

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-13-1182**

Case Type: Condemnation

Notice of Filing of Order

RACHEL RENEE MYERS
MALKERSON GUNN MARTIN LLP
220 SOUTH 6TH ST
SUITE 1900
MPLS MN 55402

Great River Energy, a Minnesota cooperative corporation, by its Board of Directors; Northern States Power Company (d/b/a Xcel Energy), a Minnesota corporation, by its Board of Directors; Western Minnesota Municipal Power Agency, a Minnesota municipal corporation and political subdivision, by its Board of Directors; Otter Tail Power Company, a Minnesota corporation, by its Board of Directors; and Central Minnesota Municipal Power Agency, a Minnesota municipal power agency, by its Board of Directors vs Schoenbauer Farms, Inc., et. al.

You are notified that on August 07, 2014, the following was filed:

Order-Other
& Findings of Fact, Conclusions of Law, and Order

Dated: August 12, 2014

Heather M. Kendall
Court Administrator
Scott County District Court
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

cc: MOLLIE MAE SMITH
Minnesota Pipe Line Company, LLC
Jami Kiecker
Bruce Kiecker
Jo Carol Nelson
HomeTown Bank
Nick Gerdes
Helena Township
Michael T Eischens
Shari M Eischens
Wells Fargo Bank, National Association
Robert F Nytes

Alice R Nytes
Thomas H Walerius
Ann M Walerius
AgStar Financial Services, FLCA
The Minnesota Valley Electric
Cooperative
First Minnesota Bank
Roundbank
Gregory J Stepka
Jean A Stepka
U.S. Bank, National Association, N.D.
Patricia A Kubes
Wencel J Kubes
Randolph J Kubes
Chris Kubes
Lisa M Kubes
Wencel A Kubes
Sonja Kubes
Mark C Lund
L Lund Tara
State Bank of New Prague
Bremer Bank, National Association
Muretta H Prokes
AgStar Financial Services, ACA
Cedar Summit Dairy, LLC
Scott Soil and Water Conservation
District
Elizabeth Marie Tisdel
John Allan Tisdel
Roger R Weiers
Patricia E Miller-Weiers
Hendricks Family Farm, Inc.
Jon C Hendricks
Mary Ruth Hendricks
James Williams
Pomije Farms, LLC
Cedar Lake Township
The Hendricks Family Limited
Partnership
Bruce C Polson
Teri R Polson
Wagner Funeral Home, Inc.
Teresa L Reese
Rebecca A Crooks
Daniel Stratton
Anita A York

Ronald A Tupy
Susan L Tupy
Francis J Tupy
Karen A Tupy
Bryan Logue
Kelley Logue
John J Puncochar
Amy J Puncochar
James L Nordwall
Lonna R Nordwall
Keith P Ploumen
Chad T Ryburn
Christina M Ryburn
South Metro Federal Credit Union
Dan Smude
David B Pickit
Bank of the West
Patrick C Delony
Calvin L Schumacher
Amy L Schumacher
Virginia R Odette
New Market Bank
Eileen M Wagner
Richard J Devine
Jacqueline Devine
Andrew Joseph Freiermuth
Anthony John Marchiafava
Leander Wagner
Thomas B Zweber
Barbara Ann Zweber
Bank of America, N.A.
New Market Township
Robert John Zweber
Leon Zweber
Karen K Howard
JP Morgan Chase Bank, National
Association
Citizens Bank Minnesota
Majestic Hills Ranch Foundation
Northern Natural Gas Company
George A Fiedler
Candace M Fiedler
Danny A Thompson
US Bank National Association
Fidelity Bank
Great Southern Bank

Scott County
State of Minnesota
Irene D Kubes
Ronald D Kubes
Mark S Kubes
PHILLIP R KRASS
CHRISTOPHER ANDREW NEISEN
R GLENN NORD
WILLIAM E SJOHOLM
ROB ANDREW STEFONOWICZ
GROVER C SAYRE, III
THOMAS ROBERT LEHMANN
PATRICK J NEATON
DAVID SCOTT KENDALL
ANTON CHESKIS

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

File No. 70-CV-13-1182

Great River Energy, a Minnesota cooperative corporation, by its Board of Directors; Northern States Power Company (d/b/a Xcel Energy), a Minnesota corporation, by its Board of Directors; Western Minnesota Municipal Power Agency, a Minnesota municipal corporation and political subdivision, by its Board of Directors; Otter Trail Power Company, a Minnesota corporation, by its Board of Directors; and Central Minnesota Municipal Power Agency, a Minnesota municipal power agency by its Board of Directors,

Petitioners,

vs.

