0402 Accounting systems.

The Commission shall establish a system of accounts to be kept by utilities subject to its jurisdiction. A utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the Commission. Where optional accounting is prescribed by a federal agency or authority, the Commission may prescribe which option is to be followed.

Every utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electrical service shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all the other business, in which case all the provisions of this Title shall apply to the books, accounts, papers, and records of the other business.

Every utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the Commission and to comply with all directions of the Commission relating to these books, accounts, papers, and records.

21.0403 Annual reports.

The Commission may require any utility to file annual reports in such form and content, having regard for the provisions of this Section, as the Commission may require, and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed. The Commission may require the reports to be verified. The basic financial statements in the annual report of a utility may, at the direction of the Commission, be examined by an independent certified public accountant and the accountant's opinion thereof included in the annual report filed with the Commission.

The Commission may require the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission.

21.0404 Depreciation rates and practices.

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

21.0405 Right of entrance; Inspection.

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

giving every reasonable aid to the Commissioners and any person or persons designated by the Commission for such duties.

21.0406 Production of records.

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

21.0407 Investigation.

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

21.0408 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 (1) of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under 21.0409 below. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Commission.

21.0409 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.

21.0410 Rules of the commission.

The Commission shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers, including but not limited to rules and regulations relating to

1. internal operational procedures of the Commission and its staff;
2. interpretation and application of this Title as may be necessary to carry out its duties and exercise its powers;
3. supervision and regulation of the rates, wheeling rates, charges, tariffs, rules, regulations, practices, equipment, appliances, facilities, service, depreciation rates and practices, accounting systems, annual reports and all other aspects of all utilities;
4. the findings of any reports or other information required by, or necessary to implement, this Title; and
5. the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by this Title.
 - a. Such rules shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.

- b. No rule or regulation of the Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Secretary of the Tribe and in the office of the Clerk of the Tribal Court. The copy shall bear the signature of at least two (2) Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Title.
- c. 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.

21.0411 Commission employees and expenses.

1. The Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.
2. Upon the approval of the Council by resolution, the Commission may utilize regular Tribal staff to exercise the duties and responsibilities set out in this Title.
3. The Commission may delegate to the Tribal staff by Rule such of its functions as may be necessary to administer this Title efficiently, consistent with the limitations of this Title.
4. The total amount disbursed by the Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefore by the Council. The Commission shall submit to the Council a line item proposed budget for the next fiscal year not later than July 1st of each year.

21.0412 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 give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.
2. The premiums on any bonds required of the Commission members, officials, and its employees shall be paid from the Tribal Utility Commission Account as authorized in the Commission budget.

21.0413 Records of the commission.

1. The Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission, including minutes of all meetings of the Commission.
2. Such records shall be maintained at the offices of the Commission and shall not be removed from that location absent the consent of the Commission by formal resolution.
3. Such records shall be subject to audit any time upon the direction of the Council, and shall be audited not less than once each year by an independent auditor selected by the Council.
4. No records of the Commission, except the records of administrative proceedings before the Commission, which relate to the individual business of a named particular utility, shall be opened to public inspection, but shall be released only to the utility involved or persons duly authorized by the utility in writing to have access to such records.
5. Any records of the Commission which do not relate to the individual business of a named particular utility, and any records of administrative proceedings before the Commission, shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any utility appearing in such records shall be rendered unreadable prior to release of such copies unless the provisions

of Section 21.0413(4) of this Title would allow release of such information.

CHAPTER 21.05
Duties of Public Utilities

21.0501 Utility to provide adequate service.

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

21.0502 Reasonable charges for services and commodities of utility.

Every unjust and unreasonable rate or charge made, demanded, or received by any utility or by any two (2) or more utilities for any product, commodity or service, is prohibited and unlawful.

21.0503 Standard of service.

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

21.0504 Violation of prescribed system of accounts unlawful.

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

21.0505 Customer deposits; Interest.

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

21.0506 Unreasonable preferences or advantages prohibited.

No utility shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to any particular character of traffic or service in any respect whatsoever, nor subject any particular person, firm, corporation, company, or locality, or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect. No utility, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand, collect, or receive from any person, firm, company, or corporation, a greater or lesser compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, company, or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. Nothing in this Chapter shall prohibit a utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the authority under which such utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the Commission.

21.0507 Orders of the commission; Observance by utility.

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

21.0508 Disconnection during cold weather.

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

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

CHAPTER 21.06

Electric Utility Franchises

21.0601 Definitions.

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

1. "ASSIGNED SERVICE AREA" means the geographical area in which the boundaries are established as provided in this Chapter.
2. "CUSTOMER" means a person contracting for or purchasing electric service at retail from an electric utility.
3. "ELECTRIC SERVICE" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.
4. "ELECTRIC LINE" means lines for conducting electric energy for distributing electric energy directly to customers at retail.
5. "ELECTRIC UTILITY" means any person, his lessee, trustee, and receiver, separately or jointly, now or hereafter operating, maintaining or controlling within the Turtle Mountain Indian Reservation and its Trust

Lands equipment or facilities for providing Electric Service at retail and which falls within the definition of "utility" under this Title, and includes facilities owned by a municipality or by a cooperative electric corporation or association.

21.0602 Public policy regarding assigned service areas for electric utilities.

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated Reservation-wide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient and adequate electric service to residents of the Reservation, the Turtle Mountain Indian Reservation may, subject to Section 21.0603, be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

21.0603 Assigned service areas.

1. Within thirty (30) days following the effective date of this Title, or when requested in writing by an electric utility and for good cause shown, whichever first occurs, and at such further time as the Commission may by order, each electric utility shall file with the Commission a map or maps showing all its electric lines within the Reservation as they existed on the effective date of this Title, showing all places on the Reservation receiving its service. After thirty (30) days from the effective date of this Title, unless a customer whose place being served is shown on such map or maps, it shall be conclusively presumed that such customer was not being served on the effective date of this Title.
2. On or before twelve (12) months following the effective date of this Title, the Commission shall, after notice and hearing, establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to show accurately and clearly the boundaries of the assigned service area of each electric utility providing electric service or maintaining an electric line within the Turtle Mountain Indian Reservation.
3. To the extent that it is not inconsistent with the legislative policies of this Chapter and existing service as shown on the map or maps provided pursuant to Subsection (1), the boundaries of each assigned service area shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on the effective date of this Title, provided that these boundaries may be modified by the Commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines, and shall be modified to take account of the contracts provided for under this Section; and provided further that at any time after the effective date of this Title, the Commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after appropriate notice and hearing as provided for in this Title.
4. Contracts between an electric utility and any customer, and between utilities, which are executed on or before six (6) months after the effective date of this Title designating customers and areas to be served by the electric utilities, when approved by the Commission, shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The Commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.
5. In those areas where, on the effective date of this Title, the existing electric lines of two or more electric utilities are so intertwined that the provisions of this Section cannot reasonably be

applied, the Commission shall determine the boundaries of the assigned service areas for the electric utilities involved in such manner as will best promote the legislative policy of this Title.

21.0604 Exclusive service rights.

Except as provided under this Chapter, each electric utility shall have the exclusive right to extend electric lines to each and every present and future customer in its assigned service area and no electric utility shall extend electric lines within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area. Nothing in this Section shall prevent the retail wheeling of electricity within such areas.

21.0605 Service extensions.

Notwithstanding the establishment of assigned service areas for electric utilities as provided for in this Chapter, customers 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:

1. the electric service requirements of the load to be served;
 2. availability of an adequate power supply;
 3. the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
 4. the proximity of adequate facilities from which electric service of the type required may be delivered;
 5. the overall public convenience, necessity and interest;
 6. the preference of the customer;
 7. 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;
 8. whether the proposed service interferes with existing services provided by the electric utility in whose service area extension is requested; and
 9. duplication of services is not deemed unreasonable by the Commission.
- After such hearing, the Commission may either allow another utility to build within the service areas of another, or may order the retail wheeling of electricity between the two utilities upon such terms as to the Commission appear just and equitable.

