LESSONS LEARNED THE MINNESOTA 400 KV/DC 427 MILE PROJECT

by J. L. Ward

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This article's subject matter is the 427 mile-long voltage transmission line built to deliver electricity produced in North Dakota to southeastern Minnesota near Minneapolis-St. Paul. This project, undertaken in the mid-1970's illustrates the need to adequately prepare the public before starting a large project.

In Eastern Minnesota, much of the rural and suburban area receives its electricity from two Rural Electric Association Wholesale Co-ops, The Cooperative Power Association (CPA) of Edina which serves southeastern Minnesota and the southern Twin-Cities suburbs and the United Power Association (UPA) of Elk River, which serves northeastern Minnesota starting with the Anoha County suburbs. Neither co-op serves large cities. They generate or buy power and transmit it to 34 local Rural Electric Cooperatives serving some 300,000 customers in Minnesota and parts of Wisconsin.

The major power supplier to the wholesale co-ops, the U.S. Bureau of Reclamation, cut back on the amount of electricity it was selling to the co-ops because of the growth in towns the Bureau serves. The Bureau operates hydroelectric generators in the Dakotas where it's electricity is produced. Because of this cutback, co-ops decided to build their own generating capacity.

The co-ops developed a project to utilize low sulphur lignite coal near Underwood, North Dakota in the vicinity of the Garrison reservoir on the Missouri River. The project includes a 100 megawatt generating station and a lignite coal mine. The coal is surface mined. A 427 mile long 400 KV, direct current transmission line was planned to transport the electricity to a conversion station near Delano, Minnesota west of the Twin Cities of Minneapolis-St. Paul. The conversion station is designed to change the 400 kv, direct current electricity to 345 kv, alternating current. A 28 mile AC line was planned east to Anoha County and a 76 mile 345 KV/AC line from Delano to Mankato.

The co-ops filed their environmental impact statement for the project in August of 1974. Approval was subsequently obtained from the various state and federal agencies. However, there were many court battles, agency hearings and political manuvering in the months and years following the initial approval.

The Rural Electrification Administration in Washington approved the project and authorized funding. The original cost of the project was estimated to be $632 million dollars. In 1976, before construction of the transmission line really got underway, cost estimates had increased to $957 million dollars. Final costs were reported to be over $1.3 billion.

The transmission lines were originally scheduled to be completed in the fall of 1976. Work actually began in October 1977 after a long series of legal battles plus a ruling by the Minnesota Supreme Court that cleared the way for the co-ops to proceed with the project.

The transmission line was designed for a 160 foot wide right-of-way. There are about 1600 towers with 40 foot by 40 foot bases, ranging in heights up to 180 feet and averaging 145 feet. Approximately 695 of these towers are on the Minnesota segment of the line which averaged four towers per mile of right-of-way. The Minnesota segment crosses land owned by about 450 separate land owners.

The acquisition of right-of-way was to be by granted easement. Landowners were sent easements to be signed along with an offer that averaged from $12,000 to $15,000 per mile for the 160 foot easement or $600 to $780 per acre. The easements guaranteed access to construction and maintenance crews, but they did not prohibit tillage of the land. The land occupied by each tower base, 1600 square feet, is all that is lost from production.

Some property owners accepted the amounts offered. But many forced the issue to condemnation through the utilities right of the use of eminent domain proceedings.

After condemnation started, appraisals for land in the western counties of Minnesota when first acquisitions were made, rose to an average of $15,440 per mile and later in the eastern counties to an average of $42,011 per mile.

By late February 1978 only 57 of the needed 176 miles in Minnesota had been acquired by voluntary means. It was stated that much of the land would have to be "taken" through court condemnation proceedings. To protect farmers who wanted to settle voluntarily, private contracts were drawn up with the co-ops.

The project faced strong opposition from the beginning. Routing for the right-of-way was the primary reason for opposition. As previously mentioned, many hearings before various public

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agencies were held.

Minnesota agencies included:

1. The Minnesota Environmental Quality Board.
2. The Minnesota Public Service Commission.
3. The Minnesota Pollution Control Agency.
4. The Minnesota Energy Agency.

In addition, there were several county and local agencies that required special permits, building and etc.

