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Via Electronic Filing

April 9, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
PO Box 30221
Lansing, MI 48909-7721

Re: **Consolidated Cases U-21471/U-21472**

In the matter of the application of MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC for an Act 30 certificate of public convenience and necessity for the construction of a major transmission line between *Oneida Substation in Eaton County and Nelson Road Substation in Gratiot County, Michigan* AND the *Indiana/Michigan state border at Gilead Township in Branch County and the new Helix Substation in Calhoun County, Michigan*.

Dear Ms. Felice:

Enclosed for electronic filing in the above-referenced consolidated cases are Michigan Electric Transmission Company, LLC's Reply Brief and Proof of Service.

If you have any questions, please contact me.

Sincerely,

Dykema Gossett PLLC

Richard J. Aaron

cc: William and Linda Martin (w/encl – via first class mail only)

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of MICHIGAN)
ELECTRIC TRANSMISSION COMPANY, LLC for)
an Act 30 certificate of public convenience and)
necessity for the construction of a major)
transmission line between Oneida Substation in)
Eaton County and Nelson Road Substation in)
Gratiot County, Michigan.)

Case No. U-21471

In the matter of the application of MICHIGAN)
ELECTRIC TRANSMISSION COMPANY, LLC for)
an Act 30 certificate of public convenience and)
necessity for the construction of a major)
transmission line between the Indiana/Michigan)
state border at Gilead Township in Branch County)
and the new Helix Substation in Calhoun County,)
Michigan.)

Case No. U-21472

MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC'S REPLY BRIEF

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INTRODUCTION

The facts of this case are largely uncontested. Both of Michigan Electric Transmission Company, LLC's ("METC") Applications complied with the provisions of the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.561 *et seq.* ("Act 30"), and demonstrated that the Nelson Road to Oneida and Helix to Hiple Projects (collectively, the "Projects") are needed to strengthen the state's transmission infrastructure and maintain the long-term reliability of the grid. No party has claimed that the Projects should not be built. And no party has offered any legitimate alternative to address the current and future transmission needs identified by MISO's 2020 Reliability Imperative directing Michigan and MISO members to collaboratively respond to the electric reliability challenges affecting the region. The record is therefore clear: Michigan needs to construct the Projects in furtherance of its own transmission and energy needs as well as its shared regional responsibility. Because METC met the requirements of Act 30, the Commission must grant the requested certificates of public convenience and necessity ("Certificate" or "CPCN") for the Projects.

The outstanding issues for the Commission's consideration are the terms by which the Commission approves the Projects and issues the Certificates, including actions METC should take following this proceeding and the route in which the Nelson Road to Oneida Project will follow.¹ Staff recommends that the Certificates include three conditions, each aims to provide unwarranted assurance, even though the record

¹ No party has recommended that the Commission adopt an alternative route for the Helix to Hiple Project. As noted below, Staff offered an analysis of PR Prime but did not recommend the Commission adopt it.

clearly confirms there is no basis for doubt. Even with the undisputed evidence, Staff claims METC must be directed to do what it is already doing or plans to do.

Consistent with its normal business practices and prior Act 30 proceedings, METC requested the Certificates include flexibility to allow for, among other things, landowner requested minor modifications that will be incorporated during final design and construction. Several METC witnesses have confirmed that METC has and will consider all landowner requests and will accommodate those requests to the extent permitted and practical – METC does so with every new transmission infrastructure project. There is no need nor any practical reason to require METC to file with the Commission memoranda addressing such requests, particularly when such memoranda could include personal information from landowners that should not (or cannot) be disclosed. METC has also already provided landowners with METC’s and its land agent’s contact information and will maintain open communication with affected landowners before, during, and after construction. There is no evidence in the record to suggest otherwise.

More concerning, however, is Staff’s “all or nothing” proposed condition that Michigan should only participate in regional transmission initiatives after all the other states in the MISO footprint have approved the projects that will be located within their respective borders. Staff claims that the only way to ensure Michigan will benefit from the Projects’ construction is if the Certificates are conditioned on the other Long Range Transmission Plan (“LRTP”) Tranche 1 projects receiving regulatory approval first. Staff’s proposal, however, is counterproductive and does not reflect the realities of the time needed to construct a new transmission line. Just like Michigan, other MISO

members are relying on the Commission and METC to timely approve and construct LRTP projects.

Not only is it undisputed that Michigan will benefit from the construction of the Projects, but the record demonstrates Michigan *needs* new backbone infrastructure. No party refutes the reliability needs driven by achieving state and federal decarbonization goals, the risks associated with an increased frequency of severe weather events, and the rising energy costs from a progressively insufficient capacity import limit (“CIL”) for Local Resource Zone (“LRZ”) 7. These needs must be addressed and, according to MISO and METC, these needs must be addressed by expanding the grid. Although the benefits of the new transmission lines in Michigan are maximized when all LRTP Tranche 1 projects are constructed, the record contains evidence from two expert witnesses – METC witness Charles Marshall and MEIC² witness Michael Goggin – that confirm Michigan stands to benefit from the Projects with or without the entire LRTP Tranche 1 portfolio. Helix to Hiple, specifically, will establish Michigan’s first connection to neighboring states in 50 years, which will necessarily allow for greater access to much needed capacity. No evidence contradicts Mr. Marshall’s and Mr. Goggin’s expert opinions.

Aside from Staff’s conditions, a group of landowners – the Nelson-Oneida Intervenors (or “NRO Intervenors”) and Knaggs Group Intervenors (collectively, the “Intervenors”) – challenge a portion of the proposed route for the Nelson Road to

² The Michigan Energy Innovation Business Counsel, the Institute for Energy Innovation, and Clean Grid Alliance (collectively, “MEIC”).

Oneida Project.³ The Intervenors, through inflammatory rhetoric, argue that the impacts of the Nelson Road to Oneida Project should be shifted from their respective parcels to either the Alternate Route or their proposed NROL Hybrid route. The Intervenors are not attempting to minimize the impacts of a new transmission line nor are they credibly claiming that the Proposed Route is infeasible or unreasonable – Staff and METC agree the Proposed Route is feasible and reasonable. Rather, the Intervenors seek to further their personal interests by asserting their proposals offer a “better route.” Staff agrees, however, that Act 30 does not require an applicant to request siting authority for the “best” or “most” reasonable route; Act 30 simply requires a finding that the route the applicant intends to construct is feasible and reasonable. Absent a showing that the applicant’s proposed route does not meet the statutory standard, Act 30 requires a certificate be granted for that proposed route. And even though not required, METC has shown that the METC actually considered and thoughtfully rejected route options that included the segments recommended by the Intervenors in this case. In short, the Nelson Road to Oneida Proposed Route is reasonable and feasible and the Intervenors’ alternative routes should be rejected.

All parties agree that the Commission should grant METC’s Applications. Because METC has satisfied all statutory requirements entitling it to the Certificates,

³ No party has raised in briefing that the Helix to Hiple Proposed Route is infeasible or unreasonable. Indeed, Staff recommends that the Commission find that the Helix to Hiple Proposed Route satisfies MCL 460.568(5)(b). Staff Initial Brief, p. 67. Staff did analyze PR Prime and found, under its analysis, that it outperformed the Proposed Route but did not recommend the Commission adopt it. METC articulated its reasons the Commission should reject any such alternative in its Initial Brief. METC Initial Brief, pp. 115-117.

the Commission must issue the Certificates so METC may begin construction of the Nelson Road to Oneida Project and the Helix to Hiple Project.

ARGUMENT

I. **REPLY TO COMMISSION STAFF**

Staff and METC agree: METC satisfied the requirements of Act 30 and must be granted Certificates for the Projects. In addressing each statutory requirement, Staff confirmed that METC complied with the pre-application requirements under MCL 460.564 and MCL 460.566 and filed two Applications with all information MCL 460.567 requires. Staff Initial Brief, p. 9. Staff also confirmed that the Projects do not pose an unreasonable threat to public health and safety, in compliance with MCL 460.568(5)(c), the Proposed Routes for Nelson Road to Oneida and Helix to Hiple are feasible and reasonable under MCL 460.568(5)(b), and, as part of the LRTP Tranche 1 portfolio, the quantifiable and nonquantifiable benefits justify construction under MCL 460.568(5)(a). Staff Initial Brief, p. 10. Indeed, “Staff recommends the Commission approve METC’s [A]pplication[s] for CPCNs for Nelson to Oneida and Helix Hiple[.]” *Id.*

Staff, however, recommends the Commission include three conditions to the Certificates. Staff’s conditions are not driven by allegations that there is insufficient evidence for the Commission to determine the statutory requirements under Section 8(5) nor a disagreement that the Projects are needed and should be constructed. Rather, Staff’s conditions are intended “[t]o ensure accountability and provide those affected landowners with assurances that METC will indeed do what it says[.]” Staff Initial Brief, p. 24. In other words, Staff is attempting to manufacture certainty but doing so when there is no evidence suggesting that assurances are warranted.

Staff’s first condition requires METC to consider minor route modifications to minimize the impact on affected landowners and file in this docket a document that explains why an adjustment could not be made. Staff Initial Brief, pp. 24-25. There is no evidence to support that METC will not consider landowner requests; in fact, METC’s Applications include a request to the Commission to include flexibility in the Certificates for such modifications through the minor modification proposal. Applications, ¶ 20; 5 TR 399-404. The second condition is that METC provide affected landowners with contact information to communicate with METC for concerns that arise during and after construction. Staff Initial Brief, p. 26. Again, there is no evidence that METC will not provide this information and, in fact, the record reflects that METC *has provided* landowners with the contact information Staff wants to condition construction upon. The third, and most contentious condition, requires METC to wait to begin construction until all other LRTP Tranche 1 projects, specifically LRTP Tranche 1 projects 12, 13, 14, 15, and 16,⁴ receive their separate regulatory approval. Staff Initial Brief, pp. 26-30. If one or more projects, for some reason do not receive state regulatory approval, Staff’s condition suggests that the Projects cannot be constructed at all.

⁴ Staff is inconsistent in its reference to which LRTP Tranche 1 projects it recommends be included in its proposal. In some instances, it references the LRTP Tranche 1 projects 12 through 16 and in others it references all LRTP Tranche 1 projects, suggesting projects 1 through 16. Cf. Staff Initial Brief, p. 10, with Staff Initial Brief, p. 27. Staff also does not define what is meant by “necessary regulatory approval,” which could mean a proceeding for siting authority like an Act 30 but could also mean all regulatory approvals. A new transmission line may require several forms of approval prior to construction. As an example, in Michigan, a new transmission line like the Projects could require permits from the Michigan Department of Environmental, Great Lakes, and Energy (“EGLE”) or tall structure permits if near an airport. Regardless, even with well-defined parameters, METC objects to Staff’s conditional approval.

To be clear, METC agrees with Staff that open and transparent communication with the public is critical to the successful development of new infrastructure. And METC acknowledges there are inherent risks to Michigan's commitment to regional transmission initiatives. METC, however, does not agree with Staff that its conditions will create any more certainty than already exists as reflected in the record evidence. Each condition is addressed below.

- A. METC will consider and, when feasible and prudent, adopt landowner requested minor route modifications, if permitted by the Commission, but the Commission should reject Staff's condition to require METC to file a document explaining why a minor modification cannot be accommodated.**

METC will consider landowner requests and ensure affected landowners have information to contact METC before, during, and after construction of the Projects. METC considers landowner requests and provides landowners with contact information as part of its regular business practices. 5 TR 742-743. METC reiterates, however, that including Staff's conditions in the Certificates is not necessary.

METC intends to consider landowner requests, consistent with its usual business practices, and its Initial Brief also summarizes METC's request for Commission approval to make minor route modifications to the approved routes. METC Initial Brief, pp. 135-139. The minor modification proposal is intended to allow METC to do exactly what Staff wants METC to do. METC witness Munzel explained that during the land acquisition phase of development, METC evaluates all landowner requests and explores all possible solutions to minimize the impact to landowners, which may include solutions within the minor modification proposal, if approved by the Commission. 5 TR 742. Staff notes that it "finds this encouraging." Staff Initial Brief, p. 24. Thus, to the extent the

Commission agrees with Staff that METC should “consider minor route changes at the request of impacted landowners,” doing so requires approval of METC’s minor modification proposal. Staff is correct that the flexibility to make minor route modifications benefits both METC and affected landowners. Staff Initial Brief, p. 25.

As part of this first condition – that METC consider landowner requests for minor route adjustments – Staff recommends that the Commission require METC to “file a short memorandum detailing the request and the reason it cannot be accommodated.” *Id.* Staff reasons this additional step will ensure that METC “will communicate with affected landowners and thoroughly consider these modifications in a transparent manner.” *Id.* Respectfully, this condition is an inappropriate overreach, not justified by the facts in the record, and not supported by law. The Commission should therefore reject Staff’s request that METC file memorandums detailing minor modification requests that could not be accommodated.

Staff’s concern that METC will not consider landowner requests or communicate with affected landowners is not supported by the record. METC witnesses Munzel (Director of Real Estate), DuPree (Director of Design Engineering), and Stump (Director of Local Government and Community Affairs) all testified that METC will thoroughly consider all landowner requested minor modifications during the land acquisition phase of the Projects’ development. 5 TR 742, 400-401, 463-464. Confirmation for METC’s experts in land acquisition, line design, and public outreach highlights that it is a regular business practice for METC to consider landowner requests for minor route modifications and accommodate those requests to the extent possible and permitted by the Commission. Staff has also acknowledged that METC already

considered feedback from the public including landowners and incorporated that feedback into the Proposed and Alternate Routes for the Projects. Staff Initial Brief, pp. 66, 71.

Staff also did not identify or explain how METC’s current process of engaging with landowners during land acquisition is inadequate.⁵ METC witness Munzel described this process in detail. 5 TR 742. Landowner requests are addressed on a case-by-case basis during acquisition discussions between a landowner and METC’s land agent. *Id.* Mr. Munzel notes that METC’s approach to using land agents as the point of contact allows for an open, organic, and individualized dialogue between the landowner and METC. 5 TR 743. If a landowner makes a specific request to a land agent, the land agent communicates that request to METC’s route design and engineering teams. 5 TR 742.

METC witness DuPree explained that consideration of landowner requests for minor modifications (changes from the centerline) and requests for structure transitions (movement of a structure along a centerline) happens before finalizing the design of a project. 5 TR 402. Once a request to modify structure placement is received, METC will review the request, and where feasible and prudent (and in accordance with any approved minor modification criteria), incorporate an updated location, potentially the landowner’s preferred location, into the final design. *Id.* After review, Mr. Munzel states

⁵ In a related but separate context, Staff states that METC’s public meeting structure “meets and, in some regards, exceeds the requirements regarding public outreach[.]” Staff Initial Brief, p. 41-42. The same open and transparent public engagement philosophy applies to landowner engagement during land acquisition. Both METC witnesses Munzel and Stump testified that METC designs its landowner and public engagement to allow for an open and organic dialogue between METC and landowners. 5 TR 463, 743.

the landowner is informed of METC's decision and provided an explanation by the land agent. 5 TR 742.

Finally, Staff fails to consider the practical and legal constraints of its condition. These constraints mean a memorandum that includes the details of a landowner's request and METC's explanation for why the request cannot be accommodated offers little benefit to affected landowners. Michigan law creates restrictions related to publicly disclosing or publishing personal identifying information such as names and addresses without consent from a landowner.⁶ This means a memorandum filed in a public docket could not be a way for a landowner to learn that their specific request was considered and/or why it cannot be accommodated without landowner consent. Not to mention that some landowners may not want personal or sensitive details shared with the public as such requests could create tensions with neighbors and/or family members.

Staff's proposed condition, albeit made with good intentions, is simply not practical for METC or affected landowners. METC is well aware of the impact a transmission line has on affected landowners and it does not require conditions to appreciate that impact. Open and transparent communication with landowners extends well beyond construction as METC will be continuously working with landowners while it ensures the safe and reliable operation of the Projects after construction. It benefits METC as much as landowners to maintain open lines of communication before, during, and after construction.

⁶ See, generally, the Identity Theft Protection Act, 2004 PA 452, as amended, MCL 445.61 *et seq.*, MCR 1.109(9); Mich Admin Code, R 460.153 (requiring customer consent for disclosure of person identifying information to a third party for a secondary purpose).

B. METC has provided landowners with contact information for concerns that arise during and after construction, making Staff’s second condition unnecessary.

With respect to Staff’s second condition, METC notes that it has already provided contact information to landowners, so additional assurances are not necessary. METC witness Munzel testified that METC has started engaging with landowners and developing relationships. 5 TR 741. The relevant contact information was provided in a letter mailed to landowners in July 2024. 5 TR 744. And, to the extent that a landowner did not receive a letter or retain the contact information contained in the letter, Mr. Munzel explained that METC’s land agents also provide contact information with landowners. *Id.* Placing such a condition upon a certificate is unnecessary.

C. The Commission should reject Staff’s condition that METC cannot begin construction of the Project until the other LRTP 1 Projects receive regulatory approval.

Staff also recommends that the Commission condition the Certificates on the other LRTP Tranche 1 projects, specifically 12, 13, 14, 15, and 16, “receive necessary regulatory approval in the state that they are to be constructed.” Staff Initial Brief, pp. 26-27. Although Staff agrees that the Projects “provide significant benefits to Michigan customers so long as the total LRTP Tranche 1 portfolio of projects is constructed,” *id.*, Staff claims its condition is required to hold METC “accountable to being able to deliver the promised benefits[.]” Staff Initial Brief, p. 24.

