

3900 **APPLICABILITY**

3900.1 This Chapter establishes the Public Service Commission's ("Commission") Code of Conduct between regulated energy utilities and their affiliates.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1110 (February 4, 2011).

3901 PROHIBITION OF FAVORABLE TREATMENT FOR AFFILIATES

- 3901.1 Neither an energy utility nor a core service affiliate(s) shall represent that any advantage accrues to a customer or others in the use of the energy utility's services as a result of that customer or others dealing with the core service affiliate(s).
- 3901.2 Neither an energy utility nor a core service affiliate(s) shall represent that the affiliation allows the core service affiliate(s) to provide a service superior to that available from other licensed energy suppliers.
- 3901.3 No energy utility shall promote the services of a core service affiliate or disparage the services of a competitor of a core service affiliate.
- 3901.4 An energy utility shall not condition or tie the provision of regulated utility services to:
- (a) The purchase, lease, or use of any other goods or services offered by the energy utility or its affiliates; or
 - (b) The direct or indirect commitment not to deal with any competing energy supplier.
- 3901.5 An energy utility shall not give preferential treatment to an affiliate(s) or customers of the affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated energy suppliers and their customers in the same manner without regard to whether the supplier is a core service affiliate.
- 3901.6 An energy utility shall process all requests for service by any similarly situated energy supplier in the same manner and within the same period of time as it processes requests for service from a core service affiliate(s). An energy utility shall keep an annual log of the length of time it takes the energy utility to process each request for service.
- 3901.7 An energy utility shall provide the same information about its distribution and transmission services contemporaneously to all energy suppliers in a manner that does not favor a core service affiliate(s) in either the type or manner of access to such information.
- 3901.8 An energy utility shall apply all the terms and conditions of its tariff related to delivery of energy services to similarly situated providers in the same manner, without regard to whether the supplier is a core service affiliate.

3901.9 An energy utility shall offer the same discounts, rebates, fee waivers, or penalty waivers to all similarly situated non-affiliated suppliers or customers that it may offer to its core service affiliate or customers of its affiliate. The energy utility shall make such contemporaneous offers, including an appropriate posting on the energy utility's electronic bulletin board, or by some other appropriate means (*e.g.*, Internet website).

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1110 (February 4, 2011).

3902 LIMITATIONS ON JOINT MARKETING, SPACE, AND SALES FOR CORE SERVICE AFFILIATES

- 3902.1 Joint promotions, marketing, and advertising between an energy utility and its core service affiliate(s) are prohibited. Joint marketing shall include the sharing of billing materials. The energy utility may allow a core service affiliate access to space on its billing envelope or the ability to include marketing information inside the billing envelope only under the circumstance of a general promotion of supplier choice where space is made available to all competitors of the core affiliate under the same terms and conditions.
- 3902.2 Joint sales calls shall not be initiated either by an energy utility or its core service affiliate(s). However, when a customer requests a joint sales call, a joint sales call may be conducted. If a customer enters into a contract with a core service affiliate, a joint call relating to that contract may be conducted.
- 3902.3 An energy utility shall not provide sales leads to its core service affiliate(s).
- 3902.4 Marketing/advertising material used by the core service affiliate claiming an association with the energy utility shall include a disclaimer that:
- (a) The affiliate supplier is not the same company as the energy company, whose name or logo may be at least partially used;
 - (b) The prices and services of the affiliate supplier are not set by the Commission; and
 - (c) The customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.
- 3902.5 An energy utility and a core service affiliate(s) shall operate from physically separate locations to avoid the inadvertent sharing of information. The core service affiliate(s) shall not share office space owned or used by the energy utility.
- 3902.6 An energy utility shall not ask a customer for consent to provide the customer's name or information to its core service affiliates licensed in the District of Columbia. An energy utility shall refrain from speaking to its customers for, or on behalf of, its core service affiliates.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1111 (February 4, 2011).

3903 DISCLOSURE OF INFORMATION

- 3903.1 An energy utility shall not disclose any customer-specific information obtained in connection with the provision of regulated utility services except upon written consent of the utility customer. The consent form signed by the utility customer shall state the purpose of the disclosure.
- 3903.2 Notwithstanding the limitations in subsection 3903.1, customer-specific information may be disclosed for lawful bill collection or credit reporting purposes, pursuant to a subpoena or request by a duly authorized law enforcement official, or pursuant to a lawful request authorized by local or federal law.
- 3903.3 Any information provided by an energy utility to a core service affiliate(s) with respect to its electric or gas system, the marketing or sale of energy to customers or potential customers, or the delivery of energy to or on its system, shall be contemporaneously disclosed to all non-affiliated energy suppliers or potential non-affiliated energy suppliers on its system. Disclosure of such information must be published on the energy utility's electronic bulletin board or equivalent mechanism used to communicate with licensed energy providers.
- 3903.4 Notwithstanding the limitations in subsection 3903.3 above, an energy utility may disclose the following information without making the disclosure publicly available:
- (a) Information to an energy supplier, whether affiliated or non-affiliated, disclosed in the administration of a contract to supply Standard Offer Service;
 - (b) Information to an energy supplier, whether affiliated or non-affiliated, concerning the energy supplier's customer that is necessary for the energy supplier to bill or provide services to its customers; and
 - (c) Information disclosed to the energy utility's affiliate(s) required for the affiliate(s) to comply with federal and state laws and regulations, including those relating to financial reporting and corporate governance.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1112 (February 4, 2011).

3904 COST ALLOCATION AND ACCOUNTING

- 3904.1 Within four (4) months of the close of the energy utility's fiscal year, an energy utility must file annually a Cost Allocation Manual ("CAM") with the Commission explaining how it will allocate and account for shared services between the energy utility and any affiliate.
- 3904.2 The CAM must include the following:
- (a) An explanation of the corporate organization;
 - (b) A description of each corporate entity, including location, list of officers and the statement of the business of each entity;
 - (c) A listing of each type of cost which is allocated or charged direct between entities and the factor(s) which is (are) used in the allocation;
 - (d) An explanation and calculation of each of the cost allocation factors used for transfers between and among corporate entities; and
 - (e) A listing of the total amount of each cost allocated or charged direct between or among corporate entities during the annual period.
- 3904.3 When changes occur to the CAM prior to the next annual filing period, the energy utility must file amendment(s) to the CAM within thirty (30) days from the effective date of the change.
- 3904.4 An affiliate and an energy utility must maintain such separate books and records as required by the Public Utility Holding Company Act of 2005 ("PUHCA 2005") and the Commission and, upon written request by the Commission, provide timely access to the books and records.
- 3904.5 The energy utility and all affiliates to or from which assets included in rate base have been transferred by or to the energy utility and all affiliates that provide services to, or share costs with, the energy utility through any allocation method, must make available for inspection and review by the Commission books relating to the foregoing pursuant to PUHCA 2005 so that the Commission may determine compliance with the Code of Conduct. Books shall be maintained for inspection and review for at least five (5) calendar years.
- 3904.6 Biennially, the energy utility shall cause a limited engagement report to be prepared by an independent accountant of its books and the books of any affiliate that has entered into a transaction with the energy utility within the period of the limited engagement review to ensure compliance with the Commission's Code of Conduct. The energy utility shall select an independent accountant and shall seek

approval by the Commission of the selection at least sixty (60) days prior to the beginning of the limited engagement review.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1113 (February 4, 2011).

3905 LOANS AND LOAN GUARANTEES

- 3905.1 An energy utility shall not provide loans or loan guarantees to an affiliate or to the holding company. The general prohibition includes use of utility rate base asset as collateral for any affiliate or holding company activity.
- 3905.2 Notwithstanding any provision to the contrary, an energy utility may participate in a cash management or money pool subject to federal regulations of the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1115 (February 4, 2011).

3906 TRANSFER OR SALE OF ASSETS

3906.1 Transfers of assets from an energy utility to an affiliate must be recorded on the utility's books at the greater of net book cost or market value. Transfers of assets from an affiliate to the energy utility shall be at the lesser of net book cost or market value. Such asymmetric pricing shall not apply to any transaction resulting from a competitive bidding process.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1114 (February 4, 2011).

3907 RESTRICTIONS ON USE OF EMPLOYEES AND EQUIPMENT

3907.1 An electric company is prohibited from sharing employees with an affiliate.

3907.2 An energy utility and an affiliate may share the same telecommunications system or computer system, so long as adequate security and system protections are in place to prevent the accessing of information or data of the energy utility by the affiliate that would be in violation of other provisions of this Chapter.

3907.3 An electric company shall not temporarily assign any employee of the electric company to an affiliate.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1114 (February 4, 2011).

3908 RING-FENCING

- 3908.1 Any energy utility owned by a holding company that transfers more than five percent (5%) of the utility's earnings to a holding company parent, or declares a special or regular cash dividend to the holding company parent, shall notify the Commission in writing within five (5) business days following such action.
- 3908.2 An energy utility shall issue debt securities and request that rating agencies maintain credit and bond ratings for those securities apart from the holding company or any affiliate. Nothing in this section shall prohibit an energy utility from issuing private debt securities without a rating, except to an affiliate.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1115 (February 4, 2011).

3909 EMERGENCY SUSPENSION

- 3909.1 The provisions of this Code of Conduct may be suspended during an emergency. Energy utilities subject to the Code of Conduct shall, within twenty-four (24) hours of the emergency suspension, and every seventy-two (72) hour period thereafter, notify the Commission of the basis of the emergency that warrants the suspension of the Code of Conduct. The energy utility shall notify the Commission within twenty-four (24) hours following the expiration of the emergency.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1115 (February 4, 2011).

3910 WAIVER

3910.1 An energy utility may petition for a waiver from any section of the Affiliate Transactions Code of Conduct, which may be granted by the Commission upon a showing of good cause.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1115 (February 4, 2011).

3999 DEFINITIONS

3999.1 For the purposes of this chapter:

Affiliate – means a person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

Annual Log – means a log maintained by an energy utility to track information regarding a request for service from an energy supplier. The annual log shall include the following: (1) name of the supplier requesting service; (2) description of the type of service being requested; (3) date of request; (4) status of request (5) date of completion of the requested service; (6) energy utility’s affiliation with the energy supplier; and (7) contact information for supplier requesting service.

Asset – means tangible and intangible property of an energy utility included in its rate base.

Asymmetric pricing – means pricing, including, but not limited to, energy utility assets, services and things of value transferred to an affiliate recorded on the utility’s books at the greater of book value or market value, with pricing of the same items transferred from the affiliate to the energy utility recorded on the utility’s books at the lesser of book cost or market value.

CAM or Cost Allocation Manual – means the manual that explains how the energy utility will allocate and account for shared services between the regulated utility and its affiliates.

Core service – means a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

Core service affiliate – means an affiliate that provides retail gas or electric energy service, including the sale and delivery of electricity or natural gas, to the public in the District of Columbia.

Customer – means a purchaser of natural gas or electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

Emergency – means any of the following, or similar, situations which require any action contrary to this Code of Conduct: (a) a natural disaster, including but not limited to a hurricane, tornado, snow storm, earthquake, flood, or land slide that impacts utility service; or (b) any national or District of Columbia declared state of emergency or condition resulting in federal, or District government closing its

respective offices; or (c) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, disconnection of system elements that could adversely affect utility service or the reliability of the utility's electric system or natural gas system or the safety of persons or property; or (d) acts of others such as riots, sabotage, acts of terrorism, insurrections, nationalization or wars, which adversely affect utility service or the reliability of the utility's electric system or natural gas system.

Energy supplier – means a licensed person including an aggregator, broker, or marketer, who generates energy (natural gas or electricity); sells energy (natural gas or electricity); or purchases, brokers, arranges or markets energy (natural gas or electricity) for sale to customers in the District of Columbia. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply energy (natural gas or electricity) solely to the occupants of the building for use by occupants; (B) (I) any person who purchases (natural gas or electricity) for its own use or its subsidiaries or affiliates; or (II) any apartment building or office building manager who aggregates energy (natural gas or electricity) service requirements for his or her buildings, and who does not: (a) take title to the energy (natural gas or electricity); (b) market energy (natural gas or electricity) services to the individually-metered tenants for his or her building; or (c) engage in the resale of energy (natural gas or electricity) services to others; (C) property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and (D) a consolidator.

Energy utility – means a natural gas corporation or electric company under the jurisdiction of the Commission whose rates, charges, terms and conditions, and the quality of services it provides to customers are regulated by the Commission.

Limited Engagement Review – means an independent accountant's examination of books and records to determine compliance with all of the sections of this Code of Conduct.

Non-core service – means any service or activity that is not a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

Non-core service affiliate – means an affiliate that does not provide any service or activity that is a retail gas or electric energy service, including the sale and delivery of electricity or natural gas to the public in the District of Columbia.

Person – means every individual, corporation, company, association, joint-stock company, firm, partnership, or other entity.

Standard offer service – means electricity supply made available to: (1) customers who contract for electricity with an electricity supplier, but who fail to

receive delivery of electricity under such contracts; (2) customers who cannot arrange to purchase electricity from an electricity supplier; and (3) customers who do not choose an electricity supplier.

Source: Notice of Final Rulemaking published at 58 DCR 1109, 1115 (February 4, 2011).