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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4 Complainant,)

5 vs.)

6 OLYMPIC PIPE LINE COMPANY,) DOCKET NO. TO-011472
Volume VII

7 INC.,) Pages 528 - 548
)

8 Respondent.)

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10 A prehearing conference in the above matter
11 was held on January 10, 2002, at 1:45 p.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge C. ROBERT
14 WALLIS.

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by DONALD T. TROTTER and LISA WATSON,
18 Assistant Attorneys General, 1400 South Evergreen Park
19 Drive Southwest, Post Office Box 40128, Olympia,
20 Washington 98504.

21 OLYMPIC PIPE LINE COMPANY, INC., by STEVEN C.
22 MARSHALL, Attorney at Law, Perkins Coie, 411 108th
23 Avenue Northeast, Suite 1800, Bellevue, Washington
24 98004 (via bridge), and PATRICK W. RYAN, Attorney at
25 Law, Perkins Coie, 1201 Third Avenue, Suite 4800,
Seattle, Washington 98101.

Kathryn T. Wilson, CCR
Court Reporter

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1 TESORO REFINING AND MARKETING COMPANY, by
2 ROBIN O. BRENA and DAVID W. WENSEL, Attorneys at Law,
3 Brena, Bell & Clarkson, 310 K Street, Suite 601,
4 Anchorage, Alaska 99501 (via bridge).

5 TOSCO CORPORATION, by CHAD M. STOKES,
6 Attorney at Law, Energy Advocates, LLP, 526 Northwest
7 18th Avenue, Portland, Oregon 97209 (via bridge).

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1 P R O C E E D I N G S

2 JUDGE WALLIS: The conference will please
3 come to order. This is a conference in the matter of
4 Commission Docket No. TO-011472, the Washington
5 Utilities and Transportation Commission versus Olympic
6 Pipe Line Company. This conference is being held on
7 Thursday, January 10th of the year 2002 at the
8 Commission offices in Olympia, Washington pursuant to
9 notice to all parties.

10 I would like to get appearances at this time.
11 If you have previously entered an appearance or had one
12 entered on your behalf, it's not necessary to do more
13 than state your name and the name of your client. If
14 you have not previously entered an appearance, I would
15 like you to state your name, the name of your client,
16 your firm name, and pertinent contact information.
17 Let's begin with the proponent of the rate increase.

18 MR. RYAN: Patrick Ryan with Perkins Coie
19 representing Olympic Pipe Line Company.

20 JUDGE WALLIS: Also on the line is
21 Mr. Marshall; is that correct?

22 MR. MARSHALL: Yes. Steve Marshall is on the
23 line too.

24 JUDGE WALLIS: For the intervenors?

25 MR. STOKES: My name is Chad Stokes. I work

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1 for the law firm Energy Advocates. My address is 526
2 Northwest 18th Avenue. That's in Portland, Oregon,
3 97209. Phone number is (503) 721-9118, and e-mail is
4 cstokes@energyadvocates.com. I represent Tosco.

5 JUDGE WALLIS: Mr. Stokes, you're appearing
6 today in lieu of Mr. Finklea; is that correct?

7 MR. STOKES: That's correct.

8 JUDGE WALLIS: Now, Mr. Brena?

9 MR. BRENA: Robin Brena and David Wensel on
10 behalf of Tesoro Refining and Marketing Company,
11 formally known as Tesoro West Coast Company. There has
12 been a name change, and we've filed a notice to that
13 effect with the Commission.

14 JUDGE WALLIS: I will acknowledge that that
15 notice has been received. Thank you very much,
16 Mr. Brena. For Commission staff?

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

19 JUDGE WALLIS: Very well. We engaged in some
20 preliminary discussions before going on the record
21 regarding our process today and agreed that it would be
22 sufficient to leave the record at this time and to
23 handle the administrative matters of identifying the
24 order of witnesses and the documents to be presented
25 for each of the witnesses off the record and then

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1 return to the record for a statement of our
2 achievements. Is that going to be acceptable to the
3 parties?

4 MR. BRENA: Yes, Your Honor.

5 MR. MARSHALL: Yes, Your Honor.

6 JUDGE WALLIS: We will be off the record at
7 this time.

8 (Discussion off the record.)

9 JUDGE WALLIS: During the period we were off
10 the record, we have engaged in the organization of our
11 witnesses, and we have assigned document numbers on our
12 exhibit list for the witnesses that are scheduled to
13 appear. I would like to recite our decisions as to
14 exhibit numbers and order of witnesses for the record
15 at this time.

