

No. 360⁵47-8-II

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

NORTHWEST GAS ASSOCIATION, et al.,

Plaintiffs/Appellants

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, et al.,

Defendants/Respondents

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. Richard D. Hicks)

APPELLANTS' OPENING BRIEF

Michael A. Nesteroff

WSBA No. 13180

D. Jeffrey Courser

WSBA No. 15466

Christopher T. Wion

WSBA No. 33207

Stephen J. Tan

WSBA No. 22756

Jason T. Kuzma

WSBA No. 31830

William J. Lehman

WSBA No. 35081

Attorneys for Appellants Northwest Gas
Association, Olympic Pipe Line Company,
Chevron Pipe Line Company, Northwest
Terminaling Company, Yellowstone Pipe
Line Company, ConocoPhillips Pipe Line
Company, McChord Pipeline Company,
Valero L.P., Terasen Pipeline Co., KB
Pipeline, BP West Coast Products LLC and
Intalco Aluminum Company

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STATE OF WASHINGTON
BY  J. NESTEROFF

FILED
COURT OF APPEALS
DIVISION II

Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

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I. SUMMARY INTRODUCTION

This case involves Public Records Act ("PRA") requests for highly specialized, detailed, private data concerning Plaintiffs' natural gas and oil pipelines in Washington State. No state or the federal government has ever released such critical energy infrastructure data to the general public, and the release of the data would pose significant security risks for the pipelines and is exempt from disclosure. Plaintiffs sought an expedited preliminary injunction in order to halt disclosure and maintain the status quo pending a trial on the merits. Although the preliminary injunction was an expedited proceeding, Plaintiffs were able to submit evidence to demonstrate why their critical information is exempt from disclosure. Respondent and Intervenors failed to offer any rebuttal evidence. It is apparent from the trial court's order denying the preliminary injunction that it erroneously viewed Plaintiffs' evidence through the lens of a request for permanent injunctive relief. In ordering immediate disclosure of the requested confidential materials, the trial court made unwarranted determinations about the sufficiency of the evidence.

While Plaintiffs recognize that the trial court was faced with a challenging situation involving competing public policies, the trial court should have maintained the status quo and granted the injunction. Confronted with the prospect of immediate release of the highly critical data, Plaintiffs brought this appeal and were granted an emergency stay of the trial court's order pending resolution of this appeal. Plaintiffs now

seek reversal of the trial court's order and direction to the trial court to enter a preliminary injunction pending trial on the merits.

II. ASSIGNMENTS OF ERROR

Plaintiffs Northwest Gas Association ("NWGA"), Olympic Pipe Line Company ("Olympic"), Chevron Pipe Line Company and Northwest Terminaling Company ("Chevron"), Yellowstone Pipe Line Company and ConocoPhillips Pipe Line Company ("ConocoPhillips"), BP West Coast Products LLC ("BP"), Intalco Aluminum Corporation ("Intalco"), McChord Pipeline Co. ("McChord"), Terasen Pipelines (Puget Sound) Corporation ("Terasen"), Valero L.P. ("Valero"), Portland General Electric ("PGE"), B-R Pipeline Company ("B-R") and KB Pipeline Company ("KB") (collectively "Plaintiffs") make the following assignments of error:

1. The trial court erred when it determined that the shapefile data did not qualify for any exemption under the Public Records Act.

2. The trial court erred when it denied Plaintiffs' motions for preliminary injunction, as that ruling was tantamount to a final decision on the merits.

3. The trial court erred when it determined that federal law did not preempt the request made pursuant to Washington's Public Records Act.

III. STATEMENT OF ISSUES

The following issues pertain to the assignments of error:

1. Whether the trial court erred when it concluded that the "terrorism" exemption in RCW 42.56.420 does not apply where Plaintiffs

raised a sufficiently serious question about the applicability of the exemption and the equities favor Plaintiffs. (Assignment of Error No. 1.)

2. Whether the trial court erred when it concluded that the commercial and proprietary information exemption in RCW 42.56.270(1) did not apply, despite Plaintiffs' showing of a likelihood of success of proving both private gain and public loss. (Assignment of Error No. 1.)

3. Whether the trial court erred when concluding that Plaintiffs did not demonstrate the likelihood of showing a private loss under RCW 80.04.095. (Assignment of Error No. 1.)

4. Whether the trial court erred by adjudicating the ultimate merits of the case at the preliminary injunction stage of the proceedings. (Assignment of Error No. 2.)

5. Whether the trial court erred by denying Plaintiffs an opportunity to conduct meaningful discovery and by applying a more rigorous burden of proof than required at the preliminary injunction stage. (Assignment of Error No. 2.)

6. Whether the trial court erred when concluding that federal law did not preempt Intervenors' request for disclosure under Washington's Public Records Act. (Assignment of Error No. 3.)

IV. STATEMENT OF THE CASE

A. The Parties.

1. Plaintiff Pipeline Companies. Plaintiffs are the owners and operators of the majority of the natural gas and liquids pipelines serving the state of Washington. Plaintiffs supply most of the natural gas to

residential, commercial and business customers in Washington and transport a large percentage of the motor fuels (gasoline, diesel, jet fuel and aviation gas) used in the state. In addition, many of the pipelines are interstate pipelines, which also serve customers throughout Oregon, Idaho, California, Montana, and Utah.

Plaintiff Northwest Gas Association ("NWGA") is a trade association composed of Avista Corporation, Cascade Natural Gas Corporation, Spectra Energy, Intermountain Gas Company, Northwest Natural Gas Company, Puget Sound Energy, TransCanada's GTN System and Williams Northwest Pipeline. Kirschner Decl. ¶ 3 at 1 (CP 32).¹ The natural gas pipeline systems of NWGA members constitute part of the critical energy infrastructure in the state of Washington and the Pacific Northwest. Kirschner Decl. ¶ 4 at 2 (CP 33); Ford Decl. ¶ 2 at 1 (CP 41); Latimer Decl. ¶ 2 at 1 (CP 47).

Plaintiff Olympic Pipeline owns a 400-mile liquids pipeline that carries refined petroleum products from refineries near Ferndale and Anacortes, Washington, to bulk stations and delivery points throughout western Washington and Oregon. Maudlin Decl. ¶ 2 at 1-2 (CP 237-38)

¹In support of their respective motions for preliminary injunction, Plaintiffs submitted the following evidence: Declarations of Dan Kirschner, Gregory Ford, Robert Latimer, Chris Maudlin, Hector J. Fajardo, Tracy Long, Randy Beggs, William Fogarty, George Hutcherson, Terry Golden, Bruce L. Paskett, Robert Huber, George Hills, Jim Snyder; Supplemental Declarations of Tracy Long and Bruce L. Paskett; and the Affidavit of Hugh Harden. These documents are contained in the Clerk's Papers and are also attached as the Appendix to this Opening Brief for the Court's convenience.

Olympic's pipeline provides, among other things, jet fuels for Seattle-Tacoma International Airport. Id. at 2 (CP 238).

Plaintiff Terasen Pipeline owns and operates an approximately 70 mile pipeline that carries crude oil from Canada to refineries near Ferndale, Washington. Harden Affid. ¶ 3 at 2 (CP 435).

Plaintiffs Chevron Pipeline Company and Northwest Terminaling own and operate a liquids pipeline that transports refined petroleum products from a refinery in Salt Lake City throughout the intermountain west and terminates in Spokane. Fajardo Decl. ¶ 3 at 1-2 (CP 274-75). The Chevron pipeline traverses approximately 150 miles of eastern Washington from Helix, Oregon, through Pasco and then to Spokane. Id. at 2 (CP 275). The pipeline is a common carrier and transports motor fuels for a variety of petroleum marketers. Id. Chevron's Pasco terminal (through which its pipeline passes), is considered a high risk facility by the Coast Guard and, therefore, is one of five Chevron facilities in the United States that has been designated as a Maritime Security ("MARSEC") facility. Long Decl., ¶ 5 at 2 (CP 266). The MARSEC designation requires Chevron to prepare a detailed security plan, using data collected in preparation of or essential to assessing threats of terrorist acts. Id.

The Yellowstone Pipeline is owned and operated by Plaintiffs ConocoPhillips Pipeline Company and Yellowstone Pipeline Company. Beggs Decl. ¶ 2 at 1 (CP 554). The pipeline runs from refineries in Billings, Montana, through northern Idaho and eastern Washington and terminates at Moses Lake. Id. at 2 (CP 595). In addition to providing

transportation services to numerous wholesalers and retailers, the Yellowstone Pipeline delivers jet fuels to both Fairchild Air Force Base and Spokane International Airport. Id.

Plaintiff McChord Pipeline Company owns and operates a dedicated pipeline that carries jet fuels from the U.S. Oil Refinery in Tacoma, Washington, to McChord Air Force Base. Hills Decl. ¶ 3 at 1 (CP 334).

Plaintiff Valero L.P. owns and operates among other facilities, a 4.2 mile liquid petroleum pipeline in Pasco. Fogarty Decl. ¶ 2 at 1-2 (CP 492-93). Plaintiffs Portland General Electric, B-R Pipeline Company, and KB Pipeline own and operate a 19 mile natural gas pipeline that runs between Cowlitz County, Washington, and Columbia County, Oregon. Hutcherson Decl. ¶ 2 at 1 (CP 521). Plaintiffs BP West Coast Products LLC and Intalco Aluminum Company jointly own a 30 mile pipeline in Ferndale, and BP also owns two other pipelines that serve the Cherry Point Refinery. Golden Decl. ¶ 3 at 2 (CP 306).

2. Washington Utilities and Transportation Commission. In 1979, Congress enacted comprehensive safety legislation governing the transportation of hazardous liquids by pipeline, the Hazardous Liquids Pipeline Safety Act of 1979 ("HLPSA"). The HLPSA was modeled after the Natural Gas Pipeline Safety Act of 1968. By 1992, the two regimes had become unified with the passage of the Pipeline Safety Act (the "Federal PSA"), most recently amended in 2002 and codified at 49 U.S.C. § 60101 et seq.

Under the Federal PSA, states may adopt additional, or more stringent safety standards for *intrastate* pipelines, but "may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c) ("Preemption"). As authorized by the Federal PSA, the Washington Pipeline Safety Act ("PSA"), Chapter 81.88 RCW, delegated the administration and enforcement of laws related to pipeline safety in Washington state to Respondent Washington Utilities and Transportation Commission ("WUTC"). The WUTC, among other things, collects highly detailed information from Plaintiffs regarding their gas and liquids pipelines. RCW 81.88.080(1); Kirschner Decl., ¶ 5 at 2 (CP 33). It is this detailed pipeline information that is the subject of this appeal.

3. Intervenors. The Bellingham Herald and Allied Daily Newspapers (a trade association which represents several of the requestors, including The Seattle Times, and Seattle Post-Intelligencer and Tri-City Herald) were granted leave to intervene by the trial court.

B. Plaintiff Pipeline Companies Provided WUTC With Detailed Geographic Data Concerning Their Pipelines.

In 2000, the Washington legislature passed the PSA, which required, among other things, that the WUTC collect geospatial information depicting gas and hazardous liquid pipelines and consolidate that information into a statewide pipeline geographic information system ("GIS"). It further requires the WUTC to produce maps and other tools delineating the location of these facilities and to provide those tools to first

responders and local jurisdictions. The stated intent of the statute is "to protect the health and safety of the citizens of the state of Washington and the quality of the state's environment by developing and implementing environmental and public safety measures applicable to persons transporting hazardous liquids and gas by pipeline within the state of Washington." RCW 81.88.005(1).

1. Confidential Data Provided to WUTC. As required by RCW 81.88, the Plaintiffs each provided WUTC with two tiers of information -- high-level data and attribute-level data.

The high-level data consists of general location information, and is used by WUTC to create maps and atlases showing the general location of the pipelines. Rathbun Affid. ¶ 7 at 3 (CP 98). These maps are typically 1:24,000 scale, in which one-inch equals 2,000 feet, and are not at issue in this case.² Beggs Decl. ¶ 4 at 2 (CP 555).

The attribute-level data, by contrast, which is the focus of this appeal, contains very detailed information about the individual pipelines, including exact geographic positioning system coordinates for the pipelines and terminals, locations and types of metering facilities, taps, mileposts, cathodic protection test sites, and valves, plus information about the

²The high-level data has been used by WUTC to produce maps and atlases that are available to the public and are accessible on the internet for five counties: Whatcom, King, Thurston, Benton and Spokane. Ex. A to Supp. Nesteroff Decl. (CP 142). This information is sufficient for homeowners to know if a pipeline is in the immediate vicinity of their residences, but still requires consultation with the One-Call system to determine and identify the exact location. Snyder Decl. ¶ 7 at 4 (CP 562).

diameter of the pipeline, depth, and commodities transported. Fajardo Decl. ¶ 4 at 2 (CP 275); Long Decl. ¶ 8 at 3 (CP 267); Hills Decl. ¶ 6 at 2 (CP 335); Maudlin Decl. ¶ 5 at 2 (CP 238); Harden Affid. ¶ 4 at 2 (CP 435); Fogarty Decl. ¶¶ 4-5 at 2 (CP 493); Paskett Decl. ¶ 12 at 3 (CP 54); Huber Decl. ¶ 7 at 2 (CP 310). This information is compiled in the form of an Environmental Systems Research Institute ("ESRI") centerline (line pipe) shapefile ("shapefile" or "shapefile data"), which is a specialized digital linework representing the pipeline locations and depths. Rathbun Affid. ¶ 5 at 2 (CP 97-98); Beggs Decl. ¶ 4 at 2 (CP 555); Maudlin Decl. ¶ 5 at 2 (CP 238). This detailed and specialized data includes countless discrete geographic data points that together depict the entire system of hazardous liquid and natural gas pipelines in Washington State, along with all of their features and attributes. Kirschner Decl. ¶ 13 at 4 (CP 35).

The detailed and specialized data have never been provided to the general public by the State of Washington, by any other state that collects similar data, or by the federal government. Because the data are specialized, they generally are useful only to those who have the correct software and training. Kirschner Decl. ¶ 13 at 4 (CP 35); Ford Decl. ¶ 9 at 3 (CP 43); Latimer Decl. ¶ 9 at 3 (CP 49). However, a trained user with the appropriate software can exploit these data to reveal aspects of the system that are considered extremely sensitive. Kirschner Decl. ¶ 13 at 4 (CP 35); Latimer Decl. ¶ 9 at 3 (CP 49); Huber Decl. ¶ 7 at 2 (CP 310); Golden Decl. ¶ 7 at 2-3 (CP 306-307). The GIS software needed to access

and manipulate these specialized data is readily available in retail stores and through the internet. VRP (Mar. 16, 2007) 36:22-37:6.

As prudent owners and operators of critical energy infrastructure facilities, Plaintiffs do not share this detailed and specialized data with anyone outside of their respective companies without an understanding of who wants it and for what purpose the information will be used. Kirschner Decl. ¶ 14 at 4 (CP 35). Even then, they only share this information under the terms of specific use and confidentiality agreements and release is generally limited to first responders at the state, county and local levels of the jurisdictions through which the pipelines pass. Ford Decl. ¶ 10 at 3 (CP 43), Latimer Decl. ¶ 10 at 3 (CP 49); Long Decl. ¶ 5 at 2 (CP 266); Beggs Decl. ¶ 6 at 3 (CP 556); Maudlin Decl. ¶ 4 at 2 (CP 238); Golden Decl. ¶ 6 at 2 (CP 306).

The "attribute level" specialized data is provided to the One-Call system, which is set up so that landowners and contractors can determine the precise location of buried utilities marked prior to digging to ensure that no utilities -- such as pipelines -- are damaged or disturbed. Hills Decl. ¶ 5 at 2 (CP 335), ¶ 7 at 3 (CP 335-36); Snyder Decl. ¶ 7 at 4 (CP 562). The One-Call system does not disseminate the actual specialized data to the public.

The WUTC currently makes "high level" maps of the pipeline available to members of the general public who request them. Beggs Decl. ¶ 4 at 2 (CP 555); Ford Decl. ¶¶ 5-6 at 2 (CP 42). These maps are on a 1:24,000 scale, and while they identify the general locations of the

pipelines, the maps do not provide the specialized "attribute level" data. Ford Decl. ¶ 5 at 2 (CP 42); Beggs Decl. ¶ 4 at 2 (CP 555); Rathbun Affid. ¶ 7 at 3 (CP 98).

2. Attribute Level Specialized Data and Federal Action to Protect Pipeline Safety. Attribute level data were not disseminated to the general public before the terrorist attacks of September 11, 2001. The 9/11 attacks necessarily focused attention on, among other things, the vulnerability of the nation's critical energy infrastructure. Kirschner Decl. ¶ 6 at 2 (CP 33). Plaintiffs responded both voluntarily and through federally mandated initiatives to enhance protection of the pipeline system in the Pacific Northwest. Id.; Latimer Decl. ¶ 12 at 3-4 (CP 49-50); Ford Decl. ¶ 14 at 4 (CP 44), Paskett Decl. ¶ 5 at 2 (CP 53).

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA") has specifically responded to the public safety and security challenges nationwide. Kirschner Decl. ¶ 7 at 2 (CP 33). PHMSA administers the national regulatory program to ensure the safe and environmentally sound transportation of natural gas, liquefied natural gas, and hazardous liquids by pipeline. Id.

PHMSA created a national pipeline mapping system (the "NPMS"). The data collected for the NPMS is necessary for regulatory oversight and for monitoring the security of the pipelines, but public access to the data is limited. Id. ¶ 8 at 3 (CP 34). At the time of the hearing in the court below, PHMSA provided pipeline data to pipeline operators and local, state, and federal government officials only. Id. Subsequently, PHMSA has made its

maps accessible to the general public, but only for high-level data about the pipelines, i.e., 1:24,000 scale, and not for the attribute level specialized data at issue here, which is not included in the NPMS. Decl. of Christopher T. Wion, Ex. E (CP 230).

Moreover, under its rule-making authority, the Federal Energy Regulatory Commission has defined GIS pipeline mapping data, with some exceptions, as critical energy infrastructure information, and such data as most likely exempt from disclosure under the Federal Freedom of Information Act. *Id.* ¶ 9.

3. Numerous Federal Agencies Have Confirmed That Gas and Hazardous Liquid Pipelines Are Significant Targets for Terrorist Attacks. Since September 11, 2001, various federal agencies, including the Department of Homeland Security ("Homeland Security"), the FBI, the CIA, the Transportation Safety Administration, the Coast Guard and PHMSA continuously advise Plaintiffs about the possibility of terrorist attacks on pipelines and the need to take steps to assess the risk of, prevent, or respond to such attacks. Fajardo Decl. ¶ 6 at 2-3 (CP 275-76); Supp. Long Decl. ¶ 2 at 1 (CP 132); Maudlin Decl. ¶ 7 at 3 (CP 239); Snyder Decl. ¶ 5 at 2 (CP 560). These agencies have identified pipelines and their related infrastructure as critical energy infrastructure that are vulnerable to terrorist attacks. Maudlin Decl. ¶ 7 at 3 (CP 239); Fajardo Decl. ¶ 6 at 2-3 (CP 275-76); Paskett Decl. ¶ 5 at 2 (CP 53).

Homeland Security has highlighted specific concerns about the vulnerability of pipelines and the effect that an attack on the pipelines

could have on the local and regional economy and national security. For example, approximately two years ago, a representative of McChord Pipeline accompanied representatives of the Department of Homeland Security on an inspection of the McChord Pipeline. Hills Decl. ¶ 6 at 2 (CP 335). The Homeland Security representative expressed concerns about the vulnerability of the McChord Pipeline, particularly due to the role the pipeline plays in providing jet fuel to McChord Air Force Base. Id.

In November 2006, the FBI issued Intelligence Bulletin No. 225, titled "Potential Terrorist Pre-Operational Activity Targeting the U.S. Oil and Natural Gas Infrastructure." Supp. Long Decl. ¶ 2 at 1 (CP 132). This Intelligence Bulletin stated that

[I]nternational terrorist organizations -- especially Al-Qa'ida -- remain the primary threat to the domestic oil and natural gas sector. Threats issued by Al-Qa'ida and its affiliates, and attacks in Iraq, Saudi Arabia, and Yemen, indicate international terrorists regard oil and natural gas sector facilities as high-priority targets, causing homeland facilities to be potentially at risk.

Supp. Long Decl. ¶ 2 at 1-2 (CP 132-33) (quoting the Supplemental Long Declaration, but not directly quoting the Intelligence Bulletin). Post incident assessments of previous attacks on oil and gas infrastructure indicate that terrorists avail themselves of publicly available information in preparing for their attacks.³ Snyder Decl. ¶ 6 at 3 (CP 561).

³This information has been reinforced by the Declaration of Jack Fox, who is with the Transportation Security Agency. Plaintiffs had not been able to obtain the Fox Declaration before the trial court's ruling and provide it to this court as an example of the type of evidence that would be developed for a trial on the merits. Simultaneous with the filing of their
(continued . . .)

C. The Public Records Act Requests for the Detailed and Specialized Attribute Level Pipeline Data.

On February 6 and 7, 2007, the WUTC received a public records request from Jean Buckner of Buckner Associates of Bellevue, Washington, seeking release of the Plaintiffs' specialized attribute level data. Buckner submitted her request pursuant to Washington's Public Records Act ("PRA"), Chapter 42.56 RCW.⁴ Rathbun Affid. ¶ 9 at 3 (CP 98). The request sought "UTC's electronic database that containing [sic] Pipeline/Facility information, to include all the underlying Pipeline/Facility data." Id. at Ex. B (CP 106).

Also on February 7, 2007, The Bellingham Herald made a public records request for:

access to and a copy of all geographic information system [GIS] data compiled by the Washington Utilities and Transportation Commission regarding hazardous liquid and gas pipelines in Whatcom County as well as underground location information and maps of pipelines from hazardous liquid pipeline companies and gas pipeline companies with interstate pipelines . . . in Whatcom County.

Id. Ex. B (CP 109). This request specifically included the detailed and specialized, attribute level data provided to the WUTC by the Plaintiffs, including NWGA members whose pipelines are in Whatcom County.⁵ Id.

(. . . continued)

Opening Brief, Plaintiffs are filing a motion pursuant to RAP 9.11 to supplement the appellate record with the Fox declaration.

⁴Chapter 42.56 RCW recodified the applicable provisions of Chapter 42.17 RCW.

⁵Plaintiffs Cascade Natural Gas, Williams Natural Gas, Terasen and BP Olympic Pipelines.

The Seattle Post-Intelligencer subsequently made a request similar to Ms. Buckner's on February 22, 2007. Id. ¶ 9 at 3-4 (CP 98-99). The Seattle Times and the Tri-City Herald also requested the attribute level data for the entire state on March 1, 2007. Id.

D. The WUTC Notifies Plaintiffs of the Request and Pending Disclosure of the Shapefile Data; Plaintiffs Promptly File a Complaint for Declaratory Judgment Barring Such Disclosure.

The WUTC promptly notified Plaintiffs that Ms. Buckner and The Bellingham Herald had made the public records request for Plaintiffs' attribute level data. Kirschner Decl. ¶ 15 at 4 (CP 35); Ford Decl. ¶ 8 at 3 (CP 43); Latimer Decl. ¶ 8 at 2 (CP 48); Paskett Decl. ¶ 10 at 3 (CP 54). More critically, the WUTC notified Plaintiffs that it expected to release the data to Ms. Buckner and The Bellingham Herald in 10 days, on February 20, 2007. Kirschner Decl. ¶ 16 at 4-5 (CP 35-36).

NWGA, Olympic and Chevron each filed complaints for injunctive relief in Thurston County Superior Court on February 14, 2007 -- just one week after the WUTC received the PRA requests. See, e.g., NWGA's Complaint for Injunctive Relief (CP 9-12), NWGA's Motion and Memorandum of Law in Support of Plaintiff's Motion for TRO and Preliminary Injunction ("NWGA's Motion" and "NWGA's Memo") (CP 13-31).⁶ The remaining Plaintiffs' lawsuits followed, and the trial court

⁶Olympic's and Chevron's complaints and motions for injunctive relief appear in the record at CP 183-92 and CP 241-78, respectively. The remaining Plaintiffs filed suit within weeks of NWGA's filing. See CP 282-311 (BP and Intalco); CP 317-98 (McChord); CP 403-59 (Terasen); 460-95 (Valero); CP 497-533 (PGE, B-R, and KB); CP 534-627 (ConocoPhillips).

later consolidated the cases. See Order of Consolidation and Setting Page Limitation for Plaintiffs' Reply Brief (CP 81-82). Plaintiffs sought a temporary restraining order and preliminary injunction preventing the WUTC from disclosing the detailed data gathered by the WUTC to Ms. Buckner, The Bellingham Herald, or other parties that are not first responders, local governments, or locator services. Plaintiff and WUTC agreed on temporary restraining orders, which the court entered and set a hearing date for March 16, 2007 on all of the Plaintiffs' preliminary injunction motions.⁷

Plaintiffs' preliminary injunction motions argued that the attribute level shapefile data is exempt from disclosure under a number of exemptions under the PRA. Specifically, Plaintiffs argued: (1) the specialized attribute level data is exempt under RCW 42.56.420, which governs information critical to protecting public safety; (2) the attribute level data is exempt intellectual property and/or research data that, if released, would produce private gain and public loss pursuant to RCW 42.56.270(1); and (3) releasing the confidential specialized data would result in private loss pursuant to RCW 80.04.095. See, e.g., NWGA's Memo at 9-14 (CP 24-29). Plaintiffs collectively submitted nearly 20 substantive declarations in support of their position. See Appendix A, hereto. In addition, as authorized by the trial court, Olympic filed a Supplemental Brief in Support of Motion for Preliminary Injunction (CP 201-11), asserting that disclosure under the PRA

⁷See CP 56-58 (NWGA); CP 197-200 (Olympic); CP 279-281 (Chevron); CP 312-16 (BP and Intalco); CP 399-402 (McChord); CP 452-56 (Terasen); CP 468-71 (stipulated) (Valero); CP 530-33 (PGE, B-R, and KB); CP 628-31 (ConocoPhillips).

would conflict with and be preempted by federal law. Due to the expedited, compressed nature of the proceedings, Plaintiffs had no opportunity to conduct any discovery, including taking depositions of individuals in the national security and Homeland Security branches of the federal government, local first responders or the requestors.

E. The Statutory Bases for Exempting the Shapefile Data and Plaintiffs' Evidence Submitted in Support.

Plaintiffs' motions relied on three primary statutory exemptions for protection of the highly specialized data -- RCW 42.56.420, the "terrorism" exemption; RCW 42.56.270, concerning confidential and proprietary information; and RCW 80.04.095, exempting valuable commercial data.

1. RCW 42.56.420. Plaintiffs argued that the exemption applied for data underlying assessments, plans or responses to acts of terrorism under RCW 42.56.420. Id. at 12-14 (CP 27-29). Plaintiffs submitted declarations from knowledgeable security managers in the pipeline industry, who all indicated that "[a]rmed with the knowledge gained from the shapefiles, a person inclined to do harm to a pipeline could tailor those efforts to maximize destruction or damage by identifying and exploiting the most sensitive points of the most critical pipelines." Plaintiffs' Joint Reply Memorandum in Support of Motions for Preliminary Injunction ("Plaintiffs' Reply"), at 5 (CP 117) (Summarizing, inter alia, warnings issued by Homeland Security and the FBI, Plaintiffs detailed the threat to pipeline safety. Id. at 4 (CP 116).). Plaintiffs maintained that the specialized data was critical to

assessing, planning, avoiding and responding to terrorist acts and that releasing the data would have a "substantial likelihood of threatening public safety." Id. at 7 (CP 119).

2. RCW 42.56.270. Plaintiffs also asserted that, due to the highly specialized nature of the data, the sensitivity of the information, the critical nature of the infrastructure systems involved, and the potential costs (both tangible and intangible) to repair or restore service lost due to damage, Plaintiffs consider the attribute level information to be confidential and proprietary under RCW 42.56.270(1). See NWGA's Memo at 9-10 (CP 24-25); see also Kirschner Decl. ¶ 14 at 4 (CP 35); Ford Decl. ¶ 10 at 3 (CP 43); Latimer Decl. ¶ 10 at 3 (CP 49); Fajardo Decl. ¶ 5 at 2 (CP 275); Maudlin Decl. ¶ 5 at 2 (CP 238); Beggs Decl. ¶ 5 at 2 (CP 555); Long Decl. ¶ 5 at 2 (CP 266); Fogarty Decl. ¶ 6 at 2-3 (CP 494).

Plaintiffs' evidence of the threat to public safety applicable to the terrorism exemption in RCW 42.56.420 also established the "public loss" element of RCW 42.56.270(1). NGWA's Memo, 9-10 (CP 24-25). Plaintiffs also submitted evidence demonstrating that at least one of the requestors intended to seek private gain from obtaining the attribute level data, by repackaging the specialized proprietary data and selling it for her own profit. Id. at 10-11 (CP 25-26).

3. RCW 80.04.095. Plaintiffs also argued that the specialized data is valuable commercial data pursuant to RCW 80.04.095, and, if released, would cause private loss. NWGA's Memo, 11-12 (CP 26-27). Plaintiffs cited the pipelines' safety and security, arguing that any damage

to one or more pipelines would result in considerable private economic loss. Id. at 12 (CP 27).

F. Northwest Industrial Gas Users File an Amicus Brief in Support of NWGA's Motion for Preliminary Injunction.

On March 6, Northwest Industrial Gas Users ("NWIGU"), comprising 35 end users of natural gas (with facilities in Oregon, Washington and Idaho), filed an amicus brief in support of Plaintiffs' motions for preliminary injunction. See Amicus Curiae Brief of the Northwest Industrial Gas Users in Support of NWGA ("Amicus Brief") (CP 64-69). NWIGU concurred with NWGA's arguments for the preliminary injunction and further argued:

Critical energy infrastructure, including the GIS pipeline data requested by Ms. Buckner and the Bellingham Herald, should not be available to the general public as a public record. Following the tragedy of September 11, 2001, there has been a concerted effort on the federal, state and local level to prevent the public dissemination of sensitive information describing critical energy infrastructure.

