IMLA SPRING CONFERENCE



2009 Mid-Year Seminar

April 19-21, 2009

Washington, DC

Work Session IV: What's New in Telecommunications
Monday, April 20
10:15 a.m. - 11:45 a.m.
Palladian Ballroom

Electric Transmission Line Infrastructure Build-Out and its Impact on Local Government

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2003 NORTHEAST BLACKOUT

…RESULTS IN

ASSAULT ON LOCAL CONTROL??

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THE FACTS

- August 2003 North Eastern Blackout
- Sense that Transmission Infrastructure requires updating
- And off goes the Industry building new Transmission Lines
- So what is the problem with that?

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BEFORE

A carefully preserved wooded community-Homes hidden in the trees.



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AFTER

Notwithstanding a local ordinance stating all utilities must be underground



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AFTER



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ALTERNATIVE

Equally available -1 mile east - already heavily populated by above ground utilities
Mere possibility of alternative rejected out of hand by transmission Co. Why?



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HOW DOES THIS HAPPEN?

- The US Transmission Line Industry
- It started out like any other day...
- Quiet intrusions
- Neighbors talk
- Town meetings
- "3rd party" neutral "facilitators"
- ½ truths

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Resistance

- Communities attempt to cooperate/negotiate
- Legislative amendments attempted
- Litigation

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Regulators to the Rescue?

- Public Service Commission
  - No investigation
  - No experts
  - Why?
  - Regulator bias in favor of the regulated
  - No funding
  - Abdication and Rubberstamping

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APPEAL?

- Collaboration: Residents and Township
- Follow up to Joint litigation at MPSC
- Opportunity to address Constitutional issues at Court of Appeals

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SPLITTING THE PLAINTIFFS

- The Township is provided with amenities
- Interest in the Appeal vanishes
- Homeowners left on their own

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THE LAW

- FEDERAL
  - Energy Policy Act of 2005
- STATE
  - Michigan 1995 Electric Transmission Line Certification Act

v

Michigan Constitution of 1963 Art VII Sec 29
(and recent amendment)

  - Utility powers of condemnation t

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Energy Policy Act of 2005

- FERC/DOE establishment of National Interest Electric Transmission Corridors (NIETC's) 16 USC 824

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Electric Transmission Line Certification Act

- **MCL 460.563** Sec. 3.
- (1) Transmission of electricity is an essential service.
- (2) This act shall control in any conflict between this act and any other law of this state.
- **460.566** Sec. 6.
- (1) Before applying for a certificate…transmission company shall schedule and hold a public meeting in each municipality through which a proposed major transmission line…would pass.
- **460.570** Sec. 10.
- (1) If the commission grants a certificate under this act, that certificate **shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice** that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate.
- (2) A zoning ordinance or limitation imposed after …transmission company files for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.
- **460.575** Sec. 15.
- (2) In administering this act, the commission shall have only those powers and duties granted to the commission under this act.

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Michigan Constitution of 1963

- **§ 29 Highways, streets, alleys, public places; control, use by public utilities.**
- Sec. 29.
- No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

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Utility Condemnation Law

- **486.255**Sec. 5.
- (1) …transmission company shall have the power to condemn property that is necessary to transmit electric energy for public use…
- (3) …any procedure or requirement under this act that is inconsistent with the electric transmission line certification act, …do not apply to… transmission company.
- **History:** Add. 2004, Act 197, Imd. Eff. July 12, 2004
- Note: No OMA, No FOIA, No oversight.

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NEXT?

- FERC PROCEEDINGS TO ESTABLISH NATIONAL TRANSMISSION CORRIDORS
- NET RESULT FOR UTILITIES: 1 STOP SHOPPING AT FERC/DOE

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BIOGRAPHY OF MICHAEL J. WATZA



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Michael J. Watza is a shareholder and co-chair of the commercial litigation and governmental affairs group at the law firm of Kitch Drutchas Wagner Valitutti & Sherbrook. Mr. Watza's areas of concentration include **litigated, legislative and administrative solutions** on behalf of **municipal, non profit and private sector clients** alike.

Michael has represented clients in **State and Federal trial courts** throughout the State of Michigan and argued in both the **State and U.S. Court of Appeals** as well as attended to regulatory matters before the **Michigan Public Service Commission, Tax Tribunal, Department of Labor and Economic Growth and Federal Communication Commission**. Mr. Watza has also represented his clients' interests in the halls of the Michigan Legislature and Congress through the negotiation and drafting of legislation on various issues including **energy, telecommunications, cable, pipeline regulation, electric transmission line regulation, the formation of inter-governmental authorities and tort reform**.

He serves as **General Counsel to PROTEC**, a consortium of several dozen Michigan municipalities with unique interest in local government right of way issues, founded by former **City of Dearborn Mayor Michael Guido**.

Michael also sits on several Boards including the **Michigan Gaming Control Board, Michigan State Bar Association Public Corporation Law Section and Administrative Law Section, the Covenant House Central School Board of Detroit Michigan and is the Chairman of City of Novi Economic Development Corporation**.

He is **chairman** of **Panel #9 for the Michigan Attorney Grievance Commission**, has been an adjunct member of the **Michigan State University Law School Faculty**, teaching a course on Ethics and the Practice of Law and serves as a **commercial mediator for the Wayne County Mediation Tribunal**.

In 2007, Mike was honored with a “Super Lawyer” designation by his peers as noted in the national publication of the same name.

Most recently, Mike successfully represented Meridian Township before the Eastern District of Michigan Federal Court and secured a **temporary restraining order and injunction against Comcast concerning the location of PEG channels**. This litigation has national implications for local government and the cable/telecommunications industry. The Court order was followed by a hearing conducted before Congress on the same issues.

Mike is a 1986 graduate of the Detroit College of Law and a 1978 graduate of Michigan State University.

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