#### STATE OF MICHIGAN

#### BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter, on the Commission's own	)	
motion, to promulgate rules required by	)	Case No. U-18361
MCL 460.10ee(1).	)	
	)	

At the May 17, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman Hon. Norman J. Saari, Commissioner Hon. Rachael A. Eubanks, Commissioner

## **ORDER AND NOTICE OF HEARING**

On January 3, 2018, the Commission sought permission from the Office of Regulatory Reinvention (ORR) to promulgate rules establishing a code of conduct for all utilities and alternative electric suppliers pursuant to MCL 460.10ee(1). ORR approved the request on February 5, 2018, ORR# 2018-002 LR. The Commission submitted the draft rules to ORR and the Legislative Service Bureau for informal approvals, which were granted on February 5 and March 6, 2018, respectively. The Regulatory Impact Statement was approved by ORR on April 30, 2018.

To provide the public with an opportunity to comment on the proposed rules, the Commission has scheduled a public hearing, which will be held at 9:00 a.m. on June 15, 2018, at 7109 W. Saginaw Hwy., Lansing, Michigan. Any person may attend the public hearing and may offer

comments on the proposed rules. The Commission encourages interested persons to become involved in the proceedings.

In addition, any person may submit written comments regarding the proposed rules. The comments should reference Case No. U-18361, and must be received no later than 5:00 p.m. on June 29, 2018. Address mailed comments to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to <a href="majoredockets@michigan.gov">mpscedockets@michigan.gov</a>. If you require assistance prior to filing, contact Commission staff at (517) 284-8090 or by e-mail at <a href="majoredockets@michigan.gov">mpscedockets@michigan.gov</a>. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure; and all comments will be filed in Case No. U-18361.

# THEREFORE, IT IS ORDERED that:

A. A public hearing regarding the promulgation of rules establishing a code of conduct for all utilities and alternative electric suppliers shall be held at 9:00 a.m. on June 15, 2018, at 7109 W. Saginaw Hwy., Lansing, Michigan. A notice of hearing is attached to this order as Exhibit A. A copy of the proposed rulemaking is attached to this order as Exhibit B.

B. The public hearing will be legislative in nature and any person may present data, views, questions, and arguments regarding the proposed rules. Statements may be limited in duration by the presiding officer in order to ensure that all interested parties have an opportunity to participate in the proceedings. If necessary, the proceeding will continue on such dates as the presiding officer may schedule until all persons have had a reasonable opportunity to be heard.

C. Any person may file written comments, suggestions, data, views, questions, argument, and modifications concerning the proposed rules. To be considered, all comments must be received at

No. U-18361.	
The Commission reserves jurisdiction and	may issue further orders as necessary.
	MICHIGAN PUBLIC SERVICE COMMISSION
	Sally A. Talberg, Chairman
	Norman J. Saari, Commissioner
	Rachael A. Eubanks, Commissioner
By its action of May 17, 2018.	
Kavita Kale, Executive Secretary	

the Commission no later than 5:00 p.m. on June 29, 2018, and should reference Case

Exhibit A

# STATE OF MICHIGAN BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

## NOTICE OF HEARING REGARDING THE ADOPTION OF ADMINISTRATIVE RULES GOVERNING THE CODE OF CONDUCT FOR REGULATED UTILITIES CASE NO. U-18361; ORR #2018-002

- The Michigan Public Service Commission is considering the adoption of rules governing the code of conduct for regulated utilities, which will be located at R 460.10101 to R 460.10113. The Commission will hold a public hearing to solicit comments from anyone who wishes to comment on the proposed rules.
- The information below describes how a person may participate in this case.
  - You may contact the Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909, (800) 292-9555 for a free copy of the proposed rules. Any person may review the rules on the Commission's E-Docket Website at <a href="michigan.gov/mpscedockets">michigan.gov/mpscedockets</a>. The rules are published in the May 15, 2018 issue of the Michigan Register under ORR #2018-002, and may be accessed at the ORR website, <a href="www.michigan.gov/lara">www.michigan.gov/lara</a>, under "Recent and Pending Rule Changes."
- The public hearing will be held:

**DATE:** June 15, 2018

**TIME:** 9:00 a.m.

**LOCATION:** 7109 W. Saginaw Hwy.

Lansing, Michigan

**PARTICIPATION:** Any interested person may attend and participate.

The hearing site is accessible, including handicapped parking. People needing any accommodation to participate should contact the Commission's Executive Secretary at (517) 284-8090 at least a week in advance to request

mobility, visual, hearing or other assistance.

