

WINNEBAGO TRIBAL CODE
TITLE 15 ARTICLE 1

TITLE 15
UTILITIES

(As adopted by Resolution #07-53, March 6, 2007)

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UTILITIES

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LEGISLATIVE FINDINGS AND PURPOSE

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15-101 Sovereign Power to Regulate. The power to regulate utilities is an inherent and essential part of the authority of any reservation tribal government. The power is therefore an aspect of the retained sovereignty of the Winnebago Tribe of Nebraska except where it has been limited or withdrawn by federal law. Services, rates, policies, procedures and practices of utilities operating within the exterior boundaries of the Winnebago Reservation have a demonstrable impact upon the political integrity, economic security, and health and welfare of the Winnebago Tribe of Nebraska. Tribal regulation of utilities operating within the exterior boundaries of the Winnebago Reservation is an essential government function of the Winnebago Tribe. The Winnebago Tribe of Nebraska is the only sovereign with authority to exercise civil regulatory jurisdiction within the exterior boundaries of the Winnebago Reservation.

The Winnebago Tribe of Nebraska is a sovereign Indian tribe organized under a constitution and bylaws ratified by the Tribe on February 29, 1936, and approved by the Secretary of the Interior on April 3, 1936, pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1934 (49 Stat. 378). Pursuant to Article III of the Constitution of the Winnebago Tribe of Nebraska, as amended, the Winnebago Tribal Council is the governing body of the Winnebago Tribe of Nebraska. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1, Subsections (g), (i), (o), (q), and (r) of the Tribal Constitution. This Title seeks to establish a structure for the many growing and future utilities-providing entities on the Reservation. [TCR 07-53]

15-102 Critical Need for Utility Regulation on Reservation. As both Indian and non-Indian populations within the boundaries of the Reservation increase, and as additional residential, commercial, government and agricultural activities multiply, the need for adequate utility regulations concomitantly increases. Inasmuch as the Reservation is checker boarded with trust and non-trust land, and as trust land and non-trust land are crisscrossed by utility lines, pipelines, rail lines, and rights-of-way of utilities and entities, the Tribe, tribal members and nonmembers have a critical need for the Tribe to regulate and coordinate all utilities and entities providing utility services within the Reservation. [TCR 07-53]

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15-103 Demonstrably Serious Impacts of Utility Activities upon Economic Security, Health and Welfare of the Winnebago Tribe of Nebraska and Winnebago Tribal Members. The rural nature of the Reservation and particular needs of the residents and businesses residing on the Reservation all present a compelling and urgent need for a seamless regulatory structure. Those particular needs stem from the following Reservation characteristics:

1. Many homes of Tribal members, particularly government financed homes, are “all electric,” that is, heated solely by electricity;
2. The health and the lives of many elderly and ill Tribal members and non-members are at risk during harsh winter and summer months;
3. The high cost of electricity within the Reservation;
4. The need to minimize and stabilize the high cost of electricity to the Tribe, Tribal members and non-members and to economic enterprises owned by the Tribe and Tribal members;
5. The urgency of minimizing and stabilizing cost of electricity to attract new and expanded investment and business on the Reservation; and
6. The absolute necessity of adequate and reliable electricity for critical medical procedures and treatments received by ill persons on the Reservation.

These reasons, amongst others, all demonstrate the serious impacts of utility services upon the economic security, health, and welfare of the Tribe and Tribal members. [TCR 07-53]

15-104 State Jurisdiction and Regulation Not Applicable within Winnebago Reservation. The State of Nebraska lacks jurisdiction to regulate utilities within the Reservation and any attempted imposition of state regulation of such utilities manifestly interferes with the right of the Tribe and Tribal members to make their own laws and be ruled by them. Moreover, utility regulation is preempted by the Tribe and 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, facilities and businesses of the Tribe financed in whole or in part by the Tribe or the federal government or all Bureau of Indian Affairs or other federally owned or operated buildings. [TCR 07-53]

15-105 Finding of Consensual Relations between Utilities Operating Within Reservation and the Tribe, Tribal Members and Non-Members of Tribe. The Council finds that every utility that 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 the Reservation lands owned by Indians, non-Indians and the Tribe. The Council further finds that the services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe. The Council further finds that regulation of such utilities located, operating or providing services upon the reservation is an essential governmental function of the Tribe and that regulation of every such utility located, operating or providing services upon the Reservation by the State of Nebraska or any municipality or political subdivision of the State is an infringement upon the right of the Tribe to make its own lands and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe. [TCR 07-53]

