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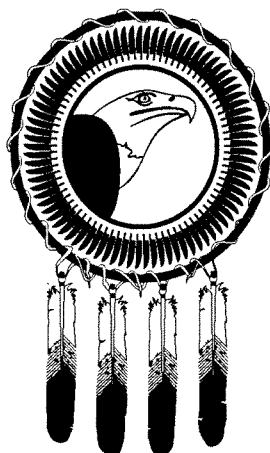
An Electricity Restructuring Strategy for the Crow Tribe

by

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OBJECTIVES OF “AN ELECTRIC RESTRUCTURING STRATEGY FOR THE CROW TRIBE”

We were offered the opportunity by Joe Kalt and Manley Begay at the Harvard Project on American Indian Economic Development to analyze, for our Master in Public Policy consulting project, how the Crow Tribe could enter the electricity business. After visiting the Crow Reservation/Territory in January 1998, we realized that the challenges that the Crow Tribe faces in entering the electricity business are different than we originally had thought.

Our visit allowed us to refine our focus so that our project addresses what we believe is the real challenge to the Tribe in entering the electricity business—strengthening its institutional capacity. This was not the principal purpose of our project at the outset. As we delved into our project, however, analysis of the Tribe’s internal organizational structure became increasingly important to our work as we realized how critical strong institutions are for the Crow Tribe.

Therefore, our project focuses on Tribal institution-building as the first step to enter the electricity business.

Our project provides:

- Analysis on why institution-building is critical to the Tribe’s endeavor to enter the electricity business, and an implementation strategy for strengthening existing institutions and establishing others;
- Information for Tribal leaders and policy-makers, such as the Crow Tribe Public Utility Commission, about the range of strategies they may consider in order to enter the electricity business, and the advantages and disadvantages of each; and,
- Informational material for future Crow Tribe Public Utility Commissioners.

Book One is intended for all audiences who are interested in economic development and electricity policy on the Crow Reservation/Territory. Book Two is meant specifically for the Crow Tribe Public Utility Commission and other Tribal entities that may be involved or interested in implementing electricity policy on the Crow Reservation/Territory.

We hope that by bringing an outside perspective to these issues we will have helped, in a small way, the Crow Tribe to achieve its goals.

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PREFACE

In 1934, the Indian Reorganization Act imposed constitutions upon the majority of American Indian tribes in the United States. The Act stated that its provisions should not apply to any tribe that voted against its application at a special election to be called by the Secretary within one year of the passage of the Act. Pursuant to this provision, the Crow adopted their own constitution in 1948 (Canby, 1988). The Crow Tribe's constitution designates the federal government as the holder of ultimate authority (Derols, 1988). Although the Tribe's Constitution encourages sovereignty and economic development, the Crow Tribe continues to struggle against external players in its pursuit of sovereignty and at the expense of successful economic development. In the post 1975-period, when most other Indian tribes' unemployment rates have been falling, unemployment levels have exceeded an estimated 80% in the Crow Tribe.

Although in the past federal Indian policy, through the Bureau of Indian Affairs, has provided parameters for sovereignty and economic development initiatives, in recent decades tribes have expanded their sovereignty through their own efforts and those of tribal Indian coalitions and organizations. These expansions have been crucial to the tribes' goals of sovereignty and economic development (Cornell and Kalt, 1992).

One goal of sovereignty is to nourish and expand upon culturally appropriate economic self-sufficiency. The issue is where the Crow Tribe can most effectively focus its energy so that what has been made possible by expansions in sovereignty is realized in tangible benefits (Cornell and Kalt, 1992). **Critical to this realization is the ability of the Crow Tribe to effectively exercise and implement the sovereignty it has already established by building and strengthening Tribal institutions.** By changing or creating their own self-governing institutions, the Crow Tribe can take steps closer to full sovereignty.

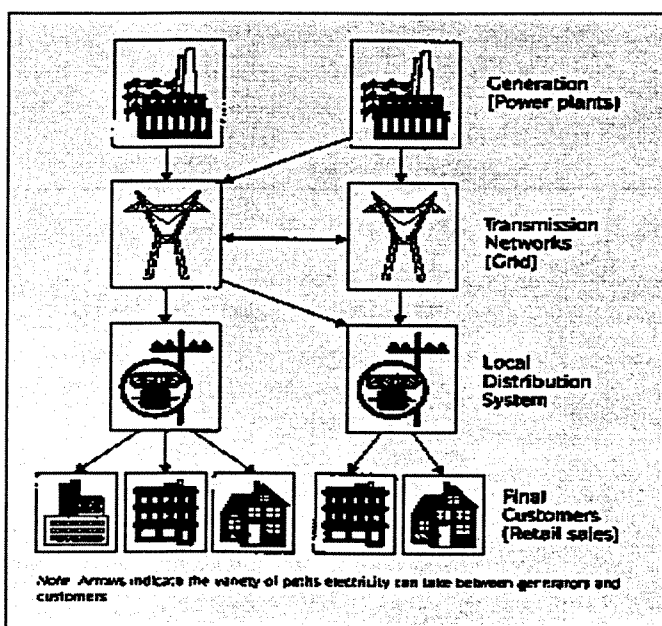
The Crow Tribe's desire to enter the electricity business illustrates another step in the Tribe's pursuit for sovereignty and economic development. This step not only symbolizes these pursuits on the Crow Reservation/Territory; *successful implementation* will symbolize the potential for real economic and social gain under the expansion of Tribal sovereignty.

EXECUTIVE SUMMARY

What Does Electricity Restructuring Mean for Future Players in the Electricity Business?

The U.S. electricity industry today is on the road to restructuring—a road heretofore uncharted. In many cases, this restructuring movement has emerged in light of free market doctrine, giving people and businesses the opportunities to compete and to choose their providers. While parallels can be drawn from similar paths taken by the airline industry, the telecommunications industry, and, most recently, the natural gas industry, the electric power industry has a unique set of critical issues that must be resolved along the way.

From Power Plants to Users: Functions of the Electricity Industry



Source: A Shock to the System

The transition will be from a structure based on vertically integrated and regulated monopolies to a separate system of components, each equipped to deal competitively with separate parts of the industry (see picture to left). Public and private utility companies—and all the other players involved—are exploring uncharted territory.

No clear precedent exists for how this new and rapidly changing electric utility climate applies to Indian tribes. Many of the complex legal and regulatory questions are now in the process of being answered, but many have not been answered at all. These questions are even more complex for Indian tribes, which fall under federal but not state jurisdiction.

There are rival interpretations of how, legally and under possibly competing regulatory structures, the Crow Tribe can establish a public distribution utility company. Given these uncertainties, our analysis focuses on the best strategy for the Tribe to enter the electricity business.

Why Should the Crow Tribe Enter the Electricity Business?

There is a cultural mismatch between Crow culture and current electricity service on the Crow Reservation/Territory. Thus far, Tribal customers have been treated and viewed as individual customers of the cooperatives, not as individual customers who are also part of a collective group with special interests and concerns. These interests warrant the formation of a unique Tribal institution that can express and act upon the interests of the Tribe as a collective entity and as a nation of individuals with special interests and needs. Some

Tribal leaders have identified this mismatch, and have been taking action on Tribal electricity issues since the early 1990s.

Additionally, many tribal leaders and members believe that owning and operating a electricity distribution utility will achieve the following goals:

- Sovereignty over electricity provision;
- Economic development on the Crow Reservation/Territory; and,
- Improved local service.

Other Tribes have either established (or have started the process to form) their own electric utilities, including the Navajo, the Tohono O'odham and Fort Mojave Tribes in Arizona, and the Salish & Kootenai Tribes on the Flathead Reservation in Montana. Although each Tribe has faced unique circumstances surrounding its efforts to enter the electricity business, they all cite similar reasons as the Crow Tribe for their efforts.

Despite overlapping motivations for entering the electricity business that the Crow Tribe shares with other Tribes, the Crow Tribe cites an additional reason: Many Tribal and non-Tribal members alike agree that the Tribe and the cooperatives that serve the Reservation simply "don't get along." We agree with these Tribal and non-Tribal leaders and members, academics, and industry and legal experts that this reason justifies the Tribe's initiatives to enter the electricity business.

How Should the Tribe Enter the Business?

We recognize that the Tribe wants to enter the electricity business by forming a distribution utility, a public company that exclusively distributes electricity (and purchases wholesale power for this distribution). This requires acquiring one or both of their current providers'—the electric cooperatives'—on-reservation assets. Although the Tribe could construct a competing distribution system alongside the current network, this is not practical largely because of costs and environmental concerns.

In our evaluation of this ideal model for entering the electricity business, we have assessed what resources the Tribe currently has available (or has within close reach) in order to evaluate *how close they can come in the near future to this ideal*. We reject acquisition as an effective short-term strategy for entering the business because:

- Acquiring on-reservation assets is a business transaction. Because of poor relations between the Tribe and the cooperatives (particularly Big Horn Electric), the Tribe is not yet prepared to interact with the cooperatives in a business environment;
- Even if the Tribe agreed to negotiate the purchase of on-reservation assets with the cooperatives, the sale of on-reservation assets would be a financially difficult deal to cut—as it is in most business transactions of this type;
- Even if the Tribe and the cooperatives reached a business deal, it would likely take at least two years for ownership to change hands; and,

- Finally, even if the Tribe *could* acquire on-reservation assets, it presently does not have in place the institutional capacity to operate a distribution utility on the Crow Territory/Reservation.

In short, building and strengthening institutional capacity will facilitate the Crow Tribe's ability to deal effectively with the challenges described above and to enter the electricity business. An institution, unlike an unorganized group of individuals, can:

- **Create a stable, standardized, and welcoming business environment;**
- **Possess the undisputed authority to establish formalized policies and carry out its operations; and,**
- **Enforce compliance with its operations.**

Alternative Strategies for Entering the Electricity Business

Because acquiring on-reservation distribution assets may not be feasible for the Crow Tribe at this time, we analyze other strategies that they may consider as a way to enter the electricity business. Other tribes, municipalities, and large industrial customers have considered some of these strategies; others that we present are unique to the Crow Tribe because they account for distinct circumstances on the Crow Reservation/Territory. These circumstances include high unemployment rates, the member-owner structure of the electric cooperatives, and Montana's special treatment of electric cooperatives in its recent electricity restructuring bill which allows them to "opt out" of competition. Other tribes that have established their own electric utilities have not faced these challenges.

In addition to acquisition strategies, we present the following strategies for analysis:

- Aggregate Tribal load without owning assets;
- Aggregate Tribal load and own the meters;
- Establish a billing and collection agency; and,
- Elect Tribal members to cooperative boards.

These strategies, compared with the status quo, will afford varying degrees of sovereignty, economic development, and improved local service:

Strategy	Sovereignty	Economic Development	Improved Local Service
Acquire On-Reservation Assets	High	High	High
Aggregate Without Owning Assets	Medium	Low	Low
Aggregate and Own the Meters	High	Medium	Medium
Billing and Collection Agency	Medium	Medium	Medium
Elect Tribal Members to Boards	Medium	Low	High

Considering Tribal goals, the most attractive strategy is to acquire on-reservation assets. The Tribe should pursue this strategy in the future. However, *this will be difficult to*

implement without a strategy to build a strong institutional foundation. We therefore believe that the Tribe should consider strengthening institutional capacity a strategy, as well, for entering the electricity industry.

What Can—and Should—the Tribe Do Now?

The Tribe should focus on strengthening institutional capacity and postpone acquisition efforts for two reasons: first, it is the only strategy that the Tribe *can* implement now:

- **Timing.** We assume that the Tribe prefers a strategy that it can implement sooner rather than later. Some strategies, such as electing Tribal members to the cooperative boards in order to gain majority representation on the boards, will take many years.
- **Political Climate.** The external political climate is not yet conducive for the Tribe to negotiate the acquisition of on-reservation assets.
- **Legal Feasibility.** Some strategies may not be feasible to implement right now because there are legal complications. Although in theory the Tribe also could acquire on-reservation assets by exercising eminent domain (i.e., condemning the assets that cross its land), in practice, this would lead to legal challenges from the cooperatives.
- **Regulatory Environment.** There are no clear precedents how federal electricity regulations affect Indian Tribes. In addition, Montana's special treatment of cooperatives, illustrated in its recent electricity restructuring law, places the Tribe at a disadvantage for certain strategies, such as aggregation of Tribal load.
- **Financial Considerations.** Entering the electricity business is a financially risky endeavor. Some ways that the Tribe can enter the business—such as by establishing a billing and collection office—are riskier than others.

Second, institution-building will prepare the Crow Tribe to take the next step in the electricity business—owning and operating an electricity distribution system. **We therefore recommend that the Tribe pursue a strategy to strengthen its institutional capacity before it enters the electricity business.**

Specifically, it should consider taking the following actions as the “first step” in entering the electricity business:

Recommendations:

- (1) Expand and redefine the Crow Tribe Public Utility Commission’s public purpose and responsibilities, and formalize its organizational structure, written policies, and standardized processes;
- (2) Establish a Crow Tribe Consumer Advocacy Office (CAO) to: consolidate and redistribute all electricity-related funds and to act as a “consumer advocate” for Tribal members in front of the electric cooperatives and other external parties;
- (3) Work toward establishing internal and external legitimacy for the Utility Commission and for the Consumer Advocacy Office;
- (4) Form a strategy for negotiating with non-Tribal entities.

The first two recommendations address the goal of strengthening Tribal institutions. The third and fourth recommendations link strengthening institutional capacity with moving forward with electricity restructuring initiatives that may involve non-Tribal parties.

Strengthening the Crow Tribe Public Utility Commission

By redefining its goals, the Crow Tribe Public Utility Commission could be a more effective institution. Specifically, its “public” purpose at this time should be to:

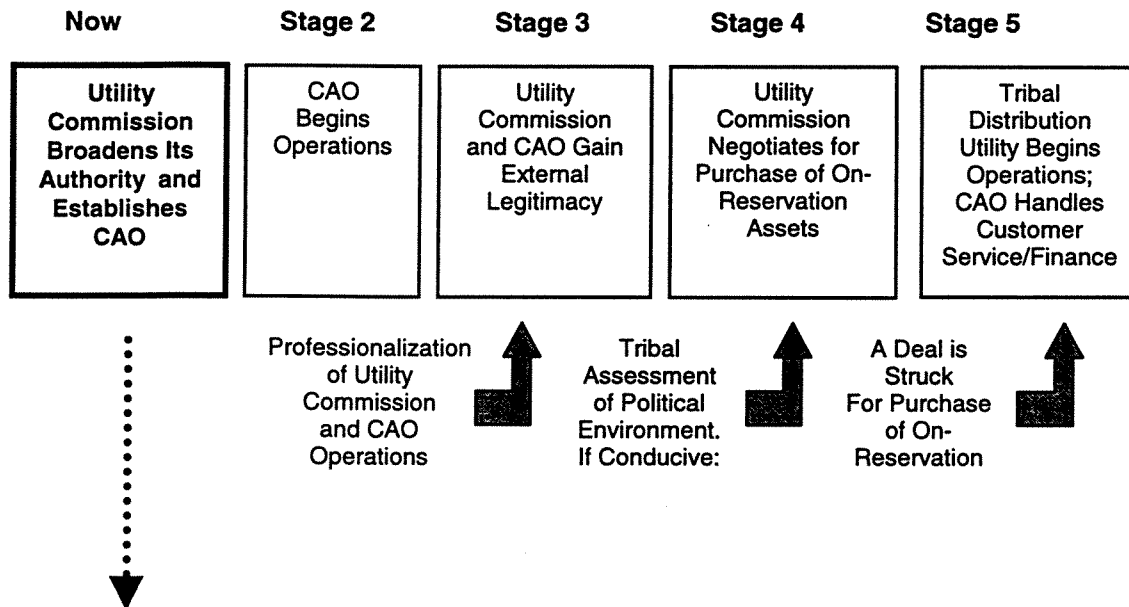
- Represent the unique interests of the Tribe as a collective entity in electricity service policies and to outside parties;
- Represent individual Tribal members’ special needs before the cooperatives; and,
- Manage (through consolidation and redistribution) all electricity-related funds that flow into the Tribe.

The establishment of a **Crow Tribe Consumer Advocacy Office (CAO)** would serve as the mechanism through which the Utility Commission implements its public purpose. In the broadest sense, a CAO would:

- Serve as a channel of communication between Tribal members (representing Tribal interests) and the electric cooperatives;
- Act as a sounding board for Tribal members to discuss their electricity concerns with Utility Commissioners or CAO employees; and,
- Provide special services (such as line extension “loans”), and redistribute energy assistance funds.

Where Does Our Recommendation Fit In To the Big Picture?

Strengthening the Crow Tribe Public Utility Commission and creating a Consumer Advocacy Office (CAO) are just the first steps that the Tribe should take to enter the electricity business as a distributor. The chart below illustrates how this first step builds the institutional foundation for later stages:



Utility Commission Broadens Its Authority by:

Redefining and Expanding Its Public Purpose to:

- Represent Tribe as collective entity;
- Represent individual Tribal members to outside parties; and,
- Manage electricity-related funds.

And Establishes CAO to:

- Serve as channel of communication between Tribal members and outside parties;
- Provide “loans” to Tribal members for line extensions; and,
- Consolidate and redistribute electricity-related funds.

Next Steps

Strengthening existing Tribal institutions such as the Utility Commission and building new ones like the CAO will put the Tribe in a strong position to enter the electricity business. Its next step should focus on how it can best utilize its resources and overcome internal and external challenges in order to build a solid institutional framework that can carry out electricity policies for the Crow Tribe.

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BACKGROUND TO "AN ELECTRICITY RESTRUCTURING STRATEGY FOR THE CROW TRIBE"¹

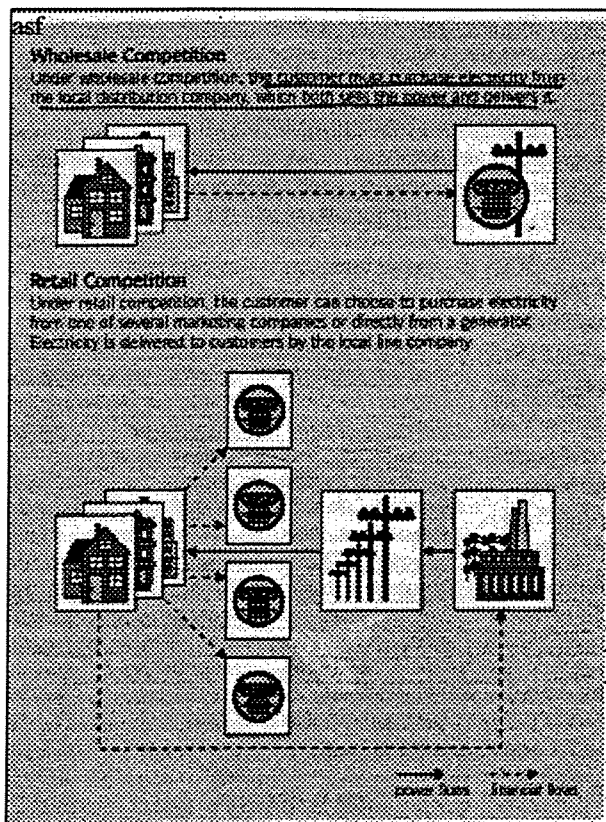
Overview

Broadly speaking, the term "restructuring" denotes movement toward increased competition in the electric utility industry. Specifically, it refers to the changes in ownership or internal operation of the utility that aims to bring about the separation of generation, transmission and distribution functions.

This section presents a general explanation of the electricity restructuring movement in the United States, including the roles that relevant entities to the Tribe, such as rural electric cooperatives, may play. We also examine how Indian tribes have taken advantage of this environment to form their electric utility companies. While certain entities, such as municipalities and large industrial users, typically have financial reasons for entering the electricity business, the reasons motivating Indian tribes are far more varied and complex.

Electricity Restructuring: Wholesale and Retail Competition

Wholesale Versus Retail Competition



Source: A Shock to the System

Currently, two approaches to restructuring are being considered in the electric utility business: wholesale competition and retail competition. The first, expanded wholesale competition is provided for under the Energy Policy Act of 1992. It opens the market so that all generators can sell power to local distribution utilities and other wholesale customers. Under retail competition, generators compete to supply power to its customers, either directly or through independent retail power marketers (see picture on left).

Under expanded wholesale competition, the generation, transmission, and distribution functions of integrated utilities would be unbundled so that utilities that distribute electricity to final customers could purchase transmission services from other utility and generation services.

From the perspective of end users like tribal customers, the world under

¹ A majority of the information in this section is a summary from three sources: Resource for the Future's *A Shock to the System: Restructuring America's Electricity Industry*, the Native American Renewable Energy Education Project's "American Indian Tribes and Electricity Restructuring: Issues and Opportunities," and the Department of Energy's Energy Information Administration documents filed under their website (www.eia.doe.gov). For further information, refer to these documents.

expanded wholesale competition would *not* look very different than today's. Customers would still purchase electricity as they do now. Expanded wholesale competition would deregulate only the generation segment of the electricity industry. When the generation function is deregulated, local distribution companies would obtain the power they sell to businesses, households, and industry through a wholesale purchase of electricity from one or more generating customers. The transmission function, which connects generators to local distributors, is likely to be continued to be regulated by the Federal Energy Regulatory Commission.

Under retail competition, the unbundling of transmission from generation and local distribution services would be extended to separate the local distribution function from retail sales. Retail customers would purchase electricity from the generator (or marketer) of their choice. In retail competition, there would be several different electricity retailers from which to choose, each offering potentially different packages of services and prices. The transmission function would likely be regulated, as it is under expanded wholesale competition, by the Federal Energy Regulatory Commission, with the exception that power generators, retailers, or customers—not local distributors—would arrange for transmission services. The local distributor such as the electric cooperative would sell its services as a distributor of electricity, presumably under regulation, but need not be the actual retailer of electricity.

Rural Electric Cooperatives

Rural electric cooperatives like Big Horn Electric and Yellowstone Valley Electric, the two cooperatives that currently serve customers living on the Crow Reservation/Territory, are incorporated under State law and are directed by a board of directors, which is elected by its members (customers). Electric cooperatives fall under the jurisdiction of the Rural Utilities Service (formerly the Rural Electrification Administration, now referred to as the RUS) in the U.S. Department of Agriculture. The Rural Electrification Act of 1936 created the RUS with the purpose of extending credit to cooperatives to provide electric service to small rural communities (usually fewer than 1,500) where it was relatively expensive to provide service.

Cooperatives have preferential access to the subsidized low-price electricity produced at Tennessee Valley Authority and Bonneville Power Administration in the Pacific Northwest. They are typically not vertically-integrated utilities. Therefore, most distribution cooperatives—like Big Horn Electric and Yellowstone Valley Electric—resemble municipal utilities because they do not generate electricity, but purchase it from other utilities.

Electricity Restructuring: Indian Tribes

Electricity restructuring initiatives have presented opportunities for Indian tribes to take advantage of wholesale and, in some states, retail choice for electricity providers. A variety of types of utility companies, including investor-owned utilities, rural electric cooperatives, public and municipal agencies, and tribal utilities serve Indian tribes. Historically, tribes have exerted little influence in determining which utility will provide electric service to their members.

Types of Utilities Serving Reservations

Type of Electric Utility	Number of Reservations	Percent of Total (%)
Investor-Owned	114	58
Cooperative	55	28
Public, Municipal, and Federal	22	11
Tribally-Owned	3	2
No Electric Service	2	1
Total	196	100

Source: Collins et al. 1994, unpublished. Collected from The Native American Renewable Energy Education Project, "American Indian Tribes and Electric Industry Restructuring: Issues and Opportunities," July 1997.

Some tribes' decisions to own and operate tribal utilities preceded the electricity restructuring initiatives that began in the early 1990s. At least four tribal utilities are currently in operation, including the Navajo Tribal Utility Authority, the Tohono O'odham Tribal Utility Authority, the Fort Mojave Indian Tribe, and the Mission Valley Power Company operated by the Salish & Kootenai Tribes. None, however, generates a significant amount of electricity. Instead, they largely rely on bulk power purchases from other sources. The table below compares Indian Reservation electric utilities.

Comparison of Indian Reservation Electric Utilities

Description	Navajo Tribal Utility Authority	Tohono O'odham Utility Authority	Aha Macav Power Service	Mission Valley Power	San Carlos Indian Irrigation Project	BIA/CRA Electric System
Ownership of Facilities	Tribal	Tribal	Tribal	BIA	BIA	BIA
Charter or Plan	Plan of Operations	Plan of Operations	Tribal Charter	PL93-638 Contract	25 CFR Ch.1 Section 175	25 CFR Ch.1 Section 175 ²
Policy Directed by	Board	Board	Board	BIA/Board	BIA	BIA
Other Utilities Operated	Gas, Water, Wastewater	Gas, Wastewater, Telephone	None	None	None	None
Growth Planned by	Board	Board	Board	BIA	BIA	BIA
Planning Horizon (yrs.)	10	10	10	3	1	1
Legal Advice	Yes	Yes	Yes	No	No	No
Initial Funding	Tribe	Tribe	Tribe	Trust Fund	BIA	BIA
New funding	RUS/CFC	RUS/CFC	Revenues	None Allowed	BIA	BIA
Rates Set by	Board	Board	Board	BIA	BIA	BIA
Operations Directed by	General Manager	General Manager	General Manager	General Manager	Electrical Engineer	Electrical Engineer
Electricity Source	WAPA, TEP	WAPA, TEP	WAPA	BPA, MT Power	WAPA	WAPA, Own Generation
Employee Preference	Tribal	Tribal	Tribal	All Indians	None	None
Buying Preference	Tribal	None	None	Indian	None	None

Source: NEOS Corporation Adapted from *Evaluation of Future Electric Utility Service*, Lee Gardner and Associates, September 1994.

Tribal Utilities and their Formation

A tribe, or a group of tribes, may own and operate electric utilities to serve the electricity needs of their customers located on tribal lands. Tribal utilities are public entities that are similar to municipal or cooperative utilities. The tribal government or a separate public agency created by the tribal government can operate a tribal utility. *Typically, tribal utilities are subject to federal regulation under the Federal Power Act or Public Utility Holding Company Act only to the extent that they engage in interstate commerce.* Tribal utility authorities established using loans from the Rural Utilities may be subject to some financial regulations that influence their operations.

The first tribal electric utility was established in 1959 when the Navajo Tribe created the Navajo Tribal Utility Authority (NTUA). Three other tribal utilities have since been established, including those operated on reservations in Arizona by the Tohono O'odham tribe and the Fort Mojave Tribe, and by the Salish & Kootenai Tribes on the Flathead Reservation in Montana. Of these four tribal utilities, only the Salish & Kootenai Tribes produce electricity (this generation represents less than 1% of their sales). These tribal utilities are essentially electricity distribution companies that provide retail service to their customers. Power is purchased primarily from Federal Power Marketing Authorities, such as the Western Area Power Administration, and from investor-owned utilities.

In recent years, additional tribes have expressed interest in creating (or have already begun the process to form) their own tribal utilities. Some of these tribes include the Crow Tribe of Montana, the Three Affiliated Tribes of the Fort Berthold reservation, the Standing Rock Sioux Tribe, the Ute Mountain Ute Tribe, and the Yurok Tribe.

Financial and Economic Motivations

Whether served by tribal utilities or by investor-owned or public utilities, most tribal customers spend a disproportionate share of their income on electricity compared to many non-tribal customers. One reason is that these customers have relatively low incomes, but another is that these customers are often not provided a full range of energy services (such as home weatherization and other basic energy efficiency measures). The high number of reservation households that are currently without electricity illustrates the need for attention regarding electricity.

In general, the motivations for utility formation are likely to be political or economic in nature, although many motivations may be difficult to categorize or even express. A tribe may create a tribal utility in order to increase its financial independence. A non-tribal, investor-owned utility operates to make a profit from the sale of electricity to its customers that it then distributes to its stockholders. Most, if not all, of the money spent by tribal customers for electricity leaves the tribal economy when it is paid to a non-tribal utility company. Even if a tribal utility purchases its electricity from another utility, funds used to pay for billing, service, and line maintenance are paid to employees of the tribal utility and remain in the local economy. The recirculation of money in the local economy multiplies economic benefits by reducing the flow of money that leaves the tribe.

Utility formation may or may not reduce the cost of electricity to tribal customers. Economies of scale generally allow large utility companies to operate more efficiently than

² The 25 CFR 175 sets forth the operating responsibilities and methodologies for BIA-administered electric utilities on reservations.

smaller ones because there are many fixed costs associated with distribution and customer service. Large utilities may have, however, high overhead expenses (such as power plan costs or power purchase contracts) that increase their total cost of service. If a tribe can purchase low-cost electricity, and establish an efficient distribution company, it may be able to provide electricity at a lower price than the prior utility may. Additionally, the tribal utility would not require a profit.

Social and Political Motivations

Social and/or political motivations are difficult to categorize because each tribe (or even tribal member) may have unique sets of interests and goals. In addition to increasing financial independence, tribal utility formation fosters increased tribal control and responsibility over an important public service. The tribal utility may be used as an institution to pursue the political or social goals of the tribe.

Reasons Why Tribes Have Decided to Own and Operate Tribal Utilities

The Fort Mojave Tribe owns and operates the Aha Macav Power Service (AMPS) on the Fort Mojave Reservation, and the Tohono O'odham Tribe owns the Tohono O'odham Utility Authority (TOUA). Both Tribes cite the following reasons for entering the electricity business:

- Increase self-determination and self-sufficiency;
- Increase economic growth on the reservations;
- Improve electricity provision services; and,
- Lower electricity rates and create economic savings.

To date, the Fort Mojave and the Tohono O'odham Tribes have successfully reached many of these goals, including:

- Direct economic savings through provision of less costly service than alternative (and former) sources;
- Tribal job creation through tribal hiring preferences; and,
- Expansion of service to remote villages within the reservation.

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

As on the Crow Reservation/Territory, many homes on Indian reservations have not been provided electricity service by existing utilities. These tribes may determine that rural electrification is an important social goal for the tribe, and use a tribal utility to implement this goal. Similarly, tribes may determine that improved service is a social goal, and use a tribal utility as the decision-making body to make this happen. Finally, some goals are both social and economic in nature. For example, tribal utilities may decide that hiring tribal members is a priority.

Electricity restructuring presents the opportunity to tribes to exert greater control over electricity issues. Through retail competition, tribal members could choose the provider of their choice, and can realize economic savings. Similarly, through expanded wholesale competition, tribal entities could aggregate their power and choose the wholesale generation

provider of their choice.

Challenges to Indian Tribes

One of the greatest challenges that Indian tribes face in taking advantage of the electricity restructuring environment in order to realize tribal goals is to build an institution which is capable of successfully managing utility operations. Delivering electricity to retail customers is a very complex undertaking.

A distribution utility must:

- Negotiate power purchase agreements to match short- and long-term power needs;
- Arrange for transmission of the electricity to its distribution system;
- Maintain the distribution system;
- Read customer meters and bill customers; and,
- Provide customer service.

These require expertise in:

- Power systems;
- Legal and regulatory issues;
- Accounting and sales;
- Billing; and,
- Management and negotiation skills.

