

LEECH LAKE BAND OF OJIBWE

TRIBAL UTILITIES COMMISSION

ORDINANCE

TITLE 14: Regulation of Utilities

Enacted

By

Resolution No. 2016-93, 7/23/16

TITLE 14: REGULATION OF UTILITIES

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Chapter 14.01 Findings, Authority and Purpose

14.0101 Legislative Findings

1. The Leech Lake Reservation Business Council ("Council") hereby finds:

(a) The availability of, and delivery of adequate public Utility service is necessary for the economic security, health and welfare of the Band.

(b) The rural nature of the Leech Lake Reservation, among other reasons, has caused the development and maintenance of public Utility services within the Reservation to be sub-standard and inadequate in comparison to such services in urban areas of the United States. This has had a serious negative impact which imperils the economic security, health, welfare and general well-being of the Band and all residents of the Reservation.

(c) 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 the Band's jurisdiction and legal authority, 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 Band.

(d) Some Utility service providers have placed Utility facilities, pipelines, transmission lines, poles, towers and other improvements over, across and upon land within the Reservation without proper authorization from the Band or the federal government.

(e) Based upon subsections (a)-(d), regulation of Utilities serving the Reservation is necessary and proper to provide for the economic security, health, welfare and general well-being of the Band and all residents of the Reservation.

14.0102 Authority to Act

1. The Council is authorized by the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (Article. VI § 1(c) and (d)) and the retained sovereign authority of the Minnesota Chippewa Tribe to:

(a) Set conditions for entry and occupation of land within the Reservation;

(b) Control economic activity within the Reservation;

(c) Require contributions from persons or enterprises engaged in economic activities within the Reservation.

2. Based upon the foregoing legislative findings and exercise of powers, the Council hereby enacts this Title 14 and establishes the Leech Lake Tribal Utility Commission ("LLTUC").

14.0103 Purpose and Goals

1. This title is intended to provide reasonable regulation of the Utilities that serve the Reservation for the following purposes:

- (a) To ensure the provision of adequate, continuous, cost-effective Utility service;
- (b) To provide access to medical, emergency medical, fire and law enforcement services;
- (c) To provide access to necessary governmental services;
- (d) To provide and enhance educational opportunities and economic development;
- (e) To ensure recognition of, and sensitivity to, the unique culture and needs of the Band;
- (f) To provide consumers with necessary information about the services they purchase and service options and a meaningful way to resolve service problems;
- (g) To provide a fair, practical means for issuance of rights of way, easements or other necessary permits for placement of Utilities' facilities on the Reservation.

2. The goals stated in Minn. Stat. §§ 237.011, Telecommunications Goals, and 237.12, Broadband Goals, are adopted herein by reference. The Band shall reserve the right to defer to its own needs and goals if it is deemed necessary.

3. The LLTUC shall administer Title 14 consistent with the purpose and goals of this ordinance.

14.0104 Definitions

- 1. "Band" means the Leech Lake Band of Ojibwe.
- 2. "Indian Land" means Individually Owned Indian Land and Tribal Land as defined herein.
- 3. "Individually Owned Indian Land" means any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more individual Indians in trust or restricted status.
- 4. "Tribal Land" means all land located within the boundaries as designated by the United States Congress.

5. "Reservation" means the Leech Lake Reservation as defined in the Leech Lake Band of Ojibwe Judicial Code, Title I, Part II, and Section 1(A).

6. "Right(s) of way" means an easement or a legal right to go over or across Tribal Land, Individually Owned Indian Land, or BIA land for a specific purpose, including but not limited to building and operating a line or road. This term may also refer to the land subject to the grant of right of way; however, in all cases, title to the land remains vested in the landowner. This term does not include service lines.

7. "Tribal Court" means the Trial Division of the Leech Lake Band of Ojibwe Tribal Court established by Title, I, Part I of the Leech Lake Band of Ojibwe Judicial Code, or its successor court(s).

8. "Trust Land" means land or any interest therein, title to which is held by the United States in trust for the Band, or title to which is held by the Band subject to federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes.

