



Enron Corp.
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July 1, 1999

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
301 West High Street
Jefferson City, MO 65102

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Missouri Public
Service Commission

Dear Mr. Roberts:

**Re: Staff's Proposed Rule For Electric Utility Affiliate Transactions
Case No. EX-99-442**

Enron Energy Services, Inc. ("Enron") would like to thank the Missouri Public Service Commission ("Commission") for the opportunity to submit these comments and its suggested revisions to the Staff's proposed rule regarding electric affiliate relationships. Enron is a competitive supplier of natural gas and electricity to various consumers in deregulated energy markets throughout the United States, Canada and Europe. Enron has participated in numerous code of conduct proceedings at both the state and federal level and believes that affiliate rules are essential in preventing anti-competitive behavior in the emerging competitive energy industry. Proper affiliate rules prevent, among other things, the sharing of competitively sensitive information and discriminatory access to goods and services. A proper code of conduct achieves those goals by protecting competition (and not competitors) and by ensuring that all unregulated companies operate under the same rules and with no advantages due to their affiliation.

We are now in the transition period when anticipatory assaults on competition can inflict the greatest injury on nascent markets and new and potential competitors. Incumbent utilities – particularly fully integrated utilities – can and are engaging in anticompetitive behavior intended to preserve their monopoly position not only now but also into the future as regulators and legislators move to deregulate the electric market. Enron submits that these efforts by the incumbents to preserve and protect their monopoly positions are grounded in one or a combination of strategies:

- Deny the new or potential entrant economical access to essential facilities, including access to information that is necessary in order to compete effectively;
- Deny the new or potential entrant access to markets by locking them up for long periods of time;

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- Disadvantage competitors by leveraging the incumbent monopolist's name and logo recognition into new competitive markets; and
- Engage in the practice of cross-subsidization of unrelated, non-regulated businesses.

A common theme among many incumbent utilities across the nation is the notion that while we need rules, we do not need them now. Commissions across the country disagree as should Missouri. Although Missouri does not currently enjoy the fruits of full retail competition, there does exist wholesale competition in both the electric and gas markets as well as retail competition in the industrial gas market. The need for affiliate rules is with us today and Missouri cannot wait.

There are some parties who may counsel against the imposition of rules prior to any legislative mandate for retail competition. Enron submits that Missouri may forego many of the early benefits of competition if it does not implement affiliate rules now. Experience has shown that anti-competitive behavior can and does occur prior to the implementation of full retail competition. Employees can be shared without proper cost allocation, customer information can be transferred from the utility to the affiliate, and proprietary or non-public reports regarding market analysis or the utility's energy-related goods and services can be made available to the affiliate. The damage that can occur prior to the implementation of a strict code of conduct that includes adequate enforcement and penalty mechanisms can be irreparable and seriously impair the development of a robust, competitive market.

Structural Separation

In order for competition in the electric market to succeed and provide the anticipated benefits for the customer, it is important that there be a competitively neutral market for all participants in the competitive portions of the market. The most significant threat to the effective development of competition is residual market power. Residual market power is the ability of incumbent utilities to maintain market power as a result of customer inertia and the incumbents' ownership and control of essential facilities. This market power may be maintained by integrated utilities or can result from affiliate abuses. There also exists the potential for vertical market power abuse which is derived from a utility's ability to use its control and knowledge of generation operations and dispatch, transmission operation and capability, and distribution facilities, and the relationships developed by virtue of its monopoly franchise to the advantage of its own unregulated operations.



Structural separation (*i.e.*, separate corporate entities) is essential to mitigate market power efficiently and effectively. A distinction needs to be drawn between behavioral and structural separation. Behavioral separation (*i.e.*, a divisional separation by the incumbent utility of its generation function from its transmission and distribution function) is inadequate because it is impossible for the regulatory process to police market power abuse completely. Structural separation and the appropriate enforcement mechanism, however, will help mitigate market power and encourage the development of a competitive market that will benefit consumers. In many respects, the requirements for structural separation are drawn from FERC rules, and Enron recommends that the Commission consider the FERC guidelines when addressing this issue. For example, while the FERC requires maintenance in separate offices, it does not require those offices be in separate buildings. Enron recommends that the Commission attribute the same interpretation to the applicable rule.

Structural separation is rooted in the belief that a regulated utility should only be allowed to engage in activities considered to be traditional utility services. Separation of regulated and unregulated activities further avoids the danger that unregulated activities may harm ratepayers or competitive markets through cross-subsidization. It reduces the opportunity for the utility to shift costs of competitive goods and services onto its utility customers.

The need for employee separation is only one of many separation rules that this Commission should consider adopting in order to prevent incumbents from leveraging their monopolist advantages into competitive businesses. For example, requirements pertaining to such issues as joint marketing and advertising, information sharing, and employee migration between the utility and its affiliates are an essential part of any effective code of conduct. For a greater understanding of how other states have dealt with the issue of separation in an effort to ensure the mitigation of market power and consumer protection, Enron would refer the Commission to the rules adopted by the California and Nevada Commissions, attached hereto as "Appendix A."

Other Competitive Services

While the utilities have focused on affiliate transactions which deal only with commodity and access to distribution and/or transmission facilities, the Commission should not lose sight of the effect of these rules on other services. Utility affiliates which provide demand side management services, energy audits, appliance sales and repairs, etc., are all in a position to benefit from the sharing of confidential information and preferential access to utility goods and services. For that reason, the application of these



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rules to all competitive affiliates is critical. Assuming the Commission adopts a rule in this proceeding which requires unbundling of energy services, it can be assumed that companies will want to compete to offer those unbundled services. It will be essential that strong affiliate rules be in effect to enable a competitive market to grow and prosper.

The legitimate goal of a code of conduct is the promotion of economic efficiency through protection of the competitive process, rather than any individual competitor. Now is the transition period when anticipatory assaults on competition can achieve their maximum injury to new and potential competitors. The vitality of the affiliate rules must fill the vacuum that previously was the province of government regulation. The affiliate rules must serve their intended function in clearing the way for competition and ensuring that competition has the opportunity to thrive. Anticompetitive activity, if unchecked by a proper code of conduct, will undoubtedly prolong the transition to competition, if not undermine it entirely.

Respectfully submitted,

Thomas S. Reichelderfer
Manager, State Government Affairs
Enron Energy Services, Inc.

ENRON'S PROPOSED RULE

**Title 4--DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240- -Public Service Commission
Chapter 20- -Electrical Utilities**

PROPOSED RULE

4 CSR 240-20.015 Affiliate Transactions

PURPOSE: This rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any Missouri Public Service Commission (Commission) regulated electrical corporation when such electrical corporation participates in affiliate transactions with any competitive affiliate-affiliated entity except with regard to HVAC services as defined in Section 386.754 by the General Assembly of Missouri. The purpose of these provisions is to establish safeguards to govern the interaction between regulated utilities and their competitive affiliates, both during the transition to and after the introduction of retail competition. In promulgating these affiliate rules, the Commission has three objectives: fostering fair competition for all participants in the marketplace, preventing cross-subsidization of competitive activities by monopoly ratepayers, and preventing anti-competitive behavior and utilities' circumvention of their regulatory obligations.

