

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

McLEODUSA TELECOMMUNICATONS SERVICES, INC.,)	Docket No. UT- 063013
)	
Petitioner,)	
)	
v.)	
)	
QWEST CORPORATION,)	
)	
Respondent.)	
)	

RESPONSE TESTIMONY

OF

WILLIAM R. EASTON

ON BEHALF OF

QWEST CORPORATION

June 14, 2006

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1 A. Yes I have. I testified in Docket Numbers UT-940641, UT-950200, UT-951425, UT-
2 960347, UT-003013 (Part D), UT-033035, UT-033044 and UT-043045.

3

4

II. PURPOSE OF TESTIMONY

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

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

16

17

III. OVERVIEW OF THE CASE

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

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

1 I am not a lawyer, but it seems to me the interpretation of the DC Power Measuring
2 Amendment is a relatively straightforward exercise. It is important to note at the outset
3 that, prior to the parties' execution of the DC Power Measuring Amendment, Qwest and
4 McLeod had agreed that McLeod would pay the DC Power Usage charge and the DC
5 Power Plant charge based on the quantity of -48 volt capacity McLeod specified in its
6 original orders for power distribution. The Amendment changed one of these charges, but
7 did not mention the other. The Amendment identifies the "DC Power Usage Charge"
8 multiple times – but never mentions the "Power Plant" charge, which is a separate charge
9 reflected in the Exhibit A to the parties' interconnection agreement. Only a strained
10 interpretation of this plain language could yield the result McLeod seeks in this case, and
11 that is exactly what the dozens of pages of testimony filed by McLeod in this case provide.

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

1 In connection with these meetings, more than a year before McLeod accepted the
2 Amendment without comment, question, or proposed changes, Qwest made McLeod aware
3 of documents addressing Qwest's position on the precise question of whether the DC
4 Power Measuring Amendment affects the DC Power Plant charge. The language of the
5 Amendment seems clear, and Qwest made its position clear well in advance of the
6 execution of the Amendment.

7
8 Mr. Ashton's testimony provides further insight into the technical and engineering reasons
9 why Qwest's interpretation is reasonable. I will avoid examining those issues in detail, but
10 based on my review of the contract and the processes that led to its creation and execution,
11 McLeod's position is an after the fact challenge to the DC Power Plant rate and not an
12 interpretation of the Amendment itself.

13
14 **IV. THE POWER MEASURING AMENDMENT**

15 **Q. WHAT IS THE LANGUAGE IN THE DC POWER MEASURING AMENDMENT**
16 **THAT ADDRESSES HOW CHARGES WILL CHANGE AS A RESULT OF**
17 **ACTUAL POWER USAGE?**

18 A. The DC Power Measuring Amendment was executed with identical language in all
19 fourteen states where Qwest provides local exchange service as an incumbent, including
20 Washington. Two provisions are key to its interpretation on this issue. First, section 1.2 of
21 the Amendment describes the process for taking power usage readings. In that section, the
22 Amendment provides that "Based on these readings, if CLEC is utilizing less than the
23 ordered amount of power, Qwest will reduce *the monthly usage rate* to CLEC's actual
24 use." (emphasis added). Second, Section 2 reads as follows:

25
26 **2.0 RATE ELEMENTS – ALL COLLOCATION**
27

1 2.1 -48 Volt DC Power Usage and AC Usage Charges. Provide -48 volt DC
2 power to CLEC collocated equipment and is fused at one hundred twenty-five
3 percent (125%) of request. The DC Power Usage Charge is for capacity of the
4 power plant available for CLEC's use. The AC Usage Charge is for the power
5 used by CLEC. Both the DC Power Usage Charge and the AC Usage Charge are
6 applied on a per ampere basis.
7

8 2.2 The -48 Volt DC Power *Usage* Charge is specified in Exhibit A of the
9 Agreement and applies to the quantity of -48 Volt Capacity specified by CLEC in
10 its order.
11

12 2.2.1 -48 Volt DC Power *Usage* Charge – Applies on a per amp basis to all
13 orders greater than sixty (60) amps. Qwest will initially apply the -48 Volt DC
14 Power Usage Charge from Exhibit A of the Agreement to the quantity of power
15 ordered by CLEC. Qwest will then determine the actual usage at the power board
16 as described in Section 1.2. There is a one (1) amp minimum charge for -48 Volt
17 DC Power *Usage*. [Italics Added].
18

