

No. A11-1116

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STATE OF MINNESOTA  
IN SUPREME COURT

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Robert T. Pudas, et al.,  
Brett R. Hanson, et al.,

Appellants,

vs.

Northern States Power Company (d/b/a Xcel Energy, et al.

Respondents.

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BRIEF AND APPENDIX OF AMICUS CURIAE NO CAPX 2020,  
UNITED CITIZENS ACTION NETWORK, ST. PAUL'S LUTHERAN SCHOOL AND  
CHURCH AND CANNON FALLS LANDOWNERS

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## STATEMENT OF THE ISSUE

**When a homeowner exercises rights under Minn. Stat. §216E.12, which expressly triggers the rights, protections, and procedures of Minnesota Statutes Chapter 117, must Northern States Power provide landowner compensation provided under Chapter 117 if NSP proceeds to take the property in fee under section 216E.12, subd. 4.**

### **Manner in which issue raised:**

Trial Court: Respondents sought an order prohibiting relocation and minimum compensation for landowners electing “Buy the Farm”, Minn. Stat. §216E.12, Subd. 4, and the district court found that Minnesota Statutes Ch. 117 applies to proceedings based on Minn. Stat. §216E.12, Subd. 4, and includes compensation for relocation and minimum compensation.

Appellate Court: Ruled that landowners were not required to relocate and were not displaced persons and were not entitled to minimum compensation and relocation benefits under Minn. Stat. Ch. 117. *See also* Dissenting Opinion, Judge Cleary.

## BACKGROUND

No CapX 2020, United Citizens Action Network, and St. Paul’s Lutheran School and Church and Cannon Falls Landowners, as Intervenors and Relators in multiple CapX 2020 Certificate of Need and Routing dockets in Minnesota and Wisconsin, submit this Amicus Brief as parties with a private interest as directly affected landowners, and addressing public interest aspects of eminent domain policy in this transmission build-out affecting thousands of landowners.<sup>1</sup>

CapX 2020 is a \$1.7 billion dollar transmission build-out launched in 2004-2005 predicated on a 2.49% annual growth in electricity demand, which obviously has not

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<sup>1</sup> No CapX 2020, United Citizens Action Network, and St. Paul’s Lutheran School and Church and Cannon Falls Landowners certify that this brief was authored in whole by Carol A. Overland, and was not authored in whole or in part by counsel for any party, and no party other than the amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

occurred. This project facilitates implementation of the regional electrical market, with significant economic benefits of a transmission build-out realized by utilities where coal displaces natural gas. CapX 2020 condemnations are affecting thousands of Minnesota landowners as they step-by-step traverse the state between its beginning in the Dakotas to its eastern terminus in mid-Wisconsin. As Intervenors in Public Utilities Commission dockets for the Certificate of Need and appeal, three CapX 2020 transmission routing dockets, and in the Wisconsin Public Service Commission Certificate of Convenience and Necessity, Amicus Curiae Applicants have steadfastly taken a public interest position on landowner rights and preservation of compensation for landowners under the statutory condemnation scheme. No CapX 2020 and United Citizen Action Network demonstrated their public interest and worked for years on legislative campaigns and then with elected legislators to repeal exemptions for public service corporations from aspects of landowner compensation under eminent domain statutes enacted in 2006 Chapter 214, Senate File No. 2750, Minnesota Statute §117.189, and achieved some success in 2009 in Chapter 110, Senate File 550, which raised the potential award of appraisal fees, and in 2010, with elimination of the exemption of public service corporations from Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187; 117.188; and 117.52, subdivisions 1a and 4. Due to the legislative aspect of our work in opposition to the CapX 2020 transmission build-out, we will focus on the legislative history of this project in relation to Buy the Farm and to changes in Minnesota condemnation law under Chapter 117.

Members of United Citizen Action Network were directly affected when their land was taken by eminent domain for the MinnCan pipeline. When fighting for compensation at the District Court, members of U-CAN were notified that their land was targeted for a transmission easement for the CapX 2020 Brookings to Hampton transmission line. This second assault on their lives and property drove them to challenge CapX 2020 transmission through the administrative process from Certificate of Need through routing, and members of U-CAN are currently facing condemnation of their land for the CapX 2020 Brookings to Hampton transmission line.

As landowners also directly affected by routing and potential condemnation for the CapX 2020 Hampton to Rochester to La Crosse transmission line, St. Paul's Lutheran School and Church and Cannon Falls Landowners, they have a personal interest in assuring that compensation will be available to them if they elect the "Buy the Farm" option. For example, the transmission line route as Ordered by the Public Utilities Commission would run adjacent to St. Paul's School, and would traverse two sides of the property of a landowner who has a home and a thriving auto repair business on that property within 150 feet of the transmission's center line. Relocation of a three-building auto repair business would be a labor-intensive and costly effort, and without minimum compensation and relocation compensation, the landowners would not be made whole, would not be justly compensated for the taking of their land.

The Amicus Curiae Applicants are deeply concerned and directly affected by the issue of landowner compensation under the "Buy the Farm" election of Minnesota Statute

§216E.12, Subd. 4 and its interrelation with the eminent domain compensation of Minnesota Chapter 117, immediate and pressing public and private interests.

## STATEMENT OF THE CASE

The case before this court originated with the onset of condemnation actions for CapX 2020 transmission projects taking place across. For the CapX 2020 Certificate of Need proceeding, notice was given to over 80,000 landowners that they could be affected by these transmission lines.<sup>2</sup> Need for three of the CapX 2020 projects, Brookings to Hampton, Hampton to La Crosse, and Fargo to Monticello, was determined through a joint Certificate of Need proceeding at the Public Utilities Commission, filed in 2006 based on 2004-2005 demand information.<sup>3</sup> A contested case was held in 2008, just after the economic crash, and the Certificate of Need was granted in 2009. Since that time, five routing dockets have been filed (the Fargo to Monticello was segmented and filed as St. Cloud to Monticello, and the remaining Fargo to St. Cloud filed later), and the last of those routing dockets, Hampton-Rochester-La Crosse is presently before the Minnesota Court of Appeals.<sup>4</sup> The Certificate of Need established the “public purpose” of the transmission projects<sup>5</sup>, and

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<sup>2</sup> See Notice Plan and Notices, PUC Docket 06-1115.

<sup>3</sup> Minnesota PUC Docket ET-2,E002/CN-06-1115, available online at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&searchType=new>, and search for docket 06-1115.

<sup>4</sup> Minnesota Court of Appeals Dockets A12-1607 and A12-1632 (consolidated).

<sup>5</sup> A Certificate of Need is deemed sufficient to demonstrate “public purpose,” however, competitive market transactions are not provision of a public necessity in a franchise service area . In this case, public purpose is



each routing docket will trigger easement acquisition and condemnations for CapX 2020 easements in counties across Minnesota.

This Amicus Curiae brief supports the Appellants/Petitioner’s position that Chapter 117 is the governing law for utility condemnations, and that landowners electing “Buy the Farm” as provided by Minn. Stat. §216E.12, Subd. 4, are eligible for all available compensation under Chapter 117. Minn. Stat. 216E.12, Subd. 4 specifically states that “the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section” and there is no specific provision limiting compensation for those landowners who elect “Buy the Farm.”

### STANDARD OF REVIEW

This is a case of first impression, a matter of law and of statutory interpretation reviewed *de novo* by this court. See Modrow v. J.P. Foodservice, Inc., 656 N.W. 2d 389, 393 (Minn. 2003); Weston v. Mc Williams & Associates, Inc., 716 N.W. 2d 634 (Minn. 2006); State v. Zacher, 504 N.W.2d 468, 470 (Minn. 1993). Statutory interpretation has a statutory basis of presumptions:

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questionable as this project is for market expansion and market transactions, which is not a function of its charter as a public service corporation, and:

Where the power to exercise eminent domain has been delegated to a municipality or to a public service corporation, and the statutory delegation of such power limits the exercise thereof to situations where there is an actual need therefor, such municipality or public service corporation may not proceed under the statute in the absence of such a need. When it does so, the courts may hold its actions in excess of the statutory authorization and hence invalid.

Reilly Tar Chemical Corp. v. City of St. Louis Park, 121 N.W. 2d 393 (Minn. 1963).

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) the legislature intends the entire statute to be effective and certain;
- (3) the legislature does not intend to violate the Constitution of the United States or of this state;
- (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and
- (5) the legislature intends to favor the public interest as against any private interest.

Minn. Stat. §645.17.

Statutory interpretation fundamentals dictate that plain meaning is primary, and statutory interpretation is based on a broad view of the context, “not in isolation but as a part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” See In Re Estate of Nordlund, 602 N.W.2d 910, 913 (Minn. App. 1999), *review denied* (Minn. Feb. 15, 2000).

## **STATEMENT OF FACTS**

Amicus Curiae No CapX 2020, United Citizens Action Network, and St. Paul’s Lutheran School and Church and Cannon Falls Landowners adopts the Statement of Facts of Appellants Hanson and Stich, and Pudas and Enos, as if fully related here.

## ARGUMENT

Minnesota's troubled history of utility need, routing and eminent domain proceedings for transmission lines is legend:

*To most Americans, the high voltage powerlines that crisscross our countryside are just a fact of life – links in an energy network whose existence is essential to our modern way of living. To many Minnesota farmers, however, one powerline has become a powerful symbol – a symbol of America's willingness to sacrifice its rural citizens to feed a gluttonous hunger for energy.*

...

*In early 1978, when hundreds of farmers rose up in anger and went into the fields to stop surveying and construction, Perpich moved over two hundred state troopers, nearly half the Minnesota Highway Patrol, into tiny Pope County in west-central Minnesota to allow the line to be built. For months the attention of Minnesotans was riveted on dramatic confrontations in the fields. The national media came to cover the weaponry and tactics of a spectacular new front in the energy war – as angry farmers deploying tractors, manure spreaders, and ammonia sprayers confronted lines of troopers armed with guns and mace in the deep snow and bitter cold of a Minnesota winter.*

...

*What happened in Minnesota and why it happened may have a significance for our nation's energy policy far beyond the questions involved in building just one powerline. A potent new force – rural Americans – has something to say about what that energy policy should be and they may have discovered a source of power that will make all American listen.*

Chapter 1, Prelude to a Protest, *Powerline: The First Battle of America's Energy War*, Barry (Mike) Casper and Paul Wellstone (1981).

Minnesota did listen to the landowners, and after living through the trauma of the powerline struggles, even after the adoption of the Power Plant Siting Act, our legislature adopted transmission-specific protections for landowners and a detailed process for transmission condemnations, including Minnesota's "Buy the Farm" option, then Minn. Stat. §116C.63, Subd. 4:

*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.*

Minn. Stat. §216E.12, Subd. 4.

**A. STATUTORY INTERPRETATION REQUIRES RECOGNITION OF THE SPECIFIC LANGUAGE OF “BUY THE FARM,” WHICH REFERS AND DEFERS TO MINN. STAT. CH. 117**

The CapX 2020 transmission build-out is the largest web of transmission proposed and permitted in Minnesota’s history, and has occurred in a manner that Public Utilities Commissioners have taken note of as routing permits are granted:

*In my value system I'm informed by two large facts. The first fact is that about 35 or 40 years ago we had a very divisive and disruptive battle over the location of a power line in central Minnesota. There was rampant lawlessness, violence, viciousness, and a breakdown of law and order. That battle took several years, very costly, very disruptive. So that's kind of on one end.*

*On the second end, I am informed by the fact that over the last four or five years we've successfully sited several hundred miles of high voltage transmission line and we've done that by following highways. And I don't think that we capture the whole magnitude of highways when we use that term, I prefer the term public purpose corridors. Highways are noisy, disruptive, polluting, a necessary evil, and I think that the more public purpose we can put into those corridors, the greater the general good is maintained. And I point to the several hundred miles of success we've had without a lot of lawlessness in doing that.*

Appendix, p. 1-3, Transcript, Commission Meeting, CapX Routing Permit 09-1448, p. 1 and 163-164.

The major change since “The First Battle of America’s Energy War” is that the legislature adopted and the courts enforced the policies of increased transparency and public participation within the Power Plant Siting Act. Over the years, the legislature has refined and tweaked transmission line siting and eminent domain for transmission lines. The *Assand* court reaffirmed the “Buy the Farm” option and expressly recognized the importance of providing landowners an out, the ability to get out from under a transmission line:

*The enactment of §116C.63, subd. 4<sup>6</sup> reflects a creative legislative response to a conflict between rural landowners and utilities concerning HVTL right-of-ways. Opponents of the utilities, resisting further encroachments upon the rural landscape and fearing the effects upon the rural environment and public health, not only challenge the placement and erection of high voltage transmission lines, but question whether the rural*

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<sup>6</sup> Now Minn. Stat. §216E.12, Subd. 4.

*community's sacrifice to the commonwealth serves a greater social good. The legislature, sensitive to these concerns but perceiving the occasion as demand the construction of additional power-generating plants and high voltage transmission lines, enacted §116C.63, Subd. 4 in partial response.*

Cooperative Power Association v. Assand, 288 N.W. 2d 697 (Minn. 1980).

This case is an issue of statutory interpretation. Statutory interpretation is not to be a contorted dance which achieves an absurd result. The plain meaning must be applied. *State by Beaulieu v. RSJ, Inc.*, 552 N.W. 2d 695, 701 (Minn. 1996). As above, there are statutory presumptions:

Not only is the Buy the Farm statute unambiguous in its reference to Minnesota Ch. 117, but Ch. 117 is also unambiguous in its abject absence of prohibitory language or exemption of any provisions' application to "Buy the Farm." As above, the presumptions of statutory interpretation weigh in favor of the public interest, in favor of the landowners facing condemnation by the utilities:

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) the legislature intends the entire statute to be effective and certain;
- (3) the legislature does not intend to violate the Constitution of the United States or of this state;
- (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and

(5) the legislature intends to favor the public interest as against any private interest.

Minn. Stat. §645.17.

Affirmatively, the plain language of “Buy the Farm” refers to Minn. Stat. Ch. 117, and directs that the Buy the Farm option grows from an eminent domain action under Minn. Stat. §117.55, and further clarifies that a Buy the Farm condemnation meets statutory requirements of “public purpose”<sup>7</sup> and “use in the utility’s business for purposes of chapter 117.” By its language, “Buy the Farm” is incorporated into Minn. Stat. Ch. 117, and Chapter 117 applies to actions under Chapter 117.

The plain language of Chapter 117 likewise provides owner compensation and contains no limitations or restrictions referencing “Buy the Farm” or specifically Minn. Stat. §216E.12, Subd. 4.

**B. LEGISLATIVE HISTORY REFLECTS THAT THE LEGISLATURE MADE MANY STATUTORY CHANGES IN ANTICIPATION OF CAPX 2020, ULTIMATELY BROADENING LANDOWNER COMPENSATION AND ELIMINATING EXEMPTIONS OF PUBLIC SERVICE CORPORATIONS.**

The legislative history shows correction of the 2006 changes to Chapter 117 in anticipation of CapX 2020 condemnations that broadened landowner compensation and eliminated exemptions of public service corporations. Statutory interpretation requires provision of compensation to landowners.

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<sup>7</sup> Eminent domain is available to public service corporations, and is not available for a private purpose. Minn. Stat. §117.025, Subd. 11; see also *Kelo v. City of New London*, 545 U.S. 469 (2005). Public use is interpreted broadly, but it must be a public use. *City of Duluth v. State*, 390 N.W. 2<sup>nd</sup>, 757, 763 (Minn. 1986). A Certificate of Need issued for a project is deemed to be sufficient demonstration of “public use.”

Legislative history reveals that over the years, the legislature has been very active in transmission policy, and there have been significant changes to transmission need and routing law, and transmission eminent domain. Legislative history is the key component to analysis of intent where a statute or statutes are at issue, in this case, both Buy the Farm and Chapter 117 generally. See Haage v. Steies, 555 N.W. 2d 7, 9 (Minn. Ct. App. 1996).

Appellants Pudas and Enos address the 1980 changes to condemnation in response to the C-U and other powerline issues at that time, acting on complaints of the utility about disgorging property acquired under “Buy the Farm.” Appellants’ Brief, p. 33. Appellant also notes that there was no removal of relocation rights, and instead the 1980 changes strengthened the tie to Chapter 117.

In anticipation of the CapX 2020 transmission build-out and condemnations, there was another round of legislative action triggered by utility preparations and landowner concern up to and including the 2010 legislative changes that preceded all of the CapX 2020 condemnation actions. For example, a group of parties<sup>8</sup> involved in

