

§3205. Marketing; large utilities

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest. [PL 1997, c. 316, §3 (NEW).]
- B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider. [PL 1997, c. 316, §3 (NEW).]
- C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section. [PL 1997, c. 316, §3 (NEW).]
- D. "Related entity" means:
 - (1) Any person who owns, directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the purchasing entity;
 - (2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);
 - (3) Any person 10% or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;
 - (4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or
 - (5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest. [PL 1997, c. 316, §3 (NEW).]
- E. "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company. [PL 1997, c. 316, §3 (NEW).]

[PL 1997, c. 316, §3 (NEW).]

2. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

- A. Outside the service territory of the distribution utility with which it is affiliated; and [PL 1997, c. 316, §3 (NEW).]
- B. Within the service territory of the distribution utility with which it is affiliated, except that:
 - (1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and
 - (2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

The marketing limitations in this paragraph do not apply to competitive electricity service or standard-offer service in the service territory or any portion of the service territory of a distribution utility that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the

commission finds that the level of competitive electricity service and standard-offer service competition in the area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine is substantially similar to the level of competitive electricity service and standard-offer service competition in the area of the State that is within the New England independent system operator control area. All kilowatt hours sales and electric load in any portion of a distribution utility's service territory that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine must be excluded from the calculation under this paragraph for those portions of the distribution utility's service territory that is not located in an area administered by the independent system administrator for northern Maine. [PL 2013, c. 346, §1 (AMD).]

No later than January 1, 2005, based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the joint standing committee of the legislature having jurisdiction over utility matters.

[PL 2013, c. 346, §1 (AMD).]

3. Standards of conduct. The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service. [PL 1997, c. 316, §3 (NEW).]

B. All regulated products and services offered by a distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination. [PL 1997, c. 316, §3 (NEW).]

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service. [PL 1997, c. 316, §3 (NEW).]

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time. [PL 1997, c. 316, §3 (NEW).]

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved. [PL 1997, c. 316, §3 (NEW).]

F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information. [PL 1997, c. 316, §3 (NEW).]

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

- (1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or
- (2) Any market information developed by the distribution utility in the course of responding to requests for distribution service. [PL 1997, c. 316, §3 (NEW).]

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests and shall keep a log of any other transactions between the distribution utility and the affiliated provider that the commission may by rule require. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph. [PL 1999, c. 398, Pt. G, §1 (AMD).]

I. [PL 1999, c. 237, §2 (RP).]

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the distribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider. [PL 1997, c. 316, §3 (NEW).]

K. Employees of a distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive provider or nonaffiliated competitive electricity provider. [PL 1997, c. 316, §3 (NEW).]

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

- (1) Sharing employees or facilities would be in the best interest of the public;
- (2) Sharing employees or facilities would have no anticompetitive effect; and
- (3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary. [PL 1997, c. 316, §3 (NEW).]

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission. [PL 1997, c. 316, §3 (NEW).]

N. A distribution utility shall establish and file with the commission a dispute resolution procedure to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending. [PL 1997, c. 316, §3 (NEW).]

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection. [PL 1997, c. 316, §3 (NEW).]

P. A distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section. [PL 1997, c. 316, §3 (NEW).]

Q. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section. [PL 1999, c. 398, Pt. G, §2 (NEW).]

[PL 1999, c. 237, §2 (AMD); PL 1999, c. 398, Pt. G, §§1,2 (AMD).]

4. Rules. The commission shall adopt rules implementing the provisions of this section, including:

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility; [PL 1997, c. 316, §3 (NEW).]

B. Rules governing the procedure for divestiture; and [PL 1997, c. 316, §3 (NEW).]

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section. [PL 1997, c. 316, §3 (NEW).]

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by distribution utilities to every employee of the distribution utility and posted prominently in every employee location.

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

[PL 1997, c. 316, §3 (NEW).]

5. Penalties.

[PL 1999, c. 398, Pt. G, §3 (RP).]

6. Prohibition; divestiture.

[PL 1999, c. 398, Pt. G, §3 (RP).]

7. Effect of divestiture.

[PL 1999, c. 398, Pt. G, §3 (RP).]

SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 237, §2 (AMD). PL 1999, c. 398, §§G1-3 (AMD). PL 2013, c. 346, §1 (AMD).

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