

A CMS Energy Company

October 19, 2007

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-14933

Dear Ms. Kunkle:

Included in this electronic file is “**Consumers Energy Company's Initial Brief**” and a Proof of Service. This case was selected for the MPSC paperless filing pilot and is therefore being filed only in a PDF format.

Very truly yours,

Rhonda M. Morris

CC: Parties per Attachment 1
to Proof of Service

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
International Transmission Company,)
d/b/a ITC*Transmission*, for a Certificate)
Of Public Convenience and Necessity for)
The Construction of a Major Transmission)
Line Running From and Through)
Sterling Heights, Troy, Clawson)
and Royal Oak, Michigan.)
_____)

Case No. U-14933

CONSUMERS ENERGY COMPANY'S INITIAL BRIEF

I. Background

On February 27, 2007, International Transmission Company d/b/a ITC*Transmission* ("ITC") filed an application with the Commission for a certificate of public convenience and necessity to construct an underground 345kV major transmission line in the Clawson-Troy area. ITC estimates the cost of this line to be approximately \$150 million. Pursuant to MCL 460.565, ITC has determined that it must obtain a certificate from the Commission prior to beginning construction of its proposed major transmission line. International Transmission Company is a Michigan corporation engaged in the transmission of electricity throughout southeastern Michigan. ITC Holdings Corp. is the parent company of ITC, and is also the parent company of Michigan Electric Transmission Company ("METC"), which is engaged in the transmission of electricity throughout much of lower Michigan. Consumers Energy

purchases transmission services from METC, and is the largest single direct customer of METC. Consumers Energy also has numerous facilities in ITC's territory and takes retail service for those facilities from entities served directly by ITC.

Consumers Energy is a public utility subject to the jurisdiction of the MPSC. Pursuant to MCL 460.572, "Reasonable and prudent costs for a transmission line for which a certificate is issued shall be included in an electric utility's rates." A portion of the costs approved for ITC's construction project will be paid for by Consumers Energy and will be included in Consumers Energy's retail rates. Consumers Energy estimates that as proposed by ITC, ITC's construction of its major transmission line will result in almost \$2 million per year being charged to the METC Pricing Zone.¹ 3 Tr 614. As noted above, Consumers Energy is the largest single customer of METC, and thus will pay the vast majority of METC's increased costs associated with the proposed project. *Id.* Therefore, Consumers Energy's utility rates will increase in the annual amount of almost \$2 million due to ITC's proposed project.

Evidentiary hearings in this matter were held September 27 and 28, 2007. The parties in the case are *ITC Transmission* ("ITC"), the Michigan Public Service Commission Staff ("Staff"), the Detroit Edison Company ("Detroit Edison"), Consumers Energy Company ("Consumers Energy") and the City of Troy ("Troy"). There was a total of nine witnesses presented over the two day period.

II. Argument

Route and design are two big areas of concerns in this case. "The Company believes that before a Certificate of Public Convenience and Necessity is issued, the

¹ Also called the Michigan Joint Zone.

Commission should assure itself that (1) the proposed Troy Line is needed; (2) the proposed Troy Line has been prudently planned; and (3) any increased expense on account of underground construction is warranted.” 3 Tr 615. ITC failed to provide information showing 1) that the proposed Troy Line is actually needed, (3 Tr 646-50) 2) that the proposed line has been prudently planned or that other alternatives have been reviewed, (3 Tr 657-58) and 3) that the increased costs for underground construction costs are warranted in this situation. 3 Tr 597.

Detroit Edison provided various alternatives to ITC’s proposed Troy Line, which essentially makes the proposed Troy Line unnecessary at this time. See Murray Davis testimony, 3 Tr 496-506. Numerous questions also arise as to whether ITC has prudently planned the proposed Troy Line. For example, ITC provided pictures of typical duct banks and cable cross-sections but failed and was unable to provide any actual information on the actual materials that would be used for the proposed line. 2 Tr 350.

The cost of the proposed project is plainly a factor that the governing statute authorizes the Commission to consider in determining whether to grant a certificate. See MCL 460.567. In fact, the Commission is statutorily required to review and determine that “[t]he quantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.” MCL 460.568(5)(a). At this point, it will be hard for the Commission to determine if the benefits outweigh the costs since ITC admits that “[a] cost benefit analysis was not performed.” 2 Tr 300.

No other authoritative body will review the costs associated with this project. The rate structure approved by FERC for METC and ITC does not provide for FERC review

of individual expenditures such as for those at issue here.² This Commission is therefore particularly well-situated to consider whether the project will provide benefits to Michigan retail customers that exceed the cost of the project. See 3 Tr 614-15.

The Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.561 *et seq.*, requires approval from the Commission for the construction of major transmission lines. This approval will only be granted after the Commission conducts a full review of all parties and conditions involved and affected by the major transmission line. Specifically, MCL 460.567(2)(e) requires the MPSC to evaluate the “estimated overall cost of the proposed major transmission line.”

Additionally, MCL 460.568(5)(b) requires that the Commission review whether “[t]he proposed or alternative route is feasible and reasonable.” Consumers Energy and its customers have a stake in whether the route is feasible and reasonable. There may be less costly alternatives that would make the proposed route unreasonable. 3 Tr 597-598. See also, Murray Davis testimony, 3 Tr 496-506. There may be alternative routes to those proposed by ITC that make all of ITC’s current proposals infeasible and unreasonable. All of these possibilities need to be considered by the Commission.

As the ALJ noted, the Commission is authorized in this proceeding to impose conditions on the grant of any certificate of necessity. 1 Tr 44. Clearly, this grant of discretion is broad enough for the Commission to consider issues relating to cost, route

² ITC and METC have formula rates based on projected FERC Form 1 data. Each year, the rate is automatically updated and put into effect by the Midwest ISO (subject to reconciliation to reflect actual Form 1 data) without review by FERC in a rate proceeding. The only way to challenge the rate being charged is to institute a complaint proceeding at FERC under Section 206 of the Federal Power Act. A Section 206 complaint is based on whatever information is already available to the complainant, without any opportunity for prior discovery. It is a catch-22 situation in which one must establish a prima facie complaint case in order to initiate a FERC proceeding in which one could discover additional information to support the complaint.

and less-expensive alternatives proposed by Consumers Energy and Detroit Edison. Based on its May 17, 2007 order in this case, the Commission has authority and has recognized that authority to review the necessity and cost of the line itself in this proceeding.

III. Relief Requested

The Commission needs to review this case based on all relevant facts and issues. Consumers Energy customers' costs will increase due to ITC's construction of a major transmission line, and those costs should be considered by the Commission in this docket. Because Consumers Energy's rates will be directly affected by ITC's construction of a major transmission line, Consumers Energy requests that ITC's actions be fully reviewed to ensure that they result in reasonable and prudent costs to Consumers Energy and its customers. Therefore, Consumers Energy respectfully requests that the Commission:

- A. Review this matter completely;
- B. Deny the certificate until ITC has made an adequate showing of public convenience and necessity; and
- C. Grant such other relief as is deemed lawful and appropriate.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: October 19, 2007

By: _____
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(517) 788-2969

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International Transmission Company,)
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PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Christen M. Rutz, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on October 19, 2007 she served an electronic copy of “**Consumers Energy Company's Initial Brief**” upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Christen M. Rutz

Subscribed and sworn to before me this 19th day of October, 2007.

Sharon K. Davis, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 07/28/10
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-14933 – E-Mail Service List

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