

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE COMPLAINT)
OF MCLEODUSA)
TELECOMMUNICATIONS SERVICES,) **DOCKET NO. 06-2249-01**
INC., AGAINST QWEST CORPORATION)
FOR ENFORCEMENT OF COMMISSION-)
APPROVED INTERCONNECTION)
AGREEMENT)

REBUTTAL TESTIMONY

OF

WILLIAM R. EASTON

FOR

QWEST CORPORATION

MAY 12, 2006

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

3 A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle
4 Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf
5 of Qwest Corporation (“Qwest”).
6

7 **Q. PLEASE GIVE A BRIEF SUMMARY OF YOUR EDUCATIONAL**
8 **BACKGROUND AND TELEPHONE COMPANY EXPERIENCE.**

9 A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980,
10 I received a Masters of Business Administration from the University of Washington. In
11 addition, I am a Certified Management Accountant.
12

13 I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in
14 financial management with U S WEST, and now with Qwest, including staff positions in
15 the Treasury and Network organizations. From 1996 through 1998, I was Director –
16 Capital Recovery. In this role I negotiated depreciation rates with state commission and
17 FCC staffs and testified in various regulatory proceedings. From 1998 until 2001 I was a
18 Director of Wholesale Finance, responsible for the management of Wholesale revenue
19 streams from a financial perspective. In this capacity I worked closely with the Product
20 Management organization on their product offerings and projections of revenue. In
21 October of 2001 I moved from Wholesale Finance to the Wholesale Advocacy group,

1 where I am currently responsible for advocacy related to Wholesale products and services.

2 In this role I work extensively with the Product Management, Network and Costing
3 organizations.

4
5 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN UTAH?**

6 A. Yes I have. I have testified previously in Docket Nos. 94-999-01, 95-049-22, 97-049-16,
7 97-2227-01, 01-049-85, 03-049-19 and 04-2277-02.

8
9
10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. The purpose of my testimony is to discuss the Power Measuring Amendment which lies at
13 the heart of this complaint. I will explain why this language supports Qwest's position that
14 the Amendment applies only to the usage component of the power charges, not to the
15 power plant rate element. I will demonstrate that this interpretation is consistent with the
16 language of the Amendment itself and with information that was provided to all CLECs,
17 including McLeod. I will also provide information regarding McLeod's intent at the time it
18 entered into the Amendment. Further, through a discussion of Qwest's power offerings, I
19 will show that McLeod's interpretation of the Amendment is totally at odds with the other
20 power options Qwest offers. Finally, I will address specific claims made by Mr. Starkey
21 and Mr. Morrison in their direct testimony.

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III. OVERVIEW OF THE CASE

Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE ISSUES IN DISPUTE IN THIS CASE.

A. It is important for the Commission to keep in mind that this case involves the interpretation of a contract – specifically, the interconnection agreement and the subsequent DC Power Measuring Amendment between McLeod and Qwest. Most of the positions taken by McLeod and its witnesses in this case reflect either McLeod’s dissatisfaction with the Commission-approved rate for the DC Power Plant charge, or McLeod’s desire for usage-based billing for the DC Power Plant charge, irrespective of what the parties actually agreed to in the DC Power Measuring Amendment at issue in this case.

I am not a lawyer, but it seems to me the interpretation of the DC Power Measuring Amendment is a relatively straightforward exercise. It is important to note at the outset that, prior to the parties’ execution of the DC Power Measuring Amendment, Qwest and McLeod had agreed that McLeod would pay the DC Power Usage charge and the DC Power Plant charge based on the quantity of -48 volt capacity McLeod specified in its original orders for power distribution. The Amendment changed one of these charges, but did not mention the other. The Amendment identifies the “DC Power Usage Charge” multiple times – but never mentions the “DC Power Plant” charge, which is a separate charge reflected in the Exhibit A to the parties’ interconnection agreement. Only a strained

1 interpretation of this plain language could yield the result McLeod seeks in this case, and
2 that is exactly what the dozens of pages of testimony filed by McLeod in this case provide.

3 McLeod now claims that the DC Power Measuring Amendment changes the Power Plant
4 charge, notwithstanding the absence of any language supporting such a claim, and that
5 McLeod held this belief before it executed the DC Power Measuring Amendment. The
6 only support for such a belief is provided, strangely enough, by McLeod's retained expert
7 witnesses, who are not employees of McLeod and who did not participate in the
8 negotiations for or execution of the DC Power Measuring Amendment. As will be
9 discussed later in this testimony, it is unlikely that actual employees of McLeod could
10 credibly testify that they held this belief prior to entering the Amendment, because internal
11 McLeod documentation establishes to the contrary and because Qwest made it abundantly
12 clear through the Change Management Process (CMP) exactly what the DC Power
13 Measuring Amendment would and would not accomplish. Indeed, a McLeod employee
14 actually participated in some of the CMP meetings relating to the DC Power Measuring
15 Amendment.

