

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4)

5 Complainant,)

6)

7 vs.)

8)

9 OLYMPIC PIPE LINE COMPANY,)

10 INC.,)

11)

12 Respondent.)

13

14

15 A prehearing conference in the above matter
16 was held on December 21, 2001, at 8:40 a.m., at 1300
17 South Evergreen Park Drive Southwest, Olympia,
18 Washington, before Administrative Law Judge C. ROBERT
19 WALLIS.

20 The parties were present as follows:

21

22 WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION, by DONALD T. TROTTER and LISA WATSON,
24 Assistant Attorneys General, 1400 South Evergreen Park
25 Drive Southwest, Post Office Box 40128, Olympia,
Washington 98504.

26 OLYMPIC PIPE LINE COMPANY, INC., by STEVEN C.
27 MARSHALL, Attorney at Law, Perkins Coie, 411 108th
28 Avenue Northeast, Suite 1800, Bellevue, Washington
29 98004 (via bridge).

30

31 TESORO WEST COAST COMPANY, by ROBIN O. BRENA,
32 Attorney at Law, Brena, Bell & Clarkson, 310 K Street,
33 Suite 601, Anchorage, Alaska 99501 (via bridge).

34

00495

1 TOSCO CORPORATION, by EDWARD A. FINKLEA,
2 Attorney at Law, Energy Advocates, 526 Northwest 18th
3 Avenue, Portland, Oregon 97209 (via bridge).

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 Kathryn T. Wilson, CCR

25 Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE WALLIS: This is a prehearing conference in the matter of Commission Docket No. TO-011472, which is a proceeding involving a request for increased rates for services proposed by Olympic Pipe Line Company, Incorporated. I would like to have appearances at this time beginning with Olympic.

MR. MARSHALL: Steve Marshall representing Olympic Pipe Line Company.

JUDGE WALLIS: For the intervenors?

MR. BRENA: Robin Brena and David Wensel on behalf of Tesoro.

JUDGE WALLIS: For other intervenors?

MR. FINKLEA: Ed Finklea on behalf of Tosco.

JUDGE WALLIS: For Commission staff?

MR. TROTTER: Donald T. Trotter and Lisa Watson for Commission staff.

JUDGE WALLIS: Very well. Tesoro has filed a notice of noncompliance and asks for several rulings in that notice. This showed up on my e-mail shortly after the scheduled time for the beginning of yesterday's scheduled conference, which has been rescheduled today by virtue of scheduling conflicts.

The other matter that we need to discuss today is scheduling of the hearing on the interim, and

00497

1 what I would like to do is take a half hour to go
2 through the motion, including -- or the notice of
3 noncompliance, touching on the requested rulings. I
4 have that in front of me. Mr. Brena, I would you like
5 to go through the points that you need a ruling on
6 today or imminently and skip those that can be deferred
7 to a later date, and to be brief, merely identifying
8 them. We do have the motion in front of us, and then
9 Mr. Marshall and others, you will have a chance for a
10 brief response. Mr. Brena?

11 MR. BRENA: Thank you, Your Honor. First,
12 there has been quite a few changes since this motion
13 has been filed, so let me say that right up front. Let
14 me say that first of all that it's important to Tesoro
15 that any future discovery be served on its experts.
16 This was our understanding of what was to be done. We
17 would like a ruling on that, apparently. We have
18 stacks of information up here that have been sent to us
19 that have not been served on our experts that we are
20 now in a situation of having to copy and send out to
21 our experts over the Christmas weekend, so that is one
22 ruling I would like to clarify. That was my
23 understanding, and it hasn't been done.

24 JUDGE WALLIS: Mr. Marshall, is there any
25 excuse for the company's failure to provide the

00498

1 information consistent with the earlier agreement?

2 MR. MARSHALL: Our earlier agreement was to
3 send everything we sent out by e-mail to everybody by
4 e-mail. Mr. Brena has interpreted that to mean that if
5 we have 500 pages of documents that we have received
6 that we must make three sets of 500 documents in
7 addition to the set for Mr. Brena. In other words, a
8 total of 2000 pages of documents and send it out to
9 him, when rules on discovery and documents generally
10 require they be made available for copying, for the
11 other party to come in and copy.

12 We accommodated Mr. Brena by sending him a
13 set, which he got yesterday at ten o'clock. We sent it
14 to him by overnight Fed Ex. These are voluminous
15 records dealing with board of director packets and so
16 forth. We haven't even been able to go through all of
17 them ourselves, but Mr. Brena and I talked about that.
18 He hasn't been able to go through them to identify
19 whether those documents might be important for his
20 experts or not.

