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February 13, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

FEB 13 PM 4:20
COMMISSION
CLERK

Re: Docket No.: 020507-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- The Florida Competitive Carriers Association's Request for Official Recognition.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/bae
Enclosures

DOCUMENT NUMBER-DATE
01510 FEB 13 03
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. Regarding BellSouth's Practice of Refusing to Provide FastAccess Internet Service to Customers who Receive Voice Service from a Competitive Voice Provider, and Request for Expedited Relief /	Docket No. 020507-TP Filed: February 13, 2003

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S REQUEST FOR OFFICIAL RECOGNITION

The Florida Competitive Carriers Association (FCCA), pursuant to sections 90.202 and 90.203, Florida Statutes, requests that the Florida Public Service Commission (Commission) officially recognize the following court decisions as they relate to the FCCA's Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL, filed on January 17, 2003, regarding the Commission's ability to compel discovery from nonparty association members:

> *University of Texas at Austin, et al. v. Vratil*, 96 F.3d 1337 (10th Cir. 1996)
>
> *Oil Heat Institute of Oregon v. Northwest Natural Gas*, 123 FRD 640 (USDC Or. 1988).[1]

These cases are "[d]ecisional... law of every other state, territory, and jurisdiction of the United States," pursuant to section 90.202(2), and "official actions of the... judicial departments of the United States and of any... jurisdiction of the United States," pursuant to section 90.202(5). Thus, these decisions are appropriate for official recognition.

[1] Copies of these decisions are attached and have been furnished to the parties.

WHEREFORE, the FCCA requests that the Commission officially recognize the court decisions listed above.

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UNIVERSITY OF TEXAS AT AUSTIN, UNIVERSITY OF TEXAS AT EL PASO, UNIVERSITY OF TEXAS PAN AMERICAN, UNIVERSITY OF TEXAS AT SAN ANTONIO, UNIVERSITY OF TEXAS AT ARLINGTON, TEXAS TECH UNIVERSITY, STEPHEN F. AUSTIN UNIVERSITY, UNIVERSITY OF NORTH TEXAS, ANGELO STATE UNIVERSITY, LAMAR UNIVERSITY - BEAUMONT, SAM HOUSTON STATE UNIVERSITY, SOUTHWEST TEXAS STATE UNIVERSITY, TEXAS A&M UNIVERSITY, UNIVERSITY OF HOUSTON, THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, which is the State of California acting in a higher education capacity, on behalf of its NCAA Division I Member Campuses: California State University, Northridge; California State University, Fresno; California State University, Fullerton; California State University, Long Beach; California Polytechnic State University, San Luis Obispos; California State University, Sacramento; San Diego State University; San Jose State University; University of Utah; University of New Mexico; University of Wyoming; and LOUISIANA STATE UNIVERSITY BOARD OF SUPERVISORS, WHICH IS THE STATE OF LOUISIANA ACTING IN A HIGHER EDUCATION CAPACITY, ON BEHALF OF ITS NCAA DIVISION I CAMPUSES: UNIVERSITY OF NEW ORLEANS AND THE LOUISIANA STATE UNIVERSITY BATON ROUGE CAMPUS, Petitioners, v. THE HONORABLE KATHRYN H. VRATIL, District Judge, Respondent, NORMAN LAW; ANDREW GREER; PETER HERRMANN; MICHAEL JARVIS, JR.; CHARLES M. RIEB; WILLIAM HALL; DOUG SCHREIBER; LAZARO COLLOZZO; ROBIN DREIZLER; FRANK CRUZ, individually and on behalf of himself and all others similarly situated, Real Parties in Interest.

No. 96-3220

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

96 F.3d 1337; 1996 U.S. App. LEXIS 24451; 1996-2 Trade Cas. (CCH) P71,573; 35 Fed. R. Serv. 3d (Callaghan) 1527

September 17, 1996, Filed

DISPOSITION:

[**1] Petitioners' application for writ of prohibition GRANTED; VACATED in part; stay DISSOLVED.

