ELECTRIC AND GAS CORPORATIONS

Act 238 of 1923

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.

History: 1923, Act 238, Eff. Aug. 30, 1923 ;-- Am. 1929, Act 253, Eff. Aug. 28, 1929 ;-- Am. 1931, Act 98, Eff. Sept. 18, 1931 ;-- Am. 1947, Act 356, Eff. Oct. 11, 1947

The People of the State of Michigan enact:

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486.251 Electric and gas corporations; incorporators; powers.

Sec. 1.

That any number of persons not less than 3 may form a corporation, for 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, by executing under their hands and seals, articles of incorporation in manner and form as required as to certain other profit corporations by the provisions of sections 1 to 97, inclusive, of Act No. 327 of the Public Acts of 1931, of Michigan and amendments thereto, and thereupon such corporations shall have and enjoy all the powers and privileges of corporations for pecuniary profit organized under said sections 1 to 97, inclusive, of Act No. 327 of the Public Acts of 1931 of Michigan, and amendments thereto.

History: 1923, Act 238, Eff. Aug. 30, 1923 ;-- CL 1929, 11871 ;-- Am. 1947, Act 356, Eff. Oct. 11, 1947 ;-- CL 1948, 486.251
Compiler's Notes: For provisions of Act 327 of 1931, referred to in this section, see MCL 450.1 et seq.

486.252 Corporate powers.

Sec. 2.

Every corporation organized as provided in section 1 of this act shall have the following powers:

First, To cause such examinations and surveys for all proposed improvements to be made as may be necessary to prepare for the work to be done.

Second, To acquire by lease, purchase, grant, and donation all such lands, easements, royalties, leaseholds, flowage rights, water power and other property, and any interest therein, as may be necessary to carry out its corporate purposes.

Third, To dam any stream or streams, and to excavate, construct, maintain, repair, and improve any existing stream or canal, or which it may excavate and construct, with water power appurtenant thereto.

Fourth, To flood, flow, and submerge its land and property by constructing the necessary dams in any canal, or in creeks, streams, or other water courses, natural or artificial.

Fifth, To condemn all lands and any and all interests therein, easements, rights of way, and other property other than lands lying within a known mineral zone of iron ore, copper, or coal, which may be necessary to generate, transmit, and transform electric energy for public use in, upon, or across private property.

Sixth, To condemn all lands, easements, rights of way, gas royalties, natural gas leaseholds and other property and any and all interests therein, other than lands lying within a known mineral zone of iron ore, copper, or coal, which may be necessary for pipe line rights of way or for an underground natural gas storage field or fields. However, the right to condemnation hereby granted shall not extend to or include the right to condemn lands, easements, rights of way, gas royalties, natural gas leaseholds, or other property or any interest therein, which are owned, leased, or used by any public utility or natural gas company carrying on the business of producing, gathering, transmitting, storing, selling, or supplying gas within the state. The term "natural gas company", as used in this act, is hereby defined as a corporation engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale. However, the condemnation of lands, natural gas leaseholds, or other property or any interest therein for an underground natural gas storage field in any formation shall be without prejudice to the right of the owner or owners of such lands, natural gas leaseholds, or other property or interest therein to drill through the formation or formations used or to be used for underground storage of natural gas provided adequate precautions are taken by such owner or owners to prevent the escape of gas stored in such formation or formations. Such condemnation proceedings in all cases shall be brought by petition addressed to the probate court for the county in which the land or any part thereof or interest therein to be condemned is located, and shall conform, as nearly as practicable, to the rules of pleading and practice governing probate court procedure. The petition shall set forth with reasonable certainty the description of each parcel of land and interest therein sought to be acquired, and the name or names of the persons owning or having interest in the land or parcels sought to be condemned insofar as disclosed by the records in the office of the register of deeds in the county in which the lands are situated, and shall specify generally the purpose and necessity of acquiring such lands and interests. Where a project involves more than 1 parcel of land located within a single county, all or any number of such parcels, irrespective of the number of persons owning or having interests therein, may be joined in 1 proceeding. The petition shall request that all persons interested in the respective premises described, or any part thereof, be required to appear and answer the petition, and show cause, if any they have, against the same, and shall pray for the appointment of 3 disinterested freeholders and residents of the county in which the land is situated as commissioners to perform the duties assigned them as hereinafter provided. Where the petitioner seeks to exercise the rights conferred by the provisions of paragraph fifth of this section, for the purpose of acquiring any property or interest therein for use as a water power project, the petitioner shall first have acquired and its petition shall contain the additional allegation that the petitioner has acquired, prior to the filing of such petition, by any means other than by condemnation, at least 90% of the property rights and

