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6/9/00

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A GENERIC PROCEEDING)
TO ESTABLISH ELECTRIC AFFILIATE RULES,)
REGULATIONS FOR FUNCTIONALLY)
SEPARATED BUSINESS ACTIVITIES, AND)
STANDARDS OF CONDUCT)

DOCKET NO. 99-279-R
ORDER NO. 16

ORDER

On May 17, 2000, the Commission issued Order No. 14 in this docket. In that Order, the Commission amended the Modified Proposed Rules (“MPRs”) attached to Order No. 11 and requested interested parties to provide final comment on the amended MPRs. The Commission also established a hearing on June 2, 2000, to consider amendments to the MPRs.

On May 25-26, 2000, final comments were filed by the Attorney General of the State of Arkansas, the General Staff of the Commission, Oklahoma Gas and Electric Co., Arkansas Western Gas Co., Southwestern Electric Power Co. and Central and South West Corp., Arkansas Electric Energy Consumers, Arkansas Electric Cooperative Corp., the Electric Distribution Cooperatives¹, Entergy

¹ The Electric Distribution Cooperatives are Arkansas Valley Electric Cooperative Corp., Ashley-Chicot Electric Cooperative, Inc., C&L Electric Cooperative Corp., Carroll Electric Cooperative Corp., Clay County Electric Cooperative Corp., Craighead Electric Cooperative Corp., Farmers Electric Cooperative Corp., First Electric Cooperative Corp., Mississippi County Electric Cooperative Corp., Inc., North Arkansas Electric Cooperative, Inc., Ouachita Electric Cooperative Corp., Ozarks Electric Cooperative Corp., Petit Jean Electric Cooperative Corp., Rich Mountain Electric Cooperative, Inc., South Central Arkansas Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corp., and Woodruff Electric Cooperative Corp.

Arkansas, Inc., and Empire District Electric Co..

On May 30, 2000, Southwestern Electric Power Co. and Central and South West Corp., on behalf of all the parties, filed a *Motion for Waiver of Hearing* (“Motion”). Order No. 15, issued on May 31, 2000, granted the Motion.

After consideration of the parties' final comments, the Commission adopts the Electric Affiliate Transaction Rules attached to this Order. Attachment A is a “clean copy” of the rules and Attachment B is a redline version reflecting changes to the amended MPRs attached to Order No. 14. There are only minimal changes, and with one exception, the changes are for purposes of clarification only. The rules that have been clarified are Rules 1.02.A, 3.01.H.(a), 3.02., 4.02.A., 4.02.B., and 4.04.A. The only substantive change is found at Rule 2.02.B.(3). At the suggestion of Entergy Arkansas, that rule has been amended to allow disclosure of customer information to an entity providing corporate support services to the utility, so long as the corporate support entity agrees to treat the information as confidential in compliance with the rule.

BY ORDER OF THE COMMISSION.

This _____ day of June, 2000.

Jim von Gremp, Chairman

Sam I. Bratton, Jr., Commissioner

Betty C. Dickey, Commissioner

Jan Sanders
Secretary of the Commission

Attachment A

DEFINITIONS

1

Affiliate

2

3 As defined in Ark. Code Ann. § 23-19-102 (2).

3

Commission

4

5 The Arkansas Public Service Commission.

5

Competitive Affiliate

6

7 An energy service provider affiliate of an electric utility; or any affiliate or unregulated
8 department, division, or other component of an electric utility providing generation products or
9 services or other energy-related products or services found to be competitive by the
10 Commission pursuant to Ark. Code Ann. 23-19-501(a).

7

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9

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Customer

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12 Any person or entity who has applied for and agreed to pay for electric service.

12

Customer Information

13

14 Information and data specific to an electric utility's customer which the electric utility acquired
15 or developed in the course of its provision of electric services. Customer information includes,
16 but is not limited to, names, telephone numbers, geographic locations, addresses, payment
17 histories, usage histories, and projected usage.

14

15

16

17

Direct Cost

18

19 Costs which can be directly identified with a particular service or product.

19

Electric Utility

20

21 As defined in Ark. Code Ann. § 23-19-102 (9) subject to other provisions of Ark. Code Ann.
22 § 23-19-101, *et. seq.*

21

22

Energy Service Provider

23

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1 As defined in Ark. Code Ann. § 23-19-102 (10)

2 **FERC**

3 The Federal Energy Regulatory Commission

4 **Fully Allocated Cost**

5 The sum of the costs which can be directly identified with a particular service or product plus an
6 appropriate allocation of indirect costs.

7 **Indirect Cost**

8 Costs that cannot be directly identified with a particular service or product including, but not
9 limited to, overhead costs, administrative and general costs, and taxes.

10 **Shared Corporate Support Services**

11 Services shared between or among an electric utility, its parent holding company, or an affiliated
12 entity such as human resources, procurement, information technology, regulatory services,
13 administrative services, real estate services, legal services, accounting, environmental services,
14 research and development unrelated to marketing activity or business development, internal
15 audit, community relations, corporate communications, financial services, financial planning and
16 management support, and corporate services.

17 **Small System**

18 An electric utility which delivers four million or fewer megawatt hours of electricity, system
19 wide, within any calendar year.

Attachment A

SECTION 1. APPLICABILITY, SCOPE, AND GENERAL REQUIREMENTS

Rule 1.01. Applicability

- A. These Rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304 (3), 23-2-305, 23-19-205 (d), and 23-19-403.
- B. These Rules shall apply to all electric utilities and their affiliates, unregulated departments, divisions, or other components transacting business or engaging in activities that are jurisdictional to this Commission.
- C. Other than the circumstances noted in Rules 1.01.D. and E., these Rules shall apply to an electric utility and its affiliates and unregulated divisions, departments, and other components upon approval by the Commission.
- D. Section 4. shall not apply to the activities necessary for an electric utility to complete the functional unbundling of its business activities pursuant to Ark. Code Ann. §§ 23-19-205 (b) and (c) and 23-19-501 (a).
- E. Rule 5.05. shall apply to an electric utility and its affiliates, unregulated divisions, departments, and other components when the electric utility has completed the functional unbundling of its business activities pursuant to Ark. Code Ann. §§ 23-19-205 (b) and (c).
- F. Nothing in these Rules shall govern, limit, or restrict the Commission's authority under Ark. Code Ann. §§ 23-19-301 through 23-19-304 or 23-19-501.
- G. These Rules shall not apply to the activities of employees of an electric utility or its affiliate engaged in transmission operations to the extent that these rules concern activities exempted from the requirements of Ark. Code Ann. § 23-19-205(d) by Ark. Code Ann. § 23-19-205(d)(1)(C).
- H. These Rules shall not apply to the activities and transactions of a special purpose entity of an electric utility specifically limited in its scope to engage in securitization transactions set forth in Ark. Code Ann. §§23-19-601 through 616, the activities and transactions of such special purpose entities being appropriately regulated by the Commission in qualified rate orders entered pursuant to Ark. Code Ann. §23-19-603.

Rule 1.02. Purpose and Scope

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1 A. The purpose of these Rules is to ensure that all transactions among or between the electric
2 utility and any affiliates or unregulated departments, divisions, and components of the electric
3 utility are conducted consistent with the requirements of Ark. Code Ann. §§ 23-19-205 (d)
4 and 23-19-403 and to ensure that electric utilities shall not use any revenue from any regulated
5 asset, operation, or service to subsidize the provision of any unregulated electric service or
6 other unregulated activity.

7 B. These Rules are intended to:

8 (1) Prevent any competitive affiliate from gaining an advantage as a result of the relationship
9 between the electric utility and its affiliate, except as specifically provided in these
10 Rules.

11 (2) Protect the competitive market from being unduly injured by the relationship between
12 the electric utility and its affiliates.

13 (3) Protect the ratepayer of the regulated monopoly utility service from providing any
14 subsidy to a competitive affiliate of the utility.

15 C. These Rules are intended to foster public, customer, and competitor confidence in the viability
16 of meaningful competition and customer choice in the electric industry.

17 D. These Rules provide specific examples of conduct and / or accounting treatment that are
18 required to comply with the provisions of Ark. Code Ann. §§ 23-19-205 (d) and 23-19-403.

19 Rule 1.03 General Requirement

20 In addition to the specific requirements or exemptions set out in these Rules, all transactions
21 among or between the regulated and any unregulated departments, divisions, components, or
22 affiliates of an electric utility shall be conducted at arm's length pursuant to Ark. Code Ann.
23 § 23-19-403.

24 Rule 1.04. Exemption from Rules

25 A. Exemptions from these Rules, other than those Rules required by Ark. Code Ann. § 23-19-
26 205(d), may be granted by the Commission in conformity with Rule 1.03 of the Commission
27 Rules of Practice and Procedure.

28 B. Pursuant to Ark. Code Ann. § 23-19-205(f), a small system may request an exception to any
29 or all of the requirements set forth in Ark. Code Ann. §§ 23-19-205 (c) and (d).