(1) Definitions.

(A) Affiliated entity means any affiliated interest, including any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a combination of political subdivisions, or any separate legal entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation or any of its subsidiaries or its parent.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and its competitive affiliate(s)an-affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of an electrical corporation. An affiliate transaction for the purposes of this rule excludes HVAC services as defined in Section 386.754 by the General Assembly of Missouri.

(C) Control (including the terms "controlling", "controlled by" and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. Under all circumstances, beneficial ownership of more than ten percent (10%) of voting securities or partnership interest of an entity shall be deemed to confer control for purposes of this rule.

(D) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., derived from) the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(E) Fully Distributed Cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated

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approach. Costs that cannot be directly assigned or indirectly allocated (e.g. General and Administrative) must also be included in the FDC calculation through a general allocation.

(F) Preferential Service means information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors.

(G) Regulated electrical corporation means every electrical corporation as defined in Section 386.020 RSMo, subject to Commission regulation pursuant to Chapter 393 RSMo.

~~(H) Variancee means an exemption granted by the Commission from any applicable standard required pursuant to this rule.~~

(H) Commission means the Public Service Commission of Missouri, or any successor thereto.

(I) Competitive Affiliate means an affiliate of a regulated electric corporation that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(J) Customer Information means non-public information and data specific to a regulated electric corporation's customer which the regulated electric corporation acquired or developed in the course of its provision of utility services.

(K) Customer means any person or corporation that is the ultimate retail consumer of goods and services.

(L) FERC means the Federal Energy Regulatory Commission.

(2) Nondiscrimination Standards

(A) No Preferential Treatment Regarding Services Provided by the Regulated Electrical Corporation: Unless otherwise authorized by the Commission or the FERC, or permitted by these rules, a regulated electrical corporation shall not, with respect to the goods or services it provides:

1. represent that, as a result of the affiliation with the regulated electrical corporation, its competitive affiliate(s) or customers of its competitive affiliate(s) will receive any different treatment by the regulated electrical corporation than the treatment the regulated electrical corporation provides to other, unaffiliated suppliers or their customers; or
2. provide its competitive affiliate(s), or customers of its competitive affiliate(s), any preference (including but not limited to terms and conditions, pricing, or timing) over unaffiliated suppliers or their customers in the provision of services provided by the regulated electrical corporation.

(B) Competitive Affiliate Transactions: The following rules shall apply to all transactions between a regulated electrical corporation and its competitive affiliate(s) with respect to goods or services the regulated electrical corporation provides.

1. In dealings with its competitive affiliate(s), a regulated electrical corporation may not discriminate between its competitive affiliate(s) and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. A regulated electrical corporation shall contemporaneously make any offering to its competitive affiliate(s) available to all similarly situated suppliers.
2. A regulated electrical corporation shall apply any tariff provision that allows for discretion in its application in the same manner for its competitive affiliate(s) and unaffiliated suppliers and their respective customers. If the regulated electrical corporation has no discretion in the application of a tariff provision, then it shall strictly enforce that tariff provision.
3. If a regulated electrical corporation offers its competitive affiliate(s) a discount, rebate, or other waiver of any charge or fee, the regulated electrical corporation shall contemporaneously make such discount or waiver available to all unaffiliated suppliers within its service territory.
4. A regulated electrical corporation shall process requests for similar services provided by the regulated electrical corporation in the same manner and within the same time for its competitive affiliate(s) and for all other suppliers and their respective customers.
5. A regulated electrical corporation shall not condition or tie the provision of any services provided by the regulated electrical corporation, nor the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions to the taking of any goods or services from its competitive affiliate(s).

6. A regulated electrical corporation shall not assign customers to which it currently provides services to any of its competitive affiliate(s), whether by default, direct assignment, option or by any other means, unless that means is equally available to all unaffiliated suppliers.
7. Except as otherwise provided by these rules, a regulated electrical corporation shall not:
 - (a) provide leads to its competitive affiliate(s);
 - (b) solicit business on behalf of its competitive affiliate(s);
 - (c) acquire information on behalf of or to provide to its competitive affiliate(s);
 - (d) share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its competitive affiliate(s);
 - (e) request authorization from its customers to pass on customer information exclusively to its competitive affiliate(s);
 - (f) give the appearance that the regulated electrical corporation speaks on behalf of its competitive affiliate(s) or that the customer will receive preferential treatment as a consequence of conducting business with the competitive affiliate(s);
 - (g) give any appearance that any competitive affiliate speaks on behalf of the regulated electrical corporation; or
 - (h) circumvent this rule by using another affiliate as a conduit to provide customer information to or preferential treatment of a competitive affiliate.

(3) Information: Disclosure

- (A) A regulated electrical corporation shall provide customer information to its competitive affiliate(s) and unaffiliated suppliers on a strictly nondiscriminatory basis, and only with prior affirmative customer written consent.
- (B) Regulated electrical corporations shall not disclose to their competitive affiliate(s) any information which a regulated electrical corporation receives from an existing or potential unaffiliated customer or unaffiliated supplier, or their agent or contractor.
- (C) Except in conjunction with the provision of corporate support services permitted below, information which is not specific to a customer but relates to the activities of the regulated electrical corporation's tariff, including but not limited to information about a regulated electrical corporation's electricity-related goods or services, shall be available to the regulated electrical corporation's competitive affiliate(s) only if the regulated electrical corporation makes that information contemporaneously available to all other suppliers on the same terms and conditions, and keeps the information open to public inspection.
- (D) Unless specifically authorized by the Commission, a regulated electrical corporation shall not provide customers or potential customers with any list of suppliers. Any list provided directly by the Commission or authorized by the Commission to be provided by a regulated electrical corporation shall include the names, addresses, telephone numbers, fax numbers, and internet addresses (if any) of all suppliers. The list shall be prepared in a manner that does not identify any affiliate relationship or emphasize any particular supplier in any way.
- (E) Except as provided in these rules, a regulated electrical corporation shall not offer or provide customers or potential customers with advice or assistance of any kind with regard to any competitive affiliate or unaffiliated suppliers.

(4) Separation

- (A) Corporate Entities: A regulated electrical corporation and its competitive affiliate(s) shall be separate legal entities.
- (B) Books and Records: A regulated electrical corporation shall maintain its books, accounts and records separate from its affiliate(s) and they shall be kept in accordance with applicable Uniform System and Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). Transactions between the regulated electrical corporation and its affiliate(s) shall be recorded in separate sub-accounts. Affiliates of a regulated electrical corporation shall maintain their separate books, accounts, and records in a manner that allows the Commission to verify compliance with these affiliate rules.

