

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the August 28, 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

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 (AESs) pursuant to Section 10ee(1) of 2016 PA 341 (Act 341), 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 (LSB) 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.

On May 17, 2018, the Commission issued an order providing the public with opportunities to comment on the proposed rules. A public hearing was held on June 15, 2018, at which one person representing the Michigan Energy Efficiency Contractors Association (MEECA) provided comments. On June 29, 2018, the Commission received written comments from the Michigan Air Conditioning Contractors Association (MACCA); Mr. Phil Forner; the Michigan Energy

Innovation Business Council (MEIBC); the Association of Businesses Advocating Tariff Equity (ABATE); the Service Contract Industry Council (SCIC); Detroit Thermal, LLC (Detroit Thermal); Wolverine Power Supply Cooperative, Inc. (Wolverine); and the Michigan Electric and Gas Association,¹ Consumers Energy Company, DTE Electric Company, and DTE Gas Company (together, MEGA). On July 3, 2018, the Commission received written comments from MEECA.

This order addresses the comments, adopts certain changes to the rules, and approves the rules for submission to ORR and LSB for their formal approvals. Each suggested revision is numbered and described, and is followed by the Commission's response. ORR requires the submission of a clean (unedited) ruleset, which appears as Exhibit A to this order. Exhibit B to this order shows the revisions resulting from the comment process in strike/bold editing.

Comments and Discussion

Michigan Energy Efficiency Contractors Association

In oral and written comments, MEECA supports the following changes to the proposed rules:

- (1) Rule 5(1) should be changed to provide that utilities and affiliates shall not share facilities, equipment, operating employees, or computer hardware and software. MEECA contends that such sharing amounts to a subsidy from the parent company and runs contrary to the intent of the Code of Conduct. MEECA states that Rule 5(1) and (2) appear to be inconsistent with respect to the sharing of employees.

Rule 5(1) allows for sharing under certain circumstances “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.” Section 10ee(3) provides for

¹ The Michigan Electric and Gas Association indicates that its comments are submitted on behalf of “Alpena Power Company, Citizens Gas Fuel Company, Indiana Michigan Power Company, Michigan Gas Utilities, Northern State Power – Wisconsin d/b/a Xcel Energy, SEMCO Energy Gas Company, Upper Michigan Energy Resources Corp., Upper Peninsula Power Company and We Energies.” MEGA's comments, p. 1, n. 1.

the use of utility assets and 10ee(13) provides for the sharing of “employees, vehicles, equipment, office space, and other facilities.” Thus, the proposed rule provides for the type of sharing that is allowed under the authorizing statute. The Commission declines to make this change, and does not find that Rule 5(1) and 5(2) are in conflict because one deals with “sharing” and the other with “transfer” of employees.

- (2) Rule 6(1) should indicate that utilities and affiliates should not engage in “other promotional activities or any other explicit or implicit communication.”

The Commission finds that the suggested language is vague and does not add substance to the rules. The prohibition on joint advertising and marketing is already contained in Rule 6(1).

- (3) Rule 6 should include a prohibition on affiliate use of a utility logo.

Affiliate use of a utility logo is statutorily allowed in Sections 10ee(3), (10)(d), and (11).

- (4) Rule 9(7) should not include “that the utility is aware of” because it allows utilities to shirk the duty of keeping all competitors in the territory informed.

The Commission agrees that the utility can only inform those companies that it is aware of, and so the language adds nothing to the requirement. The language is deleted. Rule 9(7) is addressed in greater detail, below.

- (5) The Commission should establish a cap on affiliate market share within the utility parent’s service territory.

The commenter seeks a form of economic regulation that goes well beyond the requirements of Section 10ee and the Commission declines to adopt this suggestion.

- (6) Affiliates should not be allowed to participate in requests for proposals (RFPs) solicited by the parent utility; or an independent third party should select the winning bid.

The existing Code of Conduct did not address the process of RFPs. *See*, October 29, 2001 order in Case No. U-12134, Exhibit A. This issue was not included in any draft rules, nor was it discussed in the stakeholder meetings, and it is outside the scope of the issues delineated in Section 10ee.

The Commission has addressed issues related to RFPs in orders, and recently directed the Staff “to research approaches and best practices for RFP and competitive bidding in other jurisdictions.”

April 27, 2018 order in Case No. U-18419, p. 106. The Commission anticipates examining the procedure associated with utility RFPs in future orders, and declines to add rules addressing RFPs to the Code of Conduct.

Michigan Air Conditioning Contractors Association and Mr. Forner

MACCA and Mr. Forner filed identical comments. They support the following changes to the proposed rules:

- (1) The Commission should define “restraining trade” and “competition in an unregulated market.” These terms are used in MCL 460.10ee(2), and MACCA/Forner contend that definitions would provide guidance to markets.

