

Title 23. Public Utilities and Regulated Industries

Chapter XVI. Arkansas Public Service Commission

Subchapter A. Generally

Part 450. Affiliate Transaction Rules

Subpart 1. Generally

23 CAR § 450-101. Authority.

This part is promulgated pursuant to the Arkansas Public Service Commission's authority under Arkansas Code §§ 23-2-301, 23-2-304(a)(3), 23-2-305, 23-3-102(e), 23-3-103, and 23-18-103.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule I of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-102. Purpose.

The purpose of this part is to:

- (1) Ensure that all transactions among or between a public utility and any affiliates or divisions do not result in rates which are unreasonable and in violation of Arkansas Code §§ 23-4-103 and 23-4-104;
- (2) Ensure that the rates charged by public utilities do not provide any subsidy to affiliates or divisions of the public utility which:
 - (A) Are involved in nonutility activities; or
 - (B) Provide services to the public utility;
- (3) Prevent anti-competitive behavior and market manipulation or market power; and
- (4) Prevent financial risk to rate-regulated public utility operations which may arise from business endeavors of an unregulated affiliate.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule II of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-103. Definitions.

As used in this part:

(1) "Affiliate" means:

(A) Any person covered by the definition of:

(i) "Affiliated interest with a public utility" under Arkansas Code § 23-1-101(1);

(ii) "Affiliate" under Arkansas Code § 23-3-302(2); or

(iii) "Affiliated company" under Arkansas Code § 23-18-103 (a)(1);

and

(B) Any unit, division, separate business activity, or operating part which:

(i) Is within a public utility; and

(ii) Provides assets, goods, services, information having competitive value, personnel, or financial resources other than, or in addition to, public utility service provided directly to Arkansas retail customers;

(2) "Affiliate transaction" means a purchase, sale, trade, lease, transfer, sharing or joint use, between a public utility and any affiliate thereof, of assets, whether tangible or intangible, goods, services, information having competitive value, personnel, or financial resources but not including:

(A) Electricity or gas;

(B) Electric transmission;

(C) Any purchase, sale, trade, lease, transfer, sharing or joint use, between a public utility and any affiliate thereof, of:

(i) Capacity and energy;

(ii) Gas, coal, uranium, or other fuel; and

(iii) Related gathering, storage, transportation or assets, services and consumables, in each case the costs of which are recovered by the public utility through Arkansas Public Service Commission-approved:

(a) Base rates; or

(b) A:

(1) Purchased gas adjustment;

(2) Purchased power adjustment;

(3) Fuel adjustment; or

(4) Similar mechanism; or

(D) Transactions described in Arkansas Code § 23-3-102(e)(2);

(3) "Agreed-upon procedures" means the activities performed by an independent accountant conforming with Interim Attestation Standard AT 201 of the Public Company Accounting Oversight Board, or successor provision, as in force at the time such procedures are required under this part;

(4) "Commission" means the Arkansas Public Service Commission;

(5) "Direct cost" of a product or service means a cost solely attributable, on a cost-causative basis, to the production or provision of such individual product or service where the attribution does not require the use of allocations to separate the costs incurred in the production of other services or products;

(6) "Fully allocated cost", with respect to a particular product or service, is the sum of the direct cost and indirect cost of that product or service;

(7)(A) "Market price" means a price determined by a public utility as the amount it would pay or receive for receiving or providing a good or service in an affiliate transaction based on comparisons of similar transactions with, or the price of similar goods and services available from, unrelated third parties.

(B) A public utility may make such determination based on:

(i) Surveys

(ii) Specific price inquiries;

(iii) Benchmarking;

(iv) Competitive bids; or

(v) Any other reasonable method.

(C) For goods or services for which there is no readily available comparative market price, the price shall be the fully allocated cost of the person supplying the goods or services;

(8) "Indirect cost" of a product or service means a cost, other than a direct cost, properly attributable to the production or provision of an individual product or service;

(9)(A) "Nonutility asset" is an asset used for one (1) or more nonutility businesses.

(B) Where an asset is used for both utility and nonutility businesses, a "nonutility asset" is an appropriate allocated portion of the shared asset, as determined by the Arkansas Public Service Commission;

(10) "Nonutility business" means a business other than the provision of public utility goods or services as defined at subdivision (12) of this section;

(11) "Public utility" means all jurisdictional rate-regulated public utilities;

(12) "Public utility goods or services" mean goods or services which the public utility is required, by Arkansas statute or Arkansas Public Service Commission rules, to provide to Arkansas retail customers;

(13) "Service company" means a person or division that is organized principally for the purpose of providing shared corporate support services to a public utility or its affiliates or divisions;

(14) "Shared corporate support services" means services shared between or among a public utility, its parent holding company, or an affiliate or division, such as:

- (A) Human resources;
- (B) Procurement;
- (C) Information technology;
- (D) Regulatory services;
- (E) Administrative services;
- (F) Real estate services;
- (G) Legal services;

- (H) Accounting services;
- (I) Environmental services;
- (J) Research and development;
- (K) Internal audit;
- (L) Community relations;
- (M) Corporate communications;
- (N) Financial services;
- (O) Financial planning and management support; and
- (P) Corporate services; and

(15) "Utility-related business" means a business which is, or which engages in:

- (A) A rate-regulated utility in another state of the United States;
- (B) Independent power generation;
- (C) Energy marketing and trading;
- (D) Gas:
 - (i) Gathering;
 - (ii) Production;
 - (iii) Distribution; and
 - (iv) Transportation;
- (E) Providing fuel to generating plants;
- (F) A nuclear decommissioning trust;
- (G) An entity created to facilitate tax advantages for the holding company

system;

- (H) An entity created to facilitate financing transactions;
- (I) A captive insurance and other risk management entity;
- (J) An entity that holds or manages emission allowances or other environmental allowances or credits;
- (K) An entity created to facilitate risk management with respect to the ownership of real property and improvements thereon;

(L) An entity that engages in producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing gas, oil, electricity,

thermal energy, and/or steam energy, to wholesale and/or retail customers;

(M) An entity that provides or is engaged in:

(i) Energy management services and demand side management activities;

(ii) Development and commercialization of electrotechnologies related to energy:

(a) Conservation;

(b) Storage; and

(c) Conversion;

(iii) Ownership, operation, sale, installation, and servicing of refueling, recharging, and conversion equipment and facilities relating to electric and compressed natural gas-powered vehicles;

(iv) Sale of electric and gas appliances or equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity and equipment that enables the use of gas or electricity as an alternate fuel and the installation and servicing thereof;

(v) Production, conversion, sale, and distribution of thermal energy products, such as:

(a) Process steam;

(b) Heat;

(c) Hot water;

(d) Chilled water;

(e) Air conditioning;

(f) Compressed air and similar products;

(g) Alternative fuels;

(h) Renewable energy resources; and

(i) The servicing of thermal resources;

(vi) Sale of technical, operational, management, and other similar kinds of services and expertise relating to:

(a) Distribution;

- (b) Transmission;
- (c) Generation engineering;
- (d) Development;
- (e) Design and rehabilitation;
- (f) Construction;
- (g) Maintenance and operation;
- (h) Fuel procurement, delivery, and management; and
- (i) Environmental licensing, testing, and remediation;
- (vii) Ownership, operation, and servicing of fuel procurement, transportation, handling, and storage facilities, scrubbers, and resource recovery and waste water treatment facilities, including activities related to nuclear fuels;
- (viii) Development and commercialization of technologies or processes that utilize coal waste or by-products as an integral component of such technology or process;
- (ix) Securitization activities;
- (x) Development activities relating to other authorized electric- or gas-related activities;
- (xi) Local community development investments relating to other authorized electric or gas-related activities; or
- (xii) Sales of assets related to other authorized electric- or gas-related activities; or
- (N) Other utility-related activities as determined on a case-by-case basis by the Arkansas Public Service Commission.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule III of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-104. Affiliate financial transactions.

(a) Except as otherwise provided in this section, a public utility shall not engage in any affiliate transaction in which the public utility:

(1) Provides to or shares with any affiliate any financial resource or financial benefit, including but not limited to any:

(A) Loan;

(B) Extension of credit;

(C) Guarantee or assumption of debt;

(D) Indemnification;

(E) Pledge of collateral; or

(F) Encumbrance of or restriction on the disposition of any public utility;

or

(2) Incurs any debt for purposes of investing in, or otherwise supporting, any business other than the provision of public utility service in Arkansas.

(b) A public utility may obtain financial resources from an affiliate for public utility purposes, provided that the cost to the public utility of such financial resource does not exceed the lower of:

(1) Market price; or

(2) The affiliate's fully allocated cost.

(c) This section shall not apply to or prohibit any of the following unless the Arkansas Public Service Commission finds, after notice and hearing, unless waived by the parties, and consistent with applicable law, that such arrangement is not consistent with the purposes of this part as defined in 23 CAR § 450-102:

(1) An interaffiliate financial transaction integral to an affiliate transaction for goods or services subject to and consistent with 23 CAR § 450-105;

(2) The payment of dividends by a public utility to affiliates that own stock in such public utility, including adjustments to the capital accounts of divisions within the public utility;

(3) Transactions in connection with the factoring of accounts receivable, the creation and use of special purpose financing entities, and the creation and use of

money pool or cash management arrangements, subject to safeguards to prevent cross-subsidization and unauthorized pledges or encumbrances of public utility assets;

(4) Any loan, extension of credit, guarantee, assumption of debt, restriction on disposition of assets, indemnification, investment, or pledge of assets by a public utility for the purpose of supporting the utility-related business activities of an affiliate;

(5) Any debt incurred by a public utility, including debt that imposes any encumbrance on, or any restriction placed on the disposition of any assets of, the public utility for the purpose of supporting the utility-related business activities of an affiliate;

(6) Receipt by a public utility of capital contributions or proceeds from the sale of common stock to its parent holding company;

(7) Receipt by a public utility of financial resources from an affiliate for any nonpublic utility purpose, provided that the cost to the public utility of such financial resource shall not be recovered from the public utility's customers in Arkansas;

(8) Any financing arrangement involving a public utility and any affiliate that was in existence as of the effective date of this part, provided:

(A) The public utility files with the Arkansas Public Service Commission a description of each such arrangement involving a public utility and any affiliate having an annual value or amount in excess of three hundred fifty thousand dollars (\$350,000); and

(B) Such filing is received within one hundred twenty (120) days of the effective date of this part; and

(9) Any other affiliate financial transaction proposed by a public utility, provided that:

(A) The public utility first files with the Arkansas Public Service Commission an application for approval of such proposed affiliate financial transaction including:

(i) A detailed description thereof; and

(ii) Any relevant supporting documentation; and

(B) The Arkansas Public Service Commission finds, after notice and hearing, unless waived by the parties, on such application, that the proposed affiliate

financial transaction is consistent with the purposes of this part as defined in 23 CAR § 450-102.

(d) Nothing in this section shall alter or amend the Arkansas Public Service Commission's authority or the obligation of public utilities set out in 23 CAR § 462-501 of the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule IV of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-105. Affiliate transactions other than financial transactions.

(a) Except as otherwise provided in this section, or in other applicable law, with respect to an affiliate transaction involving assets, goods, services, information having competitive value, or personnel, a public utility shall not:

(1) Receive anything of value, unless the compensation paid by the public utility does not exceed the lower of market price or fully allocated cost of the item received; and

(2) Provide anything of value, unless the compensation received by the public utility is no less than the higher of market price or fully allocated cost of the item provided.

(b) This section shall not apply to or prohibit any of the following unless the Arkansas Public Service Commission finds, after notice and hearing, unless waived by the parties, and consistent with applicable law, that such arrangement is not consistent with the purposes of this part as defined in 23 CAR § 450-102:

(1) Exchanges of information:

(A) Necessary to the reliable provision of public utility service by a public utility, provided such exchange occurs consistently with guidelines:

- (i) Published by the utility; and
 - (ii) Applied equally to affiliates and nonaffiliate entities;
- (B) Required by or necessary to comply with federal statutes or regulations; or
- (C) Between or among a public utility, its parent holding company, a service company, and any affiliated rate-regulated utility in another state of the United States;
- (2) The provision of shared corporate support services, at fully allocated cost, between or among a public utility and any affiliate, including a service company;
- (3) The provision, at fully allocated cost, of assets, goods, services, or personnel between or among a public utility and an affiliated rate-regulated utility in another state of the United States;
- (4) The provision of assets, goods, services, information having competitive value, or personnel at a price determined by competitive bidding or pursuant to a regulatory filed or approved tariff or contract; or
- (5) Any other affiliate transaction proposed by a public utility to be exempted from subsection (a) of this section provided that:
 - (A) The public utility first files with the Arkansas Public Service Commission an application for an exemption of such proposed affiliate transaction from the requirements of subsection (a) of this section including:
 - (i) A detailed description of the proposed transaction; and
 - (ii) Any relevant supporting documentation; and
 - (B) The Arkansas Public Service Commission finds, after notice and hearing, unless waived by the parties, on such application and consistent with applicable law, that the proposed exemption is consistent with the purposes of this part as defined in 23 CAR § 450-102.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule V of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-106. Books, records, and procedures.