1. A regulated electrical corporation shall track and report annually to the Commission all employee movement between the regulated electrical corporation and its competitive affiliate(s).
2. Once an employee of a regulated electrical corporation becomes an employee of a competitive affiliate, the employee may not return to the regulated electrical corporation for a period of one year. This rule is inapplicable if the competitive 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 regulated electrical corporation, such employee cannot be retransferred, reassigned, or otherwise employed by any competitive affiliate for a period of one year.
3. Any employee of a regulated electrical corporation hired by a competitive affiliate shall not remove or otherwise provide or use proprietary property or information gained from the regulated electrical corporation in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of other unaffiliated suppliers.
4. Transferring employees must sign a statement indicating that they are aware of and understand the restrictions set forth in the Code and the attendant consequences.
5. A regulated electrical corporation shall not make temporary or intermittent assignments or rotations of its employees to any competitive affiliate to circumvent any of these rules.

(2H) Standards. Transfer of Goods and Services: In all proceedings, filings, complaints or investigations relating to this subsection, the regulated electrical corporation shall have the burden of proof in establishing the fair market value.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if:

1. It compensates an affiliated entity for goods or services above the lesser of:
 - A. The fair market price; or
 - B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself.
2. It transfers information, assets, goods or services of any kind ~~(including, but not limited to, land, patents, trained employees, research, employee training, etc.)~~ to an affiliated entity below the greater of:
 - A. The fair market price; or
 - B. The fully distributed cost to the regulated electrical corporation.

(B) The regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) The regulated electrical corporation shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (9) of this rule.

~~(D) If a customer requests information from the regulated electrical corporation about goods or services provided by an affiliated entity, the regulated electrical corporation shall provide information to the customer regarding the availability of other non-affiliated entities that provide the same goods or services. The regulated electrical corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.~~

(35) Evidentiary Standards for Affiliate Transactions.

(A) When a regulated electrical corporation purchases information, assets, goods or services from an affiliated entity, the regulated electrical corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated electrical corporation from an affiliated entity, the regulated electrical corporation shall document both the fair market price of such information, assets, goods and services and the FDC to the regulated electrical corporation to produce the information, assets, goods or services for itself.

(C) In transactions that involve the provision of information, assets, goods or services to affiliated entities, the regulated electrical corporation must demonstrate that it:

1. Considered all costs incurred to complete the transaction;

- (C) Sharing of Plant, Facilities, Equipment, or Costs: A regulated electrical corporation shall not share office space, office equipment, services, and systems with its affiliate(s), nor shall a regulated electrical corporation access the computer or information systems of its affiliate(s) or allow its affiliate(s) to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under this section.
- (D) Joint Purchases: A regulated electrical corporation may not make joint purchases with its affiliate(s) of any goods or services associated with the marketing of the commodity of electricity to customers, including, without limitation, electricity for resale to customers, electric transmission, or energy-related goods/services for sale to customers. The regulated electrical corporation must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the regulated electrical corporation and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.
- (E) Corporate Support: As a general principle, a regulated electrical corporation, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliate(s) joint corporate oversight, governance, support systems, and personnel. Any shared support shall be priced, reported, and conducted in accordance with these rules, 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 regulated electrical corporation to the affiliate(s), create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.
- (F) Corporate Identification and Advertising:
1. A competitive affiliate of a regulated electrical corporation shall not trade upon, promote, or advertise its affiliation with the regulated electrical corporation, nor use the name or logo of the regulated electrical corporation in any material circulated.
 2. A competitive affiliate of a regulated electrical corporation shall not use any space in any correspondence of the regulated electrical corporation with existing or potential customers or unaffiliated suppliers for the purpose of advertising its services.
 3. A regulated electrical corporation, through action or words, shall not represent that, as a result of the competitive affiliate's affiliation with the regulated electrical corporation, its competitive affiliate(s) will receive any different treatment than other unaffiliated suppliers.
 4. A regulated electrical corporation shall not participate in joint advertising or joint marketing with its competitive affiliate(s). This prohibition means that regulated electrical corporations may not engage in activities which include, but are not limited to the following:
 - (a) A regulated electrical corporation shall not, within its service territory, participate with its competitive affiliate(s) 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 regulated electrical corporation may participate in non-sales meetings with its competitive affiliate(s) to discuss technical or operational subjects regarding the regulated electrical corporation's provision of distribution service to the customer, but only in the same manner and to the same extent it does so with unaffiliated suppliers and their customers.
 - (b) A regulated electrical corporation shall not share or subsidize costs, fees, or payments with its competitive affiliate(s) associated with research and development activities or investment in advanced technology research.
- (G) Employees: Except as permitted under "corporate support," a regulated electrical corporation and its competitive affiliate(s) shall not jointly employ the same employees. In the case of shared directors and officers, a corporate officer from the utility and, where applicable, 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 to circumvent any of these rules.

2. Calculated the costs at times relevant to the transaction;
3. Allocated all joint and common costs appropriately; and
4. Adequately determined the fair market price of the information, assets, goods or services.

(D) In transactions involving the purchase of goods or services by the regulated electrical corporation from an affiliated entity, the regulated electrical corporation will use a Commission approved 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.

(46) Record Keeping Requirements

(A) Each regulated electrical corporation shall maintain its books, accounts and records in accordance with applicable Uniform System and Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). Affiliates of a regulated electrical corporation shall maintain their books, accounts and records in a manner that allows the Commission to verify compliance with these affiliate rules.

(B) In addition, Each regulated electrical corporation shall maintain contemporaneous records documenting all affiliate transactions, including, but not limited to, the following information in a mutually agreed to electronic format (i.e., agreement between the Staff, Office of Public Counsel and the regulated electrical corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the Commission Staff and the Office of the Public Counsel on, or before, March 15th of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;
2. A full and complete list of all goods and services provided to or received from affiliated entities;
3. A full and complete list of all contracts entered with affiliated entities;
4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;
5. The amount of all affiliate transactions by affiliated entity and account charged; and
6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction;
7. All waivers of tariff or contract provisions;
8. All discounts;
9. The name of the party involved in the transaction
10. The time period over which the transaction applies; and
11. The terms and conditions involved in the transaction.

(C) The regulated electrical corporation shall make such records available for third party review upon 72 hours written notice, or at a time mutually agreeable to the regulated electrical corporation.

(D) The regulated electrical corporation shall maintain, for a minimum of six years, a record of all contracts and related bids for any transaction between it and a competitive affiliate relating to the provision of work, products or services.

(E) In addition, Each regulated electrical corporation shall maintain books of accounts and supporting records separate from its affiliates and in sufficient detail to permit verification of compliance with this rule on a calendar year basis.

(F) Compliance Audit: No later than one year after promulgation of these affiliate rules, and at a minimum, every third year thereafter, the regulated electrical corporation shall have an audit prepared by independent auditors that verifies that the regulated electrical corporation is in compliance with these affiliate rules. The regulated electrical corporation shall file this audit with the Commission no later than one year after promulgation of these rules, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.

(57) Records of Competitive Affiliates ~~d-Entities~~.

