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VIA HAND DELIVERY

August 29, 2012

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St. Paul, MN 55155

RE: Northern States Power Company, et al. vs. Roger A. Aleckson, et al
Appellate Court Case No. A11-1116
District Court File No. 73-CV-10-10828
Our File #118980.18980

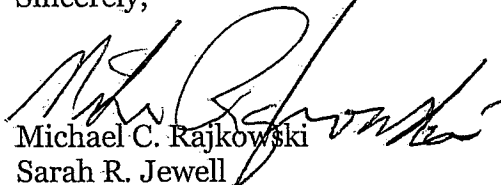
Dear Sir or Madam:

Enclosed for filing are four copies of Petition for Review of Decision of Court of Appeals in the above-referenced matter on behalf of Appellants John and Jeannie Stich and Brett and Nancy Hanson. Also enclosed is this firm's draft in the amount of \$550.00 for the required filing fee.

This petition accompanies the petition filed by Gerald W. Von Korff of the Rinke Noonan Law Firm on behalf of Appellants Pudas and Enos.

By copy of this letter, all interested parties are being served by U.S. Mail.

Sincerely,



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**STATE OF MINNESOTA
IN SUPREME COURT**

Roger A. Aleckson, et al.,
District Court Respondents,
Court of Appeals Respondents,
Brett R. Hanson, et al.,

Appellate Court Case No. A11-1116

Petitioners,

v.

Northern States Power Company, et al.,
District Court Petitioners,
Court of Appeals Petitioners,

Respondents.

**PETITION FOR REVIEW
OF DECISION OF
COURT OF APPEALS**

**Date of Filing of Court of
Appeals Decision:
August 6, 2012**

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TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Petitioners Brett R. Hanson, Nancy Hanson, John Stich and Jeannie Stich, request Supreme Court review of decision of the Court of Appeals on the following grounds:

I. STATEMENT OF LEGAL ISSUES

When homeowners or other qualified landowners exercise their rights under Minn. Stat. § 216E.12, which expressly triggers the rights, protections, and procedures of Minnesota Statutes Chapter 117, must the condemning authority provide relocation benefits under Minn. Stat. § 117.52 and minimum compensation under Minn. Stat. § 117.187 when it takes their land in fee by the power of eminent domain?

The Court of Appeals held that Respondents are not required to comply with Minnesota Statutes Chapter 117 and thus do not have to pay homeowners' reasonable relocation expenses and minimum compensation, because homeowners have a "choice" as to whether to exercise their rights under Minnesota Statute § 216E.12, subdivision 4. Therefore, the court held, they are not qualified for benefits because they are not being "forced" to move and are not "displaced persons" as required by the statute.

II. STATEMENT OF THE CASE

This case arises from condemnation proceedings started by Respondents in 2010 as part of the CAPX2020 project. CAPX2020 is a multi-phase project undertaken by a conglomerate of utilities to construct over 600 miles of new high voltage electrical transmission lines ("HVTL") traversing 21 Minnesota counties, from North and South Dakota across Minnesota into Wisconsin. A-007.¹ The CAPX2020 project "ultimately will cross thousands of individual parcels of property." A-008. The lines transmit 345 kilovolts ("kv") of electricity, thus invoking Minn. Stat. § 216E.12, subd. 4, which provides certain classes of landowners the right to require the acquiring authority to purchase all or part of their property when the power line transmits at 200 kv or more of electricity.

¹References are to the Petitioner's Appendix.

Petitioners John and Jeannie Stich have four young children. A-022; A-027. Petitioners Brett and Nancy Hanson also have two school-aged children. A-030. Petitioners had no intention to move; rather, they recently invested in remodeling and upgrades to their homes. A-021 - A-033; A-036 - A-038. When it became clear that a 345 kv HVTL would be placed on their homesteads, Petitioners reluctantly exercised their rights under Minnesota Statute § 216E.12, subd.4, (also known as the "Buy the Farm" statute) to require Petitioners to automatically convert the permanent easement taking into a taking of their entire property in fee. A-038. CAPX2020's easement over the Hanson's approx. 1-acre property is 150 feet wide and 75 feet long, and the power line pole itself rises 150 feet in the air, high above the tree line creating an eyesore. A-037.