This is a proposal to adopt rules that will govern the code of conduct for regulated utilities. The hearing will be for the purpose of providing an opportunity for all interested persons to present statements, views, data, questions, or arguments concerning the proposed rules. The public hearing will continue until all persons present have had a reasonable opportunity to present statements regarding the proposed rules. Persons presenting statements may be asked questions by the Commission and its Staff, as well as by the presiding officer. Statements may be limited in duration by the presiding officer in order to ensure that all interested parties have an opportunity to participate in the proceedings.

Written and electronic comments may be filed with the Commission and must be received no later than 5:00 p.m. on June 29, 2018. Written comments should be sent to the: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments may be e-mailed to <a href="majoredockets@michigan.gov">mpscedockets@michigan.gov</a>. If you require assistance, contact Commission staff at (517) 284-8090 or by e-mail at <a href="majoredockets@michigan.gov">mpscedockets@michigan.gov</a>. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure. All comments should reference Case No. U-18361. Please do not include information you wish to remain private.

Jurisdiction is pursuant to MCL 460.10ee(1) and MCL 460.55.

May 17, 2018 Lansing, Michigan

#### DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

#### PUBLIC SERVICE COMMISSION

#### CODE OF CONDUCT

## Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of the 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the public service commission by section 10ee(1) of 2016 PA 341, MCL 460.10ee(1))

R 460.10101, R 460.10102, R 460.10103, R 460.10104, R 460.10105, R 460.10106, R 460.10107, R 460.10108, R 460.10109, R 460.10110, R 460.10111, R 460.10112, and R 460.10113 are added to the Michigan Administrative Code as follows:

#### PART 1. GENERAL PROVISIONS

### R 460.10101 Applicability.

Rule 1. These rules apply to all utilities and alternative electric suppliers subject to the jurisdiction of the commission and the requirements of these rules under section 10ee of 2016 PA 341, MCL 460.10ee.

## R 460.10102 Definitions.

#### Rule 2. (1) As used in these rules:

- (a) "Affiliate" means a person or entity that directly or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in these rules, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.
- (b) "Alternative electric supplier" means a person selling electric generation service to retail customers in this state as licensed by the commission under section 10a of 2016 PA 341, MCL 460.10a. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state. An alternative electric supplier is not a public utility, but may be an affiliate of a public utility.
- (c) "Commission" means the public service commission.
- (d) "Other entity within the corporate structure" means a division, department, subsidiary, or similar entity within the corporate structure of a utility.
- (e) "Utility" means an electric, steam, or natural gas utility regulated by the public service commission, and an electric or natural gas cooperative.
- (f) "Value-added programs and services" means programs and services that are utility or energy related, including, but not limited to, home comfort and protection, appliance service,

building energy performance, alternative energy options, or engineering and construction services. Value-added programs and services do not include energy optimization or energy waste reduction programs paid for by utility customers as part of the regulated rates.

#### PART 2. CROSS-SUBSIDIZATION AND PREFERENTIAL TREATMENT

#### R 460.10103 Preventive measures.

- Rule 3. (1) A utility that offers both regulated and unregulated services shall prevent anticompetitive behavior, cross-subsidization, and preferential treatment prohibited by law and these rules. A utility shall be a separate, independent entity from any affiliate providing unregulated programs and services.
- (2) A utility shall not offer unregulated value-added programs and services except through an affiliate or other entity within the corporate structure.
- (3) A utility's regulated services shall not subsidize in any manner, directly or indirectly, the business of its affiliates or other entities within the corporate structure offering unregulated value-added programs or services.