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<sup>8</sup> This writer was part of that group, having represented an intervenor in the SW 345kV line proceeding at the PUC, Docket 01-1958. It was during this 2001-2002 proceeding that the Izaak Walton League, ME3 (now Fresh Energy), Minnesota Center for Environmental Advocacy, and North American Water Office (George Crocker, who led some of the opposition to the C-U line that Casper and /Wellstone wrote of) negotiated agreements that there would be no opposition to transmission lines such as the planned CapX 2020 build-out, that they would participate in the transmission planning process, identify desired transmission “for wind,” investigate alternate landowner compensation for transmission and not object to recovery in rates approval of a transmission only company and to support transfer of assets to transmission only company, and providing the groups with guarantees of Power Purchase Agreements for Community Wind I and II wind projects. Community Wind agreement is in ALJ Recommendation and PUC Order in PUC Docket 01-1958. Settlement Agreement filed in PUC Docket 02-2152 available online: <http://legalelectric.org/f/2010/03/settlement-agreement-02-2152-me3-waltons-mcea-nawo.pdf> Two days after Settlement Agreement was filed, the Energy Foundation announced a grant of \$8.1 million for “Wind on the Wires.” Online at <http://legalelectric.org/f/2009/08/8millionwow.pdf> Wind on the Wires was until recently a program of the Izaak Walton League. The head of Izaak Walton League’s Midwest division, Bill Grant, is now



opposition to a transmission line in southwestern Minnesota, together with utility and state agency representatives, met several times with Senator Vickerman and staff. This group was particularly interested in alternate methods of compensation for transmission line to address the taking of land for transmission in the new electrical market where transmission was for export and not serving local load. Sen. Vickerman introduced a bill in the 2005 legislative session, Senate File 462, to start the legislative discussion. It was removed from the Agriculture Committee and sent to Energy, but it did not get a hearing. Appendix, p. 4, 2005 S.F. 462 as introduced.

Also in the 2005 Legislative session, the utilities and funded “environmental” groups that had intervened in recent transmission proceedings jointly lobbied for<sup>9</sup>, and the legislature passed, the many changes that enabled the permitting of CapX 2020 transmission in the 2005 Energy Omnibus Bill, Session Laws Chapter 97, Senate File 1368. Appendix, 2005 Session Laws, Chapter 97, S.F. 1368, p. 5-21. The legislature had many opportunities prior to the application for CapX 2020 transmission build-out to limit applicability of Chapter 117 and compensation of landowners. Just before the CapX Certificate of Need application, the 2005 Omnibus Bill provided for many of the material terms found in an agreement with the funded Intervenor in transmission proceedings, such as establishment of “transmission companies” which had not previously been allowed; transfer of assets to transmission only companies; expanded

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Deputy Commissioner of Dept. of Commerce in charge of Energy Facility Permitting. The material terms of this 2002 Settlement Agreement became the foundation for the 2005 Energy Omnibus Bill, Appendix p. 5-21.

<sup>9</sup> See supra note 8.

the scope of need beyond “Minnesota” to include “regional energy needs” and “regional reliability;” transfer of routing and siting authority away from the EQB to the Dept. of Commerce; and a review of “Eminent Domain Landowner Compensation” through the “Landowner Payments Working Group,” charged with investigating alternative methods of landowner compensation. The Working Group was populated with parties to the met twice and issued a tepid report to the Legislative Electric Energy Task Force, and no legislative action was taken. Appendix, p. 22-23, Report of Landowners; Payment Working Group.<sup>10</sup>

In 2006, Chapter 117 was significantly rewritten, driven by utility initiatives and the looming CapX 2020 transmission build-out. Appendix p. 24-34, 2006 Session Laws Chapter 214, S.F. 2750. Many eminent domain procedures were altered, and most notably, the legislature gave a blanket exempt to public service corporations from many provisions of eminent domain law:

Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187; 117.188; and 117.52, subdivisions 1a and 4, do not apply to public service corporations. For purposes of an award of appraisal fees under section 117.085, the fees awarded may not exceed \$500 for all types of property.

Id., 117.189 PUBLIC SERVICE CORPORATION EXEMPTIONS (2006)

These Public Service Corporation exemptions applied to statutes at issue in this case and limited landowner payments and recovery of expenses, i.e., for Attorney Fees under 117.031; Appraisal under 117.036; ability to challenge the “public purpose,

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<sup>10</sup> Received by Overland, after request, from John Fuller, Senate Counsel, on August 6, 2009 (document had been removed from Legislative website after a revamp).

necessity or authority” for condemnation under 117.055, Subd. 2(b); compensation for loss of going concern under 117.186; minimum compensation under 117.187; limitations under 117.188; reimbursement of reestablishment expenses for nonresidential moves under C.F.R. title 49, section 24.304 under 117.52, Subd. 1(a); and relocation assistance under 117.52, Subd. 4. The 2006 legislature also slashed authorized appraisal fees to no more than \$500.00 for all types of property. These provisions seriously limited compensation to those who would be facing CapX 2020 condemnations at the behest of public service corporations. However, in these extensive amendments to Chapter 117, as in previous versions, which addressed most aspects of condemnation, there were no prohibitions or limitations addressing Minn. Stat. §216E.12, Subd. 4.