The Commission finds that the dictionary definitions of these terms are sufficient to apprise the public and the regulated community of the purpose of the Code of Conduct, and the rules themselves provide far more specificity regarding the regulated conduct than any additional definition would provide.

- (2) Rule 12 should contain a reporting requirement related to the harm occurring to the public interest by undue restraint of trade.

The entire purpose of Rule 12 is to provide the Commission with the information that is necessary to allow for enforcement of the Code of Conduct. The Commission finds that Rule 12 is sufficiently detailed in its approved form.

- (3) Rule 12(1)(c) should require that all utility costs that are attributable to a value added program or service (VAPS) be allocated directly to the individual utility that incurred the cost.

The Commission finds that this requirement is already built into the rule. Rule 12(1) does not allow for costs to be attributed to a different utility.

- (4) Rule 11(3) should require that an applicant for a waiver notify the competitive market of the waiver request.

The ability to seek a waiver from the Code of Conduct has been in place for almost 17 years, and the Commission does not find that the notice provisions should be revised. When a request for waiver results in a contested case, any interested party may request to intervene. Mich Admin Code, R 792.10415(1), 792.10417(1), and 792.10410. Applications for waivers are publicly available and appear in the Commission's electronic docket. When an applicant seeks *ex parte* treatment, the Commission may issue an order seeking comment from any interested party. *See, e.g.,* February 22 and March 29, 2018 orders in Case No. U-20057. The Commission finds that the notice requirements applicable to existing waiver applications are sufficient to ensure notification to interested parties.

- (5) Rule 13 should include progressive reporting requirements and financial penalties to ensure compliance with MCL 460.10ee(1), and to prevent those harmed by restraint of trade from having to go through the complaint process.

The Commission appreciates the commenter's concern about the costs associated with the complaint process. It is important to note that Section 10ee(14) provides that "for violations of this section a utility shall pay all reasonable costs incurred by the prevailing party." The Commission also realizes that penalties can serve as a deterrent to non-compliance. The statutory sections referred to in the rule describe the Commission's penalty power, and the Commission finds the statutes to be sufficient. Reporting requirements and financial penalties will be

determined by the Commission at the conclusion of the contested proceeding addressing the alleged violations.

Michigan Energy Innovation Business Council

MEIBC supports the following changes to the proposed rules:

- (1) Rule 5 should prohibit utilities and affiliates from sharing facilities, equipment, employees, and computer hardware and software, because doing otherwise will cause cross-subsidization (even if unintentional) and is counter to the intent of Section 10ee.

See the response to MEECA, comment number (1), above.

- (2) Rule 6(1) should state that the utility “shall not give the appearance in any way that it speaks on behalf of its affiliates.”

This phrase appears in Rule 7(1)(a), and does not need to be repeated in Rule 6(1).

- (3) Rule 7(1) should include “in any way” and Rule 7(1)(b) should include “in any manner.” Rule 7(2) should also include “a provision preventing utilities from offering financing or other terms to customers procuring unregulated services that are not available to customers of non-affiliated providers of unregulated energy products and services.” MEIBC’s comments, p. 5.

The Commission is not persuaded that the two suggested phrases add anything in the way of clarity or strength to Rule 7(1). With regard to Rule 7(2), the protections that are sought via the proffered language are addressed in Rules 6(2) and (3), and the Commission declines to make this change.

- (4) Rule 8 should include a cap on affiliate market share for the utility service territory, and “at the circuit level.” *Id.* Additionally, affiliates should not be allowed to participate in utility RFP solicitations; or an independent party should select the winning bid.

See the response to MEECA, comment numbers (5) and (6), above.

- (5) Rule 9 should include language to “ensure a clear sales referral neutrality by the utility and no interconnection preferences for the utility affiliate.” *Id.*, p. 6.

The Commission is unclear on the meaning of “clear sales referral neutrality,” but notes that preferential treatment is addressed throughout Part 2 of the rules. Additionally, the provisions of Rule 9(4), (6), and (7) (using the original numbering) ensure that information that could potentially lead to sales is disseminated in a fair and neutral manner to preclude any preferential treatment for affiliates or other entities within the corporate structure.

(6) Rule 12 should require utility officers to file annual affidavits of compliance with the code. This requirement appears in Rule 12(2).

Wolverine Power Supply Cooperative, Inc.