(A) Each regulated electrical corporation shall ensure that its parent and any other competitive affiliates ~~d-entities~~ maintain separate books and records that include, at a minimum, the following information regarding affiliate transactions:

1. Documentation of the costs associated with affiliate transactions that are incurred by the parent or competitive affiliate ~~d-entity~~ and charged to the regulated electrical corporation;
2. Documentation of the methods used to allocate and/or share costs between affiliated entities including other jurisdictions and/or corporate divisions;
3. Description of costs that are not subject to allocation to affiliate transactions and documentation supporting the non-assignment of these costs to affiliate transactions;
4. ~~Descriptions of the types of services that corporate divisions and/or other centralized functions provided to any affiliated entity or division accessing the regulated electrical corporation's contracted services or facilities;~~
5. ~~Names and job descriptions of the employees from the regulated electrical corporation that transferred to a non-regulated affiliated entity;~~
6. ~~Evaluations of the effect on the reliability of services provided by the regulated electrical corporation resulting from the access to regulated contracts and/or facilities by affiliated entities;~~
7. ~~Policies regarding the availability of customer information and the access to services available to non-regulated affiliated entities desiring use of the regulated electrical corporation's contracts and facilities; and~~
8. ~~Descriptions of and supporting documentation related to any use of derivatives that may be related to the regulated electrical corporation's operation even though obtained by the parent or affiliated entity.~~

(68) Access to Records of Competitive Affiliates ~~d-Entities~~.

(A) To the extent permitted by applicable law and pursuant to established Commission discovery procedures, a regulated electrical corporation shall make available the books and records of its parent and any other competitive affiliates ~~d-entities~~ when required in the application of this rule.

(B) The Commission shall have the authority to:

1. Review, inspect and audit books, accounts and other records kept by a regulated electrical corporation or competitive affiliated entity for the sole purpose of ensuring compliance with this rule and making findings available to the Commission; and
2. Investigate the operations of a regulated electrical corporation or competitive affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(C) This rule does not modify existing legal standards regarding which party has the burden of proof in Commission proceedings.

(79) Record Retention.

(A) Records required under this rule shall be maintained by each regulated electrical corporation for a period of not less than six years.

(10) Compliance Plans: Each regulated electrical corporation shall file with the Commission a compliance plan conforming to the terms and conditions set forth in these affiliate rules. Upon the creation of a new competitive affiliate, the regulated electrical corporation shall immediately file a compliance plan for such affiliate.

(11) Complaint Procedure: Regulated electrical corporations shall establish and file with the Commission a complaint procedure. All complaints, whether written or verbal, shall be referred to a designated officer of the regulated electrical corporation. The designated officer shall verbally acknowledge such complaint within five working days of receipt. The designated officer shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim.

The designated officer shall provide a copy of the statement to the complainant and shall communicate the results of the preliminary investigation to the complainant in writing within thirty days after the complaint was received including a description of any course of action which will be taken. In the event the regulated electrical corporation and the complainant are unable to resolve the complaint, the complainant may address the complaint to the Commission. If the Commission determines that probable cause exists for the complaint, it shall order a hearing, give notice of the hearing and conduct the hearing as it would any other hearing.

- (12) Complaint Log: Each regulated electrical corporation shall maintain a log of all new, resolved and pending complaints. The log shall be available to the public upon request and shall be filed annually with the Commission. The log shall include, at a minimum, a written statement of the complaint and the resolution of the complaint or an explanation why the complaint is still pending.

(813) Enforcement

(A) ~~(A)~~ When enforcing these standards, or any order of the Commission regarding these standards, the Commission may apply any remedy available to the Commission.

(B) No provision of these affiliate rules shall preclude the application of state and federal antitrust laws.

- (14) Penalties: In addition to other penalties available under the Commission's rules and regulations, the Commission shall have the authority to do any of the following: (i) terminate the transaction; (ii) prospectively limit or restrict the amount, percentage, or value of transactions entered into between a regulated electrical corporation and its competitive affiliate(s) as a remedy for a violation of these standards; (iii) assess such penalties as described in subsections (A) and (B) of this section; or (iv) apply any other remedy available to the Commission.

(A) Penalties shall reflect the actual or potential injury, or both, to ratepayers and competitors, and the gravity of the violation. Repeated violations will require more severe penalties.

(B) If any regulated electrical corporation found by the Commission to have violated these rules fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, regulation, directive, or requirement of the Commission, such regulated electrical corporation shall be subject to a penalty of no less than \$5,000 nor more than \$20,000 for each separate violation, in addition to any other penalties assessed by the Commission. The Commission may deem a violation which continues for more than one day to be separate violations for each day a violation described herein continues.

(C) Any penalties assessed by the Commission will in no manner preclude a party's rights to pursue damages in a court of competent jurisdiction.

(D) If the Commission, in two separate orders, finds that a regulated electrical corporation has violated these standards more than twice in a period of twelve months, such finding will trigger a prohibition for one year on the regulated electrical corporation's entry into any transactions with the competitive affiliate involved in such violations. In the event that such prohibition is not honored, the Commission may consider extension of the prohibition period as appropriate or may permanently preclude the regulated electrical corporation from dealing with the competitive affiliate in the regulated electrical corporation's service territory. The mandatory penalties set forth in subsection (B) of this section do not preclude any other penalties set forth in these rules or this state's statutes.

(E) For each violation of these rules, the regulated electrical corporation will be obligated to place in one monthly billing packet a notice, written by the Commission, which informs the public of the substance of the violation and explains how similar violations can be reported by members of the public.

(9) ~~Variances~~

(A) ~~A variance from the standards in this rule may be obtained by compliance with Sections (9)(A)1. or (9)(A)2. The granting of a variance to one regulated electrical corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated electrical corporation to comply with the standards.~~

~~1. The regulated electrical corporation shall request a variance upon written application in accordance with Commission procedures set out in 4 CSR 240.2.060 (11), or;~~

~~2. A regulated electrical corporation may engage in an affiliate transaction not in compliance with the standards set out in Section (2) (A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by Sections (9)(A)2.A. and (9)(A)2.B. of this rule.~~

~~A. All reports and record retention requirements for each affiliate transaction must be complied with, and;~~

~~B. Notice of the non-complying affiliate transaction shall be filed with the Secretary of the Commission and the Office of the Public Counsel within 10 days of the occurrence of the non-complying affiliate transaction. The Notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of Section (2) (A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within 30 days of the notice of the non-complying affiliate transaction, any party shall have the right to request a hearing regarding the non-complying affiliate transaction. The Commission may grant or deny the request for hearing at that time. If the Commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated electrical corporation's annual CAM filing the regulated electrical corporation shall provide to the Secretary of the Commission a listing of all non-complying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final Commission determination on whether the non-complying affiliate transaction resulted in the best interests of the regulated customers.~~

Authority: sections 386.250 RSMo Supp. 1998, and 393.140 RSMo 1994. Original rule filed April 26, 1999.

PUBLIC ENTITY COST: This proposed rule is expected to result in a fiscal impact to the Missouri Public Service Commission of \$171,198 annually in the aggregate and \$154,012 in succeeding years. The Office of the Public Counsel expects no fiscal impact. No other public entity is expected to have any fiscal impact.

PRIVATE ENTITY COST: This proposed rule will cost private entities more than \$500.00 in the aggregate. The cost for electric utilities is estimated to be an aggregate of \$500,000 the first year and \$375,000 in succeeding years.

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file initial and reply comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. All comments should refer to Case No EX-99-442, and be filed with an original and fourteen (14) copies. To be considered, initial comments must be received at the above address within thirty (30) days after publication of the notice in the **Missouri Register**. Reply comments in response to the initial comments may be filed by sending them to Dale Hardy Roberts at the address above. To be considered, reply comments must be received within sixty (60) days after publication of the notice in the **Missouri Register**. A public hearing will be held at 10:00 a.m., on September 14, 1999. The public hearing will be held at the Truman State Office Building, Room 520B, 301 West High Street, Jefferson City, Missouri, for interested persons to appear and respond to commissioner questions. Commenters wishing to be heard should submit written requests, at least seven (7) days prior to the hearing, to Dale Hardy Roberts at the above address.*

Anyone with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the hearing at one of the following numbers Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

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Affiliate Transaction Rules

I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

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Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

II. Applicability

- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

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relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

- C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.
- D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.
- E. **Existing Rules:** Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.
- F. **Civil Relief:** These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- G. **Exemption (Advice Letter):** A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:
 - 1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
 - 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
 - a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

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letter to the Executive Director, served on all parties to this proceeding; and

b. Agree in this notice to comply with the Rules in their entirety.

H. Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. No Preferential Treatment Regarding Services Provided by the Utility:

Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. Affiliate Transactions: Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

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1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.
 2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.
 3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
 4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.
 5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.
- C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

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- D. No Assignment of Customers:** A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.
- E. Business Development and Customer Relations:** Except as otherwise provided by these Rules, a utility shall not:
1. provide leads to its affiliates;
 2. solicit business on behalf of its affiliates;
 3. acquire information on behalf of or to provide to its affiliates;
 4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
 5. request authorization from its customers to pass on customer information exclusively to its affiliates;
 6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
 7. give any appearance that the affiliate speaks on behalf of the utility.
- F. Affiliate Discount Reports:** If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:
1. the name of the affiliate involved in the transaction;
 2. the rate charged;
 3. the maximum rate;
 4. the time period for which the discount or waiver applies;

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5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and
14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

- A. **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.
- B. **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

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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 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.

C. Service Provider Information:

1. Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.
2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no

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Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.)

The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

- D. Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.
- E. Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.
- F. Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.
- If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.
- G. Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

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- H. **FERC Reporting Requirements:** To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

V. Separation

- A. **Corporate Entities:** A utility and its affiliates shall be separate corporate entities.
- B. **Books and Records:** A utility and its affiliates shall keep separate books and records.
1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).
 2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.
- C. **Sharing of Plant, Facilities, Equipment or Costs:** A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).
- D. **Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint

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purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

- E. **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.

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F. Corporate Identification and Advertising:

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;

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- 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.

G. 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. In its compliance plan required in Rule VI, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.
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

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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. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. 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

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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 energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:
 - i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.
 - ii. Utility needs for utility employees always take priority over any affiliate requests;
 - iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;
 - iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and
 - v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

H. 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, and except for as provided by Rule V.G.2.e, all such transfers shall be subject

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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.

VI. Regulatory Oversight

- A. **Compliance Plans:** No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

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- B. **New Affiliate Compliance Plans:** Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these Rules with respect to the new affiliate.
- C. **Affiliate Audit:** No later than December 31, 1998, and every year thereafter, the utility shall have audits ~~prepared~~ performed by independent auditors that cover the calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The utilities shall ~~file this audit~~ the independent auditor's report with the Commission's Energy Division beginning no later than ~~December 31, 1998,~~ May 1, 1999, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.
- D. **Witness Availability:** Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

VII. Utility Products and Services

- A. **General Rule:** Except as provided for in these Rules, new products and services shall be offered through affiliates.
- B. **Definitions:** The following definitions apply for the purposes of this section (Section VII) of these Rules:
1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.
 2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.
 3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.

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4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.
- C. Utility Products and Services:** Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:
1. Existing products and services offered by the utility pursuant to tariff;
 2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;
 3. New products and services that are offered on a tariffed basis; and
 4. Products and services which are offered on a nontariffed basis and which meet the following conditions:
 - a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
 - b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
 - c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
 - d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by ~~the utility~~ ratepayers, and ~~minimal or no direct undue diversion of utility~~ management attention; ~~control~~; and
 - e. ~~the utility offering is restricted to less than 1% of the number of customers in its customer base.~~ The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

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D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;
2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.
3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and
4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. Requirement to File an Advice Letter: Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:
 - a. demonstrate compliance with these rules;
 - b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
 - c. demonstrate that the utility has not received competition transition charge (CTC) recovery in the Transition Cost Proceeding, A.96-08-001, or other applicable related CTC Commission

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proceeding, for the portion of the utility asset dedicated to the non-utility venture; and

- d. address the potential impact of the new product or service on competition in the relevant market; including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.
 - e. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.
2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.
 3. A protest of an advice letter filed in accordance with this paragraph shall include:
 - a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or
 - b. An explanation of the specific harm the protestant will allegedly suffer.
 4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.
 5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of

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products and services only after Commission approval through the normal advice letter process.

- F. Existing Offerings:** Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.
- G. Section 851 Application:** A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.
- H. Periodic Reporting of Nontariffed Products and Services:** Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:
1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;
 2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);

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3. The costs allocated to and revenues derived from each category; and
 4. Current information on the proportion of relevant utility assets used to offer each category of product and service.
- I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

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(END OF APPENDIX A)

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Docket No. 97-5034

In re proposed rulemaking to establish
standards of conduct and related requirements
for distribution companies and affiliates.

At a general session of the Public Utilities Commission of Nevada, held at its offices on December 18, 1998.

PRESENT:

Chairman Judy M. Sheldrew

Commissioner Timothy Hay

Commissioner Lucy A. Stewart

Commission Secretary Jeanne Reynolds

ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

1. In March 1998, the Commission first issued a proposed regulation for comment and hearing in Docket No. 97-5034. The proposed regulation consists of standards of conduct and related requirements for distribution companies (electric distribution utilities and natural gas local distribution companies) and their affiliates. The regulation was necessitated by the enactment of NRS 704.965 to 704.999, inclusive. On March 30 and April 2, 1998, the Commission held a workshop, the Commission made substantive changes to the proposed regulation and re-issued it for further comment and hearing. Further revisions to the proposed regulation were made; subsequent hearings were held on June 30 (and continued on July 20, 1998); September 29, 1998; November 6, 1998; and December 4, 1998.

2. The Legislative Counsel Bureau has reviewed this regulation and has returned it in a format suitable for codification in the Nevada Administrative Code.

3. At a duly-noticed agenda meeting on December 18, 1998, the Commission voted to adopt the amendments to Chapter 704 of the NAC, which are attached to this Order, as permanent regulations.

Therefore, based upon the foregoing findings and conclusions, it is hereby ORDERED that:

1. The Commission hereby adopts the amendments to Chapter 704, which are attached to this order and incorporated herein by reference, as permanent regulations in accordance with the provisions of NRS 233B.
2. The attached permanent regulations shall be forwarded to the legislative counsel for incorporation into the Nevada Administrative Code.
3. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order.

By the Commission,

JUDY M. SHELDREW, Chairman

TIMOTHY HAY, Commissioner

LUCY A. STEWART, Commissioner

Attest: JEANNE REYNOLDS, Commission Secretary

Dated: 12/30/98 Carson City, Nevada

ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA

(Adopted December 18, 1998)

LCB File No. R087-98

December 11, 1998

Explanation - matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§ 2-31, NRS 703.025, 704.980, 704.981 and 704.998.

Section 1. Chapter 704 of the NAC is hereby amended by adding thereto the provisions set forth as

sections 2 to 31, inclusive, of this regulation.

Sec. 2. As used in Section 2 to 31, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 3. "Affiliate" means a company that is a branch, division or subsidiary of a distribution company that:

- 1. Provides a potentially competitive or discretionary electric or natural gas service; or*
- 2. Is a provider of last resort as described in NRS 704.982.*

Sec. 4. "Customer" means the retail purchaser of electric or natural gas service.

Sec. 5. "Distribution company" includes:

- 1. An electric distribution utility as defined in NRS 704.970; and*
- 2. A seller of any noncompetitive component of natural gas service.*

Sec. 6. "Noncompetitive service" means any electric or natural gas service determined by statute or by the commission to be unsuitable for purchase by customers from alternative sellers.

Sec. 7. "Potentially competitive service" means a component of electric or natural gas service determined by the commission to be suitable for purchase by customers from alternative sellers. The term includes any potentially competitive electric service that is deemed to be effectively competitive pursuant to NRS 704.976.

Sec. 8. 1. Sections 2 to 31, inclusive, of this regulation:

(a) Apply to the provision of services as set forth in NRS 704.961 to 704.999, inclusive.

(b) Do not apply to a public utility that supplies natural gas which is not regulated under an alternative plan established pursuant to NRS 704.997.

2. The provisions of sections 2 to 31, inclusive, of this regulation are not in any way restricted by the provisions of NAC 704.270 to 704.2725, inclusive.

Sec. 9. 1. A distribution company may not provide any potentially competitive or discretionary electric natural gas service.

2. An affiliate of a distribution company may provide a potentially competitive or discretionary electric or natural gas service upon approval by the commission and in accordance with sections 2 to 31, inclusive, of this regulation.

Sec. 10. A distribution company shall designate an officer to evaluate and certify compliance with sections 2 to 31, inclusive, of this regulation.

Sec. 11. 1. An affiliate shall:

- (a) Be a separate corporate entity from the distribution company;*
- (b) Operate independently from the distribution company;*
- (c) Maintain books, records and accounts in the manner prescribed by the commission;*
- (d) Keep its books, records and accounts separate from the books, records and accounts kept by the distribution company;*
- (e) Not have officers, directors or employee in common with the distribution company, except that the chairman of the distribution company or of the holding company of the distribution company may serve on the board of directors of the affiliate;*
- (f) Not have any member on its board of directors who is also an employee or officer of the distribution company, except as otherwise provided in paragraph (e);*
- (g) Not obtain credit pursuant to an arrangement that would allow a creditor, upon default, to have recourse to the assets of the distribution company; and*
- (h) Not use office space, office equipment or office services provided by the distribution company, unless the affiliate executes with the distribution company a contract that is approved by the commission. The affiliate and the distribution company must:*
 - (1) File the contract with the commission as a joint application not later than 6 months before the effective date of the contract; and*
 - (2) Demonstrate to the commission that the contract:*
 - (I) Does not circumvent the provisions of sections 2 to 31, inclusive, of this regulation;*
 - (II) Preserves an arm's length business relationship between an affiliate and the distribution company;*
 - (III) Does not interfere with the development of effective competition;*
 - (IV) Will result in minimal risk of anticompetitive behavior by the affiliate or distribution company and;*
 - (V) Will result in minimal regulatory expenses to prevent anticompetitive behavior.*

The contract must not become effective until the commission approves the contract. Unless the commission determines otherwise, all office space, office equipment and office services provided by the distribution company pursuant to the contract are subject to the provisions of section 12 of this regulation.

2. A distribution company shall document and report quarterly to the commission each occasion that:

- (a) An employee of the distribution company becomes an employee of an affiliate; or*
- (b) An employee of an affiliate becomes an employee of the distribution company.*

3. An employee of a distribution company who is hired by an affiliate:

- (a) Shall not remove proprietary property or information from the distribution company;*
- (b) Shall not provide the affiliate with proprietary property or information of the distribution company;*
- (c) Shall not use proprietary property or information of the distribution company on behalf of the affiliate; and*
- (d) Shall, before he becomes an employee of the affiliate, sign a statement indicating that the employee has read and will abide by the restrictions set forth in this section and understands that a violation of a provision of this section could subject him to the penalties set forth in section 30 of this regulation.*

Sec. 12. When dealing with an affiliate, a distribution company:

- 1. Shall not discriminate between the affiliate and another entity that competes with the affiliate in the provision or procurement of goods, services, facilities and information, or in the establishment of standards.*
- 2. Shall not refuse to provide an entity that is in competition with an affiliate with goods, services, facilities or information which the commission determines the distribution company is reasonably capable of providing to its affiliate, regardless of whether the distribution company currently offers such goods, services, facilities or information to an affiliate.*
- 3. Shall not, when providing or procuring, or declining to provide or procure, goods, services, facilities or information, or when establishing standards, provide, attempt to provide or conspire with another person, including, without limitation, an affiliate, to provide:*
 - (a) A competitive advantage to an affiliate; or*
 - (b) A competitive disadvantage to a competitor of an affiliate.*
- 4. Shall account for all transaction with each affiliate in accordance with accounting principles designated or approved by the commission.*
- 5. Shall, if it offers to an affiliate a good or service other than a good or service provided by a contract pursuant to paragraph (h) of subsection 1 of section 11 of this regulation, offer the same service to all similarly situated nonaffiliated entities.*
- 6. Shall, at the same time it offers to an affiliate a good or service other than a good or service provided by contract pursuant to paragraph (h) of subsection 1 of section 11 of this regulation, offer the same service to nonaffiliated entities by using the mechanism described in subsection 7.*
- 7. Shall provide a mechanism that is accessible to the public, such as an electronic bulletin board, for all interested entities to receive promptly pertinent information concerning:*
 - (a) Services which the distribution company provides;*
 - (b) Any discounted services which the distribution company offers to an affiliate; and*
 - (c) Any transaction between the distribution company and an affiliate.*

8. Shall not represent that it will provide an affiliate or a customer of an affiliate with different treatment regarding the provision of services as a result of affiliation with the distribution company than the treatment the distribution company provides a nonaffiliated provider of service and its customers.

9. Shall not provide an affiliate or a customer of an affiliate with preferences over a nonaffiliated supplier or its customers, including, without limitation, preferences in terms and conditions of service or pricing, or in timing of service.

10. Shall apply a tariff provision that allows for discretion in its application in the same manner for an affiliate and customers of the affiliate as it does for another market participant and its customers.

