

A11-1116

STATE OF MINNESOTA
IN COURT OF APPEALS

Northern States Power Company, *et al.*,

Appellants,

v.

Roger A. Aleckson, *et al.*,

and

Victor E. Spears, *et al.*,

Respondents.

APPELLANTS' REPLY BRIEF and SUPPLEMENTAL APPENDIX

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FACTUAL BACKGROUND¹

Only one fact is relevant to this appeal: After Appellants notified Respondents of their intent to acquire a transmission line easement across the edge of their properties, each Respondent had a choice to make. They could (1) choose to move, by making a so-called "Buy-the-Farm" election,² which would require Appellants to condemn a fee interest in such part of their property that they designated, or (2) choose to remain on their property, as many of their neighbors did.

Respondents argue that their Buy-the-Farm elections were reasonable choices, sincerely made. But, regardless of *how* or *why* they decided to exercise their choices, the critical fact is that Respondents *had a choice*. They were not required to move. They could have remained on their property. The choice was theirs. The fact that they had a choice is the only fact relevant to this appeal, and it is undisputed.³

¹ References to "A. App." herein refer to the Appendix attached to Appellants' initial brief, and "Supp. App." refers to the Supplemental Appendix attached hereto.

² Respondents also had the choice to sell their properties on their own.

³ Respondents' briefs contain numerous statements that are both incorrect and not relevant to this appeal. For example, without citation to the record, the Pudases and Mr. Enos incorrectly state that "the easement designated by NSP covered the *entire* homestead" (Pudas and Enos Br. at 3) (emphasis added). In fact, the record demonstrates that the transmission line easement occupies only a portion of their respective properties. (A. App. 85; Supp. App. 123.) The erroneous statement on page 3 of the Pudas and Enos brief that two non-right-of-way easements were "automatically converted" into a fee taking of the entire property "by operation of law" is discussed *infra* at pp. 7-8.

ARGUMENT

I. RESPONDENTS WERE NOT REQUIRED TO RELOCATE.

Appellants' initial brief demonstrates that the minimum compensation and relocation assistance statutes do not apply to owners who have an option or choice as to whether to remain on their property or move, where only an easement is sought. Instead, both statutes apply only where owners have *no choice* but to relocate. Section 117.187 allows owners to make minimum compensation claims only if they "must relocate." *Minnesota Statutes* § 117.187. The Minnesota Uniform Relocation Act ("MURA"), *Minnesota Statutes* §§ 117.50 – 117.56, permits claims for relocation assistance only by a "displaced person," which is expressly defined to exclude "a person who is *not required* to relocate permanently as a direct result of a project."⁴ 49 C.F.R. § 24.2(a)(9)(ii)(D) (incorporated by reference into *Minnesota Statutes* § 117.50, subd. 3) (emphasis added). Neither statute applies to owners who can choose to remain. The Legislature chose to not allow parties who have a choice to make a claim.

Respondents could have remained in their homes, but chose not to do so. Their houses have not been, and will not be, destroyed, moved, or altered because of the transmission line easement. In fact, other families will live in Respondents' former houses. Respondents made a *choice* to move, they were *not required* to do so.

Respondents seem to agree that, under the plain meaning § 117.187 and MURA, only persons who are required to relocate can pursue minimum compensation and

⁴ Respondents' briefs fail to even acknowledge this controlling definition.

relocation assistance claims, but then make two arguments to attempt to demonstrate that they had no choice but to relocate.⁵ Their arguments are unavailing.

A. The "Condemnation Process" Did Not Deprive Respondents of Their Choice Regarding Whether to Relocate.

Respondents' principal argument is that, once they chose to force Appellants to condemn fee title to their property, the "condemnation process" deprived them of a choice regarding whether to remain or move. The Pudases and Mr. Enos argue that "[t]he *condemnation process* removed entirely [their] ability to decide whether they must relocate." (Enos and Pudas Br. at 6) (emphasis added). The Hansons and Stiches

⁵ In their brief, the Pudases and Mr. Enos also reference concerns about EMF, stray voltage, and other supposed threats to human health and the environment, although they do not expressly base their arguments on them. (Pudas and Enos Br. at 11 and n. 8-10.) The findings of fact made by the Administrative Law Judge in the route permit process rejected any significance to such concerns. The ALJ, after reviewing the extensive testimony and the Environmental Impact Statement prepared for this transmission line, found that:

159. The maximum electric field associated with Applicants' proposal, measured at one meter above the ground, is calculated to be 3.76 kV/m. The Commission has imposed a maximum electric field limit of 8 kV/m measured at one meter above the ground.

160. The highest projected magnetic field level during peak operation at the edge of the right-of-way is 23.79 mG. These levels are considerably less than one percent of the recommended exposure guidelines.

161. There is no indication that any significant impact on human health and safety from EMFs will arise from the Proposed HVTL, regardless of which route is chosen.

(A. App. 30.) The Minnesota Public Utilities Commission expressly adopted these Findings of Fact. (Supp. App. 138.)

similarly argue that “once the Buy the Farm election is made, the matter proceeds through the condemnation process under Chapter 117” and, therefore, “Appellants were required to obtain all of Respondents’ property.” (Hanson and Stich Br. at 7.) Respondents’ argument that the condemnation process forced them to relocate is misplaced for two reasons.

First, it is a circular, bootstrap argument. Respondents argue that they were deprived of a choice regarding whether to remain or move by the condemnation process, but they ignore the fact that it was Respondents’ freely-exercised elections that resulted in their moving. A person who *chooses* to do something cannot say that he was *compelled* to do the thing. Owners who voluntarily choose to expand easement takings into full fee title acquisitions that include their houses cannot say that their resulting relocations were compelled simply because of the fact that *once they chose to expand the taking* by making the elections, they were required to actually relocate. As noted, the minimum compensation and MURA statutes apply to owners who have no choice but to relocate. Here, it cannot be disputed that Respondents had a choice. They could choose whether or not to make elections under the Buy-the-Farm statute. Having willfully chosen to initiate the process that resulted in the total divestment of their property, they cannot now equate themselves with owners who have no choice.

