FLORIDA'S FAILURE TO REGULATE

Despite massive political spending and lobbying, most states have found a way to enact and enforce regulations to protect citizens from monopoly utility expansions.

Florida has yet to do so…

MEP COALITION
FOR FAIR COMPETITION
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727.275.0572
1532 US Highway 41 Bypass S. #139
Venice, FL 34293-1032
mepcoalition.org
info@mepcoalition.org

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EXECUTIVE BRIEF

Florida's oversight of utility monopolies has failed.

The Florida Public Service Commission, the State Legislature, the Attorney General and all those charged with the protection of consumers have failed to act to provide reasonable regulatory oversight and restrictions on the expansion of utility monopolies. This leaves consumers, rate payers, small businesses and local communities at risk while utilities leverage their monopoly status and use ratepayer funds to subsidize expansion into new unregulated industries.

This has already been prohibited or regulated across much of the United States.
Florida has fallen behind most other states and has allowed powerful utility lobbyists and political donations to inhibit reasonable and responsible governance.

All businesses are driven by growth. Building shareholder value, increasing market share and growing profitability are the benchmarks for success especially among large publicly traded companies.

Utility companies, because they maintain vital public infrastructure, are granted special rights and privileges including monopoly-like status – the ability to operate as a sole supplier free from competition. All commercial and residential customers must use the one utility monopoly that services their area as there is essentially no reasonable alternative. In return for this special status and exemption from a myriad of laws designed to encourage competition, utility monopolies are regulated with special rules and laws designed to protect the rights of ratepayers and consumers who cannot choose another supplier if they do not think the company is providing good service, dealing with them fairly or pricing their services reasonably.

The job of protecting the ratepayer, consumer and citizen from the corporation's drive to grow and expand their monopoly status into greater market power and profitability falls to regulators charged to act in the public interest. Public Service Commissions, Attorneys General and state legislators have direct oversight responsibility to keep utility monopolies in check and protect citizens.

Using utility ratepayer funds to subsidize new businesses.
The expansion of regulated utility monopolies using ratepayer funds to enter unregulated businesses are not new. Over the past twenty years, many utilities have attempted to leverage their monopoly power, access to customer data and ratepayer funded infrastructure to subsidize easy entry into electrical, heating, air conditioning, plumbing and other industries.

States across the U.S. have enacted laws to regulate so-called **Utility Affiliate Transactions,** preventing regulated utilities from using ratepayer funded resources to subsidize nonregulated subsidiaries. Florida has yet to implement even the most basic regulatory protections.

Massive political spending, lobbying, and donations as well as contributions specifically targeted at those with the power to nominate members to the Florida Public Service Commission, the state regulatory authority, have all contributed to the undermining of regulatory oversight and reasonable safeguards against the misuse of ratepayer funds.

Undermining Regulatory Oversight

Major campaign donations. Florida's four largest energy companies contributed more than $43 million to state level candidates, political parties and political committees in the 2014 and 2016 election cycles.

- **Political spending increasing.** The energy companies spent more than twice as much in the most recent four-year period than in the previous ten-year period.
- **Lobby expenditures trending upward.** Utilities continue to have an outsized lobbying presence in the Florida Capitol, employing more than one lobbyist for every two legislators.
- **Trade associations used to lobby.** While the energy companies are not supposed to use customer dollars to lobby, regulators allow them to bypass the ban by paying dues to trade groups and associations that lobby.

Utility	Average Number of Contract Lobbyists Per Year 2014 – 2017	Total Paid 2014 - 2017
Duke Energy	25	$750,000
Florida Power & Light	32	1,760,000
Gulf Power Company	13	$940,000
TECO/Tampa Electric	24	$2,098,000
Totals	94	$5,548,000

*(SOURCE: Power Play Redux: Political Influence of Florida's Top Energy Corporations***:** *http://www.integrityflorida.org/wp-content/uploads/2018/05/Power-Play-Redux-final.pdf)*

Our review of 13 states chosen randomly illustrates the type of restrictions used across the country to prohibit misuse of ratepayer funds and prevent subsidization. These regulations address the sharing of customer data, joint marketing, sharing of personnel and corporate infrastructure and much more in order to shield ratepayers, local businesses and entire industries from insurmountable and unfair competition.

Federal Trade Commission and Consumer Protections

The Federal Trade Commission weighed in on this issue and offers guidelines for utility/affiliate codes of conduct in their July 2000 report, "Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform."

> ***"The chief concerns in the context of affiliate transactions in retail competition typically include discrimination as well as cross-subsidization or cost-shifting that favors the unregulated affiliate relative to its competitors. Consumers are harmed because discrimination and cross-subsidization may displace more efficient and innovative competitors and shift production to less efficient suppliers… Most states have rules or codes of conduct against cost shifts and cross-subsidization already in place because of the traditional concern about burdening ratepayers with unrelated costs."***

Moreover, the FTC dedicates an entire sub-section to logo usage, where they identify concerns of using a utility's logo resulting in consumer deception and cross-subsidization.

> ***"Harm to competition may occur because the unregulated affiliate's access to the logo of its regulated parent gives it a cost advantage through potential cross-subsidization that otherwise equally efficient competitors cannot match. The anticompetitive results may include (1) higher-than-necessary average operating (i.e., non-logo-related) costs for the industry and higher prices for consumers due to the continued operation of the affiliate, which can survive with higher-than-necessary costs due to the cross-subsidization; (2) greater market concentration and less competition than would occur absent the cross-subsidization;(78) and (3) discouragement of potential entry that likely would have occurred absent the cross-subsidization, including entry involving innovative products and production processes."***

There is no need to reinvent the wheel as most states have already successfully acted to reign in ratepayer subsidized utility expansions. Aggressive lobbying and political spending must not prevent legislators and regulators from doing their jobs and acting in the public trust. Florida must finally take action and enact real legislative and regulatory controls, as other states have done, to protect consumers, ratepayers and small businesses.

Other states have found a way through the wall of corporate lobbying and political spending to protect citizens. Failing to do so in Florida will result in irreparable harm and will be a distressing demonstration of a complete breakdown and abdication of legislative and regulatory oversight bought and paid for with utility ratepayer funds.

FLORIDA DRAFT LEGISLATION

Currently seeking Florida legislators willing to sponsor this bill or a version of it to provide Florida with consumer protections currently written into law in states across the country.

Chapter 366, Florida Statutes, Public Utilities

Section 366.____ is created to read:

Section 366.____ Public utility or electric utility prohibited from engaging in construction contracting services, exceptions, penalty.—

(1) A public utility or electric utility, as defined in s. 366.02, may not engage in construction contracting services, as defined in ch. 489, unless otherwise provided in subsection (7).

(2) No affiliate or utility contractor may use any facility, electronic processing or communication mechanism, public relations or marketing product or service, vehicle, service tool, instrument, employee, or any other public utility or electric utility asset, the cost of which is recoverable in the regulated rate for utility service, to engage in construction contracting services unless the public utility or electric utility is compensated for the use of such asset at cost to the public utility or electric utility.

(3) No affiliate or utility contractor may use or combine any bookkeeping, billing, mailing, financing, legal services, or insurance product or service procured or owned by a public utility or electric utility for any activity related to construction contracting.

(4) A public utility or electric utility may not provide any affiliate or utility contractor with bookkeeping, billing, mailing, financing, legal services, or insurance product or service related to construction contracting, including service warranty or home warranty products or services under ch. 634 or construction liens under part I, ch. 713.

(5) A public utility or electric utility may not use or allow any affiliate or utility contractor to use the name, trade or service mark, logo, or slogan of such public utility or electric utility to engage in construction contracting services.

(6) A public utility or electric utility may not engage in or assist any affiliate or utility contractor in engaging in construction contracting services in a manner which subsidizes the activities of such public utility, electric utility, affiliate or utility contractor to the extent of changing the rates or charges for the public utility's or electric utility's regulated services above or below the rates or charges that would be in effect if the public utility or electric utility were not engaged in or assisting any affiliate or utility contractor in engaging in such activities.

(7) Any affiliate or utility contractor engaged in construction contracting services shall maintain accounts, bookkeeping and records separate and distinct from the public utility or electric utility.

(8) The provisions of this section shall apply to any affiliate or utility contractor engaged in construction contracting services that is owned, controlled or under common control with a public utility or electric utility providing regulated utility service in this state or any other state.

(9) The provisions of this section shall not be construed to prohibit a public utility or electric utility from providing emergency service, providing any service required by law, providing any service exempt from construction contracting licensure under s. 489.103(5), or providing a program pursuant to an existing tariff, rule or order of the Commission.

UTILITY AFFILIATE TRANSACTION RULES BY STATE

State	Rule	Prohibits Subsidation	Market Value Asset Transfers	Prohibits Sharing of Customer Data	Prohibits Joint Marketing	Prohibits Sharing of Employees	Prohibits Sharing of Corporate Infrastructure	Prohibits Use of Logo	Notes
FLORIDA	Florida Administrative Code 25-6.1351 Cost Allocation and Affiliate Transactions	(Not Specific)	X (Unenforced/Unregulated)						No clear rules in place compared to other states
CALIFORNIA	PUC Affiliate Transaction Rules Applicable to Large CA Energy Utilities	X	X	Non-discriminatory	X	X	X	Allowed with Disclaimer	Any shared corporate support shall be priced, reported
MISSOURI	4 CSR 240-40.015	X	Commission approves cost allocation, market valuation and internal cost methods	Requires customer consent and non-discriminatory	Allowed with Disclaimer			Allowed with Disclaimer	Includes HVAC Services Affiliate Transactions (4 CSR 240-40.017)
TEXAS	Texas Administrative Code Title 16 Part 2 Chapter 25 Subchapter K RULE §25.272	X	Governed by a tariff approved by the Commission, non-discriminatory	Requires customer consent and non-discriminatory	X	X	X		includes access for all to things like billing inserts if offered to the affiliate.
CONNECTICUT	Code of Conduct for Electric Distribution Companies Sec 16-244h1-7	X	X	Requires customer consent and non-discriminatory	Allowed with Disclaimer	X		Allowed with Disclaimer	Corporate support services shall be priced, reported
MAINE	PUC 65-407 (Chapters 304 and 820)	X		X (820 requires purchase)	X (820 requires purchase)	X		X (820 requires purchase)	
ARKANSAS	PSC Order No. 7 Docket No. 06-112-R Affiliate Transaction Rules	X	X	X	X	X	X		Describes Books and Record Keeping
NEW HAMPSHIRE	Chapter PUC 2100 Affiliate Transaction Rules	X	X	Requires customer consent	X	X	X	Allowed with Disclaimer	Corporate support services shall be priced, reported
RHODE ISLAND	PUC R.I.G.L. § 39-1-11 and § 39-3-7		Transactions tariffed, other sales are publicly disclosed		Unless promotions are non-discriminatory	Limited		X	Describes Books and Record Keeping
NEW JERSEY	NJ Administrative Code Title 14:4-3	X	Prohibited unless tariffed	Requires customer consent	X	X	X	Allowed with Disclaimer	Corporate support services shall be priced, reported
MICHIGAN	Public Act 141, MCL 460.10 Code of Conduct	X	X	Requires customer consent and non-discriminatory	X	X	X		Non-discriminatory services
ILLINOIS	Title 83 Chapter Ic Part 450	X	Transfer costs must be Commission approved	Requires customer consent and non-discriminatory	X	X			Includes internal audit information
NORTH CAROLINA	NC Utilities Commission: North Carolina Code of Conduct	X	X	Requires customer consent and non-discriminatory	Must make such oppotunities available to comparable third parties.			Allowed with Disclaimer	Same rules apply in South Carolina (Aimed at Duke)
MARYLAND	2013 Maryland Code PUBLIC UTILITIES § 7-211 - Energy efficiency programs	X							Ruling is ambiguous, multiple fights over use of logo (BGE)
MASSACHUSETTS	220 CMR 12.00 and Proposed Bills H3513 and H860		X	Requires customer consent and non-discriminatory	X	X		Allowed with Disclaimer	Proposed 2011 H. 860. Contains full prohibition on logo and subsidization.

FEDERAL ENERGY REGULATORY COMMISSION

Rule: Cross-Subsidization Restrictions on Affiliate Transactions, [Docket No. RM07-15-000; Order No. 707][1]

SUMMARY: In this Final Rule, pursuant to sections 205 and 206 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) is amending its regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates. These restrictions will supplement other restrictions the Commission has in place to protect captive customers of franchised public utilities or transmission customers of franchised public utilities that own or provide transmission service over jurisdictional transmission facilities from inappropriate cross-subsidization of affiliates.

Order No. 707 expands the applicability of recently-adopted affiliate transaction restrictions. FERC's restrictions are meant to prevent franchised public utilities (that is, utilities with franchised service obligations under state law) with captive customers from unfairly subsidizing their unregulated affiliates at the captive customers' expense. FERC traditionally has addressed this issue in the context of market-based rate sellers, and recently codified in its regulations a series of restrictions on transactions between franchised public utilities with captive customers and their affiliates that sell power at marketbased rates. Even more recently, in a 2007 order approving the acquisition of KeySpan by National Grid, FERC applied those conditions not only to the relationship between a franchised public utility with captive customers and its affiliates that sell power at market-based rates, but also to the relationship between the utility and all of its other affiliates, even those that do not engage in power sales.

Order No. 707 further broadens the scope of the affiliate transaction restrictions so that the rules adopted in the National Grid merger proceeding will apply to all FERC-jurisdictional franchised utilities that either (1) serve wholesale or retail customers under cost-based regulation, or (2) own or provide transmission service over FERC jurisdictional transmission facilities. However, FERC clarifies that if a franchised public utility has received a determination from FERC that it does not have captive customers, it may continue to rely on that determination. If a franchised public utility is subject to the affiliate restrictions under Order No. 707, it must comply with the following rules:

‡ FERC approval is required for any wholesale sale by the utility to an affiliate eligible to sell wholesale energy at market-based rates, or by such an affiliate to the utility.

‡ Sales of non-power goods and services to any affiliate must be at the higher of cost or market price.

‡ With the exception of purchases from "centralized service companies" (i.e., a service company providing legal, accounting, tax, human resources, and related services) purchases of non-power goods and services from any affiliate must be at a price no higher than the market price.

‡ Purchases by a franchised utility of non-power goods and services from a "centralized service company" must be at cost.[2]

[1] https://www.ferc.gov/whats-new/comm-meet/2008/022108/E-2.pdf

[2] https://www.huntonak.com/images/content/2/0/v3/2058/FERC-707-Alert.pdf

FEDERAL TRADE COMMISSION

Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform[3]

Limits on Transactions Between Regulated Utilities and Their Unregulated Affiliates

As discussed above, we have significant reservations about the effectiveness of relying exclusively on behavioral rules [to discourage discrimination in transactions between regulated utilities and their unregulated affiliates]. If the scale, scope, or vertical integration economies of affiliation are substantial and can be realized even in the presence of functional unbundling, [a state commission] may wish to strengthen its approach by requiring the affiliates to operate independently, on a bid-based, arm's-length basis. For example, [a state commission] may wish to require that the bulk of regulated utility purchases from unregulated affiliates be restricted to contracts won through an objective bidding process in which a third party evaluates the bids.

A critical element of workable bidding systems is the perceived and actual objectivity of the bid evaluation process. The system must be perceived as objective in order to attract bidders. Potential bidders, other than affiliates, may be unwilling to incur the costs of making a bid if the system is perceived as biased in favor of affiliates. The system must also be objective in fact in order to avoid raising costs for customers of the regulated utility. The use of third-party evaluations of the bids is one technique for achieving such objectivity.(70)

In addition, [a state commission] may wish to consider restrictions on asset transfers from the parent distribution utility to an affiliate. Some states are considering making such transfers subject to particular price bounds to assure that ratepayers do not unfairly subsidize the activities of the affiliate.(71) This proposal raises issues similar to determining the value of assets in assessing stranded costs. Just as some states, such as Massachusetts, have determined that the market is the best gauge of value to determine the value of generating assets in a stranded cost assessment,(72) [a state commission] may wish to use actual market values, rather than a band of prices, for asset transfers. The arm's-length bid process discussed above is an example of a method to establish actual market values.

Benefits and Costs of Allowing Unregulated Affiliates to Use the Parent, Regulated Distribution Firm's Logo

[A state commission] may wish to compare the benefits and costs of allowing affiliates of regulated distribution firms to use the corporate logo of the distribution firm.(73) One benefit of such use may be to reduce prices in the competitive markets served by affiliates. With access to the parent company's logo, the affiliate is likely to have lower marketing costs that may be passed along to consumers in a competitive market.(74) The lower prices of the affiliate may encourage other firms serving this market to charge lower prices as well, resulting in lower prices for the market as a whole.(75) If consumers' perceptions of the implications of an affiliate's use of the parent utility's logo are accurate,(76) a second prospective benefit may be reduced search costs for consumers.

On the cost side, we have identified two potential concerns about the use of logos by affiliates: deception of consumers and cross-subsidization.

(1) Potential Deception: [This is discussed in Chapter VIII.]

(2) Potential Cross-subsidization and the Use of the Parent Utility's Logo: Although some forms of cross-subsidization may be effectively addressed by transfer pricing rules,(77) other forms may be more difficult to assess. Cross-subsidization could take the form of cost-shifting among inputs used for both regulated and unregulated products, such as the use of a corporate logo in marketing the affiliate's products and services as well as the regulated parent utility's products and services. Costs of shared inputs could be assigned in a biased manner (i.e., with additional costs assigned to the regulated side of the business) so that the regulated entity can justify

[3] https://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform#Limits

higher rates. This biased assignment of costs, which is often difficult for regulators to detect and remedy, distorts competition and produces inefficiencies in the unregulated business as well.

The risk of failing to detect anticompetitive cross-subsidization is heightened if (1) the reputation of the regulated parent utility is effectively embodied or represented by its logo; (2) the regulated parent firm can improve its reputation by incurring costs of the type that regulators would traditionally include in the rate base of the regulated firm; and (3) the unregulated affiliate can enhance its own reputation among consumers by using the logo of the regulated parent firm, even if elements of the regulated firm's reputation do not apply to the affiliate. When these factors are present, a regulated incumbent will have a heightened incentive to overinvest in reputation-building because it can expect to incorporate a greater share of these investments into its rate base than if the assets were not shared with the affiliate. Moreover, the affiliate would realize additional profits from its increased sales in the unregulated market. The principal obstacle to deterring this conduct is that it may be extraordinarily difficult to distinguish competitive from anticompetitive levels of investment in reputation-building. Harm to competition and consumers may result from such overinvestment and subsequent cross-subsidization.

Harm to competition may occur because the unregulated affiliate's access to the logo of its regulated parent gives it a cost advantage through potential cross-subsidization that otherwise equally efficient competitors cannot match. The anticompetitive results may include (1) higher-than-necessary average operating (i.e., non-logo-related) costs for the industry and higher prices for consumers due to the continued operation of the affiliate, which can survive with higher-than-necessary costs due to the cross-subsidization; (2) greater market concentration and less competition than would occur absent the cross-subsidization;(78) and (3) discouragement of potential entry that likely would have occurred absent the cross-subsidization, including entry involving innovative products and production processes.

If [a state commission] upon more detailed study determines that there are substantial economies of vertical integration that cannot be realized without allowing affiliates to use the logos of their respective regulated parent utilities, [a state commission] may wish to consider two policy alternatives that are designed to obtain some of the potential benefits of affiliate use of the parent distribution firm's logo without incurring the costs. First, some states are considering allowing the use of the logo by affiliates, contingent upon use of a disclaimer that avoids consumer deception. [A state commission] may wish to evaluate this alternative by examining the impression that consumers are likely to have with the use of the logo accompanied by a disclaimer, and whether that impression would be accurate.(79)Consumer research designed to investigate the effects of several alternative policies on consumers may be the most effective approach.(80) A disclaimer that suffices to avoid consumer deception also may suffice to discourage cross-subsidization in the form of excessive investment in reliability.

Another alternative for transfer of the rights to use the parent firm's logo is to require that the affiliate (and any other firms granted the right to use the logo) pay the parent for the right to use the logo.(81) Because the logo is an asset, use of the logo by other firms, including affiliates, represents an asset transfer from the parent firm, and [a state commission] may wish to treat it like other asset transfers.(82) In order to avoid cross-subsidization in such a transaction, the use of the parent logo must be fairly evaluated.

MASSACHUSETTS

Rule: 220 CMR 12.00 STANDARDS OF CONDUCT FOR DISTRIBUTION COMPANIES AND THEIR AFFILIATES[4] and Proposed Bills H3513 and H860[5]

Market Value Asset Transfers

A Distribution Company may sell, lease, or otherwise transfer to an Affiliate,
including a Competitive Affiliate, an asset, the cost of which has been reflected in the Distribution Company's rates for regulated service, provided that the price charged the Affiliate is the higher of the net book value or market value of the asset. The Department shall determine the market value of any such asset sold, leased, or otherwise transferred, based on the highest price that the asset could have reasonably realized after an open and competitive sale.

A Distribution Company may sell, lease, or otherwise transfer to an affiliate, including a Competitive Affiliate, assets other than those subject to 220 CMR 12.04(1), and may also provide services to an affiliate, including a Competitive Affiliate, provided that the price charged for such asset or service is equal to or greater than the Distribution Company's fully allocated cost to provide the asset or service.

An Affiliated Company may sell, lease, or otherwise transfer an asset to a Distribution Company, and may also provide services to a Distribution Company, provided that the price charged to the Distribution Company is no greater than the market value of the asset or service provided.

A Distribution Company must maintain a log of all transactions with Affiliated Companies made pursuant to 220 CMR 12.04(1) through (3). The log shall include the date of the transaction, the nature and quantity of the asset or service provided, the price charged, and an explanation of how the price was derived for purposes of compliance with 220 CMR 12.04. All log entries must be dated and made contemporaneously with relevant transactions. The log shall be kept up to date. The Distribution Company shall file a copy of the log with the Department no later than January 15 of each year, covering the previous year.

Sharing Customer Data

A Distribution Company shall not release any proprietary customer information to an Affiliate without the prior written authorization of the customer.

To the extent that a Distribution Company provides a Competitive Affiliate with information not readily available or generally known to any Non-affiliated Supplier, which information was obtained by the Distribution Company in the course of providing distribution service to its customers, the Distribution Company shall make that information available on a non-discriminatory basis to all Non-affiliated Suppliers transacting business in its service territory. 220 CMR 12.03(10) does not apply to customer-specific information obtained with proper authorization, information necessary to fulfill the provisions of a contract, or information relating to the provision of general and administrative support services.

Joint Marketing

The Distribution Company shall not engage in joint advertising or marketing programs of any sort with its Competitive Energy Affiliate, nor shall the Distribution Company directly promote or market any product or service offered by any Competitive Affiliate.

[4] https://www.mass.gov/files/220_cmr_12.00_10_3_08.pdf

[5] https://malegislature.gov/Bills/187/H860

Sharing Employees

Employees of a Distribution Company shall not be shared with a Competitive Energy Affiliate, and shall be physically separated from those of the Competitive Energy Affiliate. The Distribution Company shall fully and transparently allocate costs for any shared facilities or general and administrative support services provided to any Competitive Affiliate.

Logo Usage

Subject to 220 CMR 12.03(12), a Distribution Company may allow an Affiliate, including a Competitive Energy Affiliate, to identify itself, through the use of a name, logo, or both, as an Affiliate of the Distribution Company, provided that such use by a Competitive Energy Affiliate shall be accompanied by a disclaimer that shall state that no advantage accrues to customers or others in the use of the Distribution Company's services as a result of that customer or others dealing with the Competitive Energy Affiliate, and that the customer or others need not purchase any product or service from any Competitive Energy Affiliate in order to obtain services from the Distribution Company on a non-discriminatory basis. The disclaimer shall be written or spoken, or both, as may be appropriate given the context of the use of the name or logo.

CALIFORNIA

Rule: Public Utilities Commission Affiliate Transaction Rules Applicable to Large California Energy Utilities[6]

Subsidization

Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Market Value Asset Transfers

Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, all such transfers shall be subject to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.

3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.

4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.

5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.

6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

Sharing Customer Data

Customer Information: A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.

Non-Customer Specific Non-Public Information: A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on

[6] http://www.cpuc.ca.gov/General.aspx?id=1459

the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

Joint Marketing

A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

1. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

2. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

3. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

Sharing Employees

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules.

2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:

    a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

    b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years.

Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.

c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

e. A utility shall not make temporary or intermittent assignments, or rotations to its affiliates.

Sharing Corporate Infrastructure

Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

Logo Usage

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:

    a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";

    b. the affiliate is not regulated by the California Public Utilities Commission; and

    c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."
    The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

    a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

    b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

    c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

MISSOURI

Rule: Code of State Regulations 4 CSR 240-40.015[7]

Subsidization

4 CSR 240-40.015 Affiliate Transactions
PURPOSE: This rule is intended to prevent regulated utilities from subsidizing their nonregulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any Missouri Public Service Commission (commission) regulated gas corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo Supp. 1998, by the General Assembly of Missouri). The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities.

4 CSR 240-40.017 HVAC Services Affiliate Transactions
PURPOSE: This rule prescribes the requirements for HVAC services affiliated entities and regulated gas corporations when such gas corporations participate in affiliated transactions with an HVAC affiliated entity as set forth in sections 386.754, 386.756, 386.760, 386.762 and 386.764, RSMo by the General Assembly of the State of Missouri.

A regulated gas corporation may not engage in or assist any affiliated entity or utility contractor in engaging in HVAC services in a manner which subsidizes the activities of such regulated gas corporation, affiliated entity or utility contractor to the extent of changing the rates or charges for the regulated gas corporation's services above or below the rates or charges that would be in effect if the regulated gas corporation were not engaged in or assisting any affiliated entity or utility contractor in engaging in such activities.

Market Value Asset Transfers

(D) In transactions involving the purchase of goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission approved Cost Allocation Manual (CAM) which sets forth cost allocation, market valuation and internal cost methods. This CAM can use benchmarking practices that can constitute compliance with the market value requirements of this section if approved by the commission.

In transactions involving the purchase of information, assets, goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods. This CAM can use bench marking practices that can constitute compliance with the market value requirements of this section if approved by the commission.

Sharing Customer Data

Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

Joint Marketing/Logo Usage

Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

[7] https://www.sos.mo.gov/cmsimages/adrules/csr/previous/4csr/4csr0308/4c240-40.pdf

TEXAS

Rule: Texas Administrative Code Title 16 Part 2 Chapter 25 Subchapter K RULE §25.272[8]
(See also: Project 41616 2014 Texas PUC Ruling[9] and Texas Court of Appeals Dissenting Opinion[10] for issues including logo sharing)

Subsidization

A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. In accordance with PURA and the commission's rules, a utility and its affiliates shall fully allocate costs for any shared services, including corporate support services, offices, employees, property, equipment, computer systems, information systems, and any other shared assets, services, or products.

Market Value Asset Transfers

Sale of products or services by a utility. Unless otherwise approved by the commission and except for corporate support services, any sale of a product or service by a utility shall be governed by a tariff approved by the commission. Products and services shall be made available to any third party entity on the same terms and conditions as the utility makes those products and services available to its affiliates.

Sharing Customer Data

1) Proprietary customer information. A utility shall provide a customer with the customer's proprietary customer information, upon request by the customer. Unless a utility obtains prior affirmative written consent or other verifiable authorization from the customer as determined by the commission, or unless otherwise permitted under this subsection, it shall not release any proprietary customer information to a competitive affiliate or any other entity, other than the customer, an independent organization as defined by PURA §39.151, or a provider of corporate support services for the sole purpose of providing corporate support services in accordance with subsection (e)(2)(A) of this section. The utility shall maintain records that include the date, time, and nature of information released when it releases customer proprietary information to another entity in accordance with this paragraph. The utility shall maintain records of such information for a minimum of three years, and shall make the records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. When the third party requesting review of the records is not the customer, commission, or Office of Public Utility Counsel, the records may be redacted in such a way as to protect the customer's identity. If proprietary customer information is released to an independent organization or a provider of corporate support services, the independent organization or entity providing corporate support services is subject to the rules in this subsection with respect to releasing the information to other persons.

    (A) Exception for law, regulation, or legal process. A utility may release proprietary customer information to another entity without customer authorization where authorized or requested to do so by the commission or where required to do so by law, regulation, or legal process.

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8 https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=2&ch=25&rl=272

9 https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.272/41616adt.pdf

10 https://cases.justia.com/texas/third-court-of-appeals/2014-03-13-00358-cv-1.pdf?ts=1405646304

(B) Exception for release to governmental entity. A utility may release proprietary customer information without customer authorization to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the utility; provided, however, that the utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order, and shall also promptly notify the affected customer in writing that such information has been requested.

(C) Exception to facilitate transition to customer choice. In order to facilitate the transition to customer choice, a utility may release proprietary customer information to its affiliated retail electric provider or providers of last resort without authorization of those customers only during a period prescribed by the commission.

(D) Exception for release to providers of last resort. On or after January 1, 2002, a utility may provide proprietary customer information to a provider of last resort without customer authorization for the purpose of serving customers who have been switched to the provider of last resort.

(E) Exception for release to State of Texas' Division of Emergency Management. Beginning January 1, 2011, a utility may provide proprietary customer information to the State of Texas' Division of Emergency Management, upon that agency's request for purposes of identifying the customer as a critical care residential customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers).

2) Nondiscriminatory availability of aggregate customer information. A utility may aggregate non-proprietary customer information, including, but not limited to, information about a utility's energy purchases, sales, or operations or about a utility's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services in accordance with subsection (e)(2)(A) of this section, a utility shall aggregate non-proprietary customer information for a competitive affiliate only if the utility makes such aggregation service available to all non-affiliates under the same terms and conditions and at the same price as it is made available to any of its affiliates. In addition, no later than 24 hours prior to a utility's provision to its competitive affiliate of aggregate customer information, the utility shall post a conspicuous notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days, providing the following information: the name of the competitive affiliate to which the information will be provided, the rate charged for the information, a meaningful description of the information provided, and the procedures by which non-affiliates may obtain the same information under the same terms and conditions. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party.

3) No preferential access to transmission and distribution information. A utility shall not allow preferential access by its competitive affiliates to information about its transmission and distribution systems.

4) Other limitations on information disclosure. Nothing in this rule is intended to alter the specific limitations on disclosure of confidential information in the Texas Utilities Code, the Texas Government Code, Chapter 552, or the commission's substantive and procedural rules.

5) Other information. Except as otherwise allowed in this subsection, a utility shall not share information, except for information required to perform allowed corporate support services, with competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest prior to any such sharing. Information that is publicly available, or that is unrelated in any way to utility activities, may be shared.

Joint Marketing/Sharing Corporate Infrastructure

Corporate support services--Services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by PURA §39.157(d) and (g) and rules implementing those requirements, include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development unrelated to marketing activity and/or business development for the competitive affiliate regarding its services and products, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning.

Examples of services that may not be shared include engineering, purchasing of electric transmission facilities and service, transmission and distribution system operations, and marketing, unless such services are provided by a utility, or a separate affiliate created to perform such services, exclusively to affiliated regulated utilities and only for provision of regulated utility services.

(h) Safeguards relating to joint marketing and advertising.
(1) Joint marketing, advertising, and promotional activities.
(A) A utility shall not:
i. provide or acquire leads on behalf of its competitive affiliates;
ii. solicit business or acquire information on behalf of any of its competitive affiliates;
iii. give the appearance of speaking or acting on behalf of any of its competitive affiliates;
iv. share market analysis reports or other proprietary or non-publicly available reports, with its competitive affiliates;
v. represent to customers or potential customers that it can offer competitive retail services bundled with its tariffed services; or
vi. request authorization from its customers to pass on information exclusively to its competitive affiliate.

(B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:
i. acting or appearing to act on behalf of a competitive affiliate in any communications and contacts with any existing or potential customers;
ii. joint sales calls;
ii. joint proposals, either as requests for proposals or responses to requests for proposals:
iv. joint promotional communications or correspondence, except that a utility may allow a competitive affiliate access to customer bill advertising inserts according to the terms of a commission-approved tariff so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the competitive affiliate that uses bill inserts;

v. joint presentation at trade shows, conferences, or other marketing events within the State of Texas; and
vi. providing links between any of a utility's websites and social media platforms, and any of the websites and social media platforms of its competitive affiliates.

