

Code of Conduct/Value Added Services

Today's Agenda

I. Introductions

II. Presentation by MPSC Staff

III. Discussion

IV. Next Steps

Historical Context

- **The May 3, 2000 order in Case No. U-11916 adopted affiliate transaction guidelines (ATGs) applicable to all electric and gas utilities.**
 - The Michigan Court of Appeals vacated that order on grounds that the MPSC had failed to follow the Michigan APA. *MEGA v MPSC*, 252 Mich App 254 (2002). The MPSC then returned to adopting ATGs in individual cases (they follow the model set adopted in Case No. U-10150).
- **The October 29, 2001 order in Case No. U-12134 adopted the Code of Conduct (COC) currently applicable to all electric utilities.**
 - The Michigan Supreme Court found that a generally applicable industry code of conduct may not be promulgated through a contested case proceeding. *DTE v MPSC*, 472 Mich 897 (2005).
 - The court allowed the COC to stand because it found that the enactment of 2004 PA 88, MCL 460.10a(5), ratified the COC and made the procedural issue moot.

Public Act 341

- Requires the MPSC to establish a **Code of Conduct** to prevent cross-subsidization, preferential treatment, and (except as otherwise provided) information sharing, between a utility's regulated services and unregulated programs and services.
- Applies to electric, gas, and steam utilities and unregulated affiliates.
- Utilities are now allowed to offer its customers **value-added programs and services (VAPS)** if those programs or services do not harm the public interest by unduly restraining trade or competition in an unregulated market.
 - “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 their regulated rates.
- Requires a utility to file an annual report with the list of VAPS, and provide the MPSC with the ability to conduct an audit of the utility and the VAPS to ensure compliance with these provisions.

Code of Conduct Development Timeline

- Dec. 2016 – PA 341 signed by Governor
- March 28, 2017 – U-18326 MPSC Order providing guidance
- April 20, 2017 – PA 341 took effect
- February-May 2017 – MPSC Staff internal work group re: proposed Code of Conduct rules
- June-July 2017 – Stakeholder feedback on proposed rules
- ~August 2017 – MPSC initiates formal rulemaking process

Interim Order

- **The March 28, 2017 order in Case No. U-18326 provides:**
 - A docket where utilities that want to offer a VAPS can provide notification to the MPSC and describes what information is required
 - That electric utilities and AESs may provide one annual report to the MPSC consolidating the information required under secs.10ee(6) and (15) and the information required from the existing COC. Those can continue to be filed in Case No. **U-12134** on the usual date
 - A docket where natural gas and steam utilities subject to 10ee may file their annual reports **no later** than April 30 of each year.
 - All existing waivers from the COC remain in place and waivers from this order may be requested as well. The MPSC cannot provide waivers from statutory mandates.

Code of Conduct Draft Rules

- Draft rules include the following:
 - **Existing Code of Conduct** used as a starting point
 - Incorporates **Affiliate Transaction Guidelines**
 - Keeping books in a manner consistent with GAAP and USoA
 - Required information in annual reports
 - Reporting on utility assets encumbered by creditors
 - Incorporates provisions of **Sec. 10ee of PA 341**
 - Includes “other entities within the corporate structure” to address the ability to offer **VAPS** without forming a separate affiliate or division.
 - Notification
 - Annual Reporting
 - **Data privacy tariffs**

Rulemaking Process

Request for Rulemaking (RFR)



Draft Rules



Public Hearing & Public Comment



Post-Hearing Draft Rules



Joint Committee on Administrative Rules



MPSC Adopts the Rule

Questions?