

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of Michigan’s rural )  
electric cooperatives for a determination that the )  
Commission will not require the provision of choice )  
to customers with a peak load of less than 1 MW )  
before January 1, 2007. )  
\_\_\_\_\_ )

Case No. U-13698

At the September 11, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

Section 10x(1) of the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141), MCL 460.10x(1), provides that the Commission shall not require a cooperative electric utility to implement customer choice before January 1, 2005 nor require the unbundling of a cooperative’s rates under Section 10b of Act 141 before July 1, 2004. In addition, Sections 10r(2) and 10x(5) of Act 141, MCL 460.10r(2) and MCL 460.10x(5), provide that the Commission shall not require a cooperative to contribute to an educational program for customer choice issues “until July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier.” MCL 460.10x(5).

On February 4, 2003, Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks

Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative (the cooperatives) filed an application requesting the Commission to delay implementation of customer choice for customers with a peak load of less than 1 megawatt (MW).<sup>1</sup> The cooperatives originally sought to delay the implementation of customer choice in their service territories until January 1, 2007. They also proposed to delay their funding of customer education and the unbundling of their rates until July 1, 2006.

However, on February 19, 2003, the cooperatives filed an amended application seeking to further delay implementation of customer choice programs in their service territories by another 12 months, or until January 1, 2008. They also proposed an additional 12-month delay of the onset of their obligation to fund customer education and to unbundle their rates until July 1, 2007. In an order issued on March 26, 2003, the Commission directed that a legislative-type hearing be held on June 3, 2003 to allow interested persons to comment on the merits of the relief requested in the cooperatives' application.

Administrative Law Judge Barbara A. Stump (ALJ) conducted the June 3, 2003 public hearing. Speakers at the hearing included Albert Ernst, the cooperatives' legal counsel, Daniel J. Blair, an accounting specialist in the Commission's Competitive Energy Division, Michael W. Peters, Executive Vice President of the Michigan Electric Cooperative Association (MECA), Joseph Bartolone, Jr., Founder of Utility Services Corporation, Betty Reynolds Maciejewski, a Director of Cherryland, Allan Barr, a Board Member of Presque Isle, Louis Wenzlaff, a Director of Thumb, and Phil Eikenberry, a Director of Great Lakes. In addition, the ALJ accepted several

---

<sup>1</sup>As discussed later in this order, member-consumers of these cooperatives with peak loads of 1 MW or greater currently have the right to choose to buy power from an alternative electric supplier (AES).

thousand letters and postcards that were sent in by member-consumers of the cooperatives in support of the application. Finally, the ALJ set July 1 and July 22, 2003, respectively, as deadlines for the submission of comments and reply comments.<sup>2</sup>

The Michigan Association of Broadcasters (MAB) and Consumers Energy Company (Consumers) filed comments opposed to the application. MECA and the Commission Staff (Staff) filed joint comments in favor of granting the cooperatives additional time to implement customer choice. In addition, the Commission received comments from the Michigan Municipal Electric Association (MMEA) and 35 letters from individual members of the State Legislature in favor of the relief requested in the application.

### **SUMMARY OF THE COMMENTS**

#### **MECA and the Staff**

On July 24, 2003, MECA and the Staff filed joint comments requesting that the Commission adopt a schedule for implementation of customer choice for the cooperatives' member-consumers with a peak load of less than 1 MW. In so doing, they maintain that Mr. Bartolone's comments at the June 3, 2003 public hearing indicate that it would cost over \$13 million for all of the cooperatives to implement customer choice programs, with a minimum expenditure of \$500,000 per cooperative. They also noted that Mr. Bartolone opined that the average implementation schedule would span 34 months. Given the cost and effort necessary to implement customer choice, MECA and the Staff suggest that it might be more appropriate for the Commission to phase in implementation of customer choice for the cooperatives' smaller customers, particularly in light of the current lack of interest in the program. In this regard, the cooperatives noted in their comments

---

<sup>2</sup>Subsequently, the ALJ changed the comment and reply comment deadlines to July 24, 2003 and August 12, 2003.

that to date none of their member-consumers with a load of 1 MW or greater has been approached by marketers or has been given alternative supply options by an AES.

