Case No. A11-1116

STATE OF MINNESOTA
IN COURT OF APPEALS

Northern States Powers Company, *et al.*,

Appellants,

vs.

Roger A. Aleckson, *et al.*,

Respondents.

PETITION FOR REVIEW OF COURT OF APPEALS DECISION OF RESPONDENTS PUDAS AND ENOS AND APPENDIX

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Petitioners request the Supreme Court review the above- entitled decision.

Statement of Legal Issues Sought to Be Reviewed

When a homeowner exercises rights under Minn. Stat. § 216E.12, which expressly triggers the rights, protections, and procedures of Minnesota Statutes Chapter 117, must NSP provide relocation benefits under Minn. Stat. § 117.52 and minimum compensation under § 117.187 to the homeowner, if NSP proceeds to take the property in fee under section 216E.12, subd. 4.

Statement of the Case

This case arises from four of the hundreds of high voltage power line easement condemnations currently pending in Minnesota District Courts that affect homeowners, farmers and businesses located on over 700 miles of right of way from Fargo to Monticello and LaCrosse to Brookings South Dakota. See Order of Court of Appeals Granting Discretionary Review. Appendix A1 - A3. The District Court in Stearns County determined that homeowners whose property is taken in fee by eminent domain under section 216E.12 are by statute entitled to minimum compensation and relocation services, because the statute grants NSP the right to take their property at a time and price determined not by negotiation, but by compulsion under Chapter 117. A Wright County District Court managing these cases in the Tenth Judicial District explained:

> "Notably, Minn. Stat. section 216E subd. 2-states,- '[i]n eminent proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.' .....nowhere does section 216E.12 state that minimum compensation or relocation benefits are excluded." Decision, A10 - A17.

NSP sought discretionary review of the Stearns County order, asserting that the rulings in both Judicial Districts had broad application to hundreds of pending cases. In a divided opinion, the Court of Appeals ruled that NSP can take homes under Chapter 117, but need not provide relocation services nor minimum compensation to landowners. We seek Supreme Court review

because the decision is wrong and impacts hundreds of landowners involving hundreds of miles of pending condemnations.

This is an Important Question Upon Which this Court Should Rule

Chapter 216E derives from comprehensive 1977 amendments to the Power Plant Siting Act and from the legislature's determination that homeowners should not be compelled to share their property with a high voltage transmission line. Experience with then recently completed high voltage acquisitions convinced the 1977 legislature that high voltage lines inflicted uncompensated damage on remaining lands, raised unresolved health risks to children, and potentially interfered with livestock and business. The legislature might have simply required utilities to conduct all takings in fee, but it chose instead to deny power companies the right to take easements over the landowner's objection. The Pudas family's circumstances illustrate the rationale for the 1977 buy-the-farm amendments. NSP's power line easement would occupy fully 2/3 of the Pudas homestead, their entire yard. Because the tower and ultra-high voltage lines cannot coexist with trees brush and buildings, the easement required removal of trees and shrubs, exposing the yard and home to the adjoining freeway. See Affidavit of Robert Pudas. A23 - A38 . Even the remaining 1/3 of the homestead, including the home itself, would be covered by an easement allowing entry for repairs and maintenance of the line and tower. Under these circumstances, the Pudas family decided that they were not comfortable raising their family underneath high voltage lines or towers, and so they exercised their right under section 216E.12 to insist that if NSP chose to persist in locating its lines on their homesteads, it must take the entire homestead. NSP proceeded to take the entire Enos and Pudas homes by eminent domain using all of the powers afforded by Chapter 117. Condemnation Commissioners subsequently found that both Enos and Pudas families were entitled to minimum compensation awards

because providing "fair market value" would force them to move to inferior homes.

The Court of Appeals decision fails to recognize that the legislature acted deliberately to assure high voltage condemnees the right to relocation benefits in the 1977 amendments, and again deliberately granted high voltage condemnees the right to minimum compensation in the 2010 amendments to Chapter 117. The 1977 amendments clearly states that, "except as otherwise specifically provided", all provisions of Chapter 117 will govern these condemnations. Minn. Stat. §§ 216E.12, subd.2. "The required acquisition.... shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117." Id., subd. 4. And, contrary to its current position, in a brief to the Minnesota Supreme Court, in Cooperative Power Association v. Aasand, 288 N.W.2d 697 (Minn. 1980), the power industry actually conceded the Act grants relocation benefits in these circumstances. See A79 - A90.

