



## MEMORANDUM

TO: Members of the Troy City Council  
FROM: Lori Grigg Bluhm, City Attorney  
DATE: February 27, 2008  
SUBJECT: ITC's Application for Certificate of Public Convenience and Necessity

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International Transmission Company, d/b/a ITCTransmission, filed an application with the Michigan Public Service Commission (MPSC), seeking a certificate of public convenience and necessity for the construction of a new transmission line, which was planned to run through Sterling Heights, Troy, Clawson, and Royal Oak. Under the state statute (MCL 460.561 et. seq.), which was amended in 1995, this is only the second such request pending before the MPSC. The only other request involves an overhead transmission project in Hartland Township, Michigan.

ITC sought permission to construct this approximately 14 foot, 345 kilovolt line, which was projected to cost approximately \$150 million dollars. In addition to ITC and the Michigan Attorney General (the parties of record), the City of Troy, Detroit Edison and Consumers Energy were granted permission to intervene in the proceedings. According to Detroit Edison, the project, if approved, would increase annual transmission rates by \$30 million.

The MPSC denied ITC's application on February 22, 2008, finding that ITC needed to do a more comprehensive analysis of the proposed solutions for projected reliability problems, especially in light of the projected cost of the project. ITC may appeal the ruling within 30 days. Our office will continue to monitor these proceedings.

As always, if you have any questions concerning the above, please let me know.

STATE OF MICHIGAN

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
INTERNATIONAL TRANSMISSION COMPANY, )  
d/b/a ITCTRANSMISSION, for a certificate of public )  
convenience and necessity for the construction of a )  
transmission line running from and through )  
Sterling Heights, Troy, Clawson, and Royal Oak, )  
Michigan. )  
\_\_\_\_\_ )

Case No. U-14933

At the February 22, 2008 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Steven A. Transeth, Commissioner

FINDINGS OF FACT

Procedural History

On February 27, 2007, International Transmission Company, d/b/a ITCTransmission (ITC), filed an application under the Electric Transmission Line Certification Act, 1995 PA 30 (Act 30), MCL 460.561 *et seq.*, seeking a certificate of public convenience and necessity (CPCN or certificate) for the construction of a major electric transmission line running from and through Sterling Heights, Troy, Clawson, and Royal Oak. The proposed line, referred to as the Bismarck-Troy line, would be a 345 kilovolt (kV) line, 13.94 miles in length, comprised of 2.3 miles of existing overhead double circuit transmission line, and 11.64 miles of new underground line. The

proposed line would provide a direct connection between ITC's Bismarck Station and The Detroit Edison Company's (Detroit Edison) Troy Station.

A prehearing conference was held on April 10, 2007 before Administrative Law Judge Mark E. Cummins (ALJ). At that prehearing, the ALJ granted the City of Troy's petition to intervene,<sup>1</sup> denied petitions to intervene filed by Detroit Edison and Consumers Energy Company (Consumers), and received statements of position filed under Rule 207 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17207, from the cities of Clawson and Sterling Heights. The Commission Staff (Staff) also participated. Thereafter, the utilities appealed the denial of their petitions to intervene, and on May 17, 2007, the Commission granted Detroit Edison and Consumers leave to intervene, primarily based on the fact that most of the projected \$30 million in annual transmission line costs arising from the proposed line would ultimately be borne by utility ratepayers.<sup>2</sup>

Evidentiary hearings were conducted on September 27 and 28, 2007. The record consists of 783 pages of transcript and 60 exhibits. Briefs and reply briefs were filed by ITC, Detroit Edison, Consumers, and the Staff.

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<sup>1</sup>The municipalities expressed support for expedited approval of the application. However, the ALJ notes that, despite being granted intervenor status, "once it became clear that the application would not be approved in time for the 2007 construction season, the City [of Troy] has expressed no position regarding ITC's application." PFD, p. 9, note 3.