.....

The nature of this data and its disclosure raises serious safety and security concerns. This data can be manipulated, used, and studied, to identify certain critical and sensitive parts of Washington's pipeline system. An individual with destructive objectives, armed with this data, would have the ability to cause severe damage. To make such information widely available to the public jeopardizes public safety rather than enhancing it.

Id. at 3-4 (CP 66-67). NWIGU went on to describe the severe private loss that would occur as a result of damage to the pipelines if the shapefile data is released, including interrupted services to hospitals and food processing facilities. Id. at 4 (CP 67).

G. The WUTC Declined to Take a Position on Whether the Shapefile Data Is Exempt From Disclosure Under the PDA.

In its Reply to Plaintiffs' motions, the WUTC did not take a position as to whether the shapefile data is exempt under the PRA, and instead deferred to the trial court. See Reply Memorandum of Defendant Washington Utilities and Transportation Commission to Motions for Preliminary Injunction ("WUTC's Reply"), at 7 (CP 91). The WUTC confirmed that no court has addressed the language in RCW 42.56.420(1). Id.

H. Intervenors Oppose the Motion for Preliminary Injunction.

Intervenors filed a motion to intervene and a brief in opposition to the Plaintiffs' motions for preliminary injunction. See Opposition of Proposed Intervenors The Bellingham Herald and Allied Daily Newspapers to Plaintiffs' Motions for Preliminary Injunctions ("Intervenors' Opposition"), at 1-9 (CP 637-45). Although Intervenors argued that releasing the data would "allow homeowners and citizen action groups to determine pipeline vulnerabilities and thereby advocate for better safety," and that "the public interest would *benefit* from disclosure because valuable information about pipeline safety would be available to homeowners and concerned citizens," they did so without benefit of any evidence to support their argument. Id. at 5, 7 (CP 641, 643) (emphasis in original). Indeed, Intervenors provided no specific detail or evidence of how releasing the shapefile data would further effectuate either of these propositions.

I. The Trial Court Denies the Motions for Preliminary Injunction, Effectively Mooting Any Subsequent Trial on the Merits.

Following a hearing on Plaintiffs' Motions for Preliminary Injunction, the trial court issued a 20-page memorandum opinion denying the motions. See Memorandum Opinion Denying Injunction and Ordering Public Records Be Disclosed ("Order") (CP 159-78). The trial court ruled that no exemption applied and ordered the WUTC to disclose the documents. Id. Plaintiffs immediately filed their Notice of Appeal and an Emergency Motion for Stay, which this Court granted.

V. STANDARD OF REVIEW

The PRA mandates that "[j]udicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo." RCW 42.56.550(3); see also Progressive Animal Welfare Soc'y v. Univ. of Washington, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). This Court reviews de novo the trial court's denial of an injunction brought pursuant to the PRA where, as here, the record consists of declarations, memoranda of law and other documentary evidence. Dawson v. Daly, 120 Wn.2d 782, 788, 845 P.2d 995 (1993) (citing Spokane Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 35-36, 769 P.2d 283 (1989)).

VI. ARGUMENT

A. Standard for Granting a Preliminary Injunction.

A party seeking a preliminary injunction must show (1) a clear legal or equitable right; (2) that there is a well grounded fear of immediate invasion of that right; and (3) that the acts complained of have or will result in actual and substantial injury. Rabon v. City of Seattle, 135

Wn.2d 278, 284, 957 P.2d 621 (1998) (citing Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)). When determining whether a party has the requisite "clear legal or equitable right," the court must examine the likelihood that the party will prevail on the merits. Rabon, 135 Wn.2d at 285.

Grounds for the grant of a preliminary injunction also exist where the moving party demonstrates "sufficiently serious questions going to the merits to make the case a fair ground for litigation with the balance of hardships tipping decidedly in its favor." League of Women Voters of Washington v. King County Records, Elections & Licensing Services Div., 133 Wn. App. 374, 384-85, 135 P.3d 985 (2006) (internal quotation mark omitted) (quoting Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998) (internal quotation mark omitted)). Plaintiffs satisfied both standards. As a threshold matter, however, the trial court erred when it rendered what amounted to a final decision on the merits, and the order denying the preliminary injunction should be reversed on this basis alone.

B. The Trial Court's Ruling Was Substantively Incorrect.

Plaintiffs submitted extensive unrebutted evidence that the attribute level shapefile data was exempt from disclosure under several of the PRA's exemptions. The trial court all but ignored this evidence when making its final determination that the records were not exempt. This Court reviews Plaintiffs' challenge to WUTC's potential disclosure de novo, and Plaintiffs have satisfied their burden of proving a "clear legal

or equitable right" and demonstrated their likelihood of success on the merits. Rabon, 135 Wn.2d at 284. Additionally, Plaintiffs have raised "sufficiently serious questions going to the merits to make the case a fair ground for litigation with the balance of hardships tipping decidedly in its favor." League of Women Voters, 133 Wn. App. at 384-85.

Plaintiffs do not dispute that the PRA mandates disclosure of public records not falling under specific exemptions delineated in the Act. See Olsen v. King County, 106 Wn. App. 616, 623, 24 P.3d 467 (2001). Nor do Plaintiffs dispute that the WUTC is a state agency and that the attribute level shapefile data constitutes information prepared and retained by the agency in the performance of its governmental functions. See Confederated Tribes of the Chehalis Reservation v. Johnson, 135 Wn.2d 734, 746, 958 P.2d 260 (1998) (public record subject to disclosure includes any writing containing information relating to performance of any governmental function, retained by any state agency, regardless of record's physical form). Plaintiffs submit, however, that the detailed and specialized data is exempt from public disclosure under several of the PRA's exemptions.

1. Plaintiffs Have Raised "Sufficiently Serious Questions" About the Merits of the Terrorism Exemption and the Equities Tip Decidedly in Plaintiffs' Favor, Warranting the Grant of a Preliminary Injunction. In their motions for preliminary injunction, Plaintiffs argued that RCW 42.56.420(1) applies to shapefile data, exempting it from

disclosure. See, e.g., NWGA's Memo, 12-14 (CP 27-29).

RCW 42.56.420 exempts from disclosure:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

Plaintiffs submitted several declarations from knowledgeable witnesses to the effect that the specialized attribute level data is the very essence of what is covered by RCW 42.56.420(1). See, e.g., Long Decl. ¶ 5 at 2 (CP 266). (Chevron is required to "prepare a detailed security plan based on underlying data collected in preparation of or essential to assessing the threat of terrorist acts. These data are similar to what CPL has provided to the WUTC for mapping purposes as required by state law"). The WUTC also admits that no court has examined this exemption and that the language is undefined. WUTC's Reply, 8 (CP 92). The trial court's interpretation of the statute does not offer any illumination of the scope of what would be considered "terrorist" acts. The trial court acknowledged that the PSA was passed to ensure public safety and that terrorist acts "are always nested within

the larger issue of safety itself," but then declined to find that the shapefile data were exempt because they were created for first responders. Order 14, 15. The Plaintiffs have raised a sufficiently serious question about the applicability of RCW 42.56.420's exemption, and the issue should be allowed to proceed to trial on the merits.

Moreover, Plaintiffs submitted evidence that releasing the attribute level data would result in a "substantial threat to public safety." Plaintiffs presented information from the FBI and Homeland Security confirming that pipelines are being targeted by terrorists. See Supp. Long Decl. ¶ 2 at 1-2 (CP 132-33). It does not take an expert to testify that damage to the flow of jet fuels to McChord or Fairchild Air Force Bases or to SeaTac or Spokane International Airports would constitute a significant "public loss." See, e.g., Hills Decl. ¶ 3 at 1 (CP 334); Fajardo Decl. ¶ 3 at 2 (CP 275); Maudlin Decl. ¶ 2 at 1-2 (CP 237-38). NWIGU's amicus brief provides independent confirmation of the huge potential threat to public safety if the detailed data is released and then misused:

The nature of [the shapefile] data and its disclosure raises serious safety and security concerns. This data can be manipulated, used and studied to identify certain critical and sensitive parts of Washington's pipeline system. An individual with destructive objectives, armed with this data, would have the ability to cause severe damage. To make such information widely available to the public jeopardizes public safety rather than enhancing it.

Amicus Brief, 4 (CP 67).

Finally, the balance of the equities tips decidedly in Plaintiffs' favor. As discussed in Plaintiffs' Emergency Motion to Stay (granted by this Court), once the specialized data is released, this disclosure cannot

simply be "unmade" and the disclosed information cannot thereafter become "unpublic." Intervenors offered no compelling or urgent reason for release of the records prior to a trial on the merits. In the absence of a reason for hasty disclosure of the detailed and specialized data, the most equitable result would be to maintain the status quo and grant the preliminary injunction so the scope of the exemption can be further elucidated. The inability to "unring" this particular bell is even more troubling when it concerns information which may cause a "substantial likelihood of threatening public safety" if released.⁸ RCW 42.56.420; Maness v. Meyers, 419 U.S. 449, 460 (1975).

2. Plaintiffs Have Satisfied the Showing of a Likelihood of Success Under the Commercial and Proprietary Information Exemption.

The second exemption the attribute level data falls under is the commercial and proprietary information exemption in RCW 42.56.270(1), which exempts from disclosure:

Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss[.]

(Emphasis added.) The PRA exempts from disclosure valuable intellectual property and research data placed in the public domain for public benefit.

⁸See § VI.B.2 for the extensive evidence Plaintiffs submitted to demonstrate a "public loss" pursuant to RCW 42.56.270. For example, William Fogarty testified that releasing the shapefile data would "compromise the company's ongoing Security measures and would make the Pipeline more vulnerable to exploitation and sabotage," leading to public safety consequences. Fogarty Decl. ¶ 8 at 3 (CP 494).

Spokane Research & Def. Fund v. City of Spokane, 96 Wn. App. 568, 576, 983 P.2d 676 (1999) (citing Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 255, 884 P.2d 592 (1994)). The term "research data" means "a body of facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiry." Servais v. Port of Bellingham, 127 Wn.2d 820, 832, 904 P.2d 1124 (1995) (holding that projected cash flows prepared to provide the Port of Bellingham with data it could use in negotiations with developers constituted research data exempt from disclosure). As Intervenors point out, Plaintiffs collect the attribute level data for a specific purpose -- to comply with the reporting requirements of the PSA.⁹ Thus, the data is "research data" for purposes of RCW 42.56.270(1).

Research data is exempt from disclosure if disclosure would produce private gain and public loss. RCW 42.56.270(1). As for the private gain, Plaintiffs offered evidence that Ms. Buckner intended to package and sell the Plaintiffs' detailed, attribute level shapefile information. See Long Decl. ¶ 9 at 3 (CP 267). And, as discussed in more detail in Section IV.B.3, infra, release of the attribute level data could result in private pipeline or other utility companies gaining a competitive

⁹Intervenors' argument that, because the PSA specifically directs Plaintiffs to collect the shapefile data, the data does not qualify as exempt under RCW 42.56.420(1) finds no support in the law. Thus, although Plaintiffs agree that the highly specialized data is collected for purposes of the PSA, it also qualifies as data maintained under RCW 42.56.420(1)(a).

advantage over the companies whose confidential data would be released pursuant to the PRA request.

At the trial court, the Intervenor argued that Plaintiffs' claims about private loss "are speculative at best." See Intervenor's Opposition, at 7 (CP 643). This assertion is patently absurd and flies in the face of the extensive evidence before the Court. Plaintiffs submitted no less than 14 declarations that address the potential impact on the economy and public safety should the highly specialized data be released. See Beggs Decl. ¶ 6 at 3 (CP 556) (releasing the shapefile data would undermine the One-Call system and thereby jeopardize public safety because equipment digging into pipelines is the number one cause of pipeline accidents); Fajardo Decl. ¶ 6 at 2-3 (CP 275-76) (providing shapefile data would hinder pipeline company's ability to protect its pipelines and facilities from attack and thereby "endanger public safety and the economic viability of the energy infrastructure in Washington"); Fogarty Decl. ¶ 8 at 3 (CP 494) (releasing the data would "compromise the company's ongoing security measures and would make the Pipeline more vulnerable to exploitation and sabotage," leading to financial and public safety consequences); Ford Decl. ¶ 16-17 at 5 (CP 45) (upon public disclosure of the shapefile data, there will be a substantial likelihood of a threat to public safety and economic viability of the Pacific Northwest, including natural gas operations); Hills Decl. ¶ 7 at 2 (CP 335) (release of shapefile data would compromise security of McChord pipeline and present a public safety issue); Kirschner Decl. ¶ 6 at 2 (CP 33) ("The incapacity or

destruction of the regional gas pipeline system would have potentially severe consequences for economic security and public safety"); Latimer Decl. ¶ 12 at 3-4 (CP 49-50) (incapacity of the pipeline system would have "potentially catastrophic" consequences for economic security and public safety); Long Decl. ¶ 10 at 3 (CP 267) (widespread dissemination of shapefile data would make the pipeline significantly more vulnerable, which could result in impact on regional or national economy); Huber Decl. ¶ 9 at 3 (CP 311) (release of shapefile data undermines employee safety and safety of the public in general); Maudlin Decl. ¶ 8 at 3 (CP 239) (release of the shapefile data would compromise ongoing security measures and could increase risks of serious impacts to distribution of petroleum products throughout Washington and beyond); Paskett Decl. ¶ 13 at 3-4 (CP 54-55) (release of the shapefile data will make the pipeline more susceptible to ecoterrorism, "endangering the safety of the public and the economic viability of the state's energy infrastructure"); Supp. Paskett Decl. ¶ 9 at 3 (CP 130) (interruption in service "could have severe impact on the natural gas supply to hundreds of thousands of natural gas customers in Washington and Oregon"); Snyder Decl. ¶ 7 at 4 (CP 562) (if detailed pipeline information is widely available to the public, more citizens will rely on that data rather than contacting One-Call, increasing the chance of a digging accident); Golden Decl. ¶ 9 at 3 (CP 307) (release of shapefile data would increase risk of disruption of service to the BP Facility undermining public safety).

In contrast to the substantial evidence submitted by Plaintiffs, Intervenors presented no evidence to rebut Plaintiffs' evidence of public loss. As a consequence, Plaintiffs have satisfied their burden of showing that they would likely succeed on proving both private gain and public loss. Additional discovery prior to a trial on the merits would further strengthen their position.

3. Plaintiffs Have Similarly Demonstrated a Likelihood of Success of Establishing Exemption Pursuant to RCW 80.04.095, Which Exempts "Valuable Commercial Information" From Disclosure. RCW 80.04.095 provides:

Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW [sic]: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.

(Emphasis added.) Again, Plaintiffs submitted unrebutted evidence that the detailed and specialized data was "valuable commercial information." See Beggs Decl. ¶ 5 at 2-3 (CP 555-56) (shapefile data is "confidential and proprietary"); Fajardo Decl. ¶ 5 at 2, ¶ 7 at 3 (CP 275-76) (same); Fogarty

Decl. ¶ 6 at 2-3 (CP 493-94) ("The Pipeline is a valuable asset. Valero L.P. considers the Pipeline GIS information it has disclosed to WUTC to be proprietary."); Harden Affid. ¶ 7 at 3 (CP 436) (the shapefile data is competitively sensitive because it is not generally available and is commercially valuable); Kirschner Decl. ¶ 14 at 4 (CP 35) (the shapefile data is proprietary and is not shared); Latimer Decl. ¶ 10 at 3 (CP 49) (dataset is specialized and highly sensitive, and company considers the information to be proprietary).

Plaintiffs also provided unrebutted evidence of how releasing the data would result in private loss. See Beggs Decl. ¶ 5 at 2-3 (CP 555-56) (competitors could determine from the shapefile data the nature and extent of company's and its customers' business activities and thereby gain a competitive advantage); Fajardo Decl. ¶ 7 at 3 (CP 276) (information would "permit competitors to determine the nature and extent of Chevron's business activities" and thereby gain a competitive advantage); Fogarty Decl. ¶ 6 at 3 (CP 494) (disclosed shapefile data could "be exploited by third parties for private commercial profit"); Harden Affid. ¶ 7 at 3 (CP 436) (competitors could target their marketing efforts "based not on their business acumen, but rather on involuntary disclosure forced upon Puget").

Plaintiffs met their burden of showing a likelihood of success of showing the shapefile data is exempt under RCW 80.04.095. The trial court should have preserved the status quo, granted the requested preliminary injunction permitted Plaintiffs' case to go to trial on the

merits.¹⁰ The trial court's ruling should be reversed and the preliminary injunction granted.

C. The Trial Court Improperly Made a Final Determination While Deciding the Merits of Plaintiffs' Motion for Preliminary Injunction.

In conformance with CR 65(a)(2), it is a "well-settled principle[]" that a trial court hearing a motion for a preliminary injunction is not permitted to adjudicate the ultimate merits of the case. Rabon, 135 Wn.2d at 286; accord, Washington Fed'n of State Employees, Council 28 v. State, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983); Tyler Pipe, 96 Wn.2d at 793; Travis v. Tacoma Public Sch. Dist., 120 Wn. App. 542, 553, 85 P.3d 959 (2004). A preliminary injunction should not give the parties the full relief sought on the merits of the action. McClellan v. Smith, 4 Wn. App. 394, 399, 482 P.2d 798 (1971). The trial court here erred by ordering disclosure of the highly specialized data, the only issue in dispute in this action and the sole relief sought by the Intervenors.

1. The Trial Court Did Not Consolidate the Hearing on Preliminary Injunction and Trial on the Merits, and Was Therefore Barred by the Court Rules From Issuing a Final Determination. The court rules prohibit a trial court from ruling on the final merits of the case in a preliminary injunction proceeding. Civil Rule 65(a)(2) provides that

¹⁰Again, if Intervenors or the trial court disputed the substance of the evidence quickly marshaled in support of the requested preliminary injunction, Plaintiffs should have been permitted time to gather additional data that will establish both that the shapefile data is "valuable commercial information" and that dissemination would result in "private loss."

"[b]efore or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application." However, "if the [trial] court does not expressly state that it is consolidating the injunction hearing and a trial on the merits, it may not render a final determination on the merits." League of Women Voters, 133 Wn. App. at 382 (emphasis added). The court must give "clear and unambiguous" notice of the court's intent to consolidate before the hearing "or at a time which will still afford the parties a full opportunity to present their respective cases." University of Texas v. Camenisch, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981) (emphasis added; internal quotation marks and citation omitted). In the absence of such an order or a stipulation of the parties, the court cannot enter an order disposing of the case. Rabon, 135 Wn.2d at 285 n.2.

Here, the trial court did not order consolidation of the preliminary injunction and a hearing on the merits pursuant to CR 65(a)(2). There was no consolidation motion pending and no stipulation of the parties to such a consolidation. The trial court, therefore, was procedurally barred from rendering a final decision on the merits of Plaintiffs' case. League of Women Voters, 133 Wn. App. at 382. On this basis, the court here should reverse the ruling and remand for a trial on the merits.

2. The Exigent Nature of Preliminary Injunctions Impedes the Parties' Ability to Marshal Necessary Evidence, Which Is Why the Burden Is Lower and Final Adjudication Is Improper at the Preliminary Injunction Stage. There are two intertwining principles underlying the rule that the trial court cannot make a final determination on the merits at the preliminary injunction stage. First, the frequently rushed nature of the preliminary injunction process necessarily hampers the parties' ability to gather evidence necessary to "prove" their case for a permanent injunction and to fully present their arguments. As would necessarily follow, the standard for a preliminary injunction is lower and less onerous for the moving party than for a permanent injunction. Consequently, because of the limitations on the parties' ability to marshal evidence and the lower evidentiary burden, the trial court is not in a position to rule on the merits of the permanent injunction at the preliminary injunction stage.

a. The Necessary Haste of the Preliminary Injunction Process Unavoidably Limits the Type and Nature of the Evidence Presented. Courts and commentators recognize that the rushed nature of the preliminary injunction process necessarily hinders the parties' ability to gather and submit the evidence that would satisfy the more rigorous burden of proof at a trial on the merits. In Camenisch, the United States Supreme Court revisited and reaffirmed basic principles governing the grant or denial of preliminary injunctions. The Court explained:

The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often

necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.

Camenisch, 451 U.S. at 395 (emphasis added; internal citations omitted).

The Supreme Court observed that the proceedings at issue in Camenisch "[bore] the marks of the haste characteristic of a request for a preliminary injunction," citing the limited evidence and changing legal theories presented to the trial court. Id. at 398.

The Washington Supreme Court has similarly recognized that "the exigent circumstances under which a preliminary injunction is issued frequently preclude the full development of a record." Federal Way Family Physicians, Inc. v. Tacoma Stands Up for Life, 106 Wn.2d 261, 267, 721 P.2d 946 (1986) (emphasis omitted). Indeed, it is precisely the "urgency that necessitates a prompt determination of the preliminary injunction application" that impairs the parties' ability to proceed as if at the permanent injunction stage. 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 2949 (2d ed. 1995). As persuasively stated in Kennedy ex rel. NLRB v. Sheet Metal Workers Int'l Ass'n Local 108:

Speed is often extremely important in proceedings for restraining orders and temporary injunctions, and both the movant and the opposing party are often unable to obtain and marshal their evidence in a manner that would be proper for a summary judgment hearing or for an actual trial.

Kennedy, 289 F. Supp. 65, 90 (C.D. Cal. 1968) (emphasis added).

In the present case, the trial court below erred by disposing of the case on the merits without affording Plaintiffs an opportunity to conduct discovery necessary to prove their entitlement to a permanent injunction.

There can be no reasonable dispute that Plaintiffs had a very limited amount of time to prepare their fact presentations and essentially no time for discovery. The hearing on the preliminary injunction was just one month after the Plaintiffs scrambled to file their complaints and submit declarations to support their motions for temporary restraining order and preliminary injunction. They were forced to do this in order to prevent the WUTC from disclosing the highly sensitive shapefile data. Plaintiffs did not have time to depose a single witness.

Indeed, the trial court criticized Plaintiffs' seeming failure to submit more evidence in support of their arguments. The record and the trial court's order¹¹ make clear that, with additional time to gather the specific evidence, Plaintiffs will likely prevail at a trial on the permanent injunction. For example, when considering the terrorism exemption in RCW 42.56.420, the trial court questioned the absence of the federal government in the proceedings:

COUNSEL: The fourth element is the substantial likelihood of threats to public safety. We have provided the Court with numerous declarations that outline the concerns by the pipeline companies that

¹¹Plaintiffs reiterate that this Court reviews the trial court's ruling de novo, and need not afford the decision any deference. Dawson, 120 Wn.2d at 788. Plaintiffs simply refer to the Order to demonstrate that the trial court cited a purported lack of evidence for its ruling, which Plaintiffs could have remedied with additional time to conduct necessary discovery.

this shapefile data is essentially a virtual road map to every element of the Washington State pipeline system. . . . The federal government is not releasing this type of pipeline data. The federal government considers for example the natural gas pipelines to be critical energy infrastructure so that we here in Washington ought to be treading very, very lightly when it comes to releasing other data that is not available to other states or the federal government.

THE COURT: You raise an interesting point that arose in my own madcap brain here, and that is if there is the kind of concern that you state -- and I don't think you're being silly when you say these things -- where is the federal government? Where is the US attorney representing Homeland Security? Why haven't they intervened in this case or otherwise brought some federal judge in on this?

COUNSEL: I cannot answer that. That is a very good question. It would certainly be helpful I think for everyone to have the US attorney present. They seem --

THE COURT: I don't think it's necessary, but I'm saying, this has got a lot of publicity. Where are they?

COUNSEL: I think the timing of this and the emergency nature of what we've had to do in the last few weeks, I'm not sure the federal government is nearly as nimble as some of the private parties have been in terms of responding to this.

THE COURT: I'll resist the temptation.

COUNSEL: But I do believe they have an interest. The bulk of the pipelines though are owned by private parties, and we are, I hope, ably and amply representing those interests, and perhaps were this to go . . . through a trial on the merits, we might see the federal government as a participant.

VRP (Mar. 16, 2007) 25:18-27:19 (emphasis added). Plaintiffs should be able to conduct some discovery involving representatives of the federal government, including but not limited to Homeland Security, to further establish that the highly specialized data is exempt under RCW 42.56.420. Under the hurried circumstances of the emergency motion for stay briefing in this Court, Plaintiffs were able to obtain a declaration from Jack Fox, General Manager for the Pipeline Office of Transportation Sector Network

Management for Homeland Security as one example of the type of additional testimony that Plaintiffs would expect to elicit to support permanent injunctive relief. Had Plaintiffs had additional time to gather supporting evidence with the protection of the status quo preserved by a preliminary injunction, Plaintiffs would have the opportunity to submit additional evidence to demonstrate how the requested data falls within the terrorism exemption.¹²

As to the "research data" exemption in RCW 42.56.270, the court found that the Plaintiffs submitted "no reliable evidence" that the documents requested here would result in private gain, as required by RCW 42.56.270.¹³ See Order at 6-7 (CP 164-65). The trial court further pointed out that WUTC submitted no evidence of public loss. Id. As to the former statement about private gain, had the trial court maintained the status quo with a preliminary injunction, Plaintiffs could have taken depositions to establish the type of private gain that already was indicated in the record, i.e., Requestor Buckner's statement to two of the pipeline companies that she intended to repackage the Plaintiffs' highly specialized

¹²Intervenors level similar "lack of evidence" charges against Plaintiffs. See, e.g., Intervenors' Opposition at 5 and 6 (CP 641-42) (plaintiffs "have not provided any evidence" supporting the exemption under RCW 42.56.420; plaintiffs have provided no evidence that would support a claim that the shapefile data "contain trade secrets or other competitively sensitive data"). These assertions are not true as even cursory examination of the record indicates, but presuming without conceding that they are true, this simply underscores the need for Plaintiff to conduct some discovery.

¹³The trial court's erroneous conclusion that the hearsay evidence Plaintiffs submitted is not something the court could rely on at the preliminary injunction stage is discussed in detail in Section IV.C.2, infra.

data and sell it over the internet. See Latimer Decl. ¶ 11 at 3 (CP 49); Long Decl., ¶ 9 at 3 (CP 267).

The latter conclusion -- that there was no evidence of public loss -- is puzzling. While WUTC did not submit evidence of public loss, Plaintiffs submitted numerous unrebutted¹⁴ declarations confirming that release of the highly specialized data could result in damage to the pipelines from a terror attack and that would cause massive loss to the public. For example, Bruce Paskett of Northwest Natural Gas testified in his declaration that an interruption in the pipelines could "have a severe impact on the natural gas supply to hundreds of thousands of natural gas customers in Washington and Oregon." Supp. Paskett Decl. ¶ 9 at 3 (CP 130); see also Section VI.B.2, supra (citing extensive testimony regarding public loss). If the trial court was looking for more than the numerous sworn statements from Plaintiffs' representatives or amicus NWIGU, then the trial court should have preserved the status quo, granted the preliminary injunction and given Plaintiffs the opportunity to gather the necessary evidence for a trial on the merit.¹⁵ By not preserving the status quo, the trial court acted prematurely and on a limited record and

¹⁴The WUTC did submit the Affidavit of Alan Rathbun. CP 96-112. Mr. Rathbun's affidavit did not, however, rebut any of the evidence Plaintiffs submitted in the form of nearly 20 substantive declarations.

¹⁵For example, Plaintiffs could seek discovery of evidence of the impact on the public after the Bellingham pipeline explosion to demonstrate the public loss resulting from damage to or interference with the pipeline(s).

denied Plaintiffs any meaningful opportunity to gather and present evidence in support of a permanent injunction.

b. Plaintiffs' Application for a Preliminary Injunction Is Subject to the "Likelihood of Success" Standard: Plaintiffs Were Not Required to "Prove" Their Case at the Preliminary Injunction Hearing. At the outset of the hearing on the preliminary injunction motions, Plaintiffs made it clear that they were prepared to proceed only under the less rigorous standard for preliminary -- rather than permanent -- injunction.

[Counsel]: Your Honor, this does come on by the petitioners on a motion for preliminary injunction to enjoin the Washington Utilities and Transportation Commission from disclosing plaintiffs' pipeline GIS data in response to several requests under the Public Disclosure Act. As the Court has remarked, a temporary restraining order has been entered. We're here today to find out if the record supports a preliminary injunction such that the commission will continue to be enjoined during the pendency of this action. Let me say that the suits are based upon RCW 42.56.540. This is the permanent injunction that we seek in this litigation. Today, however, we're not seeking to satisfy the standard for the permanent injunction, rather, we are under the standard for a preliminary injunction, which as the Court is well aware requires a clear, legal or equitable right, a well-grounded fear of immediate invasion of that right and an act complained of that will result in actual or substantial injury.

VRP (Mar. 16, 2007) 8:1-20 (emphasis added). Yet, even a cursory review of the trial court's Order reveals that the trial court was viewing the preliminary injunction proceedings through the lens of a trial on the merits. For example, although the trial court conceded that the requested data are "arguably commercial designs or drawings and proprietary information" as contemplated by RCW 42.56.270(1), the trial court then queried "what evidence is there now that this request would result in either

private gain or public loss?" Order, at 7 (CP 165) (emphasis added). The trial court went on: "Petitioners Pipelines have not met the burden of proof required for an injunction to be granted[,]" . . . nor has the [WUTC] proved that the records should not be disclosed pursuant to their burden set out [in] RCW 42.56.550." Id. (emphasis added).

The Camenisch court squarely rejected the idea of equating "likelihood of success" with actual "success" on the merits, because to do so would "ignore[] the significant procedural differences between preliminary and permanent injunctions." 451 U.S. at 394 (emphasis added). The United States Supreme Court unequivocally declared that, because the preliminary injunction procedures "are less formal and [the] evidence is less complete than in a trial on the merits," a "party thus is not required to prove his case in full at a preliminary injunction hearing." Id. at 395 (emphasis added).

The trial court here held Plaintiffs to the higher standard of proving their "case in full." The trial court did not consider the likelihood of whether Plaintiffs could strengthen their case should they have the opportunity to develop the case further for a trial on the merits. Instead, the trial court simply considered the quickly prepared, preliminary evidence as if that evidence were all that would ever be available, and the court made a final determination on the merits. As the Camenisch Court observed, such a ruling "ignores the significant procedural differences between preliminary and permanent injunctions." Id. at 354.