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interests including lands to be overflowed, required for such purpose, within the area proposed for such water power project. Where the petitioner seeks to exercise the rights conferred by the provisions of paragraph sixth of this section, for the purpose of acquiring any property or interest therein for use as a natural gas storage field, the petition shall contain the allegation that more than 75% of the recoverable gas reserves originally in that natural gas storage field were produced before the filing of the petition. Where less than 75% of the recoverable gas reserves originally in the natural gas storage field were produced before the filing of the petition, the petitioner shall first have acquired and its petition shall contain the allegation that the petitioner has acquired, prior to the filing of such petition, by any means other than by condemnation, at least 75%, computed in respect to surface area, of the property rights and interests in the underground field required for storage purposes, and its petition shall also contain an accurate description of the surface area underlaid by the formation or formations to be used for natural gas storage.

The petition shall also contain the allegation that a certificate has been obtained from the public service commission that the present or future public convenience and necessity require or will require the acquiring of any property or interest therein for use as a natural gas storage field. Upon application being filed with the public service commission for a certificate required by this section, the commission shall set the matter for hearing and shall give reasonable notice of the hearing thereon to all interested parties as in the commission's judgment may be necessary under rules prescribed by the commission. The commission may issue a temporary certificate in case of emergency to assure maintenance of adequate service without notice of hearing pending the determination of an application for a permanent certificate. The commission by rule may exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate is not required in the public interest. Before any certificate is granted, the commission shall examine and inquire into the necessity of the natural gas storage field and determine that the natural gas storage field will serve the present or future public convenience and necessity, and that the field is safe for development and operation of gas storage. The granting of a permanent or temporary certificate by the commission pursuant to this section constitutes a prima facie case in any court of this state that the natural gas storage field so certified is required by the public convenience and necessity.

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History: 1923, Act 238, Eff. Aug. 30, 1923 ;-- Am. 1929, Act 253, Eff. Aug. 28, 1929 ;-- CL 1929, 11872 ;-- Am. 1947, Act 356, Eff. Oct. 11, 1947 ;-- CL 1948, 486.252 ;-- Am. 1957, Act 67, Imd. Eff. May 21, 1957 ;-- Am. 1961, Act 69, Eff. Sept. 8, 1961 ;-- Am. 1973, Act 26, Imd. Eff. June 14, 1973

486.252a-486.252j Repealed. 1980, Act 87, Eff. Apr. 1, 1985.

Compiler's Notes: The repealed sections pertained to condemnation proceedings for electric and gas corporations.

486.253 Electricity or gas sold to public; rates, terms, and conditions; examination of books and records; order of commission; review; certificate of necessity.

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.

History: 1923, Act 238, Eff. Aug. 30, 1923 ;-- CL 1929, 11873 ;-- Am. 1947, Act 356, Eff. Oct. 11, 1947 ;-- CL 1948, 486.253 ;-- Am. 2004, Act 197, Imd. Eff. July 12, 2004
Compiler's Notes: For provisions of Act 9 of 1929 and Act 69 of 1929, referred to in this section, see MCL 483.101 et seq. and MCL 460.501 et seq., respectively.

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486.254 Existing corporations; right of condemnation.

Sec. 4.

Corporations heretofore lawfully organized, among other things, for any of the purposes specified in section 1 hereof; 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 foreign corporations heretofore lawfully organized or that may hereafter be lawfully organized, among other things, for any of the purposes specified in section 1 hereof, and duly authorized to carry on business in the state of Michigan shall have and are hereby given the right to condemn private property in accordance with the provisions of this act and subject to the same conditions and requirements as herein specified.

History: 1923, Act 238, Eff. Aug. 30, 1923 ;-- CL 1929, 11874 ;-- Am. 1931, Act 98, Eff. Sept. 18, 1931 ;-- Am. 1947, Act 356, Eff. Oct. 11, 1947 ;-- CL 1948, 486.254

486.255 Independent transmission company or affiliated company; power to condemn property; limitation; procedures and requirements; definitions.

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.

History: Add. 2004, Act 197, Imd. Eff. July 12, 2004

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