21 I think the volume of those records -- and
22 the agreement that we thought we had didn't extend to
23 supplying actual hard copies of voluminous documents to
24 multiple experts. If that's what he believes, we would
25 like to be relieved of the burden of trying to send out

00499

1 that kind of material and that kind of bulk to multiple
2 experts. Let him arrange for the dissemination of that
3 kind of bulk. His experts have gotten everything we
4 have sent by e-mail, everything that we have sent by
5 fax, everything that we have sent to Mr. Brena in a
6 form except for voluminous documents.

7 JUDGE WALLIS: Mr. Finklea, do you have any
8 comments?

9 MR. FINKLEA: I'll let Mr. Brena address the
10 issue.

11 JUDGE WALLIS: Mr. Trotter?

12 MR. TROTTER: No.

13 JUDGE WALLIS: Mr. Marshall, does the company
14 want an early hearing on its request for interim
15 relief?

16 MR. MARSHALL: We absolutely do, Your Honor.
17 We don't have the capability of copying multiple
18 copies, 2000 pages of copying any more than Mr. Brena
19 had yesterday. It's physically impossible to do. We
20 sent Mr. Brena a note indicating what we were doing
21 when we were doing it. If he had called yesterday and
22 said, "We need you to send those off to them. We'll
23 pay for it. Please do that," we might have been able
24 to do that, but again, he's got in his statement here
25 an agreement that we've been served multiple pages of

00500

1 documents when that wasn't the idea we had in mind. We
2 thought if we could send all this stuff out
3 electronically, we would do that. It's a matter of
4 trying to figure out how we can accommodate these
5 multiple requests coming in in a way that meets
6 everybody's needs to the maximum that we can.

7 JUDGE WALLIS: Mr. Brena, can you give us a
8 citation to the company's specific agreement and read
9 that for us for the record?

10 MR. BRENA: On the December 12th hearing --
11 it's actually been a couple of times. When I was down
12 there during the technical conference, Mr. Marshall
13 agreed to serve -- well, there has been two or three
14 conversations of this. We actually served four or five
15 people for Olympic, and we asked for a similar courtesy
16 from them with regard to their service of materials,
17 and we've included Charles McGee, Gary Grando, John
18 Brown and myself as the four, so we asked that they
19 serve a similar number.

20 The agreement in the December 12th hearing, I
21 explained the agreement in a quote that I included in
22 the pleading today that Mr. Marshall had previously
23 agreed to serve the discovery directly on our experts,
24 and I've brought this topic up three or four times that
25 for the purposes of expediting this distribution of

00501

1 this discovery that the service of it directly on our
2 experts would be very, very helpful to us and would cut
3 down the time. Two aspects of this --

4 MR. MARSHALL: Mr. Brena did not quote from
5 me.

6 MR. BRENA: First of all, the agreement was
7 never that they would only do anything by e-mail but
8 that they would e-mail by fax and then follow it up by
9 Federal Express. We've done everything we can to
10 expedite this process. Now what we are sitting here on
11 is a stack of 500 or more pages of discovery that's
12 sitting up here that didn't get up here until well
13 after the order to compel. They sent us an e-mail
14 telling us what they were going to do. We sent them an
15 e-mail back saying, "Please distribute it to our
16 experts." So they didn't do it, and notwithstanding
17 having told us a couple of times they would.

18 JUDGE WALLIS: Mr. Brena, you need not repeat
19 information you've previously provided. We have a lot
20 of ground to cover this morning. Our only chance of
21 doing that is if we are terse. Mr. Marshall, you wish
22 to respond?

23 MR. MARSHALL: Your Honor, I asked Mr. Brena
24 to quote my agreement. He has not done that. He has
25 quoted something where he's trying to interpret the

00502

1 agreement --

2 JUDGE WALLIS: Do you have a citation,
3 Mr. Marshall, to anyplace in the record or otherwise in
4 writing that's in the file that supports your position?

5 MR. MARSHALL: We don't have a record on any
6 agreement whatsoever.

7 JUDGE WALLIS: Were you present at the
8 December 12th hearing?

9 MR. MARSHALL: Yes.

10 JUDGE WALLIS: Did you contradict Mr. Brena's
11 statement that's quoted here?

12 MR. MARSHALL: I think it's a question of
13 understanding what it is we've agreed to do. I think
14 that our --

15 JUDGE WALLIS: Mr. Marshall, do you
16 understand we are under considerable time pressure
17 here?

18 MR. MARSHALL: Yes.

19 JUDGE WALLIS: Is it very difficult for your
20 staff to when you copy documents push the 4 button
21 instead of the 1 button?