<sup>2</sup>ITC's parent company is ITC Holdings Corp., which is also the parent company of Michigan Electric Transmission Company (METC). Detroit Edison purchases transmission services from ITC, and Consumers purchases transmission services from METC. Under the proposal, it is estimated that Detroit Edison customers would be responsible for annual charges of approximately \$24 million for the proposed line, and Consumers customers would be responsible for approximately \$2 million annually. Detroit Edison's replies to exceptions, p. 35, note 25; 3 Tr 614.

On December 5, 2007, the ALJ issued a Proposal for Decision (PFD), recommending that the Commission deny the application. Exceptions were filed by the Staff and ITC. Replies to exceptions were filed by ITC, the Staff, Consumers, and Detroit Edison.

### Positions of the Parties

ITC proposes to begin construction on the line in March 2008, and estimates that construction could take approximately three years. 2 Tr 188. The estimated cost of the line is \$150 million, resulting in “an approximate \$30 million increase in annual transmission rates.” 2 Tr 197. Two alternate routes were evaluated, each of which is located within a mile and a half of the generally east/west path that is proposed. The preferred route was chosen to avoid “the construction disruption the new underground cable/duct bank system would have caused along 14 Mile Road and 15 Mile Road/Maple.” 2 Tr 196.

Noting the increase in population in Oakland and Macomb counties between 1970 and 2000, and that energy consumption per household has increased during this time as well, ITC provided testimony that the proposed line is necessary to improve the company’s ability to adequately transport electricity to and through the central part of its system. 2 Tr 197-198. ITC’s analysis of its system’s future requirements is based on the highest forecast contained in the 21<sup>st</sup> Century Energy Plan (21 CEP) – a projected 2012 system peak load of 14,193 megawatts (MW). ITC states that its planning criteria require that none of the system’s components be outside of their capabilities or rating when all facilities are in service, and that the system must be able to sustain an outage of any system element, or more than one element, without exceeding the capability or ratings of the remaining equipment. 2 Tr 198. ITC states that the line will allow the company greater flexibility to shut down equipment in this part of the system for maintenance. ITC states that the new line will provide increased reliability and capacity, reduced line losses, and more

efficient generation. Benefits to the company include increased Federal Energy Regulatory Commission (FERC) jurisdictional transmission revenues, and the potential for increased market value and service volume over time. ITC witnesses testified that the line would have no deleterious effect on public health and safety, either during construction or as a result of the increased electric and magnetic fields in its vicinity.

Detroit Edison opposes the line. Detroit Edison acknowledged that, assuming ITC's projected peak load is accurate, overloads could eventually exist in the vicinity of the Troy Station. 3 Tr 492. However, Detroit Edison presented evidence that potential overloads could be dealt with through minor, and much less expensive, changes to the system. Detroit Edison proposes replacing one copper strain bus with an aluminum bus for \$73,384, and replacing Position GC Trainers with aluminum conductors and 1200 amp disconnects with 2000 amp disconnects for \$138,176. Alternatively, Detroit Edison proposes installation of an 83.5 MW gas-fired peaker at the Troy Station, at a cost of approximately \$35 million. 3 Tr 497-498. The peaker would likely run no more than 37 hours per year, according to Detroit Edison. Detroit Edison's witness testified that the combination of all of these alternatives would result in reducing the power flow of the connected circuit to 51.4% of its new normal rating, which is less than the 55% flow that ITC projects as a result of construction of the new line. 3 Tr 498.

Detroit Edison also suggested several other low-cost solutions to add capacity and reliability to this part of ITC's central system, including (1) replacing 12.5 miles of ASCR conductor with higher-rated ACCC conductor for approximately \$1.6 million, (2) installing a Real Time Thermal Rating System (RTTRS) on various lines for \$126,000, (3) replacing the wave trap at the Northeast Station for \$15,000, and (4) replacing another 3.5 miles of line with ACCC conductor

for \$588,028. 3 Tr 499-503. Detroit Edison states that these changes would cost roughly \$2.5 million, can be completed in a few weeks or months, and involve little infrastructure disruption.

