

STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE APPLICATION OF MICHIGAN  
ELECTRIC TRANSMISSION COMPANY LLC  
FOR TRANSMISSION LINE

CHARTER TOWNSHIP OF OSHTEMO,  
Appellant,

v

MICHIGAN ELECTRIC TRANSMISSION  
COMPANY LLC,  
Petitioner-Appellee,  
and

MICHIGAN PUBLIC SERVICE COMMISSION,  
Appellee.

CoA No. 317893  
MPSC  
LC No. 00-017041

-----, *OK*  
APPLICATION FOR LEAVE TO APPEAL  
AND BRIEF IN SUPPORT

150695

APPL

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**FILED**

Dated: December 19, 2014

DEC 22 2014

LARRY S. ROYSTER  
CLERK  
MICHIGAN SUPREME COURT

**STATEMENT OF JUDGMENT APPEALED FROM**  
**AND RELIEF SOUGHT**

Appellant is seeking leave to appeal the Decision of the Michigan Court of Appeals in the consolidated cases of *Har Company, LLC, et al v Michigan Electric Transmission Company and Michigan Public Service Commission* and *Charter Township of Oshtemo v Michigan Electric Transmission Company, LLC and Michigan Public Service Commission and Michigan Townships Association and Michigan Municipal League, et al*, Court of Appeals Case Nos. 317872 and 317893.

Appellant requests review and reversal of the Michigan Court of Appeals' Decision invalidating the underground requirements for public utilities using its public streets.

**STATEMENT OF QUESTIONS**

- I. DID THE COURT OF APPEALS CLEARLY ERR IN STRIKING DOWN THE TOWNSHIP'S UTILITY ORDINANCE PROVISION REQUIRING PLACEMENT OF PUBLIC UTILITY LINES CROSSING A PUBLIC ROAD UNDERGROUND THEREBY NULLIFYING THE TOWNSHIP'S AUTHORITY UNDER CONST 1963, ART 7, § 29, WHICH DECISION RESULTED IN MANIFEST INJUSTICE?

APPELLANT TOWNSHIP SAYS                      YES

- II. THE LOCAL CONTROL OF PUBLIC UTILITIES AUTHORIZED BY THE MICHIGAN CONSTITUTION BEING APPLICABLE TO MUNICIPALITIES STATEWIDE AND THUS OF STATEWIDE IMPORTANCE, DID THE MPSC AND COURT OF APPEALS ERR AS A MATTER OF LAW BY FAILING TO DETERMINE ACTUAL CONFLICT BETWEEN THE TOWNSHIP'S PUBLIC UTILITY ORDINANCE AND THE MPSC'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY?

APPELLANT TOWNSHIP SAYS                      YES

- III. DID THE COURT OF APPEALS CLEARLY ERR BY FAILING TO APPLY THE DEFINITIONS CONCERNING LOCATION AND CONSTRUCTION IN ACT 30 WHEN UPHOLDING THE MPSC'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY THUS RESULTING IN MANIFEST INJUSTICE?

APPELLANT TOWNSHIP SAYS                      YES

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## STATEMENT OF FACTS

In December of 2010, the Michigan Electric Transmission Company, LLC (hereinafter "METC") approached Oshtemo Charter Township (hereinafter "Township") seeking to construct an electric transmission line in the southern portion of the Township through a pristine oak savannah forest. However, METC's information was sketchy. They provided the Township only a vague verbal description of the project without maps or analytical analysis of the proposed route. METC did not provide information regarding the route selection process. The Township representatives requested METC consider a route along the I-94 corridor or within a railroad right-of-way so as to preserve the natural resources of the Township and prevent a new scar across the rural residential character of the Township. In spite of numerous requests, METC failed and refused to provide further more detailed information to the Township.

