

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

9/25/12

SUBJECT:

CapX - Eminent Domain Resolution

PREPARED BY:

Randy Anderton, Manager of Engineering

ITEM DESCRIPTION:

Prior to constructing any of the CapX transmission lines, it is necessary for the Project Manager, NSP(MN) to acquire the necessary property rights to allow the construction of the 4 segments of transmission line in Minnesota. These 4 segments are as follows:

- 1) North Rochester to Northern Hills – 161kV
- 2) North Rochester to the Mississippi River – 345kV
- 3) Hampton to North Rochester – 345kV
- 4) North Rochester to Chester – 161kV

The Project Manager has been and is continuing to negotiate the purchase of easements with landowners associated with segment #1 mentioned above. In the event the Project Manager is unable to reach agreement with some of the landowners, it will be necessary for the Project Manager to utilize eminent domain to avoid a delay in getting segment #1 constructed.

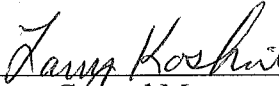
The Project Manager will also negotiate the purchase of easements for segments 2 through 4 noted above as well. The Project Manager's use of eminent domain within those segments may be necessary in the future as well. To utilize eminent domain, it is necessary for the 4 Minnesota utilities (NSP_MN, SMMPA, DPC, and RPU) participating in the CapX project in Minnesota to authorize the "*Resolution Authorizing the Use of Eminent Domain, Including "Quick-Take," to Acquire Real Property for High Voltage Transmission Line and Substation Purposes.*" The City Attorney has reviewed the attached resolution and has approved the language.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

On March 6, 2012, the PDA (Project Development Agreement) Amendment was approved which authorized property acquisition on the Northern Hills to North Rochester 161kV transmission route. The amendment also authorized preliminary right of way work on the North Rochester to the Mississippi River section of 345kV route. Property rights acquisitions for the 3 segments other than the Northern Hills to North Rochester will be authorized when the Project Agreements are approved later in 2012.

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board request the Council to approve the attached "*Resolution Authorizing the Use of Eminent Domain, Including "Quick-Take," to Acquire Real Property for High Voltage Transmission Line and Substation Purposes,*" and that the Mayor and City Clerk execute the document.


General Manager


Date

**Resolution Authorizing the Use of Eminent Domain,
Including “Quick-Take,” to Acquire Real Property for
High Voltage Transmission Line and Substation Purposes**

WHEREAS, the **City of Rochester**, a Minnesota municipal corporation acting through its Public Utility Board (the “Project Participant”), is qualified to do business in the state of Minnesota; and

WHEREAS, the Project Participant is engaged in the business of generating, transmitting, and distributing electric power and energy in the state of Minnesota; and

WHEREAS, the Minnesota Public Utilities Commission (the “Commission”) has granted a Certificate of Need (“CON”) and Routing Permits that authorize the construction and operation of a new 345 kV transmission line between Hampton, Minnesota, and Kellogg, Minnesota, a new 161 kV transmission line between the new North Rochester Substation in Pine Island Township and the existing Northern Hills Substation in Rochester, Minnesota, and a new 161 kV transmission line between the new North Rochester Substation and the existing Chester Substation in Marion Township, with modifications and upgrades to the planned Hampton Substation, the Northern Hills Substation, and the Chester Substation, in Dakota, Goodhue, Olmsted, and Wabasha counties (the “Project”); and

WHEREAS, in connection with the Project, the Project Participant has entered into agreements with other Project participants, including agreements that authorize the acquisition of the real property necessary to construct, operate, and maintain the Project through the exercise of the power of eminent domain; and

WHEREAS, the Project Participant is authorized by law to exercise the power of eminent domain, in accordance with *Minnesota Statutes*, Chapter 117 (2011), to acquire real property for the Project within the routes designated by the Commission; and

WHEREAS, the owners and occupants of the real property where an easement will be acquired will have the full rights and enjoyment of the easement area not inconsistent with the Project Participant’s easement rights, provided, however, that the owners or occupants of said real property shall not erect thereon any structures or other objects, permanent or temporary, nor shall the owners or occupants of said real property perform any act that will interfere with or endanger the Project; and

WHEREAS, while the Project’s Land Acquisition team has made considerable and substantial efforts to acquire the necessary real property from the owners of the real property affected, it has been unsuccessful in doing so with respect to all such real property; and

WHEREAS, the taking of title to and possession of real property for the Project prior to the filing of awards by the court-appointed commissioners is authorized by law, including *Minnesota Statutes*, Section 117.042 (2011) (the “Quick-Take” statute); and

WHEREAS, to construct and accomplish the Project, it is reasonably necessary and convenient for the Project Participant to acquire by exercise of the power of eminent domain fee title to property for substation purposes, and perpetual and irrevocable easements and rights-of-way to survey, construct, operate, maintain, use, upgrade, rebuild, relocate, or remove a transmission line facility with one or more circuits, with all towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, and equipment related to said transmission line facility, together with communication equipment relating to the operation of such facility, within the routes designated by the Commission. The easement rights to be acquired are specifically described in Exhibit A, attached hereto and made a part hereof as though fully set forth at this point;

