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March 27, 2012

VIA ELECTRONIC MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Proposed Rulemaking Order for Revisions to Code of Conduct at 52 Pa.Code § 54.122
Docket No. L-2010-2160942

Dear Secretary Chiavetta:

Enclosed please find an original and 15 copies of the *Comments of PECO Energy Company on the Pennsylvania Public Utility Commission's Proposed Revisions to Subchapter E (Competitive Safeguards) of its Electric Generation Customer Choice Regulations* concerning the above-referenced Proposed Rulemaking Order.

Kindly return a time-stamped copy of the Comments in the self-addressed envelope that is enclosed. Please do not hesitate to contact me should you have any questions regarding this filing.

Sincerely,

Michael S. Swerling
Counsel for PECO Energy Company

MSS:mb
Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

REVISIONS TO CODE OF CONDUCT AT 52 PA. CODE § 54.122	:	**Docket No. L-2010-2160942**

COMMENTS OF PECO ENERGY COMPANY ON THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S PROPOSED REVISIONS TO SUBCHAPTER E (COMPETITIVE SAFEGUARDS) OF ITS ELECTRIC GENERATION CUSTOMER CHOICE REGULATIONS

RECEIVED

MAR 27 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Dated: March 27, 2012

For PECO Energy Company

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I. INTRODUCTION

On March 18, 2010, the Pennsylvania Public Utility Commission (the "Commission") issued an Advanced Notice of Proposed Rulemaking Order to investigate the effectiveness of the current Code of Conduct for electric distribution companies ("EDCs") and electric generation suppliers ("EGSs") at 52 Pa. Code § 54.122 ("Code of Conduct") and determine whether additional safeguards are needed to facilitate the development of Pennsylvania's competitive retail electricity market. On August 25, 2011, the Commission entered a Proposed Rulemaking Order ("Order") at this docket to solicit comments on proposed revisions to the Code of Conduct (the "Proposed Amendments"). The Order was published in the Pennsylvania Bulletin on February 11, 2012 and allows interested parties to file comments within 45 days of that date.

PECO Energy Company ("PECO" or "the Company") supports the Commission's goal of facilitating the continued development of the competitive retail market in Pennsylvania and commends the Commission's focus on this effort. However, PECO is concerned that, with respect to this rulemaking, the proposed changes addressed below are unnecessary, and are not supported by evidence of transgressions that would warrant their imposition.

Accordingly, PECO is respectfully submitting these comments to address those sections of the Proposed Amendments that would: (1) require affiliated EDCs and EGSs to occupy "different buildings"; (2) prohibit sharing by affiliated EDCs and EGSs of corporate support services that do not involve transferring competitively sensitive information; (3) prohibit joint EDC/EGS marketing, sales or promotional activities unless the EDC provides a comparable opportunity to other EGSs; and (4) require an EDC to maintain and file a "log" of "business transactions" with an affiliated EGS.

II. PECO'S COMMENTS ON SPECIFIC SECTIONS OF THE PROPOSED RULEMAKING

A. The "Different Buildings" Requirement Should Not Be Adopted

The Commission's proposed Section 54.122(3)(ix) provides, in relevant part, that an EDC and its affiliated EGS "may not share office space and shall be physically separated *by occupying different buildings*" (emphasis added). PECO recommends that this revision should not be adopted because it is without precedent, unnecessary, and it would impose burdensome costs on Pennsylvania's energy companies and consumers.

As a threshold matter, although some states require their equivalents of EDCs and EGSs to have varying degrees of physical separation, ***none*** impose a "different buildings" requirement. Indeed, PECO believes that the proposed Section 54.122(3)(ix) exceeds the requirements imposed by regulations in the three states the Commission used as reference points for the Proposed Amendments.

New Jersey's regulations provide only that a utility may not "share office space" with a related competitive business segment, *see* N.J. Admin. Code tit. 14, §14:4-3.5(e). Moreover, neither Texas nor Illinois require separate buildings for regulated and non-regulated affiliates. To the contrary, the commissions in each of these states have concluded that physical separation short of "different buildings" is sufficient to prevent improper or inadvertent transfer of sensitive competitive information.