Because METC failed to provide even rudimentary information to the Township residents or to the Township itself, and due to the fact that the proposed transmission line was not a high-voltage transmission line, it appeared that METC would proceed with the project with no public input or governmental oversight of any kind. In order to protect the interests of its citizens and meet its constitutional and legislative duty to protect the public health, safety and welfare, the Township amended its Public Utility Ordinance, which Ordinance was originally enacted in 1975. The amendment, effective November 22, 2011, sought to ensure the citizens of the Township would have input into the process, either before the Township Board or before the Michigan Public Service Commission and sought to minimize the negative impacts associated with the installation of the proposed transmission line. The amendment was enacted in conjunction with the pre-existing provisions of the Township Zoning Ordinance and the Township's Master Plan 2011.

The Township submits to this Court that the narrowly-tailored limitations of the Public Utility Ordinance (as amended) were reasonable, balanced and clearly fall within the authority granted to the Township under the Michigan Constitution and State law.

METC refused to proceed before the Township and on July 31, 2012, filed an application with the Michigan Public Service Commission (hereinafter "MPSC") 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) for the construction of an electric transmission line other than a major transmission line.

The Township's petition to intervene was granted as was that of certain citizens of Oshtemo Charter Township, to-wit: Harco LLC, Ward Squires, Henrietta Squires, Ken Irish, Margaret Irish, Jack Kuipers, Jane Kuipers, individually and as a trustee of the Jane Kuipers Trust, J&K Holdings, LLC, Doug Maxwell, individually and as a trustee of the Doug E. Maxwell 2000 Trust, and Mickie Maxwell, individually, and as a trustee of the Mickie A. Maxwell Trust, collectively, referred to as the Landowners, petitioned to intervene, and the petition was granted.

The MPSC conducted an evidentiary hearing on January 29, 2013. All parties filed briefs and reply briefs. The Township asserted: 1) that METC had failed to comply with substantive and procedural due process, 2) that METC had failed to meet the requirements of Section 8 of Act 30 (MCL 460.568 (5)(a) and 3) that the Township's Public Utility Ordinance was applicable and required an alternative route or the underground construction of a portion of the transmission line.

On April 29, 2013, the ALJ issued her Proposal for a Decision (hereinafter "PFD") upholding the applicability of the Township's Ordinances. The PFD found that the Public Utility Ordinance was not preempted by State law and proposed: (1) requiring the permit be conditioned

upon underground construction of 1,500-2,000 feet of the transmission line, or (2) requiring METC to make an additional showing that any local benefits of underground construction did not justify the burden on ratepayers for the project. The ALJ also proposed denial of METC's application based on the finding that they had failed to show that the benefits of the project justified the financial, environmental and social costs of the project under Section 8 of Act 30.

The MPSC in its Order of July 29, 2013, rejected the PDF, refusing to condition the Certificate on METC's compliance with the Township's Ordinances. The MPSC further failed to adopt the alternative recommendation that the record be reopened. The MPSC granted METC's application for the transmission line. The MPSC's final order was served upon the parties on August 2, 2013. The Township filed its claim of appeal with this Court on August 23, 2013.

The Court of Appeals issued its Decision on November 18, 2014. The Court of Appeals upheld the MPSC's Decision, striking down the Township's exercise of its authority under the Const 1963, art 7, § 29. The Court of Appeals held that the MPSC's issuance of its Certificate of Public Convenience and Necessity preempted the Township's Ordinance provisions without making any analysis or finding that there was an actual conflict between the Township's Ordinance and the MPSC's issuance of the Certificate of Public Convenience and Necessity. It is from this Decision that the Township requests leave to appeal and requests reversal.

## ARGUMENT

- I. THE COURT OF APPEALS CLEARLY ERRED IN STRIKING DOWN THE TOWNSHIP'S UTILITY ORDINANCE PROVISION REQUIRING PLACEMENT OF PUBLIC UTILITY LINES CROSSING A PUBLIC ROAD UNDERGROUND THEREBY NULLIFYING THE TOWNSHIP'S AUTHORITY UNDER CONST 1963, ART 7, § 29, WHICH DECISION RESULTED IN MANIFEST INJUSTICE.

The Michigan Court of Appeals referenced the authority granted to Oshtemo Charter Township under Const 1963, art 7, § 29. However, the Court ultimately held that the Township's authority to grant or withhold consent to the use of its roads by requiring public utilities to be underground was subject to the "constitution and law" provision of Const 1963, art 7, § 22.

In order to determine whether the general authority granted to the Michigan Legislature pursuant to Const 1963, art 7, § 22 is controlling over the specific grant of authority given to the Township under Const 1963, art 7, § 29, one must first understand the structure of the Michigan Constitution. Amici Curiae for the Michigan Townships Association and Michigan Municipal League aptly pointed out the following in its Court of Appeals' Brief:

“In *Romano v Auditor General*, 323 Mich 533, 536-537; 35 NW2d 701 (1949) the Michigan Supreme Court stated that:

‘The function of a state constitution is not to legislate in detail, but to generally set limits upon the otherwise plenary powers of the legislature.’ (Emphasis added)

This function differs from the United States Constitution as distinguished by the Michigan Supreme Court in *In re Request for Advisory Opinion Enrolled Senate Bill 558 (being 1976 PA 240)*, 400 Mich 175, 400 Mich 311, 317-318; 254 NW2d 544 (1977), when the court indicated that:

‘The Michigan Constitution is not a grant of power to the Legislature as is the United States Constitution, but rather, is a limitation on a general legislative power.’ *In Re: Brewster Street Housing Site*, 291 Mich 313, 289 NW2d 493 (1939).

In further addressing the legislative authority of this State, the Michigan Supreme Court in *Attorney General ex rel. O'Hara v Montgomery*, 275 Mich 504, 538; 267 NW2d 550 (1936) stated that:

'The legislative authority of the state can do anything which it is not prohibited from doing by the people through the Constitution of the State or of the United States. The constitution of the State is not a grant of power. It is a limitation upon authority.' (Emphasis added)

It follows that "[a] fundamental and indisputable tenet of law is that a constitutional mandate cannot be restricted or limited by the whims of a legislative body through enactment of a statute.' *American Federation of State, County and Municipal Employees, Council 25 v Wayne County*, 292 Mich App 68, 93; 11 NW2d 4 (2011)."

The Township submits that specific rights granted to the Township by the people of the State of Michigan should not be swept aside by the Legislature in violation of the limitations placed upon the Legislature by the Const 1963, art 7, § 29. The Township is not alone in making such arguments.

When the Supreme Court denied the application for leave to appeal in the *City of Lansing v State of Michigan and Wolverine Pipe Line Company*, 480 Mich 1104; 745 NW2d 100 (2008), the esteemed Justice Markman dissented from that denial to grant leave and wrote:

MARKMAN, J., dissents and states as follows:

I would grant leave to appeal. Defendant builder is attempting to construct a pipeline under several streets in plaintiff city. The Court of Appeals held that plaintiff's consent to this project was not required under MCL 247.183(2), and that Const. 1963, art. 7, § 29 did not necessitate a different result. *City of Lansing v. \*\*110 Michigan*, 275 Mich.App. 423, 737 N.W.2d 818 (2007).

At issue is whether MCL 247.183(2) is consistent with the first sentence of Const. 1963, art. 7, § 29. MCL 247.183(2) states that, under the circumstances present here, a utility company "is not required to obtain the consent" of the affected city. However, the first sentence of art. 7, § 29 states that a utility does not "have the right to the use of the highways [or] streets" of any city "without the consent" of that city. Also relevant is the second sentence of art. 7, § 29, which states that a city possesses a right of "reasonable control" over its streets "[e]xcept as otherwise provided in this constitution."

The first sentence of the constitutional provision grants to cities the unqualified authority to refuse consent to utility projects, whereas the grant of "reasonable control" over city streets is qualified. This lack of qualification in the first sentence must be considered in light of the \*1105 express qualification in the very next sentence. Read together, the difference between these grants of authority arguably gives rise to an inference that a city's right to withhold consent to a utility project cannot be defeated by other constitutional provisions in the same fashion as a city's right of "reasonable control."

