

November 2, 2023

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John Mellgren
Administrative Law Judge
Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301

Re: Docket UT 125

Dear Judge Mellgren:

The parties were unable to agree on a procedural schedule. Thus, pursuant to your October 18, 2023 Memorandum, Qwest hereby submits its proposed schedule for Commission proceedings in connection with the remand in this proceeding. Qwest also submits some preliminary comments on the schedule NPCC proposed to Qwest, assuming it makes the same proposal today.

The schedule NPCC proposed would have the matter immediately move to remedial proceedings directed solely to a calculation of the refunds it claims Qwest must make. That proposal is inappropriate because it assumes the Commission has granted NPCC's Motion, which has not occurred.

As the record stands, the Commission denied NPCC's Motion. While the Court of Appeals reversed and remanded, it did not grant the Motion or direct the Commission to grant the Motion. Rather, the court required further proceedings because it determined that the Commission had not supported a factual finding with substantial evidence in the record, and that the Commission had expressed an overly limited view of its own authority. The Court of Appeals expressly stated: "We conclude that the PUC's prior orders in this docket neither require nor preclude the requested refunds and that, on this record, we cannot say whether state or federal law require the PUC to order the requested refunds." The court did not constrain the decision the Commission may make on remand on the merits of the Motion.

For these reasons, the Commission must consider and rule upon NPCC's Motion before it may even address issues pertaining to a refund, and any remedy must be consistent with the Commission's final order. For example, if the Commission somehow decides that Qwest did not fully comply with the Refund Orders issued in this docket, it must then decide what remedy, if any, is available and appropriate. If the Commission decides to amend its 2007 order as requested by NPCC in the alternative, any remedy must be consistent with, among other things, the amendment to the order the Commission makes. Qwest firmly believes that the Commission

John Mellgren
Administrative Law Judge
November 2, 2023
Page 2

should again deny NPCC's Motion and never reach any issue pertaining to a refund or other remedy.

Under Qwest's proposed schedule, NPCC, as the moving party bearing the burden of proof, would first make a submission in support of its Motion in light of Court of Appeals' decision. Qwest and the other parties would then file a response. Following that, there may be a hearing which could simply be oral argument or an evidentiary hearing if you determine there are material disputed issues of fact. Any further proceedings required as a result of the Commission's order deciding the Motion would be scheduled after that order is issued.

Qwest's proposed schedule:

Date	Event	Comments
Dec. 7, 2023	Deadline for NPCC to file submission in support of its Motion, in light of Court of Appeals' decision	
March 7, 2024	Deadline for Qwest and other parties to file responses	
April 4, 2024 or thereafter (optional)	Hearing	This may just be for oral argument unless ALJ determines there are disputed material facts that require an evidentiary hearing

Sincerely,



Lawrence H. Reichman

LHR:dma