

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to implement 2008 PA 295 through issuance of) Case No. U-15800
a temporary order as required by MCL 460.1191.)
_____)

At the July 1, 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 DENYING REQUESTS FOR WAIVERS

On June 2, 2009, the Michigan Municipal Electric Association (MMEA) filed, on behalf of certain of its members, a request for waiver of requirements established in Section 45(5) of 2008 PA 295 (the Act), MCL 460.1045(5), which mandates that certain information be included in monthly billing statements to customers.

The MMEA states that some of its members cannot comply with Section 45(5) without incurring substantial costs. Generally, it states, these costs arise from the need either to establish an entirely new bill format or to develop new billing software. For example, the MMEA states, if a utility uses a postcard for billing, there may not be sufficient space for adding four lines to comply with the requirements of Section 45(5). Moreover, the MMEA states, the municipal utilities tend to have a small customer base, which means the costs must be recovered from a limited number of customers. It states that some municipal utilities are thus left with a choice of

increasing customer bills significantly, decreasing the amount spent to comply with the renewable energy and energy optimization standards of the Act, or a combination of both.

The MMEA seeks to avoid the hardship that compliance would bring by requesting that municipal utilities be permitted to comply with Section 45(5) by including the required information in the annual report required by Section 51(2), MCL 460.1051(2), which requires information different from that required by Section 45(5) be placed in an annual report, which among other things, must be sent to the utility's customers.

The Commission is not persuaded that it may grant the MMEA's waiver request, no matter how sympathetic the Commission is to the municipal utilities' plight. The Commission is not empowered to exercise any authority over municipal utilities that is not expressly provided for in the Act. *See*, MCL 460.1111. Moreover, the Legislature has closely defined what it requires from rate regulated utilities, alternative electric service providers, and municipal utilities. If it had intended to provide for the Commission's authority to grant a waiver or alter the statutory requirements for avoiding financial hardship or waste, the Legislature could have and presumably would have expressly provided that authority. But it did not.

The Legislature stated clearly what it intended all electric providers to include on monthly billings to residential customers. Section 45(5) provides:

In its billing statements for a residential customer, each provider shall report to the residential customer all of the following in a format consistent with other information on the customer bill:

- (a) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the renewable energy program requirements of this act. In the first bill issued after the close of the previous year, an electric provider shall notify each residential customer that the customer may be entitled to an income tax credit to offset some of the annual amounts collected for the renewable energy program.

- (b) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the energy optimization program requirements of this act.
- (c) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the reductions in the monthly energy bill produced by the energy optimization program under this act.
- (d) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the long-term, life-cycle, levelized costs of building and operating new conventional coal-fired electric generating power plants avoided under this act as determined by the commission.
- (e) The website address at which the commission's annual report under section 51 is posted.

MCL 460.45(5).

The Commission finds no ambiguous statutory language that would permit interpreting this section to require compliance only when the costs are minimal or compliance does not create an undue burden. The Legislature did not leave compliance with the Act optional for municipal utilities and did not provide any possibility of obtaining the relief that the MMEA seeks for its member companies. Rather, the Legislature demonstrated its intent that municipal utilities should comply with the Act when it established specific enforcement provisions in MCL 460.1053. That section authorizes the Commission to adjudicate complaints of non-compliance. Upon a finding that a municipal utility has failed to comply, the Commission is to notify the Attorney General, who may obtain injunctive relief.

For all of the above reasons, the Commission finds that it is without authority to grant the relief that the MMEA seeks on behalf of its members. Nor does the Commission possess the authority to grant the MMEA's alternative request to permit each affected municipal utility to seek its own waiver. The possibility of granting the relief sought by the MMEA must be created, if at all, through the legislative process, not by administrative fiat.

THEREFORE, IT IS ORDERED that the request for waiver of the requirements of MCL 460.1045(5) for municipal utilities filed by the Michigan Municipal Electric Association is denied.

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

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of July 1, 2009.

Mary Jo Kunkle, Executive Secretary