Sharing Employees

Sharing of employees, facilities, or other resources. Except as otherwise allowed in paragraph (3), (4), (5), or (7) of this subsection, a utility shall not share employees, facilities, or other resources with its competitive affiliates unless the utility can prove to the commission prior to such sharing that the sharing will not compromise the public interest. Such sharing may be allowed if the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(3) Sharing officers and directors, property, equipment, computer systems, information systems, and corporate services. A utility and a competitive affiliate may share common officers and directors, property, equipment, computer systems, information systems and corporate support services, if the utility implements safeguards that the commission determines are adequate to preclude employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates

(4) Employee transfers and temporary assignments. A utility shall not assign, for less than one year, utility employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of confidential information. Utility employees engaged in transmission or distribution system operations, including persons employed by a service company affiliated with the utility who are engaged in transmission system operations on a day-to-day basis or have knowledge of transmission or distribution system operations and are transferred to a competitive affiliate, shall not remove or otherwise provide or use confidential property or information gained from the utility or affiliated service company in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of non-affiliated electric suppliers. Movement of an employee engaged in transmission or distribution system operations, including a person employed by a service company affiliated with the utility who is engaged in transmission or distribution system operations on a day-to-day basis or has knowledge of transmission or distribution system operations from a utility to a competitive affiliate or vice versa, may be accomplished through either the employee's termination of employment with one company and acceptance of employment with the other, or a transfer to another company, as long as the transfer of an employee from the utility to an affiliate results in the utility bearing no ongoing costs associated with that employee. Transferring employees shall sign a statement indicating that they are aware of and understand the restrictions and penalties set forth in this section. The utility also shall post a conspicuous notice of such a transfer on its Internet site or other public electronic bulletin board within 24 hours and for at least 30 consecutive calendar days. The exception to this provision is that employees may be temporarily assigned to an affiliate or non-affiliated utility to assist in restoring power in the event of a major service interruption or assist in resolving emergency situations affecting system reliability. Consistent with §25.84(h) of this title (relating to Reporting of Affiliate Transactions for Electric Utilities), however, within 30 days of such a deviation from the code of conduct, the utility shall report this information to the commission and shall conspicuously post the information on its Internet site or other public electronic bulletin board for 30 consecutive calendar days.

(5) Sharing of office space. A utility's office space shall be physically separate from that of its competitive affiliates, where physical separation is accomplished by having office space in separate buildings or, if within the same building, by a method such as having offices on separate floors or with separate access, unless otherwise approved by the commission.

(6) Separate books and records. A utility and its affiliates shall keep separate books of accounts and records, and the commission may review records relating to a transaction between a utility and an affiliate.

(A) In accordance with generally accepted accounting principles or state and federal guidelines, as appropriate, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(B) A utility shall prepare financial statements that are not consolidated with those of its affiliates.

(C) A utility and its affiliates shall maintain sufficient records to allow for an audit of the transactions between the utility and its affiliates. At any time, the commission may, at its discretion, require a utility to initiate, at the utility's expense, an audit of transactions between the utility and its affiliates performed by an independent third party.

(7) Limited credit support by a utility. A utility may share credit, investment, or financing arrangements with its competitive affiliates if it complies with subparagraphs (A) and (B) of this paragraph.

(A) The utility shall implement adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(B) The utility shall not allow an affiliate to obtain credit under any arrangement that would include a specific pledge of any assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations. This subsection does not affect a utility's obligations under other law or regulations, such as the obligations of a public utility holding company under §25.271(c)(2) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies).

CONNECTICUT

Rule: Department of Public Utility Control: Code of Conduct for Electric Distribution Companies Sec 16-244h1-7[11]

Subsidization

(5) An electric distribution company shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

Market Value Asset Transfers

(3) An electric distribution company shall pay fair market value for all goods and services produced, purchased or developed by its generation entities or affiliates. The electric distribution company's purchasing practices shall be non-discriminatory and shall result in fair prices to its customers. All transfers from a generation entity or affiliate to its electric distribution company shall be posted on the affiliate discount internet web page referenced in section 16-244h-3(f) of the Regulations of Connecticut State Agencies within 24 hours of the time at which the service provided by the generation entity or affiliate is so provided.

Sharing Customer Data

(1) Unless the electric distribution company has received a form from a customer requesting that the customer's name, address, telephone number and rate class not be released, the electric distribution company may release such information to its generation entities or affiliates without customer consent, so long as such information is released only on a strictly non-discriminatory basis pursuant to the provisions of section 16-245o(d) of the Connecticut General Statutes. Customer consent is not required for an electric distribution company to provide load data concerning existing customers of its generation entities or affiliates necessary for customer billing and load reporting to the regional independent system operator, as that term is defined in section 16-1 of the Connecticut General Statutes.

(2) An electric distribution company shall receive prior affirmative written customer consent before releasing any customer information not referenced in subdivision (1) of this subsection. If an electric distribution company releases customer specific information not referenced in subdivision (1) of this subsection to its generation entity or affiliate, it shall make similar customer specific information available to other electric suppliers on a strictly non-discriminatory basis and on the same terms and conditions.

(3) If an electric distribution company releases customer information to its generation entities or affiliates for which no tariff or standard fee applies, within 24 hours of the time at which an electric distribution company releases such customer information, the electric distribution company shall post, either directly on or directly linked to the discount page required pursuant to section 16-244h-3(f) of the Regulations of Connecticut State Agencies, a notice providing the terms and conditions of such release of information. The notice shall include, but is not limited to:

(A) The name of the generation entity or affiliate receiving the information;
(B) The number of names provided;
(C) The type of information provided (e.g., customer specific load profiles);
(D) The price charged to the generation entity or affiliate; and
(E) The electronic form in which the information was provided.

Joint Marketing/Advertising/Logo Usage

(1) An electric distribution company shall not trade upon, promote, or advertise its generation entity or affiliate's affiliation with the electric distribution company, nor allow the electric distribution company name or logo to be used by the generation entity or affiliate in any advertisement or in any

[11] https://www.ct.gov/pura/lib/pura/regs/16-244h-1to7.pdf

material circulated by the generation entity or affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the electric distribution company's name or logo appears that:

(A) The generation entity or affiliate ''is not the same company as [i.e. The Connecticut Light and Power Company, The United Illuminating Company], the electric distribution company,''; and

(B) ''You do not have to buy [the generation entity or affiliate's] products in order to continue to receive quality regulated services from the electric distribution company.''

The application of the name/logo disclaimer is limited to the use of the name or logo in Connecticut. Any written disclaimer shall be in bold print, and shall not utilize a typeface of less than eight points in size. Compensation for ratemaking purposes for the use of the electric distribution company's logo by a generation entity or affiliate shall be determined by the department in any rate case held pursuant to section 16-19 of the Connecticut General Statutes. The electric distribution company shall record any such use of its logo by its generation entity or affiliate.

(2) An electric distribution company, through action or words, shall not represent that, as a result of the generation entity or affiliate's relationship with the electric distribution company, its generation entity or affiliates will receive any different treatment than other service providers.

(3) An electric distribution company shall not offer or provide to any generation entity or affiliate advertising space in electric distribution company billing envelopes or any other form of written electric distribution company customer communication. The appearance of a generation entity or affiliate's name or logo on a customer bill to indicate the customer's choice of electric supplier shall not be considered trading upon or promoting the generation entity or affiliate's affiliation with the electric distribution company under subdivision (1) of this subsection, and shall not be considered joint advertising or joint marketing prohibited in subdivision (4) of this section. An electric distribution company shall offer each electric supplier the ability to display its name or logo or both on the customer bill, to indicate the customer's choice of electric supplier, under the same terms and conditions as those offered to the electric distribution company's generation entities or affiliates. The appearance of an electric distribution company's logo on a customer bill to indicate the provider of electric distribution services shall not require the disclaimers listed in subdivision (1) of this section.

(4) An electric distribution company shall not participate in joint advertising or joint marketing with its generation entities or affiliates. This prohibition against joint advertising or joint marketing includes, but is not limited to the following:

(A) An electric distribution company shall not participate with its generation entities or affiliates through joint sales calls, through joint call centers or otherwise, or through joint proposals (including responses to requests for proposals) to existing or potential customers. This subparagraph does not prohibit an electric distribution company from participating, on a nondiscriminatory basis, in non-sales meetings with its generation entities or affiliates or any other electric supplier to discuss technical or operational subjects regarding the electric distribution company's provision of transportation service to the customer. An electric distribution company shall maintain a record of all such meetings that shall include, but is not limited to, the customer's name and customer class, the customers electric supplier at the time of the meeting, the date of the meeting and a general description of the subject matter discussed. The record of meetings shall be open to inspection by the department and its staff consistent with the provisions of section 16-244h-5(b) of the Regulations of Connecticut State Agencies;

(B) Except as otherwise provided for by sections 16-244h-1 to 16-244h-7, inclusive, of the Regulations of Connecticut State Agencies, an electric distribution company shall not participate in any joint activity with its generation entities or affiliates. The term ''joint activity'' includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

(C) An electric distribution company shall not participate with its generation entities or affiliates in trade shows, conferences, or other information or marketing events.

(5) An electric distribution company shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

Corporate Support/Sharing Employees

(f) Corporate Support:
(1) An electric distribution company, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its generation entities or affiliates joint corporate oversight, governance, support systems and personnel. Any shared corporate support shall be priced, reported and conducted in accordance with the separation and information standards set forth in sections 16-244h-1 to 16-244h-7, inclusive, of the Regulations of Connecticut State Agencies, as well as other applicable department pricing and reporting requirements.

(2) Such shared corporate support shall not allow or provide a means for the transfer of confidential information such as customer information or noncustomer specific non-public information from the electric distribution company to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for cross subsidization of generation entities or affiliates. In the compliance plan submitted pursuant to section 16-244h-7 of the Regulations of Connecticut State Agencies, a corporate officer from the electric distribution company and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric distribution company follows the mandates of this subsection, and to ensure the electric distribution company is not utilizing shared corporate support services as a means to circumvent sections 16-244h-1 to 16-244h-7, inclusive of the Regulations of Connecticut State Agencies.

(3) Examples of services that may be shared include, but are not limited to: payroll, taxes, shareholder services, insurance, financial reporting, corporate financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management. Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, electric purchasing for resale, purchasing of electric transmission, system operations and marketing.

(h) Employees:
(1) Except as permitted in subsection (f) of this section, an electric distribution company and its generation entities or affiliates shall not jointly employ the same employees. This prohibition against joint employees also applies to board of directors and corporate officers, except that if an electric distribution company and its generation entities or affiliates are controlled by a holding company, any board member or corporate officer may serve on the holding company and with either the electric distribution company or its generation entities or affiliates, but not both. In the case of shared directors and officers, a corporate officer from the electric distribution company and holding company shall verify in the electric distribution company's compliance plan submitted pursuant to section 16-244h-7 of the Regulations of Connecticut State Agencies the adequacy of the specific mechanisms and procedures in place to ensure that the electric distribution company is not utilizing shared officers and directors as a means to circumvent sections 16-244h-1 to 16-244h-7, inclusive, of the Regulations of Connecticut State Agencies.

(2) All employee transfers between an electric distribution company and its generation entities or affiliates shall be consistent with the following provisions:

(A) An electric distribution company shall track and report to the department all employee transfers between the electric distribution company and generation entities or affiliates. The

electric distribution company shall report this information to the department no later than July 1, 2000 and annually thereafter.
(B) Once an employee of an electric distribution company becomes an employee of a generation entity or affiliate, the employee shall not return to the electric distribution company for a period of one year. This prohibition is inapplicable if the generation entity or affiliate to which the employee transfers no longer transacts business in this state during the one-year period. In the event that an employee returns to the electric distribution company, such employee shall not be retransferred, reassigned, or otherwise employed by a generation entity or affiliate for a period of two years. An employee that is hired by the generation entity or affiliate and becomes an employee of the electric distribution company shall not be retransferred, reassigned, or otherwise employed by a generation entity or affiliate for a period of two years. Employees transferring from the electric distribution company to a from the electric distribution company in a discriminatory or exclusive fashion, to the benefit of the generation entity or affiliate or to the detriment of unaffiliated electric suppliers.

(C) Any electric distribution company employee hired by a generation entity or affiliate shall not remove or otherwise provide information to the generation entity or affiliate which the generation entity or affiliate would otherwise be precluded from having pursuant to sections 16-244h-1 to 16 244h-7, inclusive, of the Regulations of Connecticut State Agencies.

(D) An electric distribution company shall not make temporary or intermittent assignments, or rotations of its employees to its generation entities or affiliates.

(E) A transferring employee shall sign a statement attesting that the employee is aware of and understands the restrictions set forth in sections 16-244h-1 to 16-244h-7, inclusive, of the Regulations of Connecticut State Agencies and the attendant consequences of violations of those sections.

MAINE

Rule: PUC 65-407[12] Chapters 304 and 820

304 SUMMARY - This Chapter establishes standards of conduct applicable to both large and small investor-owned distribution utilities and affiliated competitive providers, a method of tracking the retail sales made by an affiliated competitive provider within the service territory of its affiliated distribution utility and a requirement that consumer-owned utilities notify the Commission of any wholesale generation sales.

820 SUMMARY: This rule describes the record keeping, accounting and structural requirements that Maine utilities must comply with if they engage in non-core business activities consistent with the requirements in 35-A M.R.S.A. §§ 503, 707, 708, 713, 714 and 715.

Subsidization (304)

No Subsidization. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section.

Sharing of Customer Data (820)

i. Limits on Use of Customer Information.
   i. Use by Affiliate of Customer Specific Information (CSI) or Aggregate Customer Information (ACI). A utility affiliate must purchase any CSI or ACI it wishes to use from the core utility at market value.
   ii. Availability of CSI or ACI. If a utility makes CSI or ACI available to a non-core utility subsidiary, it must make the CSI or ACI available to any other entity requesting it, on the same terms.
   iii. Affirmative Permission of Customer Required. To use any CSI (as distinguished from ACI), the utility must obtain affirmative, written permission from the customer.

ii. Obligation to Provide Information. If a utility provides information to an affiliate related to its status as a public utility, it must provide such information upon request to nonaffiliated companies.

iii. Preferences Forbidden. The utility may not act in preference to its affiliate or affiliates in providing access to utility facilities or services or in influencing utility customers to use the services of its affiliates. A utility that provides the name of its affiliate to a customer interested in the services of its affiliate must also provide the names of non-affiliated entities providing such services.

iv. Additional Standards of Conduct. This rule does not limit the Commission from imposing additional standards of conduct on a utility's activities related to its affiliated interests to the extent necessary to protect the public interest.

Joint Marketing (304 and 820)

Joint Advertising or Marketing. Joint advertising or marketing is any advertising or marketing that includes, directly or indirectly, references to both the distribution utility and its affiliated competitive provider. It also includes the use by the affiliated competitive provider of the same or substantially similar name or logo as the distribution utility in a way that would require a payment for good will under Chapter 820.

i. Promotion of Affiliate; Joint Marketing.

[12] https://www.maine.gov/sos/cec/rules/65/chaps65.htm

1) Neither a distribution utility nor its affiliated competitive provider may give any appearance of speaking on behalf of the other.
2) Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the distribution utility's services as a result of that customer's or others' dealing with the affiliated competitive provider.

3) A distribution utility and its affiliated competitive provider may not engage in joint advertising or marketing.

4) The distribution utility may not in any manner promote its affiliated competitive provider or any product or service offered by its affiliated competitive provider nor may the affiliated competitive provider promote any product or service offered by the distribution utility.

5) The Commission shall maintain a current list of all competitive providers available to customers in each distribution utility's service territory. The Commission shall update the list and rearrange the names on the list in a random sequence at least every 60 days. If a customer requests information about competitive electricity providers or where the customer may obtain generation services, the distribution utility shall provide a copy of the most recent list of competitive electricity providers issued by the Commission.

6) Unless the distribution utility or affiliated competitive provider is specifically asked what the relationship is between the two entities or whether the distribution utility or affiliated competitive provider has an affiliation or association with a competitive provider or distribution utility, respectively, employees of those entities may not disclose the affiliation. If they are specifically asked, employees may disclose the affiliation but must inform the questioner that:
   a. The affiliated competitive provider is not regulated by the Public Utilities Commission;
   b. No advantage will accrue to any customer of the affiliated competitive provider due to the affiliate's relationship with the distribution utility; and
   c. Customers may select another competitive electricity provider.

   The distribution utility shall submit as part of its implementation plan under Section 5 a script containing the information specified above that distribution utility and affiliated competitive provider employees shall use in responding to inquiries regarding affiliated status.

Sharing Employees (304)

Sharing of Employee Prohibition. Employees of a distribution utility must be located in a separate building from the employees of the affiliated competitive provider. Employees may not be shared between a distribution utility and its affiliated competitive provider. An employee is considered to be shared if the employee performs work for both entities. The employees of a distribution utility and the employees of an affiliated competitive provider must be served by separate telecommunications and computer systems. An employee who is transferred from an affiliated competitive provider to the distribution utility cannot return to the affiliated competitive provider for at least one year.