16 Additionally, more than a year before McLeod accepted the Amendment without comment,
17 question, or proposed changes, Qwest made McLeod aware of documents addressing
18 Qwest's position on the precise question of whether the DC Power Measuring Amendment
19 affects the DC Power Plant charge. The language of the Amendment seems clear, and
20 Qwest made its position clear well in advance of the execution of the Amendment.

1 Mr. Hubbard's testimony provides further insight into the technical and engineering
2 reasons why Qwest's interpretation is reasonable. I will avoid examining those issues in
3 detail, but based on my review of the contract and the processes that led to its creation and
4 execution, McLeod's position is an after the fact challenge to the DC Power Plant rate and
5 not an interpretation of the Amendment itself.

6
7 **IV. THE POWER MEASURING AMENDMENT**

8
9 **Q. WHAT IS THE LANGUAGE IN THE DC POWER MEASURING AMENDMENT**
10 **THAT ADDRESSES HOW CHARGES WILL CHANGE AS A RESULT OF**
11 **ACTUAL POWER USAGE?**

12 A. The pertinent section of the amendment is Section 2 which reads as follows:
13

14 **2.0 Rate Elements – All Collocation**

15
16 2.1 -48 Volt DC Power Usage and AC Usage Charges. Provide -48 volt DC
17 power to CLEC collocated equipment and is fused at one hundred twenty-five
18 percent (125%) of request. The DC Power Usage Charge is for capacity of the
19 power plant available for CLEC's use. The AC Usage Charge is for the power
20 used by CLEC. Both the DC Power Usage Charge and the AC Usage Charge are
21 applied on a per ampere basis.
22

23
24 2.2 The -48 Volt DC Power *Usage* Charge is specified in Exhibit A of the
25 Agreement and applies to the quantity of -48 Volt Capacity specified by CLEC in
26 its order.
27

28 2.2.1 -48 Volt DC Power *Usage* Charge – Applies on a per amp basis to all
29 orders greater than sixty (60) amps. Qwest will initially apply the -48 Volt DC
30 Power Usage Charge from Exhibit A of the Agreement to the quantity of power

1 ordered by CLEC. Qwest will then determine the actual usage at the power board
2 as described in Section 1.2. There is a one (1) amp minimum charge for –48 Volt
3 DC Power *Usage*. [Italics Added].
4
5

6 **Q. PLEASE EXPLAIN HOW THIS LANGUAGE SUPPORTS QWEST’S CLAIM**
7 **THAT THE USE OF MEASURED POWER LEVELS APPLIES ONLY TO THE**
8 **POWER USAGE RATE ELEMENT AND NOT TO THE POWER PLANT RATE**
9 **ELEMENT.**

10 A. There are two different types of charges for DC Power: power plant and power usage. The
11 DC Power Measuring Amendment clearly mentions only the “DC Power Usage Charge”
12 and never mentions the separate “Power Plant” charge. Indeed, the term “DC Power
13 Usage Charge” appears five times in the DC Power Measuring Amendment. Because only
14 one rate element has been explicitly identified in the Amendment, it would be inconsistent
15 with the language of the Amendment to conclude that it applies to more than one element,
16 especially a rate element that is never specifically mentioned in the Amendment.
17

18 **Q. IS THE LANGUAGE OF THE AMENDMENT AND QWEST’S**
19 **INTERPRETATION OF IT CONSISTENT WITH THE WAY THE DC POWER**
20 **RATES ARE PORTRAYED IN THE EXHIBIT A TO THE SGAT?**

21 A. Yes. Section 8.1.4.1 of the Exhibit A to the Utah SGAT portrays the DC rates as
22 follows:

23
24 8.1.4.1 -48 Volt DC Power Usage, per Ampere, per Month
25 8.1.4.1.1 Power Plant
26 8.1.4.1.1.1 Power Plant - Less Than 60 Amps, per Amp \$ 11.7795

1	8.1.4.1.1.2 Power Plant – Equal to or Greater Than 60 Amps, per Amp	\$ 7.7927
2		
3	8.1.4.2 Power Usage	
4	8.1.4.2.1 Power Usage - 60 Amps or less, per Amp	\$ 1.95
5	8.1.4.2.2 Power Usage - More Than 60 Amps, per Amp	\$ 3.89
6		

7 Looking at the language in the Amendment and the rate elements contained in the Exhibit
8 A, it is clear that the rate element impacted by the Amendment is 8.1.4.2.2. Any other
9 interpretation is inconsistent with that language.