In the 2007 and 2008, after landowner outcry based on notice of CapX 2020 and participation in CapX 2020 proceedings, bills were introduced in the legislative session to remedy these draconian 2006 Chapter 117 provisions limiting landowner compensation and exempting public service corporations, but they did not pass.

Starting in 2008 with the CapX 2020 transmission build-out routing dockets, the Dept. of Commerce, now charged with environmental review of powerline projects, and in response to repeated requests in Scoping to include “Buy the Farm” costs in the mandated cost/benefit analysis for a project, began to insert language specifically excluding Buy the Farm costs from environmental review. From the list of exclusions:

*The manner in which land owners are paid for transmission rights of way easements, as that is outside the jurisdiction of the Public Utilities Commission.*

Appendix p. 35-38, Scoping Decisions (selected), CapX Routing Dockets ET2/TL-08-1474; ET2/TL-09-246; ET2/TL-09-1056; ET2/TL-09-1448.

After introduction of bills over three years attempting to amend Chapter 117 and repeal the public service corporation exemption from multiple provisions of Minnesota eminent domain law, in 2009, a bill was passed with a limited amendment, increasing appraisal recovery for landowners, from \$500.00 to \$1,500.00. Appendix p. 39-41, 2009 Session Laws, Ch. 110, S.F. 550 (selected).

Then, in 2010, as the 2008 and 2009 CapX 2020 routing proceedings<sup>11</sup> were moving through the Public Utilities Commission, where many landowners were intervening and/or participating, legislation was finally passed eliminating the public service corporations' exemption from specific sections of the landowner compensation provisions of Chapter 117, correcting the 2006 bill's blanket exemptions. Appendix, p. 42-44, 2010 Session Laws, Chapter 288, H.F. 1182. This bill removed the exemptions, noted above, for Public Service Corporations for Attorney Fees under 117.031; Appraisal under 117.036; ability to challenge the "public purpose, necessity or authority" for condemnation under 117.055, Subd. 2(b); compensation for loss of going concern under 117.186; minimum compensation under 117.187; limitations under 117.188; reimbursement of reestablishment expenses for nonresidential moves under

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<sup>11</sup> Public Utilities Commission CapX Routing Dockets ET2/TL-08-1474; ET2/TL-09-246; ET2/TL-09-1056; ET2/TL-09-1448.

C.F.R. title 49, section 24.304 under 117.52, Subd. 1(a); and relocation assistance under 117.52, Subd. 4. The legislature returned this compensation to landowners facing condemnation by utilities, and the change was made prior to initiation of any CapX 2020 condemnations.

Through the many years of CapX 2020 specific wrangling, the “Buy the Farm” provision was not amended to separate it from Ch. 117, nor were there any changes to Ch. 117 to limit compensation to landowners electing Buy the Farm. Instead, the changes broadened the 2006 language, presumably “to better the practice, or to remedy some defect discovered in the operation of the existing law.” See Spicer v. Stebbins, 237 N.W. 844, 845 (Minn. 1931). The intent of the legislature was to address landowners concerns and assure that they could receive just compensation, and that they were not unduly limited through exemptions of public service corporations.

**C. THE CONSEQUENCES OF A UTILITY INTERPRETATION OF “BUY THE FARM” AND CH. 117 WOULD STRIP LANDOWNERS OF PROTECTIONS LONG AVAILABLE UNDER STATE AND FEDERAL LAW.**

Landowner compensation under state and federal law has long been available to those faced with eminent domain. See Minn. Stat. Ch. 117; 49 C.F.R. Part 24. Utilities have worked to limit landowner compensation in their election of the “Buy the Farm” option,<sup>12</sup> and have limited landowner compensation in the many iterations of Chapter 117 at the legislature until exemptions for Public Service Corporations were eliminated in

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<sup>12</sup> In 2002, Minn. Stat. §116C.63, Subd. 4 was amended to cover only those high voltage transmission lines over 200KV. See S.F. 2740: <https://www.revisor.mn.gov/bin/bldbill.php?bill=S2740.1&session=ls82>, incorporated into 2002 Session Laws, Ch. 398.