Second, this revision could impose substantial costs on Pennsylvania EDCs, EGSs and their respective customers. For example, instead of leasing a floor, or separate floors, in the same building, EDCs and their affiliated EGSs would have to enter into separate purchase or leasing arrangements with different sellers or landlords. This would likely make it more costly for the EDC and EGS to do business, and the purpose of the Competitive Safeguard rules is not

to make it more expensive for EDCs and their affiliates to do business in Pennsylvania, but instead to prevent anti-competitive behavior. Indeed, even in a case where the Commission found that a company – in this case a telephone company – engaged in anti-competitive behavior the Commission did not require this extreme result. *See Re Nextlink Pennsylvania, Inc.*, 196 PUR 4th 172, 322 (1999) (Where Commission took action against Bell Atlantic after finding that the company had, in fact, abused its "market power" and discriminated against non-affiliated providers and required that Bell Atlantic's wholesale and retail operations "have offices that are physically separated," but not "different buildings").

For the reasons set forth above, PECO respectfully submits that Section 54.122(3)(ix) should be not be adopted as proposed.

B. The Prohibition On Sharing Certain Services Should Not Be Adopted

Section 54.122(4)(iii) provides that an EDC and its affiliated EGS "may not share employees or services, except for corporate support services, emergency support services, or tariff services offered to all [EGSs] on a non-discriminatory basis." Then, Section 54.122(4)(iii)(A) sets forth all of the services that the Commission contends should not be "corporate support services" and prohibits the sharing of those services:

> "Corporate support services" do not include purchasing of electric transmission facilities, service and wholesale market products, hedging and arbitrage, transmission and distribution service operations, system operations, engineering, billing, collection, customer service, information systems, electronic data interchange, strategic management and planning, account management, regulatory services, legal services, lobbying, marketing or sales.

This proposed rule also goes farther than the comparable rules adopted in Illinois, New Jersey and Texas by forbidding sharing of many of the kinds of "corporate support services" that the Illinois, New Jersey, and Texas regulations explicitly permit.

For instance, the ICC's comparable regulation provides that "electric utilities and their affiliated interests [that are] in competition with alternative retail electric suppliers shall not jointly employ or otherwise share the same employees" (Ill. Admin. Code tit. 83, §450.110), then creates an exception for "corporate support" broadly defined as follows:

> "Corporate support" means corporate oversight and governance involving administrative services (including travel administration, security, printing, graphics, custodial services, secretarial support, mail services, and records management), financial management services (including accounting, treasury, internal audit, tax, and financial reporting and planning), data processing, shareholder services, human resources, employee benefits, regulatory affairs, legal services, lobbying, and non-marketing research and development activities. Corporate support also includes strategic planning.

Ill. Admin. Code tit. 83, §450.10. The New Jersey BPU did much the same; its regulations allow "shared services" without the onerous restrictions the Proposed Amendments would impose. *See* N.J. Admin. Code tit. 14, §14:4-3.2.

Likewise, under the Texas commission's regulations, utilities and competitive affiliates are given fairly wide latitude to share personnel and services, as reflected in its broad definition of permissibly-shared "corporate support services." That definition includes many of the services the Proposed Amendments would forbid affiliates in Pennsylvania to share such as, notably, legal services. *See* 25 Tex. Admin. Code § 25.272(c)(4). In like fashion, the FERC's regulations allow sharing of corporate support employees, senior managers, and boards of directors so long as shared employees do not participate in directing, organizing or executing generation or market functions. *See* 18 C.F.R. 35.39(c)(ii).

PECO is concerned that using a definition of "corporate support service" that is too narrowly drawn could significantly handicap EDCs and EGSs from doing business as part of a common holding company system. Many functions that Section 54.122(4)(iii)(A) would prohibit must, by practical necessity, be "shared" if EDCs and EGS are subsidiaries of a common parent. For instance, various regulatory filings, tax returns, corporate reports and filings required by the securities laws, employment, EEOC and ERISA matters are just a few that readily come to mind, but there are many others. Of course, none of these services would implicate competitive interests or competitive information. And, in most instances, these services can only be performed on a "shared" basis for the corporate system as a whole.