10

11 **Q. IS THERE ANY SIGNIFICANCE TO THE FACT THAT POWER PLANT**
12 **CHARGES AND POWER USAGE CHARGES BOTH COME UNDER THE**
13 **HEADING “POWER USAGE”?**

14 **A.** No. First, Sections 2.2 and 2.2.1 of the DC Power Measuring Amendment provide only
15 that the “-48 Volt DC Power Usage Charge” is affected by measured usage. This reference
16 is in the singular, which indicates that only one charge is affected. McLeod’s interpretation
17 requires altering this language to read in the plural: “-48 Volt DC Power Usage Charges.”
18 Moreover, there is no charge associated with the heading at 8.1.4.1 of the Exhibit A to the
19 SGAT: “-48 Volt Power Usage.” The only charges for power usage are associated with
20 items 8.1.4.2.1 and 8.1.4.2.2, and the DC Power Measuring Amendment clearly does not
21 alter the rate for item 8.1.4.2.1.

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23 Second, Section 26.30 of the interconnection agreement between Qwest and McLeod
24 provides that headings have no force or effect in the interpretation of the agreement:

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26.30 HEADINGS OF NO FORCE OR EFFECT

The headings of Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

McLeod’s interpretation of the Amendment would void this provision of the ICA. Section 8.1.4.1 of Exhibit A is clearly a “heading”, not a separate rate element, and as such should not be read to have any effect on the language of the Amendment. In other proceedings Mr. Starkey has attempted to minimize this language of the ICA by referring to section 8.1.4.1 of Exhibit A as a rate “grouping” or rate “category,” and not a heading, but I see no real difference between these terms. Because no charges are associated with Section 8.1.4.1, it is clearly a heading.

Q. IS QWEST’S INTERPRETATION CONSISTENT WITH INFORMATION MADE AVAILABLE TO ALL CUSTOMERS, INCLUDING MCLEOD, THROUGH THE PRODUCT CATALOG ON THE QWEST WEBSITE?

A. Yes. Attached, as Exhibit WRE_1, is a copy of the Collocation Direct Current (DC) Power Overview as it appeared on the Wholesale Products and Services portion of the Qwest.com website at the time McLeod executed the Amendment and many months prior. Page 1 of the overview plainly distinguishes between power plant capacity and usage charges and, in the “greater than 60 amps” usage description, notes that “Qwest will adjust the monthly usage rate based upon the actual usage on a going forward basis if the CLEC has opted into

1 DC Power Measurement.” The overview mentions nothing about reducing the power plant
2 capacity charge based upon actual usage.

3
4 **Q. WERE CLECS INVOLVED IN THE DEVELOPMENT OF THE POWER**
5 **MEASUREMENT PRODUCT OFFERING?**

6 A. Yes. The Power Measurement offering went through the formal Change Management
7 Process (CMP) to insure that all CLECs were informed of the offering and had an
8 opportunity to offer comments and ask questions about its application.

9
10 **Q. PLEASE DESCRIBE HOW THIS ISSUE WAS ADDRESSED IN THE CHANGE**
11 **MANAGEMENT PROCESS.**

12 A. On May 7, 2003, pursuant to the formal CMP process, Qwest entered a Change Request
13 (CR) to introduce the Power Measurement process to the CLEC community. At the May
14 2003 monthly CMP meeting, the CLECs requested an input meeting to discuss the CR in
15 more detail. This input meeting was held on June 5, 2003. Throughout the summer of
16 2003, a status report on the CR was provided to CLECs at the monthly CMP meetings. At
17 the September monthly CMP meeting, CLECs requested another input meeting to further
18 discuss the details of the CR in more detail.

19
20 Accordingly, an ad hoc meeting was scheduled and held on October 8, 2003 with a follow-
21 up additional ad hoc meeting held on October 20, 2003. Throughout the process, multiple
22 redline versions of the Power Measurement language were made available to the CLECs

1 as discussions progressed. The end result of the process was the final approved language
2 incorporated into the Collocation Direct Current (DC) Power Overview on November 18
3 and implemented on December 23rd.