MECA and the Staff contend that Section 10x(1) gives the Commission discretion to establish the date by which each of the cooperatives must provide customer choice in their service territories to member-consumers with a peak load of less than the 1 MW, provided that the implementation date selected by the Commission is no earlier than January 1, 2005. Further, MECA and the Staff argue that the same discretion applies to the funding of educational choice programs required under Section 10r(2) of Act 141. Finally, they request that the Commission grant the cooperatives relief from the Section 10b requirement that obligates the cooperatives to unbundle their rates.

The compromise proposal filed by MECA and the Staff would do all of the following:

- By January 1, 2005, all cooperatives would provide choice for all commercial and industrial member-consumers with a peak load of 200 kilowatts (kW) and above. Unbundled rates for such member-consumers would be filed no later than July 1, 2004.
- By January 1, 2006, all cooperatives would provide choice for all commercial and industrial member-consumers that currently have a demand meter installed and that have a peak load of 50 kW and above. However, no more than 30% of the total number of member-consumers between 50 kW and 199 kW for each cooperative could switch. Unbundled rates for such member-consumers would be filed no later than July 1, 2005.
- By January 1, 2007, the Commission could make a determination regarding further implementation of customer choice for all other member-consumers served by the cooperatives.
- For purposes of the above, the threshold kW determinations may be reached by an individual member-consumer through aggregation of its multiple metering points located within a cooperative's service territory.

### MAB

The MAB, which is currently offering a retail open access choice program to its members located in The Detroit Edison Company's (Detroit Edison) and Consumers' service territories, states that it is opposed to both the relief requested in the application and the joint proposal

proffered by the cooperatives and the Staff because the MAB desires to extend the benefits of customer choice to its members that are located in the cooperatives' service territories. The MAB supports allowing a cooperative's member-consumers to aggregate load measured at several metering points to meet the 1 MW or greater threshold. The MAB also maintains that delaying implementation of customer choice as proposed by the cooperatives is contrary to Act 141. Citing myriad sections from Act 141, including Sections 10a, 10b(2), 10b(3), 10r(2), 10x(1), and 10x(5), the MAB insists that the Commission does not have discretion to delay customer choice beyond January 1, 2005.

In response to the cooperatives' pleas for more time due to the high cost of implementing customer choice, the MAB argues that customer choice will instill benefits on both the cooperatives and their member-consumers. In any event, the MAB contends that the cooperatives have not proven that the costs associated with the implementation of customer choice will be excessive or harmful.

The MAB also states that its members (and presumably others) are eager to participate in the cooperatives' customer choice programs by the January 1, 2005 date established by the Legislature. According to the MAB, it is ready to begin programs in these cooperatives' service territories that would benefit customers that have been impeded by the ruling that does not allow a customer's load to be aggregated to reach the 1 MW threshold in the cooperatives' territories.

Finally, the MAB contends that the cooperatives' member-consumers would be better served if the Commission were to order the cooperatives to show cause why they cannot comply with the statutory mandates of Act 141 or, in the alternative, to file applications seeking authority to commence offering open access programs by January 1, 2005.

## Consumers

Consumers also insists that the relief sought by the cooperatives and the joint position of the cooperatives and the Staff are unlawful. Citing MCL 460.10(2)(a), which states that one of the purposes of Act 141 is “to ensure that all retail customers in this state of electric power have a choice of electric suppliers” and MCL 460.10x(5), which states that a cooperative utility must provide funding for customer choice education by “July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier,” Consumers argues that the Commission cannot indefinitely delay implementation of customer choice.

Consumers also maintains that the cooperatives’ request is directly inconsistent with a commitment they made to the Commission in an October 31, 2002 settlement agreement that was approved by the December 6, 2002 order in Case No. U-12656 et al., wherein the cooperatives committed to provide customer choice to all of their member-consumers by January 1, 2005. Indeed, Consumers argues that the cooperatives have had years to prepare for the beginning of customer choice programs and are not in position to claim that they should not be required to do so by January 1, 2005.