Though Section 10ee(16)(a) defines utility to mean an electric utility “regulated by the commission,” Wolverine suggests that the proposed rules contain an ambiguity that could lead to the Commission asserting jurisdiction over a federally regulated electric cooperative such as Wolverine which provides only wholesale service. Wolverine supports the following change to the proposed rules:

- (1) Rule 2(1)(e) should state “‘Utility’” means an electric, steam, or natural gas utility regulated by the public service commission, and an electric or natural gas cooperative that is subject to regulation pursuant to the Electric Cooperative Member-Regulation Act, 2008 PA 167, MCL 460.31 to 460.39.

The Commission agrees with Wolverine. It should be clear that the Code of Conduct does not apply to federally regulated wholesale services. The proposed language has been added.

Association of Businesses Advocating Tariff Equity

ABATE supports the following changes to the proposed rules:

- (1) The rules should define how market prices will be determined as used in Rule 8(4).

This was a topic of discussion in the stakeholder meetings. The Commission finds that Rule 8(4) is sufficiently clear without a definition of fair market price.

- (2) The rules should require the filing of an annual cost of service report, which should “(i) be publicly available; (ii) clearly identify the services provided; (iii) define the methodology for allocating costs; and (iv) indicate the resulting allocation. Additionally, the report should be comprehensive and include a full examination of all costs. . . . To maximize effectiveness, the methodology should be subject to an initial review and challenge by interested parties. Moreover, annual filings should be required to show that the utilities are following methodologies spelled out in their respective reports.” ABATE’s comments, pp. 4-5.

The Commission finds that this concern is adequately addressed in Rule 12(1)(c)-(f) and (i)-(k) (as originally numbered), which already requires a sufficient amount of detail to allow for an appropriate review of the costs.

- (3) Rule 6(1) should state that the utility “shall not give the appearance in any way that it speaks on behalf of its affiliates or other entities within the corporate structure.”

Again, the Commission finds that this concept is adequately addressed in Rule 7(1)(a).

- (4) The list of data required under MCL 460.10ee(15) should be repeated in the rules.

Entities covered by the statute are expected to know what their obligations are under the statute.

While it is sometimes necessary to refer to a statutory section, ORR generally discourages the promulgation of regulations that repeat statutory requirements. *See*, MCL 24.207. Regulated entities are capable of understanding that they may be subject to both statutory and regulatory reporting requirements. Additionally, reference is made to Section 10ee(15) in Rule 12(1).

- (5) Rule 12(1)(k) should require the utility to employ an external auditor.

The Commission finds that this would impose an unnecessary burden on the regulated entities.

- (6) The rules should require the filing of supporting documentation with filed reports.

This concern is addressed throughout Rule 12, and the Commission finds that a sufficient amount of documentation is already required under the proposed rules.

- (7) The rules should contain a detailed timeline for the imposition of penalties, and the Commission should retain discretion over the severity of fines and penalties. The timeline should indicate a “close temporal link” between violation of the code and the subsequent penalty. *Id.*, p. 8.

Again, the Commission’s penalty power is described in the statutes that are referred to in Rule 13. As always, the Commission will seek to address violations in a timely manner in accordance with the requirements of the Michigan Administrative Procedures Act, MCL 24. 201 *et seq.* (APA). Both the timing and the severity of fines will be determined by the Commission at the conclusion of the contested proceeding addressing the alleged violations.

Service Contract Industry Council

SCIC comments that the proposed rules may have the unintended effect of resulting in fewer VAPS being offered, because they do not appear to allow utilities to partner with unaffiliated third-parties, even though there is no risk of cross-subsidization involved. SCIC supports the following changes to the proposed rules:

- (1) Rule 3(2) should be amended to state that it does not apply to a service contract program provided by a third-party.

The current Code of Conduct allows for the use of third-party contractors and it was not the Commission’s intent to create a prohibition on that practice. The Commission agrees that, as written, Rule 3(2) could be interpreted to imply such a prohibition, and the Commission has revised the rule accordingly, along with adding a definition of “third-party” to Rule 2.

- (2) Rule 8(1) should be stricken, or “discrimination” should be defined.

The Commission declines to strike the rule, and finds that, in the context of rules governing anti-competitive practices, the meaning of the rule is clear.

- (3) Rule 6(1) should be revised to make clear that the prohibition contained therein “only applies to the bundling of traditional utility offerings with third-party ‘value-added’ services.” SCIC comments, p. 4.

Rule 6(1) refers only to “[a] utility, its affiliates, and other entities within the corporate structure offering unregulated [VAPS]” and does not refer to third-parties. However, see the response to MEGA, comment number (5), below. The Commission has revised the rule to make it consistent with the current Code of Conduct.

- (4) Rules 10 and 12 should be revised to make clear that utilities are not required to provide data maintained by unaffiliated persons that is maintained as part of an independent service contract program.

