

66 Pa.C.S. § 2101 (2009)

§ 2101. Definition of affiliated interest

(a) GENERAL RULE: As used in this part "affiliated interest" with a public utility means and includes the following:

(1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.

(3) Every corporation 5% or more of whose voting securities are owned by any person or corporation owning 5% or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of 5% or more of voting securities.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of 5% or more of voting securities.

(5) Every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities, which has one or more officers or one or more directors in common with such public utility, to every other corporation which has directors in common with such public utility where the number of such directors is more than one-third of the total number of the utility's directors.

(6) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public utility even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section. As used in this part substantial influence means any corporation or person which or who stands in such relationship to the public utility that there is an absence of free and equal bargaining power between it or him and the public utility.

(7) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons, or both, with which or whom they are related by ownership or blood relationship, or both, or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

(b) CONSTRUCTION OF SECTION: The term "person" shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers and partnerships.

§ 2102. Approval of contracts with affiliated interests

(a) GENERAL RULE: No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

(b) FILING AND ACTION ON CONTRACT: It shall be the duty of every public utility to file with the commission a verified copy of any such contract or arrangement, or a verified summary as described in subsection (a) of any such unwritten contract or arrangement. All such contracts and arrangements, whether written or unwritten, entered into prior to the effective date of this section and required to be on file with the commission by prior act and in full force and effect at the effective date of this section shall be subject to the provisions of the sections regarding affiliated interests. The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. If at the end of 30 days after the

filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period. No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(c) **DISALLOWANCE OF EXCESSIVE AMOUNTS:** If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive, in any proceeding involving the rates or practices of the public utility. In any proceeding involving such amounts, the burden of proof to show that such amounts are not in excess of the reasonable price for furnishing such services, and that such services are reasonable and proper, shall be on the public utility.

(d) **EXCEPTIONS:** The provisions requiring the written approval of the commission shall not apply to transactions with affiliated interests of any common carrier by railroad or motor vehicle that is subject to the Interstate Commerce Act unless required by order of the commission, nor where the amount of consideration involved is not in excess of \$ 10,000 or 5% of the par value of outstanding common stock, whichever is smaller. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. Where the commission has given its approval generally as to a class or category of transactions, the commission may apply such approval to all subsidiary or related transactions. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding

involving the rates or practices of the public utility, the commission may disallow any payment or compensation made pursuant to such transaction unless the public utility shall establish the reasonableness of such payment or compensation.

§ 2103. Continuing supervision and jurisdiction over contracts

The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements as described in section 2102 (relating to approval of contracts with affiliated interests) so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as it has over such original contracts and arrangements. The fact that the commission shall have approved entry into such contracts or arrangements shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

§ 2104. Contracts to be in writing; cost data

The commission may, by regulation or order, require any contract with an affiliated interest to be in writing. The commission may also, by regulation or order, require that any contract with an affiliated interest shall contain a provision whereby the affiliated interest shall agree to furnish to the public utility, at the time of billing such public utility for any service, property, security, right, or thing, under such contract, a detailed statement of the cost to the affiliated interest of such service, property, security, right, or thing.

§ 2105. Contracts in violation of part void

Every contract with an affiliated interest, made effective or modified in violation of any provision of this part, or of any regulation or order of the commission made under this part, shall be void; and any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under such contract, or under any contract with an affiliated interest, the terms of which shall have been breached by the affiliated interest, shall be unlawful.

§ 2106. Effect on rates

In any proceeding, upon the commission's own motion, or upon application or complaint, involving rates or practices of any public utility, the commission may disallow, in whole or in part, any payment or compensation to an affiliated interest for any services rendered or property or service furnished, or any property, right, or thing received by such public utility, or donation given or received, under existing contracts or arrangements with such affiliated interest unless such public utility shall establish the reasonableness thereof. In such proceeding no payment shall be approved or allowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the service, property, security, right or thing to the public utility. No proof shall be satisfactory, within the meaning of the foregoing sentence, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken there from as the commission may deem adequate, properly identified and duly authenticated. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

§ 2107. Federal regulatory agencies

The provisions of this chapter shall not be applicable to the rates and related terms and conditions for the interstate transmission of electricity, natural gas, liquified natural gas, substitute natural gas, liquified propane gas or naphtha which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof, except that the commission may regulate the volume of such purchases. This section shall not apply to any proceeding under section 1317 (relating to regulation of natural gas costs) or 1318 (relating to determination of just and reasonable natural gas rates).