Schoenbauer Farms, Inc., a Minnesota corporation, *et al.*,

Respondents.

ORDER

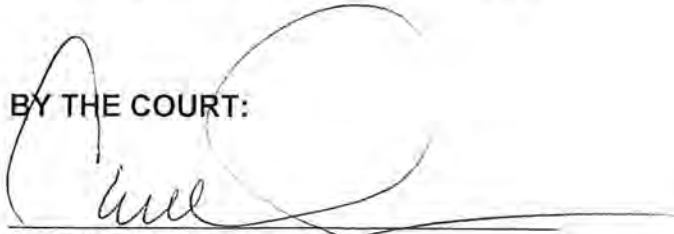
Parcels HCL 0230-1, HCL 0230-2, and PIP 05-923-009-1 (David V. Minar Living Trust and Florence L. Minar Living Trust)

IT IS HEREBY ORDERED that by the agreement of the parties the following Exhibits from the April 23, April 24, and April 25, 2014 Evidentiary Hearing shall be sealed by Scott County Court Administration:

1. Petitioners' Exhibit 129 containing Rule 106 Summary of Sales; and
2. Respondents' Exhibit 48 containing a chart of Respondents' gross revenues and profits.

Dated: August 7, 2014

BY THE COURT:


Caroline H. Lennon
Judge of District Court

FILED

AUG - 7 2014

SCOTT COUNTY COURTS

STATE OF MINNESOTA

COUNTY OF SCOTT

Great River Energy, a Minnesota cooperative corporation, by its Board of Directors; Northern States Power Company (d/b/a Xcel Energy), a Minnesota corporation, by its Board of Directors; Western Minnesota Municipal Power Agency, a Minnesota municipal corporation and political subdivision, by its Board of Directors; Otter Trail Power Company, a Minnesota corporation, by its Board of Directors; and Central Minnesota Municipal Power Agency, a Minnesota municipal power agency by its Board of Directors,

Petitioners,

vs.

Schoenbauer Farms, Inc., a Minnesota corporation, *et al.*,

Respondents,

DISTRICT COURT

FIRST JUDICIAL DISTRICT

File No. 70-CV-13-1182

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

**Parcels HCL 0230-1, HCL
0230-2, and PIP 05-923-
009-1 (David V. Minar
Living Trust and Florence
L. Minar Living Trust)**

The above-entitled matter came before the Honorable Caroline H. Lennon, Judge of District Court, on April 23, April 24, and April 25, 2014, at the Scott County Government Center, Shakopee, Minnesota for an Evidentiary Hearing to determine the validity of the Minar Trusts¹ Buy-the-Farm election. Over the span of the three-day Evidentiary Hearing, the Court heard testimony and received numerous exhibits. Following the close of the record, the Court, Daniel Leshar (the project lead), and counsel for Petitioners and

¹ Any reference to "Respondent" or "Respondents" refers solely to the Minars and the Minar Trusts, and this Order does not affect the other Respondents in Court File No. 70-CV-13-1182.

FILED

AUG - 7 2014

SCOTT COUNTY COURTS

Respondents visited the Minar Trusts' property. The visit to the property was conducted off the record, and counsel did not provide argument during the visit. The Court gave the parties until May 16, 2014 to submit closing arguments, at which time the Court took the matter under advisement.

Steven Quam and Patrick Mahlberg, Attorneys at Law, appeared as counsel for and on behalf of the Petitioners. Rod Krass and Paula Maccabee, Attorneys at Law, appeared as counsel for and on behalf of the Respondents, the Minar Trusts ("David and Florence Minar" or "the Minars").

Based upon the proceedings, this Court makes the following:

FINDINGS OF FACT

Background of the Petition

1. Petitioners are five electric utilities involved in a multi-year project to construct and operate four new high voltage transmission lines to provide improvements to the power grid in Minnesota. Collectively, Respondents are Minnesota landowners who elected for Petitioners to acquire their properties in fee.
2. Petitioners have undertaken to construct and operate a 345 kilovolt ("kV") high voltage transmission line ("HVTL") project between Brookings, South Dakota, and Hampton, Minnesota (the "Brookings Project"). The Brookings Project has a capacity of 200 kV or greater and is more than 1,500 feet in length, designating it as a "large energy facility." See Minn. Stat. § 215B.2421, subd. 2(2).
3. On September 14, 2011, The Minnesota Public Utilities Commission ("MPUC") issued an HVTL Route Permit to Petitioners for Segments 1, 2, 3, 5, and 6 of the Brookings Project, pursuant to Minn. Stat. § 216E.03 (2010), and Minn. R., Parts 7850.1700-

7850.2800. On March 1, 2011, the MPUC issued an Order Granting Route Permit for Remanded Segment of Route for Segment 4 of the Brookings Project.

4. Petitioners filed their Condemnation Petition on January 14, 2013. Following the hearing on the Petition, the Court, on April 22, 2013, entered Findings of Fact, Conclusions of Law, and an Order granting the Petition, quick-take motion, and appointing commissioners.
5. The April 2013 Order transferred title to and possession of the easement interests described in the Petition to Petitioners.

The Minar Trusts' Election (HCL 0230-1, HCL 0230-2, and PIP 05-923-009-1)

6. On March 1, 2013, the Minar Trusts made a written Buy-the-Farm election to compel Petitioners to expand the taking from the easement to a fee taking of the entirety of HCL 0230-1 and HCL 0230-2, which includes the portions of HCL 0230-2 which are on the east side of Drexel Avenue, and the 10-acre parcel (PID 05-923-009-1) in the northeast corner. The election totals 132 acres².
7. On May 20, 2013, Petitioners objected to the election, and on August 1, 2013, Petitioners served a supplemental response to the election. Petitioners argued that the Minar Trusts' election included ineligible noncontiguous land and failed the Buy-the-Farm statute's reasonableness requirement. The Court denied Petitioners' motion for partial summary judgment and Respondents' motion to overrule Petitioner's objection to the election on January 6, 2014 ("January 2014 Order"). The parties proceeded to an Evidentiary Hearing to determine whether Petitioners must purchase the Minar Trusts' election by statute.

² The overall size of the election including right-of-ways is 132 acres and 123 acres net of right-of-ways.

8. The Minar Trusts are the fee owners of an organic grass-fed dairy farm located in Helena Township, Scott County, Minnesota ("Home Farm"). David and Florence Minar are the trustees of the two Minar Trusts. The Home Farm consists of an 8.03-acre parcel designated as HCL 0230-1, a 114-acre parcel designated as HCL 0230-2, and a 10-acre parcel that was not designated by Petitioners, but is referred to by its tax identification number, PID 05-923-009-1.
9. HCL 0230-1, the 8.03-acre parcel, is located on the southwest end of the Farm and is unoccupied. HCL 0230-1 is used as a pasture for the Farm's cattle. HCL 0230-2, the 114-acre parcel, straddles Drexel Avenue, which runs through the parcel north-to-south. HCL 0230-2 contains barns and other improvements, including a house. The house is owned by the Minar Trusts, but it is leased to David and Florence Minar, and it serves as their homestead. In addition, there is a 10-acre parcel, identified by its tax identification number PID 05-923-009-1, and it is located on the northeast corner of the Farm. This 10-acre parcel is unoccupied land, which is used as a pasture for the Farm's cattle.
10. Petitioners require an easement for the transmission line right-of-way on the southwest corner of the farm, primarily located on HCL 0230-1 (8.03-acre pasture). The easement totals 0.70 acres and crosses both HCL 0230-1 and HCL 0230-2, but the easement does not touch the 10-acre parcel in the northeast corner of the Minar Trusts' property. The easement comprises 0.53% of the elected land. The Petitioners have already taken 0.7 acres of a permanent electric transmission easement for the placement of approximately-150-foot tall polls. The polls support a 345,000-volt HVTL, and Petitioners have obtained the approval for a second 345,000-volt HVTL to be

placed on the same poles sometime in the future.

11. In addition to the easement for the HVTL right-of-way, the Petition includes ancillary easements that permit Petitioners to acquire a temporary easement to enter upon the land to survey, as well as easements of ingress and egress over the property to the easement area through existing field roads and lanes, if available. In the event that there is no pre-established way to access the easement area, Petitioners may use the most reasonable and feasible route. This determination resides solely in Petitioners' discretion. Additionally, the ancillary easements permit Petitioners to enter the property from time to time for maintenance and replacement of power lines. These instances are specifically restricted to remote and unusual circumstances that are unforeseeable that require more land than is currently available in the easement area.

a. The Court expressed concern in its January 2014 Order that the ancillary easements potentially created blanket easements, which would amount to an undue burden on Respondents. Accordingly, Petitioners sought testimony that the ancillary easements were in fact reasonable and there was not a significant risk in this case of Petitioners requiring frequent and cumbersome access to the easement area. David Minar testified on cross-examination that there is an existing field road by the HVTL access point; therefore, the possibility of requiring additional access across the Home Farm for the maintenance and upkeep of the line is unlikely, and the ancillary easements are not unduly burdensome on the Minars.

