

Afternoon CommStock Report-09/05/14
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Farm Bureau Resolutions Considered:

"The enforcement of eminent domain should never be utilized in the condemnation/acquisition of private property unless a clear and convincing case can be made that such condemnation/acquisition is necessary to the public interest/benefit 'and' an electric transmission line should be required to benefit Iowa consumers in order for the right of condemnation to be granted as part of a franchise."

What is eminent domain and why has it become such an issue?

According to Dr. Tiffany Dowell of Texas A&M University: "Eminent domain refers to the right of a government or its agent to appropriate private property for public use upon the payment of just compensation. Historically, this power has most frequently been used to obtain land for public facilities (i.e., hospitals or schools), highways and railroads. This right is rooted in the U.S. Constitution. The Fifth Amendment provides that no private property shall be taken for public use without just compensation. In order for eminent domain to be used, three factors must be met: The entity taking the property must have eminent domain power, the property must be taken for a public use, and just compensation must be paid. There is no question that the federal government and each of the 50 states hold eminent domain power. Additionally, a private party may be granted eminent domain power in certain circumstances. For example, frequently a private pipeline company may obtain eminent domain power by state statute in order to build pipelines."

US transportation and energy infrastructure systems were built with use of eminent domain. The power to appropriate private property for purposes considered to be a public use was frankly necessary in order to build the highways, bridges, pipelines and power transmission lines, ports and airports that commerce depends on today. It is a Federal power stemming from the US Constitution that has been adopted and implemented by all the states. In Iowa, the authority to grant eminent domain power to infrastructure projects rests with the Iowa Utilities Board. Now if the state of Iowa was building a new road, the power of eminent domain to acquire the property is a given. What we are seeing, however, is private companies who wish to build power transmission lines and oil pipelines seek use of public domain power to acquire the needed easements through private property.

The register quoted Rob Hillesland, a spokesman for the Iowa Utilities Board who said, "Companies planning pipeline projects have the right to ask the board to approve the use of eminent domain for parcels where they have been unable to secure voluntary easements. The board says it typically asks a utility to secure as many voluntary easements as possible before submitting a formal petition seeking the right of eminent domain. The Iowa Utilities Board

has the authority to grant eminent domain to the extent it is necessary for the public use, which the applicant utility has the burden to prove, according to information provided by the board. However a county compensation commission, not the Iowa Utilities Board, determines the matter of just compensation for property rights taken by eminent domain."

The question for private companies that seek use of eminent domain power then becomes what is the clear definition of what is in "the public interest?" Is it in the US public interest to bring oil from Canada through the Keystone XL pipeline to US refineries? Isn't it in the public interest to bring oil from the Bakkan in ND through a proposed pipeline to IL? Is it in the public interest to move power through transmission lines from wind turbine farms in the WCB and Plains states to Chicago consumers? Strong cases can be made that these ventures are in the public interest the same as all the pipelines and power transmission lines that have been built before them.

Opponents will tear into them with territorial arguments against them. It's Canadian oil, there is no refinery in Iowa for Bakken oil, or the power from the Rock Island Clean Lines (RICL) power transmission line will not be used in Iowa and so on.

I am an American. I am also an Iowan. I find it absurd that infrastructure opponents narrowly define "public interest" so parochially that even though clear public interest to the country exists, that somehow Iowans can say no and deny that it exists. Since when are Iowans or Nebraskans, Minnesotans or residents of other states not Americans? I would therefore, agree with the first resolution being considered by the Iowa Farm Bureau, but not the "and" as stated above.

An electric transmission line that benefits the United States of America also benefits Iowa. What I see is that when opponents get desperate to stop something they twist definitions around to fit their opposition. I think that the system of eminent domain that is in place in Iowa "if" implemented as it is supposed to be, is a pretty good system. That is a big "if." It will depend on how statutes are interpreted. Are we really going to stop building pipelines and transmission lines that cross state lines with oil and electricity that aren't consumed in Iowa? The oil originates in ND and some of the wind power to be transmitted will originate in Iowa to be sold in IL. It is all-American oil and power. Would you prefer that the oil comes from the Mid-East or from non-renewal high carbon pollution power plants?

I think that use of our own oil and renewable energy is compelling. You have to dig down deep dredging up convoluted reasoning to contend these proposed infrastructure projects are not in these states public interest as part of the US. That said, the right of private property is sacrosanct in this country and private companies should be held to a very high bar relative to their being granted the right of eminent domain. As the IUB spokesman noted, the utilities board asks a utility to acquire as many voluntary easements as possible before submitting a request for eminent domain power. If the utility can't come up with a large majority of voluntary easements there is something wrong with the utility and the approach that it has taken with land owners. Private companies need to make private deals as to acquire easements with landowners.

Not all interstate infrastructure projects have used eminent domain to get their easements. In the book Flash Boys, the author Michael Lewis describes a successful effort in 2008 where they laid 827 miles of fiber optic cable from

the Chicago MERC to the Carteret exchange in New Jersey to transmit market info. The value was in the speed of the transmission so the route was very important. They believed they could charge Wall Street firms \$20 bln a year rent for use of the line. They needed a permanent easement through private property to lay their cable and they came to commercial terms with the landowners to buy the easements. They gave one Pennsylvania company low 6 figures plus free internet just to go across their parking lot.

The RICL and the Texas oil company pipeline from the Bakken are commercial enterprises. They are going to make money, enormous sums from their projects yet they have arbitrarily decided what they will pay landowners for the easements they need, refusing to negotiate. They view the land they need as farmland when the use they seek has nothing to do with growing crops. This is a commercial enterprise and the land they need should have a commercial value transferred to the value of the easements. Commercial values are at a minimum twice farmland values.

The Texas oil pipeline company is just starting its process of requirements to seek a franchise from the Iowa Utilities Board. The RICL effort is more advanced - expected to file by the end of the year. If they want to build this power transmission line and pipeline then make commercial deals to acquire the easements with landowners. The Iowa Utilities Board should only get involved with eminent domain after 90% or more of easements have been acquired voluntarily. If this was going to be a state or Federal highway it would be one thing relative to use of eminent domain, but these are privately owned transmission lines and pipelines and they can pay their way. Giving these commercial companies the rights of eminent domain would simply be giving them a license to screw landowners of the real commercial value of the easements that these companies can pay. A lot of landowners do not know what the commercial value of these easements really is and the companies are waving some cash in front of their faces that may look to some like a lot when they are actually a low ball number.

Unless the RICL is under-reporting voluntary easements acquired to the Iowa Utilities Board they had 131 of the 1247 voluntary easements needed. (10.5%) No progress has been reported since late June. There were 1117 objections filed against the RICL project which far exceeds the number of easements gained. RICL may have acquired more easements that they have not reported. If they were having tremendous success in securing more voluntary easements I think they would be sharing their joy and the fact that they are quiet likely suggests it is not going as well as they had hoped. I think that it should be public knowledge as to the number of easements that RICL has transacted and also what the benchmark of private easements that RICL would have to acquire voluntarily from landowners before the Iowa Utilities Board would begin to consider granting eminent domain to the company to finish gaining the rest of the easements needed.

I am not against pipelines or power lines per se: the country has to have them as a key component of economic growth - but private companies should not be able to skate in under the radar as a guise of being a public service provider by use of eminent domain power. They are for profit concerns and as such, need to acquire commercial agreements for easements. They are hoping that the Iowa Utilities Board does their work for them at half the market price by granting them eminent domain power.

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