

**Collaborative Report**  
to the  
Michigan Public Service Commission

Code of Conduct Rule 9

Case No. U-18361

Prepared by  
Michigan Public Service Commission Staff

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## **Executive Summary**

The Michigan Public Service Commission (MPSC or Commission) opened Case No. U-18361 on its own motion to promulgate rules required by MCL 460.10ee(1). <http://legislature.mi.gov/doc.aspx?mcl-460-10ee>. Pursuant to the Commission order dated August 28, 2018 the Staff convened a collaborative for ***“the purpose of identifying a process whereby competitors who wish to receive information that is shared by a utility under Rule 9 make their request for the information known to the utility.”***

Staff and participants engaged in focused discussions regarding the process whereby competitors who wish to receive information that is shared by a utility under Rule 9 make their request for the information known to the utility. The participants were able to reach a consensus on a draft of an MPSC webpage to be utilized as a single platform where competitors would be able to see what value-added programs and services (VAPS) are being offered and track when a utility is sharing information, and also how to make an informational request to each utility. Discussions also covered issues outside the focus of the collaborative, primarily centered around the utility response phase subsequent to receiving a request for information.

## History and Background

Public Act 341 of 2016 directed the Commission to adopt a Code of Conduct governing value-added programs and services (VAPS). In addition to its focus on VAPS, the Code of Conduct incorporated guidelines that govern the interactions between regulated utility companies and its unregulated affiliates, alternative electric suppliers (AESs) and cooperatives.

Commission Staff solicited input and met several times with utilities and other stakeholders during the Code of Conduct rulemaking process. The Commission recognized that disclosure of information required under Rule 9 may be problematic. Under Rule 9 and as mandated in Act 341, information obtained by a utility in the course of conducting its regulated business shall not be shared with its affiliates offering VAPS unless that same information is provided upon request to competitors.

In its order dated August 28, 2018 in Case No. U-18361, the Commission directed Staff to convene a collaborative with the utilities and alternative electric suppliers who are 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 Rule 9 make their request for the information known to the utility.”***

Staff held a collaborative meeting on March 11, 2019. Approximately 50 people participated in the collaborative, either in person or by phone. Prior to the March 11 collaborative, participants were provided a brief description of the intent and focus for the meeting along with a draft website for review. This provided a clear starting point for the collaborative and was followed by meaningful discussion focused on the identified intent. Participants were able to reach a consensus on a draft of an MPSC webpage to be utilized as a single platform where competitors would be able to track when a utility is sharing information and provide the necessary contact information to make a request for information. For purposes of this report, the process by which a competitor makes a request is considered the ***Request Phase***. This was the primary focus of the collaborative. However, discussions also included issues outside the focus of the collaborative. Participants raised several potential issues related to the utility role in responding to informational requests. For purposes of this report, this is considered the ***Response Phase***.

## **Information Sharing**

Under Rule 9 and as mandated in PA 341 of 2016, information obtained by a utility in the course of conducting its regulated business shall not be shared with its affiliates offering VAPS unless that same information is provided upon request to competitors of the affiliates. It is difficult for competitors of affiliates that offer VAPS to know when information is being provided by a utility to an affiliate. Similarly, it is difficult for the utilities to know each and every potential VAPS competitor. The collaborative was successful in bringing together MPSC Staff, utilities/coops, AESs, non-regulated competitors, and other interested parties for the purpose of identifying a workable process that allows competitors wishing to receive information to submit a request.

## **Request Phase – Consensus Items**

Collaborative participants recommend that the MPSC create a new website to be used as the single platform for competitors to determine when information is shared by utilities and to provide the information needed to make a request. A draft of the proposed website content is provided in Appendix A. The proposed website would:

- Provide all the necessary information in a single location for a competitor to know how to make a request (and whom to contact) for each utility.
- Provide transparency of when information is being shared between a utility and its affiliates, thus removing any guesswork on the competitor side of wondering if there is new information being utilized and reducing the potential for a utility to receive duplicate/repetitive requests for the same information.
- Allow competitors and other interested parties to search for updates on shared information without searching multiple sites with multiple platforms and templates.
- Avoid utility expense and administrative burden of maintaining a web page or other online site to track shared information.
- Streamline the MPSC Staff monitoring efforts.

The proposed website would contain a list of MPSC regulated utilities and cooperatives that could provide VAPS, along with the address and the Code of Conduct contact for each. This would provide the necessary information for a competitor make a request for information. The website would also outline the VAPS offered at each utility and the date of the last information sharing update.

The following responsibilities would need to be carried out for the website to function as intended.

### Michigan Public Service Commission (MPSC)

- Develop and maintain webpage within the existing MPSC website.
- Receive and update information to the website as provided by the utilities.
- Serve as a communication conduit for answering questions from all participants about the process or issues.

### Utilities

- Provide a confirmation email/notice for all incoming informational requests. This will assure the requestor that the utility has received said request.
- Provide and maintain up-to-date contact information with the MPSC (electronically and by mail or phone).
- Notify the MPSC of programs being offered and the date of activation for the purpose of maintaining accurate up-to-date information on the webpage.
- Provide the MPSC immediate updates for the most recent date of information sharing.
- Provide competitors the same information the utility provided to affiliates or other entities within the corporate structure in a contemporaneous manner.

### Competitors

- Submit requests to the utility using the contact information and request methodology outlined on the website.
- Contact the MPSC Staff in matters of website issues, utility contact issues, and Code of Conduct issues or concerns.
- Work with the utility to resolve concerns about utility responses.

The idea of a standard request form was also proposed by the collaborative participants during the collaborative. While Staff does not believe this is necessary, there was general agreement that a standard request form could certainly be created and implemented, and the participants supported the use of such a form. The specific content of a potential standard request form was not explored and therefore no consensus was achieved regarding the content. Through feedback provided subsequent to the collaborative, it is Staff's understanding that many of

the utilities believe the bullet points below are appropriate for a standard request form.

- Business name description
- Business website
- Contact name, title, address, phone number and e-mail address
- Documentation of license to conduct business in the State of Michigan
- An explanation of how the entity is a competitor of the utility VAPS (currently providing or capable of providing the same product or service)
- Geographic area served
- Explanation of what the data will be used for (should only be used to plan, market, implement, bill or collect for unregulated VAPS)
- Current data privacy policy, or statement that the business has no customer data privacy policy
- A description of the business' electronic data security systems and protections used to protect customer information.
- Acknowledgement that competitor must comply with utility-specific data privacy and security standards/protections
- Include a confidentiality agreement to be signed as part of the process (would need to be utility specific but Joint Commenters would be willing to consider working toward a standard version)

Appendix B provides a draft of a standard request form with the content that Staff believes is most appropriate.

## **Response Phase**

Several issues were raised during the collaborative that were outside the scope of the collaborative. These issues are outlined below and are primarily centered on utility responses.

**Data Security/Privacy:** Utilities are required to secure customer data and believe that information shared with competitors should likewise be subject to the same or substantially similar data security requirements. Conversely, competitors are concerned about the cost of such data security requirements and that they will be put at a competitive disadvantage due to the lack of data shared, or the possible delays and prohibitive costs associated with meeting data security/system requirements imposed by utilities. Further, the utilities represent that there may be several areas of conflict between data privacy responsibilities and the Code of Conduct requirements for information sharing. Along those lines, Staff notes that Act 341 does not require any specific measures of data security when sharing

information with competitors (although such security may be reasonable) and that the utility tariffs differ from utility to utility regarding the Code of Conduct overlap with data security/privacy. The utilities also note the role of the Federal Trade Commission and Michigan's Identity Theft Protection Act in the area of data security/privacy.