Detroit Edison further argues that ITC has chosen to assume a system peak load that exceeds both the Midwest Independent Transmission System Operator, Inc.'s (MISO) most recent load forecast and ITC's own projected forecast. ITC has relied upon the highest forecast contained in the 21 CEP, of a peak load of 14,193 MW by 2012. MISO projects a 2011 system peak of 13,460 MW. Using MISO's projection, according to Detroit Edison's testimony, the overload problems described by ITC do not exist. 3 Tr 506. Detroit Edison argues that ITC has failed to demonstrate a need for the line.

Consumers also opposes the line. Consumers provided testimony about the advantages of an overhead line, which could run through a different corridor, and the dearth of alternatives explored by ITC. Consumers states that 84% of the \$30 million increase in annual transmission costs will be charged to transmission customers in Michigan, and that this cost will be passed along to utility ratepayers through the power supply cost recovery (PSCR) charge. 3 Tr 613. Consumers points out that no cost/benefit analysis was performed by ITC, and few alternatives were considered. Like Detroit Edison, Consumers argues that ITC has failed to demonstrate a need for the line.

The Staff also opposes the line. The Staff testified that it found neither the timetable nor the estimate of the project's cost to be credible. 3 Tr 636, 641-642, 650. The Staff based this opinion on the fact that the proposed in-service date for the line is not related to any point in time when the line may actually be needed, and the fact that earlier MISO reports had put the cost of the line at only \$50 million. The Staff argues that ITC makes a weak case for its projected load forecast, and has failed to consider lower-cost alternatives. The Staff contends that the alternative solutions offered by Detroit Edison are both feasible and less costly, while producing a comparable level of

increased reliability. The Staff further argues that ITC did a poor job of considering alternate routes, because those considered are too much like the chosen route – they are close together and run through the same corridor. The Staff contends that a larger geographic area, opening the possibility for an aboveground line, should have been considered. 3 Tr 777. Thus, the Staff argues that ITC’s application does not meet the requirements of MCL 460.567 because it fails to provide a credible construction date and cost, fails to adequately consider alternate routes, fails to present adequate information on the issue of need (such as modeling data and analysis to support the forecast), and fails to adequately present the public and private benefits of the line. The Staff contends that the application must be rejected.

The Staff further argues that, even if the application were considered complete, ITC has failed to justify construction of the line and failed to show that the route is feasible and reasonable. The Staff takes issue with the projected overloads, and contends that, even if the overloads existed, the alternative solutions suggested by Detroit Edison are more reasonable. The Staff notes that ITC chose to forego any cost/benefit analysis, and failed to conduct a study to determine exactly how many hours per year, based on the prevailing forecast, the relevant circuits would actually be overloaded. The Staff contends that ITC has failed to meet the four criteria required for issuing a certificate.

#### The PFD

The ALJ begins by addressing the question of whether a “need” for the line must be demonstrated in order for a certificate to issue from the Commission. ITC characterizes Act 30 as solely a siting statute, noting that “need” is not among the criteria for consideration by the Commission in deciding whether to issue a certificate. Detroit Edison, Consumers, and the Staff argue that Act 30 is analogous to 1929 PA 9, MCL 483.101 *et seq.* (Act 9), which governs the granting of certifi-

cates for the construction of gas pipelines, and urge the Commission to make a determination on the issue of “need.”