Second, even *after* making their Buy-the-Farm elections, Respondents *still* had a choice about whether or not to allow the expanded condemnation taking to continue. Respondents erroneously contend that once they made their Buy-the-Farm elections, an irrevocable process began that would inexorably lead to their eviction from their homes.

They incorrectly argue that, after expanding the condemnation taking by making Buy-the-Farm elections, “they will be forced to move whether they wish to do so,” and that “the amount of payment and the timing of that payment, the date of their eviction, are all judicially determined, whether the landowners like it or not.” (Pudas and Enos Br. at 7, 16.) They attempt to equate themselves with owners who are subject to a total taking, arguing that once they made their elections, “their position was exactly the same” as any other owner who has to relocate as a result of a total taking of its property. (*Id.* at 7.)

Respondents decidedly are *not* in the same position as owners who are forced to relocate as a result of a total taking. In an ordinary condemnation, the owner cannot choose whether to expand the taking, what type of proceeding should occur (e.g., quick-take), what property should be included, and whether the proceeding should continue to a final conclusion. The condemnor makes those decisions. It initiates the process, chooses the type of proceedings, determines that portion of the property to be acquired, and chooses whether to continue the condemnation process.

By contrast, in a Buy-the-Farm election, the owner controls those important choices by virtue of its “*option*” to “require the utility to condemn a fee interest in any amount of contiguous, commercially viable land” it owns. *Minnesota Statutes* § 216E.12, subd. 4 (emphasis added). There is nothing to prevent an owner, after making a Buy-the-Farm election, from withdrawing its election and reversing the scope of the taking at any time up to the time that fee title passes to the utilities.⁶ Throughout the proceedings, an

⁶ *Minnesota Statutes* § 216E.12, subd. 4, contains no provision stating that an owner cannot *withdraw* an election at any time. The statute does state that an owner “may not

electing owner retains its ability, at will, to withdraw its election and terminate the Buy-the-Farm portion of the proceedings.⁷

Thus it is not true, as Respondents contend, that once they made their elections, it would be only a matter of time before they would be evicted by a court order, and that they therefore meet the statutory definitions of “displaced persons” and persons who “must relocate.” Instead, they had ongoing, continuing choices to either let the condemnation process play out or to terminate the Buy-the-Farm portion of the process at any time, until the moment that title passed to Appellants. The fact that they have had ongoing choices to allow the Buy-the-Farm portions of the proceedings to continue, or to withdraw their elections, negates their argument that the process left them with no choice but to relocate.⁸

expand or otherwise modify an election without the consent of the utility,” but even if that provision were read to apply to an owner’s decision to withdraw an election, the utility would always consent. That is because the utility does not need and does not want fee title to the owner’s land. Had Appellants needed and wanted fee title to all of Respondents’ land, they would have commenced condemnation proceedings to acquire fee title in the first place. Instead, the utilities in this case began proceedings to acquire only an easement, which is all they needed.

⁷ Indeed, one of the property owners in the Stearns County proceedings below, Highland Four LLP, recently decided (without the need to seek Appellants’ consent) to withdraw its Buy-the-Farm election, eleven months after it originally made the election. (Supp. App. 129, 135.) Similarly, in the Wright County proceedings, several other owners (represented by the same counsel that is representing some of the Respondents in this case) decided to withdraw their elections long after they were made. (Supp. App. 136.)

⁸ Respondents contend that Appellants incorrectly focus on the time period *before* they made their elections. (Pudas and Enos Br. at 6-7.) However, the pre-election and post-election distinction they attempt to draw ultimately does not matter. The fact remains that Respondents chose to expand the taking, and throughout the process retained the ability to withdraw their Buy-the-Farm elections at any time.

B. No "Automatic Conversion" of the Non-Right-of-Way Easements Took Place When Respondents Made Their Buy-the-Farm Elections.

When Respondents made their Buy-the-Farm elections, they designated their *entire properties* for condemnation by Appellants, including their homes. (A. App. 88, 94, 97; Supp. App. 125.) As discussed, the transmission line easement does not extend to Respondents' houses, and does not require that Respondents relocate. The only reason that Appellants are condemning fee title to the entirety of Respondents' properties is that Respondents exercised their options to elect to force Appellants to condemn fee title to their entire properties.

Respondents argue that the acquisition of their entire properties occurred "automatically" and "by operation of law," rather than because of their own choices. (Pudas and Enos Br. at 3.) Their argument is factually misleading and legally unsupported. It is factually misleading because it focuses *not* on the easement for the transmission line right-of-way, but instead on two other easements (the "non-right-of-way easements") – one that is intended to provide temporary access to the transmission line during construction, and a second that is intended to allow temporary access to property adjacent to the right-of-way easement, if needed, to repair or maintain the transmission line. Neither of the two non-right-of-way easements requires Respondents to relocate. Their homes did not need to be vacated, demolished, altered, or moved because of the non-right-of-way easements.

Respondents' argument that the non-right-of-way easements "automatically converted" to a fee taking when they made their elections is also legally unsupported.

The statute provides only that the “*transmission line*” right-of-way easement is converted into a fee taking following an owner’s election, not the non-right-of-way easements:

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.

Minnesota Statutes § 216E.12, subd. 4 (emphasis added). Nothing states that any non-right-of-way easements are converted to a fee taking. Thus, the only reason that land beyond the transmission line easement ends up being condemned by the utilities is because the owners choose to compel the utilities to condemn it.