22 MR. MARSHALL: Yes, Your Honor, it is.

23 JUDGE WALLIS: Why is that difficult?

24 MR. MARSHALL: Because of trying to get all
25 the material out in time to be able to send it to them.

00503

1 We are making multiple copies anyway, Your Honor. We
2 had to make copies not only for Mr. Brena but for
3 staff, for Mr. Finklea, for all of these people, and to
4 try to get this all out -- Christy Omohundro is here,
5 and I think we can represent to the Court and all the
6 parties that we have been working well into the night
7 to try to get all these materials out to meet all the
8 Federal Express time frames we have.

9 We sent to Mr. Brena on the 18th an e-mail
10 stating exactly what we would be able to do with these
11 huge number of documents that we had to distribute by
12 Federal Express, and we said what we were going to do
13 with that. We didn't hear from him until we got this
14 fax yesterday from him shortly after the prehearing
15 conference on December 20th complaining about it. He
16 didn't tell us anything about this. We said, "Here's
17 what we are going to do with it." He quotes this
18 e-mail that we sent to him on the 18th, as early as we
19 could, not explaining anything at all about why this
20 would be difficult for him in any way.

21 MR. BRENA: Your Honor, let me put this into
22 the context of where we are today. Where we are today
23 is we have 500 pages that were not copied and
24 distributed to our experts that are sitting up here in
25 my office --

00504

1 JUDGE WALLIS: Have you taken steps to copy
2 those documents?

3 MR. BRENA: We have immediately, Your Honor.
4 The earliest we can get them out for delivery would be
5 today before ten o'clock. This is Christmas weekend,
6 and overnight delivery -- we've contacted DHL. The
7 earliest that they are saying they can get the
8 documents there would be on Christmas Eve.
9 Realistically, we've sent down materials in the last
10 week for same-day delivery, and it's taken five days to
11 get there. For next-day delivery, it's taken five days
12 to get there. It's not realistic to assume that the
13 discovery will even get to our experts until the day
14 after Christmas, and that's where we are at.

15 JUDGE WALLIS: Very well. Mr. Brena, make
16 those copies, get them out to your experts.
17 Mr. Marshall, any future documents, make the additional
18 copies and send them at the same time as you send the
19 responsive documents to the other parties. Mr. Brena,
20 will your clients pay the cost of doing so?

21 MR. BRENA: Of course, Your Honor.

22 JUDGE WALLIS: Let's move on.

23 MR. FINKLEA: Your Honor, I think the next
24 item of business is the schedule itself for the interim
25 hearing.

00505

1 MR. BRENA: Mr. Finklea, that's just one
2 point with regard to our motion. There are several
3 others.

4 MR. FINKLEA: Do you want to complete your
5 motion first, Mr. Brena?

6 MR. BRENA: I'll do it however Judge Wallis
7 would like to proceed.

8 JUDGE WALLIS: Mr. Brena, please proceed.

9 MR. BRENA: I just want clarification, Your
10 Honor, that the method of service will be by e-mail,
11 fax, and overnight express, and the reason for that
12 request is we've gotten some financial documents. They
13 appear to be responsive. They are in such small print,
14 and they've shown up on our fax machine but not on our
15 e-mail. So I would just like to reaffirm your ruling
16 that the service of discovery in this expedited
17 situation will be to the degree possible by e-mail and
18 by fax and then by follow-up document.

19 JUDGE WALLIS: Is my recollection correct
20 that that was the standard established at the outset?

21 MR. BRENA: That's my recollection, Your
22 Honor.

23 MR. MARSHALL: Your Honor, we have provided
24 all of those materials by e-mail and fax that Mr. Brena
25 is just now talking about. I would like a

00506

1 clarification. To fax 500 pages of material is not a
2 practical situation to multiple parties.

3 JUDGE WALLIS: Mr. Brena?

4 MR. BRENA: I agree with Mr. Marshall with
5 regard to the distribution of 500 pages --

6 JUDGE WALLIS: I don't believe that's in
7 dispute.

8 MR. BRENA: -- it wasn't that it was in an
9 overnight box; although, we would have preferred -- if
10 we are going to keep the schedule, we would have
11 preferred it be faxed under these circumstances no
12 matter how realistic it is, but my concern with regard
13 to the 500 pages is it got sent to Alaska and then to
14 be forwarded on and put into an unnecessary delay in
15 the system --

16 JUDGE WALLIS: We have dealt with that to the
17 extent we can. Let's focus on things we have yet to
18 deal with. I don't think there is any dispute about
19 the faxing of voluminous documents. I don't think
20 there is any dispute about documents that are not
21 available in electronic format. With the caveat that
22 the parties have been requested to explore scanning and
23 PDF or other format that would allow the transmission
24 by electronic means other than fax, is everyone aware
25 of that and remaining willing to comply?