COUNSEL:

For UNIVERSITY OF TEXAS AT AUSTIN, UNIVERSITY OF TEXAS AT EL PASO, UNIVERSITY OF TEXAS PAN AMERICAN, UNIVERSITY OF TEXAS AT SAN ANTONIO, UNIVERSITY OF TEXAS AT ARLINGTON, TEXAS TECH UNIVERSITY, STEPHEN F. AUSTIN UNIVERSITY, UNIVERSITY OF NORTH TEXAS, ANGELO STATE UNIVERSITY, LAMAR UNIVERSITY - BEAUMONT, SAM HOUSTON STATE UNIVERSITY, SOUTHWEST TEXAS STATE UNIVERSITY, TEXAS A&M UNIVERSITY, UNIVERSITY OF HOUSTON, Petitioners: Dan Morales, Texas Atty General, Jorge Vega, Asst. Atty. General, Texas Attorney General's Office, Austin, TX. Christopher Johnson, Laquita A. Hamilton, Toni Hunter, Office of the Attorney General, General Litigation Division, Austin, TX. For THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, which is the State of California acting in a higher education capacity, on behalf of its NCAA Division I Member Campuses: California State University, Northridge; California State University, Fresno; California State

University, Fullerton; California State University, Long Beach; California Polytechnic State University, San Luis Obispos; California State University, Sacramento; San Diego State University; San Jose State University; University of Utah; University of New Mexico; and University of Wyoming, Petitioner: Earl K. Madsen, Bradley, Campbell & Carney, Golden, CO. For LOUISIANA STATE UNIVERSITY BOARD OF SUPERVISORS, WHICH IS THE STATE OF LOUISIANA ACTING IN A HIGHER EDUCATION CAPACITY, ON BEHALF OF ITS NCAA DIVISION I CAMPUSES: UNIVERSITY OF NEW ORLEANS AND THE LOUISIANA STATE UNIVERSITY BATON ROUGE CAMPUS, Petitioner: M. Nan Alessandra, David M. Korn, Phelps Dunbar, L.L.P., New Orleans, LA. G. Michael Pharis, Taylor, Porter, Brooks & Phillips, L.L.P., Baton Rouge, LA.

For KATHRYN H. VRATIL, District Judge, Respondent: Kathryn H. Vratil, District Judge, United States District Court for the District of Kansas, Kansas City, KS.

For NORMAN LAW, ANDREW GREER, PETER HERRMANN, MICHAEL JARVIS, JR., CHARLES M. RIEB, individually and on behalf of all others similarly situated, Real Parties in Interest: W. Dennis Cross, Morrison & Hecker, Kansas City, MO. Gerald I. Roth, Allentown, PA. Robert G. Wilson, Cotkin & Collins, Los Angeles, CA. For WILLIAM HALL, on behalf of himself and all others similarly situated, Real Party in Interest: Bonney E. Sweeney, Dennis Stewart, Milberg, Weiss, Bershad, Hynes & Lerach, San Diego, CA. For DOUG SCHREIBER, LAZARO COLLOZZO, ROBIN DREIZLER, FRANK CRUZ, on behalf of himself and all others similarly situated, Real Parties in Interest: W. Dennis Cross, Lori R. Schultz, Morrison & Hecker, Kansas City, MO. Gerald I. Roth, Allentown, PA. Robert G. Wilson, Cotkin & Collins, Los Angeles, CA.

For AMERICAN COUNCIL ON EDUCATION, Amicus Curiae: John J. Jurcyk, Jr., Carl A. Gallagher, McAnany, Van Cleave & Phillips, Kansas City, KS. For BAYLOR UNIVERSITY, Amicus Curiae: Roy L. Barrett, Stuart Smith, Naman, Howell, Smith & Lee, Waco, TX. For BRIGHAM YOUNG UNIVERSITY, Amicus Curiae: Eugene H. Bramhall, Brigham Young University, Provo, UT. For SOUTHERN METHODIST UNIVERSITY, Amicus Curiae: John H. McElhaney, Locke, Purnell, Rain, Harrell, Dallas, TX. S. Leon Bennett, General Counsel and Vice President for Legal Affairs, Southern Methodist University, Dallas, TX. For UNIVERSITY OF NOTRE DAME, Amicus Curiae: William P. Hoye, Associate Vice President and Counsel, University of Notre Dame, Notre Dame, IN.

JUDGES:
Before EBEL and MURPHY, Circuit Judges.