II. APPELLANTS ARE NOT ARGUING THAT THEY ARE EXEMPT FROM THE MINIMUM COMPENSATION AND MURA STATUTES.

Respondents argue that they are entitled to relocation assistance and minimum compensation under §§ 117.52 and 117.187 by virtue of the fact that public service corporations are not expressly “exempted” from those statutes. However, that argument is irrelevant because Appellants do not contend that an exemption applies.

Instead, Appellants submit that the plain language of the statutes does not allow minimum compensation or relocation assistance claims to be made by owners who have a choice of whether or not to relocate. Appellants acknowledge that such claims might be appropriate where a transmission line easement actually requires an owner to relocate. For example, if houses were located within the transmission line right-of-way, relocation might well be necessary. Unlike the present case, the owners in that circumstance might have no choice but to move, and the statutory requirements would be met – a claim for

minimum compensation would be available because such owners “must relocate,” and relocation assistance could be sought because the owners would meet the definition of a “displaced person.”

III. RESPONDENTS’ RELIANCE ON EXTRINSIC EVIDENCE OF ALLEGED LEGISLATIVE INTENT IS MISPLACED.

A. The Statutes at Issue are Unambiguous and the Court Need Only Apply Their Plain Meaning.

Statutory construction presents a question of law. *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 910 (Minn. 2006). The Court “begin[s] with the language of the statute, inquiring first whether the statute is ambiguous.” *Id.* (citing *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 68 (Minn. 2006)). It is well settled that “[i]f the statute is plain and unambiguous, we apply the words of the statute according to their plain meaning and engage in no further construction.” *Reiter*, 721 N.W.2d at 910 (citing *Wynkoop v. Carpenter*, 574 N.W.2d 422, 425 (Minn. 1998)). Consideration of extrinsic evidence of legislative intent is simply not appropriate for an unambiguous statute. *Id.*

Here, the language found in *Minnesota Statutes* § 117.187, that minimum compensation is available only if an owner “must relocate,” is unambiguous. Resort to extrinsic evidence is not necessary to understand the meaning of the word “must.” The plain meaning of “must” is something that is mandatory, not something that is optional. A person who can choose whether to relocate is *not*, under the plain meaning of the statute, a person who “must relocate.” Similarly, the definition of a “displaced person” entitled to relocation assistance under MURA is not ambiguous. As the governing definition plainly states, “a person who is *not required* to relocate permanently as a direct

result of a project” is *not* a “displaced person.” 49 C.F.R. § 24.2(a)(9)(ii)(D) (incorporated by reference in *Minnesota Statutes* § 117.50, subd. 3) (emphasis added).

Respondents do not contend that the statutes are ambiguous. They make no attempt to argue that the Legislature’s intent cannot be discerned from reading the language selected by the Legislature. Nevertheless, Respondents devote substantial portions of their briefs to arguing that extrinsic materials (such as how the Legislature allegedly failed to react to arguments made in the *Aasand* briefs more than 30 years ago, but which were not addressed in the Court’s opinion), and different enactments of the Legislature, are somehow relevant to determine the meaning of §§ 117.187 and 117.52. Without a determination that the statutes are ambiguous, the extrinsic material is simply irrelevant.

B. The Extrinsic Evidence Does Not Support Respondents' Arguments.

In any event, the extrinsic evidence that Respondents identify does not support their arguments. They rely mainly on 2010 legislation that amended § 117.189 by, among other things, removing exceptions from certain provisions of Chapter 117 that previously had been applicable to public service corporations. *See* 2010 Minn. Laws ch. 288, § 1.

However, nothing about the 2010 amendment addresses the Buy-the-Farm statute, *Minnesota Statutes* § 216E.12, subd. 4. The Buy-the-Farm statute is neither expressly nor implicitly referenced in the 2010 amendment. In fact, the wording of the amendment appears to *exclude* the amendment’s application to land that an owner elects to force a utility to acquire under the Buy-the-Farm statute. The 2010 amendment states that the

minimum compensation and relocation provisions now apply “to the use of eminent domain authority by public service corporations *for* . . . construction or expansion of . . . a high-voltage transmission line” 2010 Minn. Laws ch. 288, § 1 (emphasis added). Appellants are using eminent domain to acquire *easements* for construction of the transmission line. The additional land that Respondents, through their Buy-the-Farm elections, are compelling Appellants to condemn fee title to is not “for” the construction or expansion of a transmission line. That land will not be used “for” the transmission line, but simply will be held by Appellants until such time that it can be re-sold. On its face, the 2010 amendment does not apply to Buy-the-Farm elections.

In addition, the fact that the Legislature, at one time, exempted public service corporations from the minimum compensation and relocation assistance provisions, but later removed the exemption, says nothing about what the phrases “must relocate” and “displaced person” mean. It is conceded that if Appellants acquired a transmission line easement, and a house were located within the easement, the owner could be entitled to make minimum compensation and relocation assistance claims (if all other requirements were met). The fact that the Legislature removed the exemption does not signal that courts are now free to ignore the plain language of the statutes.⁹

⁹ In their brief, the Pudases and Mr. Enos reason that “[s]ince minimum compensation does not apply to easement acquisitions, it seems incontrovertible that the legislature intended to grant minimum compensation to electing landowners.” (Br. at 28.) That reasoning is faulty because the premise is incorrect – an easement acquisition *could* require an owner to relocate, as described above, in which case minimum compensation would be available because the “must relocate” and “displaced person” requirements would be met.