2010. The Respondent's attorneys were doing just that decades ago in its brief for the Aasad case in 1979, where it was argued that "Buy the Farm" put too much power in the hands of landowners:

*The fact that the landowner can arbitrarily control the utility's expenditure of assets is, in itself, enough to invalidate the statute; but here the situation is exacerbated by the fact that the person in whose hands the power lines is in a position to benefit directly from the improper use of power.*

*The potential for abuse of the condemnee's power is substantial, for he can profit merely by exercising the power. For example, if a transmission line crosses his property anywhere but immediately adjacent to its edge, and he requires a taking of a fee interest in the land immediately adjacent to the easement, his damages to the remaining property could be greatly inflated because of the severance damages to which he would arguably be entitled.*

App. A-41, Appellants' Brief, p. 75. The Aasad court did not agree, and vigorously affirmed the landowners' right to use "Buy the Farm" to compel the utility to force a fee taking of the entire property. See Aasand, 228 N.W, 2d 697 (Minn. 1980).

The utilities may argue that there would be unintended consequences in covering "Buy the Farm" with the umbrella of landowners protections of Minn. Stat. Ch. 117. However, landowner compensation, eminent domain, and Buy the Farm have received extensive review by the legislature. Landowner protections include minimum compensation under Minn. Stat. §117.187, relocation benefits and other payments under Minn. Stat. §117.52, compensation for the full "Buy the Farm" appraised value under Minn. Stat. §117.042, and any other benefits available to landowners under Minn. Stat. Ch. 117, and these protections would come at significant cost to the utilities. However, costs are an expected part of a transmission line build-out of over 700 miles in Minnesota alone. A significant cost does not render it an unintended consequence. The legislature

has given much attention to eminent domain, has made many amendments, additions and deletions, and the law is what it is.

Costs to the utility are expected, and are borne by ratepayers. Costs are recovered by utilities in a number of ways. Since the 2005 passage of Session Law Ch. 97, S.F. 1368, utilities can recover costs through an automatic annual adjustment for facilities such as CapX 2020 that have been granted a Certificate of Need, and there is no need for a drawn out rate case. Minn. Stat. §216B.16, Subd. 7b. Utilities have also been granted a 12+<sup>0</sup>% rate of return on transmission construction efforts by the Federal Energy Regulatory Commission. Increased cost through landowner election of the Buy the Farm is not an unexpected consequence, it is a result that utilities anticipate.

### **CONCLUSION**

No CapX 2020, United Citizens Action Network, and St. Paul's Lutheran School and Church and Cannon Falls Landowners, as parties with a direct personal interest and public interest, respectfully request that the Court reverse the Court of Appeals decision in this matter.

*To those of you who would exploit us, do not underestimate the people of this area. Do not make the mistake of lumping us together as 'overburden' and dispense with us as nuisances. Land is historically the central issue in any war. We are the descendants spiritually, if not actually, of those who fought for this land once, and we are prepared to do it again. We intend to win.*

Powerline, p. 308-309, Casper and Wellstone (1981).

This is an important case with significant impacts given the many numbers of landowners affected by CapX 2020 transmission across Minnesota. Buy the Farm is an

important option for landowners besieged with transmission projects across their land, over their home, their farm, and over their business. As Judge Cleary stated:

*If the legislature intended to side with the utilities over these effectively dispossessed landowners to such an extent, it would have so provided, with specific language excluding landowners who elect to transfer a fee interest in their property from receiving minimum compensation and relocation benefits. The legislature did not do so.*

Northern States Power v. Aleckson, et al., 819 N.W. 2d 709, 714-715 (Ct. App. 2011).

Based on the plain language of the statute, the legislature's pull-back of exemptions once granted to utilities from provisions of Minn. Stat. Ch. 117 protecting landowners, the reliance and reference of the "Buy the Farm" option to Minn. Stat. Ch. 117, and the lack of express prohibitions and restrictions in Chapter 117, the legislature had no intention of limiting application of Buy the Farm and Chapter 117. The court must reverse the Appellate Court's erroneous reversal of the District Court's Order. Landowners electing "Buy the Farm" are entitled to all compensation and all protections of Minnesota eminent domain law.



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