16 Exhibit 1-T will be Mr. Batch's initial
17 testimony, BCB-1 revised. 2-T will be Mr. Batch's
18 supplemental testimony, BCB-5-T, and 3-T for
19 identification will be Mr. Batch's rebuttal testimony,
20 which is designated BCB-22-T. Exhibits 4 and 5 will be
21 held by Exhibits BCB-2 and 3 respectively. Exhibit 6
22 is not used to recognition that proposed BCB-4 has been
23 stricken. Exhibit 7 and 8 for identification will be
24 BCB-6 and 7, and Exhibit 9 through Exhibit 17 for
25 identification will you BCB-23 through 31 inclusive

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1 respectively.

2 Then we move to documents that Mr. Brena has
3 presented for possible use on cross-examination, and
4 those begin with Exhibit 18, which is Mr. Brena's No.
5 1, and proceed through Exhibit 47. Exhibit 47 for
6 identification will be Exhibit 30 as Mr. Brena has
7 provided. Mr. Brena as also provided an exhibit list
8 with a description of these documents. He has pledged
9 to provide us an electronic version of that, and we
10 will incorporate the information in that list in our
11 official exhibit list. We will also provide copies to
12 counsel of that list. Recognizing that Mr. Batch has
13 provided rebuttal testimony and that other documents
14 might be offered on cross-examination of the rebuttal,
15 we are reserving the numbers through 80 for Mr. Batch.

16 We move on to Exhibit No. 81, which is
17 Mr. Fox's testimony HBF-1-T. Exhibit 82 for
18 identification will be HBF-2, and Exhibit 83 will be
19 HBF-3. We are reserving the numbers 84 through 100 for
20 potential future use and move on to Exhibit 101-E,
21 which is Mr. Schink's GRS-3-T, and we are collectively
22 marking as Exhibit 101-T Mr. Schink's testimony and his
23 attached qualifications.

24 Then we move to the intervenors' exhibits.
25 We begin with Exhibit 111-T, which will be Mr. Hanley's

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1 FJH-1-T and the attached resume. 112-C will be
2 Mr. Hanley's attachment FJH-2-C. Mr. Brown's testimony
3 JFB-1-TC, including his qualification statement, will
4 be Exhibit 113 TC. Mr. Grasso's testimony, GG-1-TC
5 will be marked as Exhibit 114-TC for identification,
6 and his accompanying exhibits, GG-2-C through GGH-8-C
7 are marked as Exhibits 115-C through 121-C
8 respectively.

9 Finally, the Commission staff's witnesses are
10 presenting their testimony and exhibits to the record
11 as follows: Mr. Elgin's testimony KLE-1-T will be
12 Exhibit 131-T for identification. His KLE-2, -3, and
13 -4 will be Exhibits 132, -3, and -4 for identification,
14 and Mr. Colbo's exhibits RGC-1-T, -2, and -3 will be
15 exhibits 135-T, 136 and 137 for identification.

16 Do parties have any corrections or additions
17 to that list? I would like now to run down the
18 estimates of time on cross-examination. For the
19 company witnesses, Mr. Batch, Mr. Brena estimates six
20 to seven hours on cross; Mr. Stokes, one hour, and
21 Mr. Trotter, 45 minutes to one hour. For Mr. Fox,
22 Mr. Brena estimates two to three hours; Stokes one
23 hour, and Mr. Trotter one-half hour. For Mr. Schink,
24 Mr. Brena estimates two to three hours; Mr. Stokes one
25 hour, and Mr. Trotter one-half hour.

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1 We do recognize that counsel have taken pains
2 to make there's a realistic yet outside estimate and
3 have asked counsel to review their examination and to
4 recognize the limited time availability for the hearing
5 and do their best to operate efficiently so they can
6 conduct a complete examination and yet assist the
7 Commission in completing the proceeding in the time
8 frame that is available for it.

9 For the intervenor witnesses, Mr. Hanley,
10 Mr. Marshall estimates 20 to 30 minutes and Mr. Trotter
11 10 minutes. For Mr. Brown, Mr. Marshall estimates 20
12 to 30 minutes and Mr. Trotter 10 minutes, and for
13 Mr. Grasso, the parties make the same estimates, 20 to
14 30 minutes for Mr. Marshall, and 10 minutes for
15 Mr. Trotter. Finally, as to the Commission staff
16 witnesses, for Mr. Elgin, Mr. Marshall estimates 15 to
17 20 minutes; Mr. Finklea, approximately one-half hour,
18 and Mr. Brena one-half hour. For Mr. Colbo, the
19 estimates are the same; by Mr. Marshall, 15 to 20
20 minutes; Mr. Finklea one-half hour, approximately, and
21 Mr. Brena one-half hour.

22 Does this recitation reflect the information
23 that the parties gave me earlier? Very well. The
24 question came up as to the exhibits on cross that might
25 arise as a result of the filing of rebuttal testimony

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1 today. I would ask that the parties provide the
2 adequate number of copies to the hearing room no later
3 than nine o'clock on the morning of the hearing and
4 that they be organized according to the witness, and we
5 will convene a prehearing conference if there is any
6 administrative matter to consider at that time so that
7 we will be able to have those marked and distributed to
8 each of the commissioners and each of counsel, each of
9 counsels' witnesses who needs a copy and have that all
10 taken care of so that at 9:30 we can begin the hearing
11 recognizing the need for efficient use of our time.

12 Will that work for the parties? Very well.
13 Is there any other administrative issue that we need to
14 address today? Mr. Brena, you asked for information
15 before about how our proceedings are generally
16 conducted. Have we given you enough information for
17 your purposes?

18 MR. BRENA: Yes, you have, Your Honor.

19 JUDGE WALLIS: Is there anything else that
20 parties would like to ask about process?

21 MR. MARSHALL: We have become aware of a
22 letter from the Department of Ecology that may pertain
23 indirectly to this matter that was received by the
24 WUTC. I'm asking for a copy of and that and we will
25 file that. I don't think that's anything that we

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1 wanted to bring to the attention of the parties except
2 as a matter of notice, and it's something that we can
3 talk about on Monday morning as to whether that is
4 appropriate to be part of the public record for people
5 to respond to if they wish or not. We are not making
6 that an exhibit and have no intent to rely on it in any
7 way, shape, or form, but I do understand there is
8 something out there from the Department of Ecology.

9 JUDGE WALLIS: I will make an inquiry as to
10 whether that such a letter has been received --

11 MR. MARSHALL: It was received by the
12 Commission or may have been received by the Commission
13 prior to Christmas. We just learned about it, and I
14 think we are in the process of obtaining a copy of that
15 today.

16 MR. BRENA: Can I ask what the substance of
17 the letter is?

18 MR. MARSHALL: Basically, these guys are
19 doing a fine job responding to the Department of
20 Ecology requests, but I don't know. I have not
21 reviewed it. I did want to bring it to everyone's
22 attention now because I didn't want it to come up in
23 the hearing. If anybody thought that it had anything
24 that needed to be responded to, I thought it would be
25 best for me to at least let everybody know that we are

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1 getting more aware of what this might be.

2 MR. BRENA: Are you intending to offer that
3 letter into evidence?

4 MR. MARSHALL: No. That's just what I said.
5 We aren't going to rely on this in any way, shape, or
6 form, but it's just out there, and probably out of an
7 abundance of caution on making sure that anything
8 that's out there that might have to do with the case
9 directly or indirectly is available for anybody to
10 respond to if they think it necessary.

11 JUDGE WALLIS: Mr. Marshall, are you
12 concerned about a potential ex parte situation with
13 that document?

14 MR. MARSHALL: I think so, but I don't know
15 enough to know that that's a problem. I just wanted to
16 alert people that's there, and of course, the way to
17 handle ex parte issues would be to make it available to
18 everybody.

19 JUDGE WALLIS: I would like to explain to
20 everyone that we have established a screening process
21 by which letters that may be ex parte in nature are
22 withheld from the commissioners and are dealt with
23 apart from the record. If the commissioners receive
24 such a document and believe that it may have ex parte
25 aspects, then they will or I will offer it to the

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1 record.

2 I do not recall seeing such a document, but I
3 will initiate a search for it, and we will provide it
4 to the parties. If we discover that tomorrow, we will
5 provide it by fax so that it would be available to you.
6 Otherwise, if we have it on Monday morning, we will
7 have that available by copy, and we will make sure that
8 all parties receive it.

9 MR. MARSHALL: Very good. I've probably
10 taken up too much of people's time with it. It may not
11 be an issue at all.

12 JUDGE WALLIS: We appreciate you doing so.

13 MR. BRENA: I have one other question about
14 process. We haven't had an opportunity to review their
15 rebuttal case, but it looks quite extensive. I'm
16 assuming that Monday morning at nine o'clock would be
17 the appropriate time to file and argue a motion to
18 strike?

19 JUDGE WALLIS: It would be the appropriate
20 time to present such a motion. We would appreciate it
21 being in writing, and we will determine at that time
22 the time frame for argument on the motion.