1. Exemption.

   The Commission may approve an exemption from this subsection upon a finding that:

a. Sharing employees or facilities would be in the best interest of the public;
b. Sharing employees or facilities would have no anticompetitive effect; and
c. The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The Commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the Commission determines that modification or removal of the exemption is necessary.

ARKANSAS

Rule: Arkansas PSC Order No. 7 Docket No. 06-112-R Affiliate Transaction Rules[13]
The purpose of these rules is to ensure that all transactions among or between a public utility and any affiliates or divisions do not result in rates which are unreasonable and in violation of Ark. Code Ann. §§ 23-4- 103 and 23-4-104; to ensure that the rates charged by public utilities do not provide any subsidy to affiliates or divisions of the public utility which are involved in non-utility activities or which provide services to the public utility; to prevent anti-competitive behavior, and market manipulation or market power; and to prevent financial risk to rate-regulated public utility operations which may arise from business endeavors of an unregulated affiliate.

Rule IV - Affiliate Financial Transactions

A. Except as otherwise provided in this Rule IV or in other applicable law, a public utility shall not engage in any affiliate transaction in which the public utility:
    1. provides to or shares with any affiliate any financial resource or financial benefit, including but not limited to any:
        a. loan, extension of credit, guarantee or assumption of debt, indemnification, pledge of collateral; or
        b. encumbrance of or restriction on the disposition of any public utility;
    2. incurs any debt for purposes of investing in, or otherwise supporting, any business other than the provision of public utility service in Arkansas.

B. A public utility may obtain financial resources from an affiliate for public utility purposes, provided that the cost to the public utility of such financial resource does not exceed the lower of market price or the affiliate's fully allocated cost.

C. Rule IV shall not apply to or prohibit any of the following unless the Commission finds, after notice and hearing, unless waived by the parties, and consistent with applicable law, that such arrangement is not consistent with the purposes of these rules as defined in Rule II:
    1. An inter-affiliate financial transaction integral to an affiliate transaction for goods or services subject to and consistent with Rule V.
    2. The payment of dividends by a public utility to affiliates that own stock in such public utility (including adjustments to the capital accounts of divisions within the public utility).
    3. Transactions in connection with the factoring of accounts receivable, the creation and use of special Purpose financing entities, and the creation and use of money pool or cash management arrangements, subject to safeguards to prevent cross-subsidization and unauthorized pledges or encumbrances of public utility assets.
    4. Any loan, extension of credit, guarantee, assumption of debt, restriction on disposition of assets, indemnification, investment, or pledge of assets by a public utility for the purpose of supporting the utility related business activities of an affiliate.
    5. Any debt incurred by a public utility, including debt that imposes any encumbrance on, or any restriction placed on the disposition of any assets of, the public utility for the purpose of supporting the utility related business activities of an affiliate.
    6. Receipt by a public utility of capital contributions or proceeds from the sale of common stock to its parent holding company.
    7. Receipt by a public utility of financial resources from an affiliate for any non-public utility Purpose, provided that the cost to the public utility of such financial resource shall not be recovered from the public utility's customers in Arkansas.

[13] http://www.apscservices.info/Rules/affiliate_transaction_rules.pdf

8. Any financing arrangement involving a public utility and any affiliate that was in existence as of the effective date of these rules; provided the public utility files with the Commission a description of each such arrangement involving a public utility and any affiliate having an annual value or amount in excess of $350,000 and such filing is received within 120 days of the effective date of these rules.
9. Any other affiliate financial transaction proposed by a public utility, provided that:
    a. the public utility first files with the Commission an application for approval of such proposed affiliate financial transaction including a detailed description thereof and any relevant supporting documentation, and
    b. the Commission finds, after notice and hearing, unless waived by the parties, on such application, that the proposed affiliate financial transaction is consistent with the purposes of these rules as defined in Rule II.

D. Nothing in this Rule IV shall alter or amend the Commission's authority or the obligation of public utilities set out in Rule 5.01 of the Commission's Rules of Practice and Procedure.

Rule V Affiliate - Transactions Other Than Financial Transactions

A. Except as otherwise provided in this Rule V, or in other applicable law, with respect to an affiliate transaction involving assets, goods, services, information having competitive value, or personnel, a public utility shall not:
    1. receive anything of value, unless the compensation paid by the public utility does not exceed the lower of market price or fully allocated cost of the item received; and,
    2. provide anything of value, unless the compensation received by the public utility is no less than the higher of market price or fully allocated cost of the item provided.

B. Rule V shall not apply to or prohibit any of the following unless the Commission finds, after notice and hearing, unless waived by the parties, and consistent with applicable law, that such arrangement is not consistent with the Purposes of these rules as defined in Rule II:
    1. Exchanges of information:
        a. necessary to the reliable provision of public utility service by a public utility, provided such exchange occurs consistently with guidelines published by the utility and applied equally to affiliates and nonaffiliate entities;
        b. required by or necessary to comply with federal statutes or regulations; or,
        c. between or among a public utility, its parent holding company, a service company and any affiliated rate-regulated utility in another State of the United States.
    2. The provisions of shared corporate support services, at fully allocated cost, between or among a public utility and any affiliate, including a service company.
    3. The provision, at fully allocated cost, of assets, goods, services, or personnel between or among a public utility and a affiliated rate-regulated utility in another State of the United States.
    4. The provision of assets, goods, services, information having competitive value, or personnel, at a price determined by competitive bidding or pursuant to a regulatory filed or approved tariff or contract.
    5. Any other affiliate transaction proposed by a public utility to be exempted from Rule V.A provided that
        a. the public utility first files with the Commission an application for an exemption of such proposed affiliate transaction from the requirements of Rule V.A, including a detailed description of the proposed transaction and any relevant supporting documentation, and

b. the Commission finds, after notice and hearing, unless waived by the parties, on such application and consistent with applicable law, that the proposed exemption is consistent with the Purposes of these rules as defined in Rule II.

Rule VI Books, Records and Procedures

A. Recordkeeping

1. The public utility shall:
    a. keep books and records separately from the books and records of its affiliates; and,
    b. maintain such books and records in accordance with the applicable rules and orders of the Commission, and with Generally Accepted Accounting Principles (GAAP) as amended;

   provided, that, any multi-jurisdictional public utility whose Arkansas rates are set pursuant to jurisdictional allocations among such public utility's various regulatory jurisdictions shall not be required to keep books and records other than on a combined basis including all its utility business.
2. Such books and records shall contain all information necessary to:
    a. Identify all affiliate transactions in which the public utility participated; and,
    b. Identify and allocate or impute all revenues and costs (both direct and indirect) associated with all such affiliated transactions.
3. Upon the creation of a new affiliate that will participate in affiliate transactions with a public utility, the utility shall, no later than 60 days after the creation of such affiliate, notify the Commission by letter to the Secretary of the Commission of the creation of such new affiliate, which notice shall include an explanation of how the public utility will implement these rules with respect to such new affiliate.
4. Each public utility shall maintain, for at least five years, records of each affiliate transaction in which it participated, and the records shall:
    a. Be made contemporaneously with each affiliate transaction;
    b. Be in a readily retrievable format, and;
    c. Include, for each affiliate transaction;
        (1) The identity of the affiliate involved in the affiliate transaction;
        (2) The commencement and termination dates of the affiliate transaction;
        (3) a description of the affiliate transaction, including the nature and quantity of value provided and received;
        (4) the dollar amount of the affiliate transaction and the manner in which such dollar amount was calculated;
        (5) all other terms of the affiliate transaction;
        (6) the direct and indirect costs associated with the affiliate transaction, including any allocation formula used to attribute indirect costs; and,
        (7) all information necessary to verify compliance with these rules and the accuracy of amounts stated on the public utility's books and records, such information to include, but not be limited to:

(a) invoices, vouchers, communications, journal entries, workpapers; and,
(b) information supporting the price of each affiliate transaction, including but not limited to the cost and allocation method of the affiliate transaction and, when the cost was the result of a competitive bidding process, the market price and basis for the market price of the affiliate transaction; and,

d. be summarized and said summary for the prior calendar year shall be filed annually with the Commission as part of the annual report required by Rule IX. Unless otherwise ordered by the Commission, a public utility may satisfy the requirement of this Rule VI.A.4.d by filing with the Commission a copy of Federal Energy Regulatory Commission Form 60, Annual Report of Centralized Service Companies.

5. Each public utility shall file contemporaneously with its annual report under Rule VI.A.4.d the following information: a summary report indicating the aggregate dollar amount of all transactions described in Rule III.G(1), (2), (3), and (4) which the utility has conducted with each affiliate, as defined under Rule III.A, including the name of each such affiliate.
6. Each public utility shall maintain, update annually, train appropriate employees in, and (within 120 days following the effectiveness of these rules, and thereafter, to the extent of material changes, in each annual report required under Rule IX) file with the Commission, written procedures which ensure compliance with these rules; and, such written procedures shall include, at a minimum:
    a. all internal rules, practices, financial record keeping requirements, and other policies governing affiliate transactions among or between the public utility and its affiliates;
    b. the names and addresses of all the public utility's affiliates that participate in affiliate transactions with the public utility;
    c. an organizational chart depicting the ownership relationships between the public utility and those affiliates that participate in affiliate transactions with the public utility;
    d. a description of the types of assets, goods and services provided in any existing affiliate transaction lasting more than one year; and,
    e. a cost allocation manual or other description of the methods used to determine allocations in affiliate transactions.

B. The Commission shall have access to all books and records, of a public utility and its affiliates that participate in transactions with the public utility, to the extent such access is relevant to determining compliance with all applicable Arkansas statutes and rules or establishing rates subject to the Commission's jurisdiction.

NEW HAMPSHIRE

Rule: Chapter PUC 2100 Affiliate Transaction Rules[14]

Subsidization

(d) Shared corporate support permitted by this section shall not:

(1) Allow or provide a means for the transfer of customer information or distribution system information from the utility to the competitive affiliate;

(2) Create the opportunity for preferential treatment, unfair competitive advantage, or cross subsidization of competitive affiliates; or

(3) Create customer confusion.

Market Value Asset Transfers

Puc 2105.09 Transfer of Goods, Services, and Assets.

(a) To the extent that these rules do not prohibit transfers between a utility and its affiliates, the permitted transfers shall be subject to the following pricing provisions:

(1) A utility may sell, lease, or otherwise transfer to an affiliate an asset, the cost of which has been reflected in the utility's rates for regulated service, provided that the price charged the affiliate is the highest of the net book value, fully loaded cost, and the current market value of the asset, as applicable;

(2) A utility may sell, lease, or otherwise transfer to an affiliate assets other than those subject to (1) above, and may also provide services to an affiliate, provided that the price charged for such asset or service is the highest of the net book value, fully loaded cost, and its current market value, as applicable;

(3) An affiliate may sell, lease, or otherwise transfer an asset to a utility, and may provide services to a utility, provided that the price charged to the utility is the lesser of the market value, the net book value, and the fully loaded cost, as applicable;

(4) Joint or shared costs allowed in Puc 2105.03 and Puc 2105.04 shall be allocated and shall be priced to the utility and its competitive affiliate based on fully loaded costs;

(5) Products or services which are price regulated by a state or federal agency shall be priced 'at the tariffed or regulated rate;

(6) In cases where more than one state commission regulates the price of products or services provided to or by a utility, this commission's pricing provisions shall govern such transactions in New Hampshire; and

(7) For purposes of this section, the market value of any asset sold, leased, or otherwise transferred, shall be determined based on the highest price that the asset could have reasonably realized after an open and competitive sale.

Customer Information

Puc 2103.02 Preferences to Competitive Affiliates Regarding Products and Services, Distribution System Information, and Customer Information.

(a) A utility shall provide its products and services, including but not limited to terms and conditions, pricing, and timing, to competitive affiliates, and to non-affiliated competitors in a non-discriminatory manner;

(b) A utility shall provide access to distribution system information to its competitive affiliates and to non-affiliated competitors in a non-discriminatory manner; or

(c) A utility shall not allow an employee, officer, director, or agent of a competitive affiliate access to customer information except as permitted in accordance with Puc 2104.01.

PART Puc 2104 DISCLOSURE AND INFORMATION

Puc 2104.01 Release of Customer Information to Competitive Affiliate. A utility shall not release any customer information to a competitive affiliate without the prior written authorization of the customer.

[14] https://www.puc.nh.gov/Regulatory/Rules/PUC2100.pdf

Puc 2105.04 Shared Services

(d) Shared corporate support permitted by this section shall not: (1) Allow or provide a means for the transfer of customer information or distribution system information from the utility to the competitive affiliate;

Puc 2105.06 Employee Transfers. All employee transfers between a utility and its competitive energy affiliates shall comply with the following provisions:

(j) Utility employees transferring from the utility to a competitive energy affiliate and shared utility employees shall not use customer information and distribution system information in a discriminatory fashion to the benefit of the competitive energy affiliate or to the detriment of non-affiliated energy competitors;

Joint Advertising and Marketing

Puc 2105.07 Joint Advertising and Marketing. A utility shall not:

(a) Engage in joint advertising or marketing programs of any sort directly or indirectly with its competitive energy affiliates.

(b) This section shall not prohibit a utility from participating, on a nondiscriminatory basis, in non-sales meetings with its competitive energy affiliates or any non-affiliated energy competitor to discuss technical or operational subjects.

Sharing Employees

Puc 2105.04 Shared Services.

(e) Examples of services, systems, and personnel that shall not be shared include, but are not limited to:

(1) Employee recruiting;

(f) Any shared corporate support shall be priced, reported, and conducted in accordance with the separation and information standards set forth in these rules and in other applicable commission pricing and reporting requirements.

Corporate Infrastructure

Puc 2105.02 Shared Facilities, Services and Data.

(a) Except to the extent necessary to perform shared corporate support functions permitted under Puc 2105.04, a utility shall not:

(1) Share office space, office equipment, services, or computer data with its competitive energy affiliates; or

(2) Allow its competitive energy affiliates to access its computer data.

(b) The separation required by this section shall, at a minimum, be accomplished by methods such as:

(1) Use of secure passwords and firewalls; and

(2) Occupation of separate floors of an office building, or distinct wings.

Corporate Identification/Logo usage

Puc 2105.08 Corporate Identification.

(a) Subject to Puc 2105.07, a utility may allow any affiliate to identify itself through the use of a name, logo, or both as an affiliate of the utility, provided that such use by a competitive energy affiliate shall be accompanied by a disclaimer stating that:

(1) No advantage accrues to customers or others in the use of the utility's services as a result of that customer or others dealing with the competitive energy affiliate; and

(2) The customer or others need not purchase any product or service from any competitive energy affiliate in order to obtain services from the utility on a non-discriminatory basis.

(b) The disclaimer referred to in (a) above shall be written or spoken, or both, as is appropriate given the context of the use of the name or logo.
(c) The disclaimer referred to in (a) above shall not be required where the name or logo is merely being used for identification of assets or employees and it is impractical to include such disclaimer, such as on the competitive energy affiliate's vehicles, business locations, equipment, employee business cards, or clothing.
(d) A utility shall not provide to its competitive affiliates:

(1) Advertising space in its billing envelopes used for regulated utility services unless it provides access on the same terms and conditions for all similarly situated non-affiliated competitors; or

(2) Access to any other form of written communication with utility customers unless it provides access on the same terms and conditions to all similarly situated non-affiliated competitors.

RHODE ISLAND

Rule: Public Utilities Commission Regulations for Utility Interaction with Gas Marketers R.I.G.L. § 39-1-11 and § 39-3-7[15]

INTRODUCTION

These regulations, enacted pursuant to R.I.G.L. § 39-1-11 and § 39-3-7, set forth the entry requirements for gas marketers and the standards of conduct for utilities with respect to gas marketers. They further apply to transactions, direct or indirect, between public utilities and gas marketers. The standards are intended to promote fair competition and a level playing field among all participants in the natural gas marketplace in Rhode Island.

"Gas marketer" means an entity which markets gas and gas-related services, and is authorized to provide services in Rhode Island in accordance with Section III of these regulations.

"Marketing affiliate" means a gas marketer residing within a corporate structure that includes a Rhode Island public utility. A marketing affiliate includes any arm of the utility or parent of the utility, either owned or subject to common control, or part of a separate legal entity, which functions as a gas marketer.

STANDARDS OF CONDUCT

A. PERSONNEL

1. (a) A utility employee may not do any of the following on behalf of a gas marketer:

Purchase gas, pipeline capacity or storage capacity. Market or sell gas and related services. Price or administer transportation upstream of the city gate and related tariff services, non-tariff and competitive products and services. Hire and train gas marketer employees.

