

A11-1116

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Northern States Power Company, *et al.*,*Appellants,*

v.

Roger A. Aleckson, *et al.*,  
and  
Victor E. Spears, *et al.*,

*Respondents.*

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APPELLANTS' BRIEF, ADDENDUM, and APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF ISSUES

- I. Where a landowner elects under the “Buy-the-Farm” statute, *Minnesota Statutes* § 216E.12, subd. 4, to require a utility to condemn a fee interest in all of its property, rather than remain on the property and accept payments and damages for a transmission line easement, is the owner a person who “must relocate” within the meaning of *Minnesota Statutes* § 117.187?

How raised: The issue was raised in the parties’ cross-motions, heard by the district court on February 16, 2011.

Ruling: The district court ruled that Respondents could pursue claims for minimum compensation under § 117.187.

Authority:

- Minn. Stat. § 216E.12, subd. 4
- Minn. Stat. § 117.187
- *Cooperative Power Ass’n v. Aasand*, 288 N.W.2d 697 (Minn. 1980)

- II. Is a landowner who makes a “Buy-the-Farm” election a “displaced person” within the meaning of *Minnesota Statutes* § 117.50, subd. 3, so as to be eligible for relocation assistance under § 117.52?

How raised: The issue was raised in the parties’ cross-motions, heard by the district court on February 16, 2011.

Ruling: The district court ruled that Respondents could pursue claims for relocation assistance under § 117.52.

Authority:

- Minn. Stat. § 117.50, subd. 3
- 42 U.S.C. § 4601(6)
- *Alexander v. Dep’t of Hous. and Urban Dev.*, 441 U.S. 392 (1979)

## STATEMENT OF THE CASE

This is an appeal from the May 18, 2011, Order and Judgment of the Stearns County District Court, Honorable Frank J. Kundrat presiding. (Add. 1.)<sup>1</sup> This Court granted Appellants' petition for discretionary review in an Order filed on September 1, 2011. (Add. 10.)<sup>2</sup>

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

### **A. The CapX 2020 Project.**

Appellants are among the developers of four new electric transmission lines called the CapX 2020 Project ("Project"). The Project ultimately will extend over 600 miles, crossing 21 Minnesota counties. The Project's Fargo line extends from Fargo, North Dakota, to Monticello, Minnesota.<sup>3</sup> The St. Cloud to Monticello line ("Fargo 1") is the first segment of the Fargo line. Appellants are the owners of the Fargo 1 Project. In most cases, Appellants have been able to acquire the required transmission line easements through direct negotiation with landowners. In other cases, the easements have been acquired through condemnation. This appeal arises out of the condemnation proceedings

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<sup>1</sup> "Add." refers to the Addendum. "A. App." refers to Appellants' Appendix.

<sup>2</sup> The Wright County District Court issued an order dated July 12, 2011, which addresses similar issues. (A. App. 108.) That order is not part of the present appeal.

<sup>3</sup> Land acquisition efforts for the Bemidji to Grand Rapids line are currently underway, and construction of a portion of that project has begun. Acquisition efforts for the Brookings, South Dakota, to Hampton (Dakota County) line are in their early stages. The acquisition efforts for the fourth project, the La Crosse, Wisconsin, to Hampton line, will likely commence during the latter part of 2012.

filed in Stearns and Wright Counties for the first 28 miles of the Project, between Monticello, Minnesota, and St. Cloud, Minnesota.

**B. The Route Permit for Stearns and Wright Counties.**

Following a contested case hearing and findings of fact made by an administrative law judge (A. App. 1), the Minnesota Public Utilities Commission issued a route permit for the Fargo 1 Project on July 12, 2010. (A. App. 60.) The route permit provides that “when the transmission line route parallels existing highway rights-of-way, the transmission line ROW shall occupy and utilize the existing highway right-of-way to the maximum extent possible . . . .” (A. App. 62.) The designated route through Stearns and Wright counties accomplishes this by utilizing the Interstate Highway 94 (“I-94”) right-of-way to the greatest extent possible. As a result, the easement width needed from landowners adjacent to the I-94 right-of-way is typically less than the normal 150-foot width required for a 345 kilovolt (“kV”) transmission line such as the Fargo 1 Project.

