

No. 25-159

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**In the Supreme Court of the United States**

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LEONARD W. HOFFMAN, ET AL.,

*Petitioners,*

v.

WBI ENERGY TRANSMISSION, INC.

*Respondent.*

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**On petition for a writ of certiorari  
to the United States Court of Appeals  
For the Eighth Circuit**

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**RESPONDENT'S SUPPLEMENTAL BRIEF**

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**CORPORATE DISCLOSURE STATEMENT**

Respondent WBI Energy Transmission, Inc. is an indirect, wholly-owned subsidiary of MDU Resources Group, Inc. MDU Resources Group, Inc. is publicly traded on the New York Stock Exchange.

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## **RESPONDENT'S SUPPLEMENTAL BRIEF**

Respondent WBI Energy Transmission, Inc. respectfully submits this supplemental brief to inform the Court that, in light of arguments advanced by the Solicitor General in its *amicus curiae* brief, WBI acquiesces in the grant of certiorari and urges the Court to affirm the Eighth Circuit.

The Eighth Circuit observed in the decision below that its holding conflicted with those of several other circuits. Pet. App. 7a. WBI principally argued in its Brief in Opposition that, notwithstanding a potential conflict regarding the meaning of federal law, unique features of North Dakota law would nonetheless resolve this matter in WBI's favor; that is, *even if* the Court resolves the question presented in petitioners' favor, WBI would prevail because of state law. BIO 12-21. The Solicitor General notes that these are "reasonable arguments," but nonetheless asks the Court to "assume without deciding" that North Dakota law is to the contrary, in order to resolve the question presented. U.S. Br. 22.

WBI agrees with the Solicitor General that the question presented is central to nationwide natural gas infrastructure. U.S. Br. 20-21. WBI will therefore acquiesce in certiorari to resolve the question of federal law presented, provided that it reserves the right to argue on remand, should it become relevant, that North Dakota law does not in fact include attorneys' fees in the state's measure of just compensation.

For the reasons WBI and the Solicitor General have explained, the Court should affirm the Eighth Circuit. See U.S. Br. 8-18; BIO 21-31. The delegation of the federal eminent domain power in Section 717f(h) is "categorical." *PennEast Pipeline Co. v. New*

*Jersey*, 594 U.S. 482, 498 (2021). Because WBI stands in the shoes of the federal government when condemning land under the Natural Gas Act, there is no basis to apply a different rule to WBI than would apply to the federal government—*i.e.*, that “[a]ttorneys’ fees and expenses are not embraced within just compensation.” *United States v. Bodcaw Co.*, 440 U.S. 202, 203 (1979).

Congress amended the NGA to include Section 717f(h) to clear away obstacles created by the application of state eminent domain law to interstate pipeline projects. To ensure the viability of critical federal energy projects, it is imperative that the Court affirm the holding below, which correctly interpreted Congress’s delegation of eminent domain authority.

### **CONCLUSION**

WBI acquiesces in certiorari and urges the Court to grant the petition and affirm the judgment of the Eighth Circuit.

Respectfully submitted.

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