

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

Northern States Power Company (d/b/a Xcel Energy)
a Minnesota corporation, by its Board of Directors;
Great River Energy, a Minnesota cooperative
corporation, by its Board of Directors; ALLETE, Inc.
(d/b/a Minnesota Power), a Minnesota corporation, by
its Board of Directors; Western Minnesota Municipal
Power Agency, a municipal corporation and political
subdivision of the State of Minnesota, by its Board of
Directors; and Otter Tail Power Company, a
Minnesota corporation, by its Board of Directors,

Petitioners,

vs.

Scott J. Sypnieski, *et al.*,

**RESPONDENTS CAROL A.
STICE AND DAVID C. SHORE'S
REPLY TO PETITIONERS'
RESPONSE TO RESPONDENTS'
NOTICE OF INTENT
PURSUANT TO MINNESOTA
STATUTES 216E.12**

File CV-10-7551

Case Type: Condemnation

Respondents.

**IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL ESTATE
IN THE COUNTY OF WRIGHT, STATE OF MINNESOTA,
FOR HIGH VOLTAGE TRANSMISSION LINE PURPOSES**

This Memorandum is provided in response to Petitioners' filing dated March 1, 2011
titled **PETITIONERS' RESPONSE TO RESPONDENTS' NOTICE OF INTENT
PURSUANT TO MINNESOTA STATUTES SECTION 216E.12 (Parcels MQ015 and
MQ016)** wherein Petitioner asserts that Respondents Carol Stice and David Shore's election
under Minnesota Statutes Chapter 216E.12 Subd. 4 requires Stice and Shore to prove commercial
viability. Counsel for Stice and Shore have been working with counsel for Petitioners on a
process to address these objections within the Stearns County matters relating to the same power

line project. To the extent Petitioners and Respondents, Stice and Shore, have not come to agreement as to responsibility for these matters prior to the May 16, 2011 hearing, counsel will ask to be heard on the issue.

Carol Stice and David Shore are homeowners subject to Petitioners' condemnation action in the above captioned matter. Carol Stice and David Shore filed an election under Minnesota Statutes 216E.12 Subd. 4 to require Petitioners to acquire, by condemnation, the entire property they own in fee. Petitioners have admitted that Stice and Shore's election falls within one of the enumerated categories of eligibility under the statute. Petitioners, however, filed an objection which asserts that to be eligible under Minnesota Statutes Chapter 216E.12, homeowners must first prove to Petitioners that their home and property are "commercially viable." Petitioners, in the March 1, 2011, filing, assert that homeowners must complete testing which may cost thousands or tens of thousands of dollars on surveys, title work, soil borings, environmental testing, and home inspections.

ARGUMENT

I. COMMERCIAL VIABILITY RELATES TO ELECTION VALIDITY.

The State is vested with the power of eminent domain, and utility companies obtain the power of eminent domain only to the extent such power is delegated to them by the State. See Cooperative Power Association v. Aasand, et.al., 288 N.W.2d 697, 700 (Minn. 1980). The State of Minnesota made such a delegation in Minnesota Statutes Chapter 216E known as the Minnesota Power Plant Siting Act. Id. However, the State conditioned its delegation of power by placing certain processes, procedures, and requirements upon utility companies. The condition of delegation at issue in this case is found in 216E.12 Subd. 4 which is often referred to

as the “Buy the Farm” election. The Minnesota Supreme Court in Aasand, made it clear that such a conditional delegation is in fact constitutional. 288 N.W.2d 697, 700 (Minn.1980).

Minnesota Statutes Section 216E.12 Subd. 4, states (relevant portions underlined):

When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route for a high-voltage transmission line with a capacity of 200 kilovolts or more by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land, pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a right-of-way for a high-voltage transmission line with a capacity of 200 kilovolts or more shall automatically be converted into a fee taking.

In Aasand, the Supreme Court noted:

“the statute [116C.63, now 216E.12, Subd. 4] defines such acquisitions to be for a public purpose. In this manner, the legislature affords landowners not wishing to be adjacent to such right-of-ways the opportunity to obtain expeditiously the fair market value of their property and go elsewhere. The statute, in doing so, responds to parties most affected by the operation of high voltage transmission lines; the statute eases the difficulties of relocation by *shifting the transaction cost* of locating a willing purchaser for the burdened property from landowner to utility.” 288 N.W.2d at 700 (Emphasis added) . In Aasand, the Minnesota Supreme Court referred to commercial viability in terms of an “unmarketable fragment.” Id. At 701.

Petitioners argue that the term “commercially viable,” as used in § 216E.12 Subd 4, requires homeowners to make representations, warranties, and disclosures about their property before it is transferred to Petitioners. Such an argument is contrary to the fundamental principles of condemnation law and the rationale for the adoption of the “Buy the Farm” statute. To interpret “commercially viable” to require a homeowner to warrant title, the existence of wells, and the compliance of a septic system does not match the purposes of Minnesota Statutes Section 216E.12 Subd. 4 or the principles of condemnation under Minnesota Statutes Chapter 117. Such an interpretation creates a tremendous disincentive for homeowners to elect “Buy the Farm.” Such an interpretation also guts the intent of the “Buy the Farm” law which was enacted for the purpose of making homeowners whole when high voltage power lines are being built in their front yards. Such an interpretation is contrary to Aasand, where the Supreme Court described the purpose of the “Buy the Farm” statute as *shifting the transactional costs* from the homeowner to the power utility company.

II. PETITIONERS ARE RESPONSIBLE FOR INVESTIGATION OF THE PROPERTY AT PETITIONERS’ SOLE COST AND EXPENSE.

Petitioners’ process and procedures for acquiring property by eminent domain are governed by Minnesota Statutes Chapter 117. (See Minn. Stat. § 216E.12, Subd. 4 and 117.012). Minnesota Statutes Chapter 117 provides mechanisms by which Petitioners may inspect and survey properties to be acquired pursuant to the “Buy the Farm” Statute. Specifically, 117.041 provides:

117.041 ENTRY FOR SURVEY OR ENVIRONMENTAL TESTING.

Subdivision 1. Surveys. For the purpose of making surveys and examinations relative to any proceedings under this chapter, it shall be lawful to enter upon any land, doing no unnecessary damage.

(Minn. Stat. § 117.041).

V. CONCLUSION.

Petitioners, and not Respondents, have the obligation to conduct any and all investigations, surveys, or testing of the property subject to acquisition under Minnesota Statutes Section 216E.12. Petitioners have the ability and all rights of entry needed and a specified statutory framework as found in Minnesota Statutes Section 117.041. Petitioners' assertions that the "commercial viability" requirement is intended to prevent a homeowner from opting into "Buy the Farm" due to a septic system in need of updating or similar matter is a misinterpretation of the statute. Such matters relate to "damages" payable (i.e. fair market value of the property acquired) and not "commercial viability."

Dated: April 18, 2011

Respectfully submitted,

RINKE NOONAN

By 

Igor S. Lenzner, #234023

Adam A. Ripple, #0386989

Nicholas R. Delaney, #0350035

Attorney for Respondents

Carol A. Stice and David C. Shore

1015 West St. Germain St. Ste, 300

P.O. Box 1497

St. Cloud, MN 56302

(320) 251-6700