

Howard & Howard

law for business®

Ann Arbor

Kalamazoo

Las Vegas

Peoria

Royal Oak

Toronto*

248.723.0426

Jon D. Kreucher

JDK@H2Law.com

January 11, 2011

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 is the Reply Brief of Affected Landowners and a related proof of service.

Please call if you have any questions.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

Jon D. Kreucher

Filed Electronically in E-Docket

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.)

REPLY BRIEF

of the

AFFECTED LANDOWNERS

DATED: January 11, 2011

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

By: Rodger A. Kershner (P26049)

Jon D. Kreucher (P46133)

450 West Fourth Street

Royal Oak, MI 48067

RKershner@HowardandHoward.com

(248) 723-0421

JKreucher@HowardandHoward.com

(248) 723-0426

Attorneys for:

Affected Landowners

INTRODUCTION

As the Commission has appropriately noted, “for those land owners who are subject to condemnation proceedings as a result of the issuance of a certificate, this is a high price to pay indeed, requiring the Commission’s strong conviction of the necessity of the proposed line.”¹ Any 140 mile long transmission line traveling through at least 94 miles of cropland² will have a potentially-serious effect on farming operations. A route taken through some of the windiest areas of our state³ will also have a potentially-dramatic impact on renewable energy production.⁴ It will not be enough for the Commission to conclude that *both* the Proposed and Alternate Routes are “reasonable” and to leave a decision to a flip of a coin or to ITC*Transmission’s*⁵ own subjective preference. Instead, the Commission will presumably consider which route best facilitates Michigan’s underlying policy of Act 295, which route best avoids “useless duplication of facilities,”⁶ and – if other things are equal – which route best supports other broad policy objectives of our state.

Here, both the Proposed and Alternate Routes were within the best scoring routes in ITC*Transmission’s* analysis. Additionally, ITC has asserted that there is no substantive difference between the Routes in terms of cost, construction schedule, or the ability to reliably transmit energy.⁷ Consequently, the Routes are substantially equivalent in many material respects. *That is not to say, however, that all segments of the two Routes are necessarily*

¹ Order, U-14933 at 16 (Feb. 22, 2008) (discussing that ITC*Transmission* had failed to carry its burden that any transmission line was necessary).

² The entire Proposed Route will travel through 102.4 miles of cropland, and the Alternate Route will traverse 94.6 miles of farmer’s fields. *See*, Staff Exhibit S-33.

³ *See*, Staff Exhibit S-32, incorporated into the Affected Landowners’ Initial Brief at 3.

⁴ *See, e.g.*, testimony of Dr. Andrew Oliver on behalf of RES North America Leasing, where it was estimated that the Proposed Route, as currently designed, would reduce RES’ developable area in one of its planned wind farms by about 10%. 3 TR 414,

⁵ Hereafter, “ITC” or “Company.”

⁶ Order, U-14933 at 16 (Feb. 22, 2008).

⁷ *See, e.g.*, 3 TR 519, Exhibit AL-1 at 1, and Exhibit RES-1 at 4.

reasonable. For example, when competing segments on the Proposed and Alternate Routes between the Rapson and Baker substations are compared and contrasted, the segment along the Proposed Route would *not* be a reasonable choice because that segment *unnecessarily threatens the public convenience through disproportionate impacts to farming operations and unreasonably threatens renewable energy generation*. ITC’s Initial Brief offers little to dilute these concerns. Any choice to nevertheless plow forward and approve the Proposed Route between Baker and Rapson would be unreasonable, particularly given the viable and constructible alternative that exists in the Alternate Route.

Importantly, the Alternate Route between Baker and Rapson has met with *no particular resistance from parties who have voiced a position on the relative merits of the two Routes*. For example, no such party has concluded that the Alternate Route between Baker and Rapson fails to meet the statutory criteria of Act 295. For its part, ITC has actually opined that the Alternate Route between Baker and Rapson⁸ would be a “reasonable and constructible route,”⁹ would “facilitate transmission of electricity generated by wind energy conversion systems located in the wind energy zone,”¹⁰ has “received federal approval,”¹¹ would not “represent an unreasonable threat to the public convenience, health and safety,”¹² would be of “appropriate capability to enable the wind potential of the wind energy resource zone to be realized,”¹³ and would be feasible and reasonable.¹⁴ *ITC’s own scoring* even demonstrates that the Alternate Route between Baker and Rapson will have less overall adverse impact than would the Proposed Route

⁸ When combined with either the balance of the Alternate Route or the balance of the Proposed Route. *See*, Exhibit AL-1 at 124.

