THE HOPI TRIBE

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LeRoy N. Shingoitewa
CHAIRMAN

Herman G. Honanie
VICE-CHAIRMAN

MEMORANDUM

TO: George Mase, Council Representative
Village of Sipaulovi

Martha A. Mase

FROM: Martha A. Mase, Tribal Secretary
Hopi Tribal Council

DATE: May 16, 2013

SUBJECT: HOPI PUBLIC UTILITY AUTHORITY – ORDINANCE NO. 60
A.I. #048-2013

The Hopi Tribal Council on May 15, 2013 by motion and majority vote approved Resolution H-039-2013.

By passage of this Resolution the Hopi Tribal Council adopts the Hopi Public Utility Authority and Hopi Public Utility Commission Establishment Act, Ordinance No. 60.

Should you have any questions, you may contact me at (928) 734-3132.

c: Office of the Chairman
Office of the Vice Chairman
Office of the Tribal Treasurer
Office of General Counsel
Office of the Executive Director
Office of Financial Management
Departments/Programs
Villages
file

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HOPI TRIBAL COUNCIL
RESOLUTION
H-039-2013

WHEREAS, the Constitution and By-Laws of the Hopi Tribe, ARTICLE IV-POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a) and (g), authorizes the Hopi Tribal Council "To represent and speak for the Hopi Tribe in all matters for the welfare of the Tribe, . . ." and "To make ordinances to protect the peace and welfare of the Tribe, . . ."; and

WHEREAS, the management, operation, and maintenance of utility systems and services are vital to the spiritual, cultural and economic welfare of the Hopi Tribe, the several self-governing Hopi Villages (the "Villages"), and other approved users of utilities on the Hopi Reservation; and

WHEREAS, the Hopi Tribe, though is Energy/Water Task Team (the "Team") and advisors, has developed a Hopi Tribal ordinance entitled "Hopi Public Utility Authority and Hopi Public Utility Commission Establishment Act" (the "Ordinance"), a copy of which is attached hereto as Exhibit "A"); and

WHEREAS, subject to the Constitution and By-Laws of the Hopi Tribe, the purposes of the Ordinance are: (i) to create an independent authority referred to as the "Hopi Public Utility Authority" (the "Authority"), to manage, operate, and maintain utility systems for the Hopi Tribe, the Villages, and other approved rate-payers and participants in order to provide safe and reliable utility services at reasonable costs; and (ii) to create an independent commission, referred to as the "Hopi Public Utility Commission" (the "Commission"), to regulate the activities of the

Authority and any other public utility providing public services within the territory or jurisdiction of the Hopi Tribe; and

WHEREAS, the purpose of the Authority regarding water is to be a wholesale distributor of water to the Villages, so that each Village may operate and maintain its own user-delivery system, unless a Village authorizes the Authority to operate and maintain that Village's user-delivery system; and

WHEREAS, the purpose of the Commission is to regulate public utility services and to address grievances, complaints, and appeals regarding public utilities and public services; and

WHEREAS, the Team encouraged public input and comment during the development of the Ordinance; and

WHEREAS, the Team has recommended that the Hopi Tribal Council adopt the Ordinance in the form attached hereto as Exhibit "A"; and

WHEREAS, the Hopi Tribal Council has determined that the actions described below are in furtherance of the welfare of the Hopi Tribe.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby approves, adopts and promulgates the attached ordinance, which shall become effective immediately upon Tribal Council adoption of this Resolution.

BE IT FINALLY RESOLVED that the Team shall ensure that the Hopi Tribal Council actions intended by this Resolution are carried out in accordance with this Resolution and the Ordinance.

HOPI TRIBAL COUNCIL
RESOLUTION
H-039-2013

CERTIFICATION

The Hopi Tribal Council duly adopted the foregoing Resolution on May 15, 2013, at a meeting at which a quorum was present with a vote of 7 in favor, 4 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a) and (g) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said Resolution is effective as of the date of adoption and does not require Secretarial approval.

LeRoy N. Shingoitewa, Chairman
Hopi Tribal Council

ATTEST:

Martha A. Mase

Martha A. Mase, Tribal Secretary
Hopi Tribal Council

Hopi Public Utility Authority
And
Hopi Public Utility Commission
Establishment Act

Ordinance No. 60

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STATEMENT OF PURPOSE

The purpose of this Act is to create an Independent Authority which shall be referred to as the Hopi Public Utility Authority (HPUA), subject to the Constitution and By-Laws of the Hopi Tribe, to manage, operate, and maintain utility systems for the Hopi Tribe, the several self-governing Hopi Villages, and other approved rate-payers and participants in order to provide safe and reliable services to the people at reasonable costs, and to create an Independent Commission which shall be referred as the Hopi Public Utility Commission (HPUC), subject to the Constitution and Laws of the Tribe, to regulate the activities of the Hopi Public Utility Authority and any other public utility providing public services within the territory or jurisdiction of the Hopi Tribe. The purpose of the HPUA regarding water shall be for the Authority to be a wholesale distributor of water to the several Villages each to operate and maintain its own user-delivery system unless a Village authorizes the Authority to operate and maintain that Village's user-delivery system. The purpose of the HPUC shall be to regulate Public Utility Services and to address grievances, complaints, and appeals regarding public utilities and public services.

Sec. 1 DEFINITIONS

1) Annual Five Percent Administrative Cost. The term Annual Five Percent Administrative Costs shall refer to the amount the HPUA shall set aside annually from its annual projected gross revenues for defraying expenses and costs borne by the Tribe, the Department of Public Services, Department of Water, or other department or programs.

2) Approved Capital Project Priority List. The term Approved Capital Project Priority List shall refer to a list of construction, replacement, repair, or delivery projects approved by the Commission.

3) Authority. The term Authority shall refer to the Hopi Public Utility Authority.

4) Commission. The term Commission shall refer to the Hopi Public Utility Commission.

5) Direct HPUA Customer. The term Direct HPUA Customer shall refer to any customer purchasing utility services directly from the HPUA, including any self-governing Village with its own Village Public Utility, but shall not refer to customers receiving services directly from a self-governing Village Public Utility.

6) Excess Revenue. The term Excess Revenue shall mean revenue held or receivable by the HPUA in excess of the amount of revenues necessary to complete all Projects on the Approved Capital Project Priority List, but which shall not include the Annual Five Percent Administrative and Related Indirect Cost.

7) Final Determination. The term Final Determination shall mean the final action taken by the Commission to dispose of a Grievance or Complaint.

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8) Final Order. The term Final Order shall mean the final disposition of any appeal filed before the Commission subject to Judicial review.

9) Hopi Public Utility Authority. The Hopi Public Utility Authority shall refer to the entity established by this Act to provide public utility services on behalf of the Hopi Tribe.

10) Hopi Public Utility Commission. The Hopi Public Utility Commission shall refer to the entity established by this Act to regulate all public utility services and public utility service providers within the territory and jurisdiction for the Hopi Tribe.

11) Indirect HPUA Customer. The term Indirect HPUA Customer shall refer to a customer receiving public utility services directly from a Village Public Utility.

12) Judicial Review. The term Judicial Review shall mean review in the appropriate Courts of the Hopi Tribe.

13) Major Capital Project. A Major Capital Project shall be any project which requires more than (suggestion: $200,000) from borrowed funds.

14) Proposed Capital Projects Priority List. The term Proposed Capital Projects Priority List shall mean a list of projects with projected expenditures over ($ 25,000?) compiled and proposed by the HPUA in conjunction with the Annual Budget for construction, replacement, repair, or delivery project.

15) Public Utility Services. The term Public Utility Services shall include the production, transmission or delivery of water, sewer, solid waste, sanitary services, electricity, power, and telecommunications.

16) Public Utility. The term Public Utility shall mean every corporation, company, person, association, or their lessees, trustees created or receivers appointed by any court, for the production, transmission, or delivery of Public Utility Services for persons living within the territory or jurisdiction of the Hopi Tribe or Villages.

17) Village Public Utility. The term Village Utility shall mean any public utility authority established by any self-governing Village or consortium of self-governing Villages to provide Public Utility Services.

