

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**OSHTEMO, CHARTER TOWNSHIP OF,**

Appellant,

Supreme Court Case No. 150695

v

Court of Appeals Case No. 317893

**MICHIGAN PUBLIC SERVICE  
COMMISSION and MICHIGAN ELECTRIC  
TRANSMISSION COMPANY, LLC**

MPSC Case No. U-17041

Appellees.

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**BRIEF OF MICHIGAN ENERGY PROVIDERS  
GROUP AS *AMICUS CURIAE* IN SUPPORT  
OF APPELLEE MICHIGAN ELECTRIC  
TRANSMISSION COMPANY, LLC**

Dated: April 12, 2016

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## **COUNTER-STATEMENT OF QUESTION PRESENTED**

**Is Section 10(1) of the Michigan Electric Transmission Line Certification Act; 1995 PA 30, MCL 460.570(1), which provides that a certificate granted by the Michigan Public Service Commission takes precedence over a conflicting local ordinance, constitutional despite Const 1963, art 7, §29 authorizing municipalities to consent to a public utility's use of public places for wires, poles and other facilities?**

*Amicus Curiae* Michigan Energy Providers' Group says "YES".

Petitioner – Appellee Michigan Electric Transmission Company, LLC says "YES".

The Michigan Public Service Commission and Michigan Court of Appeals said "YES".

Respondent – Appellant Charter Township of Oshtemo says "NO".

## **STATEMENT OF JURISDICTION**

*Amicus Curiae* Michigan Energy Providers Group ("Energy Providers") agrees with the Jurisdictional Statement of Appellant Charter Township of Oshtemo. Energy Providers submitted this brief and accompanying motion pursuant to MCR 7.312 (H).

## **STATEMENT OF INTEREST**

Energy Providers are engaged in the business of providing energy to Michigan residents, primarily as electric or natural gas public utilities or combination utilities providing both types of service. These energy services are rendered to customers through a vast infrastructure of utility assets located in municipalities throughout the state. Much of this infrastructure is for local distribution of service, but the overall system is today dependent on larger components, owned and operated by Energy Providers or others, used to transport or interconnect the local systems with major sources of supply such as natural gas producers, electric generating plants and

adjoining utility systems.

The construction and operation of high-volume gas pipelines, high-voltage electric transmission lines and other major facilities are often subject to statewide or national regulatory policies and procedures that require an agency to evaluate a proposed project from a broader system perspective that considers statewide or national issues of need and practicality, in addition to local concerns. The Electric Transmission Line Certification Act at issue here, 1995 PA 30; MCL 460.561 *et seq.* ("Act 30") is a statute that authorizes a specialized, expert regulatory agency, the Michigan Public Service Commission ("MPSC" or "Commission"), to regulate the location and construction of certain high-voltage electric transmission lines from a statewide and system perspective. Even so, local interests must be considered by an applicant under Act 30 by holding meetings with the public and local officials before filing an MPSC application. MCL 460.566. Indeed, those local interests may participate in the MPSC proceedings, just as they did in this case. Far from foreclosing local input to the process, Act 30 actually demands it.

Following extensive local efforts and a contested case, METC obtained an Act 30 certificate of public convenience and necessity ("certificate" or "CPCN") from the MPSC approving the route and construction of a high-voltage electric transmission line running through the Charter Township of Oshtemo ("Township"). Township, in anticipation of the project, had amended its public utility ordinance to require proof of necessity, advance local approval and underground construction near the public rights-of-way. The MPSC considered the positions of local interests participating in the contested case but ultimately granted a certificate approving the project. The MPSC also found that

the grant of a certificate preempted the conflicting local ordinance, under Section 10(1) of Act 30; MCL 460.570(1).