**Timing of Response:** Pursuant to Act 341, a utility must "contemporaneously" provide the requested information to a competitor. The non-utility participants interpret this to mean at the same time and without delay. The utilities believe a reasonable amount of time to respond is appropriate and necessary when considering the utility-proposed vetting process and internal staffing characteristics. During the collaborative meeting, the proposed vetting process (and potential associated signed agreements) was estimated as several business days to several weeks. It is Staff's understanding that the utilities believe a 5-business day response timeframe would be appropriate (assumes adoption of utility proposed content for a standard request form).

**Same Terms and Conditions:** Pursuant to Act 341, a utility must provide "the same information on the same terms and conditions, and in the same form and manner" to a requesting competitor. The collaborative participants were in general agreement that this means that any information the utility provides to an affiliate will be the exact information provided to a competitor requestor. For example, if a utility provides a 10,000 field excel file to an affiliate then the competitor would receive the same exact file without modification. By extension, if the utility provides a written narrative explaining the data, or providing instruction, then the competitor would also receive that information as well.

**Competitor versus Non-Competitor:** Utilities expressed interest in some level of verification and/or vetting process to ensure that the person making a request is indeed a competitor. Staff believes this has merit given that the law allows for sharing of information with a competitor (as opposed to any person making a request).



# Appendix A

(Draft of VAPS Website)

## Value Added Programs and Services (VAPS) in Michigan

Value-added programs and services mean 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.

This page provides a list of MPSC regulated utilities and cooperatives that could provide VAPS. If you wish to inquire or complain about a value-added program or service, contact the provider listed below or follow the links to its website.

<b>Investor-Owned Utilities</b>			
Utility Name and Address	Code of Conduct Contact	VAPS Offered	Most Recent Date of Data Sharing
<a href="#">Consumers Energy Company</a> One Energy Plaza Jackson, MI 49201-2276	{Name} {Title} {Phone Number} {Email} {optional Info Request Link}	<ul style="list-style-type: none"> <li>• <a href="#">ASP – Appliance Service Plan</a></li> <li>• <a href="#">Virtual Energy Engineering Services</a></li> <li>• <a href="#">Business Customer Technical Services</a></li> </ul>	
<a href="#">DTE Electric Company</a> One Energy Plaza Detroit, MI 48226	{Name} {Title} {Phone Number} {Email} {optional Info Request Link}	<ul style="list-style-type: none"> <li>• <a href="#">Tree Guard</a></li> <li>• Load Watch – Energy Monitoring Service</li> <li>• <a href="#">HPP - Home Protection Plan</a></li> </ul>	
<b>Cooperatives</b>			
Utility Name and Address	Code of Conduct Contact	VAPS Offered	Most Recent Date of Data Sharing

For those requesting information sharing pursuant to the Code of Conduct R 460.10109, please complete the [Information Sharing form](#) and submit to the respective utility(s).

If you experience difficulties obtaining information from one of the utilities listed above, please contact Lacie Latimore at the Michigan Public Service Commission for assistance at [latimorel@michigan.gov](mailto:latimorel@michigan.gov) or via telephone at 517-284-8122.

# Appendix B

(Draft of Standard Request Form)

# Code of Conduct Rule 9 – VAPS Information Sharing Request

Utility's Name: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Pursuant to the Code of Conduct R 460.10109(5) - I, \_\_\_\_\_,  
(Competitor Name)

am requesting the same information on the same terms and conditions, and in the same form and manner, and contemporaneously for the following program(s):

\_\_\_\_\_. This request takes effect immediately and is only valid for information available on or before this date.

Competitor Individual Name: \_\_\_\_\_

Competitor Business Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**Explanation:** Explain here how you or your business is a competitor of a utility VAPS. If you have a license, include a reference to (or documentation of) your license to conduct business in Michigan.

This form must be sent to the Code of Conduct contact person of the utility you are seeking the information. You must complete a separate form for each utility you are seeking the information from.