NOW, THEREFORE, BE IT RESOLVED, by the Rochester City Council of the City of Rochester that the Project Participant's management and Fredrikson & Byron, P.A., the Project's Land Rights Counsel ("Counsel"), are hereby authorized to bring such legal actions, including the use of eminent domain, as may be required to acquire the real property that the Project Participant reasonably believes is necessary for the Project within the routes designated by the Commission; and

RESOLVED FURTHER, that the Project Participant's management and Counsel are hereby authorized to utilize the "Quick-Take" statute to acquire the real property that the Project Participant reasonably believes is necessary for the Project within the routes designated by the Commission prior to the filing of awards by the court-appointed commissioners; and

RESOLVED FURTHER, that the Project Participant's management and Counsel are hereby authorized to do any other acts consistent with law that may be necessary to effectuate the timely construction of the Project; and

RESOLVED FURTHER, that the Project Participant's management, and such other persons as are designated by the Project Participant's management, are hereby appointed to serve as the Project Participant's representatives and witnesses in connection with any legal actions, including the use of eminent domain, as may be necessary to acquire the real property required for the Project; and

RESOLVED FURTHER, that the officers of the Project Participant are each hereby authorized, empowered and directed to do any and all acts necessary or in their judgment advisable to carry out the foregoing resolution; and

RESOLVED FURTHER, this unanimous written consent may be executed in two or more counterparts, each of which when executed shall be deemed to be an original. Such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned, Rochester City Council of the City of Rochester agrees to the foregoing action for the adoption of said resolutions with the same force and effect as though said resolutions had been adopted by the unanimous action of all members at a regular meeting of the Board, duly called, held and convened according to law and the Bylaws of the Project Participant.

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

EXHIBIT A

Easement Rights to be Acquired:

1. In addition to acquiring real property in fee for substation purposes, the Project Participants (“Petitioners”) shall acquire perpetual and irrevocable easements and rights-of-way (the “**Easement**”) to survey, construct, operate, maintain, use, upgrade, rebuild, relocate, or remove a transmission line facility, with one or more circuits, with all towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, and equipment related to said transmission line facility, together with communication equipment relating to the operation of such facility (collectively, the “**Electric Lines**”) through, over, under, and across certain real property situated in Dakota, Goodhue, Olmsted, and Wabasha counties, Minnesota, described on **Exhibit A** attached to the Petition (the “**Premises**”). The Easement shall be limited to that certain part of the Premises described as the “**Easement Area**” on said Exhibit A.

2. All Electric Lines installed and placed by or on behalf of Petitioners in the Easement Area shall remain Petitioners’ property.

3. Petitioners shall also acquire a temporary easement to enter upon the Premises to survey for and locate the Electric Lines, and an easement for ingress and egress over and across the Premises to the Easement Area, by means of existing field roads and lanes, if any, otherwise, by the use of the most reasonable and feasible route selected by Petitioners in their reasonable discretion. Petitioners shall acquire and enjoy a temporary easement for use by Petitioners of the Premises adjacent to the Easement Area from time to time during construction, repair, or replacement of the Electric Lines. After completion of the initial construction, the temporary easement for Petitioners’ use of the Premises adjacent to the Easement Area for, from time to time, repair or replacement of the Electric Lines, shall be restricted to those remote and unusual circumstances where, due to conditions not presently foreseeable, access to the Easement Area is

not practically otherwise available, and where, in such situations, repair or replacement activities require more area than is available within the Easement Area.

4. Owners shall not erect any buildings, structures, or other objects, permanent or temporary, upon the Easement Area, nor shall they plant trees within the Easement Area without the Petitioners' prior express written approval, or perform any other act that will interfere with or endanger the Electric Lines. Petitioners may remove trees that are located within the Easement Area, and trim or remove any trees that are located adjacent to the Easement Area which may interfere with or otherwise endanger the Electric Lines, by falling thereon or by otherwise striking the Electric Lines.

5. Owners may cultivate, use, and occupy the Easement Area in a manner that is not inconsistent with Petitioners' rights acquired herein. Owners may dedicate and have or permit to be improved, maintained, and used for the purposes of streets, curbs and gutters, sewers, water and underground utilities ("**Improvements**"), the portion of the Easement Area not occupied by the structures supporting Petitioners' electric system, provided that said Improvements do not in Petitioners' opinion impair the structural or electrical integrity of or ability to maintain said electric system or materially alter the existing ground elevations; and provided further that all such Improvements shall not result in a ground or other clearance of less than the minimum requirements specified by the National Electrical Safety Code and any other applicable laws or regulations or other codes in effect from time to time. Owners and their agents or assigns must submit plans of Improvements or other installations within the Easement Area for review, compliance, and written approval by Petitioners' Administrative Agent prior to installation of the proposed Improvements.

6. Petitioners will pay for direct damages to landscaping, roads and driveways, livestock, crops, fields and other owner property caused by Petitioners in connection with the construction or maintenance of the Electric Lines, and by Petitioners' exercise of their rights under paragraph 3, above.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve the attached "*Resolution Authorizing the Use of Eminent Domain, Including "Quick-Take," to Acquire Real Property for High Voltage Transmission Line and Substation Purposes.*" for the construction of four segments of transmission line in Minnesota as described in the Resolution, and that the Common Council authorize the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 25th day of September, 2012.

President

Secretary