Respondents claim that landowners who exercise their rights under Minn. Stat. § 216E.12 have a "choice" as to whether to sell their land to the utilities and move or whether to live under a 345 kv HVTL and accept a permanent easement across their homesteads. A-061 - A-062. This is completely wrong, because there is nothing in Minn. Stat. § 216E.12 that says such condemnees are disqualified from the protections and benefits of Minn. Ch. § 117.

Petitioners argued that the acquiring authority is not exempted from paying such benefits. A-093. Two district courts agreed and held that Minn. Stat. § 117.187 and Minn. Stat. § 117.52 apply to Minn. Stat. § 216E.12. A-102 - A-110; A-111 - A-125. The district courts found that Minn. Stat. § 216E.12 clearly references Chapter 117 and that the legislature neither limited the application of relocation benefits nor minimum compensation when condemnees exercise their rights under Minn. Stat. § 216E.12. The district court decisions reflect legislative history. A - 126 - A-166.

Respondents brought an interlocutory appeal, seeking discretionary review by the Minnesota Court of Appeals under Minn. R. App. Civ. Proc. 105. A-001 - A-020. The Minnesota Court of Appeals granted the petition for discretionary review on August 31, 2011.

A-167 – A-169. On August 6, 2012, the Minnesota Court of Appeals reversed the district court in a 2-1 decision, with Judge Cleary dissenting. A-170 – A-181.

III. CRITERIA RELIED UPON AND ARGUMENT IN SUPPORT OF PETITION

The issue presented by this case is whether an acquiring authority may avoid the requirements of Minnesota Statutes §§ 117.189, 117.187 and 117.52, by calling a homeowner's use of Minn. Stat. § 216E.12, subd. 4, a "choice." Respondents claim that because homeowners have a "choice", such homeowners are really not "displaced persons" under the Minnesota Uniform Relocation Act ("MURA") and are not landowners that "must" move as a direct result of an eminent domain project. Thus, Respondents argue such condemnees are not qualified for reasonable relocation benefits and minimum compensation.

This argument is not only flawed, it is simply wrong because the law provides the exact opposite. Minnesota Statute § 216E.12, subd.4 cross-references Chapter 117, stating that the acquisition of land under [216E.12] "shall be considered an acquisition for a public purpose, for the purposes of Chapter 117." (emphasis added) The law is crystal clear that Chapter 117 applies to condemnations under Minn. Stat. 216E.12 because Chapter 117, "preempts any other provision in the law" and states that "all condemning authorities must exercise the power of eminent domain in accordance with the provisions of this chapter."² (emphasis added) There are only two exceptions to the application of Chapter 117 in eminent domain projects.³ Neither exemption is found in this case. Respondents' argument, which the 2 of the 3 panelists on the Court of Appeals adopted, narrowly views the words "must" and "displaced" by taking them

² Minn. Stat. § 117.012, subd.1 (2011).

³ This chapter does not apply to the taking of property under laws relating to drainage or to town roads when those laws themselves expressly provide for the taking and specifically prescribe the procedure. The taking of property for a project undertaken by a watershed district under chapter 103D or for a project undertaken by a drainage authority under chapter 103E may be carried out under the procedure provided by those chapters. Minn. Stat. § 117.012, subd. 3 (2011).

totally out of context of an eminent domain condemnation proceeding – which is absolutely wrong.

