

Staff Briefing Papers

| | | | |
|--------------|--|--|--------------|
| Meeting Date | January 4, 2018 | Agenda Item | **8 |
| Company | Qwest Corporation, dba CenturyLink | | |
| Docket No. | P421/RW-17-569 | | |
| Issues | <p>In the Matter of a Petition by Qwest Corporation dba CenturyLink QC for resolution of Dispute with BNSF Railway Company Over Use of Railroad Right of Way Under Minn. Stat. § 237.045</p> <p>Should the Commission reconsider its November 7, 2017 Order Finding that Minnesota Statute § 237.045 Governs the Proposed Facility?</p> | | |
| Staff | Michael Kaluzniak | mike.kaluzniak@state.mn.us | 651.201.2257 |
| | Janet Gonzalez | janet.gonzalez@state.mn.us | 651.201.2231 |



Relevant Documents

Date

| | |
|---|-------------------|
| Commission Order Finding that Minn. Stat. § 237.045 Governs Proposed Facility | November 7, 2017 |
| BNSF Request for Rehearing | November 27, 2017 |
| CenturyLink Reply Comments | December 8, 2017 |

The Commission has the authority to accept or decline a petition for rehearing **with or without** a hearing or oral argument (Minnesota Rules, 7829.3000, subpart 6). In other words, a decision on a petition for reconsideration can be made without taking oral comments at the Commission meeting.

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

Should the Commission reconsider its November 7, 2017 Order Finding that Minnesota Statute § 237.045 Governs the Proposed Facility?

II. Statutes and Rules

Under Minn. R. 7829.3000, a party or a person aggrieved and directly affected by a Commission decision or order may file a petition for reconsideration within 20 days of the date the decision or order is issued. A petition for reconsideration must set forth the specific grounds relied upon or the errors claimed. Other parties to the proceeding may file answers to the petition within 10 days of filing the petition. The Commission has the authority to decide a petition for reconsideration with or without a hearing or oral argument. The Commission may reverse, change, modify, or suspend its original decision if it finds its decision unlawful or unreasonable.

Any action of the Commission may be reconsidered. However, only a Commissioner voting on the prevailing side may move to reconsider. If the motion to reconsider passes, then the matter is before the Commission. The Commission may then alter, amend, rescind, or uphold its previous decision. The same question cannot be reconsidered a second time. However, the Commission may at any time, on its own motion or upon motion of an interested party, upon notice, reopen any case after issuing an order.¹

All five current Commissioners supported the motion finding that the proposed facility is governed by Minnesota Statute § 237.045, and, as such, any one of them may offer a motion to reconsider.

III. Background

On November 7, 2017, the Commission issued an order finding that Minnesota Statute § 237.045 governed a proposed facility subject to a dispute between Qwest Corporation dba CenturyLink QC (CenturyLink) and Burlington Northern Santa Fe Railroad (BNSF).

On November 27, 2017, BNSF filed a request for rehearing pursuant to Minnesota Statute § 216B.27².

On December 8, 2017, CenturyLink filed reply comments.

¹ *Minnesota Public Utilities Commission, Operating Procedures and Policy, Meeting Procedures*, issued February 1, 1995, Amended and Adopted September 18, 2014.

² Minnesota Rule 7829.3000 is the operative rule for the petition.

IV. Parties' Comments

BNSF

In its petition, BNSF argued that the Commission did not address BNSF's arguments on preemption by the Interstate Commerce Commission Termination Act of 1995 or that the statute constitutes an unconstitutional violation of the Takings Clause of the Minnesota and United States Constitutions. Even so, BNSF stated that the subject facility is not subject to the operative statute because it doesn't constitute a paralleling, but instead is a longitudinal occupancy.

CenturyLink

In their reply comments, CenturyLink stated that BNSF's petition raised no new issues and made no new arguments. In response, CenturyLink stated that it relied on its previous arguments and that the petition should be denied.

V. Staff Analysis

The Commission must decide whether the arguments and information presented in the petition provide sufficient cause to reconsider its original decision. If the Commission does not believe the petition provides sufficient cause, it should deny reconsideration. Alternatively, if the Commission decides there is sufficient cause to reconsider, it can hear additional argument from the petitioner and other stakeholders at the meeting, order that additional information be provided through written submissions, or take some other action such as referral to the Office of Administrative Hearings for further proceedings. The Commission may reverse, change, modify, or suspend its original decision if it finds the decision unlawful or unreasonable.

Based on its review, staff believes the Commission's decision in this matter is consistent with the facts, the law, and public interest. The Petition for Reconsideration did not raise new issues, did not point to new and relevant evidence, and did not disclose mistakes or uncertainties in the Commission's November 7, 2017 Order Finding that Minn. Stat. § 237.045 Governs the Proposed Facility.

VI. Decision Options

1. Grant reconsideration or rehearing of the November 7, 2017 Order as petitioned.
2. Deny reconsideration or rehearing of the November 7, 2017 Order as petitioned.
3. Take some other action deemed appropriate.

Staff recommendation: Decision Option 2.