Township appealed, among other positions challenging the constitutionality of Act 30, Section 10(1) on the basis that a certificate could not take precedence over the local consent requirement of Const 1963, art 7, Article VII, §29, because that requirement could not be negated by other state laws or constitutional provisions. The Court of Appeals disagreed, reviewing other constitutional language, statutes and case law in deciding that the local consent requirement was not absolute. Township sought leave to appeal to this Court, which granted the application by order of December 23, 2015 and directed briefing as follows:

The parties shall include among the issues to be briefed whether the Electric Transmission Line Certification Act, 1995 PA 30, effective May 17, 1995, is consistent with the first sentence of Const 1963, art 7, §29.

Energy Providers agree with Appellee Michigan Electric Transmission Company, LLC ("METC"), the Michigan Court of Appeals and the MPSC that the certificate issued for this project takes precedence over the Township's conflicting ordinance.

Accordingly, the Energy Providers disagree with the Township's incorrect contention that Article 7, §29 permits a municipality to effectively invalidate Act 30 as to an electric transmission project certification, and thereby render the Michigan Legislature's established MPSC regulatory process nugatory by subjecting all transmission projects to local regulation. A decision in Township's favor will disrupt the certification process of the MPSC - as validly authorized by the Michigan Legislature—and allow municipalities along the route of a proposed project to require contradictory, duplicative, and costly local proceedings. Such proceedings would occur without the demonstrated expertise

that the MPSC has regarding such matters.

Township's request for relief in this case is that METC be required to submit to the application of the local ordinance prior to establishing any public utility facilities within its boundaries. The impact of such a ruling would be expensive and harmful to the development of major new energy infrastructure projects. Indeed, transmission line projects often draw local opposition due to their visibility and corridor requirements. Act 30 allows these matters of statewide concern to be determined at the MPSC, which must balance competing interests and consider interests broader than local opposition, but without disregarding a local point of view and legitimate local concerns. Project developers are often able to work out routing issues to reduce local impacts, and the MPSC process facilitates compromise before a body with the subject-matter expertise to address these issues.

Numerous Michigan court opinions also confirm that the municipal consent requirement in art 7, §29 that forms the foundation for Township's argument is not absolute and unfettered. Just as the MPSC and Court of Appeals have rejected Township's attempt to shift the balance of power in its favor, this Court's precedent requires a similar result here. If Township's incorrect view were to prevail, Michigan can anticipate more hostile ordinances from municipalities, responding primarily to local concerns, along any proposed project route. The Township's position that opposition should be "reasonable" won't help matters much where establishing whether local consent is unreasonably withheld will require municipality-by-municipality litigation, delaying projects and driving up costs. The efficient MPSC Act 30 process, which is overseen by an agency with the necessary expertise, will be replaced by the potential of

litigious chaos for each project, with local concerns prevailing over broader statewide energy system concerns.

Energy Providers recognize that this Court must apply the constitution and law as written and intended, using established principles of construction and interpretation. Negative consequences of a constitutional provision do not control the interpretation analysis. Nevertheless, Energy Providers believe there are compelling arguments in favor of upholding the validity of Act 30, Section 10(1) based on a practical reading of the constitutional language as written, with recognition of the meaning and understanding of its terms with regard to the development of public utilities in Michigan.

Energy Providers also support the reasoning applied by the MPSC and the Court of Appeals, and the detailed arguments in METC's brief. An order or opinion affirming the Court of Appeals is warranted.

## **STATEMENT OF FACTS AND DESCRIPTION OF THE ENERGY PROVIDERS AND ELECTRIC INDUSTRY**

### **A. Statement of Facts**

The Energy Providers adopt the following portions of METC's Counter Statement of Facts and Procedural History: Sections B and E in their entirety, and Section C(4) to the extent that underground construction is significantly more expensive and burdensome than overhead construction.

