

## **Preliminary Code of Conduct Governing the Relationship Between Energy Optimization Service Companies and Electric Service Providers**

Section 93(12) of 2008 PA 295 specifies that the approval process for energy optimization service companies (EOSCs)<sup>1</sup> requires adherence to a code of conduct governing the relationship between the EOSC and the electric service provider whose customer is being served by the EOSC.

### **I. Applicability**

This code applies to all electric providers subject to the energy optimization requirements of 2008 PA 295 and to energy optimization service companies providing services to electric customers who choose to implement a self-directed energy optimization plan as provided in Section 93 of the Act.

### **II. Compliance with Law**

Electric providers and EOSCs shall comply at all times with orders of the Michigan Public Service Commission and all applicable local, state and federal laws, ordinances, regulations and codes.

### **III. Professional Conduct**

Electric providers and EOSCs shall work individually and cooperatively to adhere to the highest standards of honesty and integrity in providing service to their mutual customers. They shall utilize best industry practices for energy optimization services and only make performance claims that are realistic and verifiable.

### **IV. Separation**

In general, electric providers and EOSCs shall be independent and not affiliated with each other.

Any EOSC which has a structural or functional affiliation with an electric service provider shall disclose such affiliation to the Commission at the time of its application for approval and await Commission direction on the acceptability and required conduct if approval is granted to the affiliated EOSC. If an affiliation occurs after approval is received, it will be the joint responsibility of the affiliated provider and EOSC to notify the Commission of the affiliation and seek guidance.

---

<sup>1</sup> In general, EOSCs are companies which operate via performance-based contracts with client firms to implement measures which reduce energy consumption and costs in a technically and financially viable manner.

An electric provider shall not interfere in the business operations of an EOSC. This provision includes, but is not limited to, the following:

- A. An electric provider shall not give the appearance in any way that it speaks on behalf of any EOSC.
- B. An electric provider shall not interfere in any manner in the contractual relationship between an EOSC and its customers unless such involvement is clearly permitted in the contract between the customer and the EOSC.

An EOSC shall not give the appearance in any way that it speaks on behalf of any electric provider. Nor shall an EOSC interfere in the business relationship between an electric provider and its customers.

#### V. Fair Dealing/ Non-Discrimination

An electric provider will not try to influence a customer's selection of EOSC.

An electric provider will respond to all EOSCs in a timely fashion and apply consistent administrative and reporting requirements. To the extent that an electric provider makes helpful information available to EOSCs, it shall do so in a non-discriminatory fashion.

#### VI. Confidentiality of Customer Records

Communications needed to implement providers' energy optimization plans and integrate the plans developed for customers by EOSCs into the providers' plans shall be open between the two entities. However, they shall be conducted under the terms of a confidentiality agreement designed to ensure and maintain the confidentiality of commercially sensitive or proprietary customer data.

#### VII. Cooperation with Reporting and Monitoring Requirements

EOSCs shall provide necessary data to the electric providers to enable timely monitoring and preparation of reports required by Commission orders and 2008 PA 295.

#### VIII. Dispute Resolution

An electric provider and EOSC 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 the implementation of self-directed energy optimization plans provided through EOSCs. The electric provider shall keep a log of all complaints, including 1) the name of the person or entity filing the complaint, 2) the date the complaint was filed, 3) a written statement of the nature of the complaint, and 4) the results of the resolution process.

#### IX. Compliance

Each electric provider and EOSC shall designate a corporate officer who will oversee compliance with the code of conduct and be available to serve as the Commission's primary contact regarding compliance with the code.

Each electric provider shall file with the Commission an affidavit signed by the designated corporate officer certifying that the electric provider will comply fully with the code of conduct.

Each EOSC shall include with its approval filing an affidavit signed by the designated corporate officer certifying that the EOSC will comply fully with the code of conduct.

#### X. Oversight, Enforcement and Penalties for Violation

A. An electric provider and EOSC shall maintain documentation needed to investigate compliance with the code of conduct. All documentation shall be kept at a designated company office in Michigan. The electric provider and EOSC shall make this information available for review upon a request by the Commission or its Staff. The designated officer will either be available or make personnel available who are knowledgeable to respond to inquiries by the Commission or its Staff regarding compliance with the provisions of the code of conduct.

B. (1) The penalty for EOSC violations of the code of conduct will include removal from the list of approved EOSCs for a period of not more than five years.

(2) The penalty for violations of the code of conduct by electric providers will include forfeiture of EO credits generated by self-direct customers impacted by the violations.