

# CROW CREEK SIOUX TRIBE UTILITIES CODE

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## CHAPTER ONE

### FINDINGS, PURPOSE AND SCOPE

#### **Section 1. FINDINGS**

The Crow Creek Sioux Tribe (“Tribe”), a federally recognized Indian tribe, through the elected Crow Creek Sioux Tribal Council, acting pursuant to its inherent sovereign governmental authority and the enumerated powers under the Constitution and Bylaws of the Crow Creek Sioux Tribe, finds that:

##### **(1) Inherent Tribal Sovereign Power to Regulate Utilities**

The Crow Creek Sioux Tribe is a sovereign Indian tribe organized pursuant its Constitution and Bylaws adopted on April 26, 1949 and as subsequently amended. The power to regulate utilities is an inherent and essential part of the authority of Crow Creek Sioux Tribe.

The Tribal Council, under the authority of Article VI Section 1(F) of the Constitution and Bylaws, has the power and responsibility to adopt resolutions and ordinances governing the management of all economic affairs of the Crow Creek Sioux Tribe and the Crow Creek reservation (“Reservation”).

##### **(2) Need For Adequate Utility Regulations**

Both Indian and non-Indian populations within the boundaries of the Crow Creek Reservation require access to essential utility services. To ensure residents of the Crow Creek reservation have access to essential utility services at reasonable rates, terms and conditions of service, Tribe shall regulate all utilities operating within the boundaries of the Crow Creek reservation.

##### **(3) Lack of State Jurisdiction**

The State of South Dakota lacks jurisdiction to regulate utilities within the boundaries of the Crow Creek reservation. State regulation of such utilities providing service on the Crow Creek reservation interferes with the right of the Crow Creek Sioux Tribe to govern economic and business affairs on the Crow Creek reservation. Utility regulation is preempted by the Tribe and the federal government with respect to all HUD homes of tribal members, other homes and businesses of tribal members financed in whole or in part by the Tribe or the federal government, all tribal buildings and businesses of the Tribe financed in whole or in part by the Tribe or the federal government, all Bureau of Indian Affairs or other federally owned or operated buildings, and all private parties and non-Indians that have voluntarily consented to tribal jurisdiction by

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locating on the Crow Creek reservation and/or contracting with the Crow Creek Sioux Tribe for services.

## **(4) Consensual Relations Between Utilities Operating Within the Reservation and the Tribe, Tribal Members and Nonmembers**

Every utility which enters and operates within the exterior boundaries of 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 services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe. The regulation of such utilities located, operating or providing services upon the Reservation is an essential governmental function of the Tribe. The regulation of every such utility located, operating or providing services upon the Reservation by the State of South Dakota or any municipality or political subdivision of the State is an infringement upon the right of the Tribe to make its own laws and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe.

## **(5) Utility Easements and Rights-of-Way Cross Tribal Land**

Inasmuch as both trust land and non-trust land are crossed by utility lines, carrying both energy and telecommunications services, pipelines, rail lines and rights-of-way of utilities, engaged in both the transmission and distribution of utility services, and inasmuch as the Tribe and tribal members have legal and economic interests in Reservation lands and rights-of-way with the boundaries of the Reservation, the protection of such legal and economic interests requires that the Tribe regulate all utilities operating within the Reservation.

## **Section 2. PURPOSE**

The Tribe hereby declares it to be in the public interest that all utilities located, operating or providing services within or across the Reservation be regulated as hereinafter provided in order to provide all retail consumers of utility services and commodities within the Reservation with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of such utilities and their need to construct facilities to provide such services and commodities or otherwise to obtain utility supplies.

The purpose of this legislation shall also be to regulate all utilities located, operating or providing services within the Reservation with respect to matters other than rates, including connection of

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service, disconnection of service, reconnection, deposit and overdue payment charges, and other terms and conditions of service.

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.

## **Section 3. BENEFITS OF TRIBAL GOVERNMENT**

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

- (1) A consumer base that includes tribal government, other tribal entities, businesses located on the Reservation, federal government entities, tribal members and other residents of the Reservation.
- (2) The provision of governmental services, police and fire protection, and a Tribal Court system of general jurisdiction;
- (3) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction;
- (4) The orderly development and protection of the Reservation lands, resources and communities; and
- (5) The establishment of an independent Tribal Utility Authority for the tribal regulation of all utilities and utility related activities within the Tribe's sovereign jurisdiction.

