

cross-examine Staff and Company witnesses who testify on rate rebalancing at the hearings and to address the issue in its post-hearing briefing.

3. On December 13, 2005, citing these same arguments, Administrative Law Judge Dennis Moss issued Order No. 4, denying Public Counsel's motion for leave to file cross-rebuttal. By this motion, Public Counsel respectfully moves for reconsideration of that decision.

III. ARGUMENT

4. Pursuant to WAC 480-07-375, Public Counsel respectfully requests reconsideration of Order No. 4 because Public Counsel is substantially prejudiced by its inability to prefile testimony on the rate-rebalancing issue and no other party would be prejudiced if Public Counsel is allowed to file cross-rebuttal testimony on January 6, 2006.

5. This Motion arises from what may have been a misunderstanding regarding the reason Public Counsel did not file direct testimony on the rate-rebalancing issue. Public Counsel does not disagree that Staff addressed rate-rebalancing in the prehearing conference. Nor did we mean to imply that we were surprised when Staff filed direct testimony on that subject. Our point is that rate-rebalancing is not a standard issue in a transfer of control case.¹ Public Counsel's understanding was that if the issue was going to be brought forward at all, it would be brought forward by Staff as a proposal or recommendation. In other words, Staff would take the posture of being the proponent of this issue and Public Counsel would respond to it. Indeed, absent a Staff recommendation on this issue, there would be no rate-rebalancing issue to address.

¹ In essence, rate-rebalancing involves a proceeding in which the company is ordered to collect lower revenue from one source and more revenue from another source. Here, Staff proposes lowering access charges paid to Sprint by long distance companies for originating and terminating calls and raising rates for residential ratepayers to offset this revenue loss. The logical nexus between the Company's petition and Staff's proposal remains to be established.

6. In good faith and with an eye towards efficient use of resources, Public Counsel expected to file testimony in response to the Staff proposal if and when it was made, including only addressing specific issues raised by Staff. In retrospect, Public Counsel acknowledges that the procedure to make this possible was not addressed in the prehearing conference and should have been. For instance, Public Counsel could have requested a cross-answer to Staff's testimony or clarified that the rebuttal could be used for this purpose.
7. However, prior Public Counsel attorney, Robert Cromwell, Jr., believed that the original rebuttal date adopted in Order No. 1 included, by implication, permission to file cross-rebuttal of Staff's testimony. After Mr. Cromwell's departure, Public Counsel made the motion for leave to file cross-rebuttal testimony because it was unclear whether such an opportunity existed.
8. Public Counsel's concern is that it be allowed to address an issue of significant financial importance to ratepayers. Given that the other parties to the case will have prefiled testimony on this issue, we believe that the record should also include Public Counsel's prefiled testimony since the Commission is best served by a complete record. We also believe that Public Counsel can be accommodated without prejudice to the other parties.
9. If Public Counsel was allowed to file cross-rebuttal testimony on January 6, 2005, Staff could file surrebuttal testimony on January 20, 2006, and the Company could file sursurrebuttal testimony of January 27, 2006, without jeopardizing either the February 6, 2006, start date for the hearing or March 24, 2006, deadline set for an order to issue. Public Counsel has conferred with the parties. While both parties have reserved their right to oppose this motion, both agreed that should a motion be granted there would be adequate time for surrebuttal and sursurrebutal without delaying the hearing. Specifically, should this motion be granted, Staff finds it

acceptable to submit its surrebuttal two weeks after Public Counsel submits its cross-rebuttal and the Company has indicated that it finds it acceptable to file sursurebuttal one week after Staff files its surrebuttal.

10. Finally, Public Counsel appreciates this opportunity for reconsideration and apologizes for the continued need to spend time resolving the issue. However, if it will be helpful, we offer oral argument upon your request.

IV. CONCLUSION

11. For the foregoing reasons Public Counsel respectfully requests reconsideration of Order No. 4 denying Public Counsel's motion for leave to file cross-rebuttal in the above captioned matter

DATED this 16th day of December, 2005.

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