

Attachment to Entry
of January 20, 2000
Case No. 99-1141-EL-ORD

4901:1-20-16 Corporate separation.

(A) Purpose and scope

Electric utilities are required by section 4928.17 of the Revised Code, to file with the commission an application for approval of a proposed corporate separation plan. The following rules provide that all the state's electric utility companies must meet the same standards so a competitive advantage is not gained solely because of corporate affiliation. The rules should create competitive equality, preventing unfair competitive advantage and prohibiting the abuse of market power. Generally, the rules are applied to the activities of the regulated utility and its transactions with its affiliates. However, to ensure compliance with the rules, examination of the books and records of other affiliates may be necessary. Compliance with paragraph (G)(4) of this rule shall begin immediately. Compliance with the remainder of the corporate separation rules shall coincide with the start date of competitive retail electric service, January 1, 2001, unless extended by commission order for an electric utility pursuant to division (C) of section 4928.01 of the Revised Code.

(B) Definitions

- (1) "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal merchant function of the electric utility whereby the electric utility provides a competitive service.
- (2) "Electric utilities" are as defined in division (A)(11) of section 4928.01 of the Revised Code.
- (3) "Fully allocated costs" are the sum of direct costs plus an appropriate share of indirect costs. For purposes of these rules, the term "fully allocated costs" shall have the same meaning as the term "fully loaded embedded costs" as that term appears in division (A)(3) of section 4928.17 of the Revised Code.
- (4) "Employees" are all full-time or part-time employees of an electric utility or its affiliates, as well as consultants, independent contractors or any other persons performing various duties or obligations on behalf of or for an electric utility or its affiliate.

- (5) "Competitive supplier" means any entity or entities, including aggregators, brokers, and marketers, offering to supply electricity or energy-related goods or services at retail, by sale or otherwise, within the service territory of the electric utility.
- (6) "Customer" means any entity that is the ultimate retail consumer of goods and services.
- (C) Beginning on the starting date of competitive retail electric service, no electric utility shall supply in this state, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service (or a noncompetitive retail electric service and a product or service other than retail electric service) unless under a commission-approved corporate separation plan.
- (D) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall work/function independently of each other.
- (E) Electric utilities that structurally separate regulated electric utility business from nonregulated business and that certify to the commission on an annual basis that there is no sharing of employees and that there are no unregulated transactions between the electric utility and the unregulated affiliate, may be granted exemptions from certain audit requirements.
- (F) The corporate separation rules apply to all affiliate transactions and shared services. Transactions made in accordance with rules or regulations approved by the federal energy regulatory commission, securities and exchange commission and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in the corporate separation rules. Upon a showing of reasonable grounds for complaint, the electric utility has the burden of proof to demonstrate compliance with approved transactional costing rules or regulations.
- (G) Electric utilities are required by section 4928.17 of the Revised Code to file an application for approval of a proposed corporate separation plan. The proposed plans shall include provisions relating to the following:
 - (1) Structural safeguards
 - (a) An electric utility shall place a copy of the minutes of each board of

directors meeting in the CAM in accordance with paragraph (J) of this rule, where it shall be maintained for a minimum of three years.

- (b) An electric utility may not share employees with any affiliate, if the sharing, in any way, violates paragraph (G)(4) of this rule. An electric utility shall maintain in the CAM a copy of the job description of each shared employee (except for shared consultants and shared independent contractors). The electric utility shall maintain in the CAM a list of the names of and job summaries for shared consultants and shared independent contractors. An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs. An electric utility shall add to the CAM a copy of all transferred employees' previous and new job descriptions.
- (c) Electric utilities and their affiliates that provide services to customers within the electric utility's service territory shall function independently of each other and shall not share facilities and services if such sharing in any way violates paragraph (G)(4) of this rule.
- (d) During an interim period, an electric utility has the burden of establishing "good cause" for selecting an interim functional separation plan (as opposed to a structural separation). The interim plan shall provide a detailed timeline for progression to full structural separation and shall be subject to periodic commission staff review at the staff's discretion.

(2) Separate accounting

Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

(3) Financial arrangements

Except as the commission may approve, the financial arrangements of an electric utility are subject to the following restrictions:

- (a) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.

- (b) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
 - (c) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.
 - (d) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
 - (e) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.
 - (f) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.
- (4) Code of conduct
- (a) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.
 - (b) On or after the effective date of the rule, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric competitors transacting business in its service territory, unless otherwise directed by the customer. This paragraph does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.
 - (c) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and

ancillary services) that is not contemporaneously and in the same form and manner available to a nonaffiliated competitor of retail electric service.

- (d) Electric utilities shall treat as confidential all information obtained from a competitive supplier of retail electric service, both affiliated and nonaffiliated, and shall not release such information unless a competitive supplier provides authorization to do so.
- (e) The electric utility shall not tie (nor allow an affiliate to tie) or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.
- (f) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.
- (g) The electric utility, upon request from a customer, shall provide a complete list of all suppliers operating on the system, but shall not endorse any suppliers nor indicate that any supplier will receive preference because of an affiliate relationship.
- (h) The electric utility shall ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.