**C. The Stearns County Condemnation Proceedings.**

After acquiring most of the easements in Stearns County through negotiation, on October 21, 2010, Appellants commenced a condemnation action in the district court to acquire easements over land that included parcels owned by some of the Respondents. Following a hearing, the district court entered an Order Granting the Petition and Appointing Commissioners, and an Order Transferring Title and Possession of the requested easements to Appellants as of January 20, 2011. (A. App. 74, 81.) Appellants commenced a second condemnation action in Stearns County on December 1, 2010 to acquire easements over other land, including a parcel owned by another of the

Respondents. Following a hearing on that petition, the district court entered an Order Granting the Petition and Appointing Commissioners, and an Order Transferring Title and Possession of the requested easements to Appellants. (A. App. 98.)

**D. Respondents' Buy-the-Farm Elections and Claims for Additional Compensation.**

Under *Minnesota Statutes* § 216E.12, subd. 4 (2010), the so-called “Buy-the-Farm” (“BTF”) statute, when a utility condemns an easement to construct a transmission line with a capacity of 200 kV or more over specified classes of real property, the fee owner of such property has the option to require the utility to condemn a fee interest in “any amount” of the owner’s “contiguous, commercially viable land” that the owner chooses. In this case, Respondents Robert and Charlene Pudas, Nancy and Brett Hanson, and John and Jeannie Stich made elections under the BTF statute, choosing to require Appellants to condemn a fee interest in the entirety of their properties.

Respondents Robert and Charlene Pudas live on property in Stearns County designated in the condemnation proceedings as Parcel MQ116. (A. App. 85.) The parcel abuts the I-94 right-of-way. (*Id.*) Approximately 35 feet of the transmission line’s 150-foot easement lie within the existing I-94 right-of-way. (*Id.*) Approximately 115 feet of the easement is on the land the Pudases own directly adjacent to the I-94 right-of-way. The transmission line easement does not require the Pudases’ residence to be altered, demolished, or moved. Nor does it require that the Pudases move. Unlike many of property owners along the transmission line’s I-94 route who decided to remain on their properties and accept easement payments from Appellants, the Pudases decided that they

want to live elsewhere. On December 6, 2010, they filed an election under *Minnesota Statutes* § 216E.12, subd. 4, to require Appellants to acquire fee title to the entirety of their property. (A. App. 87.) Although the Pudases will receive just compensation for their property in the condemnation, their election seeks to also compel Appellants to “provide an appraisal complete with a minimum compensation analysis pursuant to [*Minnesota Statutes* § 117.187] . . . and [to] comply with all requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act.” (A. App. 88.)

Respondents Nancy and Brett Hanson reside on property in Stearns County designated as Parcel MQ119. (A. App. 92.) Their property abuts I-94. (*Id.*) Approximately 50 feet of the transmission line’s 150-foot easement lie within the existing I-94 right-of-way. Approximately 100 feet of the easement is on land the Hansons own directly adjacent to the I-94 right-of-way. (*Id.*) The easement does not require that the Hansons’ residence be altered, demolished, or moved. Nor does it require that the Hansons move. The Hansons decided that they want to live elsewhere. On December 2, 2010, they filed an election under the BTF statute to require Appellants to acquire fee title to the entirety of their property. (A. App. 94.) Like the Pudases, the Hansons are seeking additional compensation in the form of minimum compensation and relocation assistance. (*Id.*)

Respondents John and Jeannie Stich live on property in Stearns County designated as Parcel MQ122. (A. App. 95.) Their property abuts I-94. (*Id.*) Approximately 50 feet of the transmission line’s 150-foot easement lie within the existing I-94 right-of-way.

Approximately 100 feet of the easement is on the land the Stiches own directly adjacent to the I-94 right-of-way. (*Id.*) The easement does not require that the Stiches' residence be altered, demolished, or moved. Nor does it require the Stiches to move. The Stiches decided that they want to live elsewhere. On December 9, 2010, they filed an election under the BTF statute to require Appellants to acquire fee title to the entirety of their property. (A. App. 97.) Like the Pudases and the Hansons, they are seeking additional compensation in the form of minimum compensation and relocation assistance.

In the district court proceedings, Respondents submitted affidavits to explain their motivations for choosing to make BTF elections. The district court's Order did not reference or rely on the affidavits, and the reasons underlying Respondents' elections are not relevant to the legal issues presented on this appeal. The legal question is not whether the Respondents *want* to relocate because Appellants have acquired a transmission line easement; it is whether Respondents *must* relocate because the easement has been acquired.

#### **E. The District Court's Ruling.**

The district court ruled in its May 18, 2011, Order that Respondents could pursue compensation beyond the fair market value of their properties, specifically, that they could pursue "minimum compensation" claims under *Minnesota Statutes* § 117.187, as well as claims for relocation assistance under § 117.52. The district court's memorandum concludes that landowners making BTF elections are entitled to pursue minimum compensation and relocation assistance benefits under §§ 117.187 and 117.52 because the legislature did not expressly *prohibit* them from pursuing such claims.

(Add 4, 5-6.) The decision was based entirely on the court's interpretation and construction of the statutes at issue.

## ARGUMENT

### **I. A DE NOVO STANDARD OF REVIEW IS APPLICABLE.**

The construction or interpretation of a statute presents a question of law that this Court reviews de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this Court. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

Here, the issues on appeal present pure questions of statutory interpretation, and the application of the statutory language to undisputed facts. The district court's ruling was based entirely on its interpretation of the applicable statutes. Accordingly, this Court must review the district court's ruling de novo.

### **II. THE "BUY-THE-FARM" STATUTE ONLY ENTITLES AN ELECTING LANDOWNER TO RECEIVE FAIR MARKET VALUE FOR ITS PROPERTY.**

#### **A. The BTF Statute is Intended to Relieve a Landowner of the Burden of Locating a Willing Buyer for its Property.**

In 1977, the Minnesota Legislature enacted the so-called "Buy-the-Farm" statute, which is now codified at *Minnesota Statutes* § 216E.12, subd. 4.<sup>4</sup> The statute provides that when a utility acquires through condemnation an easement to construct a high voltage transmission line over certain classes of real property, the fee owner has the

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<sup>4</sup> See 1977 Minn. Laws ch. 439, § 17. The statute was originally codified at Minn. Stat. § 116C.63.

option to require the utility to condemn a fee interest in any amount of the owner's "contiguous, commercially viable land" that it chooses. *Id.* By using terms such as "option," "elects," and "election," the statute makes clear that the decision to remain on the property or move elsewhere is the landowner's decision alone:

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 . . . 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 . . . 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.

*Minnesota Statutes* § 216E.12, subd. 4 (2010) (emphasis added).

The process described in the BTF statute is unique. It is not a "condemnation" in the ordinary sense because, in order to construct a transmission line project, a utility does not need to acquire fee title for either the right-of-way (an easement is sufficient) or for

the entirety of the owner's property. Nor does the utility want to acquire fee title to land that is not needed for a project.

The legislature's purpose in enacting this unique provision was succinctly described by the Supreme Court in *Cooperative Power Ass'n v. Aasand*, 288 N.W.2d 697 (Minn. 1980): When a property owner does not wish to live adjacent to a transmission line easement, but chooses to move elsewhere, the statute is designed to shift from the property owner to the utility the burden of locating a willing purchaser for its property. 288 N.W.2d at 700. In *Aasand*, two utilities sought to condemn an easement for construction of a transmission line over the Larsens' property. The Larsens decided that they did not want to live on land with a transmission line easement, even though they could have remained and would have been fully compensated for the easement. However, instead of finding a purchaser for their farm, they chose to make an election under the BTF statute to compel the utilities to buy their farm. The utilities, after being compelled to purchase the Larsens' farm, were then required to completely divest themselves of it. *Minnesota Statutes* § 116C.63, subd. 4 (1978).

The Court in *Aasand* held that the statute acted as a "condition precedent" to the utilities' exercise of the power of eminent domain delegated by the State. The Court reasoned that the condition precedent would not amount to an unconstitutional taking as long as the statute was applied in a reasonable manner. Because the statute was read by the Court to apply only to "commercially viable" land, which presumably could be easily resold by the utilities, the Court deemed the condition reasonable and not an unconstitutional taking. It recognized that the statute is a mechanism for "shifting the

transaction cost of locating a willing purchaser for the burdened property from landowner to utility.” *Aasand*, 288 N.W.2d at 700.

**B. Nothing in the BTF Statute is Intended to Put a Landowner in a Better Position Than if the Owner Had Sold its Property in an Arms-Length Transaction on the Open Market.**

Because the purpose of the BTF statute is simply to “shift[] the transaction cost of locating a willing purchaser for the burdened property from landowner to utility,” the statute was not designed to provide, and does not in fact provide, a landowner with greater rights than the owner would have if it located a buyer for its property itself. If the Respondents in this case had sold their properties to third parties, bypassing the BTF process, they would have received the properties’ market value – the same value that all sellers receive in open market, arms-length transactions. They would not have received relocation assistance. They would not have received “minimum compensation.” They would have received simply the amount that their properties were worth on the market.

Nothing in the BTF statute requires a utility to pay more than the fair market value for BTF property. In *Northern States Power v. Williams*, 343 N.W.2d 627 (Minn. 1984), the Supreme Court stated that the BTF statute “afford[s] ‘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.’” *Id.* at 633 (emphasis added) (quoting *Aasand*, 288 N.W.2d at 700). The Court made no mention of any other measures or forms of compensation because none are required by the BTF statute.

To the contrary, the BTF statute provides that, following the forced acquisition of agricultural land, a utility must divest itself of such land “not later than the time it can

receive the *market value* paid at the time of the acquisition . . . .” *Minnesota Statutes* § 216E.12, subd. 4 (emphasis added). The statute does not address any *other* compensation beyond the fair market value that must be paid. Indeed, the Supreme Court concluded that the statute does not constitute an impermissible taking exactly because of the fact that the utility presumably will receive from its purchaser the same measure it paid the landowner to acquire the land – the fair market value.

Here, after receiving notice of Appellants’ plan to acquire an easement on their land, the Respondents had a choice to make: they could either continue to live on their property (receiving a payment for the easement and any other damages caused by the easement), or they could choose to force Appellants to acquire their property and move elsewhere. Although most property owners along the transmission line route in Stearns County chose to stay, Respondents are choosing to move. That is their absolute right, of course, as all landowners have the right to sell their land and move if events occur that they do not like. Had Respondents chosen to find buyers for their properties, they would have received market value for their properties and nothing more. Simply because the Respondents chose to exercise their right to make BTF elections to, in the words of the Supreme Court, “shift[] the transaction cost of locating a willing purchaser for the burdened property from landowner to utility,” does not mean that Respondents are entitled to receive anything more than the value they would have received had they sold their properties themselves. Nothing in the BTF statute establishes any right for the Respondents to receive more than the fair market value of their properties.

**III. THE “MINIMUM COMPENSATION” PROVISION ENACTED IN 2006 DOES NOT PROVIDE A BASIS FOR RESPONDENTS TO SEEK ADDITIONAL COMPENSATION BEYOND FAIR MARKET VALUE.**

**A. “Minimum Compensation” Is Available Only to Owners Who Have No Choice But to Move.**

Minnesota Statutes § 117.187, enacted by the legislature in 2006, provides:

When an owner *must relocate*, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority’s payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, “owner” is defined as the person or entity that holds fee title to the property.

