



## SCHEEF & STONE, L.L.P.

*Legal counsel based on solid principles.*

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March 15, 2024

Hon. John Mellgren  
Administrative Law Judge  
Oregon Public Utilities Commission  
201 High Street SE, Suite 100  
Salem, Oregon 97301-3398

**Via email**

RE: Docket UT 125  
**Response to Reichman letter dated March 13, 2024**

Dear Judge Mellgren:

We are in receipt of Mr. Reichman's March 13, 2024 letter confirming Qwest's inability to find and submit the tariffs for its charges applicable from May 1, 1996 through October, 2003. That letter also does not contain a "specific request for additional time to comply with [the 2/7/24 order]..."

As you recall, Mr. Reichman's client, Qwest, was ordered to produce those tariffs in the Memoranda dated February 7, 2024 and March 4, 2024. In the February 7, 2024 Memorandum, in spite of NPCC's suggestion that the record be supplemented with Qwest's actual billing records from May 1, 1996 to October, 2003, Judge Allwein stated he believed that a sufficient 'substitute' for actual records would be the applicable tariffs on file during the time period. He gave two reasons: (1) he presumed that Qwest would only actually bill what it was allowed to bill under those tariffs, and (2) there had been no allegations that the actual billings differed from the tariffs. The issue of Qwest's actual billing records was reserved for Phase Two of the proceeding.

My understanding is that these tariffs were going to be used to determine whether Qwest was charging its ratepayers charges in excess of NST rates (which were established in Order 07-497) between May 1, 1996 and October, 2003. That is, the overcharges the Court of Appeals ordered the PUC to investigate in Phase One of this remanded proceeding would be determined by whether there were any differences between NST rates found in Order 07-497 and the rates

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Qwest was actually charging during the applicable time period.<sup>1</sup>

However, that “substitute” pricing data (i.e., the tariffs) does not appear to be available from Qwest per Mr. Reichman’s March 13, 2024 letter. Indeed, while Mr. Reichman states: “Qwest has been able to locate tariffs for most, but not all of the rates for this time period,” in his table and exhibits which identify the rates *none of the information he provided* is a tariff but just “other sources for the rates and their effective dates.” Zero out of eight tariffs is not “most” of the information requested.

Therefore, and given that this matter should proceed apace without any more unnecessary delays, we are seemingly left with two options:

1. The PUC produces the applicable tariffs; or
2. Qwest produces its actual billing records.

I suspect (without knowing) that the PUC also does not have the applicable tariffs which is perhaps why it placed that burden on Qwest. But rather than place any more unnecessary burdens on *anyone*, including the PUC, perhaps it would be best simply to order Qwest to produce its billing records (which Qwest has already told us it has), and then use those records to determine the actual rates charged during the applicable time period.

Please advise on how you now wish to proceed with Phase One.

Sincerely,

/s/ James A. Pikel

cc: Larry Reichman (via email)

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<sup>1</sup> NPCC asserts that *the fact* of overcharges is actually already proven—indeed stipulated by Qwest—evidenced by the ruling made in Order 07-497 and its attached supporting materials. Only the amounts of those overcharges are really still at issue. This assertion will be conclusively established once we get to merits briefing.