

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).	)	
_____	)	

At the September 26, 2019 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**

On December 20, 2018, the Commission adopted final rules governing the Code of Conduct for all utilities and alternative electric suppliers (AESs) pursuant to Section 10ee(1) of 2016 PA 341 (Act 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 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 Mich Admin Code, R 460.10109 (Rule 9) make their request for the information known to the utility.

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). The Staff states that approximately 50 people attended the collaborative, and that participants were able to reach consensus on the content of the webpage that will be provided by the Commission which will act

as the single platform where competitors can track when a utility has shared information under Rule 9, and can make a request for the same information. A division of responsibilities was agreed upon by participants as follows:

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.

Report, p. 6. An agreed-upon plan for the content of the website for monitoring information sharing associated with value added programs and services (VAPS) is attached to the Report as Appendix A.<sup>1</sup> Thus, the process for requests, which was the primary issue for the collaborative, was the subject of consensus and the Commission approves moving forward with the recommended process and creation of the website.

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<sup>1</sup> On August 27, 2019, the Staff filed a revised version of Appendix A to add a column heading. This order adopts the revised version.

The Staff further states that the content of the Information Sharing Request form was not the subject of consensus, and the Staff offers a draft form as Appendix B to the Report. By this order, the Commission seeks comments on Appendix B from all interested parties, including whether or not an Information Sharing Request form should be established, and will address any issues regarding the form in a later order.

Additionally, the Staff notes four topics of interest related to the utility's response to an information sharing request that gave rise to much discussion:

**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).

Report, pp. 7-8. The Commission seeks comments on these four issues as well, specifically:

- 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?

Any person may submit written comments regarding the content of Appendix B to the Report, and the four identified issues. The comments should reference Case No. U-18361, and must be received no later than 5:00 p.m. on October 28, 2019. Address mailed comments to: Executive

Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). If you require assistance prior to filing, contact Commission staff at (517) 284-8090 or by e-mail at [mpscedockets@michigan.gov](mailto:mpscedockets@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 Commission Staff shall create the website for information sharing as described in the August 14, 2019 Collaborative Report on Code of Conduct Rule 9 and depicted in the August 27, 2019 version of Appendix A thereto.

B. Within 15 days of the date of this order, all regulated utilities and cooperatives shall provide the Commission Staff with a company contact person to work with in populating the website for information sharing. The contact information may be submitted by e-mail to [latimorel@michigan.gov](mailto:latimorel@michigan.gov). For purposes of initially populating the website, if the Commission Staff requires additional information from any utility or cooperative, the utility or cooperative should make every effort to respond to the information request within 5 business days.

C. Any person may file written comments regarding the content of or need for Appendix B to the August 14, 2019 Collaborative Report on Code of Conduct Rule 9, and regarding the four issues identified in this order. To be considered, all comments must be received at the Commission no later than 5:00 p.m. (Eastern time) on October 28, 2019, 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](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto: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



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Sally A. Talberg, Chairman



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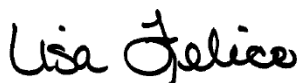
Daniel C. Scripps, Commissioner



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Tremaine L. Phillips, Commissioner

By its action of September 26, 2019.



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Lisa Felice, Executive Secretary

# PROOF OF SERVICE

STATE OF MICHIGAN )

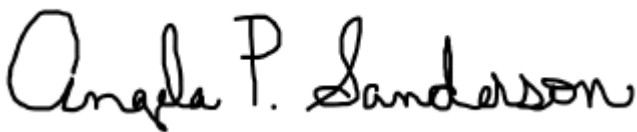
Case No. U-18361

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on September 26, 2019 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 26<sup>th</sup> day of September 2019.



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Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-18361**

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**Name**

**Email Address**

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Sharon Feldman

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