Again, the rules make clear that they apply to utilities, affiliates, and other entities within the corporate structure, each of which is a defined term in Rule 2. Rules 10 and 12 do not refer to third-parties, and the Commission rejects the suggested change.

- (5) The Commission should provide for reply comments.

In its rulemaking proceedings, the Commission follows the requirements of the APA. The APA does not provide for reply comments.

Detroit Thermal, LLC

Detroit Thermal, who appears to be in a unique position, supports the following changes to the proposed rules:

- (1) The rules should be revised to provide more exemptions for small utilities such as the exemption provided in Rule 5(3). Detroit Thermal states that it serves less than 100 customers, and it has one employee who handles business development for the utility and its affiliates. Thus, it states, it will be impossible for Detroit Thermal to comply with Rules

6(1), 7(1)(a), and 7(2). Detroit Thermal further states that all of its accounting and billing work is performed by one of its affiliates. As such, Rule 9(5) will prohibit the utility from providing customer specific consumption information or billing data to this affiliate without the prior written approval of each customer, despite the fact that this arrangement has been in place for some time. Detroit Thermal also objects to Rule 7(2), stating that, as a small utility, it must join with its affiliates in order to obtain financing for capital projects. Detroit Thermal states that it is typical in this type of financing for a lender to require that the assets of each entity be cross-collateralized. For example, as part of its most recent round of funding, the Michigan Economic Development Corporation required that Detroit Thermal and its affiliated entities pledge all of their assets as collateral for the bonds issued to each entity. According to Detroit Thermal, adoption of Rule 7(2) will significantly impair Detroit Thermal's ability to obtain financing.

The Commission acknowledges the difficult situation presented by Detroit Thermal and notes that, prior to enactment of Section 10ee, steam utilities were not subject to the Code of Conduct. Very small utilities may find it impossible to comply with many aspects of the Code of Conduct, as Detroit Thermal's examples illustrate. The Commission agrees that the exemption for small utilities should be expanded. Rule 5(3) currently contains an exemption for utilities with fewer than 60 employees with respect to the sharing of facilities and employees, which reflects the language in the existing Code of Conduct (in place since 2001). October 29, 2001 order in Case No. U-12134, Exhibit A, p. 3., section II.M. The Commission finds that the language of Rule 1 should be revised to state that the Code of Conduct rules are not applicable to utilities with fewer than 150 customers. The Commission finds that, by defining the applicability in terms of the number of customers, the rule will exempt only the very smallest utilities from the obligation to comply with the Code of Conduct. The complaint provisions apply to these small utilities and thus will continue to provide an avenue for parties to seek a remedy for anti-competitive practices.

(2) Rule 9(2) should reflect the fact that not all utilities are required to file data privacy tariffs.

The Commission finds that Rule 9(2), at this point, serves no purpose related to the Code of Conduct, and has deleted that subsection and renumbered the remainder of Rule 9.

- (3) Rule 9(4) should be revised to state that only information pertaining to a VAPS is required to be provided to competitors. Detroit Thermal again points out that it uses an affiliate to handle accounting and billing; thus, it is necessary to provide the affiliate with a great deal of customer data, but that information is not associated with the provision of a VAPS.

The Commission rejects this suggestion because Rule 9(4) already addresses only the situation where the information is shared with an affiliate offering an unregulated VAPS.

- (4) Rule 9(4) should be revised to require a utility to provide the stated information to competitors that request the information, similar to Rule 9(7). Otherwise, Rule 9(4) is vague in that it does not define “competitor” and it is unclear whether the obligation refers to the competitors of the utility or of the affiliate offering the VAPS. Rules 9(6) and (7) should show similar changes.

The Commission notes that competitors of an affiliate-offered-VAPS are unlikely to know that information has been requested from, and is being provided by, the utility. However, the Commission finds this comment (and others like it) to be useful. The Commission recognizes that the disclosure of information may be the most problematic aspect of the Code of Conduct. In Section 10ee(10)(a), the Legislature mandated that a utility customer list that is provided to the utility’s VAPS, for example, must be “provide[d] upon request to a provider of a similar program or service.” Based on the language of the statute, the Commission finds that the requirement that a request first be received by the utility should be added to Rule 9(4), (6), and (7), as originally numbered (Rule 9(7) already contains this, but only by implication). Detroit Thermal makes a valid point – and the Commission is also concerned – that providers of similar VAPS will not know that the type of utility information listed in Rule 9(4), (6), and (7) is being provided to a competitor. On the other hand, placing the burden on the utility to discover the identity of all VAPS competitors and maintain up-to-date information on those entities may not be workable. For that reason, in addition to the revisions to Rule 9, the Commission directs the Commission Staff (Staff), within 60 days of the date on which the Commission receives formal approval of the

ruleset from LSB (LSB's approval follows ORR's), to convene a collaborative with the utilities and AESs subject to the Code of Conduct, and all other interested parties, for the purpose of identifying a workable process whereby competitors who wish to receive information that is shared by a utility under Rule 9 make their request known to the utility, and which allows utilities to comply with Rule 9 with as little administrative burden as possible. The parties should explore whether a standing request, with regular updates, is a workable solution. The Commission does not find that the process needs to be codified in the rules, but is convinced that a process will be required in order to facilitate compliance with the rules.

