

220 CMR 12.00: STANDARDS OF CONDUCT FOR DISTRIBUTION COMPANIES AND THEIR COMPETITIVE AFFILIATES

Section

- 12.01: Purpose and Scope
- 12.02: Definitions
- 12.03: General Standards of Conduct.
- 12.04: Pricing of Transactions Between Distribution Companies and Affiliates
- 12.05: Penalties

12.01: Purpose and Scope

- (1) Purpose. 220 CMR 12.00 sets forth the Standards of Conduct governing the relationship between a Distribution Company and its Affiliates transacting business in Massachusetts.
- (2) Scope. 220 CMR 12.00 applies to all Distribution Companies under the Department's jurisdiction. 220 CMR 12.00 does not supersede existing applicable law and regulations.

12.02: Definitions

Affiliate refers to any "affiliated company," as defined in M.G.L. c. 164, § 85, or any unit or division within a Distribution Company or its parent, or any separate legal entity either owned or subject to the common control of the Distribution Company or its parent.

Antitrust Laws are federal and state statutes, including the Sherman Act, 15 U.S.C. §§ 1 through 7, the Clayton Act, 15 U.S.C. §§ 12 through 27, and the Massachusetts Antitrust Act, M.G.L. c. 93, §§ 1 through 14A, and related judicial decisions.

Competitive Affiliate refers to any Affiliate that is engaged in the sale or marketing of products or services on a competitive basis.

Competitive Energy Affiliate refers to any Competitive Affiliate that is engaged in the sale or marketing of natural gas, electricity, or Energy-related Services on a competitive basis.

Competitive Non-energy Affiliate refers to any Competitive Affiliate that is engaged in the sale or marketing of products or service, other than natural gas, electricity, or Energy-related Services, on a competitive basis.

Department refers to the Department of Public Utilities.

Distribution Company refers to a natural gas local distribution company or Electric Company that provides distribution services under the Department's jurisdiction.

Electric Company is defined as in M.G.L. c. 164, § 1.

Employee refers to an officer, director, employee or agent who has specific knowledge of, or direct access to, information not otherwise available to Non-affiliated Energy Suppliers that could provide a Competitive Energy Affiliate with an undue advantage.

Energy-related Services are those services the costs of which have been recovered by Distribution Companies through rates approved by the Department.

Non-affiliated Energy Supplier refers to any entity, including aggregators, engaged in marketing, brokering or selling natural gas, electricity, or energy-related services to retail customers where such product or service is also provided by a Competitive Energy Affiliate.

Non-affiliated Supplier refers to any entity engaged in selling or marketing products or services where such product or service is also provided by a Competitive Affiliate.

12.03: General Standards of Conduct.

- (1) A Distribution Company shall apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.
- (2) A Distribution Company shall strictly enforce tariff provisions for which there is no discretion in the application of the provision.
- (3) A Distribution Company shall not, through a tariff provision or otherwise, give its Competitive Affiliate or customers of its Competitive Affiliate preference over Non-affiliated Suppliers or their customers in matters relating to any product or service that is subject to a tariff on file with the Department.
- (4) If a Distribution Company provides its Competitive Energy Affiliate, or a customer of its Competitive Energy Affiliate, any product or service other than general and administrative support services, it shall make the same products or services available to all Non-affiliated Energy Suppliers or their customers on a non-discriminatory basis.
- (5) A Distribution Company shall not offer or sell electricity or natural gas commodity or capacity to its Competitive Affiliate without simultaneously posting the offering electronically on a source generally available to the market or otherwise making a sufficient offering to the market.
- (6)
 - (a) If a Distribution Company offers its Competitive Energy Affiliate, or a customer of its Competitive Energy Affiliate, a discount, rebate or fee waiver for any product or service, it shall make the same available on a non-discriminatory basis to all Non-affiliated Energy Suppliers or customers.
 - (b) If a Distribution Company offers a Competitive Affiliate, or a customer of a Competitive Affiliate, a discount, rebate or fee waiver for any product or service that is subject to a tariff on file with the Department, it shall make the same available to all Non-affiliated Suppliers and their customers simultaneously, to the extent technically possible, on a comparable basis.
- (7) A Distribution Company shall process all same or similar requests for any product, service, or information in the same manner and within the same period of time, consistent with the rules set forth in 220 CMR 12.03(6).
- (8) A Distribution Company shall not condition or tie the provision of any product, service, or rate agreement by the Distribution Company to the provision of any product or service by its Competitive Affiliate.
- (9) A Distribution Company shall not release any proprietary customer information to an Affiliate without the prior written authorization of the customer.
- (10) To the extent that a Distribution Company provides a Competitive Affiliate with information not readily available or generally known to any Non-affiliated Supplier, which information was obtained by the Distribution Company in the course of providing distribution service to its customers, the Distribution Company shall make that information available on a non-discriminatory basis to all Non-affiliated Suppliers transacting business in its service territory. 220 CMR 12.03(10) does not apply to customer-specific information obtained with proper authorization, information necessary to fulfill the provisions of a contract, or information relating to the provision of general and administrative support services.
- (11) A Distribution Company shall refrain from giving any appearance of speaking on behalf of its Competitive Affiliate in any and all contacts or communications with customers or potential customers. The Distribution Company shall not represent that any advantage accrues to customers or others in the use of the Distribution Company's services as a result of that customer or others dealing with the Competitive Affiliate.

12.03: continued

(12) The Distribution Company shall not engage in joint advertising or marketing programs of any sort with its Competitive Energy Affiliate, nor shall the Distribution Company directly promote or market any product or service offered by any Competitive Affiliate.