⁹ Exhibit AL-1 at 124.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

between those substations.¹⁵ Additionally, Staff has concluded that both Routes are reasonable and feasible,¹⁶ and not a single landowner along the Alternate Route has appeared and briefed any opposition to placement of the transmission line along the Alternate Route.

The Affected Landowners respectfully request that a siting certificate to locate a line between the Baker and Rapson substations on the Proposed Route be denied by the Commission, as ITC has failed to carry its statutory burdens of proof with respect to that segment of the Proposed Route. The Affected Landowners further request that the mitigation and remediation conditions attached to the Affected Landowners' Initial Brief at Attachment A be ordered when a siting certificate is issued.

I. The Segment of the Proposed Route Between Baker and Rapson Would Impose Greater Adverse Impacts Than Would the Alternate Route Between Those Substations, Poses an Unreasonable Threat to the Public Convenience, and Will Not Permit the Potential of the Wind Energy Resource Zone to be Realized. Therefore, the Proposed Route Between Baker and Rapson is Unreasonable.

According to ITC's Initial Brief, "the routing study conducted in this case . . . is by far the most comprehensive and detailed study ever presented to the Commission in a transmission siting case."¹⁷ ITC explains that its siting expert began with "a study area for the proposed project around the endpoints (i.e. substations) identified by ITC."¹⁸ The effort next identified "human and natural resources" within the area, and several state and federal agency stakeholders were contacted.¹⁹ "Several potential routes using many line segments" were developed, and some routes eliminated because they were too close to homes or too far outside the wind zone.²⁰

¹⁵ See, *infra*, Section IA.

¹⁶ Staff's Initial Brief at 1.

¹⁷ ITC's Initial Brief at 30.

¹⁸ *Id.*

¹⁹ *Id.* at 30 – 31.

²⁰ *Id.* at 31.

Although ITC asserts that it was not required to do so, the Company subsequently held a number of meetings with local officials and landowners to identify resources and local concerns.²¹

Throughout this process, 19 separate routing criteria were considered and weighted by ITC.²² As noted in the Affected Landowners' Initial Brief, the criteria and weights passed through at least seven different iterations, in an apparent effort to accurately judge the relative advantages and disadvantages of each Route.²³ "[T]he 10% best scoring routes were retained for further evaluation," and ITC's effort was ultimately intended to identify the path with the "least overall impact."²⁴ While the Proposed Route was "preferred" by ITC, the Company has noted that the "Alternate Route would also minimize overall environmental impacts from project construction and operation."²⁵

Indeed, by selecting two potential routes in the best-scoring 10% of all routes considered, ITC has offered potential paths that are nearly indistinguishable in many important respects. The Proposed and Alternate Routes, when taken as a whole, are not expected by ITC to be materially different in terms of cost, construction time, or their ability to reliably transmit energy.²⁶ Consequently, the difference between the Routes lies in distinctions in the 19 scored criteria and in each Route's relative ability to support other broad policy goals of our state.

A. As Between the Baker and Rapson Substations, ITC's Own Scoring Reveals that the Alternate Route has Less Overall Adverse Impact, and is, Therefore, the Only Reasonable Route.

ITC asserts that it went to great effort to accurately judge the relative strengths and weaknesses of the Proposed and Alternate Routes. It makes sense, then, that ITC would be

²¹ *Id.*

²² *Id.*

²³ Exhibit AL-1 at 80 – 86.

²⁴ ITC's Initial Brief at 31.

²⁵ *Id.*

²⁶ *See, e.g.*, 3 TR 519, Exhibit AL-1 at 1, and Exhibit RES-1 at 4.

willing to fully commit to its own scoring. Unfortunately, however, and as confirmed in its Initial Brief, ITC missed one important step in its analysis: The Company did not compare the two sets of competing segments that ultimately comprise the Routes.

Here, the Proposed and Alternate Routes both *start* at the same location (the Baker substation). The western half of each Route then travels from southwest to northeast and both loop at their northern most point around Bad Axe; in fact, at that point (at the middle of the Routes), the two paths *share* several common miles through Colfax and Verona Townships. The two Routes then head south, and again share many miles of common path toward the *end* of each Route through Greenwood, Kenockee and Wales Townships. Importantly, then, the two Routes share *a common beginning, a common middle, and a common end*. The places where the Routes split essentially breaks down into two competing sets of two segments, *i.e.*, the two competing segments between the common Baker substation starting point and the common Rapson substation mid-point (one such segment along the Proposed Route and the other segment along the Alternate Route), and the two competing segments between the common Rapson mid-point and the common end of the two routes (again, one of the segments on the Proposed Route, the other on the Alternate).

When viewed in this way, ITC could have analyzed the Routes in two ways: ITC could have compared the two sets of competing segments (*e.g.*, ITC could have compared the segment between Baker and Rapson on the Proposed Route to the competing segment on the Alternate Route) or ITC could have compared the *entire length* of the two Routes.

ITC appears to have chosen the latter approach, and compared the scores for the entire length of each Route. This scoring strategy, however, was not without its compromises. By scoring only the entire length of each Route, *disproportionate burdens associated with the*

Proposed Route between Baker and Rapson were masked. In fact, ITC’s own Initial Brief acknowledged the issue with respect to the “visibility score” included as part of the Company’s 19 criteria. According to ITC:

Additionally, *although the western half of the Proposed Route (Baker to Rapson) would have slightly above average visibility, the eastern portion (Rapson to Fitz) would have substantially below average visibility.*²⁷ (emphasis supplied)

Essentially, then, the relative, unfavorable scoring of the Proposed Route between Baker and Rapson -- when compared to the same segment along the Alternate Route -- was lost when the scores were averaged into the entire length of the respective Routes.

This choice was not made by ITC because it did not have relevant data for each of the competing segments. In fact, ITC’s own analysis reveals that the Proposed Route between Baker and Rapson *did not score as well* as did the Alternate Route between those substations.²⁸ According to ITC’s own data, *in addition to scoring better overall*, the Alternate Route between Baker and Rapson has several notable advantages over the Proposed Route. Those advantages are:

- Length Parallel to Existing T-Line (Miles);
- Length Replacing Existing T-Line (Miles);
- Length of New Greenfield Alignment (Miles);
- Transmission Line Crossings (Number);
- New ROW Required (Acres);
- Residences with Unobstructed View Score (Number); and
- Length Through Cropland (Miles).²⁹

²⁷ See, e.g., ITC’s Initial Brief at 33 – 34.

²⁸ Some clarification of ITC’s weighted scoring may be appropriate, as it is not entirely intuitive. As explained by ITC, the Company began by measuring the physical characteristics of each Route. Those physical characteristics were then applied against a weight established by ITC. A positive weight was given to an unfavorable characteristic, and a negative weight to a favorable characteristic. The weighted scores were then compared against a mean for all routes considered. Consequently, the best scoring routes were those routes with the *highest negative number associated with the overall score*. See, 3 TR 210 – 13. Here, the overall score for the Proposed Route between Baker and Rapson was (-)48.4, and the overall score for the competing segment on the Alternate Route was (-)52.3. See Table at Attachment B to the Initial Brief of the Affected Landowners.

²⁹ Additionally, there was no difference in score with respect to Public Facilities within 500 feet. See, Table Attached to Affected Landowners’ Initial Brief at Attachment B, Exhibit AL-1 at 12.

The differences in scoring with respect to these qualities was also substantial in many cases,³⁰ and those material differences involve policy issues that the Commission regularly considers when deliberating on transmission line routes: For example, the criteria of Length Parallel to Existing T-Line and Length Replacing Existing T-Line go to the question of whether facilities will be duplicated unnecessarily.³¹ Similarly, the amount of new ROW Required (acres) relates to the Commission's concerns over "the high price" that will be paid by those "subject to condemnation proceedings."³²

Despite being given an opportunity to do so, ITC has not explained the overall scoring advantage that the Alternate Route between Baker and Rapson achieved³³ -- and while the Company may now choose to focus on individual criterion where the Proposed Route was favored or on its subjective judgment, *the fact will remain that the Alternate Route between Baker and Rapson scored better overall (according to ITC's own analysis and weighting) than did the Proposed Route between those substations.*

Of perhaps equivalent consideration is the fact that, among those parties who have shared a view which compares the Routes, there has been no substantial opposition to placement of the transmission line along the Alternate Route. Given the overall scoring advantage of the Alternate Route between Baker and Rapson and lack of opposition to leverage that segment of the Alternate Route, it would be arbitrary and unreasonable to nevertheless choose the Proposed Route for the western half of the line.