That the trial court misapprehended the difference between the preliminary and permanent injunction phases of the proceedings is further underscored by the court's rejection of testimony about Ms. Buckner's stated intention to repackage the Plaintiffs' shapefile data for sale to the general public. See Order 6 n.13 (referring ostensibly to the Long Decl. ¶ 9 at 3 (CP 267) and rejecting the testimony as "hearsay within hearsay"). Given that the "urgency of obtaining a preliminary injunction necessitates a prompt determination," trial courts can consider inadmissible evidence, such as hearsay. Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984).¹⁶ Washington's CR 65 also contemplates that there is a lower evidentiary burden at the preliminary injunction stage than at a trial on the merits: "any evidence received on application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial." CR 65(a)(2) (emphasis added). Plainly, then, not all evidence adduced at the preliminary injunction stage must be admissible. Again, the trial court misapprehended not only the scope of its role at the preliminary injunction stage, but also the evidentiary burden Plaintiffs must satisfy. The trial court's erroneous ruling should be reversed.

¹⁶Federal Rule of Civil Procedure 65 is virtually identical to CR 65, so cases interpreting the federal rule are instructive. All Star Gas, Inc. v. Bechard, 100 Wn. App. 732, 736-37, 998 P.2d 367 (2000). Although not all circuits have resolved the issue of the use of hearsay in a preliminary injunction proceeding, all of the circuits with well settled law (including the Ninth Circuit) permit the use of hearsay evidence at the preliminary injunction stage. Michael J. Lichtenstein, Settling the Law in the Circuits: Presenting Hearsay Evidence in a Preliminary Injunction Hearing, 29 Am. J. Trial Advoc. 415, 426 (Fall 2005).

c. The Trial Court Improperly Prejudged the Merits of Plaintiffs' Arguments That the Shapefile Data Is Exempt From Disclosure.

The trial court's premature assessment that Plaintiffs could not prove their case on the merits effectively disposed of Plaintiffs' arguments in their entirety and disposed of Plaintiffs' opportunity for a trial on the merits. Washington courts routinely reject this procedural end run. See, e.g., Rabon, 135 Wn.2d at 286.

In Rabon, the plaintiff owned two dogs that tried to, and later did, attack passersby on several occasions. Rabon was charged with owning a vicious animal in violation of Seattle Municipal Code 9.25.083. Id. at 283. Rabon was found guilty, and his convictions were affirmed on appeal. Id. After the appeals process was finished, the City ordered the dogs destroyed. Id. Rabon sought to enjoin the ordered destruction of his dogs, claiming due process violations and state law preemption of the local ordinance. Id. at 283-84. The trial court granted the temporary injunction, but denied the preliminary injunction.

The Washington Supreme Court concluded that "[i]n assessing the likelihood of the prevailing [on the preliminary injunction], the trial court effectively decided the merits of petitioner's arguments that state statutes either preempted or conflicted with the City's ordinances and that his due process rights had been violated." Id. at 284. The Court reversed the trial court's denial of the preliminary injunction and remanded for a hearing on Rabon's claims. Id. at 296.

Here, the trial court's ruling had the same effect as the ruling in Rabon: The only issue before the trial court was whether there was a likelihood that the various exemptions cited by Plaintiffs prevented disclosure of the shapefile data. By determining that no exemption applied, the trial court improperly adjudicated the ultimate merits. The law is unequivocal on this principle, and the court's ruling should be reversed and a preliminary injunction granted so that Plaintiffs can adequately prepare for and present their case at a trial on the merits.

D. Plaintiffs Have Met Their Burden of Showing a Likelihood of Success on the Merits on the Federal Preemption Issue.

Plaintiffs anticipate that the Intervenors will argue that Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 884 P.2d 592 (1994) ("PAWS"), forecloses the possibility of federal preemption. PAWS confirmed that, although FOIA will not preempt the PRA, other applicable federal statutes will preempt the PRA. 125 Wn.2d at 266-67.

In this case, the federal Pipeline Safety Act, 49 U.S.C. § 60101 et seq., not only contains an express "preemption" statute limiting the scope of a state's regulatory authority over interstate pipelines,¹⁷ but also expressly prohibits public disclosure of pipeline GIS data obtained from those Plaintiffs owning or operating interstate pipelines. See § 60117(d) (commercial information considered confidential under 18 U.S.C. § 1905 "may be

¹⁷The federal Pipeline Safety Act does not foreclose states from adopting more stringent safety standards for intrastate pipeline facilities, but the overwhelming majority of the pipelines in this case are interstate pipelines and, therefore, not subject to more stringent state regulation.

disclosed only to another officer or employee concerned with carrying out this chapter"); see also 18 U.S.C. § 1905 (Trade Secrets Act) (prohibiting disclosure of confidential commercial information); Gilda Indus., Inc. v. U.S. Customs & Border Protection Bureau, 457 F. Supp. 2d 6, 10 (D.D.C. 2006) (prohibiting disclosure of commercial information -- consisting of names and addresses of importers -- which could be combined with other publicly available data to cause commercial harm); Judicial Watch, Inc. v. FDA, 407 F. Supp. 2d 70, 75 (D.D.C. 2005) (disclosure denied where intervenor failed to establish genuine dispute of material fact whether risk of abortion-related violence would, or could, cause competitive harm to drug sponsor's competitive position).

The WUTC's authority to obtain data from interstate (as opposed to intrastate) pipeline companies bearing on issues of safety is derived solely from federal law, under which it acts as an agent of the federal Department of Transportation ("DOT") to carry out the mandates of the federal regulatory regime. See Olympic Pipe Line Co. v. City of Seattle, 437 F.3d 872, 878 (9th Cir. 2006) (state authority may not impose safety requirements on an interstate hazardous liquid pipeline unless the DOT has delegated authority to the state entity under § 60106(a) or § 60117(c)).

As an agent of the DOT's Office of Pipeline Safety under § 60117, the WUTC is subject to the same federal limitations on public disclosure of pipeline data as govern the federal agency. Here, the GIS data obtained by the WUTC contains protected "commercial information" prohibited from disclosure under § 60117(d). Even if the PRA did not exempt this

data (it does) the PRA cannot authorize disclosure of data specifically protected by federal law. To hold otherwise would result in state preemption of a federal statute, turning the Supremacy Clause of the United States Constitution (Const. art. VI, ¶ 2) and fundamental concepts of federalism on their head. There can be no dispute that the issue of preemption tips demonstrably in Plaintiffs' favor. Indeed, as a matter of law, the pipeline GIS data is confidential commercial information protected from public disclosure under § 60117(d).

E. The Harm to Plaintiffs in Disclosing This Information Before a Trial on the Merits Far Outweighs Any Possible Harm to the Requestors.

Plaintiffs demonstrated the substantial harm that would result from disclosure of the highly specialized pipeline data. Indeed, the only evidence before the trial court is that disclosure of the data will compromise security plans, make the pipeline systems more vulnerable to attack, and could result in the disruption of service to hundreds of thousands. Further, that harm would be irreversible, for once the detailed attribute level data in the public domain, it would be unrecoverable. While Intervenors claim they are entitled to disclosure of this information, they make no argument as to why they must have the information prior to a trial on the merits. Plaintiffs amply satisfied the burden for the grant of preliminary injunction.

VII. CONCLUSION

The trial court erroneously ruled on the merits of Plaintiff's motion for preliminary injunction. Plaintiffs respectfully request that this Court

vacate the trial court's order denying the preliminary injunction and direct the trial court to enter a preliminary injunction until the issue can be decided on its merits.

RESPECTFULLY SUBMITTED this 2d day of May, 2007.

LANE POWELL PC

By Michael A. Nesteroff
Michael A. Nesteroff
WSBA No. 13180
Randall P. Beighle
WSBA No. 13421
Attorneys for Appellants Chevron
Pipe Line Company, Northwest
Terminaling Company,
Yellowstone Pipe Line Company,
ConocoPhillips Pipe Line Company
and McChord Pipeline Company

STOEL RIVES LLP

By Michael A. Nesteroff for DJC
per telephone auth.
D. Jeffrey Courser
WSBA No. 15466
Vanessa Soriano Power
WSBA No. 30777
Timothy L. McMahan
WSBA No. 16377
Attorneys for Appellants Northwest
Gas Association and KB Pipeline

DANIELSON, HARRIGAN,
LEYH & TOLLEFSON LLP

By Michael A. Nesteroff for
CJW per email auth.
Arthur W. Harrigan
WSBA No. 01751
Christopher T. Wion
WSBA No. 33207
Attorneys for Appellant Olympic
Pipe Line Company

CASCADIA LAW GROUP

By Michael A. Nesteroff for SJT
per email auth.
Stephen J. Tan
WSBA No. 22756
Tanya Barnett
WSBA No. 17491
Attorneys for Appellant Valero L.P.

CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP

By Michael A. Nesteroff for
WTJ per telephone auth.
William J. Lehman
WSBA No. 35081
Attorneys for Appellants BP West
Coast Products LLC and Intalco
Aluminum Company

PERKINS COIE LLP

By Michael A. Nesteroff for SJK
per email auth.
Jason T. Kuzma
WSBA No. 31830
Sheree Strom Carson
WSBA No. 25349
Attorneys for Appellant Terasen
Pipeline Co.

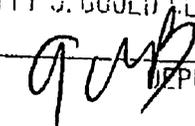
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THURSTON COUNTY WASH

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, a
Washington corporation,

Plaintiff,

v.

THE WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION, a
state agency,

Defendant.

No.

07 - 2 - 00321 - 2

**DECLARATION OF DAN
KIRSCHNER IN SUPPORT OF
PLAINTIFF'S MOTION FOR TRO
AND PRELIMINARY INJUNCTION**

I, Dan Kirschner, hereby declare as follows:

1. I am the executive director of plaintiff Northwest Gas Association ("NWGA"), a Washington corporation, and have personal knowledge of the matters related herein.

2. NWGA is a trade organization of the Pacific Northwest natural gas industry. Members include natural gas utilities serving communities in the northwest and interstate pipelines that move natural gas from production areas into and through the region.

3. NWGA members deliver or distribute the vast majority of natural gas consumed in the Pacific Northwest. NWGA members include Avista Corporation, Cascade Natural Gas Corporation, Spectra Energy, Intermountain Gas Company, Northwest Natural Gas Company, Puget Sound Energy, TransCanada's GTN System and Williams Northwest Pipeline.

**DECLARATION OF DAN KIRSCHNER IN SUPPORT OF PLAINTIFF'S MOTION FOR
TRO AND PRELIMINARY INJUNCTION -**

S C A N N E D
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1 4. NWGA members serve almost two million residential, commercial and industrial
2 consumers in the Pacific Northwest. Natural gas currently is the fuel for about fourteen percent
3 (14%) of the region's electrical generation capacity. The natural gas pipeline systems of NWGA
4 members constitute part of the critical energy infrastructure in the state of Washington and the
5 Pacific Northwest.

6 5. RCW 81.88.080 requires the Washington Utilities and Transportation
7 Commission (WUTC) to collect and consolidate geospatial information depicting gas and
8 hazardous liquid pipelines into a statewide pipeline geographic information system (GIS). It
9 further requires the WUTC to produce maps and other tools delineating the location of these
10 facilities and to provide those tools to first responders and local jurisdictions. The purpose of the
11 pipeline mapping requirement serves an important governmental objective of pipeline safety and
12 security. In response to the requirements of RCW 81.88.080, the WUTC has compiled GIS data
13 relating to natural gas pipeline systems, including that of major large-diameter high-pressure
14 natural gas pipelines owned and operated by NWGA members.

15 6. The terrorist attacks of September 11, 2001 caused wide-spread recognition of the
16 vulnerability of the nation's critical energy infrastructure and NWGA members responded
17 voluntarily and through federally mandated initiatives to enhance protection of the natural gas
18 pipeline system in the Pacific Northwest. The incapacity or destruction of the regional gas
19 pipeline system would have potentially severe consequences for economic security and public
20 safety.

21 7. The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety
22 Administration ("PHMSA") has specifically responded to the public safety and security
23 challenges nationwide. PHMSA administers the national regulatory program to assure the safe
24 and environmentally sound transportation of natural gas, liquefied natural gas and hazardous
25 liquids by pipeline.

26

**DECLARATION OF DAN KIRSCHNER IN SUPPORT OF PLAINTIFF'S MOTION FOR
TRO AND PRELIMINARY INJUNCTION - 2**

S. C. A. N. N. E. E.
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0-000000033

1 8. The PHMSA has created a national pipeline mapping system ("NPMS"). The
2 data collected for the NPMS is necessary for regulatory oversight and for monitoring the security
3 of the pipelines, but public access to the data is limited. At this time PHMSA is providing
4 pipeline data to pipeline operators and local, state and federal government officials only.

5 9. Moreover, under its rule making authority, the Federal Energy Regulatory
6 Commission ("FERC") has defined GIS pipeline mapping data, with some exceptions, as critical
7 energy infrastructure information ("CEIP") and, through its rule making authority, recognizes
8 such data as most likely exempt from disclosure under the Federal Freedom of Information Act.

9 10. In the Washington State Legislature, on February 6, 2007, House Bill 1478 ("HB
10 1478") was passed out of the House Technology, Energy & Communications Committee. HB
11 1478 would amend RCW 81.88.080 and RCW 42.56.330 with three objectives. First, HB 1478
12 would ensure that the public has access to useful information concerning the location of pipeline
13 facilities, specifically maps. Second, it enables the WUTC to fulfill its obligation to equip local
14 jurisdictions with useful information by making explicit its obligation to transmit maps, GIS data
15 or any other information concerning these facilities. Finally, HB 1478 secures the GIS data from
16 unnecessary public disclosure. HB 1478 for the 2007 Regular Session is attached and
17 incorporated as Exhibit A.

18 11. HB 1478 has broad support, including the WUTC and the Governor-appointed
19 Washington State Citizens Committee on Pipeline Safety ("Citizens Committee"). The Citizens
20 Committee meets regularly to discuss, identify, review and highlight pipeline safety issues on a
21 local and national level. The Citizens Committee consists of nine voting members representing
22 the public, including local government, and elected officials. The Citizens Committee voted in
23 favor of HB 1478, except for two dissenting votes, including that of Jean Buckner, one of the
24 requestors as more fully described below.

25 12. HB 1478 also enjoys the support of the Pipeline Safety Trust ("Trust"), a
26 nationwide pipeline industry oversight organization. The Trust was endowed by the federal

**DECLARATION OF DAN KIRSCHNER IN SUPPORT OF PLAINTIFF'S MOTION FOR
TRO AND PRELIMINARY INJUNCTION - 3**

C A N N E D
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1 courts from the criminal penalties imposed as a result of the 1999 pipeline explosion in
2 Bellingham. The Trust exists to provide credible, independent oversight of the pipeline industry
3 in the public interest.

4 13. GIS data is highly specialized and useful only to a few users with the correct
5 software and training. GIS data includes countless discrete geographic data points that together
6 depict the entire system of hazardous liquid and natural gas pipelines in Washington state, along
7 with all of its features and attributes. The data can be exploited by a trained user with the
8 appropriate software to reveal aspects of the system that are considered sensitive.

9 14. Additionally, because of the specialized nature of the dataset, the sensitivity of the
10 information contained therein, the critical nature of the infrastructure systems depicted and the
11 potential costs (both tangible and intangible) of effecting repairs and restoring service loss due to
12 damage, association members consider this type of information to be proprietary. As responsible
13 owners and operators of these critical energy infrastructure facilities, they do not share GIS data
14 outside of their respective companies without an understanding of who wants it and for what
15 purpose the information will be used. Even then, they only share this information under the
16 terms of specific use and confidentiality agreements. The same level of protection is not
17 provided by the WUTC with regard to information it gathers or develops concerning the very
18 same facilities.

19 15. The NWGA has been notified that Jean Buckner of Bellevue has made a public
20 records request for pipeline GIS data, including "all the underlying pipeline/facility data".
21 Additionally, the NWGA has been notified that the Bellingham Herald also has made a public
22 records request for the Whatcom County Pipeline Atlas on compact disc and pipeline GIS data
23 for Whatcom County.

24 16. The WUTC has also notified the NWGA that on February 20, 2007, it plans on
25 providing Ms. Buckner and the Bellingham Herald with an ESRI centerline (line pipe) shapefile.
26 The shapefile is a digital livework representing the pipeline locations, with pipeline pressure

**DECLARATION OF DAN KIRSCHNER IN SUPPORT OF PLAINTIFF'S MOTION FOR
TRO AND PRELIMINARY INJUNCTION - 4\$ G A N N E D**

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1 regulators, compressor stations, metering facilities, taps, mile posts, cathodic protection test sites,
2 or valves. Additionally, the shapefile will contain information about diameter, pipeline operator
3 name, and transported commodity (i.e. natural gas, hazardous liquids). The WUTC will also
4 provide the Whatcom County Pipeline Atlas to the Bellingham Herald.

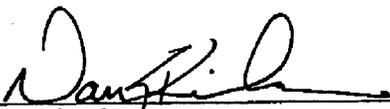
5 17. The NWGA has no objections to providing the Whatcom County Pipeline Atlas to
6 the Bellingham Herald. However, pipeline geographic data gathered by the WUTC should not
7 be disclosed as a public record. Moreover, it is clear that HB 1478 would confirm the public
8 interest in restricting circulation of such GIS data and would expressly exempt the data under
9 RCW 42.56.330.

10 18. The WUTC should be permanently enjoined from disclosing NWGA member
11 pipeline geographic data gathered by the WUTC to Ms. Buckner, the Bellingham Herald, or
12 other parties who are not first responders, local governments or locator services. Otherwise,
13 upon public disclosure, there will be a substantial likelihood of threatening public safety and
14 economic viability of the entire Pacific Northwest, including natural gas operations in the state of
15 Washington.

16 I declare under penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct.

18 Dated this 12th day of February, 2007 at Portland, Oregon.

19 NORTHWEST GAS ASSOCIATION

20
21 By: 
22 Dan Kirschner
23 Executive Director
24
25
26

**DECLARATION OF DAN KIRSCHNER IN SUPPORT OF PLAINTIFF'S MOTION FOR
TRO AND PRELIMINARY INJUNCTION - 5 S C A N N E D**

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0-000000036

HOUSE BILL 1478

State of Washington 60th Legislature 2007 Regular Session

By Representatives Morris, Crouse, Takko, McCoy, McCune, Kenney and Linville

Read first time 01/22/2007. Referred to Committee on Technology, Energy & Communications.

1 AN ACT Relating to authorities of the Washington utilities and
2 transportation commission relative to the requirement imposed upon gas
3 and hazardous liquid pipelines under RCW 81.88.080; and amending RCW
4 81.88.080 and 42.56.330.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 81.88.080 and 2000 c 191 s 7 are each amended to read
7 as follows:

8 (1) The commission shall require hazardous liquid pipeline
9 companies, and gas pipeline companies with interstate pipelines, gas
10 transmission pipelines, or gas pipelines operating over two hundred
11 fifty pounds per square inch gauge, to provide accurate maps of their
12 pipeline to specifications developed by the commission sufficient to
13 meet the needs of first responders, including installation depth
14 information when known.

15 (2) The commission shall evaluate the sufficiency of the maps and
16 consolidate the maps into a statewide geographic information system.
17 The commission shall assist local governments in obtaining hazardous
18 liquid and gas pipeline location information and maps. The maps shall
19 be made available to the one-number locator services as provided in

1 chapter 19.122 RCW. The mapping system shall be consistent with the
2 United States department of transportation national pipeline mapping
3 program.

4 (3) The mapping system shall be completed by January 1, 2006, and
5 periodically updated thereafter. The commission shall develop a plan
6 for funding the geographic information system and report its
7 recommendations to the legislature by December 15, 2000.

8 (4) The commission shall provide to first responders, state
9 agencies, and local governments data that the commission develops or
10 gathers for the maps that are consolidated into the geographic
11 information system as described in this section. The commission shall
12 provide or make available for inspection by any other entity maps or
13 map images that illustrate line pipe location as long as the map or map
14 images are of no greater detail than a scale of one to twenty-four
15 thousand.

16 (5) For purposes of this section, "first responders" means
17 firefighters and law enforcement personnel.

18 **Sec. 2.** RCW 42.56.330 and 2006 c 209 s 8 are each amended to read
19 as follows:

20 The following information relating to public utilities and
21 transportation is exempt from disclosure under this chapter:

22 (1) Records filed with the utilities and transportation commission
23 or attorney general under RCW 80.04.095 that a court has determined are
24 confidential under RCW 80.04.095;

25 (2) The residential addresses and residential telephone numbers of
26 the customers of a public utility contained in the records or lists
27 held by the public utility of which they are customers, except that
28 this information may be released to the division of child support or
29 the agency or firm providing child support enforcement for another
30 state under Title IV-D of the federal social security act, for the
31 establishment, enforcement, or modification of a support order;

32 (3) The names, residential addresses, residential telephone
33 numbers, and other individually identifiable records held by an agency
34 in relation to a vanpool, carpool, or other ride-sharing program or
35 service; however, these records may be disclosed to other persons who
36 apply for ride-matching services and who need that information in order
37 to identify potential riders or drivers with whom to share rides;

1 (4) The personally identifying information of current or former
2 participants or applicants in a paratransit or other transit service
3 operated for the benefit of persons with disabilities or elderly
4 persons;

5 (5) The personally identifying information of persons who acquire
6 and use transit passes and other fare payment media including, but not
7 limited to, stored value smart cards and magnetic strip cards, except
8 that an agency may disclose this information to a person, employer,
9 educational institution, or other entity that is responsible, in whole
10 or in part, for payment of the cost of acquiring or using a transit
11 pass or other fare payment media, or to the news media when reporting
12 on public transportation or public safety. This information may also
13 be disclosed at the agency's discretion to governmental agencies or
14 groups concerned with public transportation or public safety;

15 (6) Records of any person that belong to a public utility district
16 or a municipally owned electrical utility, unless the law enforcement
17 authority provides the public utility district or municipally owned
18 electrical utility with a written statement in which the authority
19 states that it suspects that the particular person to whom the records
20 pertain has committed a crime and the authority has a reasonable belief
21 that the records could determine or help determine whether the
22 suspicion might be true. Information obtained in violation of this
23 subsection is inadmissible in any criminal proceeding;

24 (7) Any information obtained by governmental agencies that is
25 collected by the use of a motor carrier intelligent transportation
26 system or any comparable information equipment attached to a truck,
27 tractor, or trailer; however, the information may be given to other
28 governmental agencies or the owners of the truck, tractor, or trailer
29 from which the information is obtained. As used in this subsection,
30 "motor carrier" has the same definition as provided in RCW 81.80.010;
31 ((and))

32 (8) The personally identifying information of persons who acquire
33 and use transponders or other technology to facilitate payment of
34 tolls. This information may be disclosed in aggregate form as long as
35 the data does not contain any personally identifying information. For
36 these purposes aggregate data may include the census tract of the
37 account holder as long as any individual personally identifying
38 information is not released. Personally identifying information may be

1 released to law enforcement agencies only for toll enforcement
2 purposes. Personally identifying information may be released to law
3 enforcement agencies for other purposes only if the request is
4 accompanied by a court order; and

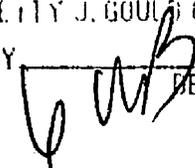
5 (9) Data developed or gathered by the utilities and transportation
6 commission under RCW 81.88.080 and other pipeline maps or pipeline
7 geographic information data filed with the commission. However, the
8 commission or other agencies with whom the commission shares the
9 information under RCW 81.88.080 shall make available for public
10 inspection and copying any maps or map images that illustrate line pipe
11 location as long as the map or map images are of no greater detail than
12 a scale of one to twenty-four thousand.

--- END ---

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, a
Washington corporation,

Plaintiff,

v.

THE WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION, a
state agency,

Defendant.

No. 07 - 2 - 00321 - 2

**DECLARATION OF GREGORY R.
FORD IN SUPPORT OF PLAINTIFF'S
MOTION FOR TRO AND
PRELIMINARY INJUNCTION**

I, Gregory R. Ford, hereby declare as follows:

1. I am the Director Environmental, Health & Safety for Northwest Pipeline Corporation ("NWP"), and have personal knowledge of the matters related herein. NWP is a member of the Northwest Gas Association.

2. NWP operates an interstate gas transmission pipeline in seven states, including 1,400 miles of natural gas transmission pipeline in the State of Washington. Approximately 85% of all of the natural gas consumed in the state of Washington is transported to or in Washington over facilities owned by Northwest Pipeline.

3. Following the legislative mandate under RCW 81.88.080 requiring consolidation of pipeline geographic information system ("GIS") data into a statewide geographic information system, NWP provided GIS information pertaining to its facilities in Washington to the Washington Utilities and Transportation Commission ("WUTC").

**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION**

1 4. NWP provided the GIS information to the WUTC with a belief that the
2 information would be used for the benefit 1) first responders, 2) local governments and 3) one-
3 call locator services. Nothing in the legislative language directing the WUTC to collect GIS
4 information from pipeline companies indicates that the legislature contemplated the broad public
5 disclosure of pipeline location information when it authorized the gathering and consolidation of
6 GIS data.

7 5. It is my understanding that pursuant to legislative mandate under RCW
8 81.88.080, the WUTC held a series of meetings with first responders and determined that a map
9 with a scale of 1 to 24,000, or one inch representing 24,000 inches (2,000 feet), would be helpful
10 to police or firefighters at the scene of an emergency. The WUTC then prepared "First
11 Responder Maps" to these specifications and provided hard copies to first responders to assist
12 them with their duties.

13 6. The WUTC has made these First Responder Maps or very similar maps available
14 to individuals who have requested them. The WUTC is also part way through implementing a
15 project to put these First Responder Maps or very similar maps on the internet.

16 7. NWP has questioned whether the WUTC project is the best method to distribute
17 pipeline location information to those who need it. However, NWP recognizes that information
18 about the location of the pipeline is needed by many constituencies. To this end NWP takes
19 many actions to make information about the location of its facilities available. For example, in
20 2005, information was mailed to 110,755 residents and businesses (both in Washington and other
21 states) along NWP's rights-of-way and within a 660-foot buffer zone on either side the pipeline
22 centerline informing them that they lived near the facilities. Information on the pipeline was
23 mailed to 57,749 excavators and 43,068 farmers in the counties where the pipeline is located.
24 Additionally, letters and maps were sent to 1,952 emergency responders located within 10 miles
25 of either side of the pipeline centerline, and to 1,578 public officials whose jurisdictions are
26

**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION - A N N E D**

1 impacted by the pipeline. The total 2005 mailing by Northwest Pipeline to advise parties of the
2 location of the pipeline involved 215,102 items.

3 8. The GIS information that the WUTC has advised has been requested by Ms. Jean
4 Buckner and The Bellingham Herald, contains much more information than pipeline location
5 information available in the First Responder maps and the maps the WUTC is putting on the
6 internet. The WUTC has also notified the NWGA that on February 20, 2007, it plans on
7 providing Ms. Buckner and the Bellingham Herald with an ESRI centerline (line pipe)
8 shapefiles. The shapefile is a digital linework representing the pipeline locations, with pipeline
9 pressure regulators, compressor stations, metering facilities, taps, mile posts, cathodic protection
10 test sites, or valves.

11 9. GIS data is highly specialized and useful only to a few users with the correct
12 software and training. GIS data includes countless discrete geographic data points that together
13 depict the entire system of hazardous liquid and natural gas pipelines in Washington State, along
14 with all of its features and attributes. The data can be exploited by a trained user with the
15 appropriate software to reveal aspects of the system that are considered sensitive.

16 10. Additionally, because of the specialized nature of the dataset, the sensitivity of the
17 information contained therein, the critical nature of the infrastructure systems depicted and the
18 potential costs (both tangible and intangible) of effecting repairs and restoring service loss due to
19 damage, association members consider this type of information to be proprietary. As responsible
20 owners and operators of these critical energy infrastructure facilities, they do not share GIS data
21 outside of their respective companies without an understanding of who wants it and for what
22 purpose the information will be used. Even then, they only share this information under the
23 terms of specific use and confidentiality agreements. The same level of protection is not
24 provided by the WUTC with regard to information it gathers or develops concerning the very
25 same facilities.

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**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION.**

1 11. In the Washington State Legislature, on February 6, 2007, HB 1478 was passed
2 out of the House Technology, Energy & Communications Committee. HB 1478 would amend
3 RCW 81.88.080 and RCW 42.56.330 with three objectives. First, HB 1478 would ensure that
4 the public has access to useful information concerning the location of pipeline facilities,
5 specifically maps. Second, it enables the WUTC to fulfill its obligation to equip local
6 jurisdictions with useful information by making explicit its obligation to transmit maps, GIS data
7 or any other information concerning these facilities. Finally, HB 1478 secures the GIS data from
8 unnecessary public disclosure.

9 12. NWP supports HB 1478.

10 13. Pipeline geographic data should not be disclosed as a public record. Moreover, it
11 is clear that HB 1478 would confirm the public interest in restricting circulation of such GIS data
12 and would expressly exempt the data under RCW 81.88.080 and RCW 42.56.330.

13 14. The terrorist attacks of September 11, 2001 caused wide-spread recognition of the
14 vulnerability of the nation's critical energy infrastructure and NWGA members responded
15 voluntarily and through federally mandated initiatives to protect the natural gas pipeline system
16 in the Pacific Northwest. The incapacity or destruction of the regional gas pipeline system
17 would have potentially catastrophic consequences for economic security and public safety and
18 the unfettered distribution of specific pipeline location information could contribute to these
19 consequences. Provision of discreet portions of GIS pipeline mapping data, however, promotes
20 safety and security of the pipeline system when utilized by first responders, local governments
21 and locator services.

22 15. I believe that the risk of a terrorist attack on Northwest Pipeline is a real one. The
23 FBI has issued warnings since the events of September 11, 2001 based on information available
24 to the Department of Homeland Security that terrorists are targeting energy facilities in the
25 United States for attacks. Further, there is at least one individual currently in jail awaiting trial
26

**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION. A N N E D**

1 for allegedly planning on blowing up gas processing facilities connected to Northwest Pipeline
2 as well a gas pipeline owned by Williams.

3 16. It is clear that a coordinated attack by terrorists on Northwest Pipeline's facilities
4 could result in truly devastating safety and economic consequences in Washington, Oregon and
5 Idaho.

6 17. Northwest Pipeline delivers 85% of all natural gas consumed in Washington,
7 nearly as much in Oregon, and 95% of all natural gas consumed in Idaho. Our customers include
8 all the major local distribution companies serving these states. These companies, in turn, serve
9 electric generators, industrials and millions of residential customers.

10 18. Since the pipeline carries natural gas, any attack on the pipeline presents a public
11 safety danger to those in the area. Further, interruptions to gas and electric power supplies
12 generated by the gas could likewise endanger lives of those reliant on the power, especially in
13 times of extreme weather. Though terrorist have not yet attacked a pipeline in the United States
14 to my knowledge, pipelines have many of the hallmarks of a terrorist target – the destruction of
15 the line itself could be spectacular, it could potentially involve many fatalities and would be
16 terribly disrupting to a public beyond the boundaries of pipeline immediate event.

17 19. The WUTC should be permanently enjoined from disclosing NWGA member
18 pipeline geographic data to Ms. Buckner, the Bellingham Herald, or other parties who are not
19 first responders, local governments or locator services. Otherwise, upon public disclosure, there
20 will be a substantial likelihood of threatening public safety and economic viability of the entire
21 Pacific Northwest, including natural gas operations in the state of Washington.

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**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION. - A N N E D**

1 I declare under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct to the best of my knowledge.

3 Dated this 13th day of February, 2007 at Houston, Texas.

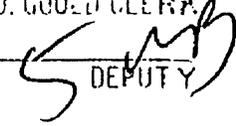
4 NORTHWEST PIPELINE CORPORATION

5 By: Gregory R. Ford
6 Gregory R. Ford
7 Director Environmental, Health & Safety
8 Northwest Pipeline Corporation
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**DECLARATION OF GREGORY R. FORD IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION - 6 * N N E E**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, a
Washington corporation,

Plaintiff,

v.

THE WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION, a
state agency,

Defendant.

No. 07 - 2 - 00321 - 2

DECLARATION OF ROBERT
LATIMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR TRO
AND PRELIMINARY INJUNCTION

I, Robert Latimer, hereby declare as follows:

1. I am the Supervisor of Community Relations for the Gas Transmission Northwest Corporation (GTN) pipeline system and have personal knowledge of the matters related herein.

GTN is a member of the Northwest Gas Association. The parent corporation of GTN is TransCanada, a North American energy infrastructure company.

2. GTN operates a 612 mile long interstate gas transmission pipeline that transports natural gas from the Canadian border in Northern Idaho to and through Idaho, Washington and Oregon. The GTN system terminates at Malin, Oregon on the border of Oregon and California. The GTN system is capable of delivering almost 3 billion cubic feet of gas per day to the Pacific Northwest, California and Nevada.

3. Following the legislative mandate under RCW 81.88.080 requiring consolidation of pipeline geographic information system ("GIS") data into a statewide geographic information

DECLARATION OF ROBERT LATIMER IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION

1 system, GTN provided GIS information pertaining to its facilities in Washington to the
2 Washington Utilities and Transportation Commission ("WUTC").

3 4. GTN provided its GIS information to the WUTC with the understanding that the
4 information would be used to equip first responders and local governments with the information
5 they need to be effective partners with GTN is the safe and secure operation of GTN facilities.

6 5. I understand that, pursuant to the legislative mandate under RCW 81.88.080, the
7 WUTC conducted a needs assessment with first responders and determined that maps delineating
8 the line-pipe location of these facilities would be helpful to police or firefighters at the scene of
9 an emergency. In response, the WUTC then prepared Pipeline Atlases by county and provided
10 hard copies to first responders to assist them with their duties.

11 6. The WUTC has made Pipeline Atlases or very similar maps available to
12 individuals who have requested them. The WUTC is also engaged in a pilot project to post the
13 Pipeline Atlases or very similar maps on the internet.

14 7. GTN recognizes that information about the location of the pipeline is needed by
15 many constituencies and undertakes a number of activities to make information about the
16 location of its facilities available. Furthermore, the Federal Government requires high-pressure
17 pipeline operators to conduct public awareness activities with regard to these facilities, to
18 measure the efficacy of such efforts and to adjust tactics as necessary to ensure its
19 communications are making a difference.

20 8. The GIS information that the WUTC advised was requested by Ms. Jean Buckner
21 and The Bellingham Herald contains much more information than pipeline location information
22 available in the Pipeline Atlases and being posted by the WUTC on the internet. The WUTC
23 also notified the NWGA that on February 20, 2007, it plans on providing Ms. Buckner and the
24 Bellingham Herald with an ESRI centerline (line pipe) shapefiles. The shapefile is a digital
25 linework representing the pipeline locations, with pipeline pressure regulators, compressor
26 stations, metering facilities, taps, mile posts, cathodic protection test sites, or valves.

**DECLARATION OF ROBERT LATIMER IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION**

1 9. GIS data is highly specialized information, useful only to a few users with the
2 correct software and training. GIS data includes countless discrete geographic data points that
3 together depict the entire system of hazardous liquid and natural gas pipelines in Washington
4 State, along with all of its features and attributes. The data can be exploited by a trained user
5 with the appropriate software to reveal aspects of the system that are considered sensitive.

6 10. Additionally, because of the specialized nature of the dataset, the sensitivity of the
7 information contained therein, the critical nature of the infrastructure systems depicted and the
8 potential costs (both tangible and intangible) of effecting repairs and restoring service loss due to
9 damage, association members consider this type of information to be proprietary. As responsible
10 owners and operators of these critical energy infrastructure facilities, they do not share GIS data
11 outside of their respective companies without an understanding of who wants it and for what
12 purpose the information will be used. Even then, they only share this information under the
13 terms of specific use and confidentiality agreements. The same level of protection is not
14 provided by the WUTC with regard to information it gathers or develops concerning the very
15 same facilities.

16 11. I contacted Ms. Buckner directly on February 7, 2007 after receiving notification
17 from the WUTC of her public records request. The purpose of my contact was to ascertain Ms.
18 Buckner's intent in requesting the data. I explained who I am, who I work for and that part of
19 our company's due diligence process when reviewing these requests included contacting
20 requestors directly. In response, Ms. Buckner indicated she intended to gather all relevant
21 pipeline GIS files and to possibly repackage and market the data to others. I was left with the
22 impression that she operated a private consulting firm focused on the use and marketing of GIS
23 data sets. I further explained to Ms. Buckner our concern as a responsible operator when
24 reviewing requests for this type of information.

25 12. The terrorist attacks of September 11, 2001 raised awareness of the potential
26 vulnerability of the nation's critical energy infrastructure. NWGA members responded

**DECLARATION OF ROBERT LATIMER IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION**

1 voluntarily and through federally mandated initiatives to protect the natural gas pipeline system
2 in the Pacific Northwest. The incapacity or destruction of the regional gas pipeline system
3 would have potentially catastrophic consequences for economic security and public safety.
4 Provision of discreet portions of GIS pipeline mapping data to first responders and other
5 government agencies, however, promotes the safety and security of the pipeline system when
6 appropriately utilized.

7 13. In the Washington State Legislature, on February 6, 2007, HB 1478 was passed
8 out of the House Technology, Energy & Communications Committee. HB 1478 would amend
9 RCW 81.88.080 and RCW 42.56.330 with three objectives. First, HB 1478 would ensure that
10 the public has access to useful information concerning the location of pipeline facilities,
11 specifically maps. Second, it enables the WUTC to fulfill its obligation to equip local
12 jurisdictions with useful information by making explicit its obligation to transmit maps, GIS data
13 or any other information concerning these facilities. Finally, HB 1478 would secure GIS data
14 from uncontrolled public release and dissemination.

15 14. GTN supports HB 1478 and has committed resources to its passage.

16 15. Pipeline geographic data should not be disclosed as a public record. Moreover, it
17 is clear that HB 1478 would confirm the public interest in restricting circulation of such GIS data
18 and would expressly exempt the data under RCW 42.56.330.

19 16. The WUTC should be permanently enjoined from disclosing pipeline geographic
20 data to Ms. Buckner, the Bellingham Herald, or other parties who are not first responders or local
21 governments. Otherwise, upon public disclosure, there will be a substantial increase in the
22 vulnerability of these critical energy systems, thereby threatening the public safety and economic
23 viability of the entire Pacific Northwest, including natural gas operations in Washington State.

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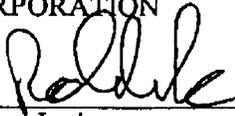
**DECLARATION OF ROBERT LATIMER IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION - A. N. N. E. D.**

1 I declare under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct to the best of my knowledge.

3 Dated this 13 day of February, 2007 at Ehrenberg, Arizona.

4 GAS TRANSMISSION NORTHWEST
5 CORPORATION

6 By: _____


Robert Latimer
Supervisor, Community Relations
TransCanada GTN System

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**DECLARATION OF ROBERT LATIMER IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION - S A N N E E**

1 EXPEDITE
2 No hearing set
3 Hearing is set
4 Date: 3-16-07
5 Time: 2:30 pm
6 Judge/Calendar
7 Hon. Richard Hicks

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SUPERIOR COURT
THURSTON COUNTY WASH

'07 FEB 28 P1:30

BETTY J. CHASE
BY 4
DEPUTY

8 SUPERIOR COURT FOR THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF THURSTON

10 OLYMPIC PIPE LINE COMPANY, a
11 Delaware corporation,

12 Plaintiff,

13 vs.

14 THE WASHINGTON UTILITIES AND
15 TRANSPORTATION COMMISSION, a
16 public agency

17 Defendant

Case No. 07-2-00327-1

DECLARATION OF CHRIS MAUDLIN
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

18 I, Chris Maudlin, hereby declare under penalty of perjury under the laws of the State of
19 Washington as follows:

- 20 1. I am the President of plaintiff Olympic Pipe Line Company ("Olympic").
21 2. Olympic owns a 400-mile petroleum-products system, which has served the
22 Pacific Northwest since construction in 1964 (the "Pipeline"). The Pipeline runs through 24
23 municipalities, nine counties, and dozens of parcels of private property, as well as along power
24 and railroad rights-of-way and numerous High Consequence Areas (streams, rivers, urban
25 centers etc.). The pipeline system originates at refineries near Ferndale and Anacortes,
Washington. Branches from these refineries come together at the Allen Station, about 20 miles
south of Bellingham, and the pipeline route is then south to its terminus in Portland, Oregon.

DECLARATION OF CHRIS MAUDLIN IN
SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION - 1

ORIGINAL

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
e 899 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

0-000000237

1 Relatively short side laterals off the pipeline serve intermediate points. A branch known as the
2 "Seattle Lateral" leaves the main line at Renton Station, going through Renton and Seattle on
3 its way to several shippers' terminals on Harbor Island. Those combined facilities are a major
4 distribution point for non-pipeline modes of transportation, including tanker trucks and barges
5 carrying petroleum products throughout the central Puget Sound area. The Pipeline is a
6 common carrier and transports a variety of petroleum products for various customers.
7 Olympic's line supplies the jet fuel for Seattle-Tacoma International Airport.

8 3. Pursuant to RCW 81.88.080, Olympic provided confidential information related
9 to the Pipeline, including detailed information on the location and diameter of the pipelines as
10 well as the precise location of pressure regulators, pump stations, metering facilities, taps, mile
11 posts, cathodic protection test sites, and valves to the Washington Utilities and Transportation
12 Commission (WUTC) (collectively, the "Olympic Pipeline Information").

13 4. Olympic submitted the Olympic Pipeline Information to cooperate with the
14 WUTC to enhance safety, security and increase the efficiency of emergency response
15 personnel to pipeline related emergencies. Olympic considers the Olympic Pipeline
16 Information proprietary and does not release this information to any third party that is not a first
17 responder or governmental agency

18 5. It is my understanding that the WUTC combined the Olympic Pipeline
19 Information with similar information provided by other gas and hazardous liquid companies,
20 pipelines and others, to create ERSI centerline (line pipe) shapefiles, which contain pipeline
21 locations, pipeline pressure regulators, pipeline diameters, compressor stations, metering
22 facilities, taps, mile posts, cathodic protection test sites, or valves. I understand that this data can
23 be exploited by a trained user with the appropriate software to reveal aspects of the system that
24 are considered sensitive, confidential and proprietary.

25

DECLARATION OF CHRIS MAUDLIN IN
SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION - 2

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98102
TEL. (206) 623-1700 FAX, (206) 623-1701

0-00000238

1 6. The U.S. Department of Transportation, Pipeline and Hazardous Materials
2 Safety Administration ("PHMSA") administers the national regulatory programs to assure safe
3 and environmentally sound transport of, among other things, petroleum products by pipeline.
4 The national mapping system created by PHMSA for its regulatory oversight and monitoring
5 the security of pipelines is identical to the information compiled by the WUTC on pipelines
6 located in Washington state, including Olympic's Pipeline and facilities. The information in the
7 PHMSA mapping system is not disclosed to the public, but is available only to pipeline
8 operators and federal, state and local government officials.

9 7. Subsequent to the terrorist attacks of September 11, 2001, Olympic has been
10 informed and advised by various federal government agencies, including the U.S. Department
11 of Homeland Security, the Transportation Security Agency, the U.S. Coast Guard, and the
12 PHMSA, that liquid pipelines and facilities such as those owned and operated by Olympic in
13 the state of Washington are considered critical infrastructure and should be regarded as such in
14 addressing the risk of, and prevention of, potential terrorist attacks.

15 8. Release of detailed information about the Pipeline and facilities would
16 compromise Olympic's on-going security measures and Damage Prevention Program by
17 pinpointing features of the Pipeline and facilities in ways that could increase the potential
18 vulnerability of this vital system and increase the risk of serious adverse impacts on Olympic's
19 operations and the distribution of petroleum products throughout Washington State and
20 beyond. Any increase in these risks in turn increases the potential for widespread direct and
21 indirect effects through (a) disruption or closure of Olympic's Pipeline and facilities; (b)
22 devastating financial consequences for government, society, and the overall state economy, as
23 a result of the inability to distribute petroleum products to the public, or otherwise; and/or (c)
24 potential exploitation of elements of the Pipeline or facilities to disrupt other critical
25 infrastructure or other vital facilities. It is critical for Olympic to keep detailed information

DECLARATION OF CHRIS MAUDLIN IN
SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION - 3

S C A N N E D
LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-1701

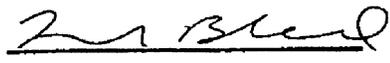
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regarding its Pipeline and facilities confidential and non-public in order to avoid a potentially serious increase in risks to the safety, integrity, and vital functions of the Pipeline and facilities.

DATED this 23 day of February, 2007 in Renton WA.


CHRIS MAUDLIN

I certify under penalty of perjury under the laws of the State of Washington that I had a copy of this document ~~hand delivered~~ *emailed* to all parties or their attorneys of record by messenger on the 28th day of February, 2007


DECLARATION OF CHRIS MAUDLIN IN
SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION - 4

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX, (

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SUPERIOR COURT
THURSTON COUNTY WASH.

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Date: _____
Time: _____
Judge/Calendar: Hon. Richard Hicks

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CHEVRON PIPE LINE COMPANY, a
Delaware corporation; and NORTHWEST
TERMINALING COMPANY, a Delaware
corporation,

Plaintiffs,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Defendant.

NO. 07-2-00328-0

DECLARATION OF HECTOR J.
FAJARDO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
INJUNCTION

HECTOR FAJARDO, declares and says:

1. I am over 18 years of age, I have personal knowledge of the matters asserted herein and I am competent to testify thereto.

2. I am the Chevron Pipe Line Company ("CPL") Vice President for Asset Management, Western Portfolio, which encompasses the states of Washington, Oregon, Idaho, Utah, California, Colorado, Alaska, and western Canada. I am responsible for approximately 3,000 miles of CPL's pipelines and numerous associated facilities. I also am president of Northwest Terminaling Company, which is the owner and operator of a fuel storage and distribution terminal in Pasco, Washington.

3. CPL's pipeline in Washington state originates at the Chevron refinery in Salt Lake City, Utah, and travels through the states of Utah, Idaho and Oregon before crossing into

DECLARATION OF HECTOR FAJARDO IN SUPPORT OF PLAINTIFFS' MOTION FOR INJUNCTION - 1

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SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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1 Washington state north of Helix, Oregon, running northwesterly to CPL's Pasco terminal, and
2 then north-northeasterly to Spokane, Washington ("Washington Pipeline"). The Washington
3 Pipeline is approximately 150 miles in length. Along the length of the pipeline are numerous
4 metering facilities, taps, mileposts, cathodic protection test sites and valves. A portion of
5 CPL's Washington pipeline runs adjacent to Fairchild Air Force Base, outside of Spokane,
6 and supplies fuel to the base for its national defense operations. The Washington Pipeline and
7 associated facilities and terminals handle a significant portion of the motor fuels sold in
8 Eastern Washington and are critical parts of the motor fuel distribution network for Eastern
9 Washington. The Washington Pipeline is a common carrier and transports motor fuels for
10 various customers, including Chevron U.S.A., Shell Oil U.S.A., and BP America.

11 4. As required by federal and state law, CPL has provided geographical and other
12 detailed information about the Washington Pipeline and facilities to the Washington Utilities
13 and Transportation Commission ("WUTC"). Specifically, CPL provides WUTC with the
14 GPS coordinates for the pipeline and terminals, locations and types of metering facilities,
15 taps, mileposts, cathodic protection test sites, valves, and information about the diameter of
16 the pipeline, depth, and commodities transported. It is my understanding that this information
17 is embedded electronically in centerline maps kept on file by WUTC.

18 5. None of this information has ever been made generally available to the public
19 because it is sensitive security information about a critical component of the U.S. energy
20 infrastructure and because CPL considers the information highly confidential and proprietary.

21 6. Since the terror attacks of September 11, 2001, CPL has been particular
22 vigilant about security issues regarding its pipelines and facilities. I have received numerous
23 communications from federal agencies, including the U.S. Department of Homeland Security,
24 Transportation Safety Administration; the U.S. Coast Guard; and the U.S. Department of
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DECLARATION OF HECTOR FAJARDO IN SUPPORT
OF PLAINTIFFS' MOTION FOR INJUNCTION - 2

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1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

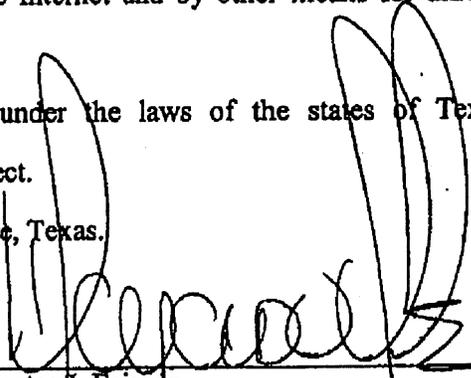
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1 Transportation, Pipeline and Hazardous Materials Safety Administration, advising CPL that
2 its pipelines and facilities, including those in Washington state, are considered critical energy
3 infrastructure that is vulnerable to terrorist attack. I believe that providing the detailed
4 information in the centerline maps to the public would severely impair CPL's ability to
5 protect its pipelines and facilities from attack, and therefore endanger public safety and the
6 economic viability of the energy infrastructure in Washington state.

7 7. The information also would permit competitors to determine the nature and
8 extent of Chevron's business activities in the marketplaces it serves in this region and,
9 thereby, gain a competitive advantage over Chevron. Once this information is released by
10 the WUTC, the data can be circulated on the Internet and by other means for unrestricted
11 commercial or unlawful exploitation.

12 I declare under penalty of perjury under the laws of the states of Texas and
13 Washington that the foregoing is true and correct.

14 DATED: February 15th, 2007, at Bellaire, Texas.

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17 _____
18 Hector J. Fajardo
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DECLARATION OF HECTOR FAJARDO IN SUPPORT
OF PLAINTIFFS' MOTION FOR INJUNCTION - 3

013000.0614/1360142.1

· S E A N N E

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1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
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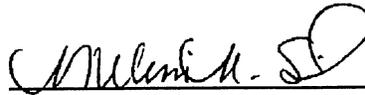
affidavit pages. I have also determined that it is complete and legible.

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Erik D. Price, WSBA #23404
Lane Powell PC
111 Market Street NE, Suite 360
Olympia, WA 98501
Telephone: (360) 754-6001
Fax: (360) 754-1605

SUBSCRIBED AND SWORN to before me this 15th day of February
2001.



Melissa K. Seipel
Notary Printed Name

Notary Public for the State of Washington
Residing at Olympia
My Commission Expires: 6-29-07

AFFIDAVIT OF FACSIMILE RECEIPT OF
SIGNATURE PAGE IN COMPLIANCE WITH GR
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111 Market Street NE, Suite 360
Olympia, Washington 98501
Telephone: (360) 754-6001
Facsimile: (360) 754-1605

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SUPERIOR COURT
THURSTON COUNTY WASH

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- 1 EXPEDITE
- 2 Hearing is Set
- 2 Hearing is Not Set
- 3 Date: _____
- 3 Time: _____
- 4 Judge/Calendar: _____

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CHEVRON PIPE LINE COMPANY, a
Delaware corporation, and NORTHWEST
TERMINALING COMPANY, a Delaware
corporation,

Plaintiffs,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Defendant.

NO. 07 - 2 - 00328 - 0

**DECLARATION OF TRACY LONG IN
SUPPORT OF PLAINTIFFS' MOTION
FOR INJUNCTIVE RELIEF**

TRACY LONG, being first duly sworn, on oath deposes and says:

1. I am over 18 years of age, I have personal knowledge of the matters asserted herein and I am competent to testify thereto.

2. I am the security/emergency response advisor for Chevron Pipe Line Company. I am responsible for preparing and updating Chevron's security plans for each of its pipelines and facilities, and for emergency response at those pipelines and facilities.

3. One of the Chevron pipelines for which I have responsibility runs from Chevron's refinery in Salt Lake City, Utah, through the states of Utah, Idaho and Oregon and crosses into Washington north of Helix, Oregon. The Washington portion of the pipe line runs northwesterly from the Washington-Oregon border to CPL's terminal at Pasco, Washington, and from there roughly north-northeasterly to Spokane, Washington.

DECLARATION OF TRACY LONG IN SUPPORT
OF PLAINTIFF'S MOTION FOR INJUNCTION - 1

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SEATTLE, WASHINGTON 98101-2338
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1 4. The U.S. Department of Transportation, Pipeline and Hazardous Materials
2 Safety Administration ("PHMSA") administers the national regulatory programs to assure
3 safe and environmentally sound transport of, among other things, hazardous liquids such as
4 refined motor fuels by pipeline. The national mapping system created by PHMSA for its
5 regulatory oversight and monitoring the security of pipelines is identical to the information
6 compiled by the Washington Utilities and Transportation Commission ("WUTC") on
7 pipelines located in Washington state, including CPL's Washington Pipeline and facilities.
8 The information in the PHMSA mapping system is not disclosed to the public, but is available
9 only to pipeline operators and federal, state and local government officials.

10 5. The CPL Pasco terminal is considered a high-risk facility by the Coast Guard
11 and, therefore, is one of five CPL facilities in the United States that has been designated as a
12 Maritime Security ("MARSEC") facility. This MARSEC designation required CPL to
13 prepare a detail security plan based on underlying data collected in preparation of or essential
14 to assessing the threat of terrorist acts. These data are similar to what CPL has provided to the
15 WUTC for mapping purposes as required by state law. The security plan for the Pasco
16 terminal is considered "Sensitive Security Information" and is not generally available to the
17 public. Because the plan is sensitive, the underlying information about the facility also is
18 sensitive. The information is released only in very limited circumstances, and only when a
19 potential recipient executes a confidentiality and non-disclosure agreement, a copy of which is
20 attached hereto as Exhibit A.

21 7. A portion of the Washington Pipeline lies adjacent to Fairchild Air Force Base,
22 outside Spokane, Washington, and supplies fuels for use in the base's national defense
23 mission. Information concerning this part of the Washington Pipeline is highly sensitive
24 because affects national defense as well as critical energy infrastructure.

25 8. On February 6, I received a copy of an e-mail notification from WUTC that it
26 planned to release to requestor Jean Buckner the agency's ESRI shapefiles containing, among

DECLARATION OF TRACY LONG IN SUPPORT
OF PLAINTIFF'S MOTION FOR INJUNCTION - 2

013000.0614/1359987.1

S. C. A. N. E. LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

0-000000266

1 other things, data concerning CPL's pipeline and facilities, including Global Positioning
2 Satellite coordinates for the entire length of the Washington pipeline; the size and depth of
3 the pipeline; the type of transported commodity; and the location of pipeline valves, pressure
4 regulators, compressor stations, metering facilities, taps, breakout tanks and cathodic
5 protection test sites.

6 9. In response to the WUTC e-mail, I contacted Ms. Buckner concerning her
7 document request. I learned from this conversation that Ms. Buckner wants the information
8 to develop a pipeline and facility map that she could sell to the public. Although I advised
9 Ms. Buckner that the information she seeks is sensitive security information, I understood her
10 position to be that the pipeline industry was not as much as a target for a terrorist attack as an
11 above ground facility. I advised her that I receive monthly Transportation Security Agency
12 reports regarding suspicious activities on rail, air, chemical and pipelines and, from the
13 information in the reports, that the pipeline industry was showing suspicious activities each
14 month.

15 10. Release of the data by WUTC would compromise and jeopardize CPL's
16 Washington pipeline and facilities by providing detailed information that has not been
17 publicly available before this. If the data are released for widespread dissemination, CPL's
18 Washington Pipeline and facilities, which are already considered high risk and vulnerable,
19 could become significantly more so because the information provides a virtual road map to
20 every component along the entire 150-mile length of pipeline. Thus, key details about the
21 energy supply infrastructure for the state of Washington would become available to anyone
22 who might seek to disrupt the regional or national economy.

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DECLARATION OF TRACY LONG IN SUPPORT
OF PLAINTIFF'S MOTION FOR INJUNCTION - 3

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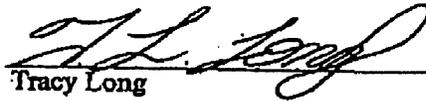
LANE POWELL PC
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I declare under penalty of perjury under the laws of the states of Texas and Washington that the foregoing is true and correct.

DATED: February 14, 2007, at Bellaire, Texas.


Tracy Long

DECLARATION OF TRACY LONG IN SUPPORT OF PLAINTIFF'S MOTION FOR INJUNCTION - 4

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SCANNED

EXHIBIT A

SCANNED

0-000000269

NON-DISCLOSURE AGREEMENT

I, _____, an individual official, employee, consultant, or subcontractor of or to _____ (the Authorized Entity), intending to be legally bound, hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, specified below, that is owned by, produced by, or in the possession of the United States Government.

(Signer will acknowledge the category or categories of information that he or she may have access to, and the signer's willingness to comply with the standards for protection by placing his or her initials in front of the applicable category or categories.)

Initials: **Protected Critical Infrastructure Information (PCII)**

I attest that I am familiar with, and I will comply with all requirements of the PCII program set out in the Critical Infrastructure Information Act of 2002 (CII Act) (Title II, Subtitle B, of the Homeland Security Act of 2002, Public Law 107-296, 196 Stat. 2135, 6 USC 101 et seq.), as amended, the implementing regulations thereto (6 CFR Part 29), as amended, and the applicable PCII Procedures Manual, as amended, and with any such requirements that may be officially communicated to me by the PCII Program Manager or the PCII Program Manager's designee.

Initials: **Sensitive Security Information (SSI)**

I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of SSI information as cited in this Agreement and in accordance with 49 CFR Part 1520, "Protection of Sensitive Security Information," "Policies and Procedures for Safeguarding and Control of SSI," as amended, and any supplementary guidance issued by an authorized official of the Department of Homeland Security.

Initials: **Other Sensitive but Unclassified (SBU)**

As used in this Agreement, sensitive but unclassified information is an over-arching term that covers any information, not otherwise indicated above, which the loss of, misuse of, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy. This includes information categorized by DHS or other government agencies as: For Official Use Only (FOUO); Official Use Only (OUO); Sensitive Homeland Security Information (SHSI); Limited Official Use (LOU); Law Enforcement Sensitive (LES); Safeguarding Information (SGI); Unclassified Controlled Nuclear Information (UCNI); and any other identifier used by other government agencies to categorize information as sensitive but unclassified.

I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access as cited in this Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand and agree to the following terms and conditions of my access to the information indicated above:

1. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of information to which I have been provided conditional access, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
2. By being granted conditional access to the information indicated above, the United States Government has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this Agreement and the laws, regulations, and directives applicable to the specific categories of information to which I am granted access.
3. I attest that I understand my responsibilities and that I am familiar with and will comply with the standards for protecting such information that I may have access to in accordance with the terms of this Agreement and the laws, regulations, and/or directives applicable to the specific categories of information to which I am granted access. I understand that the United States Government may conduct inspections, at any time or place, for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding information under this Agreement.

4. I will not disclose or release any information provided to me pursuant to this Agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such information I will do so only under approved circumstances and in accordance with the laws, regulations, or directives applicable to the specific categories of information. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.

5. (a) For PCII - (1) Upon the completion of my engagement as an employee, consultant, or subcontractor under the contract, or the completion of my work on the PCII Program, whichever occurs first, I will surrender promptly to the PCII Program Manager or his designee, or to the appropriate PCII officer, PCII of any type whatsoever that is in my possession.

(2) If the Authorized Entity is a United States Government contractor performing services in support of the PCII Program, I will not request, obtain, maintain, or use PCII unless the PCII Program Manager or Program Manager's designee has first made in writing, with respect to the contractor, the certification as provided for in Section 29.8(c) of the implementing regulations to the CII Act, as amended.

