



SENATE BILL No. 408

March 16, 1995, Introduced by Senators DUNASKISS, NORTH, BERRYMAN, BYRUM, CISKY, KOIVISTO, BENNETT and STILLE and referred to the Committee on Technology and Energy.

A bill to regulate the location and construction of certain electric transmission lines; to prescribe powers and duties of the Michigan public service commission and to give precedence to its determinations in certain circumstances; and to prescribe the powers and duties of certain local units of government and officials of those local units of government.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "electric transmission line certification act".

3 Sec. 2. As used in this act:

4 (a) "Certificate" means a certificate of public convenience
5 and necessity issued for a major transmission line pursuant to
6 this act or issued for a transmission line pursuant to section
7 9.

1 (b) "Commission" means the Michigan public service
2 commission.

3 (c) "Construction" means any substantial action taken on a
4 route constituting placement or erection of the foundations or
5 structures supporting a transmission line. Construction does not
6 include preconstruction activity or the addition of circuits to
7 an existing transmission line.

8 (d) "Electric utility" means a person, partnership, corpora-
9 tion, association, or other legal entity whose transmission or
10 distribution of electricity the commission regulates pursuant to
11 Act No. 106 of the Public Acts of 1909, being sections 460.551 to
12 460.559 of the Michigan Compiled Laws, or Act No. 3 of the Public
13 Acts of 1939, being sections 460.1 to 460.8 of the Michigan
14 Compiled Laws. Electric utility does not include a municipal
15 utility.

16 (e) "Major transmission line" means a transmission line of 5
17 miles or more in length wholly or partially owned by an electric
18 utility through which electricity is transferred at system bulk
19 supply voltage of 345 kilovolts or more.

20 (f) "Municipality" means a city, township, or village.

21 (g) "Preconstruction activity" means any activity on a pro-
22 posed route conducted before construction of a transmission line
23 begins. Preconstruction activity includes surveys, measurements,
24 examinations, soundings, borings, sample-taking, or other testing
25 procedures, photography, appraisal, or tests of soil, groundwa-
26 ter, structures, or other materials in or on the real property
27 for contamination. Preconstruction activity does not include an

1 action that permanently or irreparably alters the real property
2 on or across the proposed route.

3 (h) "Route" means real property on or across which a trans-
4 mission line is constructed or proposed to be constructed.

5 (i) "Transmission line" means all structures, equipment, and
6 real property necessary to transfer electricity at system bulk
7 supply voltage of 100 kilovolts or more.

8 Sec. 3. Transmission of electricity is an essential
9 service.

10 Sec. 4. (1) If an electric utility, that has 50,000 or more
11 residential customers in this state, plans to construct a major
12 transmission line in this state in the 5 years after planning
13 commences, the electric utility shall submit a construction plan
14 to the commission. An electric utility with less than 50,000
15 residential customers in this state may submit a plan under this
16 section. A plan shall include all of the following:

17 (a) The general location and size of all major transmission
18 lines to be constructed in the 5 years after planning commences.

19 (b) Copies of relevant bulk power transmission information
20 filed by the electric utility with any state or federal agency,
21 national electric reliability coalition, or regional electric
22 reliability coalition.

23 (c) Additional information required by commission rule or
24 order that directly relates to the construction plan.

25 (2) At the same time the electric utility submits a con-
26 struction plan to the commission under subsection (1), the
27 electric utility shall provide a copy of the construction plan to

1 each municipality in which construction of the planned major
2 transmission line is intended.

3 Sec. 5. An electric utility shall not begin construction of
4 a major transmission line for which a plan has been submitted
5 under section 4 until the commission issues a certificate for
6 that transmission line. Except as otherwise provided in section
7 9, a certificate of public convenience and necessity under this
8 act is not required for constructing a new transmission line
9 other than a major transmission line or for reconstructing,
10 repairing, replacing, or improving an existing transmission line,
11 including the addition of circuits to an existing transmission
12 line.

13 Sec. 6. (1) Before applying for a certificate, an electric
14 utility shall schedule and hold a public meeting in each munici-
15 pality through which a proposed major transmission line for which
16 a plan has been submitted under section 4 would pass. A public
17 meeting held in a township satisfies the requirement that a
18 public meeting be held in each affected village located within
19 the township.

20 (2) In the 60 days before a public meeting held pursuant to
21 subsection (1), the electric utility shall offer in writing to
22 meet with the chief elected official of each affected municipal-
23 ity or his or her designee to discuss the utility's desire to
24 build the major transmission line and to explore the routes to be
25 considered.

26 Sec. 7. (1) An electric utility that has 50,000 or more
27 residential customers in this state shall apply to the commission

1 for a certificate for a proposed major transmission line. An
2 applicant may withdraw an application at any time.

3 (2) An application for a certificate shall contain all of
4 the following:

5 (a) The planned date for beginning construction.