Sec. 2 ADOPTION AND AMENDMENT

(a) This Act is adopted under the authority of Article XI, Section 1 (a) of the Constitution and By-Laws of the Hopi Tribe.

(b) The Hopi Tribal Council, acting in accordance with the Constitution and By-Laws of the Hopi Tribe, may amend this Act.

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Sec. 3 SOVEREIGN IMMUNITY

This Act shall not be construed to waive the sovereign immunity in any Court from monetary damage claims, or to waive any other immunity or privilege of the Hopi Tribe.

Sec. 4 APPLICABILTIY

This Act shall apply to the Hopi Public Utility Commission, the Hopi Public Utility Authority, any other public utility providing services within the territory or jurisdiction of the Hopi Tribe, and all persons within the territory or jurisdiction of the Hopi Tribe.

Sec. 5 EFFECTIVE DATE

This Act shall be effective upon enactment.

Sec. 6 CREATION OF HOPI PUBLIC UTILITY AUTHORITY

(a) There is hereby created the Hopi Public Utility Authority ("HPUA"). The HPUA shall be operated on a self-sustaining financial basis and its revenue collection shall be designed to cover operating expenses, amortization of loans, and appropriate reserves. The HPUA shall be staffed by a Director and such subordinate staff as shall be necessary to meet the requirement of this Act. The Director shall be qualified to be an administrator to develop and coordinate planning, managing, and overseeing the operations and maintenance of the public utility services provided by the HPUA.

(b) The HPUA shall have the authority to provide public services of water, sewer, solid waste, sanitary services, electricity, power, and natural gas to any Director HPUA Customer, including any Village or Village Public Utility, throughout the Hopi Territory on behalf of the Hopi Tribe. The HPUA shall recognize that each self-governing Village has the right to establish its own Village Public Utility for any public service and the HPUA shall provide public utility services to each Village or Village Public Utility as determined by the Village governing body; provided, that the HPUA enter into agreements with any Village or consortium of Villages to provide direct Public Utility Services from the HPUA to Village utility users.

(c) The Authority shall develop and adopt an Operational Manual for the Authority within six months of the effective date of this Act

(d) The HPUA shall be responsible for the management, operation, maintenance, and repair of its own infrastructure, including but not limited to power, communications, sanitation, or water transmission, delivery, disposal, or storage, including any valves, main lines, hydrants, treatment facilities, pumping stations, pumps, tanks, transfer stations, transmission lines, including any roads necessary for public services activities.

(e) The HPUA shall manage its own finance system, including collection of payments disbursements and all accounting and auditing operations.

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(f) The HPUA shall collect payments from each self-governing Village or Village Public Utility and all Direct HPUA Customers. The HPUA shall collect payments from the appropriate Village or Village Public Utility even if the Village or Village Public Utility has failed to collect from its own customers.

(g) The HPUA shall not be responsible for rate collection and accounting for payments to be made by Indirect HPUA Customers to the appropriate Village or Village Public Utility.

(h) The HPUA shall have the authority to contract for maintenance, repair, and replacement of its own physical system infrastructure, but shall not have the authority to undertake a Major Capital Project for replacements.

(i) The HPUA shall not be responsible for the management, operation, repair or maintenance, of any costs associated with any Village Utility or Village Utility infrastructure established and operated by any self-governing Village.

(j) If a Village Utility shall provide Public Utility Services to any agency of the federal, state, or tribal governments, any benefits, equity, or savings derived from their participation shall not inure only to the Village providing the utility service, but shall be distributed equitably to all HPUA residential customers.

(k) The HPUA shall have the authority to seek funding from any source, including loans, provided that the intent to submit and prepare any grant proposal shall be coordinated with the Tribe's planning and development offices.

(l) The HPUA shall make its own budget. The HPUA annual budget shall include an Approved Capital Project Priority List. The HPUA annual budget shall include any proposed funding requests made to the Tribe. The HPUA's Annual Budget shall include an Annual Five Percent Administrative and Related Indirect Cost payment to a restricted account held by the Hopi Tribe for these purposes only.