³⁰ See, Affected Landowners' Initial Brief at Attachment B.

³¹ See, Order, U-14933 at 16 (Feb. 22, 2008).

³² *Id.*

³³ See, e.g., Interrogatory AL-ITC-52, Exhibit AL-1 at 130, and Interrogatory AL-ITC-47, Exhibit AL-1 at 122.

B. The Proposed Route Between Baker and Rapson Poses an Unreasonable Threat to Public Convenience.

ITC's Initial Brief asserts that no unreasonable threat to the public convenience will occur, and in particular, that no unreasonable risk to farming operations will result from the transmission line. In support of its conclusion ITC continues to principally rely on its own speculation, and in particular, on its view that "because line spans will be between 800 – 1,100 feet, in many cases the line may entirely span a field"³⁴ and that no resulting impact will occur.

Unfortunately, the Company hasn't done its math. Even a *modestly-sized* field of 40 acres is one-quarter of a mile, or 1,320 feet, square. When traversed diagonally, as would be most of the fields between Baker and Rapson, a path of *1,866 feet* across that same modest 40 acre parcel would be required.³⁵ Therefore, ITC's claim that a distance of 800 – 1,100 feet between supporting structures will "in many cases . . . entirely span a field," is mathematically incorrect. Even in the case of a 40 acre field, a real potential exists for the placement of *two* poles (if the line runs parallel to the field's boundary) or *three* poles (if the line traverses diagonally through a field). Many parcels, of course, are much greater than the 40 acre example, and will, therefore, experience many more poles. Such supporting structures will literally create obstacles to farming operations for *generations* to come.

It is of little comfort, and establishes little credibility, when ITC's Initial Brief assuredly asserts that a distance between poles of 800 – 1,100 feet will span many fields, or when ITC claims that only 2.55 acres will be lost to farming along the entire 140 mile route.³⁶ Common sense counsels otherwise. Similarly, it is unsettling when ITC's witness claims that soil compaction may already be occurring on farms in the Thumb, even though ITC has absolutely no

³⁴ ITC's Initial Brief at 25 (citing Exhibit S-42, p.1).

³⁵ The hypotenuse is calculated as the square root of the sum of the squares of each of the triangle's sides.

³⁶ Exhibit AL-1 at 8.

idea of the type of soil there³⁷ or the vehicles being used on those farms.³⁸ While ITC has submitted a few documents in an effort to mount some sort of a rebuttal to the extensive testimony of Mark Zimmer – a fifth generation farmer in the Thumb – ITC’s claims are unconnected to the record. In the end, ITC can suggest only that farmers will *learn to live with these significant inconveniences, not that the inconveniences will never occur.*³⁹

Concerns over the transmission line’s adverse impact on farming are appropriate regardless of the path actually taken. However, these concerns arise to an even greater extent on the Proposed Route between Baker and Rapson. As noted in the Affected Landowners’ Initial Brief, the Proposed Route between those two substations has 16 more miles of greenfield alignment, or *nearly 60% more* such alignment than does the Alternate Route between those substations.⁴⁰ Consequently, 16 more miles of farmland would be newly exposed to challenges associated with a transmission line than would be the case with the Alternate Route between Baker and Rapson, and 100 more poles than would likely be placed on the Proposed Route between Baker and Rapson than on the Alternate Route between those two substations.⁴¹ Of course, lost productivity and other challenges associated with those poles would also follow.

When the segments between Baker and Rapson are compared, the Proposed Route unreasonably threatens public convenience and farming operations because a viable Route with 16 fewer miles of greenfield alignment through cropland also exists. It has long been the policy

³⁷ Exhibit AL-1 at 107.

³⁸ While ITC Witness Hodge has, for example, testified that soil compaction can occur when pick up trucks with thin tires run across fields or where weight per axle exceeds 10,000 pounds, there is no evidence in the record to suggest that either circumstance regularly exists in fields in the Thumb.