## **Section 4. SOVEREIGN IMMUNITY**

The Crow Creek Sioux Tribe, and all its constituent parts, including the Tribal Utility Authority established pursuant to this Code, are hereby clothed with all the privileges and immunities of the Tribe, including sovereign immunity from suit in any court, except as may be specifically and explicitly limited by the Tribal Council and only after consultation with the Tribal attorneys, and are thus immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Code or elsewhere.

Nothing in this Code shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tribal Utility Authority, except that after exhaustion of administrative remedies as provided herein, a party aggrieved by the decision of the Tribal Utility Authority may petition the Tribal Court for review of the

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decision by the Tribal Utility Authority. Nothing in this Code, nor any such petition to the Tribal Court, nor any enforcement action taken pursuant to this Code, including the filing of suit by the Tribal Utility Authority 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.

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## CHAPTER TWO

### TRIBAL UTILITY AUTHORITY

#### **Section 1. TRIBAL UTILITY AUTHORITY**

The Tribe, through the enactment of this Code, hereby further defines, pursuant to provisions of this Code, the Tribal Utility Authority, an independent, governmental agency and subdivision of the Tribe. This Code shall amend the Crow Creek Utility Authority Ordinance, amended September 1997, by establishing Commissioners to oversee and provide direction to the Tribal Utility Authority and providing further direction to the Tribal Utility Authority on the regulation of utilities on the Crow Creek reservation.

#### **Section 2. DELEGATED GOVERNMENTAL FUNCTIONS**

The Crow Creek Sioux Tribe formally delegates exclusive and essential governmental functions and authority for the appropriate and independent regulation of utilities on the Crow Creek Indian Reservation.

##### **(1) Exercise of Tribal Regulatory Authority over Utilities**

The establishment and operation of Tribal Utility Authority serves an essential governmental function of the Crow Creek Sioux Tribe by providing for exercise of Tribal regulatory authority over the policies and operations of all utility systems on the Crow Creek Reservation. It is the purpose and intent of the Crow Creek Sioux Tribal Council in establishing the Tribal Utility Authority to provide, through regulation, more efficient, modern, safe and environmentally sound utility services to the residents of the Crow Creek Reservation.

##### **(2) Economic Security, Health and Welfare of Tribe at Issue**

The creation and operation of Tribal Utility Authority also serves an essential governmental function of the Crow Creek Sioux Tribe by helping to address the serious economic, social and health problems associated with utilities services within the jurisdiction of the Tribe and the attendant effects on the Reservation environment and the public health, safety and welfare of the Tribe, its members, and all residents of the Crow Creek Reservation.

##### **(3) Tribal Governmental Authority Delegated to Commission**

The Tribal Utility Authority is a tribal public body and a subordinate, wholly owned governmental subdivision of the Crow Creek Sioux Tribe and has been delegated the right to exercise one or more of the substantial governmental functions of the Crow Creek Sioux Tribal

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government. It is the purpose and intent of the Tribal Council, in enacting this Code, that the operations of Commission be conducted independently and on behalf of the Tribe for the sole benefit and interests of the Tribe, its members, and the residents of the Reservation. In carrying out its purposes under this Code, the Commission shall function as an independent regulatory arm of the Tribe. Notwithstanding any authority delegated to the Tribal Utility Authority under this Code, the Tribe reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe or on behalf of Tribal Utility Authority, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe and Tribal Utility Authority.