When construing two constitutional provisions, this Court must give "proper meaning and effect to both." *In re Request for Advisory Opinion*, 479 Mich. 1, 35 n. 90, 740 N.W.2d 444 (2007). The specific right in the first sentence of art. 7, § 29, to refuse consent to utility projects, fits logically within the city's general right in the second sentence to exercise "reasonable control" over its streets. Therefore, to give meaning and effect to both sentences, it may be inferred that there is some difference in terms of the Legislature's authority to overrule the city with regard to its exercise of the more specific right in comparison with its exercise of the more general right. However, the Court of Appeals renders these rights indistinguishable in terms of the Legislature's overruling authority, treating the specific right to refuse consent in an identical manner as the general right of "reasonable control." Thus, the Court of Appeals arguably gives no effect at all to the first sentence of art. 7, § 29.

Of course, the specific right of cities to refuse consent to utility projects may be limited by another constitutional provision. In this regard, the Court of Appeals relied on Const. 1963, art. 7, § 22, which states that a city may enact resolutions and ordinances "subject to the constitution and law." However, this begs the question of to *which* parts of the constitution and *which* laws are the city's actions properly subject. At least arguably, the specific grant of constitutional authority to cities to refuse consent to utility projects must control over the more general authority granted to the Legislature in art. 7, § 22. See *Jones v. Enertel*, 467 Mich. 266, 271, 650 N.W.2d 334 (2002) ("[S]pecific provisions ... prevail over any arguable inconsistency with the more general rule.").

I am cognizant of arguments concerning the wisdom of a single community being allowed to effectively veto a utility project designed to benefit many communities in Michigan. However, while some may wish to avoid facilitating such an anomalous result, the first obligation of this Court is to faithfully maintain our constitution. Plaintiff's arguments are not frivolous and merit full consideration by this Court so that the rights of cities under our constitution may be clearly understood."

Appellant in this case would argue that the specific grant of authority given to the Township, under the first sentence of the Const 1963, art 7, § 29, does and should take priority over the general grant of authority given to the Michigan Legislature, pursuant to Const 1963, art 7, § 22. Faithfulness to the Constitution should be the first priority of this Court.

The first sentence of Const 1963, art 7, § 29 requires consent of the Township. In this case, consent is subject to the public utilities placing the electric transmission line under the public streets. As Justice Markman pointed out, in the *City of Lansing* case request for leave, the first sentence of art 7, § 29 grants the Township unqualified authority to refuse consent. This is in contrast to the reasonable control provisions of the second sentence of art 7, § 29, and should be construed to give proper meaning to both – otherwise the first sentence is unnecessary. Also, the specific provisions of the first sentence of art 7, § 29 should take precedence over the general provisions of art 7, § 22. Therefore, the Court of Appeals' Decision in this case should be reversed, and the Township's Public Utility Ordinance upheld in order to avoid manifest injustice.

## ARGUMENT

- II. THE LOCAL CONTROL OF PUBLIC UTILITIES AUTHORIZED BY THE MICHIGAN CONSTITUTION BEING APPLICABLE TO MUNICIPALITIES STATEWIDE AND THUS OF STATEWIDE IMPORTANCE, THE MPSC AND COURT OF APPEALS ERRED AS A MATTER OF LAW BY FAILING TO DETERMINE ACTUAL CONFLICT BETWEEN THE TOWNSHIP'S PUBLIC UTILITY ORDINANCE AND THE MPSC'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

MCL 460.570(1), being Section 10 of the Electric Transmission Line Certification Act,

states:

“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.” (Emphasis added)

Assuming for the sake of argument that the Michigan Public Service Commission properly issued the Certificate of Public Convenience and Necessity, Section 10 of the Act still requires a further analysis to determine if the Township's Public Utility Ordinance is a “conflicting local ordinance” as defined by the Act. The ALJ in her Proposal for a Decision addressed the Township's Ordinance and whether it would be in conflict with the location and construction of the transmission line. The ALJ concluded that:

"Recognizing its authority to require aboveground construction, the Commission has nonetheless reviewed local ordinances prior to making a determination.<sup>139</sup> Section 7(d)(2) of Act 30 requires the application to identify local ordinances regulating the location or construction of the transmission line. Section 8(4) of Act 30 provides: “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.” Correspondingly, 8(5)(d) of Act 30 adds as a criterion for granting an application whether the applicant has agreed to conditions. While local requirements for underground construction could be evaluated under subsections 8(5)(a) or (b) of Act 30, the Commission has previously reviewed local ordinances after a discussion of the justification and routing issues, in the context of whether additional conditions should be required.