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1 Rule 1.05. Complaints Alleging Violations of These Rules

2 Complaints alleging violations of these Rules shall be addressed pursuant to the procedures
3 outlined in Section 10 of the Commission's Rules of Practice and Procedure.

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SECTION 2. PROHIBITION AGAINST PREFERENTIAL TREATMENT

Rule 2.01. Preferential Treatment Prohibited

A. An electric utility shall not:

- (1) Represent that its competitive affiliates and competitive affiliates' customers will receive preferential treatment by the utility compared to that afforded non-affiliated providers and their customers, other than patronage capital, voting rights, and other specific benefits to which cooperative members may be entitled by virtue of being a member of the cooperative.
- (2) Provide its competitive affiliates or customers of its competitive affiliates any advantage, including but not limited to preferences in terms, conditions, pricing, reliability, quality, design and equipment requirements, scheduling, or timing, over non-affiliated suppliers or their customers in the provision of services by the electric utility, other than patronage capital, voting rights, and other specific benefits to which cooperative members may be entitled by virtue of being a member of the cooperative.
- (3) Identify potential customers within its service territory for its competitive affiliates unless:
 - (a) the electric utility simultaneously makes the information publicly available on the same terms and conditions to competitive providers, for example, by posting the information on its Internet site or other public electronic bulletin board; and
 - (b) the customer provides prior affirmative written consent or other verifiable authorization as determined by the Commission.
- (4) Solicit business within its service territory on behalf of its competitive affiliates unless the utility:
 - (a) maintains complete and detailed books and records accounting for all associated costs, including the costs of employee time, and assigns those costs to the competitive affiliate pursuant to the pricing rules set forth in Rules 4.01 and 4.02;
 - (b) ensures that the communication by its employee is truthful and not misleading;
 - (c) ensures that the communication by its employee includes the disclaimer specified in Rule 3.05.A (2);

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- 1 (d) ensures that employees engaged in distribution operations do not engage in such
2 solicitation; and
3 (e) describes specifically and in detail how its proposed business plan to be filed
4 pursuant to Rule 5.01 will ensure compliance with the rule.
- 5 (5) Speak on behalf of its competitive affiliates unless the utility:
- 6 (a) maintains complete and detailed books and records accounting for all
7 associated costs, including but not limited to the costs of employee time, use of
8 any equipment supplies and services, and assigns those costs to the affiliate
9 pursuant to the pricing rules set forth in Section 4;
10 (b) ensures that the communication by its employee is truthful and not misleading;
11 (c) ensures that the communication by its employee includes the disclaimer
12 specified in Rule 3.05.A (2);
13 (d) ensures that employees engaged in distribution operations do not engage in such
14 communication; and
15 (e) describes specifically and in detail how its proposed business plan to be filed
16 pursuant to Rule 5.01 will ensure compliance with the Rule.
- 17 (6) Condition or otherwise tie the provision of its services, the availability of discounts of its
18 rates, charges, or fees, or waivers of terms and conditions of any of its services to the
19 taking of goods or services from its competitive affiliates.
- 20 (7) Afford any employee engaged in the retail marketing or sale of electricity, for either the
21 electric utility or an affiliate, access to the system control center or similar facilities used
22 for distribution functions that differs in any way from the access available to other
23 energy service providers, except to the extent necessary to restore service or to prevent
24 or respond to emergency conditions
- 25 B. The competitive affiliate shall not speak on behalf of the electric utility unless the affiliate:
- 26 (a) ensures that the communication by its employee is truthful and not misleading;
27 and
28 (b) ensures that the communication by its employee includes the disclaimer
29 specified in Rule 3.05.A(2).
- 30 C. The competitive affiliate shall not represent that its customers will receive preferential treatment
31 by the utility compared to that afforded non-affiliated providers and their customers, other than
32 patronage capital, voting rights, and other specific benefits to which cooperative members may
33 be entitled by virtue of being a member of the cooperative.

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1 Rule 2.02. Provision of Information

2 A. An electric utility shall not provide information to its competitive affiliates, except for information
3 that is publicly available or is necessary for the performance of joint corporate functions, except
4 as otherwise provided in this rule. The terms and conditions for disclosure of customer
5 information pursuant to this rule shall be included in the electric utility's tariffs.

6 B. With respect to customer information:

7 (1) An electric utility shall provide a customer with his customer information upon request.

8 (2) An electric utility shall not condition provision of electric service upon a customer's
9 agreement to release customer information to another entity.

10 (3) An electric utility shall release the customer information listed in Ark. Code Ann. §
11 23-19-401(a)(3), including name, address and telephone number, to another entity only
12 pursuant to the customer's prior affirmative written consent or other verifiable
13 authorization as determined by the Commission. In such cases, the electric utility shall
14 not be required to release any customer information to any other entity. Such consent
15 shall not be required for the release of such information to a third party which has been
16 retained by the utility to perform billing services for it, so long as the billing service
17 provider is not an electric utility or an energy service provider and the billing service
18 provider agrees to treat the information confidential as required by this rule. Such
19 consent shall not be required for the release of such information to an entity that
20 provides shared corporate support services to the electric utility, so long as the entity
21 agrees to treat the information as confidential as required by this rule.

22 (4) To the extent necessary to ensure continuity of service or provide the standard service
23 package as described in Ark. Code Ann. § 23-19-402, an electric utility may provide,
24 without customer authorization, the customer information listed in Ark. Code
25 Ann. § 23-19-401(a)(3) to the electric utility or energy service provider providing the
26 standard service package.

27 (5) To the extent necessary to restore service or to prevent or respond to emergency
28 conditions, an electric utility may provide the customer information listed in Ark. Code
29 Ann. § 23-19-401(a)(3) without customer authorization to the parties involved in the
30 service restoration or responding to the emergency conditions. The electric utility shall
31 release only the customer information necessary to restore service or prevent or
32 respond to an emergency condition. The electric utility must report any such release of
33 information pursuant to Rule 5.03.

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1 C. With respect to energy service provider information:

2 (1) If a customer requests a list of energy service providers, the electric utility shall provide
3 a list in such a manner that treats all energy service providers equally. Any lists
4 provided in accordance with this Rule must be filed for informational purposes only with
5 the Secretary of the Commission. This requirement can be satisfied by providing the list
6 of energy service providers and electric utilities providing generation maintained by the
7 Secretary of the Commission pursuant to Rule 1.04.(i) of the Commission's Rules of
8 Practice and Procedure.

9 (2) If a customer requests information about a specific energy service provider, the electric
10 utility may provide the information so long as the information is truthful and not
11 misleading. If the information requested concerns a competitive affiliate, the electric
12 utility shall:

13 (a) maintain complete and detailed books and records accounting for all associated
14 costs, including but not limited to the costs of employee time, use of any
15 equipment supplies and services, and assigns those cost to the affiliate pursuant
16 to the pricing rules set forth in Section 4;

17 (b) ensure that the communication by its employee is truthful and not misleading;

18 (c) ensure that the communication by its employee includes the disclaimer specified
19 in Rule 3.05.A(2); and

20 (d) describe specifically and in detail how its proposed procedures and accounting
21 in its business plan to be filed pursuant to Rule 5.01 will ensure compliance with
22 the rule.

23 (3) An electric utility shall not provide any information about a specific unaffiliated energy
24 service provider, not publicly available, to any other person unless authorized by the
25 specific energy service provider or the Commission's Rules.

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SECTION 3. FUNCTIONAL SEPARATION

Rule 3.01. Business Entities

- 1
- 2
- 3 A. At a minimum, each electric utility shall functionally unbundle its business activities as required
- 4 by Ark. Code Ann. §§ 23-19-205 (b) and (c).
- 5 B. Each electric utility shall provide the following information:
- 6 (1) Within sixty days of a Commission order adopting these Rules, each electric utility shall
- 7 file its plan to functionally unbundle its business activities pursuant to Ark. Code Ann.
- 8 §§ 23-19-205 (b) and (c). The plan shall identify when and how it will be implemented
- 9 and shall identify all regulatory approvals required for its implementation.
- 10 (2) An electric utility that delays the implementation of retail open access pursuant to
- 11 Ark. Code Ann. § 23-19-106 (e) shall not be required to submit the information
- 12 required by Rule 3.01.B. (1) until one year before it implements retail open
- 13 access.
- 14 (3) Each electric utility shall file any modifications to the plan addressed in Rule 3.01.B(1).
- 15 (4) Within ten days after implementation of the plan addressed in Rule 3.01.B.(1), each
- 16 electric utility shall file a notice of completion. Such notice shall identify any deviations
- 17 from the previously filed plan.
- 18 C. The electric utility shall keep separate books and records separate from its affiliates as required
- 19 by Ark. Code Ann. § 23-19-205 (d) (2) (F).
- 20 D. The books and records of the electric utility's unregulated divisions, departments, and
- 21 components shall be maintained in a format that can be readily ascertained and readily
- 22 separated by department, division, and component.
- 23 E. Electric utility books and records shall be kept in accordance with the FERC Uniform System
- 24 of Accounts (18 C.F.R. § 101) or the RUS Uniform System of Accounts - Electric (7 C.F.R. §
- 25 1767, RUS Bulletin 1767B-1, Issued September 5, 1997) and Generally Accepted Accounting
- 26 Principles (GAAP), as these may be amended.
- 27 F. Unless otherwise authorized by the Commission or permitted by Rule 1.01.G., an electric utility
- 28 shall not:

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- 1 (1) allow an affiliate to obtain credit under an arrangement that would include a specific
2 pledge of assets owned by the electric utility, or
- 3 (2) provide a guarantee or otherwise extend credit to its affiliate.
- 4 G. An electric utility's office space shall be physically separate from that of its competitive
5 affiliates. Physical separation shall be accomplished by having office space in separate buildings
6 or, if within the same building, by a method such as having offices on separate floors or with
7 separate access. An electric utility shall not share office space with its competitive affiliates
8 unless the electric utility:
- 9 (a) maintains complete and detailed books and records reflecting adherence to the
10 pricing provisions of Section 4.
- 11 (b) describes specifically and in detail its written procedure to ensure compliance
12 with this Rule in the filing made pursuant to Rule 5.01.
- 13 H. An electric utility shall not share office equipment, facilities, computer or information systems, or
14 other resources with its competitive affiliates unless the electric utility:
- 15 (a) maintains complete and detailed books and records reflecting adherence to the
16 pricing provisions of Rules 4.01, 4.02 and 4.03.
- 17 (b) describes specifically and in detail the procedures it will use to ensure
18 compliance with this Rule in its filing made pursuant to Rule 5.01.
- 19 I. Employees of an electric utility may participate in meetings with employees of its competitive
20 affiliate to discuss technical or operational subjects regarding the electric utility's provision of
21 services only if the electric utility gives notice of such meetings to all competitors on its Internet
22 site or other public electronic bulletin board and allows them to attend. This requirement shall
23 not apply when the meeting addresses the needs of a specific customer and that customer elects
24 to meet solely with the utility and its competitive affiliate.
- 25 J. Each electric utility shall require each of its employees in Arkansas engaged in the production,
26 distribution, and marketing or sale of retail electricity to sign a statement indicating that he/she is
27 aware of, understands, and will comply with the restrictions set forth in the Arkansas Act 1556
28 of 1999 and these Rules. Each electric utility shall make its employees engaged in activities
29 outside Arkansas aware of the restrictions set forth in the statutes and these Rules. The electric
30 utility shall describe its procedures to ensure compliance with this Rule in its written procedures
31 filed pursuant to Rule 5.1.

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1 Rule 3.02. Allocation of Joint and Common Costs

2 For the purpose of allocating joint and common costs between the electric utility and its affiliates or
3 unregulated departments, divisions, or components, the following guidelines shall apply to the allocation
4 of costs associated with joint purchases, shared corporate support services, and transactions that are
5 priced at cost under Section 4 :

6 A. To the maximum extent practical, costs shall be collected and classified on a direct basis for
7 each service or product provided.

8 B. The method for charging joint and common costs shall be on a fully allocated cost basis.

9 C. All direct and indirect costs between regulated and non-regulated products and services shall
10 be traceable to the books of the electric utility. Sufficient information, subject to audit, shall be
11 maintained to document and support the allocation of costs.

12 Rule 3.03. Treatment of Revenues Received by the Electric Utility for the Provision of Competitive 13 Goods or Services

14 When an electric utility receives revenues for the provision of competitive goods or services, the
15 revenues and the fully allocated cost of providing the goods or services shall be treated below the line
16 for ratemaking purposes.

17 Rule 3.04. Employees

18 A. Joint employment of any person, not including a board member or corporate officer, by an
19 electric utility and an affiliate is prohibited.

20 B. The electric utility shall not utilize shared officers and directors in a manner that would violate
21 any provision of Ark. Code Ann. § 23-19-205 (d) (2).

22 C. Shared officers and directors shall file with the Secretary of the Commission a statement signed
23 and sworn under oath that they are aware of, understand, and will comply with the restrictions
24 set forth in the statutes and these Rules.

25 Rule 3.05. Corporate Identification and Advertising

26 A. To the extent that an electric utility's affiliate chooses to use the electric utility's name or logo, or
27 a substantially similar name or logo, for advertising and in solicitations intended to influence a

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1 customer's selection of an electric service provider, that advertising and solicitation shall:

2 (1) Be truthful and not misleading; and

3 (2) Contain one of the following statements, as applicable, displayed in such a manner
4 that the statement is legible, visible, and/or audible, as appropriate for the media utilized:

5 (a) in cases where the competitive affiliate is a separate corporate entity,
6 contain the following statement: "[name of competitive affiliate] is not the
7 same company as [name of utility] and is not regulated by the Arkansas
8 Public Service Commission, and you do not have to purchase products or
9 services from [name of competitive affiliate] to continue to receive
10 regulated services of the same quality from [name of utility]; or

11 (b) in cases where the competitive affiliate is not a separate corporate entity,
12 contain the following statement: "The sale of [identify competitive goods
13 or services] by [name of competitive affiliate] is not regulated by the
14 Arkansas Public Service Commission, and you do not have to purchase
15 products or services from [name of competitive affiliate] to continue to
16 receive regulated services of the same quality from [name of electric utility]."

17 Rule 3.05.A.(2) shall not apply to advertising and solicitations normally disseminated outside the
18 electric utility's service territory.

19 B. Regarding advertising space promoting generation products or services or other energy-related
20 products or services found to be competitive by the Commission pursuant to Ark. Code Ann.
21 § 23-19-501(a) in electric utility billing envelopes or other written communication with electric
22 utility customers:

23 (1) An electric utility shall not offer to provide to its affiliate such advertising space in
24 electric utility billing envelopes or other form of electric utility customer written
25 communication unless it contemporaneously offers access on the same terms and
26 conditions to all other unaffiliated energy service providers and subsequently provides
27 such access to all energy service providers that accept the offer. The electric utility
28 shall post notice of the availability of such an offer on its Internet site or other public
29 electronic bulletin board. However, the electric utility may identify the actual provider
30 of electric service to the customer, including an affiliate, on the customer's bill.

31 (2) An electric utility may establish reasonable business policies or guidelines concerning
32 the materials included in its billing envelopes. Such requirements shall not be utilized in

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1 such a manner that would create an advantage for its affiliate.

- 2 (3) Rule 3.05.B.(1) shall remain applicable to an electric utility until another entity is
3 permitted to provide a consolidated bill reflecting charges for distribution, transmission,
4 generation, and customer services.

5 C. An electric utility may participate in joint advertising or joint marketing with its competitive
6 affiliate if the electric utility:

- 7
8 (1) maintains complete and detailed books and records accounting for all associated costs,
9 including but not limited to the costs of employee time, use of any equipment supplies,
10 and services, and assigns those costs to the affiliate pursuant to the pricing rules set
11 forth in Section 4.
- 12 (2) describes specifically and in detail how its proposed procedures and accounting will
13 ensure compliance with this Rule and with the requirements of Ark. Code Ann. § 23-
14 19-205(d) in its filing made pursuant to Rule 5.01.
- 15 (3) ensures that the advertisements and all other communications are truthful and not
16 misleading; and
- 17 (4) ensures that the advertisement and all other communications include the disclaimer
18 specified in Rule 3.04.A(2).

19 No cost of joint advertising may be included in the utility's rates except to the extent allowed by
20 Ark. Code Ann. § 23-4-207.

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SECTION 4. TRANSACTIONS AND JOINT PURCHASES

Rule 4.01. Transactions Between Electric Utilities and Affiliates

Transactions between an electric utility and a competitive affiliate shall be accomplished through the following means:

- A. Tariffed products and services; or
- B. In the event that the electric utility purchases power from its competitive affiliate for purposes of providing the standard service package, the procedures set forth in Ark. Code Ann. 23-19-402(a); or
- C. The sale or transfer of goods, services or assets consistent with the requirements of Rule 4.02.

Rule 4.02. Pricing of Transactions Involving the Sale or Transfer of Goods, Services, or Assets Between Electric Utilities and Affiliates

- A. Except as provided in Rule 4.01.B, for each asset that was transferred from the electric utility to the competitive affiliate during the course of functional unbundling of business activities pursuant to Ark. Code Ann. §§23-19-205(b) and (c) and 23-19-501(a), all transactions, including any sale, transfer, lease or rental of that asset and the provision of services using that asset, from the competitive affiliate to the electric utility shall be at cost until such time as the asset has been fully depreciated,
- B. Except as provided in Rule 4.01.B, for any service performed by any department, division or other business component transferred from the electric utility to the competitive affiliate during the course of functional unbundling pursuant to Ark. Code Ann. §§23-19-205(b) and (c) and 23-19-501(a), the provision of such service by the competitive affiliate to the electric utility shall be priced at cost until such time as the Commission determines that such pricing is no longer appropriate,
- C. All other transactions involving the sale, transfer, lease or rental of any goods, services or assets between an electric utility and its competitive affiliates shall be priced at fair market value. This requirement may be satisfied by imputing fair market value pricing to such transactions for purposes of determining the electric utility's revenue requirement in ratemaking proceedings.