15-106 Illegality of State Tax Collection by Utilities. Any and all state taxes, whether embedded in rates or identified as a line item on retail or commercial utility bills, are illegal as a matter of public policy

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and law for any and all Indian persons, tribally-owned enterprises and tribal programs located on the Reservation. [TCR 07-53]

15-107 Benefits Provided by Tribal Government to Utilities. Among the numerous benefits provided by the Tribal government to all utilities located, operating or providing services within the Reservation are the following:

1. The provision of governmental services, including sewer and water systems, police and fire protection, clearing and maintenance of approved right-of-ways on trust and allotted lands on the Reservation, and a Tribal court system of general jurisdiction;
2. The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction;
3. The orderly development and protection of the Reservation lands, resources and communities. [TCR 07-53]

15-108 Purpose. The Tribal Council hereby declares it to be in the public interest that all Utilities be regulated as provided by this Title in order to:

1. Inventory and regulate all utility facilities and any and all right of way corridors, encumbrances, and uses on the Reservation;
2. Provide all retail customers 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;
3. Avoid unnecessary duplication of facilities which increase costs of service to the consumer and to minimize disputes between Utilities that may result in inconvenience or diminished efficiency in service to such customers;
4. Control rates, connection of service, disconnection of service, reconnection, deposit and overdue payment charges;
5. Prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services.
6. Promote consistency and a seamless regulatory structure for the Reservation and its residents through exclusive tribal regulation of Utilities. [TCR 07-53]

15-109 Scope of Services to be Regulated.

1. Services to be regulated by the Winnebago Tribe shall initially include electricity, telecommunications, water, wastewater, gas, and heating services.
2. At such time as the Winnebago Tribe shall deem appropriate, the Winnebago Tribe shall extend its active regulatory jurisdiction to other utility services and facilities, as its utility Board shall identify. [TCR 07-53]

15-110 Territory, Persons and Property Affected. To the extent permitted by Tribal and federal law, this Title, including any subsequent amendments and related regulations, and Board regulatory authority shall apply to the Winnebago Reservation, as defined by its historical boundaries under the treaties with the United States signed on March 8, 1865 and June 22, 1874, including, but not limited to, all lands, islands, waters, roads, and bridges, and all interests herein, whether in trust or non-trust status, and such other lands, islands, waters or any interest therein thereafter added to the Reservation, including Thurston and Woodbury Counties. [TCR 07-53]

15-111 Explicit and Implicit Intention for State Law Preemption. The Winnebago Tribe of Nebraska has exclusive jurisdiction over utilities or entities operating within or maintaining, or

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controlling any utility equipment or utility facilities within the Reservation that furnish or seek to furnish at retail price any utility service product or commodity to any consumer. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over all residents on the Reservation. In order to provide for the equitable regulation and protection of such utilities, the Tribe, Tribal members and non-members within the Reservation, it is the express intent of the Council that this Title shall preempt any law enacted by the State of Nebraska or local jurisdictions within the State purporting to regulate such utilities located, operating or providing services within the Reservation. [TCR 07-53]

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GENERAL PROVISIONS

15-201	Title and Date.	15-203	Definition of Terms.
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15-201 Title and Date. The Title of this Winnebago Tribal Title shall be “Utilities” and come into force on the date of enactment by the Winnebago Tribal Council. [TCR 07-53]

15-202 Sovereign Immunity. The Winnebago Tribe of Nebraska, and all its constituent parts, including the Tribal Utility Board established pursuant to this Title, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribal Council 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 Board, except that after the exhaustion of Tribal administrative remedies as provided herein, a party aggrieved by a Board decision may petition the Winnebago Tribal Court for review of the decision by the Board. [TCR 07-53]

15-203 Definition of Terms. In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