Act 30 does not require a finding that an applicant will “deliver the promised benefits,” it requires a finding that “the [q]uantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.” MCL 460.568(8)(a). In other words, Act 30 directs the Commission to find “that the proposed transmission line

would fulfill a public purpose[.]” *HAR Co, LLC v Mich Electric Transmission Co LLC (In re Mich Electric Transmission Co)*, 309 Mich App 1, 14; 867 NW2d 911 (2014).

If a proposed transmission line fulfills a public purpose and its quantifiable and nonquantifiable public benefits justify construction, then the Commission “shall grant the application and issue the certificate.” MCL 460.568(5).

There is no basis on this record to support Staff’s recommended condition. METC’s Initial Brief summarizes why the Commission must reject Staff’s condition because it is dependent on the action of someone other than the applicant and therefore not authorized by Act 30. METC Initial Brief, pp. 82-83; see also MCL 460.568(4). The Commission must reject Staff’s condition for two additional reasons: (i) there is sufficient record evidence for the Commission to find that the Projects’ public benefits justify construction and (ii) Staff’s “all or nothing” approach to transmission development is against the public interest.

1. The record demonstrates that the Projects’ public benefits justify construction, with or without the entire LRTP Tranche 1 portfolio.

The principal reason Staff recommends that METC wait to begin construction is Staff’s belief that there is “no evidence entered into in this case that identifies, analyses, or illustrates a clear benefit to these [P]rojects absent the whole portfolio that justify the construction.” Staff Initial Brief, p. 27. But, in the same breath, Staff acknowledges that Staff “does not testify conclusively that there are NO benefits with constructing these lines in isolation[.]” just that METC did not provide the type of analysis Staff would have wanted. Staff Initial Brief, p. 28 (emphasis in original). Staff’s argument is more about the form of evidence than the substance. The record contains more than sufficient

evidence to support that the Projects’ public quantifiable and nonquantifiable benefits justify construction under MCL 460.568(8)(5)(a), with or without the other LRTP Tranche 1 projects.

“The testimony of one expert constitutes substantial evidence in PSC cases.” *HAR Co, LLC*, 309 Mich App at 12, citing *Ass’n of Businesses Advocating Tariff Equity v Pub Serv Com*, 192 Mich App 19; 480 NW2d 585 (1991). The record includes the testimony of two expert witnesses – METC witness Marshall and MEIC witness Goggin – both of which testify that the Projects provide public benefits when viewed in isolation. 5 TR 326-327, 904-905. Their opinions are not based on speculation or conjecture; rather, both experts ground their respective opinions on objective facts that the Projects will expand Michigan’s transmission system and add new paths for power flow; provide a new interstate connection point between the new Helix Substation and existing Hiple Substation, which will increase import and export capacity capabilities and market access; the costs will be regionally cost-shared once in-service; and Michigan has already experienced negative cost implications due to insufficient access to capacity.

METC witness Marshall testified that construction of the Projects will provide benefits to Michigan even absent other LRTP 1 projects. 5 TR 326. Mr. Marshall confirmed that expanding Michigan’s transmission system aids in increasing LRZ 7’s CIL, promoting reliability of Michigan’s system, supporting the growth of Michigan’s overall renewable generation portfolio, and bring jobs and economic growth to the state. 5 TR 324. Mr. Marshall explained that these benefits will materialize because the Projects provide a critical connection between Michigan and neighboring states. *Id.* The Helix Substation itself, absent other LRTP Tranche 1 projects, will act as an electrical

hub that will loop in existing 345 kV transmission line segments as well as the Helix to Hiple Project, which will improve market access and provide more options for load serving entities. 5 TR 326-327. The Hiple Substation has six existing 345 kV lines making it a robust source, with connection to both MISO and PJM markets. *Id.* The Projects add in-state capacity between the Hiple Substation and Michigan, and within Michigan. *Id.* This new capacity, parallel to existing 345 kV lines, will better balance flows in and out of the state. *Id.*

Michigan will benefit from this new interstate access point because the record demonstrates that LRZ 7 and MISO generally are likely to have insufficient capacity in the near future. 5 TR 327-328; Exhibit METC-29R (CLM-1R). The 2020/2021 PRA highlights the significant economic harm insufficient capacity can have on LRZ 7. 5 TR 237-238, 293. METC witness Marshall testified that due to insufficient access to resources resulting in CONE pricing, customers' cost burden was \$911 million as the cost of capacity at CONE was about \$258/MW per day. *Id.* And recent data shows that the probability of LRZ 7 reaching CONE again is only increasing. 5 TR 327-328. Specifically, in December, North American Electric Reliability Corporation ("NERC") issued its 2024 Long-Term Reliability Assessment and categorized MISO as "High Risk," which means an area that between 2025 and 2029 is "likely to experience a shortfall in electricity supplies at the peak of an average summer or winter season." Exhibit METC-29R (CLM-1R), p. 6. The report also notes that "[e]xtreme weather, producing wide-area heat waves or deep-freeze events, poses an even greater threat to reliability." *Id.*

MEIC witness Goggin echoed Mr. Marshall's opinion and testified that "Michigan will realize major benefits from increasing the ability to import energy, capacity,

and renewable energy[.]” 5 TR 905. Mr. Goggin added that Michigan will benefit from addressing the local (Michigan) reliability needs through the Projects because the cost of construction will be allocated throughout the entire region as opposed to only Michigan customers. 5 TR 904. Mr. Goggin points to NERC Standard TPL-001-5, requires that transmission owners ensure that power flows can be reliably accommodated and explained that if an LRTP Tranche 1 project is not constructed, the local transmission owner would likely require other upgrades. 5 TR 904-905. He testified that these local projects will likely be more expensive for local customers as those customers would be responsible for the total cost of the upgrade. 5 TR 904. Unlike LRTP Tranche 1 and the Projects, that cost burden is not accompanied by the benefit of access to the regional market.

Mr. Marshall’s and Mr. Goggin’s expert opinions sufficiently support that construction of the Projects, absent the other LRTP Tranche 1 projects, is justified. No party, including Staff, has challenged the credibility of Mr. Marshall or Mr. Goggin as qualified experts sufficiently knowledgeable to speak to the public benefits of new backbone infrastructure in Michigan. And no party has offered any counter evidence or opinion to contradict Mr. Marshall’s and Mr. Goggin’s expert testimonies. Staff even softened its position from testimony and clarified that Staff “does not testify conclusively that there are NO benefits with constructing these lines in isolation.” Staff Initial Brief, p. 28 (emphasis in original). Staff pointing out that there is “no robust analysis” does not refute that Mr. Marshall’s and Mr. Goggin’s expert opinions are reasonable, derived from their scientific and technical expertise, and grounded in objective facts. Their opinions, therefore, support a finding that the Projects, absent the other LRTP Tranche 1 projects,

provide public benefits to justify their construction. MCL 460.568(5)(a). The record contains no evidence to the contrary.

2. Staff’s “all or nothing” approach to transmission development is against the public interest.

As noted in METC’s Initial Brief, “Act 30 was crafted by the Legislature to address the concerns for the need for comprehensive transmission line siting authority” and ensure that when the need for infrastructure arises, applicants have a clear path to siting authority. May 31, 2007 Order in Case No. U-14861, p. 31 n 7 (“Case No. U-14861”). Indeed, the Legislature specifically limited conditional approval to affirmative actions the applicant can satisfy to progress with construction: a condition must be “*the applicant taking additional action* to assure the public convenience, health, and safety and reliability of the proposed major transmission line.” MCL 460.568(4) (emphasis added). Staff’s condition that METC wait to begin construction until other LRTP Tranche 1 projects receive regulatory approval for construction cuts directly against this policy. There is nothing METC can do to guarantee the regulatory approval of the other LRTP Tranche 1 projects to ensure construction of the Projects can and will move forward. 5 TR 329.

Staff offers no credible evidence to suggest that the other LRTP Tranche 1 projects will not be constructed and, in fact, the record demonstrates the more likely outcome is the exact opposite. MISO’s Multi-Value Projects (“MVPs”) are required to provide benefits to each local resource zone. 5 TR 245, 299. Development takes 18-months and incorporates stakeholder feedback from the entire region to maximize regional alignment of the portfolio. 5 TR 241-242, 295-296. As evidence of MISO’s proven process, experience, and regional engagement to successfully tackle the most pressing regional system needs, METC witness Marshall testified that MISO’s first set of MVPs, MTEP 11,

were all approved by MISO members, constructed, and placed in-service. 5 TR 328-330. Similarly, MEIC witness Goggin testified that “it is unlikely that other segments will not receive the necessary approvals for construction.” 5 TR 903. MEIC noted in its Initial Brief that “the proportion of costs allocated to each state in which benefits accrue from the regionally cost-shared lines makes constructing the lines a good deal.” MEIC Initial Brief, p. 29. METC agrees. There is no reason to think the other LRTP Tranche 1 projects will not receive the necessary state regulatory approval.

Instead of providing evidence to support of its condition, Staff speculates “[t]here exists a risk that the other LRTP projects may or may not be delayed by regulatory proceedings,” including a risk that “one or more connecting sections [is] not approved.” Staff Initial Brief, p. 58. Given the unknown, Staff claims that the Commission should impose a condition to hold METC “accountable to being able to deliver the promised benefits[.]” Staff Initial Brief, p. 24. Staff’s condition will not minimize the risk but contribute to it: the practical implications of Staff’s condition is METC cannot progress with construction of the Projects until after all other LRTP Tranche 1 projects, or LRTP projects 12 through 16, are approved. 5 TR 499-500. This could take anywhere from a few months to a few years. The likely result, then, is the very delay Staff claims is a risk.

Contrary to Staff’s claim, Staff’s condition is not simply “one that is completed relatively early” in the construction process. Staff Initial Brief, p. 28. METC cannot continue its engineering and design or activities that do not qualify as “construction”⁷ under Act 30 while it waits for the other projects to receive the required approval.

⁷ Act 30 defines “construction” as “any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line.” MCL 460.562(d).

Staff Initial Brief, p. 27. Until the condition is satisfied, METC has zero assurances that construction can and will move forward. In other words, if Staff's condition is adopted, the Projects will not move forward until after the other projects receive regulatory approval. 5 TR 499-500.

Siting is the second step in the project life cycle of a transmission line. 5 TR 400. METC witness Capra explained there are several milestones that occur between regulatory approval under Act 30 and starting construction, which can take several years to complete. 5 TR 499. METC generally does not start certain activities, such as final design, ordering materials, undertaking environmental permitting, and ultimately construction until it receives regulatory approval. *Id.* These activities require significant capital investment to complete and METC cannot justify incurring these costs without the assurance that construction is moving forward. *Id.*

If METC does not progress with construction at the conclusion of this proceeding, the likely result is a significant delay to the in-service date of the Projects. 5 TR 499. METC witness Marshall testified that transmission development takes more than double the time as generation. 5 TR 231, 287. The Commission previously recognized the same point:

[A]n electric utility cannot simply visit a building supply company, order hundreds of utility poles and miles of wire, and start construction on its project. The utility or transmission company building to meet its needs must obtain permits, approvals, and rights-of-way. There are engineering issues to be considered. Construction supplies and crews must be arranged. All of these activities take time. This case is an excellent example. It has taken the parties and the Commission one year to reach a final determination. [Case No. U-14861, p. 31.]

Staff's reference to the current wait times in the MISO interconnection queue ignores why those delays exist. See Staff Initial Brief, pp. 26-27. A contributing factor to the delays

to the MISO interconnection queue is that a number of the new generation projects are waiting for review and approval until the completion of the LRTP 1 projects. 5 TR 325. If anything, the MISO interconnection queue is evidence in support of the timely approval of the Projects and reflects that a delay in their construction means a delay in those generation resources coming online. *Id.*

In addition to delays in generation development, a delay in the Projects, as part of the LRTP Tranche 1 portfolio, will have compounding effects to delay and undercut future transmission development, including LRTP Tranche 2.1 projects. *Id.* METC witness Marshall testified that MISO's Long Range Transmission Planning efforts are intended to ensure the region's transmission system is both reliable and compliant with regulatory requirements well into the future. 5 TR 326. These efforts are built upon the foundation established through the first tranche of projects that address the most critical transmission needs. *Id.* MISO's long-term goals and regional planning efforts are contingent on the timely construction of Tranche 1 projects.

METC appreciates and shares Staff's concerns about potential delays of LRTP Tranche 1 projects, as all parties' acknowledge that Michigan and the region will benefit the most from all of these projects being approved and constructed. METC, however, believes that imposing Staff's third condition on the Certificates may actually create the delay it seeks to avoid.⁸ Countless decisions by generators, businesses, and transmission owners have already been made assuming the Projects will be completed. Not approving or delaying approval of the Projects would jeopardize years of work,

⁸ In addition, if other states take the same position and condition construction on the construction of other projects, the region's progress on building needed transmission infrastructure will come to a standstill.

potentially hundreds of millions of dollars, and put Michigan’s electric grid at higher risk of delaying Michigan’s clean energy future. 5 TR 329. It is simply not practical nor prudent impose a condition that only serves to harm the public interest, and the Commission should reject it.

II. REPLY TO NRO INTERVENORS AND KNAGGS GROUP INTERVENORS

Act 30 requires a proposed route to be feasible and reasonable, “not that it was more feasible and more reasonable than any other route proposed by any party.” *HAR Co, LLC*, 309 Mich App at 13. METC and Staff both agree that the Nelson Road to Oneida Proposed Route is feasible and reasonable under MCL 460.568(5)(b). Staff Initial Brief, p. 10. Still, the Intervenor insist the Commission approve a route that they claim to be preferable when, in reality, they are asking the Commission to move the Nelson Road to Oneida Project off of their properties. Their arguments focus on surface-level critiques rather than credible challenges that warrant deeper analysis. The Intervenor’s portrayal of METC’s route development and selection of the Nelson Road to Oneida Proposed Route could not be further from the truth.

METC, with the assistance of Burns & McDonnell (“BMcD”), dedicated over two years developing a study area, identifying and analyzing resources within the study area, soliciting feedback from agencies and the public, evaluating route segments, and refining potential route options before selecting the Proposed Route and presenting it to the Commission. The Route Study balanced a variety of evaluation factors that conceptualized social, engineering, and environmental considerations consistent with industry best practices. 5 TR 515-516. The breadth and diligence of METC’s route development is highlighted by the fact that Staff used a different methodology to analyze

the data yet reached the same conclusion: the Proposed Route is feasible and reasonable.⁹ See Staff Initial Brief, p. 62. To say that the Proposed Route was selected by happenstance without consideration of the public interest and awareness of the unavoidable burden to affected landowners, as suggested by the Intervenor, is clearly unwarranted. See Intervenor Initial Brief, p. 10. Superficial critiques have no place in decisions that carry tangible positive and negative public impacts inherent in siting transmission infrastructure.

The Intervenor's emphasis of the Consumers Energy Right-of-Way ("ROW") and Maple River State Game Area (or the "Sanborn Loop") as routing options are not revelations or new information to METC. The record demonstrates these route segments were considered extensively. In discussing the comparison of route segments, the Nelson Road to Oneida Route Study states: "Key considerations when analyzing the remaining routes were segments options that avoid protected lands along Maple River, minimize residential proximity, and collocate within existing unoccupied easement/ROW with Segments 68 and 70." Exhibit METC-23A (KAS-2A), p. 34. As discussed in METC's Initial Brief, METC and BMcD identified rational, defensible reasons to reject the Consumers Energy ROW and avoid the Maple River State Game Area for the Proposed Route. Rejecting these route segments does not mean the Proposed Route is not feasible or reasonable.

⁹ Staff's analysis highlights METC witness Belin's expert opinion that the process implemented by METC and BMcD to develop the Route Studies is "considered an industry best practice and provides defensible and reproducible conclusions." 5 TR 706, 718.

Staff recommends that both the Proposed Route and Alternate Route for the Nelson Road to Oneida Project are feasible and reasonable for purposes of MCL 460.568(5)(b). METC does not contest Staff's conclusion. But METC's position remains the Proposed Route should be approved for construction because it is feasible and reasonable as it best minimized overall land use conflicts and impacts to social and environmental resources. See Exhibit METC-23A (KAS-2A), p. 41.

A. The Commission should disregard and explicitly reject the Intervenor's procedurally deficient arguments and hyperbole.

Prior to addressing the Intervenor's substantive arguments, METC requests that the Commission disregard and explicitly reject the hyperbolic and inappropriate statements as articulated by counsel for the Nelson-Oneida Intervenor. Perhaps the most troubling aspects of the Intervenor's Initial Brief is their disregard for procedural safeguards and references to information that is not evidence and references to information that was explicitly excluded from the record. See Intervenor Initial Brief, pp. 44-45. Specifically, the Intervenor's reference to discovery responses related to witness Haddix and Colby's testimony refers to a report that was *excluded* by Administrative Law Judge ("ALJ") Saunders because it was an improper attempt to submit supplemental direct testimony¹⁰ and because it is hearsay, MRE 802.¹¹ *Id.* Despite the

¹⁰ The Intervenor admitted, several times, that the motivation for offering the report was to supplement direct testimony. 5 TR 1166. Rather than timely and properly proffer supplemental direct testimony based on a motion explaining why the information was not included in its case in chief, the Intervenor would have the material admitted without any party having a chance to submit discovery or rebuttal evidence. The report was properly excluded.