Rule 4.03. Joint Purchases and Shared Corporate Support Services

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- 1 A. The costs of joint purchases and shared corporate support services by an electric
2 utility and its competitive affiliate shall be appropriately allocated in accordance with
3 Rule 3.02.
- 4 B. Shared corporate support services shall not be used in a manner that would result in the transfer
5 of customer information in violation of Rule 2.02.B.(4).
- 6 C. The electric utility shall ensure that all joint purchases and shared corporate support services are
7 conducted, priced, and recorded in a manner that permits clear identification and audit of the
8 electric utility and affiliates of such purchases.

9 Rule 4.04 Records of Transactions Between Electric Utilities and Affiliates

10 An electric utility shall maintain a record of all transactions with its competitive affiliates for at least three
11 years following the date of each transaction. The record shall be in a readily retrievable format and
12 shall include for each transaction:

- 13 A. the identity of the competitive affiliate involved in the transaction;
- 14 B. the date of the transaction;
- 15 C. a narrative description of the transaction;
- 16 D. the dollar amount of the transaction; and
- 17 E. sufficient information to conduct an audit of the transaction for the purposes of ensuring
18 compliance with these Rules, including, but not limited to, invoices, vouchers, and journal
19 entries, and information supporting the pricing method used, including but not limited to the cost
20 and allocation method of the transaction and the market price and basis for the market price of
21 the transaction.

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SECTION 5. REPORTING REQUIREMENTS

Rule 5.01. Written Procedures

- 1
- 2
- 3 A. Within sixty days of the filing of the information required in Rule 3.01.B.(1) and pursuant to
4 Ark. Code Ann. § 23-19-205(d)(3), each electric utility shall maintain in a public place and file
5 with the Commission its current written procedures implementing the requirements of Ark.
6 Code Ann. §§ 23-19-205(d) and 23-19-403 and these Rules.
- 7 B. The written procedures filed with the Commission pursuant to Rule 5.01.A. should include:
- 8 (1) All internal rules, practices, and policies governing the interaction between the electric
9 utility and its competitive affiliates;
- 10 (2) All internal codes of conduct, financial record keeping requirements, and other policies
11 addressing interaction between the electric utility and its competitive affiliates;
- 12 (3) The names and addresses of all competitive affiliates;
- 13 (4) An organizational chart depicting the structure of the electric utility, its affiliates, and the
14 relationships between the electric utility and its affiliates. The organizational chart
15 should identify the officers and directors of the electric utility and its affiliates;
- 16 (5) A description of the types of assets, goods, and services provided between the electric
17 utility and each of its affiliates; and
- 18 (6) Such additional procedures, information, and detail which the Commission requests to
19 enable other energy service providers, customers, and the Commission to determine
20 that the electric utility is in compliance with the requirements of Ark. Code Ann.
21 § 23-19-205 (d).
- 22 C. If changes are made to the information addressed in Rules 5.01.B.(1), (2), and (3), the electric
23 utility shall file with the Commission a revised copy of that information within thirty days
24 following the change. A cover letter identifying each change to that information and providing
25 an explanation for each change must accompany the filing.
- 26 D. The electric utility shall file with the Commission a revised copy of its written procedures
27 annually by March 31 if there are any changes to those procedures. A cover letter identifying
28 each change to those procedures and providing an explanation for each change must
29 accompany the revised copy of the written procedures.

Attachment A

1 Rule 5.02. Notice of Employee Transfers

2 A. As required by Ark. Code Ann. §23-19-205(d)(2)(B), each electric utility shall file notice of
3 each employee transfer described below annually by March 31 for the preceding calendar year:

4 (1) an employee of the electric utility engaged in the retail sales or marketing functions is
5 transferred to the transmission or distribution functions;

6 (2) an employee of the electric utility engaged in the retail sales or marketing functions is
7 transferred to a competitive affiliate;

8 (3) an employee engaged in the transmission or distribution functions is transferred to the
9 retail sales or marketing functions of the electric utility;

10 (4) an employee of a competitive affiliate is transferred to the retail sales or marketing
11 functions of the electric utility; or

12 (5) an employee of a competitive affiliate is transferred to the transmission or distribution
13 functions of the electric utility.

14 B. The notice required in Rule 5.02.A. shall include:

15 (1) the name of the employee;

16 (2) the title and responsibilities of the position from which the employee is transferred;

17 (3) the title and responsibilities of the position to which the employee is being transferred;
18 and

19 (4) the effective date of the transfer.

20 C. For the purposes of Rule 5.02.A., a transfer can be accomplished through either:

21 (1) the employee's termination of service with one company, department, or division and
22 acceptance of employment with another company, department, or division within six
23 months of the termination date; or

24 (2) a transfer to another company, department, division, or component.

25 This reporting guideline does not, in any way, limit the requirements of Ark. Code Ann.

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1 § 23-19-205 (d) (2) (B).

- 2 D. For each employee transfer described in Rule 5.02.A., the electric utility shall require the
3 employee to sign a statement indicating that he/she is aware of, understands, and will comply
4 with the restrictions set forth in the statutes and these Rules.

5 Rule 5.03. Reporting of Emergency Circumstances

- 6 A. As required by Ark. Code Ann. §23-19-205(d)(1)(B), an electric utility must file notice with
7 the Commission each time emergency circumstances affecting system reliability cause an electric
8 utility to deviate from the requirements of Ark. Code Ann. §23-19-205(d) and these Rules.
9 The electric utility must file the notice within twenty-four hours of the deviation.

- 10 B. Within thirty days of the termination of the emergency circumstances described in Rule 5.03.A.,
11 the electric utility shall file a report that shall, include:

- 12 (1) A description of the emergency circumstances affecting system reliability;
13 (2) The specific deviations from the requirements of Ark. Code Ann. §23-19-205(d) and
14 these Rules;
15 (3) The duration of the deviations; and
16 (4) The identification of the other affected parties that were directly provided the
17 information in Rules 5.03.B.(1) and (2).

- 18 C. The electric utility shall conspicuously post the information identified in Rule 5.03.B. on its
19 Internet site or other public electronic bulletin board contemporaneous with its filing. The
20 information shall remain posted for at least thirty days.

- 21 D. Pursuant to Ark. Code Ann. §23-19-205(d)(2)(B), an electric utility may, for the purpose of
22 restoring power in the event of a major service disruption, temporarily transfer employees
23 engaged in the retail sales or marketing functions, to or from the transmission or distribution
24 functions or to an affiliate or unregulated department, division, or component. In addition to the
25 requirements of Ark. Code Ann. §23-19-205(d)(2)(B), the electric utility shall file a report of
26 such transfers with the Commission within thirty days following such transfers. The report shall
27 include the information required in Rule 5.02.B. and the following:

- 28 (1) A description of the major service disruption;

Attachment A

- 1 (2) The specific reasons for the temporary transfer of the employee and a statement of the
2 number and job titles of the employees transferred;
- 3 (3) The duration of the temporary transfer; and
- 4 (4) An explanation of how the electric utility will be compensated for the time the employee
5 was temporarily transferred or an explanation of assignment of the costs associated with
6 the employee during the period of the temporary transfer.

7 E. The annual report required in Rule 5.02.A. shall include the transfers addressed by Rule
8 5.03.D.

9 Rule 5.04. Notice of Disclosure of Information

- 10 A. If an employee of an electric utility discloses any information prohibited by Ark. Code Ann.
11 §§23-19-205(d)(2)(D)(i), (ii), and (iii), the electric utility shall file notice with the Commission
12 immediately after the discovery of such disclosure. Such notice shall include:
- 13 (1) A general description of the type of information disclosed;
 - 14 (2) The identification of the party to whom the information was disclosed;
 - 15 (3) The identification and title of the employee who disclosed the information;
 - 16 (4) An explanation of the circumstances surrounding the disclosure including the reasons for
17 the disclosure;
 - 18 (5) Whether such information will be publicly disclosed routinely in the future;
 - 19 (6) The corrective action taken by the electric utility to ensure that a similar incident does
20 not occur in the future; and
 - 21 (7) A description of any training, as necessary, to ensure employee understanding of these
22 Rules.

23 The notice shall not disclose any customer information.

- 24 B. The electric utility shall conspicuously post the information identified in Rule 5.04.A. on its
25 Internet site or other public electronic bulletin board within twenty-four hours after the
26 discovery of such disclosure. The information shall remain posted for at least thirty days after

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1 the discovery of such disclosure.

2 C. If an electric utility discloses customer information, it shall contemporaneously provide the
3 notice required in Rule 5.04.A. to any affected customers.

4 Rule 5.05. Annual Compliance Audit

5 A. Annually, for the preceding calendar year, each electric utility shall have an independent audit
6 prepared verifying that the electric utility is in compliance with Ark. Code Ann.
7 §§23-19-205(d) and 23-19-403 and these Rules. The scope of the compliance audit shall be
8 established in advance and shall annually be subject to Commission approval.