00507

1 MR. MARSHALL: Yes, Your Honor. I guess the
2 only question is what constitutes voluminous? If we
3 could have some sort of a -- so we don't get into
4 another dispute. I would hate to see another dispute
5 arise over what constitutes voluminous.

6 JUDGE WALLIS: What my request is so long as
7 you both have telephones that you communicate by
8 telephone, and if there is a question, call the other
9 party and ask and work something out. That will do
10 wonders to allowing the Commission to hear this interim
11 request on an expedited schedule.

12 MR. MARSHALL: That's what we thought we did
13 three days ago when we sent Mr. Brena an e-mail about
14 the 500 pages.

15 JUDGE WALLIS: My suggestion is from this
16 point forward if that kind of question arises, use the
17 telephone. Will the parties be able to do that?

18 MR. BRENA: Certainly, Your Honor, and
19 hopefully, we are reaching the end of this expedited
20 discovery. I just wanted to be clear that we wanted
21 that 500 pages served by fax just because of the
22 expedited nature of the current schedule, so in
23 general, I agree with him with regard to voluminous
24 faxes, but in that particular case, I wanted it faxed.
25 I'm ready to move on.

00508

1 The second set of discovery requests, at the
2 time we filed --

3 MR. MARSHALL: May I make one suggestion on
4 these 500 pages? If Mr. Brena wants to give them to
5 his experts and believes we can fax 500 pages of
6 documents, why didn't he do that when he got it at 10
7 o'clock yesterday to his own experts?

8 JUDGE WALLIS: I will treat that as a
9 rhetorical question. Let's move on.

10 MR. BRENA: The second set of discovery
11 requests --

12 JUDGE WALLIS: I will interject that
13 Mr. Marshall does have a good point in dealing with
14 those documents from this point on, and if fax is a
15 feasible means to transmit them, then that will get
16 them there faster than the carrier. Mr. Brena?

17 MR. BRENA: The second set of discovery
18 requests, at the time we filed this, they have not
19 complied with Your Honor's order. They have
20 subsequently served their answers to the second set of
21 discovery requests. We've reviewed them. We believe
22 they are adequately responsive. There is no issue with
23 regard to No. 2.

24 With regard to No. 3, throughput, throughput
25 is developing a rather long and storied history in

00509

1 terms of trying to get it. The information we got, for
2 example, to use one example, their July throughput, it
3 appears that they indicated throughput for only the
4 affiliated shippers and the intervenors. It appears
5 that their throughput numbers that were served on us do
6 not include volume for nonaffiliated nonintervenor
7 shippers.

8 I've gone back and reviewed the transcript a
9 couple of different times. The result of what they've
10 given us is we don't have their total throughput. For
11 example, in July of 2001, their total throughput was
12 9.6 million barrels. Their most recent response
13 indicates 7.7 million barrels, so we believe what
14 they've done is not give complete throughput
15 information.

16 It was my understanding of what was coming
17 was that there would be throughput that would be
18 specifically indicated by affiliate and intervenor, but
19 that the other category would not be identified by
20 party, but the throughput information would be
21 provided. It doesn't do us any good to have throughput
22 for four shippers on the line and not the rest, so I
23 would like for them -- and their response was late.

24 I would again like for them to give us a
25 complete history of the throughput that includes the

00510

1 affiliated shippers, the shipper intervenors, and then
2 if it's a plug category or however it's designated, the
3 volumes for the nonaffiliated nonintervenor shippers so
4 we have a total throughput number.

5 JUDGE WALLIS: Mr. Marshall, is that
6 something that you could provide?

7 MR. MARSHALL: Yes. We have provided all
8 this. Mr. Brena is mistaken. We have given Mr. Brena
9 the intervenor throughput, the affiliated; that is, the
10 way he's described affiliated, meaning BP and Equilon
11 throughput, and we've given the total throughput. He's
12 trying to create some kind of code so he can go back
13 and construct what other shippers, which is also
14 confidential information, might have provided by
15 specific shippers. We've given the totals --

16 MR. BRENA: That's not true that's what I'm
17 trying to do --

18 MR. MARSHALL: I haven't finished. I believe
19 that Mr. Brena is mistaken. I think that he needs to
20 analyze this better in terms of the one we gave him on
21 the 14th and the one we gave him most recently with the
22 specific information by the shippers that were required
23 to be provided by specific information; that is,
24 Equilon, Arco, and the two intervenors, Tosco and
25 Tesoro. Those have been given in exact format to the

00511

1 barrel by identified shipper. The rest of the shippers
2 need to be anonymous, and the total throughput was
3 given earlier.

4 MR. BRENA: Your Honor, if I may, what he
5 appears to be doing is combining two different sets of
6 responses, and they just don't add up. The first set
7 of responses that we just had total volumes in the
8 system and didn't identify it at all, but it had total
9 volumes. The first set also had destinations and the
10 like.

11 It would be a Herculean task to merge those
12 two documents into a total picture. All they have to
13 do is push a button on their computer to give us the
14 information we are asking for in one document -- that
15 would be origin and destination point and volumes --
16 and then it would have affiliated shippers,
17 nonaffiliated intervenor shippers and then the other
18 category all in one document.

19 MR. MARSHALL: He has all the information,
20 Your Honor. He's just saying he wants it in a
21 different format. We've provided the information
22 requested.

23 MR. BRENA: I want it in a format that you
24 can reconcile. The earlier report and the later
25 report, they don't add up. Two plus two doesn't equal

00512

1 four in this situation. They have one type of
2 information before on total. They've given a different
3 type of information in the second report. All we've
4 asked for is one report, not bits and pieces, that
5 lists it by the categories Your Honor ordered, total
6 throughput by origin, destination, and rate. They
7 haven't done that.

8 JUDGE WALLIS: Mr. Marshall, you did agree to
9 provide a redacted version of that information. I
10 believe it does need to be a complete, although
11 redacted, in terms of the identity of shippers'
12 document, and we'll ask you to do that.

13 MR. MARSHALL: What I would ask then is for
14 all the parties to send us back the first report that
15 we sent out so that we can take all that information
16 back so we don't have any issue about identifying
17 shippers that are not wishing to be identified, and I
18 think we need to talk off line so I can understand what
19 Mr. Brena is saying, because I believe we have all the
20 information, but we will try to supply information in a
21 format that Mr. Brena had requested to make it easier
22 for him. We believe he has the information, but I
23 don't know if I completely understand what he's trying
24 to say here.

25 JUDGE WALLIS: I'm not sure I understand at

00513

1 this juncture exactly what he wants, except I do
2 understand that he wants a single document showing the
3 affiliated shipments, redacted information regarding
4 other shipments, and the total information all in a
5 single array. Is that correct, Mr. Brena?

6 MR. BRENA: Yes, and let me be specific.
7 Point of origin, point of destination, rate, and then
8 three shipper categories - affiliated shippers,
9 nonaffiliated intervenors, and others.

10 MR. MARSHALL: I would ask Mr. Brena to send
11 me that request in an e-mail form so we are sure not to
12 miscommunicate that --

13 MR. BRENA: I don't know how I could be any
14 clearer than I just was.

15 JUDGE WALLIS: Mr. Brena, please comply with
16 that and copy to other parties.

17 MR. BRENA: Okay. No. 4, monthly financial
18 statements, and we have an awful lot of paper and an
19 awful lot of e-mails going back and forth here, but I
20 just want to be clear, and I don't want to take up our
21 time here unnecessarily, but to the degree that there
22 has been a production of a financial record, that's
23 like the net income of their income calculation that's
24 been served on us in a form other than electronically,
25 if it's available electronically, because it's been

00514

1 very difficult to read some of these copies they've
2 produced. They are very, very small and very hard to
3 read, and it's just tremendously disconcerting, but I
4 will have my staff follow up with the documents and
5 e-mail to all the parties. If we don't have an e-mail
6 copy of it, what it is we would like an e-mail copy of,
7 if it's available, and that would resolve No. 4 if
8 that's acceptable to all the parties.

9 JUDGE WALLIS: Mr. Marshall, will that work
10 for you?

11 MR. MARSHALL: Ms. Omohundro has told me just
12 now, because she's sitting here, that all of that has
13 been provided electronically already. Mr. Brena is
14 incorrect. He's raising an issue that's moot.

15 JUDGE WALLIS: Mr. Marshall, off line, will
16 you and Ms. Omohundro talk to Mr. Brena and identify
17 exactly where that information has been provided?

18 MR. MARSHALL: Yes. I think Mr. Brena is
19 just speculating. He doesn't know what he has because
20 I don't think he's reviewed all of that yet --

21 JUDGE WALLIS: We understand, but there is a
22 large volume of material that has been concentrated in
23 a short period of time and recognize the challenges
24 that imposes on all of us to deal with.

25 MR. BRENA: No. 5, we have asked for

00515

1 operating capital expenses related to the Whatcom Creek
2 accident. With regard to what's been provided, their
3 response provides information since July 1 since BP was
4 the operator. It provides no information regarding the
5 accounting expenses. I guess we are right back into
6 the former operator situation.

7 MR. MARSHALL: Mr. Brena is incorrect again.
8 We've provided the Equilon information to him, and
9 we've gone back and asked Equilon to verify how it sees
10 the Whatcom Creek expenses. Mr. Brena has that
11 information. He just hasn't reviewed it.