23 MR. BRENA: Thank you.

24 JUDGE WALLIS: Let's move now to Mr. Brena's
25 concern regarding the designation of confidentiality of

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1 certain exhibits. Mr. Brena?

2 MR. BRENA: Certainly, Your Honor. There are
3 two issues with regard to confidentiality that I want
4 to raise today, and one goes to the confidentiality of
5 the potential cross-examination exhibits, which we
6 filed, and I'm assuming that Monday morning would also
7 be the time to take up the confidentiality designation
8 of those cross-examination exhibits so we don't take up
9 hearing time to do it.

10 With regard to our prefiled testimony and
11 exhibits, we were just moving that the Commission allow
12 them to be filed on a nonconfidential basis. I've had
13 a phone call with Mr. Marshall which I asked him to
14 review the case, see if there is any particular part of
15 it that he feels needs to remain confidential, and I
16 guess I would just wait to hear from him on that.
17 Certainly from my perspective and the perspective of
18 Tesoro, the designation of confidentiality should apply
19 only to the information that truly might compromise
20 Olympic's ability to compete fairly or impose some
21 business risks if designated. We don't believe that
22 any of the information that we are providing to the
23 Commission through our direct case and exhibits meets
24 that standard, and we would like as much of our case
25 public as possible.

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1 One of the reasons for our motion is to try
2 and add hearing efficiency. I notice that we have to
3 close hearings and the process in such a limited time
4 of handling confidential information and confidential
5 cross-examination exhibits. We want to minimize the
6 time involved in managing the issue down to matters
7 that truly need to be held confidential.

8 I guess in arguing, I would also like to
9 point out that at least it's my understanding that all
10 of this information may be available to a public
11 document request. I don't bring that up for the
12 purpose of undermining the protective order but only to
13 argue that during the production of information, for
14 example, with regard to shipper throughput information,
15 that the chairperson at one point limited the
16 availability of discovery to us and didn't allow the
17 designation of individual shippers based on the risk
18 that the information may be disseminated to the public.
19 So I would just point out that the information we are
20 getting is already kind of being screened once with
21 that screen, and I think that's an additional argument
22 why our case should be not designated as confidential.

23 JUDGE WALLIS: Does that conclude your
24 argument?

25 MR. BRENA: It does.

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1 JUDGE WALLIS: Mr. Ryan, are you prepared to
2 respond?

3 MR. MARSHALL: Actually, I would like to --
4 and Mr. Ryan can jump in too. We had a conference with
5 Mr. Batch about this yesterday at some length on the
6 confidentiality request by Mr. Brena. We think that we
7 are able to eliminate most of these items that he has
8 in mind for being confidential, and what we would like
9 to do is just continue that review. Obviously because
10 of trying to get testimony out the door, we haven't
11 been able to fully address it, but here this afternoon
12 and tomorrow, we ought to be able to finish that, and I
13 think we can probably solve most of that. It's our
14 intent to make a good-faith effort not to include
15 anything that doesn't absolutely have to be included as
16 confidential.

17 I do want to point out on the throughput
18 information that Mr. Brena mentioned, there is a new
19 FERC confidentiality order with respect to throughput.
20 I'm in the process of obtaining that order. The only
21 question I have on that is until I review that, I'm not
22 sure -- and I will make copies available to everybody
23 when we get that, and Mr. Brena may have that himself
24 because he's a participant in those hearings, but I
25 want to make sure that what we have with regard to

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1 throughput is not inconsistent with that order. I
2 don't think it's a wise idea to have two agencies with
3 inconsistent requirements for the parties if it can be
4 avoided, but I do intend to work with Mr. Brena on that
5 to minimize problems that might occur with throughput
6 data.

7 We have used as background for calculating
8 some things in our rebuttal case throughput data for
9 Tosco and Tesoro, but as I understand it, Tosco and
10 Tesoro have been agreeable to having their information
11 on throughput become public. I'm not sure what the
12 other information there is out there that could be
13 gleaned from this or that might be contradictory to
14 either the federal statute or the current FERC order on
15 confidentiality. What I'm saying is we will work to
16 figure out all that out and minimize any of the
17 documents that we believe ought to be continued with a
18 confidentiality designation for the purposes of this
19 interim hearing.

20 MR. BRENA: I'm happy to work with
21 Mr. Marshall. I would like to guess get this issue
22 resolved. With regard to Tesoro and Tosco's, I will
23 allow Tosco's counsel to speak for Tosco, but the
24 context about shipper information went to the form in
25 which Olympic would provide it to the parties in this

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1 proceeding and whether or not they could individually
2 indicate Tesoro and Tosco. That isn't the same as
3 saying that Tesoro and Tosco agree that their
4 information should be available to the public and that
5 we've waived whatever rights we may have. We have not.

