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March 20, 2020

Hon. Sally Wallace
Administrative Law Judge
via email: mpscdockets@michigan.gov

Re: MPSC Case No. U-20697

Rule 413 Statement from the Michigan Air Conditioning Contractors Association (MIACCA)

Your Honor,

Please accept this Rule 413, Mich Admin Code R 792.10413, statement from MIACCA regarding the requested \$244 million rate increase of Consumers Energy Company (“Consumers”); which according to their application is based in part on the electric utility’s operating and maintenance expenses (“O&M”) and impacts the utility's total cost of providing service.

One of the factors that affects the O&M is the statutorily required costing allocations found in MCL 460.10ee when a regulated utility, such as Consumers provides assets, personnel, and or services to its non-utility affiliate or entity providing other non-utility value added products and or services (“VAPS”). According to the 2018 VAPS Annual Report filed by Consumers on April 30, 2019, in Case No. U-18326, Consumers had a total of \$85,651,659 in net VAPS revenue with \$71,878,314 coming from its Appliance Service Plan (“ASP”)¹; with a fair number of the ASP enrollees being electric customers of Consumers who have ASP charges included on their monthly electric bill.

MIACCA is an association of heating, air conditioning, ventilation and refrigeration (“HVACR”) contracting professionals that have suffered a loss of business from Consumers’ ASP and is put at even more of a competitive disadvantage when all costs directly attributable to the ASP are not allocated to the program or service as required by MCL 460.10ee(8); which requires:

The direct and indirect costs of all utility assets used in the operation of the program or service shall be allocated to the program or service based on the proportional use by the program or service as compared to the total use of those assets by the utility. The cost of

¹ Consumers ASP is primarily repair coverage for residential appliances, including HVACR equipment, where for a monthly fee, usually included on the monthly utility bill, enrolled appliances are repaired at no cost.

the program or service includes administrative and general expense loading to be determined in the same manner as the utility determines administrative and general expense loading for all of the utility's regulated and unregulated activities.

On December 20, 2018, pursuant to MCL 460.10ee of Public Act 341 of 2016, the Commission issued an order in Case No. U-18361 formally adopting the current Code of Conduct² rules for all electric, natural gas, and steam utilities and alternative electric suppliers. The Code of Conduct includes measures to prevent cross-subsidization, preferential treatment, and, except as otherwise provided under this section, information sharing, between a utility's regulated electric, steam, or natural gas services and its unregulated VAPS. With Rule 12(1)(e) of the Code of Conduct annual report to contain:

(e) A balance sheet, where available, and income statement for each value-added program and service offered by an affiliate or other entity within the corporate structure, including revenues, less direct and indirect expenses broken out separately. Direct and indirect revenues and expenses shall be separated by category and then aggregated at the direct and indirect levels, and the report shall include gross income, amounts flowed back to ratepayers to reduce rates, and net income. Each category of indirect cost should be accompanied by formulas/calculations/allocations showing how they have been derived.

However neither Consumers' 2018 Annual VAPS Report or its Application for rate increase in this case clearly shows how the ASP charges that were included on the monthly electric bill were allocated in accordance with MCL 460.10ee(8)-(9)³ or Rule 12 of the Code of Conduct. In fact according to Consumers' 2018 VAPS Annual Report, Attachment 3, page 3, the use of the monthly billing service is only \$0.104 per MPSC ruling and not pursuant to MCL 460.10ee(9) with postage.

MIACCA is deeply concerned that without the proper allocation of Consumers utility costs to its VAPS as required by MCL 460.10ee, that Consumers will be subsidizing the APS and harming the public interest by unduly restraining trade or competition in the unregulated HVACR repair market.

Consumers has already demonstrated its attempts to hide its allocation activities by filing its 2018 VAPS Annual Report as "confidential" and by not including calculations in its application and testimony in this rate case showing how electric utility costs are being allocated to the ASP. Likewise, Consumers' 2018 Annual VAPS Report does not indicate to which utility is the \$0.104 per mailing and other costs are going to; given that the gas utility operates the ASP, is the gas utility getting the allocations for the ASP use of the electric utility monthly bill and payment processing services? So without intervention herein by someone as knowledgeable and experienced as Mr. Phil Forner, Consumers will likely be able to continue its improper, secretive, and unchallenged allocation of utility costs to its ASP.

² Code of Conduct is Administrative Rule R 460.10101 - R 460.10113. ("Code of Conduct")

³ MCL 460.10ee(9) states: A utility may include charges for its value-added programs and services offered under this section on its monthly billings to its customers if the utility complies with all of the following: (a) The proportional share of all costs associated with the billing process, including the postage, envelopes, paper, and printing expenses, are allocated as required under subsection (8).

Therefore, given the above it is respectfully requested that this tribunal provides for a full and complete hearing in this general rate case as required by MCL 460.6a, which includes the intervention of all interested persons, specifically Mr. Phil Forner, and the proper application of MCL 460.10ee(8)-(9).

Best Regards,

A handwritten signature in black ink, appearing to read "M.J. D'Smith". The signature is written in a cursive, somewhat stylized font.

M.J. D'Smith
Executive Director

Cc: Ms. Dana Nessel, Michigan Attorney General
Mr. Robert Jackson, Michigan Energy Ombudsman
Utility Consumer Participation Board c/o Susan Weber