

HF 1182
2-08-10

Thank you for letting me submit my comments to the House Energy Committee hearing on removing exceptions to the eminent domain law. I am grateful for this opportunity to address House File 1182, and to confirm the need for the removal of these exceptions. This is a pressing issue that will have a serious impact on the landowners in Minnesota who will have to host the numerous high voltage transmission lines that are proposed. It will probably affect the constituents of most or all of the legislators in attendance today .

The eminent domain law changes that were passed in 2006 went a long way to protect citizens and give them a fair deal for their land in eminent domain cases. However, as you know, Public Service Corporations were exempted from these laws by Statute 117.189, -- all electric utilities including the 11 entities that comprise CapX2020 are PSC's and receive this benefit.

Although a couple of the exemptions in 117.189 have been modified in the last two legislative sessions, the bulk of the exemptions still apply to PSC's, including utilities, in the taking of landowner property for transmission lines.

Exemptions like MN Statute 117.031 still apply. While landowners are protected from unjust low offers from the government in condemnation proceedings, they have no such protection from utility offers. Regardless of the % of difference between a utility's initial offer and the final awarded judgment, they will not be reimbursed for attorney fees, even when the difference is 40% or more.

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Minnesota Statute 117.186 provides compensation for loss of a going concern's value if a business is destroyed in the eminent domain process and up to three years of gross income for damages to a business if 51% of driveway access is lost or taken. Utilities are exempted from this provision. It also exempts them from providing minimum compensation sufficient for the owner to purchase a comparable property in the community.

There are more exemptions that I will not go in to, but I would like to point out that when bad offers are made with no landowner protections for the eminent domain process, the road to a fair and just resolution for them is long and arduous and expensive, with no recovery of costs under the present exemptions to the 2006 eminent domain laws. I have talked to a couple of citizens who are still going through this nightmare on the MinnCann pipeline project for the south metro area and each step of the way for them costs more and more money for appraisals and attorney fees with no hope for recovery under the present law. This is just not fair.

I have heard it said that the electric companies will treat landowners fairly, regardless of the Minnesota laws on eminent domain, but I would like to point out a 2007 article in the Farmington Independent, that raises strong questions about that assertion.

The article reports on a group of Farmington citizens battling with Great River Energy for more than a year, trying to get adequate compensation for land taken to construct a 115 kilovolt power line across portions of their property. Mediation finally awarded these landowners \$55,000, - a 376% increase over the original \$14,600 offer. But because of the utility exceptions

to MN Eminent Domain laws, even if these landowners win GRE's appeal to the mediation decision, much of the increase they realize goes to attorney fees. Many Farmington landowners accepted the \$14,600 offer. Was it because they thought it was fair and that they should give away their easements for the public good? I would suggest it was out of a historical lack of faith in the system to give them fair treatment, and an unwillingness to confront the powerful utilities whose pockets are deep and only gain by extending time for payment. Does the much higher offer to those who appealed and went through the complicated system of receiving justice, suggest they got overpayments from a biased court? I don't think so.

I constantly hear the argument that low ratepayer cost must be considered as large, high voltage transmission lines are built. Indeed, this argument has grounded every conversation around the justification to build new dirty coal plants and to continue the use of old dirty coal plants. In the case of the CapX2020, Big Stone II was a large factor in justifying their construction, being listed in key engineering studies as a source of energy for those lines. In fact, with Big Stone II's demise, there are many more questions around the "need" for these lines. But to get back to the ratepayer/landowner argument on unfair exceptions to the eminent domain law, I would like to point out that, if you asked your constituents whether or not they would like a tiny reduction on their kilowatt hours acquired on the backs of unfairly low offers to the landowners who are forced to host these lines, my bet is that they, like me, would say "no". They might even point out that they could be the next affected landowner and that they would like fair treatment in negotiating condemnations.

Groups opposed to high voltage large transmission lines are working very hard to ensure that these lines do not take advantage of Minnesota ratepayers and property owners while bringing little benefit to our state, and much potential to slow down the development of local, economically beneficial renewable energy. Why is it then, that we would ask our landowners to not only host these questionable lines, to endure a view-scape of 170 foot high towers every 600-900 feet with a constant hum and an admitted safety issue of dangerous EMF's that the World Health Organization in studies has been determined to raise the incidence of leukemia in children? And then we want to ask them to give away their property too?

In the upcoming legislative session, you have an opportunity to right an egregious wrong, and create a level playing field for landowners who are asked to turn over their properties for the alleged greater good of the people of Minnesota. Please do not fail them by leaving the present exemptions for Public Service Corporations in place. Remove these exceptions. In the future, many more of your constituents will become these affected landowners and will be expecting justice when asked to sacrifice for a perceived greater good.

FARMINGTON INDEPENDENT ARTICLE

Empire township resident David Baker has some advice for his neighbors in Castle Rock and Eureka townships — question everything.

His unsolicited advice comes from someone with a voice of experience. A lot of experience, in particular, to dealing with power companies and having power utility transmission lines being built on his property. After all, he has been battling with Great River Energy for more than a year, trying to get adequate compensation for land taken to construct a 115 kilovolt power line across a portion of his property.

And now, Great River Energy is part of an 11-group utility consortium planning to build a 345 kilovolt power line from Brookings, S. D., to a substation in Hampton. That project, called the CapX2020 project, will likely construct its lines within a 12-mile corridor that covers all of Eureka and Castle Rock townships. And, ironically, the corridor even stretches right up to 210th Street in Empire township, where Baker lives.

The 210th Street group

Baker and his neighbors, at first 16 homes strong, encountered Great River Energy a few years back when the utility company decided to construct a power line from the Farmington substation on Denmark Avenue and County Road 50 eastward, and another connecting up to the Empire substation.

The community first learned of the proposed line in mid-2004, and over the course of the next year or so, routes were fine-tuned. Only, the city of Farmington was not pleased with the route chosen in town, as it went through an area of town where development had already occurred. And, it turns out, the residents along 210th Street — where the power line to connect at the Empire substation was routed — were not especially excited, either.

The city appealed the route, going up against the Minnesota Environmental Quality Board's (now a part of the Public Utilities Commission) recommendation. The city's appeal failed, and the power line was built.

The residents, likewise, appealed the route chosen to go past their homes, but for different reasons. GRE could benefit from using eminent domain if necessary. The EQB backed the proposed route. Many of the residents along 210th Street simply accepted the offer they were given when GRE came to purchase land for easements.

But not all of them did. Baker and eight others chose instead to fight. If they could not stop the power line's construction, at least they wanted to be adequately compensated.

GRE paid one of Baker's neighbors \$14,600 for the property that was taken to construct the power lines. It was felt, Baker says, that the offer represented a fair market value for the property. However, the neighbors did not. The collective group felt the power lines, once constructed, would negatively affect their property values, and possibly, their health.

Finding compensation

The group enlisted the legal assistance of Minneapolis attorney Robert J. Hajek. One of Hajek's first tasks was to file an appeal to the EQB's verdict. Almost immediately after Hajek came on board, GRE increased its offer to Baker's neighbor from \$14,600 to \$16,000.

But that was not enough, Baker said.

“When you construct something of that size, will it affect the individual property values? Even somebody with a fourth grade knowledge of real estate can see it will,” he said.

To prove the point, an independent appraiser was contacted. The appraiser confirmed what the neighbors believed — a power line across the street from their homes would diminish property values by about 10 percent. According to Baker, the appraiser once called his neighborhood, “the power line ghetto”.

Plus, it turns out that the FHA loan rules prohibit issuance of an FHA loan to homes within a certain distance of overhead high-voltage transmission lines, and a 115 kV line qualifies as “high voltage.” Those two factors alone, Hajek said, will negatively affect the residents along 210th Street for years, especially when they try to sell their homes. If a home goes on to the market, the homeowners will likely get less for the house because of the power line, and even if a buyer came along, the buyer would have to obtain alternative financing.

And that’s not all. A buyer who has a pace maker or has someone in his or her family with one will likely not even look at the home just because the power line is present, Hajek said. Studies of electric or magnetic force are inconclusive, but concerns of health effects from exposure to EMF have been known to deter buyers. Additionally, Medtronic’s, the company that manufactures pacemakers, warns its clients against being too close to overhead power lines because the transmission lines can affect the pacemaker’s operation.

An award

The neighborhood group chose not to accept GRE’s second offer, but instead, filed an appeal. The matter went into mediation. This past July, two of the eight 210th Street properties involved received awards. The neighbor who had initially been offered \$14,600 was awarded \$55,000. But Great River Energy has filed an appeal to the mediation awards. The matter now goes to a jury court, and is scheduled to begin in February.

“We’ve been a little beaten up along the way,” Baker said. “You can’t do this all by yourself. You have to watch their websites. You have to present alternatives. You have to research as much as possible.”

For his part, Hajek hopes to change legislation regarding how utility companies compensate residents before the CapX2020 planners determine a route and start to acquire the property. He and Baker have been in contact with Farmington’s state representative Pat Garafalo, who is interested in realigning the legislation, as well.

“I think there’s some opportunity to make things better,” Garafalo said. “We need to recalibrate that needle so that the system works.”

Specifically, Hajek would like the law to require public utility companies to pay legal fees of the homeowners if the utility company “low-balls” an offer and the homeowner wants to take the matter to court. Otherwise, the homeowners who are having their property taken are paying almost all of their settlements back to attorneys, and see no real compensation for their losses. State law already requires the Minnesota Department of Transportation to do so, which has affected the way MnDOT now compensates property owners when it takes land for public projects. Hajek had a hand in changing that legislation, and would now like to include public utility companies in it, as well.