OPINION:

[*1339] ORDER

Petitioners are National Collegiate Athletic Association (NCAA) Division I state colleges and universities. They seek a writ of prohibition to vacate those portions of the district court's order of sanctions dated May 29, 1996, referring to them as "real parties in interest" and requiring them to respond to plaintiffs' interrogatories. See Law v. NCAA, 167 F.R.D. 464 (D. Kan. 1996).

"[A] writ of prohibition is a drastic and extraordinary remedy which should be granted only when the petitioner has shown his right to the writ to be clear and undisputable and that the actions of the court were a clear abuse of discretion." Sangre de Cristo Community Mental Health Serv., Inc. v. United States (In re Vargas), 723 F.2d 1461, 1468 (10th Cir. 1983). This court looks to five nonconclusive factors when determining whether to grant the writ: (1) the party seeking the writ must have no other adequate means to secure the relief desired; (2) the petitioning party will be damaged or prejudiced in a way not correctable on appeal; (3) the [**2] district court's order constitutes an abuse of discretion; (4) the district court's order represents an often-repeated error and manifests a persistent disregard of the federal rules; and (5) the district court's order raises new and important problems or issues of law of first impression. Pacificare of Okla., Inc. v. Burrage, 59 F.3d 151, 153 (10th Cir. 1995) (explaining similar mandamus standard).

NCAA, defendant below, is a voluntary unincorporated association. Jones v. Wichita State Univ., 698 F.2d 1082, 1083 (10th Cir. 1983). As such, it is regarded under Kansas law as an aggregate of its members, and lacks capacity to sue or be sued in its own name. See Frey, Inc. v. City of Wichita, 11 Kan. App. 2d 116, 715 P.2d 417, 418 (Kan. Ct. App. 1986). The Federal Rules, however, allow associations such as NCAA to be sued in their own name in federal court for purpose of enforcing a federal right. See Fed. R. Civ. P. 17(b)(1). Acting under this provision, plaintiffs sued NCAA, asserting violation of federal antitrust statutes.

The district court granted plaintiffs summary judgment against NCAA on the issue of liability. It ultimately ordered NCAA to respond to certain interrogatories on [**3] damage issues. NCAA failed to comply with this order. In response to plaintiffs' request for sanctions, the district court determined that since

NCAA's party status under Fed. R. Civ. P. 17(b) was "merely procedural," and NCAA had no jural existence under Kansas law, NCAA's member institutions were the "real parties in interest" before the court. Relying on this characterization, the district court ordered each member institution to respond directly to the interrogatories propounded to NCAA.

Petitioners object to the district court's order on two grounds, asserting they are not parties to the action who can be ordered to respond to interrogatories, and that they are entitled to Eleventh Amendment immunity from being treated as parties for discovery purposes in this damages action. We agree with petitioners on both grounds, n1 and grant them the requested writ of prohibition.

n1 We do not, in this ruling, decide whether these or other state colleges and universities are, in fact, entitled to Eleventh Amendment immunity as arms of their respective states. See Seibert v. Univ. of Okla. Health Services Ctr., 867 F.2d 591, 594-95 (10th Cir. 1989). Although we presume, without deciding, that most if not all of the state colleges and universities will be entitled to Eleventh Amendment immunity, if the plaintiffs in this action wish to put this matter at issue as to any such institution, the district court may ultimately need to address that matter on remand.

[**4]

[*1340] The district court erred in characterizing the unserved, nonparty petitioners as "real parties in interest" for discovery purposes, and acted without jurisdiction in ordering them to respond to interrogatories propounded under Rule 33. Rule 17(b)(1), which provides for suit against an unincorporated association "for the purpose of enforcing for or against it a substantive right," recognizes the NCAA as the procedural party defendant before the court. n2 This party status clearly extends to party discovery. See Sperry Prods., Inc. v. Association of Am. Railroads, 132 F.2d 408, 411 (2d Cir. 1942), cert. denied, 319 U.S. 744, 63 S. Ct. 1031, 87 L. Ed. 1700 (1943) (recognizing that an association's jural existence under Rule 17(b)(1) extends beyond service of process to other procedural incidents under the Rules). n3

