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7 BEFORE THE HEARING EXAMINER  
8 FOR THE CITY OF SEATTLE

9 In the Matter of the Appeals of

10 **FOSS MARITIME COMPANY AND**  
11 **PORT OF SEATTLE**

12 from an interpretation  
13 issued by the Director,  
14 Department of Planning  
15 and Development

Hearing Examiner File Nos.  
S-15-001; S-15-002  
(Director's Interpretation: 15-001)

FOSS MARITIME'S REPLY IN  
SUPPORT OF MOTION TO QUASH  
AND/OR FOR PROTECTIVE ORDER

16 Foss's Motion to Quash and/or For Protective Order relied on two things – the burden  
17 of doing discovery the same week of the hearing, and DPD's failure to request this discovery in  
18 a timely fashion. DPD and the Environmental Intervenors have not refuted either of these  
19 points. DPD fails to explain its failure to raise the topic of deposition discovery until less than  
20 month before the hearing, and its subsequent repeated failures to advance the discovery so that  
21 the time left to conduct any deposition was compressed into mere days before the hearing in  
22 this matter. DPD also fails to note that the list of overbroad topics it submitted two weeks  
23 before the hearing were drafted by counsel for the Environmental Intervenors, and reflected a  
24 desire for information that DPD itself did not even want (as demonstrated by DPD's immediate  
25 agreement to narrow the topics). DPD instead uses its opposition brief largely as an  
26 opportunity to complain at length about *Foss's* trial preparation and document production. But

1 these issues, which the parties have largely resolved amicably, have nothing to do with whether  
2 DPD is entitled to a CR 30(b)(6) deposition under these circumstances. DPD is not entitled to  
3 discovery at this late date.

4 DPD's only argument about its delay is that it "demonstrated its interest" in "this  
5 topic"<sup>1</sup> in its Motion to Dismiss on June 15, 2015, and again in its written discovery requests on  
6 July 9. Opp. at 2. Foss has never argued that it was unaware of the factual issues that are  
7 relevant in this proceeding. But knowledge of the issues in a case does not place one on notice  
8 of a CR 30(b)(6) deposition. This is why Foss told the City and the Hearing Examiner on June  
9 3, 2015 – months before the hearing – that it wanted two depositions. DPD's written  
10 discovery actually militates against notice of some form of discovery on the same topic. It is  
11 hard to even understand how a motion to dismiss indicates that a party should expect a last  
12 minute deposition. Why, then, did DPD drop its request for a similar deposition of the Port?  
13 That has never been explained.

14 DPD also ignores the fundamental distinction between a 30(b)(6) deposition and a  
15 deposition of a fact witness, as Foss explained in its Motion. DPD argues that Foss has  
16 disclosed several witnesses who may testify at the hearing regarding activities at Terminal 5,  
17 but fails to recognize or appreciate that Foss's witnesses all will testify at the hearing in their  
18 individual capacities as fact witnesses. Thus, contrary to DPD's baseless assertion, Foss will  
19 not be "including preparation on this topic." The preparation required by CR 30(b)(6) –  
20 determining knowledge of the entire corporate entity – is fundamentally different from  
21 preparation of individual witnesses for a hearing.

22 Nor does DPD deny that it is the Environmental Intervenors, and not DPD, who insisted  
23 that the deposition take a full day rather than the 3.5 hours DPD initially had requested.<sup>2</sup> In  
24 fact, DPD does not even state a basis for its objection to a protective order limiting any  
25

26 <sup>1</sup> DPD does not clarify to which of its nine proposed deposition topics it is referring.

<sup>2</sup> The Environmental Intervenors have now amended their estimate to 5.5 hours total.

1 deposition to 3.5 hours, likely because the DPD itself represented to Foss that this was all the  
2 time it would need. Despite its protests to the contrary, DPD appears to be following the  
3 instructions of the Environmental Intervenors. DPD's objection lacks any justification, and if  
4 the deposition is to proceed then the Hearing Examiner should issue an order limiting it to the  
5 3.5 hours DPD already has stated will be sufficient.

6 The Environmental Intervenors claim that the preparation burden on Foss "appears to be  
7 overblown" because Foss has multiple lawyers working on this matter. This is an ironic point  
8 since the City, who assigned only one lawyer this matter, claims the reason it did not timely  
9 send out discovery was because it was too busy to turn to discovery until it was too late. In any  
10 case, it is the burden on Foss that is relevant here, not just the burden on its counsel. Foss's  
11 witnesses are already taking two days out of their business schedules to attend the hearing next  
12 week, and already have a day of hearing preparation scheduled next week. On the remaining  
13 two days, they have other business commitments which they would need to cancel to prepare  
14 for, and then attend, this late deposition. These are real burdens and unnecessary  
15 inconveniences caused by nothing other than unneeded delay.<sup>3</sup>

### 16 CONCLUSION


17 DPD's opposition and that of the Environmental Intervenors provides no justification  
18 for proceeding with a deposition at this late date, and does nothing to alleviate the burdens  
19 DPD seeks to impose on Foss mere days before the hearing. The Motion should be granted and  
20 the deposition (still not even noticed by the City) quashed.

21 DATED this 6<sup>th</sup> day of August, 2015.  
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25 <sup>3</sup> Counsel for the City and the Environmental Intervenors also attempt to explain statements they made by offering  
26 their view of the purported context or other statements they made. Foss will not further this "tit for tat" recounting  
of past discussions, other than to say that Foss's counsel does not agree with the representations made by counsel  
for the City and the Environmental Intervenors.

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**CERTIFICATE OF SERVICE**

I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of Washington that on August 6, 2015, I caused to be served the foregoing document, FOSS MARITIME'S REPLY IN SUPPORT OF MOTION TO QUASH AND/OR FOR PROTECTIVE ORDER, on the person(s) identified below in the manner shown:

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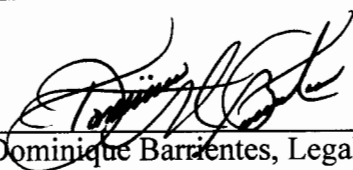
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14 Dated at Seattle, Washington, this 16<sup>th</sup> day of August, 2015.

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