

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 27, 2014

REGULAR CONSENT _____ EFFECTIVE DATE July 1, 2014

DATE: May 15, 2014

TO: Public Utility Commission

FROM: Jim Stanage 

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck 

SUBJECT: QWEST CORPORATION: (Docket No. UM 1687) Petition for approval to recover prudent costs incurred for the relocation of facilities required by a public body that are beyond the normal course of business.

STAFF RECOMMENDATION:

Staff recommends that the filed petition requesting authorization of a temporary monthly charge of \$0.15 per line be granted and that the company be directed to file a tariff.

DISCUSSION:

Background

Qwest Corporation d/b/a CenturyLink QC (Qwest) filed a petition to request approval to recover from its customers prudent costs incurred for the relocation of facilities required by a public body. Qwest is currently regulated under ORS 759.255, but is eligible to petition the Commission under ORS 758.025(5)(a), which states:

Notwithstanding any other provision of ORS chapter 759, a telecommunications utility that is not subject to rate-of-return regulation, including a utility regulated under ORS 759.255 may, after participating in the process described in subsection (3) of this section, request authorization from the Public Utility Commission to recover from customers prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source. *Recoverable relocation costs* are the nonfacility costs incurred in the relocation plus the undepreciated value of the facilities replaced, including the cost of placing such facilities underground if underground placement is required by the public body or other provision of law. *The commission may authorize the recovery of relocation costs that the commission determines to be substantial and beyond the normal course of business.* [Emphasis added.]

Under ORS 758.025 and OAR 860-022-0047(14), the Commission may administratively approve an unopposed petition without a hearing. For good cause, the Commission may suspend the effective date of a petition (whether opposed or unopposed) without a hearing for a period not to exceed six months. If opposition to the petition is timely filed, the Commission will schedule a conference to determine the schedule and proceedings necessary to complete its review of the petition under subsection 15 of the rule.

Analysis: Standards and Findings

There are several criteria that must be met before the Commission can authorize a filing under ORS 758.025 and OAR 860-022-0047, which are described below under the following topics: (1) a utility's eligibility, (2) timeliness/notice, (3) cost recovery period, (4) required by public body/project planning, (5) prudence/recoverability of costs claimed/otherwise reimbursed, (6) amount of recovery/beyond normal, (7) cost allocation method, and (8) Commission process and hearing. Staff's findings for each topic are provided below in italics.

Utility's Eligibility

Only telecommunications utilities not subject to rate-of-return regulation are allowed to recover facility relocation costs.

Qwest is not subject to rate-of-return regulation, but is a utility regulated under ORS 759.255, and therefore, is eligible to file with the Commission for recovery of relocation costs.

Timeliness/Notice

Under ORS 758.025 and OAR 860-022-0047, the Commission may authorize an eligible telecommunications utility to recover eligible relocation costs if: (a) the petition is filed at least 90 days before the proposed effective date of the cost recovery and (b) the utility has provided the notice to all customers whose bills will be affected if the requested cost recovery is authorized by the Commission on or before the date the utility submits its petition to the Commission. Customers may submit objections or comments regarding the petition to the Commission within 45 days of receipt of the notice.

Qwest's petition was filed in compliance with standards set in the statute and the rule in terms of its timeliness and the notification of affected customers.

Cost Recovery Period

The rule, under subsection 18, allows recovery of relocation costs for which construction began on or after January 1, 2010.

According to Qwest's responses to staff's data requests, the proposed relocation cost recovery period covers the years 2012 and 2013, which complies with the rule.

Required by Public Body/Project Planning

The Commission must determine if Qwest's filing is restricted to projects that were required by a public body. Also, in reviewing the petition under OAR 860-022-0047(12), the Commission is required to verify the utility's participation in the design and planning process described in ORS 758.025(3).

The petition provides evidence that the 19 relocation projects for which Qwest seeks cost recovery were required by a public body. Also, the petition asserts that Qwest complied with the requirement of ORS 758.025(3) to discuss the scope and schedule of projects with the public body that required relocations of the company's facilities and did so during the planning and design phase of each project.

Staff notes that the Commission may audit any relocation costs or other information submitted by the utility in its petition under subsection 13 of the rule.

Prudency/Recoverability of Costs Claimed/Otherwise Reimbursed

A telecommunications utility may request authorization from the Public Utility Commission, under ORS 758.025(5)(a), to recover from customers prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source and that qualify as recoverable relocation costs.

