

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).)
_____)

In the matter of the application of)
MICHIGAN CONSOLIDATED GAS COMPANY) Case No. U-10150
for authority to increase its rates and for other relief.)
_____)

In the matter, on the Commission's own motion to)
consider changes to its guidelines for transactions)
between affiliates.) Case No. U-11916
_____)

In the matter of the approval of a code of conduct for)
CONSUMERS ENERGY COMPANY and)
THE DETROIT EDISON COMPANY.) Case No. U-12134
_____)

In the matter, on the Commission's own motion,)
to consider guidelines or standards to govern)
transactions between **THE DETROIT EDISON**) Case No. U-13502
COMPANY and its affiliates.)
_____)

In the matter of the joint application of)
WISCONSIN PUBLIC SERVICE CORPORATION,)
UPPER PENINSULA POWER COMPANY, and)
MICHIGAN GAS UTILITIES CORPORATION for)
waivers from, or declarations regarding the) Case No. U-15325
applicability of, the code of conduct and affiliate)
transaction guidelines and related approvals to)
support services provided by Integrys Business)
Support, LLC.)
_____)

In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of)
Section 10ee of 2016 PA 341.) Case No. U-18326
_____)

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **MICHIGAN GAS
UTILITIES CORPORATION** to fully comply with the
Code of Conduct, Mich Admin Code,
R 460.10101 *et seq.*

Case No. U-20683

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **ALGER DELTA
COOPERATIVE ELECTRIC ASSOCIATION**
to fully comply with the Code of Conduct,
Mich Admin Code, R 460.10101 *et seq.*

Case No. U-20684

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **THUMB ELECTRIC
COOPERATIVE** to fully comply with the
Code of Conduct, Mich Admin Code,
R 460.10101 *et seq.*

Case No. U-20685

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **GREAT LAKES
ENERGY COOPERATIVE** to fully comply with the
Code of Conduct, Mich Admin Code,
R 460.10101 *et seq.*

Case No. U-20686

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **ONTONAGON
COUNTY RURAL ELECTRIC COOPERATIVE**
to fully comply with the Code of Conduct, Mich
Admin Code, R 460.10101 *et seq.*

Case No. U-20687

In the matter, on the Commission's own motion,
regarding the regulatory filings, determinations,
and/or approvals necessary for **CLOVERLAND
ELECTRIC COOPERATIVE** to fully comply with the
Code of Conduct, Mich Admin Code,
R 460.10101 *et seq.*

Case No. U-20688

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In the matter, on the Commission’s own motion,)	
regarding the regulatory filings, determinations,)	
and/or approvals necessary for BAYFIELD)	Case No. U-20695
ELECTRIC COOPERATIVE, INC. , to fully comply)	
with the Code of Conduct, Mich Admin Code,)	
R 460.10101 <i>et seq.</i>)	
_____)	

At the January 23, 2020 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Daniel C. Scripps, Commissioner
Hon. Tremaine L. Phillips, Commissioner

ORDER

Information Sharing Issues

On December 20, 2018, in Case No. U-18361, the Commission adopted final rules governing the Code of Conduct (COC) for all utilities and alternative electric suppliers (AESs) pursuant to Section 10ee(1) of 2016 PA 341, MCL 460.10ee(1), in Case No. U-18361. In the August 28, 2018 order in Case No. U-18361, p. 18, the Commission directed the Commission Staff (Staff) to convene a collaborative with the utilities and AESs who are subject to the COC and all other interested parties for the purpose of identifying when a utility has shared information with an affiliate or other entity within the corporate structure, and for instituting a process whereby competitors who wish to receive that same information under Mich Admin Code, R 460.10109 (Rule 9) make their request for the information known to the utility.¹

¹ For ease of reference in this order: (1) value added programs and services offered by a utility affiliate or other entity within the utility’s corporate structure are referred to as VAPS; (2) competitors to those VAPS are referred to as VAPS-C; and (3) the COC rules (R 460.10101-460.10113) are referred to by rule number (*e.g.*, Rule 9).

On March 11, 2019, the Staff held the required collaborative. On August 14, 2019, the Staff filed the Collaborative Report on Code of Conduct Rule 9 (Report). On September 26, 2019, the Commission issued an order (September 26 order) directing the Staff to begin creating the website for information sharing as described in the Report, and seeking comment on five issues. The Commission sought comment on whether the Commission should supply an information sharing request form, and, if so, the content of the form. The Commission additionally sought comment on the following four issues:

- 1) Data Security/Privacy: Utilities are required to comply with all data privacy tariffs. Rule 9(1). A customer list may only include the name and address of a customer. Rule 9(2). Does a customer list require the heightened security discussed by the utilities? Customer consumption and billing information requires prior written customer approval in order to be shared. Rule 9(4). In light of the prior written approval requirement, does this information require the heightened security discussed by the utilities? Are there instances where a utility should routinely require an affiliate or VAPS to acquire the requested information from a third party? Alternatively, should the Commission consider amending the rules to allow no information sharing beyond the requirement of MCL 460.10ee(10)(a) for the sharing of customer lists?
- 2) Timing of Response: MCL 460.10ee(10)(a) allows 5 business days for the provision of customer lists. Should this standard be adopted for all information sharing responses? This would become the meaning of “contemporaneously” under Rule 9(3), (5), and (6).
- 3) Same Terms and Conditions: Rule 9(3), (5), and (6) require the “same form and manner” for information sharing. Does this mean provision of the identical information?
- 4) Competitor versus Non-Competitor: How should the requesting party establish that it is a current or potential/new competitor of the party that received the shared information?

September 26 order, p. 4. Comments were due by October 28, 2019. On that date, comments were filed by the Michigan Air Conditioning Contractors Association (MIACCA), Phil Forner,

and Michigan Electric and Gas Association on behalf of Utility Joint Commenters (UJC).² The comments are as follows.

Data Security/Privacy

MIACCA notes that MCL 460.10ee(10)(a) does not make reference to data privacy tariffs, and thus contends that the Commission should not impose any restrictions on the ability of a provider of a similar program or service to obtain a customer list. MIACCA contends that a customer list does not warrant privacy concerns. MIACCA urges the Commission to amend the COC rules to prohibit the sharing of any information between a utility and its affiliates or other entities within the corporate structure other than a customer list because that is not provided for in MCL 460.10ee(10)(a). MIACCA states that all sharing requests, whether they come from an affiliate, a VAPS, or a VAPS-C, should “go through the MPSC website.” MIACCA’s comments, p. 1.

Mr. Forner supplies the same comments as MIACCA. He adds information regarding his attempts to receive shared information from Consumers, and states his objection to Consumers’ requirement that he enter into a non-disclosure agreement (NDA). Mr. Forner notes that Consumers’ data privacy tariff allows for the disclosure of customer information pursuant to the COC. He contends that “absent clear guidance from the Commission the utilities will delay, impede and or impose other non-statutory requirements on the sharing of customer information.” Forner’s comments, p. 1.

UJC notes that protecting customer data is a growing concern, and states that utilities are subject to security standards “that stem from internal policies, state tariffs, federal requirements and oversight from the Federal Trade Commission, and customer trust and expectations.” UJC’s

² UJC includes Consumers Energy Company (Consumers), DTE Electric Company (DTE Electric), DTE Gas Company, Indiana Michigan Power Company, Michigan Gas Utilities Corporation, Northern States Power Company – Wisconsin, SEMCO Energy Gas Company, and Upper Michigan Energy Resources Corporation. UJC’s comments, p. 1, n. 1.

comments, p. 1. UJC contends that, if a data breach occurs, customers will blame the utility, whether or not it was the fault of a third party. UJC asserts that vendors working with utilities are required to meet the utility's internal security standards, and argues that VAPS-Cs should be subject to the same requirement. UJC asserts that customer consumption and billing information should be subject to a higher degree of privacy and security than customer lists (the COC already provides for this). UJC argues that utility affiliates should not be required to obtain information from a third party rather than the utility, because that was not required by the Legislature in MCL 460.10ee.

UJC argues that the sharing of a customer list should require an NDA from the VAPS-C, and the "actual sharing of the customer list should be done with some level of encryption to secure the data during the transfer from the utility to the competitor." UJC's comments, p. 3. Finally, UJC urges the Commission to maintain a list of valid VAPS-Cs, and to inform the utility when there has been a data breach by a VAPS-C.

Timing of Response

All three commenters state that five business days meets the definition of "contemporaneously" under the rules. However, UJC comments that the five business days should begin to run only after the competitor has submitted: (1) a signed Information Sharing Request form, (2) a signed NDA, and (3) proof that the requester is a competitor to the relevant VAPS by showing that it is authorized to do business in Michigan and is licensed to perform the same type of service (if a license is needed).

Same Terms and Conditions

All three commenters state that the identical information should be supplied to the competitor as was supplied to the VAPS by the utility. However, MIACCA and Mr. Forner add that the

information should not be supplied “in an utility format that requires expensive and or specialized software to access.” MIACCA’s and Forner’s comments, p. 2.

Competitor versus Non-Competitor

MIACCA and Mr. Forner both contend that the requester should be required to self-certify that they are a representative of a provider of a similar program or service, or are a potential provider of that program or service. They state that potential providers should be allowed to access the shared information in order to do a “feasibility analysis.” *Id.*

UJC argues that the requester should be required to provide proof that they are registered to do business in Michigan and are in good standing, and proof that they employ someone licensed to do the type of work they are competing for, if a license is required.

