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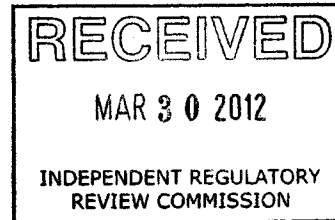
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March 27, 2012



Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Revisions to Code of Conduct at 52 Pa. Code § 54.122
Docket No. L-2010-2160942

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Comments along with the electronic filing confirmation with regard to the above-referenced matter.

Sincerely,

Deanne M. O'Dell

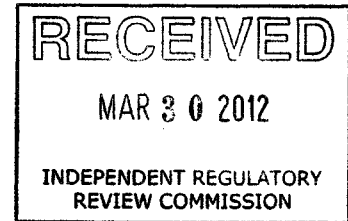
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Revisions to Code of Conduct at 52 Pa. :
Code § 54.122 : Docket No. L-2010-2160942
:



**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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Date: March 27, 2012

TABLE OF CONTENTS

I. INTRODUCTION.....1

A. Section (1): Non-discrimination requirements.....3

B. Section (2): Customer request for information.4

C. Section (3): Prohibited transactions and activities.....4

 1. Prohibiting Use of Ratepayer Revenue By Affiliated EGS4

 2. Appropriate Limitations On The Use Of EDC Identifier5

D. Section (4): Accounting and training requirements8

 1. Sharing Employees and Corporate Support Services8

 2. Training and Designation of a Compliance Contact.....11

E. Section (5) Dispute Resolution Procedures11

II. CONCLUSION14

Attachment A: RESA’s Suggested Changes To Proposed Regulations

I. INTRODUCTION

In its August 25, 2011 Proposed Rulemaking Order, the Commission proposed revisions to its current competitive safeguards regulations which implement various safeguards to ensure that incumbent electric distribution companies (“EDCs”) do not directly or indirectly favor affiliated electric generation suppliers (“EGSs”) to the detriment of robust retail electric competition. The Retail Electricity Supply Association (“RESA”)¹ is a trade organization of EGSs who are providing thousands of consumers in Pennsylvania alternative generation service and who look forward to serving even more customers. RESA members include EGSs who are affiliated with EDCs in Pennsylvania, and elsewhere, as well as EGSs who have no such affiliations. RESA applauds the Commission’s efforts to foster the development of the competitive market in Pennsylvania and has been an active participant in many of the Commission’s proceedings working toward achieving this goal. The standards of conduct addressed in this proceeding are an important aspect of ensuring a fair and functioning competitive market. At the core, effective standards of conduct need to prohibit an EDC from unfairly favoring its affiliate or utilizing ratepayer revenue to fund generation services as such actions would give the EDC and/or its affiliated EGS a significant competitive advantage that could undermine the development of the competitive market. At the same time, RESA members recognize the need to ensure that the regulations are narrowly tailored to achieve the ultimate

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

goals without being overly prescriptive or burdensome. With this in mind and in addition to some organizational and/or clarification suggestions, RESA offers three substantive recommendations for the Commission's consideration.

First, RESA recommends that the Commission revise Section 3 to streamline its proposed regulations regarding the use of an EDC's name or "identifier." As explained further below, the proposed regulations are too broad and may have the unintended consequence of interfering with the ability of EGSs to utilize an EDC's name or identifier for marketing purposes. Rather, RESA recommends that the section be streamlined and that reasonable disclosure requirements be implemented and applied equally to all EGSs.

Second, RESA recommends that the Commission revise Section 4 to more narrowly address concerns about the sharing of employees between an EDC and affiliated EGS. In consideration of the varying and complex corporate structures that may be utilized, RESA recommends that this section be revised to make clear that revenue derived from the ratepayers of an EDC may not be used to support the generation services offered by an affiliated EGS while recognizing that there are employees (and services) within a corporate structure who need to manage and provide support for the corporation as a whole. To address training, RESA also recommends the appointment of a compliance contact to ensure appropriate training and to address disputes that may arise.

Finally, RESA recommends that the Commission revise Section 5 to provide an abbreviated dispute resolution process ("ADRP") similar to the one available for telecommunications carriers. Code of conduct violations could be serious and result in the inability of an EGS to serve a particular market. While privately resolving disputes or relying on mediation may be the preferable first approach, involvement of the Office of Administrative Law

Judge (“OALJ”) with ultimate resolution by the Commission in an expedited process better serves the public interest than requiring new entrants to utilize the costly and lengthy formal litigation process.

Each of RESA’s recommendations are more fully explained below and RESA’s proposed revisions are set forth in Attachment A to these comments.

