

**810-RICR-30-00-1**

## **TITLE 810 - PUBLIC UTILITIES COMMISSION**

### **CHAPTER 30 – GAS**

#### **SUBCHAPTER 00 – N/A**

##### **PART 1 - Rules for Utility Interaction with Gas Marketers**

### **1.1 Authority and Purpose**

- A. These regulations, enacted pursuant to R.I. Gen. Laws §§ 39-1-11 and 39-3-7, set forth the entry requirements for gas marketers and the standards of conduct for utilities with respect to gas marketers. They further apply to transactions, direct or indirect, between public utilities and gas marketers. The standards are intended to promote fair competition and a level playing field among all participants in the natural gas marketplace in Rhode Island.
- B. For a transition period of two years from the effective date of these regulations, a marketer will be permitted to share utility services and resources to the extent provided in the master service framework.

### **1.2 Definitions**

- A. As used in these rules, except as otherwise required by the context:
  - 1. "Applicant" means, in proceedings involving filings for permission or authorization which the Commission may give under statutory or other authority delegated to it, the party on whose behalf the filings are made.
  - 2. "Clerk" means the Commission clerk, appointed by the Commission pursuant to R.I. Gen. Laws § 39-1-9.
  - 3. "Commission" means the Public Utilities Commission.
  - 4. "Division" means the Division of Public Utilities and Carriers described in R.I. Gen. Laws §§ 39-1-2(4) and 39-1-3.
  - 5. "Employee" means an officer, director, employee or agent.
  - 6. "Gas marketer" means an entity which markets gas and gas-related services, and is authorized to provide services in Rhode Island in accordance with § 1.3 of this Part.

7. "Marketing affiliate" means a gas marketer residing within a corporate structure that includes a Rhode Island public utility. A marketing affiliate includes any arm of the utility or parent of the utility, either owned or subject to common control, or part of a separate legal entity, which functions as a gas marketer.
8. "Master service framework" means a Commission-approved contractual arrangement that allows certain services and resources to be shared with, allocated between or charged to the utility and/or a gas marketer.
9. "Shared employee" means any individual employed by a utility who performs tasks or services for both the utility and a gas marketer, regardless of the method of accounting for the individual's time (e.g., an allocation basis or billed based on actual hours).
10. "Transportation" means the contractual delivery of gas to a retail consumer.
11. "Utility operating personnel" includes any individual employed or retained by a utility whose job duties involve any of the following gas functions:
  - a. Purchasing, marketing, secondary marketing (releases or assignments) or selling; Scheduling and interrupting or curtailing natural gas; Pipeline transportation capacity or storage capacity; Pricing of tariff, non-tariff, or competitive utility products and services.

### **1.3 Entry Requirements**

- A. For a period of three years from the effective date of these regulations, gas marketers must register to provide service in the State of Rhode Island. Marketers will not otherwise be regulated as public utilities.
- B. In order to qualify as a gas marketers, an applicant must first file a Statement of Business Operations ("SBO"), including such information as corporate and local company name, business locations, location of primary facilities (if any), evidence of authorization from the Rhode Island Secretary of State to do business in Rhode Island, proof of filing for a tax identification number with the Rhode Island Division of Taxation, service agent, attorney of record, corporate officers, and major stockholders or partners holding a ten percent or greater equity interest, as well as documentation of the prospective gas marketer's initial capitalization and a general description of its operations. The description should include a detailed explanation of the nature and location of the facilities within Rhode Island which are owned or leased by the applicant, if any, as well

as the geographic boundaries of the area in which it will provide service. In addition, a description of the customer service organization to be employed in serving transportation customers should be provided, together with both customer service and regulatory contact persons.

- C. The Division will review the SBO and make a recommendation to the Commission as to whether the applicant should be authorized to do business in Rhode Island. No service may be rendered unless and until the Commission has approved the application.
- D. Gas marketers shall file an amended SBO annually on the anniversary date of the authorization order to include a twelve-month statement of income and a current balance sheet.

## **1.4 Standards of Conduct**

### **A. PERSONNEL**

- 1. A utility employee may not do any of the following on behalf of a gas marketer:
  - a. Purchase gas, pipeline capacity or storage capacity.
  - b. Market or sell gas and related services.
  - c. Price or administer transportation upstream of the city gate and related tariff services, non-tariff and competitive products and services.
  - d. Hire and train gas marketer employees.
- 2. A utility employee may offer to sell or otherwise proffer gas, pipeline capacity or storage capacity, and related services to a gas marketer or to others on behalf of the utility. A utility employee may respond to transportation and related tariff service requests or inquiries from the gas marketer as well as from others on behalf of the utility.
- 3. A marketing affiliate may receive corporate-level support affiliated with the preparation of joint financial statements and shareholder relations.
- 4. The use of shared employees shall be minimized. A shared employee shall record time in a manner consistent with the master service framework, if applicable.
- 5. The use of utility operating personnel, as established in a master service framework is permitted, subject to all of the following limitations:

- a. The use of a utility employee by a gas marketer or the use of a gas marketer employee by the utility is not allowed if it is likely to result in the sharing or exposure of market sensitive information or an unfair competitive advantage for either party.
  - b. Advice and assistance in human resource management shall be limited to general personnel and corporate matters. It shall not include job or position specific hiring or training advice or assistance dealing with the functions to be performed by the employee.
  - c. Advice or assistance with regard to engineering and construction matters as well as gas consulting services shall be made available to all gas marketers on an equal basis.
- 6. Utility operating personnel may engage in transactions involving natural gas supply, capacity, or both, with a gas marketer, but may not share with the gas marketer any information related to sales by other gas marketers of natural gas supply, capacity, or both.
  - 7. An individual may not be an officer of both a utility and a gas marketer.

#### B. PROPERTY

- 1. A gas marketer shall occupy facilities that are physically separate from a utility. Unless otherwise allowed through the master service framework, office equipment and services used on a regular basis may not be provided by a utility or shared in any manner.

#### C. RECORDS

- 1. A marketing affiliate's books shall be kept separate from the utility's books. Aggregated information that is not market sensitive of a utility or of a marketing affiliate may be transferred to or from the utility or the marketing affiliate for corporate financial accounting and reporting purposes.
  - a. A utility may not obtain account information or market sensitive information from a gas marketer.
  - b. If a utility is not part of a holding company system, the utility may have corporate responsibilities for actions of a marketing affiliate. Under these circumstances, individual account or market sensitive information of a marketing affiliate may not be disclosed to the utility except in extreme situations where there is a corporate need to access such

information. In such a situation, the information shall be shared only on a need-to-know basis, shall be kept confidential and may not be shared with utility operating personnel. Individual account or market sensitive information of the utility may not be disclosed to a gas marketer.

- c. If a utility is part of a holding company system, individual account or market sensitive information of the utility may not be disclosed to a gas marketer. Likewise, individual account or market sensitive information of the gas marketer may not be transferred to the utility.
- 2. Without the written consent of the customer, a utility employee may not disclose to a gas marketer any information which the utility receives from any of the following:
  - a. A customer or supplier.
  - b. A potential customer or supplier.
  - c. An agent of a customer or supplier or potential customer or supplier.
  - d. A gas marketer or other supply entity seeking to supply gas to a customer or potential customer that is located in the utility's service territory.
- 3. A utility may disclose information that is aggregated so that specific customer, gas supply contract, pipeline capacity contract, release capacity contract, and storage contract information cannot be ascertained. The utility may not disclose such information to a marketing affiliate or any other market participant without that information being equally accessible to other interested parties.
- 4. A utility may disclose non-customer specific information, such as market trends, economic forecasts, regulatory trends, demographics, opinion research, gas supply outlook, technology trends, and similar information. The utility may not disclose such information to its gas marketer or any other market participant without making that information being equally accessible to other interested parties.
- 5. If a utility is part of a holding company system, the utility may not perform audits of a marketing affiliate. The holding company shall be responsible for ensuring the confidentiality of sensitive information gained during the course of an audit. A holding

company may not utilize utility employees to perform an audit of a marketing affiliate.

6. If a utility is not part of a holding company system and has corporate and financial responsibilities for the marketing affiliate, an audit may be performed by utility support personnel. Confidential information obtained in an audit which may be market sensitive or may provide an unfair competitive advantage may not be shared with or made available to utility operating personnel.
7. A utility must file annually with the Commission a confidential report detailing transportation volumes and associated number of customers, by gas marketer.

#### D. ADVERTISING

1. Promotional materials may allow marketers to be identified as affiliated with utilities. However, neither utilities nor marketing affiliate personnel may represent that any advantage accrues to customers or others in the use of the utility's services as a result of that customer or others dealing with the marketing affiliate. Joint promotions between the utility and the marketing affiliate are prohibited, unless such promotions are offered to all other competitors under the same terms and conditions. A utility and a marketing affiliate may not share trademarks or logos.

### 1.5 Standards for Competitive Gas Marketing

#### A. MARKETING LIMITATIONS

1. Utilities shall not provide leads to gas marketers and shall refrain from giving any appearance that the utility speaks on behalf of any gas marketer. Nor shall the marketing affiliate suggest that its receives preferential treatment as a result of its affiliation. If a customer requests information about marketers, a utility should provide a list of all approved gas marketers, including its affiliate, but should not promote its affiliate.
2. To the extent a utility provides a marketing affiliate information related to transportation which is not readily available or generally known to other gas marketers, including but not limited to utility customer lists, it must contemporaneously provide that information to all gas marketers on its system. A utility must file with the Commission procedures that will enable the Commission to determine how the utility is complying with this standard.

3. Utilities shall not condition or tie their agreements to release interstate pipeline capacity to any agreement by a gas supplier, customer or other third party relating to any service in which their marketers are involved.

B. CONDITIONS FOR COMPETITIVE SALES

1. A utility shall communicate with all market participants when it has gas supply or capacity, or both, available for release.
2. A utility may not sell gas supply or capacity to a marketing affiliate at less than a market-clearing price without either posting on an electronic bulletin board that is a well known source or placing an offering that would constitute an offering to the market of capacity or supply.
3. Utilities must apply any tariff provision relating to transportation in the same manner to the same or similarly situated gas marketers if there is discretion in the application of the provision.
4. Utilities shall uniformly enforce tariff provisions for which there is no discretion in the application of the provision for all transportation customers.
5. Utilities may not, through a tariff provision or otherwise, give a gas marketer or its customers preference over other gas marketers or customers in matters relating to transportation including, but not limited to, scheduling, balancing, metering, storage, standby service or curtailment policy. Utilities may not sell to their marketing affiliates gas and capacity on a bundled basis, unless such bundled service is offered contemporaneously on a similar basis to other gas marketers.
6. If a utility offers its marketing affiliate, or a customer of its affiliate, a discount, rebate, or fee waiver for transportation services, balancing, meters or meter installation, storage, standby service or any other service offered to shippers, it must contemporaneously offer the same discount, rebate, or fee waiver to all similarly situated non-affiliated gas marketers or customers by providing appropriate notification to the non-affiliated gas marketers or customers. A utility must file with the Commission procedures that will enable the Commission to determine how the utility is complying with this standard.
7. Utilities must process all similar requests for transportation in the same manner and within a similar period of time.

8. Utilities shall not disclose to any gas marketer any information obtained in connection with providing delivery or related services to another gas marketer or customer, a potential supplier or customer, any agent of such customer or potential supplier, or any other entity seeking to supply gas to a customer or potential customer.

## **1.6 Administrative Standards**

### **A. ACCOUNTING AND REPORTING**

1. Utilities and their marketing affiliates shall keep separate books of accounts and records.
2. A utility shall keep sufficient records of transactions with a marketing affiliate to document, for all consummated sales or release transactions, all offers of, bids for, requests for, and sales of natural gas supplies, capacity, or both, including the evaluation criteria for acceptance and rejection. A utility shall maintain documentation of such marketing affiliates transactions, such as phone logs, so that the utility's activities can be audited.
3. If a utility provides tariffed on-system distribution services at a discounted rate, the utility shall maintain complete and accurate records of all service requests, service refusals, and service transactions arising under its tariffs.
4. A utility shall publicly disclose sales at wholesale or transfers of gas supply or capacity and related services for all transactions that are not tariffed transactions. A utility shall report all transactions within 30 days following the end of the month in which the transaction occurred.
  - a. For each transaction under § 1.6(A)(4) of this Part, disclosure shall include all of the following:
    - (1) The date of the contract or arrangement.
    - (2) The period covered.
    - (3) The type of transaction (commodity, capacity, storage balancing, etc.).
    - (4) Units sold or transferred.
    - (5) Conditions or restrictions placed on the transaction.



- (6) The price for the transaction, including separate prices for each service offered on a stand-alone basis.

## B. ENFORCEMENT

1. Should a utility or gas marketer be found to have violated these regulatory requirements, it will be subject to appropriate sanctions as determined by the Commission or any other entity having jurisdiction.

## C. COMPLAINTS

1. Utilities shall establish a complaint procedure, which must contain the following elements:
  - a. All complaints, whether written or verbal, shall be referred to general counsel or other designated representative of the utility.
  - b. The designated utility representative counsel shall prepare and mail to the complainant an acknowledgment of receipt of such complaint within ten working days of receipt.
  - c. The designated utility representative shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The designated utility representative shall provide a copy of the statement to the complainant. The designated utility representative shall communicate the results of the preliminary investigation to the complainant in writing within thirty days after the complaint was received, including a description of any course of action which will be taken.
  - d. In the event the utility and the complainant are unable to resolve the complaint, the complainant may address the complaint to the Division.

- D. The foregoing rules and regulations, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this 9th day of October, 1996, to become effective twenty (20) days after filing, pursuant to the provisions of R.I. Gen. Laws 1956 (1988 Reenactment) § 42-35-2(a)(2) and -3, and R.I. Gen. Laws 1956 (1984 Reenactment) § 39-1-11.

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