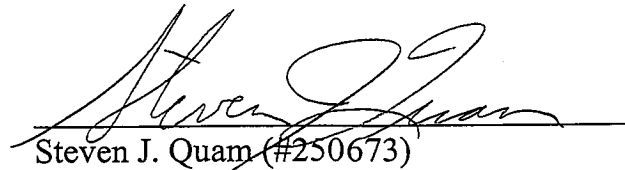
Finally, the legislative history materials that Respondents cite contain a statement by one legislator that the purpose behind the 2010 amendment's removal of the exemption for electric transmission lines and pipelines was to create uniformity, so that public service corporations would have the same obligations as all other condemning authorities. (Hanson and Stich Br. at 6 and n. 3.) The uniformity goal expressed by the legislator does not support Respondents' arguments. If Mn/DOT acquired an easement over the same portion of Respondents' property for the expansion of Interstate 94, or a pipeline company acquired the same easement for the construction of a pipeline, those condemning authorities *would not* be faced with minimum compensation or relocation assistance claims because those projects, just like the instant transmission line easements, would not require the owners to relocate. Public service corporations, like Appellants, are now "on par" with other condemning authorities. Regardless of who is exercising the power of eminent domain, when an owner must relocate, minimum compensation and MURA apply. Where an owner has a choice, the minimum compensation and MURA statutes do not apply.

CONCLUSION

Based on the record below, Respondents are neither owners who must relocate nor are they displaced persons. Therefore, under the plain meaning of *Minnesota Statutes* §§ 117.187 and 117.52, Respondents are not eligible to make claims for minimum compensation or relocation assistance. The trial court's order should be reversed.

Respectfully submitted,

Dated: January 3, 2012.

A handwritten signature in black ink, appearing to read "Steven J. Quam", is written over a horizontal line.

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Email correspondence from Bradley V. Larson, counsel for Highland Four, LLP, to counsel for Appellants withdrawing Buy-the-Farm Election (dated November 10, 2011)	A. App. 135
Correspondence from Michael Rajowski, counsel for property owners Robert and Doris Dahl and Donald and Judeen Faleide, to counsel for Appellants withdrawing their Buy-the-Farm Election (dated April 13, 2011)	A. App. 136
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MONTICELLO TO QUARRY 345 KV
EXHIBIT A SHEET 1 OF 2 SHEETS

Certificate of Survey

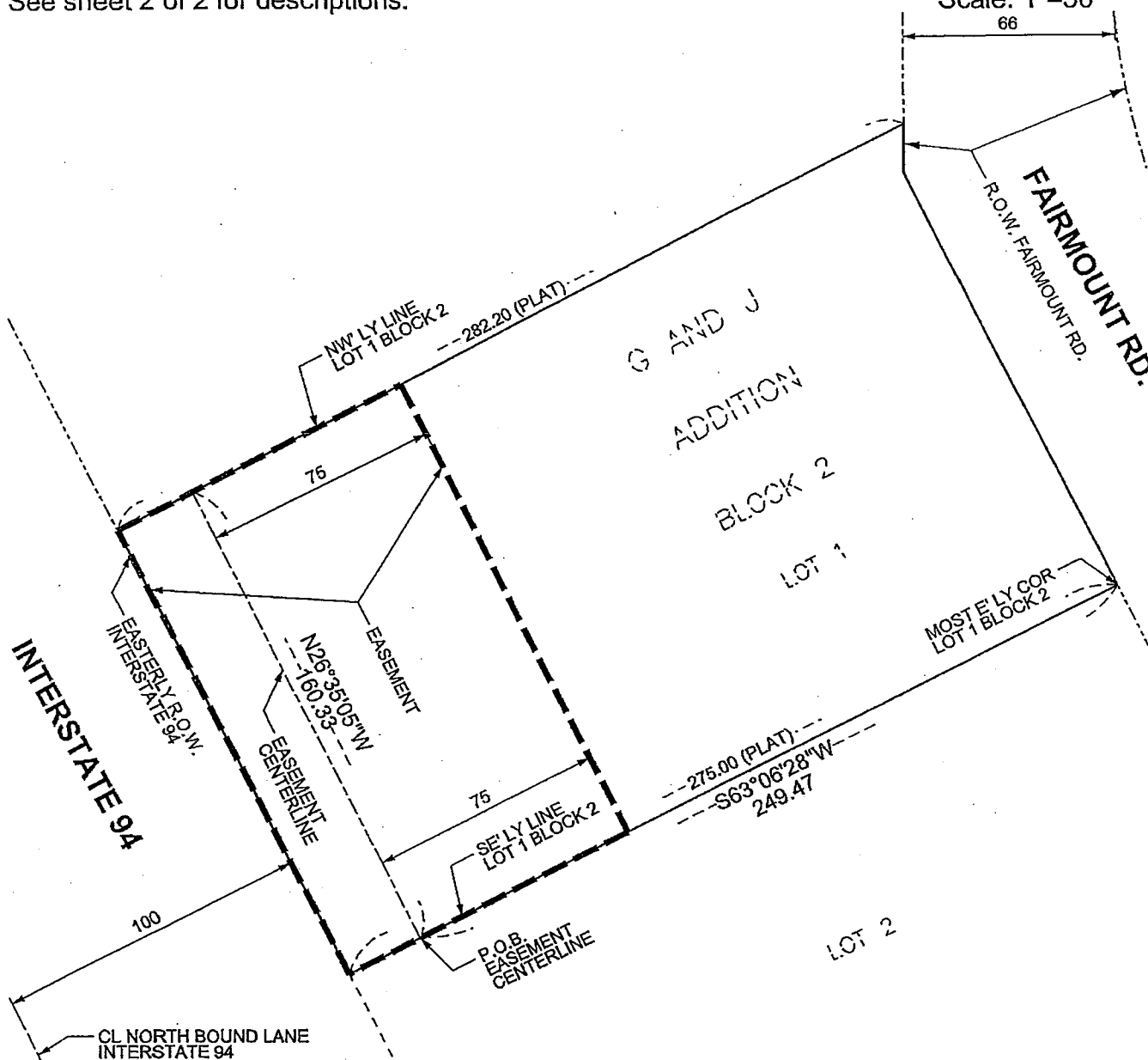
Location: Lynden Township, Stearns County, Minnesota

Grantor: Matthew Enos

See sheet 2 of 2 for descriptions.