*Minnesota Statutes* § 117.187 (emphasis added).<sup>5</sup>

“A statute should be interpreted, whenever possible, to give effect to all of its provisions; ‘no word, phrase, or sentence should be deemed superfluous, void, or insignificant.’” *American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). Here, effect must be given to the operative word, “must.” The minimum compensation statute does not become applicable simply because a property owner *wants* to relocate because of a project. It is only applicable where an owner “*must relocate*.” The plain meaning of the word “must” is something that is required and compulsory, as opposed to something that is optional or voluntary. Some owners faced with a partial taking will choose to move, while others will choose to remain despite the partial taking. The legislature’s use

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<sup>5</sup> The meaning and scope of § 117.187 is currently before this Court in *County of Dakota v. George W. Cameron, IV*, File No. A11-1273.

of the word “must” demonstrates that it was drawing a distinction between owners who have a choice about whether to relocate and owners who do not. Only owners who have no choice and who are *required* to relocate due to a project (i.e., owners who “must” relocate) are entitled to pursue claims for minimum compensation. If the statute were read to permit owners to claim minimum compensation simply because they choose to relocate, the word “must” would become meaningless and unnecessary. Such an interpretation would not only be contrary to the plain meaning of the statute, but would unnecessarily increase the costs of public improvements.

This case does not involve landowners who *must* relocate in response to a complete or partial taking of their land. It involves landowners who *want* to relocate. It is undisputed that none of the Respondents is required to relocate as the result of Appellants’ acquisition of a 150-foot easement, a portion of which lies within the existing I-94 right-of-way. The easements do not require that the Respondents’ homes be demolished or moved. If they chose to do so, Respondents could remain on their properties, as many of the property owners along the I-94 transmission line route in Stearns County have done. Instead, the Respondents here have chosen to relocate. While the affidavits they submitted in the district court assert that their choices to relocate are sincere, and that, in their minds, their choices to relocate are justified, the fact remains that they are *choices*. Respondents’ houses will still be there after they compel Appellants to acquire them and they move elsewhere. After Respondents relocate, someone else will purchase and move into the houses on Respondents’ former land. Respondents will be living elsewhere not because they *must*, but because they *choose* to

live elsewhere. As a matter of law, the minimum compensation provision is not applicable to Respondents.

Respondents argued in the district court that they meet the prerequisite of the minimum compensation statute because they “must” relocate as a result of the fact that they elected to require Appellants to acquire their properties under the BTF statute. That is a bootstrap argument. The BTF statute is elective, not compulsory.<sup>6</sup> A party cannot elect its way into qualifying for “minimum compensation” under § 117.187. The statute is intended to benefit owners who have no choice. Applying the statute to owners who “must” relocate simply because they elected to exercise their BTF option would be no different than allowing an owner who has entered into a contract to sell his or her property to a private party to pursue minimum compensation because he or she “must” relocate under the terms of the purchase agreement. Respondents’ argument lacks merit.

**B. The District Court Erred in Concluding that the Legislature Intended the Minimum Compensation Provision to Apply to All BTF Elections.**

The basis for the district court ruling that “minimum compensation” under § 117.187 is available to Respondents is the court’s conclusion that the legislature did not specifically state in the BTF statute that minimum compensation *would not* be available to owners making a BTF election. (Add. 4-5.) The court based its reasoning on the fact

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<sup>6</sup> The statute is replete with language making clear that the “Buy-the-Farm” remedy is optional. Under the statute, a land owner has “the *option* to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land . . . .” Minn. Stat. § 216E.12, subd. 4 (2010) (emphasis added). The owner exercises that option when he or she “*elects* in writing” to require the utility to acquire the land. *Id.* The owner has “only one such *option* and may not expand or otherwise modify an *election* without the consent of the utility.” *Id.* (emphasis added).

that *Minnesota Statutes* § 216E.12, subdivision 2, a general provision enacted in 1977, states: “In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in Chapter 117, except as otherwise specifically provided in this section.” The district court reasoned that, because the “minimum compensation” provision of § 117.187 became part of Chapter 117 in 2006, the minimum compensation provision *automatically* became applicable to *all* BTF elections. (Add. 4-5.) There are two problems with the court’s analysis.

