

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)	
regarding the regulatory reviews, revisions,)	
determinations, and/or approvals necessary for)	Case No. U-15814
BAYFIELD ELECTRIC COOPERATIVE, INC.,)	
to fully comply with Public Acts 286 and 295 of 2008.))	
_____)	

At the June 2, 2009 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On October 6, 2008, Governor Jennifer M. Granholm signed Public Acts 286 and 295 of 2008 into law. Among other things, Act 295, MCL 460.1001 *et seq.*, requires all rural electric cooperatives in this state, whether rate regulated by the Commission or member-regulated under the Electric Cooperative Member-Regulation Act, 2008 PA 167, MCL 460.31 *et seq.*, to have a renewable energy plan and an energy optimization plan.

On October 21, 2008, the Commission opened this docket for consideration of the renewable energy plan and energy optimization plan that Act 295 obligates Bayfield Electric Cooperative, Inc. (Bayfield), to submit for consideration by the Commission.

On November 19, 2008, Bayfield and a group of other rural electric cooperatives filed a motion to consolidate their dockets. In doing so, Bayfield stressed that “[t]raditionally, the

Commission has not attempted to regulate Bayfield.” Motion, p. 2. Additionally, Bayfield requested that the Commission “grant Bayfield a waiver from requirements emanating from 2008 PA 286 and 295.” Motion, p. 3.

On November 20, 2008, Bayfield informed the Commission that there are no alternative electric suppliers (AESs) operating in its Michigan service territory; that its kilowatt-hour (kWh) choice sales limit is 6,997,489 kWh¹; and that the cooperative serves less than 100 customers in Michigan.

On December 4, 2008, the Commission issued the Temporary Order in Case No. U-15800 as required by Act 295. In doing so, the Commission ordered Bayfield to file its renewable energy plan and energy optimization plan by February 18, 2009.

On December 22, 2008, Bayfield submitted a letter indicating that it intended to meet its statutory requirement under Act 295 related to its energy optimization plan by paying the specified percentage of its electric sales revenues to an independent program administrator selected by the Commission as permitted by law. Bayfield calculated its Act 295 energy optimization plan obligation to be \$239.76 for 2009.²

On January 16, 2009, following substitution of counsel, Bayfield filed an amended submission regarding its permissible limit of AES sales. In this document, Bayfield stated that its retail sales to Michigan customers in 2007 of 178,883 kWh would result in a customer choice sales limit of 17,888.3 kWh. Alternatively, if based on Bayfield’s 2005-2007 average retail sales to Michigan customers of 173,642 kWh, its customer choice sales limit would be 17,364.2 kWh.

¹Apparently, Bayfield mistakenly included its entire Wisconsin and Michigan load in its initial choice customer sales limit calculation.

²Bayfield stated that in 2007 it had sales of only 178,883 kWh to its Michigan customers (consisting of 7 year-round and 48 seasonal residences and hunting cabins located in the extreme western Upper Peninsula of Michigan along the Wisconsin border).

On March 3, 2009, Bayfield submitted a notice of intent to file its renewable energy plan application on April 3, 2009. Bayfield reasoned that in its Temporary Order in Case No. U-15800, the Commission had indicated that member-regulated electric cooperatives were to file their renewable energy plans within 120 days of the issuance of the order. Contending that Bayfield has traditionally been regulated “as a *de facto* member-regulated cooperative” Bayfield stated its intention to follow the filing procedures for member-regulated cooperatives.

On April 3, 2009, Bayfield filed its renewable energy plan. In its application, Bayfield stated that as of December 2008, Bayfield’s Michigan customers consisted of 7 year-round and 52 seasonal residences and hunting cabins on and near Chaney Lake, a remote area of the Western Upper Peninsula. According to Bayfield, in 2008, its Michigan customers accounted for 172,009 kWh, or 0.21% of Bayfield’s total sales.

