

Qwest

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Alex M. Duarte
Corporate Counsel

October 12, 2005

Honorable Allan Arlow
Administrative Law Judge
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: UX 29- Qwest's Objection to Request for Expedited Consideration

Dear Judge Arlow:

I apologize in advance for this letter, but late yesterday afternoon we received several intervenors' motion to strike Qwest's rebuttal testimony, or, in the alternative, modify the hearing schedule, with a request for expedited consideration. This is to advise Your Honor that Qwest sincerely believes this motion is nothing more than a delay tactic, and an attempt to distract Qwest from its preparation for the upcoming hearing next week (October 18-20, 2005). Because I will be at the Commission for a prehearing conference in another matter this morning, and thus will not be back in the office until the afternoon, I am sending Your Honor this letter this morning to advise you that although this letter is not meant to be a substantive response to the motion, Qwest strenuously objects to the request for expedited consideration.¹

We do believe, however, that the main reason for the motion is that these intervenors are simply unhappy with the fact that Qwest filed testimony by an economist to rebut their witnesses, especially TRACER's economic expert witness, Dr. Cabe, and perhaps that Qwest's company witness Robert Brigham's rebuttal testimony is long. This extensive rebuttal testimony, however, was necessary since Staff and the intervenors filed more than 140 pages of testimony.

In any event, Qwest does want to at least make sure that the procedural arguments about TRACER counsel's failure to make arrangements to pick up the materials last Friday afternoon, or its apparently not realizing that Monday was a postal holiday (which, actually, I myself must confess I had not thought of), are off the table. Thus, although the motion is incorrect about Qwest's service of the testimony being "insufficient" (Qwest served the testimony in accordance with all procedural rules), in order to deal with what Qwest believes is really at issue here, and to not get bogged down with issues of "postal holidays" and such, Qwest would be willing to

¹ In the event that Your Honor does permit expedited consideration, Qwest kindly requests as much time as possible to respond regarding the substantive reasons why the rebuttal testimony that Qwest filed on Friday (the Rebuttal Testimony of Robert Brigham and the Rebuttal Testimony of William Fitzsimmons) is appropriate and does not prejudice any party, and thus why the motion lacks merit. This letter, however, is not intended to address those substantive issues, but only the apparent *procedural* argument that the moving parties have raised.

provide data responses regarding such confidential information *within four business days*, so that the moving parties' "substantial harm" argument about the time to issue requests is moot.

I also note that as of 9:00 p.m. last night, Qwest had not yet received any data requests, despite that TRACER and all parties had received the confidential information. If the data requests were so important, Qwest does not understand why these parties did not issue them by the close of business yesterday so that they could at least receive the responses by Tuesday, October 18 (the first day of a three-day hearing). Instead, we believe the fact that these parties did not issue any new data requests confirms that the motion is really not about a one-day gap in receiving the confidential information, or about our small office not being equipped to put together a special package for their counsel's office on Monday afternoon (i.e., the matters raised on page 2 through page 4, line 20 of the motion). Rather, Qwest believes their failure to issue these new data requests shows this motion is really about a *delay of the actual hearing schedule* because of the matters raised beginning at page 4, line 21 through page 6, line 2 of the motion.

Accordingly, in order to avoid having the arguments about the "service" of the testimony be an issue, and even though Qwest timely served its rebuttal testimony, Qwest has advised the parties it is willing to respond to data requests regarding the confidential information *within four business days* so that the parties can have the responses at the upcoming hearing. (See Attachment A (email of October 11, 2005).) We do, however, strongly object to the motion, and to the request for expedited consideration. Finally, we also kindly request that, if Your Honor is inclined to grant expedited consideration, you allow Qwest sufficient time, in light of its other pressing matters and its preparation for the hearing, to respond to the motion's substantive arguments.

Thank you for your attention to this matter. If you have any questions about this request, please feel free to call me at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alex M. Duarte". The signature is fluid and cursive, with the first name "Alex" being the most prominent part.

Alex M. Duarte

cc Service List (via email)

Encl.