First, when *Minnesota Statutes* § 216E.12, subd. 2, was enacted in 1977,<sup>7</sup> there was no “minimum compensation” provision in Chapter 117. As such, the legislature could not have intended in 1977 to make the non-existent “minimum compensation” remedy available to landowners when it enacted § 216E.12, subd. 2. Moreover, in 2006, when the legislature enacted the minimum compensation provision in § 117.187, it made no reference to the BTF statute and did not amend the BTF statute itself. Thus, there is no evidence that the legislature intended to *require* minimum compensation to be paid to all owners who utilize the BTF statute.

Despite the lack of direct *affirmative* evidence that the legislature intended the 2006 minimum compensation provision to apply to all owners making elections under the BTF statute, the district court erroneously relied on a *negative* inference that it must be what the legislature intended because the legislature did not amend the BTF statute to expressly *exempt* the BTF statute from the operation of § 117.187. (Add. 4.) Appellants

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<sup>7</sup> 1977 Minn. Laws ch. 439, § 17.

respectfully submit that the district court's statutory interpretation is incorrect. It is incorrect to rely on the general provision in § 216E.12, subd. 2, to conclude that the legislature intended for the 2006 amendments to Chapter 117 to modify § 216E.12 when: (1) § 216E.12 predates the 2006 amendments to Chapter 117; and (2) the 2006 amendments to Chapter 117 never mention § 216E.12.

Second, and more fundamentally, even if the analysis in the district court's Order were correct (which it is not), that does not mean that the *terms and requirements* stated in § 117.187 may be ignored. Section 117.187, by its terms, restricts a minimum compensation claim to owners who "must" relocate. The district court only performed the first step of the required analysis. The court concluded that the legislature did not, in the BTF statute, expressly prohibit owners who make BTF elections from pursuing any remedy identified in Chapter 117. However, the court failed to address the second step of the analysis – determining, under the specific language of § 117.187, whether these Respondents are owners who "must relocate" as a result of the easement acquisition. As discussed above, Respondents do not meet the "must relocate" prerequisite of § 117.187 and therefore cannot pursue minimum compensation. It was error for the district court to permit them to claim minimum compensation when they plainly do not meet a fundamental prerequisite of the statute.

#### IV. MINNESOTA'S UNIFORM RELOCATION ASSISTANCE ACT DOES NOT APPLY TO RESPONDENTS.

##### A. Respondents Are Not "Displaced Persons" Under the Minnesota Relocation Assistance Act.

Respondents seek relocation assistance under the Minnesota Uniform Relocation Act ("MURA"), *Minnesota Statutes* §§ 117.50-56. Any analysis of MURA must begin with an analysis of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.* (the "Uniform Relocation Act" or "federal Act"), because MURA expressly incorporates certain key provisions of the federal Act. MURA provides in relevant part:

In all acquisitions undertaken by any acquiring authority . . . the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended . . . , and those regulations adopted pursuant thereto.

*Minnesota Statutes* § 117.52, subd. 1.

Both the federal Uniform Relocation Act and MURA (by incorporating the federal Act) require an acquiring authority to provide certain relocation benefits to a "displaced person." 42 U.S.C. § 4622. Both the federal Act and MURA use the same definition of "displaced person." MURA expressly incorporates the federal definition and the regulations interpreting the definition.<sup>8</sup> *See Minnesota Statutes* § 117.50, subd. 3 (defining "displaced person" as "any person who . . . meets the definition of a displaced

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<sup>8</sup> MURA previously had a broader definition of "displaced person" than the definition in the federal Act. *See In re Application for Relocation Benefits of James Bros. Furniture, Inc.*, 642 N.W.2d 91, 98-99 (Minn. Ct. App. 2002). However, in 2003, after the *James Brothers* case was decided, the legislature amended the definition of "displaced person" in § 117.50, subd. 3, to mirror the federal definition. 2003 Minn. Laws ch. 117, § 1.

person under United States Code, title 42, §§ 4601 to 4655, and regulations adopted under those sections”).