Some of the most frequently voiced objections to the project were:

1. Seizure of private land through the use of eminent domain proceedings.
2. Health issues.
3. Electrical generating capacity needs are over estimated by industry and the government.
4. Lines were being routed across agricultural lands while wildlife refuges and parks were protected by the government.

Following the start of construction of the line and after condemnation proceedings had been carried far enough for the co-ops to take possession of the parts of the right-of-way not previously acquired, the most intense and bitter parts of the protest by farmers began.

As for the right-of-way surveying, let it suffice to quote from one news article. "The attorney for a Starnes County power line protester has filed a motion with the state Supreme Court challenging the prosecution's right to shift the location of his client's trial."

The trial, which was scheduled to start on a Monday, had been postponed pending the ruling. The protester was charged with two felony counts of criminal destruction of property for allegedly driving his tractor over power line surveying equipment in 1976. The inference being that to get a conviction the trial would have to be moved out of the defendant's home county. Other incidents of alleged harassment against surveyors and equipment were reported.

The bulk of the protest came from an area in the center of the line in Minnesota which is highly productive irrigated farmland inhabited by second, third and fourth generation families. In all there were reported to be some 50 rural environment and protest organizations.

After the Supreme Court ruling which allowed construction of the line to proceed, protests included the following alleged actions:

1-11-78—"Protesters Run off a Crew"-250 protesters confronted survey crews being protected by 150 state troopers. They rocked jeeps, spit in surveyors faces and caused survey crews to leave the sites.

1-13-78—State trooper patrols check farmers for drivers licenses—Troopers hanged in effigy.

1-15-78—A protester was issued a complaint warrant to appear in court for kicking a work truck.

1-16-78—The Governor got co-ops to not press suit against farmers for damages. One such farmer was being sued for $500,000.

1-16-78—Protesters predict sabotage of line after it is built.

Probably the classic act to show their feelings came when six protesters covered themselves with pig manure and offered themselves for arrest. The protesters said the covering of manure was symbolic of what was happening to their rights. They were arrested for refusing to leave a restricted construction area. After the arrests, the six were taken to jail in an old bus so that squad cars would not get dirtied with manure.

After construction began, protesters continued their harrassment. Tower footings bolts were removed and towers toppeled. Three protesters built "tree houses" in towers and had to be physically removed.

According to many on the scene, the primary causes for the heated and intense protests were:

1. Plain mistrust by people in general and farmer land owners in particular, of "Big Business", "Big Government" and politics in general. This mistrust was increased by Watergate and related incidents.
2. The utilities relied too much on legal procedures. Those responsible allowed the legal staffs to make presentations that the general public didn't understand. Many individuals went to hearings thinking they could truly object with a reasonable expectation of results. They didn't realize the state agencies had already set the route. The hearings were for information and to make minor alterations along the route.
3. No public relations activity to condition the public. They had a "zero" public relations budget. In retrospect, a project of this magnitude should have a major public relations effort.

Other major results from the controversy were related to eminent domain. The legislature amended the Minnesota law to require the purchase of all contiguous land to the ROW if the owner wanted to sell when condemned. Many felt the right of eminent domain given to utilities by the legislature had been misused.

In commenting on the need for more public relations than was used, one spokesman stated "such painstaking public relations work was legally unnecessary, but gone are the days when the law of eminent domain is something you can point to with pride as you begin to bulldoze your way through a person's property."

Today the project is complete. No vandalism has occured since late 1980. Many of the land owners along the route now feel their fears were misplaced. The utility reports that most of their activity now is in the legal front. The state legislature has passed new legislation requiring the line routing to be re-certified before any new or additional facilities can be built that are connected with the existing line. The state Supreme Court legally supports the need for the line.

The state agency that is charged with granting the right to build electric transmission lines has set up a scientific evaluation board. In 1982 the board is to present its findings to the state agency. The board's report is to help guide the state agency in routing of transmission lines. There is to be no intent of denying the right to build transmission lines, just what should be done to minimize problems that might occur.

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life of the proposed use. Review of rental fees and adjustments of the terms and conditions during the lease period should be restricted to gross inequities. However, should the federal government pursue its desire for fee adjustment during the term of the lease, that adjustment should be based on specific adjustment formulas in the original lease document so that actual cost of lease to the leaseholder can be estimated at the outset of the lease period. Similar provisions are found in Federal Regulations regarding rights-of-way (40 C.F.R., Section 2800.0 through 2800.3). Thus, those regulations require similar revision.

