

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
of the election by the Board of Directors of)
ALGER DELTA COOPERATIVE ELECTRIC)
ASSOCIATION to become member-regulated in)
accordance with 2008 PA 167, MCL 460.34.)
_____)

Case No. U-16011

At the September 15, 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

DETERMINATION

On June 25, 2009, the Board of Directors of Alger Delta Cooperative Electric Association (Alger Delta) adopted a resolution to become member-regulated in accordance with 2008 PA 167, MCL 460.31 *et seq.*, the Electric Cooperative Member-Regulation Act (the Act). *See*, MCL 460.34. By letter dated June 29, 2009, Alger Delta informed the Commission of the resolution.

“Member-regulation” means that the Board of Directors of Alger Delta will be solely responsible for establishing, maintaining, and applying all rates, charges, accounting standards, billing practices, and terms and conditions of service. MCL 460.32(f). Section 6(2) of Act 167 provides that:

Notwithstanding the provisions of this act, the commission shall retain jurisdiction and control over all member regulated cooperatives for matters

involving safety, interconnection, code of conduct . . . , customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier . . . , and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier, service area, distribution performance standards, and quality of service, including interpretation of applicable commission rules and resolution of complaints and disputes, except any penalties pertaining to performance standards and quality of service shall be established by the cooperative's members.

MCL 460.36(2). However, Section 9 of Act 167 provides that the Commission shall retain jurisdiction over certificates of need, and enforcement of 1999 AC, R 460.3411, which deals with areas served and line extensions. MCL 460.39(1).

By letter dated July 17, 2009,¹ Alger Delta stated that it was aware of the recent transition by Cherryland Electric Cooperative (Cherryland) to member-regulation in Case No. U-15983. According to Alger Delta, after reviewing both the July 10, 2009 Commission Staff (Staff) report filed in Case No. U-15983 and the Commission's July 16, 2009 determination issued in Case No. U-15983, Alger Delta indicated that it is confident that the Commission will ultimately determine that its journey towards member-regulation will be completed without controversy. In support of this claim, Alger Delta stated all of the following:

- There is no ambiguity in this case as to whether the notification to the Commission was timely.
- Alger Delta will file documentation showing compliance with the notice and hearing requirements of Section 4(a)-(f) of Act 167, MCL 460.34(a)-(f).
- Alger Delta is willing to meet with the Commission Staff to discuss issues related to the transition and to establish an orderly process for the transition to member-regulation. (However, Alger Delta did express some concerns about the time and cost involved in travel to and from the Upper Peninsula.)
- Alger Delta has no objection to a Staff report, although it is respectfully suggested that in view of this compliance letter, such a Staff report may not be necessary.

¹The July 17, 2009 letter was filed on that date, but revised and re-filed on July 20, 2009.

- Unlike the Cherryland docket, it does not appear that any Alger Delta member consumer seeks to intervene in this matter.
- Consistent with the arguments raised by Cherryland, Alger Delta takes the position that all pending Commission dockets relating to ratemaking are suspended as of September 27, 2009, *e.g.*, Case No. U-15405-R.

On August 11, 2009, the Commission issued an order to address the notification from Alger Delta. In so doing, the Commission directed Alger Delta to file documentation in this docket within seven days of the date of the order showing compliance with the notice and hearing requirements of Section 4(a)-(f) of Act 167. MCL 460.34(a)-(f). The requested documentation was filed on August 13, 2009.

In the August 11 order, the Commission also directed Alger Delta and the Staff to begin meetings with the Staff no later than August 20, 2009 to discuss issues related to the transition and to establish an orderly process for the transition of Alger Delta to member-regulation. The Staff was directed to report to the Commission by September 1, 2009 on the results of its discussions with Alger Delta.

On August 24, 2009, the Staff filed its report. In so doing, the Staff states that its meeting with Alger Delta took place on August 18, 2009. According to the Staff report, the participants agreed that the Cherryland case should serve as a guide to Alger Delta in its transition to member-regulation. The Staff also reported that Alger Delta had agreed in its August 13 filing that “Alger Delta is in accord with the Staff Report in Case No. U-15893 with respect to the issues of billing practices, ratemaking, safety and code of conduct.”