Next, Consumers insists that its own experience with customers with less than 1 MW of load indicates that such customers have considerable interest in customer choice. Consumers states that it currently has 600 customers that have elected to receive generation service from an AES, over 500 of which have less than 1 MW of load. Accordingly, Consumers asserts that there is no reason to believe that the proportion of customers interested in participating in customer choice on the cooperatives’ systems would be materially different.

Consumers also stresses that the cooperatives’ request to delay choice for their own customers is ironic in light of the aggressive attempt by Wolverine Marketing Power Cooperative (Wolverine

Marketing), the retail marketing entity formed by the Wolverine Power Supply Cooperative, Inc., which is the exclusive wholesale electricity supplier of four of the cooperatives, to take advantage of the choice programs of other utilities. According to Consumers, it would be poor policy, as well as anti-competitive, to allow the cooperatives' affiliate to participate as an AES without also opening up the cooperatives' markets to competition to the same extent. Indeed, Consumers suggests that granting the relief sought by the cooperatives would place the marketing affiliate squarely in violation of the reciprocity provisions of the Consumers' retail open access tariff approved by the Commission. Consumers insists that it would be unlawful and unreasonable to allow Wolverine Marketing to continue to act as an AES for customers of the same size that the cooperatives' proposal seeks to deny other AES suppliers the right to serve.

### **DISCUSSION**

The Commission finds that the cooperatives should be authorized to implement customer choice programs for member-consumers having less than 1 MW of peak load according to a phased-in schedule. The cooperatives' member-consumers with a peak load of 1 MW or greater<sup>3</sup> already have customer choice pursuant to the Commission's December 6, 2002 consolidated order in Cases Nos. U-12656 (Cloverland), U-12657 (Midwest), U-12658 (Cherryland), U-12659 (Great Lakes), U-12660 (Presque Isle), and U-12661 (HomeWorks). Their request to phase in the schedule for customer choice for member-consumers having a peak load of less than 1 MW is reasonable and in the public interest given the lack of interest in customer choice amongst such customers and in light of the significant time, effort, and expense involved. The schedule being approved by the Commission calls for the cooperatives to extend customer choice to all com-

---

<sup>3</sup>Alger Delta, Ontonagon, and Thumb do not have any member-consumers with a peak load of 1 MW or greater.

mercial and industrial member-consumers having a peak load of 200 kW or greater by January 1, 2005 and to up to 30% of any remaining commercial and industrial member-consumers having a peak load of between 50 kW to 199 kW by January 1, 2006. Additionally, the cooperatives shall provide unbundled rates to all commercial and industrial member-consumers having a peak load of 200 kW or greater by July 1, 2004. Commercial and industrial member-consumers having a peak load of between 50 kW to 199 kW shall be provided with unbundled rates by July 1, 2005.

The Commission notes that the phased-in proposal suggested by MECA and the Staff addresses one of the MAB's major concerns by allowing individual member-consumers to aggregate load at multiple metering points located within a cooperative's service territory to reach the threshold kW requirements for participation in a customer choice program.

In finding that the phased-in proposal should be approved, the Commission expressly rejects the arguments by the MAB and Consumers that the Commission lacks discretion to select a date other than January 1, 2005 for the commencement of customer choice in the service territories of the cooperatives. MCL 460.10x(1) states, in part:

The commission shall not require a cooperative electric utility to provide its retail customers the ability to choose an alternative electric supplier before January 1, 2005, nor unbundle its rates as required under section 10b before July 1, 2004.

The language used by the Legislature is restrictive with regard to prohibiting the Commission from requiring a cooperative to provide customer choice before January 1, 2005, but it does not prohibit the Commission from setting a later date for a cooperative to implement a customer choice program for member-consumers having less than 1 MW of peak load. Moreover, Act 141 is replete with examples of the Legislature's different treatment of investor owned utilities and cooperatives.