Bayfield explained that it is a member of Dairyland Power Cooperative (Dairyland), a generation and transmission cooperative headquartered in LaCrosse, Wisconsin. Bayfield obtains all of its power and energy for resale, including energy from renewable resources, from Dairyland under a wholesale all-requirements contract that currently extends through December 31, 2055. Dairyland’s wholesale rates under the contract are established on a not-for-profit basis to produce revenues that are sufficient to meet the cost of the operation and maintenance of Dairyland’s generating plant, transmission system and related facilities, the cost of any power and energy purchased for resale by Dairyland, transmission service, payment of principal and interest on all indebtedness, and a reasonable margin.

According to Bayfield, Dairyland’s wholesale rates reflect the cost of renewable energy generating plants and purchased renewable energy to meet renewable portfolio and “green pricing” regulations applicable to itself and its 25 distribution cooperative members in Wisconsin,

Minnesota, Iowa and Illinois. Dairyland also supplies renewable energy to 16 municipal electric utility members under long-term wholesale all-requirements contracts. Bayfield states that Dairyland does not currently charge separate wholesale rates for renewable energy and capacity provided to its distribution cooperative members, nor does Dairyland separately itemize the incremental additional cost of generating and procuring energy from renewable sources on its power bills to its distribution cooperative members. Rather, Bayfield explains, Dairyland offers a renewable “green pricing” program and wholesale rate, known as “Evergreen,” that its distribution cooperative members, including Bayfield, offer to their retail member-customers. Currently, there are no Michigan member-customers of Bayfield who have subscribed to the Evergreen program.

Bayfield stresses that its retail rates are established on a not-for-profit basis, based on the cost of wholesale power from Dairyland and Bayfield’s distribution and other operating expenses, in amounts that are sufficient to cover its wholesale power, distribution facility and operating costs, and a reasonable margin. Bayfield’s retail rates are determined on an as-needed basis, but not less than annually by its board of directors, which is democratically elected from its member-consumers. Retail rates and purchase cost adjustment charges are determined primarily on the basis of an analysis and projection of wholesale rates under the Dairyland contract. Any annual margins derived from operations are allocated back to the Bayfield member-consumers on the basis of their annual patronage. Bayfield states that its retail rates do not include a separate itemization or surcharge for renewable energy to meet the cooperative’s regulatory requirements of the State of Wisconsin. Bayfield does not propose to surcharge Michigan customers under its proposed renewable energy plan.

Bayfield does not expect any significant load growth in Gogebic County, Michigan, because of its remote and inaccessible location. In the previous 51 years, Bayfield’s distribution line for

that area has served less than 60 customers. Bayfield expects that its Michigan load will remain the same or even decline relative to its residential load growth in the State of Wisconsin. For these reasons, Bayfield asserts that it would be reasonable to either grant a waiver or allow the cooperative to meet the renewable energy standards in Act 295 by continuing to include annual sales to its Michigan customers in the kWh retail sales total that it uses for compliance with the renewable energy plan required by Section 196.378 of the Wisconsin statutes.

Specifically, Bayfield proposes that it should be deemed to be in compliance with Act 295 by adhering to Wisconsin's renewable portfolio standards (RPS). Bayfield represents that Dairyland supplies renewable capacity and energy to Bayfield from a variety of renewable energy generation facilities and purchased power resources, including wind turbines, a hydroelectric station, and landfill gas-fired and manure digester gas-fired generation facilities to ensure compliance with the Wisconsin RPS. According to Bayfield, Wisconsin law requires electric utilities to provide an escalating percentage of sales to retail customers from renewable resources, either directly or through the purchase of renewable energy credits (RECs), subject to the supervision of the Public Service Commission of Wisconsin (PSCW). Total retail sales for purposes of the Wisconsin RPS are calculated on the basis of the average of the provider's retail electric sales during the prior three years and are scheduled to increase over the next six years.

Dairyland's current (system-wide) renewable resources, either owned or purchased under long-term power purchase agreements, representing approximately 5% of system capacity, include 44,757 Megawatt-hours (MWh) of hydroelectric generation, 85,255 MWh of wind generation, 10,950 MWh of digester generation, and 89,585 MWh of landfill gas generation. Bayfield asserts that these renewable resource types meet the definition of a "renewable energy resource" in Section 9(i) of Act 295. Further, Bayfield contends that over the next several years, Dairyland

plans to acquire additional renewable generation principally through additional purchase power agreements for wind turbine output, manure digesters, and biomass-fired generators.