9 B. Each electric utility shall file the results of the annual compliance audit required by Rule 5.05.A.
10 with the Commission no later than August 1 of the following year.

11 C. Following the submission of the results of the third annual compliance audit addressed in Rules
12 5.05.A. and B., each electric utility shall not be required to conduct the annual audit unless
13 directed by the Commission.

Attachment A

1 Rule 5.06. Records of Allegations of Violations of These Rules

2 A. Each electric utility shall keep a current record of all allegations made to the electric utility or the
3 Commission regarding violations of these Rules. The record shall provide, for each allegation, a
4 brief summary of the nature of the allegation and its resolution or current status. Each electric
5 utility shall maintain such records for at least three years.

6 B. Semi-annually, by March 31 and September 30 of each year, each electric utility shall file with
7 the Commission the record of allegations of violations of these Rules addressed in Rule 5.06.A.
8 for the preceding calendar year.
9

Attachment A

1 Rules of Practice and Procedure, Rule 1.04.(i) should be modified as follows:

- 2 (i) The Secretary of the Commission shall maintain (1) a list of each authorized energy
3 service provider and electric utility providing generation and (2) a list of each authorized
4 telecommunications provider in the State of Arkansas. In conjunction with the name of
5 each energy service provider, electric utility providing generation, and
6 telecommunications provider, the list shall also contain the name and business address
7 of the person designated by the energy service provider, electric utility providing
8 generation, or telecommunications provider to receive all service of process and official
9 correspondence from the Commission. It shall be the obligation of all energy service
10 providers, electric utilities providing generation, and telecommunications providers to
11 verify that the information maintained on this list is current and accurate.

Attachment B

DEFINITIONS

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Affiliate

As defined in Ark. Code Ann. § 23-19-102 (2).

Commission

The Arkansas Public Service Commission.

Competitive Affiliate

An energy service provider affiliate of an electric utility; or any affiliate or unregulated department, division, or other component of an electric utility providing generation products or services or other energy-related products or services found to be competitive by the Commission pursuant to Ark. Code Ann. 23-19-501(a).

Customer

Any person or entity who has applied for and agreed to pay for electric service.

Customer Information

Information and data specific to an electric utility's customer which the electric utility acquired or developed in the course of its provision of electric services. Customer information includes, but is not limited to, names, telephone numbers, geographic locations, addresses, payment histories, usage histories, and projected usage.

Direct Cost

Costs which can be directly identified with a particular service or product.

Electric Utility

As defined in Ark. Code Ann. § 23-19-102 (9) subject to other provisions of Ark. Code Ann. § 23-19-101, *et. seq.*

Energy Service Provider

Attachment B

1 As defined in Ark. Code Ann. § 23-19-102 (10)

2 **FERC**

3 The Federal Energy Regulatory Commission

4 **Fully Allocated Cost**

5 The sum of the costs which can be directly identified with a particular service or product plus an
6 appropriate allocation of indirect costs.

7 **Indirect Cost**

8 Costs that cannot be directly identified with a particular service or product including, but not
9 limited to, overhead costs, administrative and general costs, and taxes.

10 **Shared Corporate Support Services**

11 Services shared between or among an electric utility, its parent holding company, or an affiliated
12 entity such as human resources, procurement, information technology, regulatory services,
13 administrative services, real estate services, legal services, accounting, environmental services,
14 research and development unrelated to marketing activity or business development, internal
15 audit, community relations, corporate communications, financial services, financial planning and
16 management support, and corporate services.

17 **Small System**

18 An electric utility which delivers four million or fewer megawatt hours of electricity, system
19 wide, within any calendar year.

Attachment B

SECTION 1. APPLICABILITY, SCOPE, AND GENERAL REQUIREMENTS

Rule 1.01. Applicability

- A. These Rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304 (3), 23-2-305, 23-19-205 (d), and 23-19-403.
- B. These Rules shall apply to all electric utilities and their affiliates, unregulated departments, divisions, or other components transacting business or engaging in activities that are jurisdictional to this Commission.
- C. Other than the circumstances noted in Rules 1.01.D. and E., these Rules shall apply to an electric utility and its affiliates and unregulated divisions, departments, and other components upon approval by the Commission.
- D. Section 4. shall not apply to the activities necessary for an electric utility to complete the functional unbundling of its business activities pursuant to Ark. Code Ann. §§ 23-19-205 (b) and (c) and 23-19-501 (a).
- E. Rule 5.05. shall apply to an electric utility and its affiliates, unregulated divisions, departments, and other components when the electric utility has completed the functional unbundling of its business activities pursuant to Ark. Code Ann. §§ 23-19-205 (b) and (c).
- F. Nothing in these Rules shall govern, limit, or restrict the Commission's authority under Ark. Code Ann. §§ 23-19-301 through 23-19-304 or 23-19-501.
- G. These Rules shall not apply to the activities of employees of an electric utility or its affiliate engaged in transmission operations to the extent that these rules concern activities exempted from the requirements of Ark. Code Ann. § 23-19-205(d) by Ark. Code Ann. § 23-19-205(d)(1)(C).
- H. These Rules shall not apply to the activities and transactions of a special purpose entity of an electric utility specifically limited in its scope to engage in securitization transactions set forth in Ark. Code Ann. §§23-19-601 through 616, the activities and transactions of such special purpose entities being appropriately regulated by the Commission in qualified rate orders entered pursuant to Ark. Code Ann. §23-19-603.

Rule 1.02. Purpose and Scope

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1 A. The purpose of these Rules is to ensure that all transactions among or between the electric
2 utility and any affiliates or unregulated departments, divisions, and components; of the electric
3 utility are conducted consistent with the requirements of Ark. Code Ann. §§ 23-19-205 (d)
4 and 23-19-403 and to ensure that electric utilities shall not use any revenue from any regulated
5 asset, operation, or service to subsidize the provision of any unregulated electric service or
6 other unregulated activity.

7 B. These Rules are intended to:

8 (1) Prevent any competitive affiliate from gaining an advantage as a result of the relationship
9 between the electric utility and its affiliate, except as specifically provided in these
10 Rules.

11 (2) Protect the competitive market from being unduly injured by the relationship between
12 the electric utility and its affiliates.

13 (3) Protect the ratepayer of the regulated monopoly utility service from providing any
14 subsidy to a competitive affiliate of the utility.

15 C. These Rules are intended to foster public, customer, and competitor confidence in the viability
16 of meaningful competition and customer choice in the electric industry.

17 D. These Rules provide specific examples of conduct and / or accounting treatment that are
18 required to comply with the provisions of Ark. Code Ann. §§ 23-19-205 (d) and 23-19-403.

19 Rule 1.03 General Requirement

20 In addition to the specific requirements or exemptions set out in these Rules, all transactions
21 among or between the regulated and any unregulated departments, divisions, components, or
22 affiliates of an electric utility shall be conducted at arm's length pursuant to Ark. Code Ann.
23 § 23-19-403.

24 Rule 1.04. Exemption from Rules

25 A. Exemptions from these Rules, other than those Rules required by Ark. Code Ann. § 23-19-
26 205(d), may be granted by the Commission in conformity with Rule 1.03 of the Commission
27 Rules of Practice and Procedure.

28 B. Pursuant to Ark. Code Ann. § 23-19-205(f), a small system may request an exception to any
29 or all of the requirements set forth in Ark. Code Ann. §§ 23-19-205 (c) and (d).

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1 Rule 1.05. Complaints Alleging Violations of These Rules

2 Complaints alleging violations of these Rules shall be addressed pursuant to the procedures
3 outlined in Section 10 of the Commission's Rules of Practice and Procedure.

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SECTION 2. PROHIBITION AGAINST PREFERENTIAL TREATMENT

Rule 2.01. Preferential Treatment Prohibited

A. An electric utility shall not:

- (1) Represent that its competitive affiliates and competitive affiliates' customers will receive preferential treatment by the utility compared to that afforded non-affiliated providers and their customers, other than patronage capital, voting rights, and other specific benefits to which cooperative members may be entitled by virtue of being a member of the cooperative.
- (2) Provide its competitive affiliates or customers of its competitive affiliates any advantage, including but not limited to preferences in terms, conditions, pricing, reliability, quality, design and equipment requirements, scheduling, or timing, over non-affiliated suppliers or their customers in the provision of services by the electric utility, other than patronage capital, voting rights, and other specific benefits to which cooperative members may be entitled by virtue of being a member of the cooperative.
- (3) Identify potential customers within its service territory for its competitive affiliates unless:
 - (a) the electric utility simultaneously makes the information publicly available on the same terms and conditions to competitive providers, for example, by posting the information on its Internet site or other public electronic bulletin board; and
 - (b) the customer provides prior affirmative written consent or other verifiable authorization as determined by the Commission.
- (4) Solicit business within its service territory on behalf of its competitive affiliates unless the utility:
 - (a) maintains complete and detailed books and records accounting for all associated costs, including the costs of employee time, and assigns those costs to the competitive affiliate pursuant to the pricing rules set forth in Rules 4.01 and 4.02;
 - (b) ensures that the communication by its employee is truthful and not misleading;
 - (c) ensures that the communication by its employee includes the disclaimer specified in Rule 3.05.A.(2);

