

CHAPTER Puc 2100 AFFILIATE TRANSACTIONS RULES

PART Puc 2101 APPLICABILITY

Puc 2101.01 Purpose. Puc 2100 sets forth certain standards of conduct and related procedures governing the relationship between a distribution company and its affiliates transacting business in New Hampshire.

Puc 2101.02 Scope.

(a) Puc 2100 shall apply to all distribution companies as defined in Puc 2102.06.

(b) Puc 2100 shall not limit in any way the commission's existing authority, including but not limited to its authority to:

- (1) Regulate distribution companies, their rates, and their affiliate contracts and arrangements; or
- (2) Adopt amendments to these rules, which will be binding upon distribution companies.

Puc 2101.03 Communications Allowed. Nothing in these rules shall prohibit communications between a distribution company and its affiliates necessary to:

(a) Provide transition or default service as approved by the commission pursuant to RSA 369-B or 374-F; or

(b) Restore service or to prevent or respond to emergency conditions.

Puc 2101.04 Circumvention Prohibited. A distribution company shall not:

(a) Utilize communications necessary under Puc 2101.03 to circumvent these rules; ~~or~~

(b) enter into any arrangement or contract with an affiliate, either oral or written, that would circumvent these rules or any other law or rule to which the affiliate or distribution company would otherwise be subject; or

(c) Take any other actions either directly or indirectly through an affiliate to circumvent these rules.

PART Puc 2102 DEFINITIONS

Puc 2102.01 "Affiliate" means "affiliate" as defined in RSA 366:1, II.

Puc 2102.02 "Commission" means the New Hampshire public utilities commission.

Puc 2102.03 "Competitive affiliate" means any affiliate that is engaged in the sale or marketing of products or services on a competitive basis and includes any competitive energy affiliate or energy project development affiliate.

Puc 2102.04 "Competitive energy affiliate" means any competitive affiliate that is engaged in the sale or marketing of natural gas, electricity, or energy-related services on a competitive basis.

Puc 2102.05 "Customer information" means any non-public information and data specific to a distribution

company customer that the distribution company acquires or develops in the course of its provision of utility services.

Puc 2102.06 “Distribution company” means a utility, as defined in RSA 362:2, that provides natural gas or electric distribution services subject to this commission’s jurisdiction. Without limitation, the term includes a rural electric cooperative for which a certificate of deregulation is effective pursuant to RSA 301:57, I, but in such case only when and to the extent that a competitive affiliate of such cooperative acts as a competitive electric power supplier as defined in Puc 2002.05 outside such cooperative’s service territory.

Puc 2102.07 “Distribution system information” means information concerning the specific location or characteristics of part or all of the distribution company’s distribution system or other non-customer-specific non-public information that is not available on an equivalent basis to non-affiliated suppliers.

Puc 2102.08 “Energy-related services” means those services the costs of which have been recovered by distribution companies or affiliates through rates approved by the commission, ISO-New England or any successor organization, or the Federal Energy Regulatory Commission. Such services shall include but not be limited to, generation, transmission services, and distribution services whether provided by the distribution company or its affiliates.

Puc 2102.09 “Energy project development affiliate” means any affiliate that is engaged in the development of any energy generation, energy transmission, or energy distribution project and shall include but not be limited to any services or equipment provided by the affiliate to any energy generation, energy transmission, or energy distribution project.

Puc 2102.~~1009~~ “Fully loaded cost” means the direct cost of goods, products or services plus all applicable indirect charges and overheads.

Puc 2102.~~110~~ “Non-affiliated energy supplier” means any entity, including aggregators as defined in Puc 2002.02 and Puc 3002.02, engaged in marketing, brokering or selling natural gas, electricity, or energy-related services to retail customers where such product or service is also provided by a competitive energy affiliate.

Puc 2102.~~121~~ “Non-affiliated supplier” means any entity engaged in selling or marketing products or services where such product or service is also provided by a competitive affiliate and includes any non-affiliated energy supplier.

Puc 2102.~~132~~ “Substantial Control” as used in RSA 366:1, II, means 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 an entity. ‘Substantial control’ includes a minority voting interest established by a direct or indirect voting interest of 10 percent or more in the entity pursuant to RSA 366:1, II (a).

Puc 2102.~~143~~ “Utility employee” means an officer, director, employee or agent of the distribution company who has specific knowledge of or who accesses customer information or distribution system information that could provide a competitive affiliate with an undue advantage.

PART Puc 2103 NONDISCRIMINATION

Puc 2103.01 Tariff Provision Allows Discretion. If a tariff provision allows for discretion in its application, a distribution company and its employees shall apply that tariff provision in the same manner to its

affiliates and other market participants and their respective customers.

Puc 2103.02 Tariff Provision Does Not Allow Discretion. A distribution company shall strictly enforce tariff provisions for which there is no discretion in the application of the provision.

Puc 2103.03 Preferences to Competitive Affiliates Regarding Products and Services, Distribution System Information, and Customer Information. A distribution company shall not:

(a) Provide its competitive affiliates, or customers of its competitive 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 products and services provided by the distribution company;

(b) Provide its competitive affiliates, or customers of its competitive affiliates, any preference regarding access to distribution system information over non-affiliated suppliers or their customers; or

(c) Allow an employee, officer, director or agent of a competitive affiliate access to customer information except as permitted in accordance with Puc 2104.01.

Puc 2103.04 Conduct of Distribution System Operations and Access to System Control Operations by Competitive Affiliates. A distribution company shall not allow an employee, officer, director or agent of a competitive affiliate to:

(a) Conduct distribution system operations; or

(b) Have access to system control centers or similar facilities used by distribution operations in any way that differs from the access available to employees of non-affiliated suppliers.

Puc 2103.05 Provision of Products and Services to Competitive Energy Affiliates or Energy Project Development Affiliates. If a distribution company provides its competitive energy affiliate or an energy project development affiliate or a customer of its competitive energy or energy project development affiliate any product or service other than general and administrative support services, it shall make the same products or services available to all similarly situated energy suppliers or their customers on the same terms and conditions.

Puc 2103.06 Access to Distribution Facilities by Energy Suppliers and Offering of Supply, Capacity, Regulated Utility Services and Distribution System Information to Competitive Energy Affiliates.

(a) A distribution company shall provide all similarly situated energy suppliers access to its distribution facilities on the same terms and conditions.

(b) If a distribution company offers supply, capacity, regulated utility services, or distribution system information to its competitive energy affiliates or its energy project development affiliates, it shall contemporaneously make the offering available to all non-affiliated energy suppliers registered with the commission or non-affiliated energy project developers.

Puc 2103.07 Offer and Posting of Discounts, Rebates and Waivers to Competitive Affiliates, and Competitive Energy Affiliates and Energy Project Development Affiliates.

(a) If a distribution company is authorized by the commission to offer a discount, rebate or waiver of all or any part of any other charge or fee to its competitive affiliates for the provision of regulated utility service, or to offer a discount, rebate or waiver for a transaction in which its competitive affiliates are involved, and in accordance with such authority the distribution company offers such discount, rebate or waiver, then the distribution company shall contemporaneously make such discount or waiver available to all non-affiliated suppliers or non-affiliated energy project developers serving the same market.

(b) A distribution company shall also post any such discount, rebate or other waiver of any charge, fee, term or condition associated with regulated utility services provided by the distribution company to its competitive energy affiliates or energy project development affiliate on an internet web page directly and conspicuously linked to its home page or on a page directly linked to such internet web page. The distribution company shall also file a public notice with the Commission within five business days of offering any discount or waiver to its competitive affiliate or making any change or update to such internet web page. The public notice shall include an accurate representation of the internet web page and the information and disclaimer required by Puc 2103.07(c) and (d).

(c) The posting required by paragraph (b) shall consist of a notice providing the following information:

- (1) The name of the competitive energy affiliate or energy project development affiliate involved in the transaction;
- (2) The competitive energy affiliate's or energy project development affiliate's role in the transaction, such as aggregator, electric supplier or marketer;
- (3) The rate charged; (4)
- (4) The maximum rate;
- (5) The time period for which the discount or waiver applies; (6)
- (6) The quantities involved in the transaction;
- (7) The delivery points involved in the transaction;
- (8) Any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount; and
- (9) Procedures by which a non-affiliated energy supplier or non-affiliated energy project developer may request a comparable offer.

(d) The competitive energy affiliate and energy project development affiliate discount page and associated pages shall provide a disclaimer stating that:

- (1) The page is intended to provide notice to all non-affiliated energy suppliers or non-affiliated energy project developers of any discount for regulated utility services provided by a distribution company to its own competitive energy affiliate or energy project development affiliate so that all non-affiliated energy suppliers or non-affiliated energy project developers may avail themselves of any such discount; and
- (2) The page also is intended to indicate that a distribution company's competitive energy affiliate or energy project development affiliate has no preferential access to services.

Puc 2103.08 Processing of Requests for Services by Competitive Energy Affiliates, Non-Affiliated Energy Suppliers, and Customers and Prohibition Against Preferences to Competitive Energy Affiliates.

(a) A distribution company shall process requests for similar regulated utility services provided by the distribution company in the same manner and within the same time for its competitive energy affiliates or energy project development affiliates and for all other non-affiliated energy suppliers or non-affiliated energy project developers and their respective customers.

(b) A distribution company shall not give preference of any kind for regulated utility services to its competitive energy affiliates or energy project development affiliates or their customers.

Puc 2103.09 Prohibition Against Tying. A distribution company shall not condition or tie the provision of any product, service, or rate agreement by the distribution company to the provision of any product or service by its competitive affiliate.

Puc 2103.10 Business Development and Customer Relations Regarding Competitive Affiliates.

(a) A distribution company shall refrain from giving any appearance of speaking on behalf of its competitive affiliate in any and all contacts or communications with customers or potential customers.

(b) A distribution company shall not represent that any advantage accrues to customers or others in the use of the distribution company's services as a result of that customer or others dealing with the competitive affiliate.

(c) A distribution company may not attend advocacy or lobbying meetings with customers or potential customers, or state or local officials, with its energy project development affiliate, except as expressly permitted by the commission on a case by case basis.

(d) Except as otherwise provided in Puc 2100, a distribution company shall not: (1)

Provide leads to its competitive affiliates;

(2) Solicit business on behalf of its competitive affiliates;

(3) Acquire information on behalf of or to provide to its competitive affiliates; or

(4) Share with its competitive affiliates 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.

(e) To the extent that any activities permitted in (d) and allowed under Puc 2100 occur, a distribution company shall file a public report of such activities to the commission within 5 business days of their occurrence. Such a report shall be updated by the distribution company within 5 business days after any further activity subsequent to the first.

PART Puc 2104 DISCLOSURE AND INFORMATION

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

Puc 2104.02 List of Suppliers. If a customer requests information about any energy supplier, the distribution company shall provide the list of registered electric energy or natural gas suppliers maintained by the commission, including a disclaimer on behalf of the commission stating that the New Hampshire public utilities commission, in making the list available, does not guarantee or make any representation regarding the financial stability or service quality of the suppliers listed.

Puc 2104.03 Non-Public Information from Non-Affiliated Energy Suppliers. A distribution company shall not provide non-public information and data which have been received from non-affiliated energy suppliers or non-affiliated energy project developers to its competitive energy affiliates or its energy project development affiliates.

PART Puc 2105 SEPARATION

Puc 2105.01 Separate Books and Records and Access by Commission.

(a) A distribution company and its affiliates shall keep separate books and records.

(b) The books and records of affiliates, including vouchers, memoranda, documents, letters, contracts or other papers, shall be open during normal business hours for examination by the commission and its staff with respect to transactions and other matters involving the relationships between the distribution company and its affiliates.

Puc 2105.02 Shared Facilities, Services and Data.

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

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

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

(b) The separation required by this section shall, at a minimum, be accomplished by methods such as: (1)

(1) Use of secure passwords and firewalls; and

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

Puc 2105.03 Joint Purchases.

(a) Except as otherwise prohibited by the commission, a distribution company and its competitive energy affiliates may make joint purchases of products and services, but not those associated with the delivery of distribution services or generation and supply services.

(b) Examples of permissible joint purchases shall include joint purchases of general office supplies and telephone services.

(c) Examples of joint purchases not permitted shall include electric power or natural gas purchases for resale, purchasing of natural gas transportation and storage capacity, purchasing of electric transmission, and purchasing of system operations or marketing services.

(d) The distribution company shall ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the distribution company and competitive energy affiliate portions of such purchases, and in accordance with applicable commission allocation and reporting rules.

Puc 2105.04 Shared Services.

(a) For purposes of this section, "sharing" means having the same employees or support systems involved in performing functions for the distribution company and its competitive affiliates, whether directly or indirectly through a service company, parent company, or third party service provider.

(b) A distribution company, its parent holding company, or an affiliate created solely to perform corporate support services may share with its competitive affiliates, joint corporate oversight, governance, support systems and personnel.

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

(1) Payroll;

- (2) Taxes;
- (3) Shareholder services;
- (4) Insurance and risk management;
- (5) Information systems and technology;
- (6) Materials management and procurement;
- (7) Internal auditing;
- (8) Budget administration;
- (9) Call center facilities;
- (10) Billing and payment processing;
- (11) Management and maintenance of affiliate-owned or leased vehicles and buildings;
- (12) Corporate financing;
- (13) Financial reporting;
- (14) Corporate financial planning and analysis;
- (15) Treasury services;
- (16) Corporate and strategic planning;
- (17) Corporate accounting;
- (18) Corporate security;
- (19) Human resource services related to compensation, benefits, employment policies, planning and administration;
- (20) Employee records;
- (21) Regulatory affairs;
- (22) Lobbying;
- (23) Legal;
- (24) Engineering services other than utility system operations engineering; and
- (25) Pension management.

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

- (1) Allow or provide a means for the transfer of customer information or distribution system information from the distribution company to the competitive affiliate;
- (2) Create the opportunity for preferential treatment, unfair competitive advantage or cross-subsidization of competitive affiliates; or
- (3) Create customer confusion.

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

- (1) Employee recruiting;
- (2) Hedging and financial derivatives and arbitrage services concerning the purchase and sale of natural gas or electricity;
- (3) Electric power and/or natural gas purchases for resale;
- (4) Purchasing of natural gas transportation and storage capacity;
- (5) Purchasing of electric transmission;
- (6) Utility system operations or engineering related to utility system operations;
- (7) Marketing of non-tariffed natural gas, electricity, or energy-related services; and
- (8) Call center personnel and telephone numbers.

(f) Any shared corporate support shall be priced, reported and conducted in accordance with the separation and information standards set forth in these rules, as well as other applicable commission pricing and reporting requirements. **Prior to engaging in any shared corporate support, a distribution company shall file a public report to the commission on an annual basis, describing the shared support and providing a quantified estimate of the benefits of such support to the customers of the distribution company.**

(g) To the extent that a distribution company offers call center facilities or billing and payment processing to a competitive energy affiliate under Puc 2103.05, such services shall be made available to all similarly situated non-affiliated suppliers on the same terms and conditions.

Puc 2105.05 Joint Employment.

(a) Except as permitted in Puc 2105.04 and this section, a distribution company and its competitive ~~energy~~ affiliates shall not jointly employ any person.

(b) If a distribution company and its competitive ~~energy~~ affiliates are controlled by a holding company:

- (1) Any board member who is not an officer may serve on the board of the holding company and the board of any affiliate; and
- (2) Any corporate officer may serve in such capacity for the holding company and either the distribution company or its competitive ~~energy~~ affiliates, but not both.

(c) Notwithstanding (b) (1) and (2), above, administrative corporate officers such as the secretary, clerk, treasurer, accounting or securities and exchange commission and tax filing officers may serve in such capacity for the holding company and any **affiliates**.

(ed) In the case of shared directors and officers, a corporate officer from the distribution company and holding company shall certify in the distribution company's compliance plan submitted pursuant to these rules that the specific mechanisms and procedures in place, to the best of their knowledge and belief, are adequate to ensure that the distribution company is not utilizing shared officers and directors as a means to circumvent these rules.

Puc 2105.06 Employee Transfers. All employee transfers between a distribution company and its competitive energy affiliates **or energy project development affiliates** shall comply with the following provisions:

(a) A distribution company shall track all employee transfers between the distribution company and its competitive energy affiliates or energy project development affiliates ;

(b) The distribution company shall report the information required to be tracked under (a), above, to the commission no later than July 1 of each year;

(c) No transfer between a distribution company and its competitive energy affiliates or energy project development affiliates shall take place if the total number of such transfers during the preceding one year period exceeds 10% of the number of utility employees in the distribution company at the time of such transfer;

(d) Once a utility employee becomes an employee of a competitive energy affiliate or energy project development affiliate, the employee shall not be re-employed by the distribution company for a period of one year;

(e) The requirement in (d), above, shall not apply if the competitive energy affiliate to which the utility employee transfers ceases to transact business in New Hampshire during the one year period;

(f) In the event that an employee is re-employed by the distribution company, such employee shall not be transferred to, reassigned to, or otherwise employed by a competitive energy affiliate or energy project development affiliate for a period of 2 years;

(g) An employee who is hired by the competitive energy affiliate or energy project development affiliate and becomes a utility employee shall not be transferred to, reassigned to, or otherwise employed by a competitive energy affiliate or energy project development affiliate for a period of 2 years;

(h) The requirements in (d)-(g), above, shall not apply to any utility employee covered by a collective bargaining agreement;

(i) No utility employee hired by or shared with a competitive energy affiliate or hired by an energy project development affiliate shall remove or otherwise provide information to the competitive energy affiliate or energy project development affiliate which the competitive energy affiliate or energy project development affiliate would otherwise be precluded from obtaining pursuant to these rules;

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

(k) Utility employees transferring from the distribution company to an energy project development affiliate shall not use customer information and distribution system information in a discriminatory fashion, to the benefit of the energy project development affiliate or to the detriment of non-affiliated energy project developers or the customers of the distribution company;

(l) A distribution company shall not make temporary or intermittent assignments or rotations of its employees to its competitive energy affiliates in a manner designed to circumvent the prohibitions concerning the provision of information contained in subparagraphs (i)-(j);

(m) A transferring or shared employee shall sign a statement, which shall be filed with the commission by the distribution company, attesting that the employee is aware of and understands the restrictions set forth in these rules and the attendant consequences of violations of those provisions.

Puc 2105.07 Joint Advertising and Marketing. (a)

(a) A distribution company shall not:

(1) Engage in joint advertising or marketing programs of any sort with its competitive energy

affiliates except as set forth in ~~(d)(b)(4)~~ below; or

(2) Directly promote or market any product or service offered by any competitive energy affiliate except as set forth in ~~(d)(b)(4)~~ below.

(b) **A distribution company shall not:**

(1) Engage in joint advertising or marketing programs of any sort with its energy project development affiliates; or

(2) Directly or indirectly promote or market any product or service offered by any energy project development affiliate.

(c) The prohibitions against joint advertising or joint marketing in (a) **and (b)**, above, shall include, but not be limited to, the following:

(1) A distribution company shall not participate with its competitive energy affiliates **or energy project development affiliates** through joint sales calls or otherwise, or through joint proposals, including responses to requests for proposals, except at the affirmative request of existing or potential customers;

(2) Except as otherwise provided for by these rules, a distribution company shall not participate in any joint activity with its competitive energy affiliates **or energy project development affiliates**; and

(3) A distribution company shall not jointly participate with its competitive energy affiliates **or energy project development affiliates** in trade shows, conferences, or other such information or marketing events, unless there is separation, including physical separation, which:

a. Prevents customer confusion about:

1. The separate identity of the distribution company and its competitive energy affiliates **or energy project development affiliates**; and

2. The relationship between the products and services of the distribution company and those of its competitive energy ~~affiliates~~ **supplier or energy project development affiliates**;

b. Prevents any appearance or impression that:

1. The distribution company speaks on behalf of its competitive energy ~~affiliate~~ **supplier or energy project development affiliate** and vice versa; and

2. Any advantage accrues to customers or others in the use of the distribution company system services as a result of that customer or others dealing with the competitive energy ~~affiliate~~ **supplier or energy project development affiliate**; and

c. Is otherwise consistent with the requirements of Puc 2100.

(de) Notwithstanding the restrictions set forth in ~~(cb)~~ (1), (2) and (3), above, to the extent that joint advertising or joint marketing is permitted and is conducted with non-affiliated energy suppliers, the distribution company shall not be prohibited from participating in such joint advertising or joint marketing with a competitive energy affiliate under the same terms and conditions that apply to the non-affiliated energy supplier.

(e) For purposes of ~~(cb)~~ (2), above, the term “joint activity” shall include, but is not limited to, advertising, sales, marketing, and communications with any existing or potential customer, **and appearances at public meetings or before local or state officials or agencies.**

(f) This section shall not prohibit a distribution company from participating, on a nondiscriminatory basis, in non-sales meetings with its competitive energy affiliates or any non-affiliated energy supplier to discuss technical or operational subjects regarding the distribution company's provision of distribution ~~transportation~~ service to the customer.

Puc 2105.08 Corporate Identification.

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

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

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

(b) The disclaimer referred to in (a), above, shall be written or spoken, or both, as is appropriate given the context of the use of the name or logo.

(c) The disclaimer referred to in (a), above, shall not be required where the name or logo is merely being used for identification of assets or employees and it is impractical to include such disclaimer, such as on the competitive energy affiliate's vehicles, business locations, equipment, employee business cards or clothing.

(d) A distribution company shall not permit an energy project development affiliate, to identify itself, through the use of a name, logo, or both, as an affiliate of the distribution company, except in filings with the commission, any other government agency, any court or tribunal.

(e) A distribution company shall not provide to its competitive affiliates:

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

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

(f) Notwithstanding the provisions in (e) (1) and (2), a distribution company shall not provide its energy project development affiliates with advertising space in its billing envelopes used for regulated utility services or access to any other form of written communication with distribution company customers.

Puc 2105.09 Transfer of Goods, Services, **Interests in Real Estate,** and Capital Assets.

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

(1) A distribution company may sell, lease, or otherwise transfer to an affiliate, including a competitive affiliate, an interest in real estate or other asset, the cost of which has been reflected in the distribution company's rates for regulated service, provided that the price charged the affiliate is the higher of the net book value or current market value of the interest or asset;

(2) A distribution company may sell, lease, or otherwise transfer to an affiliate interests in real estate or assets other than those subject to (1), above, and may also provide services to an affiliate, provided that the price charged for such interest, asset or service is equal to the greater of the

distribution company's fully loaded cost to provide the interest, asset or service or its current market value;

(3) An affiliate may sell, lease, or otherwise transfer an interest in real estate or asset to a distribution company, and may also provide services to a distribution company, provided that the price charged to the distribution company is the lesser of the market value of the interest, asset or service provided or the fully loaded cost to provide the interest, asset or service;

(4) Joint or shared costs allowed in Puc 2105.03 and Puc 2105.04, including plant, facilities, equipment, interests in real estate, corporate support services, overhead and supplies shall be allocated and priced to the distribution company and its competitive energy affiliate based on the greater of fully loaded costs or its market value at the time provided;

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

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

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

(8) For purposes of this section, "interest in real estate" shall include but not be limited to, licenses, easements, fee simple title, rents, leases, access to property, rights of entry, joint tenancies, and tenancies in common.

(b) A distribution company shall maintain a record of all transactions described in this section for a period of no less than 5 years from the completion of the transaction, which records shall include an adequate basis for determination of both fully loaded costs and market value.

PART Puc 2106 REGULATORY OVERSIGHT

Puc 2106.01 Filing of Compliance Plan; Compliance with RSA 366:3

(a) Each distribution company shall file with the commission a compliance plan demonstrating to the commission that there are adequate procedures and policies in place for complying with these rules.