On this record, in response to the testimony of Ms. Heiny-Cogswell and Mr. Milliken supporting the Township ordinances, the evidence presented by METC to establish that underground construction would conflict with the transmission line is limited to generalized statements regarding the costs of underground construction and maintenance.... Likewise, while METC asserted that the cost of underground construction is five to seven times the cost of aboveground construction, METC did not provide a specific estimate of the cost of underground construction limited to the 1,500 feet Ms. Heiny-Cogswell testified the Township was requesting. ... Because there is not sufficient record evidence to demonstrate a conflict between the transmission line project and the underground construction required by the municipal ordinance and requested by the Township in this proceeding, this PFD recommends that the Commission condition approval of a certificate on underground construction of the transmission line over 1500 feet within the Township, or require METC to make an additional showing that any local benefits of underground construction do not justify the burden on the ultimate ratepayers for the project." (PFD p. 60-62.)" (Emphasis added)

However, the MPSC failed to conduct any analysis of whether the Township's Ordinance conflicted with the location or construction of the transmission line and simply held:

"Finally, the Commission agrees with the Staff and METC that under the plain language of Sections 3 and 10 of Act 30, the Commission's grant of the CPCN preempts Oshtemo's ordinance. Moreover, the Commission agrees with the Staff that the burden of proof demonstrating the practicality and expense of undergrounding these portions of the line in accordance with the ordinance, was Oshtemo's, not METC's. And the Commission finds that Oshtemo failed to carry its burden; it merely offered a proposal and expected METC to undertake the required analysis. The Commission therefore rejects the recommendation in the PFD that the CPCN be conditioned on METC's compliance with the ordinance, and the alternative recommendation that the record be opened." MSPC Opinion p. 26 (Emphasis added.)

In light of the specific language of the MPSC Opinion "preempting" the Township's Ordinance, the Court of Appeals blatantly held that:

"Contrary to arguments made by Oshtemo Township and amici Michigan Townships Association, et al, the PCS did not hold that Act 30 preempted all local regulation by the Township and did not eliminate the authority granted to Oshtemo Township by Const 1963, art 7, § 29 to control its roads and rights-of-way." (Emphasis added)

The Court of Appeals held that not all local ordinances are preempted by Act 30 and yet failed, as did the MPSC, to determine how the Township's Ordinance was in conflict with the Certificate of Public Convenience. This results in circular reasoning in that the MPSC issued the Certificate of Public Convenience based on a ruling that the Township Ordinance was preempted by State law, and the Court of Appeals then held that it was the Certificate's issuance that preempted the Township Ordinance. Neither the MPSC nor the Court of Appeals ever determined or analyzed whether an actual conflict exists. Thus, no one has analyzed whether a conflict exists between the Township's Ordinance and the Certificate of Public Convenience and Necessity, except the ALJ, who found that:

"Because there is not sufficient record evidence to demonstrate a conflict between the transmission line project and the underground construction required by the municipal ordinance and requested by the Township in this proceeding, this PFD recommends that the Commission condition approval of a certificate on underground construction of the transmission line over 1500 feet within the Township.

Michigan law requires that statutes and ordinances must be construed in a constitutional manner if at all possible. *Gora v City of Ferndale*, 456 Mich. 704; 576 NW2d 141 (1998).

Local municipal police powers may cover the same matter that is covered by the State legislature, but supplement or aid in carrying out the State legislation. *Surtman, et al v Secretary of State*, 309 Mich. 270; 15 NW2d 471 (1944).

Section 3 of the Electric Transmission Line Certification Act, MCL 460.561, et seq, relied upon by the MPSC provides only that the "act shall control in any conflict between the act and any other law of the state." Section 10 (MCL 460.570) provides.

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. (Emphasis added)

If the MPSC is allowed to simply “preempt any local ordinance” without any finding of fact or conclusion of law as to the alleged conflict between its Order and the local ordinance, it constitutes an unlawful delegation of legislative authority.

“ ‘The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.’ ” *Livonia v Dep't of Social Services*, 423 Mich. 466, 502; 378 NW2d 402 (1985), quoting *Dep't of Natural Resources v Seaman*, 396 Mich. 299, 308; 240 NW2d 206 (1976). The statute must contain sufficient standards so as not to “leave the people unprotected from uncontrolled, arbitrary power in the hands of administrative officials.” *Id.* at 308–309; 240 NW2d 206.

The MPSC's Decision in this case seems to state that MCL 460.563 and MCL 460.570 allow the issuance of a Certificate of Public Convenience and Necessity and therefore local Ordinances are preempted. The MPSC engages in circular reasoning by concluding in that the Township Ordinances are superseded by the Certificate of Public Convenience and Necessity, and therefore, they need not be considered in determining whether to grant the Certificate. The reasoning of the MPSC is tantamount to concluding that there is preemption of local Ordinances because the Ordinances are preempted.

As analyzed previously, the *Detroit Edison, Co. v City of Wixom*, 382 Mich 673; 172 NW2d 382 (1969) case specifically found that the MPSC must determine ACTUAL conflict between local Ordinances and the State law or regulation.

Even setting aside the *Detroit Edison* precedent, to adopt the MPSC's interpretation of Act 30 of 1995 as preemptive of local Ordinances would grant arbitrary and unlimited power to the MPSC. Under that analysis, it remains totally within the discretion of the Michigan Public

Service Commission to grant the Certificate of Public Convenience and Necessity and strike down any other Ordinance or regulation no matter how reasonable it was.

The Michigan Supreme Court addressed the issue of the excessive grant of legislative authority in *Blue Cross and Blue Shield of Michigan v William G. Milliken, Frank Kelly, Nancy Boerwaldt, Commissioner of Insurance of the State of Michigan*, 422 Mich. 1, 27; 367 NW2d 1 (1985). The Court held:

“BCBSM charges that § 205(6) is an unconstitutional delegation of legislative authority in that it lacks adequate standards to guide the panel’s action.

Challenges of unconstitutional delegation of legislative power are generally framed in terms of the adequacy of the standards fashioned by the Legislature to channel the agency’s or individual’s exercise of the delegated power. See *e.g., Osius v St. Clair Shores*, 344 Mich. 693, 698, 75 N.W. 2d 25 (1956). Although for many years this and other courts evaluated delegation challenges in terms of whether a legislative (policymaking) or administrative (factfinding) function was the subject of the delegation, this analysis was replaced by the ‘standards’ test as it became apparent that the essential purpose of the delegation doctrine was to protect the public from misuses of the delegated power. The Court reasoned that if sufficient standards and safeguards directed and checked the exercise of delegated power, the Legislature could safely avail itself of the resources and expertise of agencies and individuals to assist the formulation and execution of legislative policy.

The criteria this Court has utilized in evaluating legislative standards are set forth in *Dep’t. of Natural Resources v Seaman*, 396 Mich. 299, 309, 240 N.W. 2d 206 (1976): 1) the act must be read as a whole; 2) the act carries a presumption of constitutionality; and 3) the standards must be as reasonably precise as the subject matter requires or permits. The preciseness required of the standards will depend on the complexity of the subject. *Argo Oil Corp. v Atwood*, 274 Mich. 47, 53, 264 N.W. 285 (1935). Additionally, due process requirements must be satisfied for the statute to pass constitutional muster. *State Highway Comm*

*v Vanderkloot*, 392 Mich. 159, 174, 220 N.W. 2d 416 (1974).