CERTIFICATE OF SERVICE

UX-29

I hereby certify that on the 12th day of October, 2005, I served the foregoing **QWEST CORPORATION'S LETTER TO THE HONORABLE ALLAN ARLOW** in the above entitled docket on the following persons via U.S. Mail (or via e-mail if so indicated), by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 12th day of October, 2005.

QWEST CORPORATION



By: _____
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Attorney for Qwest Corporation

Duarte, Alex

From: Duarte, Alex
Sent: Tuesday, October 11, 2005 9:10 PM
To: 'Jessica Gorham'; puc.filingcenter@state.or.us; Richard Cabe; Doug Denney; Gregory Diamond; Dennis Gabriel; Karen Johnson; Rex Knowles; Gregory Kopta; Lisa Rackner; Lawrence Reichman; Brad Schaffer; Brian Thomas; Sarah Wallace; Michael Weirich
Cc: Mason, Don; Harris, Sheila; Butler, Carla
Subject: RE: UX 29 - Joint Motion to Strike Qwest's Rebuttal Testimony

Sarah-

We are in receipt of your motion. Needless to say, we disagree with your motion, and we do not believe there is any merit to it, and we believe it is simply a delay tactic. We believe the main reason for the motion is that your clients are simply unhappy with the fact that Qwest is using an economist to rebut your witnesses, especially TRACER's economist expert witness, Dr. Cabe, and perhaps that Mr. Brigham's rebuttal testimony is long (which was necessary since Staff and the intervenors filed more than 140 pages of testimony). We believe this motion is really a tactic to delay the hearing next week.

Since I don't really expect to convince you to withdraw the motion, I do want to at least make sure that the arguments about your failure to make arrangements to pick up the materials on Friday afternoon, or your apparently not realizing that Monday was a postal holiday (which, actually, I myself must confess I had not thought of), are off the table. Thus, although you are incorrect about Qwest's service of the testimony being "insufficient" (Qwest served the testimony in accordance with all procedural rules), in order to deal with what we believe is really at issue here, and to not get bogged down with issues of "postal holidays" and such, Qwest is willing to respond to data responses in four business days, and thus your "substantial harm" argument about the time to issue data requests is moot.

I do note, however, that as of 9:00 p.m. this evening, we have not yet received any data requests, despite that you received the confidential information. If the data requests were so important, I do not understand why your clients did not issue them by the close of business today so that they could at least receive the responses by Tuesday, October 18 (the first day of a three-day hearing). Instead, we believe that the fact your clients did not issue any new data requests confirms that the motion is really not about a one-day gap in receiving the confidential information, or about our small office not being equipped to put together a special package for your office yesterday afternoon (i.e., the matters raised on page 2 through page 4, line 20 of your motion). Rather, we believe the failure to issue these new data requests confirms this is really about a delay in the actual hearing schedule due to the matters you raised beginning at page 4, line 21 through page 6, line 2 of the motion.

Accordingly, in order to avoid having the arguments about the "service" of the testimony be an issue, and even though Qwest timely served its testimony, Qwest is willing to respond to data requests *within four business days* so that the parties can have them at the upcoming hearing. We also will strongly object to your motion, and the request for expedited consideration.

Alex

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Jessica Gorham [<mailto:jac@aterwynne.com>]
Sent: Tuesday, October 11, 2005 3:53 PM
To: puc.filingcenter@state.or.us; Richard Cabe; Doug Denney; Gregory Diamond; Duarte, Alex; Dennis Gabriel; Karen Johnson; Rex Knowles; Gregory Kopta; Lisa Rackner; Lawrence Reichman; Brad Schaffer; Brian Thomas; Sarah Wallace; Michael Weirich
Subject: UX 29 - Joint Motion to Strike Qwest's Rebuttal Testimony

Attached for filing is an electronic copy of Joint Motion to Strike Qwest's Rebuttal Testimony or, in the Alternative, Modify the Hearing Schedule and Affidavit of Lisa F. Rackner. The original will follow via US Mail. Please contact me with any questions.

<<UX 29 - Motion to Strike.pdf>> <<UX 29 - Affidavit.pdf>> <<Exhibit A.pdf>> <<Exhibit B.pdf>> <<UX 29 - Letter & COS Motion to Strike.pdf>>

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