Liability provisions of the federal land lease and right-of-way grant are awkward. The individual obtaining either lease or grant of right-of-way from the federal government is placed in a very awkward liability position due to the land-use regulations. Those regulations require that the leaseholder or holder of a right-of-way must allow physical entry on to the lease or right-of-way by the general public, other leaseholders or federal personnel. At the same time the regulations require that the leaseholder remain obligated for all liabilities to individuals entering onto the lease or right-of-way and at the same time the leaseholder must indemnify the federal government.

Right of physical entry by others should not be a general provision to all rights-of-way or leases. The particular purpose of land grant must be taken into consideration as well as the type of facilities to be placed on the land. Certainly the opportunity for physical injury to an individual walking down a transmission line corridor is much less than an individual walking through a 2,000 megawatt powerplant facility. The promulgated regulations ignore such a difference.

The terms and conditions of both lease and right-of-way require the potential land user provide detailed descriptions of facilities for which authorization is sought (40 C.F.R., Section 2920.4). Facility description should be consistent with the stage of planning and the stage of design anticipated prior to receipt and authorization of use of lands. A generating station conceptual design can be provided prior to authorization of use of lands. However, detailed designs cannot be developed until the lands are available. The Regulations further state that a legal description of the primary and alternative project location is required (40 C.F.R., Section 2920.2). Regulations by the Council on Environmental Quality on the National Environmental Policy Act, require a "scoping process" whereby the general public provides alternatives to the proposed action. The two regulations, when put together, would suggest that the potential land user must provide detailed descriptions for his proposal and all the alternatives proposed by the general public. A request to delay submission of detailed project descriptions until completion of the regulatory review process should be considered reasonable.

The above discussion does not identify all of the problems which the individual user of federal lands encounters under regulations written for the implementation of the Federal Land Policy and Management Act. To resolve concerns raised by parties effected by these and other issues, it would behoove the federal government and potential holders of federal land rights to work together for the formulation of reasonable and workable land acquisition regulations.

The last subject to be covered in this paper is that of cost recovery (40 C.F.R., Section 2802.1–2803.1). Our attorneys consider cost recovery to be invalid and unconstitutional as it invokes a federal tax formulated by the Administrative Branch of government. Requiring individuals who apply for federal land rights to reimburse the land manager for "all costs" to develop the environmental impact review and the land-right acquisition does not comply with the Federal Land Policy and Management Act, Section 304(d).

In the Congressional Record Senator McClure states, "I assume what we are trying to do in this instance is to balance the equities that are involved, but we do not want to simply in every instance say that government will absorb all of the costs of studies and of the administrative procedures. But, on the other hand, we don't always want the applicant to bear all of the costs. There has to be a reasonable balance between the two". In the Conference Report the House amendments used the adjective "reasonable" to modify charges and costs; the adjective "extraordinary" is imprinted in the Senate bill. Other citations are available to indicate that Congress did not intend that "all costs" would be reimbursed. But Congress did intend that reimbursement would be limited to those costs incurred by the federal agent that are of benefit only to the potential land user. Now under the Council on Environmental Quality regulations where alternatives are identified by the general public, the potential land user is required to reimburse "all costs" for study of those alternatives introduced by the general public. These regulations need to be abolished.

We can get into a number of areas of controversy such as the above which will result in individuals suing the federal government. This places the government and the individual in an adversary position. Would it not be better for individuals experienced in federal land acquisition to sit down with the federal land managers and assist in the development of regulations which will provide for "reasonable" reimbursement of costs for processing the proposed actions?

The federal land manager has not been able to fully consider all the ramifications of these land acquisition regulations. The federal land managers can and should join with potential land users to develop regulations for the obtaining of rights on federal lands that both the user and the land manager can accept as fair and equitable. Such a procedure is not a panacea but it's much better than the present adversary position which is time consuming, costly and completely unnecessary.

Lines **(cont. from pg. 10)**

The utility is conducting its own evaluation of effects of the EHV-DC transmission line and plans to have information available in the near future.

Without proper empathy with the private property owner, other Minnesota 400 KV/DC 427 Mile projects will take place.
