

HOUSE BILL No. 6111

September 26, 1990, Introduced by Reps. Jaye, Rocca, Bender, Giese, Runco, Law, Honigman, Camp, Emmons, Willis Bullard, Weeks, Martin, Dolan and Kulchitsky and referred to the Committee on Public Utilities.

A bill to amend section 2 of Act No. 238 of the Public Acts of 1923, entitled as amended

"An act authorizing the formation of corporations for the purpose of generating, manufacturing, producing, gathering, storing, transmitting, distributing, transforming, selling and supplying electric energy or gas, either artificial or natural, or both electric energy and gas, to the public generally, or to public utilities or natural gas companies, and providing for and giving to such corporations and also to corporations heretofore lawfully organized, among other things, for such purposes; to corporations heretofore lawfully organized, or that may hereafter be lawfully organized and duly authorized to carry on the electric or gas business as a public utility in the state of Michigan; and to foreign corporations heretofore lawfully organized or that may hereafter be lawfully organized, among other things, for such purposes, and duly authorized to carry on business in the state of Michigan, the right to condemn private property for the uses provided for herein,"

being section 486.252 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 238 of the Public Acts of
2 1923, being section 486.252 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 2. (1) ~~Every~~ EACH corporation organized as provided
5 in section 1 ~~of this act~~ shall have ALL OF the following
6 powers:

7 (A) ~~First,~~ To cause ~~such~~ examinations and surveys for
8 all proposed improvements to be made as may be necessary to pre-
9 pare for the work to be done.

10 (B) ~~Second,~~ To acquire by lease, purchase, grant, and
11 donation all ~~such~~ lands, easements, royalties, leaseholds,
12 flowage rights, water power, and other property, and any interest
13 therein, as may be necessary to carry out its corporate
14 purposes.

15 (C) ~~Third,~~ To dam any stream or streams, and to excavate,
16 construct, maintain, repair, and improve any existing stream or
17 canal, or which it may excavate and construct, with water power
18 appurtenant ~~thereto~~ TO THE STREAM OR CANAL.

19 (D) ~~Fourth,~~ To flood, flow, and submerge its land and
20 property by constructing the necessary dams in any canal, or in
21 creeks, streams, or other water courses, natural or artificial.

22 (E) ~~Fifth,~~ To condemn all lands and any and all interests
23 ~~therein~~ IN LANDS, easements, rights of way, and other property
24 other than lands lying within a known mineral zone of iron ore,
25 copper, or coal, which may be necessary to generate, transmit,
26 and transform electric energy for public use in, upon, or across
27 private property.

1 (F) ~~Sixth,~~ To condemn all lands, easements, rights of way,
 2 gas royalties, natural gas leaseholds, and other property and any
 3 and all interests therein, other than lands lying within a known
 4 mineral zone of iron ore, copper, or coal, which may be necessary
 5 for pipe line rights of way or for an underground natural gas
 6 storage field or fields. However, the right to condemnation
 7 ~~hereby~~ granted IN THIS SUBDIVISION shall not extend to or
 8 include the right to condemn lands, easements, rights of way, gas
 9 royalties, natural gas leaseholds, or other property or any
 10 interest therein, which are owned, leased, or used by any public
 11 utility or natural gas company carrying on the business of
 12 producing, gathering, transmitting, storing, selling, or supply-
 13 ing gas within the state. ~~The term "natural gas company", as~~
 14 ~~used in this act, is hereby defined as a corporation engaged in~~
 15 ~~the transportation of natural gas in interstate commerce, or the~~
 16 ~~sale in interstate commerce of such gas for resale. However,~~
 17 ~~the~~

18 (2) THE condemnation of lands, natural gas leaseholds, or
 19 other property or any interest therein AS AUTHORIZED UNDER THIS
 20 SECTION for an underground natural gas storage field in any for-
 21 mation shall be without prejudice to the right of the owner or
 22 owners of ~~such~~ THE lands, natural gas leaseholds, or other
 23 property or interest therein to drill through the formation or
 24 formations used or to be used for underground storage of natural
 25 gas ~~provided~~ IF adequate precautions are taken by ~~such~~ THE
 26 owner or owners to prevent the escape of gas stored in ~~such~~ THE
 27 formation or formations. ~~Such condemnation~~

