

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

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In the matter of the application of ZFS  
Ithaca, LLC, for authority to construct  
and operate a pipeline in Wheeler, Lafayette,  
and Emerson Townships of Gratiot County, Michigan.

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Case No. U-20198

**APPLICATION FOR LEAVE TO APPEAL THE PRESIDING OFFICER'S  
DECISION TO DENY LANDOWNERS' MOTION TO INTERVENE**

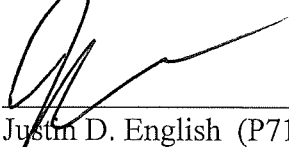
NOW COMES Bryon Reeves, Carl Reeves, Cecil Becker, Carol Reeves,  
Weburg Farmlands, LLC, Katherine Evitts, Kyle Bolt, Marshall Jenkins, Kendall  
English, Sharon English, Jeffrey Gulick, Dale Myers, Jane Myers, Matthew Brown,  
Richard Aldrich, Larry Butcher, Garry Butcher, Helen J. Laurenz, Kelly Butcher,  
Marilyn Myers, Russell Markley, and Ken Federspiel (hereinafter the  
"Landowners"), by and through their attorneys at the English Law Office, PLC, and  
for their Application for Leave to Appeal the Presiding Officer's Decision to Deny  
Landowners' Motion to Intervene and state the following:

1. That on Wednesday September 5, 2018, the Administrative Law Judge in this  
case, Number U-20198, denied the Landowners' Motion to Intervene under  
both the two-prong test as well as permissive intervention. (See Transcript at  
13, ln. 21.)
2. That the Landowners have standing to intervene in this matter as the owners  
of land abutting the road right-of-way. See *Donaldson v Alcona Co Bd of Co  
Rd Comm'rs*, 219 Mich App 718; 558 NW2d 232 (1996).

3. That the Landowners will suffer an injury if the Application is approved in this matter as more fully stated in the affidavit provided by Matthew Brown, provided as an offer of proof concerning matters the Administrative Law Judge did not allow. (See Matthew Brown Affidavit attached hereto.)
4. That the Landowners can provide a unique perspective in this matter that will help in making a determination on all relevant facts and information.
5. Granting the Landowners' Application for Leave to Appeal will prevent substantial harm to the appellant or the public-at-large.
6. That the Landowners request oral argument on this application.

WHEREFORE the Landowners respectfully request that the Commission grant their application for leave to appeal and order reversal of the Administrative Law Judge's order denying the Landowners' Motion to Intervene and order any other relief deemed just and fair.

Respectfully submitted,



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Justin D. English (P71565)  
Attorney for the Landowners

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**AFFIDAVIT OF MATTHEW BROWN**

I, Matthew Brown, after having been duly sworn state the following from my own personal knowledge:

1. That I am Matthew Brown and I have had experience with natural gas pipelines being installed on my property.
2. That I have dealt with TransCanada in regards to tile and they have required us to pay for the water jet truck related to the gas lines as it pertains to tiling the field when the prior gas company have covered those costs themselves.
3. That the crops that are planted above the natural gas lines do not yield as much per acre and therefore result in reduced financial returns for those crops.
4. That the ground above the natural gas lines take years to settle and will often result in farm equipment getting stuck due to the land and soil being disturbed.
5. That upon review of the application in this matter, if approved, there will be a financial loss for all adjoining land owners and farmers, including myself, as a result.

I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE STATEMENTS  
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND  
BELIEF.

Dated: 9-12-18

  
\_\_\_\_\_  
Matthew Brown

STATE OF Michigan )  
Gratiot COUNTY )

Acknowledged before me in Gratiot, County, MI., on 9/12/18  
By Matthew Brown.