(b) For SSI and SBU - I hereby agree that material which I have in my possession and containing information covered by this Agreement, will be handled and safeguarded in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information, consistent with the laws, regulations, or directives applicable to the specific categories of information. I agree that I shall return all information to which I have had access or which is in my possession 1) upon demand by an authorized individual; and/or 2) upon the conclusion of my duties, association, or support to DHS; and/or 3) upon the determination that my official duties do not require further access to such information.

6. I hereby agree that I will not alter or remove markings, which indicate a category of information or require specific handling instructions, from any material I may come in contact with, in the case of SSI or SBU, unless such alteration or removal is consistent with the requirements set forth in the laws, regulations, or directives applicable to the specific category of information or, in the case of PCII, unless such alteration or removal is authorized by the PCII Program Manager or the PCII Program Manager's designee. I agree that if I use information from a sensitive document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same matter as the original.

7. I hereby agree that I shall promptly report to the appropriate official, in accordance with the guidance issued for the applicable category of information, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation, I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.

8. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to the information covered by this Agreement. This may serve as a basis for denying me conditional access to other types of information, to include classified national security information.

9. (a) With respect to SSI and SBU, I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of the information not consistent with the terms of this Agreement.

(b) With respect to PCII I hereby assign to the entity owning the PCII and the United States Government, all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of PCII not consistent with the terms of this Agreement.

10. This Agreement is made and intended for the benefit of the United States Government and may be enforced by the United States Government or the Authorized Entity. By granting me conditional access to information in this context, the United States Government and, with respect to PCII, the Authorized Entity, may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I understand that if I violate the terms and conditions of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, or directives applicable to the category of information involved and neither the United States Government nor the Authorized Entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.

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Date: _____
 Time: _____
 Judge/Calendar: _____

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CHEVRON PIPELINE COMPANY, a
 Delaware corporation, and NORTHWEST
 TERMINALING COMPANY, a Delaware
 corporation,

Plaintiffs,

v.

WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION,

Defendant.

No.

AFFIDAVIT OF FACSIMILE RECEIPT
 OF SIGNATURE PAGE IN
 COMPLIANCE WITH GR 17(2)

STATE OF WASHINGTON)
) ss.
 County of THURSTON)

I, Robin Dale, being duly sworn, on oath state:

1. I am an attorney with Lane Powell PC, counsel for the petitioners herein.

I have personal knowledge of the matters herein stated and am qualified to testify thereto.

2. I examined the Declaration of Tracy Long and determine it consists of 9 pages, including page 4 with Tracy Long's faxed signature and these affidavit pages. I

AFFIDAVIT OF FACSIMILE RECEIPT OF
 SIGNATURE PAGE IN COMPLIANCE WITH GR
 17(2)

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 111 Market Street NE, Suite 360
 Olympia, Washington 98501
 Telephone: (360) 754-6001
 Facsimile: (360) 754-1605

SCANNED

have also determined that it is complete and legible.

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[Handwritten Signature]

Robin Dale, WSBA #22166
Lane Powell PC
111 Market Street NE, Suite 360
Olympia, WA 98501
Telephone: (360) 754-6001
Fax: (360) 754-1605

SUBSCRIBED AND SWORN to before me this 14th day of February,
2007.



[Handwritten Signature]

Melissa K. Seipel
Notary Printed Name

Notary Public for the State of Washington
Residing at Olympia
My Commission Expires: 6-29-2007

AFFIDAVIT OF FACSIMILE RECEIPT OF
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EXPEDITE
 Hearing is Set
 Hearing is Not Set
Date: March 16, 2006
Time: 2:30 p.m.
Judge/Calendar: Judge Hicks

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'07 FEB 26 P4:36

BETTY J. BOULD
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

YELLOWSTONE PIPE LINE COMPANY, a)
Delaware corporation; and)
CONOCOPHILLIPS PIPELINE COMPANY,)
a Delaware corporation,)
Plaintiffs)

NO. 07-2-00399-9

DECLARATION OF RANDY BEGGS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR INJUNCTIVE RELIEF

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Defendant.

RANDY BEGGS, declares and says:

1. I am over 18 years of age, I have personal knowledge of the matters asserted herein and I am competent to testify thereto.

2. I am the Director, Pipeline Regulatory Compliance for ConocoPhillips Pipe Line Company ("CPPL"), which is co-owner and the operator of the Yellowstone Pipeline. The Yellowstone Pipeline is a 650-mile long liquid pipeline that runs from refineries in Billings, Montana, westward through the states of Montana, Idaho and Washington. ConocoPhillips Pipe Line Company operates the pipeline, which carries refined petroleum products, including gasoline, diesel and jet fuel, for distribution to markets in western Montana, northern Idaho and eastern and central Washington. The Washington portion of the pipeline is approximately 140 miles in length; it enters the state east of Spokane, and travels

DECLARATION OF RANDY BEGGS IN SUPPORT OF
PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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1 westerly through Spokane, Lincoln, Adams and Grant Counties. There are two terminals
2 located in Spokane, one is known as the Spokane Parkwater Terminal and the other is the
3 called North Spokane. CPPL also operates a terminal in Moses Lake, Washington, delivery
4 stations at Fairchild Air Force Base and Spokane International Airport, and a pipeline spur
5 from Moses Lake terminal to Grant County Airport.

6 3. The Yellowstone Pipeline and associated facilities and terminals handle a
7 significant portion of the refined petroleum products sold in eastern and central Washington
8 and are critical parts of the refined petroleum products distribution network east of the
9 Cascade mountains. The Yellowstone Pipeline is a common carrier and transports refined
10 petroleum products for various customers.

11 4. CPPL provides detailed information to PHMSA and WUTC concerning all
12 aspects of the Yellowstone Pipeline for the agencies' to incorporate into a mapping system
13 used by the agencies for their regulatory oversight and monitoring. This information is
14 compiled in the form of a centerline (line pipe) shapefile, which is a digital linework
15 representing the pipeline locations and depths, with pipeline metering facilities, taps,
16 mileposts, cathodic protection test sites and valves, as well as information about the diameter,
17 pipeline operator name, and transported commodity (i.e. natural gas, hazardous liquids). This
18 information is electronically embedded in the shapefile. The information CPPL provides to
19 the PHMSA and WUTC is not disclosed to the general public, but it is available only to
20 pipeline operators and to federal, state and local government officials, including first
21 responders. At most, the general public is provided with a 1:24,000 scale map that is
22 sufficient to locate a pipeline, but does not provide specific information about its components.

23 5. None of this information has ever been made generally available to the public
24 because it is sensitive security information about a critical component of the U.S. energy
25 infrastructure and because CPPL and Yellowstone consider the information highly
26 confidential and proprietary. The information also would permit competitors to determine the

DECLARATION OF RANDY BEGGS IN SUPPORT OF
PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 2

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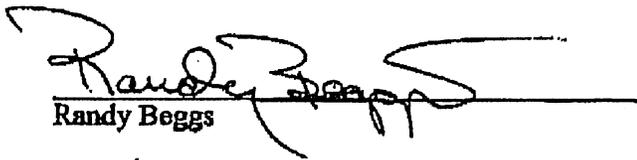
1 nature and extent of CPPL's and its customers' business activities in the marketplaces its
 2 serves in this region and, thereby, gain a competitive advantage. Once this information is
 3 released by the WUTC, the data can be circulated on the Internet and by other means for
 4 unrestricted commercial or unlawful exploitation.

5 6. While CPPL is committed to ensuring that detailed information about its
 6 Yellowstone Pipeline is provided to first responders at the state, county and local level of each
 7 jurisdiction through which the pipeline passes, it does not believe that making the detailed
 8 information available to the general public will enhance safety. Indeed, releasing such
 9 information likely would undermine the One-Call system and thereby jeopardize public
 10 safety. Equipment digging into pipelines is the number one cause of pipeline accidents. The
 11 One-Call system is designed to promote public safety by having landowners and contractors
 12 call for specific location information before they dig. If the detailed information about the
 13 Yellowstone Pipeline and facilities were released to the general public, contractors and
 14 landowners would use the information instead of the One-Call system. Doing so is not only
 15 against the law, but can result in an extremely dangerous situation.

16 7. For all the foregoing reasons, the Court should not allow WUTC to release the
 17 data about the Yellowstone Pipeline and facilities.

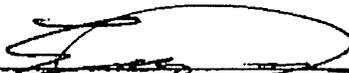
18 I declare under penalty of perjury under the laws of the states of Oklahoma and
 19 Washington that the foregoing is true and correct.

20 DATED: February 26, 2007, at Ponca City, Oklahoma.

21
 22 
 23 Randy Beggs

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 26
 DECLARATION OF RANDY BEGGS IN SUPPORT OF
 PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 3

1 2. I examined the Declaration of Randy Beggs and determine it consists of 5
2 pages, including page 3 with Randy Beggs' faxed signature and these affidavit pages. I
3 have also determined that it is complete and legible.
4

5
6 
7 Erik D. Price, WSBA # 23404
8 Lane Powell PC
9 111 Market Street NE, Suite 360
10 Olympia, WA 98501
11 Telephone: (360) 754-6001
12 Fax: (360) 754-1605

13 SUBSCRIBED AND SWORN to before me this 26th day of February
14 2007.



27 
28 _____
29 Melissa K. Seipel
30 Notary Printed Name
31 Notary Public for the State of Washington
32 Residing at Olympia
33 My Commission Expires: 6-29-07

AFFIDAVIT OF FACSIMILE RECEIPT OF
SIGNATURE PAGE IN COMPLIANCE WITH GR
17(2)

2

LANE POWELL PC
111 Market Street NE, Suite 360
Olympia, Washington 98501
Telephone: (360) 754-6001
Facsimile: (360) 754-1605

THE HONORABLE RICHARD D. HICKS

EXPEDITE
 No hearing set
 Hearing is set
 Date: 3/16/07
 Time: 2:30 p.m.
 Judge/Calendar: Richard D. Hicks

FILED
 SUPERIOR COURT
 THURSTON COUNTY WASH.
 07 MAR -6 P 4:32
 BETTY J. GOULD CLERK
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ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

VALERO L.P., a Delaware corporation,

No. 07-2-00437-5

Plaintiff,

v.

THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, a
public agency,

**DECLARATION OF
WILLIAM FOGARTY IN
SUPPORT OF
PLAINTIFF VALERO
L.P.'S MOTION FOR
PRELIMINARY
INJUNCTION**

Defendant.

WILLIAM FOGARTY certifies and declares under penalty of perjury
as follows:

1. I am over the age of eighteen and am competent to testify to the
matters set forth herein. I make this declaration based on my personal
knowledge and in support of plaintiff Valero L.P.'s Motion for Preliminary
Injunction.

2. I am a Maintenance Manager employed by Valero L.P. in
Wichita, Kansas. My responsibilities as Maintenance Manager have
required that I become informed regarding various facilities owned and
operated by Valero L.P. and its subsidiaries and affiliated companies,
including the 4.2-mile liquid petroleum pipeline ("Pipeline") owned and

DECLARATION OF WILLIAM FOGARTY
IN SUPPORT OF PLAINTIFF VALERO L.P.'S
MOTION FOR PRELIMINARY INJUNCTION
Page 1

CASCADIA LAW GROUP PLLC
1201 THIRD AVENUE, SUITE 320
SEATTLE, WA 98101
(206) 292-6300

1 operated by Kaneb Pipe Line Operating Partnership, L.P., located in Pasco,
2 Franklin County, Washington.

3 3. The Pipeline originates at Tidewater Barge Lines, Inc.'s
4 offloading and storage facility on the Snake River and terminates at the
5 Burlington Northern Santa Fe rail yard. The Pipeline is located in a
6 commercial/industrial zone. It runs through public rights of way and private
7 property and is currently used to transport diesel fuel. The Pipeline and
8 associated facilities include branches, laterals, regulators, pump stations,
9 metering facilities, taps, and valves.

10 4. As required by RCW 81.88.080, Valero L.P. has disclosed to
11 the Washington Utilities and Transportation Commission ("WUTC")
12 geographic and system data concerning the Pipeline, associated terminals,
13 and facilities. The information disclosed by Valero L.P. includes Global
14 Positioning Satellite coordinates for the entire length of the Pipeline;
15 centerline geographic information system (GIS) data; information regarding
16 the size and depth of the Pipeline; and information regarding the type and
17 quantities of transported commodities.

18 5. I understand that the WUTC has used the information provided
19 by Valero L.P.—in combination with similar information provided by other
20 gas and hazardous liquid companies, pipelines and others—to create ERSI
21 Centerline Shapefiles (the "Shapefiles"). I understand that these Shapefiles
22 contain information regarding the locations of pipelines, pipeline pressure
23 regulators, compressor stations, metering facilities, taps, mile posts, and
24 cathodic protection test sites.

25 6. The Pipeline is a valuable commercial asset. Valero L.P.
26 considers the Pipeline GIS information it has disclosed to WUTC to be

27 DECLARATION OF WILLIAM FOGARTY
28 IN SUPPORT OF PLAINTIFF VALERO L.P.'S
MOTION FOR PRELIMINARY INJUNCTION
Page 2

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SEATTLE, WA 98101
(206) 292-6300

1 proprietary. Valero L.P. has assembled and maintained this data, and has
2 disclosed it to WUTC, to promote public and private interests in pipeline
3 security and safety. Because dissemination of information regarding its
4 Pipeline could be exploited by third parties for private commercial profit,
5 Valero L.P. does not release this information to any third party that is not a
6 first responder or governmental agency.

7 7. Based on literature distributed by and on communications with
8 various government agencies, Valero L.P. understands that liquid petroleum
9 facilities such as the Pipeline are considered critical infrastructure and
10 should be regarded as such in addressing the risk of, and prevention of,
11 potential terrorist attacks.

12 8. Valero L.P. believes that dissemination of detailed information
13 about Valero L.P.'s Pipeline and associated facilities would compromise the
14 company's ongoing security measures and would make the Pipeline more
15 vulnerable to exploitation or sabotage. A breach of these security measures
16 or disruption in Valero L.P.'s ability to use the Pipeline could have financial
17 and public safety consequences.

18 Executed on this 6th day of March, 2007, at 16:55,

19 Wichita, KS.

20
21 
22 William Fogarty

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27 DECLARATION OF WILLIAM FOGARTY
IN SUPPORT OF PLAINTIFF VALERO L.P.'S
MOTION FOR PRELIMINARY INJUNCTION
28 Page 3

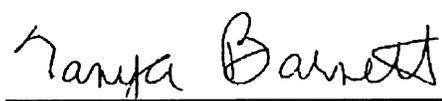
CASCADIA LAW GROUP PLLC
1201 THIRD AVENUE, SUITE 320
SEATTLE, WA 98101
(206) 292-6300

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th day of March, 2007, served a copy of the foregoing on the following parties, by depositing true and correct copies with ABC-Legal Messenger:

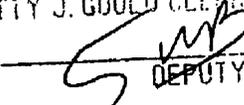
Robert Cedarbaum
Washington Utilities & Transportation Commission
1400 S. Evergreen Park Dr. SW
Olympia, WA 98504
Attorney for Defendant



Tanya Barnett

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

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BY  DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation, B-R
PIPELINE COMPANY, a Delaware
corporation, and KB PIPELINE
COMPANY, an Oregon corporation,

Plaintiffs,

v.

THE WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION, a
public agency,

Defendant.

No. 07 - 2 - 00442 - 1

DECLARATION OF GEORGE
HUTCHERSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR TRO AND
PRELIMINARY INJUNCTION

I, George Hutcherson, hereby declare as follows:

1. I am the Manager of Transmission Contracts, Planning and Expansion at Portland
General Electric Company. I make this declaration on personal knowledge.

2. The Kelso-Beaver Pipeline ("KB Pipeline") is owned by Portland General
Electric Company, B-R Pipeline Company, and KB Pipeline Company as tenants-in-common.
The KB Pipeline is a large-diameter, high-pressure natural gas pipeline that runs for
approximately 19 miles between Cowlitz County, Washington and Columbia County, Oregon.

DECLARATION OF GEORGE HUTCHERSON IN SUPPORT OF PLAINTIFFS' MOTION
FOR TRO AND PRELIMINARY INJUNCTION - 1

Seattle-3357397.1 0099999-00006

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

SCANNED

0-000000521

1 3. Portland General Electric Company ("PGE") is an Oregon corporation with a
2 79.5% tenancy-in-common ownership interest in the KB Pipeline.

3 4. B-R Pipeline Company is a Delaware corporation and is a wholly owned
4 subsidiary of United States Gypsum Company. B-R Pipeline Company has a 10.5% tenancy-in-
5 common ownership interest in the KB Pipeline.

6 5. KB Pipeline Company is an Oregon corporation, and is a wholly owned
7 subsidiary of Northwest Natural Gas Company. KB Pipeline Company has a 10% tenancy-in-
8 common ownership interest in the KB Pipeline.

9 6. The KB Pipeline is operated by Cascade Natural Gas Corporation ("Cascade").
10 PGE, B-R Pipeline Company, and KB Pipeline Company (collectively the "PGE Plaintiffs")
11 engaged Cascade Natural Gas Corporation to handle daily operations of the KB Pipeline through
12 an operating services agreement.

13 7. The events of September 11, 2001, caused wide-spread recognition of the
14 vulnerability of the nation's critical energy infrastructure. The incapacity or destruction of the
15 KB Pipeline would have potentially severe consequences for economic security and public safety
16 in Washington and Oregon. The PGE Plaintiffs responded voluntarily and through federally
17 mandated initiatives to enhance protection of the KB Pipeline.

18 8. The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety
19 Administration ("PHMSA") has specifically responded to the public safety and security
20 challenges nationwide. PHMSA administers the national regulatory program to assure the safe
21 and environmentally sound transportation of natural gas, liquefied natural gas and hazardous
22 liquids by pipeline.

23 9. The PHMSA has created a national pipeline mapping system ("NPMS"). It is my
24 understanding that public access to the data is limited. I understand that, at this time, PHMSA is
25 providing pipeline data to pipeline operators and local, state and federal government officials
26 only.

**DECLARATION OF GEORGE HUTCHERSON IN SUPPORT OF PLAINTIFFS' MOTION
FOR TRO AND PRELIMINARY INJUNCTION - 2**

Seattle-3357397.1 0099999-00006

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 10. Moreover, under its rule-making authority, the Federal Energy Regulatory
2 Commission ("FERC") has defined GIS pipeline mapping data with some exceptions, as critical
3 energy infrastructure information ("CEII") and, through its rule making authority, recognizes
4 such data as most likely exempt from disclosure under the Federal Freedom of Information Act.

5 11. I understand that RCW 81.88.080 requires the Washington Utilities and
6 Transportation Commission ("WUTC") to collect and consolidate geospatial information
7 depicting gas and hazardous liquid pipelines into a statewide pipeline geographic information
8 system (GIS). It further requires the WUTC to produce maps and other tools delineating the
9 location of these facilities and to provide those tools to first responders and local jurisdictions.
10 The purpose of the pipeline mapping requirement serves an important governmental objective of
11 pipeline safety and security. In response to the requirements of RCW 81.88.080, I understand
12 that the WUTC has compiled GIS data relating to natural gas pipeline systems, including that of
13 major large-diameter high-pressure natural gas pipelines such as the KB Pipeline owned by the
14 PGE Plaintiffs and operated by Cascade.

15 12. The PGE Plaintiffs have been notified that the WUTC has received a public
16 records request for pipeline GIS data, including "all the underlying pipeline/facility data."
17 Additionally, the PGE Plaintiffs understand that the Bellingham Herald also has made a public
18 records request for the Whatcom County Pipeline Atlas on compact disc and pipeline GIS data
19 for Whatcom County.

20 13. The WUTC has also notified the PGE Plaintiffs that on March 2, 2007, it plans on
21 providing a member of the public and the Bellingham Herald with an ESRI centerline (line pipe)
22 shapefile.

23 14. The PGE Plaintiffs have no objections to providing the Whatcom County Pipeline
24 Atlas to the Bellingham Herald. However, pipeline geographic data gathered by the WUTC
25 should not be disclosed as a public record.

26
**DECLARATION OF GEORGE HUTCHERSON IN SUPPORT OF PLAINTIFFS' MOTION
FOR TRO AND PRELIMINARY INJUNCTION - 3**

Seattle-3357397.1 0099999-00006

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY
<p>PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation, B-R PIPELINE COMPANY, a Delaware corporation, and KB PIPELINE COMPANY, an Oregon corporation,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, a public agency,</p> <p style="text-align: center;">Defendant.</p>

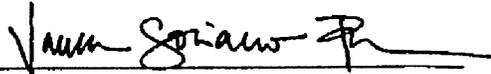
NO.
DECLARATION OF FAXED DOCUMENT (DCLR)
[Attach as last page of Faxed Document]

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing facsimile transmission for filing and certify that it is on bond paper.
2. My address is: 600 University Street, Suite 3600, Seattle, WA 98101
3. My phone number is: (206) 624-0900
4. The facsimile number where I received the document is: (206) 386-7500
5. I have examined the foregoing document, determined that it consists of 5 number of pages, including this Declaration page, and that it is complete and legible.

I certify under penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: March 1, 2007, at Seattle, Washington.

Signature: 
Vanessa Soriano Power

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	Date: _____
	Judge/Calendar: _____

FILED
SUPERIOR COURT
THURSTON COUNTY WASH.

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BETTY J. GOULD CLERK

BY DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN THE COUNTY OF THURSTON

BP WEST COAST PRODUCTS LLC, a
Delaware limited liability company and
INTALCO ALUMINUM CORPORATION, a
Delaware corporation,

Plaintiffs,

v.

THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, a
Washington public agency

Defendant.

Case No. 07-2-00377-6

DECLARATION OF TERRY GOLDEN
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

I, Terry Golden, hereby declare as follows:

1. I am Terry Golden and am employed by BP West Coast Products LLC ("BP").

My duties include responsibilities as Production Manager for the Cherry Point Refinery in
Blaine, WA.

2. BP owns and operates an oil refinery located near Ferndale, Washington.

1 3. BP and Intalco Aluminum Corporation ("Intalco") jointly own a 30.7 mile,
2 16-inch pipeline known as the Ferndale Pipeline System. The Ferndale Pipeline System
3 connects the BP refinery and the Intalco smelter facilities to the Westcoast Energy Inc. pipeline
4 at the United States Canadian border near Sumas, Washington.

5 4. BP also owns two other pipelines that serve their Cherry Point Refinery: (i) a
6 5.3 mile, 6-inch butane line used to ship butane between storage at Cherry Point to BP's
7 Ferndale, Washington Terminal (collectively, the "Cherry Point Pipeline System").

8 5. Pursuant to RCW 81.88.080, BP and Intalco provided confidential, pipeline
9 information related to the Ferndale Pipeline System, including detailed information on the
10 location and diameter of the pipelines as well as the precise location of pressure regulators,
11 compressor stations, metering facilities, taps, mile posts, cathodic protection test sites, and valves
12 to the Washington Utilities and Transportation Commission (WUTC) (collectively, the "Ferndale
13 Information"). BP also provided the WUTC with the same type of detailed information for its
14 Cherry Point Pipeline System (the "Cherry Point Information").

15 6. BP submitted the Ferndale Information and the Cherry Point Information to
16 cooperate with the WUTC to enhance safety, security and increase the efficiency of emergency
17 response personnel to pipeline related emergencies. BP considers this information proprietary
18 and does not release the Ferndale Information and the Cherry Point Information to any third
19 party that is not a first responder, governmental agency or pipeline locator except under a
20 confidentiality agreement.

21 7. It is my understanding that the WUTC combined the Ferndale Information and the
22 Cherry Point Information, along with similar information provided by other gas companies,
23 pipelines and others, to create ERSI centerline (line pipe) shapefiles, which contain pipeline
24 locations, pipeline pressure regulators, pipeline diameters, compressor stations, metering facilities,
25 taps, mile posts, cathodic protection test sites, or valves. I understand that this data can be
26

1 exploited by a trained user with the appropriate software to reveal aspects of the system that are
2 considered sensitive, confidential and proprietary.

3 8. BP has learned that Ms. Jean Buckner of Bellevue, Washington, has made a
4 public records request for information from the WUTC for disclosure of the Plaintiffs' pipeline
5 geographic information consisting of centerline shapefiles for the Ferndale Pipeline System and
6 BP Cherry Point Pipeline System and the underlying Ferndale Information and the underlying
7 Cherry Point Information. Additionally, BP has learned that the Bellingham Herald made a
8 similar public records request.

9 9. I have been advised that the WUTC intends to release the shapefiles for the
10 Ferndale Pipeline System and BP Cherry Point Pipeline System and the underlying Ferndale
11 Information and the Cherry Point Information. The release of this information in any form
12 increases the risk of disruption of service to the BP facility, and undermines the safety of BP
13 employees, and the public in general.

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Page 3 - DECLARATION OF TERRY GOLDEN IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP
SUITE 2000
1001 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1136

SCANNED

EXHIBIT App. 3 of 4

0-000000307

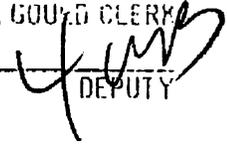
10. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

By: 
Terry Golden
Production Manager for BP's Cherry Point Refinery

DATED February 21, 2007.

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

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BETTY J. GOULD CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, a
Washington corporation,

Plaintiff,

v.

THE WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION, a
state agency,

Defendant.

No. 07 - 2 - 00321 - 2

**DECLARATION OF BRUCE L.
PASKETT IN SUPPORT OF
PLAINTIFF'S MOTION FOR TRO
AND PRELIMINARY INJUNCTION**

I, Bruce L. Paskett, hereby declare as follows:

1. I am the manager of code compliance for Northwest Natural Gas ("NW Natural").

As manager of code compliance, I have primary responsibility for NW Natural's pipeline safety programs and for ensuring compliance with applicable state and federal pipeline safety regulations. I am also responsible for responding to safety inspections conducted by state and federal pipeline safety personnel. After the events of September 11, 2001, I had joint responsibility within the company for NW Natural's Homeland Security Program.

2. I received a bachelor of science degree in mechanical engineering from Oregon State University. Following graduation from college, I was employed in the geothermal industry and in the pulp and paper industry. Since 1983, I have been employed at NW Natural, where I have held a number of different positions, including manager of engineering, chief engineer and

**DECLARATION OF BRUCE L. PASKETT IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION**

1 manager of code compliance. I am also a Registered Professional Engineer in the state of
2 Oregon.

3 3. In my positions as chief engineer and manager of code compliance, I have been
4 heavily involved in a number of American Gas Association ("AGA") committees related to
5 pipeline safety and integrity, including AGA's Distribution-Transmission Engineering
6 Committee, Pipeline Integrity Committee, Operations Safety Regulatory Action Committee and
7 Natural Gas Security Committee. Through my involvement in these committees, I have been
8 deeply engaged in recent congressional pipeline safety legislative activities and federal Pipeline
9 and Hazardous Materials Safety Administration ("PHMSA") rulemaking activities.

10 4. NW Natural owns and operates nearly 22,000 miles of distribution "main" and
11 "service" pipeline, including nearly 13,000 miles of main line and about 9,000 miles of service
12 line, to deliver natural gas to its customers. In addition, NW Natural owns and operates well
13 over 600 miles of transmission pipeline, beginning with the installation of the company's first
14 transmission pipeline in 1956.

15 5. NW Natural has a strong commitment to pipeline safety and security. Since the
16 September 11, 2001 terrorist attacks, NW Natural (on its own and in response to mandated
17 PHMSA initiatives) has developed a security plan recognizing that NW Natural pipelines are
18 part of the critical energy infrastructure in the states of Washington and Oregon. NW Natural's
19 security plan corresponds to the federal color code system as mandated by PHMSA. For security
20 purposes, NW Natural was directed only to certify its security plan to PHMSA, but not submit it
21 for filing.

22 6. A critical aspect of NW Natural's security plan is to avoid placing geographic
23 information system ("GIS") mapping data of its entire system into the public domain. NW
24 Natural does provide pipeline location information for discrete parts of its system to assist first
25 responders in support of the safety and security of the system. There is no justifiable reason,
26 however, for NW Natural's pipeline geographic data to be in the public domain.

**DECLARATION OF BRUCE L. PASKETT IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION**

1 7. Pursuant to RCW 81.88.080, the Washington Utilities & Transportation
2 Commission (the "WUTC") is charged with creating a statewide GIS mapping system to provide
3 assistance to local governments, first responders and locator services. The fundamental purpose
4 of the WUTC's mandate is to promote the safety and security of the natural gas pipeline system
5 in the state.

6 8. NW Natural supports HB 1478 now pending in the 2007 Regular Session of the
7 Washington State Legislature. HB 1478 allows the WUTC to make available for public
8 inspection and copying any maps or mapped images that illustrate line pipe locations. Pipeline
9 geographic data would be exempt from public disclosure.

10 9. The WUTC has possession of GIS mapping data depicting major large-diameter
11 high-pressure liquid fuel and natural gas pipeline locations of operators in the state of
12 Washington, including NW Natural.

13 10. NW Natural has been notified that Jean Buckner of Bellevue and the Bellingham
14 Herald have made public records requests for pipeline GIS data, including "all the underlying
15 pipeline/facility data".

16 11. The WUTC has also notified NW Natural that on February 20, 2007, it plans on
17 providing Ms. Buckner with an ESRI centerline (line pipe) shapefile. An identical disclosure
18 will be made to the Bellingham Herald on February 20, 2007.

19 12. The shapefile is a digital linework representing the pipeline locations, with
20 pipeline pressure regulators, compressor stations, metering facilities, taps, mile posts, cathodic
21 protection test sites and valves. Additionally, the shapefile will contain information about
22 diameter, pipeline operator name, and transported commodity (i.e. natural gas, hazardous
23 liquids).

24 13. The WUTC's public disclosure of NW Natural's pipeline geographic data will
25 damage and impair NW Natural's effort to promote the safety and security of its system and
26 undercut the purpose for which the GIS data system was developed in the first instance. NW

**DECLARATION OF BRUCE L. PASKETT IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION.** 3A N N E D

1 Natural's system will be made more vulnerable to eco-terrorism, endangering the safety of the
2 public and the economic viability of the state's energy infrastructure.

