



MICHIGAN

AIR CONDITIONING CONTRACTORS ASSOCIATION

July 29, 2018

Executive Secretary,
Michigan Public Service Commission,
P.O. Box 30221, Lansing, MI 48909.
mpscedockets@michigan.gov.

Re: MPSC Case No. U-18361
Proposed code of conduct written comments by MIACCA

The Michigan Air Conditioning Contractors Association, does hereby submit these written comments generally in support of what is included in the May 2, 2018 proposed code of conduct (Proposed Code) but has the following concerns and or comments regarding what is missing and or potentially ambiguous in the Proposed Code:

The Proposed Code has no Provisions for Unduly Restraining Trade or Competition. Sec. 10ee (2) of 2016 PA 341, MCL 460.10ee(2), authorizes a utility 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”. Yet the Proposed Code does not even mention “restraining trade” or “competition in an unregulated market”, let alone identify what the Michigan Public Service Commission (Commission) and or its staff considers to be “restraining trade or competition in an unregulated market”.

Having the Commission establish definitions of “restraining trade or completion in an unregulated market” would provide meaningful guidance to unregulated markets impacted by VAPS and the energy ombudsman created in Sec. 10ff of 2016 PA 341, MCL 460.10ff; who is to “serve as a liaison for businesses and individuals in the state by guiding energy issues, problems, and disputes from businesses and individuals to the appropriate entity, agency, or venue for resolution” along with acting as a “monitor the activities of the commission, the Michigan agency for energy, and other regulatory entities of this state whose decisions affect businesses and individuals with respect to energy and communicate those entities' decisions, policy changes, and developments to businesses and individuals in this state.”

Furthermore Part 5, Rule 12 of the Proposed Code does not contain any annual reporting requirement for the utility offering VAPS as to what harm is occurring to the public interest by VAPS unduly restraining trade or competition in an unregulated market. The Commission, if going to allow a utility to offer a VAPS must ensure the free market is not corrupted as Sec. 10ee(2) of 2016 PA 341, MCL 460.10ee(2) authorizes.

The Proposed Code does not prevent a gas utility from allocating electric utility costs directly attributable to VAPS as part of the gas utility rate case and not part of the electric utility rate case. Given the Commission's recent history of not requiring Consumers Energy to allocate electric utility mailing and payment processing cost that were directly attributable its appliance service program in an electric utility rate case (see attached MPSC July 23, 2015 FOIA denial – Exhibit 1); which made the electric rates artificially higher due to those direct costs not being allocated for in the electric rates. The Part 5, Rule 12(1)(c) of the Propose Code should be made clearer to require each utility costs that are directly attributable to VAPS be allocated directly to the individual utility that incurred the cost and be clearly reported as such for each utility and each VAPS.

The Proposed Code does not include any notification requirement for waivers. While Part 5, Rule 11(3) of the Proposed Code appropriately puts on the requesting party the burden of demonstrating a waiver will not impair the development or functioning of the competitive market, the Proposed Code does not require the requesting party to notify the competitive market of the waiver request. It is only fair to the competitive market that it be given the same notification for a waiver as for a new VAPS as required in Part 5, Rule 10(1) of the Proposed Code.

There should be progressive reporting requirements as a penalty. Part 5, Rule 13 of the Proposed Code only includes statutory penalties listed in sections 10c and 10ee(14) of 2016 PA 341, MCL 460.10c, and MCL 460.10ee(14). The Commission is well aware of Consumers Energy's three previous code of conduct violations for basically the same thing, yet that did not deter Consumer Energy initially. Furthermore, as demonstrated in MPSC Case No. U-17882 (see attached MPSC 3-30-16 FOIA Response – Exhibit 2) VAPS have significant potential to do market harm and requiring those harmed by a utility to go through a lengthy complaint case each time arguably shifts the responsibility of the Commission stated in Sec. 10ee (1) of 2016 PA 341, MCL 460.10ee(1). to the complainant. There should progressive reporting requirements along with financial penalties, to make it easier for the Commission to ensure that Sec. 10ee (1) of 2016 PA 341, MCL 460.10ee(1) is complied with.

Please advise if you have any questions.

Best Regards,

M.J. D'Smith
Executive Director
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