PECO is also concerned that the proposed prohibition of "sharing" with respect to "strategic management and planning" could capture the whole senior management team of an EDC's parent that also has an EGS subsidiary doing business in Pennsylvania.[1] PECO believes that EDCs and affiliated EGSs should not be required to implement entirely separate management teams at the parent level to deal independently with EDC and EGS functions. Such a requirement seems at odds with the statutory responsibility of the parent corporation's directors and officers to manage the entire enterprise.[2] As a result, this proposed provision could prevent Pennsylvania EDCs from having corporate affiliations with EGSs doing business in Pennsylvania.

Also, to the extent the proposed prohibition on shared services would require a holding company system to rearrange how corporate services are provided (by, for example, eliminating or curtailing the use of a common "service company" for an EDC and its affiliated EGS), it

[1] The New Jersey BPU's regulations permit joint "corporate oversight, governance, support systems and personnel." N.J. Admin. Code tit. 14, §14:4-3.5(i). The Texas and Illinois regulations authorize shared corporate support services that include corporate and strategic planning.

[2] See 15 Pa. C.S.A. § 1721(a).

would impose a *de facto* "divestiture" or "reorganization" in contrast to Section 2804(5) of the Public Utility Code, where the legislature expressly withheld authority to require either an asset divesture or other form of reorganization by stating that the Commission "may permit, but shall not require an electric utility to divest itself of facilities or reorganize its corporate structure".

For the reasons set forth above, Section 54.122(4)(iii)(A) of the Proposed Amendments should not be adopted or, in the alternative, the Commission should adopt a definition that allows sharing of all forms of "corporate support services" except those that directly involve competitively sensitive information. To that end, the Commission should impose restrictions on sharing of corporate services that are no more restrictive than those contained in the regulations of the three states the Commission surveyed as models for its proposed amendments (Illinois, New Jersey and Texas).

C. The Provisions Dealing With Joint Marketing, Sales And Promotional Activities Should Be Revised Or Clarified

Section 54.122(3)(vii) provides that an EDC and its affiliated EGS may not engage in "joint marketing, sales or promotional activities" unless a similar opportunity is "offered to electric generation suppliers in the same manner under similar terms and conditions." The proposed regulation does not define "joint marketing, sales or promotional activities." However, PECO believes that the operative phrase, when read in context, expresses the Commission's intent to have it apply only to joint marketing, selling or promoting *of a competitive product or service by the affiliated EGS* and not to educational efforts about company-wide initiatives such as the Exelon 2020 program. Accordingly, PECO urges the Commission to revise Section 54.122(3)(vii) to reflect that clarification.

The requested clarification would assure PECO that Section 54.122(3)(vii) will not be triggered by the efforts of Exelon's subsidiaries, including PECO, to educate the public about *Exelon 2020* -- Exelon's system-wide initiative to reduce, offset or displace 15.7 million metric tons of greenhouse gases ("GHG") by 2020. *Exelon 2020*, which has been in place since 2003, is a multi-faceted program that cuts across corporate boundaries and challenges all Exelon companies to reduce, offset or displace GHG emissions.

Company-wide educational initiatives such as *Exelon 2020* are not "joint marketing, sales or promotional activities." As such, the stated purpose of the Proposed Amendments, to foreclose potential favoritism being shown by an EDC to its affiliated EGS and to prevent "anti-competitive practices" (*see* Order at 2), would not be served by interpreting Section 54.122(3)(vii) so broadly that it could be triggered by subsidiaries of a parent company disseminating information about these types of initiatives. Accordingly, PECO asks that the Commission incorporate appropriate limiting language in Section 54.122(3)(vii) or provide a comparable limitation in any final order it issues to revise the Code of Conduct.

D. The Requirement To Maintain A Log Of Business Transactions Between An EDC And Affiliated EGS Should Be Revised

Section 54.122(4)(ii)(A) requires an EDC to document its business relationship with an affiliated EGS through a cost allocation manual that should include, among other things, "a log of business transactions between the [EDC] and [EGS]." The "log" requirement, as written, is unnecessarily broad and could require an EDC to document and report transactions that are not material to the concerns this section of the Proposed Amendments is meant to address. Thus, "business transactions" could be interpreted to include transactions that an EGS enters into with its affiliated EDC pursuant to the EDC's Supplier Tariff. Because those transactions must

conform to Commission-approved tariff requirements, are subject to audit and are likely to be voluminous (for example, all EDI transactions), they should not be subject to the "log" requirement. In fact, reporting those kinds of transactions is likely to result in information "overload" that would inundate the Commission with data.

