

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)
BAYFIELD ELECTRIC COOPERATIVE, INC. to)
fully comply with Public Acts 286 and 295 of 2008.)
_____)

Case No. U-15814

At the October 21, 2008 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 OPENING DOCKET

On October 6, 2008, Governor Jennifer M. Granholm signed Public Acts 286 and 295 of 2008
into law.

I.

Public Act 286 amends Public Act 3 of 1939; MCL 460.1 *et seq.*, to require the
Commission to do all of the following:

- Revise procedures for the filing, investigation, and hearing of petitions and applications for gas and electric utility rate increases. MCL 460.6a(1).
- Complete rate cases within a 12 month deadline (subject to certain permissible extensions). Failure by the Commission to make a determination within the allotted time means that the application will be considered approved. MCL 460.6a(2).

- Upon request, establish load retention transportation rate schedules or approve gas transportation contracts for gas distribution utilities for the purpose of retaining large industrial or commercial customers. MCL 460.6a(5).
- Adopt standard rate application filing forms and instructions. MCL 460.6a(6).
- Provide for recovery by a merchant plant of the difference between the costs to generate electricity from specified renewable resources and what the plant was paid for that electricity, under certain conditions and subject to limitations. MCL 460.6a(7)-(9).
- Prohibit a person from acquiring, controlling, or merging with a jurisdictional regulated utility without Commission approval. MCL 460.6q.
- Allow an electric utility that proposed to construct, invest in, purchase an electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for six years or longer to apply for a certificate of necessity (CON) from the Commission, if the construction, investment, or purchase would cost at least \$500 million and if a portion of the costs would be allocable to retail electric customers in this state. MCL 460.6s(1).
- Authorize the Commission to implement separate CON review criteria and approval standards for utilities with fewer than 1.0 million customers, for projects that cost less than \$500 million. MCL 460.6s(2).
- Require the Commission to establish standards for an integrated resource plan that a utility requesting a CON will file. MCL 460.6s(11).

Act 286 also requires the Commission to do the following in regard to electric rates:

- Phase in rates equal to the cost of providing service to industrial and commercial customers over a five-year period, subject to certain maximum rate impacts for residential customers and metal melting customers. MCL 460.11(1)-(2).
- Consider adoption of eligible low-income and senior citizen customer rates. MCL 460.11(3).
- Establish rate schedules ensuring that educational institutions are charged rates that reflect the actual cost of service. MCL 460.11(4).
- Approve cost of service rates for smaller utilities. MCL 460.11(5).

Additionally, the law amends the “Customer Choice and Electricity Reliability Act”

2000 PA 141; MCL 460.10 *et seq.*, to do the following:

- Require the Commission to issue orders providing that no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year take service from an alternative electric supplier (AES) at any time. MCL 460.10a(1)(a)-(d).
- Allow an AES customer to receive standard tariff service from an electric utility in accordance with the utility's procedures in place on January 1, 2008, for the return of an AES customer to utility service; and allow the Commission to amend the procedures as needed. MCL 460.10a(15).
- Require the Commission to authorize rates that would ensure that an electric utility that offered retail open access service from 2002 until the bill took effect fully recovers within five years its restructuring costs and any associated accrued regulatory costs. MCL 460.10a(16).
- Require the Commission to adopt service quality and reliability standards for generation systems. MCL 460.10p(5).
- Require the Commission to submit a report to the Legislature and the Governor regarding power quality disturbance issues. MCL 460.10p(8).
- Require the Commission to review its existing rules and amend them, if necessary, to implement performance standards for generation and distribution facilities. MCL 460.10p(9)-(10).
- Study and report to the Governor and the Legislature on the advisability of separating generation and distribution, and the potential benefit of creating an electric generation purchasing pool. MCL 460.10r(6)-(7).
- Require each regulated utility to file with the Commission a plan for using dispatchable customer-owned distributed generation within the context of its integrated planning resource process. MCL 460.10r(8).
- Revise provisions pertaining to the ability of municipally owned utility customers to choose service from an AES. MCL 460.10y.

II.

Public Act 295 of 2008 is also known as the "Clean, Renewable, and Efficient Energy Act."

Initially, Act 295 is to be implemented according to the provisions set forth in a "temporary order" that must be issued by the Commission within 60 days of the effective date of the new legislation.

Within one year of Act 295's effective date, the Commission must promulgate administrative rules to govern the further implementation of the law.

The Commission intends to issue an order in Case No. U-15800 to comply with the temporary order requirement in Section 191 before the December 5, 2008 deadline. Additionally, in a separate order issued in the near future in Case No. U-15900, the Commission will commence a rulemaking proceeding to solicit comments and suggestions regarding the content of the administrative rules that must be adopted pursuant to Section 191.

Subpart "A" of Part 2 of Act 295 concerns renewable energy. Among other things, Subpart "A" requires all providers of electric service in this state to establish renewable energy programs. All providers must file a plan within 90 days (120 days for self-regulated rural electric cooperatives and municipally-owned electric utilities) after the Commission issues the temporary order. The Commission's role, and the approach for energy providers to comply with the Act, vary according to the type of electric provider and the size of its customer base.