Based on its discussions and the cooperative’s filings in this matter, the Staff indicates that the Staff and Alger Delta agree that the effective date for member-regulation by Alger Delta will be September 27, 2009. The Staff also reports that Alger Delta intends to adopt, as its own, the

Commission's current billing practices, and that Alger Delta will be responsible for the enforcement of its billing practices and for all future revisions of them.

With regard to ratemaking, the Staff states that Alger Delta will have full authority over all aspects of ratemaking, including fees, charges, penalties, pole attachment rates, etc. According to the Staff, Alger Delta intends to continue to use the existing Commission-approved rates, charges, and so on, until new ones are approved by the cooperative. At such time that Alger Delta does amend its rates, the cooperative will provide a copy of the changes to the Commission.

On the issue of the Code of Conduct adopted by the Commission pursuant to MCL 460.10a(4), the Staff reports that the parties are in agreement that the Code of Conduct will continue to apply to Alger Delta.

With regard to safety issues, the Staff's report indicated that there was general agreement that the Commission's safety regulation will continue to apply to Alger Delta. However, the Staff also indicated that, "unlike the situation for gas utilities, where safety regulation is encompassed in a single document, electric safety regulation is contained in a variety of requirements." Consequently, the Staff stated that it would be necessary for the Commission and the cooperative to address what encompasses safety regulation on a case-by-case basis in the future.

Finally, even though the Commission's order did not provide for responses, the Staff suggested that Alger Delta should file a response indicating its agreement or disagreement with the Staff report.

On September 2, 2009, Alger Delta filed a response to the Staff report. In so doing, Alger Delta stated that it has reviewed the Staff report and is in agreement with its content. Specifically, Alger Delta emphasized that it had provided the Commission with documentation in the form of a verified affidavit of Thomas Harrell, its General Manager, indicating the cooperative's compliance

with the requirements of Section 4(a)-(f) of the Act. Alger Delta also indicated that the cooperative had completed notifying its member-consumers via publication of the minutes of its June 25, 2009 board meeting in *Country Lines* on August 20, 2009, which has been verified by Alger Delta's submission of a proof of publication and mailing.

Finally, although not explicitly addressed by the Staff report, Alger Delta indicates its assumption that the Commission will agree that subsequent to September 27, 2009, the Commission will have no jurisdiction over any proceedings determining or reviewing Alger Delta's rates, charges, accounting standards, billing practices, and terms and conditions of service.

Discussion

The Commission is persuaded that Alger Delta has met all of the prerequisites for exercising authority over its rates, charges, accounting standards, billing practices, and terms and conditions of service as permitted by MCL 460.32(f). Section 4 of Act 167, MCL 460.34, specifies the procedures that the cooperative's Board of Directors must follow in order to trigger the cooperative's statutory right to act alone in certain specific rate-related activities. The Commission is persuaded that Alger Delta has complied with all of the notice requirements of Section 4 of Act 167. Accordingly, upon the commencement of member-regulation by Alger Delta, the Commission will cease asserting any authority over the cooperative's right to determine its rates, charges, accounting standards, billing practices, and terms and conditions of service. After September 27, 2009, Alger Delta should seek dismissal of any currently pending cases over which the Commission will no longer have any jurisdiction.

THEREFORE IT IS DETERMINED that:

A. Alger Delta Cooperative Electric Association has complied with the requirements in the Commission's August 11, 2009 order to file documentation showing compliance with the requirements of MCL 460.34(a)-(f).

B. Alger Delta Cooperative Electric Association has complied with the requirements of MCL 460.34(a)-(f).

C. Alger Delta Cooperative Electric Association and the Commission Staff have complied with the requirements in the Commission's August 11, 2009 order to discuss issues regarding the orderly transition of the utility to member-regulation.

D. The Commission Staff has complied with the requirements in the Commission's August 11, 2009 order by filing its report to the Commission on the results of discussions with Alger Delta Cooperative Electric Association on August 24, 2009.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of September 15, 2009.

Mary Jo Kunkle, Executive Secretary