(a) Recordkeeping.

(1)(A) The public utility shall:

(i) Keep books and records separately from the books and records of its affiliates; and

(ii) Maintain such books and records in accordance with:

(a) The applicable rules and orders of the Arkansas Public Service Commission; and

(b) Generally Accepted Accounting Principles (GAAP) as amended.

(B) Provided that, any multijurisdictional public utility whose Arkansas rates are set pursuant to jurisdictional allocations among such public utility's various regulatory jurisdictions shall not be required to keep books and records other than on a combined basis, including all its utility business.

(2) Such books and records shall contain all information necessary to:

(A) Identify all affiliate transactions in which the public utility participated; and

(B) Identify and allocate or impute all revenues and costs, both direct and indirect, associated with all such affiliate transactions.

(3) Upon the creation of a new affiliate that will participate in affiliate transactions with a public utility, the utility shall, no later than sixty (60) days after the creation of such affiliate, notify the Arkansas Public Service Commission by letter to the secretary of the Arkansas Public Service Commission of the creation of such new affiliate, which notice shall include an explanation of how the public utility will implement this part with respect to such new affiliate.

(4) Each public utility shall maintain, for at least five (5) years, records of each affiliate transaction in which it participated and the records shall:

- (A) Be made contemporaneously with each affiliate transaction;
- (B) Be in a readily retrievable format; and
- (C) Include, for each affiliate transaction:
 - (i) The identity of the affiliate involved in the affiliate transaction;
 - (ii) The commencement and termination dates of the affiliate transaction;
 - (iii) A description of the affiliate transaction, including the nature and quantity of value provided and received;
 - (iv) The dollar amount of the affiliate transaction and the manner in which such dollar amount was calculated;
 - (v) All other terms of the affiliate transaction;
 - (vi) The direct and indirect costs associated with the affiliate transaction, including any allocation formula used to attribute indirect costs; and
 - (vii) All information necessary to verify compliance with this part and the accuracy of amounts stated on the public utility's books and records, such information to include, but not be limited to:
 - (a) Invoices, vouchers, communications, journal entries, work papers; and
 - (b) Information supporting the price of each affiliate transaction, including but not limited to:
 - (1) The cost and allocation method of the affiliate transaction; and
 - (2) When the cost was the result of a competitive bidding process, the market price and basis for the market price of the affiliate transaction; and
- (D)(i) Be summarized and said summary for the prior calendar year shall be filed annually with the Arkansas Public Service Commission as part of the annual report required by 23 CAR § 450-109.
- (ii) Unless otherwise ordered by the Arkansas Public Service Commission, a public utility may satisfy the requirement of subdivision (c)(4)(A) of this

section by filing with the Arkansas Public Service Commission a copy of Federal Energy Regulatory Commission Form 60, Annual Report of Centralized Service Companies.

(5) Each public utility shall file contemporaneously with its annual report under subdivision (c)(4)(A) of this section the following information:

(A) A summary report indicating the aggregate dollar amount of all transactions described in 23 CAR § 450-103(2)(A) – (D) which the utility has conducted with each affiliate, as defined under 23 CAR § 450-103(1) including the name of each such affiliate.

(6)(A) Each public utility shall maintain, update annually, train appropriate employees in, and within one hundred twenty (120) days following the effectiveness of this part, and thereafter, to the extent of material changes, in each annual report required under 23 CAR § 450-109, file with the Arkansas Public Service Commission, written procedures which ensure compliance with this part.

(B) Such written procedures shall include, at a minimum:

(i) All internal rules, practices, financial recordkeeping requirements, and other policies governing affiliate transactions among or between the public utility and its affiliates;

(ii) The names and addresses of all of the public utility's affiliates that participate in affiliate transactions with the public utility;

(iii) An organizational chart depicting the ownership relationships between the public utility and those affiliates that participate in affiliate transactions with the public utility;

(iv) A description of the types of assets, goods, and services provided in any existing affiliate transaction lasting more than one (1) year; and

(v) A cost allocation manual or other description of the methods used to determine compensation in affiliate transactions.

(b) **Arkansas Public Service Commission access.** The Arkansas Public Service Commission shall have access to all books and records of a public utility and its affiliates that participate in transactions with the public utility, to the extent such access is

relevant to determining compliance with all applicable Arkansas statutes and rules or establishing rates subject to the Arkansas Public Service Commission's jurisdiction.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule VI of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-107. Bond rating downgrades.