Information Sharing Request Form

MIACCA and Mr. Forner did not comment on the form. UJC suggests that the form should contain a confidentiality clause acknowledging that the customer information must be kept confidential and that an NDA is required, and that the form should ask for the geographic area served by the requester.³

Discussion

MCL 460.10ee(10)(a) provides that a utility shall, “[i]n the manner and to the extent allowed by commission rule or order, provide upon request to a provider of a similar program or service any lists of customers receiving regulated service that the utility provides to its value-added programs or services.” Rule 9(2) provides that prior written approval from the customer is not required for the sharing of a customer list, and the customer list may include only the customer’s name and address. Rule 9(3) provides that any information shared by a utility with an unregulated

³ Rule 9(3) already specifies that shared information shall be offered to “competitors operating in the service territory” of the utility receiving the request.

VAPS shall not be provided unless “that same information is provided upon request to competitors operating in the service territory on the same terms and conditions and contemporaneously.” Rule 9(4) provides that customer specific consumption and billing data cannot be shared with a VAPS without prior written approval of the customer. And Rule 9(5) provides that non-customer-specific aggregated data must also be shared with a VAPS-C in the same manner and contemporaneously as it is shared with a VAPS. Finally, Rule 9(1) and (5) provide that the utility must comply with its data privacy tariff at all times.

The data privacy tariffs of the investor owned utilities (such as Consumers and DTE Electric, for example) do not set security requirements for how customer data is stored and maintained; rather they set requirements addressing the accessibility and sharing of that data with customers themselves and with third parties, including vendors and law enforcement personnel. Thus, the Commission observes that the security requirements referred to by UJC are internal to each utility and are not imposed by statute, order, or regulation.

The data privacy tariffs of Consumers and DTE Electric specify that informed customer consent is not required for the sharing of a customer name and address with an appliance repair service pursuant to the COC. *See*, Consumers tariff C17.3.B., and DTE Electric tariff C14.1 Disclosure Without Customer Consent, B. The Commission notes that that limitation applies only to customer name and address, and only to situations that involve an appliance repair service VAPS or VAPS-C. Any other information shared with a VAPS and a VAPS-C falls under “Secondary Purpose” as defined in the data privacy tariffs and requires “Informed Customer Consent.” *See*, Consumers tariff C17.2.C., and DTE Electric tariff C14.1 Collection and Use of Data and Information, B. Thus, the data privacy tariffs require informed customer consent for any

shared information other than name and address, and for sharing with any VAPS and VAPS-C that is not in the business of appliance repair.

This dovetails with the COC's requirements for "prior written consent" in Rule 9(4) and for any information shared under Rule 9(3) that goes beyond name and address.⁴ The Commission observes that names and addresses shared under Rule 9(2) and aggregated (non-customer-specific) information shared under Rule 9(5) do not require "prior written consent," but may well require informed customer consent under the applicable data privacy tariff depending on the type of information shared and the type of VAPS and VAPS-C involved, as does information shared pursuant to Rule 9(3) and (4). Utilities need to be cognizant of the duties imposed by both the data privacy tariffs and the COC; some of them overlap and some do not.

The Commission observes that all but one of the current data privacy tariffs approved in Case No. U-18485 contain an outdated (as of the passage of Section 10ee) statutory reference, and they are not uniform. The Commission looks to update the language of these tariffs to correct this reference and to make the tariffs conform to the COC so that Informed Customer Consent is not required for the sharing of customer name and address with *any* VAPS or VAPS-C, not just appliance repair services. To that end, the Commission proposes that each currently-approved data privacy tariff be revised to read as follows: "Informed Customer Consent is not required for the disclosure of customer name and address to a provider of a value-added program or service, regardless of whether that provider is a utility affiliate or other entity within the corporate structure or a third party provider, in compliance with MCL 460.10ee(10)(a) and Mich Admin Code, R

⁴ The original Code of Conduct, in effect until January 9, 2019, contained the same requirements. *See*, October 29, 2001 order in Case No. U-12134, Exhibit A, p. 4 (Section IV.A., B., and C.).

460.10109(2).” The Commission will accept comments on this proposed language, as discussed further below.

Against this legal background, the Commission has considered the filed comments and finds that the sharing of a customer list (name and address only) under Rule 9(2) should not require the use of encryption or the signing of an NDA. Names and addresses are easily available on the internet, and additional burdens on the receipt of that information are unnecessary.