For example, Section 10r(3) requires investor owned utilities to display certain environmental information on customers' bills, whereas cooperatives may publish such information in a periodical sent to their member-consumers. In Section 10w, investor owned utilities were directed to join a multistate regional transmission system organization. Section 10w does not apply to cooperatives. Pursuant to Section 10b(2), investor owned utilities had a deadline of January 1, 2002 to offer customer choice. On the other hand, in Section 10x(1), cooperatives were exempted from customer choice until at least January 1, 2005. Similarly, investor owned utilities were required to file unbundled rate applications one year after passage of Act 141, whereas cooperatives are not required to unbundled their rates until after July 1, 2004. In passing Section 10x(5), the Legislature gave cooperatives 2½ more years to commence an educational funding mechanism. The Legislature also exempted cooperatives from the requirement in Section 10x(2) regarding the maintenance of separate facilities, operations, and personnel for the purposes of providing retail service and acting as an alternative electric supplier. Given all of these instances in which the Legislature treated cooperatives differently than investor owned utilities, the Commission is persuaded that there is no reason to deny the cooperatives the ability to phase in customer choice in a manner that meets the unique needs of these rural cooperatives while still advancing the legislative mandate of customer choice.

Additionally, the Commission finds that the MAB and Consumers' citations to MCL 460.10b(2) and MCL 460.10x(5), which concern unbundling and educational funding deadlines, are not persuasive, as the Commission is not convinced that the unambiguous language of MCL 460.10x(1) should be circumvented through a bootstrap argument. Moreover, in an order issued on April 17, 2003 in Case No. U-12133, the Commission prospectively suspended the educational program funding mechanisms of certain investor owned electric utilities because those

charged with executing the educational program had accomplished very few of the objectives of the program. Nonetheless, those investor owned utilities did establish educational program funding mechanisms as required by Sections 10r(2) and 10x(5) of Act 141 and the Commission's orders in Case No. U-12133. Similarly, Sections 10r(2) and 10x(5) obligate each of the cooperatives to fund educational programs by "July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier." Therefore, the Commission finds that the cooperatives should be required to file applications by April 2, 2004 proposing an educational program funding mechanism.

Finally, the Commission rejects Consumers' contention that the cooperatives' application should be rejected because, if the relief requested in the application were to be granted, there would be a potential that future actions of an affiliated marketing entity might violate Consumers' tariffs. Consumers' concerns are too speculative and raised in the wrong forum. If Consumers is concerned about an actual tariff violation, it should raise that issue through the filing of a formal complaint, not by interjecting its concerns into this proceeding.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. The phased-in proposal proffered by MECA and the Staff is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. By January 1, 2005, Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative shall provide choice for all commercial and industrial member-consumers with a peak load of 200 kilowatts and above. Unbundled rates for such member-consumers shall be filed no later than July 1, 2004.

B. By January 1, 2006, Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative shall provide choice for all commercial and industrial member-consumers that currently have a demand meter installed and that have a peak load of 50 kilowatts and above. However, no more than 30% of the total number of member-consumers between 50 kilowatts and 199 kilowatts for each cooperative shall be permitted to switch. Unbundled rates for such member-consumers shall be filed no later than July 1, 2005.

C. By September 30, 2006, Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative shall file a status report with the Commission detailing the cost to implement and the effectiveness of customer choice for the electric cooperatives.

D. Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative shall make all threshold load determinations for individual member-consumers through aggregation of the member-consumer's multiple metering points located within the cooperative's service territory.

E. By January 1, 2007, the Commission shall make a determination regarding further implementation of customer choice for all other member-consumers served by Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative.

F. By April 2, 2004, the Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative shall file proposals for educational program funding mechanisms.

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, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark  
Chair

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of September 11, 2003.

/s/ Robert W. Kehres  
Its Acting Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

---

Chair

---

Commissioner

---

Commissioner

By its action of September 11, 2003.

---

Its Acting Executive Secretary

In the matter of the application of Michigan’s rural )  
electric cooperatives for a determination that the )  
Commission will not require the provision of choice )  
to customers with a peak load of less than 1 MW )  
before January 1, 2007. )  
\_\_\_\_\_ )

Case No. U-13698

Suggested Minute:

“Adopt and issue order dated September 11, 2003 authorizing Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, The Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative to implement customer choice programs for member-consumers having less than 1 megawatt of peak load according to a phased-in schedule approved by the Commission, as set forth in the order.”