### **B. Description of *Amicus Curiae* Providers**

Individual companies participating in this brief as Energy Providers, each described more fully in Attachment No. 1, have an interest in this case for several reasons, including the fact that the electric utility and electric transmission entities may have occasion to seek project certificates under Act 30. Act 30 specifically provides for certification filings by entities that are affiliated transmission companies, independent transmission companies and electric utilities. All of the Energy Providers are participants in Michigan's energy industry in various ways and have a direct and continuing interest in upholding reasonable and efficient statewide administration of major essential infrastructure projects such as high-voltage electric transmission lines that are part of the overall energy transmission and distribution system used to provide service to the public. Such projects are essential to continued efficient and reliable delivery of energy services in Michigan.

Energy Providers that are electric utilities, participating in this brief either directly or through their associations, include investor-owned companies Consumers Energy

Company, DTE Electric Company, Alpena Power Company, Indiana Michigan Power Company, Upper Peninsula Power Company, We Energies, Wisconsin Public Service Corporation and Xcel Energy; and member-owned electric cooperatives Alger Delta Cooperative, Cherryland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, Ontonagon County REA, Presque Isle Electric & Gas Co-op and Thumb Electric Cooperative.

Provider American Transmission Company LLC and ATC Management Inc. ("ATC") is an investor-owned affiliated transmission company under Act 30, similar to METC insofar as its sole business is providing a high-voltage electric transmission service. ATC does not provide a retail utility distribution service to end users.

Energy Providers also include natural gas public utilities or pipeline companies that may have occasion to seek similar certificates of public convenience and necessity from Appellee Michigan Public Service Commission ("MPSC") under state certificate laws similar to Act 30, but for natural gas or petroleum pipelines rather than electric transmission lines. Those laws are: (i) The Natural Gas Act, 1929 PA 9; MCL 482.101 *et seq.*, and (ii) the Crude Oil and Petroleum Act, 1929 PA 16; MCL 483.1 *et seq.* The natural gas utility and/or pipeline Energy Providers include Consumers Energy Company, DTE Gas Company, Enbridge Energy, Aurora Gas Company, Citizens Gas Fuel Company, SEMCO Energy Gas Company, Michigan Gas Utilities Corporation, Wisconsin Public Service Corporation, Xcel Energy and Presque Isle Electric & Gas Co-op.

### **C. Industry Background**

The constitutional local consent language in the first sentence of Const 1963, art 7, §29 was first added to the state constitution of 1908 and has remained substantively

unchanged to the present day. The public utility industry as it existed in the early 1900s, and its evolution since then, are relevant to understanding the constitutional language. Thus, the historical development of public utilities is briefly described here.

**(a) The Electric Industry (Wires, Poles and Conduits)**

In the early 1900s, electric companies were local businesses with a significant but localized “footprint” consisting of generators, distribution wires, poles and conduits in their service territories. There was no high-voltage transmission, as service was rendered in a distribution area near the generator. The industry was in its infancy, having started in the late 1800s with central station generating stations powering arc lighting and then the new incandescent lamps invented by Thomas A. Edison in 1879. Initially, direct current was used at low voltages limiting transmission over distances. The development of alternating current in 1886 improved the ability to transmit power. Initially, numerous independent providers developed, and there were often several providers in larger cities, each with their own, overlapping systems of wires. These independent companies later consolidated, leading to the regulated, service-territory-based structure in place today. In Michigan, DTE Electric began in 1886 as The Edison Illuminating Company of Detroit, which became the Detroit Edison Company through consolidation in 1903. DTE Energy was formed as a holding company much later, in 1996.

Consumers Energy began in 1888 as Jackson Electric Light Works, which was consolidated with five other local companies in 1904 as Commonwealth Power Company. In 1910, the name was changed to Consumers Power Company, which became Consumers Energy Company in 1997. Nationally, the industry followed a

similar model of local companies being consolidated, with rapid growth in types of usage, customers and demand. The business model that prevailed for most of the 20<sup>th</sup> Century was a vertically-integrated public utility structure, with a single company providing the elements of generation, transmission and distribution. Phillip F. Schewe, *The Grid – A Journey Through the Heart of Our Electrified World*, Joseph Henry Press, 2007; DTE company history at <https://dteenergy.mediaroom.com/index.php?s=26810>; Consumers Energy history at [www.consumersenergy.com/content.aspx?id=2037](http://www.consumersenergy.com/content.aspx?id=2037). Other Michigan electric utilities followed a similar pattern and integrated business structure.

Important developments in the electric industry as it grew during the last century included improving technology, increasing interconnection among systems, the introduction of regional reliability councils and the National Electric Reliability Council following the 1965 Northeast power failure, the development of state and federal regulation under the regulatory commission model and continued growth. The vertically integrated business model continued, and the nation came to be served by five major categories of electric providers: investor-owned utilities, federal power systems (e.g. Tennessee Valley Authority), public power (e.g. Lansing Board of Water & Light), rural electric cooperatives (e.g. MECA electric cooperatives), and non-utility power marketers and generators. Charles F. Phillips, Jr., *The Regulation of Public Utilities* (Public Utilities Reports, Inc 1984), pp 523-573.

More recently, state and federal law have transformed the business of electric transmission and regional transmission operators ("RTOs") have developed to control the grid operations in multistate regions. After Michigan passed the Customer Choice

and Electric Reliability Act of 2000; 2000 PA 141; MCL 460.10 *et seq.*, Consumers Energy and DTE Electric divested their high-voltage transmission systems to unaffiliated, independent companies ITC Transmission and METC. ATC in the Upper Peninsula was formed in a similar manner under a Wisconsin state law, although affiliated with the investor-owned utilities. See MPSC "History of Commission" at [www.michigan.gov/mpsc](http://www.michigan.gov/mpsc) and Dr. Karl McDermott, *Cost of Service Regulation in the Investor-Owned Electric Utility Industry – A History of Adaptation* available at [http://eei.org/issuesandpolicy/stateregulation/Documents/COSR\\_history\\_final.pdf](http://eei.org/issuesandpolicy/stateregulation/Documents/COSR_history_final.pdf). The more recent industry evolution was recently described by the U.S. Supreme Court in *FERC v Electric Power Supply Assn*, 577 US \_\_ 136; SCt 760 (2016).

### **(b) The Natural Gas Industry (Pipes, Conduits)**

A local gas lighting industry existed in the United States starting in the early 1800s. Kerosene and gas manufactured from soft coal had replaced whale oil lamps and tallow candles. The growth in this industry continued into the 1920s as new uses of gas were promoted, when the new electric lighting captured part of the public lighting market. Michigan's gas industry grew in the late 1800s with manufactured gas and some locally produced natural gas. There were multiple competing providers in some cities.

Nationally, the natural gas utility industry experienced dramatic growth starting in the 1930s, when improved designs led to construction of major long distance pipelines from gas-producing states in the South to the Northern states. These sources caused a phase-out of manufactured gas in Michigan during the 1940s. Michigan continues to be a consuming and producing state, with ample sources of gas supply,

gas storage fields and a network of pipelines. Phillips, *supra*, pp 577-580; See, *Michigan's Natural Gas Industry*, <http://www.dleg.state.mi.us/mpsc/gas/about4.htm>.

Today's major Michigan gas utilities grew out of smaller local entities as the gas market expanded. The major providers today include DTE Gas (formerly Michigan Consolidated Gas Company), Consumers Energy Company, SEMCo Energy Gas Company and Michigan Gas Utilities. These are retail service companies with local distribution networks, supplied through the interstate gas pipeline network. See, <https://dteenergy.mediaroom.com/index.php?s=26828>.

### **(c) Telecommunications Industry (Poles, Wires, Conduit)**

The telecommunications industry started in 1844 with the first commercial telegraph line between Washington, DC and Baltimore, MD. Western Union came to dominate the public telegraph industry but demand for telegraph service declined. The telephone industry grew rapidly in the late 1800s, following the issuance of the "world's most valuable patent" (No. 174,465) to Alexander Graham Bell in 1876. The growth of the telecommunications industry was accompanied by continuous improvements in technology and changes in state and federal regulatory policy and corporate structure. The Bell System continued to function as a regulated business for much of this historical period. Local service was provided by the AT&T Bell System and smaller rural telephone companies operating local exchanges. At the local level, this service continued to be rendered through local distribution public utility networks using a distribution network and local exchanges. *The History of AT&T*, [www.corp.att.com/history/](http://www.corp.att.com/history/).