All electric utilities shall, at a minimum, provide information in their transition filings so as to enable the commission to determine whether they have met their burden of proof to satisfy this paragraph as it relates to joint advertising between the electric utility and an affiliate, joint marketing activities between the electric utility and an affiliate, and the use of the name and logo of the electric utility.

- (i) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:

- (i) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services;
 - (ii) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation;
 - (iii) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates preference over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service;
 - (iv) The electric utility shall strictly follow all tariff provisions;
 - (v) Except to the extent allowed by state law, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any state regulated monopoly service; and
 - (vi) Violations of this rule shall be enforced and subject to the disciplinary actions described in divisions (C) and (D) of section 4928.18 of the Revised Code.
- (j) Notwithstanding paragraph (G)(4) of this rule, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability. The electric utility shall maintain a log of all such actions that do not comply with paragraph (G)(4) of this rule, which log shall be subject to review by the commission.
- (5) Complaint procedure

The electric utility shall establish a complaint procedure for the issues concerning compliance with this rule. All complaints, whether written or verbal, shall be referred to the general counsel of the utility or their designee. The legal counsel shall orally acknowledge the complaint within five working days of its receipt. The legal counsel shall prepare a written statement of the complaint that 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 legal counsel 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 that was taken. The legal counsel shall keep a file in the CAM, in accordance with paragraph (J) of this rule, of all such complaint statements for a period of not less than three years. This complaint procedure shall not in any way limit the rights of a party to file a complaint with the commission.

(H) Additional transition plan content requirements for a corporate separation plan

- (1) A description and timeline of all planned education and training, throughout the holding company structure, to ensure that electric utility and affiliate employees know and can implement the policies and procedures of this rule.
- (2) A copy of a policy statement to be signed by electric utility and affiliate employees who have access to any nonpublic electric utility information, which indicates that they are aware of, have read, and will follow all policies and procedures regarding limitation on the use of nonpublic electric utility information. The statement will include a provision stating that failure to observe these limitations will result in appropriate disciplinary action.
- (3) A description of the internal compliance monitoring procedures and the methods for corrective action for compliance with this rule.
- (4) A detailed description outlining how the electric utility and its affiliates will comply with this rule, except paragraph (K) of this rule. The format shall list the rule and then provide the description. For example:

Corporate separation paragraph (G)(1)(b) - An electric utility may not share employees with any affiliate, if the sharing, in any way violates paragraph (G)(4) of this rule.

-Detailed description of compliance.

- (5) Each electric utility shall make available for commission staff review the initial CAM, the contents of which are set forth in paragraph (J) of this rule.
 - (6) A detailed listing of the electric utility's electric services and the electric utility's transmission and distribution affiliates' electric services.
- (I) Access to books and records
- (1) The commission staff has the authority to examine books, accounts, and/or

other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code.

- (2) The commission staff may investigate such electric utility and/or affiliate operations and the interrelationship of those operations at the commission staff's discretion. In addition, the employees and officers of the electric utility and its affiliates shall be made available for informational interviews, at a mutually agreed time and place, as required by the commission staff to ensure proper separations are being followed.
 - (3) If such employees, officers, books, and records cannot be reasonably made available to the commission staff in the state of Ohio, then upon request of the commission staff, the appropriate electric utility or affiliate shall reimburse the commission for reasonable travel expenses incurred.
- (J) Cost allocation manual
- (1) Each electric utility's affiliate, which provides products and/or services to the electric utility and/or receives products and/or services from the electric utility, shall maintain information in the CAM, documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations.
 - (2) The CAM will be maintained by the electric utility.
 - (3) The CAM is intended to ensure the commission that no cross-subsidization is occurring between the electric utility and its affiliates.
 - (4) The CAM will include:
 - (a) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved;
 - (b) A description of all assets, services, and products provided to and from the electric utility and its affiliates;
 - (c) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates;

- (d) Information on employees who have either transferred from the electric utility to an affiliate or are shared between the electric utility and an affiliate and shall be consistent with paragraph (G)(1)(b) of this rule.
 - (e) A log of all complaints brought to the utility regarding this rule; and
 - (f) Board of director minutes.
- (5) The method for charging costs and transferring assets shall be based on fully allocated costs.
 - (6) The costs should be traceable to the books of the applicable corporate entity.
 - (7) The electric utility and affiliates shall maintain all underlying affiliate transaction information for a minimum of three years.
 - (8) Following approval of a corporate separation plan, an electric utility shall send to the director of the utilities department of the commission (or their designee) every six months a summary of any changes in the CAM.
 - (9) The electric utility shall designate an employee who will act as a contact for the commission staff, when seeking data regarding affiliate transactions, personnel transfers, and the sharing of employees. The electric utility shall update the commission of changes in the contact.
- (K) Commission staff audits
- (1) The commission staff will perform an audit of the CAM in order to ensure compliance with this rule.
 - (2) In order to facilitate meaningful data collection, the initial engagement shall cover the first twelve months after the starting date of competitive retail electric service.
 - (3) Audits will be at the commission staff's discretion, but will attempt to follow a biennial schedule, unless otherwise ordered by the commission.
 - (4) During an interim functional separation period, additional audits may be required and an external auditor selected and managed by the commission

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may conduct the audit.