12 JUDGE WALLIS: Very well. Same instructions
13 regarding off-line communication.

14 MR. BRENA: No. 6, this goes to the 500
15 pages. We are still going through those documents. I
16 think I've said everything I need to say with regard to
17 this big stack of documents that we finally got through
18 in response to my November 26th discovery, and I think
19 that applies to -- I'm done with No. 6. No. 7, causes
20 for deteriorating financial positions --

21 JUDGE WALLIS: Mr. Marshall, does your
22 response to that constitute the company's response?

23 MR. MARSHALL: Yeah. I think the testimony,
24 the exhibit, the responses to the data requests, all of
25 the material that has been produced is responsive to

00516

1 the financial situation.

2 MR. BRENA: We will accept that and move
3 forward. 8, minutes of the board meeting and
4 attachments --

5 MR. MARSHALL: I do want to say we have
6 referred the parties to some of the data that we
7 produced in the general filing, including BCB-21.

8 JUDGE WALLIS: We understand that.

9 MR. BRENA: No. 8, minutes of the board
10 meeting, including attachments, this is just a
11 situation where I don't know if they've responded
12 because I haven't had an opportunity to go through this
13 last-minute huge stack of information we got yesterday.
14 If we go through it and do not feel it's responsive, I
15 will renew the objection.

16 JUDGE WALLIS: Earlier, I asked Mr. Marshall
17 to use the telephone to call you, and I'm going to ask
18 you to use the telephone to call Mr. Marshall in
19 situations where you are wondering whether you have the
20 information and deal with that off line to the extent
21 you can, Mr. Marshall. Will you be willing to, in
22 conjunction with Ms. Omohundro and other staff, to
23 pinpoint the documents if Mr. Brena makes that kind of
24 call?

25 MR. MARSHALL: Absolutely. We have yet to

00517

1 receive a call from Mr. Brena on any of this. That
2 would be the preferred way we would like to handle any
3 kind of questions about discovery. That way, it
4 wouldn't take up Your Honor's time or the time of the
5 other parties.

6 MR. BRENA: We would be happy to do that as
7 well. In our brief review of the documents -- for
8 example, the finance committee documents don't appear
9 to be there that I've asked for three or four times,
10 but I will be happy to pick up the phone and follow it
11 up with an e-mail.

12 JUDGE WALLIS: Thank you very much.

13 MR. MARSHALL: There are some comments made
14 by staff on finance committee documents that we just
15 received here yesterday, and we are going through to
16 double check those references to find out if there is
17 some other materials that are not in the 500 pages or
18 so.

19 JUDGE WALLIS: Thank ou.

20 MR. BRENA: I'm sorry, Your Honor.
21 Mr. Marshall just cut out. Did he indicate he got
22 additional material yesterday from the finance
23 committee?

24 MR. MARSHALL: No. We got an additional data
25 request from staff yesterday pinpointing some finance

00518

1 committee questions and data, and we are going through
2 that and will respond to that. That was my statement.

3 JUDGE WALLIS: Very well.

4 MR. BRENA: Capital improvement done to
5 comply with safety standards, I think where we are at
6 with this is they have referred us to the BCB-21 as a
7 response. What we are trying to get to and what I've
8 explained as clear as I could is they've indicated they
9 need to make the capital improvements in the 2002
10 budget as a result of those safety improvements. So
11 I've asked them to identify which of the improvements
12 in their 2002 budget are as a result of the corrective
13 action order and which are the result of some other
14 safety standard and to identify that standard, so
15 that's all I've asked for.

16 All that I've ever gotten is just a list that
17 describes what it is they are doing but doesn't mesh
18 that -- it doesn't identify whether if they need to
19 change containment dikes in particular. It doesn't say
20 whether that's in their 2002 budget as a result of the
21 corrective action order, as a result of some other
22 industry safety standards that been changed, or a
23 result of neither. That's important for us to have in
24 this case because their emphasis on the 2002 budget
25 being for safety purposes, so we are just asking them

00519

1 to identify --

2 JUDGE WALLIS: Mr. Brena, we do, because of
3 the past context in your motion, have an idea of some
4 of the underlying information. You need not repeat
5 that. We are running out of time, and I'm asking
6 Mr. Marshall for his response.

7 MR. MARSHALL: Mr. Brena is again incorrect.
8 On the containment issue in the BCB-21 referred to the
9 Department of Ecology order in compliance on what the
10 containment provisions are. You will find on BCB-21 an
11 identification to defend that anybody can do what these
12 are. Sometimes these are in response to a specific
13 order. Sometimes they are not.