**(d) Other Public Utilities (Tracks, Pipes, Wires)**

In 1909, local water and sewer systems also made use of the public right-of-ways, continuing to the present day. In Michigan, these utilities are primarily owned and operated by the municipalities themselves or a public board or authority. The term “tracks” in the constitutional provision refers to railroads, an industry experiencing rapid growth in Michigan in the early 1900s, later experiencing consolidation and abandonment of many lines. Railroad History of Michigan at [www.michiganrailroads.com](http://www.michiganrailroads.com). The cable-television industry developed in the second half of the 20<sup>th</sup> Century although its local footprint did not involve significant duplication of public utility poles and wires due to the ability to attach wires to existing public utility infrastructure. See MCL 460.6g regarding MPSC regulation of the rates charged by public utilities to “attaching parties”. There is a definition of “utility” in this statute that also encompasses the “big footprint” local distribution facilities used in a municipality (poles, ducts, and conduits).

**ARGUMENT**

**Section 10 of the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.570 (1), providing that a certificate of public convenience and necessity issued by the Michigan Public Service Commission takes precedence over a conflicting local ordinance, is constitutional despite the first sentence of Const 1963, art 7, §29 requiring a township’s consent for public utilities to use township public rights-of-way.**

The issue as stated above was specified in the Court’s December 23, 2015 order granting leave to appeal in this case. Energy Providers contend there is no constitutional inconsistency between Act 30 and Article 7, §29. Act 30, Section 10 states that a certificate of public convenience and necessity (“CPCN”) issued under Act

30 takes “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”. MCL 460.570(1). This language was applied by the MPSC in this case after extensive regulatory proceedings. In the relevant part of its order, the MPSC found that Act 30 took precedence over the Township’s amended utility control ordinance requiring proceedings and advance approval of the proposed line at the local level, including a requirement to underground certain portions of the line. The Michigan Court of Appeals subsequently affirmed this ruling.

Regardless, the Township continues to assert that Act 30 is inconsistent with the first sentence of Const 1963, art 7, §29, read alone and not in conjunction with other constitutional language. That sentence states (emphasis added):

No person, partnership, association or corporation, public or private, **operating a public utility** shall have the right to the **use of the highways, streets, alleys or other public places** of any county, township, city or village for **wires, poles, pipes, tracks, conduits, or other utility facilities** without the consent of the duly constituted authority of the county, township, city or village; or to **transact local business** therein without first obtaining a franchise from the township, city or village.

This language first appeared nearly verbatim as a new provision in Const 1908, art 8, §28. The language was carried forward in the 1963 constitution with no changes except to add “county” to the listed municipalities and the phrase “or other utility facilities” to the listed types of utility facilities.

A textual, practical and common sense reading of this language should take into account the phrase “operating a public utility” as practically understood in 1908 and 1963. In the early 1900s, the rapidly developing electric, gas and telecommunications industries had a massive overall footprint requirement for use of the streets and public

rights-of-way of a municipality in which they constructed and operated the new systems. Electric, telephone and gas local service required use of most developed streets for poles, wires, mains and service lines to extend energy or communications to customer businesses and homes throughout the municipality. In 1909, the utility service was very much a local business. There were no long distance electric transmission and interstate gas pipelines. The consent and local franchise requirements of art 7, §29 were important due to the major impact a utility business would have throughout the municipality. Municipal "consent" to this impact was important, although as history and observation demonstrate, it was readily obtained and given due to the desired benefits of public utility services.

Early Michigan regulatory statutes recognized the attributes of an electric public utility as including a utility plant or system, carrying on a local business, serving a specified territory, engaging in both the transmission and supply of electricity, having rates regulated by a regulatory commission as "just and reasonable" and being required to serve customers without preference or discrimination in rates. See 1929 PA 69; MCL 460.501, *et seq.* and 1909 PA 106; MCL 460.551, *et seq.* Act 69 contains a definition of "public utility" that speaks of owning or operating facilities for producing, generating, transmitting, delivering or furnishing gas or electricity to the public for compensation. MCL 460.501(1). These statutes remained part of the law when the state constitution was updated in 1963 and continue as part of the law to this day.

In 1963, when the constitution was updated, electric utilities continued to operate as vertically integrated businesses including the distribution network occupying most of the public streets and rights-of-way to extend service to the businesses and

residences served. High-voltage transmission was owned and operated by the major integrated utilities performing a local distribution function until the early 2000s, when DTE, Consumers Energy and utilities serving the Upper Peninsula transferred their high-voltage systems to newly formed “transmission-only” companies that operate these systems under control of federally-regulated multi-state regional transmission operators.

Michigan’s Customer Choice and Electric Reliability Act of 2000, 2000 PA 141; MCL 460.10, *et seq.* included a provision requiring investor-owned utilities to either join a FERC-approved regional transmission operator or divest transmission facilities to an independent owner. MCL 460.10w.

Energy Providers agree with the other parties that a rule of common understanding can be applied to the constitutional provision at issue here. In re Proposal C, 384 Mich 390,405; 185 NW2d 9 (1971). The primary objective of constitutional interpretation is to determine the intent of the people at the time of ratification. The plain meaning of terms used is applied unless technical, legal terms are employed. Wayne Co v Hathcock, 471 Mich 445,468; 684 NW2d 765 (2004). Although a textual, plain meaning approach is important, other factors can impact the analysis, such as the purpose or spirit of a provision, historical evidence of intent, judicial precedents and arguments of policy. R. Randall Keslo, *Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal History*, 29 Val. U. L. Rev. 121 (1994).

A plain reading of Const 1963, art 7, §29 as applied to Act 30 demonstrates no conflict between the two. An applicant for a CPCN under Act 30 is not seeking to “operate a public utility” in the municipality because the certificate will not authorize a

general occupancy of the public streets for public utility purposes. Transmission lines are not part of the distribution network used for delivery of service to energy customers throughout the municipality and the certificate approval is limited to high voltage transmission facilities related to a system already existing and operating in the municipality and elsewhere.

Township contends that Act 30's provision regarding precedence of a certificate "emasculates, guts and negates outright" the constitutional provision for local consent. This argument fails because Act 30 does not provide for the MPSC to issue a certificate for the general operation of a public utility system in a municipality. The CPCN does not address the local distribution system at all, or the transaction of a local business rendering utility service as understood in the historical sense. In a hypothetical municipality that did not have a local electric or gas utility, Consumers Energy or DTE would not be able to obtain a CPCN under Act 30 to set up their system and conduct a local service.

Further, if the two parts of the first sentence of art 7, §29 are read together, the authorization for transacting a local business in the second part gives indication of the intent behind the first part. These parts speak generally of a consent for a public utility to engage in business in the municipality and occupy the area with its public service distribution network. The apparent purpose of the entire sentence is to provide authority for a general consent to allow a public utility to build a system and serve customers in the municipality. This consent already exists in Oshtemo Township and throughout Michigan areas served by public utilities. Nothing in Act 30 acts to limit or affect in any way this consent requirement. Act 30 does not speak to the right of public

utilities, as understood in the traditional sense of rendering energy service to the public residents, to operate in a municipality.

Township's brief advocates a singular focus on the first sentence of art 7, §29 regarding local consent. Taken to its logical extreme, this approach would support an unfettered right for a municipality to deny consent for use of the right of way, for any or no reason. Realizing this extreme position is neither practical nor a desired outcome (after all, reliable utility service benefits local citizens), Township's final argument goes outside the "consent" sentence to the last sentence of the constitutional section, which speaks of "reasonable" local control. Thus, in Township's view, consent could not be *unreasonably* withheld.