Creating an institution that can carry out the above requirements would likely require the efforts of a Tribe's best people, potentially taking them away from other important projects to the tribe. Electric utility issues may not be among the most pressing concerns of many tribes, and must be weighted against all other demands for tribal resources.

PART I. PROBLEM DEFINITION AND UNDERLYING CHALLENGES

Overview

This section discusses what many Tribal leaders and members articulated to us as Tribal goals, and the problems they cite with current service that has promulgated Tribal initiatives on entering the electricity business. We have linked these goals with strategies the Tribe may wish to consider. In doing so, we further refine what Tribal leaders and members view as the primary problem.

Crow Tribal Goals

Tribal leaders, administrators and members express three goals that they believe entering the electricity business would address. These goals are to:

- Provide better local service;
- Exercise Tribal sovereignty over electric power distribution;
- Move one step closer towards comprehensive Tribal economic development.

We recognize that the Tribe wishes to own and operate a Tribal distribution utility. In addition to entering the industry through initially owning and operating a distribution utility, we analyze strategies that other entities, including Tribes, municipalities, and large industrial consumers, have considered in the restructuring environment. These include:

- Acquisition of on-reservation distribution assets (through purchase or condemnation);
- Aggregation of Tribal load (with or without owning assets);
- Alternative strategies (establish billing and collection agency, elect Tribal members to cooperative boards of directors); and,
- Maintaining the status quo.

As shown in the table below, certain strategies for entering the electricity industry address the above-stated goals. It is not the purpose of our analysis to say which is the "right" goal, but rather to point out the different strategies the Tribe may wish to consider:

Stated Goal	Range of Strategies
Provide Better Local Service	<ul style="list-style-type: none">▪ Acquire on-reservation distribution assets;▪ Elect Tribal members to cooperative boards.
Exercise Tribal Sovereignty over Electric Power Distribution	<ul style="list-style-type: none">▪ Acquire on-reservation distribution assets;▪ Aggregate power;▪ Elect Tribal members to cooperative boards.
Move Towards Comprehensive Tribal Economic Development	<ul style="list-style-type: none">▪ Acquire on-reservation distribution assets;▪ Elect Tribal members to cooperative boards;▪ Establish a vertically-integrated utility with on-reservation generation plant.

Tribal Problem Definition

Many in the Crow Tribe believe that poor service from Big Horn Electric Cooperative is the largest problem they face with respect to electric service. Many also believe that a Tribally-owned and -operated distribution utility will address the goals of increased sovereignty and economic development on the Crow Reservation/Territory. These members link the solution of ownership and operation of a Tribal electric utility to this problem.

Tribal members believe that current electricity distribution and provision creates problems for the following reasons:

- Actions of the cooperatives that may differ from written policy or are perceived by Tribal members as unfair or punitive, given the unique economic and social conditions on the Crow Reservation/Territory; and
- Inability to change cooperatives' policies.

Along with many Tribal and non-Tribal electric utility experts and various academics, we recognize that the reasons stated above alone may justify the Tribe's desire to enter the electricity business.

Our Definition of the Problem and Challenges Facing the Crow Tribe

We believe that the key problem is that *even if the Tribe did acquire on-reservation electricity distribution assets, it still might not achieve the goals of sovereignty, economic development, and improved access and service.* We believe that "jumping" into the electricity business may not address Tribal goals because the Tribe does not yet possess the institutional capacity necessary to manage and run effectively a distribution utility. We therefore link the problem with a different solution than do many in the Crow Tribe.

If the Crow Tribe wishes to enter the electricity business, it should recognize and address what we believe present significant challenges to the Tribe:

Underlying Challenges

- Strengthen institutional capacity;
- Maximize existing resources;
- Disseminate information about cooperative policies; and,
- Understand the range of strategies that the Tribe *can* implement.

Strengthen Institutional Capacity

Institutions, unlike a group of individuals, can:

- Create a stable, standardized, and welcoming business environment;

- Possess undisputed authority to establish formalized policies and carry out its operations; and,
- Have the means to enforce compliance with its operations.

Currently, the Crow Tribe Public Utility Commission, the General Council, and other Tribal agencies are involved in decision-making processes with regard to electricity issues. For example, the Tax Commissioner manages the right-of-way tax revenue (70% of which is intended to go toward low-income energy assistance), the social services department administers state energy assistance, and one member of the Crow Tribe Public Utility Commission manages the Western Area Power Administration power allocation. Because no well-defined processes or jurisdictional authorities prevail, the current institutional structures create the following problems:

Current Institutional Structure and Results of this Structure

Problem	Result
Reactive Instead of Proactive Policies	<ul style="list-style-type: none"> ▪ Tribe has minimal control over current electric service; and ▪ Decisions regarding electric service often fail to reflect Tribal goals.
Internal Legitimacy	<ul style="list-style-type: none"> ▪ If General Council authorizes, but fails to see results of, day-to-day actions of Utility Commission, it will lack institutional legitimacy.
External Legitimacy	<ul style="list-style-type: none"> ▪ Neither cooperative recognizes the legitimacy of the Crow Tribe Public Utility Commission.
Lack of Formalized Policies and Processes	<ul style="list-style-type: none"> ▪ Utility Commission meets on an ad-hoc basis, and therefore lacks a clear vision and strategy for its role as a public Tribal institution; and ▪ There is no “buy-in” from key stakeholders such as General Council and even some members currently serving on the Utility Commission.
Politicization	<ul style="list-style-type: none"> ▪ Few players make all the decisions with respect to electricity service, with no system of “checks and balances;” and ▪ Decisions are subject to outside influence because internal formalized procedures are not in place.

As indicated above, the current institutional structure fails to promote a sustainable institution that can address *and act upon* the important goals of the Tribe. In order to enter the electricity business, it first must have a credible institution that can effectively manage and coordinate resources.

Maximize Existing Resources

Thus far the Tribe has not emphasized its vast resource base that it may draw upon to achieve its goals. If managed prudently, the following resources may better allow the Tribe to realize gains toward achieving its goals.

Funds

Recent court settlements, including as the Coal Severance Tax and the 107th Meridian Boundary Settlement, have resulted in an inflow of financial resources. The Tribe also has successfully floated its first debt, which, according to the bond agreement, will be used for a community building, nursing home, land purchases, bank building, Head Start buildings, and a tribal court building addition. Based on our conversations with tax and budget experts in the Tribal Administration, interest payments from the settlements have

not been targeted toward specific Administration priorities, and principal amounts have been used to pay off Tribal debt and bills. There is no mechanism or policy in place to ensure that these funds will remain untouched.

In addition to newly- available funds, the Crow Tribe collects over \$150,000 annually in right-of-way taxes from Big Horn Electric and Yellowstone Valley Electric. According to Administration officials, approximately 70% of the tax revenues are allocated to low-income energy assistance. Again, no mechanism or policy exists to ensure that Tribal leaders will allocate these funds as intended.

A key challenge is to manage the wealth of the Crow Tribe in an effective, financially-accountable manner in order to realize economic gain for the Tribe.

Political Stability

Since the current Tribal Chairperson was elected eight years ago, the Crow Tribe has witnessed unprecedented political stability. This stability presents the opportunity for the Tribal Council to institutionalize a process of sustainable electricity-provision planning. The challenge, however, is to institutionalize a process and a Tribal governmental entity that can supersede future changes in the political environment.

Existing Institutions

The Tribe possesses the framework for which to implement an electricity policy strategy. This framework has been formalized by the creation of the Crow Tribe Public Utility Commission in 1994. The challenge is to effectively utilize this institution.

Disseminate Information About Cooperative Policies

Tribal leaders are educated about the member-owner structure of the rural electric cooperatives. However, the average Tribal member, like most electricity consumers whose knowledge of the industry is limited to the amount they pay their electricity provider each month, may not have full information—and understanding—about cooperative policies.

Electric cooperatives are member-owned, with representatives from each of the cooperatives' service areas and districts serving on the boards of directors. **Eight of Big Horn Electric Cooperative's nine board members are non-Indian, yet over 80% of Big Horn Electric's customers live on the reservation, of which the majority are Tribal members.** This discrepancy between board representation (approximately 11% Indian) and customer base (approximately 65% Indian) presents the opportunity for significant, but unrealized, political leverage. But it also points to the fact that many Tribal members simply are unaware of potential opportunities to better understand, or even to influence, cooperative policies. This may have led to underrepresentation on the board.

Understand the Range of Strategies that the Tribe *Can* Implement

While most Tribal members with whom we spoke agree that a problem does exist with the way the cooperatives provide electricity, little widespread understanding outside of the

Tribal Administration and the Utility Commission exists about the range of strategies that the Tribe can consider.

We believe that the Tribe should understand the range of strategies they may consider for entering the business for two reasons: **First, the Tribe has already taken substantive steps in electricity restructuring on the Crow Reservation/Territory.** It has:

- Filed a complaint with the Civil Rights division of the Rural Utility Service, which will investigate the actions of Big Horn Electric with respect to the Crow Tribe in April, 1998;
- Filed to become a retail aggregator (filed by the Crow Energy Corporation); and,
- Established a Crow Tribe Public Utility Commission.

Second, without an institution that can manage financial and organizational aspects of the electricity business on the Crow Reservation/Territory, the following costs may continue to accrue:

Lawsuits

To date, the Tribe has spent precious Tribal funds in legal fees in its legal actions involving Big Horn Electric Cooperative over the right-of-way taxes. Should the Tribe lose the lawsuit, not only will it fail to collect approximately \$45,000 in property tax revenue from Big Horn Electric annually, but it will also have to repay the revenue it has collected from Big Horn Electric over the previous three years. Potentially, the Court could rule that the Tribe pays this sum in present value terms—a sum much higher in today's terms than the original amount.

Money Flowing Out of the Tribe

Most, if not all, of the money spent by tribal customers for electricity leaves the Tribal economy when it is paid to a non-tribal utility company. Even if a Tribal utility must purchase its electricity from another utility, funds used to pay for billing, service, and line maintenance are paid to employees of a Tribal utility and remain in the local economy. The recirculation of money in the local economy multiplies the economic benefits to the Tribe. **Presently, the Tribe annually pays nearly \$1.5 million to Big Horn Electric Cooperative, and almost \$315,000 to Yellowstone Valley Electric Cooperative in electricity bills—and these include only residential customers.³**

Potential Economic Development Loss to Tribe

Tribal members may feel reluctant to embark upon development projects to construct homes because they fear that they will not be able to pay the up-front and in-full payments that the cooperatives request.

Tribal Member "Disenfranchisement" from the Decision-Making Process

³ These figures are derived from RUS Form 7 (Yellowstone is from FY96, and Big Horn is from FY95). Figures were estimated by multiplying total residential sales by the percentage of Tribal customers.

Based on Tribal leaders' and members' accounts, Big Horn Electric has attempted to undermine the Tribal government's credibility through publicly disparaging the Tribe's right-of-way taxes. As a result, the Tribal Administration's willingness to work within the existing electric service structure has diminished. In turn, Tribal members are unwilling to attend the annual board election meetings because they feel alienated from the decision-making process.

Foregone Consumer Benefits

The current way in which electricity is provided fails to promulgate Tribal interests. Thus far, Tribal customers have been treated and viewed as individual customers of the cooperatives, not as a customers who are also part of a collective group with special interests and concerns. Nearly every Tribal member with whom we spoke indicated that he or she would "feel better" about paying an electric bill to a Tribal entity. We therefore believe that local, Tribally-run service is a consumer benefit that it not realized under the current system.

Foregone Tribal Employment

Tribes that own and operate public utility companies have created employment opportunities for Tribal members. For example, the Arizona Fort Mojave Tribe's electric utility authority has filled its non-technical positions with Tribal members, and at present has on its staff three apprentice linemen who are Tribal members.

PART II. A MODEL CROW TRIBE ELECTRICITY DISTRIBUTION COMPANY

Overview

Operating a distribution utility is resource-intensive (human, capital, and financial). Additionally, it requires close cooperation with external players, such as federal agencies. This section considers these issues, and discusses how well the Tribe, at present, can fulfill the resource requirements required for owning and operating a distribution utility.

Human Capital Expertise

Operating a distribution utility requires experienced managerial staff who possesses a background and knowledge of industry issues, and a long-term vision about the industry and Tribal needs. The Tribe will need the following expertise:

- **Depth and Experience of Management Staff**

Information presented in the table draws upon the organizational structure of distribution companies that we visited (both municipal and cooperative), including the Belmont Light and Electric Company (Belmont, MA) and Big Horn Electric Cooperative (Hardin, MT).

Human Capital Required for Operating a Distribution Utility

Job Title	Responsibilities	Skills Required	# of Employees	Training Program
Office Manager	<ul style="list-style-type: none"> ▪ Manages daily operations ▪ Supervises staff 	<ul style="list-style-type: none"> ▪ Technical ▪ Managerial 	1	
Operations Manager	<ul style="list-style-type: none"> ▪ Supervises line crew in field 	<ul style="list-style-type: none"> ▪ Technical 	1	
Engineering Technician	<ul style="list-style-type: none"> ▪ Fills orders for new service ▪ On-site customer relations 	<ul style="list-style-type: none"> ▪ Technical 	1	
Office Manager/ Billing Clerk	<ul style="list-style-type: none"> ▪ Supervises support staff ▪ General office management ▪ Data Entry 	<ul style="list-style-type: none"> ▪ Non-technical 	1	
Accountant/ Work Order Clerk	<ul style="list-style-type: none"> ▪ Processes work orders ▪ General business accounting 	<ul style="list-style-type: none"> ▪ Non-technical 	1	
Billing Clerk/ Support Staff	<ul style="list-style-type: none"> ▪ Sends out bills ▪ Processes cash payments ▪ In-office customer service 	<ul style="list-style-type: none"> ▪ Non-technical ▪ General office skills 	2	
Lineman	<ul style="list-style-type: none"> ▪ Maintenance of lines, poles, substations ▪ Installs lines and services ▪ Answers trouble calls 	<ul style="list-style-type: none"> ▪ Technical 	6	4-year Apprentice Program
Meter Reader	<ul style="list-style-type: none"> ▪ Read meters and enters them on meter account 	<ul style="list-style-type: none"> ▪ Non-technical 	8 (Part-time)	
Janitor	<ul style="list-style-type: none"> ▪ General janitorial duties 	<ul style="list-style-type: none"> ▪ Non-technical 	2 (Part-time)	

At present, the Tribe lacks the personnel to execute the highly technical skills described above. Other Tribes have overcome this challenge by staffing the highly technical positions initially with non-Tribal members and the less technical positions with Tribal members. Tribes that have contracted out non-Tribal members expect the

personnel distribution to change over time as Tribal members gain training and experience as these types of opportunities are open to them.

Case: Lineman Apprentice Programs for Tribal Members

TOUA (the Tohono O'odham Utility Authority on the Reservation in Arizona) has found it necessary to hire non-Tribal members to fill the technical positions such as Office Manager and Department Manager since no Tribal members are presently qualified. TOUA located qualified personnel by placing advertisements in trade journals and Tribal publications. TOUA operates an apprentice lineman program that has opened up jobs for Tribal members, who are supervised by three journeymen. Of the two apprentices, both are Tribal members.

There are several recognized apprenticeship programs for linemen; some are affiliated with electricians unions. The program which TOUA's apprentices are part of is one of several Tribally-recognized non-union apprenticeship programs. These programs provide training for the participants that will enable them to become journeyman linemen after four years of on-the-job training concurrent with four years of self-study. After completing four years and passing 41 exams, apprentices are eligible for lineman jobs with any type of electric utility.

AMPS currently has on staff three apprentice linemen who are Tribal members. AMPS apprentices follow the same programs as described above.

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

The Tribe has expressed the willingness to contract out expertise, and has done so in the past. At least one highly-regarded Administration position is filled by a non-Tribal employee. Other tribes as well, including the Navajo and the Tohono O'odham, have also outsourced expertise necessary for operating a utility company. However, we have not identified a viable pool of expertise from which the Tribe could draw at this time. The natural place to look for expertise would be either cooperative that currently serves the Reservation. We believe that this may not be a reliable source of expertise because of the strained relations between the Tribe and cooperatives.

Operating a full distribution utility requires either expertise from within or a reliable pool from which to contract out this expertise.

- **Grasp of Industry Issues and a Long-term Vision**

Operating a distribution utility requires purchasing power. The Tribe would have to "shop around" a small load in comparison to the electric cooperatives (on-reservation Tribal members represent approximately 8% of Yellowstone Valley Electric's load and approximately 65% of Big Horn Electric's load).

Because of its small load, it may have comparatively less buying power. Most electric cooperatives are rural and have a very small load (under 50 MW), and

already buy the cheapest wholesale power they can. It would be difficult for the Tribe, with an even smaller load, to find cheaper power.

At present, the majority of Tribal cooperative customers on the Crow Reservation/Territory are residential. There are few commercial or industrial customers. Yet, as economic development on the Crow Reservation/Territory increases, the utility authority that operates the distribution utility will have to identify new commercial and industrial customers, and change the Tribal load requirements accordingly. Predicting changes in load requirements, and shopping for this wholesale power, requires a long-term vision of power markets and development on the Crow Reservation/Territory.

Operating a distribution utility requires a long-term vision of Tribal economic development.

▪ Technological Expertise

Operating a full distribution utility also requires expertise and familiarity with new technologies, such as geographic information systems (see box on right). Yet, as with management expertise, the Tribe may face similar challenges with finding technical expertise.

Technological expertise is a critical component to operating a distribution utility.

Financial Resources and Considerations

▪ Budgetary Considerations

Owning and operating a distribution utility is a costly endeavor. Therefore, it is critical that is a central budgetary and/or financial priority for the Tribe. Conversations with members of the Tribal finance and budget offices revealed that electricity issues are not a Tribal priority.

Tribal leaders have indicated, however, that the money it is willing to spend will depend on the strategy it adopts. They believe that there would be little political resistance to allocating funds for electric utility issues. However, we believe that the FY 99 budget and the allocation of funds through debt issuance—in which no funds are allocated toward electricity issues—highlight the Tribe's priorities for projects in the near future.

The Tribe must make entering the electricity business a budgetary priority before it decides to purchase a distribution system.

Geographic Information Systems

The Fort Mojave utility's (AMPS) completion of its electric utility plan necessitated a complete geographic survey of the reservation. To accomplish this task, the Fort Mojave Tribe established its own Geographic Information Systems (GIS) Service Center. Its purpose is to inventory the entire electric system on the reservation including the assets of electric cooperatives. The GIS Service Center also determines the position of poles, substations, roads, and rights-of-way.

The Tribe is also using an automated mapping/facilities management system to develop a SCADA (supervisory control and data acquisition) system for AMPS. In addition to its utility uses, the Tribe uses its GIS Service Center to map existing Tribal land uses in order to supervise long-term leases the Tribe holds on its reservation land.

Unlike AMPS, TOUA does not have a GIS. Therefore, TOUA contracts out to an engineering firm to assist with circuit diagrams and design.

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

▪ Financing Options

How the Tribe will finance the purchase of an on-reservation distribution system is critical. Yellowstone Valley's capital cost per mile of transmission line is over \$30,620, and \$10,919 per mile of distribution line.⁴ Big Horn Electric's assets are valued at \$22,665 per mile of transmission line, and \$8,114 per mile of distribution line.

Any entity, including Indian tribes, is eligible for Rural Utilities Service (RUS) loans by forming an electric cooperative.⁵ Tribes such as the Tohono O'odham of Arizona have purchased and operated electric cooperatives through low-interest RUS financing (see box below).

As owners of an electric cooperative through Rural Utilities Service financing, entities such as the Crow Tribe would have to conduct a feasibility study demonstrating that the entity would receive the revenue necessary to repay the loan. The RUS would help the Tribe with the feasibility study and the revenue-generating requirement. RUS financing interest rates are approximately 2% lower than commercial banks. This lower interest is significant over a 20- to 30-year project life.

The Tribe may also consider issuing additional debt. Typically, the debt structure (the timing of the repayment) should match the life of the asset being financed by the debt issuance.

In this case, the Tribe could issue debt to finance the purchase (or condemnation) of on-reservation assets, but the Tribe will not necessarily own the assets until some time after

Indian Tribes That Are RUS Borrowers

Two Tribal utilities, the Navajo Tribal Utility Authority in Arizona (NTUA) and the Tohono O'odham Utility Authority (TOUA), are RUS borrowers. RUS loans have allowed them to expand service to most areas of the reservation. After the Tohono O'odham's acquisition of Trico's system on the reservation in Arizona, TOUA was officially recognized by the RUS as a utility. However, unlike AMPS, it was unable to secure a loan without any assets for collateral. TOUA was able to do this by using its future earnings potential as collateral. With this funding, TOUA purchased the cooperative's on-reservation distribution system.

In its first ten years of existence, TOUA borrowed over \$3.8 million from the RUS. However, TOUA no longer qualifies for 100% RUS loans, since the RUS reserves 100% funding for cooperatives operating under conditions of extreme hardship such as having electric rates that are 20-25% higher than neighboring utilities. Currently, TOUA can borrow 70% from the RUS, and has therefore had to look elsewhere for supplementary funds.

Rural Utilities Cooperative Finance Corporation

Rural Utilities Cooperative Finance Corporation (CFC) is a financing cooperative formed by rural electric cooperatives that provides supplemental financing to cooperatives beyond what RUS can provide. TOUA has looked to the CFC to meet the additional 30% of its funding.

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

⁴ These figures are based upon Yellowstone Valley Electric (1996) and Big Horn (1995) Financial and Statistical Reports that the RUS-USDA requires rural electric cooperatives to submit annually. Figures were calculated based upon distribution and transmission operation and maintenance expenses, and miles of distribution (overhead and underground).

⁵ Interview with Doug Mollet, Billing, MT RUS representative, January 21, 1998.

In this case, the Tribe could issue debt to finance the purchase (or condemnation) of on-reservation assets, but the Tribe will not necessarily own the assets until some time after the debt is issued. This can create a structural mismatch between the financing mechanism and the assets being financed. A structural mismatch may have long-term ramifications for the ability of the Tribe to issue debt in the future and jeopardize the Tribe's favorable credit rating.

Financing options can facilitate the Tribe's entrance into the electricity business.

▪ **Financial Uncertainties with Owning and Operating a Distribution Utility**

Valuation of Assets. Valuation of assets for purchase is difficult because of the competing interests involved: On one hand, the entity that wants to acquire the assets wants to pay fair market value. On the other hand, the entity requiring compensation wants to recover additional costs as well.

If the Tribe chooses to purchase on-reservation assets, negotiating a fair price may be a lengthy and difficult process because of the tension between depreciated value of the assets, book value and market value of the assets. The municipalization effort of Las Cruces, New Mexico beginning in 1987—in which it exercised eminent domain—illustrates the contentious issues involved in pricing an electric distribution system (see box on right).

Stranded Costs. Although typically associated with investor-owned utilities, there may be “stranded costs” that the Tribe may have to bear if it purchases on-reservation assets. Stranded costs are costs that, under newly enacted competition, a utility cannot cover. For example, if a utility can break even only by selling power at a regulated price of eight cents per kilowatt-hour, and if the price of electricity falls to six cents per kilowatt-hour under competition, a utility may have costs it cannot cover. The Federal Energy Regulatory Commission's (FERC) rulemaking suggests that parties first try to mitigate stranded costs and negotiate a settlement. Ultimately the departing customer would be responsible for reimbursement of lost revenues (i.e., the difference between revenues the supplier would have received from the old customer and the revenues it will receive from new customers in a competitive market).

The FERC has also claimed jurisdiction over stranded costs in the case of retail-turned-wholesale customers (i.e., municipalization). Retail-turned-wholesale stranded

**Contentious Valuation of Assets:
Las Cruces' Municipalization
Effort**

Valuations of the distribution system by Las Cruces is likely to differ by millions of dollars with those of CSW, the utility that Las Cruces has condemned. CSW argues that the landmark Fifth Avenue Coach Lines case decided by the New York Court of Appeals in 1966 is the appropriate measure of just compensation:

- Tangible and intangible assets valued at *reproduction cost less new depreciation*;
- Fair market value of land owned by the utility; and,
- Severance and consequential damages.

Las Cruces maintains that *original cost less depreciation* is the valid valuation for condemnation that has traditionally been followed by the Courts.

Source: 1996 *Municipalization Review*, Coopers & Lybrand

costs have particular significance for tribal utility formation, since customers may be held responsible for stranded costs. If the Tribe aggregates its load and then departs from the cooperative, it is possible that the Tribe, as the departing "customer," may be held responsible for the ensuing costs to the utility.

Another type of stranded cost may be long-term fuel contracts for which the Tribe may ultimately be responsible. Although Yellowstone Valley Electric's contract expires with Montana Power in the year 2000, the Tribe might be forced to bear the costs of its new 20-year contract. We were unable to obtain information about Big Horn Electric's contract.

If a Tribal utility is forced to bear "stranded costs," it will have to decide whether to pass through these costs to its customers.

Las Cruces: A Case of Stranded Costs

Even if Las Cruces' condemnation is successful in the Courts, the town will face stranded investment claims before the Federal Energy Regulatory Commission (FERC). The FERC has determined that legitimate stranded investments should be permitted as long as the utility can demonstrate that it had a reasonable expectation of continuing to serve the departing customers.

The FERC has further concluded that it should be the primary forum to address stranded costs caused by wholesale wheeling for newly created wholesale customers who leave their franchised utility's distribution system through municipalization.

Source: 1996 Municipalization Review, Coopers & Lybrand

Cover Operating and Fuel Costs with Revenue Stream. A primary financial consideration is the stability and the predictability of a distribution utility's revenue stream. The quality of the revenue components (i.e., those customers who are obligated, by contract, to purchase power over a fixed amount of time) is also important. Operating and fuel costs for a public distribution utility would depend on the number of customers and the economies of scale. Small municipal distribution utilities that serve fewer than 25,000 customers, such as Belmont Light and Electric, earn \$11 million annually. With an 8% rate of return, the utility's costs are approximately \$10.1 million.

Additionally, operating costs may depend on a variety of uncontrollable factors, such as interest rates, inflation, fuel costs, local economic growth, and weather.

Future Fuel Costs. In addition to other financial uncertainties, it is unclear what impact competition will have on near- to long-term fuel prices. The following issues may affect future fuel prices and related operating costs.

First, economies of scale generally allow large utilities to operate more efficiently than smaller ones because fixed costs are distributed over a larger customer base. If the Crow Tribe could purchase low-cost electricity and establish an efficient distribution system, it may be able to provide electricity at a lower price than the current electric cooperatives.

Second, it is uncertain what impact competition in Montana will have on near- to long-term fuel prices. Many experts believe that with deregulation, out-of-state industrial "giants" will purchase Montana's low-cost electricity (it has one of the lowest rates in the

United States, with costs ranging from \$.04-.06/KWh). Additionally, Montana Power's decision to sell its generating assets may lead to higher state-wide electricity prices.⁶

Third, deregulation of electric utilities is expected to complete the shift to pure marginal cost pricing and remove subsidies to all customers. It thereby may increase the cost of providing electricity service to new rural customers. Because Tribes are located in rural areas and have a large number of unelectrified homes, they could experience a disproportionate share of the redistribution of electricity costs that may occur under restructuring.

Third Party Involvement ⁷

In addition to the Tribe and surrounding utilities, other parties likely will be involved in the development of a Tribal distribution utility. In the case of other tribes that have established their own utilities, third parties have included consultants and several regulatory agencies at both the state and the federal levels. Because we do not know the exact role (if any) that these agencies will play in the development of a Crow distribution utility, we use the example of the Fort Mojave Indian tribe of Arizona (part of the reservation is in California and Nevada). This Tribe developed its own utility, the Aha Macav Power Service (AMPS), in the early 1990s.

State Governments. One of the first actions taken by AMPS' General Manager was to send letters to the Public Utility Commissions of Arizona, California, and Nevada, informing them of AMPS intentions and asking them to determine whether or not they would

Case: The Costs to Tribes of Building and Operating a Utility

The Fort Mojave Tribe has built, own, and operated its own electric utility, the Aha Macav Power Service (AMPS). The Tribe had funds for most of its start-up needs. The initial utility construction was self-funded, although the Tribe later had to secure a loan from a private lender (which was primarily used for a casino and a hotel). The costs to the Tribe for ranged from \$2.5 to 3 million, which included providing service to the entire reservation over a period of several years. These costs included the construction of distribution lines from existing substations served by other utilities and constructing other substations.

The Fort Mojave Tribe has suggestions for other tribes who want to start utilities:

- (1) *Give sufficient thought to the financial end of the transition.* AMPS's situation was unique because most of the financial assistance sought was for the purpose of constructing the hotel and casino.
- (2) *Do not use a significant portion of the Tribe's financial reserves in the transition.*

The Tohono O'odham Utility Authority (TOUA) was recognized by the RUS in 1972 after it negotiated the purchase of the on-reservation system of the electric cooperative, Trico. TOUA sought \$1.5 million to acquire Trico's facilities and \$1.3 million to construct the "backbone" 69 kV transmission line, related substations, and village extensions. According to the current General Manager, TOUA took possession of Trico's on-reservation facilities by assuming Trico's debt associated with the system.

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

⁶ Montana Power's "announcement has added to fears of higher electric rates for Montana, with critics predicting that an out-of-state industrial giant will swoop in, sell the cheap power out of state, and leave ratepayers here to import more costly electricity. There is reason for the concern. A Department of Energy study last year predicted that Pacific Northwest can expect higher rates with deregulation, although Montana's current rates are slightly higher than other Northwest states" (*Washington Post*, March 4, 1998).

⁷ The information in this section is a summary of NEOS Corporation's "Tribal Authority Process case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation," Draft Final Report, 1996.

have jurisdiction over AMPS jurisdictions. In all three cases, the Commissions responded that because AMPS remained a tribally-owned and –operated entity operating within the reservation, the State Commissions have no regulatory authority over AMPS’ actions.

The Crow Tribe may need to discuss its plans with the Montana Public Service Commission.

Federal Government. Three federal agencies were directly involved in the development of AMPS, and continue to have roles in the present. It is likely that these agencies would also be involved in the Crow’s development of a distribution utility. These include the Federal Energy Regulatory Commission (FERC), the Bureau of Indian Affairs (BIA), and the Western Area Power Administration. In addition to these three agencies, other federal agencies whose regulations AMPS must follow include the Occupational Safety and Health Administration and the Environmental Protection Agency. We discuss a few of these agencies below:

Federal Energy Regulatory Commission. The FERC has jurisdiction over the sale of resale electricity. This applies to the wheeling of purchased power into the reservation and would also be applicable if tribes were to resell power produced by their own generation plants. AMPS filed copies of its power purchase and wheeling contracts with the FERC for approval.

Bureau of Indian Affairs. During the formation of AMPS, the BIA supplied technical assistance. The BIA continues to supply technical assistance when needed and lobbies on behalf of AMPS. The BIA may play a similar or different role in the efforts of the Crow to enter the electricity business.

Western Area Power Administration. WAPA wheels power to AMPS, which gives WAPA some regulatory jurisdiction over AMPS. This is mostly limited to resource planning such as the requirement of all long-term power customers to submit integrated resource plans.

As in the case of AMPS, the Crow Tribe will need to interact with numerous federal agencies in its effort to enter the electricity business.