14 We also provided a context of that in a
15 further more full answer about the different orders
16 from different agencies that are out there, the
17 different safety standards that have been implemented
18 both broadly by OPS and by the state rules. We've done
19 all we can with this BCB-21, which is, of course, the
20 list of the 2002 capital expenditures. I think if
21 Mr. Brena has a specific question about a specific item
22 that he can call me and ask me about that, but I think
23 using just the containment example, we certainly have
24 provided the comment as to why we are doing that.

25 MR. BRENA: With regard to the specific

00520

1 example that I used containment, in fact, he is correct
2 that BCB-21 does indicate it's pursuant to the
3 Department of Ecology order. That's the only
4 indication on the entire BCB-21. There isn't any
5 indication on that document that indicates what's done
6 pursuant to the corrective action order. There isn't
7 any indication of any other safety standards for which
8 any of those capital improvements are done.

9 I'm either asking one of two things. Either
10 identify why a particular capital improvement is being
11 done and link it to the corrective action order, safety
12 standard, or nothing, or we are entitled to assume if
13 it's not described on BCB-21 that it's not done
14 pursuant to any particular safety standard or order.

15 If he wants to live and die by the
16 descriptions that he has there to the degree that he
17 has described on that list, those actions undertaken
18 pursuant to the corrective action and identified on
19 that list, those safety standards, I'm willing to
20 accept that and move on, but when I get to hearing, I
21 see the only thing there is the containment, that's the
22 only safety standard they've identified pursuant to an
23 order, I don't want to be contradicted at hearing.

24 JUDGE WALLIS: Mr. Marshall?

25 MR. MARSHALL: I'll go back through and

00521

1 recheck on that, but I think Mr. Brena has maybe jumped
2 the gun on this. I'll go and make another check on
3 this and make sure we have someplace a document that
4 indicates -- again, I think the containment example is
5 a perfect example, and we had shown that this was done
6 pursuant to the specific Department of Ecology order.

7 JUDGE WALLIS: Please either provide the
8 information that's requested or point Mr. Brena to a
9 place in your responses that does provide that
10 information.

11 MR. BRENA: If I could ask that that be done
12 as soon as possible. Time grows short, and if I could
13 also ask that I be allowed to rely on hearing on
14 whatever it is he provides that that's the end of this,
15 because I don't want to hear they comply and then they
16 are going to change it around and not be able to rely
17 on even what they are going to change it around to.

18 JUDGE WALLIS: Mr. Marshall, will that work
19 for you?

20 MR. MARSHALL: Yes, Your Honor.

21 JUDGE WALLIS: Are we ready to move to
22 scheduling?

23 MR. BRENA: We are, Your Honor.

24 JUDGE WALLIS: Mr. Brena, what is your
25 projected filing date for your client's direct

00522

1 testimony?

2 MR. BRENA: I believe Mr. Finklea -- we are
3 sharing experts, and he was going to advance the
4 initial argument and I was going to supplement it.

5 MR. FINKLEA: Your Honor, the intervenors
6 would request the 10th of January as the date to file
7 our testimony in the interim case and that the hearing
8 commence on January 22nd. The 10th of January will
9 give us 10 working days from today to prepare our
10 testimony on the interim rate increase, and it's become
11 clear from the conversation this morning our experts
12 still don't have all the material. With the holidays,
13 we are -- even with the 10th of January, we will only
14 have 10 working days to prepare our testimony.

15 JUDGE WALLIS: Mr. Marshall?

16 MR. MARSHALL: I think it's clear that all
17 the parties have had the vast majority of what they
18 need a long time ago. We have been talking about a few
19 additional materials. I believe that intervenors
20 already had their testimony prepared. I think they had
21 their testimony prepared three weeks ago, and all they
22 are doing is just adding to that testimony. I think if
23 you could check their hard drive, their testimony would
24 already be largely completed.

25 JUDGE WALLIS: Mr. Marshall, I really would

00523

1 like us to avoid speculation here and like us to focus
2 on matters that are more relevant. If the filing is
3 January 10th, that puts the hearing into a time frame
4 that I believe as of the present the Commission does
5 not have room in the schedule.

6 MR. MARSHALL: My comments were that I
7 believe the parties are ready to go. I think filing by
8 intervenors on the 28th is doable without any harm.
9 Considering the nature and scope of an interim case,
10 they have had far more than I think anybody, certainly
11 anybody at Olympic anticipated would be required for an
12 interim case.

13 JUDGE WALLIS: Mr. Marshall, how long does
14 the company want to prepare and file rebuttal?

15 MR. MARSHALL: The schedule that Your Honor
16 has set is that they file on the 28th and we have to
17 file on the 3rd of January. That doesn't give us any
18 time to do any discovery on their case. We are willing
19 to do that because we think that we can do that, and we
20 would like to have that done and present it to the
21 Commission.