6 MR. MARSHALL: I stand corrected. I assumed
7 that you had, but I'm glad that you provided that. I
8 don't think we have disclosed anything inadvertently,
9 but this is a good clarification.

10 JUDGE WALLIS: Mr. Stokes, do you want to
11 weigh in on this issue?

12 MR. STOKES: No. We would second what
13 Mr. Brena has already stated.

14 JUDGE WALLIS: Mr. Trotter, do you want to
15 weigh in?

16 MR. TROTTER: Not at this time, Your Honor.

17 JUDGE WALLIS: I would very much encourage
18 the parties to continue your discussions. I would like
19 to make three observations. One is that the exact
20 effect of the public records act is, I think,
21 uncertain, and I think at a minimum, it's not fair to
22 say that any document noted as confidential for
23 purposes of the proceeding, I would automatically and
24 irrevocably be disclosed upon request. I think that
25 some process would occur in order to find it a

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1 determination on that.

2 I do think that it is very fair to say that
3 the Commission has previously indicated that it
4 disfavors confidential designation, and it believes
5 that as much information as possible regarding the
6 Commission's activities and it's deliberations should
7 be available in a public forum. So the Commission
8 certainly encourages the parties to reach an
9 accommodation that would allow all of the documents or
10 as many as possible to be fully available for a member
11 of the public to look at and for complete and open
12 examination on cross-examination.

13 Barring that, if that is not possible, then
14 the Commission's first preference in the conduct of
15 cross-examination is that it be done in such a way that
16 even though the exhibit is confidential, the record
17 does not contain confidential information. Many times,
18 it's possible to do this by reference to the line
19 number of an exhibit, to a portion of an exhibit to ask
20 not, "Is this 473," but, "Do you see that number at
21 Page 7 of Exhibit 241-T?" The answer is yes. "Is that
22 larger or smaller than what I'm thinking of?" "It's
23 larger." Examination can often be conducted in that
24 manner to avoid the disclosure of confidential
25 information. Barring that, as Mr. Brena as noted, it

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1 is necessary to clear the hearing room and go onto a
2 separate record which we are dealing with information
3 that is confidential. Again, that means a closed
4 transcript, and it means some procedural attention, and
5 while the Commission does that when necessary, it is
6 disfavored and we ask the parties, particularly in a
7 situation in which the timing of the proceeding is
8 going to be challenging at best, that the parties do
9 their best to help us avoid the need to do that while
10 preserving the integrity of information that is truly
11 confidential preserving. Very good. Let me ask if
12 there is anything further to come before the Commission
13 at this time?

14 MR. BRENA: I would just like to notify the
15 parties that we have e-mailed our exhibit list to all
16 the parties already.

17 JUDGE WALLIS: Thank you very much,
18 Mr. Brena.

19 MR. BRENA: And I would just like to comment
20 briefly that the FERC did issue a 1513 order, which is
21 a routine order when they go into pipeline matters
22 which allows the disclosure of shipper information
23 within the context of a rate case. It allows the
24 information to be made available under the terms of a
25 protective order.

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1 MR. MARSHALL: The protective order limits
2 those people within the company who may use that
3 material to nonmarketing and noncompetitive people.

4 MR. BRENA: That's correctly stated.

5 JUDGE WALLIS: All right. Are the parties
6 confident that we will be able to go through
7 administrative matters in a half hour on Monday, or
8 should we try to convene a little bit earlier than nine
9 o'clock?

10 MR. BRENA: My suggestion would be to convene
11 earlier. I think there may be the need for a decision
12 with regard to confidentiality matters, and I would
13 like to leave open the possibility or at least leave
14 open the time and not waste the Commission's time with
15 argument regarding the motion to strike.

16 JUDGE WALLIS: Very well. Can the parties be
17 present at 8:30?

18 MR. RYAN: Your Honor, that does put a slight
19 crunch in the copying necessary. I believe you
20 requested all adequate copies be passed out at least a
21 half hour before. We will certainly try our best to
22 accommodate that.

23 MR. MARSHALL: I thought it was a half hour
24 before the hearing started at 9:30 so the copies would
25 be provided at nine, and now they would be provided at

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1 8:30; is that correct?

2 JUDGE WALLIS: Lets be off the record,

3 please.

4 (Discussion off the record.)

5 JUDGE WALLIS: The hearing is adjourned.

6 Thank you, everyone.

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8 (Prehearing conference concluded at 3:15 p.m.)

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