

278.2213 Separate recordkeeping for utility and affiliate -- Prohibited business practices -- Confidentiality of information -- Notice of service available from competitor.

The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.

- (1) A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in KRS 278.2203 and 278.2207. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.
- (2) A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.
- (3) A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.
- (4) All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.
- (5) No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.
- (6) All dealings between a utility and a nonregulated affiliate shall be at arm's length.
- (7) Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.
- (8) Neither a utility nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.
- (9) A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in KRS 278.2203.
- (10) Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.
- (11) A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.
- (12) A utility shall notify the customer that competing suppliers of a nonregulated service exist if:

- (a) The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and
 - (b) The utility mentions itself or its affiliate when making the recommendation to the customer.
- (13) The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.
 - (14) A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.
 - (15) A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.
 - (16) Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.
 - (17) The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.

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