4
5 **Q. WERE THERE ADDITIONAL EXCHANGES OF INFORMATION AND NOTICES**
6 **BEYOND THE MONTHLY CMP AND AD HOC MEETINGS?**

7 A. Yes. As a part of the CMP process, CLECs submit questions via the CMP website and ask
8 for Qwest responses. One CLEC, Allegiance, formally submitted a question requesting
9 clarification on what specific DC power rate elements were to be impacted by Power
10 Measuring Amendment. Significantly, Allegiance's interpretation of the Power Measuring
11 Amendment at that time was consistent with Qwest's interpretation in this proceeding. The
12 Allegiance question and the Qwest response is attached as Exhibit WRE_2. Qwest's
13 response to Allegiance states very clearly that only the power usage charge was affected,
14 the power plant charge was not. All CLECs - including McLeod - were notified that
15 Qwest's response to the Allegiance question was available on the public CMP website as of
16 October 2003.

17 **Q. DID MCLEOD PARTICIPATE IN THESE MEETINGS?**

18 A. Yes, McLeod participated in these meetings. Stephanie Prull of McLeod attended the
19 5/21/03 meeting where the DC Power Measuring Amendment topic was first introduced, as
20 well as the monthly CMP meetings for June, July, August, September and October where
21 status for the DC Power Measuring Amendment CR was provided to the CLECs. McLeod

1 apparently chose not to participate in any of the three ad hoc meetings where the subject
2 was discussed in detail.

3
4 **Q. WAS INFORMATION REGARDING THE CHANGE REQUEST AVAILABLE TO**
5 **MCLEOD EVEN THOUGH IT CHOSE NOT TO ATTEND THE AD HOC POWER**
6 **MEASUREMENT MEETINGS?**

7 A. Yes. Many notifications were made to all CLECs including McLeod. In addition to being
8 notified about all meetings on the issue, on September 8, 2003 all CLECs participating in
9 CMP were notified that redline documents related to DC Power Measuring Amendment
10 CR had been posted to the CMP Document Review Site, which was open and available to
11 McLeod. On October 6, 2003 all CLECs were notified that Qwest's responses to
12 comments posted on the CMP Document Review Site were available for CLEC review.
13 This included the Qwest response to the Allegiance question discussed previously. On
14 October 10, 2003 all CLECs were informed that the DC Power Measuring Amendment CR
15 implementation was on hold and another ad hoc meeting was scheduled for October 10th.
16 On November 18, 2003 all CLECs were notified that a revised version of the DC Power
17 Measuring Amendment offering language, which included input from the ad hoc meetings,
18 was available for review. Finally, on December 9, 2003 all CLECs were notified that the
19 offering language would be implemented on December 23, 2003. The notices to the
20 CLECs all contained an Internet link to allow for easy access to all relevant documents.

1 **Q WERE MCLEOD EMPLOYEES ON THE DISTRIBUTION LIST FOR THE**
2 **NOTICES LISTED ABOVE?**

3 A. Yes. According to Qwest's records, the above notices were sent to 16 employees at
4 McLeod: Tami Spocogee, William Haas, Jennifer Kennicutt, J. Knoploh, Todd
5 Lechtenberg, Diane Bowers, Jeff Kramarczyk, Joan Eisenhart, Leo Lund, Lana Bendixsen,
6 John Taylor, Luann Harzen, Stephanie Prull, Sue Sedrel, Thomas Jenkins and Joy Heitland.

7
8 **Q. MCLEOD HAS ARGUED IN OTHER PROCEEDINGS THAT IT SOUGHT AN**
9 **AMENDMENT WITH THE "EXPRESS" GOAL TO BE BILLED FOR POWER**
10 **BASED ON WHAT IT ACTUALLY USES. DID MCLEOD EXPRESS THAT**
11 **GOAL TO QWEST?**

12 A. No, McLeod never shared their intent regarding the effect of the Amendment with Qwest
13 prior to its execution. This alone is significant given the substantial amounts of money at
14 issue. It would have taken little effort by McLeod to discuss the matter with Qwest, or
15 review the PCAT, or review the CMP process. A reasonably prudent carrier would
16 probably do all three, any one of which would have made it obvious to McLeod that only
17 the usage rate would be affected by the Amendment.

18
19 **Q. HAS MCLEOD PROVIDED INFORMATION IN A DISCOVERY REQUEST**
20 **THAT CAN HELP THIS COMMISSION ASSESS WHAT MCLEOD'S INTENT**
21 **WAS AT THE TIME IT ENTERED INTO THE POWER AMENDMENT?**

1 A. Yes. In response to a discovery request in Iowa, McLeod provided a spreadsheet it
2 developed over the three weeks prior to entering into the Amendment. Attached, as Exhibit
3 WRE_3, is copy of that spreadsheet as it existed in July/August 2004. Exhibit WRE_4 is
4 the only other version of that spreadsheet, which appears to have been populated and saved
5 in August 2005. Significantly in both the initial spread sheet and the subsequent
6 spreadsheet, McLeod does *not* include any estimated or calculated savings related to Power
7 Plant Charges and contains no columns pertaining to such charges. In light of these
8 spreadsheets, it is difficult to believe that, at the time it entered the Amendment, McLeod
9 truly believed that the Power Plant Charge would be impacted by the Amendment.