³⁹ See, e.g., ITC’s Initial Brief at 25 – 26.

⁴⁰ The Alternate Route has 27 miles of greenfield alignment between Baker and Rapson, and the Proposed Route has 43 miles. Exhibit AL-1 at 114 – 15. 43 miles – 27 miles = 16 additional miles of greenfield alignment on the Proposed Route; 16 miles/27 miles = 59.26% greater greenfield alignment on the Proposed Route between Baker and Rapson as compared to the Alternate Route.

⁴¹ See, Affected Landowners’ Initial Brief at 25.

of the State of Michigan to preserve farmland and the farming industry.⁴² It would, therefore, be arbitrary and unreasonable to nevertheless conclude that the Proposed Route between Baker and Rapson should be selected.

C. The Proposed Route Between Baker and Rapson Would Not “Enable the Wind Potential of the Wind Energy Resource Zone to be Realized.”

Like with issues related to the public convenience, ITC cannot carry its burden and prove that the Proposed Route between Baker and Rapson would “enable the wind potential of the wind energy resource zone to be realized.”⁴³

ITC continues to view its statutory burden of proof as one of *transmission capability* alone. According to ITC’s Initial Brief, it “performed rigorous studies on the proposed line, which included testing the system with various combinations of power transfers” . . . and concluded that the proposed line was sufficient to transmit “both the minimum and maximum capacities identified by the [Wind Energy Resource Zone Board].”⁴⁴ Still left without discussion, however, is *whether competition between transmission and generation is consistent with Act 295’s underlying policy*. Because this is the first siting certificate request made under Act 295, it may be that ITC’s view on the underlying purpose of MCL 460.1153(3)(d) is correct, *i.e.*, that the criterion is intended to address *only operational capabilities* of a proposed line. Of course, other interpretations are equally plausible and perhaps more compelling: Requiring an applicant to establish that a line will “enable the wind potential of the . . . zone to be realized” could have been intended by legislators to prevent a competition between transmission and generation for the same land, *i.e.*, to ensure that unnecessary challenges to generating capacity are not created. If this latter interpretation were intended, the Proposed Route between Baker

⁴² *Id.* at 18 – 19.

⁴³ MCL 460.1153(3)(d).

⁴⁴ ITC’s Initial Brief at 28.

and Rapson must be rejected, because it is – by ITC’s own admission -- “centrally located” within some of the windiest areas of the state.⁴⁵ Confirming this potential and unnecessary competition to renewable generation is Staff’s observation, as related on Exhibit S-32, that the Proposed Line between Baker and Rapson cuts through several townships with the highest wind generation capacity in that area (and indeed in the state), and testimony of the Affected Landowners which notes that several farmers along the Proposed Route between Baker and Rapson have already entered leases with wind developers.⁴⁶

Again, it appears unreasonable to conclude that a path which poses the real potential to *cannibalize* wind generation rather than *support* that generation is consistent with the policy objectives of Act 295. Consequently, ITC has not established that the Proposed Line between Baker and Rapson would “enable the wind potential of the wind energy resource zone to be realized.” This is particularly true when considered within the context of Alternate Route, which runs on the “inside edge” of those high capacity areas, poses a reduced threat of cannibalizing wind generation capacity (see Staff Exhibit S-32, Affected Landowners’ Initial Brief at 3) and, in ITC’s own judgment, otherwise meets the specific statutory requirements of Section 153.⁴⁷

ITC has failed to meet its statutory burdens of proof in this proceeding. The Proposed Route between Baker and Rapson would impose a disproportionate burden on farming operations when compared to the Alternate Route, and, therefore, poses an unreasonable risk to the public convenience when considered in the context of the Alternate Route. Similarly, ITC’s focus on conductor capability – rather on the transmission line’s ability to support the generating potential of the wind energy zone 4 – fails to address the likely requirements of MCL 460.1153(3)(d). Because the Company has failed to meet its statutory burdens of proof, ITC’s

⁴⁵ 3 TR 252.

⁴⁶ 3 TR 402.

⁴⁷ *See, e.g.*, 3 TR 252, Exhibit AL-1 at 124.

request for a siting certificate along the Proposed Route between Baker and Rapson must be denied.

II. All Conditions Recommended by the Parties to be Placed on Any Siting Certificate Issued by the Commission Should be Adopted.

