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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)	Hearing Examiner File:
)	S-15-001 and S-15-002
)	
FOSS MARITIME COMPANY)	DECLARATION OF ELEANORE S.
)	BAXENDALE ON DPD OPPOSITION
)	TO FOSS MOTION TO QUASH
from an interpretation by the Director,)	
Department of Planning and Development.)	
)	

I, ELEANORE S. BAXENDALE, declare as follows:

1. This declaration is based on my personal knowledge of the facts set forth below. I am the attorney for the Department of Planning and Development in this matter. I am over eighteen years of age and am otherwise competent to testify regarding these matters.

2. The topics DPD wished to address in the 30(b)(6) deposition were set out in an email on July 29 and covered 2 basic issues: first, the negotiations between the Port and Foss concerning uses at Terminal 5 (topic 1), and second, the activities that Foss, Shell or Shell contractors have conducted or will conduct at Terminal 5 in connection with the proposed oil rig moorage, including a description of the vessels that have or will use Terminal 5 (topics 2-9). Ex.

1. Three business days later, August 3, Mr. West for Foss and I agreed by telephone to modifications which Foss reduced to writing August 4. These modifications limit the deposition

1 to the second issue: the activities conducted in connection with the proposed oil rig moorage at
2 Terminal 5. Ex. 2.

3 3. The August 3 telephone call took place at about 1:30. In it Mr. West raised
4 concerns about the interests of the Environmental Interveners, and suggested that DPD's request
5 for the 30(b)(6) deposition was really made to cater to these intervenors, which I denied, noting
6 this topic has always been an issue in this case. At the close of that part of the discussion, Mr.
7 West said he thought I was not "playing games" in requesting the deposition. Approximately 3
8 hours later, Foss filed the Motion to Quash, asserting the opposite.

9 4. DPD provided its responses to Foss's discovery requests on July 7; these included
10 a privilege log listing interpretation drafts that the City Attorney classified as privileged because
11 they had been sent as part of emails between Andy McKim at DPD and the City Attorney's
12 office. Foss did not contact me about this prior to the deposition, which took place 15 days after
13 DPD provided its responses. At the deposition, Mr. McKim testified he had sent drafts to the
14 City Attorney for input, and Mr. West asked me where they were. I replied to check the
15 discovery privilege log. Mr. McKim's deposition was July 23. More than a week later at 6
16 o'clock on August 3, Mr. West sent a letter asking for production of these drafts. Because the
17 documents are in control of a paralegal, who is on vacation, I had to work around the technical
18 systems used to protect meta data, and in the process of considering Mr. West's argument, I
19 found another source for some of the drafts that was not associated with the emails to the City
20 Attorney. Had Foss raised the issue prior to the deposition, those drafts that do not contain legal
21 advice would have been produced before the deposition.

22 5. The parties have had at least two discussions about the generality of the exhibits
23 listed on the exhibit list – "permits," "photographs," "records of moorage in Puget Sound" – to

1 determine when the specific documents will be provided to DPD. At the meeting on July 24, Mr.
2 West stated that he needed to go through the voluminous documents that had been provided
3 through Foss's Public Record Act requests before he could produce documents, and that they
4 would be produced as available. In a telephone discussion on July 29 to discuss particular
5 exhibits to which DPD objected, Mr. West thought the documents could be produced between
6 August 3 and 5, and stated that the City's request to take the 30(b) (6) deposition could delay
7 Foss's providing documents, even though Foss is represent by 2 law firms. As of 3:00 August 5,
8 DPD has not received specific documents of any kind from Foss.

9 6. Counsel for Earth Justice offered to draft some issues for the deposition and sent
10 them to me. I could not review, edit and send them out on Monday, July 27 or Tuesday, July 28
11 because I was busy preparing DPD's Witness and Exhibit list, which was due July 28 and
12 because I was preparing questions about Foss's and the Port's witness and exhibit lists to discuss
13 documents that DPD believes should be excluded in its Motion in Limine.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed this 5th day of August, 2015, in Seattle, Washington.

16 
17 ELEANORE S. BAXENDALE

Baxendale, Eleanore

From: Baxendale, Eleanore
Sent: Wednesday, July 29, 2015 1:09 PM
To: 'drwest@gsblaw.com'; 'goodwin.t@portseattle.org'; 'josh@verislawgroup.com';
'Matthew Baca'; McCullough, Jack; 'molly@verislawgroup.com'; 'Patti Goldman';
'schnp@foster.com'
Subject: Foss Appeal topic for 30b6 deposition
Attachments: modified list for 30b6 Deposition of Foss .docx

David, here are the topics I'd like to cover in this deposition. We can discuss logistics today if there is time, or tomorrow if you prefer.

Thanks, Eleanore

Exhibit 1

1. The negotiations concerning the uses authorized in the lease, dated February 9, 2015, between the Port of Seattle and Foss for use of Terminal 5;
2. Foss's agreement(s) with Shell for use of Terminal 5 ("Shell Agreement");
3. The activities Foss has committed to perform related to the Shell Agreement;
4. The activities Foss has contracted or otherwise agreed with others to perform at Terminal 5 related to the Shell Agreement;
5. The activities Foss has already performed at Terminal 5 related to the Shell Agreement;
6. The activities Foss plans to conduct at Terminal 5 related to the Shell Agreement in the future;
7. The activities Shell and/or any Shell contractors have already performed at Terminal 5 or intend to perform in the future pursuant to the Shell Agreement;
8. Descriptions (size, type, function) of all Shell or Shell contractor vessels that have called or may call at Terminal 5 pursuant to the Shell Agreement;
9. Descriptions of all other vessels that have called or may call at Terminal 5 pursuant to the Shell Agreement during its term.

Baxendale, Eleanore

From: David West <DrWest@gsblaw.com>
Sent: Tuesday, August 04, 2015 9:18 AM
To: Baxendale, Eleanore
Cc: Dan Vecchio; McCullough, Jack; Pat Schneider; Traci Goodwin; Patti Goldman
Subject: RE: Fosss Appeal topic for 30b6 deposition

Per our discussion yesterday, here is a revised list of topics, assuming the deposition goes forward. I believe this reflects our agreement on the scope of any deposition. The original list was a bit internally duplicative and I re-arranged it, but I believe the following covers everything that was in the original notice. We need to confirm that the intervenors are willing to abide by these restrictions, but since this is not their deposition and they are not allowed to introduce new issues, I assume they will be prepared to agree.

1. The activities that Foss, Shell or Shell contractors have conducted or will conduct at Terminal 5.
2. To the extent necessary to investigate the activities that Foss, Shell or Shell contractors have conducted or will conduct at Terminal 5, but only for that purpose, the following:
 - a. The activities Foss has committed to perform related to Foss's agreement(s) with Shell for use of Terminal 5 ("Shell Agreement");
 - b. The activities Foss has contracted or otherwise agreed with others to perform at Terminal 5 related to the Shell Agreement;
 - c. The activities Foss has already performed at Terminal 5 related to the Shell Agreement;
 - d. The activities Foss plans to conduct in the future at Terminal 5 related to the Shell Agreement; and
 - e. The activities Shell and/or any Shell contractors have already performed at Terminal 5 or intend to perform in the future at Terminal 5 pursuant to the Shell Agreement.
3. Descriptions (meaning size, type, and general function) of all Shell or Shell contractor vessels that have called or may call at Terminal 5 pursuant to the Shell Agreement. Inquiry into such descriptions shall be general in nature and shall not relate to specific operational details of such vessels.
4. Descriptions (meaning size, type, and general function) of all other vessels that have called or may call at Terminal 5 pursuant to the Shell Agreement. Inquiry into such descriptions shall be general in nature and shall not relate to specific operational details of such vessels.

Inquiry will not be made into confidential, proprietary, or information which is protected from disclosure by applicable law.

Exhibit 2