

Decision No. R04-0064

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03S-321T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY QWEST CORPORATION FILED WITH ADVICE LETTER NO. 2961.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ACCEPTING STIPULATION AND
ESTABLISHING TARIFFS**

Mailed Date: January 16, 2004

I. STATEMENT

1. This proceeding was instituted by the issuance of Decision No. C03-0817, July 28, 2003. By that decision the Commission suspended and set for hearing the tariff sheets filed by Qwest Corporation (Qwest) under Advice Letter No. 2961. Qwest stated that the purpose of the filing was to modify the manner in which Qwest entered into agreements with developers and homebuilders for the pre-provision of distribution facilities in new areas of land developments. The matter was originally scheduled for a hearing to be held November 18, 2003.

2. By Decision No. R03-1048-I, the undersigned Administrative Law Judge (ALJ) granted the Petitions to Intervene filed by the Homebuilders Association of Metro Denver, the Pueblo Association of Homebuilders, Rick Clark/Red Creek Ranches, the Housing and Building Association of Colorado Springs, and the Colorado Association of Homebuilders (Developers). Staff of the Public Utilities Commission (Staff) also intervened.

3. The original procedural schedule, including original hearing date, was modified to allow the parties to attempt to negotiate a stipulated settlement to this proceeding. Ultimately,

Qwest and the Developers reached a Final Stipulation that was filed on January 13, 2004 along with a Motion to Approve Final Stipulation. Staff does not oppose the Final Stipulation. Based on the uncontested nature of the Stipulation the ALJ determined that a hearing would not be necessary and he vacated the hearing that had been scheduled for January 16, 2004.

II. FINDINGS AND CONCLUSIONS

4. This proceeding has its genesis in Docket No. 02S-360T, wherein Qwest, Staff, and the Colorado Office of Consumer Counsel (OCC) to cooperate with each other to discuss potential revisions to the land development construction credit currently contained in Qwest's exchange and network services tariff. Qwest, Staff, OCC, and various developers and trade associations met monthly for a period of time to discuss the tariffs. Most of the participants reached an agreement that called for Qwest to file tariff sheets that were a compromise position acceptable to Qwest and the majority of the builders and Developers. Qwest did file Advice Letter No. 2961 and corresponding tariff sheets that contained the compromise position to the Land Development Agreement (LDA) tariff.

5. The tariff sheets filed originally were not acceptable to Staff and Staff opposed them. Subsequently a Final Stipulation was filed on January 13, 2004 which incorporated most of Staff's concerns, and which Staff did not oppose.

6. The Final Stipulation contains an LDA tariff with four options. These are Option 1, Option 2, Option 3A, and Option 3B. The Final Stipulation contains a construction allowance formula containing a \$528.40 per lot cap for LDAs. The LDA credit formula and per lot cap reflect the cost of installing distribution plant in a typical subdivision at the raw land stage. Option 1 is a conventional LDA where Qwest engineers/designs and constructs the

facilities. Option 2 is a reverse LDA where the developer or homebuilder engineer/designs and constructs the facilities. In both cases Qwest will up pay up to the per lot cap with the developer paying in excess of that. In Option 1 the developer pays Qwest the amount over the cap; in Option 2 Qwest reimburses the developer up to the cap.¹ Option 3 contains per lot caps that are wire center specific, based upon Staff's recommended amounts set forth in Staff's prefiled testimony. Option 3A addresses situations where Qwest installs feeder, distribution, and service wire. Option 3B addresses situations where the developer installs distribution and Qwest installs feeder and service wire. Qwest will reimburse Developers on a quarterly basis consistent with its High Cost Support Mechanism (HCSM) receipts over a five-year reimbursement period.

7. Qwest will allow the developer to choose whichever LDA works best for the developer. In addition, Qwest will provide a cost estimate, although if a developer has Qwest procure an estimate and then chooses to build on its own, Qwest will deduct the cost of preparing the estimate from the reimbursement.

8. The Final Stipulation, as embodied in the tariff sheets that accompany it, produces a revised LDA tariff that is easy to administer and provides for earlier reimbursement to Developers.

9. Staff had expressed concern that Qwest might be "double dipping" by requiring a developer to reimburse Qwest over the per lot cap, but then drawing from the HCSM for that same investment. For the reasons set forth in Qwest's rebuttal testimony,² the ALJ finds and

¹ In the final Stipulation Qwest has agreed to also allow for trenching in the amount of \$79.77 per lot, subject to the overall cap of \$528.40.

² These include that LDA lots do not necessarily translate into customer revenues, if the resident chooses a carrier other than Qwest; that there are also instances of under recovery that should be netted out; and that the HCSM self-adjusts to lower support as the number of access lines increases and the cost of structure facilities are shared by more customers.

concludes that such double dipping, if it exists at all, is *de minimus*. Staff has other proceedings where it can press its case that HCSM payments may need to be adjusted.

10. The Final Stipulation, and the tariffs accompanying it, produce a land development agreement process which is just, reasonable, and in the public interest, and it should be accepted.

11. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Motion to Approve Final Stipulation filed January 13, 2004 is granted.
2. The tariff sheets filed under Advice Letter No. 2961 by Qwest Corporation are permanently suspended and canceled.
3. Qwest Corporation shall file, within seven days of the effective date of this Order, the tariff sheets attached to the Final Stipulation and Settlement Agreement filed January 13, 2004 and attached to this Order as Appendix A. The tariff sheets shall be effective on one day's notice, and shall cite this Decision as authority.
4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge