

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 20, 2020**

REGULAR  CONSENT  EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

**DATE:** October 8, 2020

**TO:** Public Utility Commission

**FROM:** Jon Cray

**THROUGH:** Michael Dougherty and Phil Boyle **SIGNED**

**SUBJECT:** RESIDENTIAL SERVICE PROTECTION FUND:  
(Docket No. UM 1517)  
Qwest Corporation Request for Waiver of OAR 860-033-0006(7) and  
860-033-0006(8).

**STAFF RECOMMENDATION:**

Staff recommends the Public Utility Commission of Oregon (Commission) approve Qwest Corporation's request for waiver of the Residential Service Protection Fund (RSPF) late payment fee and interest.

**DISCUSSION:**

Issue

Whether the Commission should approve Qwest Corporation's request for waiver of the RSPF late payment fee and interest under Oregon Administrative Rule (OAR) 860-033-0006(10).

Applicable Law

Pursuant to OAR 860-033-0006(5), "The [RSPF]... surcharges are due to the Commission on or before the 21<sup>st</sup> calendar day after the close of each month... Failure to submit the... surcharges in full on or before the due date results in the assessment of a late payment fee and interest in accordance with OAR 860-033-0006(7) and 860-033-0006(8), respectively."

As provided in the second sentence of OAR 860-033-0006(10):

The Commission may waive the late report fee, the late payment fees and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider or the cellular, wireless, or other radio common carrier files a written waiver request and provides evidence showing that the telecommunications provider or the cellular, wireless, or other radio common carrier submitted the Remittance Report and surcharge fees late due to circumstances beyond its control.

### Analysis

#### *Background*

Ernst & Young LLP (Ernst & Young), a tax preparer for Qwest Corporation, filed Qwest Corporation's RSPF report for April 2020 on May 8, 2020, but submitted the corresponding surcharges on May 26, 2020, five (5) days past the deadline. Staff mailed a letter on May 26, 2020, notifying the Company of the missed deadline and resulting late payment fee and interest. The Commission issued a Notice of Proposed Assessment to Qwest Corporation on June 11, 2020.

Prior to issuance of the Notice of Proposed Assessment, Ernst & Young contacted Staff on June 5, 2020. Ernst & Young stated the surcharges were mailed on May 19, 2020, but was unable to produce evidence that the RSPF surcharges were received by the Commission no later than 5 p.m. Pacific Standard Time on the due date (May 21) in accordance with OAR 860-033-0006(5).

Ernst & Young submitted a request for waiver via email on June 18, 2020, describing the circumstances or factors that affected timely submission of the RSPF surcharge. First, the firm stated that the global public health threat posed by the novel infectious coronavirus, COVID-19, presented challenges in navigating the transition from an office-based environment to remote work. Second, Ernst & Young stated that it uses Qwest Corporation's third-party payment system and is unable to modify any system parameters affecting the punctual remittance of the RSPF surcharge. Third, the tax preparer also asserted that the late delivery was due to delays within the United States Postal Service. Finally, Ernst & Young noted its excellent compliance record to date and provided the United States Postal Service certificate of mailing on May 19, 2020, that serves as a testament to the Company's intent to comply.

On Wednesday, July 8, 2020, Qwest Corporation confirmed for Staff that Ernst & Young's request for abatement of the RSPF late payment fee and interest was submitted on behalf of the Company. Staff requested clarification from Qwest Corporation regarding the tax preparer's statements as to the cause of the delay on July 6, 2020, July 8, 2020, and August 5, 2020. The Company explained that it engaged

Ernst & Young in January 2020 using a phased-in approach. The tax preparer began to remit the RSPF surcharge on behalf of Qwest Corporation for the February 2020 reporting month in March. Although the surcharges were not mailed at the same time as the corresponding RSPF report was filed on May 8, 2020, the Company revised the date for submission to the 10<sup>th</sup> of each month to allow for sufficient mailing time.

### Conclusion

The onset of the COVID-19 pandemic engendered a significant and rapid shift to telework that subsequently affected Ernst & Young's punctual submission of the RSPF surcharges on behalf of Qwest Corporation. The Commission has granted a similar waiver request for this reason. See Order No. 20-270. Also, by changing the date for submission of the RSPF surcharges to the 10<sup>th</sup> of each month for Ernst & Young, the Company demonstrated commitment to future punctual filings. For these reasons, Staff finds there is good cause to support Qwest Corporation's request for waiver of the RSPF late payment fee and interest.

Staff notes that of all the grounds that Ernst & Young describes in its request for waiver on behalf of Qwest Corporation, one appears to be based on an assumption there was a delay in mail delivery. OAR 860-033-0006 requires receipt by the Commission on the due date, which necessarily requires a telecommunications provider to plan appropriately for a timely submission. Staff does not find the information submitted by the Company's representative on this issue demonstrates good cause for waiver. Staff's recommendation to waive the late payment fee and interest is based on the onset of the COVID-19 pandemic and its associated effects, and on the steps taken by Qwest Corporation to better assure future punctual filings.

### **PROPOSED COMMISSION MOTION:**

Approve Qwest Corporation's request for waiver of the RSPF late payment fee and interest.