12. David and Florence Minar operate a certified organic grass-fed dairy farm on the Home Farm, which is called Cedar Summit Farms, and marketed as Cedar Summit Dairy.

David Minar has resided in the homestead located on the Home Farm since he was born in 1940. In addition to the Home Farm, the Minars lease land³ immediately to the west and southwest of the Home Farm to graze their herd (collectively referred to as "Cedar Summit Farm"). Some of the leased land is also burdened by the Brookings Project HVTL, which runs west-to-east along County Road 2. All three parcels of the Home Farm are farmed together for the production of Cedar Summit Dairy products.

13. On Cedar Summit Farm, the Minars feed 130 dairy cows⁴ with organic grass and hay grown on site. The Minars milk their cows in a milking parlor, and operate a creamery and attached retail store that sells their organic milk products and third-party products⁵. Additionally, the Minars hold marketing events, such as their annual "Milkapalooza,"⁶ and "Eat Local Farm Tour"⁷ on Cedar Summit Farm. Florence Minar testified that Cedar Summit Dairy's marketing seeks to appeal to customers' nostalgia, using the theme "a taste of the past" and invoking "the way milk used to taste back when cows were on grass all of the time." (Tr. 173:20-22).
14. At the time of David Minar's birth in 1940, the Home Farm was a conventional dairy farm. In 1974 The Minars changed their farming practice to an organic dairy farm. Since that time, Cedar Summit Farms has become the only 100 percent grass-fed

³ The Minars lease land to the west from Prokes and Kubes, and land to the south from Wilcox. The Minars have additional leased land from Tupy to grow feed to the east, which does not abut their Home Farm.

⁴ David Minar testified that there are an approximately equal number of younger cows who are not yet in production.

⁵ David Minar stated on cross-examination, that the retail store sells milk products from Cedar Summit Dairy, chicken from Callister Farm, turkey from Ferndale Farm, eggs, honey, pancake mixes, and candles.

⁶ Milkapalooza is an annual summer event sponsored by Cedar Summit Dairy and free to the public, which offers visitors the chance to tour the farm, listen to live music, visit local vendors, and pet the farm animals.

⁷ The farm tour is an annual spring/summer event that is sponsored by approximately 12-15 co-op food stores in the Twin Cities metropolitan area. The co-ops select local farms to open for public tours to show how the farms operate, as well as an opportunity for customers to see the animals and the people who create and raise their food. (Tr. 357:14- 360:20).

- organic dairy farm in the region, and has operated continuously in the same location.
15. Petitioners presented testimony to the Court through two expert witnesses, Benjamin Gallay and Dr. Peter Valberg, on the effects of the HVTL on people's and animals' health to dispute the Minars' concerns about the HVTL's stray voltage, impact on the rural landscape, and impact on their customer base. The Court finds that the Minars' subjective concerns about the HVTL influenced their decision to elect the entire property, which is of paramount importance to the Court's decision. Therefore, the Court disregarded the expert testimony of Mr. Gallay and Dr. Valberg as it pertained to the documentable risks of the HVTL.
 16. Cedar Summit Farm is a family farm. The Minar family members continue to have roles in the business and provide labor on the farm. David and Florence Minars' son Chris Minar testified that prior to the HVTL he intended to make an offer to buy the farm. Chris Minar stated, "my idea was to buy it [the Farm], keep it running, grow it as a future—something for the grandchildren in the future, whoever would want to be involved; but, you know, my entire family, all my siblings, are involved and their spouses in one form or another. So, it's just—it's very important to keep the family together and just to, you know, keep growing." (Tr. 231:4-11). However, after the construction of the HVTL on the Farm, Chris Minar testified that he will not buy the Farm as it stands with the power lines in its present location. Specifically, Chris Minar does not want to work adjacent to the HVTL and does not believe that the Farm will remain economically viable due to the presence of the HVTL.
 17. When asked on direct examination what impact the HVTL may have on Cedar Summit Farm's business, the business development and marketing manager Ryan Crum

testified that, "perception is greater than reality for our customers, and whether or not these experts can come and say it's not going to have an effect on anything [the product] or the animals, our customers believe it will, and that's going to affect their purchasing decisions." (Tr. 294:12- 16).

