

**ARKANSAS
PUBLIC SERVICE
COMMISSION**



AFFILIATE TRANSACTION RULES

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Rule I - Authority

These rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304(a)(3), 23-2-305, 23-3-102(e), 23-3-103 and 23-18-103.

Rule II – Purpose

The purpose of these rules is to ensure that all transactions among or between a public utility and any affiliates or divisions do not result in rates which are unreasonable and in violation of Ark. Code Ann. §§ 23-4-103 and 23-4-104; to ensure that the rates charged by public utilities do not provide any subsidy to affiliates or divisions of the public utility which are involved in non-utility activities or which provide services to the public utility; to prevent anti-competitive behavior, and market manipulation or market power; and to prevent financial risk to rate-regulated public utility operations which may arise from business endeavors of an unregulated affiliate.

Rule III - Definitions

- A. “Affiliate” means:
1. any person covered by the definition of:
 - a. “affiliate interest with a public utility” under Ark. Code Ann. § 23-1-101(1);
 - b. “affiliate” under Ark. Code Ann. §23-3-302(2); or
 - c. “Affiliate company” under Ark. Code Ann. §23-18-103 (a) (1); and,
 2. any unit, division, separate business activity or operating part,
 - a. which is within a public utility, and
 - b. which provides assets, goods, services, information having competitive value, personnel, or financial resources other than, or in addition to, public utility service provided directly to Arkansas retail customers.

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- B. “Public utility goods or services” mean goods or services which the public utility is required, by Arkansas statute or Commission rules, to provide to Arkansas retail customers.
- C. “Public utility” means all jurisdictional rate-regulated public utilities.
- D. “Direct cost” of a product or service means a cost solely attributable, on a cost-causative basis, to the production or provision of such individual product or service, where the attribution does not require the use of allocations to separate the costs incurred in the production of other services or products.
- E. “Indirect cost” of a product or service means a cost, other than a direct cost, properly attributable to the production or provision of an individual product or service.
- F. “Fully allocated cost,” with respect to a particular product or service, is the sum of the direct cost and indirect cost of that product or service.
- G. “Affiliate transaction” means a purchase, sale, trade, lease, transfer, sharing or joint use, between a public utility and any affiliate thereof, of assets (whether tangible or intangible), goods, services, information having competitive value, personnel, or financial resources but not including electricity or gas, except that the term shall exclude transactions described at Ark. Code Ann. §23-3-102 (e)(2).
- H. “Non-utility asset” is an asset used for one or more non-utility businesses; where an asset is used for both utility and non-utility businesses, a “non-utility asset” is an appropriate allocated portion of the shared asset, as determined by the Commission.
- I. “Non-utility business” means a business other than the provision of public utility goods or services as defined at III.B.
- J. “Utility related business” means a business which is, or which engages in:
 - 1. a rate-regulated utility in another state of the United States;
 - 2. independent power generation;
 - 3. energy marketing and trading;
 - 4. gas gathering, production, distribution and transportation;

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5. providing fuel to generating plants;
6. a nuclear decommissioning trust;
7. an entity created to facilitate tax advantages for the holding company system;
8. an entity created to facilitate financing transactions;
9. a captive insurance and other risk management entity;
10. an entity that holds or manages emission allowances or other environmental allowances or credits;
11. an entity created to facilitate risk management with respect to the ownership of real property and improvements thereon;
12. an entity that engages in producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing gas, oil, electricity, thermal energy, and/or steam energy, to wholesale and/or retail customers;
13. an entity that provides or is engaged in:
 - a. energy management services and demand side management activities;
 - b. development and commercialization of electrotechnologies related to energy conservation, storage and conversion;
 - c. ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;
 - d. sale of electric and gas appliances or equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity and equipment that enables the use of gas or electricity as an alternate fuel and the installation and servicing thereof;
 - e. production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar

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products, alternative fuels, and renewable energy resources, and the servicing of thermal resources;

- f. sale of technical, operational, management and other similar kinds of services and expertise relating to distribution, transmission, generation engineering, development, design and rehabilitation, construction, maintenance and operation, fuel procurement, delivery and management and environmental licensing, testing and remediation;
 - g. ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities, including activities related to nuclear fuels;
 - h. development and commercialization of technologies or processes that utilize coal waste or by-products as an integral component of such technology or process;
 - i. securitization activities;
 - j. development activities relating to other authorized electric or gas related activities;
 - k. local community development investments relating to other authorized electric or gas related activities; or,
 - l. sales of assets related to other authorized electric or gas related activities; or,
14. other utility related activities as determined on a case-by-case basis by the Commission.
- K. "Service company" means a person or division that is organized principally for the purpose of providing shared corporate support services to affiliates or divisions of a public utility.
- L. "Shared corporate support services" means services shared between or among a public utility, its parent holding company or an affiliate or division, such as human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting services, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support, and corporate services.

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- M. “Market price” means a price determined by a public utility as the amount it would pay or receive for receiving or providing a good or service in an affiliate transaction based on comparisons of similar transactions with, or the price of similar goods and services available from, unrelated third parties. A public utility may make such determination based on surveys, specific price inquiries, benchmarking, competitive bids or any other reasonable method. For goods or services for which there is no readily available comparative market price, the price shall be the fully allocated cost of the person supplying the goods or services.
- N. “Commission” means the Arkansas Public Service Commission.

Rule IV - Affiliate Financial Transactions

- A. Except as otherwise provided in this Rule IV, a public utility shall not engage in any affiliate transaction in which the public utility:
1. provides to or shares with any affiliate any financial resource or financial benefit, including but not limited to any:
 - a. loan, extension of credit, guarantee or assumption of debt, indemnification, pledge of collateral; or,
 - b. encumbrance of or restriction on the disposition of any public utility; or
 2. incurs any debt for purposes of investing in, or otherwise supporting, any business other than the provision of public utility service in Arkansas.
- B. Rule IV.A. shall not apply to an inter-affiliate financial transaction integral to an affiliate transaction for goods or services subject to and consistent with Rule V.
- C. A public utility may obtain financial resources from an affiliate for public utility purposes, provided that the cost to the public utility of such financial resource does not exceed the lower of market price or the affiliate's fully allocated cost.

Rule V – Affiliate Transactions Other Than Financial Transactions

- A. With respect to an affiliate transaction involving assets, goods, services, information having competitive value, or personnel, a public utility

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shall not:

1. receive anything of value, unless the compensation paid by the public utility does not exceed the lower of market price or fully allocated cost of the item received; and,
2. provide anything of value, unless the compensation received by the public utility is no less than the higher of market price or fully allocated cost of the item provided.

B. This Rule V shall not apply to exchanges of information:

1. necessary to the reliable provision of public utility service by a public utility, provided such exchange occurs consistently with guidelines published by the utility and applied equally to affiliates and non-affiliate entities: or,
2. required by federal statutes or regulations.

Rule VI - Books, Records and Procedures

A. Recordkeeping

1. The public utility shall:
 - a. keep books and records separately from the books and records of its affiliates; and,
 - b. maintain such books and records in accordance with the applicable rules and orders of the Commission, and with Generally Accepted Accounting Principles (GAAP) as amended.
2. Such books and records shall contain all information necessary to:
 - a. identify all affiliate transactions in which the public utility participated; and,
 - b. identify and allocate or impute all revenues and costs (both direct and indirect) associated with all such affiliate transactions.
3. Upon the creation of a new affiliate which is addressed by these rules, the utility shall immediately notify the Commission of the

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creation of the new affiliate, as well as posting notice on its electronic bulletin board; and, no later than 60 days after the creation of this affiliate, the utility shall file with the Commission an explanation of how the public utility will implement these rules with respect to the new affiliate.

4. Each public utility shall maintain records of each affiliate transaction in which it participated, for at least five years following the date of the termination of each such affiliate transaction; and, the records shall:
 - a. be made contemporaneously with each affiliate transaction;
 - b. be in a readily retrievable format; and,
 - c. include, for each affiliate transaction:
 - (1) the identity of the affiliate involved in the affiliate transaction;
 - (2) the commencement and termination dates of the affiliate transaction;
 - (3) a description of the affiliate transaction, including the nature and quantity of value provided and received;
 - (4) the dollar amount of the affiliate transaction and the manner in which such dollar amount was calculated;
 - (5) all other terms of the affiliate transaction;
 - (6) the direct and indirect costs associated with the affiliate transaction, including any allocation formula used to attribute indirect costs; and,
 - (7) all information necessary to verify compliance with these rules and the accuracy of amounts stated on the public utility's books and records, such information to include, but not be limited to:
 - (a) invoices, vouchers, communications, journal entries, workpapers; and,

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- (b) information supporting the price of each affiliate transaction, including but not limited to the cost and allocation method of the affiliate transaction and, when the cost was the result of a competitive bidding process, the market price and basis for the market price of the Affiliate transaction; and,
 - d. be summarized and said summary shall be filed with the Commission no later than March 1 of each year, for the prior calendar year.
- 5. Each public utility shall maintain, update annually, train its employees in, and file with the Commission, all information of all entities participating in, or responsible for, any affiliate transaction subject to these rules and written procedures which ensure compliance with these rules; and, such information and written procedures shall include, at a minimum:
 - a. all internal rules, practices, financial record keeping requirements, and other policies governing affiliate transactions among or between the public utility and its affiliates;
 - b. the names and addresses of all of the public utility's affiliates;
 - c. an organizational chart depicting the ownership relationships between the public utility and its affiliates, accompanied by information that identifies the officers and directors of the public utility and its affiliates;
 - d. a narrative description of any existing affiliate transaction lasting more than one year; and,
 - e. a cost allocation manual or other description of the methods used to determine compensation in affiliate transactions.

B. Commission Access

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

C. Booking for Exempted Affiliate Transactions

A public utility which is a party to an affiliate transaction, but which has obtained, pursuant to Rule 1.03 of the Commission's Rules of Practice and Procedure, an exemption from a pricing requirement set forth in Rule IV or V shall, in complying with Rule 9 of the Commission's Rules of Practice and Procedure and Schedules B-2 and C-2 of Appendix I to Rule 9:

1. adjust its per book balances to reflect the results had the affiliate transaction complied with the pricing requirements of these rules; and,
2. provide information sufficient to support such adjustment, including the pricing differential between its per book amount and that required by these rules.

Rule VII - Bond Rating Downgrades

- A. This Rule VII applies to any public utility having affiliates whose total capitalization equals at least ten (10) percent of the public utility's capitalization.
- B. If a public utility's bond ratings are downgraded to a Standard and Poor's rating of BB+ or lower, or to a Moody's rating of Ba1 or lower, such utility shall submit to the Commission, within thirty (30) days of such downgrading, a full explanation of the reasons for such downgrading and such explanation shall include testimony from financial experts familiar with bond ratings.
- C. The Commission may require the public utility to retain, at the public utility's expense, a financial expert to advise the Commission in reviewing the public utility's explanation.
- D. If the Commission finds, after notice and opportunity for hearing, that the public utility's downgrade would not have occurred but for one or more relationships between such public utility and one or more affiliates, the public utility must terminate such relationship(s) no later than 6 months from the date of the Commission's finding, unless the Commission finds that other remedies insulate the public utility and its customers from any

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diminution in the public utility's ability to carry out its obligation to serve at reasonable rates.

Rule VIII - Utility Ownership of Non-utility Business

- A. A public utility shall not engage in a non-utility business if the total book value of the non-utility assets owned by the utility exceeds 10 percent of the book value of the total assets of the public utility and all its affiliates.
- B. Each public utility or its public utility holding company shall file an annual report with the Commission in accordance with Rule IX that includes:
 - 1. a certification by the president of the public utility that the public utility is in compliance with this section: and,
 - 2. all financial information necessary for the Commission to determine the utility is complying with the requirements in Rule VIII.A.

Rule IX - Annual Certification of Compliance

- A. No later than January 15 of each year, each public utility shall file with the Commission a notice, signed by both the public utility's president or chief executive officer and its chief financial officer, certifying the public utility's compliance with these rules in the prior year.
- B. No later than March 1, 2007, and every year thereafter, each public utility shall submit to the Commission a report prepared by independent auditors which assesses the utility's compliance with these rules in the prior calendar year.

Rule X - Miscellaneous

Any affiliate transaction inconsistent with these rules shall be deemed void for ratemaking purposes.

Rule XI – Exemptions

- A. Any utility may petition for exemption from any of these rules, on the basis that application of the rule would not be in the public interest, in accordance with Rule 1.03 of the Commission's Rules of Practice and Procedure.

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- B. Any existing financing arrangements, provision of corporate services or other affiliate relationship which could be deemed to be in violation of these rules will be allowed to continue for a period of one year from adoption of these rules in order to allow the utilities involved to seek an exemption from the application of these rules for those existing circumstances.