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BEFORE THE OREGON PUBLIC UTILITY COMMISSION

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. UM1288

DEFENDANTS' MOTION TO REOPEN DOCKET, RECONSIDERATION OF CLOSURE, STAY EXECUTION, AND REQUEST FOR RULING ON PENDING MOTIONS

(ORAL ARUGUMENT REQUESTED)

Defendants move pursuant to OAR 860-001-0420, 86-001-0410, 860-001-0700 and 860-001-0720 to reopen Docket No. UM1288, to stay execution of the Order No. 07-424 (September 26, 2007), and to request that the Commission rule on Defendants' pending Motion to Set Aside Default (September 28, 2007) and Motion for Disclosure of Ex Parte Communications (October 22, 2007.) These motions are supported by the Points and Authorities below, the pleadings and motions on file in this docket, and the Declaration of William J. Ohle. The defendants request oral argument.

**POINTS AND AUTHORITIES**

The Commission has closed docket UM1288 on May 5, 2011, "Without an Order." Setting aside for the moment whether it is even possible to close a file without an order, at the time there was still pending before the Commission two motions: (1) Defendants' pending

1 Motion to Set Aside Default (September 28, 2007); and (2) Motion for Disclosure of Ex Parte  
2 Communications (October 22, 2007.) The Commission should reopen this docket and rule on  
3 these motions before closing the file. Failure to rule on these motions has left the parties in  
4 limbo. The Court of Appeals in *OPUC v. VCI et al.*, 231 Or App 653, 220 P3d 745 (2009), ruled  
5 that it did not have jurisdiction over the controversy until the Commission ruled on the motions.<sup>1</sup>  
6

7 Defendants are being directly prejudiced by the failure to resolve the pending motions.  
8 Unknown to defendants' counsel until prompted by the May 5, 2011, "closure," the Oregon  
9 Department of Justice filed, *ex parte*, motions to Affect Administrative Warrant (August 13,  
10 2010, Marion County Circuit Court Case No. 10C19814) and to register the Warrant as a foreign  
11 judgment in the state of Washington (December 14, 2010, Pierce County Superior Court No. 10-  
12 2-13815-9.) Counsel for defendants was never served with these pleadings anywhere near the  
13 time they were filed and only received copies after requesting them on May 27, 2011.  
14 (Declaration of William J. Ohle, Ex. A.)  
15

16 Council for defendants has been listed on the Commission's docket, and was registered  
17 with the Court of Appeals, as the attorney of record for the defendants since the inception of this  
18 case in 2007, and while the Department of Justice attempted to mail various court pleadings  
19 directly to the defendants at what was an old address, no effort was made to serve defendants'  
20 counsel in plain violation of ORCP 9, as well as the numerous rules prohibiting *ex parte*  
21 communications with the Court and with represented parties. Furthermore, the Department of  
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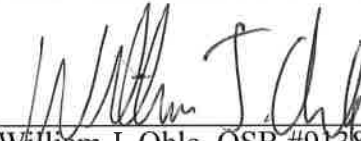
25 <sup>1</sup> In an abundance of caution, defendants have petitioned for review of the closure of the  
26 file to the Oregon Court of Appeals on the basis that the closure of the file could be seen as a  
denial of the pending motions.

1 Justice failed to inform the Court of the pending motions in violation of UTCR 3.130.<sup>2</sup>

2 The defendants have never had an opportunity to present their case and the Commission  
3 has never provided the defendants with the due process that they are entitled. For the reasons  
4 stated above, the matter should be reopened, any collection efforts should be stayed, and for the  
5 reasons stated in defendants pending motions, the order vacated.

6 Dated this 5<sup>th</sup> day of July, 2011.

8 SCHWABE, WILLIAMSON & WYATT, P.C.

9  
10 By:   
11 William J. Ohle, OSB #913866  
12 wohle@schwabe.com  
13 Facsimile: 503.796.2900  
14 Of Attorneys for VCI COMPANY f/k/a  
15 STAN EFFERDING and STANLEY  
16 JOHNSON d/b/a VILAIRE, and VCI  
17 COMPANY, a Washington corporation

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25 <sup>2</sup> The statutes cited in the Exhibit A email from the Department of Justice provide no  
26 exception to the service on rules but simply allow direct communications with a represented party. Service of the pleadings on the attorney of record was still required.

1 **CERTIFICATE OF SERVICE**


2 I hereby certify that on this 5<sup>th</sup> day of July, 2011, I served the foregoing  
3 DEFENDANTS' MOTION TO REOPEN DOCKET, RECONSIDERATION, STAY  
4 EXECUTION, AND REQUEST FOR RULING ON PENDING MOTIONS on the following  
5 party at the following address:

6 David B. Hatton  
David.Hatton@state.or.us  
7 Carolyn G. Wade  
Carolyn.g.wade@doj.state.or.us  
8 Assistant Attorney General  
1162 Court Street NE  
9 Salem, OR 97301-4096  
Attorney for the Public Utility  
10 Commission of Oregon

11 John Kroger (*via U.S. Mail only*)  
Oregon Attorney General  
12 Department of Justice  
1162 Court Street NE  
13 Salem OR, 97301

14 Carol Hulse  
Carol.hulse@state.or.us  
15 Oregon Public Utility Commission  
550 Capitol St NE #215  
16 PO Box 2148  
Salem, OR 97308-2148

17 by electronic filing and emailing to him a true and correct copy thereof, certified by me as such,  
18 placed in a sealed envelope addressed to him at the address set forth above, and deposited in the  
19 U.S. Post Office at Portland, Oregon, on said day with postage prepaid.