- a. To emphasize this point, the consumer affairs manager at Mississippi Market Natural Foods Cooperative ("Mississippi Market"), Elizabeth McMann, testified that Cedar Summit Dairy is Mississippi Market's number one selling milk. Ms. McMann went on to testify that the imagery of an idyllic farm is an important marketing tool to sell Cedar Summit Dairy products, and the farm is successful in part because "it's really very rare to see a farm that is just absolutely beautiful. It's everything that someone, I think, pictures in their mind when they think of a small scale sustainable farm, and that's actually the reality of this farm too." (Tr. 361:21- 25). When questioned about the response of the customers to the placement of the HVTL on the Farm, Ms. McMann testified that customers expect to see the Home Farm as it appears in promotional material, stating that, "people know to expect these rolling hills and green pastures and clear skies....I have never seen a picture of Cedar Summit Farm that includes high voltage power lines. I think that would come as a surprise and a shock for customers." (Tr. 366:15- 16; 366:19- 22). Ms. McMann stated that after the construction of the HVTL Cedar Summit Dairy remains the number one seller at Mississippi Market; however, Ms. McMann cautioned that, "it's my understanding that they [the HVTL] are not actually active yet.... that there's no power actually running

through the lines at this point. So things are going along as they have before.^{8H}
(Tr. 368:19- 20; 369:38- 42).

18. On July 26, 2012, Petitioners' appraiser, Jason Messner, appraised the Home Farm's land value⁹ at \$924,000 before the taking of the HVTL easement, and \$922,000 after the taking. With the consideration of a temporary cropland rent loss, Mr. Messner recommended \$2,200 as compensation for the taking of the Minars' easement. On April 15, 2014, at the request of Petitioners, Mr. Messner appraised the Home Farm to provide valuation guidance to Petitioners in the potential purchase of the property as elected. Based upon Mr. Messner's inspection of the property and factors impacting its overall value, he appraised the Home Farm at \$1,425,000.
19. Daniel Leshner, the project lead for the Brookings Line, testified that Petitioners have experience in selling properties purchased for the Brookings Line on the open market after construction of the power line. All three properties¹⁰ bought by Petitioners have sold. Mr. Leshner estimated that the properties sold within several months, and as early as one month after being listed. In Petitioners' experience, resale of the three properties recovered 84 percent of the purchase cost.
20. In 2013, the Home Farm was classified as "211R" by the Scott County Assessor's Office. Mr. Messner testified that "211" is a tax classification for rural vacant land. In 2014, the Home Farm was classified as "300 Commercial/211R." Mr. Messner testified that the "300 Commercial" designation indicates that the creamery along with an acre

⁸ Immediately following Ms. McMann's testimony, Benjamin Gallay, one of Petitioners' transmission line engineers, testified that the HVTL was turned on approximately two weeks prior to the commencement of the Evidentiary Hearing.

⁹ The land appraised by Petitioners is the same land elected by the Minar Trusts.

¹⁰ The properties were as follows: a residential property, a vacant agricultural property, and a mixed-use agricultural and residential property.

of land are taxed at a commercial rate, while the remainder of the Farm is taxed as agricultural, rural vacant, and homestead.

21. The Minars introduced exhibits and testimony concerning the Home Farm's zoning as agricultural,¹¹ as well as the conditional use permit to operate the creamery and retail store upon the land. In 2001, the Minars made a conditional use application with the County for a "Home-Extended Business" to process their milk produced on the farm into dairy products, yogurt, cheese, and milk. The Minars felt this was necessary because offsite creameries did not include other 100 percent grass-fed milk products.¹² Therefore, according to Mr. Minar, if Cedar Summit Dairy's products were processed at an offsite creamery with other organic dairies, the end product could not be marketed as 100 percent grass-fed. The conditional use permit explicitly states that its purpose is solely to allow the operation of a milk processing business for milk produced on the farm. Additionally, the permit requires that the business must be marketed as a route delivery business and not as a retail store.
22. Cedar Summit Farm has 43 dedicated grazing paddocks. Each paddock is approximately four to five acres. The Minars employ a system in which the cows graze for a twelve to twenty-four hour period on each paddock, to permit the forage on the paddock to regenerate between grazing. As such, the cattle are rotated between the paddocks, and eventually graze on all portions of the land. Of the 43 paddocks, Paddocks 1-21 are located on the Home Farm, and the remaining paddocks are located on the leased farms. A total of 11 paddocks are partially under the HVTL. Of

¹¹ The elected property is currently part of the "Urban Expansion Reserve District," and is guided for Urban Expansion under the 2030 Guiding Plan; however, agricultural use remains a permitted use in that zone.