Using these guidelines, the Court evaluates the statute's safeguards to insure against excessive delegation and misuse of delegated power.

BCBSM complains that § 205(6) contains 'absolutely no standards' to guide the actuaries in their determination of risk factors. We generally agree." p 27

If the conflict is solely with the Certificate of Public Convenience and Necessity, and the MPSC unilaterally determines that a conflict exists, this is the antithesis to the safeguards which should be in place to direct and check the exercise of a delegated power.

A statute has to clearly define the power conferred and directly or implicitly place conditions under which the authority can be exercised. *Davison v Johnson*, 79 Mich. App. 660; 262 NW2d 887 (1977), (reversed on other grounds). Anything else is an exercise of arbitrary power which is not authorized under law.

"The guiding principles in determining whether a statute provides sufficient standards for the exercise of discretion of an administrative official are:

1. The provision in question should not be isolated but must be construed with reference to the entire act;
2. The standard should be as reasonably precise as the subject matter requires or permits; and
3. If possible the statute must be construed in such a way as to render it valid, not invalid, as conferring administrative, not legislative power, and as vesting discretionary, not arbitrary, authority."

*Michigan Pleading and Practice*, Chapter 60, Sec. 60.22; *Fort Gratiot Charter Township v Kettlewell*, 150 Mich. App. 648; 389 N.W. 2d 468 (1986); *Shelby Township v Department of Social Services*, 143 Mich. App. 294; 372 N. W. 2d 533 (1985); *Klammer v Department of Transp.*, 141 Mich. App. 253; 367 N.W. 2d 78 (1985).

There must be a clear statutory basis upon which the determination of whether a conflict exists between the local ordinance or regulation and a Certificate of Public Convenience and Necessity issued by the MPSC. Appellant contends that there is no conflict. The Court of Appeals erred as a matter of law in not so finding, and we request reversal of its Decision.

## ARGUMENT

### III. THE COURT OF APPEALS CLEARLY ERRED BY FAILING TO APPLY THE DEFINITIONS CONCERNING LOCATION AND CONSTRUCTION IN ACT 30 WHEN UPHOLDING THE MPSC'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY THUS RESULTING IN MANIFEST INJUSTICE.

It is the clearly recognized rule of statutory construction for a court to construe a statute to give full effect to all of its provisions. *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006). All sections of a statute should be read together as a whole. *Patrick v Shaw*, 275 Mich App 201; 739 NW2d 365 (2007).

The rules for statutory construction set forth above include definitions within a statute. 22 Mich. Civ. Jur. Statutes § 204 states:

...“Where a statute sets forth its own glossary of terms, the courts may not import any other interpretation but must apply the meanings of the terms expressly defined therein.<sup>1</sup> When interpreting statutes, courts are bound by definitions of terms as set forth in those statutes by the legislature.<sup>2</sup> Accordingly, where a statute provides its own definition of a term, the term must be applied in conformity with that definition.<sup>3</sup> When a statute specifically defines a given term,

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<sup>1</sup> *General Motors Corp. v. Bureau of Safety and Regulation General Industry Safety Div.*, 133 Mich. App. 284, 349 N.W.2d 157 (1984); *People v. Muzzin & Vincenti, Inc.*, 74 Mich. App. 634, 254 N.W.2d 599 (1977).

<sup>2</sup> *Arrigo's Fleet Service, Inc. v State of Mich., Dept. of State, Bureau of Automotive Regulations*, 125 Mich. App. 790, 337 N.W.2d 26 (1983).