1. “Board” refers to the Winnebago Tribe of Nebraska’s Tribal Utility Board created and established under this Title.
2. “Board Member” refers to one of the members of the Board.
3. “Council” refers to the Tribal Council of the Winnebago Tribe of Nebraska.
4. “Corporation” refers to a private or public corporation or company incorporated under the laws of any nation, state or tribe, a municipality, an association, a cooperative whether incorporated or unincorporated, a joint stock association, a business trust, or any political subdivision or agency, but shall not mean the Winnebago Tribe or any of its political subdivisions, agencies, or enterprises.
5. “Tribe” refers to the Winnebago Tribe of Nebraska.
6. “Director” refers to the Tribal Utility Board Director acting in his or her official capacity.
7. “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.
8. “Service” shall refer to the furnishing by any utility or entity of any utility service, product or commodity; the installation, removal or repair of equipment or facilities utilized in the delivery of measuring the service, product or commodity of any utility or entity providing such.
9. “Tribal Utility Account” refers to the account established by Section 15-314 of this Title.
10. “Utility” or “Utilities” refers to any person, corporation or other legal entity, its lessee, trustee, and receiver, now or hereafter located, operating or providing services within the Reservation, including those maintaining or controlling equipment or facilities for furnishing at retail price telecommunications services; pipeline utilities engaged in the transportation of gas, oil, coal and water; electric utilities engaged in the generation and distribution of light, heat or power; gas utilities engaged in the distribution of natural, synthetic or artificial gas; water companies for the storage and distribution of water for domestic or other beneficial use; heating utilities that operate, maintain, or control any equipment or facilities. [TCR 07-53]

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15-301 Creation of Winnebago Tribal Utility Board. The Winnebago Tribe of Nebraska hereby creates and establishes, pursuant to this Title, the Winnebago Tribal Utility Board, a regulatory governmental agency and subordinate division of the Winnebago Tribe of Nebraska. [TCR 07-53]

15-302 Number and Selection of Board Members. The Board shall be comprised of five voting members appointed by Council who satisfy the qualifications set forth in this Title. Each member of the Board shall be a resident on the Winnebago Reservation. The tribal treasurer shall serve as one of the five members. [TCR 07-53]

15-303 Terms of Office. Board Members shall serve three (3) year terms and shall hold office until their qualified successors have been appointed; provided however, the initial Board shall have terms of office as described herein. [TCR 07-53]

15-304 Board Qualifications. All Board Members that apply and are appointed by Council shall be able to provide evidence of proficiency, professional experience and/or familiarity with utility and/or corporate issues, operations, policy or other experience deemed of sufficient relevance by Council. Board Members shall comply with the background and other requirements of any elected or appointed tribal representatives of the Winnebago Tribe of Nebraska. [TCR 07-53]

15-305 Initial Appointment of the Utility Board. The Council shall determine the initial terms of appointed Board Members. Two Board Members appointed to the initial Board shall serve terms of three (3) years. Two Board Members appointed to the initial Board shall serve terms of two (2) years. The remaining Board Member appointed to the initial Board shall serve a term of one (1) year. [TCR 07-53]

15-306 Vacancies. If any Board member shall die, resign, be removed, or for any reason be unable to serve as a Board Member, the Council shall declare that position vacant and shall appoint another person to fill that position. The term of office of any person appointed to replace an initial Board Member shall be for the balance of any unexpired term for that position. [TCR 07-53]

15-307 Resignations. Any Board Member may resign by delivering a written resignation to the President of the Board. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Board Member's resignation under this Section or removal under Section 15-308 below

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shall also terminate that Board Member's status, if applicable, as a presiding officer of the Board. [TCR 07-53]

15-308 Removals. Board Members accepting their appointment agree that they may be removed by the Council for serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, or misconduct in office, but, except as provided below in this Section, only after a hearing before the Council, and only after the Board Member has been given written notice of the specific charges at least ten (10) days prior to such hearing. At any such hearing, the Board Member shall have the opportunity to be heard in person or by counsel and to present witnesses on his/her behalf. If the Council determines that immediate removal of a Board Member is necessary to protect the interest of the Tribe, the Board Member 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 Council shall be final and may not be appealed. [TCR 07-53]

15-309 Officers of the Board and Duties of Officers.