### **Section 3. NUMBER, ELECTION AND QUALIFICATIONS OF COMMISSIONERS**

The Tribal Utility Authority shall comprise three voting members. Members of the initial Tribal Utility Authority shall be appointed to serve two year terms, and thereafter members shall stand for election in a manner to be provided in the Crow Creek Sioux Tribe. The Tribe shall set forth the nomination and election procedures, along with any specific qualifications as may be required, provided that:

- (1) Two Commissioners shall be members of the Tribal Council.
- (2) All three Commissioners shall be enrolled members of the Crow Creek Sioux Tribe.
- (3) In nominating qualified Commissioners, due consideration shall be given to the following:
  - (a) Sound judgment and business knowledge, expertise or experience;
  - (b) Expertise, experience or knowledge of public utility systems of the types under the regulatory authority and control of Tribal Utility Authority;
  - (c) The qualities of experience, industry, responsibility, integrity, judgment, and sensitivity to the unique Indian cultural, economic and social conditions and goals of the Crow Creek Sioux Tribe and Tribal Utility Authority;
  - (d) The need for diverse experience and expertise on the Tribal Utility Authority;

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- (e) The need for expertise in and understanding of management, business administration, public administration, regulated industries and similar or related areas of importance to the operations of Tribal Utility Authority; and
- (f) Applicable guidelines of organizations and entities, governmental and private, that may provide financial assistance to Tribal Utility Authority.

## **Section 4. TERMS OF OFFICE**

Commissioners shall serve two year terms and shall hold office until their successors have qualified and been elected.

## **Section 5. INITIAL COMMISSION**

The initial Commission shall have its commissioners appointed by the Tribal Council.

## **Section 6. RESIGNATION**

Any Commissioner may resign by delivering a written resignation to the Chairman of the Crow Creek Sioux Tribe. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. The resignation of a Commissioner shall also terminate that Commissioner's status, if any, as an officer of the Tribal Utility Authority.

## **Section 7. REMOVAL**

A Commissioner may be removed by a two-thirds majority vote of the Tribal Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance or nonfeasance or for misconduct in office, but only after a hearing before the Tribal Council, and only after the Commissioner has been given written notice of the specific charges at least ten (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 Tribal Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Tribal Council, by two-thirds majority vote, may temporarily remove a Commissioner 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 Secretary of the Tribal Council. The decision on removal by the Tribal Council shall be final.

## **Section 8. VACANCIES**

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

## **Section 9. OFFICERS OF THE TRIBAL UTILITY AUTHORITY**

- (1) **Chair.** The Chair of the Tribal Utility Authority shall be selected by and from among the members of the Tribal Utility Authority and shall hold office of Chair for a term of two years. No Commissioner may serve as Chair for two consecutive terms. The Chair shall preside over all Tribal Utility Authority meetings; sign on behalf of the Tribal Utility Authority all documents, decisions, orders, notices, or other papers approved for such execution by the Tribal Utility Authority; and shall have such other powers and duties as may from time to time be assigned to him or her by the Tribal Utility Authority.
- (2) **Vice Chair.** The Vice Chair of the Tribal Utility Authority shall be selected by and from among the members of the Tribal Utility Authority and shall hold office for a term of two years. Whenever the Chair is unable to preside or fulfill his or her duties as Chair, the Vice Chair shall do so, and when so acting, shall be clothed with all of the powers and duties of the Chair.
- (3) **Secretary/Treasurer.** The Secretary/Treasurer of the Tribal Utility Authority shall be elected by and from among the members of the Tribal Utility Authority for a term not to exceed his or her term as a member of the Tribal Utility Authority. The Secretary/Treasurer shall be bonded, and shall perform or oversee all functions and duties of the office, including:
  - (a) prepare financial statements of Tribal Utility Authority;
  - (b) maintain consolidated balance sheet and consolidated statements of income;
  - (c) obtain certified professional financial or accounting services, as approved by the Tribal Utility Authority; and
  - (d) perform duties as the Tribal Utility Authority may assign.

## **Section 10. GENERAL PROCEDURES OF THE AUTHORITY**



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The Tribal Utility Authority 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 Tribal Utility Authority 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 Crow Creek Sioux Tribe. Any party may appear before the Tribal Utility Authority and may be heard in person or by attorney. Every vote and official action of the Tribal Utility Authority 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 Tribal Utility Authority.

## **Section 11. TRIBAL UTILITY AUTHORITY DIRECTOR**

The Tribal Utility Authority shall appoint a Director, who shall have primary responsibility for the day-to-day operation of the Tribal Utility Authority, pursuant to delegation of authority by the Tribal Utility Authority, including supervision of all Tribal Utility Authority employees. The Director shall not be a Commissioner and shall have no vote on Tribal Utility Authority matters.