Sec. 7 CREATION OF HOPI PUBLIC UTILITY COMMISSION

(a) There is hereby created the Hopi Public Utility Commission ("HPUC").

(b) COMPOSITION AND APPOINTMENT

(1) The HPUC shall consist of seven (7) Commissioners, including one President and six members.

(2) The Tribal Council shall select by majority vote all seven Commissioners and the Commission shall select from among the Commissioners, the President of the Commission. No member of the Commission shall be a seated Member of the Tribal Council.

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(3) Any partial term vacancy in the position of Member or President of the Commission through death, resignation, or otherwise, shall be filled in accordance to subparagraph (2). The newly selected Member filling a partial-term vacancy shall serve the remainder of the vacating Commissioner's term.

(c) TERM OF OFFICE. Commissioners shall serve four (4) year terms; provided, that the first Commissioners shall serve staggered terms, with four Members serving four year terms and three Members serving two year terms, as determined by the Tribal Council at the time of the appointment. The first Commissioners shall select the first president from among the four –year Commissioners.

(d) REMOVAL

(1) The Tribal Council may remove the Commission President or any Commission Member for reasonable cause as provided by law.

(2) The Commission President or any Member shall have the right to appeal removal in writing to the Hopi Court.

(3) In any removal proceeding by the Tribal Council, a Commissioner shall be afforded due process, including the rights, unless waived, to be represented at their expense, to procure information, and to provide testimony and evidence in a public hearing.

(e) ELIGIBILITY

(1) Commissioners shall consist of at least three residential utility customers and at least one business utility customer.

(2) Commissioners must be at least 25 years of age and have a minimum high school education level.

(3) No member of the Commission shall be a seated Member of the Tribal Council or other tribal official.

(f) COMPENSATION. Commissioners of the HPUC shall be compensated for each meeting. Such compensation shall not exceed one-hundred dollars ($ 100.00) for one regular monthly meeting, fifty dollars ($50.00) for no more than two special meetings, and two-hundred dollars ($ 200.00) for each hearing conducted pursuant to Section 12 of this Act.

Sec. 8 GENERAL POWERS AND DUTIES OF THE HPUC

(a) The Commission shall hold one Regular Meeting every calendar month. The Commission shall hold Special Meetings as called by the President or any three Members. The Commission shall post notice for all meetings in conspicuous places

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at least five (5) days prior to the each meeting and shall provide the time, place, and written agenda in each notice.

(b) The Commission shall have the authority to make regulations and rules governing the Authority and other Public Utilities, except a Public Utilty operated by a self-governing Hopi Village. The Commission shall promulgate an initial set of regulations to implement this Act within six months of the effective date of this Act. The Commission is authorized to engage experts and consultants as needed to assist the Commission with the fulfillment of its obligations and responsibilities under this Act. The HPUC shall have the power to set the rates, connection charges, and other fees by the Authority and any other Public Utility within the jurisdiction of the Tribe, except a Public Utility established and operated by a self-governing Village. The Commission shall on an annual basis review utility rates, connection charges, and any other fee or charge assessed by any Public Utility to determine reasonableness and equity of such charges based upon the public interest, essential operating requirements of the Public Utility.

(c) The Commission shall also consider the following factors in determining the reasonableness and equity or rates, charges, and fees:

(1) promotion of Village Public Utilities;
(2) competition to keep consumer costs down;
(3) consumer choice;
(4) quality of life;
(5) reliability of service; and
(6) efficiency and productivity.

(d) The HPUC shall have the power to set, regulate, or negotiate the rates, connection charges, and other fees to be paid by the HPUA for procurement of any utility product or service or to be paid to the HPUA by any other Public Utility or Village Public Utility.

(e) After proposing any adjustment to rates, charges, or fees, and prior to adopting such rates, charges, or fees, and prior to the two public hearings required in paragraph (d), the Commission shall notify each Member of the Tribal Council of any proposed adjustments.

(f) The Commission shall have the authority, upon its own findings or upon a Grievance or Complaint, to order HPUA or any other Public Utility to undertake certain repairs.

(g) The Tribal Council reserves the authority to select the provider(s) of Public Utility Services to HPUA and for the reservation or territory as a whole and to negotiate or set rates, charges, or fees paid by HPUA or the Tribe as a whole by written resolution.

