

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY

Respondent.

DOCKET NO. TO-011472

OLYMPIC PIPE LINE COMPANY'S
MOTION FOR ORDER TO LIMIT
DISCOVERY

I. OLYMPIC'S MOTION TO LIMIT DISCOVERY

1. Olympic Pipe Line Company ("Olympic"), by and through its attorneys, Perkins Coie LLP, hereby moves the Washington Utilities and Transportation Commission ("WUTC" or "Commission") to reasonably limit further discovery from Olympic. In accordance with WAC 480-09-420, the name and address of Olympic is as shown below. Please direct all correspondence related to this Motion as follows:

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II. RELEVANT STATUTES AND REGULATIONS

2. This motion is based upon, or may bring into issue, the following statutes and rules: WAC 480-09-420, WAC 480-09-460, WAC 480-09-480, Washington Civil Rule 26, Federal Civil Rule 33.

III. DISCUSSION

3. WAC 480-09-480 establishes the methods and limitations for obtaining data in an adjudicative proceeding before the Washington Transportation Commission. WAC 480-09-480(6)(a)(vi) provides that the Commission shall limit the frequency, extent, or scope of discovery if the discovery sought is unreasonably cumulative or duplicative, the party seeking discovery has had an ample opportunity to obtain the information sought, or the discovery requests are unduly burdensome or expensive. In making this decision, the Commission must take into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. See id.

4. At the November 21, 2001 prehearing conference and in Bob Batch's testimony, Ex. No. 2T (BCB-5), Olympic informed the Commission that Olympic has a total of 75 employees and has only a handful of people who are knowledgeable enough to respond to discovery requests.

5. The amount of discovery demanded of Olympic to date has been overwhelming. In the interim rate case portion with a three day turn around deadline, Olympic responded to 200 data requests.

- Tesoro's First Set of Discovery Requests included 17 requests for admission, 42 interrogatories, and 16 requests for production.
 - Before December 5, Staff submitted 22 informal data requests and 40 initial formal data requests.
 - On December 5, 2001, following the December 4th technical conference (at which Staff and Intervenors questioned Olympic's employees for several hours), Staff served on Olympic 25 more formal data requests.
 - On December 7, 2001 Tesoro served on Olympic a Second Set of Discovery Requests, bringing its total to 79 data requests.
 - On December 20, 2001 the Commission Staff conducted a full audit of Olympic's accounts and ledgers.
 - On December 20, 2001 Staff served 17 more data requests on Olympic.
 - Following numerous conferences Olympic supplemented and re-supplemented almost each of its responses to Tesoro's interim rate data requests.
6. At the hearings on the interim case, Staff also admitted to being overwhelmed by the immense documentation. See Trans. at 1092, 1. 9-13.
6. Discovery continues to be overwhelming:
- On February 1, 2002, Tesoro sent its "Third Set of Discovery Requests Relating to Olympic Pipe Line Company's Amended Petition for Immediate Rate Relief" containing seventy-one (71) data requests.
 - On January 11, 2002 Staff issued 21 more data requests--Nos. 300-321, just before the hearings on January 14-16.
 - On January 29, 2002 Staff issued 37 more data requests--Nos. 322-359.

- On January 30, 2002 Staff issued Data Request No. 360. **This request asks for all responses Olympic has made to data requests in the FERC proceeding, Docket No. ISO1-44-000.**
- On February 5, 2002 Staff served on Olympic 10 more data requests – Nos. 361-370. These responses are due on February 20th.
- On February 5, 2002 Staff issued 12 more data requests--Nos. 371-383. These responses are due on February 20th.
- On February 7, 2002 Staff issued 5 more data requests--Nos. 384-389. These responses are due on February 22nd.
- On February 11, 2002 Staff issued 13 more data requests--Nos. 390-403. These responses are due on February 26th.
- The FERC Staff, Tosco, and Tesoro have filed numerous discovery requests in the FERC proceeding. (All of these requests are attached to Olympic's accompanying Response to Staff's Motion Regarding Hearing Schedule).
 - On January 16, 2002 the FERC staff submitted 26 data requests.
 - On February 5, 2002 Tosco submitted 42 data requests.
 - On February 13, 2002 Tosco submitted 10 data requests.
 - On February 14, 2002 Tosco submitted 12 data requests.
 - On February 7, 2002 Tesoro submitted 71 data requests.
- On February 12, 2002 Tesoro issued subpoenas duces tecum. (Attachment A)

V. SUMMARY OF ARGUMENTS

A. Discovery to Date Has Been Expensive, Duplicative, and Oppressive

7. The data requests issued by Intervenors have been expensive, duplicative, and oppressive.

8. Olympic has attempted to respond to these voluminous requests, at great burden on the handful of employees knowledgeable enough to respond.

9. The Commission's Order of January 31, 2002 recognizes that Olympic faces a dire financial emergency. Expensive data requests must be limited to the minimum necessary.

B. The Balance of Interest Favors Limiting Discovery

10. In deciding to limit discovery, the Commission should consider the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. See WAC 480-09-480(6)(a)(vi). Placing reasonable limits on excessive discovery requests is now necessary.

C. Comparison to Civil Rule 26(c)

11. The provisions in the Commission's procedural regulations (WAC 480-09-480) are similar to protective orders under Washington's Civil Rule 26(c) that prevent "annoyance, embarrassment, oppression, or undue burden" from discovery. See, e.g., Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35 (1984) (noting significant potential for abuse through discovery and important interests served by Civil Rule 26(c)); see also Civil Rule 26(b) (listing reasons for court to limit frequency or use of discovery requests). Under the civil rules, the trial court exercises broad discretion to manage the discovery process to encourage the disclosure of relevant information while protecting participants against the harmful side effects of burdensome and overzealous discovery. See Rhinehart v. Seattle Times Co., 98 Wn.2d 226, 232, 654 P.2d 673 (1982), aff'd, 467 U.S. 20 (1984); O'Connor v. Dep't of Soc. & Health Servs., 143 Wn.2d 895, 905 (2001); see also 4 J. Moore, Federal Practice para. 26.67, at 26-487 (2d ed. 1982).

12. The Intervenors and Staff now have all the information legitimately needed to prepare their case on Olympic's requested general rate relief, given Olympic's responses during the interim rate

relief proceedings and the documents already disclosed during the general rate case process. Olympic's discovery responses have been voluminous, numbering in the thousands of pages.

VI. PRAYER FOR RELIEF

13. The Commission should order no further discovery against Olympic except on a showing of necessity and upon order from the Commission.

14. If the commission adopts the hearing sequence suggested by Olympic, the parties will have all of the discovery produced in the FERC proceeding plus all of the testimony and cross examination transcripts from the FERC proceeding. If any supplemental discovery needs to be done after that, Intervenors and Staff should be required to file a motion showing necessity.

DATED this 15th day of February, 2002.

PERKINS COIE LLP

By _____

Steven C. Marshall, WSBA #5272
Patrick W. Ryan, WSBA #25499

VERIFICATION

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

_____, being first duly sworn, on oath deposes and says:

That he is the legal representative of Olympic Pipeline Company, that he has read the foregoing Motion For an Order Limiting Discovery, that he knows the contents thereof and that he believes the same to be true to the best of his knowledge and belief.

Patrick Ryan, WSBA #25499
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SUBSCRIBED and SWORN to before me this XXX day of January, 2002.

Print Name: _____

Notary Public in and for the State of
Washington, residing at _____

My commission expires: _____