10
11 **Q. TO THE EXTENT THAT MCLEOD HAD REQUESTED AN AMENDMENT TO**
12 **PROVIDE FOR AN “AS CONSUMED” RATE FOR THE POWER PLANT**
13 **ELEMENT, WOULD QWEST HAVE BEEN WILLING TO ENTER INTO SUCH**
14 **AN AMENDMENT?**

15 A. No, Qwest would not have been willing to enter into such an amendment. Such an
16 amendment was never offered or even considered by Qwest. As discussed below, Qwest
17 offers other power options that allow a CLEC to reduce their power plant charges if they
18 choose to do so. Thus, an Amendment to affect the power plant charges as McLeod wants
19 makes no sense.

20 **Q. HAS MCLEOD BEEN HARMED IN ANY WAY BY ENTERING INTO THE**
21 **AMENDMENT?**

1 A. Not at all. McLeod has received a measured power usage rate, which is exactly what was
2 intended by the Amendment. McLeod has received the benefit of the terms of the contract
3 and the Amendment and as a result has experienced significant power usage savings.
4 McLeod's attempt to force a much broader interpretation, and receive benefits it did not
5 bargain for, should be rejected.

6

7 **Q. ARE ANY OTHER CARRIERS ADVANCING THE SAME INTERPRETATION**
8 **OF THE POWER MEASURING AMENDMENT AS MCLEOD?**

9 A. No. Approximately 50 carriers have this same power measuring language in their
10 interconnection agreements or in amendments to their interconnection agreements with
11 Qwest. No other carrier has disputed the power plant charges or advanced the same
12 interpretation of this Amendment as McLeod.

13

14

V. QWEST DC POWER OFFERINGS

15 **Q. PLEASE DESCRIBE THE QWEST PRODUCT OFFERINGS RELATED TO DC**
16 **POWER?**

17 A. Qwest provides DC Power cabling, which is not at issue in this proceeding, along with the
18 following DC power offerings that I will describe below:

19

- 20
- -48 Volt DC Power Capacity
 - -48 Volt Power Usage
- 21

- 1 • DC Power Measurement
- 2 • DC Power Reduction
- 3 • DC Power Restoration

4

5 These power offerings have been designed to offer CLECs flexibility in managing their DC
6 power requirements while at the same time allowing Qwest to manage the overall power
7 requirements of its central offices.

8

9 **Q. PLEASE DESCRIBE THE QWEST RATE ELEMENTS RELATED TO -48 VOLT**
10 **DC POWER CAPACITY AND POWER USAGE ELEMENTS.**

11 A. Qwest's DC Power offering, which provides -48 volt DC power to CLECs' collocation
12 equipment, has two separate rate elements: one of the rate elements is for the power plant
13 and the other is for power usage. The Power Plant charge recovers the fixed costs of the
14 power plant that is available for a CLEC's use. This charge is applied on a per amp basis
15 based upon the quantity of -48 volt DC power specified in a CLEC's collocation order. For
16 example, if a CLEC were to order a power feed of 100 Amps, it would be billed for the 100
17 Amps as a power plant charge.

18

19 The second rate element is the usage charge which recovers the cost for power the CLEC
20 uses. Qwest applies the appropriate -48 volt DC power usage charge to the quantity of
21 power ordered. For orders greater than 60 amps CLECs have the option of opting into the
22 DC Power Measurement offering which is described below.

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Q. PLEASE DESCRIBE THE DC POWER MEASUREMENT OPTION.

A. The Power Measurement option is offered through the Power Measuring Amendment and provides a CLEC with the opportunity to adjust its power consumption usage charges to reflect actual usage, while at the same time maintaining the power capacity it originally ordered. Under the DC Power Measurement offering, Qwest will measure power usage on feeds greater than 60 amps on a semi-annual basis provided that an agreement or amendment has been signed between Qwest and the CLEC. Based on these measurements, Qwest will apply the monthly DC power usage rate to the CLEC’s actual power usage, rather than to the ordered level. Qwest will also take measurements within 30 calendar days of a written request by a CLEC after installation or removal of equipment. Qwest will perform a maximum of four readings per year on a particular collocation site. The Power Measurement option does not affect the Power Plant charge.