11. Shall strictly enforce mandatory tariff provisions.

12. Shall not condition or otherwise tie the provision of a utility service or the availability of discounts, rates, other charges, fees, rebates or waivers of terms and conditions to the taking of any goods or services from an affiliate.

12. Shall not:

(a) Refer a potential customer to an affiliate;

(b) Provide information to an affiliate regarding a potential business arrangement between a potential customer and the affiliate;

(c) Except as otherwise prescribed by the commission, acquire information on behalf of or to provide to an affiliate;

(d) Share with an affiliate a market analysis report, survey, research or any other type of report that is proprietary or not available to the public, including, without limitation, a forecast, planning or strategic report;

(e) Give an appearance that the distribution company speaks on behalf of an affiliate or that a customer will receive preferential treatment as a consequence of conducting business with an affiliate; or

(f) Give an appearance to a third party that an affiliate speaks on behalf of the distribution company.

Nothing in this subsection prohibits an affiliate from billing for distribution services in a manner consistent with sections 2 to 31, inclusive, of this regulation.

14. Shall make any discount or waiver of all or of part of a charge or fee available to all market participants.

15. Shall not share the office space, equipment or services of an affiliate or access the computer information systems of an affiliate, unless the affiliate executes a contract with the distribution company that has been approved by the commission pursuant to the procedures set forth in paragraph (h) of subsection 1 of section 11 of this regulation.

Sec. 13. A distribution company shall provide information about specific customers to its affiliates and to nonaffiliated entities:

- 1. On a strictly nondiscriminatory basis;*
- 2. Only with the consent of a customer; and*
- 3. In accordance with the rules or standards required by the commission.*

Sec. 14. Information that is not specific to a customer, including, without limitation, information concerning the goods, services, purchases, sales or operations of the distribution company, may be made available to an affiliate only if the distribution company:

- 1. Makes such information contemporaneously available to all alternative sellers at the same price, terms and conditions; and*
- 2. Keeps the information open to public inspection.*

Sec. 15. Except as otherwise authorized by the commission, a distribution company shall not provide a person with a list of alternative sellers.

Sec. 16. Except as otherwise provided in sections 2 to 31, inclusive, of this regulation, a distribution company shall not offer or provide a customer with advice or assistance of any kind regarding an affiliate or another service provider.

Sec. 17. A distribution company shall:

- 1. Keep for at least 3 years a record documenting a transaction with an affiliate, including, without limitation, a record documenting:*

- (a) A waiver of a tariff;*
 - (b) A waiver of a contract provision;*
 - (c) A discount given by the distribution company to the affiliate;*
 - (d) Contracts or related bids for the provision of work, products or services for or from an affiliate.*
- 2. Make the records that the distribution company is required to maintain pursuant to subsection 1 available for review by third parties upon notice of at least 72 hours, unless the distribution company makes a different agreement with a third party concerning the review of the record.*

Sec. 18. 1. If a distribution company provides an affiliate with a discount, rebate or other waiver of a charge or fee, the distribution company shall, at the time the service for which the distribution company is giving the discount, rebate or other waiver of a charge or fee is first provided, post on the electronic bulletin board of the distribution company a notice which included, without limitation:

- (a) The name of the affiliate involved in the transaction;*
- (b) The actual rate charged by the distribution company;*
- (c) The maximum rate that the distribution company may charge pursuant to its tariff;*

- (d) The period during which the discount or waiver applies;*
- (e) The quantities involved in the transaction;*
- (f) The delivery points involved in the transaction;*
- (g) Any conditions or requirements applicable to the discount or waiver; and*
- (h) The procedures through which a nonaffiliated entity may request and receive a comparable discount, rebate or other waiver of a charge or fee.*

2. This section does not provide a distribution company with any authority not otherwise existing to grant a discount, rebate or other waiver of a charge or fee.

Sec. 19. 1. A distribution company that provides an affiliate with a discounted rate, rebate or other waiver of a charge or fee for a service shall, for each billing period, maintain in its records:

- (a) The name of the affiliate to which the distribution company is providing services pursuant to the transaction;*
- (b) A description of the role of the affiliate in the transaction, including, without limitation, whether the affiliate will act as a transporter, marketer, supplier or seller;*
- (c) The duration of the discount or waiver;*
- (d) The maximum rate that the distribution company may charge pursuant to its tariff;*
- (e) The rate or fee that the distribution company charges during the billing period; and*
- (f) The quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.*

2. All records maintained pursuant to this section must also conform to rules of the Federal Energy Regulatory Commission, where applicable.

3. This section does not provide the distribution company with any authority not otherwise existing to grant such discount, rebate or other waiver of a charge or fee.

Sec. 20. 1. Unless the commission specifies otherwise, a distribution company with an affiliate shall obtain and pay for an audit 6 months after the affiliate first provides service to customers and once every year thereafter.

2. The audit required pursuant to subsection 1 must be conducted by an independent auditor selected by the commission.

3. The auditor shall determine whether a distribution company has complied with all pertinent regulations, including, without limitation, whether the distribution company has:

- (a) Complied with the separate accounting requirements set forth in section 11 of this regulation; and*

(b) Provided information or services to affiliated and nonaffiliated entities on a nondiscriminatory basis.

4. The auditor shall submit the results of the audit to the commission.

5. The commission will make the results of the audit available for public inspection.

6. Any person may submit comments on the final audit report.

Sec. 21. For purposes of conducting an audit pursuant to section 20 of this regulation, the distribution company and its affiliate shall provide the independent auditor, the commission staff, the bureau of consumer protection in the office of the attorney general and the commission access to:

1. Financial accounts and records which:

(a) Verify that the transactions conducted between the distribution company and its affiliates are authorized by and conducted in accordance with the provisions of NRS 704.961 to 704.999, inclusive, and sections 2 to 31, inclusive, of this regulation; and

(b) Relate to the regulation of rates;

2. All records in any form relating to the provision of information or services to affiliated or nonaffiliated entities; and

3. The working papers and supporting materials of any auditor who performed an audit pursuant to section 20 of this regulation.

Sec. 22. Except as otherwise stated in its approved tariff, a distribution company:

1. Shall fulfill a request from a nonaffiliated entity for service within a period no longer than the period in which it fulfills such a request for itself or for an affiliate;

2. Shall charge each affiliate an amount for service that is no less than the amount charged to any nonaffiliated entity for the same service;

3. May, in accordance with the provisions of paragraph (h) of subsection 1 of section 11 of this regulation, provide an affiliate with facilities, services and information if the distribution company makes such facilities, services and information available to all nonaffiliated entities at the same rates and on the same terms and conditions and the costs are allocated in a manner acceptable to the commission;

4. May not market or sell services that are provided by an affiliate; and

5. May not state that it is an affiliate of a potentially competitive or discretionary service unless the statement complies with the requirements set forth in subsection 6 of section 24 of this regulation.

Sec. 23. 1. If a distribution company transfers goods or services to an affiliate, the distribution company must price the goods or services at fair market value or fully loaded cost, whichever is higher.