Several parties, including ITC, have requested that certain conditions attach to any siting certificate which is issued by the Commission. The Affected Landowners support each condition that has been proposed.

A. ITC's Request for Siting Flexibility Should Be Approved, But Conditioned on the Commission's Continuing Oversight.

ITC has not, and will not, conduct any field survey work until a route is approved by the Commission. At this point in time, therefore, ITC has a very limited idea of where poles might be placed or how much soil will need to be excavated per pole.⁴⁸ The survey work that will occur after a certificate is issued may reveal that certain changes to engineering and design should be made. Flexibility may also be required, according to ITC, in order to meet landowner concerns.⁴⁹

The Affected Landowners believe that it would be reasonable to provide ITC with *some* flexibility to deal with issues as they are encountered. Still unknown, however, is the extent to which such changes should be permitted without the need for ITC to submit a particular modification for the Commission's approval.⁵⁰ If identification of the scope of permitted flexibility cannot be determined in advance, the Commission should retain jurisdiction so that oversight can be provided and routing matters promptly resolved.

⁴⁸ Exhibit AL-1 at 107.

⁴⁹ *See, e.g.*, ITC's Initial Brief at 33, n. 10, citing Tr. 214).

⁵⁰ Exhibit RES-1 at 12.

B. The Affected Landowners' Request for Mitigation and Remediation Conditions Should Be Approved.

Some flexibility in siting the permanent location of transmission line is appropriate; however, it would not be prudent to permit unlimited flexibility without the Commission's ongoing oversight. If the parties cooperate and act in good faith with respect to any Route which may be approved, the need for the Commission's ongoing intervention will be minimized. The frequency of such intervention would also be reduced if the parties had a clear sense of obligations before any construction begins. Such guidance would be well defined if the Commission ordered those mitigation and remediation policies attached to the Affected Landowners' Initial Brief at Attachment A.

The Affected Landowners are understandably concerned over ITC's experience and view of farming issues. For ITC, construction of a transmission line through 100 miles of Michigan cropland is unprecedented. As also noted by the Affected Landowners and by Staff, ITC will "consider" concerns raised by landowners, but has offered nothing in the way of firm commitments or even a promise as to the type of possessory interest that the Company will seek.⁵¹ Additionally, while ITC has offered to comply with laws and requirements related to soil erosion, it is clear that such laws and regulations will not address many other issues raised by the Affected Landowners like soil mixing.⁵²

The Affected Landowners do not believe that current uncertainties should prevent a transmission line from being built along an available (and otherwise reasonable) route. However, because of existing uncertainties, it would be appropriate for the Commission to impose those mitigation and remediation policies the Commission deems reasonable so that the eventual impact to farming operations is minimized. If the Commission retains jurisdiction in

⁵¹ See Affected Landowners' Initial Brief at 27 and associated citations.

⁵² *Id.* at 28

this matter (as would appear to be prudent), a pre-identified list of mitigation and remediation guidelines will reduce the number of potential disputes between ITC and landowners. Conditions designed to reduce farming impacts will also help preserve of agriculture operations, which has been a long-standing policy objective of our state.⁵³

C. RES’ Request for Siting Flexibility to Maximize Wind Generation and For a Crossing Agreement Are Both Reasonable Conditions.

RES’ Initial Brief requests that the Commission approve a route with “conditions designed to mitigate adverse effects on wind generation.” Specifically, RES requests that ITC be “required to reposition structures (and therefore the conductors between them) to reasonably maximize wind potential.”⁵⁴ In order to prevent the bifurcation of its planned wind project, RES also requests that the Commission require ITC to enter the Crossing Agreement RES proposes or alternatively, that the Commission or its designee retain jurisdiction to resolve any future disputes that may arise with respect to a crossing agreement.⁵⁵

The Affected Landowners support the development of wind generated energy in the Thumb, and believe that renewable energy generation is a policy objective of Act 295.⁵⁶ Because RES’ requests are reasonably calculated to satisfy the underlying policy purposes of the Act, the Affected Landowners join RES’ request for siting flexibility and for crossing agreements on reasonable terms.

⁵³ *Id.* at 18.

⁵⁴ RES’ Initial Brief at 7.

⁵⁵ *Id.* at 8.

⁵⁶ 3 TR 402.