#### R 460.10104 Records.

- Rule 4. (1) A utility shall maintain its books and records separately from those of its affiliates or other entities within the corporate structure offering unregulated value-added programs and services.
- (2) The commission may review records relating to any transaction between a utility and an affiliate, or relating to the offering of unregulated value-added programs and services. At any time, the commission may initiate an investigation into transactions between the utility and its affiliates, or into its offering of value-added programs and services.
- (3) A utility, its affiliates, and other entities within the corporate structure shall keep their books in a manner consistent with generally accepted accounting principles and, where applicable, with the Uniform System of Accounts.

## R 460.10105 Sharing of facilities and employees.

- Rule 5. (1) A utility, its affiliates, and other entities within the corporate structure may share facilities, equipment, operating employees, and computer hardware and software with documented protection to prevent discriminatory access to competitively sensitive information, provided that such sharing complies with section 10ee of 2016 PA 341, MCL 460.10ee, and measures are adopted to prevent cross-subsidization and preferential treatment that is otherwise prohibited.
- (2) A utility may transfer employees between the utility and an affiliate alternative electric supplier providing the utility documents those transfers and files semi-annually with the commission a report of each occasion on which an employee of the utility became an employee of an affiliate alternative electric supplier and/or an employee of an affiliate alternative electric supplier became an employee of the utility.
- (3) None of these rules shall be interpreted to require a utility with fewer than 60 employees to maintain separate facilities, operations, or personnel used to deliver regulated services and unregulated programs and services.

## R 460.10106 Marketing.

- Rule 6. (1) A utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services, shall not engage in joint advertising, marketing, or other promotional activities related to the provision of both regulated and unregulated services, nor shall they jointly sell services.
- (2) A utility or affiliate alternative electric supplier shall not provide or offer to provide any customer with preferential treatment or service for doing business with the utility, its affiliates, or other entities within the corporate structure offering unregulated value-added programs or services, nor shall the utility or affiliate alternative electric supplier provide any customer with inferior treatment or service for doing business with an unaffiliated supplier of a similar service.
- (3) A utility shall not condition or otherwise tie the provision of a utility service or the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions to the taking of any goods or services from the utility, its affiliates, or other entities within the corporate structure offering unregulated value-added programs or services.

R 460.10107 Utility and affiliate or alternative electric supplier relationship.

- Rule 7. (1) A utility shall not interfere in the business operations of any alternative electric supplier. This provision includes, but is not limited to, all of the following:
- (a) A utility shall not give the appearance that it speaks on behalf of any alternative electric supplier or affiliate.
- (b) A utility shall not interfere in the contractual relationship between the alternative electric supplier and its customers unless the utility's action is clearly permitted in the contract between the customer and the alternative electric supplier or in tariffs approved by the commission.
- (2) A utility shall not finance or co-sign loans, provide loan guarantees, provide collateral, or be encumbered or allow its assets to be encumbered by affiliates or other entities within the corporate structure. The utility and its assets shall not be the subject of recourse in the event of default by an affiliate or other entity within the corporate structure.

#### PART 3. DISCRIMINATION

R 460.10108 Discrimination.

- Rule 8. (1) A utility shall not discriminate in favor of or against any person, including its affiliates.
- (2) A utility shall not provide any affiliate or other entity within the corporate structure offering unregulated value-added programs or services, or any customer of an affiliate or other entity within the corporate structure offering unregulated value-added programs or services, preferential treatment or any other advantages that are not offered under the same terms and conditions and contemporaneously to other suppliers offering programs or services within the same service territory or to customers of those suppliers.
- (3) If a utility provides to any affiliate alternative electric supplier or customers of an affiliate alternative electric supplier a discount, rebate, fee waiver, or waiver of its regulated tariffed terms and conditions for services or products, it shall contemporaneously offer the same discount, rebate, fee waiver, or waiver to all alternative electric suppliers operating within the utility's service territory or all alternative electric suppliers' customers.
- (4) If a utility provides services or products to any affiliate or other entity within the corporate structure, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is based upon the higher of fully allocated embedded cost

or fair market price. If an affiliate or other entity within the corporate structure provides services or products to a utility, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is at the lower of market price or 10% over fully allocated embedded cost. Asset transfers from a utility to an affiliate or other entity within the corporate structure for which the cost is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), is at the higher of cost or fair market value. Asset transfers from an affiliate or other entity within the corporate structure to a utility for which the cost is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8) is at the lower of cost or fair market value.