n2 Use of the phrase "real party in interest" in this context is somewhat unfortunate and misleading. "Real party in interest," as used in Fed. R. Civ. P. 17(a), refers to the principle that an action "should be brought in the name of the party who possesses the substantive right being asserted under the applicable law." 6A Charles Allen Wright et al., Federal Practice and Procedure § 1541 (2d ed. 1990). The requirement of bringing suit in the name of the real party in interest properly applies only to plaintiffs, see 6A id. § 1542, and differs from "capacity to be sued," which is at issue here. [**5]

n3 We disagree with the district court that recognition of the NCAA as the entity before the court for discovery purposes offends Erie R. Co. v. Tompkins, 304 U.S. 64, 82 L. Ed. 1188, 58 S. Ct. 817 (1938). Discovery is "a procedural matter, which is governed by the Federal Rules of Civil Procedure." Wilson v. Gillis Advertising Co., 145 F.R.D. 578, 580 (N.D. Ala. 1993), quoting Mid Continent Cabinetry, Inc. v. George Koch Sons, Inc., 130 F.R.D. 149, 151 (D. Kan. 1990). This is a federal question case, where a federal rule dictates the status of the party before the court, and where the issue before the court is applicability of that status in the context of application of other federal rules concerning discovery. Erie does not require consideration of NCAA's status under state law for purposes of deciding the discovery issue. See Wilson, 145 F.R.D. at 580 (federal question case was "not within the aegis of Erie" for purpose of determining discovery issue); Fireman's Fund Ins. Co. v. S.E.K. Constr. Co., 436 F.2d 1345, 1352 (10th Cir. 1971) (Erie does not apply where federal question is involved).

[**6]

The Federal Rules provide a clear-cut procedure for obtaining responses to interrogatories from an association such as NCAA. Under Fed. R. Civ. P. 33(a), interrogatories may only be directed to a party to an action. Where that party is an association, Rule 33(a) allows it to select an officer or agent to respond on its behalf. Id.; see also 8A Charles Allen Wright et al., Federal Practice and Procedure § 2172 (2d ed. 1990). In the event the officer or agent fails to respond, enforcement of the court's orders regarding discovery is obtained under Rule 37, which, notably, contains no procedure for requiring responses from unserved, nonparty members of the association. The district court's order here was not authorized by, and is in contravention of, these federal rules concerning discovery.

Moreover, petitioners, as state colleges and universities, are entitled to Eleventh Amendment immunity from being treated as parties. Seminole Tribe of Fla. v. Fla., 134 L. Ed. 2d 252, 116 S. Ct. 1114, 1124 (1996). Eleventh Amendment immunity entitles a state not only to protection from liability, but also from suit, including the burden of discovery, as a party, within the suit. See Puerto Rico Aqueduct [**7] & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 143-44, 121 L. Ed. 2d 605, 113 S. Ct. 684 (1993). Plaintiffs' reliance on Laxalt v. McClatchy, 109 F.R.D. 632, 634-35 (D. Nev. 1986), for the proposition that the Eleventh Amendment does not shield nonparty state entities from discovery, is misplaced. In Laxalt, discovery was sought under Fed. R. Civ. P. 45, which, in contrast to Fed. R. Civ. P. 33, specifically provides a procedure applicable to nonparties. Here, the court ordered enforcement of responses to Rule 33 interrogatories under Fed. R. Civ. P. 37, thereby treating the state colleges and universities as "parties" and bringing them squarely within the protections discussed in Puerto Rico Aqueduct.

We conclude that petitioners have shown their entitlement to the requested writ of prohibition under the high standard associated [*1341] with the writ. We grant relief only as to the state Division I members, however. Although some private Division I members have appeared in this action as amici curiae, none of them has sought to join as a petitioner. Amici may only support relief claimed by a party to the proceeding. See, e.g., Newark Branch, N.A.A.C.P. v. Town of Harrison, 940 F.2d 792, 808 (3d [**8] Cir. 1991); United States v. Louisiana, 718 F. Supp. 525, 528 (E.D. La. 1989), appeal dismissed, 493 U.S. 1013, 107 L. Ed. 2d 729, 110 S. Ct. 708 (1990); United States v. E.I. Du Pont De Nemours & Co., 13 F.R.D. 487, 488-89 (N.D. Ill. 1953). n4

n4 We previously declined to grant NCAA mandamus relief from the district court's order; nothing in this order should be read as granting relief to the NCAA from its obligations under that order.