The ALJ found that “while a showing of ‘need’ is not required, *per se*, it may sometimes constitute a relevant factor to be considered when deciding whether the public benefits of a proposed line ‘justify’ its construction – as *is* required by Section 8(5)(a) of Act 30. This particular case presents just such an occasion.” PFD, p. 41 (emphasis in original). Thus, the ALJ found that before the Commission could rule that the “project’s expected benefits ‘justify’ the construction-related inconvenience and increased rates resulting from the line’s installation and operation, ITC must prove that this particular line is actually needed.” *Id.*

The ALJ rejected the Staff’s contention that ITC failed to fulfill the 12 filing requirements. The ALJ found that ITC had submitted, albeit “bare-bones,” all 12 pieces of information required by Section 7(2)(a)-(l). PFD, p. 45. The ALJ found that, “[w]hile providing the additional information desired by the Staff might have helped ITC prevail in this case, it was not required to do so.” *Id.*

Turning to the four criteria for issuance of a certificate, the ALJ found that the latter two criteria listed in Section 8(5) had been met by ITC. The ALJ found that there was little dispute that the line would not present an unreasonable threat to public health or safety, and that ITC would accept a conditional grant. MCL 460.568(c), (d). The ALJ found, however, that ITC had not satisfied the first two criteria, which require that the public benefits associated with the proposed line justify its construction, and that the route be feasible and reasonable. MCL 460.568(a), (b). The ALJ found that Detroit Edison had demonstrated that less-costly options exist for improving capacity and reliability on this portion of ITC’s system. The ALJ further found that ITC had not justified its adoption of the high load forecast, as opposed to the base or low forecasts,

from the 21 CEP, nor its reasons for ignoring its own and MISO's more recent forecasts, which are also lower. *See*, 2 Tr 157-158, 3 Tr 506. The ALJ was unconvinced by ITC's objections to each alternative upgrade. Finally, the ALJ noted that ITC "cites nothing in the way of quantifiable public benefits arising from its proposed construction of this 345 kV line." PFD, p. 48. The ALJ noted the lack of a cost/benefit analysis such as has been offered in other major transmission line cases. The ALJ found that, based on the existing record, it was impossible to conclude that the quantifiable and nonquantifiable public benefits of ITC's proposed line justify its construction. MCL 460.568(5)(a).

The ALJ further found that, while ITC had demonstrated that the route of the proposed line is feasible, it had failed to demonstrate that it is reasonable. MCL 460.568(5)(b). The ALJ agreed with the Staff that very little difference exists between the chosen route and the alternative routes. The ALJ found that, given the relatively hefty price tag for the line and the resulting effect on rates, ITC should have performed a more comprehensive analysis of alternative routes through a larger geographic area. The ALJ recommends that the Commission deny the certificate.

### Exceptions

The Staff agrees with the ALJ's recommendation but takes exception to the ALJ's finding that ITC had fulfilled the 12 filing requirements.

ITC objects to the ALJ's findings and recommendation. ITC begins by arguing that the ALJ improperly added language to the statutory certification requirements by requiring a showing of need and a cost/benefit analysis. ITC further argues that the ALJ considered the cost of the project in determining whether the analysis of alternate routes was adequate, though Act 30 does not mention "different requirements for providing alternate routes depending on the project's cost."

ITC's exceptions, p. 3. ITC complains that the Commission is allowing this transmission issue to be decided by the utilities, who are simply "market participants."

ITC points out that "need" is not among the criteria listed in Section 8(5), and argues that the Commission must carry out its legislative mandate. ITC describes Act 30 as a siting statute, where need is part of the filing but not a determinative criteria, and contends that "necessity" does not equal "need." ITC asserts that the Legislature clearly "excluded need as a substantive requirement." *Id.*, p. 12. ITC further argues that public benefits are "just a small part of need," and that the Commission has previously found that the statute does not require a finding of need. *Id.*, p. 17.

ITC further argues that it has established the need for the line, through its showing of the quantifiable and nonquantifiable benefits of the line. ITC complains that the PFD ignored testimony that the proposed line will improve infrastructure and bolster reliability and capacity in the central part of ITC's system. ITC observes that regional growth in the project area means that existing transmission lines will not be able to supply projected customer demand over the full range of potential forecast system demands. ITC states that mandatory North American Electric Reliability Corporation (NERC) planning reliability standards require long-range planning of this type. ITC states that there will be cost savings to customers due to more efficient generation being dispatched as a result of reduced congestion on the system. Noting that transmission upgrades require at least 36 months lead time and that even the load forecast used by MISO found at least one element potentially loads at 99.3%, ITC states that "Close is not good enough where transmission is concerned." ITC's exceptions, p. 26.

ITC contends that Act 30 does not mention a cost/benefit analysis and that the ALJ improperly required one. ITC maintains that the ALJ also improperly required an undefined standard of geographical diversity among alternate routes, and the inclusion of cost data for alternate routes.

ITC argues that the required rights-of-way do not allow for much diversity of routes, and overhead lines are too costly. ITC also faults the ALJ for focusing exclusively on cost and disregarding reliability in his preference for the solutions offered by Detroit Edison. ITC asserts that its proposal “results in a robust transmission system that is able to withstand the more severe real time system events which can and do occur.” *Id.*, p. 30. ITC asserts that Detroit Edison failed to consider all of the contingent conditions that could occur. Additionally, ITC avers that the non-transmission solutions considered by the ALJ are partial and temporary and will not improve system reliability, and that the Detroit Edison witness who offered these solutions was not credible. ITC states that Detroit Edison has “a competitive and financial interest in blocking transmission projects.” *Id.*, p. 34.

#### Replies to Exceptions

In reply to the Staff, ITC argues that the Staff’s exceptions are not supported by citation to the record or briefs, and do not meet the standards for exceptions imposed by 1999 AC, R 460.17341(4) (Rule 341). ITC complains that the Staff’s exceptions fail to specify the findings and conclusions to which exception is taken and argue in favor of affirming the PFD, which is not the function of exceptions as laid out in Rule 341. As such, ITC argues that the Commission should disregard the Staff’s exceptions.

In reply to ITC’s exceptions, Consumers contends that ITC’s statements about the cost of an overhead line are unsupported because ITC never did a cost/benefit analysis nor considered an overhead line.

In reply to ITC, Detroit Edison notes that dictionary definitions of “need” cite “necessity” as a synonym. Detroit Edison argues that the Legislature did not do a useless act in requiring applicants to file information “supporting the need” for the line. MCL 460.567(2)(f). Detroit Edison

argues that the Commission is required to find that the project is justified, and this is a broader finding than simply need. Detroit Edison maintains that ITC is mistaken in referring to Act 30 as a siting statute, noting that the act never uses the words "site" or "siting." Detroit Edison points out that the Commission made a determination on the issue of need in its recent (and only) Act 30 case. *See*, May 31, 2007 order in Case No. U-14861, pp. 30-31.

Detroit Edison states that this contested case is the only opportunity for a full review of ITC's project, because MISO is not required to perform a full independent review to ensure that the expansion of transmission is appropriate and cost-effective, and the MISO review does not allow for meaningful participation by stakeholders.

Detroit Edison again argues that ITC has relied on an outdated high forecast from the 21 CEP. Detroit Edison points out that ITC assigned no probability to whether or when the high forecast would actually occur, and admitted that its own internal forecast was both more recent and lower. 2 Tr 157-158. Detroit Edison contends that ITC's project exceeds NERC, MISO, and ITC's own planning criteria. 2 Tr 264-266, 279. Detroit Edison maintains the importance of considering cost, in light of Act 30's multiple citations to cost, and the fact that reasonable and prudent costs associated with the line will be included in customers' rates. Detroit Edison urges the Commission to consider the practical, lower-cost alternatives that the utility has identified in determining justification for the line.