## **Section 12. TRIBAL UTILITY AUTHORITY MEETINGS**

### **(1) Open Meetings**

All meetings of the Tribal Utility Authority, including special meetings, shall be open to the public. Notice of such meetings shall be posted at appropriate places on the Reservation, including the offices of Tribal Utility Authority and the administrative offices of the Tribal Council, sufficiently in advance of such meetings so as to provide adequate notice to the public. At each meeting, the Tribal Utility Authority shall set aside a period of time for public comment and questions. At all meetings, the Tribal Utility Authority reserves the right to convene in executive session.

### **(2) Quorum**

Two Commissioners shall constitute a quorum of the Tribal Utility Authority.

### **(3) Majority Vote**

At all Tribal Utility Authority meetings where a quorum is present, all questions rising in connection with the action of the Tribal Utility Authority shall be decided by majority vote of the Commissioners present. Each Commissioner, including the Chair, shall be entitled to cast one vote on each matter before the Commission. The Chair shall preside at each

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meeting; in his or her absence, the Vice-Chair shall preside.

## (4) **Record of Meetings**

The Secretary shall keep, or cause to be kept, a complete and accurate record of all meetings and of all actions taken, copies of which shall promptly be furnished to the Tribal Utility Authority, to the Tribal Council and appropriate Council Committee, and to the public upon request.

## (5) **Action Without a Meeting**

Action taken by concurrence of two or more Commissioners without a meeting is a valid action of the Commission if, either before or after such action is taken, all appointed Commissioners sign and file with the Secretary a memorandum showing the nature of the action taken, that at least two Commissioners approved the action, and the positions of the remaining Commissioners with respect to the action.

## (6) **Telephone Meetings**

A Commissioner may participate in a Tribal Utility Authority meeting by means of conference telephone or similar communications equipment that enables all Commissioners participating in the meeting to hear and speak with one another.

## **Section 13. GENERAL STANDARDS FOR COMMISSIONERS**

### (1) **General Standards**

Commissioners shall discharge their duties:

- (a) In good faith;
- (b) With the degree of diligence, care and skill that an ordinarily prudent person in a like position would exercise in similar circumstances; and
- (c) In a manner they reasonably believe to be in the best interests of Tribal Utility Authority.

### (2) **Liability**

A Commissioner is not liable for any action taken as a Commissioner, or any failure to take any action.

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## CHAPTER THREE

### POWERS AND DUTIES OF TRIBAL UTILITY AUTHORITY

#### **Section 1. JURISDICTION AND POWERS OF TRIBAL UTILITY AUTHORITY**

##### **(1) General Jurisdiction of the Tribal Utility Authority Over Utilities**

The general jurisdiction of the Tribal Utility Authority 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) Powers of Tribal Utility Authority**

The Tribal Utility Authority shall have power to:

- (a) Investigate all methods and practices of utilities or other persons subject to the provisions of this Code.
- (b) Require utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Tribal Utility Authority not contrary to law.

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- (c) Require copies of reports, rates, classifications, schedules, and time tables in effect and used by such utilities or other persons and all other information desired by the Tribal Utility Authority relating to such investigations and requirements to be filed with the Tribal Utility Authority.
- (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 Tribal Utility Authority that all of the interested parties have agreed concerning the matter at hand, the Tribal Utility Authority may issue its order without a hearing.
- (f) Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services applied for any utility by any firm or corporation owned or controlled directly or indirectly by the utility or any affiliate, subsidiary, parent, associate or any corporation whose controlling stockholders are also controlling stockholders of the utility, before permitting the value of such materials or services to be included in valuations or cost of operations for rate-making purposes. If unreasonable profits have been made in any such transactions, evaluations of such materials and services may be reduced accordingly.
- (g) Employ and fix the compensation of rate experts, engineers, and all other expert help and assistance for rate increase application hearings, investigations, and proceedings relating to utilities. The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the Tribal Utility Authority while engaged in any such hearing, investigation, or proceeding shall, upon appropriate order of the Tribal Utility Authority, 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 Tribal Utility Authority.
- (h) Retain and use the services of the tribal attorneys or other attorneys designated by the Tribal Utility Authority upon a contract approved by the Tribal Council.
- (i) Employ and use the services of the tribal accountants or other accountants designated by the Tribal Utility Authority upon a contract approved by the Tribal Council.
- (j) Promulgate and enforce rules and regulations consistent with this Code.