A. Section (1): Non-discrimination requirements.

RESA offers two suggestions for this section. First, RESA recommends that the title of the section be clarified to provide additional information about the concepts embodied in the section. Specifically, Section (1) deals with ensuring that EDCs deal in a non-discriminatory manner with all EGSs in effectuating a customer’s decision to receive service from the EGS. The process includes providing appropriate information to the EGS and processing an EGS’s requests to transfer the customer. To clarify the intent of this section, RESA recommends that the title be modified as follows:

- (1) *Non-discrimination requirements in the provisioning of retail generation supply service.*

Second, RESA recommends the addition of a new subsection (vi) which is intended to incorporate the concept currently proposed in Section (4)(iii) that EDCs are required to provide tariff services to all EGSs on a non-discriminatory basis. RESA understands this concept to mean that the operational services as set forth in an EDC’s supplier support tariff must be provided on a non-discriminatory basis. RESA supports this concept but suggests that its inclusion in Section (4)(iii) is misplaced as that section deals primarily with the sharing of employees by an EDC and affiliated EGS. Therefore, RESA recommends adding the concept to this first section which specifically deals with ensuring that an EDC provides all services necessary to facilitate customer choice on a non-discriminatory basis. RESA recommends the

following paragraph be added (and correspondingly that the proposed language in Section (4)(iii) be deleted as discussed further below in Section I.D.1):

(vi) An electric distribution company shall provide all services offered to electric generation suppliers, whether through a supplier tariff or other operational rules and protocols, on a non-discriminatory basis.

B. Section (2): Customer request for information.

Section (2) ensures that an EDC with an affiliated EGS does not express any favoritism for its affiliated EGS in its dealings with customers. RESA supports this objective but notes that the Commission is actively investigating the implementation of customer referral programs.² Generally, a customer referral program is intended to provide customers within an EDC's service territory information about the competitive market at the time customers contact an EDC. There are various structures for a customer referral program which may include highlighting a specific EGS or group of EGSs. Therefore, an EDC operating consistent with the rules and requirements of a Commission approved customer referral program may need to refer customers to a specific EGS or group of EGSs and this regulations should not restrict an EDC's ability to do so. For this reason, RESA recommends the inclusion of the following sentence at the end of subsection (i):

(i) . . . If the electric distribution company has implemented a customer referral program, then the electric distribution company may refer customers consistent with the terms of the customer referral program.

C. Section (3): Prohibited transactions and activities

1. Prohibiting Use of Ratepayer Revenue By Affiliated EGS

Currently proposed subsection (i) prohibits an EDC from subsidizing an affiliated EGS and including the costs for the EGS in the rates of an electric distribution company. RESA fully

² *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 at 13-33.

supports prohibiting an EDC from using revenue received from ratepayers to fund the competitive generation service of an affiliate EGS. A marketplace dominated by a competitive supplier who is able to rely on the financial resources of an affiliated EDC acquired from the captive ratepayers will not foster the development of a robust competitive market. While the proposed section limits what an EDC may include in its rates, RESA recommends that the regulation be expanded as suggested below to be clear that no revenues received from ratepayers may be utilized to fund any function of the affiliated EGS:

- (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. No functions of an affiliated electric generation supplier or transmission supplier may be paid for or funded, either directly or indirectly, with rates or revenues received from ratepayers of the affiliated electric distribution company.

2. Appropriate Limitations On The Use Of EDC Identifier

RESA recommends revisions to currently proposed subsections (iv) and (v) of Section (3). These two sections address the use of an EDC's name or "identifier" by affiliated and non-affiliated EGSs. Specifically, subsection (iv) allows the use of an EDC identifier on the condition that specific disclaimers are used and a licensing agreement with the EDC is obtained. Subsection (v) prohibits the use of an EDC's name or its corporate parent under any circumstances. RESA is peculiarly sensitive to concerns about how an EDC's "brand" recognition may appeal to a long-time customer's sense of loyalty to the EDC. In other words, by associating itself with the recognizable EDC brand or name, the potential exists for an EGS to gain an unfair competitive advantage. While this concern is appropriate and RESA recommends that it needs to be addressed in the context of these regulations, RESA finds the Commission's

currently proposed regulations too far-reaching, potentially burdensome and unnecessary for the following reasons.