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- 1 (d) ensures that employees engaged in distribution operations do not engage in such
2 solicitation; and
3 (e) describes specifically and in detail how its proposed business plan to be filed
4 pursuant to Rule 5.01 will ensure compliance with the rule.
- 5 (5) Speak on behalf of its competitive affiliates unless the utility:
- 6 (a) maintains complete and detailed books and records accounting for all
7 associated costs, including but not limited to the costs of employee time, use of
8 any equipment supplies and services, and assigns those costs to the affiliate
9 pursuant to the pricing rules set forth in Section 4;
10 (b) ensures that the communication by its employee is truthful and not misleading;
11 (c) ensures that the communication by its employee includes the disclaimer
12 specified in Rule 3.05.A (2);
13 (d) ensures that employees engaged in distribution operations do not engage in such
14 communication; and
15 (e) describes specifically and in detail how its proposed business plan to be filed
16 pursuant to Rule 5.01 will ensure compliance with the Rule.
- 17 (6) Condition or otherwise tie the provision of its services, the availability of discounts of its
18 rates, charges, or fees, or waivers of terms and conditions of any of its services to the
19 taking of goods or services from its competitive affiliates.
- 20 (7) Afford any employee engaged in the retail marketing or sale of electricity, for either the
21 electric utility or an affiliate, access to the system control center or similar facilities used
22 for distribution functions that differs in any way from the access available to other
23 energy service providers, except to the extent necessary to restore service or to prevent
24 or respond to emergency conditions
- 25 B. The competitive affiliate shall not speak on behalf of the electric utility unless the affiliate:
- 26 (a) ensures that the communication by its employee is truthful and not misleading;
27 and
28 (b) ensures that the communication by its employee includes the disclaimer
29 specified in Rule 3.05.A(2).
- 30 C. The competitive affiliate shall not represent that its customers will receive preferential treatment
31 by the utility compared to that afforded non-affiliated providers and their customers, other than
32 patronage capital, voting rights, and other specific benefits to which cooperative members may
33 be entitled by virtue of being a member of the cooperative.

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1 Rule 2.02. Provision of Information

2 A. An electric utility shall not provide information to its competitive affiliates, except for information
3 that is publicly available or is necessary for the performance of joint corporate functions, except
4 as otherwise provided in this rule. The terms and conditions for disclosure of customer
5 information pursuant to this rule shall be included in the electric utility's tariffs.

6 B. With respect to customer information:

7 (1) An electric utility shall provide a customer with his customer information upon request.

8 (2) An electric utility shall not condition provision of electric service upon a customer's
9 agreement to release customer information to another entity.

10 (3) An electric utility shall release the customer information listed in Ark. Code Ann. §
11 23-19-401(a)(3), including name, address and telephone number, to another entity only
12 pursuant to the customer's prior affirmative written consent or other verifiable
13 authorization as determined by the Commission. In such cases, the electric utility shall
14 not be required to release any customer information to any other entity. Such consent
15 shall not be required for the release of such information to a third party which has been
16 retained by the utility to perform billing services for it, so long as the billing service
17 provider is not an electric utility or an energy service provider and the billing service
18 provider agrees to treat the information confidential as required by this rule. Such
19 consent shall not be required for the release of such information to an entity that
20 provides shared corporate support services to the electric utility, so long as the entity
21 agrees to treat the information as confidential as required by this rule.

22 (4) To the extent necessary to ensure continuity of service or provide the standard service
23 package as described in Ark. Code Ann. § 23-19-402, an electric utility may provide,
24 without customer authorization, the customer information listed in Ark. Code
25 Ann. § 23-19-401(a)(3) to the electric utility or energy service provider providing the
26 standard service package.

27 (5) To the extent necessary to restore service or to prevent or respond to emergency
28 conditions, an electric utility may provide the customer information listed in Ark. Code
29 Ann. § 23-19-401(a)(3) without customer authorization to the parties involved in the
30 service restoration or responding to the emergency conditions. The electric utility shall
31 release only the customer information necessary to restore service or prevent or
32 respond to an emergency condition. The electric utility must report any such release of
33 information pursuant to Rule 5.03.

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1 C. With respect to energy service provider information:

2 (1) If a customer requests a list of energy service providers, the electric utility shall provide
3 a list in such a manner that treats all energy service providers equally. Any lists
4 provided in accordance with this Rule must be filed for informational purposes only with
5 the Secretary of the Commission. This requirement can be satisfied by providing the list
6 of energy service providers and electric utilities providing generation maintained by the
7 Secretary of the Commission pursuant to Rule 1.04.(i) of the Commission's Rules of
8 Practice and Procedure.

9 (2) If a customer requests information about a specific energy service provider, the electric
10 utility may provide the information so long as the information is truthful and not
11 misleading. If the information requested concerns a competitive affiliate, the electric
12 utility shall:

13 (a) maintain complete and detailed books and records accounting for all associated
14 costs, including but not limited to the costs of employee time, use of any
15 equipment supplies and services, and assigns those cost to the affiliate pursuant
16 to the pricing rules set forth in Section 4;

17 (b) ensure that the communication by its employee is truthful and not misleading;

18 (c) ensure that the communication by its employee includes the disclaimer specified
19 in Rule 3.05.A(2); and

20 (d) describe specifically and in detail how its proposed procedures and accounting
21 in its business plan to be filed pursuant to Rule 5.01 will ensure compliance with
22 the rule.

23 (3) An electric utility shall not provide any information about a specific unaffiliated energy
24 service provider, not publicly available, to any other person unless authorized by the
25 specific energy service provider or the Commission's Rules.

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SECTION 3. FUNCTIONAL SEPARATION

Rule 3.01. Business Entities

- 1
- 2
- 3 A. At a minimum, each electric utility shall functionally unbundle its business activities as required
- 4 by Ark. Code Ann. §§ 23-19-205 (b) and (c).
- 5 B. Each electric utility shall provide the following information:
- 6 (1) Within sixty days of a Commission order adopting these Rules, each electric utility shall
- 7 file its plan to functionally unbundle its business activities pursuant to Ark. Code Ann.
- 8 §§ 23-19-205 (b) and (c). The plan shall identify when and how it will be implemented
- 9 and shall identify all regulatory approvals required for its implementation.
- 10 (2) An electric utility that delays the implementation of retail open access pursuant to
- 11 Ark. Code Ann. § 23-19-106 (e) shall not be required to submit the information
- 12 required by Rule 3.01.B. (1) until one year before it implements retail open
- 13 access.
- 14 (3) Each electric utility shall file any modifications to the plan addressed in Rule 3.01.B(1).
- 15 (4) Within ten days after implementation of the plan addressed in Rule 3.01.B.(1), each
- 16 electric utility shall file a notice of completion. Such notice shall identify any deviations
- 17 from the previously filed plan.
- 18 C. The electric utility shall keep separate books and records separate from its affiliates as required
- 19 by Ark. Code Ann. § 23-19-205 (d) (2) (F).
- 20 D. The books and records of the electric utility's unregulated divisions, departments, and
- 21 components shall be maintained in a format that can be readily ascertained and readily
- 22 separated by department, division, and component.
- 23 E. Electric utility books and records shall be kept in accordance with the FERC Uniform System
- 24 of Accounts (18 C.F.R. § 101) or the RUS Uniform System of Accounts - Electric (7 C.F.R. §
- 25 1767, RUS Bulletin 1767B-1, Issued September 5, 1997) and Generally Accepted Accounting
- 26 Principles (GAAP), as these may be amended.
- 27 F. Unless otherwise authorized by the Commission or permitted by Rule 1.01.G., an electric utility
- 28 shall not:

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- 1 (1) allow an affiliate to obtain credit under an arrangement that would include a specific
2 pledge of assets owned by the electric utility, or
- 3 (2) provide a guarantee or otherwise extend credit to its affiliate.
- 4 G. An electric utility's office space shall be physically separate from that of its competitive
5 affiliates. Physical separation shall be accomplished by having office space in separate buildings
6 or, if within the same building, by a method such as having offices on separate floors or with
7 separate access. An electric utility shall not share office space with its competitive affiliates
8 unless the electric utility:
- 9 (a) maintains complete and detailed books and records reflecting adherence to the
10 pricing provisions of Section 4.
- 11 (b) describes specifically and in detail its written procedure to ensure compliance
12 with this Rule in the filing made pursuant to Rule 5.01.
- 13 H. An electric utility shall not share office equipment, facilities, computer or information systems, or
14 other resources with its competitive affiliates unless the electric utility:
- 15 (a) maintains complete and detailed books and records reflecting adherence to the
16 pricing provisions of Rules 4.01, 4.02 and 4.03.
- 17 (b) describes specifically and in detail the procedures it will use to ensure
18 compliance with this Rule in its filing made pursuant to Rule 5.01.
- 19 I. Employees of an electric utility may participate in meetings with employees of its competitive
20 affiliate to discuss technical or operational subjects regarding the electric utility's provision of
21 services only if the electric utility gives notice of such meetings to all competitors on its Internet
22 site or other public electronic bulletin board and allows them to attend. This requirement shall
23 not apply when the meeting addresses the needs of a specific customer and that customer elects
24 to meet solely with the utility and its competitive affiliate.
- 25 J. Each electric utility shall require each of its employees in Arkansas engaged in the production,
26 distribution, and marketing or sale of retail electricity to sign a statement indicating that he/she is
27 aware of, understands, and will comply with the restrictions set forth in the Arkansas Act 1556
28 of 1999 and these Rules. Each electric utility shall make its employees engaged in activities
29 outside Arkansas aware of the restrictions set forth in the statutes and these Rules. The electric
30 utility shall describe its procedures to ensure compliance with this Rule in its written procedures
31 filed pursuant to Rule 5.1.