(h) The HPUC or HPUA shall establish each their own annual budget, and if the HPUC or HPUA are requesting an appropriation from the Tribal Council such requests shall

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be timely presented in accordance with the Fiscal Management Policies and budget processes of the Council.

Sec. 9 PUBLIC MEETINGS FOR SETTING RATES

(a) The Commission shall hold at least two public meetings in a sixty (60) day period for setting or increasing utility rates prior to taking a final action to set or increase utility rates.

(b) The Commission shall post notice of public meetings in conspicuous places at last ten (10) days prior to the each meeting and shall state the time, place, and agenda, and a written explanation for the proposed rates and shall be available at the offices of the Hopi Tribe, the HPUC, and the HPUA.

Sec. 10 GRIEVANCES AND GRIEVANCE HEARINGS

(a) Any Direct HPUA Customer may file a Grievance with the Commission aggrieving any rate, toll, charge, schedule, joint rate, regulation, measurement, or any other action or practice relating to the provision of utilty services, or if the provision of service is unreasonable, inadequate, or discriminatory. An Indirect HPUA Customer may file with the local village utility grievance system, if any.

(b) Any Grievance shall be in writing and shall contain sufficient details to notify the Commission of the nature of the matter.

(c) The Commission shall duly investigate every Grievance.

(d) The Commission shall notify HPUA prior to any hearing being conducted to resolve a Grievance.

(e) The Commission shall make a Final Determination in writing on each Grievance within ninety (90) days of the Grievance being duly filed.

(f) The Final Determination on any Grievance shall be appealable to the Commission under Section 12 of this Act and shall not be ripe for Judicial Review.

Sec. 11 PUBLIC UTILTY COMPLAINTS

(a) Any Public Utility may file a Complaint with the Commission on any matter affecting its own product or service.

(b) Any Complaint shall be in writing and shall contain sufficient details to notify the Commission of the nature of the matter.

(c) The Commission may investigate the Complaint as it considers necessary.

(d) The Commission shall issue a Final Determination, in writing, to the Public Utility.

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(e) The Final Determination issued by the Commission on any Complaint shall be appealable to the Commission under Section 12 of this Title and shall not be ripe for Judicial Review.

Sec. 12 APPEALS

(a) Any Direct or Indirect HPUA Customer shall have the right to file an Appeal with the Commission on any action or decision made by the HPUC, HPUA, or other Public Utility that adversely affects the customer, including on the final decision on a duly filed Grievance or Complaint filed by the Customer.

(b) Any Appeal shall be in writing and shall be of sufficient detail to provide the Commission with an adequate understanding of the decision being appeals.

(c) The Commission shall conduct a hearing on every Appeal within sixty (60) days after the Appeal has been filed. The Commission shall provide at least ten (10) days written notice to the customer filing the Appeal and to the appropriate Public Utility of the time and place of the hearing on the Appeal.

(d) Both Public Utility and the customer filing the Appeal shall have an opportunity to be heard by the Commission at each hearing.

(e) The Commission may issue subpoenas at the request of either party, which shall be enforceable by a finding of contempt by the Commission and enforcement action by Hopi Law Enforcement.

(f) The Commission shall issue a Final Order making findings of facts and conclusions of law in writing on every Appeal within thirty (30) days after the hearing date.

(g) A final Order of the Commission shall be final for the purposes of Judicial Review.

Sec. 13 BUDGETING OF FUNDS

HPUC and HPUA are hereby authorized an appropriation in an amount necessary to effectuate the purpose of this Act consistent with the Hopi Annual Budget.

Sec. 14 SELF-GOVERNING HOPI VILLAGES

(a) Each self-governing Village as provided in the Constitution and By-Laws of the Hopi Tribe has the authority to establish its own Village Public Utility to provide public services for the Village; provided, the scope of the power and activities of any public service authority and utility of a Village shall be limited to the territory, persons, and jurisdiction of that Village, unless otherwise consistent with this Act.

(b) The Hopi Tribe shall regulate and operate all public service utilities between and among the several Villages.

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