1st Karen A. Gulick

Notary Public, State of MI, County of Gratiot.  
My commission expires 11-30-2019

KAREN A GULICK NOTARY PUBLIC - STATE OF MICHIGAN COUNTY OF GRATIOT My Commission Expires 11/30/2019 Acting in the County of <u>Gratiot</u>
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Case No. U-20198

**BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL  
THE PRESIDING OFFICER'S DECISION TO DENY  
LANDOWNERS' MOTION TO INTERVENE**

That Bryon Reeves, Carl Reeves, Cecil Becker, Carol Reeves, Weburg Farmlands, LLC, Katherine Evitts, Kyle Bolt, Marshall Jenkins, Kendall English, Sharon English, Jeffrey Gulick, Dale Myers, Jane Myers, Matthew Brown, Richard Aldrich, Larry Butcher, Garry Butcher, Helen J. Laurenz, Kelly Butcher, Marilyn Myers, Russell Markley, and Ken Federspiel (hereinafter the "Landowners" or "Appellants") all own land which abuts the route of the proposed gas line in this matter. The Landowners filed a Motion to Intervene in this matter raising several concerns about the construction of the proposed gas lines as well as the effect on their use of the land adjoining the gas line. On Wednesday September 5, 2018 the Administrative Law Judge denied their Motion to intervene for failing to identify an injury in fact (two-prong test) and permissive intervention (no unique perspective). The Administrative Law Judge did not allow the Landowners' request to provide testimony at the hearing denying the Motion to Intervene, which was offered by their Counsel. (See Transcript at p. 10, ln 19-22.)

The following, in relevant part, must be shown by way of this application for the Commission to grant their Application to Appeal the Presiding Officer's Decision to Deny Landowners' Motion to Intervene:

(2) The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

- (a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.
- (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.
- (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

(3) An offer of proof shall be made in connection with an appeal of a ruling excluding evidence. The offer of proof shall be made on the hearing record. If the ruling excluded oral testimony, the offer of proof shall consist of a statement of the substance of the evidence that the appellant contends would be established by the testimony. ...

(4) The application shall be supported by a clear and concise brief, pursuant to the provisions of R 792.10434, stating the basis for the appeal and showing that it complies with the provisions of this rule. The brief shall be supported by specific factual allegations as appropriate.

R 792.10433 (emphasis added). In this matter granting the Landowners' Application for Leave to Appeal will prevent substantial harm to the Appellant or the public-at-large. The Landowners in this matter satisfy both the two-prong test as well as the unique perspective requirement for permissive intervention and their Motion to Intervene should have been granted.

**Two-Prong Intervention:**

A party must satisfy the two-prong test established by the U.S. Supreme Court in *Association of Data Processing Service, Inc v Camp*, 397 US 150; 90 S Ct, [sic] 827, 25 L Ed 2d 184 (1970) and applied in these matters in *Drake v Detroit Edison Company*, 453 F Supp 1123 (WD Mich, 1978). The party in question must show: 1) it suffered an "injury in fact;" and 2) that the interests damaged are within the "zone of interests" to be protected or regulated by the statute or constitutional guarantee in question. *Drake, supra*, p. 1127. [Case No. U-9138, *supra*, p 5.]

An injury in fact requires the showing of a "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Alltel Communications, Inc v Michigan Bell Tel Co*, Case No. U-15166, Order, May 22, 2007, p 22 (citing *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 628-29; 684 NW2d 800 (2004)); *In the matter of the Application of Michigan Consolidated Gas Co (National Energy Marketer's Assoc v Pub Serv Comm)*, unpublished opinion per curiam of the Court of Appeals, issued January 21, 2010 (Docket No. 282810).

**Injury in Fact:**

Attached hereto is an affidavit of Matthew Brown indicating the issues he has faced and the financial loss suffered as a result of having natural gas lines in or near his farmland. There is a cost incurred as well as actual injury for each landowner which desires to improve their property as now there is no need for concern about a gas line, whereas in the future if actually constructed there will be additional issues in

dealing with improvements as it relates to the location and presence of the gas line.

This prong is met for intervention.

**Zone of Interest (Owners adjoining the road right-of-way):**

The Michigan Court of Appeals has held that owners of private land adjoining a road have standing to maintain an action concerning the use and maintenance of a road. *Donaldson v Alcona Co Bd of Co Rd Comm'rs*, 219 Mich App 718, 723-24; 558 NW2d 232 (1996).

