

State of Minnesota
Stearns County

MAY 20 2011

JUDICIAL DISTRICT

District Court
Seventh Judicial District

Court File Number: **73-CV-10-10828**

Case Type: Condemnation

MICHAEL COYNE RAJKOWSKI
QUINLIVAN & HUGHES
P O BOX 1008
ST CLOUD MN 56302-1008

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input checked="" type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

Northern State Power Company et al vs. Roger A Aleckson et al

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on May 18, 2011.
<input checked="" type="checkbox"/>	Judgment was entered on May 18, 2011.

Dated: May 18, 2011

Court Administrator
Stearns County District Court
725 Courthouse Square Room 134
St. Cloud MN 56303
320-656-3620

cc: STEVEN JOHN QUAM
Country Side Campers and Distribution Company
STEARNS BANK NATIONAL ASSOCIATION
Dorothy Amundson
SHERBURNE STATE BANK
DRE Builders Inc
John A Krause
CLEARWATER RENTAL CENTER
KAF Property LLC
Franklin Outdoor Advertising Company Inc
AMERICAN HERITAGE NATIONAL BANK
ANNANDALE STATE BANK
Clarke Mosquito Control Products Inc
Tire Solutions Inc
FIRST STATE BANK OF KENSINGTON
NORTHGATE HOMES INC
ASSOCIATED BANK NATIONAL ASSOCIATION
Neils Franz & Chirhart PA
State Bank of Cold Spring
PHH Mortgage Corporation
AFS CHECK SYSTEMS INC
LIBERTY SAVINGS BANK FSB
Wells Fargo Home Mortgage Inc
U S BANK NATIONAL ASSOCIATION ND

FREEPORT STATE BANK
AT & T Communications of the Midwest Inc
Levimo LLC
PNC Bank National Association
The Antioch Company LLC
Creative Memories Inc
BNSF RAILWAY COMPANY
Farmers Union Industries Foundation Inc
Park 5 Investments LLC
LANDWEHR CONSTRUCTION, INC.
City of St Augusta
Estate of Duane G Kiffmeyer
Richard Kiffmeyer
Joan A Kiffmeyer
Renee M Albers
Roland A Albers
White Oak Farm Limited Partnership
Robert J Klaverkamp
KEITH E. KLAVERKAMP
MARGARET E RICE
Paynesville Area Health Care System
Citibank South Dakota NA
Clearwater Hotels LLC
THE FIRST NATIONAL BANK OF COLD SPRING
State Bank & Trust
Mack Investment Group LLC
McDonalds Corporation
Southwest Resources LLC
ANCHOR BANK NA
QWEST CORPORATION
Minnesota Housing Finance Agency
Scott K Stainbrook
Renotta G Stainbrook
Wells Fargo Bank NA
Stearns Cooperative Electric Association
National Pipeline Reserve LLC
Stearns County Dept - AUDITOR-TREASURER
IGOR SCOTT LENZNER
ADAM ALLEN RIPPLE
NICHOLAS ROBERT DELANEY
STUART TODD ALGER
BRUCE D MALKERSON
SUSAN MARIE KADLEC
MARVIN A LISZT
MATTHEW HARVEY JONES
ANDREW DAVID HULTGREN

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

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,

Court File Nos. 73-CV-10-10828
73-CV-10-9472

**ORDER ON MINIMUM
COMPENSATION AND
RELOCATION BENEFITS
UNDER CHAPTER 117**

Petitioners,

v.

Roger A. Aleckson, *et al.*,

and

Victor E. Spears, *et al.*,

Respondents.

The above-entitled matter came on for hearing before the Honorable Frank J. Kundrat, Judge of District Court, Stearns County, on April 20, 2011, based upon Motions for the Release of Funds. Petitioners appeared by their attorneys, Steven J. Quam and John Drawz, Fredrickson & Byron, P.A. Attorneys Igor S. Lenzner, Bradley V. Larson, and Michael Rajkowski appeared on behalf of Respondents.

During the course of the hearing, the parties asked the Court to rule on the applicability of minimum compensation and relocation benefits under Minnesota Statutes Chapter 117 to proceedings based on Minn. Stat. § 216E.12, subd. 4, commonly known as the “Buy-the-Farm

Statute." Based on the arguments and submissions of counsel, as well as all the files, records, and proceedings herein, the Court makes the following:

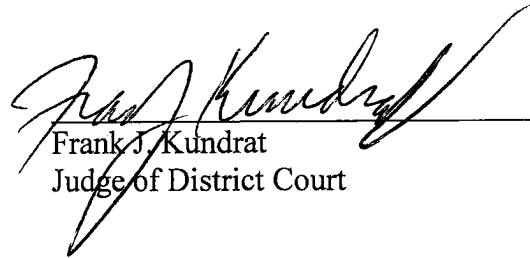
ORDER

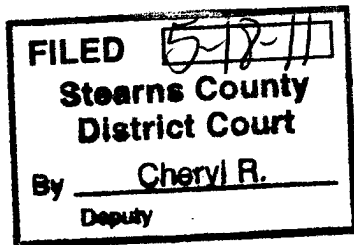
1. Minimum compensation, pursuant to Minn. Stat. § 117.187, applies to proceedings under Minn. Stat. § 216E.12, subd. 4.
2. Relocation benefits, pursuant to Minn. Stat. § 117.52, applies to proceedings under Minn. Stat. § 216E.12, subd. 4.
3. The attached **MEMORANDUM** shall be made part of this Order as if fully set out herein.

IT IS SO ORDERED.

Date:

May 18, 2011


Frank J. Kundrat
Judge of District Court



JUDGMENT


I hereby certify that the foregoing Order/Conclusions of Law constitutes that Judgment of the Court.

Dated:

5-18-11

Timothy Roberts, Court Administrator

By:



Deputy

MEMORANDUM

I. BACKGROUND FACTS

On October 19, 2010 and December 1, 2010, Petitioners commenced these condemnation actions by filing their Petitions with the District Court Administrator. Petitioners have brought these actions to acquire easements across various parcels of land located in Stearns County. These easements, as well as others acquired by Petitioners through direct negotiation, are necessary for the construction, operation and maintenance of 345 kV High Voltage Transmission Lines (“HVTL”). The HVTL project extends for approximately 28 miles between Monticello and St. Cloud.

The relevant Respondents remaining in these actions are owners of the parcels Petitioners seek to acquire. Pursuant to Minn. Stat. § 216E.12, subd. 4, otherwise known as the “Buy-the-Farm” statute, these Respondents have exercised their option to require the utilities to condemn their entire fee interest in the properties. The issues currently before the Court are: (1) does Minn. Stat. § 117.187 regarding the payment of “minimum compensation” apply to homesteads where the owners have elected the “buy-the-farm” option under Minn. Stat. § 216E.12; and (2) are Petitioners required to pay relocation benefits and services under Minn. Stat. § 117.52 to homeowner/occupants who have elected the “buy-the-farm” option under Minn. Stat. § 216E.12?

II. LAW AND ANALYSIS

A. Minimum Compensation

Minnesota Statutes Chapter 216E, known as the Minnesota Power Plant Siting Act, gives public utilities such as Petitioners, the power to condemn property in eminent domain proceedings. The specific eminent domain and condemnation powers of utilities at issue here are found in Minn. Stat. § 216E.12. Pursuant to Chapter 216E, Petitioners have obtained a permit

for the construction of high-voltage transmission lines and have begun the process of acquiring easements across the necessary property. Respondents, as owners of the properties subject to Petitioners' easements, made a "buy-the-farm" election under Minn. Stat. § 216E.12, subd. 4 to have Petitioners condemn a fee interest in their entire properties.

Petitioners now argue that when a property owner makes a "buy-the-farm" election under Minn. Stat. § 216E.12, subd. 4, the public utility acquiring the fee interest in the subject property does not have to pay minimum compensation or relocation benefits to that person. For the reasons set forth herein, the Court does not agree with Petitioner's argument, as the plain language of the applicable statutes dictates otherwise.

A critical starting point in this statutory analysis is that in proceedings for the acquisition of property for the "construction of a route or a site, the proceedings shall be conducted in the manner proscribed in chapter 117, **except** as otherwise specifically provided in this section." Minn. Stat. § 216E.12, subd. 2 (emphasis added). Upon review of Minnesota Statutes Chapter 216E, the Court finds that the legislature did not see fit to except minimum compensation under Minn. Stat. § 117.187 or relocation benefits under Minn. Stat. § 117.52 from Chapter 216E proceedings.