9. "Council" means Tribal Council and/or Reservation Business Committee.

14.0105 Waiver

To the extent any Utility is unable to comply with the specific requirements adopted herein, it may request a waiver of the requirement, but such waivers will not be granted absent a specific showing justifying the relief requested.

14.0106 Coverage

Title 14 applies to all Utilities ("Utility" or "Utilities") providing service to customers on the Reservation, including 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 the Reservation equipment or facilities for furnishing of telecommunications services; pipelines/bulk storage Utilities engaged in the transportation or distribution of gas, oil, coal, wind, solar, geo-thermal, waste water, minerals 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.

Chapter 14.02 General Provisions for All Utilities

14.02.01 Registration Requirements for All Utilities

1. All Utilities providing service to customers on the Reservation (Indian and non-Indian) must provide the following information to the LLTUC:

- (a) Name of Utility: legal name, doing business as name(s);
- (b) Address, email, and phone numbers of Utility and Points of Contact (“POCs”) for Utility; POCs should be provided for normal business hours and for outside of business hours;
- (c) List of products and services provided;
- (d) Geographic limitations to products and services provided; and
- (e) Copy of rates, terms and conditions of products and services.
- (f) Maps identifying the location of all lines and facilities operated, maintained, or controlled by the Utility within the Reservation, along with accompanying legal descriptions of such locations.

2. The information in sub (a)-(f) can be provided in any reasonable way by the Utility. This information can be provided electronically or by reference to specific websites or by any alternate means acceptable to the LLTUC. This information should be kept current at least on an annual basis.

3. Registration is not an application requiring approval. It is part of the authorization process. No Utility related activity shall occur without proper process and/or approval with a documented written approval including expiration date of such authorized action.

4. The registration required applies to any current or new Utility serving any customer within the boundaries of the Reservation, even if such Utility does not own or maintain facilities within the Reservation.

5. The initial registration shall require a non-refundable \$500 fee to cover administrative costs of the Leech Lake Tribal Utility Commission. Upon receipt of all information required by Section 14.0201 Registration Requirements for all Utilities, the Utility Commission shall bring forth the request with all documents to the Council. The Council will review and provide directives to the Leech Lake Land Division to administer any specific right of way and easement.

14.0202 Annual Report and Annual Fee

1. All Utilities shall submit an Annual Report by February 1 of each year for the preceding calendar year identifying the following:

- (a) Number of customers on the Reservation;
- (b) Revenues billed to all classes of customers on the Reservation;
- (c) Improvements in capital infrastructure on the Reservation completed in the prior year and planned for the current year; and
- (d) The number of resolved and unresolved complaints received from customers on the Reservation.
- (e) Plans for new developments for the next five (5) years.

2. All Utilities shall submit an annual fee when filing the Annual Report, based upon the number of customers it serves on the Reservation reported on the Annual Report multiplied by \$1.00. The fee shall be used to cover the costs of administration of the LLTUC and not for general revenue-generating purposes.

14.0203 Registration and Filing

Please submit all Registrations and Filings through the Band's email filing system at utilities.commission@llojibwe.org or through the mail at the address below:

Leech Lake Tribal Utility Commission
190 Sailstar Drive NW
Cass Lake, MN 56633

14.0204 Utility Tax As defined and established by Title 5 of the Leech Lake Band of Ojibwe Judicial code.

14.0205 Consumer Protection

1. This title shall not relieve any Utility of any obligations imposed upon it by other applicable federal statutes, state statutes, or municipal codes with respect to providing service to customers in Minnesota.

2. If any Utility refuses to provide service requested by any resident of the Reservation (Indian and non-Indian), the Utility must provide notice to the LLTUC and information as to why service is being denied.

3. If any Utility disconnects service to any resident of the Reservation (Indian and non-Indian), the Utility must provide the LLTUC with a copy of all disconnection notices sent to the customer and information as to why service is being disconnected.