¹¹ Counsel for Staff also agreed that the record the Intervenor were attempting to admit was hearsay. 5 TR 1169.

exclusion of this report from the record, Intervenors continue to reference its contents, even going as far as to discuss the report’s potential admissibility as a “government record.”¹² Intervenors Initial Brief, p. 45. This reference to excluded evidence is not only improper but also fundamentally misleading. ALJ Saunders already ruled on the inadmissibility of this report, and any attempt to discuss its contents now is an attempt to bypass that ruling and introduce evidence that was deemed inadmissible by the ALJ. Intervenors could have (but did not) appeal that ruling; rather, they attempt to do indirectly what they cannot do directly and their efforts should be explicitly rejected by the Commission.

In addition, the Intervenors make several statements that are not only speculative and unsupported but are also unfairly prejudicial, including unsupported and speculative inferences to related to the credibility of METC’s expert witnesses and the reasons a witness was replaced. Intervenors Initial Brief, p. 14. Indeed, Mr. Thornhill only stepped in as METC’s witness after Ms. Samuelson took a new employment opportunity (not for any credibility issue). The Intervenors also attempt to color the procedural history here

¹² While Intervenors may claim the material is a governmental record exception to the hearsay rule, they make no effort to establish facts to support the claim. The material is not authenticated by a government entity. The official records exception to hearsay requires there be a certificate by a governmental custodian attached to the document which certificate states that the document is a true and accurate copy of an official record. See MRE 803(9), 901; *Gilliland v Baldwin-Lima-Hamilton Corp*, 52 Mich App 489; 218 NW2d 63 (1974) (“[S]ince the information as to hours of down time was not required in an official record by statute, and since the information was not based upon the personal knowledge of the reporter and was offered as evidence of facts reported, it was subject to the hearsay rule and did not fall within the official records exception.”) None of this is present in this case. In addition, there must be evidence that the record sets out the office’s activities, a matter observed under a legal duty to report making the information trustworthy as an exception of not having the declarant present for cross. None of this is present either.

and the ALJ's rulings in such a way to create a false narrative about certain information. Intervenor's Initial Brief, pp. 24, 31. They also erroneously imply that METC utilized permitted motion practice for improper motives. Intervenor's Initial Brief, pp. 22-25, 31-32. The procedural safeguards and rules of evidence protect *all* parties and the integrity of a contested case. Intentional disregard for these common and reasonable standards should be disregarded and explicitly rejected in the Commission's order.

In addition to the disregard of the ALJ's orders and the rules of evidence by including excluded documents and evidence not in the record in their Initial Brief, the NRO Intervenor's regularly made public comments (*ex parte*) before the Commission regarding the issues of law and fact in this case *after* they became parties to this case and *after* they filed testimony intended to be part of the record. The Intervenor's also handed the Commission documents at public meetings that were later offered as exhibits in support of their case (see, e.g., Exhibit NROL-6 (BCA-6)¹³), meaning the Intervenor's essentially presented their evidence to the Commission before METC, the other parties, and the ALJ were able to verify that the document complied with the rules of evidence. The Intervenor's use of public comment in this manner runs afoul to the Administrative Procedure Act's, 1969 PA 306, as amended, MCL 24.201 *et seq.* ("APA"), prohibition against *ex parte* communications. MCL 24.282 (prohibiting a decisionmaker from communicating, directly or indirectly, with a party regarding the issues of fact or law in a contested case). Although the NRO Intervenor's are free to make public comments or become a party and witness to a contested case under Act 30, the APA prohibits them

¹³ Witness Wohlscheid-Brennan created Exhibit NROL-6 (BCA-6) and provided a copy to the Commission at the January 23, 2025 public meeting. See Case No. U-21471, Dkt. # 241.

from doing both while a contested case is pending before the Commission. See *Hanselman v Killeen*, 112 Mich App 275, 283; 316 NW2d 237 (1982), reversed on other grounds, sub nom *Hanselman v Wayne County Concealed Weapon Licensing Board*, 419 Mich 168, 351 NW2d 544 (1984) (the prohibition against *ex parte* communications “ensures the impartiality of administrative tribunals acting in an adjudicative capacity,” and to “preserve the integrity of administrative proceedings by removing opportunities to aid witnesses in tailoring their testimony and thus permanently impairing an adverse party’s chances of obtaining a fair hearing.”).

METC is not requesting the Commission categorically ignore the testimony that was improperly raised at public comment periods by the Nelson-Oneida Intervenors since the Commission is perfectly capable of remaining neutral and rendering decisions regardless of public comments. Rather, METC’s intent is to explain how such practice prejudices the process and substance of a case and is contrary to the APA’s prohibition against *ex parte* communications. METC requests that the Commission consider the improper cross-over of the Intervenors’ testimony and public comments when weighing the credibility and significance of such evidence.

B. METC and BMcD adequately considered the Consumers Energy ROW and relied on rational reasons in selecting the Proposed Route.

Turning to Intervenors’ substantive claims, they claim that METC did not sufficiently consider the Consumers Energy ROW as a possible route option. This argument is unsupported. As noted above and METC’s Initial Brief, the Route Study specifically analyzed route options that would “collocate within existing unoccupied easement/ROW with Segments 68 and 70.” Exhibit METC-23A (KAS-2A), p. 34. And after careful consideration, BMcD concluded that “[r]outes using Segments 68 and

70 along existing unoccupied ROW required less ROW, however they did not significantly reduce the overall residential proximity.” Exhibit METC-23A (KAS-2A), p. 35. Simply put, these route segments do not minimize the overall potential impacts of the Nelson Road to Oneida Project, unlike the Proposed Route.

As an initial matter, the Commission must recognize that a majority of the Intervenor’s arguments in favor of the Consumers Energy ROW are based on speculation and hyperbole. The Intervenor provided no evidence to support their allegations related to the investment made by Consumers Energy to acquire the land and whether that investment was recovered in rates; whether adjacent property owners were aware of the Consumers Energy ROW when they purchased their property or that it even existed; and if Consumers Energy acquired this land because, 50 years ago, it “foresaw that increased transmission capacity would be required in mid-Michigan[.]” Intervenor Initial Brief, p. 11. These allegations are irrelevant to the Commission’s evaluation of the Nelson Road to Oneida Proposed Route.

The facts that are relevant and undisputed include: (i) the Consumers Energy ROW contains *no existing infrastructure* and is simply a pre-existing ownership interest in land, 5 TR 592; (ii) the Consumers Energy ROW is not wide enough to accommodate Nelson Road to Oneida and would require METC to obtain additional land rights from landowners that border the ROW, 5 TR 429, 592; (iii) of the 1,304 potential routes evaluated by BMcD and METC, the Alternate Route was chosen and presented in

METC's Application¹⁴ in part because it utilized the Consumers Energy ROW, 5 TR 583; and (iv) the Route Study demonstrates there are rational reasons and identifiable data points that explain why BMcD and METC selected the Proposed Route over the Alternate Route and, more specifically, rejected a route that utilized the Consumers Energy ROW as the Proposed Route, Exhibit METC-38R (SGT-1R); 5 TR 582-583.

The Intervenors have failed to rebut any of these facts and, instead, argue "paralleling is a fundamental route selection principle, and it was not applied here." Intervenors Initial Brief, p. 16. The Intervenors point to other states and previous route studies performed by BMcD to support their erroneous idea that "[t]he route design principle of paralleling" is a routing mandate. Intervenors Initial Brief, pp. 13-14. The Intervenors, however, appear to confuse the word "selection" with "consideration." No state or regulatory body requires a transmission operator to *select* a route that involves paralleling with existing infrastructure. 5 TR 575. At most, there may be a requirement that a transmission operator *consider* paralleling opportunities, which was done in the Route Studies for Nelson Road to Oneida and Helix to Hiple. 5 TR 576.

The Texas law cited by the Intervenors and witness Andrews highlights this point: the "hostile to regulation" state requires that certain "factors must be *considered* in the selection of the utility's alternative routes . . . [including] whether the routes parallel or utilize existing compatible rights-of-ways for electric facilities[.]" 5 TR 984, citing 16 Tex

¹⁴ Both METC and Staff pointed out in their Initial Briefs that Act 30's application requirement to present an alternate route suggests that the alternate be one that is, in the words of Staff, "seriously considered" and, in the words of METC, a route that could have potentially been selected but was not. Staff Initial Brief, p. 56; METC Initial Brief, p. 56; MCL 460.567(2)(c). The chosen alternate serves a critical role in an applicant's development of a proposed route and also the Commission's evaluation of feasibility and reasonableness of the applicant's proposed route.