1. **President.** The President of the Board shall be appointed by the Council from among the members of the Board and shall hold office for a term of two (2) years. No Board Member may serve as President for two consecutive terms. The President shall preside over all Board meetings; is authorized to sign on behalf of the Board all documents, decisions, orders, notices or other documents approved for such execution by the Board; and shall have such other powers and duties as may from time to time be assigned to him or her by the Board.
2. **Vice President.** The Vice President of the Board shall be appointed by the Council from among the members of the Board and shall hold office for a term of one (1) year. Whenever the President is unable to preside or fulfill his/her duties as President, the Vice President shall do so, and when so acting, shall be clothed with all the powers and duties of the President.
3. **Secretary.** The Secretary of the Board shall be appointed by the Council for a term not to exceed his/her term of office as Board Member. His/her duties shall be those assigned by the Board.
4. **Treasurer.** The Tribal Treasurer shall serve as Treasurer of the Board and shall perform all functions as such for the Board pursuant to his/her constitutional authority. [TCR 07-53]

15-310 Compensation. Compensation for Board Members, if any, shall be determined by the Council and shall be paid solely from the Tribal Utility Account. [TCR 07-53]

15-311 Quorum. Three (3) Board Members shall constitute a quorum of the Board. A majority of those Board Members present at a meeting at which there is no quorum may by motion adjourn the meeting from time to time for a period not exceeding ten (10) days in any one instance. [TCR 07-53]

15-312 Majority Vote. All questions arising in connection with the action of the Board shall be decided by majority vote of those present and constituting a quorum. [TCR 07-53]

15-313 General Procedures of the Board. No Board Member shall participate in any hearing or proceeding in which such Board Member has any direct personal pecuniary interest. The Board 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 rules in use by the Winnebago Tribal Courts. Any party may appear before the Board and may be heard in person or by attorney. Every vote and official action of the Board shall be entered into the record and its proceedings shall be published upon the request of any interested person. Every Board Member shall have the right to administer oaths and affirmations in any proceeding pending before the Board. [TCR 07-53]

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15-314 Tribal Utility Account Established. It is hereby authorized and directed to be established an account in a federally insured financial institution to be known as the Winnebago Tribal Utility Account. [TCR 07-53]

15-315 Jurisdiction of Board. General Jurisdiction of the Board over Utilities. The general jurisdiction of the Board may extend to and include:

1. Telecommunications companies engaged in the furnishing of telecommunications services, including telegraph, telephone, and wireless companies engaged in the transmission of messages, conversations and data by voice or electronic means;
2. Water and sewer companies engaged in the storage and distribution of water for domestic or other beneficial reservation use;
3. Gas utilities engaged in the distribution of natural, synthetic or artificial gas;
4. Heating utilities engaged in the distribution of heat;
5. Pipeline utilities engaged in the transportation of gas, oil, coal and water;
6. Electric utilities engaged in the generation and distribution of light or power;
7. Electric companies engaged in the generation of power and/or steam;
8. Any other Utility that operates, maintains, or controls any equipment or facilities within the reservation.

Nothing in this Title shall prohibit the Board from making any order affecting rates, contracts, services rendered, adequacy or sufficiency of facilities, of any Utility owned and operated by any state or by any political subdivision of any state or any Utility that is not operated for profit. [TCR 07-53]

15-316 Powers and Duties of Board With Respect to Utilities. The Board shall have power to:

1. Investigate all methods and practices of Utilities or other persons subject to the provisions of this Title;
2. Coordinate or participate materially in the coordination of permitting and approvals for existing and new Utility facilities on the Reservation;
3. Require Utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Board not contrary to law;
4. Require copies of reports, rates, classifications, schedules and time tables in effect and use by such Utilities or other persons and all other information desired by the Board relating to such investigations and requirements to be filed with the Board.
5. Compel enforcement with 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 Winnebago Tribal Court.
6. 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. If at any time it shall appear to the satisfaction of the Board that all of the interested parties have agreed concerning a matter at hand, the Board may issue its order without a hearing.
7. Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or service applied for any Utility by any firm or corporation owned or controlled directly or indirectly by the Utility or any affiliate, subsidiary, parent, holding, 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 or services may be reduced accordingly.

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8. Employ and fix the compensation of rate experts, engineers, and all other expert help and assistance for rate increase application hearings, investigations, and proceeds relating to Utilities.
9. 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, rate reform, and Utilities subject to the jurisdiction of the Board. The Board shall also have the authority to file reports, hold hearings and promulgate regulations for any such purposes.
10. Promulgate and enforce rules and regulations consistent with this Title, subject to final approval by the Council.
11. Employ and consult with advisors regarding its duties as it may deem necessary.
12. Require by regulation the filing of any forms or reports necessary for the implementation of this Title.
13. 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.
14. Delegate to an individual Board Member, or to the Director or other members of the Board staff or tribal staff, such of its functions as may be necessary to administer this Title efficiently, provided that the Board may not delegate its powers to promulgate rules and regulations, or to hear or rule upon any complaints filed pursuant to this Title.
15. Impose reasonable permitting or licensing fees, subject to final approval by the Council.
16. 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.
17. Exercise all authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.