Other categories of shared information are another matter, and the Commission will further examine the issues of encryption and NDAs. The Commission is also concerned that, whether pursuant to a data privacy tariff or the COC, the customer consent must make clear that the customer is agreeing to share information beyond name and address that will be received by both a VAPS and a VAPS-C. Due to the utility’s regulatory obligation to provide all shared information with a VAPS-C that makes a request, it is important that customers realize that their specific billing, consumption, and other personal information may be shared with not only a VAPS but also a VAPS-C. The Commission anticipates that customer-initiated clearinghouse services, such as Green Button Connect, will eventually provide a solution for this type of consent issue, and the Commission looks to advance protocols which will allow customers to make an informed decision to make information directly available to appropriate third parties. These efforts are underway in the MI Power Grid initiative. *See*, October 17, 2019 order in Case No. U-20645, pp. 6-7. In the meantime, it is important to note that under Rules 11(1) and 4(2) utilities reporting instances of information sharing with a VAPS must be able to show that prior written approval has been received from affected customers before the information (beyond name and address) was shared

with the VAPS; and that the approval covers the subsequent required sharing with the VAPS-C.⁵

The Commission will take further comment on the following three issues: (1) free encryption products or services that would allow the safe transfer of customer specific data at no cost to the VAPS-C; (2) the proposed revision to the data privacy tariffs of all affected utilities; and (3) commenters are invited to file simple NDAs for the Commission's consideration. Proposed NDAs should avoid imposing unnecessary burdens on VAPS-Cs (including restrictions on using the shared information in regulatory proceedings), and should keep the focus on reasonable protection of the shared information.

The Commission finds that VAPS-Cs should be able to self-certify that they are either current competitors to the relevant VAPS or are contemplating entering the same business (in the same service territory). Certification of such to the utility should provide sufficient protection from abuse of the information sharing system under the COC.

The Commission agrees with the commenters that five business days meets the definition of "contemporaneously" under the COC. The Commission also agrees with the commenters that the

⁵ Rule 11(1) states:

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.

Rule 4(2) states:

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.

identical information should be supplied to the VAPS-C as was supplied to the VAPS, in conformance with the COC.

Finally, the Commission's information sharing website will provide the VAPS-C with the utility's description of its VAPS, the date information was shared with the VAPS, and the utility contact person who will take care of shared information requests from VAPS-Cs. This should be sufficient to allow the VAPS-C to effectuate a request, provide the information necessary to accomplish the transfer of the data, and self-certify its competitive status and the overlap of its geographic service territory. As such, the Commission finds that an information sharing request form is unnecessary for the website to achieve its purpose. The website will also include a Staff contact who can answer questions regarding the process.

Opening and Closing Dockets

With this order, the Commission assigns the docket numbers listed herein to each utility and cooperative that is currently making compliance filings in accordance with the COC. These dockets shall act as the single repository for future COC compliance filings, including those made pursuant to Rules 10 and 12, and will fulfill the requirements of Rule 10(2).

The Commission also takes this opportunity to close older dockets related to the affiliate transaction guidelines, and finds that no further filings should be made in these dockets. Thus, the Commission closes Case Nos. U-10150, U-11916, U-13502, and U-15325.

Finally, the Commission finds that Case No. U-18326 (a temporary location for compliance filings) and Case No. U-12134 (the original Code of Conduct docket) have served their purpose and should be closed. Any AES that currently chooses to make its annual compliance filing in Case No. U-12134 may continue to do so in its original licensing docket.

Any person may submit written comments regarding the three issues identified in this order. The comments should reference Case No. U-18361, and must be received no later than 5:00 p.m. on February 21, 2020. Address mailed comments to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscdockets@michigan.gov. If you require assistance prior to filing, contact the Commission Staff at (517) 284-8090 or by e-mail at mpscdockets@michigan.gov. All information submitted to the Commission in this matter will become public information available on the Commission's website and all comments will be filed in Case No. U-18361.

THEREFORE, IT IS ORDERED that:

A. The dockets in Case Nos. U-10150, U-11916, U-12134, U-13502, U-15325, and U-18326 are closed.

B. The dockets in Case Nos. U-20674 through U-20695 are opened.

C. The sharing of a customer list by a utility pursuant to Mich Admin Code, R 460.10109(2) shall not require the use of encryption or a non-disclosure agreement.

D. Competitors of a value-added program or service shall self-certify their status as a competitor or potential competitor and shall provide the utility with a description of their service territory when making a request for shared information pursuant to Mich Admin Code, R 460.10109.

E. Pursuant to Mich Admin Code, R 460.10109, information that is shared within five business days with a competitor of a value-added program or service is deemed to have been shared contemporaneously, and the shared information shall be identical to the information shared with the value-added program or service.

F. Any person may file written comments regarding the three issues listed in this order. To be considered, all comments must be received at the Commission no later than 5:00 p.m. (Eastern time) on February 21, 2020, and should reference Case No. U-18361.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Daniel C. Scripps, Commissioner

Tremaine L. Phillips, Commissioner

By its action of January 23, 2020.

Lisa Felice, Executive Secretary