First, subsection (iv) appears to prohibit any use of an EDC's name or logo unless disclaimers are used and licensing agreements are acquired. As written, however, this proposed regulations is too broad and may have far-reaching consequences that could overtake any positive impact of the regulation. As an example, many EGSs – affiliated and non-affiliated – include the EDC's name and other EDC "identifiers" in their various marketing materials to customers. For many, the EDC identifier is an important part of the marketing effort as EGSs inform customers about the role of generation suppliers in relation to the distribution companies. EGSs may also refer to the Price-to-Compare of the EDC and some include bill "mock ups" which include EDC identifiers to inform potential customers about how their charges are likely to appear on bills issued by the EDC. While the proposed regulations would permit such continued use, the proposed regulations require that such use can only occur if an EGS includes disclaimers and enters into an appropriate licensing agreement. The proposed regulations also specifically dictate the terms that must be included in the disclaimers as well as where the disclaimers must be located. RESA submits that requiring any EGS who is marketing to a potential customer and identifying that customer's EDC to include the proposed disclaimers in the marketing materials and secure a licensing agreement is unnecessary and burdensome.

Second, currently proposed subsection (v) prohibits any EGS from having the same name as an EDC or its corporate parent. Again, RESA views this subsection as too far reaching and restrictive for a number of reasons. Concerns about brand loyalty are generally only present in the EDC service territory where the EDC is using the name of the EDC or corporate parent. Therefore, an outright ban of the use in all service territories seems overly broad. Moreover, the

corporate name of a particular entity may not be well known to customers who do know the EDC's specific name. Thus, permitting an affiliated EGS to incorporate the parent company's name in its own may not have the impact that this regulation is attempting to curtail. Finally, changing a corporate name and informing customers of such change may be a costly and time-consuming process that may not be reasonably concluded within the six months set forth in the regulations.

For all these reasons, RESA recommends that subsections (iv) and (v) be simplified and made equally applicable to all EGSs – regardless of affiliation. RESA's recommendations require all EGSs using a name similar to the EDC to provide appropriate disclosures. Ensuring that an EGS's affiliation or relationship to an EDC is clearly explained to a potential customer and that EDCs comply with all the other restrictions set forth in the code of conduct is a reasonable way to address this issue. RESA does not recommend specific language that should be used for the disclosures nor how they should be presented to the customers as RESA supports permitting EGSs the flexibility to make these judgments based on the marketing activity and sales channel. The Commission always retains the right and ability to review these disclosures to determine their compliance with the regulations. RESA recommends the following modifications to this section:

- (iv) An company, regardless of affiliation, using a similar name as the electric distribution company must provide appropriate disclosures regarding the nature of the relationship which would include at least: (a) disclosure that the affiliated electric generation supplier is not the electric distribution company; (b) disclosure that the non-affiliated company is not the electric distribution company and not affiliated with the electric distribution company; and, (c) disclosure of the full legal name of the entity providing services under the similar name. ~~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.~~

D. Section (4): Accounting and training requirements

1. Sharing Employees and Corporate Support Services

Currently proposed subsection (iii) addresses the sharing of employees. The general rule set forth in the proposed regulation is that an EDC and affiliated EGS may share employees for corporate support services, emergency support service or tariff services offered to all EGSs. For the reasons discussed above in Section I.A, RESA recommends that the concept of requiring tariff services to be offered on a non-discriminatory basis be moved to Section (1). RESA does not propose any revisions regarding the sharing of employees for emergency support services. RESA does, however, offer modifications: (1) regarding when employees should be considered "shared;" (2) to prohibit the cross-subsidization of these employees with revenues received from the EDC's ratepayers; and, (3) to refine the exclusions from the definition of corporate support services.

RESA recognizes that corporate structures and internal employee organizational structures vary widely and the responsibilities of employees within various affiliates of an overall corporate structure may be complicated. RESA also recognizes that some corporate

structures rely on centralized corporate services structures whereby management level employees and executives are responsible for overseeing all of the functions of the corporation including those of the affiliates. Thus, the management-level supervisor of the legal department oversees all legal issues for all entities within the corporate structure. Likewise, human resources and information technology departments manage resources for all entities within the corporate organization. Attempting to identify every possible corporate structure and then proscribing rules for potential abuses within a specific corporate structure would be daunting and likely unsuccessful. For that RESA recommends the following modifications to the Commission's proposed regulations.

At the outset, RESA recommends that the regulations recognize that employees working exclusively for an affiliated generation supplier are not considered shared employees. These employees focus all of their time on the business of the electric generation supplier and, as such, are not "shared" with the EDC as contemplated by these regulations.

Additionally, the regulations should make clear that no revenues from ratepayers are used to pay for the functions of the affiliated generation supplier. This should be made clear within the definition of "corporate support services." Requiring shared employees who may perform functions for the EDC and the EGS to maintain records of their time devoted to the various entities is not unreasonable or unduly burdensome. Rather, such requirements are a reasonable way to ensure that ratepayer revenue is not improperly funding unregulated and competitive functions.