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- (k) Employ and consult with such advisors regarding its duties as it may deem necessary.
- (l) Require by regulation the filing of any forms or reports necessary for implementation of this Code.
- (m) Examine under oath either orally or in writing any agent, officer, or employee of any utility subject to regulation under this Code, or any other witness with respect to any enforcement action authorized by this Code.
- (n) Delegate to an individual Commissioner, or to the Director or other members of the Tribal Utility Authority staff or Tribal staff such of its functions as may be necessary to administer this Code efficiently; provided that the Tribal Utility Authority 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 Code.
- (o) Adopt by regulation a schedule of fees and charges imposed upon utilities.
- (p) Adopt rules and regulations in furtherance of the purposes of this Code.
- (q) Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Code.
- (r) Regulate the use of rights-of-way, easements, or any other use of land on the reservation to provide utility service, including, but not limited to, (i) end user services offered by telephone, telecommunications, electric, gas, wind, water, video, and other utility service providers, and (ii) carrier, transport, or transit services offered by wholesale carriers, distributors, aggregators, and any other entities providing non-end user services. As part of the Commission's review and regulation of rights-of-way, a de novo review of all existing rights-of-way shall be undertaken to determine existing rights and obligations for use of rights-of-way, easements, and other use of land on the Crow Creek reservation.

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Except as provided in this Title, the Tribal Utility Authority 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 Code shall not be deemed a waiver or affect the ability to exercise such powers in the future.

## **(3) Duties of Tribal Utility Authority**

The Tribal Utility Authority is hereby vested with the powers, rights, functions, and jurisdiction to regulate, in accordance with the provisions of this Code, every utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the Tribal Utility Authority.

## **(4) Power of Tribal Utility Authority to Establish Rates**

The Tribal Utility Authority 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 Tribal Utility Authority, 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 Code, the Tribal Utility Authority by order shall fix reasonable 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 Tribal Utility Authority to Regulate Services**

Whenever the Tribal Utility Authority 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 Tribal Utility Authority shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, facilities, services, or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The Tribal Utility Authority shall, 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.

## **Section 2. ANNUAL REPORTS BY UTILITIES**

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

## **Section 3. INVESTIGATION**

The Tribal Utility Authority, 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 Tribal Utility Authority 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.

## **Section 4. HEARINGS; EXAMINER**

The Tribal Utility Authority may, in addition to the hearings specifically provided for under this Code, conduct any other hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Code. The Tribal Utility Authority may designate one of its members to act as examiner for the purpose of holding any hearing which the Tribal Utility Authority has the power or authority to hold, or the Tribal Utility Authority may appoint another person to act as examiner. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Tribal Utility Authority.

## **Section 5 APPOINTMENT OF EXAMINER, POWER OF EXAMINER**

The Tribal Utility Authority may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to aid as examiner for the purpose of holding any hearing which the Tribal Utility Authority, 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 Code with respect to any such hearing.

## **Section 6. RULES OF THE UTILITY AUTHORITY**

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## (1) **Written Rules and regulations**

The Tribal Utility Authority shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers. Such written rules and regulations, when properly promulgated by the Commission, shall have the force of law. Tribal Utility Authority rules and regulations may include, but are not limited to:

- (a) Internal operational procedures of the Tribal Utility Authority and its staff;
- (b) Interpretation and application of this Code as may be necessary to carry out its duties and exercise its powers;
- (c) Supervision and regulation of the rates, charges, tariffs, rules, regulations, practices, equipment, facilities, services, depreciation rates and practices, accounting systems, annual reports and all other aspects of all utilities;
- (d) Findings of any reports or other information required by, or necessary to implement, this Code; and
- (e) Inspections, investigations, hearings, enforcement actions and other powers of the Tribal Utility Authority authorized by this Code.

## (2) **Hearings**

Such rules shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.