Scale: 1"=50'
66



I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT
WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION
AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER
THE LAWS OF THE STATE OF MINNESOTA.

Todd M. Hendershott
TODD M. HENDERSHOTT LIC. NO. 43806

PARCEL: MQ121
SEC. 20, T.123N., R.27W., 5TH P.M.
CO.: STEARNS

DATE 7-9-10

MONTICELLO TO QUARRY 345 KV
EXHIBIT A SHEET 2 OF 2 SHEETS

Certificate of Survey
Location: Lynden Township, Stearns County, Minnesota
Grantor: Matthew Enos

"Premises":

Lot One (1), Block Two (2), G and J Addition, Stearns County, Minnesota.

"Easement Area":

An easement over, under and across that part of the herein before described "Premises" which lies within 75.00 feet on each side of the following described centerline:

Commencing at the most easterly corner of the herein before described Lot One (1), Block Two (2), G and J Addition; thence South 63 degrees 06 minutes 28 seconds West 249.47 feet along the southeasterly line of said Lot One (1), Block Two (2), G and J Addition to the point of beginning of the centerline to be described; thence North 26 degrees 35 minutes 05 seconds West 160.33 feet to the northwesterly line of said Lot One (1), Block Two (2), G and J Addition and said centerline there terminating.

The side lines of said easement are to be prolonged or shortened to terminate on the northwesterly and southeasterly lines of said Lot One (1), Block Two (2), G and J Addition.

Containing 0.37 acres, more or less

PARCEL: MQ121
SEC. 20, T.123N., R.27W., 5TH P.M.
CO.: STEARNS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

SEVENTH 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,

MATTHEW ENOS'
NOTICE OF INTENT
PURSUANT TO MINNESOTA
STATUTE SECTION 216E.12

Petitioners,

File 73-CV-10-10828

Case Type: Condemnation

vs.

Roger A. Aleckson, *et al.*,

Respondents.

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

TO: THE ABOVE NAMED PETITIONERS AND THEIR ATTORNEYS, STEVEN J. QUAM
AND JAMES E. DORSEY OF FREDRIKSON & BYRON, P.A., 200 SOUTH SIXTH
STREET, SUITE 4000, MINNEAPOLIS, MN 55402-1425.

PLEASE TAKE NOTICE that Respondent, Matthew Enos, pursuant to Minnesota
Statute §216E.12, hereby notices his intent to require Petitioners to acquire all of his contiguous,
commercially viable property, legally described as follows:

See **EXHIBIT A** ("Matthew Enos Property").

The Matthew Enos Property shall be acquired in fee, together with all improvements thereon, based on the fair market value without regard to the presence of the utility route or site. Accordingly, Petitioners shall be required to convert the easement interest they seek into a fee taking of the Matthew Enos Property, in its entirety, and shall re-file their Petition, negotiate in good faith for the purchase of a fee interest in the Matthew Enos Property, provide an appraisal complete with a minimum compensation analysis pursuant to Chapter 117 of the Minnesota Statutes prior to re-filing, and comply with all requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act for both Mr. Enos and his tenants.

Dated: 2-16, 2011

RINKE NOONAN

By



Igor S. Lenzner, 234023

Adam A. Ripple, 0386989

Nicholas R. Delaney, 0350035

Attorneys for Respondent Matthew Enos

P.O. Box 1497

St. Cloud, MN 56302-1497

320-251-6700

EXHIBIT A

Matthew Enos

Property Description

The subject property consists of a parcel located at 22131 Fairmont Road, St. Cloud, MN. It is further described (abbreviated) as per public record as:

Parcel: 19-10707-0006
Lot 1, Block 2, G & J Addition
Section 20 Township 123N Range 027W
Stearns County, MN
Classed as Residential Homestead

STATE OF MINNESOTA)
)
COUNTY OF STEARNS)

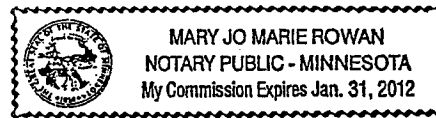
AFFIDAVIT OF SERVICE BY MAIL

The below signed, being duly sworn, states that on the 16 day of February, 2011, I served the Certificate of Representation and Parties (Matthew Enos) and Notice of Intent Pursuant to Minnesota Statute Section 216E.12 on Steven J. Quam, the attorney for Northern States Power Company, et al., the Petitioners in this action, by mailing to him a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Cloud, Minnesota, directed to said attorney at Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425.

Cathy M. Preis

Subscribed and sworn to before me
this 16 day of February 2011.

Mary Jo Marie Rowan
Notary Public



DEC 07 2010

STATE OF MINNESOTA

CaseType: Condemnation
DISTRICT COURT

COUNTY OF STEARNS

SEVENTH 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,

Case No: 73-CV-10-9472

vs.

