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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,

Defendant.

Docket No. UM1288

DEFENDANTS’ OBJECTIONS TO THE ADMISSION OF PRE-FILED EXHIBITS

(ORAL ARGUMENT REQUESTED)

Defendants’ object to the admission of complainant’s prefiled testimony and exhibits, Exhibits 100 through 115, as premature, prejudicial, and as unnecessary hearsay. In addition, defendants reiterate their request that an Administrative Law Judge be appointed to this docket and that the ALJ determine issues of admissibility and allow for discovery and cross-examination of witnesses at a hearing on this dispute.

Complainant filed its Complaint on September 10, 2007, along with over a hundred pages of testimony and exhibits; the Exhibits 100 through 115 complainant now seeks to have admitted into evidence. Before defendants were even required to file their Answer to the Complaint, complainant moved to have the exhibits admitted into evidence. (See Defendants’ Motion to Set Aside Default, filed September 28, 2007). Further, before defendants were required to Answer, and well before its objections to the motion to admit the exhibits was due under OAR 860-013-0050, complainant obtained an *ex parte* order from the Commission defaulting defendants and admitting all such exhibits. *Id.* Defendants immediately moved to set aside the default and the

1 admission of the evidence as a violation of the Commission’s own rules as well as a violation of
2 defendants’ due process rights. *Id.* The present objections to the evidence are in direct response
3 to complainant’s motion to admit the evidence and are in addition to the reasons for setting aside
4 the admission of the evidence in the Motion to Set Aside the Default Order.

5 The testimony and exhibits that complainant seeks to introduce are the result of an
6 investigation that lasted over nine months and included some four subpoenas for information
7 from Quest, a carrier in competition with defendants. (Exhibits 104 - 108). The testimony
8 includes not only factual testimony regarding how information was gathered from Quest’s
9 computer system (Exhibit 103) but also expert statistical analysis of data (Exhibits 100 – 103)
10 and the internal findings of the PUC’s accounting staff (Exhibit 109).

11 Defendants have yet to even fully analyze the testimony, let alone conduct discovery and
12 examine the witnesses. There is no need to rush the admission of testimony and exhibits, and no
13 need to accept written testimony when defendants should have the opportunity to cross-examine
14 these witnesses. In fact, written testimony only appears to be appropriate when the “Commission
15 or ALJ [] direct[s] that the testimony of any witness, including supporting exhibits, be submitted
16 in writing...” OAR 860-014-0060. Neither the Commission nor an ALJ has directed the parties
17 to file written testimony.

18 Thus it is premature and unduly prejudicial to admit into evidence one-sided written
19 testimony at this time. Defendants, if allowed, intend to depose these witnesses or at a minimum
20 cross-examine the witnesses live at a hearing. In either case, “live” testimony subject to cross-
21 examination is far superior to hearsay evidence in the form of written testimony. The admission
22 of the testimony and exhibits, offered by complainant, is unnecessary and will likely become
23 obsolete once discovery is completed. Complainant’s motion should therefore be rejected.

1 Dated this 9th day of October, 2007.

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3
4 By:



5 William J. Ohle, OSB #913866

6 wohle@schwabe.com

7 Facsimile: 503.796.2900

8 Of Attorneys for VCI COMPANY f/k/a

9 STAN EFFERDING and STANLEY

10 JOHNSON d/b/a VILAIRE, and VCI

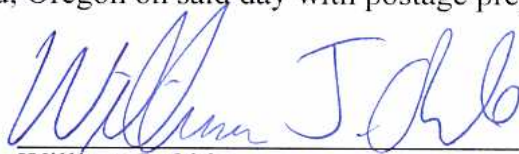
11 COMPANY, a Washington corporation

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 9th day of October 2007, I served the foregoing
3 DEFENDANTS' OBJECTIONS TO THE ADMISSION OF PRE-FILLED EXHIBITS on the
4 following party at the following address:

5 David B. Hatton
6 Assistant Attorney General
7 1162 Court Street NE
8 Salem, OR 97301-4096
9 David.Hatton@state.or.us

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

13 
14 _____
15 William J. Ohle