NSP argued that Enos and Pudas are not "displaced" for relocation purposes, and that they are not persons who "must relocate" for minimum compensation purposes because they used their buy-the-farm rights. But exercising those rights actually turns them into condemnees. Section 216E.12 is quite clear: once a family serves a buy-the-farm notice, their homes are subject to involuntary taking at a price and at a time that is beyond their control. The minimum compensation and relocation provisions apply because there is no exemption "otherwise specifically provided in this section." §216E.12, subd. 2. They become persons who must relocate because NSP is granted the irrevocable right to displace them. The entitlement to compensation for the Enos and Pudas homesteads does not arise from the initial petition description seeking only an easement. Their request for relocation benefits was submitted after their homestead became the subject of a taking by operation of the Power Plant Siting Act. The statute very clearly states that once Pudas and Enos make their election, Chapter 117 applies in

every respect.

The Tenth District's analysis of the plain language cited above is absolutely correct, and is sufficient alone to resolve this issue. But the panel's decision also runs afoul of the 2010 amendment expressly granting minimum compensation rights to high voltage line condemnees. Laws 2010 Chapter 288 section 1. See Enos and Pudas Brief, Appendix A67. Prior to 2006, power companies procured in section 117.189 an express exemption from certain Relocation Act reestablishment cost provisions and from the ALJ relocation dispute resolution process. When the 2006 property rights reforms added minimum compensation protection to landowners who "must relocate," the power industry procured blanket exemption from operation of the minimum compensation protection for all public service company takings. Minn. Stat. 117.189 (2006). However, in 2010, anticipating impending high voltage takings, the legislature removed the exemption for high voltage line condemnations of 100 kilovolts or more. See Minn. Laws 2010 Chapter 288 section 1. In so doing, the legislature harmonized the minimum compensation statute, section 117.189, with section 216E.12 subdivision 2 granting high voltage condemnees all of the protections found in Chapter 117. The 2010 amendment is inconsistent with the panel's reasoning that condemnees are not persons who "must relocate." If the legislature had intended to deny minimum compensation to persons electing under buy-the farm, despite language in section 216E.12 stating that all rights under Chapter 117 apply, surely it would have said so in plain language.

Equally troubling is the panel's failure to recognize that relocation benefits are necessary to make just compensation actually just. The Relocation Act sought to address the reality that condemning authorities had certain advantages over homeowners, who had no choice regarding the timing, terms, and results of the taking of their property. See Norfolk Redev. & Hous. Auth.

v. Chesapeake & Potomac Tel. Co., 464 U.S. 30 (1983); Minn. Stat. § 117.52 (2010) Forcing a homeowner to move without paying relocation benefits is based upon "an unrealistic concept of just compensation." Moorer v. Department of Housing & Urban Development, 561 F.2d 175, 180 (8th Cir. 1977). The panel's decision eviscerates the homeowners rights under section 216E.12, because homeowners who feel that they cannot live under a high voltage line, must now endure financial loss as the price of relocating away from the line. Without relocation benefits, eminent domain unfairly forces the homeowner to absorb the transactional costs of finding, financing, acquiring and moving to a new home. It forces the homeowner to relocate at a time that may be financially inconvenient, or even impossible. In many instances, the homeowner may be unable to find an equivalent home near homeowner's place of work, and relocation services assist in that effort. In some cases, a disabled or elderly homeowner may have made accommodations that do not translate into compensation in the marketplace. The homeowner may lack the ability to provide a necessary down payment, or to meet the interest and monthly payment terms of a mortgage offered, if any is indeed offered. The Uniform Relocation Act thus ensures that no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means. See generally 24 C.F.R. 24.1. The panel has taken all of these protections away from Buy-the-Farm condemnees, despite the fact that the legislature has refused persistently to do so with statutory language.

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Respectfully Submitted,

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