

HOUSE BILL No. 5808

April 22, 2004, Introduced by Reps. Bradstreet and McConico and referred to the Committee on Energy and Technology.

A bill to amend 1995 PA 30, entitled
"Electric transmission line certification act,"
by amending sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 15
(MCL 460.562, 460.563, 460.564, 460.565, 460.566, 460.567,
460.568, 460.569, 460.570, 460.571, 460.573, and 460.575).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Certificate" means a certificate of public convenience
3 and necessity issued for a major transmission line ~~pursuant to~~
4 **under** this act or issued for a transmission line ~~pursuant to~~
5 **under** section 9.

6 (b) "Commission" means the Michigan public service
7 commission.

8 (c) "Construction" means any substantial action taken on a
9 route constituting placement or erection of the foundations or

1 structures supporting a transmission line. Construction does not
 2 include preconstruction activity or the addition of circuits to
 3 an existing transmission line.

4 (d) "Electric utility" means a person, partnership,
 5 corporation, association, or other legal entity whose
 6 transmission or distribution of electricity the commission
 7 regulates ~~pursuant to Act No. 106 of the Public Acts of 1909,~~
 8 ~~being sections 460.551 to 460.559 of the Michigan Compiled Laws,~~
 9 ~~or Act No. 3 of the Public Acts of 1939, being sections 460.1 to~~
 10 ~~460.8 of the Michigan Compiled Laws~~ **under 1909 PA 106, MCL**
 11 **460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc.**
 12 Electric utility does not include a municipal utility **or an**
 13 **independent transmission company.**

14 (e) "Independent transmission company" means a person,
 15 partnership, corporation, association, or other legal entity, or
 16 its successors or assigns, that is engaged in this state in the
 17 transmission of electricity using facilities it owns that were
 18 divested under section 10w of 1939 PA 3, MCL 460.10w, and is
 19 independent of an electric utility, or an affiliate of the
 20 utility, generating or distributing electricity to retail
 21 customers in this state.

22 (f) ~~-(e)-~~ "Major transmission line" means a transmission line
 23 of 5 miles or more in length wholly or partially owned by an
 24 electric utility **or independent transmission company** through
 25 which electricity is transferred at system bulk supply voltage of
 26 345 kilovolts or more.

27 (g) ~~-(f)-~~ "Municipality" means a city, township, or village.

1 **(h)** ~~—(g)—~~ "Preconstruction activity" means any activity on a
2 proposed route conducted before construction of a transmission
3 line begins. Preconstruction activity includes surveys,
4 measurements, examinations, soundings, borings, sample-taking, or
5 other testing procedures, photography, appraisal, or tests of
6 soil, groundwater, structures, or other materials in or on the
7 real property for contamination. Preconstruction activity does
8 not include an action that permanently or irreparably alters the
9 real property on or across the proposed route.

10 **(i)** ~~—(h)—~~ "Route" means real property on or across which a
11 transmission line is constructed or proposed to be constructed.

12 **(j)** ~~—(i)—~~ "Transmission line" means all structures,
13 equipment, and real property necessary to transfer electricity at
14 system bulk supply voltage of 100 kilovolts or more.

15 Sec. 3. **(1)** Transmission of electricity is an essential
16 service.

17 **(2) This act shall control in any conflict between this act**
18 **and any other law of this state.**

19 Sec. 4. **(1)** If an electric utility ~~—~~ that has 50,000 or
20 more residential customers in this state ~~—~~ **or an independent**
21 **transmission company** plans to construct a major transmission line
22 in this state in the 5 years after planning commences, the
23 electric utility **or independent transmission company** shall submit
24 a construction plan to the commission. An electric utility with
25 ~~less~~ **fewer** than 50,000 residential customers in this state may
26 submit a plan under this section. A plan shall include all of
27 the following:

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

3 (b) Copies of relevant bulk power transmission information
4 filed by the electric utility **or independent transmission company**
5 with any state or federal agency, national electric reliability
6 coalition, or regional electric reliability coalition.

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

9 (2) At the same time the electric utility **or independent**
10 **transmission company** submits a construction plan to the
11 commission under subsection (1), the electric utility **or**
12 **independent transmission company** shall provide a copy of the
13 construction plan to each municipality in which construction of
14 the planned major transmission line is intended.

15 Sec. 5. An electric utility **or independent transmission**
16 **company** shall not begin construction of a major transmission line
17 for which a plan has been submitted under section 4 until the
18 commission issues a certificate for that transmission line.
19 Except as otherwise provided in section 9, a certificate of
20 public convenience and necessity under this act is not required
21 for constructing a new transmission line other than a major
22 transmission line or for reconstructing, repairing, replacing, or
23 improving an existing transmission line, including the addition
24 of circuits to an existing transmission line.

25 Sec. 6. (1) Before applying for a certificate **under section**
26 **5**, an electric utility **or independent transmission company** shall
27 schedule and hold a public meeting in each municipality through

1 which a proposed major transmission line for which a plan has
2 been submitted under section 4 would pass. A public meeting held
3 in a township satisfies the requirement that a public meeting be
4 held in each affected village located within the township.

5 (2) In the 60 days before a public meeting held ~~pursuant to~~
6 **under** subsection (1), the electric utility **or independent**
7 **transmission company** shall offer in writing to meet with the
8 chief elected official of each affected municipality or his or
9 her designee to discuss the utility's **or independent transmission**
10 **company's** desire to build the major transmission line and to
11 explore the routes to be considered.

12 Sec. 7. (1) An electric utility that has 50,000 or more
13 residential customers in this state **or an independent**
14 **transmission company** shall apply to the commission for a
15 certificate for a proposed major transmission line. An applicant
16 may withdraw an application at any time.

17 (2) An application for a certificate shall contain all of the
18 following:

19 (a) The planned date for beginning construction.

20 (b) A detailed description of the proposed major transmission
21 line, its route, and its expected configuration and use.

22 (c) A description and evaluation of 1 or more alternate major
23 transmission line routes and a statement of why the proposed
24 route was selected.

25 (d) If a zoning ordinance prohibits or regulates the location
26 or development of any portion of a proposed route, a description
27 of the location and manner in which that zoning ordinance

1 prohibits or regulates the location or construction of the
2 proposed route.

3 (e) The estimated overall cost of the proposed major
4 transmission line.

5 (f) Information supporting the need for the proposed major
6 transmission line, including identification of known future
7 wholesale users of the proposed major transmission line.

8 (g) Estimated quantifiable and nonquantifiable public
9 benefits of the proposed major transmission line.

10 (h) Estimated private benefits of the proposed major
11 transmission line to the applicant or any legal entity that is
12 affiliated with the applicant.

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

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

17 (k) Information indicating that the proposed major
18 transmission line will comply with all applicable state and
19 federal environmental standards, laws, and rules.

20 (l) Other information reasonably required by the commission
21 pursuant to rule.

22 Sec. 8. (1) Upon applying for a certificate, the electric
23 utility **or independent transmission company** shall give public
24 notice in the manner and form the commission prescribes of an
25 opportunity to comment on the application. Notice shall be
26 published in a newspaper of general circulation in the area to be
27 affected within a reasonable time period after an application is

1 provided to the commission ~~—~~ and shall be sent to each affected
2 municipality and each affected landowner on whose property a
3 portion of the proposed major transmission line will be
4 constructed. The notice shall be written in plain, nontechnical,
5 and easily understood terms and shall contain a title that
6 includes the name of the electric utility **or independent**
7 **transmission company** and the words "NOTICE OF INTENT TO CONSTRUCT
8 A MAJOR TRANSMISSION LINE".

9 (2) The commission shall conduct a proceeding on the
10 application as a contested case ~~pursuant to chapter 4 of~~ **under**
11 the administrative procedures act of 1969, ~~Act No. 306 of the~~
12 ~~Public Acts of 1969, being sections 24.271 to 24.287 of the~~
13 ~~Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to 24.328.** Upon
14 receiving an application for a certificate, each affected
15 municipality and each affected landowner shall be granted full
16 intervenor status as of right in commission proceedings
17 concerning the proposed major transmission lines.

18 (3) The commission may assess certificate application fees
19 from the electric utility **or independent transmission company** to
20 cover the commission's administrative costs in processing the
21 application and may require the electric utility **or independent**
22 **transmission company** to hire consultants chosen by the commission
23 to assist the commission in evaluating those issues the
24 application raises.

25 (4) The commission shall grant or deny the application for a
26 certificate not later than 1 year after the application's filing
27 date. If a party submits an alternative route for the proposed

1 major transmission line, the commission shall grant the
2 application for either the electric utility's **or independent**
3 **transmission company's** proposed route or 1 alternative route or
4 shall deny the application. The commission may condition its
5 approval upon the applicant taking additional action to assure
6 the public convenience, health, and safety and reliability of the
7 proposed major transmission line.

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

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

12 (b) The proposed or alternative route is feasible and
13 reasonable.

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

16 (d) The applicant has accepted the conditions contained in a
17 conditional grant.

18 (6) A certificate issued under this section shall identify
19 the major transmission line's route and shall contain an
20 estimated cost for the transmission line.

21 (7) If construction of a proposed major transmission line is
22 not begun within 5 years of the date that a certificate is
23 granted, the certificate is invalid and a new certificate shall
24 be required for the proposed major transmission line.

25 Sec. 9. (1) An electric utility **or independent transmission**
26 **company** may file an application with the commission for a
27 certificate for a proposed transmission line other than a major

1 transmission line. If an electric utility **or independent**
2 **transmission company** applies for a certificate under this
3 section, the electric utility **or independent transmission company**
4 shall not begin construction of the proposed transmission line
5 until the commission issues a certificate for that transmission
6 line.

7 (2) The commission shall proceed on an application in the
8 same manner as provided in section 8. Except as otherwise
9 provided in subsection (3), the provisions of this act that apply
10 to applications and certificates for major transmission lines
11 apply in the same manner to applications and certificates issued
12 under this section.

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

15 Sec. 10. (1) If the commission grants a certificate under
16 this act, that certificate shall take precedence over a
17 conflicting local ordinance, law, rule, regulation, policy, or
18 practice that prohibits or regulates the location or construction
19 of a transmission line for which the commission has issued a
20 certificate.

21 (2) A zoning ordinance or limitation imposed after an
22 electric utility **or independent transmission company** files for a
23 certificate shall not limit or impair the transmission line's
24 construction, operation, or maintenance.

25 (3) In an eminent domain or other related proceeding arising
26 out of or related to a transmission line for which a certificate
27 is issued, a certificate issued under this act is conclusive and

1 binding as to the public convenience and necessity for that
2 transmission line and its compatibility with the public health
3 and safety — or any zoning or land use requirements in effect
4 when the application was filed.

5 Sec. 11. In a civil action in the circuit court ~~pursuant~~
6 ~~to~~ **under** section 4 of the uniform condemnation procedures act,
7 ~~Act No. 87 of the Public Acts of 1980, being section 213.54 of~~
8 ~~the Michigan Compiled Laws 1980 PA 87, MCL 213.54,~~ the court may
9 grant a limited license to an electric utility **or independent**
10 **transmission company** for entry on land to conduct preconstruction
11 activity related to a proposed major transmission line or a
12 transmission line if the electric utility **or independent**
13 **transmission company** has scheduled or held a public meeting in
14 connection with a certificate sought ~~pursuant to section 9~~
15 **under section 7 or 9** and if written notice of the intent to enter
16 the land has been given to each affected landowner on whose
17 property the electric utility **or independent transmission company**
18 wishes to enter. The limited license may be granted upon such
19 terms as justice and equity require. An electric utility **or**
20 **independent transmission company** that obtains a limited license
21 shall provide each affected land owner with a copy of the limited
22 license. A limited license shall include a description of the
23 purpose of entry, the scope of activities permitted, and the
24 terms and conditions of entry with respect to the time, place,
25 and manner of entry. The court shall not deny a limited license
26 for entry to conduct preconstruction activity for any of the
27 following reasons:

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

2 (b) The electric utility **or independent transmission company**
3 has not yet applied for a certificate.

4 (c) The commission has not yet granted or denied the
5 application.

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

7 Sec. 13. (1) Except as otherwise provided in this section,
8 information obtained by the commission under this act is a public
9 record as provided in the freedom of information act, ~~Act~~

10 ~~No. 442 of the Public Acts of 1976, being sections 15.231 to~~
11 ~~15.246 of the Michigan Compiled Laws~~ 1976 PA 442, MCL 15.231 to
12 15.246.

13 (2) An electric utility **or independent transmission company**
14 may designate information received from a third party that the
15 electric utility **or independent transmission company** submits to
16 the commission in an application for a certificate or in other
17 documents required by the commission for purposes of
18 certification submitted to the commission as being only for the
19 confidential use of the commission. The commission shall notify
20 the electric utility **or independent transmission company** of a
21 request for public records under section 5 of ~~Act No. 442 of the~~
22 ~~Public Acts of 1976, being section 15.235 of the Michigan~~
23 ~~Compiled Laws~~ **the freedom of information act, 1976 PA 442, MCL**
24 **15.235**, if the scope of the request includes information
25 designated as confidential. The electric utility **or independent**
26 **transmission company** has 10 days after the receipt of the notice
27 to demonstrate to the commission that the information designated

1 as confidential should not be disclosed because the information
2 is a trade secret or secret process — or is production,
3 commercial, or financial information the disclosure of which
4 would jeopardize the competitive position of the electric utility
5 **or independent transmission company** or the person from whom the
6 information was obtained. The commission shall not grant the
7 request for the information if the electric utility **or**
8 **independent transmission company** demonstrates to the satisfaction
9 of the commission that the information should not be disclosed
10 for a reason authorized in this section. If the commission makes
11 a decision to grant a request, the information requested shall
12 not be released until 3 days have elapsed after notice of the
13 decision is provided to the electric utility **or independent**
14 **transmission company**.

15 (3) If any person uses information described in
16 subsection (1) to forecast electrical demand, the person shall
17 structure the forecast so the third party is not identified
18 unless the third party waives confidentiality.

19 Sec. 15. (1) A commission order relating to a certificate
20 or other matter provided for under this act is subject to review
21 as provided in section 26 of ~~Act No. 300 of the Public Acts of~~
22 ~~1909, being section 462.26 of the Michigan Compiled Laws~~ **1909 PA**
23 **300, MCL 462.26.**

24 (2) **In administering this act, the commission shall have only**
25 **those powers and duties granted to the commission under this act.**

26 Enacting section 1. This amendatory act does not take
27 effect unless Senate Bill No. _____ or House Bill No. 5807

1 (request no. 04438'03) of the 92nd Legislature is enacted into
2 law.