

§707. Affiliated interests

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

A. "Affiliated interest" means:

(1) With respect to a public utility other than a provider of provider of last resort service:

(a) Any person who owns directly, indirectly or through a chain of successive ownership 10% or more of the voting securities of a public utility;

(b) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in division (a);

(c) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;

(d) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, if the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or

(e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest; or

(2) With respect to a provider of provider of last resort service:

(a) Any person who owns directly, indirectly or through a chain of successive ownership 25% or more of the voting securities of a provider of provider of last resort service;

(b) Any person, 25% or more of whose voting securities are owned, directly or indirectly, by a provider of provider of last resort service;

(c) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a provider of provider of last resort service, if the person or group of persons beneficially owns more than 3% of the provider's voting securities; or

(d) Any provider of provider of last resort service of which any person defined in divisions (a) to (c) is an affiliated interest. [PL 2011, c. 623, Pt. A, §11 (AMD).]

B. "Transaction" means any dealings between a public utility and its affiliated interests that affect, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 501. [PL 2011, c. 623, Pt. A, §11 (AMD).]

C. "Voting security" 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 1987, c. 141, Pt. A, §6 (NEW).]

[PL 2011, c. 623, Pt. A, §11 (AMD).]

2. Access to accounts and records. The commission may require the production of books, accounts, records, papers and memoranda of any affiliated interest which relates, directly or indirectly, to its transactions with a public utility. The commission may, in determining the reasonableness of utility rates, disallow all or a portion of the payments under any transaction, the account or record of which is not made available to the commission.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Consent by commission. No public utility may extend or receive credit, including the guarantee of debt, or make or receive a loan to or from an affiliated interest or make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial

or similar services, or for the furnishing of any service or real or personal property other than those enumerated with any affiliated interest until the commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

A. Unless the commission disapproves it within 60 days of filing, a contract or arrangement filed with the commission under this section is deemed approved. The commission may, however, suspend the effective date of the contract or arrangement for an additional 60 days if necessary to enable the commission to complete its review of the contract or arrangement. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. The commission may approve a contract or arrangement with an affiliated interest undertaken after October 24, 1977, subject to such terms, conditions and requirements as it determines necessary to safeguard the public interest. If the contract or arrangement is not consented to or approved by the commission as provided in this section, the commission may disallow, for rate-making purposes, payments or part of any such payments as the commission finds not to be in the public interest, and the commission may, after notice to the affected parties and opportunity for hearing, declare that contract or arrangement prospectively void as it applies to utility operations within the State. Unless otherwise invalid, that contract or arrangement shall remain in effect until declared prospectively void as it applies to utility operations within the State by an effective final order of the commission issued under this section no later than 90 days from the date of service of the notice. [PL 1989, c. 159, §2 (AMD).]

C. The commission may, in the case of a utility or group of utilities, exempt from this section from time to time classes of transactions as it may specify by rule or order in advance and which in its judgment will not be adverse to the public interest. [PL 1987, c. 141, Pt. A, §6 (NEW).]

D. Commission approval of a contract or arrangement under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in this Title. [PL 1987, c. 141, Pt. A, §6 (NEW).]

E. By rule or by order, after notice and hearing, the commission may make this section applicable to contracts or arrangements between affiliated interests of a public utility, even though the public utility is not a party to the contracts or arrangements, in cases where the purpose of the contracts or arrangements is to furnish the services or goods to be used by the public utility in the course of its operations in the State, as described in this subsection. [PL 1989, c. 159, §2 (NEW).]

F. In addition to the exemptions permitted by paragraph C and subsection 4, the commission for good cause may, by rule or by order, exempt classes of contracts or arrangements or a utility or group of utilities from filing or obtaining commission approval of a contract or arrangement with an affiliated interest or between affiliated interests prior to the entry into the contract or arrangement by the utility, provided that no such exemption may exceed 60 days and that the commission shall thereafter approve or disapprove the contract pursuant to this subsection. [PL 1989, c. 159, §2 (NEW).]

G. For any contract or arrangement expected to involve the use by an affiliated interest of utility facilities, services or intangibles, including good will or use of a brand name, the commission shall determine the value of those facilities, services or intangibles. When its facilities, services or intangibles are used by the affiliated interest, the utility's costs must be charged to and received from the affiliated interest based upon this value. The commission shall also determine the proper allocation of costs for shared facilities, services or intangibles. If the commission is unable to make the value determinations required by this paragraph within the time limits imposed by paragraph A, the commission may approve the contract or arrangement without making the determinations, except that the commission shall make the determinations within 60 days of approving the contract or arrangement. [PL 1997, c. 237, §1 (NEW).]

[PL 1997, c. 237, §1 (AMD).]

4. Waiver. The commission may, by general rules, waive the requirements for filing and for approval of contracts and arrangements described in subsection 3 in cases of:

- A. Contracts or arrangements made in the ordinary course of business for the employment of officers or employees; [PL 1987, c. 141, Pt. A, §6 (NEW).]
- B. Contracts or arrangements made in the ordinary course of business for the purchase of services, supplies or other personal property; [PL 1987, c. 141, Pt. A, §6 (NEW).]
- C. Contracts or arrangements where the total obligation to be incurred does not exceed \$500; [PL 1987, c. 141, Pt. A, §6 (NEW).]
- D. The temporary leasing, lending or interchanging of equipment in the ordinary course of business in case of an emergency; and [PL 1987, c. 141, Pt. A, §6 (NEW).]
- E. Contracts made by a public utility with any person whose bid is the most favorable to the public utility. [PL 1987, c. 141, §6 (NEW).]

However, if the commission finds that any public utility is abusing or has abused the waiver granted in this section in order to evade compliance with this section, the commission may require that public utility to file and receive the commission's approval of all such contracts as provided for in this section, but the general waiver shall remain in effect as to all other public utilities.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Violations.

[PL 2003, c. 505, §17 (RP).]

6. Application. This section does not apply to any telephone utility other than a provider of provider of last resort service with respect to affiliated interests that are directly related to or that may directly affect provider of last resort service in this State, as determined by the commission by rule or order. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 623, Pt. A, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1989, c. 159, §2 (AMD). PL 1997, c. 237, §1 (AMD). PL 2003, c. 505, §17 (AMD). PL 2011, c. 623, Pt. A, §§11, 12 (AMD).

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