Finally, RESA recommends some revisions to the list of exclusions from the definition of corporate services. The term "service" should be qualified with the term "transmission." Further, and consistent with the discussion above, legal services, lobbying and information

systems – including information technology support – may all be aspects of an internal corporate structure which provides these services for all affiliates to manage the functioning and operation of the corporation as a whole. As written, the Commission’s regulations appear to prohibit employees of the corporation who are tasked with managing the entire corporation to oversee these specific functions for all affiliates. Such restrictions may not be practical in ensuring an efficient operation of the company since no employees are permitted to manage the provisioning of these services to the entire corporation. They may also be costly to implement. The creation of new and costly requirements will only hurt consumers by increasing their costs either in their distribution rates or in the price they pay for generation (whether supplied by a default service supplier or an EGS). RESA believes such a result is not necessary as the proposed regulations – with RESA suggested modifications – are reasonably tailored to ensure that EGSs with affiliated EDCs are not given a competitive advantage in the marketplace. Based on these considerations, RESA recommends that subsection (iii) be modified as follows:

(iii) An electric distribution company and affiliated electric generation supplier or transmission supplier may not share employees or services, except for corporate support services or, 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. Employees in an internal corporate support services structure that are dedicated or embedded exclusively to either the transmission supplier or the affiliated electric generation supplier are not considered shared employees.

(A) “Corporate support services” cannot, under any circumstances, result in the functions related to the affiliated generation supplier being funded through the rates or revenues received from ratepayers of the affiliated electric distribution company. Corporate support services do not include purchasing of electric transmission facilities, transmission service, or 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.

2. Training and Designation of a Compliance Contact

In subsection (iv), the Commission addresses training to ensure compliance with the regulations. RESA agrees that appropriate training is critical to ensuring that violations of these standards of conduct do not occur. To that end, RESA recommends that proposed subsection (iv) make clear that the training undertaken by the EDCs and its affiliated EGS is subject to audit by the Commission. Further, RESA recommends the addition of a new subsection (v) which requires an EDC with an affiliated EGS to designate a primary compliance contact who is responsible for ensuring compliance with the regulations and addressing any disputes that may occur. Identifying such person will facilitate the ability of the Commission and other aggrieved parties to address any concerns or disputes regarding compliance with the regulations.

RESA's recommended revisions are as follows:

- (iv) 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 employees in their content and application which shall be subject to Commission audit.
- (v) An electric distribution company with an affiliated electric generation supplier must designate a primary compliance contact who will be responsible for the standards of conduct set forth in these regulations and to address any disputes that may arise. The name and contact information of the compliance contact shall be provided to the Commission and made publicly available.

E. Section (5) Dispute Resolution Procedures

The Commission's proposed regulations require EDCs to adopt dispute resolution procedures to address alleged violations of the code of conduct. RESA supports this goal as violations of these regulations can seriously hamper the ability of competitors to offer services in

a market whereby an affiliated EGS is receiving an unfair advantage because of its relationship to an EDC. While RESA supports the proposed regulations' efforts to require an alleged violator of the regulations to provide timely responses to a party raising a dispute and to encourage parties to attempt to mediate the dispute, RESA submits that an expedited and more formal abbreviated dispute resolution process ("ADRP") should be implemented. The Commission has implemented an ADRP process to deal with disputes between competitive local exchange carriers and incumbent local exchange carriers that could hamper the ability of the competitive carrier to provide service.³ Such process should be implemented here. When disputes cannot be settled among the parties either informally or through mediation, expecting new entrants to the market to embark upon lengthy and costly formal proceedings before the Commission may result in such disputes not being addressed by the Commission. This result is not desirable for the marketplace as competitors may choose not to offer their services in a market where an affiliated EGS is able to dominate the market through its relationship with the EDC. Such an outcome has the potential to undermine all of the effort of this rulemaking. Empowering those entities in the marketplace to identify violations of these regulations and enabling them to pursue these violations through an expedited and formal proceeding is a necessary way to give meaning to these regulations which best serves the public interest. Therefore, RESA recommends the following changes to Section (5):

(5) Abbreviated Dispute Resolution Procedures.

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

³ *Joint Petition of Nextlink Pennsylvania, Inc. et al., for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Docket No. P-00991648, Final Order Reinstating Abbreviated Dispute Resolution Process entered August 31, 2005.