Detroit Edison states that ITC has failed to demonstrate a reliability problem, and argues that the only real reliability concerns are associated with the project itself, given that ITC has never previously installed 345 kV cable underground, and that only 16 miles of this type of cable have been installed in the U.S. 2 Tr 295. Detroit Edison points to the Staff's testimony indicating that the utility's proposed alternatives provide viable solutions for any reliability problems, at lower

cost. Detroit Edison argues that it is uniquely qualified to evaluate ITC's proposal since Detroit Edison, until recently, owned this transmission system, and its witness was the former Director of Transmission for the utility. Detroit Edison notes that it is ITC's largest transmission customer, and that its share of the proposed \$30 million increase in annual transmission rates is approximately \$24 million, which would be passed through to Detroit Edison customers. Detroit Edison's replies to exceptions, p. 35, note 25.

In reply to ITC's exceptions, the Staff argues that the Commission is required to consider whether the line is needed in order to determine whether it is justified. The Staff reminds the Commission that Act 30 must be read as a whole, and that information required as part of the application must have a function. The Staff also notes that Act 30 contains no reference to siting. The Staff points out that a dictionary definition of "justify" uses the sample phrase "justified each expense as necessary." Staff's replies to exceptions, p. 10. The Staff argues that in light of the fact that public takings of private property through condemnation are possible following the grant of a certificate under Act 30, the Commission must not disregard the issue of need for the line.

#### CONCLUSIONS OF LAW

Under Act 30, a major transmission line is defined as a 345 kV line of at least five miles in length. MCL 460.562(g). An independent transmission company seeking to construct such a line must apply to the Commission for a certificate of public convenience and necessity. MCL 460.567(1), 460.562(b). This is only the second application submitted to the Commission since the 1995 promulgation of Act 30.

Before applying to the Commission for a certificate, Act 30 requires the applicant to submit a construction plan to the Commission and to each municipality in which the line would be constructed, hold public meetings in each of those municipalities, and offer in writing to meet with

each affected municipalities' chief elected official to discuss the line and route. MCL 460.564(2); MCL 460.566. Between November 6 and December 13, 2006, ITC carried out these tasks. Act 30 also requires the applicant to submit written notice of its application to each municipality and landowner on whose property a portion of the project will be constructed, and provide published notice in the vicinity of the proposed line. MCL 460.568(1). ITC provided testimony that it provided these notices in conjunction with the filing of its February 2007 application. The parties do not dispute that ITC satisfied its pre-application responsibilities to submit its construction plan and contact potentially affected municipalities. PFD, p. 8.

Act 30 then requires filing an application for a certificate with the Commission. The application must address at least 12 specific topics, including the date for beginning construction, a description and evaluation of at least one alternate route, and information supporting the need for the line. MCL 460.567(a)-(l). The Commission is thereafter required to conduct a contested case proceeding, after which it must grant the application and issue the certificate if it finds 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.

MCL 460.568(5)(a)-(d).

The utilities must purchase transmission services at rates set by the Federal Energy Regulatory Commission (FERC), which, under the Federal Power Act, has jurisdiction over the rates and charges of transmission providers such as ITC. 16 USC 824 *et seq.* FERC-approved rates are

binding on state utility commissions. *Entergy Louisiana, Inc v Louisiana Public Service Comm*, 539 US 39; 123 SCt 2050; 156 LEd2d 34 (2003). Payments made by Detroit Edison and Consumers for transmission costs under FERC-approved rates are recoverable from ratepayers (as transportation costs) through the power supply cost recovery mechanism. MCL 460.6j(1)(a); *Detroit Edison Co v Public Service Comm*, 276 Mich App 216; 740 NW2d 685 (2007). Thus, a direct consequence of the construction of a new transmission line is that the costs of that construction will ultimately be borne by this state's electric ratepayers. MCL 460.6j(5), (12). *See, also*, MCL 460.572. In this case, the Commission is required to weigh whether, in the current economic climate, increased annual charges of approximately \$24 million for Detroit Edison ratepayers, and \$2 million for Consumers ratepayers, are justified, which requires a thorough examination of evidence supporting the necessity for the line.