Similarly, Section 54.122(4)(ii)(A), as written, could cover Supply Master Agreements ("SMAs") that an EGS executes with its affiliated EDC for default service supply. However, the form of SMA is approved by the Commission in advance. Additionally, SMAs are entered into pursuant to a Commission-approved competitive procurement process that is administered by an independent evaluator and overseen by the Commission and the final bids are ultimately approved by the Commission. Consequently, these kinds of transactions are already subject to intense Commission scrutiny and, therefore, do not need to be further documented in the "log".

For the foregoing reasons, Section 54.122(4)(ii)(A) should be redrafted so that "business transactions" do not include transactions covered by an EDC's Supplier Tariff or any transactions entered into pursuant to a Commission-approved procurement plan.

III. CONCLUSION

PECO appreciates the opportunity the Commission has provided to submit comments on the proposed revisions to the Code of Conduct and requests that the Commission reflect all of these comments in developing any final regulations that might be adopted at this docket. PECO respectfully requests that the Commission consider PECO's comments and its proposed revisions to the Commission's Annex A attached hereto.

Respectfully Submitted,

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March 27, 2012

For PECO Energy Company

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54: ELECTRICITY GENERATION CUSTOMER CHOICE

* * * * *

Subchapter E: Competitive Safeguards

* * * * *

§ 54.122. Code of conduct.

Electric generation suppliers and electric distribution companies shall comply with the following requirements:

[(1) An electric distribution company may not give an electric generation supplier, including without limitation, its affiliate or division, any preference or advantage over any other electric generation supplier in processing a request by a distribution company customer for retail generation supply service.

(2) Subject to customer privacy or confidentiality constraints, an electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in an equal and nondiscriminatory manner. "Customer information" means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.

(3) An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.

(4) Each electric distribution company shall adopt the following dispute resolution procedures to address alleged violations of this section:

(i) Regarding any dispute between an electric distribution company or a related supplier, or both, and an electric generation supplier (each individually referred to as a "party" and collectively referred to as "parties"), alleging a violation of any of the provisions of this section, the electric generation supplier shall provide the electric distribution company or related supplier, or both, as applicable, a written notice of dispute which includes the names of the parties and customers, if any involved and a brief description of the matters in dispute.

(ii) Within 5 days of receipt of the notice by the electric distribution company or related supplier, or both, a designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

(iii) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

(iv) If mediation is not successful, the matter shall be converted to a formal proceeding before a Commission administrative law judge, and the prosecuting parties shall be directed to file a formal pleading in the nature of a complaint,

petition or other appropriate pleading with the Commission within 30 days or the matter will be dismissed for lack of prosecution. Any party may file a complaint, petition or other appropriate pleading concerning the dispute under any relevant provision of 66 Pa.C.S. (relating to the Public Utility Code).

(5) An electric distribution company may not illegally tie the provision of any electric distribution service within the jurisdiction of the Commission to one of the following:

(i) The purchase, lease or use of any other goods or services offered by the electric distribution company or its affiliates.

(ii) A direct or indirect commitment not to deal with any competing electric generation supplier.

(6) An electric distribution company may not provide any preference or advantage to any electric generation supplier in the disclosure of information about operational status and availability of the distribution system.

(7) An electric distribution company shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division electric generation supplier, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(8) Every electric distribution company and its affiliated or divisional electric generation supplier shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employes in their content and application.

(9) If an electric distribution company customer requests information about electric generation suppliers, the electric distribution company shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other equal and nondiscriminatory means. In addition, an electric distribution company may provide the address and telephone number of an electric generation supplier if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission will maintain a written list of licensed electric generation suppliers. The Commission will regularly update this list and provide the updates to electric distribution companies as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all electric generation suppliers and that is not designed to provide any particular electric generation supplier with a competitive advantage.