If the Court of Appeals' decision stands, Minnesota courts will have adopted a position that is absolutely wrong, that eviscerates the meaning of Minn. Stat. § 216E.12 and renders it practically useless. Such a holding would permit acquiring authorities to use an end-around the legislature's amendment to Minn. Stat. § 117.189 in 2010, when public service corporations' exemptions from paying relocation and minimum compensation were removed. Such a holding would produce a chilling effect on hundreds of future condemnees who may wish to invoke Minn. Stat. § 216E.12, subd. 4, but may not be in a financial position to pay related moving expenses or do not receive enough money from the utility's valuation of their property to allow them to purchase a comparable property in their community.

The issue presented in this case is of great importance to many Minnesota families who are now being impacted by the current CAPX2020 project. Individual homeowners, such as Petitioners, should not have to bear the burden of a 345 kv HVTL, absorb the related moving costs and give up the chance at finding a comparable home in their community due to financial constraints. If the Court of Appeals decision stands, Respondents will be allowed to treat these condemnees differently than other condemnees in Minnesota, and will effectively penalize those who exercise their rights under Minn. Stat. § 216E.12, subd.4.

The Minnesota Supreme Court upheld the constitutionality of the statute in Cooperative Power Ass'n v. Aasand, 288 N.W.2d 697, 699-700 (1980) and found, "opponents of the utilities question whether the rural community's sacrifice to the commonweal serves a greater social good." The Aasand court found that the enactment of Minn. Stat. § 216E.12, "reflects a creative legislative response to a conflict between rural landowners and utilities concerning HVTL right-of-ways." Id. The legislature allowed landowners to compel the sale of their property if they did not want to live with a high voltage electric transmission line on their land. The Aasand decision

reflects Minnesota's Constitutional mandate in Article I § 13 of the Bill of Rights, which states, "Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." Homeowners, such as Petitioners, need reasonable relocation benefits and minimum compensation to make them whole. The legislature grappled with this public policy matter as reflected in the legislative history, which was largely ignored by the Court of Appeals.

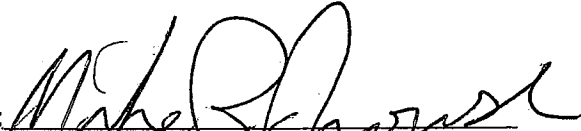
It is obvious that the issue presented by this petition would help develop and clarify the law by harmonizing the district courts' decisions in favor of Petitioners with the 2-1 decision of the Court of Appeals, which is plainly wrong and goes against the plain language of the statute. The court must not allow the Court of Appeals decision to stand because it is contrary to the plain reading of the statutes. Homeowners and other landowners are protected by Minnesota Chapter 117 when their land is taken by eminent domain because that is what the law says, even when they exercise their rights under Minn. Stat. § 216E.12, subd.4. For these reasons, Brett and Nancy Hanson and John and Jeannie Stich respectfully seek an order granting review of the Order of the Court of Appeals.

QUINLIVAN & HUGHES, P.A.

Dated:

8-29-12

By:



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PETITIONER'S APPENDIX INDEX

- A-001 – A-020** NSP's Petition for Discretionary Review to the Minnesota Court of Appeals
- A-021 – A-025** Affidavit of Jeannie Stich, District Court Record
- A-026 – A-028** Affidavit of John Stich, District Court Record
- A-029 – A-033** Affidavit of Nancy Hanson, District Court Record
- A-034 – A-049** Affidavit of Michael C. Rajkowski
- A-050 – A-052** Affidavit of Brett Hanson
- A-053 – A-089** Transcript of Stearns County District Court Hearing, Dated April 20, 2011
- A-090 – A-101** Respondent's Memorandum of Law, Stearns County District Court, dated March 7, 2011
- A-102 – A-110** Stearns County District Court Order, Signed by Judge Kundrat, Dated May 18, 2011
- A-111 – A-125** Wright County District Court Order, Signed by Judge Davis, Dated July 12, 2011
- A-126 – A-166** House of Representatives Committee Meeting Minutes
- A-167 – A-169** Order Granting Petition for Discretionary Review
- A-170 – A-181** Minnesota Court of Appeals Reversing the District Court

