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October 4, 2010

Ms. Mary Jo Kunkle

Executive Secretary

Michigan Public Service Commission

6545 Mercantile Way, STE 7

Lansing, MI 48909

Re: ITCTransmission Wind Zone Certificate Request
Case No. U-16200

Dear Secretary Kunkle:

Enclosed for filing in the above matter are i) the Appearances of Rodger A. Kershner and Jon D. Kreucher on behalf of Gerald Elenbaum, Marilyn Elenbaum and Lynn and Carol Louis, ii) Petitions to Intervene Out of Time as filed separately by Gerald Elenbaum, Marilyn Elenbaum, and Lynn and Carol Louis; iii) a Notice of Hearing related to the requests to intervene; and iv) a Proof of Service for the documents.

Please call if you have any questions.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

Jon D. Kreucher

Filed Electronically in E-Docket

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 241-6170.

Please Note: The commission will provide service of documents in this proceeding to only one person for each party.

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: _____ Docket No. _____

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)
2. (Name)
3. (Name)
4. (Name)
5. (Name)
6. (Name)
7. (Name)

Name _____

Address _____

City _____ State _____

Zip _____ Phone (____) _____

Email _____

Date _____

Signature: _____

☐ I am not an attorney

☐ I am an attorney whose:

Michigan Bar # is P- _____

_____ Bar # is: _____
(state)

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
PUBLIC SERVICE COMMISSION

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Case / Company Name: _____ Docket No. _____

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)
2. (Name)
3. (Name)
4. (Name)
5. (Name)
6. (Name)
7. (Name)

Name _____

Address _____

City _____ State _____

Zip _____ Phone (____) _____

Email _____

Date _____

Signature: _____

☐ I am not an attorney

☐ I am an attorney whose:

Michigan Bar # is P- _____

_____ Bar # is: _____
(state)

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of International	)	
Transmission Company d/b/a ITC <i>Transmission</i> , for	)	
an expedited siting certificate for a transmission line,	)	
pursuant to 2008 PA 295, Part 4, for Region No. 4	)	Case No. U-16200
(Thumb Region), as designated by the Michigan Wind	)	
Energy Resource Zone Board and the Commission's	)	
Order in Case No. U-15899.	)	

PETITION OF MARILYN ELENBAUM TO INTERVENE OUT OF TIME

DATED: October 4, 2010

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

By: Rodger A. Kershner (P26049)

Jon D. Kreucher (P46133)

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Attorneys for:

Marilyn Elenbaum

PETITION OF MARILYN ELENBAUM FOR LEAVE TO INTERVENE OUT OF TIME

Marilyn Elenbaum (“Petitioner”), by her attorneys Howard & Howard Attorneys PLLC, respectfully submits her Petition for Leave to Intervene Out of Time in the above-captioned proceeding pursuant to Rule 201(1) of the Commission’s Rules of Practice and Procedure, 1992 ACS R460.17201(1), and the Administrative Procedures Act, MCL 24.201, *et seq.* For her representations as to her rights and interests, her grounds for the proposed intervention, and the positions that she intends to take in these proceedings, the Petitioner says:

1. Petitioner is a legal or beneficial owner of real property in Section 8 Township 15 North, Range 10 East, and Section 34, Township 16 North Range 10 East, Huron County Michigan (“Petitioner’s Property”).

2. On information and belief, the transmission line which is the subject of this proceeding is proposed to be built on, or in such proximity to Petitioner’s Property that the transmission line will be visible from and affect the value of Petitioner’s Property and Petitioner’s use and enjoyment of Petitioner’s Property.

3. Petitioner is an “affected landowner” within the meaning of MCL 460.1153, and upon receipt by the Commission of the Application filed in the instant Docket, Petitioner was, by statute, “granted full intervenor status as of right in commission proceedings concerning the proposed transmission lines.” MCL 460.1153(2).

4. Pursuant to Rule 201(1) of the Commission’s Rules of Practice and Procedure, a late petition to intervene may be granted upon a showing of “good cause” and a showing that a grant of the petition “will not delay the proceeding or unduly prejudice any party to the proceeding.” In addition, Rule 103(2) provides that the Commission’s Rules shall be “liberally construed to secure a just, economical, and expeditious determination of the issues presented.”