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1 Rule 3.02. Allocation of Joint and Common Costs

2 For the purpose of allocating joint and common costs between the electric utility and its affiliates or
3 unregulated departments, divisions, or components, ~~when Section 4 requires that transactions be priced~~
4 ~~at cost~~, the following guidelines shall apply to the allocation of costs associated with joint purchases,
5 shared corporate support services, and transactions that are priced at cost under Section 4 :

- 6 A. To the maximum extent practical, costs shall be collected and classified on a direct basis for
7 each service or product provided.
- 8 B. The method for charging joint and common costs shall be on a fully allocated cost basis.
- 9 C. All direct and indirect costs between regulated and non-regulated products and services shall
10 be traceable to the books of the electric utility. Sufficient information, subject to audit, shall be
11 maintained to document and support the allocation of costs.

12 Rule 3.03. Treatment of Revenues Received by the Electric Utility for the Provision of Competitive 13 Goods or Services

14 When an electric utility receives revenues for the provision of competitive goods or services, the
15 revenues and the fully allocated cost of providing the goods or services shall be treated below the line
16 for ratemaking purposes.

17 Rule 3.04. Employees

- 18 A. Joint employment of any person, not including a board member or corporate officer, by an
19 electric utility and an affiliate is prohibited.
- 20 B. The electric utility shall not utilize shared officers and directors in a manner that would violate
21 any provision of Ark. Code Ann. § 23-19-205 (d) (2).
- 22 C. Shared officers and directors shall file with the Secretary of the Commission a statement signed
23 and sworn under oath that they are aware of, understand, and will comply with the restrictions
24 set forth in the statutes and these Rules.

25 Rule 3.05. Corporate Identification and Advertising

- 26 A. To the extent that an electric utility's affiliate chooses to use the electric utility's name or logo, or
27 a substantially similar name or logo, for advertising and in solicitations intended to influence a

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1 customer's selection of an electric service provider, that advertising and solicitation shall:

2 (1) Be truthful and not misleading; and

3 (2) Contain one of the following statements, as applicable, displayed in such a manner
4 that the statement is legible, visible, and/or audible, as appropriate for the media utilized:

5 (a) in cases where the competitive affiliate is a separate corporate entity,
6 contain the following statement: "[name of competitive affiliate] is not the
7 same company as [name of utility] and is not regulated by the Arkansas
8 Public Service Commission, and you do not have to purchase products or
9 services from [name of competitive affiliate] to continue to receive
10 regulated services of the same quality from [name of utility]; or

11 (b) in cases where the competitive affiliate is not a separate corporate entity,
12 contain the following statement: "The sale of [identify competitive goods
13 or services] by [name of competitive affiliate] is not regulated by the
14 Arkansas Public Service Commission, and you do not have to purchase
15 products or services from [name of competitive affiliate] to continue to
16 receive regulated services of the same quality from [name of electric utility]."

17 Rule 3.05.A.(2) shall not apply to advertising and solicitations normally disseminated outside the
18 electric utility's service territory.

19 B. Regarding advertising space promoting generation products or services or other energy-related
20 products or services found to be competitive by the Commission pursuant to Ark. Code Ann.
21 § 23-19-501(a) in electric utility billing envelopes or other written communication with electric
22 utility customers:

23 (1) An electric utility shall not offer to provide to its affiliate such advertising space in
24 electric utility billing envelopes or other form of electric utility customer written
25 communication unless it contemporaneously offers access on the same terms and
26 conditions to all other unaffiliated energy service providers and subsequently provides
27 such access to all energy service providers that accept the offer. The electric utility
28 shall post notice of the availability of such an offer on its Internet site or other public
29 electronic bulletin board. However, the electric utility may identify the actual provider
30 of electric service to the customer, including an affiliate, on the customer's bill.

31 (2) An electric utility may establish reasonable business policies or guidelines concerning
32 the materials included in its billing envelopes. Such requirements shall not be utilized in

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1 such a manner that would create an advantage for its affiliate.

- 2 (3) Rule 3.05.B.(1) shall remain applicable to an electric utility until another entity is
3 permitted to provide a consolidated bill reflecting charges for distribution, transmission,
4 generation, and customer services.

5 C. An electric utility may participate in joint advertising or joint marketing with its competitive
6 affiliate if the electric utility:

- 7
8 (1) maintains complete and detailed books and records accounting for all associated costs,
9 including but not limited to the costs of employee time, use of any equipment supplies,
10 and services, and assigns those costs to the affiliate pursuant to the pricing rules set
11 forth in Section 4.
- 12 (2) describes specifically and in detail how its proposed procedures and accounting will
13 ensure compliance with this Rule and with the requirements of Ark. Code Ann. § 23-
14 19-205(d) in its filing made pursuant to Rule 5.01.
- 15 (3) ensures that the advertisements and all other communications are truthful and not
16 misleading; and
- 17 (4) ensures that the advertisement and all other communications include the disclaimer
18 specified in Rule 3.04.A(2).

19 No cost of joint advertising may be included in the utility's rates except to the extent allowed by
20 Ark. Code Ann. § 23-4-207.

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SECTION 4. TRANSACTIONS AND JOINT PURCHASES

Rule 4.01. Transactions Between Electric Utilities and Affiliates

Transactions between an electric utility and a competitive affiliate shall be accomplished through the following means:

- A. Tariffed products and services; or
- B. In the event that the electric utility purchases power from its competitive affiliate for purposes of providing the standard service package, the procedures set forth in Ark. Code Ann. 23-19-402(a); or
- C. The sale or transfer of goods, services or assets consistent with the requirements of Rule 4.02.

Rule 4.02. Pricing of Transactions Involving the Sale or Transfer of Goods, Services, or Assets Between Electric Utilities and Affiliates

- A. Except as provided in Rule 4.01.B, for each asset that was transferred from the electric utility to the competitive affiliate during the course of functional unbundling of business activities pursuant to Ark. Code Ann. §§23-19-205(b) and (c) and 23-19-501(a), all transactions, including any sale, transfer, lease or rental of that asset and the provision of services using that asset, from the competitive affiliate to the electric utility shall be at cost until such time as the asset has been fully depreciated,
- B. Except as provided in Rule 4.01.B, for any service performed by any department, division or other business component transferred from the electric utility to the competitive affiliate during the course of functional unbundling pursuant to Ark. Code Ann. §§23-19-205(b) and (c) and 23-19-501(a), the provision of such service by the competitive affiliate to the electric utility shall be priced at cost until such time as the Commission determines that such pricing is no longer appropriate,
- C. All other transactions involving the sale, transfer, lease or rental of any goods, services or assets between an electric utility and its competitive affiliates shall be priced at fair market value. This requirement may be satisfied by imputing fair market value pricing to such transactions for purposes of determining the electric utility's revenue requirement in ratemaking proceedings.

Rule 4.03. Joint Purchases and Shared Corporate Support Services

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- 1 A. The costs of joint purchases and shared corporate support services by an electric utility
2 and its competitive affiliate shall be appropriately allocated in accordance with Rule 3.02.
- 3 B. Shared corporate support services shall not be used in a manner that would result in the transfer
4 of customer information in violation of Rule 2.02.B.(4).
- 5 C. The electric utility shall ensure that all joint purchases and shared corporate support services are
6 conducted, priced, and recorded in a manner that permits clear identification and audit of the
7 electric utility and affiliates of such purchases.

8 Rule 4.034 Records of Transactions Between Electric Utilities and Affiliates

9 An electric utility shall maintain a record of all transactions with its competitive affiliates for at least three
10 years following the date of each transaction. The record shall be in a readily retrievable format and
11 shall include for each transaction:

- 12 A. the identity of the competitive affiliate involved in the transaction;
- 13 B. the date of the transaction;
- 14 C. a narrative description of the transaction;
- 15 D. the dollar amount of the transaction; and
- 16 E. sufficient information to conduct an audit of the transaction for the purposes of ensuring
17 compliance with these Rules, including, but not limited to, invoices, vouchers, and journal
18 entries, and information supporting the pricing method used, including but not limited to the cost
19 and allocation method of the transaction and the market price and basis for the market price of
20 the transaction.