Plaintiffs in this case are not members of the general public but, instead, own property along the contested road. They need the road to get to their homes and, if it is not maintained by the road commission, they will have to undertake that burden. These interests are unique to plaintiffs and not shared by members of the general public. *In fact, plaintiffs' interests are contrary to the interests of the general public.* If the road is maintained by the road commission, then it is the general public that must pay the maintenance expense. The road offers little benefit to other members of the public because it is a dead-end road that leads to only three houses. Because plaintiffs have a sufficient personal stake in the outcome of this litigation that differs from that of the general public, plaintiffs have standing to bring this action. *Karrip*, supra at 733-734; *Comstock*, supra at 63 Mich. App. at 202-203. The trial court erred in granting summary disposition to defendants with regard to the standing question.

*Donaldson v Alcona Co Bd of Co Rd Comm'rs*, 219 Mich App 718, 723-24; 558 NW2d 232 (1996) (emphasis added). In this matter the Landowners are clearly within the “zone of interest” in this matter and this prong is satisfied.

**Permissive Intervention:**

The Commission holds for permissive intervention exists when the proposed intervenor “could be expected to bring helpful information to the Commission’s attention that might not otherwise be available.” *In re International Transmission Co*, Case No. U-16200, Order, October 14, 2010, p 4. A “unique perspective” must relate

to “the issues raised by the case.” *In re Masotech Forming Technologies*, Case No. U-11057, Order, June 5, 1996, p 3. The Commission applies “a balancing test that weighs any benefit expected to be derived by allowing the intervention against the potential delay and expense expected to accompany the involvement of the intervenor.” *In re International Transmission Co*, Case No. U-16200, *supra* at 4.

**Something to Add:**

Landowners that have used, worked, and know the land at issue, its history, whether it floods or has any unique aspect certainly could add to this matter something that the Staff for the Commission may not be aware. It seems the unique perspective of the adjoining Landowners would be invaluable to the Commission in deciding on whether to grant or deny the Application in this matter.

**Conclusion:**

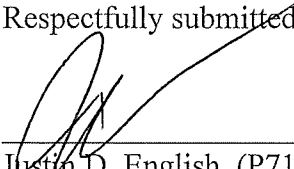
For the above stated reasons the Landowners request the following:

WHEREFORE the Intervenors respectfully request that the Commission;

- A. Grant the Landowners’ Application for Leave to Appeal;
- B. Grant the Landowners’ request to intervene in this matter;
- C. Deny the Applicant’s request for approval of the proposed pipeline; and/or
- D. Grant any other relief as may be lawful and proper to the proposed Intervenors.

Respectfully submitted,

September 12, 2018

  
Justin D. English (P71565)  
Attorney for the Landowners

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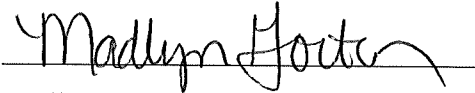
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**PROOF OF SERVICE**

The undersigned deposes and says that on September 12, 2018 she did cause copies of **Application for Leave to Appeal the Presiding Officer's Decision to Deny Landowner's Motion to Intervene and Brief in Support** along with a copy of this **Proof of Service** to be served by enclosing said documents in envelopes, clearly addressed to Kavita Kale at Michigan Public Service Commission, 7109 West Saginaw Highway, 3<sup>rd</sup> Floor, Lansing, MI 48917 and Richard J. Aaron at 201 Townsend Street, Ste 900, Lansing, MI 48933, by depositing the same in the United States mail/First-Class Service, with postage fully prepaid thereon and to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov), Richard J. Aaron via email at [raaron@dykema.com](mailto:raaron@dykema.com), Michael J. Orris via email at [orrism@michigan.gov](mailto:orrism@michigan.gov), Suzanne Sonneborn at [sonneborns@michigan.gov](mailto:sonneborns@michigan.gov), Anne Uitvlugt at [Anne.uitvlugt@cmsenergy.com](mailto:Anne.uitvlugt@cmsenergy.com), and Michael Rampe at [Michael.rampe@cmsenergy.com](mailto:Michael.rampe@cmsenergy.com).

I STATE THAT THIS ABOVE PROOF OF SERVICE IS TRUE AND CORRECT  
UNDER PENALTY OF PERJURY.

  
Madlyn Gorton, Administrative Assistant