5. Good cause exists for Petitioner's late intervention. Like the case with many of the affected landowners, Petitioner farms. While Petitioner had hoped to review the 400+ pages of the Application, locate counsel and seek intervention within the approximately two week period contemplated for such effort, the immediate demands of the harvest prevented Petitioner from doing so.

6. Petitioner agrees to be bound by the record and procedural schedules developed before the date of Petitioner's intervention as a party to this proceeding. No proceedings except the Prehearing Conference have been held in this Docket; therefore no party will be prejudiced by granting Petitioner's petition out of time.

7. Intervention should occur if a party has established a *right* to intervene. A party can establish such a right by either: i) demonstrating that a statute creates the right, or ii) through meeting the two prong test articulated in Data Processing Service Organization, Inc. v. Camp, 397 US 150 (1970).¹ Intervention may also occur if there is "some good reason" to *permit* such intervention, *In the matter of the application of INTERNATIONAL TRANSMISSION COMPANY, d/b/a ITCTransmission, for a certificate of public convenience and necessity for the construction of a major transmission line running from and through Sterling Heights, Troy, Clawson, and Royal Oak*, Order of May 17, 2007 at page 8. The Commission has previously found "good reason" exists where the interests of the proposed intervenor would not be protected by the parties to the proceeding,² where a proposed intervenor possesses information that may advance the Commission's consideration of the issues in the proceeding,³ or where important precedent will be set or the case is unique in nature. *See, e.g., Cherryland Electric Cooperative*, U-13716 at 5 (September 30, 2001).

¹ The Commission regularly applies the Data Processing test when considering issues of intervention. *See, e.g., ITC*, U-14933 at 4 (May 17, 2007).

² ITC at 4.

³ *See, e.g., Consumers Power Company*, U-10155 at 7 (December 8, 1992).

8. The Commission regularly notes that a *right* to intervene only serves as the starting point to such an inquiry, as the Commission's discretion to *permit* intervention is broader than a mere application of the Data Processing test. ITC, supra at 9. "As recognized by prior Commission Orders, the requirements of intervention before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenors' participation." Consumers Power Company, U-10155 at 7 (December 8, 1992).

9. Here, the Petitioner has the right to intervene under Data Processing and the clear language of MCL 460.1153. Alternatively, the Commission should permit such intervention because the Petitioner is in a position to offer information that can advance the Commission's consideration of the issues which are expected to arise in this docket, because no other party will protect interests with respect to Petitioner's Property, and because no delay would occur from participation by the Petitioner.

INTERVENTION AS A MATTER OF RIGHT

10. Intervention as a matter of right can be established if a statutory right to such intervention exists. The right of an affected landowner to intervene in a proceeding initiated by an independent transmission company for an expedited siting certificate is plainly and unambiguously stated in Act 295 at MCL 460.1153(2).

11. Intervention as a matter of right can also be established if a party meets the two prong test of Data Processing. Specifically: i) the proposed intervenor's interests is arguably within the "zone of interests" to be protected or regulated by a statute and ii) an injury will occur, economic or otherwise. *See, e.g., Michigan Consolidated Gas Co.*, U-10150 at 5 (December 8, 1992). Here, it would appear that there will be no dispute as to whether Petitioner is within the zone of interests

intended to be protected. Additionally, it is not reasonably open to disagreement that any landowner on whose property the applicant would locate gigantic steel towers, or on which wires carrying hundreds of thousand of volts would be allowed to overhang, or whose vistas would be dominated by such structures, or whose property values might be permanently diminished by their presence is interested and stands to be injured esthetically, financially, or both.

12. At this early stage, the Petitioner can not state with specificity all positions Petitioner may take or relief Petitioner may seek on issues arising in this docket. Petitioner intends, through discovery and examination to test Applicant's judgment whether the transmission line route selected by the Applicant is in fact more in the public interest than alternative routes, identified by Applicant or otherwise. It is not Petitioner's position that an Application for an expedited siting certificate permitting the construction of a transmission line along some route should not be granted.