6 (b) A detailed description of the proposed major transmis-
7 sion line, its route, and its expected configuration and use.

8 (c) A description and evaluation of 1 or more alternate
9 major transmission line routes and a statement of why the pro-
10 posed route was selected.

11 (d) If a zoning ordinance prohibits or regulates the loca-
12 tion or development of any portion of a proposed route, a
13 description of the location and manner in which that zoning ordi-
14 nance prohibits or regulates the location or construction of the
15 proposed route.

16 (e) The estimated overall cost of the proposed major trans-
17 mission line.

18 (f) Information supporting the need for the proposed major
19 transmission line, including identification of known future
20 wholesale users of the proposed major transmission line.

21 (g) Estimated quantifiable and nonquantifiable public bene-
22 fits of the proposed major transmission line.

23 (h) Estimated private benefits of the proposed major trans-
24 mission line to the applicant or any legal entity that is affili-
25 ated with the applicant.

26 (i) Information addressing potential effects of the proposed
27 major transmission line on public health and safety.

1 (j) A summary of all comments received at each public
2 meeting and the applicant's response to those comments.

3 (k) Information indicating that the proposed major transmis-
4 sion line will comply with all applicable state and federal envi-
5 ronmental standards, laws, and rules.

6 (l) Other information reasonably required by the commission
7 pursuant to rule.

8 Sec. 8. (1) Upon applying for a certificate, the electric
9 utility shall give public notice in the manner and form the com-
10 mission prescribes of an opportunity to comment on the
11 application. Notice shall be published in a newspaper of general
12 circulation in the area to be affected within a reasonable time
13 period after an application is provided to the commission, and
14 shall be sent to each affected municipality and each affected
15 landowner on whose property a portion of the proposed major
16 transmission line will be constructed. The notice shall be writ-
17 ten in plain, nontechnical, and easily understood terms and shall
18 contain a title that includes the name of the electric utility
19 and the words "NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION
20 LINE".

21 (2) The commission shall conduct a proceeding on the appli-
22 cation as a contested case pursuant to chapter 4 of the adminis-
23 trative procedures act of 1969, Act No. 306 of the Public Acts of
24 1969, being sections 24.271 to 24.287 of the Michigan Compiled
25 Laws. Upon applying for a certificate, each affected municipal-
26 ity and each affected landowner shall be granted full intervenor

1 status as of right in commission proceedings concerning the
2 proposed major transmission lines.

3 (3) The commission may assess certificate application fees
4 from the electric utility to cover the commission's administra-
5 tive costs in processing the application and may require the
6 electric utility to hire consultants chosen by the commission to
7 assist the commission in evaluating those issues the application
8 raises.

9 (4) The commission shall grant or deny the application for a
10 certificate not later than 1 year after the application's filing
11 date. If a party submits an alternative route for the proposed
12 major transmission line, the commission shall grant the applica-
13 tion for either the electric utility's proposed route or 1 alter-
14 native route or shall deny the application. The commission may
15 condition its approval upon the applicant taking additional
16 action to assure the public convenience, health, and safety and
17 reliability of the proposed major transmission line.

18 (5) The commission shall grant the application and issue a
19 certificate if it determines all of the following:

20 (a) The quantifiable and nonquantifiable public benefits of
21 the proposed major transmission line justify its construction.

22 (b) The proposed or alternative route is feasible and
23 reasonable.

24 (c) The proposed major transmission line does not present an
25 unreasonable threat to public health or safety.

26 (d) The applicant has accepted the conditions contained in a
27 conditional grant.

1 (6) A certificate issued under this section shall identify
2 the major transmission line's route and shall contain an esti-
3 mated cost for the transmission line.

4 (7) If construction of a proposed major transmission line is
5 not begun within 5 years of the date that a certificate is grant-
6 ed, the certificate is invalid and a new certificate shall be
7 required for the proposed major transmission line.

8 Sec. 9. (1) An electric utility may file an application
9 with the commission for a certificate for a proposed transmission
10 line other than a major transmission line. If an electric util-
11 ity applies for a certificate under this section, the electric
12 utility shall not begin construction of the proposed transmission
13 line until the commission issues a certificate for that transmis-
14 sion line.

15 (2) The commission shall proceed on an application in the
16 same manner as provided in section 8. Except as otherwise pro-
17 vided in subsection (3), the provisions of this act that apply to
18 applications and certificates for major transmission lines apply
19 in the same manner to applications and certificates issued under
20 this section.

21 (3) Section 4 does not apply to a transmission line for
22 which a certificate is sought under this section.

23 Sec. 10. (1) If the commission grants a certificate under
24 this act, that certificate shall take precedence over a conflict-
25 ing municipal ordinance, law, rule, regulation, policy, or prac-
26 tice that prohibits or regulates the location or construction of

1 a transmission line for which the commission has issued a
2 certificate.