What Can the Crow Tribe Do?

The requirements described above will demand the Tribe's best resources. But the Tribe *can* own and operate a distribution utility in the future. Even resources that it may lack now--such as human expertise--it can address through various means (for example, the Tribe can contract out non-Tribal employees).

However, certain external considerations make this a difficult way to enter the electricity business now. First, the external political environment is not conducive to change. Second, the legal environment will present challenges to the Tribe (both are described in the Part II, Section 2).

We know that the Tribe wants to enter the business now, so what can it do? The Tribe should consider strategies that other entities, including some Tribes,

municipalities, and large industrial customers, have considered in this restructuring environment, as well as strategies unique to the Crow Tribe.

The next part of our analysis, Parts III and IV, discusses these strategies.

PART III. A FRAMEWORK FOR EVALUATION AND DESCRIPTION OF THE STRATEGIES

Overview

We recognize that the Tribe wants to enter the electricity business by owning and operating a full distribution utility. This entails purchasing power, distributing that power over Tribally-owned lines to customers on the Crow Reservation/Territory, billing and collecting, providing services such as line extensions and new service, and providing additional ancillary services. The Tribe seeks to operate a distribution utility that provides the services described above, but in a way that matches the Tribe's special needs and interests.

From meetings with Tribal leaders, electric utility industry consultants, and industry experts, we have developed a set of criteria with which to evaluate strategies that the Tribe *can* pursue in order to realize its ideal vision for a distribution utility. In the process of applying these criteria to the ideal model, we have identified alternative strategies that the Tribe may wish to consider.

The Strategies

This section describes the range of strategies that the Tribe may wish to consider in order to enter the electricity business. Many municipalities, industrial consumers, and other Tribes have adopted some of the following strategies; some others address the unique circumstances on the Crow Reservation/Territory.

Acquire On-Reservation Distribution System

Exercise Eminent Domain over Existing On-Reservation System

Indian Tribes, like municipalities, can exercise eminent domain (i.e., condemn private property on their land) with just compensation to the asset-owner. The Crow Tribe could, in theory, exercise this right in order to condemn Big Horn Electric's and/or Yellowstone Valley Electric's distribution systems that physically lie on Tribal lands.

Purchase Existing On-Reservation System

The Tribe may consider approaching one or both of the electric cooperatives with an offer to purchase their on-reservation distribution assets. This strategy may require that a majority of the cooperative members agree to sell these assets to the Tribe.

*Purchase Only Yellowstone Valley Electric's On-Reservation System*⁸

The Tribe may decide to purchase one of the cooperatives' on-reservation transmission/distribution system. Targeting Yellowstone Electric would provide a limited customer base for the Tribe (fewer than 10% of Tribal members are served by Yellowstone Valley) and a significantly smaller-scale business endeavor.

Aggregate Tribal Load

Aggregate Tribal Load (Without owning assets)

The concept of aggregation is for a consumer group, like a tribe, to collectivize in order to negotiate better prices directly with generators or power marketers. Based on states' passage of electric restructuring legislation (either enacted or considered by commission/legislation in all but four states), many industrial customers have aggregated, or bundled, their electricity load and "shopped around" for power at lower cost than their current electricity provider. These customers have required their distributors to "wheel" power of their choice over the lines of their distributors to their meters. Public-sector aggregation may be considered by Tribes as a potential response to protect rural and low-income customers from harm in a competitive electricity services industry.

Municipal utilities have traditionally served as a form of non-profit customer aggregator and serve as a model in the restructuring debates. Local government entities, such as Tribal governments, may serve as small customer aggregators to increase their market power, with little or no ownership of electrical distribution facilities.

Own the Meters

Some municipalities, such as Falls Church, Virginia, have attempted to become distributors through either purchasing existing meters or installing their own, and then requesting companies to "wheel," or transmit, that electricity over their distribution lines all the way to the meter. The Tribe can either purchase one or both of the electric cooperatives' meters or install their own (and therefore "compete" with the existing electric cooperatives). The Tribe would assume the billing and collecting responsibilities, and would purchase power.

Alternative Strategies

Establish a Billing and Collection Agency

Although no precedent or model for this strategy exists, we have identified establishing a billing and collection agency as one way the Tribe can enter the electricity business. The Tribe would become a middleman (facilitated by a billing and collection agency) between its on-reservation customers and the electric cooperatives by: paying on behalf of Tribal customers to the cooperatives, sending out its own electricity bills, and collecting repayment from Tribal members.

⁸ We describe the strategy of acquiring Yellowstone Valley Electric Cooperative's on-reservation assets with the belief that implementation of this strategy might take steps toward Tribal goals of economic development. But because the cooperative serves fewer than 10% of the Crow Reservation/Territory residents, the Tribe would be able to exert sovereignty over electricity policy for only a very limited Tribal population. A parallel argument applies to the Tribe's goal to provide better electricity service.

Elect Tribal Members to Cooperative Boards

The boards of directors of the electric cooperatives are the principal decision-makers for electric cooperative policy. By designing and pursuing a strategy of electing Tribal members to the board(s) of directors, the Tribe could leverage electric cooperative policy.

Strengthen Institutional Capacity

One strategy that the Tribe may wish to consider is to strengthen institutional capacity so that it has the organizational, legal, and financial foundations in place in order to enter the electricity business. One way that the Tribe can do this is by strengthening, expanding, and formalizing existing institutions such as the Crow Tribe Public Utility Commission.

In Part IV, we discuss these strategies using the following framework for evaluation:

Framework for Evaluation

Timing: What is an appropriate time horizon for action on electricity issues?

Political Criteria: Will the Tribe have influence over electricity policies on the Crow Reservation/Territory? Is the external political environment conducive to entering the electricity business?

Legal Feasibility: What legal vehicles are available to the Tribe to move forward on electricity issues? Where is the Tribe likely to meet legal obstacles? Can the Tribe sustain possible, long-term legal resistance?

Regulatory Environment: Is the regulatory environment conducive to Tribal action on electricity issues? Can the Tribe circumvent regulatory obstacles?

Financial Considerations: Of the strategies, which are not financially feasible?

PART IV. EVALUATION OF THE STRATEGIES

Overview

This section evaluates how a distribution utility model and alternative strategies for entering the electricity business measure up against the framework for evaluation. The table below summarizes our findings.

Evaluation of Strategies

Strategy	Timing	Political Criteria	Legal Feasibility	Regulatory Environment	Financial Considerations
Purchase On-Reservation Distribution Assets	Not recommended	Reject	Challenge	✓	Challenge
Exercise Eminent Domain	Not recommended	Not recommended	Reject	✓	Challenge
Aggregate Load	Not recommended	Not recommended	Not recommended	Reject	✓
Own the Meters	Not recommended	Not recommended	Not recommended	Reject	✓
Establish Billing and Collection	✓	✓	✓	✓	Reject
Elect Tribal Members to Cooperative Boards	Reject	Not recommended	Not recommended	✓	✓
Strengthen Institutional Capacity	✓	✓	✓	✓	✓

✓ indicates that a strategy meets a criterion. "Not recommended" means that a strategy may only partially meet a criterion. "Challenge" indicates that the Tribe may wish to consider this strategy, but should be aware that it presents area(s) of significant challenge. "Reject" indicates that a strategy falls so short of a criterion that it precludes further consideration despite a ✓ or a "not recommended" for other criteria used to evaluate this strategy.

TIMING: Rules out strategy to elect Tribal members to cooperative boards

What is an appropriate time horizon for action on electricity issues?

Many Tribal leaders and members place importance on electricity issues and want to address them right now. Conversations with other Tribal leaders and members, however, revealed that moving forward on a strategy is *not* urgent because of more pressing Tribal issues (development of a Tribal bank, multi-purpose rooms).

Despite eight years of relative political stability on the Crow Reservation/Territory under the leadership of Chairperson Nomee, we believe that electricity restructuring strategies that involve long-term political involvement may not garner leadership and political support because of the two-year election cycle and fractionated Tribal politics. According to one Tribal Administration member whom we interviewed during our visit to the Crow Reservation/Territory (in January 1998), "it is impossible to get the Crow to unite behind one issue."

A Tribal political leader serving only a two-year term may not identify political incentive with or payoffs from pursuing a long-term strategy. Acquiring on-reservation assets could take over two years because of political, legal and regulatory challenges. Because this leader might no longer be in office after two years, such a strategy may "fall by the wayside" if the newly-elected or –appointed political leaders choose not to emphasize electricity policy on the Crow Reservation/Territory.

The internal political environment will be most conducive to strategies that take two years or fewer to implement. The table below illustrates the length of time required to implement the different strategies:

Strategy	Length of Time to Implement
Acquire On-Reservation Assets	At least two years
Aggregate Load	Depends if cooperatives opt in to competition pursuant to Montana's electricity restructuring legislation
Establish Billing and Collection Agency	One to two years
Elect Tribal Members to Cooperative Boards	Uncertain and greater than two years (depends on results of RUS investigation and ability of Tribe to mobilize members to vote)
Strengthen Utility Commission	One to two years

The strategy to elect Tribal members to the cooperative boards is not only the most uncertain among the strategies, but it will also take longer than two years to implement. Even if the Rural Utilities Service (RUS) mandates that the cooperatives change its annual board meeting date and location, the strategy of electing Tribal members to the boards is highly uncertain.

Elections are held annually. Every year, three out of nine positions are up for election. Illustrated below are the nine member districts for Big Horn Electric Cooperative, and its make-up:

Big Horn Electric Cooperative Electric Districts

District	Reservation or Off-Reservation
Deder	25% on reservation
Hardin	25% on reservation
Little Horn	100% on reservation (75% Tribal members)
Crow	100% on reservation
North Valley	100% off reservation
Upper Lodge Grass	100% on reservation
Lodge Grass	100% on reservation
Big Horn	100% on reservation (75-80% non-Tribal members)
Wyola	75% on reservation

The only Tribal member currently serving on Big Horn Electric's board of directors represents the Wyola district.

In addition to timing uncertainty, for this strategy to be successful a number of assumptions must hold:

- Tribal members will come to the annual meeting and will affect the outcome of the election;
- Voting will occur largely along racial lines;
- Tribal members will have unified positions (and act in the best interest of the Tribe);
- There will be sustained momentum and interest among Tribal members for attending the annual board elections.

Even if these assumptions held, the Tribe would either have to elect a majority of Tribal members over time or fill the top three positions (President, Vice President, and Secretary) *next year* to influence the cooperative's policies in the next two years. Additionally, the RUS investigation does not guarantee a preferred outcome for the Tribe.

Strengthening the Utility Commission balances competing Tribal positions regarding when and how soon to enter the electricity industry. On one hand, it begins the process now. On the other hand, it represents an incremental approach to entering the electricity business.

POLITICAL CRITERIA: Makes purchasing on-reservation distribution assets difficult in the near-term

Will the Tribe have influence over electricity policies on the Crow Reservation/Territory?

Most Tribal leaders agree that pursuing projects that enhance Tribal sovereignty is a priority. The level and type of sovereignty the Tribe achieves with electricity restructuring will correspond with the strategy it chooses.

Level and Type of Sovereignty According to Strategy

Strategy	Level of Potential Sovereignty Gains	Sovereignty Over:
Acquire On-Reservation Assets	High	Most issues, depending on financing mechanism ⁹
Aggregate Load	Medium	Choice of supplier, billing and collection policies (only if the Tribe owns the meters)
Establish a Billing and Collection Agency	Medium	Billing and collection policies, line extension and disconnect policies
Elect Tribal Members to Cooperative Boards	Medium	Electric cooperative policies
Strengthen Institutional Capacity	Medium	Tribal electricity-related resources

Despite the potential for high levels of sovereignty associated with acquiring on reservation assets, the external environment renders this strategy unfeasible in the near term, as described below.

Is the external political environment conducive to entering the electricity business?

The cooperatives, particularly Big Horn (of which approximately 80% of its business is on the Crow Reservation/Territory), feel that the if the Tribe pursued an acquisition strategy it would threaten their business interests. They are therefore unwilling at this time to sell their on-reservation assets.

The cooperatives' interests are to:

- Maintain their level of business (number of customers);
- Maintain their revenue stream; and,
- Control cooperative policy.

These interests are codified in the cooperatives' by-laws. In theory, the laws present opportunities for purchasing the on-reservation assets.¹⁰ In practice, however, the political ramifications of the by-laws make purchasing of the on-reservation assets highly unlikely because of the by-laws' conditions for sale: the Board would have to put the potential sale on the agenda for a meeting of *all* cooperative members, and authorization of the sale would require no less than two-thirds of all the cooperatives' members.

First, given the resistance of the General Managers and the Boards to maintain their level of business, revenue stream, and control of policy, the Board may be reluctant to put

⁹ Although acquiring on-reservation assets would allow the Tribe sovereignty over most electricity issues, the type of sovereignty may depend on how the Tribe chooses to finance its acquisition. For example, RUS financing makes acquiring on-reservation assets attractive because it appears to address the cost barriers. However, political concerns may include the fact that RUS maintains operational control over its borrowers (such as the mandatory 1.5 times interest earned ratio, which indicates that a borrower can pay back the interest one and one-half times its margins every year. Similarly, there are strict stipulations in issuing debt.

¹⁰ For further information, see Article VIII—Disposition of Property, in the Amended By-Laws of Yellowstone Valley Electric Cooperative, Inc., and Article X of the By-Laws of Big Horn Electric Inc. (1988). In effect, they state that the Cooperatives cannot sell, mortgage, or lease (or otherwise dispose of or encumber all or any substantial portion of its property) unless such disposition is authorized at a meeting of the members and approved by no fewer than two-thirds of all the members of the Cooperative.

a possible sale of part of its assets on the agenda. Second, even if a sale of on-reservation assets did become an issue on the agenda, *approximately 1,470 of Big Horn Electric's customers would have to approve a sale of Big Horn Electric's assets. This also means that every Tribal customer of Big Horn Electric would have to attend the annual election meeting to vote.*

A strengthened Utility Commission could negotiate with the cooperatives to sell on-reservation assets to the Tribe. Additionally, it could be in a stronger position to influence Board members to: (1) put the sale of assets on the cooperatives' agendas; and (2) recommend to its members that they approve such a sale.

LEGAL FEASIBILITY: Will present challenges if the Tribe exercises eminent domain to acquire on-reservation distribution assets

What legal vehicles are available to the Tribe to move forward on electricity issues?

Case: Is Falls Church a Sham Transaction?

In 1995, Falls Church, Virginia attempted to aggregate its load and limit ownership of distribution facilities to meters in order to:

- (1) Aggregate the load of Falls Church in order to achieve a lower rate for customers; and
- (2) Avoid the burden of owning any major distribution assets.

The key issue is whether owning metering assets constitutes a legitimate distribution and transmission operation. No legal precedent clearly delineates the minimum ownership of distribution facilities required to avoid being considered a "sham" transaction.

When Falls Church and Virginia Power (the incumbent provider) could not agree on a transmission charge rate, Falls Church filed a request with the FERC to require Virginia Power to transmit power over its lines.

The FERC's ruling was expected to have a significant impact on the electricity industry by changing the industry's conception of electricity distribution, but when Fall Church's mayor lost his re-election bid, the effort ended, leaving the question of what constitutes transmission still unclear.

Source: 1995 Municipalization Review, Coopers & Lybrand

The Tribe has numerous legal resources it can utilize, if necessary, to enter the electricity business. First, the Tribe can use federal entities, such as Rural Utilities Service/Department of Justice investigations into the practices of the cooperatives that serve Tribal members. The RUS/DOJ may require, as a result of the current investigation, that the cooperatives change the times and places of their annual board meetings. While this may appear to make the strategy of electing Tribal members to cooperatives' boards feasible, for reasons explained in the previous section on timing, this strategy is unlikely to produce successful results.

Second, the Tribe, like a municipality, can exercise eminent domain (i.e., condemn) over on-reservation assets of the electric cooperatives.¹¹ As described below, we do not recommend this strategy.

Where is the Tribe likely to meet legal obstacles?

The Tribe is likely to meet three main obstacles if it attempts to exercise eminent domain (even with "just"

¹¹ Interview, Tom Starrs.

compensation) over the cooperatives' on-reservation assets. First, the patchwork nature of trust versus fee land on the Crow Territory/Reservation makes difficult the ability of the Tribe to exercise eminent domain over individually-owned land that has been leased to non-Indians. Second, any attempt to exercise eminent domain, whether over fee or trust land, will be legally challenged by the cooperatives as an unfair "taking." Third, if the Tribe could exercise eminent domain, the cooperatives would dispute what constitutes "compensation" for the taking of their assets—thus potentially leading to another legal conflict.

The Tribe may meet legal obstacles in its attempt to implement other strategies that may involve condemning cooperative assets. For example, the Tribe could choose to aggregate its load and own the meters by "condemning" those on the Crow Reservation/Territory. Since Federal Energy Regulatory Commission Orders 888 and 889, numerous municipalities and other entities have interpreted the Orders in ways that have been legally challenged by current providers. To date, many of these cases—including purchasing or condemning the meters—are still in the courts (see Falls Church case on previous page).

Can the Tribe sustain possible, long-term legal resistance?

The Tribe may choose to exercise eminent domain and incur another legal challenge (the Tribe has borne a two-year legal battle with one of the cooperatives over the right-of-way tax). In fact, the Tribe may be able sustain, financially and politically, another long-term legal conflict. For two reasons, this is a short-sighted strategy if the Tribe is serious about entering the electricity business:

- Lawsuits represent "opportunity costs" to the Tribe. Given the magnitude of other Tribal projects that may also serve Tribal goals of sovereignty and economic development, these financial and non-financial resource may be better spent elsewhere; and
- **Any strategy that challenges the cooperatives on legal grounds will undermine the Tribe's legitimacy as a potential business associate.**

Even if the Tribe could acquire on-reservation distribution assets by exercising eminent domain, it would still lack the means and policies for operating a Tribal utility. Owning the assets, but not having the capacity to operate or enforce compliance with its policies—would put electricity provision at stake for people on the Crow Reservation/Territory.

REGULATORY ENVIRONMENT: The current regulatory environment precludes any aggregation strategy

Is the regulatory environment conducive to Tribal action on electricity issues?

Because of recent changes in the electricity industry, what an entity, such as a municipality, industrial consumer, or even cooperative can do is unclear. It is even less clear with regard to Indian tribes. However, both federal and state law may limit the ability of the Crow Tribe to aggregate its load. The focus of this section is not to describe in detail all the different regulatory players that may affect tribes, but rather to point out the

regulatory obstacles that the Crow Tribe may face if it chooses to pursue a strategy of aggregation.

Federal Regulatory Environment. Although at the federal level FERC Order 888 mandates open access to all public utilities, the FERC does not have specific jurisdiction over municipalities and electric cooperatives owning transmission facilities to file open access tariffs (Hitt, 1997). As the case brought before the FERC by People's Electric Cooperative demonstrates, there may be significant federal regulatory challenges to Tribes acting as aggregators (see box on right). It is unclear based on this case to what extent federal regulatory bodies can regulate reselling electricity.

State Regulatory Environment. There are two issues of concern: state authority and Montana's recently-passed electricity restructuring bill, SB390.

First, the issue of state regulation in cases where American Indian interests are present is far more complicated than federal regulation. Although states are generally prohibited from exerting authority over Tribal lands, since Indian Tribes are sovereign, with a relationship with the federal, but not state governments, states have intervened in the past in situations affecting non-Tribal customers living on reservations.

The U.S. Supreme Court has held that state laws may be applied on Tribal lands unless they interfere with Indian self-government or rights granted by federal law. *Thus, it is unlikely that a state could claim jurisdiction over a Tribal utility that serves Tribal members on Tribal lands.* However, a state may be able to regulate a Tribal utility that serves non-Tribal members located on non-Tribal lands or that serves non-Tribal members on Tribal lands. To date, no precedent regarding this issue has been established.

Second, although the Tribe successfully filed with the FERC to become an aggregator in 1992, Montana's "Electric Utility Industry Restructuring and Customer Choice Act" prevents the Tribe from exercising its right to aggregate its load because of the following provision:

Case: People's Electric Cooperative and Chickasaw Tribal Utility Authority

FERC's jurisdiction over Tribal utilities was recently tested in a case brought before FERC by People's Electric Cooperative. People's sought FERC approval of an agreement with the newly-formed Chickasaw Tribal Utility Authority (CTUA) to make People's the primary provider of wholesale electricity to CTUA. Investor-owned utilities intervened, claiming that it was a "sham transaction" intended to enable People's to serve additional customers outside of its state-prescribed service territory. FERC agreed: the proposed sale was a retail transaction and thus was not subject to FERC jurisdiction.

This case is significant because FERC considered CTUA to be a purchasing agent acting for a collective, rather than an electric utility engaged in reselling electricity. This decision is under appeal, so it does not necessarily establish FERC policy on Tribal utility formation.

If, however, FERC bases future decisions on this precedent, the formation of new Tribal utilities may be made more difficult. At the very least, Tribes interested in creating Tribal utilities must try to avoid bypassing policies prohibiting sham wholesale transactions.

Source: *American Indian Tribes and Electricity Restructuring: Issues and Opportunities*, The Native American Renewable Energy Education Project.

A cooperative utility may file a notice with the [Montana Public Service] commission that the cooperative utility does not intend to open its distribution facilities to electricity suppliers and does not intend to adopt a transition plan (SB390, Section 20).

Implications for the Crow Tribe are ambiguous. On one hand, the cooperatives, like the Crow Tribe, fall under federal jurisdiction and are not regulated by the Montana Public Service Commission. They are regulated solely by their boards of directors. Since the Crow Tribe does not fall under state jurisdiction, as an entity it is possible that SB390 does not apply to the Tribe.

But whether or not SB390 applies does not change what the Tribe *can* do now. Even if the Tribe legally *could* require cooperatives that may opt out of competition to wheel power, there are two potential obstacles: first, reselling power may be considered a sham transaction under federal law, as noted in the preceding page; second, SB390 in effect grants the cooperatives a monopoly position over distribution on the Crow Reservation/Territory.

Can the Tribe circumvent regulatory obstacles?

Because no precedent has been established that concerns the treatment of non-Indians on trust land, the Tribe may be able carry out the regulatory duties usually carried out by state public utility commissions because of its status as a sovereign Tribe. Other states have recognized this sovereignty (see box above).

The level of regulation that the Tribe can exercise over non-Indians living on Tribal lands and over outside parties (like the cooperatives) is highly uncertain. But they can, unequivocally, regulate Tribal members on reservation land. This leads us to believe that the Tribe should focus now on building and cultivating institutional capacity, so when the regulatory environment becomes more certain, they are ready to act.

Other Tribes: State Jurisdiction?

In the Fort Mojave's decision to own and operate a Tribal utility, one of the first steps taken by AMPS' General Manger was to send letters to the Public Utility Commissions of Arizona, California, and Nevada informing them of AMPS' intentions and asking them to determine whether or not they would have jurisdiction over AMPS' operations.

In all three cases, the Commission responded that because AMPS' remained a Tribally-owned and -operated entity operating within the reservation, the state Commissions have no regulatory authority over AMPS' actions. Thus, the roles of ensuring fair rates and protection of the public interest commonly assumed by the Commission were left to the Tribe.

It is unknown if there was any formal declaration by the State of Arizona regarding the regulatory relationship between it and the Tohono O'odham Tribe.

"It is widely recognized that Indian Tribes conducting business wholly within their reservations are not subject to state regulation. This includes TOUA and its operations. Thus, the state has no jurisdiction in TOUA's operation."

Source: NEOS Corporation, "Tribal Authority Process Case Studies: The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation" (Draft)

FINANCIAL CONSIDERATIONS: Establishing a billing and collection agency places excessive financial risk on the Tribe

Of the alternative strategies, which are not financially feasible?

The Tribe's economic outlook is better than it has been at any other time in Crow history. Recent court settlements have generated a significant amount of revenue into the Tribe. In general, financing for a distribution system is not the Tribe's primary obstacle. Nevertheless, with the prospect of owning and operating a distribution utility, it is critical that the Tribe does not put its favorable financial position at jeopardy by pursuing a short-term strategy that may be financially risky.

With a billing and collection agency, the Tribe is assuming the risk associated with late or non-paying Tribal members (a risk currently borne by the cooperatives). At this time, it will be difficult for the Tribe to codify a formal process for billing and collection of Tribal members' monthly bills because it does not have the institution to enforce collection. If it cannot enforce collection, a Tribal billing and collection agency likely will operate on a deficit.

Inability to collect revenue to cover expenses may result in either or both of the following:

- The Tribe's General Council could authorize continued billing and collection agency operations by funding it through the Tribe's General Fund, thereby making provision of electricity a "bulk purchase, free distribution" good; and,
- Continued General Council funding without payment from Tribal members will drain Tribal resources and undermine its financial legitimacy.

The problems described above are problems inherent to any electricity distribution business; it is an issue that the Tribe will have to consider in the future when it moves fully into the electricity business. However, the Tribe should avoid financially risky strategies now.

Only if the Tribe begins to build and strengthen institutional capacity will it possess the authority and the mechanisms to enforce financial policies in the future.

PART V. RECOMMENDATIONS

Recommended Goals for the Crow Tribe

In considering the goals of increased sovereignty, economic development on the Crow Reservation, and improved electricity service that Tribal members have articulated *and* our evaluation of how the Tribe should enter the electricity business, we believe that the following subset of goals address what The Tribe *can* achieve in next two years.

- (1) Build and strengthen institutional capacity to implement Tribal goals related to electricity in the future;
- (2) Provide tangible gains to Tribal members through consolidated customer representation;
- (3) Increase sovereignty over electricity service for Tribal members on the Crow Reservation/Territory.

Our Recommendations for the Tribe to Enter the Electricity Business

Our evaluation illustrates that no one strategy provides a feasible and direct “entrance” into the electricity business for the Crow Tribe. Nevertheless, we believe that the Tribe’s current approach to entering the electricity business (i.e., lawsuits, RUS investigations), while legitimate, fails to build the institutional capacity necessary to enter the business. We therefore do *not* recommend maintaining the status quo. Entering the electricity business requires an institution that can:

- Create a stable, standardized, and welcoming business environment;
- Possess the authority to establish policies and carry out its operations; and,
- Enforce compliance with its operations.

One way in which the Tribe can build institutional capacity is to strengthen its Public Utility Commission. We therefore recommend that the Tribe take the following steps:

- (1) Expand and redefine the Crow Tribe Public Utility Commission’s public purpose and responsibilities, and formalize its organizational structure, written policies, and standardized processes;
- (2) Establish a Crow Tribe Consumer Advocacy Office (CAO) to: consolidate and redistribute all electricity-related funds and act as a “consumer advocate” for Tribal members before the electric cooperatives and other external parties; and,
- (3) Work toward establishing internal and external legitimacy for Utility Commission and for the Consumer Advocacy Office; and,
- (4) Form a strategy for negotiating with non-Tribal entities.

In short, we believe that successful implementation of the recommendations could take the Tribe one step closer to their stated goals of better electric service, sovereignty over electricity policy for Tribal members, and a step towards economic development on the Crow Reservation/Territory.

Discussion of the Recommendations

Recommendation 1: Expand and redefine the Crow Tribe Public Utility Commission's public purpose and responsibilities, and formalize its organizational structure, written policies, and standardized processes.

The Public Utility Commission's Public Purpose and Responsibilities

The Crow Tribe Public Utility Commission's formally stated goal is to provide safe, adequate, and reliable electricity service on the Crow Reservation/Territory. However, at present these goals too broadly address the problems that Tribal members face (difficulty paying bills, line extension payment policies). We believe that the Commission should more narrowly define these goals. Specifically, we believe that the Commission should redefine a public purpose that it can carry out immediately.

We believe the Commission's public purpose should be to:

- Represent the unique interests of the Tribe as a collective entity in electricity service policies and to outside parties;
- Represent individual Tribal members' special needs before the cooperatives; and,
- Manage all electricity-related funds that flow into the Tribe.

If the Commission refines its goals to include a public purpose that incorporates specific goals, it will have a more immediate role to exert in the Tribe. Furthermore, if the Utility Commission has specific projects and initiatives to fulfill these goals, the Commission will command greater political support among Tribal leaders and members.

Formalized Organizational Structure

As discussed above, for the Utility Commission to be an effective governing body, it should have additional responsibilities than the current organizational structure allows. Without expanding the organizational structure to include a new office, the Utility Commission's impact on electricity provision will remain limited.

A **Consumer Advocacy Office (CAO)** should serve as the formally-authorized business and implementation arm of the Utility Commission. In addition to other functions, this office will provide the forum in which individual Tribal members directly can participate in on-going electricity issues on the Crow Reservation/Territory.

We spoke with many Tribal members who had definite opinions about current electricity provision. However, they had no one to whom they formally could express these ideas. The CAO not only can provide the venue for Tribal members to register their personal interests (and/or dissatisfaction with the current system), but it can also serve as the body that formulates ideas, based upon Tribal members' concerns, for how the system can be improved.

Written Policies and Standardized Processes

We focus on two areas in which written policies and standardized processes will strengthen the Utility Commission: first, policies that address how the Utility Commission can best operate; second, how the Utility Commission should carry out its public purpose.

How the Utility Commission Should Operate

Since its creation, the Utility Commission has met infrequently and irregularly as a governing body. Establishing written policies and standardized processes for when and how often the Utility Commission meets will provide the following: First, it provides the opportunity for all Commissioners to be equally informed of electricity developments on the Crow Reservation/Territory. Second, it provides the forum for the exchange of ideas and open debate among the Commissioners on directions the Tribe should take. Third, it provides the formalized avenue in which to develop strategies and implementation plans. These policies, in addition to others (refer to Book Two, Part III), should be codified in a CAO Plan of Operations.

How the Utility Commission Should Carry Out Its Public Purpose

The Utility Commission should carry out its public purpose through the CAO, which should be governed by written policies and processes established by the Commission and authorized by the Tribe's General Council.

Recommendation 2: Establish Crow Tribe Consumer Advocacy Office (CAO).

Our second recommendation builds upon *how* the Tribe can expand the role and responsibilities of the Utility Commission. The CAO serves as the primary mechanism by which the Tribe can do this.

Why Establish a CAO

As discussed above, we believe that the Utility Commission's public purpose should be to:

- Represent the unique interests of the Tribe as a collective entity in electricity service policies and to outside parties;
- Represent individual Tribal members' special needs before the cooperatives; and,

- Consolidate and redistribute all electricity related funds that flow into the Tribe.

The CAO should be the institution authorized to carry out the Utility Commission's public purpose. It should turn the above public purposes into action.

How the CAO Should Be Created

Establishment of a CAO should follow the same authorization process that governs all Tribal decisions: first, drafting a resolution for the CAO's formation; second, presenting it to the Tribe's Executive Committee one week before the quarterly General Council meetings; third, seeking approval from the General Council.

