

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Qwest Corporation's Land)
Development Agreements (LDA) Tariff)
Provisions)

DOCKET NO. 03-049-62
ORDER ON PETITION FOR REVIEW

ISSUED: July 21, 2005

By The Commission:

By Report and Order issued June 6, 2005 (June 6 R&O), we resolved disputes concerning the terms and conditions by which Qwest Corporation (Qwest) would place utility facilities in new residential subdivision developments within in its Utah service territory. ClearWave Communications, East Wind Enterprises L.L.C., and Prohill, Inc., dba Meridian Communications of Utah (collectively Petitioners) have requested that the Commission review the June 6 R&O. By filing submitted 15 July, 2005, Qwest opposes Petitioners' Petition for Review.

PETITIONERS REQUEST FOR REVIEW

Petitioners claim an attempt to deliver their Petition on July 1, 2005, near the close of business on that day to the Commission, but the person delivering the Petition was unable to reach the floor on which the Commission offices are located. However, Petitioners' counsel's law office did send an email to the Commission with an attached text file containing a Petition for Review. On July 5th, following the July 4th holiday, Petitioners' counsel informed Commission staff of the difficulty encountered in attempting to physically file a petition with the Commission and stated he desired to physically file a Petition for Review (and corresponding electronic version), but have this filing be deemed to have been made on July 1, 2005. The July 5th version, however, differs from the July 1st emailed document sent to the Commission; its substantive difference is an explicit request for relief in the nature of a restraining order. Further complexity is added by the Petitioners' filing of a separate filing on July 19, 2005, again asking for restraining order/preliminary injunctive relief. While other parties may potentially object to the differences between the two versions of the Petition for Review and the belated filing of the version which the Petitioners ask the Commission to actually consider, in substantive effect such objections are moot as we have determined that we will not change any aspect of our prior decision.

DISCUSSION OF PETITIONERS' ARGUMENTS FROM THE PETITION FOR REVIEW

Petitioners claim error in the process by which the June 6 R&O was issued by the Commission. Petitioners note that no recommended report containing proposed Findings of Fact, Conclusions of Law, and Order was prepared by the individual hearing officer who presided over

the prior procedural hearings and conducted the evidentiary proceedings April 14, May 23 and May 24, 2005. From that, Petitioners question whether the June 6 R&O reflects the decision or determinations of the Commissioners of the Commission. To paraphrase Petitioners, they seek review to ensure that the Commission as a whole considered the matter.

If there was any question that the June 6 R&O did not reflect a decision rendered by the Commission or the commissioners signing it, we hereby reaffirm that decision and the reasoning therein as the final order of the Commission and commissioners subscribed to the June 6 R&O and reiterate it in this Order on Review. The June 6 R&O represents the Commission's decision on and resolution of the issues resolved therein. Nothing from the previous proceedings, Petitioners' Petition for Review, our consideration of any of Petitioners' arguments and our review of and consideration of the full record developed through the entirety of this docket persuades us to change or alter our decision. As the purpose of these proceedings was to determine what might be just and reasonable terms by which Qwest may place new utility facilities in residential subdivisions, we conclude that we need not alter the decision expressed in the June 6 R&O. We reiterate our conclusion "that Qwest's new facility installation process for new residential developments, as outlined in Qwest's filed testimony in this docket and as recently included in Qwest's price list filing made in May, 2005, is reasonable. We are unable to find that a 1997 tariff Option 2 type of alternative must be made available, in addition to the installation terms and conditions Qwest has voluntarily included." (June 6 R&O, page 13.)

Petitioners complain that there are few "salient facts" which are referenced in support of the Commission's decision. The missing salient facts, however, are those relevant to Petitioners' position (to impose different terms and conditions upon an unwilling utility). As we noted in the June 6 R&O, Utah case law and public policy support giving deference to utility management in its decisions of what utility plant is to be provided and how it is to be installed. An exception to Commission restraint to not "unreasonably interfere with the right of the management [over utility facilities]" is where "it is made to appear that the policy and consequent expenditure is actuated by bad faith, or involves dishonesty, wastefulness, or gross inefficiency." *Logan City v. Public Utilities Commission of Utah*, 77 Utah 442, 447, 296 P. 1006 (Utah 1931). We are unpersuaded by Petitioners' argument and a review of the record to change our conclusion that the record provides insufficient support allowing us to adopt Petitioners' position and substitute or interject different terms and conditions beyond those chosen by Qwest.

Petitioners further complain of, from their viewpoint, the impact resulting from our decision upon public policies, the policies pursued or implicated by our decision, and the weighting given to the policies and interests of the parties participating in the proceedings and the public interest. Our development of and pursuit of public policy in the state regulation of public utilities, the weighting of differing interests and policies (sometimes opposing) and the application of such policies and weighted interests is precisely a legislative function or responsibility of the Commission. That Petitioners may disagree with our resolution can be understood. But a party's disagreement with our result does not mean we have erred or should change our resolution. Again, we conclude that nothing in Petitioners' argument requires us alter our decision.

We do not rule upon the merits of Petitioners' request for relief in the nature of a restraining order/injunctive relief as other interested parties have not had an opportunity to respond to Petitioners' request. We do not believe that we must resolve the restraining order/injunctive

relief aspects of Petitioners' filing prior to dealing with their request that we review our June 6 R&O decision. We do reach the merits of Petitioners' request for review of our decision on the reasonableness of Qwest's revised terms and conditions and the basis upon which the Commission may impose different terms and conditions for the installation of utility facilities beyond those proposed by Qwest. We do so because we have made our determination of the merits of that request and to avoid argument that we did not respond to Petitioners' request for review or reconsideration within twenty days of its filing.

Wherefore, based on our consideration and review of the arguments and record made herein and decisions based thereon, we deny all relief sought by Petitioners' Petition for Review, except their request that installation activity on certain projects be permitted to continue beyond July 31, 2005.

DATED at Salt Lake City, Utah, this 21st day of July, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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