The certificate also takes precedence over any conflicting local ordinance, law, rule, regulation, policy, or practice, and 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 eminent domain proceedings. MCL 460.570. Thus, the Commission is also required to decide whether the necessity for the line justifies the potential condemnation of private property.

Act 30 places comprehensive authority for transmission line location and construction with the Commission through the power to issue or deny a certificate. MCL 460.565. The certificate is one "of public . . . necessity." MCL 460.562(b); MCL 460.565. Thus, it defies logic to posit that the Commission is required to ignore the necessity for the proposed line in determining whether to issue a certificate.

In Act 30, the four criteria that must be met in order for a certificate to issue do not use the word “need,” though the 12 filing requirements do. *Cf.*, MCL 460.568(5)(a)-(d) (“The commission shall grant the application and issue a certificate if it determines . . . [t]he quantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.”), and MCL 460.567(2)(f) (“An application for a certificate shall contain . . . [i]nformation supporting the need for the proposed major transmission line.”). This is not troubling to the Commission. The Legislature did not intend a useless act when it required applicants to file information supporting the need for the line. The justification for constructing the line must demonstrate the need for the line.

The legislative history of Act 30 is instructive on this issue. Act 30 was introduced as S.B. 408 (1995). S.B. 408 was designed to replace a patchwork of local regulations and decisions with a uniform, state-level authority, vested in the Commission, for determining the location and construction of major transmission lines. The Senate Fiscal Agency’s Bill Analysis states:

By establishing a process under which the Public Service Commission would decide whether a proposed high voltage line was necessary and in the public interest, the bills would create the needed siting authority. As the body constituted to determine the adequacy of energy available, the PSC is the agency best equipped to evaluate *the need for a proposed line*.

March 28, 1995 Senate Fiscal Agency Analysis, S.B. 408 (Substitute S-1), p. 5 (emphasis added).

It appears clear that the Legislature intended the Commission to consider the need for the line under Act 30.

Act 30 is analogous to its companions, 1929 PA 9 (Act 9), MCL 483.101 *et seq.*, and 1929 Act 69 (Act 69), MCL 460.501 *et seq.* The Commission has a long history of making determinations of necessity under these acts. Act 9 governs the issuance of certificates of convenience and necessity for the construction and operation of natural gas pipelines. Act 9 requires the

Commission “to examine and inquire into the necessity and practicability of such transmission line,” and to determine that the line will serve the “convenience and necessities of the public” before granting the certificate. MCL 483.109. Likewise, Act 69, which governs the issuance of certificates of public convenience and necessity for the construction, operation, service, or extension of service for any utility plant or system, requires the Commission to determine that “public convenience and necessity requires or will require such construction, operation, service, or extension.” MCL 460.502. Among the factors to be considered by the Commission in making this determination are “the benefit, if any, to the public in the matter of rates,” and “such other matters as shall be proper and equitable.” MCL 460.505. Thus, the Legislature has given the Commission broad authority to determine what considerations are key to a finding of necessity.

Probably the most fundamental aspect of regulatory authority is the ability to control entry into and departure from a regulated industry. Historically, certificates of public convenience and necessity operate in all regulatory spheres (railroads, electricity, gas, telecommunications) to “prevent useless duplication of facilities that could result in increased rates being imposed on captive [] ratepayers.”<sup>3</sup> The Commission has found that certificates “prevent wasting economic resources by constructing unneeded pipelines,” and serve to “protect local land owners and the general public from the unnecessary disruption, due to pipeline construction, of their use of both public and private lands.” March 29, 1995 order in Case No. U-10547, p. 17. *See, also, City of Marshall v Consumers Power Co.*, 206 Mich App 666, 678; 523 NW2d 483, 489 (1994) (holding that Act 69 was enacted to prevent the waste inherent in duplication of facilities). The Commission is mindful that, for those land owners who are subject to condemnation proceedings

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<sup>3</sup>71 Univ. of Colo. L. Rev. 1153, 1170 (Fall 2000), quoting *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCCR 11,364, 11,366, note 9 (citing 78 Cong. Rec. 10314 (1934) (remarks of Rep Rayburn)).

as a result of the issuance of a certificate, this is a high price to pay indeed, requiring the Commission's strong conviction of the necessity of the proposed line.