3 I declare under penalty of perjury under the laws of the state of Washington that the
4 foregoing is true and correct.

5 Dated this 13th day of February, 2007 at Portland, Oregon.

6 NORTHWEST NATURAL GAS

7
8 By: Bruce L. Paskett
9 Bruce L. Paskett
10 Manager of Code Compliance
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**DECLARATION OF BRUCE L. PASKETT IN SUPPORT OF PLAINTIFF'S MOTION
FOR TRO AND PRELIMINARY INJUNCTION - 4 A N N E X**

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	Judge/Calendar: _____

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

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BETTY J. GOULD CLERK
BY *[Signature]* DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN THE COUNTY OF THURSTON

BP WEST COAST PRODUCTS LLC, a
Delaware limited liability company and
INTALCO ALUMINUM CORPORATION, a
Delaware corporation,

Plaintiffs,

v.

THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, a
Washington public agency

Defendant.

Case No. 07-2-00377-8

DECLARATION OF ROBERT HUBER
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

I, Robert Huber, hereby declare as follows:

1. I am Robert Huber and am employed by Intalco Aluminum Corporation's ("Intalco") parent company Alcoa Inc. ("Alcoa"). I am Alcoa's Northwest Energy Manager and designated as the "Owner's Representative" for the Ferndale Pipeline System.

2. Intalco operates a 278,000 metric ton per year (mtpy) primary aluminum smelter facility located near Ferndale, Washington.

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP
SUITE 2000
1001 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1136
(503) 224-3092

EXHIBIT Bpg 143

0-000000309

1 3. Intalco jointly owns a 30.7 mile, 16-inch pipeline known as the Ferndale Pipeline
2 System with BP West Coast Products LLC ("BP"). The Ferndale Pipeline System connects the
3 BP refinery and the Intalco smelter facilities to the Westcoast Energy Inc. pipeline at the United
4 States Canadian border near Sumas, Washington.

5 4. Intalco also owns a 4 mile, 8-inch pipeline that transports gas from the BP facility,
6 known as the Ferndale Lateral Pipeline. The Ferndale Lateral Pipeline is part of the Ferndale
7 Pipeline System.

8 5. Pursuant to RCW 81.88.080, Intalco provided confidential, pipeline information
9 related to the Ferndale Pipeline System, including detailed information on the location and
10 diameter of the pipeline as well as the precise location of pressure regulators, compressor
11 stations, metering facilities, taps, mile posts, cathodic protection test sites, and valves to the
12 Washington Utilities and Transportation Commission (WUTC) (collectively, the "Ferndale
13 Information").

14 6. Intalco submitted the Ferndale Information to cooperate with the WUTC to
15 enhance safety, security and increase the efficiency of emergency response personnel to pipeline
16 related emergencies. Intalco considers this information proprietary and does not release the
17 Ferndale Information to any third party that is not a first responder, governmental agency or
18 pipeline locator except under a confidentiality agreement.

19 7. It is my understanding that the WUTC combined the Ferndale Information, along
20 with similar information provided by other gas companies, pipelines and others, to create ERSI
21 centerline (line pipe) shapefiles, which contain pipeline locations, pipeline pressure regulators,
22 pipeline diameters, compressor stations, metering facilities, taps, mile posts, cathodic protection test
23 sites, or valves. I understand that this data can be exploited by a trained user with the appropriate
24 software to reveal aspects of the system that are considered sensitive, confidential and
25 proprietary.

1 8. Intalco has learned that Ms. Jean Buckner of Bellevue, Washington, has made a
2 public records request for information from the WUTC for disclosure of the Plaintiffs' pipeline
3 geographic information consisting of centerline shapefiles for the Ferndale Pipeline System and
4 the underlying Ferndale Information (collectively, the "Plaintiffs' Geographic Pipeline
5 Information"). Additionally, Intalco has learned that the Bellingham Herald made a similar
6 public records request.

7 9. I have been advised that the WUTC intends to release Plaintiffs' Pipeline
8 Geographic Information. The release of this information in any form increases the risk of
9 disruption of service to the Intalco facility, and undermines the safety of Intalco employees, and
10 the public in general.

11 10. I declare under penalty of perjury under the laws of the state of Washington that
12 the foregoing is true and correct.

13 By:



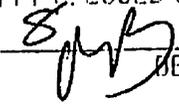
Robert Huber
Alcoa Inc.
Northwest Energy Manager
Owner's Representative for the Ferndale Pipeline System

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16 DATED February 22, 2007
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FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'07 FEB 26 P4:32

BETTY J. COULD CLERK

BY  DEPUTY

1 EXPEDITE
2 Hearing is Set
3 Hearing is Not Set
4 Date: March 16, 2006
5 Time: 2:30 p.m.
6 Judge/Calendar: Judge Hicks

7 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

8 McCHORD PIPELINE CO., a Washington
9 corporation,

10 Plaintiff,

11 v.

12 WASHINGTON UTILITIES AND
13 TRANSPORTATION COMMISSION,

14 Defendant.

NO. 07-2-00398-1

DECLARATION OF GEORGE HILLS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR INJUNCTIVE RELIEF

15 GEORGE HILLS, declares and says:

16 1. I am over 18 years of age, I have personal knowledge of the matters asserted
17 herein and I am competent to testify thereto.

18 2. I am the chief engineer for McChord Pipeline Co. ("McChord"). I also am a
19 non-voting industry representative on the Washington state Citizens Advisory Committee on
20 Pipeline Safety.

21 3. McChord owns and operates an intrastate hazardous liquids pipeline, which
22 runs 14.25 miles from U.S. Oil & Refining Co. in Tacoma to McChord Air Force Base
23 ("McChord Pipeline"). The McChord Pipeline transports jet fuel to the base for use in its
24 national security operations.

25 4. McChord received a letter, dated February 20, 2007, from WUTC advising that
26 detailed information about the McChord Pipeline, among others, would be released on March

DECLARATION OF GEORGE HILLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 1

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ORIGINAL

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LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

0-000000334

1 2, 2007, in response to a Public Records Request, unless a court order is obtained ("Records
2 Request"). A true and correct copy of the letter is attached hereto as Exhibit A.

3 5. As part of McChord's compliance with federal and state regulations, the U.S.
4 Department of Transportation, Pipeline and Hazardous Materials Safety Administration
5 ("PHMSA"), and to the Washington Utilities and Transportation Commission ("WUTC")
6 have detailed information about the McChord Pipeline. This information includes the precise
7 GPS coordinates for the entire length of the McChord Pipeline, the size and depth of the
8 pipeline, the location of each and every component, including pipeline isolation valves,
9 pressure relief devices, and cathodic protection systems. This detailed information about the
10 McChord Pipeline is not disclosed to the general public, but is available only to federal, state
11 and local government officials, including first responders and the One-Call system.

12 6. Liquids and gas pipelines have been a focus of concern since the terror attacks
13 of September 11, 2001, because of their vulnerability and the severe impacts an attack on a
14 pipeline could have to the local and regional economy and national security. Approximately
15 two years ago, a representative of McChord accompanied representatives of the U.S.
16 Department of Homeland Security on a patrol of the McChord Pipeline. The Homeland
17 Security representatives expressed concern about the vulnerability of the McChord Pipeline,
18 particularly because of the role it plays in providing McChord Air Force Base with a vital
19 commodity for its operations. Consequently, the detailed information sought in the Records
20 Request about the McChord Pipeline should be considered sensitive security information
21 about critical energy infrastructure and not made available to the public.

22 7. If the detailed information about the McChord Pipeline were released to the
23 general public in response to the Records Request, it not only would compromise and
24 jeopardize the security of the McChord Pipeline, but also would present a public safety issue.
25 Right now all property owners and contractors are required by law to call a centralized
26 number to ensure, before any digging takes place, that there are no underground utilities, such

**DECLARATION OF GEORGE HILLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 2**

117665.0001/1362869.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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1 as a pipeline, that would be disturbed or damaged. This One-Call System has been a
2 significant factor in reducing the number of incidents involving damage to pipelines. If the
3 specific information about the McChord Pipeline is released publicly, it could become a
4 disincentive for property owners and contractors to use the One-Call System and create
5 extremely dangerous situations for themselves and the public.

6 8. I also am concerned that the threatened release of information about the
7 McChord Pipeline would undermine legislative efforts currently underway that would keep
8 this information from disclosure. HB 1478 would make the information that WUTC proposes
9 to release categorically exempt from disclosure under state law. The measure has wide
10 support, including the support of the Citizens Advisory Committee on Pipeline Safety. The
11 legislative process should be allowed to work without a release of the very information that
12 the bill would protect.

13 I declare under penalty of perjury under the laws of the state of Washington that the
14 foregoing is true and correct.

15 DATED: February 23, 2007, at Tacoma, Washington.

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18 _____
George Hills

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**DECLARATION OF GEORGE HILLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF - 3**

999999.0070/1362869.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

SCANNED

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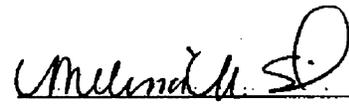
1 have also determined that it is complete and legible.

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4 Erik D. Price, WSBA # 23404
5 Lane Powell PC
6 111 Market Street NE, Suite 360
7 Olympia, WA 98501
8 Telephone: (360) 754-6001
9 Fax: (360) 754-1605

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2007. SUBSCRIBED AND SWORN to before me this 26th day of February.



27 

28 Melissa K. Seipel
29 Notary Printed Name

30 Notary Public for the State of Washington
31 Residing at Olympia
32 My Commission Expires: 6-29-07

EXHIBIT A



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

February 20, 2007

Re: Release of Pipeline GIS data in response to Public Record Requests

To Pipeline Facility Owners:

In early February, 2007, the commission received two public records requests for information the Utilities and Transportation Commission maintains in its geographic information system. The commission previously advised you that it would release the requested information today. However, three temporary restraining orders were issued last week by the Superior Court of Thurston County that determines how the commission will process these public records requests.

First, the commission will not release information expressly protected by the restraining orders pending the outcome of a preliminary injunction hearing on March 16, 2007 in Thurston County Superior Court. Information about facilities owned by the following companies fall into this first category:

Avista Utilities
Cascade Natural Gas
Chevron Pipe Line Company
Northwest Natural Gas
Northwest Terminaling Company
Olympic Pipeline
Puget Sound Energy
Transcanada GTN
Williams Pipeline Company

Second, on Friday, March 2, 2007, the commission will release geographic information that is not affected by the current restraining orders, absent further order of a court. As of today, the commission believes that information about facilities owned by the following 16 companies fall into this second category:

Agrium U.S. Inc.
BP Cherry Point Refinery
ConocoPhillips
Evergreen Aluminium
Ferndale Pipeline System

EXHIBIT A

SCANNED

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Pipeline Facility Owners
Page 2
February 20, 2007

Georgia Pacific - Camas Mill
Inland Empire Paper Co.
K.B. Pipeline
Kinder Morgan Canada
McChord Pipeline Company
Naval Air Station (Whidbey)
Ochoa AG Unlimited Foods
Sumas Cogeneration
Tidewater Barge Lines
Valero
Weyerhaeuser Company (Longview facility)

Specifically, the information to be released on March 2, 2007 consists of ESRI centerline (line pipe) shapefiles which consist of digital representations of pipeline locations, with pipeline pressure regulators, compressor stations, metering facilities, taps, mileposts, cathodic protection test sites, or valves. Additionally, the ESRI shapefiles will contain information about diameter, pipeline operator name, installation date, operating pressure, wall thickness and other pipeline specifications, and transported commodity (i.e. natural gas, hazardous liquids)

If you have any questions about this process, please contact Alan Rathbun, 360-664-1254.

Sincerely,



Carole J. Washburn
Executive Secretary

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'07 FEB 26 P4:36

BETTY J. GOUGH CLERK

[Signature]
DEPUTY

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EXPEDITE
 Hearing is Set
 Hearing is Not Set
Date: March 16, 2006
Time: 2:30 p.m.
Judge/Calendar: Judge Hicks

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

YELLOWSTONE PIPE LINE COMPANY, a)
Delaware corporation; and)
CONOCOPHILLIPS PIPE LINE)
COMPANY, a Delaware corporation,)

Plaintiffs,)

v.)

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

Defendant.)

NO. 07-2-00399-9

DECLARATION OF JIM SNYDER IN
SUPPORT OF PLAINTIFFS' MOTION
FOR INJUNCTIVE RELIEF

JIM SNYDER, declares and says:

1. I am over 18 years of age, I have personal knowledge of the matters asserted herein and I am competent to testify thereto.

2. I am the manager of the Global Security Group for ConocoPhillips Company, which is the parent company of ConocoPhillips Pipe Line Company ("CPPL"), the co-owner and operator of the Yellowstone Pipeline. I serve as the chief security officer for ConocoPhillips and all associated companies. Among my responsibilities are ensuring that CPPL provides a safe and secure environment for the pipelines and facilities it owns and/or operates. This includes oversight of the development and preparation of security plans for CPPL's pipelines and facilities.

DECLARATION OF JIM SNYDER IN SUPPORT OF
PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF - 1

117580.0010/1362370.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

ORIGINAL
SCANNED

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1 3. The Yellowstone Pipeline is a 650-mile long liquids pipeline running from the
2 refineries in the Billings, Montana, area, through western Montana, northern Idaho and
3 eastern and central Washington states. The Washington portion of the Yellowstone Pipeline
4 runs westerly from the Washington border to terminals in Spokane. From there a spur line
5 runs to Moses Lake, Washington. The Yellowstone Pipeline distributes refined petroleum
6 products, including gasoline, diesel and jet fuel, for use in retail markets in Montana, Idaho
7 and Washington.

8 4. In my role as Global Security Manager for ConocoPhillips I am familiar with
9 the federal and state regulations concerning pipeline safety and security. Among the
10 regulatory agencies that oversee the Yellowstone Pipeline are the U.S. Department of
11 Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which
12 administers national regulatory programs, the Transportation Security Administration of the
13 U.S. Homeland Security Department, and the Washington Utilities and Transportation
14 Commission ("WUTC"), which supervises the Washington state portion of the Yellowstone
15 Pipeline.

16 5. In the wake of the terror attacks of September 11, 2001 and as a result of
17 multiple attacks against pipeline infrastructure both in the United States and abroad, CPPL
18 has paid particularly close attention to the security of its pipelines and facilities, including the
19 Yellowstone Pipeline. In particular, it has safeguarded information about its pipelines and
20 facilities. I regularly receive communications from the Transportation Security
21 Administration of the U.S. Department of Homeland Security, the Overseas Security
22 Advisory Council of the U.S. Department of State, the Central Intelligence Agency, the U.S.
23 Department of Energy, the Federal Bureau of Investigation, and other sources concerning the
24 vulnerability of liquids pipelines, such as the Yellowstone Pipeline, to terror attacks. Because
25 of their length and remote locations, pipelines have been, and continue to be, targeted by
26 terrorists and others. These factors make their protection extremely challenging. One of the

DECLARATION OF JIM SNYDER IN SUPPORT OF
PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF - 2

117580.0001/1362370.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

SCANNED

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1 chief protections for buried pipelines is that their location may not be easily determined. An
2 attack on a pipeline could severely impact the supply of refined petroleum products to retail
3 and wholesale customers, including defense and transportation installations. An attack could
4 also result in significant environmental damage. Because interruption of the energy supplies
5 to these locations could adversely affect national defense and the U.S. economy, these
6 pipelines and facilities are considered national critical infrastructure. Information which
7 would aid individuals intent on the destruction of these facilities is sensitive security
8 information that should not be made generally available.

9 6. Post incident assessments of prior attacks on oil and gas infrastructure
10 indicates that terrorists avail themselves of publicly available information in preparing for
11 their attacks. If the information contained in WUTC's centerline shapefiles, including the
12 underlying data, were to be published without limits on its dissemination, it could be expected
13 that the information would be reviewed and relied upon by those planning an attack. The
14 threat to CPPL's infrastructure would be elevated because publication of the information
15 would provide anyone in the world, including those planning its destruction, with a virtual
16 road map to each and every component along the Yellowstone Pipeline's length. While it is
17 important to disseminate information concerning the pipeline and critical elements to first
18 responders, government officials and the One-Call system, the WUTC's planned release of
19 the pipeline data constitutes an uncontrolled disclosure that could provide this key
20 information to those who might be planning to do harm to a pipeline or facility. Indeed,
21 having the information restricted to, for example, the One-Call system, acts as a deterrent for
22 potential terrorists who, in order to maintain operational secrecy, go to great lengths to avoid
23 interactions with others while obtaining information about a target. A coincidental side
24 security benefit of the One Call system is its reliance on human interaction that actually
25 constitutes a disincentive to those planning the destruction of the pipeline and/or associated
26 facilities.

DECLARATION OF JIM SNYDER IN SUPPORT OF
PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF - 3

117580.0001/1362370.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

SCANNED

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2. I examined the Declaration of Jim Snyder and determine it consists of 6 pages, including page 4 with Jim Snyder's faxed signature and these affidavit pages. I have also determined that it is complete and legible.



Erik D. Price, WSBA # 23404
Lane Powell PC
111 Market Street NE, Suite 360
Olympia, WA 98501
Telephone: (360) 754-6001
Fax: (360) 754-1605

SUBSCRIBED AND SWORN to before me this 26th day of February, 2007.



Melissa K. SEIPEL
Notary Printed Name

Notary Public for the State of Washington
Residing at Olympia
My Commission Expires: 6-29-07

AFFIDAVIT OF FACSIMILE RECEIPT OF
SIGNATURE PAGE IN COMPLIANCE WITH GR
17(2)

2

LANE POWELL PC
111 Market Street NE, Suite 360
Olympia, Washington 98501
Telephone: (360) 754-6001
Facsimile: (360) 754-1605

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
THE HONORABLE RICHARD HICKS

EXPEDITE
 Hearing is Set
 Hearing is Not Set

07 MAR 14 P4:08

Date: March 16, 2007

Time: 2:30 pm NETTY J. GOULD CLERK

Judge/Calendar: Hon. Richard Hicks
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, et al.,)
Plaintiffs,)
v.)
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Defendant.)

CONSOLIDATED
CASE NO. 07-2-00321-2, et al.
SUPPLEMENTAL DECLARATION OF
TRACY L. LONG IN SUPPORT OF
PLAINTIFFS MOTION FOR
INJUNCTIVE RELIEF

TRACY L. LONG, declares and says:

1. I am over 18 years of age, I have personal knowledge of the matters asserted herein and I am competent to testify thereto.

2. In my capacity as the security/emergency response advisor for Chevron Pipe Line Company, I am aware of reporting by the U.S. Department of Homeland, Transportation Security Agency regarding threats to pipelines. Although much of this information is classified because it is highly sensitive, it is my understanding that the following unclassified information has been collected:

- The Federal Bureau of Investigation issued Intelligence Bulletin No. 225, titled "Potential Terrorist Pre-Operational Activity Targeting the U.S. Oil and Natural Gas Infrastructure," dated November 15, 2006, which states that international terrorist organizations—especially Al-Qa'ida—remain the

SUPPLEMENTAL DECLARATION OF TRACY L. LONG IN SUPPORT OF PLAINTIFFS MOTION FOR INJUNCTIVE RELIEF - 1

013000.0624/1367590.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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1 primary threat to the domestic oil and natural gas sector. Threats issued by Al-
2 Qa'ida and its affiliates, and attacks in Iraq, Saudi Arabia, and Yemen, indicate
3 international terrorists regard oil and natural gas sector facilities as high-
4 priority targets, causing homeland facilities to be potentially at risk.
5 Apparently there have been at least three instances since 2005 of threats to
6 specific pipelines in the United States.

7 • Suspicious activities at U.S. oil and natural gas pipeline facilities—including
8 incidents of possible surveillance—are reported regularly to the Department of
9 Homeland Security and the FBI. While the majority of these incidents are
10 resolved through investigation, some have raised concern within the
11 intelligence and law enforcement communities of possible links to terrorist
12 preoperational planning. DHS HITRAC Quarterly Infrastructure Suspicious
13 Activity Analysis: Oil & Natural Gas Sector, 1/11/07

14 • Suspicious incidents involving the oil and natural gas facilities increased from
15 68 in the second quarter to 91 in the third quarter of 2006, the last period for
16 which summary data are available. Almost half of the 91 suspicious incidents
17 involved photography of facilities. DHS HITRAC Quarterly Infrastructure
18 Suspicious Activity Analysis: Oil & Natural Gas Sector, 1/11/07

19 3. The information provided to Chevron by DHS and the FBI clearly indicates
20 that the pipeline industry should take very seriously the vulnerability of our pipelines to
21 attacks. There is nothing speculative about this vulnerability, particularly given the serious
22 consequences to public safety and the economy.

23 4. Because of the thousands of miles of pipeline in the United States, some of
24 which travels through very populated areas and other parts through remote areas, it is neither
25 feasible nor effective to physically guard every mile of pipeline. The most effective starting
26 point for security is to safeguard the detailed geographical information about the pipelines and

SUPPLEMENTAL DECLARATION OF TRACY L.
LONG IN SUPPORT OF PLAINTIFFS MOTION FOR
INJUNCTIVE RELIEF - 2

013000.0624/1367590.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

scanned

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1 ensure that the information is not released to the public at large. Restricting access of the GIS
 2 data to government and first responders keeps the information out of the hands of those who
 3 could do mischief to the energy infrastructure.

4 5. I am not aware of any state other than Washington that either has collected the
 5 shapefile data at issue here or, if it has collected the data, that it has ever provided it to anyone
 6 other than a government agency, first responder or one-call system.

7 I declare under penalty of perjury under the laws of the states of Texas and
 8 Washington that the foregoing is true and correct.

9 DATED: March 13, 2007, at Bellaire, Texas.

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Tracy L. Long

SUPPLEMENTAL DECLARATION OF TRACY L. LONG IN SUPPORT OF PLAINTIFFS MOTION FOR INJUNCTIVE RELIEF - 3

013000.0624/1367590.1

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 SEATTLE, WASHINGTON 98101-2338
 206.223.7000 FAX: 206.223.7107

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- EXPEDITE
- Hearing is Set
- Hearing is Not Set

THE HONORABLE RICHARD HICKS

Date: March 16, 2007
 Time: 2:30 pm
 Judge/Calendar: Hon. Richard Hicks

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

NORTHWEST GASS ASSOCIATION, et
 al.,

 Plaintiffs,

 v.
 WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION,

 Defendant.

CONSOLIDATED
 CASE NO. 07-2-00321-2, et al.

 AFFIDAVIT OF FACSIMILE RECEIPT
 OF SIGNATURE PAGE IN
 COMPLIANCE WITH GR 17(2)

STATE OF WASHINGTON)
) ss.
 County of THURSTON)

I, Erik D. Price, being duly sworn, on oath state:

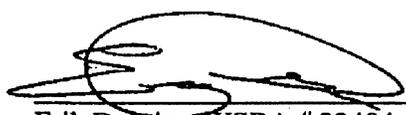
1. I am an attorney with Lane Powell PC, counsel for the petitioners herein. I have personal knowledge of the matters herein stated and am qualified to testify thereto.
2. I examined the Declaration of Tracy L. Long and determine it consists of 5 pages, including page 3 with Tracy Long's faxed signature and these affidavit pages. I have also determined that it is complete and legible.

AFFIDAVIT OF FACSIMILE RECEIPT OF
 SIGNATURE PAGE IN COMPLIANCE WITH GR
 17(2)

1

LANE POWELL PC
 111 Market Street NE, Suite 360
 Olympia, Washington 98501
 Telephone: (360) 754-6001
 Facsimile: (360) 754-1605

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Erik D. Price, WSBA # 23404
Lane Powell PC
111 Market Street NE, Suite 360
Olympia, WA 98501
Telephone: (360) 754-6001
Fax: (360) 754-1605

SUBSCRIBED AND SWORN to before me this 14th day of March,
2007.





Melissa K. Seipel
Notary Printed Name
Notary Public for the State of Washington
Residing at Olympia
My Commission Expires: 6-29-2007

AFFIDAVIT OF FACSIMILE RECEIPT OF
SIGNATURE PAGE IN COMPLIANCE WITH GR
17(2)

LANE POWELL PC
111 Market Street NE, Suite 360
Olympia, Washington 98501
Telephone: (360) 754-6001
Facsimile: (360) 754-1605

1 EXPEDITE
2 Hearing is Set
3 Hearing is Not Set
4 Date: March 16, 2007
5 Time: 2:30 p.m. Special Set
6 Judge/Calendar: Hon Richard Hicks

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

07 MAR 14 P4:08

BETTY J. GOULD CLERK
BY 4 DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THURSTON COUNTY

10 NORTHWEST GAS ASSOCIATION, a
Washington corporation,

11 Plaintiff,

12 v.

13 THE WASHINGTON UTILITIES AND
14 TRANSPORTATION COMMISSION, a
public agency,

15 Defendant.
16

CASE NO. 07-2-00321-2

SUPPLEMENTAL DECLARATION OF
BRUCE L. PASKETT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

17 I, Bruce L. Paskett, hereby declare as follows:

18 1. I am the manager of code compliance for Northwest Natural Gas ("NW Natural").
19 As manager of code compliance, I have primary responsibility for NW Natural's pipeline safety
20 programs and for ensuring compliance with applicable state and federal pipeline safety
21 regulations. I am also responsible for responding to safety inspections conducted by state and
22 federal pipeline safety personnel. After the events of September 11, 2001, I had joint
23 responsibility within the company for NW Natural's Homeland Security Program.

24 2. I received a bachelor of science degree in mechanical engineering from Oregon
25 State University. Following graduation from college, I was employed in the geothermal industry
26

SUPPLEMENTAL DECLARATION OF BRUCE L. PASKETT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION - 1

Seattle-3359106.1 0032758-00082

ORIGINAL

STOEL RIVES LLP
ATTORNEYS
805 Broadway, Suite 725, Vancouver, WA 98660
Telephone (360) 699-3

0-000000128

1 and in the pulp and paper industry. Since 1983, I have been employed at NW Natural, where I
2 have held a number of different positions, including manager of engineering, chief engineer and
3 manager of code compliance. I am also a Registered Professional Engineer in the state of
4 Oregon.

5 3. In my positions as chief engineer and manager of code compliance, I have been
6 heavily involved in a number of American Gas Association ("AGA") committees related to
7 pipeline safety and integrity, including AGA's Distribution-Transmission Engineering
8 Committee, Pipeline Integrity Committee, Operations Safety Regulatory Action Committee and
9 Natural Gas Security Committee. Through my involvement in these committees, I have been
10 deeply engaged in recent congressional pipeline safety legislative activities and federal Pipeline
11 and Hazardous Materials Safety Administration ("PHMSA") rulemaking activities.

12 4. A critical aspect of NW Natural's security plan is to avoid placing geographic
13 information system ("GIS") mapping data of its entire system into the public domain.

14 5. GIS mapping data ranges from high-level data to very detailed attribute-level
15 data. The high-level data is general mapping location data. NW Natural does not contest that
16 high-level data be made available to the public. With the high-level data, the public is informed
17 whether a pipeline runs down a particular road or corridor, but does not receive detailed
18 information about the attributes of the pipeline.

19 6. As earlier defined, the shapefiles (the attribute-level data) are digital lineworks
20 representing the pipeline locations, with pipeline pressure regulators, compressor stations,
21 metering facilities, taps, mile-posts, cathodic protection test sites, or valves. Additionally, the
22 shapefiles will contain information about diameter, pipeline operator name, and transported
23 commodity (i.e. natural gas, hazardous liquids).

24 7. An individual member of the public with access to high-level pipeline GIS data
25 (the generic mapping data) would be able to use the information to determine if a pipeline is
26

SUPPLEMENTAL DECLARATION OF BRUCE L. PASKETT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION - 2

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ATTORNEYS
805 Broadway, Suite 725, Vancouver, WA 98660
Telephone (360) 699-59

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1 located on their property. What the individual would not be able to discern, however, are the
2 specific attributes of a particular pipeline.

3 8. An individual member of the public with access to attribute-level pipeline GIS
4 data, however, would be well-equipped to sabotage Washington's pipeline infrastructure.
5 Comprehensively, attribute-level GIS data from various pipelines would provide a basis for
6 determining the specific routes for all of the gasoline and natural gas supplies entering the entire
7 Northwest region. Knowledge of the specific locations of pipelines, valves, and compressor
8 stations, used improperly, could seriously disrupt the gasoline supply and the entire energy
9 supply and economic health of the region.

10 9. With attribute data, a member of the public with an interest in interrupting
11 pipelines could sabotage particular locations in Washington and, as a result, interrupt the natural
12 gas supply to the entire region. Such an event would not be short-lived. An interruption could
13 have a severe impact on the natural gas supply to hundreds of thousands of natural gas customers
14 in Washington and Oregon. It could take months to restore natural gas services to the public. In
15 the meantime, economic and societal disruption would result if hot water, heat, and power were
16 unavailable to hospitals, schools, and other significant institutions.

17 10. In addition, just turning a valve could have a major disruption on the region of
18 potentially catastrophic nature. It is imperative to national security that jet fuel and gasoline be
19 provided to airports and military airbases. Security of the pipelines ensures that the flow of
20 aviation fuel and gasoline are uninterrupted.

21 11. Providing the public, beyond first responders, with attribute-level GIS data could
22 cause severe harm not only to operators, but to the public health, safety, and welfare.

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**SUPPLEMENTAL DECLARATION OF BRUCE L. PASKETT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION - 3**

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STOEL RIVES LLP
ATTORNEYS
805 Broadway, Suite 725, Vancouver, WA 98660
Telephone (360) 699-3971

0-000000130

1 I declare under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct.

3 Dated this 13 day of March, 2007 at Portland, Oregon.

4 NORTHWEST NATURAL GAS

5
6 By: Bruce L. Paskett
7 Bruce L. Paskett
8 Manager of Code Compliance
9
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SUPPLEMENTAL DECLARATION OF BRUCE L. PASKETT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION - 4

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STOEL RIVES LLP
ATTORNEYS
805 Broadway, Suite 725, Vancouver, WA 98660
Telephone (360) 699-35

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FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'07 FEB 28 P4:35

NETTY J. GOLD CLERK
BY 4 DEPUTY

EXPEDITE
 No hearing set
 Hearing is set
Date: Friday, March 16, 2007
Time: 2:30 P.M.
Judge/Calendar: Hon. Richard Hicks

RICHARD D. HICKS

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

TERASEN PIPELINES (PUGET SOUND)
CORPORATION, a Delaware corporation,

No. **07-2-00435-9**

Plaintiff,

AFFIDAVIT OF HUGH HARDEN

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Defendant.