(13) Subject to 220 CMR 12.03(12), a Distribution Company may allow an Affiliate, including a Competitive Energy Affiliate, to identify itself, through the use of a name, logo, or both, as an Affiliate of the Distribution Company, provided that such use by a Competitive Energy Affiliate shall be accompanied by a disclaimer that shall state that no advantage accrues to customers or others in the use of the Distribution Company's services as a result of that customer or others dealing with the Competitive Energy Affiliate, and that the customer or others need not purchase any product or service from any Competitive Energy Affiliate in order to obtain services from the Distribution Company on a non-discriminatory basis. The disclaimer shall be written or spoken, or both, as may be appropriate given the context of the use of the name or logo.

(14) If a customer requests information about Energy Suppliers, the Distribution Company shall provide a current list of all Energy Suppliers operating on the system or registered with the Department, including its Energy-related Competitive Affiliate, but shall not promote its affiliate. The list of Energy Suppliers shall be in random sequence, and not in alphabetical order. The list shall be updated every 60 days to allow for a change in the random sequence.

(15) Employees of a Distribution Company shall not be shared with a Competitive Energy Affiliate, and shall be physically separated from those of the Competitive Energy Affiliate. The Distribution Company shall fully and transparently allocate costs for any shared facilities or general and administrative support services provided to any Competitive Affiliate.

(16) A Distribution Company and its Competitive Affiliate shall keep separate books of accounts and records which shall be subject to review by the Department in accordance with the provisions of M.G.L. c. 164, § 85.

(17) The Department may approve an exemption from the separation requirements of 220 CMR 12.03(15) upon a showing by the Distribution Company that shared employees or facilities would be in the best interests of the ratepayers and have minimal anticompetitive effect, and that the costs can be fully and accurately allocated between the Distribution Company and its Competitive Energy Affiliate. Such exemption shall be valid until such time that the Department determines that modification or removal of the exemption is necessary.

(18) A Distribution Company shall establish and file with the Department a dispute resolution procedure to address complaints alleging violations of 220 CMR 12.00. Such procedure shall designate a neutral person to conduct an investigation of the complaint; require that said person communicate the results of the investigation to the claimant in writing within 30 days after the complaint is received; and require that such communication describe any action taken and notify the complainant of his or her right to complain to the Department if not satisfied with the results of the investigation.

(19) A Distribution Company shall maintain a log of all new, resolved, and pending complaints alleging violations of 220 CMR 12.00. The log shall be subject to review by the Department and shall include the date each complaint was received; the complainant's name, address, and telephone number; a written description of the complaint; and the resolution of the complaint, or the reason why the complaint is still pending.

(20) Notwithstanding any other provisions in 220 CMR 12.00, in emergency circumstances, a Distribution Company shall take any actions necessary to ensure public safety and system reliability. A Distribution Company shall maintain a log of all such actions, subject to review by the Department.

12.04: Pricing of Transactions Between Distribution Companies and Affiliates

- (1) A Distribution Company may sell, lease, or otherwise transfer to an Affiliate, including a Competitive Affiliate, an asset, the cost of which has been reflected in the Distribution Company's rates for regulated service, provided that the price charged the Affiliate is the higher of the net book value or market value of the asset. The Department shall determine the market value of any such asset sold, leased, or otherwise transferred, based on the highest price that the asset could have reasonably realized after an open and competitive sale.
- (2) A Distribution Company may sell, lease, or otherwise transfer to an affiliate, including a Competitive Affiliate, assets other than those subject to 220 CMR 12.04(1), and may also provide services to an affiliate, including a Competitive Affiliate, provided that the price charged for such asset or service is equal to or greater than the Distribution Company's fully allocated cost to provide the asset or service.
- (3) An Affiliated Company may sell, lease, or otherwise transfer an asset to a Distribution Company, and may also provide services to a Distribution Company, provided that the price charged to the Distribution Company is no greater than the market value of the asset or service provided.
- (4) A Distribution Company must maintain a log of all transactions with Affiliated Companies made pursuant to 220 CMR 12.04(1) through (3). The log shall include the date of the transaction, the nature and quantity of the asset or service provided, the price charged, and an explanation of how the price was derived for purposes of compliance with 220 CMR 12.04. All log entries must be dated and made contemporaneously with relevant transactions. The log shall be kept up to date. The Distribution Company shall file a copy of the log with the Department no later than January 15th of each year, covering the previous year.

12.05: Penalties

- (1) Any Distribution Company or Affiliate that violates any provision of 220 CMR 12.05 shall be subject to a civil penalty not to exceed \$ 25,000 for each violation for each day that the violation persists; provided, however, that the maximum civil penalty shall not exceed \$ 1,000,000 for any related series of violations. Any such penalty shall be determined by the Department after a public hearing.
- (2) In determining the amount of any penalty assessed pursuant to 220 CMR 12.05(1), the Department will consider the following: the appropriateness of the penalty to the size of the business of the Distribution Company or Affiliate charged; the gravity of the violation; the good faith of the Distribution Company or Affiliate in attempting to achieve compliance after notification of a violation; and any other criteria deemed appropriate by the Department under the circumstances.
- (3) Nothing in 220 CMR 12.00 shall be construed to confer immunity from state and federal Antitrust Laws. A penalty assessed pursuant to 220 CMR 12.00 does not affect or preempt antitrust liability but rather is in addition to any antitrust liability that may apply to the activity.

REGULATORY AUTHORITY

220 CMR 12.00: M.G.L. c. 164, §§ 1, 1C, 1F, 76A, 76C, 85, 85A, 94A, 94B, 94C