The Commission recently opined on the issue of need under Act 30, stating:

In choosing to address the need issue, the Commission is cognizant that MCL 460.568(5) does not specifically require the Commission to make a finding on the issue of need. . . . Nevertheless, in light of the Legislature's definition in MCL 460.562(b) of a "certificate" as being "a certificate of public convenience and necessity," the requirement in MCL 460.567[(2)](f) that the application address the issue of need, the parties' presentations on the issue of need, Act 30's legislative history, and the ALJ's findings and recommendations, the Commission is persuaded that the proper course is to make a determination on this issue at this time.

May 31, 2007 order in Case No. U-14861, pp. 30-31. That case involved a 120 kV overhead line.

The Commission finds that the stated rationale for considering need applies with equal (or perhaps greater) force in this case, where the proposed 345 kV line is to be built underground using a cable type (XLPE) that has seen little use in the United States and for which ITC admits it has no reliability data. 2 Tr 295.

ITC contends that the ALJ over-emphasized the cost of the project. Cost is clearly an element of justification. The Supreme Court has stated that "The requirement of a certificate of convenience and necessity may enable the commission to . . . keep[] the investment at the lowest figure consonant with satisfactory service." *Huron Portland Cement Co v Public Service Comm*, 351 Mich 255, 267; 88 NW2d 492, 499 (1958) (quotation omitted). The Commission has held that the issuance of a certificate requires "a showing that the line is cost justified." January 28, 1993 order in Case No. U-10059, U-10061, p. 50. *See, also, Zaremba v Public Service Comm'n*, unpublished opinion per curiam of the Court of Appeals, issued December 3, 1999 (Docket No. 210673), at 2 ("finding that a proposed project serve[s] the 'convenience and necessities' of the public before a CPCN can be issued . . . must include a determination of the economic feasibility of the proposed

project.”) Small quantifiable and nonquantifiable public benefits may justify an inexpensive line. An expensive line construction project that will ultimately be funded by ratepayers requires more significant public benefits, that rise above the level of conjecture. The Commission finds that ITC’s testimony regarding reliability and capacity issues was not ignored by the ALJ, but rather was appropriately evaluated in the context of the statutory requirements. The ALJ correctly pointed out that a cost/benefit analysis can be helpful in demonstrating the justification for such a project.

The Commission notes the Staff’s testimony supporting the feasibility of the lower-cost alternative upgrades. 3 Tr 653-657, 761. The Commission also notes the discrepancy between the high 21 CEP forecast relied upon by ITC, and the MISO and ITC-internal forecasts. The forecast included in the 21 CEP was formulated in 2006 after the conclusion of the Capacity Needs Forum, to reflect the fact that demand was trending downwards. 21 CEP, p. 9. The MISO and ITC-internal forecasts are more recent and reflect even lower demand. The need for the additional transmission, in the form in which ITC proposes to provide it, must be the first quantifiable benefit that demonstrates the justification for the construction of the line. The Commission finds that ITC has failed to demonstrate that the forecast supporting the proposed line is reliable enough to provide a foundation for this \$150 million project.

The Commission is left without a sufficient basis for deciding that the quantifiable and nonquantifiable benefits of the proposed line justify its construction, and therefore must deny the application for a certificate. Because this determination disposes of the matter, the Commission makes no finding on the chosen route.

THEREFORE, IT IS ORDERED that the application filed by International Transmission Company, d/b/a *ITCTransmission*, for a certificate of public convenience and necessity for the construction of a major transmission line running from and through Sterling Heights, Troy, Clawson, and Royal Oak, Michigan, is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of February 22, 2008.

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Mary Jo Kunkle, Executive Secretary