- Investor-owned, rate-regulated electric utilities and rate-regulated rural electric cooperatives must file applications that will be processed as contested cases under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 *et seq.* Providers with 1 million or more customers must propose a bidding process to obtain renewable energy credits. Sec 21(2)(d). Each plan must establish a non-volumetric mechanism for cost recovery. Sec 21(3). The Commission has 90 days to approve, with any changes consented to by the electric provider, or reject the plan. Sec 21(5). Once approved, the Commission must conduct annual reconciliations subject to contested case proceedings. Sec 49. Two years after a plan's initial approval, and every two years thereafter, the Commission must review the plan as a contested case proceeding. Sec 21(8). An electric provider may amend its plan at any time. Sec 21(9). Amendments that change the cost recovery mechanism require a contested case proceeding. Sec 21(9).
- The renewable energy plans for AESs and member-regulated rural electric cooperatives are governed by Section 23. The Commission is required to approve the plans of AESs and member-regulated rural electric cooperatives, but without the necessity of conducting a contested case proceeding. Rather, the Commission must provide an opportunity for public comment on a

proposed plan. Thereafter, within 90 days of filing of the plan, the Commission is required to approve, with any changes consented to by the electric provider, or reject the plan. Sec 23(3). Biennial reviews and plan amendments may be considered by the Commission after notice of an opportunity to comment. Sec 23(4)-(5).

- The renewable energy plans of municipally-owned electric utilities are governed by Section 25. Two or more municipally-owned electric utilities that each serve fewer than 15,000 customers may file their plans jointly. Larger municipally-owned electric utilities must file individually. The Commission must provide an opportunity for public comment on a proposed plan unless the governing body of the provider has already provided an opportunity for public comment. Thereafter, the Commission is required to make a determination whether the proposed plan complies with the act, but the Commission is not authorized to approve or reject a proposed plan of a municipally-owned electric utility. Biennial reviews and amendments are treated in a similar fashion.

If the Commission determines that a municipally-owned electric utility's proposed plan or amendment does not comply with this act, the Commission is required to explain in writing the reasons for its determination. Sec 25(7).

Subpart "B" of Part 2 of Act 295 concerns energy optimization. Among other things, Subpart "B" requires the filing with the Commission of energy optimization plans by each electric provider and all rate-regulated natural gas distribution utilities.

- The overall goal of an energy optimization plan is to reduce the future costs of provider service to customers. Energy optimization plans are to be "designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction." Sec 71(2). Each provider's proposed energy optimization plan is subject to review and/or approval in the same manner as an electric provider's renewable energy plan under Subpart A of Act 295. A provider is permitted to combine its energy optimization plan with its renewable energy plan.

Providers are also permitted to request Commission approval of the payment of a financial incentive to reward the provider for positive performance.

III.

The Commission realizes that the descriptions of Acts 286 and 295 in this order do not cover all of the important details contained in the legislation. Over the course of the next few months, the rest of the legislation will be discussed in a number of Commission dockets. However, because of the multitude and multiplicity of regulatory actions that must be accomplished to implement Public Acts 286 and 295, and due to the strict time limits placed on the Commission to complete the initial phases of the implementation process, the Commission is opening this docket for Bayfield Electric Cooperative, Inc (Bayfield) at this time to address certain issues that demand immediate attention. The early opening of this docket will assist in the orderly implementation of the new laws, expedite the processing of the company's future applications, and provide intervenors additional time to comply with intervention requirements in the Commission's Rules of Practice and Procedure, R 460.17202. Therefore, at the outset of the implementation process, and while awaiting the issuance of the temporary order required by Section 191 of PA 295, the Commission provides the following as guidance to Bayfield regarding the implementation process.

Choice Sales Limit

Section 10a(1)(a) of Act 286; MCL 460.10a(1)(a) provides that "no more than 10% of an electric utility's average weather adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time." Accordingly, Bayfield shall limit AES sales of electricity within its service territory to no more than 10% of its average weather adjusted retail sales for the preceding calendar year.

In carrying out this effort, Bayfield shall provide the Commission with sufficient data through the submission of annual filings in this docket that permits the Commission Staff (Staff) to calculate the permissible level of AES sales allowed by MCL 460.10a(1)(a). The filing of data

regarding the 2007 calendar year shall be submitted within 30 days of the issuance of this order. Thereafter, the annual filings for the preceding year shall be submitted by the first business day in April of the ensuing year.

Interventions

Because time is of the essence, the Commission encourages interested persons to file interventions in this docket as soon as possible following issuance of this order.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets Website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 241-6170 or by e-mail at: mpscedockets@michigan.gov.

Joint Proceedings

To the extent that a provider may desire to have its case consolidated with that of another provider, and to the extent that such is permitted by the act, the Commission asks that the provider make that desire known through the filing of a request seeking consolidation of cases.

To the extent that a provider has separate divisions that provide both gas and electric utility service or is an electric provider that is affiliated with another utility that provides gas service, the Commission asks that the provider make its desire to consolidate cases known through the filing of a notice of intent to seek consolidation.