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21 \_\_\_\_\_  
22 William J. Ohle

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BEFORE THE OREGON PUBLIC UTILITY COMMISSION

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. UM1288

DECLARATION OF WILLIAM J. OHLE

I, William J. Ohle, under penalty of perjury, do hereby declare:

1. I am one of the attorneys representing defendants in the above-captioned matter and have been the attorney of record for defendants since November 2007.
2. I was never served at the time of filing with any of the state court pleadings filed by the Oregon Department of Justice on behalf of the Commission, specifically the Administrative Warrant (August 13, 2010, Marion County Circuit Court Case No. 10C19814) and the registration of the Warrant as a foreign judgment in the state of Washington (December 14, 2010, Pierce County Superior Court No. 10-2-13815-9.)
3. Counsel for defendants only received copies of the state court pleadings after requesting them on May 27, 2011, with the email attached as Exhibit A.

1           4.       I declare under penalty of perjury that the above is true and correct to the best of  
2 my knowledge.

3           Dated this 5<sup>th</sup> day of July, 2011.

4  
5   
6 \_\_\_\_\_  
7 William J. Ohle

**Ohle, William**

**From:** Wade Carolyn G [carolyn.g.wade@doj.state.or.us]  
**Sent:** Friday, May 27, 2011 10:02 AM  
**To:** Ohle, William  
**Subject:** VCI/Vilaire  
**Attachments:** 20110526135312829.pdf

Bill--

Thanks for talking with me yesterday.

I enclose all the pleadings related to the recordation of the PUC order with the Marion County Clerk's Office, the opening of the Marion County Circuit Court case and subsequent order of the court, and the registration of the order as a foreign judgment in Washington.

In pulling together these documents, it became clear to me what occurred and why it would not have been necessary or appropriate to serve you with a copy of any of the pleadings. After the Court of Appeals declined to set aside the default order, it came to our office to be enforced. It was recorded in the Marion County Clerk's Office, as any warrant or order is recorded as a matter of course. Then a Marion County Circuit Court case was opened pursuant to ORS 205.126(1), asking the court to issue an order confirming that the order should be treated as a judgment by other states' courts, according to Oregon law. This is our standard procedure for facilitating the recordation of warrants in foreign courts and is performed on an *ex parte* basis, because the process merely memorializes what is already established by operation of law under ORS 205.125.

When I filed the foreign judgment in Washington, I followed the Washington statute, which is based on the Uniform Registration of Foreign Judgment Act. RCW 6.36.035 directs a creditor to file an affidavit with the last known post office address of the judgment debtor and the judgment creditor, and to notify the judgment debtor only.

For these reasons, our position is that notice to you as the debtor's attorney in the prior PUC proceeding was not necessary at any stage of the post-order collection process. Of course, if your motion for reconsideration with the PUC were to be granted, or if the PUC were to issue a stay, we would suspend all collection efforts immediately. At this point, however, there is no stay, and we are not in a position to stand down on collection.

Carolyn

Carolyn G. Wade  
Senior Assistant Attorney General  
1162 Court Street NE  
Salem, Oregon 97301  
541.686.7846 (Eugene direct dial)  
503.934.4400 (Salem)

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

EXHIBIT   A    
PAGE   1   OF   1  

7/5/2011

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 5<sup>th</sup> day of July, 2011, I served the foregoing

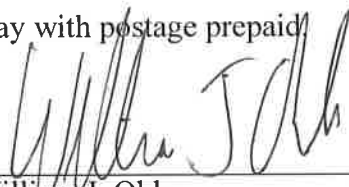
3 DECLARATION OF WILLIAM J. OHLE on the following party at the following address:

4 David B. Hatton  
David.Hatton@state.or.us  
5 Carolyn G. Wade  
Carolyn.g.wade@doj.state.or.us  
6 Assistant Attorney General  
1162 Court Street NE  
7 Salem, OR 97301-4096  
Attorney for the Public Utility  
8 Commission of Oregon

9 John Kroger (*via U.S. Mail only*)  
Oregon Attorney General  
10 Department of Justice  
1162 Court Street NE  
11 Salem OR, 97301

12 Carol Hulse  
Carol.hulse@state.or.us  
13 Oregon Public Utility Commission  
550 Capitol St NE #215  
14 PO Box 2148  
Salem, OR 97308-2148

15 by electronic filing and emailing to him a true and correct copy thereof, certified by me as such,  
16 placed in a sealed envelope addressed to him at the address set forth above, and deposited in the  
17 U.S. Post Office at Portland, Oregon, on said day with postage prepaid

18   
19 \_\_\_\_\_  
20 William J. Ohle