4. Utilities shall provide reasonable customer service to residents of the Reservation (Indian and non-Indian) in the following manner:

(a) By marketing Utility services in a culturally sensitive way;

(b) By rendering bills to customers in plain English that states clearly the basis for each charge including fees and such charges, the time for payment, and where the customer can locate information about the Utility's rates and terms and conditions of service (i.e., company website).

(c) By providing meaningful access to a customer service representative by providing toll free numbers for customers and establishing at least one location reasonably near the Reservation for in-person customer visits ("Customer Access Points"). The Utility shall advertise the Customer Access Points to customers on the Reservation by providing customer access point information in customer bills.

(d) By not discriminating against, or providing a preference to, any customer on the Reservation (Indian and non-Indian) in the provision of Utility service, product, or facility.

(e) Utilities must at all times maintain a process for receiving, processing, and resolving complaints that ensures the fair and efficient resolution of complaints. Utilities must also take reasonable steps to ensure that the process is made public and that customers can access information on how to submit an informal complaint to Utilities.

14.0206 Complaints to LLTUC

1. At least twice a year, all Utilities providing service to customers on the Reservation shall include the following information in its monthly bills, statement, or notices sent to customers or through Customer Access Points:

Complaints about Utility service may be made to:

LLTUC
190 Sailstar Drive NW
Cass Lake, MN 56633
Utilities.commission@llojibwe.org

2. Upon receipt of a customer complaint the LLTUC shall notify the Utility and require a response within five (5) business days, unless the complaint raises an issue requiring more immediate resolution because it poses an imminent threat of harm to any person. In such

an emergency situation, the LLTUC shall work with the Utility to resolve the complaint as soon as possible.

3. The LLTUC shall work with the Utility first on an informal basis to resolve all consumer complaints filed with the LLTUC. If the complaint remains unresolved, the LLTUC may request the complainant to file a formal complaint with the LLTUC stating all facts and information necessary to show:

- (a) Why the LLTUC has jurisdiction to resolve the formal complaint (i.e., the complained of conduct occurred within the jurisdictional boundaries of the Reservation);
- (b) The rules violated by the Utility's conduct;
- (c) The facts constituting the alleged violation;
- (d) Identifying information for all complainants and the Utility; and
- (e) The relief requested.

4. The LLTUC will process the formal complaint, establish a procedural schedule to provide due process to allow all parties to be heard, and issue a recommendation to the Council as to resolution of the formal complaint, with stated reasons for the recommendation.

14.0207 Protection of Records Containing Commercial Information

Records filed with the LLTUC from any Utility which contain valuable commercial information, including trade secrets or confidential marketing, costs, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying by the public if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the LLTUC, a person shall designate which records or portions of records contain valuable commercial information and provide an explanation for the request for confidentiality. Nothing in this section shall prevent the use of reasonable non-disclosure agreements by the LLTUC governing disclosure of proprietary or confidential information.

Chapter 14.03 Tribal Utility Commission

1. The Council shall appoint a minimum of five (5) members to the LLTUC, the majority of which shall be members of the LLBO. Each member shall have one vote.

2. LLTUC members shall be appointed by the Council with recommendation of the Commission. To protect and serve the purpose of this Ordinance, the members shall serve in a manner based upon longevity and experience, a change of control shall not occur by Council, but only by the individual member who may choose to vacate the position or removal by the Commission pursuant to Section 14.0305.

3. LLTUC members shall be compensated as determined by the Council and reimbursed for all reasonable expenses, consistent with Band policy and approved by the LLTUC Chairperson.

4. A LLTUC member's duties shall be performed in good faith, in a manner the member believes to be in, or not opposed to, the best interests of the Band and the residents of the Reservation and with such care as an ordinarily prudent person would use under similar circumstances in a like position.

