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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

7 INC.,) Volume XIII

8 Respondent.) Pages 1373 - 1425

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10 A prehearing conference in the above matter
11 was held on February 22, 2002, at 10:35 a.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, Senior Assistant
18 Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington
98504.

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

23 TESORO REFINING AND MARKETING COMPANY, by
24 ROBIN O. BRENA, Attorney at Law, Brena, Bell &
Clarkson, 310 K Street, Suite 601, Anchorage, Alaska
99501.

25 Kathryn T. Wilson, CCR
Court Reporter

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1 TOSCO CORPORATION, by CHAD M. STOKES,
Attorney at Law, Energy Advocates, LLP, 526 Northwest
2 18th Avenue, Portland, Oregon 97209.

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

2 JUDGE WALLIS: This conference will please
3 come to order. This is a prehearing conference in the
4 matter of commission Docket No. TO-011472. It's being
5 held in Olympia, Washington on due and proper notice to
6 all interested persons before Administrative Law Judge
7 C. Robert Wallis. Let's just ask each of the
8 representatives who are here today to state your name
9 and the name of the client that you are representing,
10 beginning with the western side of the table.

11 MR. TROTTER: Donald T. Trotter for
12 commission staff.

13 MR. STOKES: Chad Stokes, Tosco Corporation.

14 MR. BRENA: Robert Brena for Tesoro.

15 MR. MARSHALL: Steven Marshall for Olympic
16 Pipe Line Company.

17 MR. RYAN: Patrick Ryan with Olympic Pipe
18 Line Company.

19 JUDGE WALLIS: This matter was called for
20 9:30. It's now about an hour and five minutes later,
21 and in the interim period, we have been discussing
22 procedural matters, and I would like to begin by
23 stating the results of those discussions. By doing so,
24 I don't mean to foreclose anyone from offering your own
25 comments, and I will ask for those comments.

1 I believe that there is a consensus that it
2 is to everyone's advantage, the commission's advantage
3 as well as all parties' advantage, to optimize the
4 coordination amongst parties to this proceeding and
5 parties to the proceeding before the Federal Energy
6 Regulatory Commission, or FERC, and we are going to
7 proceed this morning to discuss how that may happen.

8 I believe there is a consensus that the
9 original scheduled date for the beginning of this
10 hearing before the commission -- that is, May 1 -- is
11 not now feasible. Without making any commitments to
12 scheduling, it appears that we may be able to begin the
13 hearing on June 17th or even as early as the 15th, and
14 by scheduling witnesses optimally, hear two days of
15 cross-examination on June 17th and 18th, and then to
16 take up on June 24th and proceed until conclusion.
17 Again, there are some other options in terms of use of
18 weekend time, but we'll be looking at the precise dates
19 a little bit later.

20 At the present time, it would appear that
21 that general time frame fits with the commissioners'
22 schedules as well as with the goals of this proceeding
23 to have enough information available and to have the
24 parties' presentations in time for a productive hearing
25 on that schedule. To further this discussion, we have

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1 on the line a representative of the company's staff,
2 Ms. Cindy Hammer. Mr. Marshall, what is her position
3 with the company?

4 MR. MARSHALL: Ms. Hammer's official title is
5 financial analyst for Olympic Pipe Line and employed by
6 BP Pipelines.

7 JUDGE WALLIS: And she is one of the people
8 along with Mr. Howard Fox who is responsible for
9 producing answers to discovery requests in both this
10 proceeding and the federal proceeding; is that correct?

11 MR. MARSHALL: That is correct, and
12 Ms. Hammer is also a witness both in the FERC and WUTC
13 matters pending, and her expertise and qualifications
14 are set forth in that prefile testimony.

15 JUDGE WALLIS: We are not asking for
16 testimony this morning but merely her observations on
17 process aimed at optimizing coordination. My
18 description of our discussion was very terse. Does
19 anyone wish to amplify that discussion at this time?

20 MR. MARSHALL: I would only add, Your Honor,
21 that we have made a motion to reset the hearing
22 schedule to sequence the matter so that the FERC
23 hearing would go first, and recognizing the scheduling
24 difficulties of the commission, we find moving the
25 hearing until June to be a good step. If other

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1 schedules clear up in the interim so we can sequence it
2 optimally with the FERC proceedings, we would still
3 like to keep that option open.

4 JUDGE WALLIS: The schedule that you proposed
5 was to begin approximately the middle of October; is
6 that correct?

7 MR. MARSHALL: Correct. We would like the
8 opportunity to have the FERC hearing, which starts on
9 July 9th, to conclude, and use that and use that
10 testimony and the record developed at FERC to form the
11 basis for any further supplemental discovery, and then
12 because of that scheduling, if we did the hearing
13 beginning the 14th or so of October, with the
14 prehearing briefs, we would also have an opportunity to
15 know what the initial decision of the FERC was on the
16 application of the federal methodology to these same
17 facts, and because methodology is an important issue
18 for the ultimate determination of the commission, it
19 was our hope to be able to have a complete record so
20 that important decision on methodology could be made by
21 this commission and with full knowledge of how the
22 actual federal methodology is applied by the federal
23 agency to the same facts.

24 That was our hope, and of course our
25 secondary hope -- maybe it's our primary hope -- is we

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1 would like to avoid the duplication of costs, and that
2 was our way of trying to do that.

3 JUDGE WALLIS: Thank you, Mr. Marshall. I
4 will note that we have discussed the scheduling
5 challenges to accommodating the company's requests, and
6 it is likely if we were to follow the requests that the
7 commissioners would not be available for hearing until
8 the early part of the year 2003, and the commissioners
9 do not believe that that is an acceptable delay, so
10 that's why we are talking about a session in June.