Notwithstanding the provisions of Section 21.0603, any electric utility may extend electric lines for electric service to its own utility property and facilities.

21.0606 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 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.

21.0607 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.

21.0608 Use by one utility of the facilities of another utility.

Whenever upon hearing, after due notice, the Commission has found that the public convenience and necessity requires the use by one (1) electric utility of the conduits, wires, poles, pipes or other equipment or any part thereof on, over or under any street or highway and belonging to another electric utility, and that such use will not result in irreparable injury to the owner or other users of such equipment, nor any substantial detriment to the service, and that such electric utilities have failed to agree upon such use or terms and conditions or compensation for the same, the Commission, by order, may direct that such use be permitted, and prescribe reasonable compensation and reasonable terms and conditions for such joint use. If such use is directed, the electric utility to which the use is permitted shall be liable to the owner or other users of such equipment for such damages as may result therefrom to the property of such owner or other users thereof. In lieu thereof, the Commission may order retail wheeling to accomplish the same purpose.

**CHAPTER 21.07
Electric Utility Rates and Tariffs**

21.0701 Changes in Tariff Rates; Notice to Commission.

No change shall be made by any electric utility in any tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, classifications or services which have been filed and published by any electric utility pursuant to this Title, except after thirty (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 below.

21.0702 Hearing by commission on proposed change of rates.

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

into effect and be the established and effective rates, classifications, contracts, practices, rules, and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, to alter or modify them.

21.0703 Factors in establishing rate adjustments.

In reaching its decision on any request for change in tariffs, rates, joint rates, wheeling rates, charges, fares, tolls, schedules, or classifications of an electric utility, the Commission may adopt, in whole or in part, those rates approved or allowed by any State Public Service Commission for the same type or 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 as consent to jurisdiction of the State, its agencies or political subdivisions, with respect to the regulation of utilities within the boundaries of the Reservation, such jurisdiction residing exclusively with the Tribe and the Tribal Utility Commission pursuant to the provisions of this Title. The interim adoption by the Commission of any tariff, rate, joint rate, wheeling rate, fare, toll, schedule, or classification established by the State Public Service Commission under this Section shall not affect or in any way limit implementation and enforcement by the Commission of any other provision of this Title relating to tribal regulation of electric utilities within the Reservation.

21.0704 Non-interference with federal programs.

In establishing rates under this Chapter for any rural electric cooperative or similar entity operating or providing service within the Reservation, the Commission shall take into consideration the obligations of such electric utilities to the federal government, including the Rural Utility Service, 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.

21.0705 Reasonable Rates.

Every rate made, demanded, or received by any utility, or by any two (2) or more utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. To the maximum reasonable extent, the Commission shall set rates to encourage energy conservation and renewable energy use. Any data as to reasonableness should be resolved in favor of the consumer.

21.0706 Testing Meters; Gas; Electric.

The Commission may employ such persons or firms to conduct the periodic testing of gas and electric meters used for the measurement of wholesale and retail sales of gas or electricity.

21.0707 Publishing of Schedules.

Every utility shall file with the Commission schedules showing all rates, tolls, tariffs and charges which it has established and which are in force at the time for any service performed by it within the Reservation, or for any service in connection therewith or performed by any utility controlled or operated by it.

Every utility shall file with and as a part of the schedule all rules which, in the judgment of the Commission, in any manner affect the service or

product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the Commission may by general or special order direct.

Except as provided in Chapter Five, no utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the utility applicable thereto when filed in the manner provided herein, nor shall any person knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility upon January 1, 1998, may be contingent until schedules are filed.

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

21.0708 Rate Preference Prohibited.

Except as provided herein, 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.

21.0709 Valuation of utility Property.

For the purpose of assessing property for taxation purposes, the Commission may employ such persons or firms to determine the valuation of the property (including necessary rights-of-ways, rolling stock, and capital improvements) which belong to each of the public utilities doing business within the Turtle Mountain Indian Reservation and its Trust Lands. Such valuation may be relied upon by the Tribal Council in determining a fair and equitable level of taxation to be based upon such valuation, the gross revenues derived therefrom, or the going concern value of each utility operations within the Reservation.