

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

VCI COMPANY f/k/a/ STAN EFFERDING and STANLEY JOHNSON d/b/a VILAIRE and VCI COMPANY, a Washington corporation,

Defendants.

DOCKET No. UM 1288

PUBLIC UTILITY COMMISSION OF OREGON'S RESPONSE TO MOTION TO REOPEN DOCKET, RECONSIDERATION OF CLOSURE, STAY EXECUTION, AND REQUEST FOR RULING ON PENDING MOTIONS

Defendants have moved the Public Utility Commission of Oregon (Commission) to reopen the docket in this matter and to rule on certain "pending motions." The Commission should deny the motion for lack of jurisdiction. Prior to filing their motion to reopen the docket, defendants filed a petition for judicial review of this matter in the Court of Appeals. It is well-settled that filing a petition for judicial review vests jurisdiction with the Court of Appeals and divests the agency of jurisdiction over the case.

Defendants have also moved for a stay of execution. Notwithstanding defendants' petition for judicial review, the Commission does have jurisdiction to rule on the stay. However, defendants have failed to provide any basis for granting a stay. Accordingly, the motion to stay should also be denied.

///

///

1 Defendants have also requested oral argument. This case is not a major proceeding and  
2 defendants have made no showing why oral argument should be allowed here. Defendants'  
3 request should be denied.

4 This motion is supported by the following memorandum of law.

5 **MEMORANDUM OF LAW**

6 The Commission closed docket UM 1288 on May 5, 2011.

7 On May 27, 2011, defendants filed a petition for judicial review.

8 On July 5, 2011, defendants filed Defendants' Motion to Reopen Docket,  
9 Reconsideration of Closure, Stay Execution, and Request for Ruling on Pending Motions  
10 (Defendants' Motion). Defendants state in their motion that "[i]n an abundance of caution,  
11 defendants have petitioned for review of the closure of the file to the Oregon Court of Appeals  
12 on the basis that the closure of the file could be seen as a denial of the pending motions."<sup>1</sup> But  
13 the defendants' petition for review filed under the Administrative Procedures Act, ORS 183.482,  
14 vests jurisdiction in the Court of Appeals and divests the agency of jurisdiction over the case.<sup>2</sup>  
15 Because jurisdiction is in the Court of Appeals, the Commission does not have jurisdiction to  
16 consider defendants' Motion to Reopen the Docket, Motion for Reconsideration, Motion to Set  
17 Aside Default, or Motion for Disclosure of Ex Parte Communication.

18 ///

19 ///

20 ///

21

22 \_\_\_\_\_  
<sup>1</sup> Defendants' Motion at 2 fn. 1.

23 <sup>2</sup> See *Ososke v. Driver and Motor Vehicle Services*, 320 Or 657, 660, 891 P2d 633 (1995) (timely filing of a petition  
for review of a final DMV order vests jurisdiction in the Court of Appeals).

1 The Commission does retain jurisdiction to consider a stay of an order pending appeal under  
2 ORS 183.482(3).<sup>3</sup> To obtain the stay, the party seeking relief must show: (1) irreparable harm will  
3 occur if enforcement of the order is not stayed; and (2) there is a colorable claim of error in the order.  
4 Defendants' motion, however, fails to address those standards. Therefore, the stay should be denied.

5 Defendants' request for oral argument should be denied. This is not a major proceeding. *See*  
6 OAR 860-001-0660(4). In addition, defendants neither argue nor show why oral argument should be  
7 allowed here.

8 ///

9 ///

10 ///

11 ///

12 //

13 ///

14 ///

15 ///

16 ///

17 ///

18

19 <sup>3</sup> ORS 183.482(3)(a) provides: The filing of the petition shall not stay enforcement of the agency order, but the  
agency may do so upon a showing of:

- 20 (A) Irreparable injury to the petitioner; and  
21 (B) A colorable claim of error in the order.

22 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall  
grant the stay unless the agency determines that substantial public harm will result if the order is  
stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the  
substantial public harm that would result from the granting of the stay.

23 (c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a  
bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary  
to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

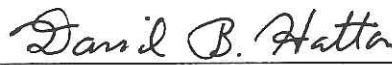
1 **CONCLUSION**

2 The petition for review that defendants filed in this case divested the Commission of  
3 jurisdiction over this matter. Accordingly, the Commission should deny defendants' motion to  
4 reopen. Although the Commission has jurisdiction over defendants' request for a stay,  
5 defendants have failed to provide grounds for that request. Accordingly, the Commission should  
6 deny the stay. Defendants' request for oral argument should be denied as defendants have made  
7 no showing why oral argument should be allowed.

8 DATED this 13<sup>th</sup> day of July 2011.

9 Respectfully submitted,

10 JOHN R. KROGER  
11 Attorney General

12   
13 \_\_\_\_\_  
14 David B. Hatton, OSB #751517  
15 Senior Assistant Attorney General  
16 Of Attorneys for Public Utility Commission of  
17 Oregon  
18  
19  
20  
21  
22  
23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of July 2011, I served a true and correct copy of the foregoing PUBLIC UTILITY COMMISSION OF OREGON'S RESPONSE TO MOTION TO REOPEN DOCKET, RECONSIDERATION OF CLOSURE, STAY EXECUTION, AND REQUEST FOR RULING ON PENDING MOTIONS; by the method indicated below, and addressed to the following:

- HAND DELIVER
- OVERNIGHT MAIL
- U.S. MAIL
- TELECOPY (FAX)

William J. Ohle  
Attorney at Law  
Schwabe, Williamson & Wyatt  
1211 SW Fifth Avenue - Suite 1900  
Portland, OR 97204

David B. Hatton  
David B. Hatton, OSB #751517  
Senior Assistant Attorney General