

# Court of Appeals, State of Michigan

## ORDER

EUGENE A ACEY V CONSUMERS ENERGY COMPANY

Docket No. 298525

LC No. 2010-109587-CH

E. Thomas Fitzgerald  
Presiding Judge

Kathleen Jansen

Pat M. Donofrio  
Judges

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The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), the Court orders that the Oakland Circuit Court's May 24, 2010 order granting plaintiffs' motion for preliminary injunction is hereby REVERSED. The existence, size, and location of defendant's pipeline easement and the maximum available working area for the construction across plaintiffs' properties was determined by the February 23, 2007 order granting summary disposition in Oakland Circuit Court docket number 2006-072541-CH. This Court affirmed the trial court's findings regarding the easement but reversed the trial court's limitation of the working area. *Consumers Energy Co v Acey*, unpublished per curiam opinion of the Court of Appeals (Docket No. 277039, 7/17/08). Our Supreme Court reversed this Court's reversal of the trial court's limitation of the working strip, reinstating the circuit court's findings as to the existence, size and location of the working strip. *Consumers Energy Co v Acey*, 483 Mich 985 (2009). That February 23, 2007 order was a final order on the merits and was affirmed on appeal. Relitigation of the size and location of the permanent pipeline easement and available working strip is barred by res judicata and collateral estoppel. *Washington v Sinai Hospital*, 478 Mich 412; 733 NW2d 755 (2007); *Monat v State Farm Ins Co*, 469 Mich 679; 667 NW2d 843 (2004). Plaintiffs cannot relitigate the location and extent of the easement or working strip, so they cannot prevail on the merits of their claims and cannot obtain injunctive relief to bar construction of the pipeline. *Pharmaceutical Research & Mfgs v Dept of Community Health*, 254 Mich App 397; 657 NW2d 162 (2002). This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 28 2010  
Date

*Sandra Schultz Mengel*  
Chief Clerk