The policy impact of this Township reasoning would be costly and impractical. Municipalities all along a proposed project route could deny consent arbitrarily, with the project developer's recourse being to engage in litigation over the reasonableness of each denial. Transmission projects that provide direct benefits to certain municipalities could be opposed with this veto power by other municipalities along the route. This is a recipe for regulatory dysfunction. Alternatively, projects could be abandoned or not commenced until service reliability is impacted to such a degree that it affects all service in the area, so that public pressure would arise to favor consent. Act 30 provides for consideration of local interests and impact in the MPSC proceedings, as occurred in this case.

Township's willingness to go outside the boundaries of the consent provision to invoke a reasonableness test also flies in the face of the proper reasoning employed by the Court of Appeals in this case to read art 7, §29 together with the provision in art 7,

§22, making municipal exercise of powers through resolutions and ordinances subject to the constitution and law, in this case, Act 30. Energy Providers support the analysis by the Court of Appeals and the Appellees reading the constitutional provisions together to find that no unconstitutional delegation of power occurred in the enactment of Act 30.

The last sentence of art 7, §29 states:

Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Application of this language is not restricted to public utility activity and recognizes a general right of municipalities to reasonable control. This sentence is subject to other provisions of the constitution such as art 7, §17 and 22 which recognize the power of the legislature to “provide by law” for non-municipal concerns. Act 30 does not oppose “reasonable control” by local municipalities based on their local interests insofar as it requires an applicant to ascertain those interests before filing an application. MCL 460.556. Act 30 also requires specific notice of an application to municipalities and landowners affected by a project who may intervene and participate in the proceeding. MCL 460.568(1). The MPSC must consider public benefits of a proposed transmission line, determine a feasible and reasonable route and consider public health and safety. MCL 460.568(5). These requirements, applied in the present case, assure that unreasonable local control will not thwart a project meeting the Act 30 standards and are not inconsistent with reasonable local control of public right-of-ways.

**CONCLUSION AND RELIEF**

Energy Providers respectfully request that this Court uphold the constitutionality of 1995 PA 30; MCL 460.561-460.575 and reject the arguments to the contrary by Oshtemo Charter Township, for reasons stated above.

Respectfully submitted,

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**Michigan Energy Providers Group**  
**Attachment No. 1**

American Transmission Company LLC and ATC Management Inc. ("ATC") is a Wisconsin limited liability corporation that owns, operates, maintains, and constructs electric transmission facilities in the states of Illinois, Michigan, and Wisconsin. ATC was founded in 2001 as the first multi-state transmission only provider in the United States. ATC is engaged solely in the business of transmitting electric power over a high voltage network ATC serves which covers much of the Upper Peninsula of Michigan. ATC's service is to transport electric power from the generating source to the local distribution provider or others who purchase electricity for service to end users. ATC at times seeks certification of Michigan facilities pursuant to 1995 PA 30 from the Michigan Public Service Commission; most recently in MPSC Case No. U-17272 (MPSC order dated January 23, 2014) involving a 138kV transmission line in the Escanaba, Michigan area.

Consumers Energy is, among other things, engaged as a public utility in the business of generating, purchasing, distributing, and selling electricity to approximately 1.8 million retail customers in the State of Michigan. The retail electric system of Consumers Energy is operated as a single utility system, within which uniform rates are charged. Consumers Energy is, among other things, engaged also as a public utility in the business of purchasing, transmitting, distributing, and selling natural gas to approximately 1.7 million customers in the State of Michigan. The natural gas system of Consumers Energy is operated as a single utility system in which uniform rates are

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charged. Consumers Energy provides electricity and/or natural gas to approximately nearly 6.6 million of Michigan's 10 million residents in all 68 Lower Peninsula counties.