The definition of “displaced person” is critical. Under the definition in the federal Act, which MURA expressly incorporates, a “displaced person” is “a person who moves from real property . . . as a *direct result* of a written notice of intent to acquire or the acquisition of such real property in whole or in part *for a program or project* undertaken by a [displacing] agency . . . .” 42 U.S.C. § 4601(6) (emphasis added). The regulations adopted under the federal Act (which are also expressly incorporated into MURA’s definition of “displaced person”) state that a “displaced person” does *not* include “a person who is *not required* to relocate permanently as a direct result of a project.” 49 C.F.R. § 24.2(a)(9)(ii)(D) (emphasis added).

The “displaced person” definition “embodies two causal requirements.” *Alexander v. Dep’t of Hous. and Urban Dev.*, 441 U.S. 39, 62 (1979). First, the relocation “must result directly from an actual or contemplated property acquisition.” *Id.* at 63. Second, the acquisition “must be ‘for,’ or intended to further, a federal program or project.” *Id.* at 63. Although the Supreme Court in *Alexander* was interpreting an earlier version of the Uniform Relocation Act, the current version of the Act continues to embody the two causal requirements: (1) a person must relocate as a “direct result” of an acquisition by a displacing agency; and (2) the acquisition must be “for” the agency’s project. 42 U.S.C. § 4601(6). A claimant must satisfy both requirements.

The statute’s use of the term “direct” in describing first causal requirement establishes that a project must actually *require* an owner to relocate. The plain meaning

of “direct” is “free from extraneous influence; immediate.” BLACK’S LAW DICTIONARY (9<sup>th</sup> Ed.) at 525. *See also* RANDOM HOUSE COLLEGE DICTIONARY at 375 (defining “direct” as “immediate” or “inevitable”). A “direct result” is an outcome that immediately and inevitably flows from an event without intervening causes. An owner that *chooses* to relocate because of an acquisition, but is not *required* to relocate, does not meet the “direct result” causation requirement because the choice to relocate, not the acquisition, is the direct cause of the relocation.<sup>9</sup> Indeed, when Congress amended the Uniform Relocation Act in 1987 to add the “direct result” causation language, it explained in the legislative history that it intended to preclude relocation assistance to owners who *choose* to relocate. *See* House Conf. Rep. No. 100-27, at 246 (1987) *reprinted in* 1987 U.S.C.C.A.N. 121, 230 (“In certain cases where a property owner voluntarily agrees to sell his or her property and moves from the property in connection with the sale, the move should not be considered to be permanent displacement as a direct

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<sup>9</sup> Courts construing the definition of “displaced person” in the prior version of the federal Act have held that relocations caused or contributed to by some act or decision *other than* the acquisition itself do not satisfy the definition’s first causal requirement. *See e.g., Dawson v. U.S. Dep’t of Hous. and Urban Dev.*, 428 F. Supp. 328 (N.D. Ga. 1976) *aff’d*, 592 F.2d 1292 (5th Cir. 1979) (holding that “the proximate cause of plaintiff’s displacement was the decision by the owner of her apartment building to sell to a private developer. While the decision of her landlord to sell may have been influenced by [federal] urban renewal activities . . . her dislocation was not the ‘direct result’ of those activities.”); *Highway Pavers v. U.S. Dep’t of Interior*, 650 F. Supp. 559 (S.D. Fla. 1986) (holding that “[t]he clear language of the [federal Act] manifests that the provisions providing for moving and related expenses are intended to provide assistance for a distinct group of persons *required* to move their business *because of* the government program requiring acquisition of the land”) (emphasis added).

result of the project and that person should not be considered eligible for relocation assistance under the Act.”)