Q. PLEASE DESCRIBE THE POWER REDUCTION OFFERING.

A. Power Reduction is an option that allows a CLEC to change its power capacity by reducing ordered amps on a primary and/or secondary feed. The Power Reduction option is offered through a different Amendment than the Power Measuring Amendment. Power Reduction can either be ordered “With Reservation” or “Without Reservation”. DC Power Reduction With Reservation allows a CLEC to reduce ordered amps on a secondary feed to zero while at the same time reserving the fuse position on the Power Distribution Board. The monthly recurring maintenance charge for this reservation does not reserve power, but does hold the

1 power cabling and fuse positions in place for potential future power restoration requests.
2 Power Reduction Without Reservation allows a CLEC to reduce the power on primary and
3 secondary feeds down to a minimum of 20 amps. Billing for the initial power ordered at
4 the collocation site will be modified to reflect the reduced amount of power.
5

6 **Q. PLEASE DESCRIBE THE POWER RESTORATION OPTION.**

7 A. The DC Power Restoration option allows a CLEC to restore previously reduced DC power
8 levels to a level less than or equal to the original DC power level ordered. If a CLEC
9 requests Restoration Without Reservation, Qwest will restore the fuse and breaker position
10 at the power source, if available. If capacity is not available at the original power board,
11 the CLEC will be connected to an alternate power source. In situations where secondary
12 feeds were reduced to zero and the fuse positions were reserved, if Qwest is unable to
13 provide the requested power restoration of the held secondary feed(s) due to power
14 capacity exhaust, Qwest will refund all the collected power maintenance charges
15 mentioned previously. A Quote Preparation Fee for performing a feasibility study and
16 producing a quote is assessed for power restoration in addition to a power restoration
17 charge if the power is restored.
18

19 **Q. WHY DOES QWEST OFFER THESE OPTIONS?**

20 A. As mentioned previously, these offerings have been designed to offer CLECs flexibility in
21 managing their DC power requirements. Through these offerings, CLECs can manage
22 their power charges as their power needs change over time. With the Power Measurement

1 offering a CLEC can reduce power usage charges if consumption is less than ordered.
2 With the Power Reduction offering, a CLEC can reduce the amount of power capacity it
3 has available. Finally, Power Restoration allows for reduced capacity to be restored at
4 some point in the future.

5
6 **Q. WERE THESE OTHER OFFERINGS AVAILABLE AT THE TIME MCLEOD**
7 **SIGNED THE DC POWER MEASURING AMENDMENT?**

8 A. Yes. McLeod protests that the Power Reduction and Power Restoration offering fail to
9 provide as much relief as it seeks now in this proceeding. These offerings, however,
10 represent the full extent of Qwest's willingness to reduce the Power Plant charge. If
11 CLECs could reduce the Power Plant charge to measured levels through the DC Power
12 Measuring Amendment, these offerings would be largely superfluous and unnecessary.
13 The only way to reconcile the fact that the Power Reduction and Power Restoration
14 offerings were offered to CLECs at the same time the DC Power Measuring Amendment
15 was offered, is to conclude that those elements covered by the Power Reduction and Power
16 Restoration offerings are not covered by the DC Power Measuring Amendment. In my
17 view, the existence of these offerings makes it very clear what Qwest's intent was with
18 regard to the DC Power Measuring Amendment.

19

1 **VI. REBUTTAL OF STARKEY AND MORRISON TESTIMONY**

2 **Q. ON PAGE 7 OF HIS TESTIMONY, MR. STARKEY PRESENTS TABLES**
3 **DEPICTING AN EXAMPLE OF THE DOLLAR IMPACT OF EACH PARTY’S**
4 **INTERPRETATION OF THE AMENDMENT. PLEASE COMMENT.**

5 A. Mr. Starkey’s example demonstrates why McLeod’s interpretation, in addition to not
6 complying with the Amendment language, is not logical. Under the McLeod
7 interpretation, when power usage goes from the ordered 180 amps to an actual usage of 24
8 amps, power plant charges are reduced from \$1403 to \$187, yet the costs Qwest incurred to
9 provide McLeod with capacity for 180 amps have not changed at all. In fact, despite the
10 lesser actual usage, McLeod still has 180 amps of power capacity available for its use if
11 McLeod needs it. McLeod may not want to continue to pay for the capacity it ordered, but
12 the fact remains, it did order this capacity and Qwest has made it available. If McLeod
13 now decides that it doesn’t need all of the capacity it originally ordered, the power
14 reduction options I described previously would allow it to reduce its capacity. Instead,
15 McLeod would like to interpret the Amendment to allow for retention of the ordered
16 capacity but avoid paying for all of the capacity it has been provided.