DTE Electric Company is a subsidiary of DTE Energy, a Michigan corporation with principal offices at One Energy Plaza, Detroit, MI 48226 providing retail electric service regulated by the Michigan Public Service Commission to more than 2 million customers in Southeast Lower Michigan. DTE Electric operates a major electric distribution system and uses the high voltage network of transmission service providers including METC and ITC in Lower Michigan in providing its retail electric service.

DTE Gas Company is a subsidiary of DTE Energy, a Michigan corporation with principal offices at One Energy Plaza, Detroit, MI 48226, providing retail natural gas public utility service regulated by the Michigan Public Service Commission to approximately 1.2 million customers in parts of Michigan's Upper and Lower Peninsulas. DTE Gas operates a system of transmission and distribution gas lines throughout its service areas and relies on the natural gas transmission pipelines of multiple transmission providers.

Enbridge Energy Limited Partnership ("Enbridge") is a limited partnership duly organized under the laws of the State of Delaware, with its principal place of business located at 1100 Louisiana, Suite 3300, Houston, Texas 77002. Enbridge owns and operates the Lakehead System, the U.S. portion of an operationally integrated, international liquid petroleum pipeline system known as the Enbridge Mainline System.

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The Lakehead System spans from the international border near Neche, North Dakota, to the international border near Marysville, Michigan. Enbridge operates approximately 900 miles of pipeline within Michigan. The petroleum transported by the Lakehead System is required by regional refineries to produce propane, gasoline, and diesel fuels and is used as a feedstock to produce a variety of consumer goods such as computers, clothing and medical equipment. The petroleum is also used in the manufacture of vehicles and tires, on which Michigan's automobile industry and economy relies.

Michigan Electric Cooperative Association ("MECA") is a trade association whose members include Michigan's 9 rural electric cooperatives: Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, Ontonagon County REA, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative. These members provide retail electric service to more than 600,000 customers in all or part of 58 counties throughout Michigan, relying on the high voltage transmission system of Wolverine, METC and other transmission providers.

Michigan Electric and Gas Association ("MEGA") is a Michigan non-profit corporation serving as a trade association for its member electric and gas utilities providing retail utility service in Michigan. MEGA electric utility members include Alpena Power Company, Indiana Michigan Power Company, a unit of American Electric Power,

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Upper Peninsula Power Company, We Energies, Wisconsin Public Service Corporation, and Northern States Power of Wisconsin, d/b/a Xcel Energy. MEGA gas utility members include Aurora Gas Company, Citizens Gas Fuel Company, Michigan Gas Utilities, and SEMCO Energy Gas Company.

Wolverine Power Supply Cooperative, Inc. ("Wolverine") is a Michigan-based not-for-profit generation and transmission electric cooperative that provides wholesale service to its seven members. Wolverine has five traditional distribution cooperative member-owners: Cherryland Electric Cooperative, Great Lakes Energy Cooperative, HomeWorks Tri-County Electric Cooperative, Midwest Energy Cooperative, and Presque Isle Electric & Gas Co-op (collectively, the "Distribution Cooperative Member-Owners"). These Distribution Cooperative Member-Owners purchase power from Wolverine and resell that power at retail to approximately 268,000 customers located in Michigan, Ohio, and Indiana. Wolverine's two other member-owners, Wolverine Power Marketing Cooperative, Inc. and Spartan Renewable Energy, Inc. are alternative electric suppliers in Michigan licensed by the Michigan Public Service Commission. Wolverine's members are both its customers and its owners. Wolverine obtains capacity and energy from its own units and/or long-term power supply contracts and balances its power supply portfolio with short-term purchases from, and sales into, Midcontinent Independent Transmission System Operator ("MISO"). Wolverine is a MISO Transmission Owner with a transmission system consisting of approximately 1,600 miles of 69 kV and 138 kV looped transmission lines and

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associated facilities. These facilities are interconnected with other Michigan transmission owners systems in the Lower Peninsula of Michigan including the Michigan Electric Transmission Company (METC) system.