2. If an affiliate transfers goods or services to the distribution company, the affiliate shall price the goods or services at fair market value or fully loaded cost, whichever is less.

3. As used in this section, "fully loaded cost" means the direct costs of goods and services plus all applicable indirect charges and overhead costs, including, without limitation, a reasonable rate of return.

Sec. 24. An affiliate:

1. Shall not market or otherwise sell services jointly with the distribution company;
2. Shall not have a name, logo, trademark, service mark or trade name that is deceptively similar to that of the distribution company, except that an affiliate which has been designated by the commission as a provider of last resort service pursuant to NRS 704.982 may have a name, logo, trademark, service mark or trade name that is similar or identical to that of the distribution company if the affiliate has been specifically authorized to do so by the commission, subject to any conditions that commission deems necessary;
3. Shall not have the logo, trademark or other corporate identification of the distribution company appear on documents of the affiliate or on goods or merchandise sold by the affiliate, unless the commission:
 - (a) Designates the affiliate to be the provider of last resort service pursuant to NRS 704.982; and
 - (b) Specifically authorizes, subject to any conditions that the commission deems necessary, the affiliate to use the name, logo, trademark, service mark or trade name;
4. Shall not use the name of the distribution company in any material that the affiliate circulates, unless the affiliate provides with the material the information described in subsection 6;
5. Shall not use space in the correspondence of the distribution company or any other form of information about the distribution company for the purpose of advertising the services of the affiliate; and
6. Shall not advertise its affiliation with the distribution company, unless the affiliate includes each of the following statements in a manner no less prominent than the statement of affiliation:
 - (a) (Name of the affiliate) is not the same corporation as (name of distribution company). (Name of affiliate) has separate management and separate employees.
 - (b) (Name of affiliate)'s affiliation with (name of distribution company) does not entitle (name of affiliate) to any special endorsement of the public utilities commission of Nevada.
 - (c) The safety, reliability and cost of distribution service received by customers of (name of affiliate) will be equivalent to that received by customers of nonaffiliated companies.

Sec. 25. An affiliate of a distribution company shall not offer goods or services until the affiliate satisfies any applicable requirements set forth in section 2 to 31, inclusive, of this regulation, except the appointment of an auditor pursuant to section 20 of this regulation.

Sec. 26. Each transaction that violates the provisions of sections 2 to 31, inclusive, of this regulation, will be considered a separate violation.

Sec. 27. 1. A person or business may complain to the commission or distribution company in writing, setting forth any act or thing allegedly done or not done by a distribution company or affiliate in violation

of sections 2 to 31, inclusive, of this regulation.

2. Upon request of a complainant who is a current or former employee of a distribution company or an affiliate, the commission will maintain the confidentiality of the complainant until the end of any resulting investigation or longer if the commission deems it necessary.

3. The distribution company shall refer all complaints, whether written or oral, to a designated representative of the distribution company, who shall:

(a) Acknowledge receipt of the complaint in writing to the complainant within 5 working days after receiving the complaint;

(b) Prepare a written summary of the complaint which must include, without limitation:

(1) The name of the complainant; and

(2) A detailed factual report of the complaint, including, without limitation:

(I) The relevant dates;

(II) The names of the companies involved;

(III) The names of the employees involved; and

(IV) The details of the claim;

(c) Conduct a preliminary investigation; and

(d) Communication the results of the preliminary investigation, including, without limitation, a description of any course of action that was taken as a result of the investigation, in writing to the complainant not more than 20 business days after the designated representative received the complaint.

4. The distribution company shall:

(a) Maintain a public log of all new, pending and resolved complaints; and

(b) Make the public log available to the commission and the bureau of consumer protection in the office of the attorney general not more than 10 business days after the end of each month, which must include, without limitation:

(1) A written summary of each complaint; and

(2) A written summary of the manner in which each complaint was resolved or, if applicable, an explanation of the reason why a complaint is still pending.

Sec. 28. 1. The division of consumer complaint resolution shall investigate any complaint concerning a violation of the provisions of NRS 703.290 and sections 2 to 31, inclusive, of this regulation.

2. If the division transmits a complaint to the commission and the commission determines that probable cause exists for the complaint, the commission will:

- (a) Order that a hearing be held;*
- (b) Provide notice of the hearing to the parties; and*
- (c) Conduct the hearing as it would any other hearing.*

Sec. 29. After a hearing has been held pursuant to section 28 of this regulation, the commission, when enforcing the provisions of sections 2 to 31, inclusive, of this regulation or an order of the commission that relates to sections 2 to 31, inclusive, of this regulation, may, without limitation:

- 1. Terminate a transaction if the violation caused material harm to the competitive market;*
- 2. Prospectively limit or restrict the amount, percentage or value of transactions entered into between a distribution company and its affiliates;*
- 3. Assess a penalty pursuant to the provisions of section 30 of this regulation; or*
- 4. Apply any other remedy which is available to the commission.*

Sec. 30. 1. A penalty assessed by the commission must reflect the actual or potential injury, or both, to ratepayers and competitors, and the gravity of the violation.

- 2. Repeated violations will require more sever penalties.*
- 3. In addition to any other penalties, the commission may subject a distribution company to a penalty of not more than \$20,000 for each time the distribution company:*
 - (a) Violates a provision of sections 2 to 31, inclusive, of this regulation;*
 - (b) Fails to perform a contractual duty; or*
 - (c) Fails, neglects or refuses to obey an order, regulation, directive or requirement of the commission.*
- 4. Penalties for a supplier of a noncompetitive natural gas distribution service are limited pursuant to the provisions of NRS 703.380.*
- 5. The commission may deem a violation that continues for more than 1 day to be a separate violation for each day the violation continues.*
- 6. A penalty or other remedy imposed by the commission will in no manner preclude the right of a party to pursue a private action in a court of competent jurisdiction.*
- 7. A fine or penalty collected pursuant to the provisions of section 2 to 31, inclusive, of this regulation, must be deposited in the state treasury pursuant to NRS 703.147 for the purposes identified therein.*
- 8. For each violation of the provisions of sections 2 to 31, inclusive, of this regulation, the affiliate shall include in one monthly billing packet a notice, written by the commission, that informs the public of the substance of the violation and explains how members of the public can report similar violations in the future.*

9. The penalties set forth in this section do not preclude any other penalty from being imposed pursuant to sections 2 to 31, inclusive, of this regulation or any other provision of law.

Sec. 31. 1. If the commission finds in two separate orders that a distribution company has materially violated the provisions of sections 2 to 31, inclusive, of this regulation more than twice in a period of 12 months, the distribution company may not, for 1 year after the date of the findings by the commission, enter into a transaction with an affiliate that was involved in the violations.

2. If a distribution company violates the provisions of subsection 1 by entering into a prohibited transaction with an affiliate, the commission may:

(a) Extend the period in which the distribution company is prohibited from entering into a transaction with the affiliate; or

(b) Permanently prohibit the distribution company from entering into a transaction with the affiliate.

3. The penalties set forth in this section do not preclude any other penalty from being imposed pursuant to sections 2 to 31, inclusive, of this regulation or any other provision of law.