The Commission met on **Thursday, May 28, 2015,** with Chair Heydinger and Commissioners Lipschultz and Tuma present.

The following matters came before the Commission:

ENERGY AGENDA

E-002/M-15-304
In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Modification to the Renewable Energy Standard Rider Tariff, RES Adjustment Factor, and the 2014 RES True-up Report

Commissioner Lipschultz moved to do the following:

1. Accept the 2014 true-up report of Northern States Power Company d/b/a Xcel Energy (Xcel) for its Renewable Energy Standard (RES) Rider.

2. Require Xcel to submit 2014 tax documentation verifying its 2014 production tax credits in its 2015 RES filing.

3. Approve Xcel's proposed RES Adjustment Factors and its proposal for implementation.

4. Approve Xcel's RES Rider tariff revisions.

5. Approve Xcel's proposed customer notice as modified by the Minnesota Department of Commerce (the Department).

The motion passed 3-0.

IP-6946/CN-15-343
In the Matter of the Application of Freeborn Wind Energy LLC for a Certificate of Need for the 200 MW Freeborn Wind Project in Freeborn County, Minnesota

Commissioner Tuma moved to grant Freeborn Wind Energy LLC's exemption request.

The motion passed 3-0.

E-6928/GS-14-515
In the Matter of the Site Permit Application for the 100 MW Aurora Distributed Solar Energy Project at Multiple Facilities in Minnesota

Commissioner Lipschultz moved to do the following:

1. Find that the Environmental Assessment and the record created at the public hearing address the issues identified in the Environmental Assessment scoping decision.

2. Approve and adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommendation for the 100 megawatt (MW) Aurora Distributed Solar Energy Project with modifications as proposed below:

   A. Include the revisions to findings 37, 38, 39, 43, 102, 135, and 140 as proposed by the Department's Energy Environmental Review and Analysis (EERA):

   37. The Scoping Decision for the EA was signed by the Deputy Commissioner of the Department of Commerce on December 4, 2014, and filed with the Commission and made available to the public as provided in Minn. R. 7850.3700, subp. 3, on December 5, 2014.

   38. The scope of the EA evaluation is identified as the 24 facility locations proposed by Aurora in the application; no other locations are included. The EA scope also ~~includes~~ anticipates an analysis of the potential development area within ~~2.5~~ two miles of each interconnection substation to which the 24 facility locations would interconnect. The scope of the EA for the Project does not include a no-build alternative; issues related to the Project need, size, type or timing; any site alternative not specifically identified in the Scoping Decision; or the manner in which land owners are compensated for the sites.

   39. The EA was filed with the Commission and made available on ~~February 2~~ January 30, 2015. The EA was prepared in accordance with Minn. R. 7850.3700 and the Scoping Decision.

   43. On February 3, 2015, the DOC-EERA sent copies of the ~~Notice of Environmental Assessment~~ EA to public libraries

   102. ~~The Scoping Decision required the EA to review the relative merits of the facility locations. The~~ In response to the request in the Administrative Law Judge's First Prehearing Order that DOC-EERA provide conclusions on the most appropriate facilities, the DOC-EERA grouped the 24 sites proposed in the Site Permit application into three categories: sites where impacts can be addressed with standard mitigation; sites where impacts can be addressed through additional mitigation measures; and sites with additional siting challenges. According to the DOC-EERA, additional mitigation measures are necessary at the Chisago site to address issues of public traffic safety. The mitigation measures may minimally impact the design of the facility and its generating capacity.

   135. The primary components of a PV solar facility that alter the landscape are solar arrays and perimeter fencing. When PV panels are at a zero degree angle, the panels will be approximately four to six feet off the ground. When panels are at their maximum tilt of 45 degrees, the tops of the panels will be approximately eight to ten feet off the ground. As proposed by Aurora, each ~~Each~~ facility will be enclosed by an

eight-foot safety and security fence made up of a seven-foot chain link fence topped by another foot of barbed wire.

140. In response to concerns raised by adjacent residents Aurora has proposed landscaping plans for the Atwater, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Pipestone, Wyoming and Zumbrota facilities, which are all proposed sites near existing residential homes. ~~Aesthetic impacts for neighboring homeowners will be largely mitigated by the site-specific landscaping plans developed by Aurora for the Atwater, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Wyoming and Zumbrota facilities.~~ A site permit condition requiring that a site-specific landscaping plans be developed for each facility is a reasonable method of mitigating visual impact to neighboring homes.

B. Include EERA's revisions to Site Permit Section 14.4 as proposed on April 23, 2015, and to Sections 5.2, 8.7, and 14.3 as proposed on May 28, 2015.

5.2 Wetlands and Shoreland
Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall not be placed in public waters wetlands as shown on the public water inventory maps prescribed by Minnesota Statute 103G except that electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the Minnesota Department of Natural Resources (DNR) and the United States Army Corps of Engineers (USACE), and local units of government as implementers of the Minnesota Wetlands Conservation Act. Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall be located in compliance with the ~~minimum~~ standards for development of the shorelands of public waters as identified in Minnesota Rules 6120.3300 and as adopted pursuant to Minnesota Rules 6120.2800 unless there is no feasible and prudent alternative.

8.7 Equipment Storage
The Permittee shall not locate temporary equipment staging areas on lands not under its control unless negotiated with affected landowner. Temporary equipment staging areas shall not be located in wetlands or native prairie as defined in Sections 5.2 and 5.3. Temporary equipment staging areas shall be sited to comply with ~~minimum~~ standards for development of the shorelands of public waters as identified in Section 5.2.

14.3 Demonstration of Compliance with Shoreland Standards
The Permittee shall demonstrate compliance with the ~~minimum~~ standards for development of shoreland areas as specified in section 5.2 of this permit, in the site plans filed in accordance with Section 6.1 of this permit, for the following facilities: Annandale, Chisago, Lake Emily, Lake Pulaski, Pine Island, West Waconia, and Zumbrota.

14.4 Security Fence Design
The security fence surrounding each Facility shall be comprised of a chain link fence of up to seven (7) feet, topped by a 1- to 2-foot extension, tilted 45 degrees outward from the vertical plane of the chain link portion, carrying monofilament cables or barbless wire.

C. Include the revisions to Site Permit sections 6.4 and 6.5 proposed by Aurora Distributed Solar, LLC (Aurora).

6.4 Agricultural Impact Mitigation Plan
The Permittee shall, with the cooperation of the Minnesota Department of Agriculture, develop an Agricultural Impact Mitigation Plan (AIMP). The purpose of the AIMP shall be to identify measures to minimize potential impacts to agricultural uses of the land upon the decommissioning of the Project. The Permittee shall submit the AIMP to the Commission fourteen (14) days prior to submitting the first ~~pre-construction meeting~~ site plan for any portion of the Project. The AIMP shall include:

(a) Measures that will be taken to segregate topsoil from subsoil during grading activities and the removal of topsoil during construction of the Project to the extent that such actions do not violate sound engineering principles or system reliability criteria.
(b) Measures that will be taken to minimize impacts to and repair drainage tiles damaged during construction of the Project.
(c) Measures that will be taken to prevent the introduction of non-native and invasive species.
(d) Measures that will be taken to re-vegetate disturbed areas with appropriate low-growing vegetation to the extent that such actions do not violate sound engineering principles or system reliability criteria.
(e) Measures that will be taken to maintain established vegetation at the facilities throughout the operational life of the facility.

6.5 Vegetation Management Plan
The Permittee shall, in cooperation with the Minnesota Department of Commerce and the Minnesota Department of Natural Resources, develop a Vegetation Management Plan for the Project and submit it to the Commission fourteen (14) days prior to submitting the first Site Plan required by Section 6.1 of this permit. The purpose of the Vegetation Management Plan is to minimize tree clearing, prevent the introduction of noxious weeds and invasive species, revegetate disturbed areas at each Facility with appropriate low-growing species, and maintain appropriate vegetation at each Facility throughout the operating life of the Project. The Vegetation Management Plan shall:

(a) Identify measures taken to minimize tree removal and minimize ground disturbance.
(b) Identify a comprehensive re-vegetation plan for disturbed areas.
(c) Identify methods to maintain appropriate vegetation throughout the operating life of the Project.

(d) Identify vegetation control methods to be used during the operation and maintenance of the Project.

(~~f~~e) Identify measures to prevent the introduction of noxious weeds and invasive species on lands disturbed by construction activities.

D. Amend proposed Site Permit section 8.19 as follows:

The Permittee shall obtain and register the address or other location indicators acceptable to the emergency responders and Public Safety Answering Points (PSAP) having jurisdiction over each of the separate facilities of the Project ~~with the local governments' emergency 911 services~~. The Permittee shall show as part of their compliance filing required in the Site Permit that they provided the emergency responders and the PSAP with jurisdiction over each of the separate facilities of the Project with the Emergency Response Plan prior to commencement of work on the site.

E. Amend the Site Permit to reflect a term of 30 years consistent with the useful life of the facility.

3. Grant Aurora a Site Permit for the 100 MW Large Electric Power Generating Plant (LEPGP) for the Aurora Distributed Solar Project to be constructed at the following Facilities as follows:

A. Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia to be developed as per the Site Plans submitted in the application.

B. Chisago, Dodge Center, Paynesville, and Pine Island with the additional mitigation measures recommended by EERA.

C. Mayhew Lake and Annandale provided the company complies with the agreements it has reached with Mayhew Lake, and provides appropriate assurances with respect to Annandale's concerns about vegetative screening and maintenance accommodations.

4. Authorize staff to modify the proposed Findings of Fact, Site Permit, and other documents as necessary to be consistent with the decisions made by the Commission on this matter.

Chair Heydinger moved to amend the motion as follows:

3. Grant Aurora a Site Permit for the 100 MW LEPGP for the Aurora Distributed Solar Project to be constructed at the following Facilities as follows:

A. Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia to be developed as per the Site Plans submitted in the application or with modifications to the site plans submitted in pre-construction filings within the defined project development areas and approved by EERA.

Commissioner Lipschultz accepted the amendment.

The motion passed 3-0.

TELECOMMUNICATIONS AGENDA

P-999/PR-15-15
In the Matter of Intercarrier Compensation Reform Required by FCC Order and Rules

Commissioner Lipschultz moved to adopt the procedures as outlined in the Department's May 14, 2015 comments --

1. for carriers filing their access rates as of July 1, 2015 and

2. for competitive local exchange carriers who benchmark their rates to the competing incumbent local exchange carrier (ILEC), and who must file revised tariffs within 15 days of the effective date of the lowered ILEC rate (July 16, 2015).

The motion passed 3-0.

P-999/PR-15-5
In the Matter of TAM's 2014 Annual Report
P-999/M-15-185
In the Matter of TAM's FY 2016 Proposed Budget and Surcharge Recommendation

Commissioner Tuma moved to take the following actions:

1. Approve the 2014 annual report for Telecommunications Access Minnesota (TAM).

2. Accept TAM's FY 2016 proposed budget.

3. Approve the proposed decrease of the TAM surcharge from $0.08 to $0.07 and direct that the TAM surcharge change be effective on or billing cycle after August 1, 2015.

The motion passed 3-0.

P-6944/M-15-65
In the Matter of the Petition of Lake County Minnesota d/b/a Lake Connections for ETC Designation in Minnesota

Commissioner Lipschultz moved to take the following actions:

1. Find that Lake County meets the common carrier requirement for ETC designation.

2. Find that Lake County's proposal to offer the supported services through a contract with Lake Communications is reasonable and condition approval on Lake County's submission within 30 days of the contract with Lake Communications or other voice telephony and related services vendor, specifying the inclusion of the following provisions and commitments:

    a. Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.

    b. Clearly show the responsibilities of Lake County and the voice telephony and related services vendor in terms of:

        1. Actual provision of services
        2. Setting of rates
        3. Advertising the products
        4. Billing and name of company on bill
        5. Resolution of customer complaints
        6. Operations and Repair of telephony-related equipment
        7. Compliance with telephony-related service quality, legal, technical, reporting and related standards and commitments
        8. Resolutions in the event of Lake Communications cannot fulfill its role as the provider of telephony and related services.

3. Find that the proposed service area conforms to federal and state rules. Approve Lake County's proposed service area which are portions relating to the census blocks within the Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area. And

a. Direct Lake County to submit within 30 days a more detailed map showing:

1. the boundaries of the county,
2. Lake County's broadband footprint,
3. each affected CenturyLink and Citizens exchange where Lake County seeks ETC designation within the entire exchange, if applicable,
4. the boundaries of included census tracts for each affected CenturyLink and Citizens exchange not included as service area on an exchange-wide basis,
5. the county's unassigned area included in the proposed service area, and
6. the county's unassigned area excluded in the proposed service area, if applicable. And

b. Waive the requirement of Minn. Rule 7812.1400 for Lake County to serve the entire relevant exchanges of the ILECs in the service area.

4. Find that Lake County meets the other ETC requirements, provided that Lake County, as part of a compliance filing, demonstrate compliance with the following:

a. Submit a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline, and a proposed schedule and frequency of such advertising, listing the specific media and means of advertising the availability of voice telephony and Lifeline, and a proposed schedule and frequency of such advertising;

b. Post voice telephony and Lifeline terms and conditions on its website and the website of any telephony vendor;

c. File a certification, signed by a county official, that it will comply with the service requirements applicable to the support that it receives as required by 47 CFR § 54.202 (a)(2).

d. Document that it has revised its website to reflect the rates actually charged and update the vendor's website or any related link that relates to its rates.

e. File tariffs or other documentation that reflect its service offerings or the service offerings of LCI and demonstrate that the services offered conform to the assurances or representations made in the petition as identified in footnote 84 of the Department's comments.

f. Commit to notify the Department and the Commission if it is unable to serve a Lifeline-qualified customer within its service area within 10 days of making the determination as recommended by the Department on page 34 of Comments.

g. File a compliance filing showing that it has met all the conditions required for ETC designation, including a contract between Lake County and LCI that demonstrates compliance with the FCC test for ETC designation.

5. Find that granting ETC status to Lake County is in the public interest.

6. Approve Lake County's petition for ETC designation in Minnesota for the limited purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments, subject to the conditions set forth above.

7. Grant Lake County's request for certification to the FCC and the universal service administrator that it will use its federal support for the intended purpose pursuant to 47 CFR 54.313 (3)(vi). Include the conditions determined by the Commission for the ETC designation.

The motion passed 3-0.

P-5681,421/C-09-302
In the Matter of Digital Telecommunications, Inc.'s Complaint Against Qwest Corporation

Commissioner Lipschultz moved to do the following:

1. Reconsider its Order Denying Relief (September 10, 2014) upon the Commission's own motion for the limited purpose of clarifying its Order.

2. Deny the Department's September 30, 2014 Request for Reconsideration and the September 22, 2014 Petition for Reconsideration of Digital Telecommunications, Inc. (DTI).

3. Modify the first paragraph on page 6 of the Order Denying Relief as follows:

   Qwest also told DTI that it had no duty to offer "wholesale prices" for DSS or PRI switching and that Qwest would not ~~renegotiate~~ negotiate the retail rate for DSS or PRI….

4. Modify the first complete paragraph on page 14 as follows (footnotes omitted):

   Qwest had the option, but not the obligation, to offer a package of enterprise services comparable to the QPP, and to accept changes to its draft amendment. The fact that Qwest failed to offer this option does not demonstrate bad faith in this context. ~~The fact that Qwest did not do these things might be evidence that Qwest refused to negotiate about these matters; alternatively, it might be evidence that no party offered terms that would make such proposals worthwhile to Qwest. But the fact that Qwest offered DTI an option, and DTI found the option less attractive than DTI would have liked – yet still sufficiently attractive to accept – is not evidence of bad faith negotiations or coercion.~~

5. Modify the last two paragraphs on page 18 as follows (footnotes omitted):

First, in the TRO the FCC found that competing carriers had widely deployed switches capable of providing service at DS1 and above, and consequently eliminated the incumbents' duty to provide access to services such as enterprise UNE-P (including the DSS and PRI functionalities) at cost-based rates. As a result, Qwest no longer had an obligation to offer enterprise switching to DTI at TELRIC rates. Qwest was not imposing discriminatory charges by insisting on applying the resale discount to its tariffed rates based on the terms of those tariffs, including term or volume purchase commitments, when offering those services for resale.

Second, the TRO's prohibition on wasteful conversion charges pertains to one-time charges, not ongoing charges. Qwest has not sought to impose any one-time charges. ~~Moreover, any suggestion that the FCC opposes bulk purchase commitments is dispelled in the TRO paragraph immediately preceding the one cited by the Department.~~

6. Modify the text on page 19 by deleting the quoted text of paragraph 586 of the FCC Order[1] at the top of the page and by deleting the last paragraph of text on that page starting with the word "Finally".

7. Modify page 20 by deleting the remaining paragraph carried over from the prior page and by changing the first two paragraphs under "Commission Analysis" as follows (footnotes omitted):

~~While DTI and the Department allege that Qwest acted coercively, the record supplies ample evidence to support the contrary conclusion. Arguably the chief obstacle DTI faced in negotiating terms for acquiring DSS and PRI switching from Qwest was DTI's long-standing plan to discontinue buying switching from Qwest and to start providing this service itself.~~

The record does not establish that Qwest acted coercively. As early as January 19, 2005, it appears that DTI had opted to address the changes required by the TRO/TRRO Amendment by "continu[ing] with our conversion process so we can get as many customers onto our own facilities as quickly as possible as to maintain our bottom line." DTI proposed to explore Qwest's promotional pricing merely as a contingency in the event DTI would not be able to convert all its customers to DTI's own facilities soon enough.

8. Modify the second paragraph on page 22 as follows:

[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996).

It may well be true that by the time DTI agreed to the amendment, it had no viable alternative means to secure DSS and PRI switching. ~~But the record indicates that this problem resulted from the practical challenges of building facilities or negotiating with third party providers – not from Qwest's coercive practices or failure to negotiate in good faith. In sum, the Commission concludes that DTI and the Department have failed to prove their claim.~~ However, the record fails to establish that Qwest acted in bad faith.

9. Modify the discussion of "Good Faith Negotiations" on page 23, and continuing on page 24, by deleting the existing text under that heading and replacing it with the following text drawn from paragraphs 49, 55, 57 and 58 of the Commission Staff's December 9, 2013 "Supplemental Record Analysis" (footnotes omitted):

The Telecommunications Act does not provide a definition of good faith and "describes only one instance in which a party might violate the good faith clause-when a party simply refuses to negotiate at all." However, the FCC's rules and regulations provide a base from which to identify other failures to negotiate in good faith, including but not limited to, "intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made"; "intentionally obstructing or delaying negotiations or resolutions of disputes"; and "refusing to provide information necessary to reach agreement." See 47 C.F.R. § 51.301(c).

The specific grounds identified by the FCC for finding bad faith negotiations do not appear to be present on the record of this case. The record as a whole fails to establish that Qwest negotiated in bad faith under the circumstances.

Qwest's repeated offer to initiate dispute resolution with the Commission suggests the absence of bad faith negotiation by Qwest. In the context of an amendment to an interconnection agreement, the FCC has explicitly authorized either an ILEC or a CLEC to petition the state commission to arbitrate a dispute, "consistent with the parties' duty to negotiate in good faith." Qwest offered, but DTI declined to pursue that path. The course of conduct regarding Qwest's offer to initiate dispute resolution and DTI's response, includes the following:

> a. On April 28, 2006, Qwest informed DTI that it intended to initiate dispute resolution with the PUC over the TRO/TRRO amendment because of the continued delay over DTI's execution of the Amendment. However, based on assurances received from a DTI representative, Qwest stated that it would delay a filing with the PUC for ten days.

b. On May 9, 2006, Qwest again stated to DTI that they intended to file for dispute resolution with the Commission and Board since Qwest had not received DTI's TRO/TRRO amendment as promised and DTI had not had any contact with Qwest since their last correspondence.

c. If DTI felt that Qwest was withholding information, coercing DTI to sign the amendment, or otherwise failing to negotiate in good faith, DTI had ample opportunity to bring the matter before the Commission.

d. Instead, in an internal email, DTI president stated "I would like to go ahead and sign the contract under the assumption that we will have all of our T1's over to DTI facilities within that period or go on month to month pricing. If we have some that we want to put on 1, 3 or 5 year contracts at that time we will let them know."

e. DTI signed the TRO/TRRO Amendment on May 12, 2006 without raising any comment or objection with the Commission. The TRO/TRRO amendment was executed on May 19, 2006 and approved by the Commission on June 28, 2006.

As evidenced by the following course of conduct, Qwest continued to offer DTI conversion options after it became apparent that DTI was struggling to meet its payments based on the month-to-month rates for PRI/DSS services.

a. Between January 2, 2007 and February 1, 2007; Qwest exchanged a number of emails with DTI regarding the price of DTI's PRI and DSS services. Qwest provided a list of "custom pricing" for DTI's PRI and DSS circuits based on the volume of circuits provided by DTI. Qwest representative Judy Rixe acknowledged that the prices quoted were not as low as previously quoted rates because DTI had greatly reduced the volume of circuits they intended to use.

b. Rixe also provided DTI with information on a special promotion Qwest was offering on bulk rated products. Rixe added that she would continue to "advocate" to Qwest's "special pricing group" for additional discounts. However, Qwest's legal review of DTI had raised concerns based on DTI's outstanding bills with Qwest, DTI's delay in signing the TRO/TRRO amendment, and the difficulty DTI posed in transitioning UNE-P services to appropriate product replacements. Qwest's legal and collections department were hesitant to discuss a special pricing contract until DTI had satisfied its bill due February 12, 2007.

c. On February 21, 2007; Qwest emailed DTI to inform it of a PRI-DSS promotion that could be used on a single circuit and would provide "an opportunity to get better pricing without depending on ICB contract." DTI was clearly very interested in the offer and expressed its intent to place orders through Qwest's promotion ASAP. DTI understood that this promotion would allow it to take advantage of the offered rates for just a single circuit, and there were no quantity requirements for this offer. Nevertheless, DTI never placed any orders under Qwest's special promotion.

d. Between February and May, 2007 Qwest asked DTI on multiple occasions for information as to the volume of PRI and DSS circuits DTI would contract for with Qwest and the term length for the contract. DTI repeatedly failed to respond and provide the information.

e. DTI finally provided Qwest with the necessary information in late June 2007, by which time DTI had an insufficient volume of circuits for Qwest to offer special pricing. Therefore, DTI was informed that it should take advantage of a Qwest promotional offer in order to obtain more favorable rates.

f. On June 29, 2007; Qwest sent a letter to DTI outlining promotional prices Qwest was offering for an 89 day period. Among the list of special offers was conversion of month-to-month pricing to 3 or 5 year contract terms. Qwest asked again if DTI knew what volume of PRI/DSS circuits DTI intended to contract with Qwest.

DTI contends that it was coerced into signing the TRO/TRRO amendment because Qwest insisted that DTI sign the amendment at the same time it signed the QPP agreement. As evidenced by the following course of conduct, DTI has not demonstrated that it was coerced into signing the TRO/TRRO Amendment:

a. Qwest required all CLECs to sign the TRO/TRRO amendment to their respective ICAs in order to effectuate the FCC's order and formally eliminate the CLECs ability to purchase certain UNE-P products at TELRIC rates. Between June 2004 and March 2006, 42 TRO/TRRO amendments and 14 new TRRO compliant Interconnection Agreements between Qwest and other CLECs were recommended for approval by the Department of Commerce and approved by the Commission. During the course of the negotiation and approval process, no CLEC or state agency pursued any claim that Qwest was negotiating in bad faith.

b. The QPP commercial agreement was a separate agreement that was offered as replacement for DTI's mass-market switching. DTI found the rates offered in the QPP to be favorable and DTI expressed its willingness to sign the QPP in conjunction with the TRO/TRRO amendment on March 10, 2006. DTI did sign the QPP agreement on March 20, 2006. However, DTI knew that signing the TRO/TRRO amendment would eliminate its ability to obtain DSS/PRI services at TELRIC rates. Therefore, DTI intentionally delayed signing the amendment and waited for Qwest to specifically request Dan Terek to do so.

c. Qwest recognized that DTI was holding off on signing the TRO/TRRO amendment in order to delay transitioning its DSS/PRI elements to some alternative service. Qwest communicated to DTI that it would be unable to execute the QPP agreement until Qwest received the TRO/TRRO amendment.

d. Pursuant to the TRRO, Qwest had a right to eliminate UNE-P services on March 11, 2006. The TRO/TRRO amendment was intended to effectuate that change of law. DTI was willing to meet this deadline regarding its mass market customers, but it was unprepared to transition its enterprise services. Qwest's insistence that DTI sign the TRO/TRRO amendment only initiated what was inevitable-the transition process of all UNE-P elements to alternative services. The fact that those services were eliminated over two months after the FCC's stated deadline does not constitute coercion.

e. Again, DTI does not dispute that it had a legal right to arbitrate the matter before the Commission, yet it signed the TRO/TRRO Amendment on May 12, 2006 without raising any comment or objection with the Commission.

10. Modify page 25 by deleting the first four paragraphs following the words "The Commission concurs with Qwest" and replacing those paragraphs with the following:

DTI signed the Amendment and declined to seek arbitration prior to signing it. The record fails to establish that DTI was coerced into signing that Amendment. And as discussed earlier, the term "equivalent month to month resale arrangements" was not ambiguous in this context. The record indicates that this term was well understood in the industry and that DTI specifically understood what it meant. The record fails to indicate that Qwest misrepresented the meaning of this term to DTI.

The motion passed 3-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: September 9, 2015

Daniel P. Wolf, Executive Secretary