(a) This section applies only to a public utility that has:

(1) A separate, stand-alone bond rating by Standard and Poor's or Moody's;
and

(2) Affiliates, other than utility-related businesses, with assets whose total book value exceeds ten percent (10%) of the book value of the public utility's assets.

(b)(1) If a public utility's bond ratings are downgraded to a Standard and Poor's rating of BB+ or lower, or to a Moody's rating of Ba1 or lower, such utility shall notify the Arkansas Public Service Commission within thirty (30) days of such downgrading.

(2) The public utility will provide the Arkansas Public Service Commission a copy of publicly released information about such rating downgrade and such other information as the Arkansas Public Service Commission requests.

(c) If the Arkansas Public Service Commission finds, after notice and opportunity for hearing, unless waived by the parties, that the public utility's bond ratings downgrade would not have occurred but for one (1) or more relationships between such public utility and one (1) or more affiliates, then the Arkansas Public Service Commission may impose remedies designed to insulate the public utility and its customers from any diminution in the public utility's ability to carry out its obligation to serve at reasonable rates.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule VII of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-108. Utility ownership of nonutility business.

(a) A public utility shall not directly engage in a nonutility business other than a utility-related business if the total book value of such nonutility business's nonutility assets owned by the utility exceeds ten percent (10%) of the book value of the total assets of the public utility and all its affiliates.

(b) This section does not apply to or prohibit a public utility or any affiliate thereof from continuing to engage in any nonutility business existing as of the effective date of this part, provided:

(1) The public utility files with the Arkansas Public Service Commission a description of such nonutility business existing as of the effective date of this part; and

(2) Such filing is received within one hundred twenty (120) days of the effective date of this part.

(c) Each public utility or its public utility holding company shall file an annual report with the Arkansas Public Service Commission in accordance with 23 CAR § 450-109 that includes:

(1) A certification by the president of the public utility that the public utility is in compliance with this section; and

(2) All financial information necessary for the Arkansas Public Service Commission to determine the utility is complying with the requirements in subsection (a) of this section.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule VIII of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-109. Compliance.

(a) No later than the June 1 following the first full calendar year after the effective date of this part, and no later than June 1 of every year thereafter, each public utility shall file with the Arkansas Public Service Commission:

(1) A notice, signed by both the public utility's president or chief executive officer and its chief financial officer, certifying the public utility's compliance with this part in the prior year; and

(2) The other annual information and reports required under this part.

(b)(1) The Arkansas Public Service Commission may at any time initiate a proceeding against a public utility to determine whether a reasonable basis exists that the public utility is out of compliance with this part.

(2)(A) If the Arkansas Public Service Commission after notice and hearing, unless waived by the parties, makes such determination and specifically identifies the rule or rules or procedures which may be in noncompliance, then the Arkansas Public Service Commission may require the public utility to engage an independent accountant, which, at the public utility's election, may be the accountant that regularly audits the public utility's financial statements, to conduct agreed-upon procedures to review identified accounting entries, methods, or procedures used by the public utility in connection with this part.

(B) A work plan outlining such agreed-upon procedures, together with such letters or acknowledgements as shall be reasonably required by the accountant in connection with such engagement, shall be developed by the public utility and filed with the Arkansas Public Service Commission for approval.

(C) Upon review of the information provided by such independent accountant after undertaking such agreed-upon procedures, which information shall be filed by the public utility with the Arkansas Public Service Commission, the Arkansas Public Service Commission may, after notice and hearing, unless waived by the parties, order the public utility to make changes in its accounting methods or procedures found by the Arkansas Public Service Commission to be reasonably necessary to ensure future compliance with this part.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule IX of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-110. Miscellaneous.

The costs of any affiliate transaction found to be inconsistent with this part shall be adjusted in a ratemaking proceeding to be consistent with this part.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Rule X of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 450-111. Exemptions.

(a) Any utility may petition for exemption from any of this part, on the basis that application of the rule would not be in the public interest, in accordance with Rule 1.03 of the Arkansas Public Services Commission's Rules of Practice and Procedure.

(b) Any existing financing arrangements, provision of corporate services, or other affiliate relationship which could be deemed to be in violation of this part will be allowed to continue for a period of one (1) year from adoption of this part in order to allow the utilities involved to seek an exemption from the application of this part for those existing circumstances.

Authority. Arkansas Code §§ 23-18-103, 23-2-305.

Codification Notes. This section was promulgated as Rule XI of the Affiliate Transaction Rules prior to codification in the Code of Arkansas Rules.