#### PART 4. INFORMATION SHARING

R 460.10109 Disclosure of information.

- Rule 9. (1) Utilities shall comply at all times with applicable data privacy tariffs.
- (2) Every utility that does not have an approved data privacy tariff shall apply to the commission for a data privacy tariff within 90 days of the effective date of these rules.
- (3) Prior written approval of the customer is not required for the disclosure of a customer list to a program or service provider of an unregulated value-added program or service in compliance with section 10ee(10)(a) of 2016 PA 341, MCL 460.10ee(10)(a), or to otherwise comply with these rules. A customer list may include only the name and address of a customer.
- (4) Information obtained by a utility in the course of conducting its regulated business shall not be shared directly or indirectly with its affiliates or other entities within the corporate structure offering unregulated value-added programs or services unless that same information is provided to competitors operating in the state on the same terms and conditions and contemporaneously.
- (5) Customer specific consumption or billing data shall not be provided to any affiliate, other entity within the corporate structure offering unregulated value-added programs or services, or alternative electric supplier without prior written approval of the customer.
- (6) If a utility provides non-customer specific, or aggregated, customer information to its affiliate or other entity within the corporate structure offering unregulated value-added programs or services, it must offer the same information on the same terms and conditions, in the same form and manner, and contemporaneously, to all competitors of that affiliate or other entity within the corporate structure. The provision of such data must comply with all applicable data privacy tariffs.
- (7) When disclosure required in subrule (6) of this rule is otherwise allowed, a utility shall not provide its affiliates or other entities within the corporate structure offering unregulated value-added programs or services with information about the distribution system, including operation and expansion, without offering the same information under the same terms and conditions, in the same form and manner, and contemporaneously, to all licensed alternative electric suppliers and competitors of the affiliate or other entity within the corporate structure that the utility is aware of. The utility shall keep a record of requests for such information, and shall make that record available to the commission upon request.
- (8) A utility shall not provide any information received from or as a result of doing business with a competitor to the utility's affiliate or other entity within the corporate structure offering unregulated value-added programs or services without the written approval of the competitor.

#### R 460.10110 Notification.

- Rule 10. (1) Utilities that intend to offer a value-added program or service shall notify the commission not less than 30 days before offering the new program or service. The written notification shall, at a minimum, provide all of the following:
- (a) A detailed description of the new value-added program or service and what it will offer.
- (b) A list of the personnel responsible for management of the value-added program or service and their location within the utility, both physically and within the corporate structure.
- (c) A detailed description of how costs, including but not limited to, billing, postage, and call center costs, will be allocated to the value-added program or service to ensure that there is no cross-subsidization between regulated and unregulated programs or services.
  - (d) A copy of the business plan for the value-added program or service.
- (e) Pro forma financial statements that outline the expected financial performance for each value-added program or service for the next 12 months.
- (2) Utilities shall request a docket for the filing of the notification, and shall thereafter make all annual report filings in that docket.
- (3) A utility that intends to sell or transfer an asset with a market value of \$1,000,000 or more to any affiliate or other entity within the corporate structure shall notify the commission of the impending sale or transfer no less than 30 days before the sale or transfer. An affiliate or other entity within the corporate structure of a utility that intends to sell or transfer an asset with a market value of \$1,000,000 or more to a utility shall notify the commission of the impending sale or transfer no less than 30 days before the sale or transfer. Upon request, the utility, affiliate, or other entity within the corporate structure shall make available to the commission information that demonstrates how the sale or transfer price was determined. Notification shall be in the form of a letter to the director of the regulated energy division of the commission.

#### R 460.10111 Oversight.

- Rule 11. (1) A utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services shall maintain documentation needed to investigate compliance with section 10ee of 2016 PA 341, MCL 460.10ee, and these rules. All documentation shall be kept at a designated company office in this state, unless the Commission by order has authorized a different location. The utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services shall make this information available for review upon request by the commission or its staff.
- (2) The utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services shall use a documented dispute resolution process separate from any process that might be available from the commission. This dispute resolution process shall address complaints arising from application of these rules. The utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services shall keep a log of all complaints, including the name of the person or entity filing the complaint, the date the complaint was filed, a written statement of the nature of the complaint, and the results of the resolution process.
- (3) A utility, its affiliates, and other entities within the corporate structure offering unregulated value-added programs or services may request a waiver from 1 or more provisions of these rules by filing an application with the commission. The requesting party carries the burden of demonstrating that such a waiver will not impair the development or functioning of the competitive market. Waivers shall be granted for entities that qualify for loans to deploy

broadband services in rural areas under the Rural Electrification Act of 1936, as amended, 7 U.S.C. §901 et seq.