- (5) Rule 12(1) exceeds the reporting requirements contained in Section 10ee(15). Rule 12 should not require income statements from affiliates that do not provide a VAPS. Rule 12(1)(j) should be deleted because it is duplicative of Rule 12(1)(e), and a utility should not be forced to create a balance sheet if one does not otherwise exist. Rule 12(1)(i) and Rule 12(3) should be changed to apply only to affiliates offering a VAPS.

The Commission rejects the notion that the reporting requirements should be struck, but finds the bulk of these comments to be valid. The Commission revises Rule 12(1)(e) to make it clear that it applies only to VAPS offered by an affiliate or other entity within the corporate structure, but declines to change the reference to provision of a balance sheet because the rule already states "where available." The Commission finds that Rule 12(1)(j) indeed duplicates Rule 12(1)(e), deletes that subsection, and renumbers the remainder of Rule 12(1). Rule 12(3) is also revised to make clear that it only applies to affiliates and other entities within the corporate structure offering VAPS.

MEGA

MEGA supports the following changes to the proposed rules:

- (1) Rule 3(2) currently prohibits the use of third-party contractual offerings and this exceeds the prohibitions required under Section 10ee, thus Rule 3(2) should be revised to allow the

offering of unregulated service programs through a contract with a third-party service provider.

The Commission has already addressed this comment (SCIC, comment number (1)) and made the suggested change.

- (2) If VAPS may be offered through a third-party contractor, then Rule 5(3) should be revised to allow retention of revenue above costs attributable to the program, consistent with Section 10ee(12). MEGA suggests adding “Utilities using a third-party contractor for programs and services remain subject to the provisions of MCL 460.10ee(12).”

Because the added language simply makes clear that utilities using third-party contractors remain subject to the provisions of the statute, the Commission finds that the suggested revision is acceptable.

- (3) Rules 3(1) and (2) are confusing and require clarification because a utility is not a separate, independent entity from its affiliate, and this is reflected in the definition of “affiliate” in Rule 2(1)(a). MEGA notes that Section 10ee(6)(b) provides that a utility may offer VAPS itself, and Section 10ee(13) provides that a utility may offer unregulated services as part of its regulated service. Rule 3(2) should be struck, as well as the last sentence in Rule 3(1).

The Commission agrees that the last sentence of Rule 3(1) adds nothing to the meaning of the rule, because the definitions of “utility” and “affiliate” in Rule 2 address the relationship between these entities, and that sentence is deleted. The Commission finds that Rule 3(2) has already been revised in a manner that addresses this comment.

- (4) The phrase “in any manner, directly or indirectly” in Rule 3(3) should be struck because it is vague and open-ended, and the statute provides sufficient detail.

The Commission agrees. The loss of the phrase leaves the rule stating precisely what the Commission intends, and the phrase is deleted.

- (5) Rule 6(1) is overbroad as written and would prevent a utility from offering VAPS through its call centers. The phrase “nor shall they jointly sell services” should be struck.

The Commission is not persuaded that the phrase should be struck. It appears in the current Code of Conduct, II.H. as “nor shall they jointly sell regulated and unregulated services.” October 29, 2001 order in Case No. U-12134, Exhibit A, p. 2. The Commission does not seek to change the status quo, and so, to better track the language of the existing Code of Conduct while folding in the language of Section 10ee, the Commission revises the phrase to state “nor shall they jointly sell regulated services and unregulated value-added programs and services.”

- (6) Rules 9(1) and (2) regarding the filing of data privacy tariffs are duplicative of Mich Admin Code, R 460.153, and the filing of these tariffs is being handled in Case No. U-18485. The rules should be revised to prevent confusion.

The Commission agrees. The determination to remove Rule 9(2) has already been explained. The Commission finds that Rule 9(1) only states an obvious truth as written, and revises that subrule to add that it is true notwithstanding any provision contained in Rule 9.