¹² Mr. Minar testified that there are no offsite 100 percent grass-fed creameries that could process their milk products.

the Home Farm paddocks, paddocks 10-21 are located on the eastern side of Drexel Avenue. The cattle pass from the west to east side of Drexel Avenue to graze via an underground cattle pass. The cattle pass was completed by Scott County at the Minar Trusts' expense.

23. In 1969, there was a contract for deed from David Minar's parents to David and Florence Minar for the Home Farm. After satisfaction of the contract for deed, David Minar's mother deeded the Home Farm to David and Florence Minar in 1993. In 2009, the Minars deeded the property to their living trusts as an estate planning device. The 1993 and 2009 deeds contain the same description of the property contained in the 1969 contract for deed. Specifically the legal description contains an exception, which states: "...excepting therefrom any property taken for road purposes."
24. In 1972 there was a highway easement in favor of Scott County for a 100-foot right-of-way through the farm for Drexel Avenue. The County paid \$802.40 for the easement, which contains 1.18 acres, "in addition to the existing 66 foot highway right-of-way." Of particular importance is that neither Petitioners' nor Respondents' title examiner could find a document in the chain of title demonstrating that the County *purchased* the 66-foot easement in fee.
25. Petitioners and Respondents had dueling experts testify as to the underlying ownership of Drexel Avenue.
 - a. Respondents elicited testimony from the Scott County Examiner of Titles, Bruce Huemoeller, that, in his opinion, the Minar Trusts own the underlying land beneath Drexel Avenue, which is subject to an easement to Scott County for road purposes. Mr. Huemoeller testified credibly that prior to 1972, the County held a

66-foot easement in the location that is currently Drexel Avenue; however, Mr. Huemoeller testified that Drexel Avenue had been relocated from the east to its present location. According to Mr. Huemoeller, the law prior to 1975 stated that whenever a parcel of land was used for six years as a public right-of-way and maintained by a public entity, the public received a 66-foot easement, being 33 feet on each side of the center line of the roadway, known as a prescriptive easement.

- b. Petitioner's witness, Richard Little, former Deputy Title Examiner in Hennepin County, opined that the legal description of the property excepts out roadways, which means Respondents do not own the land underlying Drexel Avenue, despite the lack of evidence in the chain of title that the County ever acquired Drexel Avenue in fee. When pushed on cross-examination to state whether his opinion would change if there were evidence that Drexel Avenue had moved over time, Mr. Little admitted that if in fact the road moved location, then his opinion would be different. Additionally, Mr. Little was unable to provide an explanation as to why Scott County would purchase an easement over property that the County already owned in fee.

CONCLUSIONS OF LAW

1. Petitioners challenge the following aspects of the Minar Trusts' election: (1) the election does not meet the Buy-the-Farm statute's reasonableness requirement; (2) the election includes ineligible commercial property; and (3) the election includes ineligible noncontiguous property. All other issues were waived and not argued at the Evidentiary Hearing.

Legal Standard for Condemnation under Minnesota Statutes Section 216E.12

2. Minn. Stat. § 216E.12 is better known as the “Buy-the-Farm” statute, and was enacted in response to the conflict between rural landowners and utility companies building and maintaining HVTL right-of-ways. *Coop. Power Ass’n v. Aasand*, 288 N.W.2d 697, 699 (Minn. 1980).
3. The Buy-the-Farm statute recognizes the public concerns regarding high-voltage power line encroachments upon the rural landscape, effects upon the rural environment, and effects on public health. *Id.* at 699-700; *Northern States Power Co. ex rel. Bd. of Directors v. Aleckson*, 831 N.W.2d 303, 306-07 (Minn. 2013). “The statute defines such acquisitions to be for a public purpose. In this manner, the legislature affords landowners not wishing to be adjacent to such right-of-ways the opportunity to obtain expeditiously the fair market value of their property and go elsewhere. The statute, in so doing, responds to parties most affected by the operation of high voltage transmission lines; the statute eases the difficulties of relocation by shifting the transaction cost of locating a willing purchaser for the burdened property from landowner to utility.” *Aasand*, 288 N.W.2d at 700.
4. The Buy-the-Farm statute provides in pertinent part that:

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 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....Commercial viability shall be determined without regard to the presence of the utility route or site....

Minn. Stat. § 216E.12, subd. 4 (a).

5. The Buy-the-Farm statute empowers the owner of property proposed to be acquired for the construction of HVTL lines the option to require the utility to condemn a fee interest in *any amount* of contiguous and commercially viable land. *Aleckson*, 831 N.W.2d at 305. (emphasis added).

Reasonableness of the Election

6. In the 1980 Minnesota Supreme Court case, *Cooperative Power Association v. Aasand*, the court held that “to survive review, a requirement of reasonableness must be read into [the statute’s] terms. 388 N.W.2d at 701. The Court went on to hold that where a parcel is “commercially viable, respondents [landowners] avoid one of the constitutional problems created by the act.” *Id.* In response, the Buy-the-Farm statute was amended to include the “commercially viable” language. 1980 Minn. Laws. Ch. 614, § 87, at 1485-86. While the *Aasand* Court failed to define “reasonableness,” the court’s language indicates that the two factors that bear upon reasonableness of the election are potentially the commercial viability and the statute’s divestiture provision¹³. 388 N.W.2d at 701. The Minars’ election is commercially viable, and the statute’s divestiture provision provides protection for Petitioners. *See Infra* ¶ 12, n. 15.
7. In *Aasand*, the landowner’s election was reasonable, because he was not attempting to convey an unmarketable fragment, but rather the entirety of his 150-acre farm. 388 N.W.2d at 701. The *Williams* case included *dictum* that it would be unreasonable to require the utility company to purchase the entire 387.5 acres, which was worth

¹³ “...provided that 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.” Minn. Stat. § 216E.12, subd. 4 (a).

\$690,000, when the utility company only paid \$10,785 for 12.69 acres of the HVTL easement. *Northern States Power Co. v. Williams*, 343 N.W.2d 627, 633 (Minn. 1984) (dictum). The dispute in *Williams* centered on whether the property was eligible under the statute because it was unclear whether the land's use for growing Christmas trees was "agricultural" or ineligible timberland. *Id.* Ultimately the court concluded that the property fit the definition of timberland and therefore was ineligible for election. *Id.* The *Williams'* court *dictum* is not binding on this Court and serves merely as an aside on the *Williams'* court's interpretation of "reasonableness."

8. The case law post-*Aasand* and amendment to the Buy-the-Farm statute has not formulated a bright line rule for district courts to determine the reasonableness of a landowner's election; therefore, the task of determining reasonableness is passed to the district courts on a case-by-case basis. In the January 2014 Order, the Court stated: "In each case, reasonableness is determined under a totality of the circumstances analysis, with the court considering all relevant factors that bear upon the question of reasonableness. Such relevant factors would include, among others, the use of the farm, the products of the land, the years in business, the residences upon the land, the actual encroachment onto the land from the easement, the impact on the rural landscape, and the burden upon the utility in purchasing the elected land." (Concl. of Law ¶ 5 d).
9. Based upon the uniqueness of Cedar Summit Farm as the only 100 percent grass-fed dairy farm in the region, its longstanding history in the farming community in the same location, the perception and sensitivity of their customer-base to the presence of HVTL, and the home that the Minars live in on the land, there is ample evidence that there is

an encroachment on the rural landscape. There will be a burden upon Petitioners in purchasing the land due to its size, improvements, and unique value, which is estimated to be \$1,425,000. However, the Buy-the-Farm statute seeks to mitigate these burdens through the divestiture portion of the statute. There was sufficient evidence that Petitioners have experience in reselling the Buy-the-Farm properties, and are able to recoup a significant portion of their costs in the process. Therefore, there is not an undue burden upon Petitioners in acquiring the Minar Trusts' property in fee, with the understanding that they will sell it on the open market. The Minar Trusts' election is reasonable under the statute, case law, and totality of the circumstances.

Eligibility of Elected Property

10. The Buy-the-Farm statute limits the types of property that can be included in an election to six categories.¹⁴ Minn. Stat. § 216E.12, subd. 4. Commercial land is not eligible for election. *Id.* The Buy-the-Farm statute states that the permitted properties are defined according to Minn. Stat. § 273.13, which specifies tax classifications of property. However, it is the actual use of the property, and not the county tax assessor's classification of it, that controls when determining the eligibility of the elected property. *Williams*, 343 N.W.2d at 633 (finding Sherburne County erred in classifying appellant's use of the Buy-the-Farm-elected parcels). The statute does not provide language for the courts to rely upon zoning in determining the election's eligibility; however, zoning is relevant in light of *Williams*' instruction to consider the actual use of the property. *See Id.*

¹⁴ The six permitted categories of land found in the BTF statute are: agricultural homestead, nonagricultural homestead, nonhomestead agricultural land, rental residential property, commercial seasonal residential recreational property, and noncommercial seasonal residential recreational property. Minn. Stat. § 216E.12, subd. 4.