22 That's our problem. If we don't have a
23 chance to do any discovery on these folks without their
24 file case, we will be faced with a hearing where we
25 haven't any opportunity to explore or probe what their

00524

1 witnesses are saying whatsoever.

2 JUDGE WALLIS: The staff and intervenor
3 testimony is to be filed on January 3rd. The Company
4 rebuttal is to be filed on January 9th. We will have a
5 prehearing conference on the afternoon of January 9th
6 for administrative matters. Parties' prehearing
7 memoranda are due in the Commission's offices by noon
8 on January 11th.

9 MR. BRENA: Your Honor, I had asked to be
10 heard on this. Ed Finklea would be advancing the --

11 JUDGE WALLIS: I'm sorry, we have no time.
12 We have another conference beginning with multiple
13 parties in about five minutes. I apologize for
14 limiting the argument. Mr. Finklea has presented as
15 lead counsel a strong and cogent statement. In light
16 of all of the information available, we believe that
17 this is an aggressive but doable schedule. We are
18 constrained by the Commission's schedule, by Commission
19 availability, by the staff availability. This is only
20 an interim. It is not a full rate case. Parties will
21 have the opportunity to engage in cross-examination of
22 the presentations, and unless there is --

23 MR. BRENA: Your Honor, I was just going to
24 point out just a simple thing. If January 3rd is the
25 day it's due, then we would have to complete our

00525

1 testimony probably on the 31st. We aren't going to get
2 to discovery -- we don't even know if it's fully
3 responsive -- until probably the day after Christmas on
4 the 26th.

5 New Years Day is the first. We are here and
6 we have to file it in Washington, and that would have
7 to be to the printer on the day after New Years, and it
8 would have to be completed on the 31st. That gives us
9 to draft our testimony -- and we do not have our
10 testimony drafted. That gives us effectively one
11 working day to review all of the discovery and two
12 working days to draft our testimony.

13 JUDGE WALLIS: Does staff wish to be heard?

14 MR. TROTTER: Just in light of Mr. Brena's
15 comments, I would just say perhaps staff intervenor
16 distribution on the 4th, rebuttal on the 10th,
17 prehearing on the 10th or 11th. I don't think you set
18 a hearing date, and maybe that would help as well, for
19 the evidentiary hearing.

20 JUDGE WALLIS: We have made adjustments in
21 schedule and are able to set the hearing for the 14th
22 and 15th of January. It's possible the 16th may be
23 available as well.

24 MR. TROTTER: So my modest suggestion might
25 fit with that.

00526

1 MR. BRENA: Make I ask for the 7th so we have
2 that weekend at least, and then their intervenor case
3 would be due later that week, and that would not
4 interfere with the proposed hearing dates.

5 MR. MARSHALL: That cuts off our time to do
6 any discovery. If Mr. Brena faxes his experts today
7 the materials, they have it today; they have it this
8 weekend. His statement they won't have it until the
9 26th becomes moot. He could have faxed it to them
10 yesterday. I don't think any of the material they have
11 is going to make a bit of difference to these experts.
12 They are not going to rely on any of it --

13 MR. BRENA: -- Your Honor, 500 pages today
14 for discovery we served on the November 26th. I don't
15 want to hear about a faster way to get stuff to our
16 experts.

17 JUDGE WALLIS: Mr. Brena, we will adjust the
18 filing date to January 4th for your direct and the 10th
19 at noon for the company rebuttal, briefs by noon on the
20 11th, prehearing memoranda. The hearing will begin at
21 9:30 on the 14th, and we will make time for oral
22 argument following the hearing on the 16th, and it is
23 possible that if necessary, part of the day on the 16th
24 may be devoted to concluding the hearing.

25 MR. TROTTER: Your Honor, did you want to set

00527

1 a prehearing conference that week of the 7th?

2 JUDGE WALLIS: Yes. Prehearing conference at
3 1:30 on the 10th, and we will provide written
4 notification of these dates to the parties.

5 MR. BRENA: May we be allowed to fax service
6 of our case on the 4th with hard copy to follow?

7 JUDGE WALLIS: Mr. Brena, that will depend
8 upon the volume of your case.

9 MR. MARSHALL: Your Honor, perhaps off line
10 Mr. Brena and I could work it out so that we could use
11 my office.

12 JUDGE WALLIS: Mr. Brena, would that resolve
13 your issue?

14 MR. BRENA: I hope so.

15 JUDGE WALLIS: If it does not, please get
16 back us with us during that week earlier that week, and
17 we will do our best to make the physical accommodations
18 that are required. Is there anything further this
19 morning? It appears there is not. Thank you all very
20 much.

21

22 (Prehearing concluded at 9:30 a.m.)

23

24

25