- (7) Section 10ee(10)(a) governs disclosure of information to competitors. Rules 9(4), (6), and (7) go beyond the requirements of the statute and require disclosure of information whether or not it has been requested by any competitor. Section 10ee(13) requires that the code of conduct not impose further restrictions beyond those imposed by statute. Rule 9 is impractical and utilities may not know the identities of all competitors operating in the state, which goes beyond the service territory. The statute requires that the competitor request the information. The complaint process provides protection for competitors. Thus, Rule 9 requires substantial revisions and deletions to correct these flaws.

The Commission agrees with the bulk of these comments, has revised Rule 9, and has directed the Staff to address other aspects of the provision of information (see the response to Detroit Thermal, comment number (4), above). The Commission also agrees that “state” within Rule 9(4) should be changed to “service territory,” and has revised the rule. On the other hand, common sense dictates that, in directing the Commission to establish a Code of Conduct, the Legislature did not intend that the code simply repeat what is contained in the statute. The Commission is not persuaded that Section 10ee(10)(a), which addresses only customer lists, was intended to cover the universe of

information that may be shared with a utility affiliate or other entity within the corporate structure by the utility that could result in providing a competitive advantage to said affiliate or other entity within the corporate structure.

- (8) Rule 10 goes beyond the statutory requirements of Section 10ee(4) and (5) by creating a prior approval requirement, and requiring a database of information in advance of the VAPS being offered. The prior approval requirement will put VAPS at a disadvantage in the competitive market. VAPS are innocuous and a general description will be sufficient. The complaint process and audit authority are available to address violations. Rule 10(1)(b) through (e) should be struck. All that should be required is notice of intent to offer a service, a general description, and a management contact.

The Commission has made no prior approval requirement in Rule 10, which only addresses information and documentation requirements. The Commission finds that the information requirements established in the proposed rule represent the minimum amount of information that the Commission needs in order to ensure enforcement of the Code of Conduct, but they do not constitute a prior approval requirement. A utility proposing a new VAPS may commence operation of that new VAPS without waiting for any communication from the Commission or the Staff.

- (9) Section 10ee(15) and 6(c) address reporting requirements and Rule 12 expands their scope without statutory authority. Unregulated services should not be required to meet the same level of scrutiny as regulated service, and Rule 12 should reflect that by striking 12(1) and 12(2).

The Commission finds that the proposed rule seeks the minimum amount of information that will allow the Commission to monitor compliance with the Code of Conduct.

- (10) Without making any suggestions, MEGA wonders whether definitions of terms provided in Generally Accepted Accounting Principles and the Uniform System of Accounts should be more generally recognized in the rules.

The Commission finds the definitions provided in the rules to be appropriate.

- (11) Rule 7 should be revised to delete “not limited to” and “give the appearance” because they are open-ended and meaningless.

The Commission finds that the rule language, as proposed, expresses the Commission’s intent.

“Not limited to” is a common expression that allows the reader to understand what are the minimum (but not maximum) requirements; and “give the appearance” speaks for itself.

- (12) Rule 11(1) should be revised to delete the requirement to maintain books and records in this state.

Rule 11(1) correctly reflects current law by providing that documentation shall be kept in Michigan “unless the Commission by order has authorized a different location.” *See*, MCL 460.57.

- (13) Rule 12 should be revised to make clear that the new reporting requirements supplant the old, to avoid confusion.

The Commission finds that the reporting requirements speak for themselves. They will go into effect on the date that the ruleset becomes effective, upon filing with the Secretary of State. At that time, the Commission will issue an order rescinding the existing Code of Conduct.

THEREFORE, IT IS ORDERED that:

A. The Code of Conduct rules, attached as Exhibit A, are approved and shall be submitted to the Legislative Service Bureau and the Office of Regulatory Reinvention for their formal approvals.

B. Upon formal approval of the attached Code of Conduct rules by the Office of Regulatory Reinvention and the Legislative Service Bureau, the Code of Conduct rules shall be transmitted to the Joint Committee on Administrative Rules.

C. Within 60 days of the date on which the Commission receives formal approval of the attached Code of Conduct rules from the Legislative Service Bureau, the Commission Staff shall convene a collaborative with the utilities and alternative electric suppliers who will be subject to the Code of Conduct rules, and all other interested parties, for the purpose of identifying a process whereby competitors who wish to receive information that is shared by a utility under proposed Rule 9 make their request for the information known to the utility.

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 August 28, 2018.

Kavita Kale, Executive Secretary

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. These rules do not apply to a utility with fewer than 150 customers.

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 intermediaries, 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) "Third-party" means an entity separate from a utility, and separate from a utility affiliate, that offers value-added programs and services to a utility's customers through a contract.

(f) “Utility” means an electric, steam, or natural gas utility regulated by the public service commission, and an electric or natural gas cooperative that is subject to regulation pursuant to the Electric Cooperative Member-Regulation Act, 2008 PA 167, MCL 460.31 to 460.39.