1 (3) CONDEMNATION proceedings AUTHORIZED UNDER THIS SECTION
2 in all cases shall be brought by petition addressed to the pro-
3 bate court for the county in which the land or any part ~~thereof~~
4 or interest ~~therein~~ IN THE LAND to be condemned is located, and
5 shall conform, as nearly as practicable, to the rules of pleading
6 and practice governing probate court procedure. The petition
7 shall set forth with reasonable certainty the description of each
8 parcel of land and interest ~~therein~~ IN THE LAND sought to be
9 acquired, and the name or names of the persons owning or having
10 interest in the land or parcels sought to be condemned ~~insofar~~
11 as disclosed by the records in the office of the register of
12 deeds in the county in which the lands are situated, and shall
13 specify generally the purpose and necessity of acquiring ~~such~~
14 THE lands and interests. Where a project involves more than 1
15 parcel of land located within a single county, all or any number
16 of ~~such~~ THE parcels, irrespective of the number of persons
17 owning or having interests ~~therein~~ IN THE PARCELS, may be
18 joined in 1 proceeding. The petition shall request that all per-
19 sons interested in the respective premises described, or any part
20 ~~thereof~~ OF THE PREMISES, be required to appear and answer the
21 petition, and show cause, if ~~any~~ they have CAUSE, against the
22 same, and shall pray for the appointment of 3 disinterested free-
23 holders and residents of the county in which the land is situated
24 as commissioners to perform the duties assigned them as
25 ~~hereinafter~~ provided IN THIS ACT. ~~Where~~

26 (4) IF the petitioner seeks to exercise the rights conferred
27 by ~~the provisions of paragraph fifth of this section~~ SUBSECTION

1 (1)(E), for the purpose of acquiring any property or interest
2 ~~therein~~ IN PROPERTY for use as a water power project, the peti-
3 tioner shall first have acquired and its petition shall contain
4 the additional allegation that the petitioner has acquired, prior
5 to the filing of ~~such~~ THE petition, by any means other than by
6 condemnation, at least 90% of the property rights and interests
7 including lands to be overflowed, required for such purpose,
8 within the area proposed for ~~such~~ THE water power project.
9 ~~Where~~

10 (5) IF the petitioner seeks to exercise the rights conferred
11 ~~by the provisions of paragraph sixth of this section~~ IN SUBSEC-
12 TION (1)(F), for the purpose of acquiring any property or inter-
13 est ~~therein~~ IN PROPERTY for use as a natural gas storage field,
14 the petition shall contain the allegation that more than 75% of
15 the recoverable gas reserves originally in that natural gas stor-
16 age field were produced before the filing of the petition. Where
17 less than 75% of the recoverable gas reserves originally in the
18 natural gas storage field were produced before the filing of the
19 petition, the petitioner shall first have acquired and its peti-
20 tion shall contain the allegation that the petitioner has
21 acquired, prior to the filing of ~~such~~ THE petition, by any
22 means other than by condemnation, at least 75%, computed in
23 respect to surface area, of the property rights and interests in
24 the underground field required for storage purposes, and its
25 petition shall also contain an accurate description of the sur-
26 face area underlaid by the formation or formations to be used for
27 natural gas storage. The petition shall also contain the

1 allegation that a certificate has been obtained from the public
2 service commission that the present or future public convenience
3 and necessity require or will require the acquiring of any prop-
4 erty or interest ~~therein~~ IN PROPERTY for use as a natural gas
5 storage field. Upon application being filed with the public
6 service commission for a certificate required by this section,
7 the commission shall set the matter for hearing and shall give
8 reasonable notice of the hearing ~~thereon~~ ON THIS MATTER to all
9 interested parties as ~~in the commission's judgment~~ THE COMMIS-
10 SION DETERMINES may be necessary under rules prescribed by the
11 commission. AN INTERESTED PARTY MAY REQUEST THAT A PUBLIC HEAR-
12 ING ON THE ISSUANCE OF A CERTIFICATE REQUIRED BY THIS SECTION BE
13 HELD DURING THE EVENING HOURS IN THE LOCALE THAT MAY BE AFFECTED
14 BY THE ORDER OF THE COMMISSION OR ITS DESIGNATED AGENT. The com-
15 mission may issue a temporary certificate in case of emergency to
16 assure maintenance of adequate service without notice of hearing
17 pending the determination of an application for a permanent
18 certificate. The commission by rule may exempt from the require-
19 ments of this section temporary acts or operations for which the
20 issuance of a certificate is not required in the public
21 interest. Before any certificate is granted, the commission
22 shall examine and inquire into the necessity of the natural gas
23 storage field and determine that the natural gas storage field
24 will serve the present or future public convenience and necessi-
25 ty, and that the field is safe for development and operation of
26 gas storage. The granting of a permanent or temporary
27 certificate by the commission pursuant to this section

1 constitutes a prima facie case in any court of this state that
2 the CERTIFIED natural gas storage field ~~so certified~~ is
3 required by the public convenience and necessity.

4 (6) AS USED IN THIS ACT, "NATURAL GAS COMPANY" MEANS A COR-
5 PORATION ENGAGED IN THE TRANSPORTATION OF NATURAL GAS IN INTER-
6 STATE COMMERCE, OR THE SALE IN INTERSTATE COMMERCE OF GAS FOR
7 RESALE.