## (3) **Judicial Notice**

The Tribal Court and any other court or administrative agency of competent jurisdiction shall take judicial or administrative notice of all rules and regulations of the Tribal Utility Authority promulgated pursuant to this Code.



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## **Section 7. REPORT TO TRIBAL COUNCIL**

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

## **Section 8. REHEARINGS BEFORE COMMISSION**

Within 20 days after release date 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 Tribal Utility Authority for a rehearing in respect to any matters determined in the decision. The Tribal Utility Authority may grant a rehearing on any or all matters raised in the request for rehearing, if in its discretion sufficient reason exists. Applications for rehearing shall be governed by general rules which the Tribal Utility Authority may establish. If, after rehearing, it shall appear that the original order or decision is in any respect unlawful or unreasonable, the Tribal Utility Authority may reverse, change, modify or suspend the original action accordingly. The grant or denial of a rehearing shall be discretionary with the Tribal Utility Authority. A request for rehearing shall not be deemed a condition precedent to judicial review of a final administrative order or decision.

## **Section 9. SUBPOENA; WITNESSES; FEES; MILEAGE**

The Tribal Utility Authority may issue subpoenas and all necessary process in proceedings pending before the Tribal Utility Authority; 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.

## **Section 10. OATHS; CONTEMPT; EXAMINER'S POWERS**

The Tribal Utility Authority may administer oaths and examine witnesses in proceedings pending before the Tribal Utility Authority. 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 Tribal Utility Authority, 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.

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## **Section 11. DEPOSITIONS**

The Tribal Utility Authority or any party to the proceedings may, in any investigation or hearing before the Tribal Utility Authority, cause the deposition of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the Tribal Court.

## **Section 12. TESTIMONY AND PRODUCTION OF RECORDS; PERJURY**

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

## **Section 13. COPIES OF DOCUMENTS AS EVIDENCE**

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

## **Section 14. ORDERS AND FINDINGS IN WRITING**

Every order, finding, authorization, or certificate issued or proved by the Tribal Utility Authority under any provisions of this Code shall be in writing and filed in the office of the Tribal Utility Authority. A certificate 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 15. PUBLIC RECORDS**

All decisions, transcripts, and orders of the Tribal Utility Authority shall be public records.

## **Section 16. TRANSCRIBED RECORD TO BE KEPT**

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

### **Section 17. APPEAL FROM DECISION OF TRIBAL UTILITY AUTHORITY**

Any party to any proceeding heard by the Tribal Utility Authority who is aggrieved by the decision or by the entry of any final order or decision of the Tribal Utility Authority therein may seek judicial review there from 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 18. JUDICIAL REVIEW**

#### **(1) Right of Review of Final Commission Action**

Any party to any proceeding heard by the Tribal Utility Authority who is aggrieved by the decision or by the entry of any final order or decision of the Tribal Utility Authority is entitled to judicial review thereof in the Tribal Court. A preliminary, procedural, or intermediate Tribal Utility Authority action is not subject to review.

#### **(2) Relief Pending Review**

When the Tribal Utility Authority 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 Tribal Utility Authority action or to preserve the status quo or rights pending conclusion of the review proceedings.

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## **Section 19. STAY ON JUDICIAL REVIEW; BOND**

In case the order or decision of the Tribal Utility Authority is stayed or suspended by order of the Tribal Court, the order of the Tribal Court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the Tribal Court.

## **Section 20. APPEAL TO TRIBAL APPEALS COURT**

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

## **Section 21. CIVIL INFRACTIONS**

The civil fines imposed under this Code 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 Crow Creek Indian Reservation and to compensate the Tribe for damages sustained by the Tribe by reason of violations of this Code and the costs incurred by the Tribe in enforcing this Code. The civil fines are also intended to coerce persons into complying with this Code and the laws and regulations of the Crow Creek Sioux Tribe and not to punish such persons for violation of such laws and regulations.

## **Section 22. CIVIL ACTION FOR PENALTIES**

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

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### **Section 16-103. VIOLATION OF THIS TITLE OR COMMISSION ORDER OR RULE**

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

### **Section 16-104. CUMULATIVE FINES**

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

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## CHAPTER FOUR

### DUTIES OF PUBLIC UTILITIES

#### **Section 1. TO PROVIDE ADEQUATE SERVICE**

Each utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference. Every utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as will promote the safety, health, comfort, and convenience of its customers, employees, and the public.