Such consolidation requests should be filed in the appropriate dockets no later than November 19, 2008.

Protective Orders

Should Bayfield, the Staff, or any intervenor desire the protections afforded by the entry of a protective order, a request for issuance of a protective order, along with the proposed language of the proposed protective order shall be filed and served electronically on all known potential parties to the proceedings.

Discovery

Discovery regarding a renewable energy plan and/or an energy optimization plan may commence at any time after the provider files its renewable energy plan and/or an energy optimization plan.

Public Comments

The Commission encourages interested persons who do not seek to intervene as parties to submit public comments. Written and electronic comments may be filed with the Commission at any time. Written comments should be sent to the: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments may be e-mailed to: mpscedockets@michigan.gov. All comments should reference Case No. U-15814. Comments received in this matter will become public information, posted on the Commission's website, and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. No more than 10% of Bayfield Electric Cooperative, Inc.'s average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time, except as permitted by MCL 460.10a(1)(b), (c), and (d).

B. Interested persons shall file interventions in this docket as soon as possible following issuance of this order.

C. A consolidation request by Bayfield Electric Cooperative, Inc. should be filed in the appropriate dockets no later than November 19, 2008.

D. Should Bayfield Electric Cooperative, Inc., the Commission Staff, or any intervenor desire the protections afforded by the entry of a protective order, a request for issuance of a protective order, along with the proposed language of the proposed protective order, shall be filed and served electronically on all known potential parties to the proceedings.

E. It shall be permissible for discovery regarding a renewable energy plan and/or an energy optimization plan to commence at any time after the provider files its renewable energy plan and/or an energy optimization plan.

F. The filing of 2007 calendar year data regarding the permissible level of alternative electric supplier sales shall be submitted by Bayfield Electric Cooperative, Inc. within 30 days of the issuance of this order. Thereafter, the company's annual filing for the preceding year shall be submitted by the first business day in April of the ensuing year.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of October 21, 2008

Mary Jo Kunkle, Executive Secretary

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

STATE OF MICHIGAN)

Case No. U-15814

County of Ingham)

April M. Arman being duly sworn, deposes and says that on October 21, 2008 A.D. she served a copy of the attached Commission orders via E-Mail, to the persons as shown on the attached service list.

April M. Arman

Subscribed and sworn to before me
this 21st day of October 2008

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

GAS & ELECTRIC

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Tri-County Electric Co-Op
Tri-County Electric Co-Op
Tri-County Electric Co-Op
Aurora Gas Company
Citizens Gas Fuel Company
Consumers Energy Company
Consumers Energy Company
Edison Sault Electric Company
Edison Sault Electric Company
Exelon Energy Company
Exelon Energy Company
Indiana Michigan Power Company
SEMCO Energy Gas Company
Superior Energy Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Alger Delta Cooperative
Bayfield Electric Cooperative
Cherryland Electric Cooperative
Cloverland Electric Cooperative
Cloverland Electric Cooperative
Great Lakes Energy Cooperative
Midwest Energy Cooperative
Thumb Electric Cooperative
Wolverine Power Marketing Cooperative, Inc.
Energy USA- TPC Corp
PowerOne Corp
FirstEnergy Solutions Corp.
Wisconsin Public Service Corp.
Peoples Energy Services Corporation
Niles Utilities Department
Stephenson Utilities Department
Marshall Electric Dept.
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Quest Energy, L.L.C.
Xcel Energy
City of Escanaba
City of Crystal Falls
Lisa Felice
Spark Energy Gas, LP
Universal Gas & Electric Corporation
City of Gladstone
City of South Haven
Interstate Gas Supply Inc
Constellation NewEnergy Inc.
Dillon Energy Services Inc.
MxEnergy Inc.
Village of L'Anse
Bay City Electric Light & Power
Grand Haven Board of Light & Power
Lansing Board of Water and Light
Marquette Board of Light & Power
Traverse City Light & Power
CMS ERM Michigan LLC
CMS ERM Michigan LLC
Metro Energy LLC
Premier Energy Marketing LLC
Proliance Energy LLC
Strategic Energy LLC
City of Saint Louis
American PowerNet Management, L.P.
Nordic Marketing, L.L.C.
U.P. Power Marketing, LLC
City of Marshall
Nordic Marketing of Michigan.com
Accent Energy Midwest
Mary Jo Kunkle - MPSC
SUEZ Energy Resources NA, Inc.
City of Portland
Alpena Power
Lowell Light and Power
City of Eaton Rapids
IntegrYS Energy Service, Inc
BlueStar Energy Services
Direct Energy Services
Lakeshore Energy Services
Volunteer Energy Services
Wyandotte Municipal Services
Wyandotte Municipal Services
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Hillsdale Board of Public Utilities
Hillsdale Board of Public Utilities
Michigan Gas Utilities
Neguinee Department of Public Works
Zeeland Board of Public Works

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* Total number of users subscribed to the list: 106
* Total number of local host users on the list: 0
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