Victor E. Spears; Frances M. Spears; Byron Gehrke;
Stearns Cooperative Electric Association, a Minnesota
cooperative association; Highland Four, LLP, a
Minnesota limited liability partnership; Robert T.
Pudas; Charlene A. Pudas; North American Mortgage
Company, a Delaware corporation; Wells Fargo Bank,
N.A., a national banking association; Kenneth A.
Preusser and Barbara A. Preusser, Trustees of the
Preusser Family 2007 Revocable Trust Agreement;
State Bank of Kimball, a Minnesota banking
corporation; Lamar OCI North Corporation, formerly
known as Delite Outdoor, Inc., a Delaware
corporation; CitiMortgage, Inc., a corporation under
the laws of the United States; Doug Fredrickson; Sue
Fredrickson a/k/a Susan Fredrickson; Richard E. Held;
Karen M. Held; Brad Brigalman; Franklin Outdoor
Advertising Company, Inc., a Minnesota corporation;
John E. Happe; Geraldine L. Happe; Daniel J. Happe;
Donna M. Donovan; State of Minnesota; and Stearns
County,

**HIGHLAND FOUR, LLP'S
NOTICE OF INTENT
PURSUANT TO MINNESOTA
STATUTE SECTION 216E.12**

Respondents.

TO: ABOVE NAMED PETITIONERS AND THEIR ATTORNEYS, STEVEN J. QUAM
AND JAMES E. DORSEY OF FREDRIKSON & BYRON, P.A., 200 SOUTH SIXTH
STREET, SUITE 4000, MINNEAPOLIS, MN 55402-1425.

PLEASE TAKE NOTICE that Respondent, Highland Four, LLP, pursuant Minnesota
Statute §216E.12, hereby notice their intent to require Petitioners to acquire all of Respondent's
contiguous, commercially viable property, legally described as follows:

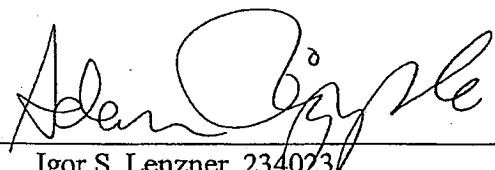
See EXHIBIT A ("Highland Property").

The Highland Property shall be acquired in fee, together with all improvements thereon,
based on the fair market value without regard to the presence of the utility route or site.
Accordingly, Petitioners shall be required to convert the easement interest they seek into a fee
taking of the Highland Property, in its entirety, and shall re-file their Petition, negotiate in good
faith for the purchase of a fee interest in the Highland Property, and provide an appraisal
complete with a minimum compensation analysis pursuant to Chapter 117 of the Minnesota
Statutes.

Dated: December 6, 2010

RINKE NOONAN

By



Igor S. Lenzner, 234023

Adam A. Ripple, 0386989

Nicholas R. Delaney, 0350035

Attorneys for Respondent Highland Four,
LLP

P.O. Box 1497

St. Cloud, MN 56302-1497

320 251-6700

EXHIBIT A

Highland Four, LLP

Property Description

See legal description below for:

Tax Parcel No. 19.10503.0000

Tax Parcel No. 19.10498.0000

Tax Parcel No. 19.10512.0000 (MQ112)

Tax Parcel No. 19.10499.0000 (MQ111)

Parcel No. 1

All those parts of the following described tracts of land lying Southwesterly of the Southwesterly right of way line of the Minneapolis and Northwestern Railroad Company (now Burlington Northern Inc.) as the same is now located and constructed over and across each of said tracts:

That East Half of the Northeast Quarter of Section 29, Township 123 North, Range 27 West, less and except that part of the East Half of the Northeast Quarter of Section 29, Township 123 North, Range 27 West, Stearns County, Minnesota, described as follows: Commencing at the Southwest corner of said East Half of the Northeast Quarter of Section 29; thence North 00 degrees 12 minutes 28 seconds West, assumed bearing, along the West line of said East Half of the Northeast Quarter a distance of 505.00 feet to the point of beginning of the tract to be described; thence continue North 00 degrees 12 minutes 28 seconds West along said West line a distance of 1522.34 feet to the Southwesterly right of way line of County State Aid Highway No. 75; thence South 33 degrees 05 minutes 41 seconds East along said Southwesterly right of way line of C.S.A.H. no. 75; a distance of 203.11 feet; thence continue Southeasterly along a tangential curve concave to the Northeast, radius 5804.58 feet, central angle 07 degrees 35 minutes 27 seconds 769.02 feet; thence South 43 degrees 04 minutes 19 seconds West, along a line not tangent to said curve 521.26 feet; thence South 00 degrees 12 minutes 28 seconds East 355.81 feet; thence South 89 degrees 44 minutes 18 seconds West 212.00 feet to the point of beginning.

AND

The Southwest Quarter of the Northwest Quarter of Section 28, Township 123 North, Range 27 West, Stearns County, Minnesota.

Parcel No. 2

All that part of the North Half of the Southeast Quarter which lines North and East of the Northeasterly right of way line of Trunk Highway No. 94 as it presently exists, all in Section 29, Township 123 North, Range 27 West.

ALSO that part of the following described tract of land lying Southwesterly of the Southwesterly right of way line of the Minneapolis and Northwestern Railroad Company (now Burlington Northern Inc.) as the same is now located and constructed over and across said tract: Northwest Quarter of the Southwest Quarter of Section 28, Township 123 North, Range 27 West, except that part thereof which lies Southwesterly of a line run parallel with and distant 100 feet Northeasterly of the following described line: Beginning at a point on the South line of said Section 28 distant 1953.9 feet East of the Southwest corner thereof; thence run Northwesterly at an angle of 35 degrees 20 minutes 30 seconds with said South section line for 2600 feet and there terminating, and except all right of access to and from Trunk Highway No. 94.

Also see legal description below for:

Tax Parcel No. 19.10505.000 (MQ113)

That part of the Southwest Quarter of the Northeast Quarter of Section 29, Township 123 North, Range 27 West, Stearns County, Minnesota lying northeasterly of the northeasterly right of way line of Interstate Highway Number 94 described as follows:

Beginning at the northeast corner of said Southwest Quarter of the Northeast Quarter; thence southerly along the east line of said Southwest Quarter of the Northeast Quarter on an assumed bearing of South 00 degrees 42 minutes 07 seconds East for 1312.29 feet to the southeast corner of said Southwest Quarter of the Northeast Quarter; thence westerly along the south line of said Southwest Quarter of the Northeast Quarter, South 89 degrees 14 minutes 39 seconds West for 258.09 feet to the point of intersection with the northeasterly right of way line of Interstate Highway Number 94; thence northwesterly along said right of way line, North 55 degrees 25 minutes 40 seconds West for 1248.02 feet; thence northwesterly to the point of intersection with the west line of said Southwest Quarter of the Northwest Quarter a distance of 31.76 feet along a tangential curve concave to the northeast having a radius of 5629.58 feet and a central angel of 0 degrees 19 minutes 24 seconds; thence northerly along said west line of the Southwest Quarter of the Northwest Quarter, North 00 degrees 05 minutes 17 seconds East for 570.78 feet to the northwest corner of said Southwest Quarter of the Northeast Quarter; thence easterly along the north line of said Southwest Quarter of the Northeast Quarter, North 89 degrees 11 minutes 03 seconds East for 1331.21 feet to the point of beginning.

Together with: A 16.5 foot ingress and egress easement over and across the West 16.5 feet of Lot 1, Block 2, Mel's Addition, according to the recorded plat thereof, Stearns County, Minnesota.

And together with: A 33 foot ingress and egress easement over and across the West 33.00 feet of the Southwest Quarter of the Southeast Quarter of Section 20, Township 123, Range 27, which lies South of Mel's Addition, according to the recorded plat thereof; Stearns County, Minnesota.

And together with: A 33 foot ingress and egress easement over and across the West 33.00 feet of the Northwest Quarter of the Northeast Quarter of Section 29, Township 123, Range 27, Stearns County, Minnesota.

STATE OF MINNESOTA)
)
COUNTY OF STEARNS)

AFFIDAVIT OF SERVICE BY MAIL

The below signed, being duly sworn, states that on the 1st day of December, 2010, I served Highland Four, LLP's Notice of Intent Pursuant to Minnesota Statute Section 216E.12 on Steven J. Quam and James E. Dorsey, the attorneys for Petitioners in this action, by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Cloud, Minnesota, directed to said attorneys at Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425, the last known address of said attorneys.

Michelle Vogt

Subscribed and sworn to before me
this 1st day of December, 2010.

Brandi M. Lowe
Notary Public



Dorsey, James

From: Bradley V. Larson [bvl@fnmmail.com]
Sent: Thursday, November 10, 2011 9:04 AM
To: Dorsey, James
Cc: 'Zona Gutzwiller'
Subject: Highland Four/Xcel

Dear Jim,

I am in receipt of your pleadings with regard to the Buy The Farm hearing scheduled for December 5. As you know, I did not initially represent them and the election was filed by other counsel. After doing my analysis and review of your Memorandum I informed my clients that they do not qualify under the Statute and the *Aasand* case. Thus, the BTF election is hereby withdrawn which will obviate the necessity of the December 5 hearing. Please let me know if you wish to cancel the hearing with Judge Kundrat or you would like me to do so. I have authorized our appraiser to finalize his appraisal based on a straight easement take and upon my receipt of same will contact you to see if this can be negotiated out short of a Commissioners hearing. Thank you for your considerations in accommodating scheduling in this matter.

Respectfully,

Brad Larson

Bradley V. Larson, Esq.
Metcalf, Larson & Muth, P.C.
313 West Broadway
P.O. Box 446
Monticello, MN 55362-0446
(763) 295-3232
(763) 295-3132 facsimile

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12/29/2011

A. App. 135



QUINLIVAN &
HUGHES, P.A.
ATTORNEYS AT LAW

Writer's Email: mrajkowski@quinlivan.com

Writer's Direct Dial: (320) 258-7857

April 13, 2011

APR 14 2011

Kevin A. Spellacy
Michael J. Ford*
Michael T. Feichtinger*
Steven R. Schwegman***
Michael D. LaFontaine
Ronald W. Brandenburg
Bradley W. Hanson*
Kenneth H. Bayliss
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W. Benjamin Winger

Of Counsel:
Keith F. Hughes
John J. Hoefs*

Retired:
John D. Quinlivan
Gerald L. Thoreen
Dennis J. (Mike) Sullivan

*Qualified ADR Neutral
*MSBA Certified Civil Trial Specialist
*American College of Trust & Estate Counsel
°Also licensed in South Dakota
□Also licensed in North Dakota
*Also licensed in Wisconsin

Steven J. Quam
Fredrikson & Byron, P.A.
200 S. 6th St., Ste. 4000
Minneapolis, MN 55402-1425


RE: CapX2020 Project
My Clients: Judeen and Donald Faleide, Robert Dahl and Doris Dahl
Our File #119041.19041

Dear Mr. Quam:

I have had an opportunity to speak with my clients about the pending hearing date. My clients have decided to remove their election for a "Buy the Farm" option. We will be proceeding then on damages. I would anticipate having an appraisal for you within sometime next week. We still need to discuss the loss of my clients' trees. As you may recall, agents of CapX2020 wrongfully removed trees before they had a legal right to be on the property.

Should you have questions, please do not hesitate to contact me.

