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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BERNICE BRANNAN, et al.,
Complainants
v.
QWEST CORPORATION,
Respondent.

DOCKET NO. UT-010988
QWEST'S FIRST AMENDED
ANSWER TO COMPLAINT

BERNICE BRANNAN, et al.,
Complainants
v.
SANITARY SERVICE COMPANY, INC.
Respondent.

DOCKET NO. TG-010989

BERNICE BRANNAN, et al.,
Complainants
v.
PUGET SOUND ENERGY, INC.
Respondent.

DOCKET NO. UE-010990

1 TERRY McNEIL, et al.,

DOCKET NO. UE-010995

2 Complainants

3 v.

4 PUGET SOUND ENERGY, INC.

5 Respondent.

6
7 TERRY McNEIL, et al.,

DOCKET NO. UT-010996

8 Complainants

9 v.

10 VERIZON NORTHWEST, INC.

11 Respondent.

12 WASHINGTON UTILITIES AND
13 TRANSPORTATION COMMISSION,

DOCKET NO. TG-011084

14 Complainants

15 v.

16 WASTE MANAGEMENT OF WASHINGTON,
17 INC., d/b/a RURAL SKAGIT SANITATION,
G-237

18 Respondent.

19
20 Pursuant to RCW 80.04.110 and WAC 480-09-420, Qwest Corporation (“Qwest”) answers
21 the complaint in this matter as follows. Qwest denies all allegations of the complaint not expressly
22 admitted herein.

23 1. As to the allegations set forth in the first paragraph of the complaint (beginning “We the
24 undersigned are requesting”), Qwest admits that, pursuant to its Exchange and Network Services Tariff
25 (WN U-40), Section 2.6, a section specifically challenged by similarly-situated complainants and upheld
26 by this Commission in Docket No. UT-911306 (First Supplemental Order dated August 25, 1992 and
27 Second Supplemental Order dated October 5, 1992), Qwest passes through to its customers receiving

1 service within the exterior boundaries of the Lummi reservation, a business privilege tax (the “Lummi
2 tax”) imposed on Qwest by the Lummi Indian Business Council. As to the complainants’ allegation that
3 the Lummi tax is invalid and illegal, Qwest is aware of no decision holding such a tax to be clearly
4 invalid; as such, based on this Commission’s holding in Docket UT-911306, Qwest denies the
5 complainants’ conclusory allegations. As to the aggregate amount of the Lummi tax that has been
6 passed through by Qwest (and its predecessors-in-interest) to “fee-land residents,” Qwest is presently
7 without knowledge or information sufficient to form a belief as to the truth of the allegations and
8 therefore denies the same. Qwest denies all further allegations set forth in the first paragraph of the
9 complaint.

10 2. As to the second paragraph of the complaint (beginning “Below are 25 Signatures”),
11 Qwest is without sufficient knowledge or information to form a belief as to the truth of the allegations set
12 forth therein regarding the fee-owing status of the signatories and whether those signatories have been
13 charged for the Lummi tax, and therefore denies the same. As to the complainants’ allegation that the
14 Lummi tax is invalid and illegal, Qwest is aware of no decision holding such a tax to be clearly invalid; as
15 such, based on this Commission’s holding in Docket UT-911306, Qwest denies the complainants’
16 conclusory allegations.

17 3. As to the third paragraph of the complaint (beginning “*Which was reconfirmed”), this
18 paragraph contains only legal conclusions and therefore requires no answer by Qwest. To the extent
19 Qwest is bound to answer the allegations set forth in the third paragraph, Qwest responds that neither
20 case cited by the complainants holds squarely that the Lummi tax is clearly invalid. In fact, Big Horn
21 County Electric Cooperative, Inc. v. Adams, 219 F.3d 944 (9th Cir. 2000) arguably stands for the
22 proposition that the Lummi tax, as a use-based (as opposed to ad valorem tax) utility tax, constitutes a
23 legitimate exercise of authority by the Lummi Tribe over nonmember residents of the Lummi reservation.
24 219 F.3d at 951-952.

25 **AFFIRMATIVE DEFENSES**

26 4. The complaint fails to state a claim upon which relief can be granted.

27 5. Complainants’ claims are barred by the doctrines of estoppel and/or res judicata.