Admin Code 25.101(b)(3)(B) (emphasis added). In Wisconsin, which is the state cited by Nelson-Oneida Intervenor witness Wohlscheid-Brennan, the law qualifies use of “existing utility corridors”¹⁵ by adding that these route options should be used “to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment[.]” 5 TR 1127, citing Wis Stat § 1.12(6); see also, *Town of Holland*, 2018 Wis App 38 at 46 (“Wis. Stat. § 1.12(6) requir[es] the siting of transmission lines in existing utility corridors only ‘to the greatest extent feasible.’”) Each law supports METC witness Thornhill’s point: paralleling with existing utility is generally considered but the circumstances and context dictate when that route option is selected. 5 TR 575.

Act 30 does not impose any formal routing requirements or require consideration of specific factors, but prior Act 30 proceedings highlight that the Commission’s practice aligns with industry best practices. For example, in Case No. U-17041 (Weeds Lake project), the Commission agreed with METC’s and BMcD’s decision to reject a route that paralleled I-94 in part because METC could not obtain a sufficiently wide enough ROW. July 31, 2012 Order in Case No. U-17041, p. 25 (“[T]he Commission finds that METC provided ample rebuttal evidence that the I-94 corridor route is not a realistic alternative to the proposed route.”) (“Case No. U-17041.”) By comparison, in Case No. U-14861, the Commission rejected landowner arguments that the Genoa-Durant transmission line

¹⁵ To be clear, an “existing utility corridor” means a corridor that already has existing utility infrastructure. See *Town of Holland v Pub Serv Comm’n of Wis*, 382 Wis 2d 799; 2018 Wis App 38, 41; 913 NW2d 914 (Wisconsin law “requires electric transmission facilities to be sited in existing utility corridors before establishing new corridors[.]”) In this instance, the Consumers Energy ROW would not be considered an “existing utility corridor.”

should not parallel M-59 in part because paralleling with M-59 in this area was “not likely” to directly affect residences.¹⁶ Case No. U-14861, p. 35. Thus, even in Michigan, paralleling with existing infrastructure is not a route selection mandate as the Intervenor would like the Commission to believe. Instead, consistent with industry standards, new transmission lines in Michigan have been sited to parallel existing infrastructure when the circumstances warrant that result.

The circumstances with the Nelson Road to Oneida Project do not support that utilization of the Consumers Energy ROW is advantageous. It is reasonable for METC and BMcD to select the Proposed Route. As noted in METC’s Initial Brief, METC and BMcD considered all paralleling opportunities for Nelson Road to Oneida as well as Helix to Hiple. METC Initial Brief, pp. 91-92. METC witness Thornhill testified that the location of the existing transmission lines generally offered few opportunities to parallel existing transmission lines without adding unnecessary length to the proposed transmission lines. 5 TR 576-577. The fact that paralleling was not an evaluation factor in the Route Study does not undermine the validity of the analysis nor the selection of the Proposed Route.

For Nelson Road to Oneida, specifically, METC witness Thornhill confirmed that including paralleling existing infrastructure as an evaluation factor would not have changed BMcD’s recommendation of the Proposed Route. 5 TR 575-576. As Staff correctly points out, “even if Paralleling data was included in the evaluations factor data in the Nelson Road to Oneida Routing Study this additional data would likely not have resulted in [the Intervenor’s] preferred outcome of METC utilizing the existing

¹⁶ The Intervenor erroneously claim that the Commission required ITC to route the Genoa-Durant line along M-59 when in fact ITC’s preferred route followed M-59 and the Commission agreed that the route was feasible and reasonable. Case No. U-14861, p. 4.

Consumers ROW.” Staff Initial Brief, p. 63. A route like the Alternate Route or the NROL Hybrid route that utilizes the Consumers Energy ROW would have increased social impacts and increased environmental impacts compared to the Proposed Route. 5 TR 576; METC Initial Brief, pp. 98-100. Thus, the record does not support the Intervenor’s insistence that the Nelson Road to Oneida Project must utilize the Consumers Energy ROW. As the record shows, METC, along with BMcD, utilized that segment for the Alternate Route because it provided a comprehensive review of the study area. After analysis, which was conducted by various professionals over many, many months, the Route Study determined that the Proposed Route minimized impacts more than the Alternate Route.

The benefits often gained by paralleling with existing infrastructure are not applicable to the Consumers Energy ROW because it is not an existing utility corridor with existing infrastructure nor is it currently wide enough to accommodate Nelson Road to Oneida. 5 TR 429, 576. Construction through this area would be starting from square one and require acquisition of easement rights, just like the Proposed Route. METC can certainly construct a transmission line through the Consumers Energy ROW, but the record demonstrates that doing so will cause greater social and environmental impact than the Proposed Route.

C. METC is not required to provide a cost-benefit analysis comparing the Proposed Route and the Alternate Route.

The Intervenor’s also argue that the Alternate Route and the NROL Hybrid route are preferable because construction of either route would be less expensive than the Proposed Route. Intervenor’s Initial Brief, p. 18. The cost difference the Intervenor’s claim to be so significant that it warrants rejection of the Proposed Route represents

approximately 1% of the total estimated cost of the Nelson Road to Oneida Project. 5 TR 421. Instead of focusing on the alleged cost differences as presented by their witness, however, the Intervenor’s Initial Brief focuses on one sentence in the Commission order in Case No. U-17041 and twists the Commission’s words to create another “mandate” that was supposedly not followed.¹⁷ Specifically, the Intervenor’s claim METC was required to provide a “cost comparison in evaluating its route selection[,]” for the purposes of comparing the Proposed Route and alternative routes. See Intervenor’s Initial Brief, p. 19. That is not what the Case No. U-17041 order says or requires.

The phrase relied on by the Intervenor states: “If METC seeks to pursue future projects that go beyond addressing an immediate reliability issue, then it is directed to present a complete analysis of the incremental quantifiable and nonquantifiable benefits to warrant the additional cost relative to alternative approaches.” Case No. U-17041, p. 25. The Commission was not concerned with cost comparisons of potential routes, but the cost comparison of the proposed and alternatives solutions that could address the identified public need.

Case No. U-17041 approved construction of the Weeds Lake project, two double circuit 138 kV transmission lines with a 220-foot ROW. *Id.*, p. 1. Weeds Lake was approved by MISO as a Baseline Reliability Project, which are described in MISO’s Transmission Planning Business Practices Manual as “projects needed to comply with

¹⁷ Outside of the statutory factors identified in Section 8(5), Act 30 states any other requirement, including information to be contained in an application, must be adopted by administrative rule. MCL 460.567(2)(l). There is no administrative rule that requires an applicant to provide a cost comparison of different routes.

Electric Reliability Organization (i.e. NERC) reliability standards and regional reliability standards.” Exhibit METC-4A (CLM-4A), pp. 25-26; see also Case No. U-17041, p. 7. METC explained that a cost-benefit analysis is not conducted to select a specific project driven by reliability standards, meaning the project was intended to address an “immediate reliability issue.” *Id.* A central issue in Case No. U-17041 (which is not present in this case) was if Weeds Lake was the appropriate transmission solution to comply with reliability standards compared to other ancillary upgrades to the then current system. *Id.*, pp. 23-24.

One party had offered several project alternatives to constructing a new line and claimed those alternative solutions would be more cost effective. *Id.*, p. 5. Agreeing with that party, ALJ Sharon Feldman recommended that METC did not demonstrate the Weeds Lake project was justified under MCL 460.568(5)(a) because the record lacked a cost-benefit analysis of alternative transmission solutions. *Id.*, pp. 5-6. The Commission disagreed and reasoned that while a cost-benefit analysis would be one way to meet MCL 460.568(5)(a), cost is only one factor to determine if a project is justified. Case No. U-17041, pp. 22-23, citing February 22, 2008 Order in Case No. U-14933, pp. 17-18. The Commission determined constructing the Weeds Lake project was justified for reliability reasons finding “the overall benefits justify construction and there is a clear need to proceed with construction to maintain reliability.” Case No. U-17041, p. 25. The Court of Appeals later upheld the Commission’s decision stating the Commission “correctly concluded that METC was not required to do a cost-benefit analysis of the Weeds Lake project. . . No statute required METC to perform a cost-benefit analysis[.]” *HAR Co, LLC*, 309 Mich at 12.

With that background, it is clear that the Intervenor’s reliance on Case No. U-17041 is useless to their overall argument for three reasons. First, contrary to the Intervenor’s claim, comparing costs had nothing to do with which route should be selected or if the proposed route was feasible and reasonable under MCL 460.568(5)(b). Rather, a cost comparison may be informative if comparing a proposed transmission *project* to an alternative *project* to assess construction justification under MCL 460.568(5)(a).

Second, the Intervenor is not proposing an alternative to constructing Nelson Road to Oneida, no party has. The type of cost-benefit analysis that was identified in Case No. U-17041 therefore would not be informative in this proceeding. No party disputes Michigan’s and the MISO footprint’s need for transmission upgrades and no party disputes that the optimal way to do so is construction of the Projects and LRTP Tranche 1—they are the only solution presented to the Commission to address the undisputed transmission need. Besides dispute over a handful of conditions, no party claims the Certificates should be denied. See, e.g., Intervenor Initial Brief, p. 7 (“Intervenor hasten to stress that they have not tried to make a case for the proposition that no CPCN should be granted[.]”)

Third, METC did present a comprehensive cost-benefit analysis to support that the quantifiable and nonquantifiable public benefits justify construction of the Projects. METC witness Marshall testified that MISO determined the Projects and LRTP Tranche 1 provide a benefit cost ratio of 2.2 to 3.4 to LRZ 7, 5 TR 261-262, 317, which Staff noted means “the benefit is 2.2 times the cost to 3.4 times the cost in LRZ 7,” Staff Initial Brief, p. 18. No party has challenged MISO’s cost-benefit analysis justifying construction of the Projects for LRZ 7. METC also independently conducted its First Contingency

Incremental Transfer Capability analysis and reliability screening, which demonstrates that the optimal transmission solution for Michigan is a new interstate transmission line, like the Projects and LRTP Tranche 1. 5 TR 251-254, 307-310. In short, METC did provide the comprehensive analyses the Commission envisioned in Case No. U-17041 and those analyses demonstrate that public benefits justify construction of the Projects.

The cost comparison presented by the Intervenors – comparing the Proposed Route to the Alternate Route and NROL Hybrid route – is not informative to assessing the feasibility and reasonableness of a route. As noted in METC’s Initial Brief, METC witness DuPree testified that the estimated total costs at this stage are preliminary. METC Initial Brief, p. 100; 5 TR 420. Regardless of the route that is ultimately approved by the Commission, the total cost will be relatively consistent since construction will be connecting the same end points through the same geographical vicinity. 5 TR 420, 500. Witness Andrews’ “cost analysis” highlights this point: the differences in cost between the Proposed Route and NROL Hybrid route and Alternate Route represent 1% of the total cost. 5 TR 421. To add perspective, the total cost will be regionally cost shared, which witness Andrews does not include in his cost breakdown. This means the cost difference for LRZ 7 the Intervenors claim is “unreasonable” is between approximately 18% to 22% (LRZ 7’s cost allocation) of 1% of the total costs, or approximately \$340,000 to \$400,000.

For the sake of argument, the marginal cost difference identified by Intervenors and witness Andrews does not refute that the Alternate Route and NROL Hybrid route have greater social and environmental impacts compared to the Proposed Route. Thus, the trade-off of selecting a (potentially) marginally less expensive route, like that

proposed by the Intervenor, is constructing a line with 15 more residences in closer proximity to the centerline and more wetland and woodland clearing than the comparable section of the Proposed Route. Exhibit METC-38R (SGT-1R); 5 TR 595-596. A potential cost difference between routes does not undermine the feasibility and reasonableness of the Proposed Route.

D. METC adequately considered and reasonably rejected crossing the Maple River State Game Area.

The Intervenor also argue that the Nelson Road to Oneida Project should cross the Maple River State Game Area, which would avoid witness Avery Sanborn's "family homestead."¹⁸ Intervenor Initial Brief, p. 24. A majority of the Intervenor's arguments on this point are mere rhetoric.¹⁹ METC's Initial Brief summarizes the practical and engineering constraints that led to the decision to avoid the state protected land. METC Initial Brief, pp. 105-106. METC writes further to correct several inaccuracies asserted by the Intervenor.

¹⁸ The Intervenor's candid admission that witness Sanborn reviewed METC's Application and supporting documents "because this threat to the family homestead" suggests that Mr. Sanborn's lay witness opinion is biased. Intervenor Initial Brief, p. 24. This is particularly concerning given that Mr. Sanborn's opinion is based on his personal observations in which he failed to provide any supporting documentation. METC Initial Brief, pp. 106-109; Exhibit METC-54, pp. 5, 21-22; 5 TR 585.

¹⁹ As an example, the statement, "because of the (unsuccessful) lengths to which METC went to disable intervenors from making it..." is irrelevant and without merit. Its inclusion in the Intervenor's Initial Brief serves only to introduce prejudice into the proceedings. Intervenor Initial Brief, p. 22. Legal motions are filed for a variety of legitimate reasons, including issues of procedural fairness and the admissibility of evidence, not simply to "disable" other parties from making their case. Such inflammatory language invites the Commission to focus on improper character judgments rather than the legal merits of the arguments and evidence being considered. Simply put, the Intervenor go beyond reasoned advocacy called for in these proceedings.

As an initial matter, METC did not “hide the ball” or avoid discussion of its and BMcD’s decision to avoid the Maple River State Game Area. The Route Study discusses this decision in detail and describes the specific route segments that were developed as a response to the information received from the Michigan Department of Natural Resources (“MDNR”) during BMcD’s public outreach. Exhibit METC-23A (KAS-2A), p. 36. METC witnesses Thornhill and DuPree also explicitly addressed the Maple River State Game Area in their respective testimonies. 5 TR 430-434, 524, 581-582. And the email between MDNR and BMcD that the Intervenor treat as their hidden “smoking gun” and obtained through discovery was included in Appendix A of the Environmental Report as evidence of BMcD’s agency outreach to inform route selection. Exhibit METC-24A (KAS-3A), Appendix A. METC informed the Intervenor – through several discovery responses²⁰ – that this correspondence reiterated MDNR’s

²⁰ See, generally, Exhibit NOI-NT-2. The Intervenor inaccurately claims “METC fought *ferociously* to prevent the admission of Consolidated Exhibit NOI-NT-2[,]” when, in reality, METC raised reasonable objections related to the Intervenor’s misuse of discovery responses in lieu of cross examination (a typical practice in Commission proceedings). Intervenor Initial Brief, pp. 31-32. METC objected to the Intervenor’s effort to admit hundreds of pages of documents that were labeled as attachments to the discovery requests they served to METC when the documents should have been independently offered as evidence to the record. The insinuation that METC was attempting to withhold or obstruct the admission of evidence by objecting to the procedure, without providing context for the legitimate legal basis for such an objection, misrepresents METC’s actions. Rules of procedure and evidence are established “to secure a just, economical, and expeditious determination of the issues presented.” Insisting that Intervenor follow the rules assures a fair process and motions to exclude evidence are a routine part of litigation and do not inherently signify bad faith or obstruction.

policy related to utility easements through state protected land and was located in METC's Application materials.²¹

To summarize, the practical constraints related to the likelihood of obtaining an easement from MDNR and the engineering constraints related to the right-of-way limitations imposed by MDNR led METC and BMcD to explore other options. Exhibit METC-23A (KAS-2A), p. 36. The Commission previously found that safety and engineering concerns of a right-of-way limitation was a rational reason to reject a route option. Specifically, in Case No. U-17041, the Commission and ALJ Feldman agreed with METC and BMcD's decision to reject I-94 as a routing option in part because the Michigan Department of Transportation limited a right-of-way to 160-feet wide and Weeds Lake required 220-feet. Case No. U-17041, pp. 8, 18, 25. The same reasoning was applied here with the Maple River State Game Area and MDNR's 100-foot ROW limitation.

The Intervenor's claim that tapering trees would sufficiently address METC's safety and engineering concerns is not supported by the record. Intervenor's Initial Brief, p. 40. There is no expert testimony, data, or analysis to support that MDNR's taper cutting policy would allow for sufficient vegetation management to comply with NERC and mitigate METC's safety concerns. As a logical point, taper cutting trees is different from removing

²¹ The relevant language related to MDNR's easement policy and stated by Earl Flegler is also emphasized in all MDNR materials: "Easements for the use of State-owned land will be considered when State-owned land is the **only** alternative for the proposed use. **Protection of the natural environment is the primary consideration.** The easement cannot conflict with the primary use or purpose for which the state lands were acquired or are being used." *Easement Application for Utility or Public Road*, <https://www.michigan.gov/-/media/Project/Websites/dnr/Documents/RealEstate/PR6288.pdf?rev=9dda0090f36c463fad5f9eaeffd69b44> (accessed April 2, 2025) (emphasis in original).

trees that present a threat to the safe and reliable operation of the transmission line. In other words, even if METC were permitted to taper trees (assuming MDNR would grant this permission), those trees could be as close as 50-feet on either side of the centerline and likely still present a risk of falling into the ROW, into conductors, onto structures, or onto the centerline; risk that is mitigated with a 200-foot ROW. Taper cutting trees would likely require increased frequency of inspection and maintenance of surrounding vegetation, which in turn means an increased frequency of ingress and egress through the state protected land to access the transmission line. Point being, there is simply insufficient information on record to support that the taper cutting tree policy cited by the Intervenor would mitigate the safety and reliability concerns of an MDNR policy that would limit the ROW width to half of what is needed for the Projects.