17
18 **Q. MR. STARKEY STATES ON PAGE 9 OF HIS TESTIMONY THAT “NOWHERE**
19 **WITHIN THE AMENDMENT DOES QWEST ISOLATE ONE OF THOSE**
20 **CHARGES VERSUS THE OTHER, AND INDICATE THAT ONE OF THE DC**

1 **POWER USAGE RATES ELEMENTS SHOULD BE BILLED BASED UPON**
2 **ACTUAL CONSUMPTION...” IS HE CORRECT?**

3 A. No. Qwest’s intent as to which charge is affected by the DC Power Measuring
4 Amendment is quite clear. As I mentioned previously, the DC Power Measuring
5 Amendment mentions the “DC Power Usage Charge” multiple times, and never mentions
6 the separate Power Plant charge. It is clear from the language of the Amendment that the
7 parties did not intend to affect or alter both rate elements, only the Power Usage Charge.
8 The Power Plant charge remains unchanged under the DC Power Measuring Amendment.

9
10 **Q. ON PAGE 15 OF HIS TESTIMONY MR. STARKEY ARGUES THAT, “TO THE**
11 **EXTENT QWEST ASSESSES (OR HAS IN THE PAST ASSESSED) THE POWER**
12 **PLANT CHARGE BASED ON THE NUMBER OF AMPS INCLUDED IN A**
13 **CLEC’S ORIGINAL ORDER FOR POWER (AS OPPOSED TO ITS ACTUAL**
14 **USAGE), QWEST’S APPLICATION WOULD BE CONTRARY TO COST**
15 **CAUSATIVE REQUIREMENTS INHERENT IN THE FCC’S TOTAL ELEMENT**
16 **LONG RUN INCREMENTAL COST (TELRIC) RULES.” DO YOU AGREE?**

17 A. Absolutely not. Mr. Starkey provides no basis for this claim. Moreover, this argument is
18 not an attack on the DC Power Measuring Amendment, but on the Power Plant rate itself.
19 McLeod has not challenged the Power Plant rate in this proceeding – indeed, McLeod paid
20 the Power Plant rate at ordered levels for several years before ever entering the DC Power
21 Measuring Amendment. Such arguments properly belong in a cost docket, not in this case.

1 **Q. ON PAGE 17 OF HIS TESTIMONY MR. STARKEY ARGUES THAT THE**
2 **POWER REDUCTION OPTION IS NOT A GOOD ALTERNATIVE TO THE**
3 **POWER MEASUREMENT OPTION. DO YOU AGREE?**

4 A. No. As noted above, the Power Reduction offering makes clear Qwest's intent with regard
5 to the DC Power Measuring Amendment. Apart from contractual issues, however, the
6 existence of the Power Reduction Amendment represents an opportunity for McLeod to
7 reduce some of its Power Plant costs. McLeod's dismissal of the Power Reduction option
8 it is not a reasonable position. McLeod would prefer to have the maximum capacity
9 available but not be responsible for the costs associated with providing this capacity.
10 Under the Power Reduction option, McLeod could avoid paying for unneeded capacity, but
11 it would not have the capacity available should it require it. Through its interpretation of
12 the Power Measuring Amendment McLeod is attempting to have the guarantee of available
13 power, without paying for that availability.

14
15 From Qwest's perspective, both Power Reduction and Power Measurement are useful
16 options depending on the needs of the CLEC. With Power Measurement, a CLEC can
17 reduce its power usage charges while at the same time maintaining its power capacity
18 should it need it. The cost to the CLEC in choosing this alternative is to continue to pay for
19 the ordered capacity. On the other hand, should a CLEC choose to reduce its capacity
20 through Power Reduction, it can reduce its capacity charge. The downside to the CLEC
21 with this alternative is that the CLEC no longer has the higher capacity available to it.
22 Qwest is willing to provide a variety of options to meet the needs of individual CLECs, but

1 is not willing, nor did it do so through the DC Power Measuring Amendment, to provide an
2 option that allows CLECs to avoid compensating Qwest for the capacity the CLEC
3 ordered.

