

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

)	
WASHINGTON UTILITIES AND)	DOCKET NO. TO-011472
TRANSPORTATION COMMISSION)	
)	
Complainant,)	FOURTH SUPPLEMENTAL
)	ORDER; PREHEARING
v.)	CONFERENCE ORDER
)	
OLYMPIC PIPE LINE COMPANY)	NOTICE OF PREHEARING
)	CONFERENCE
Respondent.)	(MARCH 4, 2002)
)	
.....)	

1 **Proceeding:** Docket No. TO-011472 is a filing by Olympic Pipe Line Company on October 31, 2001, for a general increase in its rates and charges for providing pipe line transportation service within the state of Washington.

2 **Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on February 22, 2002, before Administrative Law Judge C. Robert Wallis.

3 **Appearances.** Steven Marshall and Patrick Ryan, attorneys, Seattle, represented Respondent Olympic Pipe Line Company. Robin Brena, attorney, Anchorage, AK, represented Intervenor Tesoro, Inc. Chad M. Stokes, attorney, Portland, OR, represented Tosco Corporation. Donald T. Trotter, Assistant. Attorney General, Olympia, represented the Staff of the Commission.

4 **Purpose of the Conference.** A prehearing conference held February 15, 2002, failed to achieve closure on issues including the status of discovery. This conference was convened to discuss the data request process, the status of answers to data requests, scheduling matters occasioned by the status of data request responses, and other matters of a procedural nature as the parties might choose to raise.

5 **Discovery.** All parties expressed frustration with the status of discovery. Olympic stated that it only recently began tracking discovery requests and responses by means of a spreadsheet, and stated that it had made no substantial efforts to coordinate responses among overlapping requests from intervenors or between responses required in a parallel proceeding before the Federal Energy Regulatory Commission (FERC). Olympic did not prioritize its efforts to respond, either based on the

apparent need of parties for the information or based on the ease of response. While parties read others' data requests, they did not make additional efforts toward coordination with each other and it appears that neither Olympic nor Tosco, each represented by different law firms in the state and federal proceedings, asked that their lawyers coordinate actions with regard to improving the efficiency or the economy of their representation. The result was that a large volume of requests, containing a considerable volume of overlaps and some duplication, faced by a small staff with seemingly limited experience in such matters, became overwhelming. A further complicating factor is a change of management at the company and the reluctance of prior management to cooperate in providing requested information.

- 6 Olympic moved to limit discovery, based on its contention that the number of data requests was large or oppressive and out of proportion to the small overall dollar value of the proposed rates. We noted that the number of requests has no necessary relationship with need for the information (or with the volume of the requested responses) and denied the motion. While the value of the rate increase at issue may be paltry by some measures it is sufficiently substantial to warrant adequate preparation and presentation by the parties. We will consider motions to strike specific data requests when the required response is unduly burdensome or of little need, but will base a decision on specific circumstances.
- 7 Olympic also moved for a ruling that it need not prepare original documents presenting information in a format requested by a party. We denied the motion, instructing the parties to discuss such requests with each other to determine whether existing presentations of information could satisfy the request or whether other, available or easily prepared presentations, could satisfy the party's need. We stated in denying both of Olympic's motions that we would not address issues in generalities but would examine matters on a case-by-case basis.
- 8 Tesoro moved for a ruling that all objections to previously presented discovery requests must be deemed waived by Olympic's failure to voice objections in a timely manner under the discovery rule; we denied the motion as to prior discovery requests but made it clear that we expect parties to be proactive in resolving concerns about future requests before they become disputes and that the ruling did not apply to future data requests.
- 9 As a result of the discussions at the conference, the parties made several concessions to pragmatism that we expect will expedite further discovery. First, all counsel who have counterparts in the FERC matter will consult with their counterparts to optimize efficiency and to reduce duplications and coordinate where possible. Second, intervenor and Commission Staff counsel will consult with each other to identify overlaps and make it clear where one answer will with minimum effort satisfy multiple inquiries. In furtherance of this efficiency, Olympic agreed that a motion to

compel will not be subject to objection on the basis that the moving party was not the party who presented the data request.

- 10 For its part, Olympic's counsel will be meeting with Olympic staff members and with the company's FERC counsel to coordinate the Company's responses to data requests. In particular, we expect the Company to respond quickly to items identified by parties as priority requests. In addition, we expect the Company to identify and deal expeditiously with data requests that are easy to respond to. Olympic's counsel will consult with opposing counsel and provide a status report, identifying all responses that cannot be provided by the close of business on March 1 and discussing how to expedite the production of information that parties can use. Olympic must commit to timely communication about problematic data requests and it must commit to informing other parties about the status of data request responses if responses will not be timely. It must also address data requests from all parties equitably. It is not tolerable to ignore requests of one or more parties or to favor one or more parties in supplying responses.
- 11 **Determination of Schedule.** Olympic moved for modification of the schedule of the hearing to follow the proposed FERC schedule, with a hearing beginning in mid-October or as soon thereafter as the Commission can hold it, and agreed to waive the suspension date until November 29, 2002. Because of the Commission's schedule, however, it might not be possible to schedule the evidentiary hearings until after the first of January, 2003. Entry of an order in the general rate case as late as a year from now is not acceptable to the Commission so long as other alternatives are available. Tosco also stated that such timing would be unacceptable to it.
- 12 Reviewing the Commission's calendar, it appears possible that the hearing could be convened during the latter two weeks in June, 2002. Based on that possibility, the parties agreed to discuss scheduling of interim phases and to present agreed proposals or, in the absence of agreement, individual proposals, for the timing of discovery, the filing of evidence, and post-hearing process. We will discuss those proposals during the next prehearing conference. Mr. Brena proposed that discovery requests be barred during the latter phases of preparation of opponents' witnesses' testimony; we stated a reluctance to grant the request but agreed in concept to a suspension of the time for responses during periods when responding party's witnesses were completing testimony.
- 13 **Motions to Dismiss.** Mr. Brena suggested that motions could be made for the dismissal of issues from the proceeding, and that the responses to such motions could reduce the need for discovery. We encourage, but do not require, the parties to discuss the possible voluntary limitation of issues. We will entertain such motions and ask the parties to address their timing in their proposed schedules.

- 14 **Conclusion.** This docket has posed many challenges. The Commission's interest is in receiving a complete but not excessive record that will enable it to make a fully informed decision on the matters before it in a timely manner. We are optimistic that all parties now perceive the benefits in a pragmatic approach to discovery and related matters in furtherance of that goal, and we believe that they will act consistently with rule and with the Commission's orders to achieve that goal. We commit to working with them as needed to achieve those ends.
- 15 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter, to address the status of discovery as of the time of the conference; the status of parties' coordination with counterparts, the feasibility of a June hearing, proposals for a schedule to accomplish such a hearing, and other procedural matters that the parties or the Commission may raise. **The conference will be held on Monday, March 4, 2002, Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, beginning at 9:30 a.m.**

Dated at Olympia, Washington, and effective this 26th day of February, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.