

COUNCIL ACTION FORM

SUBJECT: PAYMENT OF JUDGMENT FOR THE 161 KV LINE EASEMENT

BACKGROUND:

The City of Ames Electric Services Department built a 161kV line from the Ames Plant substation to MidAmerican Energy Company's Ankeny switching station (northeast of Ankeny). Negotiated purchases for easements for the poles and electric lines were successful with all landowners along the route, except for two property owners, Connie Veasman and NDA Farms (represented by Connie Veasman). Therefore, the City pursued eminent domain proceedings to obtain a utility easement across that property. A hearing before the Polk County Compensation Commission resulted in a determination that the City had to pay \$14,900 for the easement. The property owners then appealed that decision to District Court. After a jury trial held on August 10-12, 2015, the jury awarded the property owners \$290,000 in damages for the 33-foot wide easement along the road.

The magnitude of this award seemed completely out of line with the cost of acquisition for all the other easements obtained for this electric line, which had all been consistent with the amount awarded the property owners by the Compensation Commission. Because of that, the City sought further review and appealed the District Court decision to the appellate courts.

On February 21, 2017, the Iowa Court of Appeals heard oral arguments regarding the City's appeal. On March 8, 2017, the Court of Appeals issued its decision, affirming the District Court jury award of \$290,000. Under the relevant statute, the City also will have to pay the attorney's fees and litigation costs for the property owners, for both the District Court and appellate proceedings.

The total amount of the judgment is \$354,878.63. (As a partner in the project, Iowa State University is responsible for 21.4% of the cost.)

- \$ 275,100.00 – Judgment (\$290,000 judgment minus \$14,900 previously paid after the County Compensation Commission decision).
- \$ 573.19 – pre-judgment interest (date of condemnation to date of District Court judgment).
- \$ 51,622.00 – Plaintiffs' attorney's fees for District Court trial.
- \$ 3,472.70 – Plaintiff's costs for District Court trial.
- \$ 10,617.24 – Interest due on judgment from date of District Court judgment to April 26, 2017.
- \$ 13,493.50 – Plaintiff's attorney's fees & costs for the appeal to Iowa Court of Appeals.

The interest due on the judgment is at an annual rate set by Iowa law. (Interest accrues on the judgment amount only; no interest accrues on attorney's fees/costs).

If Council approves payment, the City will wire the funds on April 26, as the interest is accruing on a daily basis. The interest reflected above includes interest through April 26, 2017.

Funds to satisfy this judgment will come from the Boiler Maintenance account in the Power Plant operations budget and from the 69 KV Transmission Reconstruction CIP project.

ALTERNATIVES:

1. Approve payment of \$354,868.63 to the property owners.
2. Delay action. Note that interest will continue to accrue until settled.

CITY MANAGER'S RECOMMENDED ACTION:

Construction of the 161 kV line was critical to the reliability of the electric system for the residents of Ames and Iowa State University. Efforts were made to work with the landowners to minimize the impact the line on the NDA property. When this failed, City staff followed the reasonable course of action to fairly compensate the landowners and be financially responsible to City ratepayers. Unfortunately, the City did not prevail at the District and Appellate Court levels. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 as stated above.