11. In 2013 (the year of the election), the Home Farm was assessed as rural vacant land by the Scott County Assessor's Office. Petitioners offered evidence that in 2014 part of the property was classified and taxed at the commercial rate due to the presence of the creamery, which was not an actual change from the prior year. The Home Farm is an organic farm for the production of milk products, and also serves as the Minars' homestead. The land includes a creamery to process the milk, with an attached small retail store. The creamery is necessary to maintain the 100 percent grass-fed status of the Farm's milk products. Therefore it is a necessity for the agricultural farm activities occurring on the land. The primary use of the land is agricultural, with the presence of the retail store primarily to sell the products produced in the creamery. The property is precisely the kind intended by the Legislature to protect in its enactment of the Buy-the-Farm statute, and the election consists of eligible property under the statute and case law.

Contiguity and Commercial Viability of Land Elected

12. The Buy-the-Farm statute requires the election to be composed of "contiguous, commercially viable land," but fails to define the term "contiguous." Minn. Stat. § 216E.12, subd. 4 (emphasis added). There is no dispute that the election is commercially viable¹⁵, as the Minars seek the purchase of their entire farm, which is appraised at \$1,425,000 by Petitioners' appraiser and is not an unmarketable fragment of land.

13. Pursuant to the canons of construction, "words and phrases are construed according

¹⁵ Commercial viability relates to the marketability of the election. *See Aasand*, 288 N.W.2d at 701; *See also* Minn. Stat. 216E.12, subd. 4 (a).

to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition." Minn. Stat. § 645.08. The dictionary definition of "contiguous" is: "(1) touching; in contact. (2) In close proximity without actually touching; near." Contiguous Definition, Dictionary.com, <http://dictionary.reference.com/browse/contiguous> (last visited Jul. 21, 2013). The term "contiguous" was interpreted in a Stearns County District Court Order filed June 7, 2013, File No. 73-CV-12-1451. In that case, Judge Kundrat held that parcels that were purchased together, farmed together, and treated similarly were operating as one contiguous larger parcel. The Court finds Judge Kundrat's analysis persuasive under the present facts.

14. The Court concluded in the January 2014 Order that "there is ample evidence that the election is treated as one farming operation by the Minars, and they hold the same out to the local community." (Concl. of Law ¶ 6 b i). However, the Court denied partial summary judgment in part because there was a genuine issue of material fact as to the relevance of Drexel Avenue in determining contiguity. The portion of the property that is to the east of Drexel Avenue is in close proximity to the western parcels and is necessary for the rotational grazing of the cattle. In fact, the parcels on the west and east side of Drexel Avenue are so intertwined in usage that there is an underground cattle passage to connect the Farm for ease of the cattle's grazing. The testimony from Mr. Huemoeller established that Drexel Avenue was moved to its present location. Scott County has a prescriptive easement for Drexel Avenue, which means that the underlying fee ownership of the road does not belong to the County. Since it is illogical

to sell a small strip of land in the middle of a larger parcel to a third party, the underlying ownership of Drexel Avenue belongs to the Minar Trusts. Although the legal description in the original contract for deed contains language excepting out land for road purposes, there is no evidence that anyone *but* the Minars own the land underlying Drexel Avenue. The presence of Drexel Avenue does not destroy the underlying fee ownership. The presence of the HVTL on one portion of the property necessarily affects the entire property which is farmed together for the purpose of producing 100 percent grass-fed organic milk. The Minar Trusts' election is comprised of contiguous land.

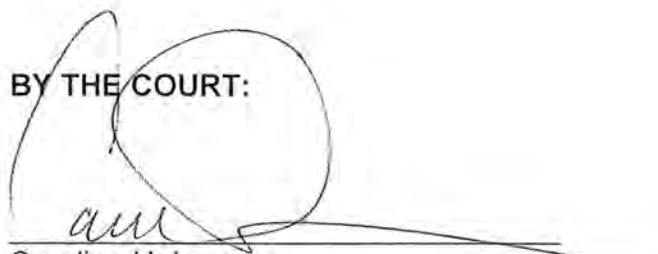
ORDER

1. Petitioners' objection to the Minar Trusts' election is **OVERRULED**.
2. Petitioners shall purchase the Respondents' elected property, in compliance with Minn. Stat. § 216E.12.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 7, 2014

BY THE COURT:



Caroline H. Lennon
Judge of District Court