(b) A utility employee may offer to sell or otherwise proffer gas, pipeline capacity or storage capacity, and related services to a gas marketer or to others on behalf of the utility. A utility employee may respond to transportation and related tariff service requests or inquires from the gas marketer as well as from others on behalf of the utility.

2. (a) A marketing affiliate may receive corporate-level support affiliated with the preparation of joint financial statements and shareholder relations.

(b) The use of shared employees shall be minimized. A shared employee shall record time in a manner consistent with the master service framework, if applicable.

3. The use of utility operating personnel, as established in a master service framework is permitted, subject to all of the following limitations:

(a)The use of a utility employee by a gas marketer or the use of a gas marketer employee by the utility is not allowed if it is likely to result in the sharing or exposure of market sensitive information or an unfair competitive advantage for either party.

Advice and assistance in human resource management shall be limited to general personnel and corporate matters. It shall not include job or position specific hiring or training advice or assistance dealing with the functions to be performed by the employee.

[15] http://www.ripuc.org/utilityinfo/natgas/gasregsmarket.html

4. Advice or assistance with regard to engineering and construction matters as well as gas consulting services shall be made available to all gas marketers on an equal basis

5. Utility operating personnel may engage in transactions involving natural gas supply, capacity, or both, with a gas marketer, but may not share with the gas marketer any information related to sales by other gas marketers of natural gas supply, capacity, or both.

6. An individual may not be an officer of both a utility and a gas marketer.

ADVERTISING

Promotional materials may allow marketers to be identified as affiliated with utilities. However, neither utilities nor marketing affiliate personnel may represent that any advantage accrues to customers or others in the use of the utility's services as a result of that customer or others dealing with the marketing affiliate. Joint promotions between the utility and the marketing affiliate are prohibited, unless such promotions are offered to all other competitors under the same terms and conditions. A utility and a marketing affiliate may not share trademarks or logos.

STANDARDS FOR COMPETITIVE GAS MARKETING

MARKETING LIMITATIONS

1. Utilities shall not provide leads to gas marketers and shall refrain from giving any appearance that the utility speaks on behalf of any gas marketer. Nor shall the marketing affiliate suggest that its receives preferential treatment as a result of its affiliation. If a customer requests information about marketers, a utility should provide a list of all approved gas marketers, including its affiliate, but should not promote its affiliate.

2. To the extent a utility provides a marketing affiliate information related to transportation which is not readily available or generally known to other gas marketers, including but not limited to utility customer lists, it must contemporaneously provide that information to all gas marketers on its system. A utility must file with the Commission procedures that will enable the Commission to determine how the utility is complying with this standard.

3. Utilities shall not condition or tie their agreements to release interstate pipeline capacity to any agreement by a gas supplier, customer or other third party relating to any service in which their marketers are involved.

B. CONDITIONS FOR COMPETITIVE SALES

1. A utility shall communicate with all market participants when it has gas supply or capacity, or both, available for release.

2. A utility may not sell gas supply or capacity to a marketing affiliate at less than a market-clearing price without either posting on an electronic bulletin board that is a well known source or placing an offering that would constitute an offering to the market of capacity or supply.

3. Utilities must apply any tariff provision relating to transportation in the same manner to the same or similarly situated gas marketers if there is discretion in the application of the provision.

4. Utilities shall uniformly enforce tariff provisions for which there is no discretion in the application of the provision for all transportation customers.

5. Utilities may not, through a tariff provision or otherwise, give a gas marketer or its customers preference over other gas marketers or customers in matters relating to transportation including, but not limited to, scheduling, balancing, metering, storage, standby service or curtailment policy. Utilities may not sell to their marketing affiliates gas and capacity on a bundled basis, unless such bundled service is offered contemporaneously on a similar basis to other gas marketers.

6. If a utility offers its marketing affiliate, or a customer of its affiliate, a discount, rebate, or fee waiver for transportation services, balancing, meters or meter installation, storage, standby service or any other service offered to shippers, it must contemporaneously offer the same discount, rebate, or fee waiver to all similarly situated non-affiliated gas marketers or customers by providing appropriate notification to the non-affiliated gas marketers or customers. A utility must file with the Commission procedures that will enable the Commission to determine how the utility is complying with this standard.

7. Utilities must process all similar requests for transportation in the same manner and within a similar period of time.

8. Utilities shall not disclose to any gas marketer any information obtained in connection with providing delivery or related services to another gas marketer or customer, a potential supplier or customer, any agent of such customer or potential supplier, or any other entity seeking to supply gas to a customer or potential customer.

VI. ADMINISTRATIVE STANDARDS

ACCOUNTING AND REPORTING

1. Utilities and their marketing affiliates shall keep separate books of accounts and records.

2. A utility shall keep sufficient records of transactions with a marketing affiliate to document, for all consummated sales or release transactions, all offers of, bids for, requests for, and sales of natural gas supplies, capacity, or both, including the evaluation criteria for acceptance and rejection. A utility shall maintain documentation of such marketing affiliates transactions, such as phone logs, so that the utility's activities can be audited.

3. If a utility provides tariffed on-system distribution services at a discounted rate, the utility shall maintain complete and accurate records of all service requests, service refusals, and service transactions arising under its tariffs.

4. A utility shall publicly disclose sales at wholesale or transfers of gas supply or capacity and related services for all transactions that are not tariffed transactions. A utility shall report all transactions within 30 days following the end of the month in which the transaction occurred.

5. For each transaction under Rule VI.A.4(a), disclosure shall include all of the following:

The date of the contract or arrangement.

The period covered.

The type of transaction (commodity, capacity, storage balancing, etc.).
Units sold or transferred.

Conditions or restrictions placed on the transaction.

The price for the transaction, including separate prices for each service offered on a stand-alone basis.

ENFORCEMENT

Should a utility or gas marketer be found to have violated these regulatory requirements, it will be subject to appropriate sanctions as determined by the Commission or any other entity having jurisdiction.

NEW JERSEY

Rule: NJ Administrative Code Title 14:4-3[16]

(a) This subchapter shall apply as follows:

1. N.J.A.C. 14:4-3.3 through 3.5 set forth standards of conduct applicable to transactions, between an electric public utility or gas public utility, including a related competitive business segment of an electric or gas public utility, and a related competitive business segment of the electric or gas public utility holding company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey;

2. N.J.A.C. 14:4-3.6 sets forth standards of conduct applicable to electric and/or gas public utilities and the related competitive business segments of each electric public utility and gas public utility, as well as the transactions, interactions and relations between an electric and/or gas public utility and a related competitive business segment of an electric and/or gas public utility; and

3. N.J.A.C. 14:4-3.7 through 3.9 address regulatory oversight, dispute resolution and violations and penalties applicable to electric and/or gas public utilities regarding affiliate relations, fair competition, accounting standards and related reporting requirements.

(b) A New Jersey electric and/or gas public utility, which is also a multi-state electric and/or gas public utility and subject to the jurisdiction of other state or Federal regulatory commissions, may file an application, requesting a limited exemption from this subchapter or part(s) thereof, for transactions between the electric and/or gas public utility and its affiliate(s) solely in its role of serving its jurisdictional areas wholly outside of New Jersey. To obtain such an exception, the applicant shall meet the requirements of N.J.A.C. 14:1-1.2(b).

Nondiscrimination

(a) An electric and/or gas public utility shall not unreasonably discriminate against any competitor in favor of its affiliate(s) or related competitive business segment.
(b) An electric or gas public utility shall not represent that, as a result of the relationship with the electric and/or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers.
(c) An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.
(d) Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following:

1. Tariffed products and services;

2. The sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its public utility holding company to all market participants through an open, competitive bidding process; or

[16] https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=fd1cf359-9fc0-45c0-a207-b4629aa27d50&pdistocdocslideraccess=true&config=00JAA1YTg5OGJlYi04MTI4LTRlNjQtYTc4Yi03NTQxN2E5NmE0ZjQKAFBvZENhdGFsb2ftaXPxZTR7bRPtX1Jok9kz&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5V8M-DSM0-00BY-K0JN-00008-00&pdcomponentid=234124&pdtocnodeidentifier=AAUAAEAAFAAB&ecomp=bgqfkkk&prid=c69df815-1e1b-4d1e-8aa0-22620d090d85

3. As provided for in N.J.A.C. 14:4-3.5(g) and (h), in (i) and (j) or 3.6(a) through (f), provided the transactions specified in N.J.A.C. 14:4-3.6 comply with all other applicable rules.

(e) An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies, except as provided for in N.J.A.C. 14:4-3.4, 3.5 and 3.6, provided the transactions specified in N.J.A.C. 14:4-3.6, Competitive utility products and/or services, comply with all other applicable rules.

1. If an electric and/or gas public utility provides supply, capacity, services, or information to a related competitive business segment of its public utility holding company, it shall make the offering available, via a public posting, on a non-discriminatory basis to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.

(*o*) Except as otherwise provided by this subchapter, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive segment of the PUHC if related to customer enrollment, marketing or business development unless offered to all competitors on a nondiscriminatory basis. By way of example, but not limited to, an electric or gas public utility shall not:

1. Provide leads to its PUHC or a related competitive business segment of its public utility holding company;

2. Solicit business on behalf of its PUHC or a related competitive business segment of its public utility holding company;

3. Acquire information on behalf of or to provide to its PUHC or a related competitive business segment of its public utility holding company;

4. Share market analysis reports or any other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with its PUHC or a related competitive business segment of its public utility holding company;

5. Share customer usage or end use equipment information, obtained during the course of providing electric and/or gas public utility services, with its PUHC or a related competitive business segment of its public utility holding company;

6. Request authorization from its customers to pass on customer information exclusively to its PUHC or a related competitive business segment of its public utility holding company;

7. Represent or imply that the electric and/or gas public utility speaks on behalf of its PUHC or a related competitive business segment of its public utility holding company or that the customer will receive preferential treatment as a consequence of conducting business with the related competitive business segment of its public utility holding company; or

8. Represent or imply that its PUHC or a related competitive business segment of its public utility holding company speaks on behalf of the electric and/or gas public utility.

Information Disclosure

(a) An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segment of its PUHC, only with prior affirmative customer written consent, or as otherwise authorized by the Board, and only if that same proprietary information is provided to unaffiliated entities on a non-discriminatory basis with prior affirmative customer written consent, or as otherwise authorized by the Board.

(b) An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a nondiscriminatory basis, and keeps the information open to public inspection.

1. An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support services permitted by N.J.A.C. 14:4-3.5(i) and (j).

2. The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.

(h) An electric and/or gas public utility shall maintain complete and accurate records, documenting all tariffed and non-tariffed transactions with its PUHC and a related competitive business segment of its public utility holding company, including, but not limited to, all waivers of tariff or contract provisions.

(i) An electric and/or gas public utility shall maintain such records in compliance with the time frame required by N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

(j) The electric and/or gas public utility shall make such records available for Board and/or Rate Counsel review upon 72 hours notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or Rate Counsel.

(k) An electric and/or gas public utility shall maintain a record of all contracts and related bids for the provision of work, products and/or services to and from the electric and/or gas public utility to and from the PUHC or related competitive business segments of its public utility holding company in compliance with N.J.A.C. 14:5-5.2 or longer if another government agency so requires.

Separation

(a) An electric and/or gas public utility, its PUHC and related competitive business segments of its public utility holding company shall be separate corporate entities.

(b) An electric and/or gas public utility and related competitive business segments of its public utility holding company shall keep separate books and records.

(e) An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions as follows:

1. An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s), which would be in violation of this subchapter.

i. Prevention of unauthorized access to computer and information systems shall be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-3.7(b).

(i) An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-3.4 and this section, as well as other applicable Board pricing and reporting rules.

(j) Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related competitive business segment of its public utility holding company in violation of this subchapter, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a related competitive business segment of the public utility holding company. In the compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (e), a senior corporate officer from the electric and/or gas public utility and public utility holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric and/or gas public utility follows the mandates of this subchapter, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent this subchapter.

(k) A related competitive business segment of a public utility holding company shall not trade upon, promote, or advertise its relationship with the electric and/or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:

1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as the electric and/or gas public utility";

2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and

3. "You do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility."

(l) The requirement of the name and/or logo disclaimer set forth in (k) above is limited to the use of the name and/or logo in New Jersey.

(m) An electric and/or gas public utility, through action or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.

(n) An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written communication to its customers, unless it provides access to all other unaffiliated service providers on the same terms and conditions.

(o) An electric and/or gas public utility shall not participate in joint advertising or joint marketing activities with its PUHC or related competitive business segments of its public utility holding company, which activities include, but are not limited to, joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals) to existing or potential customers.

1. The prohibition in (o) above notwithstanding, at a customer's unsolicited request, an electric and/or gas public utility may participate, on a nondiscriminatory basis, in non-sales meetings with its PUHC or a related competitive business segment of its public utility holding company or any other market participant to discuss technical or operational subjects regarding the electric and/or gas public utility's provision of distribution service to the customer;

2. Except as otherwise provided for by this subchapter, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company, which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

3. An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey. For the purposes of this paragraph, "joint participation" includes any sharing of costs or facilities associated with the event, such as using the same signage, handouts, transport, advertising, booth or space, or presentation time; and

4. An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.

(p) Except as permitted in (i) and (j) above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company, that are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.

1. Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services shall be provided utilizing separate assets than those utilized to provide non-competitive utility and safety services.

MICHIGAN

Rule: Public Act 141, MCL 460.10 Code of Conduct[17]

This code of conduct is intended to promote fair competition by establishing measures to prevent cross-subsidization, information sharing, and preferential treatment between the regulated and unregulated operations of electric utilities, alternative electric suppliers, and their affiliates. An electric utility or alternative electric supplier is prohibited from taking punitive action against any individual (including an employee) or entity who files a complaint with the electric utility, the alternative electric supplier, or the Commission, or otherwise causes an alleged violation of this code of conduct to come to the attention of the Commission.

II. Separation

An electric utility or alternative electric supplier that offers, itself or through its affiliates, both regulated and unregulated services shall do so with the structural or functional separation needed to prevent cross-subsidization, information sharing, and preferential treatment between the regulated and unregulated services. This includes, but is not limited to, the following:

A. An electric utility shall not offer unregulated services or products except through one or more affiliates or through other entities within the corporate structure, such as divisions.

B. An electric utility's or alternative electric supplier's regulated services shall not subsidize in any manner, directly or indirectly, the unregulated business of its affiliates or other separate entities.

C. An electric utility or alternative electric supplier shall maintain its books and records separately from those of its affiliates or other entities within its corporate structure. An electric cooperative offering unregulated services shall maintain an accounting system that allocates costs between its regulated and unregulated ventures on a fully allocated embedded cost basis, and any transfers of services, products, or property must be in compliance with the provisions of Section III, paragraph C.

D. An electric utility or alternative electric supplier and its affiliates or other entities within its corporate structure shall not share facilities, equipment, or operating employees, but may share computer hardware and software with documented protection to prevent discriminatory access to competitively sensitive information.

[17] https://www.michigan.gov/mpsc/0,4639,7-159-16377_17111-42901--,00.html

E. An electric utility's or alternative electric supplier's operating employees and the operating employees of its affiliates or other entities within its corporate structure shall function independently of each other and maintain separate offices.

F. An electric utility or alternative electric supplier shall not finance or co-sign loans for affiliates.

G. An electric utility may transfer employees between the electric utility and any of its affiliates or other entities within the corporate structure as long as the electric utility documents those transfers and files semi-annually with the Commission a report of each occasion on which an employee of the electric utility became an employee of an affiliate or other entity within its corporate structure and/or an employee of an affiliate or other entity within its corporate structure became an employee of the electric utility.

H. An electric utility and its affiliates or other entities within the corporate structure and an alternative electric supplier and its affiliates or other entities within the corporate structure offering both regulated and unregulated services or products in Michigan shall not engage in joint advertising, marketing, or other promotional activities related to the provision of regulated and unregulated services, nor shall they jointly sell regulated and unregulated services.

I. An electric utility or alternative electric supplier offering regulated service in Michigan shall not suggest that it will provide any customer with preferential treatment or service by doing business with the electric utility or the alternative electric supplier, affiliates, or other entities within the corporate structure offering unregulated services or products, nor shall the electric utility or alternative electric supplier suggest that any customer will receive inferior treatment or service by doing business with an unaffiliated supplier.

J. An electric utility or alternative electric supplier offering regulated service in Michigan shall not condition or otherwise tie the provision of a regulated service or the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions for regulated service to the taking of any unregulated goods or services from the electric utility or alternative electric supplier, affiliates, or other entities within the corporate structure.