PROVINCE OF ALBERTA)
) ss.
CITY OF CALGARY)

Hugh Harden, being first duly sworn upon oath, states as follows:

1. I am the Vice President – Operations for Terasen Pipelines (Puget Sound) Corporation (“Puget”). My business address is 2700, 300 – 5th Avenue SW, Calgary, Alberta T2P 5J2.

AFFIDAVIT OF HUGH HARDEN – 1

Perkins Cole LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

ORIGINAL

0-000000434

1 2. I have personal knowledge of the facts stated herein, and am competent to
2
3 testify to those facts.
4

5 3. Puget is a pipeline company that operates 110 kilometers of pipeline that
6
7 delivers Canadian crude oil from the US-Canada border in Sumas, British Columbia, to
8
9 refineries in the northwestern portion of the State of Washington.
10

11 4. In early February 2007, the Commission advised Puget that the Commission
12
13 had received public records requests under Chapter 42.56 RCW for pipeline geographic
14
15 information system data from the Bellingham Herald and Ms. Jean Buckner of Bellevue,
16
17 Washington, and that the Commission intends to disclose Puget's data by March 2, 2007,
18
19 absent a court order to the contrary. The Commission also notified Puget that it intends to
20
21 respond to these requests by providing the Bellingham Herald and Ms. Buckner with ESRI
22
23 centerline (line pipe) shapefiles, which consist of digital representations of pipeline
24
25 locations, with pipeline pressure regulators, compressor stations, metering facilities, taps,
26
27 mileposts, cathodic protection test sites, or valves. Additionally, the ESRI shapefiles will
28
29 contain information about diameter, pipeline operator name, installation date, operating
30
31 pressure, wall thickness and other pipeline specifications, and transported commodity (i.e.
32
33 natural gas, hazardous liquids). This information includes confidential, commercially
34
35 sensitive and critical energy infrastructure information ("CEII") that were filed with the
36
37 Commission in compliance with and pursuant to the protections of RCW 80.04.095 and
38
39 WAC 480-07-160 (the "Confidential Information").
40
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AFFIDAVIT OF HUGH HARDEN – 2

Perkins Cole LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

s c a n n e d

0-000000435

1 5. On February 20, 2007, the Commission sent a letter to Puget that confirms
2
3 the Commission's intent to release the Confidential Information on March 2, 2007, absent
4
5 court order to the contrary. Attached as Exhibit A is a true and complete copy of the letter
6
7 dated February 20, 2007.
8
9

10 6. Subsequent to the letter dated February 20, 2007, the Commission advised
11
12 Puget of a records request from the Seattle Post-Intelligencer for all geographic system data
13
14 that the Commission's pipeline safety program maintains for pipelines in Washington state.
15
16 The Commission stated that it intends to release the Confidential Information on March 2,
17
18 2007, absent court order to the contrary, in response to this request.
19
20

21 7. The Confidential Information is competitively sensitive because it is not
22
23 generally available in the market and is commercially valuable to a competitor, who could
24
25 determine the throughput capacity and operations capabilities of the Puget system.
26
27 Competitors would thus be able to target their marketing efforts based not on their business
28
29 acumen, but rather on involuntary disclosure forced upon Puget.
30
31

32 8. Additionally, the Confidential Information is exempt from mandatory
33
34 disclosure by (i) RCW 42.56.420 and (ii) the Federal Energy Regulatory Commission under
35
36 the Freedom of Information Act and because such information is critical energy
37
38 infrastructure information would be useful to those planning attacks on the nation's energy
39
40 infrastructure.
41
42

43 9. It is my understanding that the release of the Confidential Information to just
44
45 one person not bound by Commission protective order could remove all protection from the
46
47

AFFIDAVIT OF HUGH HARDEN - 3

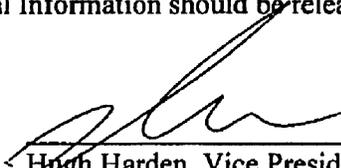
Perkins Cole LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

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1 Confidential Information, which would then become available to anyone who requested
2
3 them. Puget has significant commercial interest in maintaining the confidentiality of
4
5 information contained in the Confidential Information.
6

7
8 10. Puget has not had a reasonable opportunity to review all of the Confidential
9
10 Information in the Commission's geographic information system. It is possible that some of
11
12 the Confidential Information has lost its confidentiality or sensitivity due to the passage of
13
14 time. However, until Puget can conduct that review, including review by specific
15
16 organizations within Puget, no Confidential Information should be released.
17

18
19
20
21
22 
23 Hugh Harden, Vice President - Operations
24

25
26
27
28 SUBSCRIBED and SWORN to before me this 27th day of February, 2007.
29

30
31
32 
33 Print Name: KRISTINE A. KENNEDY
34 Notary Public in and for the Province of AB,
35 residing at 100 Patterson Dr SW Calgary AB
36 My commission expires: No expiry
37
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AFFIDAVIT OF HUGH HARDEN - 4

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

s c a n n e d

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ORIGINAL

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FILED
SUPERIOR COURT
THURSTON COUNTY WASH THE HONORABLE RICHARD HICKS

- EXPEDITE
- Hearing is Set
- Hearing is Not Set

07 MAR 14 P4:08

Date: March 16, 2007

Time: 2:30 pm BETTY J. GOULD CLERK

Judge/Calendar: Hon. Richard Hicks
[Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

NORTHWEST GAS ASSOCIATION, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,)
)
 Defendant.)

CONSOLIDATED
 CASE NO. 07-2-00321-2, et al.
 SUPPLEMENTAL DECLARATION OF
 MICHAEL A. NESTEROFF IN
 SUPPORT OF PLAINTIFFS MOTION
 FOR INJUNCTIVE RELIEF

MICHAEL A. NESTEROFF, declares and says:

1. I am one of the attorneys representing Plaintiffs Chevron Pipe Line Company, Northwest Terminaling Company, Yellowstone Pipe Line Company, ConocoPhillips Pipe Line Company and McChord Pipeline Co. in the above-captioned action. I make this declaration based upon my personal knowledge and I am competent to testify thereto.

2. Attached to my declaration as Exhibits A through I are true and correct copies of pages from the Washington Utilities and Transportation Commission web site Pipeline Map section, which is accessible at the following Internet address:

<http://www.wutc.wa.gov/webimage.nsf/0/a8cf458d248f31f0882572200075afb6>

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SUPPLEMENTAL DECLARATION OF MICHAEL A. NESTEROFF IN SUPPORT OF PLAINTIFFS MOTION FOR INJUNCTIVE RELIEF - 1

013000.0624/1368256.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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DATED: March 11, 2007



Michael A. Nesteroff, WSBA No. 13180

SUPPLEMENTAL DECLARATION OF MICHAEL A.
NESTEROFF IN SUPPORT OF PLAINTIFFS MOTION
FOR INJUNCTIVE RELIEF - 2

013000.0624/1367590.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 these affidavit pages. I have also determined that it is complete and legible.

2 

3 Erik D. Price, WSBA # 23404
4 Lane Powell PC
5 111 Market Street NE, Suite 360
6 Olympia, WA 98501
7 Telephone: (360) 754-6001
8 Fax: (360) 754-1605

9
10 SUBSCRIBED AND SWORN to before me this 7th day of March,
11 2007.



Melissa K. Seipel

Melissa K. Seipel
Notary Printed Name

Notary Public for the State of Washington
Residing at Olympia
My Commission Expires: 6-29-07

AFFIDAVIT OF FACSIMILE RECEIPT OF
SIGNATURE PAGE IN COMPLIANCE WITH GR
17(2)

1368261_1.DOC

2

LANE POWELL PC
111 Market Street NE, Suite 360
Olympia, Washington 98501
Telephone: (360) 754-6001
Facsimile: (360) 754-1605

scanned

0-000000140

EXHIBIT A

EXHIBIT B

- Railroad Safety
- Grade Crossing Safety
- Operation Lifesaver
- Pipeline Safety
 - Program Description
 - Laws & Rules
 - Pipeline Companies
 - Pipeline Newsletter
 - Citizens Committee
 - Call Before You Dig
 - Pipeline Maps**
- Motor Carrier Safety

Public Safety > Pipeline Safety > Pipeline Maps >
King County Pipeline Maps

The maps linked to this page show hazardous liquid pipelines and high-pressure natural gas pipelines (>250 psig). Click on the box to bring up a more detailed map. These maps must NOT be used to determine where you can dig safely.

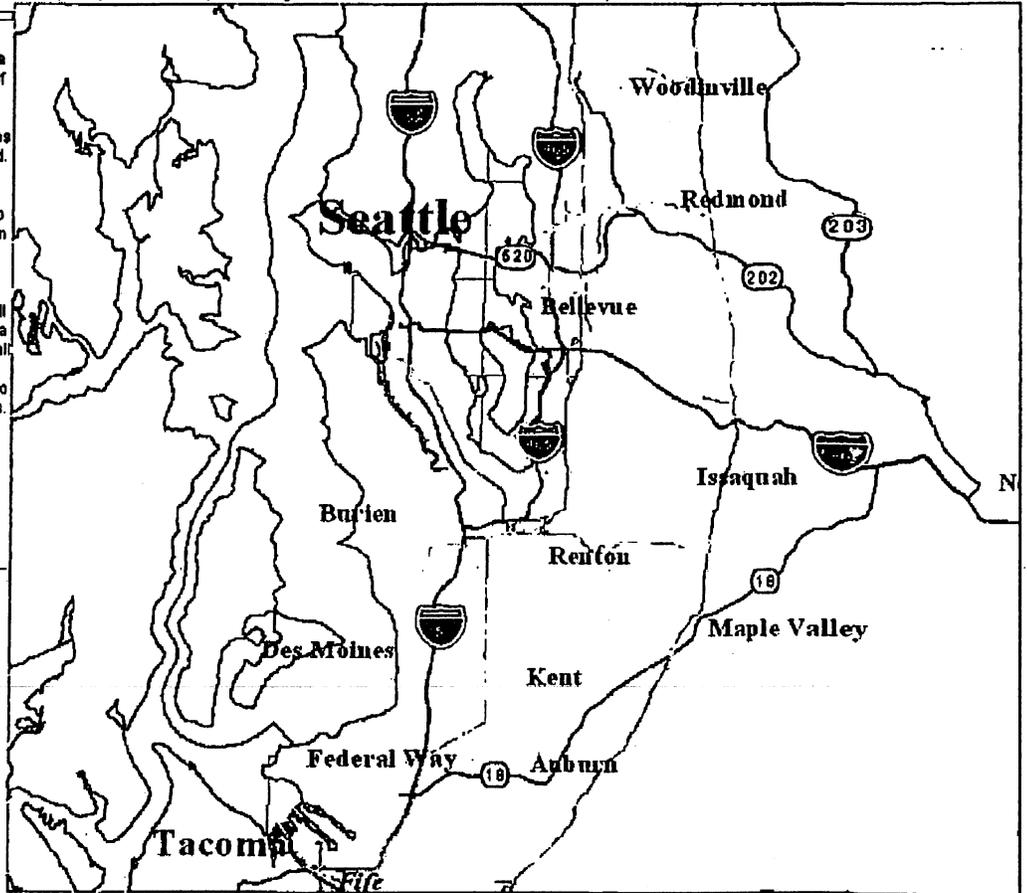
Under state law, you MUST call 1-800-424-5555 two business days before you do any digging, even on your own property. This timely call will allow utility companies to clearly mark the ground under which their facilities are located, BEFORE YOU DIG.

These maps are intended to provide a general indication of where certain hazardous liquid pipelines or major gas pipelines are located.

Pipelines in the map to the right are shown in RED.

Clicking a square will bring up a .pdf file of a map with greater detail showing major pipelines in relation to streets and highways.

Please call before you dig.
 1-800-424-5555



Not all pipelines are shown on these maps. These maps DO NOT show ANY underground power lines, telephone lines, cable lines or water lines. They DO NOT show ANY underground facilities going to a home or building. Moreover, the location of a pipeline can change, and these maps may not reflect that location change. If you choose to use these maps, you do so entirely at your own risk.

Posted/updated: 12/13/2006

360-564-1160 | PO Box 47250, Olympia, WA 98504-7250

Contact Us | Site Map | Privacy Statement | Site Notice & Info | RSS

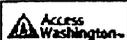
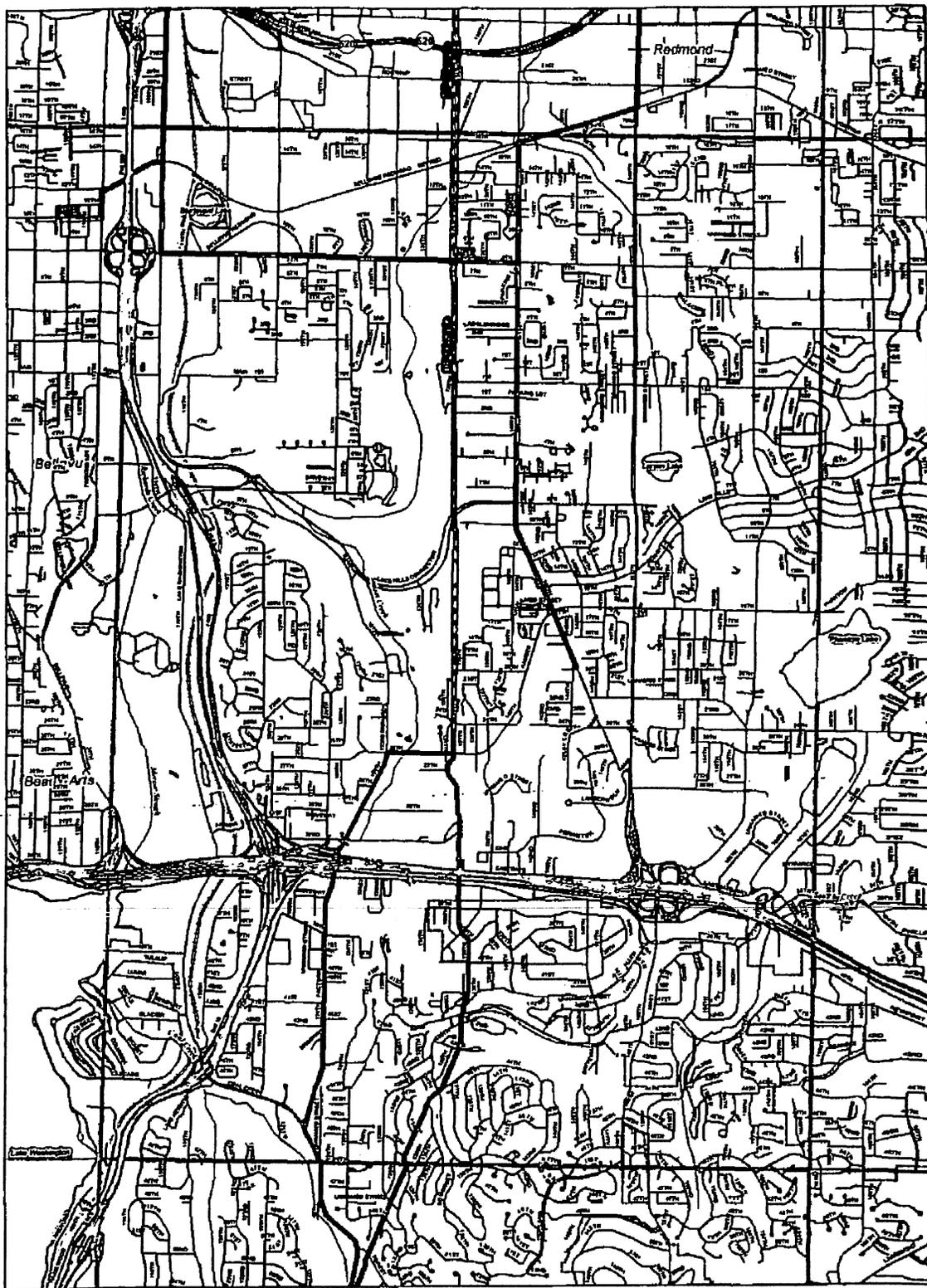
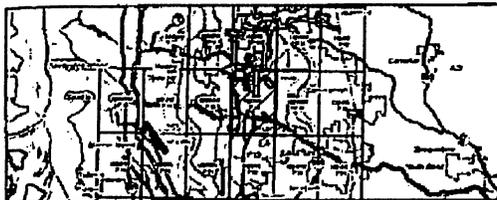


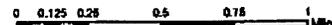
EXHIBIT C



12231NE - P. 16



Scale 1:24,000



WASHINGTON UTC <small>Utility Trust Company</small> <small>1200 1st Avenue, Seattle, WA 98101</small>	
King County Pipeline Map Created By: WUTC Pipeline Safety 418 <small>Note: This map must not be used for locating pipelines for construction purposes. Before excavating, YOU MUST CALL 1-800-424-5555 FOR 811/ATER, and comply with the state "Call Before You Dig" laws. WA W 18.122.</small>	

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EXHIBIT D

- Railroad Safety
- Grade Crossing Safety
- Operation Lifesaver
- Pipeline Safety
 - Program Description
 - Laws & Rules
 - Pipeline Companies
 - Pipeline Newsletter
 - Citizens Committee
 - Call Before You Dig
 - Pipeline Maps**
- Motor Carrier Safety

Public Safety > Pipeline Safety > Pipeline Maps > Thurston County Pipeline Maps
The maps linked to this page show hazardous liquid pipelines and high-pressure natural gas pipelines (> 250 psig). Click on the box to bring up a more detailed map. These maps must NOT be used to determine where you can dig safely.

Under state law, you MUST call 1-800-424-5555 two business days before you do any digging, even on your own property. This timely call will allow utility companies to clearly mark the ground under which their facilities are located, BEFORE YOU DIG.

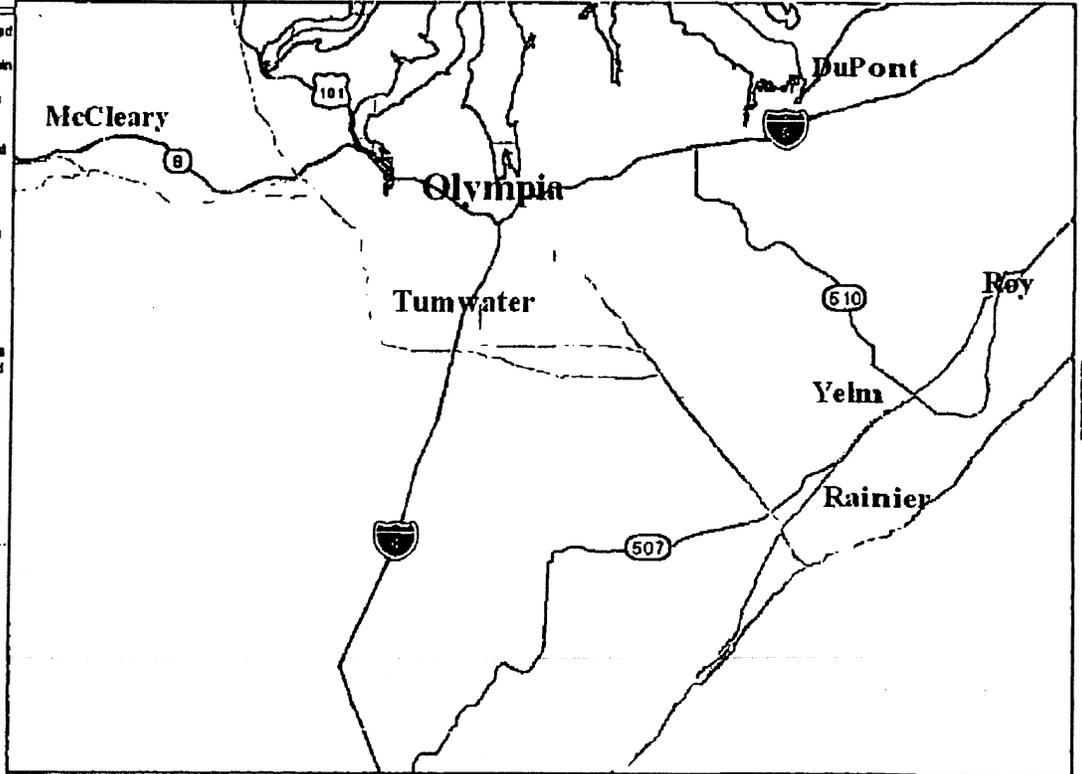
These maps are intended to provide a general indication of where certain hazardous liquid pipelines or major gas pipelines are located.

Please let us know what you think about the usefulness of this information.

Pipelines in the map to the right are shown in RED.

Clicking a square will bring up a .pdf file of a map with greater detail showing major pipelines in relation to streets and highways.

Please call before you dig.
1-800-424-5555



Not all pipelines are shown on these maps. These maps DO NOT show ANY underground power lines, telephone lines, cable lines or water lines. They DO NOT show ANY underground facilities going to a home or building. Moreover, the location of a pipeline can change, and these maps may not reflect that location change. If you choose to use these maps, you do so entirely at your own risk.

Posted/updated: 12/13/2008
These maps DO NOT show ANY underground power lines, telephone lines, cable lines or water lines. They DO NOT show ANY underground facilities going to a home or building. Moreover, the location of a pipeline can change, and these maps may not reflect that location change. If you choose to use these maps, you do so entirely at your own risk.

Posted/updated: 12/13/2008

360-664-1160 | PO Box 47250, Olympia, WA 98504-7250

Contact Us | Site Map | Privacy Statement | Site Notice & Info | RSS

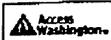


EXHIBIT E

EXHIBIT F

- Railroad Safety
- Grade Crossing Safety
- Operation Lifesaver
- Pipeline Safety
 - Program Description
 - Laws & Rules
 - Pipeline Companies
 - Pipeline Newsletter
 - Citizens Committee
 - Call Before You Dig
 - Pipeline Maps**
- Motor Carrier Safety

Public Safety > Pipeline Safety > Pipeline Maps >
Spokane County Pipeline Maps

The maps linked to this page show hazardous liquid pipelines and high-pressure natural gas pipelines (>250 psig). Click on the box to bring up a more detailed map. These maps must NOT be used to determine where you can dig safely.

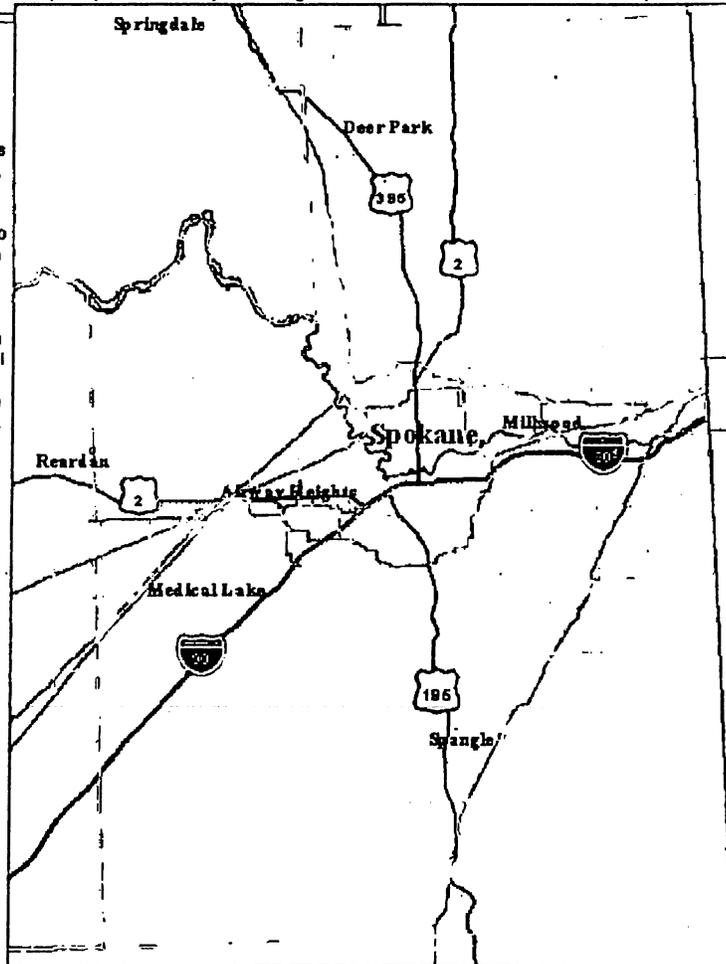
Under state law, you MUST call 1-800-424-5555 two business days before you do any digging, even on your own property. This timely call will allow utility companies to clearly mark the ground under which their facilities are located, BEFORE YOU DIG.

These maps are intended to provide a general indication of where certain hazardous liquid pipelines or major gas pipelines are located.

Pipelines in the map to the right are shown in RED.

Clicking a square will bring up a .pdf file of a map with greater detail showing major pipelines in relation to streets and highways.

Please call before you dig.
1-800-424-5555



<MAP><BODY></HTML>

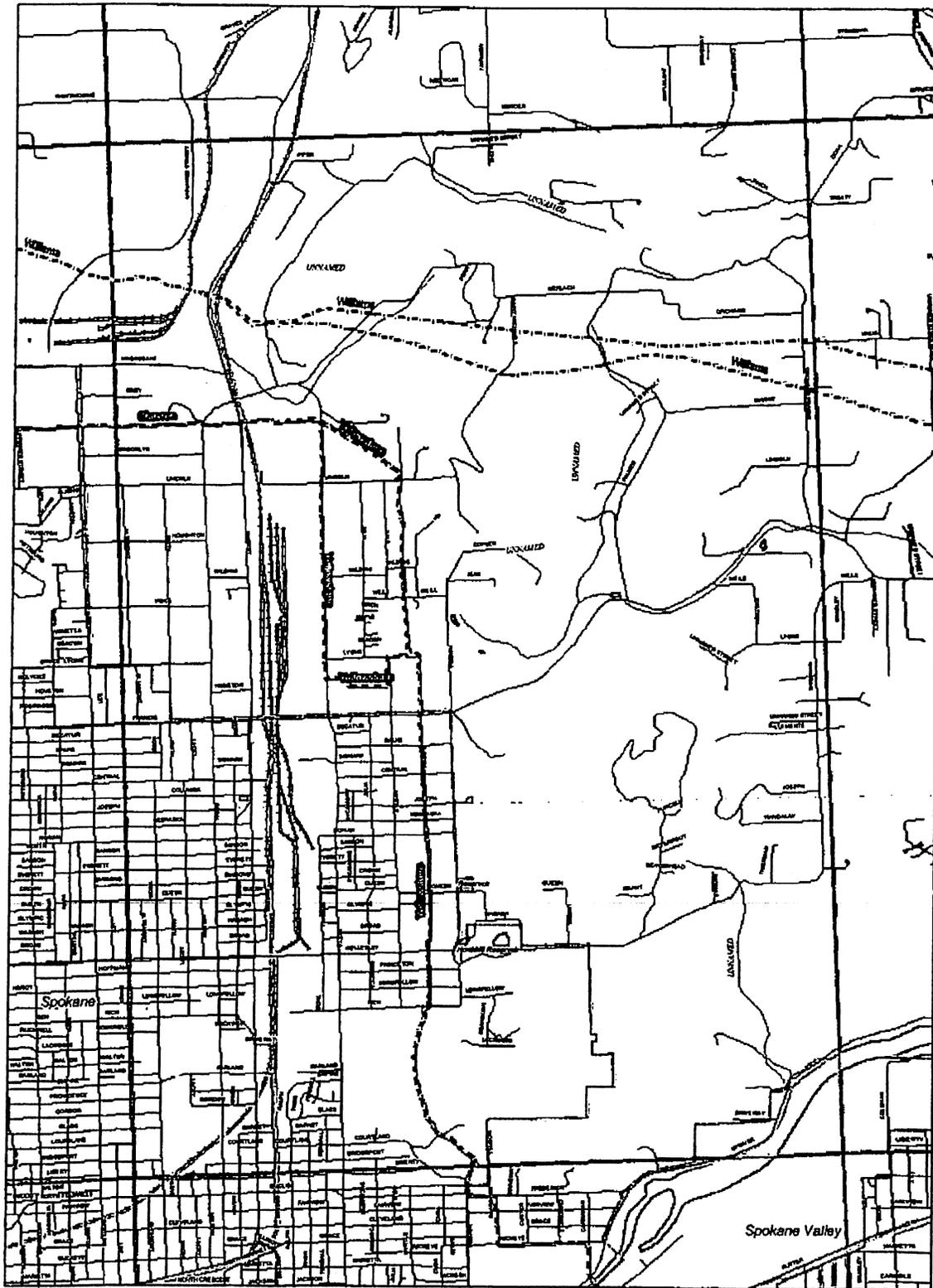
Not all pipelines are shown on these maps. These maps DO NOT show ANY underground power lines, telephone lines, cable lines or water lines. They DO NOT show ANY underground facilities going to a home or building. Moreover, the location of a pipeline can change, and these maps may not reflect that location change. If you choose to use these maps, you do so entirely at your own risk.

Posted/updated: 12/13/2006

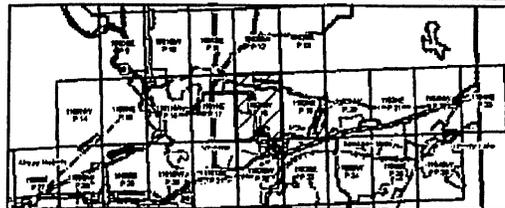
360-664-1160 | PO Box 47250, Olympia, WA 98504-7250

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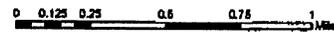
EXHIBIT G



1162NW-P.18



Scale 1:24,000



UNIVERSITY
UTC
 1987
 WATER AND SEWER
 UTILITY
 DIVISION
 2007
 CONTRACT NO. 2007-001

Spokane County Pipeline Map
 Created By: WUTC Pipeline Safety GIS

Note - These maps were used to lay out the boundary conditions for the existing program. Public Works Dept. MUST CALL 426-4533 FOR LOCATED and comply with the state "Call Before You Dig" law, RCW 9A.11.