5. To be eligible for appointment to the LLTUC, an individual must be at least 25 years of age, submit to a background check and have a minimum of three years of experience in one or more of the following fields or a college degree in one or more of the following fields:

- (a) Financial management
- (b) Land management
- (c) Business administration
- (d) Facility management
- (e) Tribal government
- (f) Law
- (g) Telecommunications
- (h) Engineering
- (i) Economic development
- (j) Environmental Management
- (k) Transportation

14.0302 Powers

1. The LLTUC is authorized to
 - (a) Conduct meetings in accordance with Section 14.0304;
 - (b) To make recommendations to the Council for enforcement of Title 14;
 - (c) To maintain all records necessary to implement and enforce Title 14;

- (d) To collect all fees and taxes submitted by Utilities under Title 14;
- (e) To issue all necessary authority to the Land Division who shall issue permits, easements, and rights-of-way consistent with Chapter 14.04 of Title 14;
- (f) To handle consumer complaints pursuant to Section 14.0206 Complaints to LLTUC of Title 14;
- (g) To assist in the application for and administration of grants to further the purposes of Title 14;
- (h) To provide advice to the Council with respect to actions or omissions of Utilities serving the Reservation;
- (i) To monitor as appropriate the activities of Utilities serving the Reservation and report to the Council, as requested; and
- (j) To represent the Band with respect to any Utility tribal engagement efforts.

14.0303 Limitations of Powers of LLTUC

1. The LLTUC shall have no power:
 - (a) To expressly or by implication enter into any agreement of any kind on behalf of the Band.
 - (b) To pledge the credit or assets of the Band.
 - (c) To dispose of, pledge, or otherwise encumber real or personal property of the Band.
 - (d) To issue Orders or promulgate rules or regulations without express authority of the Council.
 - (e) To waive any right, privilege, or immunity of the Band or to release any obligation owed to or by the Band.

14.0304 Meetings

1. The LLTUC shall conduct regular meetings and special meetings if requested by the Council or any LLTUC members. Notice of all regular meetings shall be provided at least five days before the meeting by notice in the Debahjimon newspaper, the KOJB 90.1 FM radio station and/or llojibwe.org website. Notice of all special meetings shall be provided at least 24 hours before commencement of said meetings. All notices of meetings must state the date, time and place and the business to be conducted at the meeting, which shall be open to the public except for executive sessions.

2. The Chairperson may adjourn the meeting into executive sessions to discuss matters involving litigation, the provision of legal advice, personnel matters or matters of a commercial, proprietary nature, the disclosure of which would harm the Band. The chairperson

shall declare the time of adjournment into executive sessions and its purpose on the public record. Any action taken as a result of the executive session shall be taken in public.

3. The LLTUC shall hold an annual meeting with the Council. The meeting shall be for the purpose of reporting on the annual activities and business that may come before the LLTUC. Notice of the meeting shall be posted at customary and appropriate public notice locations at least 30 days in advance of the meeting.

4. A Chairperson and a Vice Chairperson shall be chosen by the Commissioners. The Chairperson shall be responsible for presiding over meetings of the Commission. The Vice Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. A quorum of members shall consist of two members. In the event a Quorum is not present, the meeting shall be adjourned for a period not exceeding ten days.

5. The LLTUC shall keep minutes of all meetings that will be available to the public and create a record of all decisions made.

14.0305 Resignation or Removal

1. Members may resign by submitting written notice of their resignation to be accepted by the Commission; then a recommendation from the Commission to the Council to accept the resignation.

2. Any member may be removed for cause by a unanimous vote of the Commission at a duly called meeting before a recommendation goes to the Council. Cause for removal shall be limited to the following:

(a) Such member has failed to attend any four meetings within a calendar year, unless any of such absences is excused; or

(b) Such member has, during his or her term on the LLTUC, been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member; or

(c) The Commission has found, in a meeting where the topic was scheduled for discussion that the member has committed malfeasance or breached a fiduciary duty or other duty imposed by the Band's applicable Code of Ethics under Section 100.5 of the Band's General Administration Personnel Policies.

14.0306 Conflicts of Interest.

1. No member shall participate in any matter in which such member has any direct personal pecuniary interest, or in any matter in which the member feels that he/she cannot perform the duties of a member in an unbiased manner.

