

MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)
Act 3 of 1939

460.10ee Code of conduct; value-added programs and services; definitions.

Sec. 10ee.

(1) The commission shall establish a code of conduct that applies to all utilities. The code of conduct shall include, but is not limited to, 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 unregulated programs and services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this section is also applicable to electric utilities and alternative electric suppliers consistent with sections 10 through 10cc.

(2) A utility may offer its customers value-added programs and services if those programs or services do not harm the public interest by unduly restraining trade or competition in an unregulated market.

(3) Assets of a utility may be used in the operation of an unregulated value-added program or service if the unregulated value-added program or service compensates the utility as provided under this section for the proportional use of the assets of the utility. Except as otherwise provided in subsection (11), assets include the use of the utility's name and logo.

(4) A utility shall notify the commission of its intent to offer its customers value-added programs and services before offering those programs to its customers.

(5) The commission may initiate informal proceedings to determine if any program or service offered under this section potentially violates subsection (2) or (3). If the commission determines that a potential violation exists, the commission shall conduct formal proceedings to determine whether a violation has occurred and order corrective actions under this act. An informal proceeding allowed under this subsection is not required as a prerequisite to a formal complaint.

(6) A utility offering a value-added program or service under this section shall do all of the following:

(a) Provide the commission with written notice and a description of any newly offered value-added program or service.

(b) Locate within a separate department of the utility or affiliate within the utility's corporate structure the personnel responsible for the day-to-day management of the program or service.

(c) Maintain separate books and records for the program or service and provide an annual report to the commission showing how all of the utility's costs associated with the unregulated value-added program or service were allocated to the unregulated program or service. The annual report shall show to what extent the utility's rates were affected by the allocations. The utility may include this report as part of a request for rate relief.

(7) A utility offering an unregulated value-added program or service under this section shall not promote or market the program or service through the use of utility billing inserts, printed messages on the utility's billing materials, or other promotional materials included with customers' utility bills.

(8) All utility costs directly attributable to a value-added program or service allowed under this section shall be allocated to the program or service as required by this section. 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 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.

(9) 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).

(b) A customer's regulated utility service is not terminated for nonpayment of the value-added program or service portions of the bill.

(c) Unless the customer directs otherwise in writing, a partial payment by a customer is applied first to the bill for regulated service.

(10) In marketing a value-added program or service offered under this section to the public, a utility shall do all of the following:

(a) In the manner and to the extent allowed by commission rule or order, provide upon request to a provider of a similar program or service any lists of customers receiving regulated service that the utility provides to its value-added programs or services. The customer list shall be provided within 5 business days of the request on a nondiscriminatory basis. A new customer shall be added to the customer list within 1 business day of the date the customer requests to enroll in the program or service.

(b) Appropriately allocate utility costs as required under subsection (8) when personnel employed at a utility's

call center provide program marketing information to a prospective customer or customer service support for program payment issues to customers participating in a program or service offered under this section.

(c) Before enrolling a customer into the program or service offered under this section, the utility shall inform the potential customer of all of the following:

- (i) That the program or service may be available from another provider.
- (ii) That the program or service is not regulated by the commission.
- (iii) That a new residential customer has 10 days after enrollment to cancel his or her program or service contract without penalty.
- (iv) That the customer's regulated rates and conditions of service provided by the utility are not affected by enrollment in the program or service or by the decision of the customer to obtain the program or service from another provider.

(d) The utility name and logo may be used to market programs and services offered under this section if the utility complies with both of the following:

- (i) Does not market the program or service in conjunction with a regulated service.
 - (ii) Clearly indicates on all marketing materials that the program or service is not regulated by the commission.
- (11) For programs or services directly operated by a utility, costs shall not be allocated to the program or service for the use of the utility's name or logo.

(12) Except as otherwise provided in this subsection, the commission shall include only the revenues received by a utility to recover costs directly attributable to a value-based program or service under subsection (8) in determining a utility's base rates. The utility shall file with the commission the percentage of additional revenues over those that are allocated to recover costs directly attributable to a value-added program or service under subsection (8) that the utility wishes to include as an offset to the utility's base rates. Following a notice and hearing, the commission shall approve or modify the amount to be included as an offset to the utility's base rates.

(13) Except as otherwise provided in this section, the code of conduct shall not require a utility operating or offering a value-added program or service under this section as part of its regulated service to form a separate affiliate or division, impose further restrictions on the sharing of employees, vehicles, equipment, office space, and other facilities, or require the utility to provide other providers of appliance repair service or value-added programs or services with access to utility employees, vehicles, equipment, office space, or other facilities.

(14) In addition to any penalties allowed under section 10c, for violations of this section a utility shall pay all reasonable costs incurred by the prevailing party.

(15) A utility that offers value-added programs or services under this section shall file an annual report with the commission that provides a list of its offered value-added programs and services, the estimated market share occupied by each value-added program and service offered by the utility, and a detailed accounting of how the costs for the value-added programs and services were apportioned between the utility and the value-added programs and services. The utility shall certify to the commission that it is complying with the requirements of this section. The commission may conduct an audit of the books and records of the utility and the value-added programs and services to ensure compliance with this section.

(16) As used in this section:

- (a) "Utility" means an electric, steam, or natural gas utility regulated by the commission.
- (b) "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.

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