3 (2) A zoning ordinance or limitation imposed after an elec-
4 tric utility files for a certificate shall not limit or impair
5 the transmission line's construction, operation, or maintenance.

6 (3) In an eminent domain or other related proceeding arising
7 out of or related to a transmission line for which a certificate
8 is issued, a certificate issued under this act is conclusive and
9 binding as to the public convenience and necessity for that
10 transmission line and its compatibility with the public health
11 and safety, or any zoning or land use requirements in effect when
12 the application was filed.

13 Sec. 11. In a civil action in the circuit court pursuant to
14 section 4 of the uniform condemnation procedures act, Act No. 87
15 of the Public Acts of 1980, being section 213.54 of the Michigan
16 Compiled Laws, the court may grant a limited license to an elec-
17 tric utility for entry on land to conduct preconstruction activ-
18 ity related to a proposed major transmission line or a transmis-
19 sion line if the electric utility has scheduled or held a public
20 meeting in connection with a certificate sought pursuant to
21 section 9 and if written notice of the intent to enter the land
22 has been given to each affected landowner on whose property the
23 electric utility wishes to enter. The limited license may be
24 granted upon such terms as justice and equity require. A limited
25 license shall include a description of the purpose of entry, the
26 scope of activities permitted, and the terms and conditions of
27 entry with respect to the time, place, and manner of entry. The

1 court shall not deny a limited license for entry to conduct
2 preconstruction activity for any of the following reasons:

3 (a) A disagreement exists over the proposed route.

4 (b) The electric utility has not yet applied for a
5 certificate.

6 (c) The commission has not yet granted or denied the
7 application.

8 (d) An alleged lack of public convenience or necessity.

9 Sec. 12. Reasonable and prudent costs for a transmission
10 line for which a certificate is issued shall be included in an
11 electric utility's rates. The commission shall not disallow
12 costs the electric utility incurs in constructing a transmission
13 line for which a certificate is issued, which costs do not exceed
14 the amount set forth in the certificate unless the commission
15 determines that the actual costs were imprudently and unreason-
16 ably incurred, based upon substantial evidence presented in oppo-
17 sition to the electric utility's rate request. Costs incurred by
18 the electric utility that exceed the amount set forth in the cer-
19 tificate shall be included in the electric utility's rates, if
20 reasonably and prudently incurred based upon substantial evidence
21 presented in support of the electric utility's rate request.

22 Sec. 13. (1) Except as otherwise provided in this section,
23 information obtained by the commission under this act is a public
24 record as provided in the freedom of information act, Act No. 442
25 of the Public Acts of 1976, being sections 15.231 to 15.246 of
26 the Michigan Compiled Laws.

1 (2) An electric utility may designate information submitted
2 to the commission in an application for a certificate or in other
3 documents required by the commission for purposes of certifica-
4 tion submitted to the commission as being only for the confiden-
5 tial use of the commission. The commission shall notify the
6 electric utility of a request for public records under section 5
7 of Act No. 442 of the Public Acts of 1976, being section 15.235
8 of the Michigan Compiled Laws, if the scope of the request
9 includes information designated as confidential. The electric
10 utility has 10 days after the receipt of the notice to demon-
11 strate to the commission that the information designated as con-
12 fidential should not be disclosed because the information is a
13 trade secret or secret process, or is production, commercial, or
14 financial information the disclosure of which would jeopardize
15 the competitive position of the electric utility or the person
16 from whom the information was obtained. The commission shall not
17 grant the request for the information if the electric utility
18 demonstrates to the satisfaction of the commission that the
19 information should not be disclosed for a reason authorized in
20 this section. If the commission makes a decision to grant a
21 request, the information requested shall not be released until 3
22 days have elapsed after notice of the decision is provided to the
23 electric utility.

24 (3) If any person uses information described in
25 subsection (1) to forecast electrical demand, the person shall
26 structure the forecast so the third party is not identified
27 unless the third party waives confidentiality.

1 Sec. 14. (1) The commission may promulgate rules to
2 implement this act pursuant to the administrative procedures act
3 of 1969, Act No. 306 of the Public Acts of 1969, being
4 sections 24.201 to 24.328 of the Michigan Compiled Laws. The
5 rules may contain standards to determine a proposed major trans-
6 mission line's health and safety aspects, including but not
7 limited to standards for permissible additions to electric and
8 magnetic fields produced by the transmission line.

9 (2) Until rules are promulgated pursuant to subsection (1),
10 the commission shall consider and determine any health or safety
11 issue a party raises in a proceeding concerning a certificate
12 application.

13 Sec. 15. A commission order under this act is subject to
14 review as provided in section 26 of Act No. 300 of the Public
15 Acts of 1909, being section 462.26 of the Michigan Compiled
16 Laws.