
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Steve D. and Tamara Thomas against Qwest Corporation d/b/a CenturyLink, Inc.

DOCKET NO. 17-049-09

ORDER ON MOTION TO DISMISS

ISSUED September 8, 2017

I. Procedural Background.

On July 10, 2017, Steve and Tamara Thomas filed a formal complaint against Qwest Corporation d/b/a CenturyLink, Inc. (CenturyLink), a public utility.

On August 8, 2017, CenturyLink answered the complaint and filed a motion to dismiss it. The parties have fully briefed the motion to dismiss.

II. Findings of Fact.

1. The Thomases own property in Farmington, Utah.
2. A utility line owned by CenturyLink runs across the Thomases' property.
3. The utility poles supporting CenturyLink's line were initially placed by an electric utility, but are no longer used to provide electric utility services.
4. The Thomases wish to build a home on their property, but CenturyLink's utility line across the property would interfere with the proposed construction.
5. On or about February 12, 2016, Mr. Thomas began working with a CenturyLink representative to formulate a plan for relocating the utility line. Before any plan was formalized, the representative left his employment with CenturyLink.¹

¹ The Thomases claim that CenturyLink's representative gave them reason to believe that the line could be relocated at no cost to them. However, the Thomases later agreed to pay costs, as set forth in Finding of Fact 6. Therefore the PSC considers moot any question of whether CenturyLink was bound by its representative's alleged statements. Indeed, any such question would be beyond the PSC's jurisdiction, as set forth in CenturyLink's final reply in support of its motion to dismiss.

6. Thereafter, Mr. Thomas began working with a different CenturyLink representative.

After various negotiations, the Thomases and CenturyLink agreed to split the total cost of the project, which was estimated to be \$10,000 to \$11,000. However, the plan required a buried utility line, which would require an easement across property owned by one of the Thomases' neighbors. CenturyLink required the Thomases to obtain the necessary easement on its behalf.

7. The neighbor agreed to allow CenturyLink to place buried line across his property, but refused to grant a formal easement. CenturyLink refused to proceed without an easement and, therefore, revised the plan for relocating the line at issue. CenturyLink estimated that the revised plan would result in costs to the Thomases of \$7,400 (approximately \$1,900 to \$2,400 more than the Thomases expected to pay under the initial plan).

III. Parties' Positions.

Even though the Thomases have previously agreed to pay at least a portion of the costs for relocating the utility line at issue, they now set forth three arguments as to why CenturyLink should not be permitted to charge them anything. First, they argue that they have the right to use their property as they see fit. They appear to consider that, if CenturyLink's lines interfere with that right, then CenturyLink has the obligation and burden to remove the interference. The Thomases have provided no statute, court decision, or other legal authority to support this position.

Second, the Thomases argue that CenturyLink's line across the property is not within a utility easement. They consider that, absent a utility easement, CenturyLink's line is improper.

They also consider that CenturyLink should not be permitted to charge an affected property owner the costs of remedying such an impropriety.

Third, the Thomases argue that CenturyLink's line should not be allowed to cross through a property. They indicate that CenturyLink should be required to site its lines along a fence or property boundary, and should be required to bear any associated costs. The Thomases have provided no statute, court decision, or other legal authority to support this position.

In addition, the Thomases argue that the utility poles supporting the line across their property are not within an easement specifically granted to CenturyLink. Rather, the poles were placed, and were thereafter abandoned, by an electric utility. Therefore, the Thomases question CenturyLink's right to use the poles, implying that CenturyLink should be required to bear the costs of moving the line to poles located within an easement that has been specifically granted to CenturyLink.

Finally, the Thomases object to CenturyLink's requiring them to obtain any necessary easements from neighbors. They consider that this burden should be CenturyLink's alone.

CenturyLink asserts that the PSC does not have jurisdiction over any questions involving utility easements and, therefore, must dismiss the Thomases' complaint.

IV. Analysis and Conclusions of Law.

A motion to dismiss "should be granted ... only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim."²

² *Am. W. Bank Members, L.C., v. State*, 342 P.3d 224, 230 (Utah 2014) (quoting *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990)).

As CenturyLink argues, the PSC does not have jurisdiction to determine whether a utility's equipment is located within a legal utility easement. This issue involves complicated questions of property law, title, and land use, and must be addressed through a civil action. *See Taylor v. PSC*, Case No. 20030694-CA (UT Ct. App.) March 17, 2005: "[W]e agree with the PSC that a decision regarding the existence of an easement over [private] property is not within the jurisdiction of the PSC." Therefore, the PSC may not rule on most of the Thomases' arguments. A court of law must determine whether the poles and lines at issue in this matter are sited within legal easements, either recorded or prescriptive.

It is arguably within the PSC's jurisdiction to resolve the question of whether, when a property owner desires to engage in a construction project that would require relocation of an existing utility line, CenturyLink may require that property owner to obtain, on CenturyLink's behalf, necessary easements across private property that is proximate to the owner's property.³ CenturyLink has not cited to a tariff provision that imposes this specific burden on the property owner. However, in the instant case, ordering CenturyLink to pursue the required easement would provide no relief to the Thomases. The required easement has already been refused. Therefore, the PSC considers that the question is moot for purposes of this Order, and is more properly resolved through rulemaking, if at all.

ORDER

Given the foregoing, there is no relief that the PSC is able to afford the Thomases. Therefore, the PSC grants CenturyLink's motion to dismiss the Thomases' July 10, 2017 complaint. Dismissal is with prejudice.

³ *See* Utah Code § 54-4-1.

DATED at Salt Lake City, Utah, September 8, 2017.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed September 8, 2017 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#296539

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on September 8, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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