(10) An electric distribution company or its affiliate or division may not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the electric distribution company, to those provided to any other electric generation supplier or customer or that the electric distribution company's delivery services are enhanced should supply services be procured from its affiliate or division. When an electric distribution company's affiliated or divisional supplier markets or communicates to the public using the electric distribution company's name or logo, it shall include a disclaimer stating that the affiliated or divisional supplier is not the same company as the electric distribution company, that the prices of the affiliated or divisional supplier are not regulated by the Commission and that a customer is not required to buy electricity or other products from the affiliated or divisional supplier to receive the same quality service from the electric distribution company. When an affiliated or divisional supplier advertises or communicates

through radio, television or other electronic medium to the public using the electric distribution company's name or logo, the affiliated or divisional supplier shall include at the conclusion of any communication a disclaimer that includes all of the disclaimers listed in this paragraph.

(11) An electric distribution company which is related as an affiliate or division of an electric generation supplier or transmission supplier (meaning any public utility that owns, operates, or controls facilities used for the transmission of electric energy) which serves any portion of this Commonwealth; and any electric generation supplier which is related as an affiliate or division of any electric distribution company or transmission supplier which serves any portion of this Commonwealth, shall insure that its employes function independently of other related companies.]

(1) Non-discrimination requirements.

(i) An electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage over any other electric generation supplier in processing a request by a distribution company customer for retail generation supply service.

(ii) Subject to customer privacy or confidentiality constraints, an electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in an equal and nondiscriminatory manner. "Customer information" means all

information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.

(iii) An electric distribution company may not illegally tie the provision of any electric distribution service within the jurisdiction of the Commission to one of the following:

(A) The purchase, lease or use of any other goods or services offered by the electric distribution company or its affiliates.

(B) A direct or indirect commitment not to deal with any competing electric generation supplier.

(iv) An electric distribution company may not provide any preference or advantage to any electric generation supplier in the disclosure of information about operational status and availability of the distribution system.

(v) An electric distribution company shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division electric generation supplier, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(2) *Customer requests for information.*

(i) If an electric distribution company customer requests information about electric generation suppliers, the electric distribution company shall provide the address of the Commission's retail choice website and offer to

send the most current list of suppliers for that service territory, as compiled by the Commission, by regular mail, electronic mail, facsimile, telephonically, or by other equal and nondiscriminatory means, according to the customer's preference. The electric distribution company may not recommend or offer an opinion on the relative merits of particular suppliers. In addition, an electric distribution company may provide the mailing address, website address, and telephone number of an electric generation supplier if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission will maintain a written list of licensed electric generation suppliers. The Commission will regularly update this list and provide the updates to electric distribution companies as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all electric generation suppliers and that is not designed to provide any particular electric generation supplier with a competitive advantage.

(ii) An electric distribution company or its affiliate or division may not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the electric distribution company, to those provided to any other electric generation supplier or customer or that the electric distribution company's delivery services are enhanced should supply services be procured from its affiliate or division.

(3) Prohibited transactions and activities.

(i) An electric distribution company may not subsidize an affiliated electric generation supplier. Costs or overhead related to competitive,

nonregulated activities of an affiliated electric generation supplier may not be included in the rates of an electric distribution company.

(ii) An electric distribution company may not sell, release or otherwise transfer to an affiliate electric generation supplier, at less than market value, assets, services or commodities that have been included in regulated rates.

(iii) An electric distribution company may not allow an affiliate electric generation supplier to secure credit through the pledge of assets in the rate base of the electric distribution company or the pledge of money necessary for utility operations.

(iv) An electric generation supplier shall not use any word, term, name, symbol, device, registered or unregistered mark, or any combination thereof (collectively and singularly referred to as "EDC identifier"), that identifies or is owned by an electric distribution company, in connection with the sale, offering for sale, distribution, or advertising of any goods or services, unless the electric generation supplier includes a disclaimer and enters into an appropriate licensing agreement specifying such rights.

(A) The disclaimer shall state that the electric generation supplier is not the same company as the electric distribution company whose EDC identifier is featured, and that a customer need not buy the electric generation supplier's products or services in order to continue receiving services from the electric distribution company.

(B) In print and internet communications, the disclaimer shall be placed immediately adjacent to the EDC identifier and shall be in equal

prominence to the main body of the text. In radio or television communications, the disclaimer shall be clearly spoken.

(v) An electric generation supplier may not have the same or substantially similar name or fictitious name as the electric distribution company or its corporate parent. An electric generation supplier shall be granted 6 months from the effective date of this regulation to change its name.

(vi) An electric generation supplier may not allow an employee or agent to represent himself or herself as an employee of the electric distribution company through his or her attire or actions. An electric generation supplier shall comply with the Commission's rules regarding agent identification and misrepresentation.

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(vii) An electric distribution company and an affiliated electric generation supplier may not engage in joint marketing, sales, or promotional activities unless the joint marketing, sales, or promotional activities are offered to all electric generation suppliers in the same manner under similar terms and conditions. However, joint marketing, sales or promotional activities shall not include educational activities about company-wide initiatives.

(viii) An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.

Deleted: (ix) An electric distribution company and affiliated electric generation supplier may not share office space and shall be physically separated by occupying different buildings.¶

(4) Accounting and training requirements.

(i) An electric distribution company and an affiliated electric generation supplier shall maintain separate accounting records for their business activities.

(ii) An electric distribution company that has an affiliated electric generation supplier shall document the business relationship through a cost allocation manual.

(A) The cost allocation manual shall include an organizational chart, identify all contractual agreements between the two entities, include job positions and job descriptions of all shared or temporarily assigned employees, and contain a log of business transactions between the electric distribution company and electric generation supplier. The cost allocation manual shall not include transactions covered by an EDC's Supplier Tariff or any transactions entered into pursuant to a Commission-approved procurement plan.

(B) The cost allocation manual shall be filed with the Commission within 6 months of the effective date of this regulation. Substantial revisions to the cost allocation manual shall be filed when necessary. The cost allocation manual shall be posted by the electric distribution company on its Internet website within 48 hours of filing with the Commission.

(C) The cost allocation manual shall be reviewed as part of the audits and management efficiency investigations pursuant to § 516 of the Public Utility Code, 66 Pa.C.S. § 516 (relating to audits of certain utilities).

(iii) Every electric distribution company and its affiliated or divisional electric generation supplier shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employes in their content and application.

(5) Dispute resolution procedures.

(i) Each electric distribution company shall adopt the following dispute resolution procedures to address alleged violations of this section:

(A) Regarding any dispute between an electric distribution company or a related supplier, or both, and an electric generation supplier (each individually referred to as a "party" and collectively referred to as "parties"), alleging a violation of any of the provisions of this section, the electric generation supplier shall provide the electric distribution company or related supplier, or both, as applicable, a written notice of dispute which includes the names of the parties and customers, if any involved, and a brief description of the matters in dispute.

(B) Within 5 days of receipt of the notice by the electric distribution company or related supplier, or both, a designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

(C) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears

Deleted: (iii) An electric distribution company and affiliated electric generation supplier or transmission supplier may not share employees or services, except for corporate support services, emergency support services, or tariff services offered to all electric generation suppliers on a non-discriminatory basis. Temporary assignments of employees from an electric distribution company to an affiliated electric generation supplier or transmission supplier, for less than 1 year, shall be considered the same as sharing employees.¶
¶
<#>"Corporate support services" do not include purchasing of electric transmission facilities, service and wholesale market products, hedging and arbitrage, transmission and distribution service operations, system operations, engineering, billing, collection, customer service, information systems, electronic data interchange, strategic management *and planning, account management,* regulatory services, legal services, lobbying, marketing or sales.¶
¶
<#>"Emergency support services" are temporary services necessary to protect consumer safety or prevent interruption of service.¶
¶
<#>The electric distribution company shall report to the Commission by January 31 of each year the work history of each shared, temporarily assigned, or permanently transferred employee to the affiliated electric generation supplier during the previous calendar year, and the employee's new position with the affiliate.¶

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that informal resolution is not productive.

(D) If mediation is not successful, the matter shall be converted to a formal proceeding before a Commission administrative law judge, and the prosecuting parties shall be directed to file a formal pleading in the nature of a complaint, petition or other appropriate pleading with the Commission within 30 days or the matter will be dismissed for lack of prosecution. Any party may file a complaint, petition or other appropriate pleading concerning the dispute under any relevant provision of 66 Pa.C.S. (relating to the Public Utility Code).

(6) Penalties.

(i) An electric distribution company or electric generation supplier that does not comply with this subchapter shall be subject to penalties under 66 Pa.C.S. § 3301 (relating to civil penalties for violations).