(g) “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.

(2) A utility shall not offer unregulated value-added programs and services except through an affiliate or other entity within the corporate structure, or through a third-party contract.

(3) A utility’s regulated services shall not subsidize the business of its affiliates, other entities within the corporate structure, or third-party contractors 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. Utilities using a third-party contractor for value-added programs and services remain subject to the provisions of MCL 460.10ee(12).

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 regulated services and unregulated value-added programs and 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) Notwithstanding any provision of this rule, utilities shall comply at all times with applicable data privacy tariffs.

(2) 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.

(3) 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 upon request to competitors operating in the service territory on the same terms and conditions and contemporaneously.

(4) 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.

(5) 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, upon request, 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.

(6) When disclosure required in subrule (5) 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 providing, upon request, 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.

The utility shall keep a record of requests for such information, and shall make that record available to the commission upon request.

(7) 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.

PART 5. REPORTING, OVERSIGHT, AND PENALTIES

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 value-added program and service offered by an affiliate or other entity within the corporate structure, 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) 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 who offer a value-added program or service, 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).

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. **These rules do not apply to a utility with fewer than 150 customers.**

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) "**Third-party**" means **an entity separate from a utility, and separate from a utility affiliate, that offers value-added programs and services to a utility's customers through a contract.**

(ef) “Utility” means an electric, steam, or natural gas utility regulated by the public service commission, and an electric or natural gas cooperative **that is subject to regulation pursuant to the Electric Cooperative Member-Regulation Act, 2008 PA 167, MCL 460.31 to 460.39.**

(fg) “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, **or through a third-party contract.**

(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, **or third-party contractors** 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. **Utilities using a third-party contractor for value-added programs and services remain subject to the provisions of MCL 460.10ee(12).**

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 **regulated services and unregulated value-added programs and 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) **Notwithstanding any provision of this rule**, 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.~~

(32) 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.

(43) 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 **upon request** to competitors operating in the **service territory state** on the same terms and conditions and contemporaneously.

(54) 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.

(65) 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, **upon request**, 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.

(76) When disclosure required in subrule (65) 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 **providing, upon request**, ~~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.

(87) 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.

PART 5. REPORTING, OVERSIGHT, AND PENALTIES

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 **offered by an affiliate or other entity within the corporate structure**, 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.~~

(kj) 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 **who offer a value-added program or service**, 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

STATE OF MICHIGAN)

Case No. U-18361

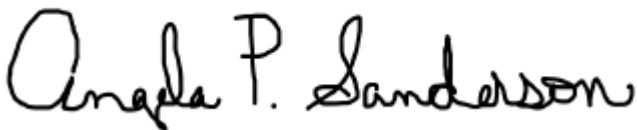
County of Ingham)

Lisa Felice being duly sworn, deposes and says that on August 28, 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

Subscribed and sworn to before me
this 28th day of August 2018



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-18361

Name

Email Address

Sharon Feldman

feldmans@michigan.gov

GEMOTION DISTRIBUTION SERVICE LIST

kadarkwa@itctransco.com	ITC
tjlundgren@varnumlaw.com	Energy Michigan
lachappelle@varnumlaw.com	Energy Michigan
CBaird-Forristall@MIDAMERICAN.COM	Mid American
david.d.donovan@XCELENERGY.COM	Xcel Energy
ddasho@cloverland.com	Cloverland
bmalaski@cloverland.com	Cloverland
vobmgr@UP.NET	Village of Baraga
braukerL@MICHIGAN.GOV	Linda Brauker
info@VILLAGEOFCLINTON.ORG	Village of Clinton
jgraham@HOMEWORKS.ORG	Tri-County Electric Co-Op
mkappler@HOMEWORKS.ORG	Tri-County Electric Co-Op
psimmer@HOMEWORKS.ORG	Tri-County Electric Co-Op
frucheyb@DTEENERGY.COM	Citizens Gas Fuel Company
mpscfilings@CMSENERGY.COM	Consumers Energy Company
jim.vansickle@SEMCOENERGY.COM	SEMCO Energy Gas Company
kay8643990@YAHOO.COM	Superior Energy Company
ebrushford@UPPCO.COM	Upper Peninsula Power Company
christine.kane@we-energies.com	WEC Energy Group
jlarsen@uppc.com	Upper Peninsula Power Company
dave.allen@TEAMMIDWEST.COM	Midwest Energy Coop
bob.hance@teammidwest.com	Midwest Energy Coop
tharrell@ALGERDELTA.COM	Alger Delta Cooperative
tonya@CECELEC.COM	Cherryland Electric Cooperative
bscott@GLENERGY.COM	Great Lakes Energy Cooperative
sculver@glenergy.com	Great Lakes Energy Cooperative
panzell@glenergy.com	Great Lake Energy Cooperative
kmarklein@STEPHENSON-MI.COM	Stephson Utilities Department
debbie@ONTOREA.COM	Ontonagon County Rural Elec
ddemaestri@PIEG.COM	Presque Isle Electric & Gas Cooperative, INC
dbraun@TECMI.COOP	Thumb Electric
rbishop@BISHOPENERGY.COM	Bishop Energy
mkuchera@AEPENERGY.COM	AEP Energy
todd.mortimer@CMSENERGY.COM	CMS Energy
jkeegan@justenergy.com	Just Energy Solutions
david.fein@CONSTELLATION.COM	Constellation Energy
kate.stanley@CONSTELLATION.COM	Constellation Energy
kate.fleche@CONSTELLATION.COM	Constellation New Energy
mpscfilings@DTEENERGY.COM	DTE Energy
bgorman@FIRSTENERGYCORP.COM	First Energy
vnguyen@MIDAMERICAN.COM	MidAmerican Energy
rarchiba@FOSTEROIL.COM	My Choice Energy
greg.bass@calpinesolutions.com	Calpine Energy Solutions
rabaey@SES4ENERGY.COM	Santana Energy