2. A member shall vacate his office if during the term of the office he or she shall be a party to a contract for profit with an entity doing business under the jurisdiction of this Ordinance, and/or that presents a conflict of interest with the duties of the Member.

Chapter 14.04 Rights of Way within the Reservation

14.0401 Compliance with Federal Laws and Regulations

Utilities subject to this Ordinance shall at all times comply with federal statutes and regulations governing rights of way within the Reservation.

14.0402 Inventory of Real Property Rights and Rights of Way.

Utilities shall file with the LLTUC an inventory of all its real property rights on the Reservation, including a copy of the documents transferring the real property interests. Utilities shall also file an inventory of all rights of way it has obtained within the Reservation and where those rights of way are located.

14.0403 Procedure for Acquisition of Tribal Consent for Rights of Way

Applicants seeking a right of way within the Reservation must obtain consent from the Band, in the form of a tribal authorization Right of Way by the Environmental Land Department after successfully securing a LLTUC documented seal of registration, in order to receive a grant of right of way within the Reservation. As a condition of obtaining such consent, all Utilities seeking a right of way within the Reservation shall use the following procedure:

1. All Applications required by the Band, including, a duplicate of any Application for right of way over Indian lands as prescribed by the BIA, shall be filed with the LLTUC, along with the proposed nature and amount of compensation to the Band. Such Application shall be accompanied by all necessary environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable tribal environmental and land use requirements refer to LLBO Land Use Ordinance 06-01.

2. The LLTUC shall review the Application, and amount and nature of proposed compensation, and shall either make a request to the Applicant that any additional information reasonably necessary for its review of the Application is submitted within a designated time period, or shall inform the Applicant that the Application is adequate for the LLTUC's initial recommendation to the Council.

3. Upon receipt of all requested information, the LLTUC shall review the Application and shall make a recommendation to the Council with regard to the terms, conditions, and compensation for the proposed right of way.

4. The Council shall then determine whether to accept the Application, and negotiate directly with the Applicant, or provide its consent to the Environmental Land Department.

14.0404 Notice of Intent to Seek Right of Way over Individually Owned Indian Lands

A Utility must provide notice to the LLTUC of its intent to submit an application to the federal government for a right of way over Individually Owned Indian Land within the Reservation. Individual Indian landowners (“allottees”) may in their discretion provide or withhold consent for a right-of-way grant. The LLTUC is authorized, but not required, to provide additional assistance at the request of one or more allottees.

14.0405 Terms, Conditions, and Valuation of Rights of Way with the Reservation

In its discretion, the Band may negotiate:

1. The nature and amount of compensation the Band shall require in exchange for its consent to a right of way over Tribal Land consistent with 25 CFR §169.110;
2. A right-of-way term that is reasonable in the view of the Band; and
3. For any other restrictions or conditions on consent for a right of way, with any such restrictions or conditions to automatically become part of the right-of-way grant if included in a consent document or tribal resolution authorizing consent.

14.0406 Trespass Enforcement

1. A trespass occurs when:
 - (a) An individual or entity takes possession of, or uses, any land within the Reservation without an authorized right of way by the Band and anywhere a right of way are required under federal law;
 - (b) An individual or entity takes possession of, or uses unrestricted fee lands within the Reservation in which the Band has a legal interest without a right of way;
 - (c) An individual or entity engages in unauthorized use within or action over an existing right of way; or
 - (d) An individual or entity engages in some other action defined as a trespass under federal regulations governing rights of way over Indian Lands.
2. In the event of a trespass, the Band and/or the landowner(s) may:
 - (a) Bring an action in Tribal Court to recover possession and/or damages, including through an eviction action, and may pursue any additional remedies available under Band law.
 - (b) In the case of a trespass on BIA regulated lands, contact the BIA office with jurisdiction over the Indian Lands and request that the office take enforcement action on behalf of the Band or Indian landowners as consistent with 25 C.F.R. § 169.413.