#### **Section 2. REASONABLE CHARGES FOR SERVICES**

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

#### **Section 3. TO OBSERVE 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 Tribal Utility Authority in any manner in any way relating to or affecting its business as a utility, and shall do everything necessary or proper in order to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.

#### **Section 4. DISCONNECT OF UTILITY SERVICE**

The Tribal Utility Authority shall promulgate regulations setting out procedures for and limitations on a utility's disconnection of utility service.

#### **Section 5. RATES FOR UTILITY SERVICE**

The Tribal Utility Authority shall promulgate regulations governing the rates for utility service.

#### **Section 6. TERMS AND CONDITIONS FOR UTILITY SERVICE**

The Tribal Utility Authority shall promulgate regulations governing the terms and conditions for utility service, including utility service provided by commercial mobile radio service ("CMRS") carriers.

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## **Section 7. UTILITY REGISTRATION, TAXES AND FEES**

### **Section 7.1 Utility Registration and License Fees.**

All persons conducting or engaged in business or trade on the Crow Creek Sioux Reservation must obtain a tribal business license and pay a license fee, prior to engaging in any such business. For any person engaged in such business on the effective date of this Code operating pursuant to a tribal business license, said license shall remain in effect until the natural expiration of its term, at which time the person shall be required to obtain a new tribal business license.

The tribal business license is required of every business operating on the Crow Creek Reservation, whether temporary or permanent, regardless of whether such business is required to obtain any other license or permit required under the laws of the Crow Creek Sioux Tribe.

Nothing in this Code affects, limits, alters, modifies, or waives the need for a business to obtain all licenses and permits required by applicable law, including but not limited to compliance with building and safety regulations, and health and safety regulations. The issuance of a business license shall not be deemed or construed as a certification of a business' compliance with other applicable regulations or laws. Additional permits and licenses may be necessary before a person may lawfully conduct a business. It is the sole responsibility of the person obtaining a business license under this Code to comply with other applicable laws and regulations concerning operation of the person's business.

An applicant intending to conduct business within the Crow Creek Sioux Reservation shall complete and file with the Tribal Utility Authority an application for business license on a form prescribed by the Tribal Utility Authority prior to conducting business on the Reservation, or, if a business is already in operation as of the adoption of this Code, then an application must be filed within 30 days of adoption of this Code. Failure to complete or file a license application when due shall result in the imposition of a late fee as determined by the Tribal Utility Authority. Failure to renew an annual license shall also result in the imposition of a late fee as determined by the Tribal Utility Authority.

All applications shall include, but are not limited to, the following:

1. A description of the type of business;
2. The name and address of the owner or owners of the business;
3. The trade name, if any, to be used by the business;
4. The locations on the reservation at which the business will be conducted;

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5. The rates, terms and conditions of service offered by the business operating on the Crow Creek reservation, which shall be updated as necessary to reflect current rates, terms and conditions of service.
6. A sworn statement that the applicant will comply with all tribal laws applicable to the applicant's business;
7. A statement that the applicant consents to the jurisdiction of the Tribal Utility Authority and the Tribal Court;
8. The name, address and signature of the agent who will accept service of process on behalf of the company;
9. The businesses' Taxpayer Identification Number; and
10. Any other information prescribed by the Tribal Utility Authority.

The fee for each class of business license shall be established by the Tribal Utility Authority.

In addition to any other remedies the Crow Creek Sioux Tribe may have, any person who conducts business or trade without a tribal business license or fails to comply with the Crow Creek Sioux tribal laws, ordinances and resolutions may be subject to civil fines and penalties. Any person who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Code, may be assessed a penalty.

### **Section 7.2 Imposition of Taxes and Fees On the Crow Creek Reservation**

The assessment and collection of taxes and fees on the Crow Creek reservation should be limited to those specifically required by applicable laws and that tribally owned entities should not be subject to any state taxes and fees, unless specifically approved by the Tribe.