4
5 **Q. AT PAGE 17 OF HIS TESTIMONY MR. STARKEY STATES THAT “THE**
6 **POWER REDUCTION AMENDMENT WOULD REQUIRE MCLEOD TO INCUR**
7 **LARGE RE-ARRANGEMENT FEES TO RE-ARRANGE POWER DISTRIBUTION**
8 **FACILITIES THAT IT DOES NOT NECESSARILY WANT TO CHANGE.”**
9 **PLEASE COMMENT.**

10 A. Mr. Starkey’s statement simply confirms my previous answer that McLeod would prefer to
11 have the maximum capacity available but not be responsible for the costs associated with
12 providing this capacity.

13
14 **Q. ON PAGE 58 OF HIS TESTIMONY MR. MORRISON DISCUSSES THE HIGH**
15 **COST OF POWER REDUCTION. DOES THIS LIMIT THE VALUE OF THE**
16 **POWER REDUCTION OPTION TO CLECS?**

17 A. No. The example Mr. Morrison cites in his testimony demonstrates that this is not the case.
18 On page 57 Mr. Morrison discusses an example where power is reduced from 60 amps to
19 20 amps. On page 58 he notes that the up front costs for the Power Reduction offering can
20 exceed \$1000. Using the Utah Power Plant per amp charge of \$11.7795 for less than 60
21 amps and \$7.7927 for greater than or equal to 60 amps, the 40 amp savings in capacity
22 achieved through power reduction equates to a monthly savings of \$ 231.97. Even

1 assuming a power reduction charge of \$4000, the savings in monthly power capacity
2 charges would offset the power reduction charge in less than 18 months' time.

3
4 **Q. ON PAGES 59-61 OF HIS TESTIMONY MR. MORRISON DISCUSSES THE**
5 **POSITIONS TAKEN BY QWEST COMMUNICATIONS CORPORATION (QCC)**
6 **IN AN ILLINOIS PROCEEDING. MR. STARKEY CLAIMS THAT QCC**
7 **EXPRESSED THE SAME CONCERNS THAT HE HAS WITH REGARDS TO**
8 **QWEST POWER REDUCTION AMENDMENT. PLEASE COMMENT.**

9 A. The proceeding that Mr. Morrison refers to differs in several key aspects from the issues
10 related to the Qwest Power Reduction offering. First the Illinois case involves a proposal
11 by AT&T/SBC that would require CLECs to fuse at a level not more than 200% of the
12 CLEC's actual usage. This is really a re-fusing proposal, not a power reduction offer.
13 Critically, the re-fusing proposal would be mandatory, unlike the Qwest power reduction
14 offering which is a voluntary offering that CLECs can choose to avail themselves of or not.
15 Second, the SBC Illinois proposal would require frequent mandatory re-fusing as usage
16 levels change. Finally, the power rate structure in Illinois is a blended rate which combines
17 both power plant and power usage. Trying to compare this proposal with the Qwest Utah
18 rate structure which has separate elements for power plant and usage is a classic case of
19 apples and oranges.

20
21 In the Illinois case, Ms. Hunnicutt-Bishara expressed three concerns about the mandatory
22 re-fusing: legal, financial and operational. Ms. Hunnicutt-Bishara's legal concern had to

1 do with compliance with an Illinois Administrative code, a code that is not relevant to Utah
2 and thus not an issue here. Ms. Hunnicutt-Bishara's financial concern had to do with the
3 fact that, under the SBC proposal, as I mentioned above, CLECs must constantly re-fuse as
4 power usage changes, forcing CLECs to constantly incur costs for re-fusing. Again, this is
5 a far cry from Qwest's power reduction offering. Ms. Hunnicutt-Bishara's final concern,
6 an operational concern, had to do with the limitation of fusing to 200% of usage levels, a
7 limitation that is not associated with Qwest's Power Reduction offering. None of Ms.
8 Hunnicutt-Bishara's concerns that Mr. Morrison cites have anything to do with the Power
9 Reduction Offering that Qwest offers CLECs.

10
11
12 **VII. SUMMARY/CONCLUSION**
13

14 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

15 A. This complaint centers on the interpretation of language in a contract amendment. In
16 Qwest's view, the language is clear that the power Measuring Amendment affects only the
17 DC Power Usage charge, not the Power Plant charge. Qwest's interpretation is consistent
18 with the way the rate elements are broken out in the Exhibit A to the SGAT. It is also
19 consistent with the information that is and was available to CLEC customers on Qwest's
20 website. Finally, McLeod's interpretation is not only inconsistent with all of the objective
21 indicators of intent discussed above, it is also inconsistent with McLeod's own internal
22 analysis prepared in connection with its decision to enter into the Amendment.

1

2 Qwest respectfully requests that the Commission rule in favor of Qwest's interpretation of
3 the Amendment language.

4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes it does.