3. In the case of a trespass over Individually Owned Indian Lands, landowners may initiate an action in Tribal Court to recover the possession. Landowners may also submit a request to the LLTUC that the Band initiate such action on their behalf. The LLTUC shall review such request and make a recommendation to the Council as to whether the Band should initiate such action on behalf of the landowner.

14.0407 Incorporation of Trespass Enforcement Regulations for Forest and Agricultural Lands

1. The Band hereby adopts and incorporates by this reference the trespass enforcement regulations for Indian agricultural lands under the American Indian Agricultural Resource Management Act, 25 C.F.R. Part 166, Subpart I. Any person or entity in trespass on Indian agricultural lands, including Utilities, shall be subject to concurrent tribal enforcement actions brought by the Band in Tribal Court, and by this Ordinance the Band declares its intention to bring primary enforcement actions in Tribal Court under 25 C.F.R. § 166.802, as amended or replaced.

2. The Band hereby adopts and incorporates by this reference the trespass enforcement regulations for Indian forest lands promulgated pursuant to 25 U.S.C. § 3106 and set forth in 25 C.F.R. § 163.29, as amended or replaced. Any person or entity in trespass on Indian forest lands as defined by federal regulations, including Utilities, shall be subject to concurrent tribal enforcement actions brought by the Band in Tribal Court, and by this Ordinance the Band declares its intention to bring primary enforcement actions into Tribal Court under 25 C.F.R. § 163.29(j)(2).

14.0408 Notice of Maintenance or Repair

Whenever practicable, all holders of rights of way within the Reservation shall give notice to the LLTUC prior to entering the Reservation for significant maintenance or repair purposes. Significant maintenance or repair includes non-emergency projects that have the potential to disrupt services, or residents' peaceful enjoyment of their property, or alter, damage, or change the existing natural environment. Such notice shall include a description of the maintenance to be performed and the timeline for the procedures. In the case of an emergency, best efforts shall be made to provide such notice.

14.0409 Service Line Agreements

1. Before beginning work to construct service lines within the Reservation, Utilities must execute a service line agreement with the Band as consistent with 25 C.F.R. § 169.54. A service line is a utility line running from a mainline, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a house, business, or other structure for which a right of way must be obtained. In the case of a power line, a service line is limited to a voltage of 14.5 kv or less, or a voltage of 34.5 kv or less if serving irrigation pumps and commercial and industrial uses. To obtain access to the Reservation for service lines, the right of way grantee must file a service line agreement meeting the requirements of this Ordinance with the LLTUC.

2. Service line agreements are agreements signed by a utility provider and the Band for the purpose of providing limited access to supply the owners (or authorized occupants or users) of one tract of land with utilities for use by such owners (or occupants or users) on the premises.

3. A service line agreement should address what utility services the provider will supply, to whom, and other appropriate details. The service line agreement should also address the mitigation of any damages incurred during construction and the restoration (or reclamation, if agreed to by the Band) of the premises at the termination of the agreement.

4. All Utilities must file for service line agreements, together with a plat or diagram, with the LLTUC no less than 30 days prior to the date of execution. The plat or diagram must show the boundary of the ownership parcel and point of connection of the service line with the distribution line. When the plat or diagram is placed on a separate sheet it must include the signatures of the parties.

Chapter 14.05 Amendments

14.0501 Amendments

1. Title 14 shall be amended as needed by the Commission and recommendations for changes or additions shall go to Council for approval.

Chapter 14.06 Appendix

14.0601 Appendix

1. Map of the Leech Lake Band of Ojibwe Reservation Lands
2. Map of the Leech Lake Band of Ojibwe Ceded Territory

LEECH LAKE TRIBAL UTILITY COMMISSION

RESPONSE TO THE ORDINANCE

TITLE 14: REGULATION OF UTILITIES

DATE: _____ NAME: _____

ADDRESS OF RESIDENCE: _____

MAILING ADDRESS IF DIFFERENT: _____

COMMENTS:

IDENTIFY 1) PAGE # - 2) ITEM # - 3) COMMENT BELOW (Use backside and additional sheet if needed):