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March 21, 2022

***Via E-Filing***

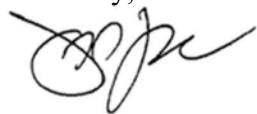
Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

**Re: In the Matter of an Investigation of the Implementation of Minnesota Statutes,  
Section 237.045 Regarding Railroad Rights-of-Way, Crossing, or Paralleling by  
Utilities / PUC Docket No. U-999/CI-22-89**

Dear Mr. Seuffert:

On behalf of BNSF Railway Company (“BNSF”), enclosed please find BNSF’s Comment in response to the Minnesota Public Utility Commission’s Notice of Comment Period in the above-referenced matter.

Sincerely,



Jason Lien

Enclosure

cc: BNSF Railway Company

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben, Chair  
Joseph K. Sullivan, Vice Chair  
Valerie Means, Commissioner  
Matthew Schuerger, Commissioner  
John Tuma, Commissioner

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In the Matter of an Investigation of the  
Implementation of Minnesota Statutes,  
Section 237.045 Regarding Railroad Rights-  
of-Way, Crossing, or Paralleling by Utilities

Docket No.: UC-999/Cl-22-89

**BNSF RAILWAY COMPANY'S  
COMMENT**

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On February 17, 2022, the Minnesota Public Utilities Commission (the "Commission") issued a notice of comment period, seeking comments as to whether the Commission should open a formal investigation to facilitate the further development of the broader issues raised in previous right-of-way disputes under Minnesota Statute Section 237.045 (the "Statute"). BNSF Railway Company ("BNSF") files this comment in response.

BNSF is the largest Class I railroad in Minnesota, operating nearly 1,500 miles of track serving communities throughout the state. BNSF moves the products and commodities that the people of Minnesota and America need to live and prosper, while maintaining an approach to safety built on the care every BNSF team member brings to colleagues, communities, and our customers' freight. For years, BNSF has worked with utilities and their contractors to issue permits for crossing active railroad corridors, while maintaining the safety and integrity of BNSF's network. This has not changed since the enactment of the process outlined in the Statute. The Statute, however, contains ambiguities that have made it difficult for both utilities and railroads to apply the Statute and resolve disputes under it when they arise. Therefore, although BNSF believes a legislative amendment may be necessary to clarify those ambiguities, BNSF welcomes the Commission's efforts to improve the implementation of the Statute for the benefit of both railroads and utilities. BNSF will briefly address each of the topics for comment outlined in the Notice.

**1. Should the Commission open a formal investigation regarding the implementation of the Statute for the purposes of improving its application?**

Ultimately, BNSF believes that amendments to the Statute would be helpful in resolving ambiguities and disputes over its application. While BNSF does not believe a formal investigation by the Commission is necessary to amend the Statute, BNSF does not oppose an informal investigation into how the Statute's procedures can be improved for all parties that could provide a record that can assist with potential future legislative efforts.

**2. What should the scope of any proposed investigation be?**

If the Commission chooses to open an investigation, the scope should be limited to improving the Statute's implementation for both railroads and utilities. The investigation should not be used by any utility or railroad as an alternative to asking the Commission to resolve individual cases or applications through the procedures outlined in the Statute. BNSF notes that the Statute only authorizes the Commission to resolve disputes over an individual crossing application through a petition filed by either a railroad or utility.

**3. What process should the Commission use to conduct the investigation?**

If the Commission deems an investigation should proceed, the investigation should be conducted pursuant to the Commission's process for resolving informal complaints, as described in Minnesota Rule 7829.1600. A less-formal process will allow the Commission to work with railroads and utilities to explore creative solutions to the difficulties created by the Statute while maintaining the flexibility required for the Commission to modify its investigation based upon new information and developments. BNSF does not believe it would be appropriate for the Commission to take any formal action or make findings as part of an investigation.

**4. Any other information relevant to improving the implementation of the Statute?**

BNSF appreciates the Commission's effort to assist railroads and utilities with resolving the difficulties they have experienced in applying the Statute. BNSF looks forward to working with the Commission, alongside other railroads and utilities, to discuss railroads' and utilities' concerns and work constructively to resolve them.

Dated: March 21, 2022

**MASLON LLP**

By: /s/ Jason Lien

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**ATTORNEYS FOR BNSF RAILWAY  
COMPANY**

### **CERTIFICATE OF SERVICE**

I, Jason Lien, hereby certify that on March 21, 2022, I e-served copies of BNSF Railway Company's Comment to the Minnesota Public Utilities Commission's February 17, 2022 Notice of Comment Period Regarding an Investigation of the Implementation of Minnesota Statutes, Section 237.045 Regarding Railroad Rights-of-Way, Crossing, or Paralleling by Utilities on the parties set forth on the attached service list by posting it on [www.edockets.state.mn.us](http://www.edockets.state.mn.us).

*/s/ Jason Lien*

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Patricia	Villegas	Patricia.Villegas@amjll.com	JLL-Proud Real Estate Partner of BNSF	Rail Practice Group 4200 Buckingham Rd 110 Fort Worth, TX 76155	Electronic Service	No	OFF_SL_22-89_Official