Passing a resolution to empower a CAO will require authorization and political support from the following institutions and parties:

Authorization and Political Support Necessary for Establishment of CAO

Institution	Authorization Required?	Type of Authorization	Political Support Required?	Type of Support
Utility Commissioners	Yes	Majority vote	Yes	Provide leadership and education to Tribal and non-Tribal institutions
Tribal Chairperson	Yes	Signature	Yes	Provide support for CAO through public endorsement
Executive Committee	Yes	Placing CAO on General Council Agenda	Yes	Executive Committee needs to put CAO on General Council agenda
General Council	Yes	Majority vote	Yes	Support (by vote) CAO at General Council meeting
Electric Cooperatives	No		Yes	Provide external legitimacy to Tribe Utility Commission
Tribal Administration Budget Department	No (authorized by General Council)		Yes	Cooperate with Tribal law, General Council, and Utility Commissioners
Tribal Administration Tax Department	No (authorized by General Council)		Yes	Cooperate with Tribal law, General Council, and Utility Commissioners
Tribal Administration Social Services Department	No (authorized by General Council)		Yes	Cooperate with Tribal law, General Council, and Utility Commissioners
Non-Tribal Members on the Crow Reservation/Territory	No		No	
BIA	Yes	Per capita payments garnishment	No	

Recommendation 3: Work toward establishing internal and external legitimacy for Utility Commission and for Consumer Advocacy Office.

Owning and operating a distribution utility will require high levels of cohesion and cooperation between the Utility Commission and different Tribal institutions and agencies, and between the Utility Commission *and outside parties*.

At present, the relationship between the cooperatives (particularly Big Horn) and the Tribe is strained. Furthermore, the cooperatives do not recognize the Crow Tribe Public Utility Commission or its directives as legitimate policies. Until outside parties acknowledge the Utility Commission as legitimate, it may be unable to carry out its goals effectively—particularly because implementing strategies to achieve its goals will involve outside players.

External legitimacy relies first on gaining internal Tribal legitimacy for the Utility Commission.

Building Internal Legitimacy

The best way to build legitimacy within the Tribe will be for the Utility Commission to “institutionally entrench” its roles and responsibilities into the Tribal government. Making the Utility Commission an institutionally entrenched body requires going beyond gaining formal approval for the *existence* of a Utility Commission. It involves developing a Utility Commission *presence* among Tribal members. A Utility Commission presence means that Tribal members know where they can take their concerns or ideas—the CAO, the day-to-day operational arm of the Utility Commission.

Institutional entrenchment may be achieved through formalized processes, including having regularly scheduled Utility Commission meetings and regular hours of operation for the CAO.

Building External Legitimacy

External legitimacy may be best achieved if the Tribe approaches its interactions with outside parties (particularly the cooperatives) as if they are business negotiations. Developing a reputation of professionalism will be useful for the Utility Commission over time as the Utility Commission leads the Tribe further into the electricity business, toward the eventual distribution utility. At present, the Utility Commission may find that not only regularly scheduled Commission meetings, but regular meetings with the cooperatives’ boards of directors and/or General Manager as well, could provide a first step in professionalizing the Utility Commission. In addition, meetings with the cooperatives’ boards will present an opportunity for the Utility Commission to articulate the special concerns and needs of the Tribe as a whole.

Recommendation 4: Form a strategy for negotiating with non-Tribal entities.

The Tribe wants to enter the electricity business. As with any business deal or financial transaction, the Tribe will have to interact with external players—whether it be the cooperatives, Western Area Power Administration, or the Federal Energy Regulatory Commission—as future business associates or potential clients. While we recognize that these deals will take place only sometime in the future, the Utility Commission can begin to think about implementing a framework for negotiations.

Some Tribal leaders have indicated that the only way to work with the cooperatives is through legal action. While this strategy may be successful for some issues (like right-of-way taxes), this will not work as a sustained strategy for entering the electricity business. We recognize that the Crow believe that in order to advance economically, they need to take a political stance. However, taking a political stance—without engaging in the negotiation process—diverts the purpose and precious resources of the Tribe and the Utility Commission.

We believe that the first step is for the Utility Commission to recognize cooperatives motivating interests, rather than focusing on the positions, behind many of the policy decisions they make. As noted in Part IV, these interests are to:

- Maintain their level of business (number of customers);
- Maintain their revenue stream; and,
- Control cooperative policy.

By presenting its desired ends to the cooperatives in a way that recognizes the legitimacy of these interests, the Tribe's chances for successful discussions with the cooperatives may improve.

This recommendation additionally reinforces our third recommendation: As the Tribe engages in negotiation strategies, it will solidify its external legitimacy.

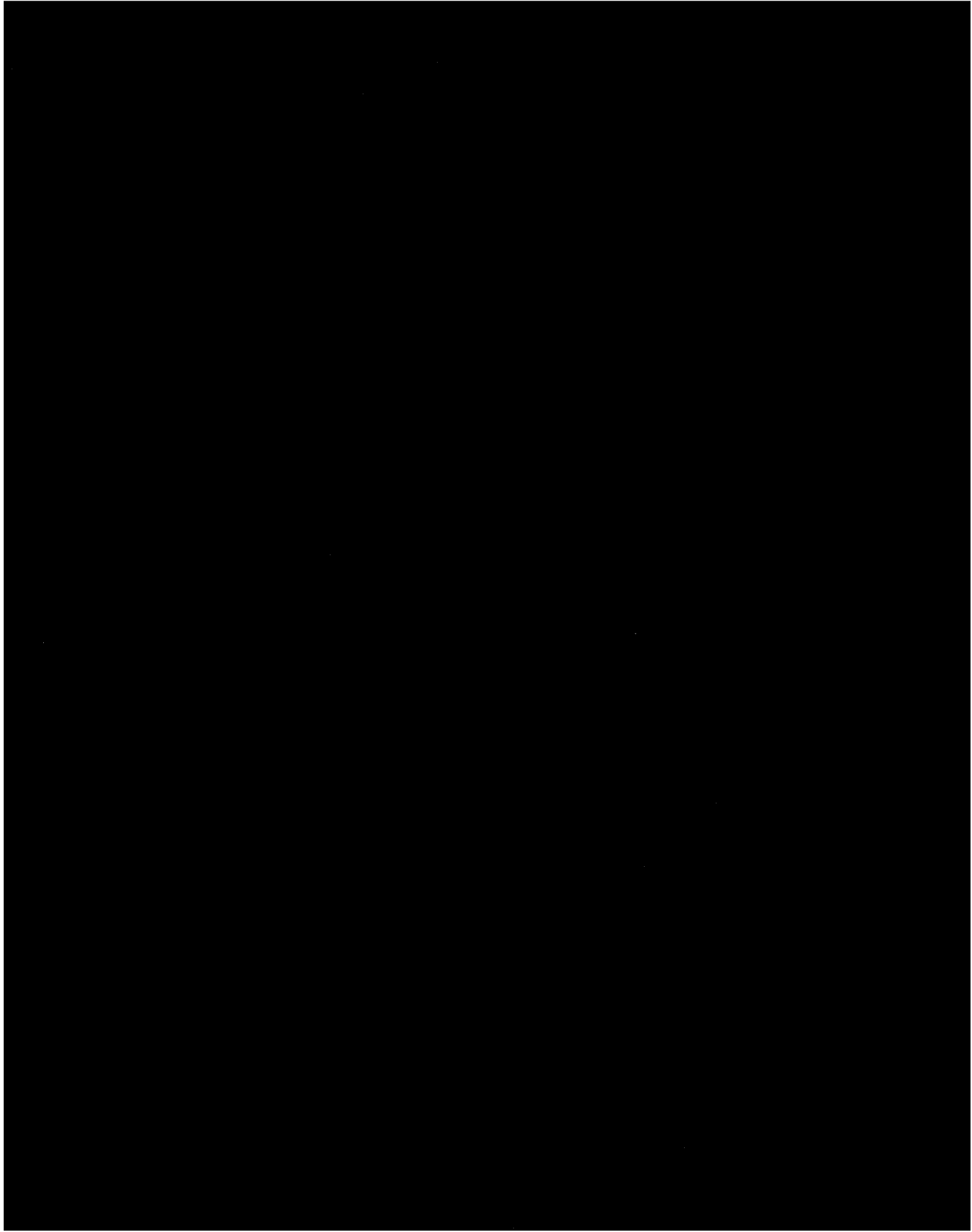
Conclusion of Our Recommendations

We recognize that there is a cultural mismatch between Crow culture and current electricity service on the Crow Reservation/Territory. This has promulgated Tribal action on electricity issues since the early 1990s.

In order to enter the electricity business, the Crow Tribe needs to build and strengthen the institutional capacity that is required to: first, create a welcoming business climate to external players whose support may be critical (such as the cooperatives), and second, to carry out the operations of a distribution utility. Part of this institutional capacity also requires making the shift from the current "legalistic" approach that the Tribe has taken to enter the electricity business to a more business-like approach.

Book Two provides an action plan for creating and strengthening a sustainable Tribal institution, and focuses on the first and second recommendations. We believe that while

the Tribe can best identify how to implement the latter two recommendations, our expertise allows us to expand on the first and second recommendations.



OVERVIEW: A FRAMEWORK FOR BUILDING A SUSTAINABLE INSTITUTION

Overview

The Crow Tribe has taken courageous steps in its effort to establish policies and actions in order to exert sovereignty over electricity provision on the Crow Reservation/Territory. One goal of sovereignty is to nourish and expand upon culturally appropriate economic self-sufficiency over businesses, like the electricity distribution business. The issue is how the Crow Tribe can most effectively focus its energy so that what has been made possible by expansions in sovereignty—such as the creation of a Crow Tribe Public Utility Commission—is realized in tangible benefits. Critical to this realization is the ability of the Crow Tribe to effectively exercise and implement the sovereignty they have already established through strong and sustainable institution-building.

The Crow Tribe's desire to enter the electricity business illustrates another step in the Tribe's pursuit for sovereignty. This step not only symbolizes the determination of the Tribe to increase sovereignty and economic development on the Crow Reservation/Territory; *successful implementation* will symbolize the potential for real economic and social gain under the expansion of Tribal sovereignty.

Book One provides the analysis for why we believe that the Crow Tribe should adopt the following recommendations:

- Expand and redefine the Crow Tribe Public Utility Commission's public purpose and responsibilities, and formalize its organizational structure, written policies, and standardized processes;
- Establish a Crow Tribe Consumer Advocacy Office (CAO) to: consolidate and redistribute all electricity-related funds and act as a "consumer advocate" for Tribal members before the electric cooperatives and other external parties; and,
- Establish internal and external legitimacy for Utility Commission and for the Consumer Advocacy Office; and,
- Form a strategy for negotiating with non-Tribal entities.

Book Two develops the first and the second recommendations, and provides possible frameworks for a sustainable implementation strategy.

PART I: A MODEL CROW TRIBE PUBLIC UTILITY COMMISSION

Overview

One way the Tribe can strengthen institutional capacity is to build upon already existing Tribal institutions. This section provides a framework for strengthening, expanding, and redefining the public purpose of the Crow Tribe Public Utility Commission.

Tribal Government decision-making bodies like a Public Utility Commission should be accountable and legitimate political structures that function independently from Tribal politics. At the same time, the issue of electricity is highly politicized for some Tribal leaders. A Consumer Advocacy Office (CAO) requires responsible organizational and financial management policies because large amounts of money will be flowing in and out of the CAO. The Utility Commission's organizational structure should be codified and formalized in order to prevent Tribal members with political interests from undermining the system.

The Crow Tribe Public Utility Commission's Public Purpose

We believe that the purpose of Crow Tribe Public Utility Commission is to:

- Represent the unique interests of the Tribe as a collective entity in electricity service policies and to outside parties;
- Represent individual Tribal members' special needs before the cooperatives; and,
- Manage all electricity-related funds that flow into the Tribe (through consolidation and redistribution).

What is the Process for Serving on the Utility Commission?

Currently, the Tribal Chairperson has appointed all five Tribal members who serve on the Utility Commission. The success that characterizes Chairperson Nomee's tenure can be, in part, attributed to the exceptional leaders whom she has appointed to help run Tribal affairs. We believe that appointment, as opposed to Tribe-wide elections, is the appropriate process to choose members of the Utility Commission because it:

- Is less subject to Tribal political factionalism;
- Enhances the likelihood that qualified Commissioners serve on the Commission.

The present process may be strengthened to make it less susceptible to the involvement of parties who may have interests that differ from Tribal goals. An ideal process for appointing Utility Commissioners would be one that is independent from the Tribe's election cycles, since these are highly politicized.

The tenure of the current Utility Commissioners is generally three years, although the

term may vary due to other assignments. The current appointment process makes the Commissioners' tenures dependent upon:

- Tribal election outcomes; and
- Maintaining favorable relations with the Tribal Chairperson and the General Council.

For example, it is unclear whether the current Commissioners will be reappointed (or continue to serve without reappointment) under a new Chairperson. Reelection of the current Chairperson, however, does not guarantee that the Commissioners will hold their positions. At any time, given the present process, one or all could be removed by a shift in political sentiment. Without a formal process in place the Commission can be susceptible to political interests. Moreover, without a formal process the Utility Commission structure may be unsustainable if there is frequent turnover, and no "institutional memory" (i.e., retained expertise on the Commission) will be built.

We recommend that Utility Commissioners are appointed for five-year terms on off-election months (such as November of each year). This process is contingent upon the current five Commissioners agreeing to serve five, four, three, two, and one year, respectively. Without this, every five years all five Commissioners would be appointed simultaneously, subjecting the process to the interests of the political party in power. The Tribe may want to consider an appointment cycle that looks as follows:

Staggered Appointment Cycle for Crow Tribe Public Utility Commissioners

Initial Terms	1998	1999	2000	2001	2002	2003	2004	2005
A (5 years)						Appoint		
B (4 years)					Appoint			
C (3 years)				Appoint				
D (2 years)			Appoint					Appoint
E (1 year)		Appoint					Appoint	

Shading denotes Tribal election year. A, B, C, D, and E refer to the five Utility Commissioner positions.

This process balances the need for "institutional memory" with the risk of the Commission being able to exercise excessive power.

Who Should Appoint the Utility Commissioners?

The Tribal Chairperson should be responsible for appointing the Utility Commissioners, with approval from the General Council. He or she also should determine conditions for compensation (in the form of a stipend or salary), with approval from the General Council.

Who Should Serve on the Utility Commission?

At present, the Commission is comprised solely of Tribal members. We believe that the Commission should not limit the make-up of the Commission to Tribal members if there are exceptionally qualified non-Tribal members who are dedicated to furthering Tribal interests.

The Tohono O'odham Tribe in Arizona has appointed non-Indians to their board (the equivalent of the Crow Tribe Public Utility Commission) because the Tribe has a set of conditions for service on its Board that has necessitated looking outside of the Tribe for the expertise. Its Board consists of seven directors. Four of the seven must be people who have at least ten years of business management experience. Of these four directors, three must have had such experience in the utility industry. Although the Tribe hopes that one day all the directors will be Tribal members, the Tribe has set realistic standards and been willing to fill these positions with non-Tribal people.

The Tribe may find it useful to set similar standards for its Utility Commissioners. However, we believe that standards should consider unique circumstances on the Crow Reservation/Territory. The Tribal Chairperson should set standards, with approval from the General Council. However, we believe that no BIA official should be appointed to the Commission. Acting otherwise might risk concentration of power into too few hands or conflicts of interest.

How Should the Utility Commission make Decisions?

Five members of equal voting power serve on the Commission. Of the five Commissioners, the Tribal Chairperson should decide who should serve as Commission Chair, and establish a policy for how long he or she should serve as Chair during his or her tenure. The Commission Chair should be responsible for coordinating and calling special meetings, and should serve as the liaison to the General Council.

Decisions by the Utility Commission should be made by a majority vote (at least three Commissioners).

Why and How Might a Utility Commissioner Be Removed from Office?

We believe that if a Utility Commissioner engages in gross misconduct, misuses Tribal funds or uses his/her position to promote personal financial interests, that person should be removed from the Commission and subject to Tribal Court proceedings. The Tribe may want to consider the following process:

- Any concerned party may submit a written complaint, obtained at the Consumer Advocacy Office and forwarded to the Tribal Chairperson and the Utility Appeal Board by the Office Manager of the Consumer Advocacy Office;
- The Utility Appeal Board reviews the complaint, and decides whether to pursue further action;

- If the Utility Appeal Board decides to pursue further action, it should move the case to Tribal Court;
- The Tribal Court reviews the case, and if it decides to pursue further action (i.e., a trial), it should request that the Tribal Chairperson remove the Commissioner from office. The Tribal Court then should decide what type of legal action is required (based on the Tribe's legal codes); and,
- Within two months of removal, the Tribal Chairperson should appoint a new Commissioner to serve the remainder of the removed Commissioner's tenure.

When and How Often Should the Utility Commission Meet?

Since its formation in 1995, the Crow Tribe Public Utility Commission has met infrequently; it does not have a regular meeting schedule. This meeting schedule may contribute to miscommunication about electricity provision among Tribal members, and cause delay in furthering Tribal interests on the issue.

We therefore recommend that meetings are held at least monthly, with an annual meeting in June (one month prior to the summer General Council meetings) that is open to the public. In addition, the Tribal Chairperson and all five Utility Commissioners should meet at least once annually to formally review and evaluate CAO operations. Any two of the five Commissioners, the Utility Commission Chair, or the Tribal Chairperson may call special meetings. A quorum of three Tribal members should be the minimum to hold an official meeting.

On Which Issues Should the Utility Commission Have Jurisdiction?

Like municipal and other tribal utility commissions, the Crow Tribe Public Utility Commission should have jurisdiction over the issues outlined below. At this time, these issues relate specifically to the policies for a Crow Tribe Consumer Advocacy Office. The Utility Commission should have jurisdictional authority over the following:

- CAO operations;
- CAO hiring policies;
- CAO financial management policies;
- Enforcement mechanisms (customer re-payment policies); and,
- Communications policies with other Tribal and non-Tribal entities.

These issues will evolve, refine, and expand as the Tribe builds this foundation and moves toward distribution in future years.

What Should Be the Relationship between the Utility Commission and the Crow Tribe Consumer Advocacy Office?

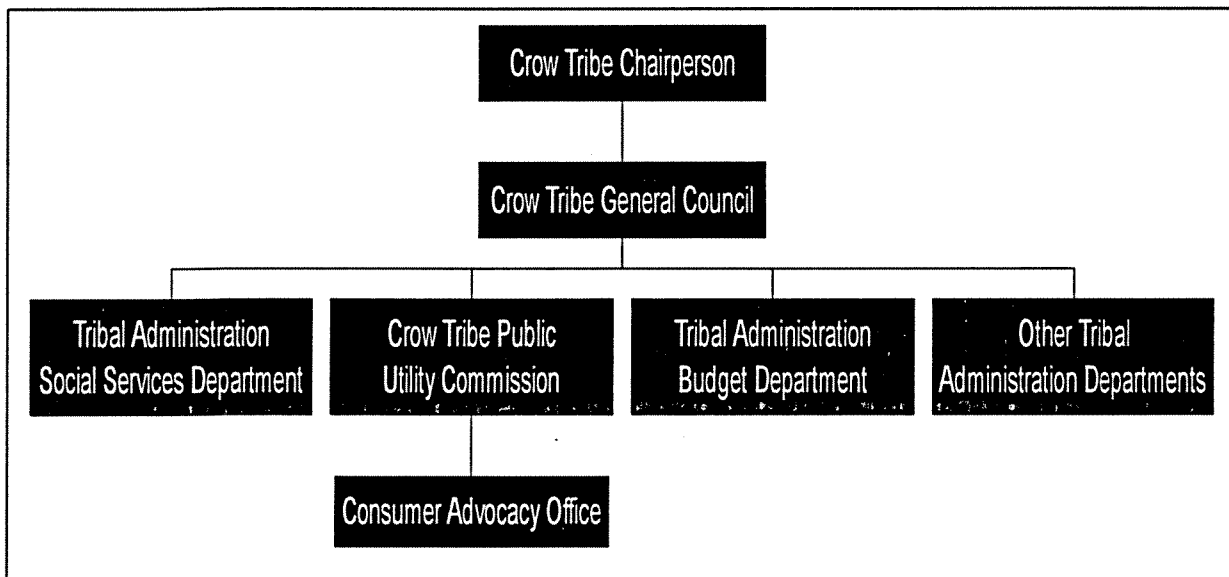
The Utility Commission should be the sole overseer and regulator for all policy

decisions and major operational activities of the CAO. The Utility Commission should use the first part of its monthly meetings to meet with the Consumer Advocacy Office's Office Manager and Managing Accountant to review all relevant policies, operations, and developments.

At any time deemed necessary, two or more Commissioners should be able to initiate a meeting between the Commissioners and the Office Manager (and the Managing Accountant, if appropriate).

What Should Be the Relationship between the Utility Commission and Other Tribal Entities?

Should the Tribe implement our recommendation for the Utility Commission, there may be a one-time shift of responsibilities from other Tribal Government entities (such as the disbursement of low-income energy assistance, which is currently done through the social services department). This should be authorized through a General Council vote.



As the organizational chart illustrates, the Utility Commission and CAO should be considered parts of the Tribal Government. As such, they should be given commensurate powers and subject to the same rules and regulations.

What Should Be the Relationship Between the Utility Commission and Non-Tribal Entities?

The Utility Commission should serve as the "consumer advocate" for the Tribe, representing collective and individuals' interests. It should be the only Tribal authorized to speak on behalf of Tribal interests to outside parties, or its authority may be undermined. When deemed appropriate, the Tribal Chairperson should speak on behalf of the Utility Commission (i.e., press reports, interviews, and other public relations matters).

How Can the Tribe Strengthen the Utility Commission's Authority?

We believe that strengthened Utility Commission policies best could be codified into Tribal law through an amendment to the resolution that authorized the Utility Commission in 1996. Such an amendment would ideally include the most salient organizational aspects of the Utility Commission:

- Public purpose of Public Utility Commission;
- Process for serving on the Utility Commission;
- Who appoints the Utility Commissioners;
- Who can serve on the Utility Commission;
- How decisions should be made by the Utility Commission;
- If and how decisions can be overridden or challenged;
- Why and how a Commissioner might be removed from office;
- The minimum number of meetings held annually;
- Over which issues the Utility Commission should have jurisdiction;
- Relationship between Utility Commission and Consumer Advocacy Office ;
- Relationship between Utility Commission and other Tribal entities; and,
- Relationship between Utility Commission and non-Tribal entities.

We also believe that codifying the role of the Utility Commission in the Crow Tribe Constitution would strengthen the institution and ensure its sustainability over future political tenures. We recognize that the many steps involved—and the ultimate approval that the Tribe would need from the Department of the Interior—makes passing amendments to the Constitution procedurally difficult. Nevertheless, we believe that this step would demonstrate that the Tribe is dedicated to creating the institutional framework necessary for entering the electricity business.

Looking Toward the Future: The Utility Commission and the CAO

The annual meeting between the Tribal Chairperson and the Utility Commission should be used to review and evaluate the operations of the CAO and assess the internal and external political environments in order to decide whether the Commission should take the next step in the process of entering the electricity business. A suggested framework for evaluation that the Tribal Chairperson and Utility Commission may consider is as follows:

Framework for Evaluation

Has the Tribe gained internal legitimacy, measured by:

- General Council approval for expanded Utility Commission responsibilities and CAO establishment?
- Regular operating hours for the CAO?
- Regularly scheduled meetings between the Utility Commissioners and CAO employees?
- High Tribal attendance at the June Utility Commission public meeting?

Has the Tribe gained external legitimacy, measured by:

- Completion of at least one line extension transaction between the Utility Commission and the electric cooperatives?
- Regular meetings between the Utility Commissioner and the electric cooperatives' boards of directors and General Managers?

PART II: ESTABLISHING A CROW TRIBE CONSUMER ADVOCACY OFFICE

Overview

This section provides a framework for the Utility Commission to begin the process of establishing a Crow Tribe Consumer Advocacy Office (CAO). This section explains what a CAO is, its objectives and functions, and its organizational structure. It also provides a suggested approach to a "Plan of Operations" for the CAO; which should serve as a manual for the Utility Commission, the CAO, and any other interested parties. Finally, this section presents a suggested time frame for establishing the CAO.

What is a Consumer Advocacy Office and What Are Its Objectives?

In the broadest sense, a CAO is the channel of communication between Tribal members and the electric cooperatives. Thus far, Tribal customers have been treated as individual customers of the cooperatives, not as individuals who are also a collective group with special interests and concerns. A CAO provides the vehicle for implementing policies that address these interests.

Specifically, a CAO is the centralized location on the Crow Reservation/Territory where Tribal members can relay their concerns about electricity issues, or apply for line extension loans.

In sum, a CAO provides the following:

- A cultural match for Tribal members and their electricity needs;
- A framework and foundation upon which to build institutional capacity for entrance into the electricity distribution business (the CAO would become a distribution utility's customer service and finance/accounting arms);
- A centralized "clearinghouse" where Tribal electricity resources may be consolidated, processed and redistributed (i.e., WAPA allocation, right-of-way tax revenue collected from cooperatives, and LIEAP funds); and,
- A step toward the Tribe's goals of sovereignty, economic development, and improved service goals.

What are the functions of a Consumer Advocacy Office?

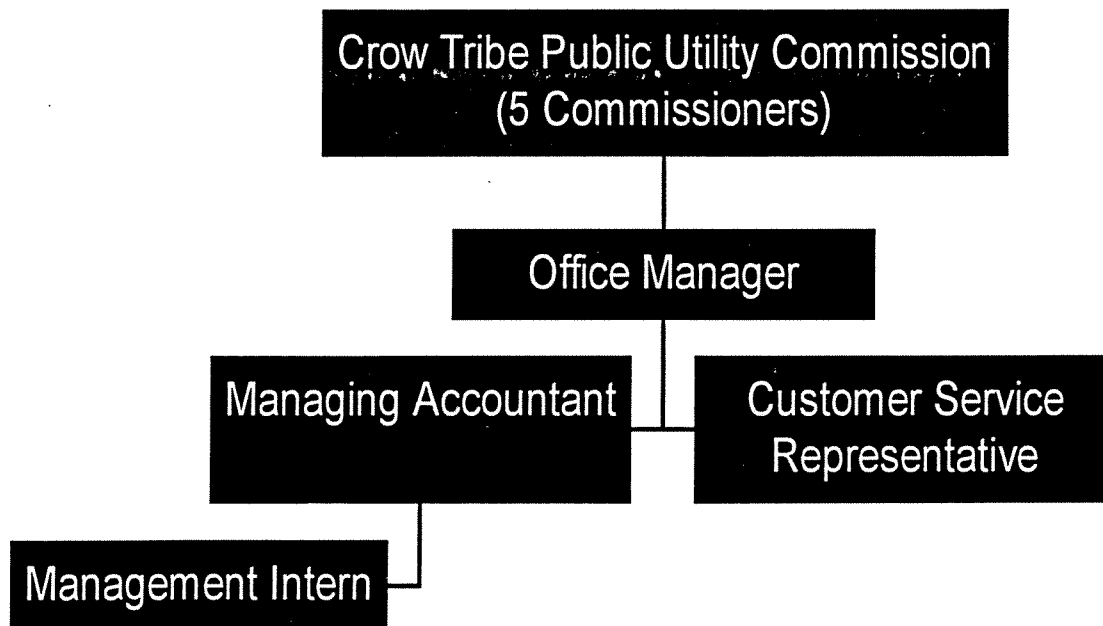
A Consumer Advocacy Office should:

- Serve as a venue for Tribal members' concerns and interests;
- Educate Tribal members about electricity provision on the Crow Reservation/Territory;

- Administer the Energy Assistance Funds, including Low Income Energy Assistance Program (LIEAP) and WAPA allocation;
- Manage right-of-way tax revenues (from Montana Power, Big Horn Electric, and Yellowstone Valley Electric);
- Provide "loans" to Tribal members/businesses who need, but cannot afford, line extensions;
- Communicate Tribal electricity policy to the Tribe through quarterly newsletter;
- Meet with Utility Commission on a monthly basis to convey status of operations, Tribal members' interests, and to receive operational and policy direction from the Commission; and,
- Perform formal annual evaluations of its operations.

What Is the Organizational Structure of a Consumer Advocacy Office?

Crow Tribe Consumer Advocacy Office



What Should Be the Roles of the Consumer Advocacy Office Employees?

Utility Commissioners

The Utility Commissioners play a key role in the articulation of the integration of Tribal interests with electricity policy. The Utility Commissioners have the power to carry out the purposes of the CAO and control and manage the Agency's business activities.

Commissioners should possess knowledge and experience in one or more of the following areas:

- Financial management;
- Human resources and development;
- Corporate management;
- Negotiation skills;
- Economic development; and,
- Law.

Specific responsibilities of the Utility Commissioners should include:

- Set short-term and long-term goals of CAO, with approval from Tribal Chairperson and General Council;
- Evaluate and authorize line extension payment requests, and set terms for Tribal member's repayment to CAO;
- Sign CAO checks and oversee operations on a weekly basis (schedule of Utility Commissioners to be determined);
- Meet monthly to develop plans and goals of CAO;
- Submit Plan of Operations to General Council for approval;
- Act as liaison to Tribal General Council (Commission Chair);
- Attend annual cooperative board elections;
- Set out CAO budget and get approval from General Council;
- Initiate IIM garnishment or wage garnishment processes, if necessary;
- Represent the CAO in grievance proceedings involving Tribal customers;
- Hire Office Manager and Managerial Accountant and specify terms of employment (including salaries); and,

- Remove any CAO employee, if necessary, with majority consensus.

Office Manager

The Office Manager plays a critical role in managing and overseeing the day-to-day operations of the CAO, making daily decisions, and working closely with the Utility Commission. These responsibilities require that the Office Manager possess:

- Knowledge of the electric utility industry;
- Managerial experience (at least a few years);
- Financial management skills;
- Ability to work with a wide variety of people.

The Office Manager should be held directly accountable to the Utility Commissioners, and should oversee the day-to-day operations of the Consumer Advocacy Office. His/her responsibilities should include:

- Communicate Plan of Operations to CAO staff (in written and verbal form);
- Hire Customer Service Representative and Management Intern, and specify terms of employment (including salaries), with approval from Utility Commissioners;
- Submit work order requests (for line extensions) to Utility Commission for evaluation;
- Submit monthly operational reports to Utility Commissioners;
- Attend annual cooperative board election meetings; and,
- Make daily operating decisions consistent with the budget.

Managing Accountant

A Managing Accountant works closely with the Office Manager in outlining the financial operational goals of the Consumer Advocacy Office, and submitting monthly financial reports to the Office Manager. He/she manages the day-to-day financial operations of the Agency. The Managing Accountant must possess:

- Significant accounting experience (CPA degree would be ideal);
- Management experience (at least three years);
- Ability to supervise staff

The responsibilities of the Managing Accountant should be to:

- Work with Office Manager to set out monthly financial plans and goals, set within Office budget;
- Manage bank account and Reserve Fund;
- Maintain database of CAO disbursement of monthly Crow Discount checks to Tribal members;
- Maintain individual records of Tribal members' line extension requests, and their account balances;
- Meet monthly with budget director of Tribal Administration to make sure budgetary goals of Tribal Administration and CAO are aligned;
- Work with Tribal Administration tax department and social services department to manage transfer of responsibility of LIEAP and right-of-way tax revenues to CAO;
- Write checks to cooperatives, co-signed by Utility Commissioner.

Customer Service Representative

The Customer Service Representative is the "buffer" between the customer and the Office Manager and/or Managing Accountant. He/she must decide whether an issue can be dealt with directly, or should be referred to either the Office Manager or the Managing Accountant. As such, the Customer Service Representative must be able to immediately identify the nature of a customer's problem, and be able to identify the appropriate next steps/channels of communication and level of response. His/her responsibilities should include:

- Meet with customers, and maintain log of Tribal member visits, concerns, and interests, and relay to Office Manager;
- Accept payments from customers and forward to Accounting Manager; and,
- Fill out and submit work order requests (for line extensions, repairs, hook-ups) to Office Manager.

Management Intern

A Management Intern's function in the Consumer Advocacy is to become exposed to the electricity business, and to provide back-up support for the Office Manager and/or Managing Accountant. The intern should have a demonstrated interest in learning management skills for the electricity business, and be a current college or professional vocation student who plans to work on the Crow Reservation/Territory after he/she completes his/her educational program.

How Does a Consumer Advocacy Office Operate?

The Utility Commission should create, in concert with the Office Manager and Managing Accountant, a Plan of Operations which details how a CAO will operate. It should be communicated to the Executive Committee before a General Council meeting, and should serve as the body of information for which the General Council can refer for consideration. The Utility Commission should begin to write a Plan of Operations immediately, and review it at its annual Tribal Chairperson/Utility Commission meetings.

Plan of Operations

A Plan of Operations should be the document presented to the Executive Committee and the General Council for authorization. It should enumerate the Utility Commission's public purpose, organizational structure, duties, and powers. It should articulate the qualifications necessary to serve on the Commission and the duties and powers of individual Commission members, as well as the staffing requirements for the CAO. It should be reviewed and evaluated quarterly by the Utility Commission. Necessary changes should be made on a quarterly basis or as necessitated by unforeseen events. Any changes should be communicated immediately to the CAO Office Manager.

In practice, the Plan of Operations will serve as a manual for the Office Manager and his/her staff, and as a resource for Utility Commissioners, electric cooperative boards of directors and General Managers, and other interested parties. It should be transparent in content, and be made publicly available.

Plan of Operations: Contents

1. Mission and Responsibilities of Consumer Advocacy Office

This section should outline the goals and responsibilities of a Consumer Advocacy Office.

2. Location of Crow Tribe Consumer Advocacy Office

This section should identify the official (mailing) address of the CAO, and the name and title of the Office Manager.

3. Crow Tribe Utility Commission: Public Purpose and Who Can Serve

This section should delineate the public purpose of the Utility Commission, its responsibilities and the scope of its jurisdiction over the operations of the Consumer Advocacy. It should also specify the qualifications necessary to serve as a Utility Commissioner, the length of the term, and the process by which a Utility Commissioner is appointed.

The Plan should also delineate the terms by which the Utility Commission turns over to the CAO any authority to expedite its daily operations.

4. Staffing

The Staffing section should outline the personnel requirements of a CAO, skills and background necessary for each position, and the duties/responsibilities of each position.

5. Budget and Sources of Revenue/Expenses

This section should describe the CAO annual budget (as allocated by the Tribal Administration), and provide a line item account for sources of revenue and expenses.

6. Payment Policies

The repayment policies of a CAO should be transparent and standardized for all Tribal members.

7. Line Extension Request Policies

This section should detail the process by which customers request line extensions from the CAO, and the process by which the Utility Commission evaluates and grants requests.

8. Grievance Procedures

This section should explain grievance procedures that are available to dissatisfied customers, and what steps they must take to file a grievance.

9. Relationship with Other Tribal Entities

It is important that the relationship between the CAO and other Tribal entities is formalized and well-defined.

10. Relationship with Non-Tribal Entities

It is important that the relationship between the CAO and non-Tribal entities is formalized and well-defined.

How Should the Utility Commission Begin the Process of Establishing a Consumer Advocacy Office?

This table provides a checklist and a suggested time frame for the Utility Commission:

ACTION	COMPLETION DATE
<input type="checkbox"/> Meet with Tribal Chairperson to discuss establishment of CAO	Immediately
<input type="checkbox"/> Write Plan of Operations	Immediately
<input type="checkbox"/> Find office space for CAO	Immediately
<input type="checkbox"/> Hold meeting at unveiling of Tribal multi-purpose building to inform Tribal members about electricity policies and to outline CAO Plan of Operations	Mid-April to Early May
<input type="checkbox"/> Submit Plan of Operations to Executive Committee one week before quarterly General Council meeting and "lobby" members of Executive Committee (ten days before mid-July General Council meeting)	10 days before July General Council Meeting
<input type="checkbox"/> Announce CAO opening, and any open staff positions, through summer issue of the <i>Crow Tribal Newsletter</i>	Mid-July
<input type="checkbox"/> Advertise for CAO staff through other venues (personal contacts, outside newspapers and publications)	Mid-July
<input type="checkbox"/> Hire CAO Office Manager, Managing Accountant, and other staff	Early August
<input type="checkbox"/> Utility Commission holds training seminar for CAO staff	Mid-August
<input type="checkbox"/> Open CAO	September 1998

PART III: ADOPTING POLICIES FOR THE CROW TRIBE CONSUMER ADVOCACY OFFICE

Overview

In order for the Consumer Advocacy Office (CAO) to operate effectively, it must put into place policies and processes that are consistent and account for a long-term vision of electricity policy and provision. Without policies and processes put into place by the CAO, employees may make decisions that are ad-hoc, uncoordinated and/or working at cross-purposes with Tribal goals. Lack of transparent, consistent processes could threaten Tribal financial and economic interests.¹²

The Utility Commission will have to codify policies for the operation of the CAO. These policies include:

- Financial management policies;
- Line extension policies;
- Customer grievance procedure policies;
- Hiring policies; and,
- Communications policies with other Tribal and non-Tribal entities.

Purpose of Adopting Formalized Policies for a Crow Tribe Consumer Advocacy Office

Adopting formalized policies will:

- Better ensure that the Agency remains de-politicized, since changes in Utility Commissioners, Administration members, or Executive Committee members will not have a substantial effect on the organization and operations of the CAO ;
- Make it more difficult for self-interested parties to take advantage of CAO;
- Commit political leadership to supporting activities of the CAO;
- Minimize risk of political “favoritism,” and help guarantee equitable treatment of all Tribal members; and,
- Better inform Tribal members about Tribal electricity policy.

¹² We have seen how lack of a clear process or policy may hurt Tribal financial interests in the management of the right-of-way taxes that the Crow Tribe collects from Montana Power, Big Horn Electric Cooperative, and Yellowstone Valley Electric Cooperative. Although the tax monies from Big Horn are being contested in court, the Tribe has not set a formal policy about how to deal with the money it has already collected from Big Horn, which it may be forced to return if it loses the lawsuit. The Tribe has incorporated these contested monies into the Tribe's general fund, where part of it may be used to pay off current debt and bills.

Financial Management Policies

Purpose of Financial Management Policies

The Tribe is currently in a strong financial position, with the 107th Committee monies and Severance Tax funds flowing into the Tribe. It is therefore critical that a CAO have consistent financial management policies to protect and establish accountability for funds flowing into and out of the Office. The CAO will be responsible for large inflows and outflows of money each day. Without a formalized process for managing these flows, the CAO's operations and financial viability will be susceptible to corrupt motivations.

What are Financial Management Policies?

Financial management policies include:

- Policies to disburse the Western Area Power Administration (WAPA) "Crow Discount" to Tribal members;
- Cash management policies;
- Management over energy assistance funds, including WAPA allocation, right-of-way tax revenues (from Montana Power, Big Horn Electric, and Yellowstone Valley Electric), and low-income energy assistance (LIEAP); and,
- Enforcement mechanisms to ensure that the CAO collects on Tribal members'/businesses' repayments.

Policies to Disburse WAPA "Crow Discount" to Tribal Members

The Utility Commission should decide how to allocate the WAPA funds as a monthly "Crow Discount" to Tribal members. It may choose to: allocate the funds equally among Tribal members, make it proportional to electricity usage, make it *inversely* proportional to electricity usage (as an incentive to conserve electricity), or allocate the "Crow Discount" on the basis of income, with lower-income bracket households receiving a disproportionately higher share.

Cash Management Policies

The general function of cash management policies should be to:

- **Establish accountability.** Records of cash receipts from members, WAPA, and right-of-way tax revenue should be recorded in a way that can be easily audited. Precise records should be recorded in a database system.
- **Cash disbursements should be made as late as possible.** As much as possible, the CAO should pay the cooperatives for line extensions (and other entities to which the CAO owes money) as late as possible, without paying bills

past their due date. This keeps cash in the bank, where the funds may earn interest, for as long as possible.

- **Cash receipts should be deposited immediately.** There is an opportunity cost of lost interest for delays in depositing cash receipts.
- **Discourage Misuse of Cash.** Access to cash should be limited to the Office Manager and Managing Accountant. Checks sent to the cooperatives should require two signatures: that of the Managing Accountant and that of a Utility Commissioner.

As necessary, the Utility Commission should review and modify cash management practices in order to keep pace with developing technologies, methods and circumstances.

Management Of Energy Assistance Funds

The CAO potentially has an enormous financial resource base if it efficiently utilizes its WAPA allocation, revenue from right-of-way taxes, and LIEAP—and if the Tribe acts with a long-term vision for how these resources may best be managed. If managed prudently through formalized processes, the financial resource base could provide tangible financial gains to members. Judicious management policies may also strengthen the CAO’s legitimacy, both on the Crow Reservation/Territory and to outside parties.

The following table provides an overview of how the CAO can use available resources to provide *direct* financial gains for Tribal members.

Resource	Approximate Value (annual)	Current Use	Recommended Use	Financial Gains
WAPA Allocation (cash)	Currently unknown	None, allocation begins in 2000	Sent to individual Tribal members on monthly basis as “Crow Discount”	Members receive monthly discount; Increases CAO’s political legitimacy
Right-of-Way Tax Revenue ¹³	\$157,000	General Fund contribution	CAO Reserve Fund (used for line extension loan, emergency assistance, and “savings” for future Tribal distribution utility operations)	Makes electricity service more affordable to Tribal members
Low-Income Energy Assistance Program (LIEAP)	Currently unknown	Disbursed to individuals through Tribal social service department	Low-income energy assistance (distributed through CAO)	Makes electricity service more affordable to Tribal members

¹³ This figure includes approximately \$45,000 from Big Horn Electric Cooperative. However, Big Horn is contesting this tax in a lawsuit.

Discussion of Potential Resources

WAPA Allocation

The Tribe has a choice of whether to accept the final power allocations of the post-2000 resource pool (the Pick-Sloan Missouri Basin Program) in electric power or in its cash equivalent. If the Tribe receives the allocation in electricity, the physical layout of the transmission grid would require that the power be transmitted through Big Horn Electric's distribution system. If the Tribe chooses to receive the allocation in the form of cash, however, it can choose to distribute the cash however it deems appropriate.

First, we recommend that the Tribe accept its WAPA allocation in cash. Second, we suggest that the CAO use this cash allocation for monthly "Crow Discount" checks to Tribal members instead of into the General Fund, where Tribal members may receive only indirect benefits from the WAPA allocation.

Right-of-Way Tax Revenue

Currently, the Tribe collects the following amounts in right-of-way taxes utilities that cross the Crow Reservation/Territory:

Electricity Provider	Amount of Taxes Tribe Collections Annually (FY98 figures)
Big Horn Country Electric Cooperative	\$44,811 (under protest)
Yellowstone Valley Electric Cooperative	\$15,077
Montana Power Company	\$97,087
TOTAL	\$156,975

Source: Crow Tribal Administration document

According to a Tribal Administration budget authority, 70% of the current tax revenue should be directed toward low-income energy assistance. The Utility Commission may want to consider designating *all* of the right-of-way tax revenues (that are not under protest) to a CAO Reserve Fund (that utilizes a deposit system to guarantee rapidity and efficiency).

The CAO Reserve Fund may be drawn upon to:

- Pay cooperatives for individual Tribal members'/businesses' line extensions (to be repaid according to CAO repayment schedule policy);
- Situations that require emergency assistance (to be decided by Utility Commission); and,
- Savings account for a future Tribal distribution utility company.

Low-Income Energy Assistance Program (LIEAP)

LIEAP, part of Montana's Department of Social and Rehabilitation Services, pays part of winter energy bills for eligible people. Payments are usually made directly to local utility

companies or other entities (in this case, the Tribal Administration's social services department).

The Utility Commission should consider establishing a policy that moves the responsibility of LIEAP disbursement from the social services department to the CAO, so that all forms of electricity assistance are disbursed under "one roof." The CAO should provide LIEAP application forms and works with Tribal members to fill them out.

Enforcement Policies

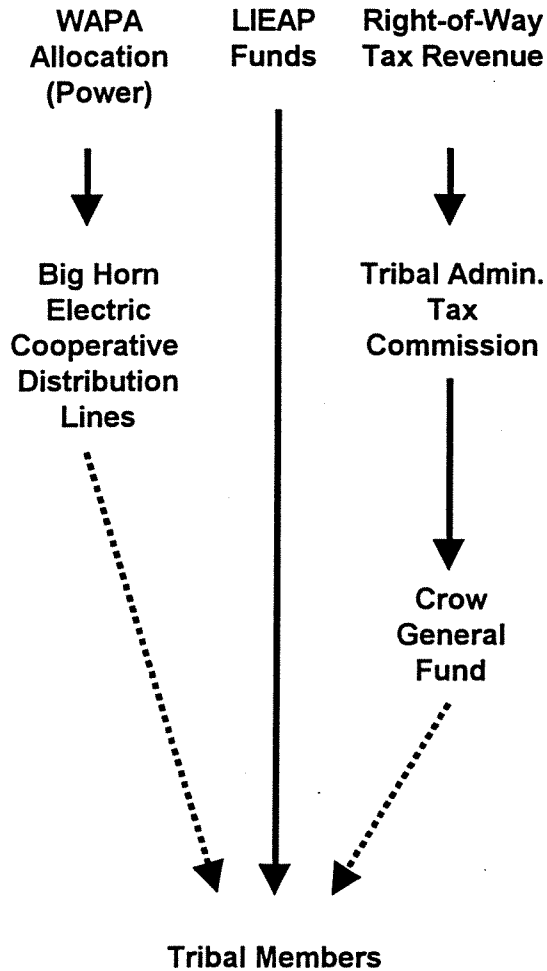
Without financial management policies to manage low-income energy assistance funds, right-of-way tax revenue, and WAPA allocation funds, the CAO will be ineffective in providing tangible benefits to Tribal members. More importantly, imprudent financial policies may put Tribal funds at risk.

It is important that the Utility Commission develops the policies and establishes the overall framework for repayment policies now. While at present repayment policies refer solely to line extension loans and repayments, in the future the a Crow distribution utility will need to put in place enforcement mechanisms to collect Tribal members'/businesses' electricity bills and other payments.

In addition to withholding deposits, the Utility Commission could consider Individual Indian Money garnishment processes for non-payers. This would require working closely with the Bureau of Indian Affairs, which manages these individual accounts. Similarly, it may wish to use punitive enforcement measures that it has considered in the past, such as wage garnishments.

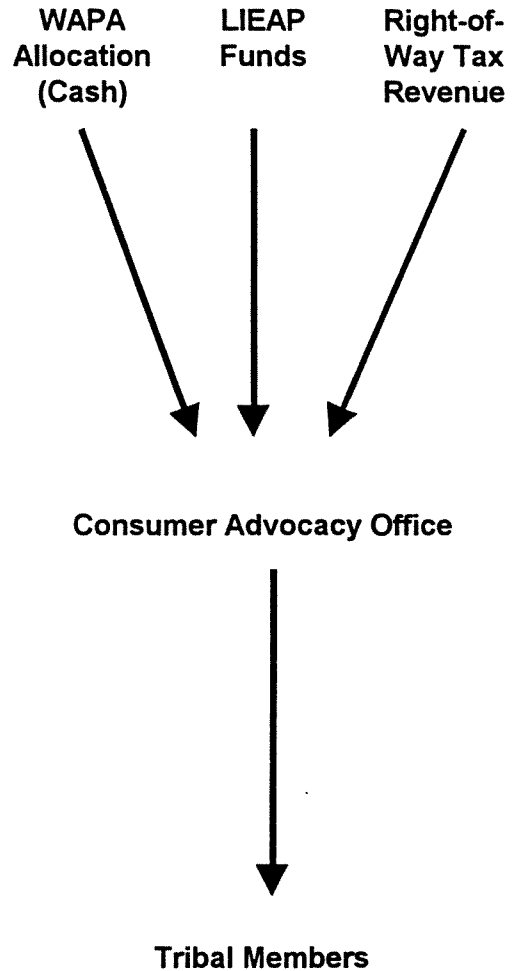
Management of Electricity-Related Tribal Funds

CURRENT PROCESS



Under the current process, Tribal members receive only indirect benefits from Tribal resources (with the exception of LIEAP assistance). This structure does not foster accountability of funds.

RECOMMENDED PROCESS



Under the recommended process, Tribal members receive direct benefits. The WAPA cash allocation is distributed as a monthly "Crow Discount" to members. Right of way taxes are deposited in the CAO Reserve Fund, to be used for line extensions, emergencies and savings.

Line Extension Policies

Purpose of Line Extension Policies

At present, the cooperatives' line extension policies do not recognize the Tribe's unique circumstances. One purpose for CAO line extension policies is to improve, through written policy, the way in which current services are provided to Tribal members.

Formalized service provision policies (such as line extension "loans") that are consistently adhered to also would acknowledge the CAO's emphasis on reliable electricity services. It also ensures that all Tribal members receive equitable and standardized services.

What Is A Line Extension Policy?

A CAO line extension policy should be designed to enable Tribal members or commercial entities who want new line extensions—but who are unable to pay the up-front costs required by the cooperatives—to receive assistance from the CAO. A line extension policy should have two parts: first, the CAO's "loan" (i.e., direct payment to the cooperatives) to the Tribal member/business; second, the repayment to the CAO from the Tribal member/business.

Line Extension Requests

A formalized process for requesting and providing line extensions will ensure that Tribal members are treated equally and fairly. The process described below suggests one approach:

1. Tribal member/business who cannot afford line extension from cooperative goes to CAO and fills out line extension request. Request form should include: information about location, number of feet for extension, reason why extension is necessary;
2. CAO forwards line extension request to the Tribal Utility Commission;
3. Utility Commission holds meeting (either at monthly meeting or at special meeting) to evaluate request;
4. Utility Commission approves/does not approve line extension;
5. If Utility Commission approves line extension, CAO makes payment on behalf of Tribal member/business to the cooperative;
6. Cooperative fulfills work order form; and,
7. Tribal member/business, based on CAO stated repayment policy, repays CAO for line extension.

Because a line extension involves a significant amount of money (up to \$30,000), the Utility Commission should evaluate the request using certain criteria. These criteria, and methods for evaluation, should be stated as policy.

The chart below illustrates criteria we believe are important in evaluating line extension requests. The Utility Commission may wish to consider the following criteria, although it may identify additional or alternative criteria:

Criteria	Questions to Consider
Affordability	<ul style="list-style-type: none"> ▪ How much will the line extension cost? ▪ Can the CAO pay for the line extension out right-of-way tax revenues? ▪ Are additional financing options available to the CAO?
Member's Credit	<ul style="list-style-type: none"> ▪ What is the member's capacity to repay the CAO for the line extension? ▪ How is the member's capacity to repay evaluated (i.e., IIM account, employment status, income earnings)
Tribal Interest	<ul style="list-style-type: none"> ▪ Will the line extension be used to further economic development on the Crow Reservation/Territory?
Additional Criteria	<ul style="list-style-type: none"> ▪ Are there any additional factors/special circumstances that may affect the evaluation?

The Utility Commission should codify processes for prioritizing requests and for repayment schedules. The Utility Commission should consider a policy that draws upon some aspects of Yellowstone Valley Electric Cooperative's Big Horn Electric Cooperative's stated policies, while modifying them to fit the Tribe's unique circumstances (see appendix).

Repayment Policies

The Tribal member/business granted a line extension "loan" should put down a security deposit with the CAO for an amount specified by the Utility Commission, as well as fill out a promissory note (see Appendix F for sample forms).

Grievance Procedure Policies

Purpose of Grievance Procedure Policies

While we acknowledge that the only reason for grievance policies now may be because a Tribal member is dissatisfied with the outcome of his or her line extension request, grievance policies will establish the institutional framework for grievance procedures that can be used in the future. This process will be critical in the future when the Tribe begins to bill and collect payments from its customers.

What is a Grievance Procedure Policy?

A grievance procedure policy is a legal process by which one party can file a complaint to seek redress against another party. Two parties initially will be affected by CAO operations: the Tribal members and the CAO/Utility Commission. The Utility Commission should consider formalized policies to address concerns brought to the Commission's attention by one or both of these parties.

Grievance Policy

A formalized grievance process protects the CAO from self-interested parties who may apply inappropriate discretion in making decisions about a member's service. For example, if a member feels that a line extension decision was made arbitrarily (i.e., not aligned with CAO policy) by a Utility Commissioner, he/she could challenge the decision through a grievance process. The threat of a grievance process may serve as a disincentive for self-interested parties to act arbitrarily.

A grievance process entails the establishment of an authoritative, legitimate **Utility Appeal Board** (authorized by the General Council). A Crow Utility Appeal Board—a body comprised of four people that listens to and decides disputes—should be modeled after two formalized processes in the Crow Tribe:

- **Gaming Commission's Administrative Hearing Process.** Tribal members that cannot resolve a dispute with the management of the entity can seek redress by filing a complaint with the Gaming Commission. Within twenty days, the Commission must hold a hearing with the option of for complainant and/or his or her representative to be present. If the complainant is dissatisfied with the outcome, he or she can take the case to Tribal Court.
- **Crow Tax Appeal Board.** The Crow Tax Appeal Board employs a process similar to the Gaming Commission's Administrative Hearing Process. An individual takes a complaint to the Appeal Board, the Board denies or accepts the appeal, and, if dissatisfied, the individual can appeal the case in Tribal Court.

We recommend that the following processes govern the Utility Appeal Board:

- It should be comprised of four people who are knowledgeable about the operations and policies of the CAO, and have no more than one Utility Commissioners on the Board in order to avoid potential conflicts of interest (the other three positions should be filled by Crow government officials);
- The Tribal Chairperson should appoint all Board members. These members should be approved by the General Council; and,
- The Utility Board should meet at consistent, specified times to listen to Tribal member/CAO or Tribal member/Utility Commission disputes (i.e., the third Friday afternoon of every month).

If a member is dissatisfied with the Crow Utility Appeal Board ruling, he/she may appeal the decision in Tribal Court. The Tribe should consider modeling this appeal process after the Tax Appeal Board procedures.

Hiring Policies

Purpose of Hiring Policies

A CAO hiring policy will standardize the process by which hiring and removal decisions are made. Formal policies will make hiring decisions less susceptible to political favoritism or nepotism. Formalized hiring policies will be particularly important for hiring expertise in the future to operate a distribution utility.

What is a Hiring Policy?

Policies that the Utility Commission should consider codifying include:

- Tribal hiring preferences;
- Contracting outside management;
- Training policies; and,
- Removal process.

Tribal Hiring Preferences

The Utility Commission may believe that hiring solely Tribal members to fill the CAO positions (Office Manager, Managing Accountant, Customer Service Representative, and Management Intern) is an appropriate hiring policy.

Contract Outside Management

The Tribe has shown the willingness to contract outside management to fill either highly technical roles or jobs in which there is a dearth of Crow talent/experience, as long as the Tribe has ultimate decision-making power. For example, the Crow Tribe Tax Commissioner is a non-Indian.

Hiring Policy	Advantages	Disadvantages
Tribal Hiring Preferences	<ul style="list-style-type: none"> ▪ Job creation on Crow Reservation/Territory ▪ Money stays within Tribe 	<ul style="list-style-type: none"> ▪ Potentially low level of expertise initially
Contract Outside Management	<ul style="list-style-type: none"> ▪ Access to potentially high level of expertise 	<ul style="list-style-type: none"> ▪ Money flows out of Tribe

We recommend that the Utility Commission initially seek people to fill the highly technical positions (Office Manager and Managing Accountant) from within the Tribe. If they are unable to fill these positions with Tribal members, the Utility Commission should consider seeking expertise outside of the Tribe (through ads in local newspapers, Commissioners' outside contacts, and other advertising mechanisms).

Training Policies

As a part of capacity-building, it is critical that the Utility Commission helps the CAO implement a formal training program for new employees. Training will ensure that CAO employees possess the necessary skills to carry out their function within the Agency, and learn new skills as the jobs require.

The Management Intern Program (in which a Crow member currently enrolled in college or a vocational program works with the Office Manager and the Managing Accountant) should be an integral part of a training program, since we believe that the Tribe would like to see a CAO that is wholly Tribally-run. In order to build the capacity for Tribally-operated service, it must train younger members of the community to take over positions that may initially be held by non-Tribal members.

Removal Process

The Tribal Chairperson, with consensus from the Utility Commission, may remove the Office Manager or Managing Accountant if either engages in gross misconduct (to be defined by the Utility Commission) or misuses CAO funds.

The Office Manager, with consensus from the Utility Commission, may remove any CAO employee, except for the Managing Accountant, if any engages in gross misconduct or misuses CAO funds.

Communications Policies

Purpose of Communications Policies

During conversations with Tribal leaders and members, we heard many different stories about problems that individual Tribal customers have experienced with the cooperatives. In particular, we heard about one Tribal member who had been repeatedly denied a line extension because he was required to pay the full costs up-front. Because he was unable to do so (and therefore had no electricity), he was forced to move into a trailer home with a relative and her family.

Tribal members base their opinions of electricity service on such stories. But like any electricity customer who knows little about electricity provision other than the sum total at the bottom of the statement, some Tribal members may not fully appreciate the underlying policies of the cooperatives.

Although stories like the one described above express the Tribe's solidarity on important issues, such stories, when repeated often, can create distortions. They look to Tribal Government to rectify the underlying problems. Strong communication policies will increase Tribal government accountability and support for the CAO by educating Tribal members on electricity industry issues.

What is a Communications Policy?

The Utility Commissioners and the CAO employees should use a communications policy to articulate and convey Tribal electricity policy and other relevant issues to Tribal members and relevant non-Tribal parties. Such policies should include:

- Public forums;
- Newsletters.

Public Forums

The Tribal Chairperson, the staff of the CAO, and the Utility Commissioners should hold a public forum to launch the new Crow Tribe CAO and its policies. These leaders should use the unveiling of the new multipurpose building in Crow Agency to announce these policies. As stated previously, the Utility Commission also should hold a public meeting in June. As policies change over time, one or more Utility Commissioners and/or CAO staff should hold district-based public forums.

Newsletters

The Utility Commission should publish and distribute to all Tribal members a quarterly newsletter that addresses current electricity matters, on-going relations with the cooperatives, and new CAO initiatives. It should also publish any CAO staff vacancies and advertise for the Management Intern program, when not filled.

APPENDIX A

A RESOLUTION RENAMING THE CROW POWER SERVICE AUTHORITY AND AUTHORIZING THE CROW PUBLIC UTILITY SERVICES AUTHORITY TO IMPROVE AND EXPAND UTILITY GOODS AND SERVICES THROUGH AND/OR THROUGHOUT VARIOUS DISTRICTS WITHIN THE CROW RESERVATION/TERRITORY AND OTHER AREAS AVAILABLE AND FOR OTHER PURPOSES.

WHEREAS, the Crow Tribe of Indians is a federally recognized Indian Tribe encompassing the Crow Reservation/Territory.

WHEREAS, there exists fiducial responsibilities of the Federal Government to and for the Crow,

WHEREAS, it is the intent of the Crow Tribal Council to protect the health, welfare, safety, and well being of Crow Tribal members, residents of the Crow Reservation, and those visiting and/or passing through Crow Reservation/Territory; and

WHEREAS, the Crow Power Service Authority was previously created and authorized by the Crow Tribal Council, and

WHEREAS, is the intent the Crow Tribal Council, through the Crow Tribe Public Utility Commission, to assure an adequate, safe, reliable, and secure flow of electricity from source to consumer to serve the current and future needs of the members of the Crow Tribe, residents of the Crow reservation, economic entities establishing residency (permanently or for an extended period of time), and those visiting and/or passing through Crow Reservation/Territory, and

WHEREAS, it is necessary to meet the increasing popularity and population needs and demands upon the Crow Reservation and to provide more efficient and effective systems and programs to serve tribal members, residents, economic entities establishing residency (temporarily or for an extended period of time), and those resorting amongst and/or traveling through the unique and majestic resources of the Crow Reservation/Territory.

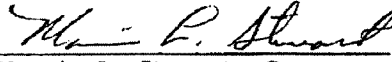
NOW THEREFORE BE IT RESOLVED, the Crow Power Service Authority be renamed the Crow Public Utility Services Authority.

BE IT FURTHER RESOLVED, the Crow Public Utility Service Authority is hereby authorized by the Crow Tribal Council to improve and expand public utilities goods and services and for purposes of (but not limited to) planning for, providing, and/or furnishing utility goods and services to all areas within the Crow Nation where such goods and/or services are determined to be feasible and economic and/or essential, and/or integral,

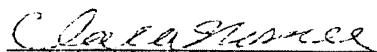
BE IT FURTHER RESOLVED, such purposes shall promote the use of utility services where available in order to improve the health and welfare of the residents of the Crow Nation at lowest possible cost consistent with prudent fiscal responsibility.


BE IT FURTHER RESOLVED, the Crow Public Utility Services Authority, alone or in conjunction with others as licensed and authorized, initiate, acquire, own, construct, operate, maintain, promote, improve and expand utility systems and programs furnishing services within, through and/or throughout the Crow Reservation/Territory.

PASSED, ADOPTED AND APPROVED, by the Crow Tribal Council this 13th day of July, 1996, by voice votes for, and -0- votes against passage and adoption.


Marvin L. Stewart, Secretary
CROW TRIBAL COUNCIL

ATTEST:


Clara Nomee, Madam Chairman
CROW TRIBAL COUNCIL

Noted: 
Duane Bird, Superintendent

Author: Steve Stevens

APPENDIX B

**CHARTER OF THE
AHA MACAV POWER SERVICES**

ARTICLE I

Name

The Fort Mojave Indian Tribe, acting through the Council of the Fort Mojave Tribe and the Fort Mojave Constitution and Bylaws, hereby authorizes this Charter under Article IV of the Constitution of the Fort Mojave Tribe as amended. The name of this tribally chartered authority is the Aha Macav Power Services (AMPS). The Fort Mojave Tribe confers on AMPS all of the Tribe's rights, privileges and immunities as if it engaged in the activities undertaken by AMPS, including, but not limited to, the Tribe's rights of eminent domain, taxation and sovereign immunity.

ARTICLE II

Duration

The period of existence of AMPS shall be perpetual, except that AMPS may have this charter amended or restated or AMPS may be dissolved in accordance with the Fort Mojave Tribal Constitution, as amended.

ARTICLE III

Purposes and Powers

A. General. The purposes for which AMPS is organized are to provide electric power to all users of such power within the Fort Mojave Indian Reservation and any other utility projects which would benefit the Tribe and that are approved by the Fort Mojave Tribal Council. The Fort Mojave Tribal Council hereby finds and declares that the creation of AMPS is necessary and desirable in order to promote the development of the Tribe's resources, to promote the prudent economic vitality of the Reservation and surrounding communities, to protect the health and welfare of tribal members and to provide employment and training opportunities for tribal members.

B. Enumerated Purposes. The purposes for which AMPS is organized are as follows:

1. To develop, operate and manage the provision of electric powers to all users of electricity within and/or on the Fort Mojave Indian Reservation or owned by AMPS unless the Fort Mojave Tribal Council specifically excludes a specific electricity user from AMPS control.
2. To develop, manage and control all other utilities operated within the Fort Mojave Indian Reservation when so requested by resolution or ordinance of the Fort Mojave Tribal Council.
3. To provide training and employment opportunities for members of the Tribe in the construction, management and operation of providing electric power to the users of electricity within the Fort Mojave Indian Reservation.

Appendix A (continued)

4. To facilitate economic development on the Reservation and in surrounding communities.

5. To enhance and protect the health and welfare of tribal members and the electric utility customers of AMPS.

6. To manage all electric utility enterprises owned or operated by AMPS in a prudent, efficient and economic manner in accordance with Tribal law.

C. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes hereinabove set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law.

D. Enumerated Powers. AMPS shall have the following enumerated powers:

1. To sue and be sued in courts of competent jurisdiction.
2. To enter into contracts and agreements affecting the affairs of AMPS's service area and to accept all funds resulting therefrom.
3. To contract with private persons, associations, or corporations for the provision of any service within or without its boundaries and to accept all funds and obligations resulting therefrom.
4. To borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures and issue general obligation or revenue bonds, or any combinations thereof.
5. To refund any bonded or other indebtedness or special obligations of AMPS without an election.
6. To acquire, dispose of and encumber real or personal property, including, without limitation, rights and interests in property, including leases and easements necessary to accomplish the purposes of AMPS.
7. To acquire, construct, equip, operate and maintain facilities to accomplish the purposes of AMPS.
8. To manage, control and supervise all the business affairs and properties of AMPS.
9. To adopt, by resolution, rules and regulations consistent with federal, state and tribal law which are necessary, appropriate or incidental to any authorized services provided by AMPS.
10. To delegate the management of the day-to-day operation of AMPS to others, and in exercising its authority hereunder, may rely on its officers and other experts. AMPS shall establish policies and retain responsibility for the ultimate direction and affairs of AMPS but may give usual and essential latitude to AMPS Manager and his delegated employees.

Appendix A (continued)

11. To fix and collect taxes, rates, fees, tolls and other service charges pertaining to the services of AMPS, including, without limitation, minimum charges and charges for availability of the facilities or services relating thereto.

12. To construct, establish, and maintain works and facilities: (a) in, across, or along any easement dedicated to a public use, or any public street, road or highway; (b) in, upon, or over any vacant public lands; and (c) in, across, or along any stream or water course.

13. To plan for the development within the service area served by AMPS including, but not limited to, review of all comprehensive plans of tribal government located within AMPS's service area, and review of all capital construction of other federally funded projects proposed by any governmental entity within the boundaries of AMPS's service area for which review is required by federal, state or tribal law.

14. To require all commercial and residential units within the Reservation to connect to the electric service provided that said unit is within AMPS's designated service area.

15. To have and exercise all powers necessary, convenient or incidental to the express powers identified above.

E. Exercise of AMPS's Powers. AMPS shall exercise its authorized powers in good faith and in a manner which it believes to be in the best interests of the Fort Mojave Indian Tribe and the interests of those within AMPS's service area.

F. Interpretation. The purpose specified herein shall be construed as both purposes and powers.

ARTICLE IV

Ownership

To enable AMPS to carry out its purposes, the Fort Mojave Tribal Council may, from time to time at the request of the Board of Directors of AMPS, vest AMPS with the power to exercise all of the Fort Mojave Tribe's powers with respect to designated tribal properties, both, real and personal, in accordance with the purposes and powers under Article III of this Charter. Such properties transferred to AMPS shall not be revocable by the Fort Mojave Tribal Council during the period AMPS is authorized to exercise control and possession of the transferred properties.

ARTICLE VI

Assets

Subject to such contractual rights of others, including the Fort Mojave Tribe, AMPS shall have as its assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of the following:

A. Tribal Property. Tribal properties of a real or personal nature subject to any conditions set out in the Tribal Council's resolution authorizing the transfer of such properties to AMPS.

Appendix A (continued)

B. Funds. All funds which AMPS may acquire by grant, gift, loan or other means.

C. : Other Real and Personal Property. All interests in real and personal property whether of a tangible or intangible nature, AMPS may acquire by grant, gift, loan, purchase, lease or other means.

D. Other assets. All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

ARTICLE VII

Control of Assets

All cash assets shall be deposited, invested, re-invested or paid out pursuant to the contractual obligations of AMPS and in accordance with the standards of prudent business practices so as to ensure the continued existence, integrity and viability of AMPS. Such decisions are reserved exclusively to the Board of Directors of AMPS.

ARTICLE VIII

Asset Distribution/Dissolution

AMPS shall determine in its sole discretion as to when a payment is to be issued and the amount of any such payment. Upon dissolution of AMPS, the remaining assets, after payment of all debts and liabilities, shall be returned to the Tribe. In no event shall the Fort Mojave Tribe be liable for any debts or liabilities of AMPS.

ARTICLE IX

Board of Directors

The Board of Directors of AMPS shall consist of seven (7) members and is hereby vested with all powers necessary to carry out the purposes of AMPS. The initial members shall be selected by the Fort Mojave Tribal Council. There are no prohibitions against the Fort Mojave Tribal Council serving as the Board of Directors. Members of the Board need not be enrolled members of the Fort Mojave Tribe. However, no more than three (3) Board members of AMPS may be non-members of the Fort Mojave Indian Tribe. The Board members' term of office and their qualifications shall be specified in the Bylaws.

ARTICLE X

Registered Office and Registered Agent

The address of AMPS's registered office is Office of the Chairperson of AMPS, Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, California 92363, and the registered agent at this address is the Chairperson of AMPS.

Appendix A (continued)

ARTICLE XI

Advisory Board

The Tribal Council of the Fort Mojave Tribe shall act as the Advisory Board to the Board of Directors of AMPS for the purpose of providing information and advice to the Board regarding political, cultural and social issues that concern the Tribe and its members.

ARTICLE XII

Trustee

AMPS is the trustee of all assets owned or controlled by AMPS on behalf of the Fort Mojave Indian Tribe.

ARTICLE XIII

Litigation

The Fort Mojave Tribe reserves the right to challenge in whatever forum all matters involving AMPS which, in the opinion of the Fort Mojave Tribe, affect its rights, privileges and immunities as a sovereign government. Before initiating or entering an appearance in any such litigation or administrative proceeding, AMPS shall give at least thirty (30) days, or such time as the court rules allow, prior written notice to the Chairperson of the Fort Mojave Tribe.

ARTICLE XIV

Waiver of Immunity

The acts or omissions of AMPS, whether pursuant to the powers enumerated in Article III or otherwise, shall not create any liability, obligation or indebtedness either of the Fort Mojave Indian Tribe or payable out of assets, revenues or income of the Tribe, and only the assets, revenues and income held by or in the name of AMPS shall be subject to, to the extent otherwise permitted herein and by law, to the debts, obligations or other liabilities created or incurred by AMPS. Any waiver of immunity of or by AMPS shall not be construed to waive any immunity of the Fort Mojave Indian Tribe or any other covered persons and entities or extend any liability to any assets, revenues or income of the Fort Mojave Indian Tribe.

RESOLUTION

BE IT RESOLVED, that the foregoing Charter of the Aha Macav Power Service, be and the same is hereby adopted, as amended. Upon adoption of the amended Bylaws of the Aha Macav Power Service by the Board of Directors, two signed duplicate originals shall be delivered to the office of the Tribal Secretary of the Fort Mojave Tribal Council.

BE IT FURTHER RESOLVED, that the Chairperson and the Secretary of the Fort Mojave Tribe are authorized and instructed to sign this resolution for and on behalf of the Fort Mojave Tribal Council.

Appendix A (continued)

Certification

We, the undersigned, Chairperson and Secretary of the Fort Mojave Tribal Council, hereby certify that the Fort Mojave Tribal Council met on this day and by a vote of 6 in favor and 0 opposed in a duly called and convened meeting of the Council, adopted the foregoing resolution.

Dated this 13th day of July, 1991.

(signature)

Chairperson
Fort Mojave Tribal Council

ATTEST:

(signature)

Secretary
Fort Mojave Tribal Council

BYLAWS OF
AHA MACAV POWER SERVICES

ARTICLE ONE

AMPS Office

The principal office of Aha Macav Power Services (AMPS) shall be on the Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363. AMPS may have such other offices, either within or without the Fort Mojave Indian Reservation as the business of AMPS may require from time to time.

ARTICLE TWO

Directors

Section 1. General Powers - The business and activities of AMPS shall be managed by the Board of Directors. The Board of Directors is hereby vested with all powers necessary to carry out the purposes of AMPS.

Section 2. Duties and Powers - The Board of Directors shall have control and management of the business and activities of AMPS. The Directors shall in all cases act as a Board. The Directors may adopt such rules and regulations for the conduct of their meetings and the management of AMPS as they may deem proper, not inconsistent with the Fort Mojave Constitution and Bylaws, as amended, and other tribal laws, these Bylaws or the Charter of AMPS.

Section 3. Election, Number and Tenure - The Board of Directors as established by the Charter of the AMPS shall consist of seven (7) members. The initial membership of the Board shall be selected by the Fort Mojave Tribal Council, thereafter the Board shall elect its members by a majority vote of the full Board. Persons who are not members of the Fort Mojave Indian Tribe may serve on the Board. However, at no time may more than three (3) non-members sit on the Board. The number of nominations for the initial Board shall not exceed two (2) candidates for each of the seven (7) Board positions. When the Board is first established one member's term shall be designated to expire in one year, three members' terms to expire in two years, and three members' terms to expire in three years. Thereafter, the term of office shall be three (3) years for each director.

Section 4. Qualifications - To be eligible for election to the Board of Directors an individual must be knowledgeable and have experience in one or more of the following fields:

- (1) financial management;
- (2) human and natural resources protection and development;
- (3) corporate management;

Appendix A (continued)

- (4) economic development;
- (5) law;
- (6) housing and utilities; and/or
- (7) health.

Section 5. Compensation - By Resolution of the Board of Directors, directors shall be paid their actual and reasonable expenses, if any, of attendance at each meeting of the Board of Directors, and such compensation as may be determined by the Board of Directors; provided that nothing herein contained shall be construed to preclude any director from serving AMPS in any other capacity and receiving compensation therefor.

Section 6. Quorum - Four (4) directors shall constitute a quorum for the transaction of business in any regular or special meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. If less than a majority of the directors are present at any meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Regular Meetings - One regular meeting shall be held within thirty (30) days after the Board is duly elected, and thereafter the Board shall meet not less than semi-annually.

Section 8. Special Meetings - Special meetings of the Board may be called at the request of the Chairman of the Board of Directors, or by any two (2) directors.

Section 9. Notice of Special Meetings - Notice of any special meeting shall be given at least three (3) days prior thereto by written notice, delivered personally or mailed to each director at his address for such notice. Any director may waive this right to notice of any meeting. Neither the business to be transacted, nor the purpose of, any regular or special meeting of the Board of Directors need to be specified in the notice, or waiver of notice, of such a meeting.

Section 10. Appointments - The Board of Directors shall appoint all AMPS officers annually at a regular meeting of the Board. If an officer is not appointed by the Board at such a meeting, such appointment shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor has been duly appointed and qualified, or until removed as hereinafter provided.

Section 11. Vacancies and Removals - Any vacancy occurring in the Board of Directors may be filled by the majority vote of the remaining directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. At a meeting of the Board of Directors called expressly for that purpose, one or more directors may be removed for cause by a majority vote of the Board. Such removal shall be without prejudice to the contract rights, if any, of the person removed.

Appendix A (continued)

Section 12. Resignation - Any director may resign his office at any time, such resignation to be made in writing and to take effect immediately without the need for Board acceptance.

Section 13. Vacancies - All vacancies in any office on the Board of Directors shall be filled promptly by the Board of Directors, either at regular meetings or at a meeting specially called for that purpose.

ARTICLE THREE

AMPS Board Officers

Section 1. Number - At its initial meeting, the Board of Directors shall appoint a Chairperson, Vice-Chairperson, Secretary and Treasurer. Other officers and agents deemed necessary may be appointed by the Board of Directors.

Section 2. Duties of Officers - The duties and powers of the officers of AMPS are those specified in these Bylaws and shall include any additional duties and powers as may be set by resolution of the Board of Directors.

Chairperson

A. The Chairperson shall be the principal executive officer of AMPS and shall supervise and control all of the business activities of AMPS.

B. The Chairperson shall preside at all meetings of the Board and may also cast his vote on all questions.

C. The Chairperson shall present an annual report of the conditions of the business of AMPS to the Board of Directors and the Fort Mojave Tribal Council.

D. The Chairperson shall sign and execute all contracts, in the name of AMPS, all deeds, mortgages, notes, drafts, or other orders for the payment of money, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution of any document shall be expressly delegated by the Board of Directors to some other officer or agent of AMPS, or shall be required by law to be otherwise signed or executed.

E. The Chairperson shall cause all books, reports, statements, and certificates to be properly kept and filed as required by law.

F. The Chairperson shall enforce these Bylaws, and perform all duties incident to his office and which are required by law, and, generally, perform all duties as may be prescribed by the Board of Directors from time to time.

Vice Chairperson

In the absence of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson, and when so acting shall have all the powers and be subject to all the

Appendix A (continued)

responsibilities of the office of Chairperson. The Vice Chairperson shall also perform such other duties and have such other powers as from time to time may be assigned to him by the Board of Directors or Chairperson.

Secretary

A. The Secretary shall insure that minutes of the meetings of the Board of Directors are kept in an appropriate book and set aside and used exclusively for AMPS purposes.

B. The Secretary shall be responsible for giving notice of special meetings of the Board of Directors.

C. The Secretary shall be the custodian of the records and seal of AMPS and shall affix the seal on AMPS papers when required.

D. The Secretary shall attest the execution of instruments on behalf of AMPS by a proper officer thereof, and shall affix the AMPS seal to such instruments on behalf of AMPS.

E. The Secretary shall attend to all correspondence and present to the Board of Directors at its meetings all official communications received by the Secretary.

F. The Secretary shall in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Chairperson or by the Board of Directors.

Treasurer

A. The Treasurer shall supervise the management of all funds and securities of AMPS, and shall insure such funds and securities be deposited in the name of AMPS in such banks, trust companies or other depositories as shall be designated by the Board of Directors.

B. The Treasurer shall insure that AMPS keep at its principal office accurate books of account of all its business and transactions. The Treasurer shall also require that AMPS employees shall at all reasonable hours exhibit books and accounts to any director upon application at the office of AMPS during business hours.

C. A report shall be rendered by the Treasurer of the conditions of the finances of AMPS at such times as shall be required by the Board of Directors.

D. The Treasurer shall perform all duties as from time to time may be assigned by the Board of Directors.

E. If required by the Board of Directors, the Treasurer shall give such bond as the Board shall determine appropriate for the faithful performance of the duties of Treasurer.

Appendix A (continued)

ARTICLE FOUR

Contracts, Loans, Checks and Deposits

Section 1. Contracts - The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of AMPS, and such authority may be general or confined to specific instances.

Section 2. Loans - No loans greater than \$25,000.00 shall be contracted on behalf of AMPS and evidence of indebtedness shall not be issued in AMPS's name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, etc. - All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of AMPS, shall be signed by such officer or officers, agent or agents, of AMPS and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits - All funds of AMPS not otherwise employed shall be deposited from time to time to the credit of AMPS in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE FIVE

Fiscal Year

AMPS shall have a fiscal year, which shall be determined by the Board of Directors during the first twelve months of operation of AMPS. Such fiscal year shall end on the last day of any one calendar month, and shall begin the first day of the next succeeding calendar month.

ARTICLE SIX

Indemnification

AMPS shall indemnify any director or officer or former director or officer of AMPS, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such a director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to AMPS.

ARTICLE SEVEN

Amendments

These Bylaws may be altered, amended, repealed or new Bylaws adopted by a majority of the entire Board of Directors at a regular or special meeting of the Board.

Appendix A (continued)

ARTICLE EIGHT

Certification

I certify that the above foregoing Bylaws of the Aha Macav Power Services consisting of six (6) pages, this page included, are the Bylaws of AMPS, adopted by the Board of Directors thereof at a meeting on the 13th day of July, 1991.

(signature)

Chairperson

Aha Macav Power Services

APPENDIX C

**TOHONO O'ODHAM UTILITY AUTHORITY
SECOND RESTATED PLAN OF OPERATION**

(Retyped from the original document for easier readability)

TOHONO O'ODHAM UTILITY AUTHORITY
SECOND RESTATED PLAN OF OPERATION

Section 1: Name, Location and Place of Business

- A. **Name.** The name of the Authority shall be Tohono O'odham Utility Authority, formerly known as Papago Tribal Utility Authority.
- B. **Location.** The principal place of business and the office of the Authority shall be at Sells, Arizona, and the post office address of the principal office is P.O. Box 816, Sells, Arizona 85634.
- C. **Place of business.** The Authority may also have offices at such other places as the Management Board may from time to time authorize.

Section 2: Seal

The seal of the Authority is described as follows:

Seal shall be in the form of a circle and shall bear the full name, "TOHONO O'ODHAM UTILITY AUTHORITY" and the word "ARIZONA" and the figure "1970."

Section 3: Duration

The duration of the Authority is perpetual.

Section 4: Purposes

- A. **General.** The purposes for which the Authority is organized are as follows:
 - 1. To plan for, provide and furnish utility services to all areas within the Tohono O'odham Nation, where such services are determined to be feasible and economic.
 - 2. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Tohono O'odham Nation.
 - 3. To acquire, construct, operate, maintain, promote and expand utility systems furnishing electric, gas, water, sewer and telephone services within the Tohono O'odham Nation.
 - 4. To initiate, acquire, operate, maintain, provide and provide, alone or in conjunction with others, cellular radio services and facilities both within and beyond the boundaries of the Tohono O'odham Nation.

Appendix B (continued)

5. To provide utility service to the Tohono O'odham at the lowest possible cost consistent with prudent fiscal responsibility
 6. To use the revenues of the Authority for the following purposes, which are listed below in the order of the priority of use:
 - a. To pay the costs of operations and maintenance.
 - b. To amortize the loans of the Authority.
 - c. To fund an adequate Renewal and Replacement fund.
 - d. To educate the Tohono O'odham in the proper, efficient and economical use of all utilities.
 - e. To accelerate the retirement of long term debt.
 - f. To provide a fair return to the Nation on its investment.
- B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Plan of Operation for the Authority or the Constitution of the Tohono O'odham Nation.

Section 5: Easement Franchises and Grants of Use

- A. Easement Franchises. The authority shall have, and is hereby granted, subject to any prior valid existing right or adverse claim, the franchise, right, permit, easement and privilege of placing, erecting, constructing, repairing, removing, replacing, maintaining, using and operating public utility systems, lines and facilities for the furnishing of electric, gas, water, sewer, telephone and cellular radio services, and necessary or useful adjuncts thereto, whether laid thereon or therein, together with the right of ingress and egress when necessary for such purposes, on, over, under and across unallotted lands of the Tohono O'odham Nation which are useful or convenient for the construction, maintenance, operation and repair of such utility systems, lines or facilities, provided, that in placing, erecting or constructing any new lines or facilities the Authority shall comply (a) with all applicable federal laws and the laws of the Tohono O'odham Nation and (b) with the provisions of any applicable land use plan adopted by a District Council which was duly approved by the Tohono O'odham Council and, provided further, that before placing, erecting or constructing any new transmission or distribution lines or facilities (excluding service lines as defined in 25 C.F.R. § 169.22) on, over, under or across unallotted lands of the Nation, the Authority shall first obtain (a) the prior review and approval of the Tohono O'odham Legislative council and (b) the prior written consent of the District Council of the District in which such lands are located, which consent shall not be unreasonably withheld. The Authority shall furnish to be Superintendent of the Sells Indian Agency copies of plats or maps delineating the utility systems, lines and facilities located on, over, under and across such lands in sufficient detail and number to permit recording in the Southwest Title Plant of the Bureau of Indian Affairs, Albuquerque, New Mexico.

- B. Grant of Easement Use.** The Authority shall have, and is hereby granted, subject to all applicable federal laws and the laws of the Tohono O'odham Nation, as the agent or permittee of the Tohono O'odham Nation, the right to use any franchise, right, permit, privilege, easement or right of way standing in the name of or granted to the Nation in connection with the construction, maintenance, operation or repair of public utility systems, lines or facilities furnishing electric, gas, water, sewer, telephone or cellular radio services.

Section 6: Control of Operations

It is intended that control and operation of the Authority shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a Management Board comparable to a Board of Directors of such a corporation.

Section 7: Management Board; Purpose; Duties and Powers

- A. Direction of purpose and exercise of powers by Management Board.** Subject to applicable laws and regulations of the Tohono O'odham Nation or the United States, the Management Board shall direct the purposes and exercise the following powers and duties:
1. The Management Board of the Authority is delegated authority and responsibility for the management and operation of the Authority.
 2. The Management Board is authorized to direct the operations to accomplish the purposes set forth in Section 4 above and to exercise the powers set forth in subsection B below without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.
 3. The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of all utilities and facilities; the planning, construction and operating of all new facilities; and for the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.
 4. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered public service corporation, and shall be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; the selection of management personnel; and for continuous supervision of performance.
 5. The Management Board shall exercise its authorized powers in the best interests of the Tohono O'odham Nation, with the limits of responsible business judgment and with the stipulation that it shall not incur contract obligations in excess of the ability of the Authority to make payment on due date.

Appendix B (continued)

6. It shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.
 7. Copies of the minutes of each meeting of the Board shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior.
 8. Members shall be reimbursed for expenses incurred in attending meetings and performing directorship duties and the Board may, at its discretion, set a reasonable fee to be paid to its members on a per-meeting-attended or other basis. Any such fee may be changed from time to time as conditions dictate.
 9. The Chairman of the Board shall make a formal report to the Chairman of the Tohono O'odham Nation and to the Tohono O'odham Council not less often than annually and in such report shall include a summary of the budget which the Management Board has approved for the coming fiscal year.
 10. The Management Board shall establish purchasing policies and procedures, giving usual and essential latitude to the General Manager and his delegated employees, but establishing limitations on amounts which may be expended without specific approval of the Board.
 11. No contract or other transaction between the Authority and any one of the members of the Management Board, or between the Authority and any corporation, partnership, firm or other legal entity in which one or more of the Management Board has an interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of the Director or Directors in such corporation, firm or other legal entity is fully disclosed to the board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who are not so interested.
 12. The Management Board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Tohono O'odham Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.
 13. The Management Board shall submit any contract or act wherein a public officer or employee of the Tohono O'odham Nation may have an interest, directly or indirectly, in the matter or transaction to any regularly called or noticed meeting of the Tohono O'odham Council for approval. Any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.
- B. Enumerated powers. Subject to approval by the Tohono O'odham Council where required and to all applicable laws and regulations of the Tohono O'odham Nation and the United

Appendix B (continued)

States, and solely in furtherance of the limited purposes set forth in Section 4 above, the Management Board shall have the following powers:

1. **Facilities.** The Management Board shall exercise full authority and shall be responsible for the custody, management and operation of all utility property and facilities, including easements and rights-of-way granted therefor, owned and operated by the Tohono O'odham Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility facilities, including the negotiation and execution of engineering and construction contracts; and for taking of any and all usual, necessary and convenient actions incident thereto.
2. **Capacity to act.** To have the capacity to act and direct the officers of the Authority to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in Section 4 above, and such as are not repugnant to laws and regulations applicable to the Authority.
3. **To appoint officers and agents.** To elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board may be needed from time to time, and to define their duties and fix their compensation. The Management Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the Authority.
4. **To act as agent.** To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Authority.
5. **To deal in real property.** To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in Section 4 above, except as prohibited by law. Title to all such real property shall be taken in the name of the Tohono O'odham Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.
6. **To deal in personal property, generally.** To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in, and dispose of, either alone or in conjunction with others, personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set forth in Section 4 above.
7. **To deal in inventions, copyrights, and trademarks.** To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), to hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor,

Appendix B (continued)

trademarks and applications therefor, and trade names, provided that title of all such acquisitions shall be taken in the name of the Tohono O'odham Nation.

8. **To execute guaranties.** To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made in pursuance of the purposes et forth in Section 4 above, provided, that no such guaranty shall be made without the prior written approval of the Tohono O'odham Council if the current aggregate indebtedness of the Authority, including such guaranty, shall exceed the sum of twenty-five million dollars (\$25,000,000).
 9. **Depository.** To designate and approve all depositories used for the deposit of funds of the Authority.
 10. **To make contracts.** To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in Section 4 above, including the negotiation of contracts subject to R.S. §2103, 25 U.S.C. §81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.
 11. **To approve budgets.** To give initial approval to annual Authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the Authority for operating and capital addition purposes.
- C. **Ancillary powers.** To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.
- D. **No construction of powers as purposes.** The powers enumerated herein shall not be construed as purposes but the Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purpose set forth in Section 4 above.

Section 8: **Indemnification of Officers, Employees and Members of the Management Board**

The Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Authority, or any person who may have served at its request as an officer, employee or member of the Management Board, against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which such employee was acting beyond the scope of his employment. The Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tohono O'odham Nation that such settlement be made and that such officer, employee or member of the Management Board was not

Appendix B (continued)

guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or member of the Management Board may be entitled to receive.

Section 9: Membership on Board; Qualification; Term of Office

- A. **Number.** The Management Board shall consist of seven persons, all of whom shall be appointed by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.
- B. **Qualification.** The members of the Management Board shall be called Directors, and shall have the following qualifications:
1. Three of the Directors shall be members of the Tohono O'odham Nation who have sufficient education and experience to qualify them for learning utility business, practices and procedures, to participate in Management Board meetings and functions, and to make sound judgments.
 2. Four Directors shall be persons having not less than ten years experience in business management of substantial character, and at least three of such persons shall have had such experience in the management and operation of a utility business.
 3. No employee of the Bureau of Indian Affairs or member of the Tohono O'odham Council shall be a member of the Board.
- C. **Term of Office.** Directors shall be appointed for the following terms of office and shall hold office until the qualification and selection of their successors:
1. The initial Management Board shall be appointed for a period of one year or until their successors have been appointed and qualified.
 2. Beginning the second year, the Directors shall be appointed in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years, starting on the first day of July of the year of their respective appointments. Directors shall be eligible for reappointment. They shall hold their offices until their successors have been appointed and qualified or until their death, resignation or removal in the manner provided herein.

Section 10: Removal

Any member of the Management Board may be removed by the Chairman of the Tohono O'odham Nation after a majority of the Management Board recommends such removal where, in the Board's best judgment, the best interests of the Authority shall be served by such removal.

Appendix B (continued)

Section 11: Resignation and Vacancies

Any member of the Management Board may resign at any time by giving written notice to the Chairman and Secretary of the Board and to the Chairman of the Tohono O'odham Nation. Resignations shall become effective at the time specified in said notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend three consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any calendar year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his directorship. The Chairman of the Nation shall be so notified and the Director shall be reappointed or replaced as set forth in this Section. Any vacancy on the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.

Section 12: Meetings of the Board

- A. **Annual meeting.** The annual meeting of the Management Board shall be held each year in the month of July at such time and place as the Board shall fix.
- B. **Regular meetings.** The Management Board shall meet at least quarterly upon notice fixing the time and place.
- C. **Special Meetings.** Special meetings of the Board may be held upon notice given by the Chairman, or Secretary, or by any three members of the Board, at such time and place as the Board shall direct or as shall be fixed by the notice.
- D. **Notice.**
 - 1. Notice of all meetings of the Board, stating the time and place, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available Authority records, not later than five days nor more than thirty days immediately preceding the meeting, excluding the day of the meeting.
 - 2. Notice may be waived in writing signed by the member or members entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a meeting shall constitute a waiver of notice.
- E. **Quorum.** Five members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board.

Section 13: Executive Committee

- A. **Designation of committee.** The Management Board, by resolution duly adopted, may designate four members of the Board, two of whom shall be members of the Tohono O'odham Nation, to constitute an Executive Committee. The designation of such Executive Committee and the delegation of the authority herein granted, shall not operate to relieve the Management

Appendix B (continued)

Board or members thereof of any responsibility imposed upon it or them by law or this Plan of Operation. No member of the Executive Committee shall continue to be a member thereof after he ceases to be a member of the Management Board. The Management Board shall have the power at any time to increase the number of members of the Executive Committee, to fill vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

- B. **Powers of the Executive Committee.** During the intervals between meetings of the Management Board, and subject to such limitations as may be required by resolution of the Management Board, the Executive Committee shall have and may exercise such authority as may be delegated by the Board.

All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Management Board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the Authority upon authorization of the Executive Committee prior to the time at which the same was submitted as above provided.

- C. **Procedure, meetings.** A Chairman of the Executive Committee shall be elected by the Management Board from among the members of the Executive Committee and shall preside at meetings of the Executive Committee and perform all duties incident to the office of the Chairman of the Executive Committee, and such other duties as, from time to time, may be assigned to him by the Management Board or the Executive Committee. The Secretary of the Authority shall keep a record of the acts of the Executive Committee and its proceedings. In the absence of the Secretary, the Chairman of the Management Board shall designate a person to act in said capacity.
- D. **No individual authority.** The members of the Executive Committee shall act only as a committee, and the individual members shall have no power as individuals.
- E. **Notice.** Notices of all meetings of the Executive Committee shall be given by the Chairman, the Secretary, or any member thereof, in the manner provided in Section 12D, and may be waived as therein provided.
- F. **Quorum.** The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

Section 14: Officers: Powers and Duties

The principal officers of the Authority shall consist of the following:

- A. **Chairman.** The Chairman of the Management Board and Chairman of the Executive Committee, which positions may be, but need not be, held by the same person, shall be members of the Management Board. The Chairman shall:
1. preside at all meetings of the Board at which he is present:

Appendix B (continued)

2. sign, with the Secretary, any instruments which have been authorized by the Board to be executed on behalf of the Authority, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Plan of Operation to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed; and
 3. in general, perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board from time to time.
- B. **Secretary.** The Secretary may, but need not be, a member of the Management Board or of the Executive Committee. The Secretary shall be responsible for:
1. keeping the minutes of the meetings of the Management Board and the Executive Committee in books provided for that purpose;
 2. seeing that all notices are duly given in accordance with the provisions of this Plan of Operation;
 3. the safekeeping of the books and records and the seal of the Authority, and affixing the seal of the Authority to all documents, the execution of which on behalf of the Authority under its seal is duly authorized in accordance with the provisions of this Plan of Operation;
 4. keeping on file at all times complete copy of this Plan of Operation of the Authority containing all amendments thereto; and
 5. in general, performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.
- C. **Treasurer.** The Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. The Treasurer shall be responsible for:
1. custody of all funds and securities of the Authority;
 2. the receipt of and issuance of receipts for all monies due and payable to the Authority, and for the deposit of all such monies in the name of the Authority in such bank or banks as shall be selected in accordance with the provisions of this Plan of Operation; and
 3. in general, performing all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.
- D. **Other officers.** in the discretion of the Management Board, there may be a Vice Chairman of the Board, Assistant Secretary, and Assistant Treasurer. Any two of these positions may be held by the same person. A Vice Chairman shall be a member of the Management Board and may, but need not, be a member of the Executive Committee. An Assistant Secretary or Assistant Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. If a Vice Chairman is elected he shall, in the absence of the Chairman

Appendix B (continued)

or in the event of his inability or refusal to act, perform the duties of the Chairman, and when so acting shall have all the powers and be subject to all the restrictions upon the Chairman. Such officers shall perform such duties as from time to time may be assigned to them by the Board.

- E. **General Manager.** The General Manager shall not be a member of the Management Board. He shall be the principal operating executive of the Authority and shall have direction of all parts of actual operations. He shall be responsible to the Board as a principal operating executive of a public service corporation normally would be. He shall render reports to the Board and perform all other functions and duties specified for the General Manager in Section 19 below.

Section 15: Election; Term of Office; Qualification

The officers, with the exception of the General Manager, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until his successor is chosen and qualified, or until his death, or until he shall have resigned, or shall have been removed in the manner provided herein.

Section 16: Removal

Any officer or agent elected or appointed by the Management Board may be removed by the Board whenever, in its judgment, the best interest of the Authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed, provided, however, the General Manager may be removed only pursuant to any approved contract provisions.

Section 17: Resignations; Vacancies

Any officer may resign at any time by giving written notice to the Management Board, or to the Chairman, or Secretary. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

Section 18: Other Officers and Agents

The Management Board may appoint such other officers and agents as it deems necessary or expedient, and may determine the duties of them as well as the terms of their holding office.

Appendix B (continued)

Section 19: General Manager; Functions; Duties

- A. The General Manager shall be employed under a written employment contract and shall be responsible to the Management Board.
- B. The function of a General Manager shall be analogous to that of the president of a public service corporation. He shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Authority into departments, each with its own specific duties and responsibilities.
- C. He shall exercise his best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.
- D. He shall be the active, operating executive of the Authority and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.
- E. He shall have the full authority and control over all employees of the Authority and shall be responsible for all department heads or other executives carrying out their assignments.
- F. He shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets and to policies and procedures approved by the Management Board relating to standards, programs inspections, cost control, employee relations and in-service training.
- G. He shall render regular reports to the Board and perform all other functions and duties specified in the Plan of Operations for the General Manager.
- H. He shall be furnished with ample transportation and shall be reimbursed for any personal expenses he may incur in carrying out his responsibilities.
- I. The General Manager shall employ competent department heads for the usual functional responsibilities for each department.

Section 20: Financial Transactions; Miscellaneous

- A. **Contracts.** Except as otherwise provided in this Plan of Operation, the Management Board may authorize any officer or officers, or any agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authority may be general or confined to specified instances.
- B. **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, or employee or employees of the Authority and in such manner as shall from time to time be determined by resolution of the Management Board.

Appendix B (continued)

- C. **Deposits.** All funds, except petty cash, of the Authority shall be deposited from time to time to the credit of the Authority in such bank or banks as the Management Board may select.
- D. **Accounting.** A modern accounting system shall be established and installed by a reputable consulting firm in conformity with accounting principles generally accepted in the utility operation field. The accounting system shall insure the availability of information as may be necessary to comply with all applicable regulatory requirements.
- E. **Records; inspection; audits.** The books, records and property of the Authority, including current financial and operating statements, shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited by an independent Certified Public Accountant at the close of each fiscal year. The results of such audit shall be included in the reports by the Chairman of the Management Board to the Chairman of the Tohono O'odham Nation and the Tohono O'odham Council required by subsection 7A (9) above.
- F. **Fiscal year.** The fiscal year of the Authority shall be the same as the fiscal year of the Tohono O'odham Nation.
- G. **Insurance.** Insurance, including liability insurance, adequate and sufficient to protect the interests of the Authority and the Tohono O'odham Nation from losses by fire or other disaster shall be carried on all property of the Authority.
- H. **Policies; rules and regulations.** The Management Board shall have the power to make and adopt such policies, rules and regulations, not inconsistent with law and this Plan of Operation, as it may deem advisable for the management of the business and affairs of the Authority.

Section 21: Rates and Charges

- A. The Management Board shall adopt all rates and charges for utility services which, when adopted, shall become effective at such time as the Board shall determine. Upon a petition being filed by five percent (5%) of the affected customers, the Authority shall, after giving such notice as the Board may determine to be adequate, hold a formal public hearing to review such rates and charges.
- B. Procedures shall be established by the Tohono O'odham Council to provide for appeals of rate decisions following a public hearing by the Authority to an impartial review board composed of specialists on utility rates.
- C. The Management Board may, in its sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the services of the Authority.

APPENDIX D

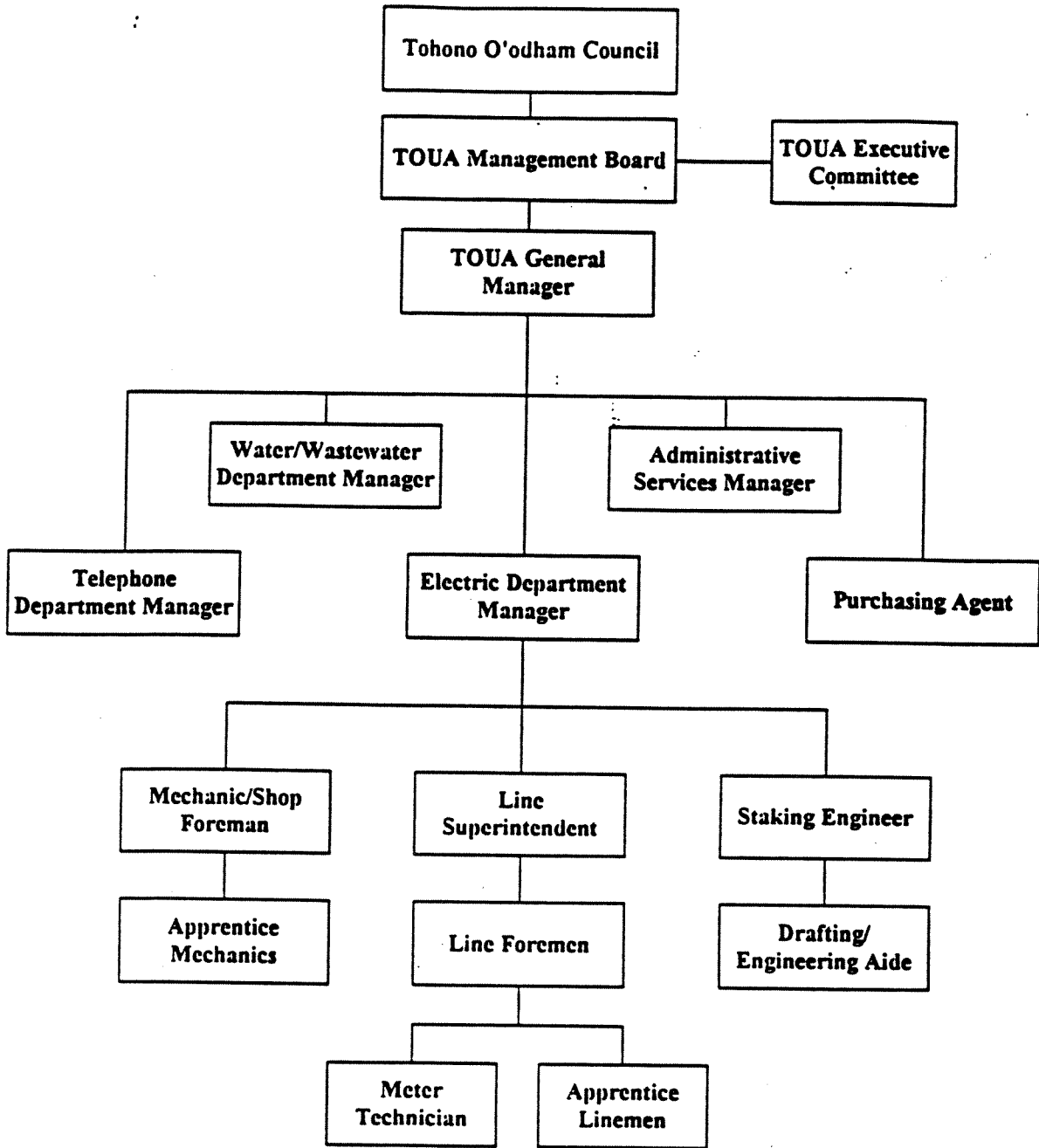


Table 4-1. Organizational Structure of Tohono O'odham Utility Authority and Electric Department

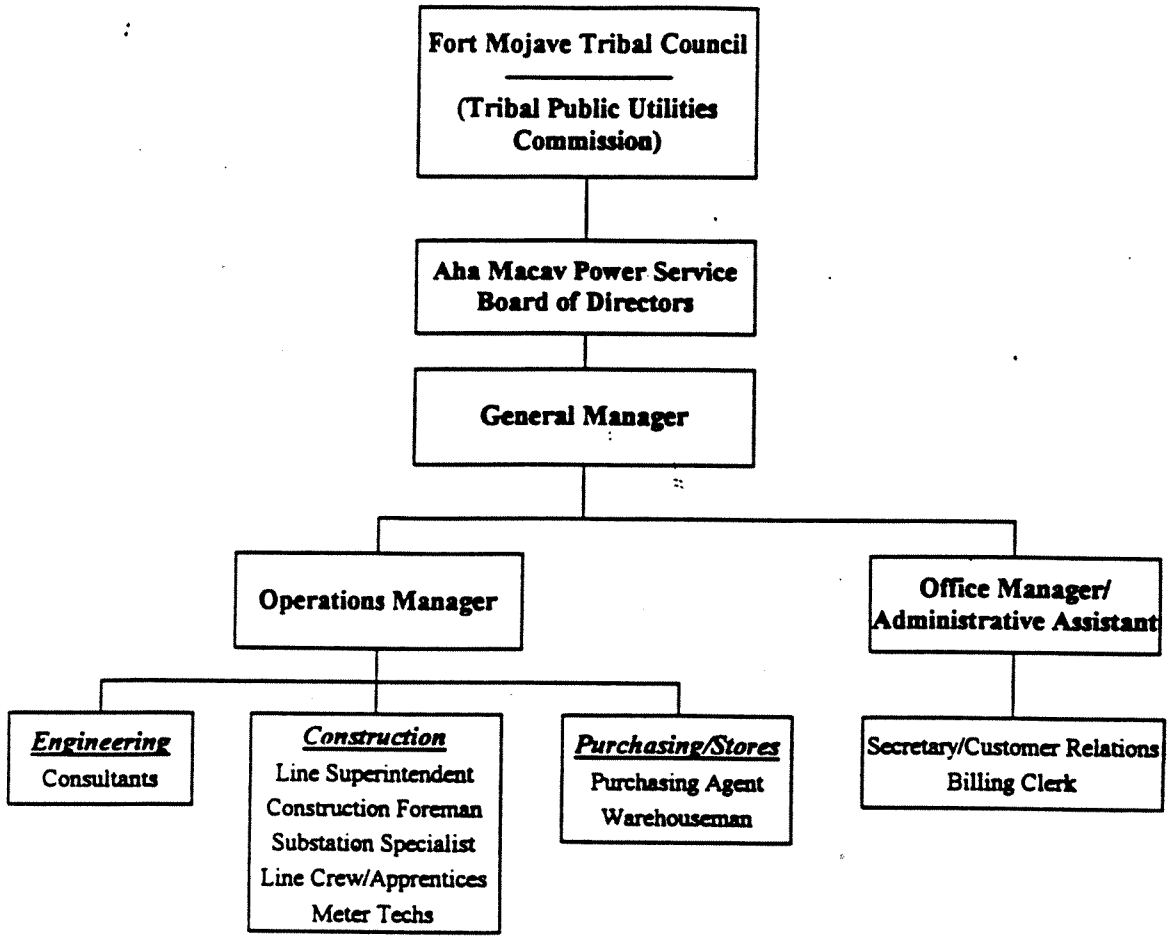


Figure 4-1. Organizational Structure of Aha Macav Power Service

APPENDIX E

BIG HORN COUNTY ELECTRIC COOPERATIVE, INC.

Policy No. 42

SUBJECT: Extension Policy - Single & Three Phase Lines

For all new consumers, the Cooperative will invest up to an amount equal to the average system investment per consumer without special contracts, charges or increased minimum bills.

The average system investment per consumer will be determined by the following formula: REA Form 7, Part C. Line 3, for December 31st of the preceding year, divided by number of services. The quotient obtained from the above formula is divided by the average cost per foot based on work order costs to determine the number of feet of line for the average system investment. The average system investment will be computed as soon as possible at the end of each calendar year, and the results of the computation will be used in the following year.

The calculation of the average line construction cost per foot will be determined semi-annually from the current cost per foot of single and three phase line construction based on work order cost, including the cost of service transformers, meters and service entrances. The calculations will be made every six months. The cost so determined will then be used for all such extensions during the next six months.

For extensions requiring a greater investment than the average system investment, as determined above:

For line extensions over the average system investment per consumer; consumer will pay the difference between the total estimated cost of the line and the average system investment. This payment will be an aid to construction and must be pre-paid by the consumer.

If the line extension is made for more than one service, then the total cost will be divided by the number of services and the average system investment will be calculated on all services for which the line is extended in determining pre-payments and minimums.

Revised, Board Meeting 01/85.
Approved as written, Regular Meeting 07/09/85.
Revised, Board Meeting 05/12/87.
Amended, Administrative Committee 02/89.

Yellowstone Valley Electric Cooperative, Inc.
Huntley, Mt. 59037

POLICY BULLETIN NO. 1 C

SUBJECT: Line Extension Policy, Single Phase Line
(Overhead and Underground)

POLICY:

I. PURPOSE

To establish uniform guidelines for extending single phase electrical installations to farm, residential, small commercial, public authority, and public building services.

II. SCOPE

This policy shall pertain to all Applicants requesting extension of overhead and underground single phase electrical service.

III. CONTENT

- A. The Applicant shall sign a five (5) year Application and Agreement For Membership and Electric Service and shall pay the required membership fee. A security deposit shall also be paid if acceptable credit history is not available.
- B. The Applicant's minimum charge shall consist of a monthly base charge, as described within the applicable rate schedule, for the cost of construction up to five hundred dollars (\$500.00). If the total cost of the line extension is beyond five hundred dollars (\$500.00), the Applicant's minimum shall consist of a monthly base charge plus a monthly line extension minimum.
 1. For line extensions which cost more than thirty five hundred dollars (\$3,500.00) to construct, the Applicant shall be required to prepay a non-refundable aid to construction contribution equal to fifty percent (50%) of the estimated construction cost which exceeds thirty five hundred dollars (\$3,500.00). Any and all remaining construction costs which have not been prepaid will bill as a monthly line extension minimum.
 2. In place of the Applicant's prepayment requirement for construction costs which exceed thirty five hundred dollars (\$3,500.00), a surety bond or certificate of deposit, in the full amount of the construction cost estimate, may be placed in Yellowstone Valley Electric Cooperative's name. Under this option the total cost of construction over five hundred dollars (\$500.00) will bill as a monthly line extension minimum.

The surety bond or certificate of deposit will not be released or satisfied until the terms of the contract have been met.

- C. The consumption of electric energy shall be allowed for monthly line extension minimums but not for monthly base charges. The Applicant's monthly base charge shall be subject to change due to rate changes by the Cooperative.
- D. A line extension factor of .020 shall be used to calculate the monthly line extension minimum. The monthly line extension minimum and the monthly base charge shall bill for a period of FIVE (5) YEARS. After the five (5) year contract term has expired, the monthly line extension minimum shall no longer bill, but the base charge will continue to bill as long as the meter is connected.

FOR EXAMPLE, based upon an estimated total construction cost of \$5,000.00:

$\$5,000.00 - \$500.00 = \$4,500.00$
 $(\$4,500.00 - \$3,000.00) \times 50\% = \750.00 (Aid to Construction)
 $(\$4,500.00 - \$750.00) \times .020 = \$75.00$ (Mo. Line Extension Min.)
Mo. Line Extension Min. + Base Charge = Total Monthly Minimum

Rate Schedule A-GS-1 shall apply.

- E. The Applicant shall have the option of prepaying the five (5) year contract base charge. Upon exhaustion of the Applicant's base charge prepayment, the applicable base charge shall bill monthly until the term of the five (5) year application for service contract has been satisfied.
- F. If the new service is for a tenant who does not own the land, the landowner may co-sign the five (5) year contract. Otherwise, the tenant must prepay the five (5) year contract before the service is installed. If the tenant or owner moves before the contract has expired, the Cooperative will retain the unused portion of the contract prepayment, unless a new occupant agrees to be responsible for the balance of the contract - at which point the unused prepayment shall be refunded to the payee of the prepayment. Aid to construction contributions shall not be refunded.
- G. When construction costs exceed thirty five hundred dollars (\$3,500.00) and have not been secured with a surety bond or certificate of deposit, as described within Section B(2) of this policy, a property lien shall be filed as security for payment of the line extension cost.

- H. In the event the new service request is to or within an established subdivision, the developer of the subdivision may be required to prepay the cost of extending power, as depicted within Policy Bulletin No. 2C.
- I. If underground facilities are requested, the Applicant may be required to pay a non-refundable contribution toward the additional cost of underground construction. There shall be no salvage value to the consumer.
- J. The Applicant shall perform any required right-of-way clearing and obtain any necessary easements before construction is started.
- K. Line extension monthly minimums and line extension aid to construction contributions will not be prorated or refunded.

RESPONSIBILITY: Management

SOURCE:	Adopted Board Action	<u>September 23, 1982</u>
	Revised Board Action	<u>April 28, 1983</u>
	Revised Board Action	<u>October 18, 1983</u>
	Revised Board Action	<u>July 19, 1984</u>
	Revised Board Action	<u>December 27, 1984</u>
	Revised Board Action	<u>July 27, 1989</u>
	Revised Board Action	<u>October 25, 1994</u>

Yellowstone Valley Electric Cooperative, Inc.
Huntley, Mt. 59037

POLICY BULLETIN NO. 2 C

SUBJECT: Line Extension Policy Pertaining to Subdivisions;
Developments; Subdividers and Developers

POLICY:

I. PURPOSE

To establish uniform guidelines for the extension of single phase and three phase electric service to and within subdivisions and developments.

II. SCOPE

For purposes herein, the terms, "Subdivision" and "Subdivider" shall have a broader connotation than their definition in law, and this policy shall apply to all developers and subdividers who develop real estate into lots, tracts, parcels, acres or aliquot parts of a section of land.

III. CONTENT

- A. **Ownership** The Subdivider, hereinafter referred to as the "DEVELOPER", shall warrant that he or she is the owner of the parcel of real property in which electric service is requested.
- B. **Design** Yellowstone Valley Electric Cooperative, Inc., herein referred to as the "COOPERATIVE", agrees to prepare, at the Developer's cost and expense, design specifications for the construction of an electrical distribution system capable of providing adequate electric utility service to each parcel of real property as shown on the official plat of the subdivision, which plat shall be attached to the design plan. The design specification shall be in accordance with standards required by law, and shall include plan specifications and staking sheets identifying each parcel to be served.
- C. **Surveys** The DEVELOPER shall furnish, at no expense to the COOPERATIVE, property surveys indicating semi-finished grades, including corner monuments and street guides, as deemed necessary by the COOPERATIVE for the location of easements and construction of the distribution system. Costs associated with the removal, relocation, or abandonment of any portion of the electrical system, due to the resurveying or change in grade of lots or parcels, shall be paid by the DEVELOPER. The DEVELOPER shall not be reimbursed for these costs.

- D. **Easements** If the division of real property is a subdivision, as defined by law, the DEVELOPER shall provide the COOPERATIVE with an official recorded plat of the subdivision, showing necessary utility easements. The DEVELOPER shall grant to the COOPERATIVE perpetual easements satisfactory to the COOPERATIVE, with adequate access, ingress and egress to any segment of the distribution system which is located inside or outside the presently platted and recorded utility easements.
- E. **Permits** The Developer shall be responsible for obtaining all necessary permits, approvals, and authorizations from any federal, state or local governmental body to develop the above subdivision. The DEVELOPER must present adequate proof, satisfactory to the COOPERATIVE, that the DEVELOPER has all necessary approvals.
- F. **Prepayment** The DEVELOPER shall make to the COOPERATIVE a prepayment equal to the COOPERATIVE's total estimated cost of the design and construction of the electrical distribution system to and within the subdivision.
1. The cost of the distribution electrical system for small-tract developments shall include any metering pedestal or underground secondary extension costs.
 2. For large-tract developments which involve the extension of primary facilities into the individual tracts, the tract owner requesting electrical service will be required to extend power into the tract according to the terms and conditions of Policy Bulletin No. 1 C.
 3. After deducting the COOPERATIVE's construction allowance, any remaining prepayment shall be retained by the COOPERATIVE and not refunded or returned to the DEVELOPER.
- G. **Construction Allowance** The COOPERATIVE shall allow a construction allowance of \$1,000 per lot or tract within the development. The construction allowance shall be deducted from the estimated cost of the electrical distribution system to and within the development.
1. The maximum construction allowance on a per construction phase basis which shall be allowed, without specific Board approval, shall be \$25,000.00.

2. For multi-phase developments, the construction allowance associated with the remaining unoccupied lots from initial phase developments shall be combined with the new phase development construction allowance to arrive at a total aggregate construction allowance, which shall not exceed \$25,000.00 without specific Board approval.

H. Construction Upon compliance of the above payment provisions by the DEVELOPER, the COOPERATIVE shall construct the electric distribution facilities specified in the design plan approved by the COOPERATIVE. The COOPERATIVE shall not construct electric distribution facilities which are beyond the load or secondary side of the metering point.

1. Whenever possible, underground electrical facilities shall be installed along the front property line.
2. All of the lots or parcels shall be served by electrical facilities built by the COOPERATIVE in strict compliance with the design and specifications prepared by the COOPERATIVE.

I. Change Of Grade The COOPERATIVE may, at its option, refuse to begin any construction of electrical facilities which will be located on premises until those premises have been brought to final grade by the DEVELOPER prior to such construction. In the event that the DEVELOPER causes the grade to be changed after construction and installation of the electrical distribution facilities by the COOPERATIVE and such change results in inadequate overhead clearances or inadequate depth or separation of facilities, or otherwise creates a violation of applicable codes, or inhibits or denies the COOPERATIVE reasonable access to its facilities, the DEVELOPER will reimburse the COOPERATIVE for the reasonable cost of making such corrections as are made necessary by the changed conditions.

J. Monthly Base Charge Until such time that the lot or tract is sold to a bona-fide residential consumer/member, who applies for electrical service and pays the required membership fee, the COOPERATIVE shall bill to the DEVELOPER a monthly base charge on a per lot or tract basis.

K. Individual Services - Metering Point After the completion of construction of the backbone distribution system within the subdivision by the COOPERATIVE, the COOPERATIVE shall extend service to individual applicants within the subdivision upon application by such individuals for membership in, and electrical service by, the COOPERATIVE, provided that all requirements for membership in the COOPERATIVE have been satisfied.

1. A meter pedestal shall be installed by the COOPERATIVE.
 - a. The meter pedestal shall be equipped with 100 or 200 amp breakers and shall be installed next to the padmount transformer, secondary pedestal, or transformer pole.
 - b. A \$300.00 non-refundable aid to construction contribution shall be assessed per metering pedestal.
 - c. Consumers shall furnish, install, and maintain the underground electric service, of adequate size, to their electrical load panels.
 - d. Based upon management's discretion, the COOPERATIVE may locate and/or repair customer's secondary service. The customer shall be charged for any such repair work performed by the COOPERATIVE.
 - e. For services larger than 200 amps, the consumer shall be required to pay the COOPERATIVE's cost of the larger metering point, based upon the COOPERATIVE's determination.

I. Rates The rates and charges imposed for electrical service by the COOPERATIVE will be the applicable rates contained within the COOPERATIVE's currently effective rate structure. These rates may be increased, decreased, or otherwise modified by duly authorized rate changes.

RESPONSIBILITY: Management

SOURCE:	Adopted Board Action	<u>December 29, 1983</u>	:
	Revised Board Action	<u>January 24, 1985</u>	
	Revised Board Action	<u>May 23, 1985</u>	
	Revised Board Action	<u>October 25, 1994</u>	

Yellowstone Valley Electric Co-op
Huntley, Mt. 59037

POLICY BULLETIN NO. 3 C

**SUBJECT: Line Extension Policy, Three Phase Line
(Overhead and Underground)**

**POLICY: Commercial, Irrigation, Public Authority,
Public Building**

COMMERCIAL, PUBLIC AUTHORITY, PUBLIC BUILDING

1. The Applicant shall sign a five (5) Year Application and Agreement For Membership and Electric Service and shall pay the required membership fee. A security deposit shall also be paid if acceptable credit history is not available.

2. The Applicant's minimum charge shall consist of a monthly base charge, as described within the applicable rate schedule, for the cost of construction up to five hundred dollars (\$500.00). If the total cost of the line extension is beyond five hundred dollars (\$500.00), the Applicant's minimum shall consist of a monthly base charge plus a monthly line extension charge.

a. For line extensions which cost more than thirty five hundred dollars (\$3,500.00) to construct, the Applicant shall be required to prepay a nonrefundable aid to construction contribution equal to fifty percent (50%) of the estimated construction cost which exceeds thirty five hundred dollars (\$3,500.00). Any and all remaining construction costs which have not been prepaid will bill as a monthly line extension minimum.

b. In place of the Applicant's prepayment requirement for construction costs which exceed thirty five hundred dollars (\$3,500.00), a surety bond or certificate of deposit, in the full amount of the construction cost estimate, may be placed in Yellowstone Valley Electric Cooperative's name. Under this option the total cost of construction over five hundred dollars (\$500.00) will bill as a monthly line extension minimum. The surety bond or certificate of deposit will not be released or satisfied until the terms of the contract have been met.

3. The consumption of electric energy shall be allowed for monthly line extension minimums but not for monthly base charges. The Applicant's monthly base charge shall be subject to change due to rate changes by the CO-OPERATIVE.

4. A line extension factor of .020 shall be used to calculate the monthly line extension minimum. The monthly line extension minimum and the monthly base charge shall bill for a period of FIVE (5) YEARS. After the five (5) year contract term has expired, the monthly line extension minimum shall no longer bill but the base charge will continue to bill as long as the meter is connected.

Example: For 2,000 feet of three phase line based upon a cost of \$5.00 per foot - commercial

2,000 feet x \$5.00 per foot = \$10,000.00
\$10,000.00 - \$500.00 = \$9,500.00
(\$9,500.00 - \$3,000.00) x 50% = \$3,250.00 (Aid To Construction)
(\$9,500.00 - \$3,250.00) x .020 = \$125.00 (Line Extension Min.)
Mo. Line Extension Min. + Base Charge = Total Monthly Minimum

Rate Schedule GS-LP-3 Shall Apply

IRRIGATION

1. The Applicant shall sign a five (5) Year Application and Agreement For Membership and Electric Service and shall pay the required membership fee. A security deposit shall also be paid if acceptable credit history is not available.

2. The Applicant's minimum charge shall consist of an annual base charge, as described within the applicable rate schedule, for the cost of construction up to five hundred dollars (\$500.00). If the total cost of the line extension is beyond five hundred dollars (\$500.00), the Applicant's minimum shall consist of an annual base charge plus an annual line extension charge, both of which will bill monthly during the irrigation billing season.

a. For line extensions which cost more than thirty five hundred dollars (\$3,500.00) to construct, the Applicant shall be required to prepay a nonrefundable aid to construction contribution equal to fifty percent (50%) of the estimated construction cost which exceeds thirty five hundred dollars (\$3,500.00). Any and all remaining construction costs which have not been prepaid will bill as an annual line extension minimum.

b. In place of the Applicant's prepayment requirement for construction costs which exceed thirty five hundred dollars (\$3,500.00), a surety bond or certificate of deposit, in the full amount of the construction cost estimate, may be placed in Yellowstone Valley Electric Cooperative's name. Under this option the total cost of construction over five hundred dollars (\$500.00) will bill as a monthly line extension minimum. The surety bond or certificate of deposit will not be released or satisfied until the terms of the contract have been met.

3. The consumption of electric energy shall be allowed for annual line extension minimums but not for annual base charges. The APPLICANT'S annual base charge shall be subject to change due to rate changes by the CO-OPERATIVE.

4. A line extension factor of .020 shall be used to calculate the line extension minimum. The annual line extension minimum and the annual base charge shall bill for a period of FIVE (5) YEARS. After the five (5) year contract term has expired, the annual line extension minimum shall no longer bill but the base charge will continue to bill as long as the meter is connected.

Example: For 2,000 feet of three phase line based upon a cost of \$5.00 per foot - irrigation

2,000 feet x \$5.00 per foot = \$10,000.00
 \$10,000.00 - \$500.00 = \$9,500.00
 (\$9,500.00 - \$3,000.00) x 50% = \$3,250.00 (Aid To Construction)
 (\$9,500.00 - \$3,250.00) x .020 = \$125.00 (Line Extension Min.)
 \$125.00 x 12 months = \$1,500.00 (Annual Line Extension Min.)
 Annual Line Extension Min. + Base Charge = Total Annual Minimum

Rate Schedule IS Shall Apply

A. The Applicant shall have the option of prepaying the five (5) year contract base charge. Upon exhaustion of the Applicant's base charge prepayment, the applicable base charge shall bill monthly until the term of the five (5) year application for service contract has been satisfied.

B. If the new service is for a tenant who does not own the land, the landowner may co-sign the five (5) year contract. Otherwise, the tenant must prepay the five (5) year contract before the service is installed. If the tenant or owner moves before the contract has expired, the CO-OPERATIVE will retain the unused portion of the contract prepayment, unless a new

occupant takes over the balance of the contract - at which point the unused prepayment shall be refunded to the payee of the prepayment. Aid to construction contributions shall not be refunded.

C. When construction costs exceed thirty five hundred dollars (\$3,500.00) and have not been secured with a surety bond or certificate of deposit, as described within Section 2a of this policy, a property lien shall be filed as security for payment of the line extension cost.

D. In the event the new service request is to or within an established subdivision, the developer of the subdivision may be required to prepay the cost of extending power, as depicted within Section 7 of Policy Bulletin No. 2A, less the per lot contribution if underground facilities are not required.

E. If underground facilities are needed, for services that do not require the developer' prepayment, the Applicant shall be required to pay a nonrefundable contribution toward the additional cost of underground construction. There shall be no salvage value to the consumer.

F. The Applicant shall perform any required right-of-way clearing and obtain any necessary easements before construction is started.

G. Line extension monthly minimums or line extension aid to construction contributions will not be prorated or refunded.

RESPONSIBILITY: Management

SOURCE: Adopted Board Action	<u>September 23, 1982</u>
Revised Board Action	<u>April 28, 1983</u>
Revised Board Action	<u>October 18, 1983</u>
Revised Board Action	<u>July 19, 1984</u>
Revised Board Action	<u>December 27, 1984</u>
Revised Board Action	<u>May 23, 1985</u>
Revised Board Action	<u>February 27, 1986</u>
Revised Board Action	<u>July 27, 1989</u>

APPENDIX F

PROMISSORY NOTE

Name _____

Acct. #: _____

Location: _____

I, the undersigned, holding membership in Yellowstone Valley Electric Cooperative, Inc., of Huntley, Montana, herein after referred to as the Cooperative, promise to pay to the order of said Cooperative the amounts listed below:

Billing:\$ _____

Current:\$ _____

Reconnect Fee: \$ _____

Security Deposit: \$ _____

Other Charges: \$ _____

Total Due: _____

The delinquent bill in the amount of \$ _____ is payable in _____ Payments.

My payment arrangement is as follows:

1st payment	_____	Due Date	_____
2nd payment	_____	Due Date	_____
3rd payment	_____	Due Date	_____
4th payment	_____	Due Date	_____

The foregoing amounts must be paid in addition to each of the next succeeding current electrical bills as consideration for not disconnecting the electric service meter on this date.

The above listed payments are due and payable at the office of the Cooperative in Huntley, Mt. 59037, by 4:30 P.M. on the date specified.

In the event of default by the undersigned, the total billing amount on file shall become due and payable. A final notice of disconnection shall be rendered, allowing three (3) days in which to pay the total billing amount in full.
two 2

Date _____

Witness: _____ Signature: _____

YELLOWSTONE VALLEY ELECTRIC

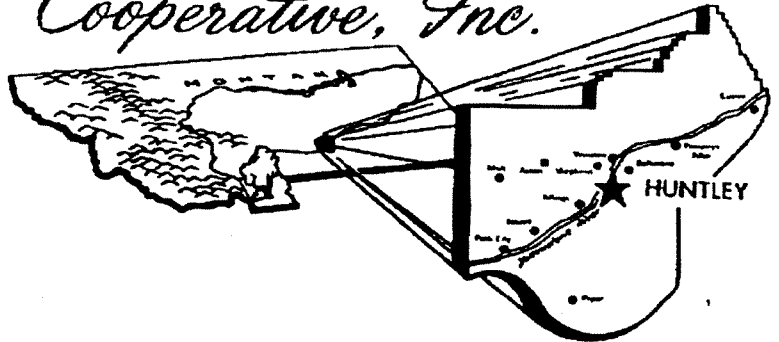
Cooperative, Inc.



HUNTLEY, MONTANA 59037

Telephone (406) 348-3411

Date



SECURITY DEPOSIT REQUEST

Dear

The following condition occurred with your credit reference:

- () Your credit reference has been received from _____ and is not satisfactory.
- () Your credit reference to _____ was returned to our office unclaimed.
- () You failed to provide our office with a credit rating letter within a reasonable period of time for your credit reference to _____.
- () You have no credit references.

Because the above condition occurred, our office at this time is assessing your electric billing account a \$ _____ Security Deposit.

We request that the Security Deposit be paid within (10) ten days of the date listed above. In the event your Security Deposit is not received within the ten-day period, your service will be subject to disconnect.

Your immediate attention to this matter is greatly appreciated.

Sincerely,
Lyda Adair

Lyda Adair
General Clerk

APPENDIX G

Glossary

One of the difficulties with discussing restructuring the electric industry is that terms mean different things to different people. This results in poor communication and misunderstandings about the proposals being discussed. To avoid some of this confusion, the following glossary is provided to clarify what the Council means when it uses certain terms. The glossary from the NARUC publication "Affected with the Public Interest" was used as the base of this list. Supplemental material was taken from many sources, including the Public Utilities Commission of Ohio, and a report by the Texas Ratepayers' Organization to Save Energy, Inc. titled "Electric Utility Restructuring, Can the Small Consumer Afford It?"

Access Charge — A charge levied on a power supplied, or its customer, for access to a utility's transmission or distribution system. It is a charge for the right to send electricity over another's wires.

Aggregator — An entity that puts together customers into a buying group for the purchase of a commodity service. The vertically integrated investor owned utility, municipal utilities and rural electric cooperatives perform this function in today's power market. Other entities such as buyer cooperatives or brokers could perform this function in a restructured power market. This is opposed to marketer which will be defined as an entity that represents different suppliers.

Average Cost — The revenue requirement of a utility divided by the utility's sales. Average cost typically includes the costs of existing power plants, transmission, and distribution lines, and other facilities used by a utility to serve its customers. It also included operating and maintenance, tax, and fuel expenses.

Avoided Cost — The cost the utility would incur but for the existence of an independent generator or other energy service option. Avoided cost rates have been used as the power purchase price utilities offer independent suppliers (Qualifying Facilities).

Bilateral Contract — A direct contract between the power producer and user or broker outside of a centralized power pool or POOLCO.

Bottleneck Facility — A point on the system, such as a transmission line, through which all electricity must pass to get to its intended buyers. If there is limited capacity at this point, some priorities must be developed to decide whose power gets through. It also must be decided if the owner of the bottleneck may, or must, build additional facilities to relieve the constraint.

BPA — Bonneville Power Administration. One of five federal power marketing administrations that sell low-cost electric power produced by federal hydro electric dams to agricultural and municipal users. BPA serves Idaho, Oregon, and Washington as well as parts of Nevada and Wyoming.

Broker — A retail agent who buys and sells power. The agent may also aggregate customers and arrange for transmission, firming and other ancillary services as needed.

Bulk Power Supply — Often this term is used interchangeably with wholesale power supply. In broader terms, it refers to the aggregate of electric generating plants, transmission lines, and related-equipment. The term may refer to those facilities within one electric utility, or within a group of utilities in which the transmission lines are interconnected.

Buy through — An agreement between utility and customer to import power when the customer's service would otherwise be interrupted.

Capacity release — A secondary market for capacity that is contracted by a customer which is not using all of its capacity.

Captive Customer — A customer who does not have realistic alternatives to buying power from the local utility, even if that customer had the legal right to buy from competitors.

Commercialization — Programs or activities that increase the value or decrease the cost of integrating new products or services into the electricity sector. (See "Sustained Orderly Development.")

Contract Path — The most direct physical transmission tie between two interconnected entities. When utility systems interchange power, the transfer is presumed to take place across the "contract path," notwithstanding the electrical fact that power flow in the network will distribute in accordance with network flow conditions. This term can also mean to arrange for power transfer between systems. (See also Parallel path flow)

Contracts for Differences (CfD) — A type of bilateral contract where the electric generation seller is paid a fixed amount over time which is a combination of the short-term market price and an adjustment with the purchaser for the difference. For example, a generator may sell a distribution company power for ten years at 6¢/kWh. That power is bid into Poolco at some low ¢/kWh value (to ensure it is always taken). The seller then gets the market clearing price from the pool and the purchaser pays the producer the difference between the Poolco selling price and 6¢/kWh (or vice versa if the pool price should go above the contract price).

Co-op — This is the commonly used term for a rural electric cooperative. Rural electric cooperatives generate and purchase wholesale power, arrange for the transmission of that power, and then distribute the power to serve the demand of rural customers. Co-ops typically become involved in ancillary services such as energy conservation, load management and other demand- side management programs in order to serve their customers at least cost.

Deintegration — (See disaggregation)

Demonstration — The application and integration of a new product or service into an existing or new system. Most commonly, demonstration involves the construction and operation of a new electric technology interconnected with the electric utility system to demonstrate how it interacts with the system. This includes the impacts the technology may have on the system and the impacts that the larger utility system might have on the functioning of the technology.

Deregulation — The elimination of regulation from a previously regulated industry or sector of an industry.

Derivatives — A specialized security or contract that has no intrinsic overall value, but whose value is based on an underlying security or factor as an index. A generic term that, in the energy field, may include options, futures, forwards, etc.

Direct Access — The ability of a retail customer to purchase commodity electricity directly from the wholesale market rather than through a local distribution utility. (See also Retail Competition)

Disaggregation — The functional separation of the vertically integrated utility into smaller, individually owned business units (i.e., generation, dispatch/control, transmission, distribution). The terms "deintegration," "disintegration" and "delamination" are sometimes used to mean the same thing. (See also "Divestiture.")

Distributed Generation — A distributed generation system involves small amounts of generation located on a utility's distribution system for the purpose of meeting local (substation level) peak loads and/or displacing the need to build additional (or upgrade) local distribution lines.

Distribution — The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

Distribution Utility (Disco) — The regulated electric utility entity that constructs and maintains the distribution wires connecting the transmission grid to the final customer. The Disco can also perform other services such as aggregating customers, purchasing power supply and transmission services for customers, billing customers and reimbursing suppliers, and offering other regulated or non-regulated energy services to retail customers. The "wires" and "customer service" functions provided by a distribution utility could be split so that two totally separate entities are used to supply these two types of distribution services.

Divestiture — The stripping off of one utility function from the others by selling (spinning-off) or in some other way changing the ownership of the assets related to that function. Most commonly associated with spinning-off generation assets so they are no longer owned by the shareholders that own the transmission and distribution assets. (See also "Disaggregation.")

DSM (Demand-Side Management) — Planning, implementation, and evaluation of utility-sponsored programs to influence the amount or timing of customers' energy use.

Economic Efficiency — A term that refers to the optimal production and consumption of goods and services. This generally occurs when prices of products and services reflect their marginal costs. Economic efficiency gains can be achieved through cost reduction, but it is better to think of the concept as actions that promote an increase in overall net value (which includes, but is not limited to, cost reductions).

Economies of Scale — Economies of scale exist where the industry exhibits decreasing average long-run costs with size.

EEI — Edison Electric Institute. An association of electric companies formed in 1933 "to exchange information on industry developments and to act as an advocate for utilities on subjects of national interest."

ELCON — Electricity Consumers Resources Council. ELCON is an association of 28 large industrial consumers of electricity. ELCON members account for over five percent of all electricity consumed in the United States. ELCON was formed in 1976 "to enable member companies to "work cooperatively for the development of coordinated, rational and consistent policies affecting electric energy supply and pricing at the federal, state, and local levels."

Electric Utility — Any person or state agency with a monopoly franchise (including any municipality), which sells electric energy to end-use customers; this term includes the Tennessee Valley Authority, but does not include other Federal power marketing agency (from EPCAct).

Embedded Costs Exceeding Market Prices (ECEMP) — Embedded costs of utility investments exceeding market prices are: 1) costs incurred pursuant to a regulatory or contractual obligation; 2) costs that are reflected in cost-based rates; and 3) cost-based rates that exceed the price of alternatives in the marketplace. ECEMPs may become "stranded costs" where they exceed the amount that can be recovered through the asset's sale. Regulatory questions involve whether such costs should be recovered by utility shareholders and if so, how they should be recovered. "Transition costs" are stranded costs which are charged to utility customers through some type of fee or surcharge after the assets are sold or separated from the vertically-integrated utility. "Stranded assets" are assets which cannot be sold for some reason. The British nuclear plants are an example of stranded assets which no one would buy. (Also referred to as Transition Costs.)

Energy Efficiency — Using less energy/electricity to perform the same function. Programs designed to use electricity more efficiently — doing the same with less. For the purpose of this paper, energy efficiency is distinguished from DSM programs in that the latter are utility-

sponsored and -financed, while the former is a broader term not limited to any particular sponsor or funding source. "Energy conservation" is a term which has also been used but it has the connotation of doing without in order to save energy rather than using less energy to do the same thing and so is not used as much today. Many people use these terms interchangeably.

EPA — The Environmental Protection Agency. A federal agency charged with protecting the environment.

EPAct — The Energy Policy Act of 1992 addresses a wide variety of energy issues. The legislation creates a new class of power generators, exempt wholesale generators (EWGs), that are exempt from the provisions of the Public Utilities Holding Company Act of 1935 and grants the authority to FERC to order and condition access by eligible parties to the interconnected transmission grid.

ESCO — Efficiency Service Company. A company that offers to reduce a client's electricity consumption with the cost savings being split with the client.

Exempt Wholesale Generator (EWG) — Created under the 1992 Energy Policy Act, these wholesale generators are exempt from certain financial and legal restrictions stipulated in the Public Utilities Holding Company Act of 1935.

Feebates — A feebate is a revenue neutral strategy which imposes a fee on polluting resources and rebates those fees to cleaner technologies. This can be accomplished directly through the revenue paid to generators by the Poolco or through incorporation of these values into the dispatch/pricing mechanism of the pool.

Federal Energy Regulatory Commission (FERC) — The Federal Energy Regulatory Commission regulates the price, terms and conditions of power sold in interstate commerce and regulates the price, terms and conditions of all transmission services. FERC is the federal counterpart to state utility regulatory commissions.

Forwards — A forward is a commodity bought and sold for delivery at some specific time in the future. It is differentiated from futures markets by the fact that a forward contract is customized, non-exchange traded, and a non-regulated hedging mechanism.

FPA — Federal Power Act of 1935. Established guidelines for federal regulation of interstate energy sales. It is the primary statute governing FERC regulation of the electric sector.

Futures Market — Arrangement through a contract for the delivery of a commodity at a future time and at a price specified at the time of purchase. The price is based on an auction or market basis. Standardized, exchange-traded, and government regulated hedging mechanism.

Generation Company (Genco) — A regulated or non-regulated entity (depending upon the industry structure) that operates and maintains existing generating plants. The Genco may own the generation plants or interact with the short term market on behalf of plant owners. In

the context of restructuring the market for electricity, Genco is sometimes used to describe a specialized "marketer" for the generating plants formerly owned by a vertically-integrated utility.

Generation Dispatch and Control — Aggregating and dispatching (sending off to some location) generation from various generating facilities, providing backup and reliability services. Ancillary services include the provision of reactive power, frequency control, and load following. (Also see "Power Pool" and "Poolco" below.)

Grid — A system of interconnected power lines and generators that is managed so that the generators are dispatched as needed to meet the requirements of the customers connected to the grid at various points. Gridco is sometimes used to identify an independent company responsible for the operation of the grid.

Hedging Contracts — Contracts which establish future prices and quantities of electricity independent of the short-term market. Derivatives may be used for this purpose. (See Contracts for Differences, Forwards, Futures Market, and Options.)

IOU — An investor owned utility. A company, owned by stockholders for profit, that provides utility services. A designation used to differentiate a utility owned and operated for the benefit of shareholders from municipally owned and operated utilities and rural electric cooperatives.

Integrated Resource Planning (IRP) — A public planning process and framework within which the costs and benefits of both demand- and supply-side resources are evaluated to develop the least-total-cost mix of utility resource options. In many states, IRP includes a means for considering environmental damages caused by electricity supply/transmission and identifying cost-effective energy efficiency and renewable energy alternatives. IRP has become a formal process prescribed by law in some states and under some provisions of the Clean Air Act Amendments of 1992.

Integrated Resource Planning Principles — The underlying principles of IRP can be distinguished from the formal process of developing an approved utility resource plan for utility investments in supply- and demand-side resources. A primary principle is to provide a framework for comparing a variety of supply- and demand-side and transmission resource costs and attributes outside of the basic provision (or reduction) of electric capacity and energy. These resources may be owned or constructed by any entity and may be acquired through contracts as well as through direct investments. Another principle is the incorporation of risk and uncertainty into the planning analysis. The public participation aspects of IRP allow public and regulatory involvement in the planning rather than the siting stage of project development.

IPP — Independent Power Producer. An private entity that operates a generation facility and sells power to electric utilities for resale to retail customers.

ISDN — Integrated Services Digital Network. A 128 Kbps (kilobytes per second) digital telephone service available in many parts of the country though not universally available that may be able to substitute for fiber optic cable in every respect except possibly television

transmission.

ISO — Independent System Operator. A neutral operator responsible for maintaining instantaneous balance of the grid system. The ISO performs its function by controlling the dispatch of flexible plants to ensure that loads match resources available to the system.

Load Centers — A geographical area where large amounts of power are drawn by end-users.

Marginal Cost — In the utility context, the cost to the utility of providing the next (marginal) kilowatt-hour of electricity, irrespective of sunk costs.

Market-Based Price — A price set by the mutual decisions of many buyers and sellers in a competitive market.

Marketer — An agent for generation projects who markets power on behalf of the generator. The marketer may also arrange transmission, firming or other ancillary services as needed. Though a marketer may perform many of the same functions as a broker, the difference is that a marketer represents the generator while a broker acts as a middleman.

Monopoly — The only seller with control over market sales.

Monopsony — The only buyer with control over market purchases.

Municipalization — The process by which a municipal entity assumes responsibility for supplying utility service to its constituents. In supplying electricity, the municipality may generate and distribute the power or purchase wholesale power from other generators and distribute it.

Municipal Utility — A provider of utility services owned and operated by a municipal government.

NARUC — The National Association of Regulatory Utility Commissioners. An advisory council composed of governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. "The chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America."

NASUCA — The National Association of Utility Consumer Advocates. NASUCA includes members from 38 states and the District of Columbia. It was formed "to exchange information and take positions on issues affecting utility rates before federal agencies, Congress and the courts."

Natural Monopoly — A situation where one firm can produce a given level of output at a lower total cost than can any combination of multiple firms. Natural monopolies occur in industries which exhibit decreasing average long-run costs due to size (economies of scale). According to economic theory, a public monopoly governed by regulation is justified when an

industry exhibits natural monopoly characteristics.

NCSL — The National Conference of State Legislatures serves the legislators and staff of the nation's 50 states, its commonwealths, and territories. NCSL was created in 1975 and is a bipartisan organization with three objectives: to improve the quality and effectiveness of state legislatures, to foster interstate communication and cooperation, and to ensure states a strong, cohesive voice in the federal system. The NCSL Energy Project is available to assist states on various energy issues, including electric industry restructuring.

NOPR — A Notice of Proposed Rulemaking. A designation used by the FERC for some of its dockets.

NRTA - Northwest Regional Transmission Association. A subregional transmission group within the Western Regional Transmission Association.

NUG — A non-utility generator. A generation facility owned and operated by an entity who is not defined as a utility in that jurisdictional area.

Obligation to Serve — The obligation of a utility to provide electric service to any customer who seeks that service, and is willing to pay the rates set for that service. Traditionally, utilities have assumed the obligation to serve in return for an exclusive monopoly franchise.

Oligopoly — A few sellers who exert market control over prices.

Options — An option is a contractual agreement that gives the holder the right to buy (call option) or sell (put option) a fixed quantity of a security or commodity (for example, a commodity or commodity futures contract), at a fixed price, within a specified period of time. May either be standardized, exchange-traded, and government regulated, or over-the-counter customized and non-regulated.

Parallel Path Flow — As defined by NERC, this refers to the flow of electric power on an electric system's transmission facilities resulting from scheduled electric power transfers between two other electric systems. (Electric power flows on all interconnected parallel paths in amounts inversely proportional to each path's resistance.)

Peak Load or Peak Demand — The electric load that corresponds to a maximum level of electric demand in a specified time period.

Performance-Based Regulation (PBR) — Any rate-setting mechanism which attempts to link rewards (generally profits) to desired results or targets. PBR sets rates, or components of rates, for a period of time based on external indices rather than a utility's cost-of-service. Other definitions include light-handed regulation which is less costly and less subject to debate and litigation. A form of rate regulation which provides utilities with better incentives to reduce their costs than does cost-of-service regulation.

Portfolio Management — The functions of resource planning and procurement under a traditional utility structure. Portfolio management can also be defined as the aggregation and management of a diverse portfolio of supply (and demand-reduction) resources which will act

as a hedge against various risks that may affect specific resources (i.e., fuel price fluctuations and certainty of supply, common mode failures, operational reliability, changes in environmental regulations, and the risk of health, safety, and environmental damages that may occur as a result of operating some supply resources). Under a more market-driven power sector with a "power pool" or POOLCO wholesale market structure, a portfolio manager would: aggregate and manage a diverse portfolio of spot-market purchases, contracts-for-differences, futures contracts and other market-hedging-type contracts and mechanisms.

Power Authorities — Quasi-governmental agencies that perform all or some of the functions of a public utility.

Power Pool — An entity established to coordinate short-term operations to maintain system stability and achieve least-cost dispatch. The dispatch provides backup supplies, short-term excess sales, reactive power support, and spinning reserve. Historically, some of these services were provided on an unpriced basis as part of the members' utility franchise obligations. Coordinating short-term operations includes the aggregation and firming of power from various generators, arranging exchanges between generators, and establishing (or enforcing) the rules of conduct for wholesale transactions. The pool may own, manage and/or operate the transmission lines ("wires") or be an independent entity that manages the transactions between entities. Often, the power pool is not meant to provide transmission access and pricing, or settlement mechanisms if differences between contracted volumes among buyers and sellers exist.

Poolco — Poolco refers to a specialized, centrally dispatched spot market power pool that functions as a short-term market. It establishes the short-term market clearing price and provides a system of long-term transmission compensation contracts. It is regulated to provide open access, comparable service and cost recovery. A poolco would make ancillary generation services, including load following, spinning reserve, backup power, and reactive power, available to all market participants on comparable terms. In addition, the Poolco provides settlement mechanisms when differences in contracted volumes exist between buyers and sellers of energy and capacity.

Provider of Last Resort — A legal obligation (traditionally given to utilities) to provide service to a customer where competitors have decided they do not want that customer's business.

Public Interest Goals — Public interest goals of electric utility regulation include: 1) inter-and intra-class and intergenerational equity); 2) the equal treatment of equals (horizontal equity); 3) balancing long- and short-term goals that have the potential to affect intergenerational balance; 4) protecting against the abuse of monopoly power; and 5) general protection of the health and welfare of the citizens of the state, nation, and world. Environmental and other types of social costs are subsumed under the equity and health and welfare responsibilities.

PURPA — The Public Utility Regulatory Policy Act of 1978. Among other things, this federal legislation requires utilities to buy electric power from private "qualifying facilities," at an avoided cost rate. This avoided cost rate is equivalent to what it would have otherwise cost the utility to generate or purchase that power themselves. Utilities must further provide customers who choose to self-generate a reasonably priced back-up supply of electricity.

PUHCA — The Public Utility Holding Company Act of 1935. This act prohibits acquisition of any wholesale or retail electric business through a holding company unless that business forms part of an integrated public utility system when combined with the utility's other electric business. The legislation also restricts ownership of an electric business by non-utility corporations.

Qualifying Facility (QF) — Under PURPA, QFs were allowed to sell their electric output to the local utility at avoided cost rates. To become a QF, the independent power supplier had to produce electricity with a specified fuel type (cogeneration or renewables), and meet certain ownership, size, and efficiency criteria established by the Federal Energy Regulatory Commission.

Real-Time Pricing — The instantaneous pricing of electricity based on the cost of the electricity available for use at the time the electricity is demanded by the customer.

Reliability — Electric system reliability has two components — adequacy and security. Adequacy is the ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers at all times, taking into account scheduled and unscheduled outages of system facilities. Security is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system facilities.

Renewable Resources — Renewable energy resources are naturally replenishable, but flow-limited. They are virtually inexhaustible in duration but limited in the amount of energy that is available per unit of time. Some (such as geothermal and biomass) may be stock-limited in that stocks are depleted by use, but on a time scale of decades, or perhaps centuries, they can probably be replenished. Renewable energy resources include: biomass, hydro, geothermal, solar and wind. In the future they could also include the use of ocean thermal, wave, and tidal action technologies. Utility renewable resource applications include bulk electricity generation, on-site electricity generation, distributed electricity generation, non-grid-connected generation, and demand-reduction (energy efficiency) technologies.

Reregulation — The design and implementation of regulatory practices to be applied to the remaining regulated entities after restructuring of the vertically-integrated electric utility. The remaining regulated entities would be those that continue to exhibit characteristics of a natural monopoly, where imperfections in the market prevent the realization of more competitive results, and where, in light of other policy considerations, competitive results are unsatisfactory in one or more respects. Reregulation could employ the same or different regulatory practices as those used before restructuring.

Research and Development (R&D) — Research is the discovery of fundamental new knowledge. Development is the application of new knowledge to develop a potential new service or product. Basic power sector R&D is most commonly funded and conducted through the Department of Energy (DOE), its associated government laboratories, university laboratories, the Electric Power Research Institute (EPRI), and private sector companies.

Resource Efficiency — The use of smaller amounts of physical resources to produce the same

product or service. Resource efficiency involves a concern for the use of all physical resources and materials used in the production and use cycle, not just the energy input.

Restructuring — The reconfiguration of the vertically-integrated electric utility. Restructuring usually refers to separation of the various utility functions into individually-operated and -owned entities.

Retail Competition — a system under which more than one electric provider can sell to retail customers, and retail customers are allowed to buy from more than one provider. (See also Direct Access)

Retail Market — A market in which electricity and other energy services are sold directly to the end-use customer.

Retail Wheeling — See Direct Access.

RD&D — Research, development and demonstration (see definitions above for "Research and Development" and "Demonstration").

RTG — A Regional Transmission Group. A voluntary organization of transmission owners, users, and other entities interested in coordinating transmission planning, expansion, operation, and use on a regional and inter-regional basis. Such groups are subject to FERC approval.

Rules of Conduct — Rules set in advance to delineate acceptable activities by participants, particularly participants with significant market power.

Securitize — The aggregation of contracts for the purchase of the power output from various energy projects into one pool which then offers shares for sale in the investment market. This strategy diversifies project risks from what they would be if each project were financed individually, thereby reducing the cost of financing. Fannie Mae performs such a function in the home mortgage market.

Self-Generation — A generation facility dedicated to serving a particular retail customer, usually located on the customer's premises. The facility may either be owned directly by the retail customer or owned by a third party with a contractual arrangement to provide electricity to meet some or all of the customer's load.

Self-Service Wheeling — Primarily an accounting policy comparable to net-billing or running the meter backwards. An entity owns generation that produces excess electricity at one site, that is used at another site(s) owned by the same entity. It is given billing credit for the excess electricity (displacing retail electricity costs minus wheeling charges) on the bills for its other sites.

Special Contracts — Any contract that provides a utility service under terms and conditions other than those listed in the utility's tariffs. For example, an electric utility may enter into an

agreement with a large customer to provide electricity at a rate below the tariffed rate in order to prevent the customer from taking advantage of some other option that would result in the loss of the customer's load. This generally allows that customer to compete more effectively in their product market.

Stranded Costs/Stranded Assets — See Embedded Costs Exceeding Market Prices.

Stranded Benefits — Public interest programs and goals which could be compromised or abandoned by a restructured electric industry. These potential "stranded benefits" might include: environmental protection, fuel diversity, energy efficiency, low-income ratepayer assistance, and other types of socially beneficial programs.

Sunk Cost — In economics, a sunk cost is a cost that has already been incurred, and therefore cannot be avoided by any strategy going forward.

Supply-Side — Activities conducted on the utility's side of the customer meter. Activities designed to supply electric power to customers, rather than meeting load through energy efficiency measures or on-site generation on the customer side of the meter.

Sustained Orderly Development — A condition in which a growing and stable market is identified by orders that are placed on a reliable schedule. The orders increase in magnitude as previous deliveries and engineering and field experience lead to further reductions in costs. The reliability of these orders can be projected many years into the future, on the basis of long-term contracts, to minimize market risks and investor exposure. (See also "Commercialization.")

SWRTA — The Southwest Regional Transmission Association. A subregional RTG within WRTA, and awaiting FERC approval.

System Integration (of new technologies) — The successful integration of a new technology into the electric utility system by analyzing the technology's system effects and resolving any negative impacts that might result from its broader use.

Taking — Reducing the value of someone's property through government action without just compensation.

Tariff — A document, approved by the responsible regulatory agency, listing the terms and conditions, including a schedule of prices, under which utility services will be provided.

Time-of-Use (TOU) Rates — The pricing of electricity based on the estimated cost of electricity during a particular time block. Time-of-use rates are usually divided into three or four time blocks per twenty-four hour period (on-peak, mid-peak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real-time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices which may fluctuate many times a day and are weather-sensitive, rather than varying with a fixed schedule.

Transition Costs — See Embedded Costs Exceeding Market Prices.

Transmission-Dependent Utility — A utility that relies on its neighboring utilities to transmit to it the power it buys from its suppliers. A utility without its own generation sources, dependent on another utility's transmission system to get its purchased power supplies.

Transmitting Utility (Transco) — This is a regulated entity which owns, and may construct and maintain, wires used to transmit wholesale power. It may or may not handle the power dispatch and coordination functions. It is regulated to provide non-discriminatory connections, comparable service and cost recovery. According to EPCRA, any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale. (See also "Generation Dispatch & Control" and "Power Pool.")

Unbundling — Disaggregating electric utility service into its basic components and offering each component separately for sale with separate rates for each component. For example, generation, transmission and distribution could be unbundled and offered as discrete services.

Universal Service — Electric service sufficient for basic needs (an evolving bundle of basic services) available to virtually all members of the population regardless of income.

Utility — A regulated entity which exhibits the characteristics of a natural monopoly. For the purposes of electric industry restructuring, "utility" refers to the regulated, vertically-integrated electric company. "Transmission utility" refers to the regulated owner/operator of the transmission system only. "Distribution utility" refers to the regulated owner/operator of the distribution system which serves retail customers.

Vertical Integration — An arrangement whereby the same company owns all the different aspects of making, selling, and delivering a product or service. In the electric industry, it refers to the historically common arrangement whereby a utility would own its own generating plants, transmission system, and distribution lines to provide all aspects of electric service.

Volumetric Wires Charge — A type of charge for using the transmission and/or distribution system that is based on the volume of electricity that is transmitted.

WATSCO — The Western Association for Transmission System Coordination.

Wheeling — The transmission of electricity by an entity that does not own or directly use the power it is transmitting. Wholesale wheeling is used to indicate bulk transactions in the wholesale market, whereas retail wheeling allows power producers direct access to retail customers. This term is often used colloquially as meaning transmission.

Wholesale Competition — A system whereby a distributor of power would have the option to buy its power from a variety of power producers, and the power producers would be able to compete to sell their power to a variety of distribution companies.

Wholesale Power Market — The purchase and sale of electricity from generators to resellers

(who sell to retail customers) along with the ancillary services needed to maintain reliability and power quality at the transmission level.

Wholesale Transmission Services — The transmission of electric energy sold, or to be sold, at wholesale in interstate commerce (from EPAct).

Wires Charge — A broad term which refers to charges levied on power suppliers or their customers for the use of the transmission or distribution wires.

WRTA — The Western Regional Transmission Association, an RTG.

WSSCC — The Western System Coordinating Council. A voluntary industry association created to enhance reliability among western utilities.

WSSP — The Western Systems Power Pool. A FERC approved industry institution that provides a forum for short-term trades in electric energy, capacity, exchanges and transmission services. The pool consists of approximately 50 members and serves 22 states, a Canadian province and 60 million people. The WSSP is headquarter in Phoenix, Arizona.

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