



LEECH LAKE BAND OF OJIBWE

Tribal Employment Rights Office
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In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minn. Stat. § 216B.16, Subd. 12, for Gorham's Inc., Northwest Natural Gas L.L.C., Northwest Natural Gas of Murray County, Inc., and Northwest Gas of Cass County L.L.C.;

In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minn. Stat. 216B.16, Subd. 12.

Docket Numbers: G6279, G6280, G6278/CI-18-770; G7066/EX-21-693

Our goal with engaging the Minnesota Public Utilities Commission (PUC) is to follow-up on a consultation between the PUC and the Leech Lake Band of Ojibwe which took place in the fall of 2021 and to specifically respond to the above dockets. The PUC at that time expressed an interest in reviewing how the Bands Tribal Employment Rights Ordinance (TERO) might be used under similar conditions as experienced with the PUC order under which Enbridge agreed to observe the Bands TERO ordinance for the decommissioning of line three which runs through the its reservation. The current request for exemption from PUC regulation by the Northwestern Gas Company and its affiliates presented an opportunity for the PUC to test how TERO law can be expanded for other uses outside of Enbridge as a matter of their regulatory authority over utilities traversing the Leech Lake Reservation.

The Enbridge example included the following docket filing where Enbridge formally agrees to compliance with the Bands TERO laws full for the decommissioning to take place on the Leech Lake Reservation in order to comply with PUC orders and obtain permitting rights. The same line of reasoning applies to events where in the immediate case a gas line company seeks a permit to conduct operations within the Leech Lake Reservation. The concept can also be expanded to cover new and ongoing maintenance of lines and services by other utilities seeking various approvals and operating within the reservation

"Enbridge Energy, Limited Partnership Line 3 Replacement Project Tribal Economic Opportunity and Labor Education Plan, August 2018 MPUC Docket No. PL-9/PPL-15-137

2. PLAN DEVELOPMENT, 3. TRIBAL ECONOMIC OPPORTUNITY AND LABOR EDUCATION PLAN b. OTHER ECONOMIC OPPORTUNITIES. ii. TERO Fees & Wages. For any construction (including decommissioning work) within the Leech Lake Reservation or Fond du Lac Reservation, **Enbridge will work closely with contractors and the Bands to ensure compliance with the applicable TERO, including hiring expectations and the payment of fees. TERO fees and all wages paid to members will be reported to Enbridge and included in Enbridge's quarterly reports to the Commission."**



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Below is a general discussion of the TERO law:

“What is the extent of TERO jurisdiction?”

TERO has jurisdiction over all employers operating within the exterior boundaries of the reservation as legally defined by treaty or legislation including ceded lands, territories, and lands where jurisdiction has not been extinguished. TERO jurisdiction covering employers working on fee land projects has been greatly reduced by the **Montana v. U. S. A.** case. Note: After **Montana**, TERO Law is now “CONSENTUAL”, typically made as a contract requirement with contractors, service providers and other employers by the Leech Lake Band of Ojibwe, Federal Agencies, State Agencies and Local Governments at the time of granting commercial contracts thus TERO law is accepted formally by agreement.

What is the legal basis for TERO?

A tribe’s authority to enact and enforce an Indian/Native employment preference law is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principle of Indian Laws and is supported by a host of Supreme Court decisions. These decisions have held that, “Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign which have never been extinguished.” Tribes have a basic relationship with the federal government as sovereign powers. This is recognized in both treaties and Federal statutes. The sovereignty of tribes has been limited from time to time by treaties and Federal legislation; however, what have not been expressly limited remains within tribal sovereignty.

One important area in which the inherent powers of tribes/villages governments should clearly apply is in the right of tribes to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations/villages. A full and accurate explanation of tribal sovereignty is found in Felix S. Cohen’s handbook of **Federal Indian Law**.



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What does the TERO Ordinance do?

- **Sets Conditions:** Mandates the tribal requirements for Indian preference that all covered employers must comply with in order to be eligible to perform work on reservations.
- **Establishes Authority:** Empowers the TERO Commission and staff with sufficient authority to fully enforce all provisions of TERO ordinance.
- **Assigns Responsibility:** Defines and describes the duties and responsibilities of TERO staff and commission.
- **Delineates Penalties for Violations:** Clearly spells out penalties employers may face for violations of tribal law.
- **Provides Due Process:** It provides principles of legal fairness to all parties involved in compliance or violation dispute issues."

See Leech Lake Web Site at <https://www.llojibwe.org/td/tero.html>

In conclusion, this letter serves as a response to the immediate docket however, it serves a broader purpose also on informing the reader on the TERO ordinance and past usage of the ordinance by the PUC. As stated at the outset our goal is to develop a broader approach to advancing the employment and business opportunities for Band members through the assistance and observance of Band laws by the PUC its future regulation determinations. Lastly, the TERO Office looks forward to working with the planned working group sponsored by the PUC to further examine how it would implement a broader policy.

TERO Director/Tommy Brown

A handwritten signature in black ink, appearing to read "Tommy Brown", is written over a horizontal line.

Signature

A handwritten date "3-7-2022" is written in black ink over a horizontal line.

Date