The petition asserts that Qwest seeks to recover prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source. The petition also asserts that Qwest seeks to recover relocation costs that are the nonfacility costs incurred in each relocation project plus the undepreciated value of the facilities replaced as required by the statute.

Amount of Recovery/Beyond Normal Cost

The Commission may authorize Qwest to file for relocation costs that are (a) substantial and (b) beyond the normal course of business.

The petition proposes recovery of \$619,551 for relocation costs. In the petition and in Qwest's responses to staff data requests, the company presents persuasive evidence that the proposed recovery amount meets the requirements of ORS 758.025 because it

is both substantial and beyond the normal course of business. It is substantial because the relocation projects for which Qwest requests recovery have a minimum cost of \$25,000 each.

The proposed amount of recovery for relocation costs is less than the total eligible recovery period costs shown in the company's petition. Therefore, the recovery amount of \$619,551 is "beyond the normal course of business" but less than the amount of relocation cost recovery that Qwest could have requested. Staff used the public body prescribed relocation costs from 2012, as provided in Qwest's response to a staff data request, to represent the statute's normal course of business criterion. Staff may adjust that standard for future relocation recovery petitions as circumstances require.

The petition proposes a relocation cost recovery mechanism of a monthly \$0.15 per access line charge for a period of 12 months in compliance with subsection 16 of the rule. The charges would begin with bills rendered on or after July 1, 2014. This charge also complies with ORS 758.025(5)(d): "Relocation costs may be recovered for a reasonable period of time subject to approval by the commission and not to exceed the depreciable life of the facilities."

Cost Allocation Method

In its review of the petition under OAR 860-022-0047(12), the Commission is required to determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services. Also to reiterate, under subsection 13 of the rule, the Commission may audit any relocation costs or other information submitted by the utility.

The petition and Qwest's responses to staff data requests show that an appropriate allocation of relocation costs was made between interstate services (at 28.2 percent) and intrastate services (at 71.8 percent). Qwest proposes to recover a fixed amount from every customer on a per local access line basis, statewide. This spread of relocation costs over all access lines is appropriate given the wide geographical disbursement of relocation projects completed by the company and the primary nature of local access line service.

Commission Process and Hearing

Pursuant to OAR 860-022-0047(14), the "Commission may administratively approve an unopposed petition without a hearing. For good cause, the Commission may suspend the effective date of a petition (whether opposed or unopposed) without a hearing for a period not to exceed six months." In addition, under subsection 15 of the rule, "If opposition to the petition is filed with the Commission within 45 days of service of the notice, the Commission will schedule a conference to determine the schedule and proceedings necessary to complete its review of the petition."

Opposition was filed by one customer who has contacted the Commission and complained about the proposed \$0.15 per month charge.¹ The essence of the customer's complaint is that they do not think they should have to pay an additional charge for relocating facilities. Staff does not find comments of this nature persuasive because they are not consistent with the criteria summarized above in this memorandum for Commission authorization of any additional charge for relocation recovery costs. As discussed, staff's criteria are premised on a petitioner's showing that the criteria established by ORS 758.025, which speak to the issues of fairness and reasonableness and which are the focus of staff's analysis above, are met.

Staff has been advised by the Department of Justice that this public meeting can serve as the "conference" required by the rule and that the Commission is authorized to conclude at this time that no further proceedings are necessary to complete the Commission's review of the petition and take action on staff's recommendation.

Conclusions

Staff's analysis outlined above leads to the following conclusions:

- 1) The petition was properly filed and affected customers were properly noticed.
- 2) Qwest presents persuasive evidence that the costs of the relocation projects represented in the proposed recovery amount meet the requirements of ORS 758.025 to be eligible as recoverable relocation costs.
- 3) Qwest presents persuasive evidence that the total proposed recovery amount of \$619,551 and the recovery mechanism of \$0.15 per access line monthly for twelve months meet the requirements of ORS 758.025 including being both substantial and beyond the normal course of business.

¹ Three comments were filed past the 45 day deadline and, pursuant to the applicable rule, were not considered by staff in forming its recommendation. Nonetheless, staff did review them and notes the nature of the objections were consistent with the comments that were timely filed.

Commission's Decision Alternatives

The Commission has the following decision alternatives:

- 1) Suspend and further investigate Qwest's petition.
- 2) Allow the petition to go into effect.

PROPOSED COMMISSION MOTION:

An order be issued granting Qwest's petition and directing the company to file a tariff consistent with its petition.