WHEREFORE, Marilyn Elenbaum requests that this Honorable Commission grant her Petition to Intervene and that she be treated as a full party to this proceeding and in all sub-dockets that may be created.

DATED: October 4, 2010

Respectfully submitted,
HOWARD & HOWARD ATTORNEYS PLLC

By: Rodger A. Kershner (P26049)
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JKreucher@HowardandHoward.com
(248) 723-0426

Attorneys for:
Marilyn Elenbaum

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of International)
Transmission Company d/b/a ITCTransmission, for)
an expedited siting certificate for a transmission line,)
pursuant to 2008 PA 295, Part 4, for Region No. 4) Case No. U-16200
(Thumb Region), as designated by the Michigan Wind)
Energy Resource Zone Board and the Commission's)
Order in Case No. U-15899.

NOTICE OF HEARING

TO: THE PARTIES OF RECORD

Please take notice that the Petitions to Intervene Out of Time as separately filed by Gerald Elenbaum, Marilyn Elenbaum, and Lynn & Carol Louis have been scheduled for hearing before the Honorable Daniel E. Nickerson, Jr. on Thursday, October 14, 2010 at 9:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

DATED: October 4, 2010

HOWARD & HOWARD ATTORNEYS PLLC
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JKreucher@HowardandHoward.com
(248) 723-0426

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 an expedited siting certificate for a transmission	)	Case No. U-16200
line, pursuant to 2008 PA 295, Part 4, for Region	)	(e-filed)
No. 4 (Thumb Region), as designated by the	)	
Michigan Wind Energy Resource Zone Board and	)	
The Commission's Order in Case No. U-15899	)	
_____	)	

PROOF OF SERVICE

The undersigned does hereby certify that the documents identified below were served via e-mail to those persons identified on the attached list, with the exception of service to Ms. Elizabeth Masters, which was effected by placing the documents in a first class envelop postage prepaid to the address shown on the attached service list.

Documents: Appearances of Rodger Kershner and Jon Kreucher on behalf of Gerald Elenbaum, Marilyn Elenbaum and Lynn & Carol Louis, Petitions to Intervene Out of Time as filed separately by Gerald Elenbaum, Marilyn Elenbaum, and Lynn & Carol Louis and Notice of Hearing related to same.

Date Served: October 4, 2010

Jon D. Kreucher

Service List
MPSC Case No. U-16200

Administrative Law Judge Hon. Daniel E. Nickerson, Jr. Administrative Law Judge Michigan Public Service Comm. 6545 Mercantile Way, Ste. 14 P.O. Box 30221 Lansing, MI 48909 nickersond@michigan.gov The Detroit Edison Company Jon P. Christinidis DTE Energy One Energy Plaza, 688 WCB Detroit, MI 48226 christinidisj@dteenergy.com mpscfilings@dteenergy.com MPSC Staff Robert W. Beach Brian W. Farkas Kristin M. Smith, Lead Counsel 6545 Mercantile Way, Suite 15 Lansing, MI 48911 Beach1@michigan.gov farkasb@michigan.gov smithk20@michigan.gov ITC Shaun M. Johnson Albert Ernst Gary P. Gordon Dykema Gossett Capitol View 201 Townsend St., Ste. 900 Lansing, MI 48933 sjohnson@dykema.com aernst@dykema.com ggordon@dykema.com Consumers Energy Company Jon R. Robinson (P27953) One Energy Plaza Jackson, Michigan 49201 Jrrobinson@cmsenergy.com	Stoutenburg Farms Richard & Nancy Sylvester Alan T. Ackerman Ackerman Ackerman & Dynkowski 100 W. Long Lake Road, Suite 210 Bloomfield Hills, MI 48304-2774 aackerman@sbcglobal.net ABATE Robert A. W. Strong Clark Hill 151 S. Old Woodward Ave. Birmingham, MI 48009 rstrong@clarkhill.com MPPA & MMEA Michael J. Pattwell Dickinson Wright 215 S. Washington Sq. STE 200 Lansing, MI 48933 mpattwell@dickinsonwright.com MMEA Jim B. Weeks 809 Centennial Way Lansing, MI 48933-1866 jweeks@mpower.org Elizabeth Masters 1629 Fox Road Wales, MI 48027
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