19 **Q. PLEASE EXPLAIN HOW THIS LANGUAGE SUPPORTS QWEST'S CLAIM**
20 **THAT THE USE OF MEASURED POWER LEVELS APPLIES ONLY TO THE**
21 **POWER USAGE RATE ELEMENT AND NOT TO THE POWER PLANT RATE**
22 **ELEMENT.**

23 A. There are two different types of charges for DC Power: power plant and power usage. The
24 DC Power Measuring Amendment clearly mentions only the "power usage rate" in section
25 1.2 and the "DC Power Usage Charge" in section 2, and never mentions the separate
26 "Power Plant" charge. Indeed, the term "DC Power Usage Charge" appears five times in
27 the DC Power Measuring Amendment, with an additional two references to the "power
28 usage rate" in section 1.2. Because only one rate element has been explicitly identified in
29 the Amendment, it would be inconsistent with the language of the Amendment to conclude
30 that it applies to more than one element, especially a rate element that is never specifically
31 mentioned in the Amendment.
32

33 **Q. IS THE LANGUAGE OF THE AMENDMENT AND QWEST'S**

1 **INTERPRETATION OF IT CONSISTENT WITH THE WAY THE DC POWER IS**
2 **DESCRIBED IN THE PARTIES' INTERCONNECTION AGREEMENT?**

3 A. Yes. Section 8.3.1.6 of the interconnection agreement reads as follows :

4
5 -48 Volt DC Power Usage Charge. Provides -48 volt DC power to CLEC collocated
6 equipment and is fused at 125% of request. Charged on a per ampere basis.

7 This is a general reference to the heading in Section 8.1.4.1 of the Exhibit A to the
8 interconnection agreement. The Exhibit A lays out the DC Power rate elements and
9 charges as follows:

10
11 8.1.4.1 DC Power Usage, per Ampere, per Month

12 8.1.4.1.1	Power Plant	\$ 9.34
13 8.1.4.1.2	Usage Less than 60 Amps, per Ampere Ordered	\$ 1.57
14 8.1.4.1.3	Usage More Than 60 Amps, per Ampere Ordered	\$ 3.13

15 It is important to note that only the Power Usage rate elements make the distinction
16 between “greater than” or “less than 60 amps.” The applicable rate for power plant
17 capacity makes no such distinction. Section 2.2.1 of the Amendment reflects the only
18 charges that are changed by the DC Power Measuring Amendment, and makes clear that
19 the usage charge impacted by the amendment “applies on a per amp basis to all orders
20 greater than sixty (60) amps”. Section 2.2.1 then goes on to describe how this charge will
21 be reduced to reflect actual usage “as described in section 1.2.” The first sentence of
22 section 1.2 notes that “the power usage rate reflects a discount from the rates for those
23 feeds greater than sixty (60) amps.” There are two different power usage charges in the
24 Exhibit A – \$3.13 for more than 60 amps, and a lower charge of \$1.57 for orders of less
25 than 60 amps. The power plant charge applies to all orders regardless of whether they are
26 greater or less than 60 amps. Read together with the rest of the agreement, particularly the
27 referenced language from section 1.2, the language in section 2.2.1 – again referencing
28 power *usage* and not power *plant* – can apply only to the usage charge at 8.1.4.1.3 of the
29 Exhibit A, not the power plant charge.

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

A. No. First, Sections 2.2 and 2.2.1 of the DC Power Measuring Amendment provide only that the “-48 Volt DC Power Usage Charge” is affected by measured usage. This reference is in the singular, which indicates that only one charge is affected. The references to the “power usage rate” and the “monthly usage rate” in section 1.2 are similarly phrased in the singular. McLeod’s interpretation requires altering each occurrence of this language to read in the plural: “-48 Volt DC Power Usage Charges” and “monthly usage rates.” Moreover, there is no charge associated with the heading at 8.1.4.1 of the Exhibit A to the interconnection agreement: “DC Power Usage, per ampere, per month.” The only charges for power usage are associated with items 8.1.4.1.2 and 8.1.4.1.3, and the DC Power Measuring Amendment clearly does not alter the rate for item 8.1.4.1.2.

