

MEMORANDUMFACTS

Minnesota is a division of ALLETE, Inc., a Public Service Corporation under Minnesota Statute § 300.03. The corporation is authorized to construct, own, maintain, and operate electric transmission facilities for the transportation of electric power on behalf of public utilities.

Minnesota Power is authorized to acquire all property rights needed by using eminent domain under Minnesota Statutes § 300.04 and 222.36 to construct, install, operate, maintain, electric transmission lines. Minnesota Power is currently building the Weston Arrowhead line in Minnesota. Thirty five transmission line towers have already been constructed in Minnesota. Minnesota Power acquired an exemption from the requirements of the Minnesota Power Plant Siting Act (Minnesota Statutes § 116C, S1-69) for the construction of the line by an Order of the State of Minnesota Environmental Quality Board (MEQB), dated March 19, 2001.

Minnesota Power has valid existing easements over certain parcels of land along the transmission line route and requested an extension of those easements. In addition, Minnesota Power requested new easements over additional properties. Minnesota Power claims that as a public service corporation it is entitled to use eminent domain to acquire or expand and widen easements over the property along the planned new transmission line. Due to construction deadlines, Minnesota Power wants to use the 'quick-take'

public service corporation, the court should determine in each particular case whether the taking of the designated property is necessary for the proposed enterprise, and whether it may be lawfully taken thereof. Minnesota Canal & Power Co. v. Fall Lake Boom Co., 127 Minn. 23, 148 N.W. 561 (Minn. 1914)

"Generally, an order granting a condemnation petition is construed as an intermediate, nonappealable order, but an aggrieved party may challenge the issue of public necessity in a direct appeal from such an order." Blue Earth County v. Stauffenberg, 264 N.W. 2d 647, 649-50 (Minn. 1978)

"Public purpose and necessity are questions of fact, and we [Minnesota Court of Appeals] will not reverse the district court's decisions on these matters unless clearly erroneous. In re Condemnation by Minneapolis Cmty. Dev. Agency, 582 N.W. 2d 596, 598 (Minn. App. 1998)

QUICK-TAKE PROCEEDINGS

The essence of quick-take proceedings is typically: (1) the filing in court of a petition or other pleading . . . by a condemning authority, stating that particular lands . . . are being or have been taken for the use of the condemnor; and (2) the deposit in court by the condemnor of funds estimated to constitute just compensation for the taking. Generally speaking, upon the completion of these two procedures, the condemnation is effected and title to the interest sought by the condemnor is vested in the condemnor. Compensation for the interest condemned, if not agreed to by the parties, is determined after a hearing or trial on the issue in the manner of ordinary condemnation proceedings. AMJUR Eminent Domain § 769

In Minnesota, "the quick-take statutory procedure here employed is an expeditious procedure designed to accomplish the immediate transfer of title and possession to property upon payment by the condemnor of the approved

proceeding to acquire the properties. Minnesota Power will deposit compensatory funds with the Court by October 28, 2004.

Certain property owners now challenge the necessity for the new transmission line, the use of the 'quick-take' proceeding, and request that the Court delay its decision until an appeal of the MEQB decision is made by the Public Utilities Commission (PUC). The owners do not challenge the Minnesota Power's right of eminent domain, the public purpose for acquiring the property in question or the necessity of the line itself; they simply want the Court to postpone its decision until the PUC appeal is completed.

ANALYSIS

EMINENT DOMAIN

Under Minnesota law, "a public service corporation, has the right of eminent domain." Minn. Statute § 222.36 (1986) Generally, the public service corporation must pay value for land taken as determined by a court-appointed panel of commissioners. Minn. Statute § 117.075 (1986) The taking of property necessary to the production and distribution of electric light and power to the public is a taking for a public use. Northern States Power Co. v. Ostlund, 236 Minn. 135, 51 N.W. 2d 808 (Minn. 1952)

To exercise power of eminent domain, there is no need for a showing of absolute necessity, but only that the proposed taking is reasonably necessary or convenient to the end in view. Dairyland Power Co-op. v. Brennan, 248 Minn. 556, 82 N.W. 2d 56 (Minn. 1957). In an eminent domain proceeding involving a

appraisal value of the property". Fine v. City of Minneapolis, 391 N.W. 2d 853, 855 (Minn. 1986)

A quick-take proceeding for condemnation of land is "not a separate kind of condemnation proceeding, it is a step in a condemnation proceeding", and results in condemnor's valuation of property, rather than award of damages for taking. Fine, 391 N.W. 2d at 855.

The use of 'quick-take' of property, under Minn. Statute § 117.042, is limited to cases where a municipality can reasonably determine that it needs the property [or easement] before court appointed commissioners can meet, investigate, prepare, and file their award report. City of Minneapolis v. Wurtele, 291 N.W. 2d 386 (Minn. 1980). Appellate review of a district court's interpretation of the 'quick-take' statute is a question of law subject to de novo review. In re Condemnation by City of Minneapolis, 632 N.W. 2d 586, 589 (Minn. 2001)

Landowners are entitled to litigate whether the condemnor's specific interest in a particular piece of property is necessary to accomplish the general project or whether a 'quick-take' procedure is required. Cooperative Power Association v. Eaton, 284 N.W. 2d 395, 397 (Minn. 1979)

The Defendants in this matter did not argue necessity for the power transmission line. The Defendants did not argue that the property in question is not needed for the transmission line. The landowners simply requested that the Court delay the quick-take procedure until a decision is made by the Public Utilities Commission on SOUL's appeal from the issuance of a permit by the

Minnesota Environmental Quality Board. That decision involves who is the proper party in interest.

The Defendants argued that Plaintiff does not have the required permits in Minnesota and that the quick-take process is not necessary at this time. They are opposed to any condemnation of their lands.

The Plaintiff argued that all permits have been obtained in Minnesota, that Plaintiff has the statutory right to do a quick-take procedure, and in fact, has already built 35 power line towers on other parcels. The project goals necessitate a quick-take procedure at this time to stay on deadline with the rest of the project timetables.

The Court contacted the Public Utilities Commission and was advised that no specific time guidelines are required for review of permits. While the Commission might review the MEQB permit on September 9, 2004, it could be pushed back one or more weeks. Further, a decision regarding the appeal would not necessarily be made the day of the hearing. In any case, Minnesota Power cannot move forward with the construction if it does not have the necessary permits. As of August 20, 2004, there was no evidence that Minnesota Power did not have the required permits.

CONCLUSION

Minnesota Power is a public service corporation which has statutory authority to acquire land or easements under the eminent domain doctrine. Minnesota Power filed a pleading for a 'quick-take' proceeding to improve and

widen their existing easements over some of the properties in question or to acquire easements over certain other parcels of property in this matter.

Minnesota Power has complied with the statute by filing this case and depositing funds estimated to constitute just compensation for the proposed taking.

Based upon the project timelines for the current undertaking, Minnesota Power needs to have access to the lands to build the transmission line in question. Minnesota Power, at this point, has obtained all necessary permits (although one permit is subject to an appeal), will deposit compensatory funds with the Court by October 28, 2004, and provided evidence of the necessity of the transmission line. This Court finds that the Plaintiff has met its burden of proof for the quick-take condemnation to proceed.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ST. LOUIS
I hereby certify that I have compared the foregoing papers with the original recorded in the files consisting of file 04-2004-0001 and that it is a true and correct copy of said original.

Dated: 10/23/04
SUSAN BYRNES, County Administrator



By [Signature] Deputy