

Shifting winds—Farms in Michigan's Thumb in path of plans for power lines

By Tom Kirvan, Legal News

(Published: Tue, Dec 28, 2010, Oakland County Legal News)

The Midwest, and Michigan in particular, is emerging as a center for clean energy.

But at a cost, of course.

That price has yet to be determined for several large farm owners in Michigan's Thumb, each of whom has retained Oakland County attorney Alan Ackerman to fend off possible condemnation actions by a public utility seeking to install transmission lines through the agricultural properties.

Ackerman, who has gained national prominence as one of the top eminent domain attorneys, has filed appearances before the Michigan Public Service Commission on behalf of three clients, two located in Tuscola County and the other in adjoining Sanilac County. The land owners are in the crosshairs of plans by International Transmission Company, otherwise known as ITCTransmission, to erect high-voltage power lines to carry the flow of electricity generated by wind energy.

"It is not a question of 'if' they are going to do this, but rather 'where' they are going to install these transmission lines," Ackerman said. "We are working to ensure that these lines are installed where they will be the least disruptive to the farming operations. It's not as simple as just going from Point A to Point B. There are all sorts of farming issues to consider, some of which I'm just learning about."

Such as "center pivot farming," the circular irrigation practice that reduces runoff and erosion while also limiting wind penetration into crop patterns, according to Michigan agricultural officials. The practice of "farming in circles" has gained in popularity over the past 25 years and has a particular foothold in Michigan's agriculturally rich Thumb area.

"The utilities, of course, want to stay out of woods and wetlands, and are more interested in the so-called 'path of least resistance' when installing transmission lines," Ackerman said. "That path of theirs might not be the best route to follow for farms that use the

'pivot' process. It is our goal to work with them to create less of an impact on the farming operations, to locate these lines where they will be the least disruptive to business."

Over the summer months, officials from ITCTransmission held a series of open houses in the Thumb to discuss the "Thumb Loop Project," a plan to install "high-voltage transmission lines to accommodate wind development projects in the Thumb region." The "Loop" includes the counties of Huron, Tuscola, Sanilac, and St. Clair.

According to materials circulated by ITCTransmission, "Michigan's 'Clean, Renewable and Efficient Energy Act' (Public Act 295) includes the state's first Renewable Portfolio Standard. The RPS requires roughly 10 percent of the state's energy to come from renewable sources by 2015." A section of the Thumb was identified as one of the state's four regions with the "highest wind energy potential," ITCTransmission officials indicated.

Over the last few years Governor Jennifer Granholm has trumpeted the importance of adopting an RPS, which grants the Michigan Public Service Commission the authority to require the state to generate a designated portion of its electricity from renewable sources such as wind, solar, biomass, geothermal, or other alternatives to fossil fuels. She repeatedly proclaimed an urgent need for Michigan "to get in the game" or else run the risk of literally being left out in the energy cold, sacrificing thousands of potential jobs and the corresponding ability to protect our natural resources.

"There obviously is a need for this type of renewable energy, so we are in no way erecting any barriers to block it from happening," attorney Ackerman said of his efforts on behalf of the three farming operations in the Thumb. "What we want is for their business needs to be considered and valued as plans for the installation of these lines move forward."

The state, according to the MPSC, derives 70 percent of its electricity from coal-fired power plants, while 28 percent is supplied by nuclear power means. The remaining, a paltry 2 percent, is generated by wind, bio-energy, and solar suppliers.

For Ackerman and the farming clients he represents, the desire to "work with ITC" is clear.

"It is not in anyone's interest to go to court over these matters," Ackerman said. "Condemnation disputes can be long and costly. It is much better to work together, receive just compensation for the land that is being used for public purposes, and move on."

As Ackerman noted in a recent article he authored for The Farm Journal, "Operating farmers losing a portion of their land in condemnation proceedings do not always have to endure the paradox of finding themselves worse off than if the entire parcel had been taken."

In the meantime, Ackerman and his partner Darius Dynkowski are awaiting word from the MPSC on the proposed route of the Thumb Loop, which will set the stage for discussions with ITC officials on compensation issues.

"ITC will make offers based on appraisals they have obtained," Ackerman said. "If those offers are fair and just, then the matter can be handled quite nicely and quickly. If the numbers don't add up, then we would hope to begin serious negotiations to resolve the differences."