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January 30, 2024

Hon. John Mellgren
Administrative Law Judge
Oregon Public Utilities Commission
P.O. Box 1088
Salem, Oregon 973-08-1088

via email only

RE: Docket No. UT 125

Dear Judge Mellgren:

On January 26, 2024, Qwest filed a motion purporting to question the “authority” of myself and Mr. James Pikel to “appear on behalf of NPCC *members*” or to “represent *the PSPs*” in this case. Qwest’s motion is nothing more than its latest Hail Mary Pass designed to hinder these proceedings and otherwise waste the time and resources of Your Honor and the parties with frivolous claims and accusations.

Concerning one initial procedural point: Your Honor suspended the “calendar” found in his Order dated January 16, 2024 (see page 8) due to issues regarding assembling the record. We request guidance on when, if ever, a response to Qwest’s Motion filed on January 26, 2024 is due. Please advise upon your review of this letter.

Qwest has Long Ago Waived Any Issue with Representative Status

Initially, Qwest’s Motion should be denied due to waiver. I have been representing NPCC since July 2009, including through two appeals, and in all that time Qwest has never once questioned my authority to do so. Qwest has therefore waived this argument. I associated Mr. Pikel as co-counsel and that happened almost five years ago (2019), again without Qwest raising any issues thus waiving its current argument as to Mr. Pikel. You would be well within your discretion to overrule the Motion based on waiver alone. Further, this is not the forum to raise the issues in Qwest’s Motion nor the time to do so (ripeness) because the answer to Qwest’s Motion will not be dispositive of anything now pending before the PUC as shown below.

Any Further Response Presents a Foregone Conclusion

Before we spend time more formally responding to the Motion, we wanted to make sure that you actually want us to do so.

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The relevant rule of procedure, ORS 9.350, is a “may” provision, giving Your Honor full discretion as to whether you want to entertain Qwest’s Motion *at all*. In addition, Qwest does not have standing to raise any of the issues it purports to place before you in the Motion, the issues are not ripe, the issues must be adjudicated (if at all) before a different tribunal, and Qwest has clearly and gravely misstated the procedural posture of the case as well as who the parties actually are. Indeed, Qwest continues to wrongly insist that NPCC bears some burdens of proof in this remand proceeding in the face of the clear instructions of the Court of Appeals regarding the remaining issues to be addressed, all of which identify the “duties” and thus place the burdens of proof on the PUC.

As you know, this matter is presently a PUC enforcement action in which the Oregon Court of Appeals, on remand, gave very specific directions to the PUC (not to NPCC nor the PSPs), ordering the PUC to fulfill certain statutory duties including conducting an investigation into overcharges Qwest has imposed on Oregon ratepayers and deciding on an appropriate remedy for those overcharges. Nowhere in that opinion is NPCC or any individual Oregon ratepayer given any instructions or ordered to fulfill any duties. No burdens of proof fall to NPCC nor on the victims of Qwest’s avarice: the PSPs. Instead, NPCC appears here only as the representative of *all* Oregon PSPs (not just “approximately 12”) and is standing by to assist the PUC in fulfilling the PUC’s duties as directed by the Court of Appeals, if and as NPCC is requested to do so. NPCC has also offered to be the repository of refund monies to be paid by Qwest, and will distribute them to their appropriate owners strictly as required by law.

The True Goal of Qwest’s Motion

Qwest’s obvious goal with the Motion is an attempt to cut down on its refund liability by falsely claiming that if one or more Oregon PSPs are no longer in existence, or NPCC’s counsel is removed, no refunds may be ordered. This is a curious position because the refunds are owed regardless of who is “representing” NPCC or the PSPs as counsel, and it is directly contrary to Oregon statutory law and Oregon Supreme Court authority as to refund award recipients.

Qwest cannot get out of its obligation to refund monies it is holding illegally even if some of the victims have died or gone out of business or there is no successor, which is not the case here. Oregon, like all states, has robust statutory and common law protocols in place for distributing funds owed to decedents’ estates or the shareholders of defunct companies, and those protocols will undoubtedly be followed once Qwest pays the refunds. *See, e.g.*, ORS, Chapter 98, That is, we should determine who gets those refunds *after* Qwest pays them as it is legally required to do. The refunds will first go to PSPs who paid them. Then, if some of those refunds cannot be returned to the appropriate owner, they become “abandoned” funds one year after the refunds are ordered, by statute. Interestingly, ORS §98.316, expressly

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deals with the exact situation here: utilities like Qwest holding funds subject to refund:

The *following funds held or owing by any utility* are presumed abandoned if unclaimed by the apparent owner for more than one year after the date of termination of services *or when the funds otherwise become payable* or distributable: ...*(2) A sum received for utility services which a utility has been ordered to refund*, together with any interest thereon and less any lawful deductions”) (emphasis added).

Since the actual refunds owed to any PSP have not been ordered at this time, this one-year clock has not yet started to run.

Then, even if some of those PSPs are no longer in business and their abandoned refunds cannot be distributed to them or their successors or heirs, Oregon law deems those funds “unclaimed funds” and they escheat to the state after a determination and notice and hearing to potential claimants. *The refund monies don’t go back to Qwest nor can Qwest avoid their payment. See, e.g., Realty Associates of Portland, Or. v. Women’s Club*, 230 Or. 481 (1962, *en banc*). Since Qwest cannot keep nor get back any of the refund monies, it has no legal interest in this process of distribution following refund and thus has no standing. Rather, the PUC (or, possibly, an Oregon court in interpleader) will decide who gets the unclaimed funds, if any. Qwest’s entire *raison d’être* for filing the Motion is empty of merit.

Please let us know if you desire a formal response to the Motion or any other information on this matter. Contacting each client will require some time, and if further response is requested, we ask for sufficient time to collect any information you might need.

Finally, to the extent Your Honor is interested in our capacity as attorneys to act *as counsel for NPCC*—a status we have enjoyed without question for over fifteen years—we will at your request send for *in camera* review a copy of supporting documentation via email under the stipulation that it will be treated as privileged and confidential and will be withheld from Qwest or its lawyers.

Sincerely,

/s/ Frank Patrick

Frank G. Patrick

OSB 760228

cc: Larry Reichman (via email)
Natascha Smith (via email)