The Intervenor also failed to refute the practical constraints of crossing the Maple River State Game Area. The MDNR has made it abundantly clear: “[e]asements for the use of State-owned land will be considered when State-owned land is *the only alternative* for the proposed use.” Exhibit METC-24A (KAS-3A), Appendix A (emphasis added). There may be other transmission lines that currently traverse the Maple River State Game Area and other state protected land, but those lines do little to affirm that MDNR would grant METC an easement for Nelson Road to Oneida. METC witness DuPree notes that the lines METC owns and maintains through state land pre-date METC’s existence or land being designated as a state game area. 5 TR 431. METC would be required to apply for an easement from MDNR and doing so would require METC to show that the requested easement is the “only alternative” – the record in this case proves that it is not. MDNR will also evaluate any requested easement with

the “[p]rotection of the natural environment [as] the primary consideration,” meaning protection of the state game area the agency is statutorily required to protect is the primary consideration. See *Intervenors Initial Brief*, pp. 38-39.

For environmental considerations outside of the state protected land, the *Intervenors* completely ignored METC’s best management practices (“BMPs”) identified in the *Environmental Report*.²² These measures reflect industry best practices to avoid or minimize the potential impact to environmental resources, including trout streams. Contrary to the *Intervenors’* claim, the *Nelson Road to Oneida Environmental Report* specifically addresses the regulated trout streams crossed by the *Nelson Road to Oneida Project’s Proposed Route* and includes a summary of the BMPs that will be implemented to comply with applicable regulations, such as MDNR Fisheries Order 200 and Fisheries Order 210, and EGLE requirements. Exhibit METC-23A (KAS-3A), pp. 28-29; see *Intervenors Initial Brief*, p. 41. Direct impacts to waterbodies will be avoided to the extent practicable; however, any work in documented trout streams will occur only in accordance with EGLE requirements and

²² The *Intervenors’ Initial Brief* does not raise a *prima facie* case of an impairment under the Michigan Environmental Protection Act (“MEPA”). MCL 324.1705. As discussed in METC’s *Initial Brief*, the Michigan Supreme Court has repeatedly recognized that “virtually all human activities can be found to adversely impact natural resources in some way or other.” *West Mich Environmental Action Council, Inc v Natural Resource Comm*, 405 Mich 741, 760; 275 NW2d 538 (1979) (WMEAC). The question is whether the impact would rise “to the level of an impairment or destruction of a natural resource so as to constitute an environmental risk and justify judicial intervention.” *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 5; 596 NW2d 620 (1999). Therefore, to the extent to which the *Intervenors* may argue a MEPA concern in their reply brief, their ecological claims do not rise to an impairment under MEPA and, even if it did, the record demonstrates the METC’s BMPs as stated in the *Environmental Report* mitigate and/or avoid any potential impairment consistent with the public trust and that no feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare exists.

the area will be restored to prior condition and configuration to the extent practicable. Exhibit METC-23A (KAS-3A), pp. 28-29.

With respect to wetland identification, METC's Initial Brief summarizes and responds to the Intervenor's erroneous claim that the Nelson Road to Oneida Route Study did not identify the applicable wetlands within the study area. METC Initial Brief, pp. 106-109. Witness Sanborn's lay opinion regarding wetlands remains unsubstantiated – he refused to provide any documentation that allows METC, BMcD, and the Commission to verify his testimony. 5 TR 585; Exhibit METC-54, pp. 21-22. His opinion also does not undermine that the Route Study utilized industry standard practices to identify wetlands for the purposes of conducting a routing analysis. 5 TR 584. For the purposes of evaluating the feasibility and reasonableness of the Proposed Route, the record evidence demonstrates that METC and BMcD appropriately captured wetlands, reasonably rejected crossing the Maple River State Game Area as a route option, and adequately explained the selection of the Proposed Route.

For these reasons and those stated in METC's Initial Brief, the Commission should find that METC's and BMcD's decision to avoid the Maple River State Game Area for the Nelson Road to Oneida Project was reasonable.

E. The record demonstrates that METC's construction of the Nelson Road to Oneida Project (and Helix to Hiple Project) will comply with applicable rules, regulations, and industry best practices to minimize cultural, historical, and economic interests.

The Intervenor's last argument that the Proposed Route's exclusion of the Consumers Energy ROW and inclusion of the "Sanborn Loop" will result in a variety of impacts to the Intervenor as affected landowners along the Proposed Route. Intervenor's Initial Brief, pp. 42-53. METC understands and appreciates the concerns

raised by the individual landowners; however, no transmission line project, indeed, no infrastructure project is without impacts. 5 TR 580. As with all infrastructure projects, METC will implement industry best practices to avoid, minimize, and/or mitigate any potential impacts, and has a policy or procedure in place that will inform and dictate how METC will respond should these concerns arise. Each of the Intervenor's concerns can be addressed through either the minor modification proposal, the Unanticipated Discoveries Plan, METC's BMPs, the Avian Protection Plan, or be compensated during land acquisition or condemnation proceedings. The Intervenor has not demonstrated or explained how these measures and policies are insufficient to mitigate their concerns. The Intervenor's individual concerns do not establish that the Proposed Route is infeasible or unreasonable, or that the Nelson Road to Oneida Project poses an unreasonable risk to public health and safety. Adopting a route alternative proposed by the Intervenor will not eliminate any potential impact of the Project; it will simply shift that impact to another landowner that is not a party to this case.

CONCLUSION AND REQUESTED RELIEF

Based on its testimony, exhibits, legal authorities, and arguments presented in its Initial Brief and Reply Brief, METC respectfully requests the following relief from the Commission regarding the Nelson Road to Oneida Project:

- A. Find that METC's Application complied with the laws of the State of Michigan and in specific compliance of Act 30.
- B. Grant METC a certificate of public convenience and necessity authorizing the construction of the Nelson Road to Oneida Project, as described in METC's Application and supporting testimony and exhibits, with approval to make minor route modifications.

C. Approve the Proposed Route for the Nelson Road to Oneida Project, as set forth in Exhibit METC-15A (BAD-A), pp. 2-27.

D. Find that the Nelson Road to Oneida Project does not, and is not likely to, pollute, impair, or destroy the air, water or other natural resources or the public trust in these resources, and that there is no feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

E. Grant such further and additional relief as the Commission may deem appropriate.

Based on its testimony, exhibits, legal authorities, and arguments presented in its Initial Brief and Reply Brief, METC respectfully requests the following relief from the Commission regarding the Helix to Hiple Project:

A. Find that METC's Application complied with the laws of the State of Michigan and in specific compliance of Act 30.

B. Grant METC a certificate of public convenience and necessity authorizing the construction of the Helix to Hiple Project, as described in METC's Application and supporting testimony and exhibits, with approval to make minor route modifications.

C. Approve the Proposed Route for the Helix to Hiple Project, as set forth in Exhibit METC-15B (BAD-5B), pp. 2-24, and the new Helix Substation, as set forth in the record, see 5 TR 372-373.

D. Find that the Helix to Hiple Project does not, and is not likely to, pollute, impair, or destroy the air, water or other natural resources or the public trust in these resources, and that there is no feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

E. Grant such further and additional relief as the Commission may deem appropriate.

Respectfully submitted,

Michigan Electric Transmission Company, LLC

Dated: April 9, 2025

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**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of)
MICHIGAN ELECTRIC TRANSMISSION)
COMPANY, LLC for an Act 30 certificate)
of public convenience and necessity for)
the construction of a major transmission)
line between Oneida Substation in Eaton)
County and Nelson Road Substation in)
Gratiot County, Michigan.)

Case No. U-21471
(Lead Case for Filing)

In the matter of the application of)
MICHIGAN ELECTRIC TRANSMISSION)
COMPANY, LLC for an Act 30 certificate)
of public convenience and necessity for)
the construction of a major transmission)
line between the Indiana/Michigan state)
border at Gilead Township in Branch)
County and the new Helix Substation in)
Calhoun County, Michigan.)

Case No. U-21472

PROOF OF SERVICE

Cassandra A. Jackway, an employee of Dykema Gossett PLLC, says that on the 9th day of April 2025, she caused to have served by electronic or first class mail, **Michigan Electric Transmission Company, LLC's Reply Brief**, upon the parties on the attached service list.

Cassandra A. Jackway

CONSOLIDATED SERVICE LIST
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