Petitioners' application for a writ of prohibition is GRANTED. The district court's reference to state NCAA Division I members as "real parties in interest" for discovery purposes is VACATED, as is its order requiring NCAA Division I state colleges and universities to answer plaintiffs' interrogatories. The stay entered by this court in its order of July 5, 1996, is DISSOLVED.

LEXSEE 123 F.R.D. 640

OIL HEAT INSTITUTE OF OREGON, an Oregon Nonprofit Corporation, Plaintiff, v. NORTHWEST NATURAL GAS, an Oregon corporation, Defendant

No. 87-853-FR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

123 F.R.D. 640; 1988 U.S. Dist. LEXIS 5463

June 8, 1988, Decided

June 8, 1988, Filed

JUDGES:
Helen J. Frye, United States District Judge.

OPINIONBY:
[*1] FRYE

OPINION:

[*641] Helen J. Frye, United States District Judge.

The matters before the court are:

1. Defendant's motion to compel and

2. Plaintiff's motion for an order compelling discovery.

BACKGROUND

Plaintiff, Oil Heat Institute, (OHI) brings this action for injunctive relief under the Lanham Act of 1946, 15 U.S.C. § 1125(a), alleging that the promotional materials of defendant, Northwest Natural Gas, contain false descriptions and representations. OHI seeks an injunction to prevent Northwest Natural Gas from using these materials.

The materials alleged in the complaint to be false purport to compare "alleged positive features of natural gas with the alleged negative features of home heating oil used by residential customers." Amended Complaint, para. 4. The alleged false representations describe or represent average warranty, routine maintenance, delivery system, cleanliness, maintenance, service, storage, delivery and pricing.

OHI'S MOTION TO COMPEL

Northwest Natural Gas moves this court to compel OHI to respond to interrogatories as follows:

1. Identify each member of the OIL Heat Institute that in any manner sells, distributes or maintains natural gas equipment;

2. Identify any [**2] members .... that utilize .... the oil prices published by the Energy Information Administration to price their respective products, including the exact manner in which said information is utilized;

3. Identify the number of complaints received by each member of OHI from June 1986 through June 1987 that concerns odor emanating from an oil furnace or tank;

4. Identify the number of complaints .... as above .... concerning soot emanating from an oil furnace;

[*642] 5. Identify the number of complaints .... as above .... concerning leaking of oil storage tanks; and

6. Describe how each member of OHI determines the prices at which that particular member will sell heating oil.

OHI answered each of the interrogatories above as follows: "Plaintiff does not maintain this information."

OHI explains in response to Northwest Natural Gas' motion to compel that OHI is a non-profit trade organization consisting of 103 heating oil dealers and 24 appliance service companies and tank installers. Under OHI's bylaws the only duty that members have is to pay

dues. OHI explains that it has produced for Northwest Natural Gas copies of all of the documents in its possession, custody or control which [**3] includes its membership list along with a description of the kind of business OHI understands each member to conduct, as well as its bylaws and membership application. OHI argues that it is not required to produce any information that is solely within the custody or control of the individual members and not readily available to the organization. Further, OHI argues that the pricing information requested is "sensitive" information and not relevant to OHI's claims against Northwest Natural Gas.

Fed. R. Civ. P. 34(a) permits discovery of documents which are in the "possession, custody or control" of a plaintiff. Inspection can be had if the party to whom the request is made has the legal right to obtain the document, even if the party has no copy in its possession. 8 Wright & Miller, *Federal Practice & Procedure,* § 2210 at 621.

OHI does not have possession or custody of the requested items. The only issue is whether OHI should be deemed to have control of the requested items because it represents the member organizations. While there are circumstances in which a party will be deemed to have control of documents such that they must produce them, the court concludes this is not such [**4] a case. *See e.g. Margoles v. Johns,* 587 F.2d 885 (7th Cir. 1978) (plaintiff's son deemed alter ego of plaintiff where plaintiff had turned over the task of producing the documents to the son.) There is no evidence here that OHI has any legal right to documents that belong to the member organizations. In addition, there is no evidence that Northwest Natural Gas cannot obtain the requested information directly from the member organizations.

Northwest Natural Gas' motion to compel is denied.