# R 460.10112 Reporting.

- Rule 12. (1) Utilities shall file the code of conduct annual report information required under section 10ee(6)(c) and (15), 2016 PA 341, MCL 460.10ee, no later than April 30 of each year in the docket in which the utility filed its notification for a new program or service, or in a new docket for an existing program or service. Code of conduct annual reports shall include all of the following:
- (a) Designation of a corporate officer of the utility who will oversee compliance with these rules and be available to serve as the commission's primary contact regarding compliance.
- (b) An organizational chart of the parent or holding company showing all regulated entities and affiliates and a description of all programs and services provided between the regulated entity and its affiliates.
- (c) An overview of the report year, including a detailed accounting of how costs were apportioned between the utility and the value-added program or service, expectations for the following year, and any 5-year projections available for each value-added program and service.
- (d) A table illustrating the customer count, revenue, and expense of each value-added program and service.
- (e) A balance sheet, where available, and income statement for each affiliate and value-added program and service, including revenues, less direct and indirect expenses broken out separately. Direct and indirect revenues and expenses shall be separated by category and then aggregated at the direct and indirect levels, and the report shall include gross income, amounts flowed back to ratepayers to reduce rates, and net income. Each category of indirect cost should be accompanied by formulas/calculations/allocations showing how they have been derived.
- (f) General ledger and trial balance for each value-added program and service shall be provided to the commission staff separately on a USB thumb drive or other appropriate technological device with formulas intact.
- (g) The number and type of complaints received in the prior calendar year regarding code of conduct issues from customers, alternative electric suppliers, or any other person or entity, and a summary of the resolution of any complaint that occurred during the calendar year.
- (h) The number of times during the prior calendar year that customer information was provided to an affiliate or competing provider of an unregulated value-added program or service, the identity of the affiliate or competing provider, and a description of the information shared.
- (i) A description of the nature of each transaction with an affiliate or other entity within the corporate structure and of the basis for the cost allocation and pricing established in each transaction.
- (j) Annual balance sheets and income statements of the non-regulated subsidiaries, affiliates, and other entities within the corporate structure of the utility offering value-added programs or services.
- (k) Reports of internal audits conducted by the utility regarding transactions between the utility and its affiliates, or transactions between the utility and other entities within the corporate structure offering value-added programs or services.
- (2) The annual report shall be signed by the designated corporate officer or a person responsible for each value-added program and service attesting to the accuracy of the

information in the annual report and certifying that there is no cross-subsidization between regulated and non-regulated utility programs and services.

(3) Copies of federal income tax returns for utilities, affiliates, and, where applicable, other entities within the corporate structure, shall be available to the commission for inspection and review.

## R 460.10113 Penalties.

Rule 13. Penalties for violations of these rules are as provided in sections 10c and 10ee(14) of 2016 PA 341, MCL 460.10c, and MCL 460.10ee(14).

# PROOF OF SERVICE

Case No. U-18361

County of Ingham

Lisa Felice being duly sworn, deposes and says that on May 17, 2018 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Lisa Felice

Subscribed and sworn to before me This 17th day of May 2018

Tina L. Bibbs

Notary Public, Clinton County, Michigan

As acting in Eaton County

My Commission Expires: November 13, 2021

## GEMOTION DISTRIBUTION SERVICE LIST

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SEMCO Energy Gas Company
Superior Energy Company

**Upper Peninsula Power Company** 

WEC Energy Group

Upper Peninsula Power Company

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Cherryland Electric Cooperative Great Lakes Energy Cooperative Great Lakes Energy Cooperative Great Lake Energy Cooperative Liberty Power Delaware (Holdings) Stephson Utilities Department Ontonagon County Rural Elec

Presque Isle Electric & Gas Cooperative, INC

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