D. Detroit Edison’s Request That a Siting Certificate Should be “Conditioned Upon Implementation of an Open and Transparent Process for the Commission and Parties to Monitor Project Costs and Development Options” Should be Granted.

Like with ITC and RES, Detroit Edison’s Initial Brief asserts that the Commission’s ongoing oversight of ITC’s project costs and design is required. According to DECo, “[t]o aid in ensuring that costs associated with the project are minimized, it is important that the Commission and the parties be able to monitor the progress of construction, the incurrence of construction expenses, and ongoing demand for interconnection should an expedited siting certificate be issued.”⁵⁷ DECo advocates an ongoing process which permits “an open and transparent” opportunity “for the Commission and parties to monitor and ensure the reasonableness of project costs and development options.”⁵⁸

Like with ITC, RES and DECo, the Affected Landowners believe that approval of a siting certificate may mark the beginning of a new set of potential issues. While the Affected Landowners remain hopeful that ITC’s eventual field surveys and construction will proceed with few problems, a project of this magnitude may nevertheless lead to subsequent disputes over eventual project design and cost. It would be prudent for the Commission to condition any siting certificate on the ongoing, “open and transparent process” that DECo advocates so that any such disputes can be resolved promptly.

CONCLUSION

The record does not demonstrate that ITC has carried its statutory burden of proof with respect to the Proposed Route between the Baker and Rapson substations. When compared to the Alternate Route between those two points, the Proposed Route would unreasonably threaten

⁵⁷ Deco’s Initial Brief at 5.

⁵⁸ *Id.* at 6.

the public convenience because of the 16 additional miles of greenfield alignment and impose a disproportionate burden for farmers between Baker and Rapson. The Proposed Route between Baker and Rapson would also unreasonably impair the “wind energy potential” of wind energy zone 4 by unnecessarily creating a competition between wind generation and transmission for the same property. Finally, the Proposed Route between Baker and Rapson unreasonably requires duplication of existing facilities when compared to the Alternate Route, and has a greater overall adverse impact – according to ITC’s own extensive scoring – than would other routes between Baker and Rapson.

In light of these considerations, it would be arbitrary and unreasonable to issue a siting certificate which permits construction of the Proposed Route between Baker and Rapson. No party to this proceeding -- including ITC when given the chance⁵⁹ – has expressed a strong preference for the Proposed Route between Baker and Rapson, nor have property owners along the Alternate Route raised objection on the record. It would be imprudent and unreasonable to impose the Proposed Route on those that would suffer disproportionately and who have taken the time to establish legitimate concerns through this record.⁶⁰

Finally, for the reasons stated here and in the Affected Landowner’s Initial Brief, the Affected Landowners respectfully request that reasonable mitigation and remediation conditions be adopted as a condition to the issuance of any siting certificate, so that adverse impacts to farming operations can be minimized, and that the conditions recommended by other parties be similarly adopted.

[Signature Block Follows]

⁵⁹ See, e.g., Interrogatory AL-ITC-52, Exhibit AL-1 at 130, and Interrogatory AL-ITC-47, Exhibit AL-1 at 122.

⁶⁰ It appears that the summary of the record provided by Staff as Attachment A to its Initial Brief inadvertently omitted Exhibit AL-1, which is 135 pages long and which contains much of the record supporting the Affected Landowners’ views. Exhibit AL-1 was admitted as part of the record at 3 TR 405.

Dated: January 11, 1011

Respectfully submitted,
HOWARD & HOWARD ATTORNEYS PLLC

By: Rodger A. Kershner (P26049)
Jon D. Kreucher (P46133)
450 West Fourth Street
Royal Oak, MI 48067
RKershner@HowardandHoward.com
(248) 723-0421
JKreucher@HowardandHoward.com
(248) 723-0426

Attorneys for:
Affected Landowners

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: Reply Brief of Intervenor Affected Landowners.

Date Served: January 11, 2011.

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
David S. Maquera
DTE Energy
One Energy Plaza, 688 WCB
Detroit, MI 48226
christinidisj@dteenergy.com
maquerad@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
Beachr1@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
Jeff Furness
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

J&L Properties

Gruber Farms

David B. Meyer
Smith Bovill
200 St. Andrews Rd.
Saginaw, MI 48638
dmeyer@smithbovill.com