Second, Section 2.1 of the underlying interconnection agreement between Qwest and McLeod provides that headings have no force or effect in the interpretation of the agreement (emphasis added):

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. **The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.** Unless the context shall otherwise require, any reference to any agreement, other instrument (including U S WEST or other third party offerings, guides or practices), statute, regulation, rule or tariff applies to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

1 McLeod's interpretation of the Amendment would void this provision of the
2 interconnection agreement. Section 8.1.4.1 of Exhibit A is clearly a "heading", not a
3 separate rate element, and as such should not be read to have any effect on the language of
4 the Amendment. At page 9 of his testimony Mr. Starkey attempts to minimize this
5 language of the interconnection agreement by referring to section 8.1.4.1 of Exhibit A as a
6 rate "grouping" and not a heading, but I see no real difference between these terms.
7 Because no charges are associated with Section 8.1.4.1, it is clearly a heading.

8
9 **Q. IN PROCEEDINGS IN OTHER STATES MCLEOD HAS ARGUED THAT THE**
10 **AMENDMENT MODIFIES THE "POWER PLANT" CHARGE BECAUSE**
11 **SECTION 2.1 OF THE AMENDMENT DEFINES "DC POWER USAGE CHARGE"**
12 **TO BE "FOR THE CAPACITY OF THE POWER PLANT AVAILABLE FOR**
13 **CLEC'S USE". DO YOU AGREE?**

14 A. No. McLeod's interpretation is problematic for several reasons. First, Section 2.1 of the
15 Amendment is a general, contextual section which does not identify the rights and
16 obligations of the parties. It is Section 2.2.1 which discusses the specifics of how power
17 measuring applies. Second, this interpretation is inconsistent with the references to power
18 usage rates and charges in section 1.2 and 2.2.1 of the Amendment. Further, McLeod's
19 interpretation is inconsistent with McLeod's own advocacy. McLeodUSA's interpretation
20 of Section 2.1 would require that the DC Power Measuring Amendment applies *only* to
21 Power Plant, a position that even McLeod does not take. Finally, Mr. Ashton's testimony
22 establishes that the capacity of the power plant available for CLEC's use continues to be
23 the ordered amount, regardless of usage. Thus, the mere mention of power plant in the
24 amendment does not necessarily mean that the rate is affected by Power Measuring,
25 reading the agreement as a whole.

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

4 A. Yes. Attached, as Exhibit WRE-2, is a copy of the Collocation Direct Current (DC) Power
5 Overview as it appeared on the Wholesale Products and Services portion of the Qwest.com
6 website at the time McLeod executed the Amendment and many months prior. Page 1 of
7 the overview plainly distinguishes between power plant capacity and usage charges and, in
8 the “greater than 60 amps” usage description, notes that “Qwest will adjust the monthly
9 usage rate based upon the actual usage on a going forward basis if the CLEC has opted into
10 DC Power Measurement.” The overview mentions nothing about reducing the power plant
11 capacity charge based upon actual usage.

12
13 **Q. WERE CLECS INVOLVED IN THE DEVELOPMENT OF THE POWER**
14 **MEASUREMENT PRODUCT OFFERING?**

15 A. Yes. The Power Measurement offering went through the formal Change Management
16 Process (CMP) to insure that all CLECs were informed of the offering and had an
17 opportunity to offer comments and ask questions about its application. The CMP resulted
18 in the creation of the PCAT attached as Exhibit WRE 2.

19
20 **Q. PLEASE DESCRIBE HOW THIS ISSUE WAS ADDRESSED IN THE CHANGE**
21 **MANAGEMENT PROCESS.**

22 A. On May 7, 2003, pursuant to the formal CMP process, Qwest entered a Change Request
23 (CR) to introduce the Power Measurement process to the CLEC community. At the May
24 2003 monthly CMP meeting, the CLECs requested an input meeting to discuss the CR in
25 more detail. This input meeting was held on June 5, 2003. Throughout the summer of
26 2003, a status report on the CR was provided to CLECs at the monthly CMP meetings. At

1 the September monthly CMP meeting, CLECs requested another input meeting to further
2 discuss the details of the CR in more detail.

3
4 Accordingly, an ad hoc meeting was scheduled and held on October 8, 2003 with a follow-
5 up additional ad hoc meeting held on October 20, 2003. Throughout the process, multiple
6 redline versions of the Power Measurement language were made available to the CLECs
7 as discussions progressed. The end result of the process was the final approved language
8 incorporated into the Collocation Direct Current (DC) Power Overview on November 18
9 and implemented on December 23rd.

10
11 **Q. WERE THERE ADDITIONAL EXCHANGES OF INFORMATION AND NOTICES**
12 **BEYOND THE MONTHLY CMP AND AD HOC MEETINGS?**

13 A. Yes. As a part of the CMP process, CLECs submit questions via the CMP website and ask
14 for Qwest responses. One CLEC, Allegiance, formally submitted a question requesting
15 clarification on what specific DC power rate elements were to be impacted by Power
16 Measuring Amendment. Significantly, Allegiance's interpretation of the Power Measuring
17 Amendment at that time was consistent with Qwest's interpretation in this proceeding. The
18 Allegiance question and the Qwest response is attached as Exhibit WRE-3. Qwest's
19 response to Allegiance states very clearly that only the power usage charge was affected,
20 the power plant charge was not. All CLECs - including McLeod - were notified that
21 Qwest's response to the Allegiance question was available on the public CMP website as of
22 October 2003.

23
24 **Q. DID MCLEOD PARTICIPATE IN THESE MEETINGS?**

25 A. Yes, McLeod participated in these meetings. Stephanie Prull of McLeod attended the
26 5/21/03 meeting where the DC Power Measuring Amendment topic was first introduced, as

1 well as the monthly CMP meetings for June, July, August, September and October where
2 status for the DC Power Measuring Amendment CR was provided to the CLECs. McLeod
3 apparently chose not to participate in any of the three ad hoc meetings where the subject
4 was discussed in detail.

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

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

23
24 **Q WERE MCLEOD EMPLOYEES ON THE DISTRIBUTION LIST FOR THE**
25 **NOTICES LISTED ABOVE?**

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

5
6 **Q. DOES MCLEOD AGREE THAT IT IS IMPORTANT TO MONITOR THE CMP**
7 **PROCESS?**

8 A. Yes, McLeod has previously testified in proceedings on the identical Amendment in Iowa
9 that that McLeod regularly participates in industry forums and discussions with Qwest
10 regarding products and services that Qwest will offer to the industry, and actively attempts
11 to stay abreast of pertinent information. (Starkey Iowa Rebuttal, page 5, lines 16-24). In
12 Utah, McLeod further acknowledged that it monitors CMP and would have been involved
13 if it was important to McLeod.

14
15 **Q. MCLEOD HAS ARGUED IN OTHER PROCEEDINGS THAT IT SOUGHT AN**
16 **AMENDMENT WITH THE "EXPRESS" GOAL TO BE BILLED FOR POWER**
17 **BASED ON WHAT IT ACTUALLY USES. DID MCLEOD EXPRESS THAT**
18 **GOAL TO QWEST?**

19 A. No, McLeod never shared their intent regarding the effect of the Amendment with Qwest
20 prior to its execution. This alone is significant given the substantial amounts of money at
21 issue. It would have taken little effort by McLeod to discuss the matter with Qwest, or
22 review the PCAT, or review the CMP process. Given the importance McLeod places on
23 DC power charges, a reasonably prudent carrier in their position would probably do all
24 three, any one of which would have made it obvious to McLeod that only the usage rate
25 would be affected by the Amendment.

26

1 In fact, the notion that obtaining “as-measured” billing for DC power plant charges was
2 McLeod’s express goal is belied by the fact that McLeod acknowledged in Iowa that the
3 persons charged with negotiating and obtaining the DC Power Measuring Amendment
4 were instructed to make sure that the DC Power Measuring Amendment did not result in
5 potentially increased power charges, as had been the case in a similar agreement negotiated
6 in Michigan.¹ In reviewing the documents produced in discovery in this case, I found no
7 evidence that McLeod even expressed to Qwest the supposed goal of avoiding the situation
8 they faced in Michigan. Regardless, this evidence shows at least two things: (1) in
9 negotiating the DC Power Measuring Amendment, McLeod was not focused on obtaining
10 “as-measured” billing for the power plant charge, but on avoiding the Michigan problem;
11 and (2) that at least internally, McLeod considered the issues surrounding DC Power
12 charges to be sufficiently significant and important to them, because they had previously
13 participated in DC power charge negotiations in other states, and had instructed their
14 employees to manage their negotiations with Qwest to reflect the lessons learned in those
15 negotiations. These facts underscore the prudence of a reasonable investigation into the
16 publicly available documents and industry discussions surrounding the Amendment.

17
18 **Q. HAS MCLEOD PROVIDED INFORMATION IN A DISCOVERY REQUEST**
19 **THAT CAN HELP THIS COMMISSION ASSESS WHAT MCLEOD’S INTENT**
20 **WAS AT THE TIME IT ENTERED INTO THE POWER AMENDMENT?**

21 A. Yes. In response to a discovery request in Iowa McLeod provided a spreadsheet it
22 developed over the three weeks prior to entering into the Amendment. This spreadsheet
23 applies to all states. Attached, as Exhibit WRE-4, is copy of that spreadsheet as it existed
24 in July/August 2004. Exhibit WRE-5 is the only other version of that spreadsheet, which

¹ Iowa Transcript p. 467.

1 appears to have been populated and saved in August 2005. Significantly in both the initial
2 spreadsheet and the subsequent spreadsheet, McLeod does *not* include any estimated or
3 calculated savings related to Power Plant Charges. Neither of the spreadsheets contain any
4 columns pertaining to such charges. In light of these spreadsheets, the only reasonable
5 conclusion that can be drawn is that, at the time it entered the Amendment, McLeod had no
6 intent or belief that the Power Plant Charge would be impacted by the Amendment.

7
8 **Q. IS IT POSSIBLE THAT THE PERSONS WHO PUT TOGETHER THE SPREAD**
9 **SHEET WERE UNAWARE THAT THERE ARE SEPARATE POWER PLANT**
10 **AND POWER USAGE RATES?**

11 A. No. It is my understanding that these spreadsheets were put together by McLeod
12 engineers. Given that the collocation quotes that Qwest provides to McLeod clearly
13 delineate plant and usage charges, I would find it hard to believe that McLeod engineers
14 were unaware that there are both plant and usage rates. Attached as Confidential Exhibit
15 WRE-6, is a copy of a collocation price quote provided to McLeod in May 2003, several
16 months prior to the signing of the Amendment. The second page of the quote provides
17 quotes for the monthly recurring charges and has separate quotes for DC Power Plant and
18 DC Power Usage.

19
20 **Q. WHAT HAS MCLEOD STATED IN OTHER PROCEEDINGS REGARDING ITS**
21 **INTERPRETATION OF THE AMENDMENT?**

22 A. In both the Utah and Iowa proceedings, McLeod acknowledged that it was only after
23 signing the Amendment, in fact many months after signing the Amendment, that it first
24 began to interpret the language in the Amendment in the manner that it is proposing in this
25 proceeding.

1 **Q. COULD THIS HELP EXPLAIN WHY MCLEOD DID NOT FILE A FORMAL**
2 **DISPUTE WITH QWEST UNTIL SEPTEMBER 2005?**

3 A. Yes. McLeod did not notify Qwest that it was disputing the billing until nearly a year after
4 the Power Measuring went into effect. This, despite the fact that Section 5.4.4 of the
5 Parties' interconnection agreement states:

6
7 "Should CLEC or U S WEST dispute, in good faith, any portion of the monthly billing
8 under this Agreement, the parties will notify each other in writing within thirty (30)
9 calendar days of the receipt of such billing, identifying the amount, reason and
10 rationale of such dispute. CLEC and U S WEST shall pay all amounts due."

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

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

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

24 A. Not at all. McLeod has received a measured power usage rate, which is exactly what was
25 intended by the Amendment. McLeod has received the benefit of the terms of the contract
26 and the Amendment and as a result has experienced significant power usage savings. In
27 order to obtain these savings, McLeod gave up nothing and made no additional promises.

1 McLeod's attempt to force a much broader interpretation, and receive benefits it did not
2 bargain for, should be rejected.

3
4 **Q. ARE ANY OTHER CARRIERS ADVANCING THE SAME INTERPRETATION**
5 **OF THE POWER MEASURING AMENDMENT AS MCLEOD?**

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

10
11 **V. QWEST DC POWER OFFERINGS**

12 **Q. PLEASE DESCRIBE THE QWEST PRODUCT OFFERINGS RELATED TO DC**
13 **POWER.**

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

- 16
17
 - -48 Volt DC Power Capacity
 - -48 Volt Power Usage
 - DC Power Measurement
 - DC Power Reduction
 - DC Power Restoration

22
23 These power offerings have been designed to offer CLECs flexibility in managing their DC
24 power requirements while at the same time allowing Qwest to manage the overall power
25 requirements of its central offices.

26
27 **Q. PLEASE DESCRIBE THE QWEST RATE ELEMENTS RELATED TO -48 VOLT**
28 **DC POWER CAPACITY AND POWER USAGE ELEMENTS.**

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

8

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

13

14 **Q. PLEASE DESCRIBE THE DC POWER MEASUREMENT OPTION.**

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

26

1 **Q. PLEASE DESCRIBE THE POWER REDUCTION OFFERING.**

2 A. Power Reduction is an option that allows a CLEC to change its power capacity by reducing
3 ordered amps on a primary and/or secondary feed. The Power Reduction option is offered
4 through a different Amendment than the Power Measuring Amendment. Power Reduction
5 can either be ordered "With Reservation" or "Without Reservation". DC Power Reduction
6 With Reservation allows a CLEC to reduce ordered amps on a secondary feed to zero while
7 at the same time reserving the fuse position on the Power Distribution Board. The monthly
8 recurring maintenance charge for this reservation does not reserve power, but does hold the
9 power cabling and fuse positions in place for potential future power restoration requests.
10 Power Reduction Without Reservation allows a CLEC to reduce the power on primary and
11 secondary feeds down to a minimum of 20 amps. Billing for the initial power ordered at
12 the collocation site will be modified to reflect the reduced amount of power.

13

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

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

26

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

2 A. As mentioned previously, these offerings have been designed to offer CLECs flexibility in
3 managing their DC power requirements. Through these offerings, CLECs can manage
4 their power charges as their power needs change over time. With the Power Measurement
5 offering a CLEC can reduce power usage charges if consumption is less than ordered.
6 With the Power Reduction offering, a CLEC can reduce the amount of power capacity it
7 has available. Finally, Power Restoration allows for reduced capacity to be restored at
8 some point in the future.

9

10 **Q. WERE THESE OTHER OFFERINGS AVAILABLE AT THE TIME MCLEOD**
11 **SIGNED THE DC POWER MEASURING AMENDMENT?**

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

23

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

25 **Q. ON PAGE 7 OF HIS TESTIMONY, MR. STARKEY PRESENTS TABLES**
26 **DEPICTING AN EXAMPLE OF THE DOLLAR IMPACT OF EACH PARTY'S**

1 **INTERPRETATION OF THE AMENDMENT. PLEASE COMMENT.**

2 A. Mr. Starkey's example demonstrates why McLeod's interpretation, in addition to not
3 complying with the Amendment language, is not logical. Under the McLeod
4 interpretation, when power usage goes from the ordered 180 amps to an actual usage of 24
5 amps, power plant charges are reduced from \$1681 to \$224, yet the costs Qwest incurred to
6 provide McLeod with capacity for 180 amps have not changed at all. In fact, despite the
7 lesser actual usage, McLeod still has 180 amps of power capacity available for its use if
8 McLeod needs it. McLeod may not want to continue to pay for the capacity it ordered, but
9 the fact remains, it did order this capacity and Qwest has made it available. If McLeod
10 now decides that it doesn't need all of the capacity it originally ordered, the power
11 reduction options I described previously would allow it to reduce its capacity. Instead,
12 McLeod would like to interpret the Amendment to allow for retention of the ordered
13 capacity but avoid paying for all of the capacity it has been provided.

14
15 **Q. MR. STARKEY STATES ON PAGE 9 OF HIS TESTIMONY THAT "IT SEEMS**
16 **VERY CLEAR THAT THE INTENTION WAS TO APPLY THE AMENDMENT**
17 **TO THE RATES WITHIN THE REFERENCED RATE GROUP." PLEASE**
18 **COMMENT.**

19 A. As I discussed previously, the interconnection agreement between the two parties has
20 explicit language stating that headings are not intended to be a part of or affect the meaning
21 of the agreement. The basic problem with McLeod's interpretation is that the amendment
22 refers to a power "usage charge" from Exhibit A to the Amendment. The heading or "rate
23 grouping", as Mr. Starkey refers to it, has no associated rate. Given the language in the
24 Amendment and the charges in Exhibit A, Qwest's interpretation is the only logical
25 interpretation. Further, given that all available evidence regarding McLeod's actual intent

1 clearly indicates that both Qwest and McLeod did not intend to see Power Plant charges
2 reduced, Mr. Starkey's testimony rings hollow.

3
4 **Q. ON PAGE 15 OF HIS TESTIMONY MR. STARKEY ARGUES THAT, "TO THE**
5 **EXTENT QWEST ASSESSES (OR HAS IN THE PAST ASSESSED) THE POWER**
6 **PLANT CHARGE BASED ON THE NUMBER OF AMPS INCLUDED IN A**
7 **CLEC'S ORIGINAL ORDER FOR POWER (AS OPPOSED TO ITS ACTUAL**
8 **USAGE), QWEST'S APPLICATION WOULD BE CONTRARY TO COST**
9 **CAUSATIVE REQUIREMENTS INHERENT IN THE FCC'S TOTAL ELEMENT**
10 **LONG RUN INCREMENTAL COST (TELRIC) RULES." DO YOU AGREE?**

11 A. Absolutely not. Mr. Starkey provides no basis for this claim. Moreover, this argument is
12 not an attack on the DC Power Measuring Amendment, but on the Power Plant rate itself.
13 McLeod has not challenged the Power Plant rate in this proceeding – indeed, McLeod paid
14 the Power Plant rate at the Commission-approved ordered levels for several years before
15 ever entering the DC Power Measuring Amendment. Such arguments properly belong in a
16 cost docket, not in this case.

17
18 **Q. HAS MCLEOD RECOGNIZED THAT QWEST INCURS COSTS FOR**
19 **DIFFERENT POWER RATE ELEMENTS IN DIFFERENT MANNERS?**

20 A. Yes, Mr. Starkey explained in his rebuttal testimony in Iowa (page 11) that he thinks "it is
21 important to break Qwest's central office power system into the three distinct components
22 detailed below in order to distinguish between the manner by which Qwest incurs cost
23 relative to each." Mr. Starkey then sets out a table showing the rate elements and rates for
24 power plant, power delivery, and power usage. Thus, early on in this proceeding, Mr.
25 Starkey recognized that Qwest does indeed incur costs differently, and structure its rates
26 differently, for each of those three "distinct" elements.

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Q. HAS MCLEOD INCLUDED THAT TESTIMONY HERE IN WASHINGTON?

A. No, that portion of Mr. Starkey’s rebuttal testimony is curiously absent. This may be because that testimony from Mr. Starkey supports Qwest’s contentions regarding the differences between the various rate elements.

Q. ON PAGE 18 OF HIS TESTIMONY MR. STARKEY ARGUES THAT THE POWER REDUCTION OPTION IS NOT A GOOD ALTERNATIVE TO THE POWER MEASUREMENT OPTION. DO YOU AGREE?

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

From Qwest’s perspective, both Power Reduction and Power Measurement are useful options depending on the needs of the CLEC. With Power Measurement, a CLEC can reduce its power usage charges while at the same time maintaining its power capacity should it need it. The cost to the CLEC in choosing this alternative is to continue to pay for the ordered capacity. On the other hand, should a CLEC choose to reduce its capacity through Power Reduction, it can reduce its capacity charge. The downside to the CLEC

1 with this alternative is that the CLEC no longer has the higher capacity available to it.
2 Qwest is willing to provide a variety of options to meet the needs of individual CLECs, but
3 is not willing, nor did it do so through the DC Power Measuring Amendment, to provide an
4 option that allows CLECs to avoid compensating Qwest for the capacity the CLEC
5 ordered.

6
7 **Q. AT PAGE 18 OF HIS TESTIMONY MR. STARKEY STATES THAT “THE**
8 **POWER REDUCTION AMENDMENT WOULD REQUIRE MCLEOD TO INCUR**
9 **LARGE RE-ARRANGEMENT FEES TO RE-ARRANGE POWER**
10 **DISTRIBUTION FACILITIES THAT IT DOES NOT NECESSARILY WANT TO**
11 **CHANGE.” PLEASE COMMENT.**

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

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

19 A. No. During discovery, McLeod asked Qwest how many carriers had availed themselves of
20 the Qwest Power Reduction offering, the cost of the reduction and net change in amperage
21 related to the reduction. Attached as Exhibit WRE-7 is the data request response that
22 Qwest provided. I have summarized the information in the following table:

POWER REDUCTION SAVINGS				
		Amps		Payback
Sites	Cost	Reduced	Monthly Savings	In Months
1	\$761	80	\$747.20	1.0
2	\$640	80	\$747.20	0.9
3	\$1,280	80	\$747.20	1.7
4	\$1,024	80	\$747.20	1.4
5	\$6,400	400	\$3,736.00	1.7
6	\$3,200	120	\$1,120.80	2.9
7	\$6,400	200	\$1,868.00	3.4
8	\$1,280	260	\$2,428.40	0.5
9	\$1,920	140	\$1,307.60	1.5
Total	\$22,905	1440	\$13,449.60	1.7

In total, 9 carriers have made use of Qwest's Power Reduction offering to reduce capacity by a total of 1,440 amps. The total cost of the 9 reductions was \$22,905. In all cases, the monthly savings associated with the reductions offset the cost in less than 4 months. In some cases, the jobs paid for themselves in the first month. On average, the costs were offset in 1.7 months. Mr. Morrison's claims about cost are clearly undermined by the actual experience of other carriers in the state.

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

A. The proceeding that Mr. Morrison refers to differs in several key aspects from the issues related to the Qwest Power Reduction offering. First the Illinois case involves a proposal by AT&T/SBC that would require CLECs to fuse at a level not more than 200% of the

1 CLEC's actual usage. This is really a re-fusing proposal, not a power reduction offer.
2 Critically, the re-fusing proposal would be mandatory, unlike the Qwest power reduction
3 offering which is a voluntary offering that CLECs can choose to avail themselves of or not.
4 Second, the SBC Illinois proposal would require frequent mandatory re-fusing as usage
5 levels change. Finally, the power rate structure in Illinois is a blended rate which combines
6 both power plant and power usage. Trying to compare this proposal with the Qwest
7 Washington rate structure which has separate elements for power plant and usage is a
8 classic case of apples and oranges.

9
10 In the Illinois case, Ms. Hunnicutt-Bishara expressed three concerns about the mandatory
11 re-fusing: legal, financial and operational. Ms. Hunnicutt-Bishara's legal concern had to
12 do with compliance with an Illinois Administrative code, a code that is not relevant to
13 Washington and thus not an issue here. Ms. Hunnicutt-Bishara's financial concern had to
14 do with the fact that, under the SBC proposal, as I mentioned above, CLECs must
15 constantly re-fuse as power usage changes, forcing CLECs to constantly incur costs for re-
16 fusing. Again, this is a far cry from Qwest's power reduction offering. Ms. Hunnicutt-
17 Bishara's final concern, an operational concern, had to do with the limitation of fusing to
18 200% of usage levels, a limitation that is not associated with Qwest's Power Reduction
19 offering. None of Ms. Hunnicutt-Bishara's concerns that Mr. Morrison cites have anything
20 to do with the Power Reduction Offering that Qwest offers CLECs.

21 22 **VII. SUMMARY/CONCLUSION**

23 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

24 A. This complaint centers on the interpretation of language in a contract amendment. In
25 Qwest's view, the language is clear that the power Measuring Amendment affects only the
26 DC Power Usage charge, not the Power Plant charge. Qwest's interpretation is consistent

1 with the way the rate elements are broken out in the Exhibit A to the interconnection
2 agreement. It is also consistent with the information that is and was available to CLEC
3 customers on Qwest's website. Finally, McLeod's interpretation is not only inconsistent
4 with all of the objective indicators of intent discussed above, it is also inconsistent with
5 McLeod's own internal analysis prepared in connection with its decision to enter into the
6 Amendment.

7

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

10

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

12 A. Yes it does.