OHI'S MOTION TO COMPEL

OHI moves the court to compel Northwest Natural Gas to produce documents which fall into two general categories: 1) customer service department manuals, and 2) the agreements by which Northwest Natural Gas and its major supplier, Northwest Pipeline Corp., purchase gas.

1. *Customer service department manuals*

Northwest Natural Gas in its response concedes that the documents are relevant and agrees to produce those portions of the manuals that are relevant to routine maintenance, service and cleanliness. OHI in reply states that while OHI has confidence that Northwest Natural Gas' counsel will make a good faith attempt to produce those portions of the customer service department [**5] manuals he says is relevant, OHI prefers its counsel to review manuals to determine for himself which portions are relevant. (Pl. Reply Memorandum in Support of Motion to Compel p. 2.)

Northwest Natural Gas explains that the manuals contain proprietary and confidential information as well as information that is in no way relevant to the subject matter of this action.

The court will allow counsel for OHI to review the customer service department manuals subject to a protective order. Counsel for the parties are to attempt to agree upon the terms of an appropriate protective order.

[*643] 2. *The agreements*

OHI seeks all documents by which the principal supplier of Northwest Natural Gas purchases gas. OHI contends that the agreements will show that the prices of the gas it purchases and sells are directly influenced by oil prices. OHI explains that this information is relevant to disprove Northwest Natural Gas' assertion in its brochures that oil prices are "subject to foreign influence" while natural gas prices are regulated by the Oregon Public Utility Commission.

Northwest Natural Gas has agreed to produce copies of agreements with Northwest Pipeline which are public records. Northwest [**6] Natural Gas asserts that there are no agreements between Northwest Pipeline and West Coast Transmission as requested in the third request for production.

Northwest Natural Gas argues that the other agreements requested by OHI are not relevant and contain confidential information.

OHI explains that the documents requested are relevant as to the price paid by Northwest Natural Gas for gas and not as to the price paid by Northwest Natural Gas' customers for gas. Northwest Natural Gas explains that the price it pays for gas is only one factor considered by the OPUC in setting its prices. Further, Northwest Natural Gas asserts that the cost of gas is highly confidential and constitutes trade secrets.

In its reply, OHI asserts that the information sought has been produced in a number of other cases without a claim of confidentiality. OHI states that "according to its last general rate case (1986), defendant purchases over 90% of its gas from Northwest Pipeline under Northwest Pipeline's Rate Schedule ODI-1. These rates are published by Northwest Pipeline and are available to anyone. Second, defendant reports its gas costs every time it files its FERC Form No. 2 Annual Report with PUC and [**7] its Form 10K with the SEC. (Defendant's gas costs in 1987 were $ 172,470,300 according to its Annual Report to its shareholders ....)" Pl. reply memorandum p. 3.

OHI contends that there is evidence that the prices at which Northwest Natural Gas purchases gas are determined in large part by formulae that are based on oil prices. OHI explains that it needs the additional agreements "in an effort to fill out the discovery it has already conducted." Pl. reply memorandum p. 5.

It appears to the court that OHI has been able to obtain a substantial amount of information relating to the cost of gas purchases by Northwest Natural Gas. It is not clear from the record what OHI will gain by securing further discovery as to gas costs. On the other hand, Northwest Natural Gas' assertions that the agreements are highly confidential is questionable if Northwest Natural Gas has in fact produced this information before.

This court concludes that Northwest Natural Gas shall produce data or records as to gas costs which have heretofore been produced in prior litigation and/or made a part of the public record.

DATED this 8 day of June, 1988.

ORDER

It is hereby ordered that the defendant's motion [**8] is denied. It is further ordered that the plaintiff's motion is granted as follows:

1. The court will allow counsel for OHI to review the customer service department manuals subject to a protective order.

2. Northwest Natural Gas shall produce data or records as to gas costs which have heretofore been produced in prior litigation and/or made a part of the public record.

DATED this 8 day of June, 1988.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Florida Competitive Carriers Association's Request for Official Recognition has been furnished by (*) hand delivery, (**) electronic mail, or by U.S. Mail this 13th day of February 2003, to the following:

(*) (**) Patricia Christensen
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) (**) Nancy White
(**) Meredith Mays
c/o Nancy Sims
BellSouth Telecommunications, Inc.
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(**) Nanette Edwards
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Vicki Gordon Kaufman