According to Bayfield, allocation and retirement of credits for Wisconsin RPS compliance (as well as for compliance with the Minnesota renewable energy standards applicable to Dairyland) are administered via the Midwest Renewable Energy Tracking System (M-RETS). Because registration of generation facilities with M-RETS requires the generator owner to enter into an agreement with the M-RETS administrator to register 100% of the generation of the facility to ensure against double-counting, these registration requirements will allow for tracking and verification of the renewable energy generated from the registered sources. The balance of Bayfield's filing contains a detailed explanation of how adherence to its proposed renewable energy plan will result in Bayfield actually exceeding compliance with the percentage standards required by Act 295.

Findings of Fact and Conclusions of Law

To begin, the Commission finds that the motion to consolidate is moot. Subsequent to the filing of the motion to consolidate, Bayfield obtained independent legal counsel and has proceeded independently from the other rural electric cooperatives.

Next, Bayfield's repeated requests for a waiver from all of the requirements of Act 295 must be rejected. The overall purpose of Act 295 calls for the Commission to ensure widespread participation in renewable energy and energy optimization programs throughout the state of Michigan. Act 295 does not provide for waivers.

Further, the Commission finds that Bayfield's request to be afforded treatment as a member-regulated cooperative should be granted for the purpose of the filing of this application.

Finally, the Commission finds that Bayfield's proposed renewable energy plan and energy optimization plan fall within the intent of the Legislature in passing Act 295 and that its plans should be accepted for filing and determined to be in compliance with the act. In reaching this conclusion, the Commission finds that Bayfield's proposal for future compliance activities should be approved, as modified by this order. Specifically, Bayfield shall make filings in this docket to demonstrate compliance with Act 295 consisting of: (1) copies of its annual Wisconsin RPS compliance reports (currently due to be filed with the PSCW on or before April 15th of each year) supplemented, if necessary, to demonstrate compliance with Michigan's renewable energy plan requirements and to verify that the RECs are not double counted, and (2) data showing annual retail sales to all of Bayfield's customer-members, separately indicating the rate classifications, sales, and number of bills to Michigan customer-members. Additionally, Bayfield shall file annually with the Commission documentation of payment of its required energy optimization plan obligation to the independent program administrator selected by the Commission.

THEREFORE, IT IS ORDERED that:

A. Bayfield Electric Cooperative, Inc's., request for a waiver from all of the requirements of 2008 PA 295 is denied.

B. Bayfield Electric Cooperative, Inc's., request for consideration as a member-regulated cooperative for the purpose of the filing of this application is granted.

C. Bayfield Electric Cooperative, Inc's., proposed energy optimization plan is accepted for filing and is approved.

D. Bayfield Electric Cooperative, Inc's., proposed renewable energy plan is accepted for filing and is approved.

E. Bayfield Electric Cooperative, Inc., shall make annual filings in this docket to demonstrate compliance with 2008 PA 295 consisting of: (1) copies of its annual Wisconsin renewable portfolio standard compliance reports that shall be filed at the same time as they are due to be filed with the Public Service Commission of Wisconsin supplemented, if necessary, to demonstrate compliance with Michigan's renewable energy plan requirements and to verify that the renewable energy credits are not double counted, and (2) data showing annual retail sales to all of the cooperative's customer-members, separately indicating the rate classifications, sales, and number of bills to Michigan customer-members. Additionally, Bayfield Electric Cooperative, Inc., shall file annually with the Commission documentation of payment of its required energy optimization plan obligation to the independent program administrator selected by the Commission.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of June 2, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15814

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on June 2, 2009 A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Lisa Felice

Subscribed and sworn to before me
this 2nd day of June 2009

Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

Service List – Case No. U-15814

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P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15814

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on June 2, 2009 A.D. she served a copy of the attached **Commission Order (Commission's Own Motion) via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Subscribed and sworn to before me
this 2nd day of June 2009

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