(b) Compliance plans shall be filed with the commission within ~~1090~~ days of the establishment of a competitive affiliate by a distribution company's registration as a regulated public utility.

(c) The compliance plan shall take effect upon its filing.

(d) A distribution company shall include in its compliance plans:

(1) Identification of all affiliates, including contact information for all offices and officers;

(2) A brief description of the business purpose of each affiliate;

(3) A detailed description of the nature of the business conducted by each affiliate in New Hampshire;

(4) A detailed description and full copies of any and all contracts or arrangements with competitive affiliates; and

(5) Such other information as the commission may require.

Puc 2106.02 Initial Certification of Officer. In the compliance plan, a corporate officer from the distribution company and holding company with direct knowledge of the operations of the distribution company and its affiliates shall certify under penalty of false statement that:

(a) Such officer has reviewed the plan; and

(b) To the best of such officer's knowledge and belief, the specific mechanisms and procedures and policies in the plan are adequate to ensure that the distribution company is not utilizing the holding company or any of its affiliates not covered by these rules or any unaffiliated entities as a means to circumvent any of these rules or any provision of New Hampshire law. .

Puc 2106.03 Annual Certifications. No later than July 1 in each year subsequent to filing its initial compliance plan, a distribution company shall:

(a) Provide the commission with the results of an independent third party audit of the distribution company's compliance with Puc 2100 for the prior year;

(b) Certify that its compliance plan continues to meet the requirements of Puc 2100 and New Hampshire law 2106.01 and Puc 2106.02; and

(c) If necessary, file an updated compliance plan which meets the requirements thereof.

Puc 2106.04 Notification to Commission and Updates to Compliance Plan.

(a) In addition to the requirements of Puc 2106.01, Puc 2106.02 and Puc 2106.03, a distribution company shall notify the commission of any new competitive energy affiliate within 10 days of its commencement of business activities in New Hampshire or within 10 business days of the creation or acquisition of an energy project development affiliate.

(b) The distribution company shall, at the same time, file with the commission an updated compliance plan providing the information required by Puc 2106.01, Puc 2106.02 and Puc 2106.03 and addressing the changes, if any, necessary due to the new competitive energy affiliate or energy project development affiliate.

(c) A distribution company shall file with the commission complete written copies of all contracts and detailed, written descriptions of all arrangements with competitive affiliates within 10 days after the date on which a contract is executed or an arrangement entered into.

(d) Any contract or arrangement not filed with the commission pursuant to RSA 366:3 shall be unenforceable in any court in this state and payments thereunder may be disallowed by the commission unless the later filing thereof is approved in writing by the commission.

(e) If a distribution company fails to provide the information required in Puc 2106.04 in the manner and time required, it shall be subject to fines of up to \$10,000 per day, up to the statutory maximum.

Puc 2106.05 Compliance Audit.

(a) Without limitation, in order to verify that the distribution company is in compliance with these rules, the commission shall, pursuant to its authority under RSA 366:5:

(1) Assign its staff to perform a review, investigation or inquiry; or

(2) Order a compliance audit to be performed by its staff or by independent auditors.

(b) If the commission orders a compliance audit by independent auditors, it shall specify the scope of the audit to be undertaken, as determined on a case-by-case basis, and the auditors shall be selected through a competitive bidding process.

Puc 2106.06 Considerations in Assessment of Civil Penalties. In assessing civil penalties for violations of Puc 2100 pursuant to its statutory authority, the commission shall take into account, in addition to the nature, extent and gravity of the particular violation:

(a) The distribution company's prior history of violations of these rules;

(b) The good faith efforts, if any, of the distribution company or competitive energy affiliate to comply with these rules;

(c) The nature and degree of economic benefit gained by the distribution company or its competitive energy affiliate;

(d) Deterrence of future violations; and

(e) Such other factors that are relevant and material to the particular circumstances of the violation.

Puc 2106.07 Relation to Antitrust Laws.

(a) Nothing in these rules shall be construed to confer immunity from state and federal antitrust laws.

(b) A penalty assessed pursuant to Puc 2106 shall not affect or preempt antitrust liability but rather is in addition to any antitrust liability that might apply to the activity.