

Act No. 197
Public Acts of 2004
Approved by the Governor
July 12, 2004
Filed with the Secretary of State
July 12, 2004
EFFECTIVE DATE: July 12, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. McConico and Bradstreet

ENROLLED HOUSE BILL No. 5807

AN ACT to amend 1923 PA 238, entitled "An act authorizing the formation of corporations for the purpose of generating, manufacturing, producing, gathering, storing, transmitting, distributing, transforming, selling and supplying electric energy or gas, either artificial or natural, or both electric energy and gas, to the public generally, or to public utilities or natural gas companies, and providing for and giving to such corporations and also to corporations heretofore lawfully organized, among other things, for such purposes; to corporations heretofore lawfully organized, or that may hereafter be lawfully organized and duly authorized to carry on the electric or gas business as a public utility in the state of Michigan; and to foreign corporations heretofore lawfully organized or that may hereafter be lawfully organized, among other things, for such purposes, and duly authorized to carry on business in the state of Michigan, the right to condemn private property for the uses provided for herein," by amending section 3 (MCL 486.253) and by adding section 5.

The People of the State of Michigan enact:

Sec. 3. (1) A corporation formed under this act shall sell to the public the electric energy it generates or transmits and the gas it manufactures, produces, stores, or transmits, upon such reasonable terms, rates, and conditions as determined by the Michigan public service commission. The Michigan public service commission may examine all books and records of the corporation and audit the corporation. Any order of the commission may be reviewed, set aside, modified, or affirmed in the manner provided by law.

(2) If 1929 PA 9, MCL 483.101 to 483.120, 1929 PA 69, MCL 460.501 to 460.506, or the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, requires a certificate of necessity to be obtained from the Michigan public service commission, then the corporation shall, before commencing any condemnation proceedings, first make application to, and obtain from the commission a certificate as required under those acts.

Sec. 5. (1) Subject to the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, and the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75, an independent transmission company or an affiliated transmission company shall have the power to condemn property that is necessary to transmit electric energy for public use except for both of the following:

(a) An independent transmission company or affiliated transmission company shall not circumvent a private agreement that existed on the effective date of the amendatory act that added this subsection under which the independent transmission company or affiliated transmission company leases rights-of-way for its electric transmission facilities from the utility.

(b) An independent transmission company or affiliated transmission company shall not condemn property owned by an electric or gas utility or municipally owned utility in a manner which unreasonably disrupts the ability of the electric or gas utility or municipally owned utility to continue to provide service to its customers. If a dispute exists under this subdivision, the condemnation shall not proceed until the Michigan public service commission determines that no unreasonable disruption is involved. The commission shall make its determination under this subdivision pursuant to a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 180 days of the date an application or petition requesting a determination is filed with the commission. If the principal parties of record agree that the complexity of dispute involved requires additional time, the commission may have up to 210 days from the date the application or petition was filed.

(2) Except as otherwise provided under this section, in condemning property under subsection (1), an independent transmission company or affiliated transmission company is subject to the same procedures and requirements under this act as a corporation formed under this act.

(3) Section 3(1) and any procedure or requirement under this act that is inconsistent with the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, or the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75, do not apply to an independent transmission company or affiliated transmission company.

(4) As used in this act:

(a) "Affiliated transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by the federal energy regulatory commission, is engaged in this state in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

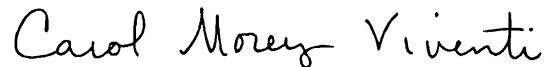
(b) "Independent transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in this state in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5808 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor