ELECTRIC TRANSMISSION LINE CERTIFICATION ACT

Act 30 of 1995

AN ACT 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.

History: 1995, Act 30, Imd. Eff. May 17, 1995

The People of the State of Michigan enact:

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460.561 Short title.

Sec. 1.

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

History: 1995, Act 30, Imd. Eff. May 17, 1995

460.562 Definitions.

Sec. 2.

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) "Certificate" means a certificate of public convenience and necessity issued for a major transmission line under this act or issued for a transmission line under section 9.

(c) "Commission" means the Michigan public service commission.

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

(e) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under 1909 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc. Electric utility does not include a municipal utility, affiliated transmission company, or independent transmission company.

(f) "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.

(g) "Major transmission line" means a transmission line of 5 miles or more in length wholly or partially owned by an electric utility, affiliated transmission company, or independent transmission company through which electricity is transferred at system bulk supply voltage of 345 kilovolts or more.

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

(i) "Preconstruction activity" means any activity on a proposed route conducted before construction of a transmission line begins. Preconstruction activity includes surveys, measurements, examinations, soundings,

borings, sample-taking, or other testing procedures, photography, appraisal, or tests of soil, groundwater, structures, or other materials in or on the real property for contamination. Preconstruction activity does not include an action that permanently or irreparably alters the real property on or across the proposed route.

(j) "Route" means real property on or across which a transmission line is constructed or proposed to be constructed.

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.563 Transmission as essential service; act as controlling.

Sec. 3.

(1) Transmission of electricity is an essential service.

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

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460.564 Construction plan.

Sec. 4.

(1) If an electric utility that has 50,000 or more residential customers in this state, affiliated transmission company, or an independent transmission company plans to construct a major transmission line in this state in the 5 years after planning commences, the electric utility, affiliated transmission company, or independent transmission company shall submit a construction plan to the commission. An electric utility with fewer than 50,000 residential customers in this state may submit a plan under this section. A plan shall include all of the following:

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

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

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.565 Transmission line; certificate required.

Sec. 5.

An electric utility, affiliated transmission company, or independent transmission company shall not begin construction of a major transmission line for which a plan has been submitted under section 4 until the commission issues a certificate for that transmission line. Except as otherwise provided in section 9, a certificate of public convenience and necessity under this act is not required for constructing a new transmission line other than a major transmission line or for reconstructing, repairing, replacing, or improving an existing transmission line, including the

addition of circuits to an existing transmission line.

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.566 Public meeting as condition for certificate application.

Sec. 6.

(1) Before applying for a certificate under section 5, an electric utility, affiliated transmission company, or independent transmission company shall schedule and hold a public meeting in each municipality through which a proposed major transmission line for which a plan has been submitted under section 4 would pass. A public meeting held in a township satisfies the requirement that a public meeting be held in each affected village located within the township.

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

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460.567 Application for certificate for proposed major transmission line; withdrawal; contents.

Sec. 7.

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

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

(a) The planned date for beginning construction.

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

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

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

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

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

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

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

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

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

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.568 Public notice; publication; conduct of proceeding; fees; consultants; granting or denying application; criteria; identification of route and estimated cost; validity and duration of certificate.

Sec. 8.

(1) Upon applying for a certificate, the electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on the application. Notice shall be published in a newspaper of general circulation in the area to be affected within a reasonable time period after an application is provided to the commission and shall be sent to each affected municipality and each affected landowner on whose property a portion of the proposed major transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission company and the words "NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION LINE".

(2) The commission shall conduct a proceeding on the application as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full intervenor status as of right in commission proceedings concerning the proposed major transmission lines.

(3) The commission may assess certificate application fees from the electric utility, affiliated transmission company, or independent transmission company to cover the commission's administrative costs in processing the application and may require the electric utility, affiliated transmission company, or independent transmission company to hire consultants chosen by the commission to assist the commission in evaluating those issues the application raises.

(4) The commission shall grant or deny the application for a certificate not later than 1 year after the application's filing date. If a party submits an alternative route for the proposed major transmission line, the commission shall grant the application for either the electric utility's, affiliated transmission company's, or independent transmission company's proposed route or 1 alternative route or shall deny the application. The commission may condition its approval upon the applicant taking additional action to assure the public convenience, health, and safety and reliability of the proposed major transmission line.

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

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

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

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

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

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.569 Certificate other than for major transmission line; provisions applicable to issuance; applicability of MCL 460.564.

Sec. 9.

(1) An electric utility, affiliated transmission company, or independent transmission company may file an application with the commission for a certificate for a proposed transmission line other than a major transmission line. If an electric utility, affiliated transmission company, or independent transmission company applies for a certificate under this section, the electric utility, affiliated transmission company, or independent transmission company shall not begin construction of the proposed transmission line until the commission issues a certificate for that transmission line.

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

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

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History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.570 Local ordinances or limitations in conflict with certificate; effect.

Sec. 10.

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

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

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460.571 Limited license.

Sec. 11.

In a civil action in the circuit court under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, the court may grant a limited license to an electric utility, affiliated transmission company, or independent transmission company for entry on land to conduct preconstruction activity related to a proposed major transmission line or a transmission line if the electric utility, affiliated transmission company, or independent transmission company has scheduled or held a public meeting in connection with a certificate sought under section 7 or 9 and if written notice of the intent to enter the land has been given to each affected landowner on whose property the electric utility, affiliated transmission company, or independent transmission company wishes to enter. The limited license may be granted upon such terms as justice and equity require. An electric utility, affiliated transmission company, or independent transmission company that obtains a limited license shall provide each affected land owner with a copy of the limited license. A limited license shall include a description of the purpose of entry, the scope of activities permitted, and the terms and conditions of entry with respect to the time, place, and manner of entry. The court shall not deny a limited license for entry to conduct preconstruction activity for any of the following reasons:

(a) A disagreement exists over the proposed route.

(b) The electric utility, affiliated transmission company, or independent transmission company has not yet applied for a certificate.

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.572 Costs to be included in rates.

Sec. 12.

Reasonable and prudent costs for a transmission line for which a certificate is issued shall be included in an electric utility's rates. The commission shall not disallow costs the electric utility incurs in constructing a

transmission line for which a certificate is issued, which costs do not exceed the amount set forth in the certificate unless the commission determines that the actual costs were imprudently and unreasonably incurred, based upon substantial evidence presented in opposition to the electric utility's rate request. Costs incurred by the electric utility that exceed the amount set forth in the certificate shall be included in the electric utility's rates, if reasonably and prudently incurred based upon substantial evidence presented in support of the electric utility's rate request.

History: 1995, Act 30, Imd. Eff. May 17, 1995

460.573 Information as public record; disclosure of confidential information; waiver.

Sec. 13.

(1) Except as otherwise provided in this section, information obtained by the commission under this act is a public record as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) An electric utility, affiliated transmission company, or independent transmission company may designate information received from a third party that the electric utility, affiliated transmission company, or independent transmission company submits to the commission in an application for a certificate or in other documents required by the commission for purposes of certification submitted to the commission as being only for the confidential use of the commission. The commission shall notify the electric utility, affiliated transmission company, or independent transmission company of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, if the scope of the request includes information designated as confidential. The electric utility, affiliated transmission company, or independent transmission company has 10 days after the receipt of the notice to demonstrate to the commission that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the electric utility, affiliated transmission company, or independent transmission company or the person from whom the information was obtained. The commission shall not grant the request for the information if the electric utility, affiliated transmission company, or independent transmission company demonstrates to the satisfaction of the commission that the information should not be disclosed for a reason authorized in this section. If the commission makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after notice of the decision is provided to the electric utility, affiliated transmission company, or independent transmission company.

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

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History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

460.574 Rules.

Sec. 14.

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

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

History: 1995, Act 30, Imd. Eff. May 17, 1995

460.575 Commission order; review; powers and duties.

Sec. 15.

(1) A commission order relating to a certificate or other matter provided for under this act is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.

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

History: 1995, Act 30, Imd. Eff. May 17, 1995 ;-- Am. 2004, Act 198, Imd. Eff. July 12, 2004

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