EXHIBIT H

Railroad Safety

- Grade Crossing Safety
- Operation Lifesaver

Pipeline Safety

- Program Description
- Laws & Rules
- Pipeline Companies
- Pipeline Newsletter
- Citizens Committee
- Call Before You Dig
- Pipeline Maps

Motor Carrier Safety

Public Safety > Pipeline Safety > Pipeline Maps >
Whatcom County Pipeline Map

The maps linked to this page show hazardous liquid pipelines and high-pressure natural gas pipelines (>250 psig). Click on the box to bring up a more detailed map. These maps should NOT be used to determine where you can dig safely.

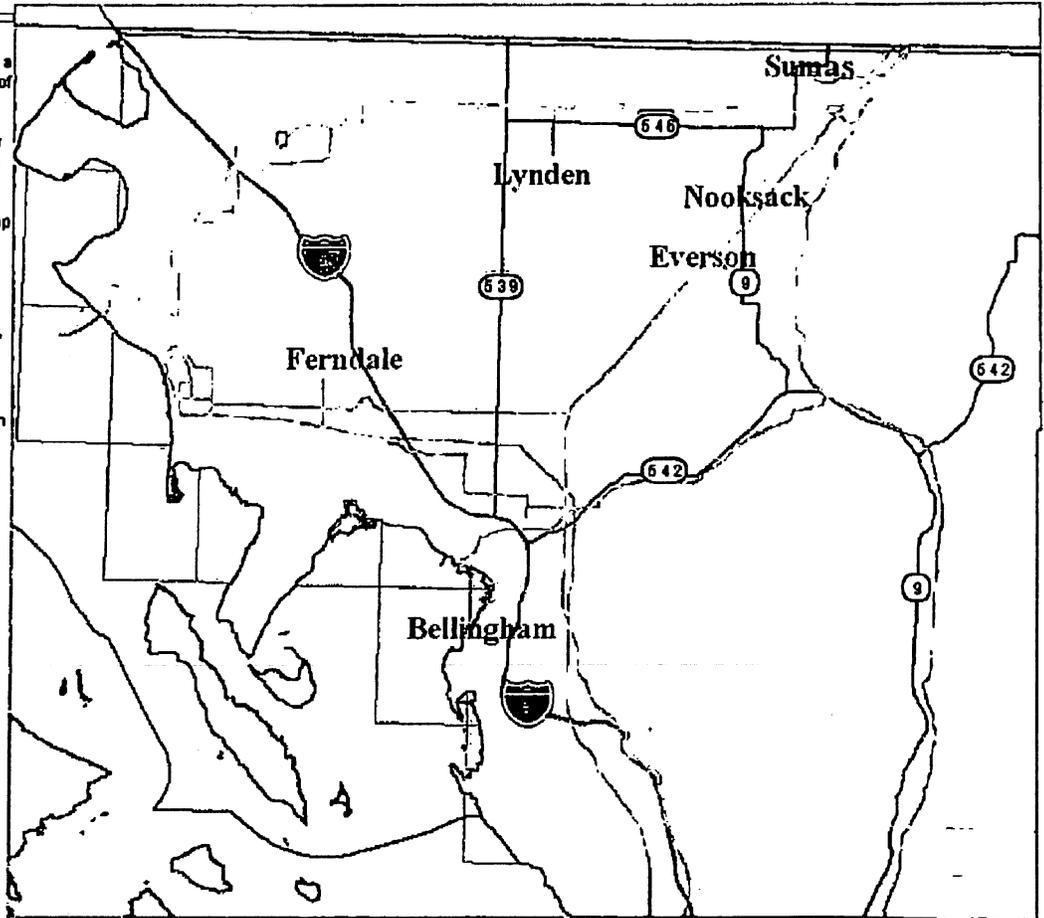
Under state law, you MUST call 1-800-424-5555 two business days before you do any digging, even on your own property. This timely call will allow utility companies to clearly mark the ground under which their facilities are located, BEFORE YOU DIG.

These maps are intended to provide a general indication of where certain hazardous liquid pipelines or major gas pipelines are located.

Pipelines in the map to the right are shown in RED.

Clicking a square will bring up a .pdf file of a map with greater detail showing major pipelines in relation to streets and highways.

Please call before you dig.
1-800-424-5555



Not all pipelines are shown on these maps.

These maps DO NOT show ANY underground power lines, telephone lines, cable lines or water lines. They DO NOT show ANY underground facilities going to a home or building.

Moreover, the location of a pipeline can change, and these maps may not reflect that location change. If you choose to use these maps, you do so entirely at your own risk.

Posted/updated: 12/13/2008

360-664-1160 | PO Box 47250, Olympia, WA 98504-7250

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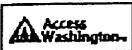
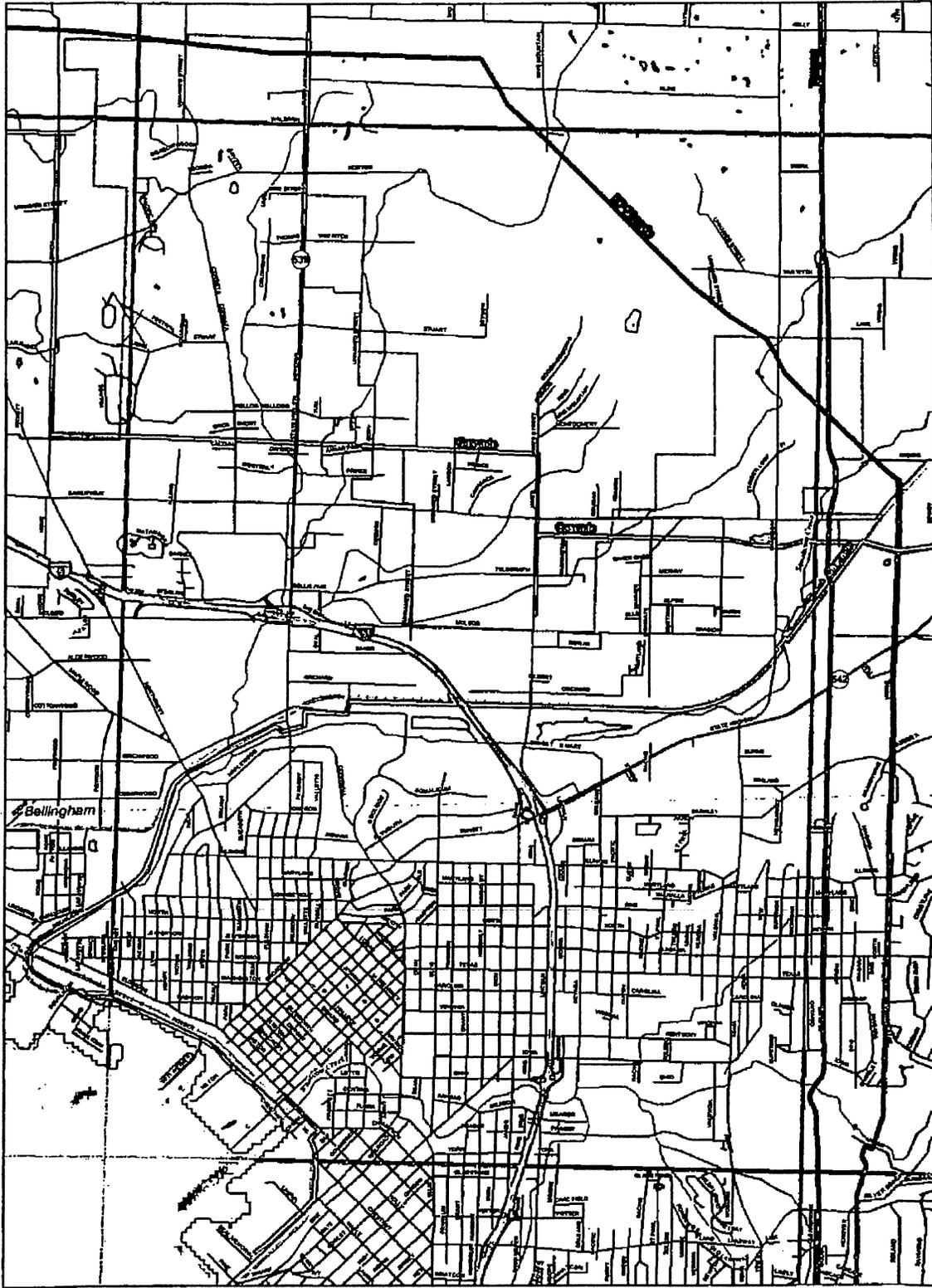
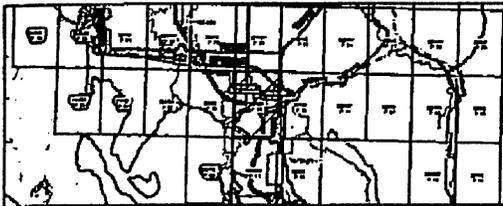


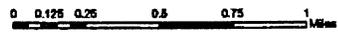
EXHIBIT I



221SW - P.34



Scale 1:124,000



Whatcom County Pipeline Map

Created By: WUTC Pipeline Safety 0215

Note: - These maps used, not to be used for locating pipelines for excavation purposes. Instead, consulting TDCI 184729 C.A.L.L. 1 (Rev. 1-94) 5111 PUB LCA/ATL, and sample work for map "Call Before You Dig" law, RCW 79.121.



1 Drive Southwest, P.O. Box 47250, Olympia, Washington 98504-7250. I am
2 over the age of 18 years old and am competent to testify on the matters
3 contained in this declaration.

4 2. My responsibilities include direction of a comprehensive
5 interstate and intrastate pipeline safety program for natural gas and
6 hazardous liquid pipelines operating in the state of Washington. The
7 purpose of the program is to enhance the public safety through compliance
8 inspections, technical assistance to local governments and pipeline
9 operators, public education, and enforcement.

10 3. In 2000, the Legislature approved the Pipeline Safety Act, now
11 codified, in part, at RCW 81.8.080. That statute directed the UTC to seek
12 federal approval to include in its responsibilities inspections of all interstate
13 pipelines operating in this State. That goal was accomplished in 2000
14 through an agreement with the federal Office of Pipeline Safety.

15 4. RCW 81.88.080 also directed the UTC to "require hazardous
16 liquid pipeline companies, and gas pipeline companies with interstate
17 pipelines, gas transmission pipelines, or gas pipelines operating over 250
18 pounds per square inch gauge, to provide accurate maps of their pipeline to
19 specifications developed by the [UTC] sufficient to meet the needs of first
20 responders . . ." The Legislature directed the UTC to consolidate these maps
21 into a geographic information system ("GIS") and to complete that project
22 by January 1, 2006 with periodic updates, as necessary. The UTC
23 completed the GIS as directed with data for 24 pipelines.

24 5. The GIS database includes Environmental Systems Research
25 Institute ("ESRI") centerline (line pipe) shapefiles. ESRI centerline
26 shapefiles are digital representations of pipeline locations, with pipeline
pressure regulators, compressor stations, metering facilities, taps, mileposts,

1 cathodic protection test sites, and valves. The centerline shapefiles also
2 contain information about diameter, pipeline operator name, installation
3 date, operating pressure, wall thickness and other pipeline specifications,
4 and transported commodity (i.e. natural gas or hazardous liquids).

5 6. Approximately 20 fire officials and other local governments
6 have requested and received the GIS. The UTC has no direct knowledge of
7 the purposes for which the GIS is used by those entities.

8 7. The GIS was also used by the UTC to create pipeline atlases by
9 county. The atlases show pipeline locations and routes, but not the other
10 more detailed information contained in the ESRI shapefiles regarding
11 pipeline appurtenances and other characteristics. Over 500 atlases have been
12 distributed to local governments and fire departments, but the UTC has no
13 direct knowledge of the purposes for which the atlases are used by those
14 entities. The UTC has also commenced posting the atlases on the Internet to
15 allow full public access to pipeline location and route information.

16 8. The Northwest Gas Association introduced legislation (House
17 Bill 1478) in 2007 that would amend the Public Records Act to create a
18 limited exemption from public disclosure for the GIS. Exhibit A. The UTC
19 supports House Bill because there is insufficient value in disseminating
20 broadly the detailed attributes of pipeline systems. Rather, the UTC
21 supports broad access to maps showing the location and route of all major
22 pipelines. This type of information raises public awareness which, in turn,
23 improves public safety.

24 9. On February 6 and 7, 2007, the UTC received public records
25 requests for the GIS data from Jean Buckner of Bellevue, Washington, and
26 the Bellingham Herald. Exhibit B. A public records request for the GIS
data was received by the WUTC from the Seattle Post-Intelligencer on

1 February 22, 2007. *Id.* The UTC notified promptly all pipeline owners of
2 these requests and the UTC's intention to satisfy the requests by releasing
3 the ESRI centerline shapefiles, unless restrained by court order. *Id.* The
4 Seattle Times and Tri-City Herald requested the GIS data on March 1, 2007.

5 10. During this and all related actions to enjoin the UTC from
6 disclosing the GIS data, the UTC provided copies of all temporary
7 restraining orders issued by this Court to Jean Buckner, the Bellingham
8 Herald, the Seattle Post-Intelligencer, the Seattle Times and the Tri-City
9 Herald.

10 
11 ALAN RATHBUN

12 SUBSCRIBED AND SWORN to before me this 7th day of
13 March, 2007.



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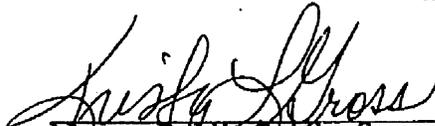

Notary Public for the State of Washington,
residing at Olympia. My commission
expires 11-19-10.

EXHIBIT A

S C A N N E D

0-000000100

HOUSE BILL 1478

State of Washington 60th Legislature 2007 Regular Session

By Representatives Morris, Crouse, Takko, McCoy, McCune, Kenney and
Linville

Read first time 01/22/2007. Referred to Committee on Technology,
Energy & Communications.

1. AN ACT Relating to authorities of the Washington utilities and
2 transportation commission relative to the requirement imposed upon gas
3 and hazardous liquid pipelines under RCW 81.88.080; and amending RCW
4 81.88.080 and 42.56.330.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 Sec. 1. RCW 81.88.080 and 2000 c 191 § 7 are each amended to read
7 as follows:

8 (1) The commission shall require hazardous liquid pipeline
9 companies, and gas pipeline companies with interstate pipelines, gas
10 transmission pipelines, or gas pipelines operating over two hundred
11 fifty pounds per square inch gauge, to provide accurate maps of their
12 pipeline to specifications developed by the commission sufficient to
13 meet the needs of first responders, including installation depth
14 information when known.

15 (2) The commission shall evaluate the sufficiency of the maps and
16 consolidate the maps into a statewide geographic information system.
17 The commission shall assist local governments in obtaining hazardous
18 liquid and gas pipeline location information and maps. The maps shall
19 be made available to the one-number locator services as provided in

1 chapter 19.122 RCW. The mapping system shall be consistent with the
2 United States department of transportation national pipeline mapping
3 program.

4 (3) The mapping system shall be completed by January 1, 2006, and
5 periodically updated thereafter. The commission shall develop a plan
6 for funding the geographic information system and report its
7 recommendations to the legislature by December 15, 2000.

8 (4) The commission shall provide to first responders, state
9 agencies, and local governments data that the commission develops or
10 gathers for the maps that are consolidated into the geographic
11 information system as described in this section. The commission shall
12 provide or make available for inspection by any other entity maps or
13 map images that illustrate line pipe location as long as the map or map
14 images are of no greater detail than a scale of one to twenty-four
15 thousand.

16 (5) For purposes of this section, "first responders" means
17 firefighters and law enforcement personnel.

18 Sec. 2. RCW 42.56.330 and 2006 c 209 s 8 are each amended to read
19 as follows:

20 The following information relating to public utilities and
21 transportation is exempt from disclosure under this chapter:

22 (1) Records filed with the utilities and transportation commission
23 or attorney general under RCW 80.04.095 that a court has determined are
24 confidential under RCW 80.04.095;

25 (2) The residential addresses and residential telephone numbers of
26 the customers of a public utility contained in the records or lists
27 held by the public utility of which they are customers, except that
28 this information may be released to the division of child support or
29 the agency or firm providing child support enforcement for another
30 state under Title IV-D of the federal social security act, for the
31 establishment, enforcement, or modification of a support order;

32 (3) The names, residential addresses, residential telephone
33 numbers, and other individually identifiable records held by an agency
34 in relation to a vanpool, carpool, or other ride-sharing program or
35 service; however, these records may be disclosed to other persons who
36 apply for ride-matching services and who need that information in order
37 to identify potential riders or drivers with whom to share rides;

1 (4) The personally identifying information of current or former
2 participants or applicants in a paratransit or other transit service
3 operated for the benefit of persons with disabilities or elderly
4 persons;

5 (5) The personally identifying information of persons who acquire
6 and use transit passes and other fare payment media including, but not
7 limited to, stored value smart cards and magnetic strip cards, except
8 that an agency may disclose this information to a person, employer,
9 educational institution, or other entity that is responsible, in whole
10 or in part, for payment of the cost of acquiring or using a transit
11 pass or other fare payment media, or to the news media when reporting
12 on public transportation or public safety. This information may also
13 be disclosed at the agency's discretion to governmental agencies or
14 groups concerned with public transportation or public safety;

15 (6) Records of any person that belong to a public utility district
16 or a municipally owned electrical utility, unless the law enforcement
17 authority provides the public utility district or municipally owned
18 electrical utility with a written statement in which the authority
19 states that it suspects that the particular person to whom the records
20 pertain has committed a crime and the authority has a reasonable belief
21 that the records could determine or help determine whether the
22 suspicion might be true. Information obtained in violation of this
23 subsection is inadmissible in any criminal proceeding;

24 (7) Any information obtained by governmental agencies that is
25 collected by the use of a motor carrier intelligent transportation
26 system or any comparable information equipment attached to a truck,
27 tractor, or trailer; however, the information may be given to other
28 governmental agencies or the owners of the truck, tractor, or trailer
29 from which the information is obtained. As used in this subsection,
30 "motor carrier" has the same definition as provided in RCW 81.80.010;
31 ((and))

32 (8) The personally identifying information of persons who acquire
33 and use transponders or other technology to facilitate payment of
34 tolls. This information may be disclosed in aggregate form as long as
35 the data does not contain any personally identifying information. For
36 these purposes aggregate data may include the census tract of the
37 account holder as long as any individual personally identifying
38 information is not released. Personally identifying information may be

1 released to law enforcement agencies only for toll enforcement
2 purposes. Personally identifying information may be released to law
3 enforcement agencies for other purposes only if the request is
4 accompanied by a court order, and

5 (9) Data developed or gathered by the utilities and transportation
6 commission under RCW 81.88.080 and other pipeline maps or pipeline
7 geographic information data filed with the commission. However, the
8 commission or other agencies with whom the commission shares the
9 information under RCW 81.88.080 shall make available for public
10 inspection and copying any maps or map images that illustrate line pipe
11 location as long as the map or map images are of no greater detail than
12 a scale of one to twenty-four thousand.

--- END ---

EXHIBIT B

S C A N N E D

0-000000105

Redacted

From: Ilyne Lawson [mailto:ILawson@wutc.wa.gov]
Sent: Tuesday, February 06, 2007 3:53 PM
To: dkirschner@nwga.org; XGIS Regulated Companies (GAS&LIQ)
Cc: Alan Rathbun; David Cullom; Sondra Walsh
Subject: Request for Public Records: RFPR 215

The commission has received a public records request for the UTC's electronic database that containing Pipeline/Facility information, to

include all the underlying Pipeline/Facility data.

Request Details:

I'm requesting all the Pipeline/Facility GIS data that was provided to the Pipeline Safety Trust through the freedom of information act. I am requesting the electronic database that contains Pipeline/Facility information. Not just the maps, but all the underlying pipeline/Facility data.

SCANNED

0-00000106

The request was made by:

Jean Buckner

Buckner Associates

15723 SE 58th PL

Bellevue, WA 98006

Phone: 425-747-9187

Fax: 425-401-8385

The process set in state law for the release of sensitive information requires us to notify you of the request for information relative to your pipeline locations.

We plan on providing the requestor with an ESRI centerline (line pipe) shapefile. This shapefile is a digital linework representing the pipeline locations, with pipeline pressure regulators, compressor stations, metering facilities, taps, mileposts, cathodic protection test sites, or valves. Additionally, the ESRI shapefile will contain information about diameter, pipeline operator name, and transported commodity (i.e. natural gas, hazardous liquids). For a complete list of the attributes that are included in our standard product, please see the attached PDF file for more information.

(See attached file: [NPMS_Centerline_Attributes.pdf](#))

The commission estimates that the earliest date for the release of the requested records will be approximately 10 business days. During the 10 day period, you may seek a superior court order preventing disclosure of these records.

We anticipate releasing the requested information no earlier than February 20, 2007, absent a court order to the contrary.

If you have any questions or concerns, please contact me.

SCANNED

0-00000107

Thank you.

ILYNE LAWSON

Pipeline Safety Management Analyst

Washington Utilities and Transportation Commission

1300 S Evergreen Park Dr. S.W.

Olympia, WA 98504

ilawson@wutc.wa.gov

TBL (360) 664 - 1302

FAX (360) 586 - 1172

Redacted

SCANNED

0-000000108

Redacted

-----Original Message-----

From: Ilyne Lawson [mailto:ILawson@utc.wa.gov]
Sent: Friday, February 09, 2007 1:42 PM
To: dkirschner@nwga.org; XGIS Regulated Companies (GAS&LIQ)
Cc: Alan Rathbun; Tim Sweeney; David Cullom; Sondra Walsh
Subject: Request For Public Record: RPPR Taylor

On February 7, 2007, The commission has received a public records request for Pipeline GIS data for Whatcom County. The request, in its original form asked for:

...access to and a copy of all geographic information system
(GIS) data compiled by the Washington Utilities and Transportation Commission regarding hazardous liquid and gas pipelines in Whatcom County as well as underground location information and maps of pipelines from hazardous liquid pipeline companies and gas pipeline companies with interstate pipelines, commercial gas pipelines, or gas transmission pipelines in Whatcom County.

The request was made by Sam Taylor, Government Reporter, The Bellingham Herald, 1155 N. State Street, Bellingham, WA 98225 (Phone: (360) 715-2263).

The commission sought to clarify the request, and as a result of that clarification, the commission now understands the request to be for access to and copies of the following information:

pipeline and street GIS data for Whatcom County in Environmental Research Systems Inc. ESRI Shapefile, or geodatabase formats (~2 Mb) for all above-ground and underground pipeline facilities, and the Whatcom County Pipeline Atlas on compact disc.

RCW 42.56.540 permits the commission to notify you of this request for information, to the extent it relates to your pipeline facilities in this state.

Accordingly, this letter is sent to notify you that the commission plans to provide the requestor with a PDF version of the UTC Pipeline Safety Atlas, covering the Whatcom County area, on a CD. The Atlas shows the location of pipelines at a scale of 1:24,000. The pipelines include both interstate and intrastate pipelines that transport hazardous

liquids, natural gas transmission pipelines, and gas pipelines operating over 250 psig.

The commission also plans to provide the requestor with an ESRI centerline (line pipe) Shapefile. The Shapefile is a digital representation of the pipeline locations, with pipeline pressure regulators, compressor stations, metering facilities, taps, mileposts, cathodic protection test sites, or valves. Additionally, the ESRI Shapefile will contain information about diameter, pipeline operator name, and transported commodity (i.e. natural gas, hazardous liquids). For a complete list of the attributes that are included in our standard product, please see the attached PDF file.

(See attached file: NPMS_Centerline_Attributes.pdf)

To provide you adequate time to consider whether you have an interest to protect, and to take steps to protect that interest, the commission will not release the requested records until February 20, 2007, absent a contrary court order or a withdrawal of the request. This is a ten day notice (not counting the last day, which is a holiday).

If you have any questions or concerns, please contact me.

Thank you.

ILYNE LAWSON
Pipeline Safety Management Analyst
Washington Utilities and Transportation Commission
1300 S Evergreen Park Dr. S.W.
Olympia, WA 98504
ilawson@wutc.wa.gov
TEL (360) 664 - 1302
FAX (360) 586 - 1172



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

February 23, 2007

Re: Public Record Requests by the Seattle Post-Intelligencer

To Pipeline Facility Owners:

Pursuant to RCW 42.56.540, we are informing you of two public records requests the Utilities and Transportation Commission (UTC) received this week from the Seattle Post-Intelligencer.

The first, received February 21, 2007, is for all geographic information system data the pipeline safety program maintains for pipelines in this state. The second, received February 22, 2007, seeks all documents regarding or between the UTC and the Northwest Gas Association, Chevron Pipe Line Company, and Olympic Pipeline -- including correspondence, notes, e-mail, memoranda, telephone messages -- between January 1, 2007, and February 22, 2007.

The commission is currently restrained by court order from releasing geographic information system data for the following companies:

Avista Utilities
Cascade Natural Gas
Chevron Pipe Line Company
Northwest Natural Gas
Northwest Terminaling Company
Olympic Pipeline
Puget Sound Energy
Transcanada GTN
Williams Pipeline Company
BP West Coast Products LLC
Intalco Aluminum Corporation

These restraining orders apply to all pending and future requests regarding these companies pending the outcome of a preliminary injunction hearing on March 16, 2007 in Thurston County Superior Court.

However, the court has not restrained the release of requested geographic information system data relating to other pipeline companies. The commission intends to release this data on March 2, 2007. Specifically, it intends to release ESRI centerline (line

U.S. A. N. N. E. D.

0-000000111

Pipeline Facility Owners

Page 2

February 23, 2007

pipe) shapefiles, which consist of digital representations of pipeline locations with pipeline pressure regulators, compressor stations, metering facilities, taps, mileposts, cathodic protection test sites, or valves. The ESRI shapefiles will also contain information about diameter, pipeline operator name, installation date, operating pressure, wall thickness and other pipeline specifications, and transported commodity (i.e., natural gas, hazardous liquids). The commission will also release electronic copies of its county pipeline atlases since the restraining orders do not cover those documents.

The commission has not determined yet when it can compile and honor the second request. However, we will not release the information before March 5.

Anyone interested in receiving a copy of either public records request from the Seattle Post Intelligencer may contact Alan Rathbun at 360-664-1254.

Sincerely,



David Danner
Executive Director

S C A N N E D

0-000000112

No. 360³7-8-II

COURT OF APPEALS
STATE OF WASHINGTON

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON -2 PM 1:39

NORTHWEST GAS ASSOCIATION ET AL

STATE OF WASHINGTON
DEPUTY

Plaintiffs/Appellants

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Defendants/Respondents

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. Richard D. Hicks)

CERTIFICATE OF SERVICE

Michael A. Nesteroff
WSBA No. 13180
D. Jeffrey Courser
WSBA No. 15466
Christopher T. Wion
WSBA No. 33207
Stephen J. Tan
WSBA No. 22576
Jason T. Kuzma
WSBA No. 31830
William J. Lehman
WSBA No. 35081
Attorneys for Appellants Northwest Gas
Association, Olympic Pipe Line Company,
Chevron Pipe Line Company, Northwest
Terminaling Company, Yellowstone Pipe
Line Company, ConocoPhillips Pipe Line
Company, McChord Pipeline Company,
Valero L.P., Terasen Pipeline Co., KB
Pipeline, BP West Coast Products LLC and
Intalco Aluminum Corporation

Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

ORIGINAL

I, Amanda Lund, hereby declare as follows:

I am over the age of eighteen years and not a party to the within action. My business address is 1420 Fifth Avenue, Ste. 4100, Seattle, WA 98101.

On April 24, 2007, I caused to be served a copy of the following documents:

1. Appellants' Opening Brief with Appendix;
2. Appellants' Motion to Supplement the Appellate Record Pursuant to RAP 9.11 with attached Exhibit A;
3. Declaration of Dan Kirschner in Support of Appellants' Motion to Supplement the Appellate Record Pursuant to RAP 9.11;
4. Declaration of D. Jeffrey Courser in Support of Appellants' Motion to Supplement the Appellate Record Pursuant to RAP 9.11; and
5. Declaration of Service.

on the following persons in the manner indicated below at the following address(es):

Vanessa Soriano Power
Stoel Rives LLP
600 University Street, Ste. 3600
Seattle, WA 98101-3197

Shelley Hall, Esq.
Stokes Lawrence, P.S.
800 Fifth Avenue, Suite 4000
Seattle, WA 98104-3179

Arthur W. Harrigan, Jr., Esq.
Christopher Thomas Wion, Esq.
Danielson Harrigan Leyh & Tollefson LLP
First Interstate Center
999 Third Avenue, Suite 4400
Seattle, WA 98104-4017

Stephen J. Tan, Esq.
Jennifer Tanya Barnett
Cascadia Law Group, PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101-3075

Jason T. Kuzma, Esq.
Sheree Strom Carson, Esq.
Perkins Coie LLP
10885 NE 4th Street, Ste. 700
Bellevue, WA 98004

by **Electronic Mail & NW Legal Delivery**

D. Jeffrey Courser, Esq.
Stoel Rives LLP
805 Broadway, Suite 725
Vancouver, WA 98660-3302

Timothy Laurence McMahan
Stoel Rives Law Firm
900 SW 5th Avenue, Ste. 2600
Portland, OR 97204-1268

William J. Lehman, Esq.
Cable Huston Benedict Haagensen & Lloyd LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136

Robert Cedarbaum
Assistant Attorney General
1400 S. Evergreen Park Drive SW
Olympia, WA 98504-0128

by **Electronic Mail & Federal Express**

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this 2nd day of May, 2007, at Seattle, Washington.


Amanda Lund