GEMOTION DISTRIBUTION SERVICE LIST

cborr@WPSCI.COM	Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)
john.r.ness@XCELENERGY.COM	Xcel Energy
cityelectric@ESCANABA.ORG	City of Escanaba
crystalfallsmgr@HOTMAIL.COM	City of Crystal Falls
felice@MICHIGAN.GOV	Lisa Felice
mmann@USGANDE.COM	Michigan Gas & Electric
mpolega@GLADSTONEMI.COM	City of Gladstone
rferguson@INTEGRYSGROUP.COM	IntegrYS Group
lrgustafson@CMSENERGY.COM	Lisa Gustafson
tahoffman@CMSENERGY.COM	Tim Hoffman
daustin@IGSENERGY.COM	Interstate Gas Supply Inc
krichel@DLIB.INFO	Thomas Krichel
cityelectric@BAYCITYMI.ORG	Bay City Electric Light & Power
Stephen.serkaian@lbwl.com	Lansing Board of Water and Light
George.stojic@lbwl.com	Lansing Board of Water and Light
jreynolds@MBLP.ORG	Marquette Board of Light & Power
bschlansker@PREMIERENERGYLLC.COM	Premier Energy Marketing LLC
ttarkiewicz@CITYOFMARSHALL.COM	City of Marshall
d.motley@COMCAST.NET	Doug Motley
mpauley@GRANGERNET.COM	Marc Pauley
ElectricDept@PORTLAND-MICHIGAN.ORG	City of Portland
gdg@alpenapower.com	Alpena Power
dbodine@LIBERTYPOWERCORP.COM	Liberty Power
leew@WVPA.COM	Wabash Valley Power
kmolitor@WPSCI.COM	Wolverine Power
ham557@GMAIL.COM	Lowell S.
AKlaviter@INTEGRYSENERGY.COM	IntegrYS Energy Service, Inc WPSES
BusinessOffice@REALGY.COM	Realgy Energy Services
landerson@VEENERGY.COM	Volunteer Energy Services
Ldalessandris@FES.COM	First Energy Solutions
mbarber@HILLSDALEBPU.COM	Hillsdale Board of Public Utilities
mrzwiers@INTEGRYSGROUP.COM	Michigan Gas Utilities/Upper Penn Power/Wisconsin
djtyler@MICHIGANGASUTILITIES.COM	Michigan Gas Utilities/Qwest
donm@BPW.ZEELAND.MI.US	Zeeland Board of Public Works
Teresa.ringenbach@directenergy.com	Direct Energy
christina.crable@directenergy.com	Direct Energy
angela.schorr@directenergy.com	Direct Energy
ryan.harwell@directenergy.com	Direct Energy
johnbistranin@realgy.com	Realgy Corp.
jweeks@mpower.org	Jim Weeks
mgobrien@aep.com	Indiana Michigan Power Company
mvorabouth@ses4energy.com	Santana Energy
sjwestmoreland@voyager.net	MEGA
hvester@itctransco.com	ITC Holdings

GEMOTION DISTRIBUTION SERVICE LIST

lpage@dickinsonwright.com

Karl.J.Hoesly@xcelenergy.com

Deborah.e.erwin@xcelenergy.com

mmpeck@fischerfranklin.com

Dickinson Wright

Xcel Energy

Xcel Energy

Matthew Peck