The federal regulation (which has been expressly adopted by MURA) also makes clear that the “direct result” causal requirement in the definition of “displaced person” is not satisfied unless relocation is required by a project. 49 C.F.R. § 24.2(a)(9)(ii)(D). Under the regulation, a person who is “*not required*” to relocate as a direct result of a project is not a “displaced person.” *Id.* In other words, if a person has a choice regarding whether to stay or move, the person is not a displaced person.

Here, Respondents’ claim for relocation assistance does not satisfy the Act’s first causal requirement. Respondents have not been displaced as a “direct result” of Appellants’ acquisition of an easement. Their relocations did not directly result from Appellants’ acquisition of a 150-foot easement on their property because the easement did not require Respondents to move. Under the applicable regulation, Respondents are not “displaced persons” because they are “*not required* to relocate permanently as a direct result of a project.” 49 C.F.R. § 24.2(a)(9)(ii)(D) (emphasis added). Rather, Respondents’ relocations are caused by their desire to live elsewhere and their choices to voluntarily transfer their land to Appellants by making BTF elections. The “direct result” causal requirement is not met.

Respondents’ BTF elections also do not satisfy the second causal requirement in the definition of “displaced person” – that the acquisition be “for” the project. *Alexander*, 441 U.S. at 63. Here, the only acquisition that is needed “for” the transmission line project is the 150-foot easement on Respondents’ property. It is undisputed that

Appellants do not want or need the property owned by Respondents that is contiguous to the easements, and Appellants will not use that property for the project. Although under the BTF statute Appellants may be compelled to acquire the unwanted contiguous land from Respondents, the acquisition is not “for” the transmission line project.<sup>10</sup>

Accordingly, because neither of the causation requirements in the definition of “displaced person” is met by Respondents’ BTF elections, they are not “displaced persons” and therefore cannot claim relocation assistance under MURA.

**B. The District Court’s Statutory Interpretation Is Incorrect.**

Just as it did with the minimum compensation issue, the district court’s order fails to address the language of the Uniform Relocation Act and the regulations to determine if Respondents satisfy the definition of a “displaced person.” Instead of analyzing the statutory requirements to determine if Respondents meet the definition of a “displaced person,” the court merely concluded that Respondents automatically were entitled to claim relocation assistance because the BTF statute does not expressly state that they cannot. (Add. 5-6.) The court’s interpretation of the statute is incorrect for the reasons discussed in Section II.B, above. However, even if the district court’s Order were

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<sup>10</sup> Respondents may argue that acquisition of their unneeded, contiguous land is nevertheless “for” the project because the BTF statute makes such acquisitions a condition precedent to Appellants’ exercise of their delegated power of eminent domain. However, the Supreme Court in *Alexander* explained that “[b]y requiring that an acquisition be ‘for’ a federal program or project, Congress intended that the acquisition must further or accomplish a program *designed to benefit the public as a whole.*” 441 U.S. at 64 (emphasis added). While it may be a requirement of the BTF statute that Appellants acquire the unneeded, contiguous land owned by Respondents, the BTF statute’s requirement merely provides a private benefit to the Respondents; the statute’s requirement is not “designed to benefit the public as a whole.” *Id.*

correct, that Respondents are not precluded by the BTF statute from *claiming* relocation assistance under MURA, the language of the statute cannot be ignored. The Court still must move to the critical question: are these Respondents “displaced persons”? As discussed above, none of the Respondents is a “displaced person” entitled to relocation assistance under § 117.52.

### CONCLUSION

This appeal presents issues of statutory construction. The central question is whether an owner who *wants* to move from his or her property because of a transmission line easement project is an owner who *must* move because of the project. The answer to that question is no. The district court’s Order should be reversed, with instructions that Respondents’ claims for minimum compensation and relocation assistance be dismissed.

Respectfully submitted,



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