<sup>3</sup> *Great Wolf Lodge v. Public Service Com'n*, 285 Mich. App. 26, 775 N.W.2d 597 (2009), judgment rev'd on other grounds, 489 Mich. 27, 799 N.W.2d 155 (2011); *Lewandowski v. Nuclear Mgt.*, 272 Mich. App. 120, 724 N.W.2d 718 (2006).

that definition alone controls.<sup>4</sup> Therefore, a statutory definition supersedes a commonly accepted dictionary or judicial definition of a term.<sup>5</sup>

1995 P.A. 30, Section 10 states that:

“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.” (Emphasis added)

Neither the MPSC nor the Michigan Court of Appeals analyzed the Township’s Ordinance in light of Act 30’s definitions to determine if it prohibited or regulated the “location” or “construction” of the electrical transmission line. The MPSC held that since it permitted overhead lines, a Township’s Ordinance requiring underground lines was pre-empted. The Court of Appeals said that the Certificate of Public Convenience and Necessity allowed overhead lines, and the Township’s Ordinance required underground lines, and therefore, the Township’s Ordinance was subject to the precedence of the Certificate of Public Convenience and Necessity. However, both the MPSC and the Michigan Court of Appeals ignored the specific definitions located within the statute to determine what constituted a conflict with a local ordinance. A local ordinance may not prohibit or control the “location or route” of an electric transmission line. A local ordinance may not prohibit or control the “construction” of an electric transmission line as defined by the Act.

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<sup>4</sup> *Lignons v. Crittenton Hosp.*, 490 Mich. 61, 803 N.W.2d 271 (2011); *Kuznar v. Raksha Corp.*, 481 Mich. 169, 750 N.W.2d 121 (2008); *Haynes v. Neshewat*, 477 Mich. 29, 729 N.W.2d 488 (2007); *Cain v. Waste Management, Inc.*, 472 Mich. 236, 697 N.W.2d 130 (2005); *Capital Properties Group, LLC v 1247 Ctr. Street, LLC*, 283 Mich. App. 422, 770 N.W.2d 105 (2009); *Michigan Educ. Ass’n v. Secretary of State*, 280 Mich. App. 477, 761 N.W.2d 234, 241 Ed. Law Rep. 858 (2008), judgment rev’d on other grounds, 488 Mich. 18, 793 N.W.2d 568, 264 Ed. Law Rep. 371 (2010), opinion superseded on other grounds on reh’g, 489 Mich. 194, 801 N.W.2d 35, 269 Ed. Law Rep. 842 (2011) and judgment aff’d, 489 Mich. 194, 801 N.W.2d 35, 269 Ed. Law Rep. 842 (2011); *Elezovic v. Bennett*, 274 Mich. App. 1, 731 N.W. 2d 452 (2007).

<sup>5</sup> *LeGalley v. Bronson Community Schools*, 127 Mich. App. 482, 339 N.W.2d 223, 14 Ed. Law Rep. 152 (1983).

1995 P.A. 30, Section 2, defines "route" as follows:

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

The Township's Ordinance does not prohibit or control the real property on or across which the transmission line is constructed or proposed to be constructed. The Township's Ordinance does not regulate the location or route since it does not zone or permit the property upon which the line may be placed on or across.

1995 P.A. Act 30, Section 2 defines "construction" as follows:

"Construction means any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line . . . ."

The Township's Ordinance does not prohibit the placement or erection of the foundations or structures supporting a transmission line. The Township's Ordinance does not regulate the construction or the placement or erection of foundations or structures supporting the transmission line.

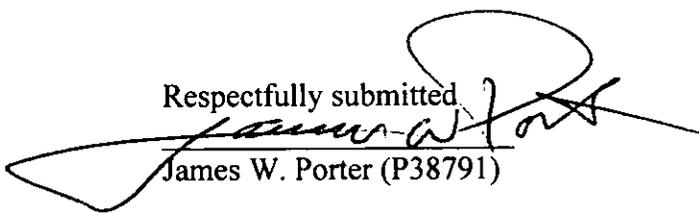
The Michigan Court of Appeals erred as a matter of law in failing to apply the specific terms set forth above in its interpretation of the statute. This error necessitates reversal by this Court.

#### REQUEST FOR RELIEF

Oshtemo Charter Township respectfully requests that this Court grant leave to appeal, reverse the Court of Appeals' Decision and uphold the Township's Public Utility Ordinance enacted, pursuant to art 7, § 29, requiring public utilities to be placed underground when crossing a public road.

Dated: December 19, 2014

Respectfully submitted,

  
James W. Porter (P38791)