Sincerely,


Michael C. Rajkowski
Attorney at Law
MCR/kap
729559

C: Donald & Judeen Faleide
Robert J. Dahl
Doris R. Dahl

Mail & Fax Center
PO Box 1008
St. Cloud, MN 56302
Fax 320.251.1415

Saint Cloud Office
Wells Fargo Center
400 South First Street, Suite 600
St. Cloud, MN 56301
Phone 320.251.1414

Little Falls Office
First Street Suites
107 First Street SE, Suite 105
Little Falls, MN 56345
Phone 320.632.0440

A. App. 136

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd
Phyllis Reha
Thomas Pugh
J. Dennis O'Brien
Betsy Wergin

Chair
Vice Chair
Commissioner
Commissioner
Commissioner

**In the Matter of the Application for a
Route Permit for the Monticello to St.
Cloud 345 kV Transmission Line Project**

ISSUE DATE: July 12, 2010

DOCKET NO. E002, ET2/TL-09-246

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ISSUING AN HVTL ROUTE
PERMIT TO XCEL ENERGY AND
GREAT RIVER ENERGY**

The above-captioned matter came before the Minnesota Public Utilities Commission (Commission) on July 8, 2010, for action on an application by Xcel Energy and Great River Energy (Applicants), for a route permit to construct a new 28-mile transmission line project in Wright and Stearns Counties.

A public hearing was held on March 8, 2010, at the Clearwater Township Hall. The hearing was presided over by Beverly Jones Heydinger, Administrative Law Judge (ALJ) for the Minnesota Office of Administrative Hearings (OAH). The hearing continued until all persons who desired to speak had done so. An evidentiary hearing was held on March 9-15, 2010, in St. Paul. The comment period closed on March 19, 2010.

STATEMENT OF ISSUE

Should the Commission find that the Environmental Impact Statement (EIS) and the record adequately address the issues identified in the scoping decision? Should the Commission issue a route permit identifying a specific route and permit conditions for the Monticello to St. Cloud 345 kV Transmission Line Project?

Based upon all of the proceedings herein, the Commission makes the following:

FINDINGS OF FACT

The Commission adopts the May 18, 2010, ALJ *Findings of Fact, Conclusions and Recommendation* for the Monticello to St. Cloud Transmission Project in Wright and Stearns counties related to OAH Docket No. 15-2500-20665-2 and PUC Docket No. E002, ET2/TL-09-246, with the following additions:

362. Applicants have continued to meet after the public hearing with OES and Mn/DOT to discuss alignments, specifically along Interstate 94. In particular, the three parties met on May 21, 2010, to review alignments in relation to permissibility within Mn/DOT Policies and Procedures for accommodating utilities in trunk highway rights-of-way. Mn/DOT has established the alignment as submitted with the draft route permit can be permitted under those policies.
363. In a June 14, 2010, meeting with EFP Staff, Applicants requested that the route width immediately south of the Quarry Site 1 siting area be widened to minimize impacts to the forested area near the intersection of Interstate 94 and Highway 23 and to minimize potential conflicts with the existing 115 kV transmission line in the area. The initial alignment for the Preferred Route heads east and northeast along the forested area and then crosses the 115 kV transmission line near a 115 kV pole at the edge of the road where the 115 kV transmission line heads northeast and east.
364. The expanded route width would have comparable impacts to the initial alignment for the Preferred Route. The length is approximately 3,100 feet and at its widest point, the expanded area adds 670 feet to the route width. By extending the route to the east, the 345 kV transmission line could be constructed east of the initial alignment in non-forested wetlands, and minimal tree clearing would be required along this segment. In addition, if the new proposed alignment were used, the height of the 345 kV line transmission structures at the 115 kV transmission line crossing could be reduced.
365. EFP Staff consulted with Mn/DOT and the Mississippi River Parkway Commission (MRPC) on impacts on the Great River Road along County Road 75 in Wright County. EFP toured the area with Mn/DOT and MRPC representatives on June 7, 2010. On June 16, 2010, Mn/DOT and MRPC submitted a number of potential mitigations for the National Scenic Byway.

Based on the Findings of Fact the Commission makes the following:

CONCLUSIONS OF LAW

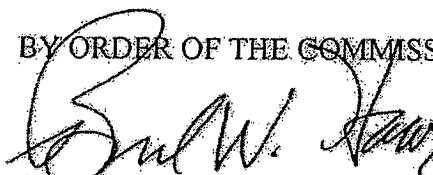
1. Any of the foregoing Findings more properly designated as Conclusions are hereby adopted as such.
2. The Public Utilities Commission has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statute 216E.03, subdivision 2.
3. The project qualifies for review under the full permitting process of Minnesota Statute 216E.03 and Minnesota Rule 7850.1700-2700.
4. The applicants, the Office of Energy Security, and the Public Utilities Commission have complied with all procedural requirements required by law.
5. The Office of Energy Security has completed an environmental impact statement of this project as required by Minnesota Statute 216E.03, subdivision 5, and Minnesota Rule 7850.2500.
6. The Public Utilities Commission has considered all the pertinent factors relative to its determination of whether a route permit should be approved as required by Minnesota Statute 216E.03, subdivision 7, and Minnesota Rule 7850.4100.
7. The conditions included in the route permit are reasonable and appropriate.

Based on the Findings of Fact, Conclusions of Law and Recommendation contained herein and the entire record of this proceeding, the Commission hereby makes the following:

ORDER

1. A route permit is hereby issued to Northern States Power Company, dba Xcel Energy, and Great River Energy to construct approximately 28 miles of 345 kV transmission line connecting the Monticello Substation in Monticello to a new Quarry Substation in St. Joseph Township. The Applicants are issued a route width of 600 feet along their proposed route except as noted in the permit conditions and denoted on the route maps. Applicants are also permitted to upgrade the Monticello Substation and construct the Quarry Substation as per their proposal.
2. The route permit shall be issued in the form attached hereto, with maps showing the approved route.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Bill W. Haar,
Executive Secretary