(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 designated compliance contact of 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~~ the designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

~~(C)~~ (ii) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the receipt of the dispute, then a party directly involved in the dispute may file a Dispute Resolution Petition with the Commission over which an Administrative Law Judge will preside and prepare an Initial Decision for the Commission's consideration. ~~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.~~

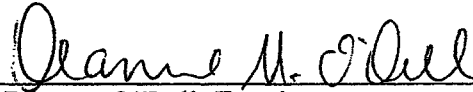
(A) The parties may, at any time during the alternative dispute resolution proceeding, request the services of a Commission mediator. The request shall act as a 30-day stay of the proceedings pending mediation.

~~(D)~~(B) The abbreviated dispute resolution process is not intended to replace or preclude any other procedures or remedies otherwise available to any of the parties under law, and a party's participation in this dispute resolution process shall not be considered a waiver of any available substantive or procedural rights. ~~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).~~

II. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding and looks forward to continuing to assist the Commission.

Respectfully submitted,



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Date: March 27, 2012

Attorneys for the Retail Energy Supply Association

ATTACHMENT A
RESA's Suggested Changes To Commission's Proposed Rulemaking
Included as Annex A of Proposed Rulemaking Order entered August 25, 2011
at Docket Number L-2012-2160942

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) Non-discrimination requirements in the provisioning of retail generation supply service.

(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.

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(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.

(vi) An electric distribution company shall provide all services offered to electric generation suppliers, whether through a supplier tariff or other operational rules and protocols, on a non-discriminatory basis.

(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. If the electric distribution company has implemented a customer referral program, then the electric distribution company may refer customers consistent with the terms of the customer referral program.

(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

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rates of an electric distribution company. No functions of an affiliated electric generation supplier or transmission supplier may be paid for or funded, either directly or indirectly, with rates or revenues received from ratepayers of the affiliated 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 company, regardless of affiliation, using a similar name as the electric distribution company must provide appropriate disclosures regarding the nature of the relationship which would include at least: (a) disclosure that the affiliated electric generation supplier is not the electric distribution company; (b) disclosure that the non-affiliated company is not the electric distribution company and not affiliated with the electric distribution company; and, (c) disclosure of the full legal name of the entity providing services under the similar name. ~~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.~~

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~~(vi)~~(v) 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.

~~(vii)~~(vi) 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.

~~(viii)~~(vii) 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.

~~(ix)~~ (viii) 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.

(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).

ATTACHMENT A
RESA's Suggested Changes To Commission's Proposed Rulemaking
Included as Annex A of Proposed Rulemaking Order entered August 25, 2011
at Docket Number L-2012-2160942

(iii) An electric distribution company and affiliated electric generation supplier or transmission supplier may not share employees or services, except for corporate support services or, 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. Employees in an internal corporate support services structure that are dedicated or embedded exclusively to either the transmission supplier or the affiliated electric generation supplier are not considered shared employees.

(A) "Corporate support services" cannot, under any circumstances, result in the functions related to the affiliated generation supplier being funded through the rates or revenues received from ratepayers of the affiliated electric distribution company. Corporate support services do not include purchasing of electric transmission facilities, transmission service, or 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.

(B) "Emergency support services" are temporary services necessary to protect consumer safety or prevent interruption of service.

(C) 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.

(iv) 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 employees in their content and application which shall be subject to Commission audit.

(v) An electric distribution company with an affiliated electric generation supplier must designate a primary compliance contact who will be responsible for the standards of conduct set forth in these regulations and to address any disputes that may arise. The name and contact information of the compliance contact shall be provided to the Commission and made publicly available.

ATTACHMENT A
RESA's Suggested Changes To Commission's Proposed Rulemaking
Included as Annex A of Proposed Rulemaking Order entered August 25, 2011
at Docket Number L-2012-2160942

(5) Abbreviated 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 designated compliance contact of 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~~ the designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

~~(C)~~(ii) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the receipt of the dispute, then a party directly involved in the dispute may file a Dispute Resolution Petition with the Commission over which an Administrative Law Judge will preside and prepare an Initial Decision for the Commission's consideration. ~~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.~~

(A) The parties may, at any time during the alternative dispute resolution proceeding, request the services of a Commission mediator. The request shall act as a 30-day stay of the proceedings pending mediation.

~~(D)~~ (B) The abbreviated dispute resolution process is not intended to replace or preclude any other procedures or remedies otherwise available to any of the parties under law, and a party's participation in this dispute resolution process shall not be considered a waiver of any available substantive or procedural rights. 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,

ATTACHMENT A
RESA's Suggested Changes To Commission's Proposed Rulemaking
Included as Annex A of Proposed Rulemaking Order entered August 25, 2011
at Docket Number L-2012-2160942

~~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).