K. An electric utility or alternative electric supplier offering regulated service in Michigan shall not allow its affiliates to use its logo unless the affiliate includes, in a clearly visible position and easily readable by customers, the following statement:

"(Affiliate name) is not regulated by the Michigan Public Service Commission."

L. If an electric utility, its affiliate, or other entity within the corporate structure offers an unregulated service, any use of its logo shall include, in a clearly visible position and easily readable by customers, the following statement:
"(Service) is not regulated by the Michigan Public Service Commission."

M. None of the provisions of this code shall be interpreted to require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or to be an alternative electric supplier.

III. Discrimination

An electric utility or alternative electric supplier that offers, itself or through its affiliates, both regulated and unregulated services shall not unduly discriminate in favor of or against any party, including its affiliates. This includes, but is not limited to, the following:

A. An electric utility or alternative electric supplier that offers, itself or through its affiliates, both regulated and unregulated service shall not provide any affiliate or other entity within its corporate structure, preferential treatment or any other advantages that are not offered under the same terms and conditions and contemporaneously to other suppliers offering services or products within the same service territory or to customers of those suppliers. This provision includes, but is not limited to, all aspects of the electric utility's or alternative electric supplier's service, including pricing, responsiveness to requests for service or repair, the availability of firm and interruptible service, and metering requirements.

B. If an electric utility provides to any affiliate or other separate entity, or customers of an affiliate or other separate entity within its corporate structure, a discount, rebate, fee waiver, or waiver of its regulated tariffed terms and conditions for services or products, it shall contemporaneously provide notice of and offer the same discount, rebate, fee waiver, or waiver to all alternative electric suppliers operating within the electric utility's service territory or all alternative electric suppliers' customers.

C. If an electric utility or alternative electric supplier offering regulated service in Michigan provides services, products, or property to any affiliate or other entity within the corporate structure, compensation shall be based upon the higher of fully allocated embedded cost or market price. If an affiliate or other entity within the corporate structure provides services, products, or property to an electric utility or alternative electric supplier offering regulated service in Michigan, compensation for services and supplies shall be at the lower of market price or 10% over fully allocated embedded cost and transfers of assets shall be based upon the lower of fully allocated embedded cost or market price.

D. If an electric utility provides a customer or potential customer with the names of its affiliates or other entities within the corporate structure that are alternative electric suppliers, it shall do so only by distributing their names along with the names of all licensed alternative electric suppliers.

E. An electric utility or alternative electric supplier offering regulated service in Michigan shall not provide information or consultation to an affiliate or other entity within the corporate structure offering unregulated electric service in Michigan regarding a potential business arrangement between that affiliate or other entity within the corporate structure and a potential customer.

F. An electric utility or alternative electric supplier offering regulated service in Michigan shall not refer a customer or potential customer to an affiliate or other entity within the corporate structure offering unregulated electric service in Michigan, nor steer a potential customer away from a non-affiliated entity offering unregulated electric service in Michigan, nor shall the electric utility or alternative electric supplier offering regulated service in Michigan provide a customer or potential customer with advice or assistance regarding the selection of or relationship with an affiliate, other entity within the corporate structure, or other service provider offering unregulated electric service in Michigan.

IV. Disclosure of Information

Information obtained by an electric utility or alternative electric supplier in the course of conducting its regulated business in Michigan shall not be shared directly or indirectly with its affiliates or other entities within its corporate structure unless that same information is provided to competitors operating in the state on the same terms and conditions and contemporaneously. This provision includes, but is not limited to, the following:

A. Customer specific names and addresses shall not be provided to an affiliate or other entity within the corporate structure unless the same information is offered on the same terms and conditions, and contemporaneously, to all competitors.

B. Customer specific consumption or billing data shall not be provided to any affiliate or other entity within the corporate structure or alternative electric supplier without prior written approval of the customer. Once each calendar year a request for up to 12 months of historic usage or billing data may be made at no cost.

C. If an electric utility or alternative electric supplier offering regulated service in Michigan provides non-customer specific, or aggregated, customer information to its affiliate or other entity within its corporate structure, it must offer the same information on the same terms and conditions, in the same form and manner, and contemporaneously to all competitors.

D. An electric utility shall not provide its affiliates or other entities within its corporate structure with information about the distribution system, including operation and expansion, without offering the same information under the same terms and conditions, in the same form and manner, and contemporaneously to all licensed alternative electric suppliers.

E. An electric utility or alternative electric supplier offering regulated service in Michigan shall not provide any information received from or as a result of doing business with a competitor to an affiliate or other entity within its corporate structure without the written approval of the competitor.

V. Electric Utility – Alternative Electric Supplier Relationship

Except for instances covered by Section 10a(3) of 2000 PA 141 or other instances approved by the Commission, an electric utility shall not in any way interfere in the business operations of an alternative electric supplier. This provision includes, but is not limited to, the following:

A. An electric utility shall not give the appearance in any way that it speaks on behalf of any alternative electric supplier.

B. An electric utility shall not interfere in any manner in the contractual relationship between the alternative electric supplier and its customers unless such involvement is clearly permitted in the contract between the customer and the alternative electric supplier or in tariffs approved by the Commission.

VI. Compliance Plans

Each electric utility or alternative electric supplier shall file a code of conduct compliance plan within 60 days of the order on rehearing on this code of conduct by the Commission. The compliance plan shall:

A. Designate a corporate officer of the electric utility or alternative electric supplier who will oversee compliance with the code of conduct and be available to serve as the Commission's primary contact regarding compliance with the code.

B. Include an affidavit signed by the designated corporate officer certifying that the electric utility or alternative electric supplier will comply fully with the code of conduct.

C. Include a clear organization chart of the parent or holding company showing all regulated entities and affiliates and a description of all services and products provided between the regulated entity and its affiliates.

The electric utility or alternative electric supplier shall file revisions to its compliance plan needed to keep the information contained therein current.

In the compliance filing, the electric utility or alternative electric supplier may request a waiver from one or more provisions of this code of conduct. The electric utility or alternative electric supplier carries the burden of demonstrating that such a waiver will not inhibit the development or functioning of the competitive market.

VII. Oversight, Enforcement, and Penalties

A. An electric utility or alternative electric supplier shall maintain documentation needed to investigate compliance with the code of conduct. All documentation shall be kept at a designated company office in Michigan. The electric utility or alternative electric supplier shall make this information available for review upon request by the Commission or its Staff. The designated officer will either be available or make personnel available who are knowledgeable to respond to inquiries by the Commission or its Staff regarding compliance with the provisions of the code of conduct.

B. The electric utility or alternative electric supplier shall use a documented dispute resolution process separate from any process that might be available from the Commission. This dispute resolution process shall address complaints arising from application of the code of conduct. The electric utility or alternative electric supplier shall keep a log of all complaints, including: (1) the name of the person or entity filing the complaint, (2) the date the complaint was filed, (3) a written statement of the nature of the complaint, and (4) the results of the resolution process.

C. Each electric utility or alternative electric supplier shall file an annual report with the commission summarizing the number and types of complaints received and their resolution.

D. Penalties for violations of the code of conduct will be as provided in Section 10c of the Customer Choice and Electricity Reliability Act, MCL 460.10c.

ILLINOIS

Rule: Public Utilities Act for Electric Utilities, Illinois Commerce Commission
TITLE 83: PUBLIC UTILITIES CHAPTER I: ILLINOIS COMMERCE COMMISSION SUBCHAPTER c: ELECTRIC UTILITIES
PART 450 NON-DISCRIMINATION IN AFFILIATE TRANSACTIONS FOR ELECTRIC UTILITIES[18]

Non-Discrimination

a. Electric utilities shall not provide affiliated interests or customers of affiliated interests preferential treatment or advantages relative to unaffiliated entities or their customers in connection with services provided under tariffs on file with the Illinois Commerce Commission (Commission). This provision applies broadly to all aspects of service, including, but not limited to, responsiveness to requests for service, the availability of firm versus interruptible services, the imposition of special metering requirements, and all terms and conditions and charges specified in the tariff.

b. Except for corporate support transactions and services that have been declared competitive pursuant to Section 16-113 of the Act, transactions between an electric utility and one or more of its affiliated interests in competition with alternative retail electric suppliers that are not governed by tariff sheets on file with the Commission shall not discriminate in relation to unaffiliated alternative retail electric suppliers.

c. Electric utilities and affiliated interests shall not notify potential or actual customers, either directly or indirectly, advertise to the public, or otherwise communicate that the electric utility provides any advantages relating to the scheduling, transmission or distribution of electricity to affiliated interests or their customers relative to unaffiliated entities and their customers.

d. A utility shall process requests for similar services provided by the utility in the same manner and within the same time period for its affiliated interests in competition with alternative retail electric suppliers and for all similarly situated unaffiliated alternative retail electric suppliers and their respective customers.

e. If discretion is permitted in application of a tariff provision, electric utilities shall maintain a log detailing each instance in which it exercised discretion, as required in Section 450.140(d).

f. If an electric utility offers affiliated interests or customers of affiliated interests a discount, rebate, fee waiver or waivers of its ordinary terms and conditions for services provided under tariffs on file with the Commission, it shall contemporaneously offer the same discount, rebate, fee waiver or waivers of its ordinary terms and conditions to all unaffiliated entities and customers of unaffiliated entities, to the extent consistent with the tariffs, provided, however, that this subsection shall not apply to billing experiments under Section 16-106 of the Act or competitive services under Sections 16-102 and 16-116(b) of the Act. Electric utilities shall maintain a log of such instances, as required in Section 450.140(d).

g. A customer's eligibility for participation in any billing experiments under Section 16-106 of the Act or contracts for competitive service under Sections 16-102 and 16-116(b) of the Act, except for those competitive services that have been declared competitive pursuant to Section 16-113 of the Act, shall not be conditioned on, nor tied to, the taking of any goods and services from the utility's affiliated interests. Electric utilities shall inform customers of this prohibition in writing before customers begin taking such service.

h. When providing delivery services as a component of any bundled service, an electric utility shall not offer affiliated interests or the customers of affiliated interests a discount, rebate, fee waiver or waivers of its ordinary terms and conditions for delivery services on file with the Commission unless delivery services have been declared competitive service pursuant to Section 16-113 of the Act or the electric utility

[18] ftp://www.ilga.gov/jcar/admincode/083/08300450sections.html

contemporaneously offers the same discount, rebate, fee waiver or waivers of its ordinary terms and conditions to all unaffiliated entities and customers of unaffiliated entities.

Marketing and Advertising

a. An electric utility shall neither jointly advertise nor jointly market its services or products with those of an affiliated interest in competition with Alternative Retail Electric Suppliers (ARES).

b. Nothing in subsection (a) shall be construed as prohibiting an affiliated interest in competition with ARES from using the corporate name or logo of an electric utility or electric utility holding company.

Customer Information

a. Customer information shall be made available in accordance with Section 16-122 of the Public Utilities Act [220 ILCS 5/16-122], without preference to affiliated interests or their customers. Electric utilities shall not provide any preferences to affiliated interests in requesting authorization for the release of customer information.

b. An unaffiliated ARES may submit, to an electric utility, a written standing request for any generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification that the electric utility provides to its affiliated interests in competition with ARES. A standing request made pursuant to this Section shall expire one year after being received by the utility unless renewed in writing by the ARES.

c. The electric utility shall contemporaneously, and in the same form and manner, make available to any unaffiliated alternative retail electric suppliers that have submitted a standing request, pursuant to subsection (b) of this Section, any generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification that the utility makes available to its affiliated interests in competition with alternative retail electric suppliers.

d. Any unaffiliated ARES that receives generic customer information pursuant to a standing request made under this Section or any affiliated interest in competition with ARES that receives generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification from the electric utility shall, in accordance with Section 16-122(b) of the Act, pay the electric utility a reasonable fee in each instance that such information is provided.

Independent Functioning

a. Except in relation to corporate support and emergency support, electric utilities and affiliated interests in competition with ARES that provide services to customers within the utility's service territory shall function independently of each other and shall not share services or facilities.

Employees

a. Except in relation to corporate support and emergency support, electric utilities and their affiliated interests in competition with alternative retail electric suppliers shall not jointly employ or otherwise share the same employees.

b. Electric utilities shall not jointly employ or otherwise share employees engaged in providing delivery services with their affiliated interests in competition with alternative retail electric suppliers.

c. Subsections (a), (b) and (d) of this Section shall not apply to any employee covered by a collective bargaining agreement subject to federal labor law, including the Labor Management Relations Act and the National Labor Relations Act.

d. Each electric utility that has an affiliated interest in competition with ARES shall maintain a log detailing the transfer of employees: from the utility to its affiliated interests in competition with ARES; from the utility to its other affiliated interests; and from the utility's other affiliated interests to its affiliated interests in competition with ARES. This subsection shall not apply to employee transfers to or from corporations that are affiliated interests of the electric utility solely because they share a common director. The log shall be made available to the Commission upon request.

Transfer of Goods

a. Transactions between an electric utility and its affiliated interests shall not be allowed to subsidize the affiliated interests.

b. In connection with an application for a certificate of service authority filed by an affiliated interest of an electric utility, pursuant to Section 16-115 of the Act, the affiliated interest shall provide a copy of a Commission approved services and facilities or affiliated interest agreement that explicitly addresses the cost allocation and valuation methodology to be applied to any transfer of goods and services: between the electric utility and its affiliated interests in competition with ARES; between the utility and its other affiliated interests; and between the utility's other affiliated interests and its affiliated interests in competition with ARES. In the event that there is no Commission approved agreement addressing these issues, the applicant shall submit such an agreement for approval as part of its application.

c. Costs associated with the transfer of goods and services between an electric utility and its affiliated interests, including affiliated interests in competition with ARES, shall be priced as specified in, and allocated pursuant to, the Commission approved services and facilities agreement or affiliated interests agreement presented in the affiliated ARES certification proceeding. Any transfer of goods and services between an electric utility and its affiliated interests, including affiliated interests in competition with ARES, that is not explicitly addressed in a Commission approved services and facilities or affiliated interests agreement is prohibited unless the transfer has been otherwise specifically approved by the Commission pursuant to Section 7-101 of the Act or approval has been waived by statute or Commission rule.

Maintenance of Books and Records and Commission Access

a. An electric utility shall maintain books, accounts, and records separate from those of its affiliated interests.

b. In connection with an application for a certificate of service authority filed by an affiliated interest of an electric utility, pursuant to Section 16-115 of the Act, the affiliated interest shall provide a copy of a Commission approved services and facilities or affiliated interest agreement that explicitly sets forth both the cost allocation guidelines and the accounting conventions to be applied to any transactions: between the electric utility and its affiliated interests in competition with ARES; between the utility and its other affiliated interests; and between the utility's affiliated interests in competition with ARES and its other affiliated interests. In the event that there is no Commission approved agreement addressing cost allocation and accounting conventions, the applicant shall submit such an agreement for approval as part of its application.

c. Upon the request of the Commission, electric utilities shall make personnel available who are competent to respond to the Commission's inquiries regarding the nature of any transactions that have taken place between the electric utility and its affiliated interests, including but not limited to the goods and services provided, the prices, terms and conditions, and other considerations given for the goods and services provided.

d. Each electric utility shall maintain a log detailing: each instance in which it exercised discretion in the application of tariff provisions; each instance in which it offered affiliated interests or customers of affiliated interests services not governed by tariffs, except for corporate support transactions and services that have been declared competitive pursuant to Section 16-113 of the Act; and each instance in which it offered affiliated interests or customers of affiliated interests a discount, rebate, fee waiver or waivers of the electric utility's ordinary terms and conditions in connection with services provided under tariffs on file with the Commission. The electric utility shall make such log available to the Commission upon request. The log shall contain the following information:
    i. the names of the affiliated interests and unaffiliated entities involved in the transaction;
    ii. a description of the transaction;
    iii. the time period over which the transaction applies; and
    iv. the quantities and locations involved in the transaction.

Internal Audits

a. Electric utilities shall conduct biennial internal audits on transactions with affiliated interests. These audits shall test compliance with this Part, with any applicable Commission orders, with the electric utility's affiliated interest operating agreement(s) and/or guidelines, with 83 Ill. Adm. Code 415, and with 83 Ill. Adm. Code 420. The audits shall include written reports of conclusions and associated workpapers that shall be available to the Commission Staff for review. The audit reports shall be submitted to the Commission's Director of Accounting within 30 days after completion. Any audit performed pursuant to this Section may be designated as confidential with the Commission's Director of Accounting.

b. The first such internal audit report shall be submitted on or before December 1, 1998. Succeeding audit reports shall be submitted on or before December 1 of each even numbered succeeding year.

c. Subsections (a) and (b) of this Section shall not apply to transactions with corporations that are affiliated interests of the electric utility solely because they share a common director or transactions with individuals that are affiliated interests of the electric utility solely because they are an elective officer or director of the electric utility.