Under Minnesota Statutes Chapter 117, the legislature has provided that "[n]otwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations." Minn. Stat. § 117.012, subd 1. The case law on statutory construction provides that "a statute is to be construed, whenever reasonably possible, in such a way to avoid

irreconcilable differences and conflicts with another statute.” *Miller v. Colortyme, Inc.*, 518 N.W.2d 544, 551 (Minn. 1994). In this case, the Court finds that Minn. Stat. § 216E.12 and Minn. Stat. § 117.187 are not in conflict with each other. Additionally, “[c]ourts should be extremely cautious in reading an exception into a statute.” *United States v. City Nat’l Bank of Duluth*, 31 F.Supp. 530, 535 (D. Minn. 1939).

Another important factor in this analysis is that the Minnesota Constitution provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation.” Minn. Const. art. I, § 13. *See also* U.S. Const. amend. V. In this case, Respondents’ properties are being taken by Petitioners for public utility use under the governmentally delegated power of eminent domain. In such cases, the question is whether “justice and fairness require that the economic injuries caused by public action be compensated” by the entity causing the taking. *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 (Minn. 2007). The Courts have generally ruled in favor of the property owners when presented with such question. *See, e.g., DeCook v. Rochester Int’l Airport Joint Zoning Bd.*, ___ N.W.2d ___, 2011 WL 1135459 (Minn.); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). Based on the foregoing analysis, the Court finds that Respondents who have made a “buy-the-farm” election under Minn. Stat. § 216E.12, subd. 4 are also entitled to minimum compensation under Minn. Stat. § 117.187.

B. Relocation Assistance

The same analysis and reasoning that applied to the issue of minimum compensation as set forth above, applies with equal force to the issue of relocation assistance under Minn. Stat. § 117.52. The legislature did not except relocation benefits from the statutory scheme created under Minnesota Statutes Chapter 216E, nor were eminent domain proceedings involving

HVTLs excepted from Minnesota Statutes Chapter 117. In further support of the conclusion that minimum compensation and relocation benefits are available to Respondents who made a “buy-the-farm” election, the legislature has mandated that these two statutes are applicable in cases where the use of eminent domain authority is exercised by a public service corporation for the purpose of constructing “a high-voltage transmission line of 100 kilovolts or more.” Minn. Stat. § 117.189(1).

III. CONCLUSION

The plain language of Minnesota Statutes Chapters 117 and 216E provide that public utilities who exercise the power of eminent domain for the construction of HVTLs must abide by the procedures and remedies in Chapter 117. Under Minnesota Statutes Chapter 117, regardless of whether a private property owner has made an election under Minn. Stat. § 216E.12, subd. 4, the property owner is entitled to minimum compensation under Minn. Stat. § 117.187 and relocation benefits under Minn. Stat. § 117.52. In this case, Petitioners shall provide these benefits to Respondents who have made a “buy-the-farm” election, pursuant to Minn. Stat. § 216E.12, subd. 4.

F. J. K.

A handwritten signature in black ink, appearing to be 'F. J. K.', written in a cursive style.

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,

ORDER

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**

The above matter came before the Court at the request of Respondent, Ronald J. Yanish,
requesting the release of funds deposited with the Court by Petitioners.

The Court having considered the Respondent's Petition and there being no reason to hold
Petitioners' funds any longer,

IT IS HEREBY ORDERED:

1. That, the Court Administrator shall immediately release funds deposited by the
Petitioners in the amount of \$303,200.00, plus interest accrued thereon.

2. That, the Court Administrator shall issue a check made payable to Ronald J.

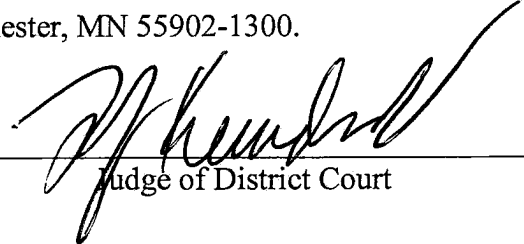
Yanish and Dianne M. Yanish in the amount of \$303,200.00, plus interest accrued thereon.

3. That, the Court Administrator shall mail the above mentioned check to Ronald J.

Yanish at 2132 Baihly Hills Drive SW, Rochester, MN 55902-1300.

Dated: _____

5/17/11



Judge of District Court