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. [TCR 07-53]

15-317 Annual Reports by Utilities. The Board may require any Utility to file annual reports in such form and content, having regard for the provisions of this Section, as the Board may require, and special reports concerning any matter about which the Board is authorized to inquire or to keep itself informed. [TCR 07-53]

15-318 Production of Records. The Board may require, by order served on any Utility in the matter provided herein for the service of orders, the production, at a reasonable time and place as the Board 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 photo static copies in lieu thereof, so that an examination may be made by the Board or under the direction of the Board. [TCR 07-53]

15-319 Investigation. The Board, 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. [TCR 07-53]

15-320 Hearings; Examiner. The Board 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. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Board. [TCR 07-53]

15-321 Rules of the Board. The Board shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers. All rules shall provide for hearings for all interested persons upon reasonable notice to be heard. The Winnebago Tribal Court and

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other courts of competent jurisdiction shall take judicial notice of rules and regulations promulgated. [TCR 07-53]

15-322 Board Employees and Expenses. The Board may employ persons or entities and incur such expenses as necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section. The Board may utilize regular Tribal staff to accomplish the same upon approval by Council. The total amount disbursed by the Board Treasurer in one fiscal year for the payment of salaries, expenses, and incidentals of the Board shall not exceed the amount in the Board budget for that fiscal year. [TCR 07-53]

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PUBLIC UTILITIES: RESPONSIBILITIES, DUTIES, REQUIREMENTS

15-401	Duty to Provide Adequate Service.	15-403	Duty to Produce Information on Reservation Easements.
15-402	Unauthorized Utilities Facilities Prohibited.	15-404	Disconnection or Discontinuation of Service.

15-401 Duty to Provide Adequate Service. All Utilities shall provide their retail customers utility services and commodities within the Reservation that are adequate and reliable at reasonable rates. All Utilities shall at least comply with standard industry practices for outages and may be appropriately fined for unreasonable practices that lead to detrimental and demonstrable harm to customers. The Board may order higher standards of reliability where such standards are in the best interest of the Tribe, however, the Board shall also approve rate increases as necessary and just to fund needed infrastructure or technical improvements for meeting such higher standards. [TCR 07-53]

15-402 Unauthorized Utilities Facilities Prohibited. Any user of a right-of-way, easement or lands for the operation or ownership of any utility facility who cannot provide any documentation to support any valid authorization, shall be notified by the Board of a procedure and timeline to get said right-of-way, easement or land lease into compliance and registered with the appropriate authorities. [TCR 07-53]

15-403 Duty to Produce Information on Reservation Easements. Every Utility shall supply the following information to the Council on forms to be provided, stating:

1. Name and mailing address of the current holder of the right-of-way or other authorization or current user of a right-of-way if unrecorded or unauthorized;
2. Legal or other description reasonably setting forth the exact location of the right-of-way or other authorization;
3. All purposes for which the right-of-way or other authorization is utilized;
4. A detailed description of all facilities constructed, utilized or operated by the current holder of the authorization;
5. A copy of all documents authorizing the use of Reservation land, and evidence that the Tribe has granted or consented to the authorization;
6. If the current holder is not the original grantee of the right-of-way or other authorization, a copy of all assignments of the authorization from all predecessors in interest and evidence that the Tribe has consented to all such assignments. [TCR 07-53]

15-404 Disconnection or Discontinuation of Service. Utilities shall maintain reasonable public policies for disconnection of customers and for discontinuation of service to customers. Such policies shall provide for reasonable notice prior to disconnection, except in the case of emergencies. [TCR 07-53]

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ELECTRIC UTILITY SERVICE ON WINNEBAGO RESERVATION

15-501	Assigned Service Areas; Nonexclusive Franchise Requirement.	15-505	Energy Conservation & Energy Efficiency.
15-502	Franchise Service Rights; Term of Franchise.	15-506	Lower Income Programs.
15-503	Interconnection Standards and Obligations.	15-507	Environmental Obligations.
15-504	Net Metering.	15-508	Ownership of Wires and Facilities.
		15-109	Valuation of Electric Utility Property. [Reserved]

15-501 Assigned Service Areas; Nonexclusive Franchise Requirement.

