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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. UM 1288

MOTION FOR LEAVE TO FILE REPLIES

Defendants move for leave to file Replies in support of their Motion to Vacate Default Order and to Dismiss Claim and their Motion for Disclosure of Ex Parte Communications. Given the seriousness and importance of the issues raised in these motions, defendants believe that the Commission would benefit from a full briefing on the questions. Defendants also request a minimum of seven (7) days from the date of any order allowing Replies, to file them with the Commission.

Replies are generally allowed on civil motions in Oregon courts, *See* UTCR 5.030, and in at least one case before the Commission, Staff has argued that “the rules allow for three rounds of briefing where there is a motion, response and reply” *In re RCC Minnesota, Inc.*, UM 1083, Order No. 1083 (Oct. 18, 2004) (however, “no third round is permitted in applications for reconsideration”).¹

¹ Defendants’ counsel has conferred with the Commission’s Hearings Division and has been advised that there is no provision under the Commission’s rules for filing a Reply in support of a motion absent an order granted leave to file a Reply.

1 The first of defendants' motions involve one of the most fundamental questions before
2 the Commission, that being its subject matter jurisdiction. From the cases cited in the claimant's
3 response, the Commission has never exercised jurisdiction on a question of money damages in a
4 case of this nature, or apparently in any case other than those involving the failure to return
5 TDAP equipment valued at \$50 or less, and in no case where jurisdiction has been challenged.
6 *See PUC v. Stanton*, TT 50, Order No. 01-146 (Feb. 1, 2001)(\$27 default order); *PUC v. Starrett*,
7 TT 51, Order No. 01-148 (Feb. 1, 2001)(\$37 default order); *PUC v. Pate*, TT 45 , Order No. 01-
8 127 (Jan. 25, 2001)(\$50 default order). Prior to ruling on a motion with as far reach
9 consequences as expanding the Commission's jurisdiction to unprecedented claims for money
10 damages, defendants' request the opportunity to reply to claimant's arguments.

11 The second motion involves the propriety of communications made between those within
12 the agency prosecuting the claim, with those within the agency adjudicating the claim, made
13 without notice or opportunity for defendants to participate or respond. The claimant essentially
14 makes the argument that there are many circumstances within a contested case where the
15 prosecutor of the claim can communicate with the adjudicating authority and decide issues to the
16 extreme detriment of the defendants without the defendants being given any notice or
17 opportunity to respond. This, defendants strongly contend, is inappropriate, and the record
18 should be made clear as to when and under what limited circumstances ex parte communications
19 should be allowed.

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1 Therefore, defendants request the opportunity to file Replies in support of their motions
2 and be granted a minimum of seven (7) days from the order allowing the Replies to file them.

3 Dated this 6th day of November, 2007.

4 SCHWABE, WILLIAMSON & WYATT, P.C.


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6 By: _____
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10 Of Attorneys for VCI COMPANY, STAN
11 EFFERDING and STANLEY JOHNSON
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 6th day of November 2007, I served the foregoing
3 MOTION FOR LEAVE TO FILE REPLIES on the following party at the following address:

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

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

12 
13 _____
14 William J. Ohle