NORTH CAROLINA

Rule: North Carolina Code of Conduct (as approved by the North Carolina Utilities Commission)[19]

This section contains the complete text of the "official" North Carolina Code of Conduct (hereinafter "Code of Conduct or "Code"), approved by the North Carolina Utilities Commission, which governs Duke Energy Carolina's (DEC) and Duke Energy Progress (DEP) transactions with affiliates. This Code applies in North Carolina and South Carolina.

CODE OF CONDUCT GOVERNING THE RELATIONSHIPS, ACTIVITIES AND TRANSACTIONS BETWEEN AND AMONG THE PUBLIC UTILITY OPERATIONS OF DEC, THE PUBLIC UTILITY OPERATIONS OF PEC, DUKE ENERGY CORPORATION, OTHER AFFILIATES, AND THE NONPUBLIC UTILITY OPERATIONS OF DEC AND PEC

GENERAL

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC and PEC, to the extent such relationships, activities, and transactions affect the operations or costs of utility service experienced by the public utility operations of DEC and PEC in their respective service areas. DEC, PEC, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.1 approved by the Commission in Docket Nos. E-2, Sub 998, and E-7, Sub 986. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry; or other changes that warrant modification of this Code.

DEC or PEC may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that exigent circumstances in a particular case justify such a waiver.

STANDARDS OF CONDUCT

A. Independence and Information Sharing

1. Separation - DEC, PEC, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable. DEC, PEC, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's and PEC's Nonpublic Utility Operations shall maintain separate records from those of DEC's and PEC's public utility operations to ensure appropriate cost allocations and any arm's- length-transaction requirements.

Disclosure of Customer Information:

(a) Upon request, and subject to the restrictions and conditions contained herein, DEC and PEC may provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation under the same terms and conditions that such information is provided to non-Affiliates.

(b) Except as provided in Section III.A.2.(f) below, Customer Information shall not be disclosed to any person or company, without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates or Nonpublic Utility Operations may be obtained by means of written authorization, electronic authorization or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC and PEC retain such authorization for verification purposes for as long as the authorization remains in effect.

[19] https://dms.psc.sc.gov/Attachments/Matter/e71fb4fb-1518-41e6-895c-7c6e3f60bdfa

(c) If the Customer allows or directs DEC or PEC to provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, then DEC or PEC shall ask the Customer if he, she, it would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC or PEC to provide Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.

(d) Sections III.A.2.(a), 2.(b), and 2.(c) herein shall be permanently posted on DEC's and PEC's website.

(e) No DEC or PEC employee who is transferred to Duke Energy or another Affiliate will be permitted to copy or otherwise compile any Customer Information for use by such entity except pursuant to written permission from the Customer, as reflected by a signed Data Disclosure Authorization. Neither DEC nor PEC shall transfer any employee to Duke Energy or another Affiliate for the purpose of disclosing or providing Customer Information to such entity.

(f) Notwithstanding the prohibitions established by this Section III.A.2, DEC and PEC may disclose Customer Information to DEBS, PESC, any other Affiliate, a Nonpublic Utility Operation or a non-affiliated third party without Customer consent, but only to the extent necessary for the Affiliate, Nonpublic Utility Operation or non-affiliated third party to provide goods or services to DEC or PEC and upon their explicit agreement to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed.

(g) DEC and PEC shall take appropriate steps to store Customer Information in such a manner as to limit access to only those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.

(h) DEC and PEC shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.

(i) No DEBS or PESC employee may use Customer Information to market or sell any product or service to DEC's or PEC's Customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by DEC or PEC.

(j) DEBS and PESC employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of DEBS or PESC that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of the Utilities.

(k) Should any inappropriate disclosure of DEC or PEC Customer Information occur at any time, DEC or PEC is required to promptly file a statement with the Commission in this docket describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.

3. The disclosure of Confidential Systems Operation Information of DEC and PEC (referred to hereinafter as "Information") shall be governed as follows: (l) Such Information shall not be disclosed by DEC or PEC to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing nonAffiliates contemporaneously and in the same manner. Disclosure to nonAffiliates is not required when disclosure to Affiliates or Nonpublic Utility Operations meets one of the following exceptions:

(i) The Information is provided to employees of DEC or PEC for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998;

(ii) The Information is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements;
(iii) A state or federal regulatory agency or court having jurisdiction over the disclosure of the Information requires the disclosure;
(iv) The Information is provided to employees of DEBS or PESC pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153;
(v) The Information is provided to employees of DEC's or PEC's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service;
(vi) The Information is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S. 62-153, provided that the agreement specifically describes the types of Information to be disclosed;
(vii) Disclosure is otherwise essential to enable DEC or PEC to provide Electric Services to their Customers; or
(viii) Disclosure of the Information is necessary for compliance with the Sarbanes-Oxley Act of 2002.

(m) Any Information disclosed pursuant to the exceptions in Section III.A.3(a), above, shall be disclosed only to employees that need the information for the purposes covered by those exceptions and in as limited a manner as possible. The employees receiving such Information must be prohibited from acting as conduits to pass the Information to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such Information.

(n) For disclosures pursuant to exceptions (vii) and (viii) in Section III.A.3(a), above, DEC and PEC shall include in their annual affiliated transaction reports the following information:
(i) The types of Information disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;
(ii) The reasons for the disclosure; and
(iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process. To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

(o) DEC, PEC, DEBS, and PESC employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC and PEC.

(p) Should the handling or disclosure of DEC's or PEC's Market Information, Transmission Information, or other CSOI by DEBS, PESC, or another Affiliate or Nonpublic Utility Operation, or their respective employees, result in (i) a violation of the FERC Standards of Conduct or Affiliate Restrictions, 18 CFR § 358 - Standards of Conduct for Transmission Providers and 18 CFR § 35.39-Affiliate Restrictions), or any other relevant FERC standards or codes of conduct, (ii) the posting of such data on an OASIS or other Internet website, or (iii) other public disclosure of the data, DEC or PEC shall promptly file a statement with the Commission in Docket Nos. E-7, Sub 986C, and E-2, Sub 998C, respectively, describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the mitigating and/or other steps taken to address the current or any future potential violation, posting, or other public disclosure.

(q) Should any inappropriate disclosure of CSOI occur at any time, DEC or PEC shall promptly file a statement with the Commission in Docket Nos. E-7, Sub 986C, or E2, Sub 998C, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the mitigating and/or other steps taken to addressthe disclosure.

(r) Unless publicly noticed and generally available, should the FERC Affiliate Restrictions, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and PEC shall file a letter in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, with the Commission describing such action within 60 days of the action, along with a copy of any amended or replacement document.

Nondiscrimination

1. DEC's and PEC's employees and representatives shall not unduly discriminate against non-Affiliated entities.

Marketing/Logo Usage

1. The public utility operations of DEC and PEC may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint marketing arrangement) with their Utility Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or restrictions that the Commission may hereafter establish. Neither DEC nor PEC shall otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of DEC or PEC in any communications unless a disclaimer is included that states the following:

(a) "[Duke Energy Corporation/Affiliate) is not the same company as [DEC/PEC], and [Duke Energy Corporation/Affiliate) has separate management and separate employees"; (b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";
(c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [DEC/PEC]"; and
(d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [DEC/PEC]."

3. Nonpublic Utility Operations may not use the names or logos of DEC or PEC in any communications unless a disclaimer is included that states the following:

(a) "[Nonpublic Utility Operation] is not part of the regulated services offered by [DEC/PEC] and is not in any way sanctioned by the North Carolina Utilities Commission"; (b) "Purchasers of products or services from [Nonpublic Utility Operation] will receive no preference or special treatment from [DEC/PEC]"; and
(c) "A customer does not have to buy products or services from [Nonpublic Utility Operation] in order to continue to receive the same safe and reliable electric service from [DEC/PEC]."

The required disclaimer must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC or PEC and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC or PEC for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. As a general guideline, with regard to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC or PEC, and Duke Energy, the other

Non-Utility Affiliates, and the Nonpublic Utility Operations, to the extent such prices affect DEC's or PEC's operations or costs of utility service, the following conditions shall apply:

(a) Except as otherwise provided for in this Section III.D, for untariffed goods and services provided by DEC or PEC to Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC or PEC shall be set at the higher of Market Value or DEC's or PEC's Fully Distributed Cost.

(b) Except as otherwise provided for in this Section III.D, for goods and services provided, directly or indirectly, by Duke Energy, a Non-Utility Affiliate other than DEBS or PESC, or a Nonpublic Utility Operation to DEC or PEC, the transfer price(s) charged by Duke Energy, the Non-Utility Affiliate, and the Nonpublic Utility Operation to DEC or PEC shall be set at the lower of Market Value or Duke Energy's, the Non-Utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC or PEC do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, DEC and PEC shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's and PEC's Customers receive service at the lowest reasonable cost. For goods and services provided by DEBS and PESC to DEC, PEC, and Utility Affiliates, the transfer price charged shall be set at DEBS' and PESC's Fully Distributed Cost.

(c) Tariffed goods and services provided by DEC and PEC to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services (such as time of use, manner of use, customer class, load factor, and relevant Standard Industrial Classification) under the applicable tariff.

(d) Subject to and in compliance with all conditions placed upon DEC and PEC by the Commission, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC or PEC to DEC, PEC, or the Utility Affiliates or by the Utility Affiliates to DEC or PEC, shall be transferred at the supplier's Fully Distributed Cost.

4. To the extent that DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS or PESC (or their successors), these Shared Services may be jointly provided to DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC and PEC is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC and PEC. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual(s) filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, PEC, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of natural gas, coal, and electricity or ancillary services intended for resale), if such joint purchases result in cost savings to DEC's and PEC's Customers. DEC, PEC, Duke Indiana, Duke Kentucky, and PEF, may capture economies-ofscale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's and PEC's Customers. Notwithstanding the foregoing, if any of the coal or natural gas jointly purchased by DEC, PEC, Duke Indiana, Duke Kentucky, or PEF is transferred to or utilized by another Affiliate within 12 months of the joint purchase, DEC and PEC will file a notification of such with the Commission. All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's and PEC's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manuals required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC and PEC incur in assembling, compiling, preparing, or furnishing requested Customer Information or Confidential Systems Operation Information for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or non-Affiliates shall be recovered from the requesting party pursuant to Section III.D.3 of this Code of Conduct.

8. Any technology or trade secrets developed, obtained, or held by DEC or PEC in the conduct of regulated operations shall not be transferred to Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission; provided however, that DEC and PEC are not required to provide advance notice for such transfers to each other. DEC and PEC may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC and PEC shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

Regulatory Oversight

1. The State's existing requirements regarding affiliate transactions, as set forth in G.S. 62-153, shall continue to apply to all transactions between DEC, PEC, Duke Energy, and the other Affiliates.

2. The books and records of DEC, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC or PEC with Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or PEC to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or PEC shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

Utility Billing Format

To the extent any bill issued by DEC and PEC, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes any charges to Customers for Electric Services and non-Electric Services from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for the Electric Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services will not be terminated for failure to pay for any other services billed.

MARYLAND

Rule: 2013 Maryland Code PUBLIC UTILITIES § 7-211 - Energy efficiency programs[20]
See also: 2016 SB 684[21], aimed at Prohibiting an affiliate of an electric company from using the electric company's trade name, logo, billing services, mail inserts, advertising, or computer services for a plan or program that provides heating, ventilation, air conditioning, or refrigeration services; requiring the Public Service Commission to determine just and reasonable compensation that an affiliate of an electric company shall provide to customers of the electric company's regulated services; etc.

(a) (1) In this section the following words have the meanings indicated.

(2) "Affiliate" has the meaning stated in § 7-501 of this title.

(3) "Demand response program" means a program established by an electric company that promotes changes in electric usage by customers from their normal consumption patterns in response to:

(i) changes in the price of electricity over time; or

(ii) incentives designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized.

(4) "Electricity consumption" and "electricity consumed" mean the sum of retail electricity sales to all customers and reported electricity losses within the electric distribution system.

(5) "Peak demand" means the highest level of electricity demand in the State measured in megawatts during the period from May 1 to September 30 on a weather-normalized basis.

(6) "Per capita electricity consumption" means the result calculated by dividing the total gigawatt-hours of electricity consumed by electricity customers in the State as of December 31 of a year, as determined by the Commission, by the population of the State as of December 31 of that year, as determined by the Department of Planning.

(7) "Plan" means an electricity savings and demand reduction plan and cost recovery proposal.

(8) "Provide heating, ventilation, air conditioning, or refrigeration services" has the meaning stated in § 9A-101 of the Business Regulation Article.

(b) The General Assembly finds and declares that:

(1) energy efficiency is among the least expensive ways to meet the growing electricity demands of the State; and

(2) to provide affordable, reliable, and clean energy for consumers of Maryland, it is the goal of the State to achieve the following energy efficiency, conservation, and demand response targets, based on 2007 electricity consumption:

(i) a 15% reduction in per capita electricity consumption by the end of 2015; and

(ii) a 15% reduction in per capita peak demand by the end of 2015.

[20] https://law.justia.com/codes/maryland/2013/article-gpu/section-7-211/

[21] https://legiscan.com/MD/text/SB684/2016

(c) Beginning with the 2008 calendar year and each year thereafter, the Commission shall calculate:

(1) the per capita electricity consumption for that year; and

(2) the peak demand for that year.

(d) Subject to review and approval by the Commission, each gas company and electric company shall develop and implement programs and services to encourage and promote the efficient use and conservation of energy by consumers, gas companies, and electric companies.

(e) As directed by the Commission, each municipal electric utility and each electric cooperative that serves a population of less than 250,000 in its distribution territory shall include energy efficiency and conservation programs or services as part of their service to their customers.

(f) The Commission shall:

(1) require each gas company and electric company to establish any program or service that the Commission deems appropriate and cost effective to encourage and promote the efficient use and conservation of energy;

(2) adopt rate-making policies that provide cost recovery and, in appropriate circumstances, reasonable financial incentives for gas companies and electric companies to establish programs and services that encourage and promote the efficient use and conservation of energy; and

(3) ensure that adoption of electric customer choice under Subtitle 5 of this title does not adversely impact the continuation of cost-effective energy efficiency and conservation programs.

(g) Except as provided in subsection (e) of this section, on or before December 31, 2008, by regulation or order, the Commission shall:

(1) to the extent that the Commission determines that cost-effective energy efficiency and conservation programs and services are available, for each affected class, require each electric company to procure or provide for its electricity customers cost-effective energy efficiency and conservation programs and services with projected and verifiable electricity savings that are designed to achieve a targeted reduction of at least 5% by the end of 2011 and 10% by the end of 2015 of per capita electricity consumed in the electric company's service territory during 2007; and

(2) require each electric company to implement a cost-effective demand response program in the electric company's service territory that is designed to achieve a targeted reduction of at least 5% by the end of 2011, 10% by the end of 2013, and 15% by the end of 2015, in per capita peak demand of electricity consumed in the electric company's service territory during 2007.

(h) (1) (i) On or before July 1, 2008, and every 3 years thereafter, each electric company shall consult with the Maryland Energy Administration regarding the design and adequacy of the electric company's plan to achieve the electricity savings and demand reduction targets specified in subsection (g) of this section.

(ii) An electric company shall provide the Maryland Energy Administration with any additional information regarding the plan, as requested.

(2) On or before September 1, 2008, and every 3 years thereafter, an electric company shall submit its plan to the Commission that details the electric company's proposals for achieving the electricity savings and demand reduction targets specified in subsection (g) of this section for the 3 subsequent calendar years.

(3) The Commission shall consider any written findings provided by the Maryland Energy Administration regarding the design and adequacy of the plan.

(4) Each electric company shall provide annual updates to the Commission and the Maryland Energy Administration on plan implementation and progress towards achieving the electricity savings and demand reduction targets specified in subsection (g) of this section.

(5) (i) The plan shall include a description of the proposed energy efficiency and conservation programs and services and the proposed demand response program, anticipated costs, projected electricity savings, and any other information requested by the Commission.

(ii) The plan shall address residential, commercial, and industrial sectors as appropriate, including low-income communities and low- to moderate-income communities.

(iii) 1. If, in connection with a program or service, the electric company proposes to provide heating, ventilation, air conditioning, or refrigeration services for its customers, the plan shall include procedures for the competitive selection of heating, ventilation, air conditioning, or refrigeration service providers.

2. On request by the electric company and for good cause shown, the Commission may waive the requirement that the electric company competitively select heating, ventilation, air conditioning, or refrigeration providers under subsubparagraph 1 of this subparagraph.

Subsidization

(6) The plan and any updates shall include a certification or recertification by the electric company that, if an affiliate of the electric company provides heating, ventilation, air conditioning, or refrigeration services through any existing contract or obligation in connection with a program or service, the customers of the electric company's regulated services will not subsidize the operations of the affiliate.

(7) The Commission shall review each electric company's plan to determine if the plan is adequate and cost-effective in achieving the electricity savings and demand reduction targets specified in subsection (g) of this section.

(i) (1) In determining whether a program or service encourages and promotes the efficient use and conservation of energy, the Commission shall consider the:

(i) cost-effectiveness;

(ii) impact on rates of each ratepayer class;

(iii) impact on jobs; and

(iv) impact on the environment.

(2) The Commission shall monitor and analyze the impact of each program and service to ensure that the outcome of each program and service provides the best possible results.

(3) In monitoring and analyzing the impact of a program or service under paragraph (2) of this subsection, if the Commission finds that the outcome of the program or services may not be providing the best possible results, the Commission shall direct the electric company to include in its annual update under subsection (h)(4) of this section specific measures to address the findings.

(4) An electric company that enters into a contract or obligation with an affiliate of the electric company to provide heating, ventilation, air conditioning, or refrigeration services in connection with a program or service shall notify the Commission within 30 days after entering into the contract or obligation that the electric company:

(i) has entered into a contract or obligation with an affiliate of the electric company; and

(ii) certifies that the customers of the electric company's regulated services will not subsidize the operations of the affiliate.

(j) (1) At least once each year, each electric company and gas company shall notify affected customers of the energy efficiency and conservation charges imposed and benefits conferred.

(2) The notice shall be provided by publication on the company's website and inclusion with billing information such as a bill insert or bill message.

(k) On or before March 1 of each year, the Commission, in consultation with the Maryland Energy Administration, shall report, subject to § 2-1246 of the State Government Article, to the General Assembly on:

(1) the status of programs and services to encourage and promote the efficient use and conservation of energy, including an evaluation of the impact of the programs and services that are directed to low-income communities, low- to moderate-income communities to the extent possible, and other particular classes of ratepayers;

(2) a recommendation for the appropriate funding level to adequately fund these programs and services; and

(3) in accordance with subsection (c) of this section, the per capita electricity consumption and the peak demand for the previous calendar year.

(l) Notwithstanding any other law, the Commission may not require or allow an electric company to require an electric customer to authorize the electric company to control the amount of the electric customer's electricity usage, including through control of the electric customer's thermostat.

(m) (1) On or before June 30, 2013, by regulation or order, the Commission shall establish a pilot program for electric customers to recharge electric vehicles during off-peak hours.

(2) (i) An electric company may request to participate in the pilot program.

(ii) The Commission shall make every effort to include at least two electric companies in the pilot program.

(3) The pilot program shall include incentives for residential, commercial, and governmental customers to recharge electric vehicles in a manner that will:

(i) increase the efficiency and reliability of the electric distribution system; and

(ii) lower electricity use at times of high demand.

(4) Incentives may include:

(i) time-of-day pricing of electricity;

(ii) credits on distribution charges;

(iii) rebates on the cost of charging systems;

(iv) demand response programs; or

(v) other incentives approved by the Commission.

(5) On or before February 1, 2015, the Commission shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly on the experience of the pilot program and the Commission's findings.

FLORIDA

Florida Administrative Code 25-6.1351 Cost Allocation and Affiliate Transactions.[22]

(1) Purpose. The purpose of this rule is to establish cost allocation requirements to ensure proper accounting for affiliate transactions and utility nonregulated activities so that these transactions and activities are not subsidized by utility ratepayers. This rule is not applicable to affiliate transactions for purchase of fuel and related transportation services that are subject to Commission review and approval in cost recovery proceedings.

(2) Definitions.

(a) Affiliate – Any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a utility. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contracts or any other direct or indirect means.

Affiliate Transaction – Any transaction in which both a utility and an affiliate are each participants, except transactions related solely to the filing of consolidated tax returns.

(c) Cost Allocation Manual (CAM) – The manual that sets out a utility's cost allocation policies and related procedures.

(d) Direct Costs – Costs that can be specifically identified with a particular service or product.

(e) Fully Allocated Costs – The sum of direct costs plus a fair and reasonable share of indirect costs.

(f) Indirect Costs – Costs, including all overheads, that cannot be identified with a particular service or product.

(g) Nonregulated – Refers to services or products that are not subject to price regulation by the Commission or not included for ratemaking purposes and not reported in surveillance.

(h) Prevailing Price Valuation – Refers to the price an affiliate charges a regulated utility for products and services, which equates to that charged by the affiliate to third parties. To qualify for this treatment, sales of a particular asset or service to third parties must encompass more than 50 percent of the total quantity of the product or service sold by the entity. The 50 percent threshold is applied on an asset-by-asset and service-by-service basis, rather than on a product line or service line basis.

(i) Regulated – Refers to services or products that are subject to price regulation by the Commission or included for ratemaking purposes and reported in surveillance.

(3) Non-Tariffed Affiliate Transactions.

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities. This subsection does not apply to the allocation of costs for services between a utility and its parent company or between a utility and its regulated utility affiliates or to services received by a utility from an affiliate that exists solely to provide services to members of the utility's corporate family. All affiliate transactions, however, are subject to regulatory review and approval.

(b) A utility must charge an affiliate the higher of fully allocated costs or market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs or market price if the charge is above incremental cost. If a utility charges less than fully allocated costs or market price, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than market price, the utility must notify the Commission Clerk in writing within 30 days of the utility initiating, or changing any of the terms or conditions, for the provision of a product or service. In the case of products or services currently being provided, a utility must notify the Division within 30 days of the rule's effective date.

(c) When a utility purchases services and products from an affiliate and applies the cost to regulated operations, the utility shall apportion to regulated operations the lesser of fully allocated costs or market price. Except, a utility

[22] https://www.flrules.org/gateway/ruleno.asp?id=25-6.1351

may apportion to regulated operations more than fully allocated costs if the charge is less than or equal to the market price. If a utility apportions to regulated operations more than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations and would be based on prevailing price valuation.

(d) When an asset used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market price or net book value. Except, a utility may charge the affiliate either the market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market price or net book value. Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. An independent appraiser must verify the market value of a transferred asset with a net book value greater than $1,000,000. If a utility charges less than market price, the utility must notify the Commission Clerk in writing within 30 days of the transfer.

(e) Each affiliate involved in affiliate transactions must maintain all underlying data concerning the affiliate transaction for at least three years after the affiliate transaction is complete. This paragraph does not relieve a regulated affiliate from maintaining records under otherwise applicable record retention requirements.

(4) Cost Allocation Principles.

(a) Utility accounting records must show whether each transaction involves a product or service that is regulated or nonregulated. A utility that identifies these transactions by the use of subaccounts meets the requirements of this paragraph.

(b) Direct costs shall be assigned to each non-tariffed service and product provided by the utility.

(c) Indirect costs shall be distributed to each non-tariffed service and product provided by the utility on a fully allocated cost basis. Except, a utility may distribute indirect costs on an incremental or market basis if the utility can demonstrate that its ratepayers will benefit. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so.

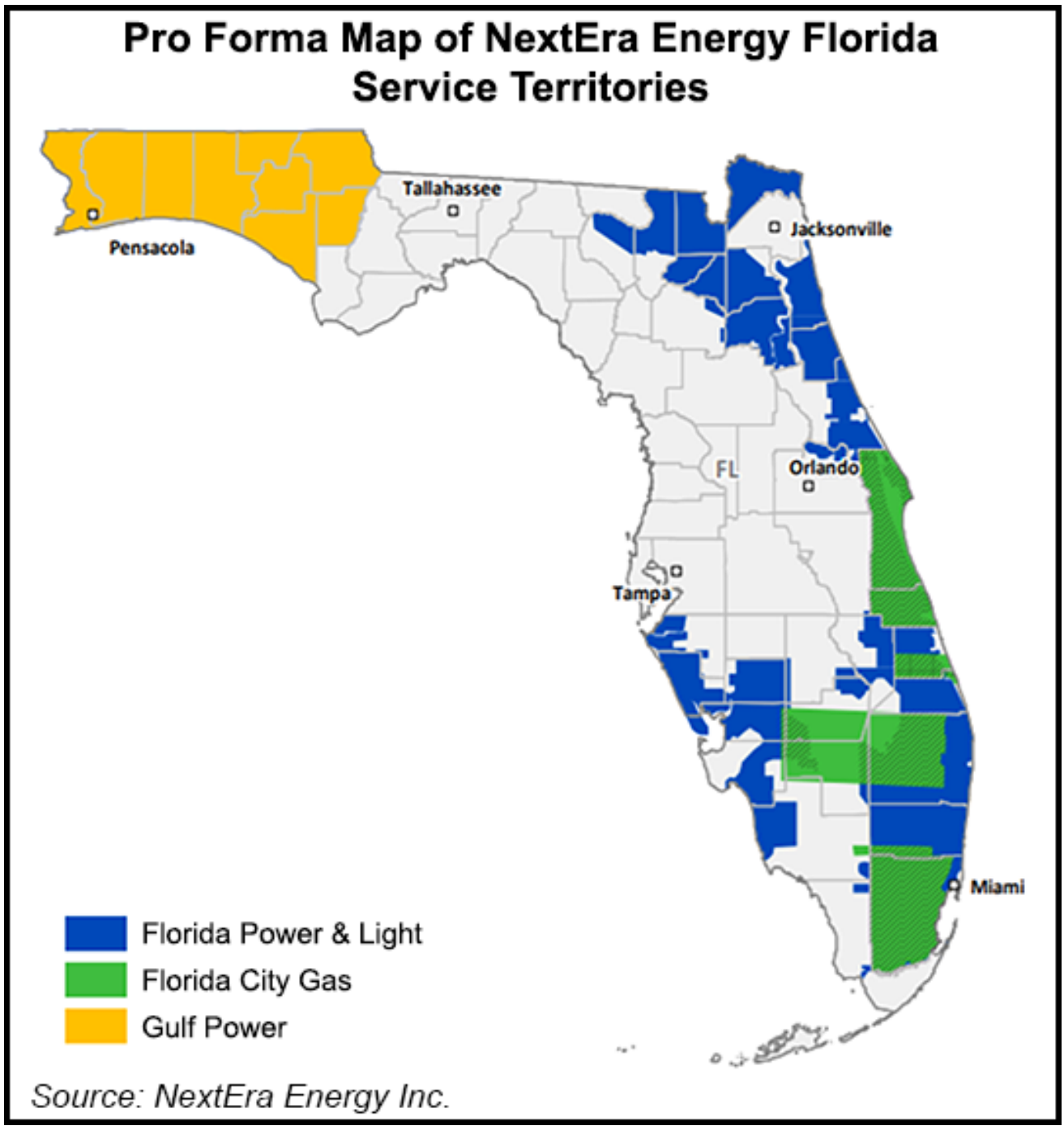
(d) Each utility must maintain a listing of revenues and expenses for all non-tariffed products and services.

(5) Reporting Requirements. Each utility shall file information concerning its affiliates, affiliate transactions, and nonregulated activities on Form PSC/AFD/101 (3/04) which is incorporated by reference into Rule 25-6.135, F.A.C. Form PSC/AFD/101, entitled “Annual Report of Major Electric Utilities,” may be obtained from the Commission’s Division of Accounting and Finance.

(6) Cost Allocation Manual. Each utility involved in affiliate transactions or in nonregulated activities must maintain a Cost Allocation Manual (CAM). The CAM must be organized and indexed so that the information contained therein can be easily accessed.

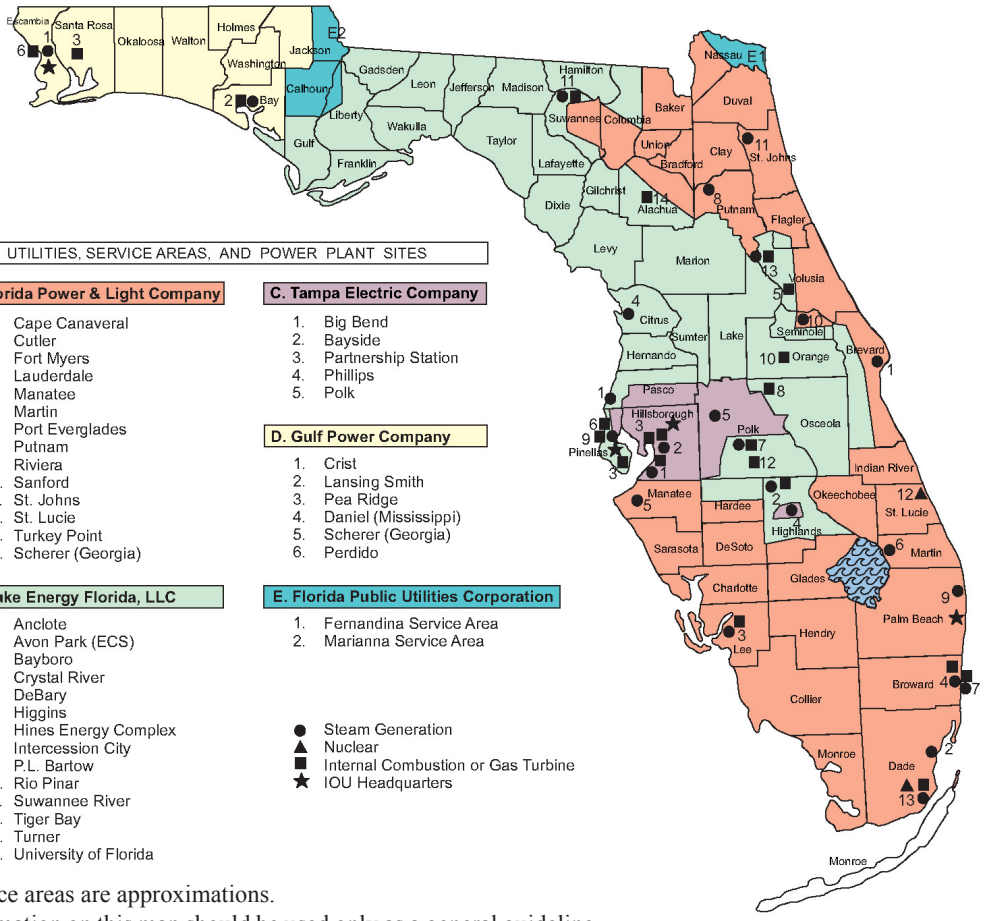
Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 350.115, 366.04(2)(a), (f), 366.041(1), 366.05(1), (2), (9), 366.06(1), 366.093(1) FS. History–New 12-27-94, Amended 12-11-00, 3-30-04.

NEXTERA ENERGY SERVICE AREAS



FLORIDA UTILITIES MAP

Investor-Owned Electric Utilities
Approximate Company Service Areas



UTILITIES, SERVICE AREAS, AND POWER PLANT SITES

A. Florida Power & Light Company

1. Cape Canaveral
2. Cutler
3. Fort Myers
4. Lauderdale
5. Manatee
6. Martin
7. Port Everglades
8. Putnam
9. Riviera
10. Sanford
11. St. Johns
12. St. Lucie
13. Turkey Point
14. Scherer (Georgia)

B. Duke Energy Florida, LLC

1. Anclote
2. Avon Park (ECS)
3. Bayboro
4. Crystal River
5. DeBary
6. Higgins
7. Hines Energy Complex
8. Intercession City
9. P.L. Bartow
10. Rio Pinar
11. Suwannee River
12. Tiger Bay
13. Turner
14. University of Florida

C. Tampa Electric Company

1. Big Bend
2. Bayside
3. Partnership Station
4. Phillips
5. Polk

D. Gulf Power Company

1. Crist
2. Lansing Smith
3. Pea Ridge
4. Daniel (Mississippi)
5. Scherer (Georgia)
6. Perdido

E. Florida Public Utilities Corporation

1. Fernandina Service Area
2. Marianna Service Area

- ● Steam Generation
- ▲ Nuclear
- ■ Internal Combustion or Gas Turbine
- ★ IOU Headquarters

Service areas are approximations.
Information on this map should be used only as a general guideline.
For more detailed information, contact individual utilities.

Source:
Florida Public Service Commission

Additional information about Florida's investor-owned electric utilities is available from:
FPSC's *Statistics of the Florida Electric Utility Industry*, October 2015
http://www.floridapsc.com/Files/PDF/Publications/Reports/Electricgas/Statistics/2014.pdf