

Energy Finance and Policy Division and Civil Justice Committees
November 4, 2009
Testimony of Gregory D. Soule

Chair Hilty, Chair Mullery, and Members of the Two Committees:

My name is Greg Soule. I live at 2915 – 345th Street, Warsaw Township, Minnesota. I am here today to speak in support of House File 1182, repealing the public service corporation exemptions. I am representing only myself as an interested citizen.

Actually, I am here to represent two very different perspectives: one based on my 28 acre hobby farm home, which is 55 miles south of the Twin Cities in the largely agricultural Sogn Valley, east of Cannon Falls and west of Northfield. The other perspective I want to bring to you today is as a partner in a Twin Cities law firm. Just so you can keep track, I have two things to tell you about this bill from the perspective from farm country, I have two things to say as an attorney, and I have three points in rebuttal to the utilities arguments against this bill.

Farm Perspective.

1. Utility Lines Have Major Impact. My neighbors and I became concerned about the condemnation powers of utilities about 6-9 months ago when we became aware that our area could be forced to have one of the CapX 2020 lines. The first point that I want to make is that putting this line through our area would be extremely disruptive. I presume most of you know something about the CapX 2020 program. It is over 600 miles of 345 kilovolt electric lines. These lines are going to be suspended from huge towers that are between 150-170 feet tall. I have a picture of one of these towers, provided courtesy of the CapX 2020 website and Xcel Energy. This illustrates the scale of these towers by showing a normal telephone pole next to it and a normal automobile. At 170 feet, these towers would be comparable to a 15-17 story building.

Obviously, there is nothing like this out in the area where we live, and it would completely dominate the landscape.

Unless you live out in the country, you have no idea what the adverse psychological and economic impacts of these lines can be. Many of my neighbors are farmers who are living in the homes where they were born. Many of the farms are century farms which have been in the same family for over 100 years. These people put a huge value on continuity and stability, and they back up that valuation by actually spending their lives in the same place for their entire lives. All of them are very fearful about the impact of these towers.

The impact is not only psychological and aesthetic, it is also economic. In the second chart that I brought today, you will see a depiction of one of the alternate lines that have been proposed by Xcel in my area. While it may be hard to make out from your seats, the orange areas along the line closest to my home indicate the 20 individual farms whose fields would be bisected along only a 12-mile stretch of this proposed line. Any farmer can tell you that having these lines divide up his fields is going to significantly interfere with his farming operations, driving up costs and reducing yields.

Now I'm sure some of you are thinking that these lines have to go somewhere and somebody is going to have to bear the burden of having these lines located on their property. While that may be true, you can at least pass House File 1182 to give them a chance to be fairly compensated when these lines are shoved down their throats.

2. Land Owners Feel Powerless. The second perspective I want to offer from farm country is that most of my neighbors feel that this entire process is completely beyond their control. They know that with the power of condemnation,

Xcel can put these lines anywhere they like, and they can force landowners to sell them an easement for these lines. These are facts that naturally make landowners feel powerless. Ultimately, that feeling of powerlessness extends over to the process of negotiating a price. Enacting House File 1182 would provide procedural safeguards that would give these farmers a fighting chance of negotiating a fair price for their land, even when they can't control where the line is located and don't want to sell an easement to the utility.

Attorney Perspective.

1. David vs. Goliath. I believe that if there is a dispute, or any kind of transaction between two parties, the best results occur when the parties have relatively equal bargaining positions. With the current special privileges that the utilities have in condemnation, their bargaining position is far superior to the property owner. The utilities come in with their engineers, environmental experts, their attorneys and their appraisers, and basically have an open checkbook because their costs are passed on to the ratepayers. The utilities have the efficiency of being able to use the same experts in transaction after transaction. In contrast, the property owner has to engage in an unfamiliar process and spend money on an attorney and an appraiser just to defend himself or herself against an unwanted sale at an unreasonable price. In this circumstance, the least the government can do is provide the procedural benefits that would be implemented by Representative Bly's bill.

2. Equal Treatment. The second point I want to make as an attorney is based on the concept of equal treatment under equal circumstances. Right now, if the state, county or local government wants to condemn my land, there are certain procedural safeguards for that process. But those procedural safeguards don't apply to the utilities. There is absolutely no policy reason why the utilities condemning private property should be treated differently than the government. I believe the public utilities were exempted in 2006 because they hadn't "overused" condemnation like

some cities did (Richfield: Best Buy headquarters). But the procedural safeguards are really just fair methods to give landowners a chance to get a fair price for their lands. This bill would make the utilities play by the same rules that currently apply to state, county and local governments.

Rebuttal.

Now I want to turn to my rebuttals of three arguments that you have heard or will hear from the utilities.

1. Utilities are highly regulated. The first argument you will hear is that the utilities are highly regulated, that they conduct lots of meetings and hearings, and as a result don't need to be subject to any more restrictions through the condemnation process. However, all of their regulations and meetings don't come into play, at all, when it comes time to negotiate a price sitting at the farmer's kitchen table. At that moment, all the hearings are done and no regulator is there to look over the utility's shoulder. That is exactly the point in this process where Representative Bly's bill would put into play procedural safeguards that would give the landowner a fighting chance to get a fair price.
2. Safeguards will delay and add costs. The utilities will tell you that these safeguards will be costly and that they will unduly slow down their process of acquiring property for these power lines. However, these are the same "Chicken Little, the sky is falling" arguments that were raised in 2006. But you do not have MNDOT or Hennepin County or local governments coming back to you complaining about how the procedural safeguards enacted in 2006 are making it impossible for them to acquire land for roads and utilities. All Representative Bly's bill does is to have the utilities operate under the same procedural safeguards, and these

procedures have not imposed unreasonable burdens on the government agencies.

3. Safeguards not needed since utilities seldom condemn. The third argument from utilities, which is personally my favorite, is that they hardly ever have to resort to condemnation when they acquire property for utility lines. Last spring, a representative of Xcel explained that for a recent project that ran 185 miles and involved 535 owners in southwest Minnesota, in only two instances was the utility required to acquire land by condemnation. I find that a very persuasive argument in favor of enacting Representative Bly's bill.

The fact that there are so few condemnations means one of two things:

- (i) First, it may mean that the utilities are very reasonable in the prices proposed – so reasonable that all of the landowners happily accept the offer from the utility and don't have to litigate to get a fair price. If that is true, then the enactment of these procedural protections will have no impact on the utilities as long as they continue to offer fair prices during the initial negotiations.
- (ii) However, the second reason why there may be so few condemnations could be that, without these procedural safeguards, the condemnation process is so stacked against landowners that they give up without a fight, even though they are only getting lowball offers. If this is the case, then we really need Representative Bly's bill to make the process fair.

Thank you very much for hearing my testimony and considering this bill.