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SECTION 5. REPORTING REQUIREMENTS

Rule 5.01. Written Procedures

- 1
- 2
- 3 A. Within sixty days of the filing of the information required in Rule 3.01.B.(1) and pursuant to
4 Ark. Code Ann. § 23-19-205(d)(3), each electric utility shall maintain in a public place and file
5 with the Commission its current written procedures implementing the requirements of Ark.
6 Code Ann. §§ 23-19-205(d) and 23-19-403 and these Rules.
- 7 B. The written procedures filed with the Commission pursuant to Rule 5.01.A. should include:
- 8 (1) All internal rules, practices, and policies governing the interaction between the electric
9 utility and its competitive affiliates;
- 10 (2) All internal codes of conduct, financial record keeping requirements, and other policies
11 addressing interaction between the electric utility and its competitive affiliates;
- 12 (3) The names and addresses of all competitive affiliates;
- 13 (4) An organizational chart depicting the structure of the electric utility, its affiliates, and the
14 relationships between the electric utility and its affiliates. The organizational chart
15 should identify the officers and directors of the electric utility and its affiliates;
- 16 (5) A description of the types of assets, goods, and services provided between the electric
17 utility and each of its affiliates; and
- 18 (6) Such additional procedures, information, and detail which the Commission requests to
19 enable other energy service providers, customers, and the Commission to determine
20 that the electric utility is in compliance with the requirements of Ark. Code Ann.
21 § 23-19-205 (d).
- 22 C. If changes are made to the information addressed in Rules 5.01.B.(1), (2), and (3), the electric
23 utility shall file with the Commission a revised copy of that information within thirty days
24 following the change. A cover letter identifying each change to that information and providing
25 an explanation for each change must accompany the filing.
- 26 D. The electric utility shall file with the Commission a revised copy of its written procedures
27 annually by March 31 if there are any changes to those procedures. A cover letter identifying
28 each change to those procedures and providing an explanation for each change must
29 accompany the revised copy of the written procedures.

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1 Rule 5.02. Notice of Employee Transfers

2 A. As required by Ark. Code Ann. §23-19-205(d)(2)(B), each electric utility shall file notice of
3 each employee transfer described below annually by March 31 for the preceding calendar year:

4 (1) an employee of the electric utility engaged in the retail sales or marketing functions is
5 transferred to the transmission or distribution functions;

6 (2) an employee of the electric utility engaged in the retail sales or marketing functions is
7 transferred to a competitive affiliate;

8 (3) an employee engaged in the transmission or distribution functions is transferred to the
9 retail sales or marketing functions of the electric utility;

10 (4) an employee of a competitive affiliate is transferred to the retail sales or marketing
11 functions of the electric utility; or

12 (5) an employee of a competitive affiliate is transferred to the transmission or distribution
13 functions of the electric utility.

14 B. The notice required in Rule 5.02.A. shall include:

15 (1) the name of the employee;

16 (2) the title and responsibilities of the position from which the employee is transferred;

17 (3) the title and responsibilities of the position to which the employee is being transferred;
18 and

19 (4) the effective date of the transfer.

20 C. For the purposes of Rule 5.02.A., a transfer can be accomplished through either:

21 (1) the employee's termination of service with one company, department, or division and
22 acceptance of employment with another company, department, or division within six
23 months of the termination date; or

24 (2) a transfer to another company, department, division, or component.

25 This reporting guideline does not, in any way, limit the requirements of Ark. Code Ann.

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1 § 23-19-205 (d) (2) (B).

- 2 D. For each employee transfer described in Rule 5.02.A., the electric utility shall require the
3 employee to sign a statement indicating that he/she is aware of, understands, and will comply
4 with the restrictions set forth in the statutes and these Rules.

5 Rule 5.03. Reporting of Emergency Circumstances

- 6 A. As required by Ark. Code Ann. §23-19-205(d)(1)(B), an electric utility must file notice with
7 the Commission each time emergency circumstances affecting system reliability cause an electric
8 utility to deviate from the requirements of Ark. Code Ann. §23-19-205(d) and these Rules.
9 The electric utility must file the notice within twenty-four hours of the deviation.

- 10 B. Within thirty days of the termination of the emergency circumstances described in Rule 5.03.A.,
11 the electric utility shall file a report that shall, include:

- 12 (1) A description of the emergency circumstances affecting system reliability;
13 (2) The specific deviations from the requirements of Ark. Code Ann. §23-19-205(d) and
14 these Rules;
15 (3) The duration of the deviations; and
16 (4) The identification of the other affected parties that were directly provided the
17 information in Rules 5.03.B.(1) and (2).

- 18 C. The electric utility shall conspicuously post the information identified in Rule 5.03.B. on its
19 Internet site or other public electronic bulletin board contemporaneous with its filing. The
20 information shall remain posted for at least thirty days.

- 21 D. Pursuant to Ark. Code Ann. §23-19-205(d)(2)(B), an electric utility may, for the purpose of
22 restoring power in the event of a major service disruption, temporarily transfer employees
23 engaged in the retail sales or marketing functions, to or from the transmission or distribution
24 functions or to an affiliate or unregulated department, division, or component. In addition to the
25 requirements of Ark. Code Ann. §23-19-205(d)(2)(B), the electric utility shall file a report of
26 such transfers with the Commission within thirty days following such transfers. The report shall
27 include the information required in Rule 5.02.B. and the following:

- 28 (1) A description of the major service disruption;

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- 1 (2) The specific reasons for the temporary transfer of the employee and a statement of the
2 number and job titles of the employees transferred;
- 3 (3) The duration of the temporary transfer; and
- 4 (4) An explanation of how the electric utility will be compensated for the time the employee
5 was temporarily transferred or an explanation of assignment of the costs associated with
6 the employee during the period of the temporary transfer.

7 E. The annual report required in Rule 5.02.A. shall include the transfers addressed by Rule
8 5.03.D.

9 Rule 5.04. Notice of Disclosure of Information

- 10 A. If an employee of an electric utility discloses any information prohibited by Ark. Code Ann.
11 §§23-19-205(d)(2)(D)(i), (ii), and (iii), the electric utility shall file notice with the Commission
12 immediately after the discovery of such disclosure. Such notice shall include:
- 13 (1) A general description of the type of information disclosed;
 - 14 (2) The identification of the party to whom the information was disclosed;
 - 15 (3) The identification and title of the employee who disclosed the information;
 - 16 (4) An explanation of the circumstances surrounding the disclosure including the reasons for
17 the disclosure;
 - 18 (5) Whether such information will be publicly disclosed routinely in the future;
 - 19 (6) The corrective action taken by the electric utility to ensure that a similar incident does
20 not occur in the future; and
 - 21 (7) A description of any training, as necessary, to ensure employee understanding of these
22 Rules.

23 The notice shall not disclose any customer information.

- 24 B. The electric utility shall conspicuously post the information identified in Rule 5.04.A. on its
25 Internet site or other public electronic bulletin board within twenty-four hours after the
26 discovery of such disclosure. The information shall remain posted for at least thirty days after

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1 the discovery of such disclosure.

2 C. If an electric utility discloses customer information, it shall contemporaneously provide the
3 notice required in Rule 5.04.A. to any affected customers.

4 Rule 5.05. Annual Compliance Audit

5 A. Annually, for the preceding calendar year, each electric utility shall have an independent audit
6 prepared verifying that the electric utility is in compliance with Ark. Code Ann.
7 §§23-19-205 (d) and 23-19-403 and these Rules. The scope of the compliance audit shall be
8 established in advance and shall annually be subject to Commission approval.

9 B. Each electric utility shall file the results of the annual compliance audit required by Rule 5.05.A.
10 with the Commission no later than August 1 of the following year.

11 C. Following the submission of the results of the third annual compliance audit addressed in Rules
12 5.05.A. and B., each electric utility shall not be required to conduct the annual audit unless
13 directed by the Commission.

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1 Rule 5.06. Records of Allegations of Violations of These Rules

2 A. Each electric utility shall keep a current record of all allegations made to the electric utility or the
3 Commission regarding violations of these Rules. The record shall provide, for each allegation, a
4 brief summary of the nature of the allegation and its resolution or current status. Each electric
5 utility shall maintain such records for at least three years.

6 B. Semi-annually, by March 31 and September 30 of each year, each electric utility shall file with
7 the Commission the record of allegations of violations of these Rules addressed in Rule 5.06.A.
8 for the preceding calendar year.
9

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1 Rules of Practice and Procedure, Rule 1.04.(i) should be modified as follows:

- 2 (i) The Secretary of the Commission shall maintain (1) a list of each authorized energy
3 service provider and electric utility providing generation and (2) a list of each authorized
4 telecommunications provider in the State of Arkansas. In conjunction with the name of
5 each energy service provider, electric utility providing generation, and
6 telecommunications provider, the list shall also contain the name and business address
7 of the person designated by the energy service provider, electric utility providing
8 generation, or telecommunications provider to receive all service of process and official
9 correspondence from the Commission. It shall be the obligation of all energy service
10 providers, electric utilities providing generation, and telecommunications providers to
11 verify that the information maintained on this list is current and accurate.