1. All Utilities providing energy or utility services to customers on the Reservation must obtain a franchise from the Board to provide service within the Reservation.
2. All franchises shall be nonexclusive, except as expressly reserved for a tribal utility service. [TCR 07-53]

15-502 Franchise Service Rights; Term of Franchise.

1. Franchises may be issued by order of the Board after consideration of all relevant facts submitted to the Board and after consideration of the best interests of the Tribe. The Board shall consider all requests for franchises and shall grant those that are determined to be in the best interests of the Tribe. The Board may require new franchisees to negotiate a tribal tax or license agreement for the term of the franchise as a condition of the franchise.
2. No franchise shall be granted or extended for any longer period of time than 20 years from the date of such grant or extension, unless a previous agreement controls such term. [TCR 07-53]

15-503 Interconnection Standards and Obligations. Utilities shall maintain reasonable public policies for interconnection to their facilities. No Utility shall disapprove an interconnection that meets national standards of safety and reliability. The Tribe, its subsidiaries and/or its affiliated entities shall have the right to interconnect wholesale or retail facilities to the facilities of any Utility under the same terms and conditions as the Utility interconnects to its own facilities. [TCR 07-53]

15-504 Net Metering. All electrical Utilities shall follow the policy of providing for Net Metering on the Reservation. Net Metering is defined as the ability of utility customers to install distributed generation behind the Utility's meter and to run that generator as needed, while the meter nets power coming in to the customer and the power going out of the customer's meter. [TCR 07-53]

15-505 Energy Conservation & Energy Efficiency.

1. Weatherization. Utilities providing electrical utility related services shall promote the weatherization of tribal buildings through programs similar to those available to customers within the State of Nebraska. Any state or federal funds received for these programs by the Utility shall be available for use within the Reservation, if like funding is not also available to the Tribe.
2. Energy Efficiency. Utilities providing electrical utility related services shall promote efficient use of energy through educational programs, technical assistance programs, energy audits, and financial assistance for improving energy efficiency. Any state or federal funds received for

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these programs by the franchisee shall be available for use within the Reservation, if like funding is not also available to the Tribe. [TCR 07-53]

15-506 Lower Income Programs. Utilities providing electrical utility related services shall maintain a program for subsidizing low income persons within the Reservation through programs similar to those available to customers within the State of Nebraska. Any state or federal funds received for these programs by the franchisee shall be available for use within the Reservation, if like funding is not also available to the Tribe. The Tribe may provide Utilities with names of customers eligible for these programs if the Tribe determines that the elderly, handicapped, or others should receive a preference in this program. [TCR 07-53]

15-507 Environmental Obligations.

1. Applicability of Environmental Laws. Utilities shall be bound by federal and tribal environmental laws regarding all facilities on the Reservation.
2. Notice of Off-reservation Environmental Issues. Utilities shall provide written notice to the Tribe of all new activities or proposals of the Utility that may have a significant impact on the regional and/or Reservation environment. [TCR 07-53]

15-508 Ownership of Wires and Facilities.

1. Unless an easement or right-of-way document signed by the Tribe and approved by the Bureau of Indian Affairs exists with regard to Utilities facilities, no Utility holds real property rights or may claim that real property rights have been transferred due to the existence of facilities on the Reservation. All facilities without such documentation are deemed to be personal property.
2. Any new facilities installed on the Reservation by Utilities in order to extend service to new customers shall be the personal property of the Tribe, and not the personal property of the Utility, when the new facilities are paid for by the new customer or by a particular user. The Utility shall provide notice to the Tribe of each such facility constructed.
3. Any facilities which are the personal property of the Tribe pursuant to this Section that are used by Utility to deliver their product or service shall be operated and maintained by the Utility in a manner consistent with the operation and maintenance of their own facilities. [TCR 07-53]

15-509 Valuation of Electric Utility Property. [Reserved] [TCR 07-53]

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TELECOMMUNICATIONS SERVICE

[Reserved]

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ARTICLE 7
WATER SERVICE

[Reserved]

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TITLE 15
ARTICLE 8
WASTEWATER SERVICE

[Reserved]

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TITLE 15
ARTICLE 9
GAS UTILITIES

[Reserved]

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TITLE 15
ARTICLE 10
HEATING UTILITIES

[Reserved]

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OTHER UTILITIES

[Reserved]

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ARTICLE 12
TRIBAL UTILITY BOARD – ENTERPRISE

[Reserved]