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# Zoning ordinance requiring underground transmission lines held unconstitutional

## FACTS:

The Michigan Electric Transmission Company (METC) filed an application with the Michigan Public Service Commission (PSC) requesting a certificate of public convenience and necessity (CPCN) under the Electric Transmission Line Certification Act (Act 30). Act 30 contains language that it controls “in any conflict between this act and any other law of this state.” METC requested a CPCN for the construction of an overhead transmission line running through Oshtemo Township to address reliability issues should existing transformers become unavailable at the same time.

The Township then amended its utility control ordinance which required METC to prove the necessity of the line, obtain Township approval and locate portions of the lines underground. At the PSC, the affected landowners and Oshtemo Township filed objections to METC’s request on several grounds and offered alternative plans.

The PSC issued an order granting METC a CPCN for the transmission line along its preferred (overhead) route and found that Act 30 did not require a “formal benefit/cost analysis” nor a finding that the proposed route was the best or most reasonable route. It further found that the grant of a CPCN preempted Oshtemo’s ordinance.

On appeal to the Court of Appeals, the landowners argued that the PSC did not follow the requirements of Act 30, i.e., that the quantifiable and nonquantifiable benefits of the proposed project justified its construction and that the new line was needed. The landowners also argued that the PSC decision violates the Separation Powers Clause of the constitution because it allows METC to ignore the Township’s requirement that a portion of the line be placed underground. The Township appealed on the basis that Michigan Constitution, art 7, section 29 grants a municipality the right to reasonably control its rights of way and that its consent was required for construction of METC’s proposed line.

## QUESTION:

Did the PSC err in granting a CPCN to METC?

## ANSWER ACCORDING TO THE TRIAL COURT AND THE MICHIGAN COURT OF APPEALS:

NO. The court of appeals held that Act 30 does not require a finding of necessity even though an applicant must include in its application information “supporting the need for the proposed major transmission line.” The court also noted that the proposed route was supported by evidence even though it did not receive the highest score using METC’s own scoring methods.

The court of appeals found that even though the Michigan Constitution grants a municipality the right to control its public places (art 7, section 29) and that provisions of the Constitution and state laws are to be liberally construed in favor of municipalities (art 7, section 34), the grant of authority to municipalities is “subject to the constitution and law” (art 7, section 22). The court of appeals found that Act 30 was not an unconstitutional delegation of power and that the certificate took precedence over Oshtemo Township’s conflicting ordinance requiring that a portion of the transmission line be constructed underground.

The Michigan Supreme Court found that the township’s ordinance was unconstitutional because it was “unreasonable.”

*Oshtemo Township v Michigan Electric Transmission Company LLC, No. 150695 (May 12, 2017)*