11 Mr. Brena, do you have any preliminary
12 comments that you would like to make?

13 MR. BRENA: With regard to the schedule?

14 JUDGE WALLIS: With regard to the context for
15 where we are and the nature of the discussions that we
16 have engaged in.

17 MR. BRENA: I would just like to reinforce
18 what Mr. Marshall said with regard to the June date
19 being acceptable to him. It's also acceptable to
20 Tesoro, and I would propose, as I did off the record,
21 that whatever date the commission has available than
22 June that we go ahead and set the hearing for June and
23 shift the schedule by an equal number of days, and I
24 certainly agree that any efforts to coordinate with
25 FERC should be made, and I'm certainly happy to

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1 participate in any of those efforts.

2 JUDGE WALLIS: Mr. Brena, you are the only
3 representative of the party who is participating in
4 both proceedings; is that correct?

5 MR. BRENA: That's correct, Your Honor.

6 JUDGE WALLIS: Mr. Stokes?

7 MR. STOKES: We would also support the June
8 dates. Any proposal to shift the hearings off until
9 October, we would have a lot of concerns with the
10 issues that we raise, so the June dates, again, we are
11 fine with that, but as it moves forward into 2003, it
12 would be unacceptable to us.

13 JUDGE WALLIS: Mr. Trotter?

14 MR. TROTTER: Your Honor, for staff, the June
15 dates are acceptable, and we share the concerns about
16 stretching it out beyond that.

17 JUDGE WALLIS: Thank you. Mr. Brena has
18 suggested that in shifting the hearing schedule, we
19 merely shift the existing schedule for this docket by
20 corresponding number of days. I have some reservations
21 about that in as much as while it is a simple and
22 direct solution, it may not offer optimal coordination
23 between the two proceedings.

24 By further background, Mr. Marshall has
25 provided responses to some data requests, as indicated

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1 that the company has responded at the FERC level to
2 some requests of Tosco, that may duplicate or provide
3 answers to data requests made at the state level, and
4 parties have not had the opportunity to respond to that
5 to evaluate the present level of the company's
6 response.

7 I'm going to ask, Ms. Hammer, if you are
8 responsible for providing company data request
9 responses in both proceedings.

10 MS. HAMMER: Yes, I am.

11 JUDGE WALLIS: As you receive these requests
12 in both proceedings, how do you approach the issue of
13 coordination of the responses?

14 MS. HAMMER: Well, currently, we've
15 established a process where when the data requests come
16 in from the attorneys, either myself -- actually, just
17 all three of us. It's myself, Howard Fox, and
18 Bernadette Zabransky -- sit down and review the
19 requests and more or less go through and assign tasks
20 and who would be the best person to respond to each
21 data request, and then we hand that off to a gal that
22 works for LESA (phonetic) that actually logs it into a
23 spreadsheet, and we identify due dates. We get a
24 notice out to everyone who is responsible for
25 responding with a date that we need the request back

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1 by, and then all of the responses are sent back to
2 Jennifer who then tries to put all of the responses in
3 to one document for an internal review before it goes
4 back to the attorneys for their review, and within this
5 process, there are several rewrites on occasion that
6 need to be made because either the question isn't
7 answered specifically or it wasn't answered correctly,
8 so then it goes back and goes back through the same
9 process again of being reassigned.

10 JUDGE WALLIS: Ms. Hammer, do you pay any
11 attention to the subjects and ask whether the company
12 has, for example, already responded to a FERC request
13 for the same information, or do you take these
14 independently and individually?

15 MS. HAMMER: Recently with all the requests
16 that have come in, we have tried to go back and see if
17 we have responded to these requests previously or if
18 they are duplicated from either Tosco, Tesoro, or
19 Staff. However, because of the magnitude that have
20 come in, we haven't been able to go and do the research
21 to see if we have responded.

22 Because of the limited amount of people there
23 are to review these and respond to these, the workload
24 has been a lot for all of us, and just trying to
25 coordinate what has been responded to and what hasn't

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1 been responded to has been a major task for us as well.
2 So we are doing the best we can to try and get Jennifer
3 to keep the spreadsheet updated and keep them logged as
4 far as what each request is asking for so we can start
5 comparing, but this process was just put into place a
6 couple of weeks ago as well.

7 JUDGE WALLIS: In gross terms, what is the
8 progress you have made in terms of providing responses
9 compared with the volume of requests that are still
10 outstanding?

11 MS. HAMMER: You mean how much have we
12 responded to versus how much we haven't?

13 JUDGE WALLIS: Yes.

14 MS. HAMMER: I actually have not sat down and
15 evaluated what the percentage is compared to what we
16 still have remaining. I guess my best guess would be
17 that we've probably responded to probably a third of
18 the requests that have been made totally, and that
19 would be including both the FERC requests and the WUTC
20 requests.

21 JUDGE WALLIS: Based upon the requests that
22 are outstanding and your experience in responses, do
23 you have a prediction as to when the company would be
24 able to complete its responses to all of the data
25 requests that are now pending?

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1 MS. HAMMER: I don't have a date where I
2 could say that we could complete all of them. No, I
3 don't have that.

4 JUDGE WALLIS: Do you have a feeling for the
5 approximate length of time that it would be until you
6 are done? Are we talking about a few days, a few
7 weeks, a few months?

8 MS. HAMMER: I would say it would be several
9 weeks.

10 JUDGE WALLIS: Let me ask counsel who are
11 present in the room whether you have coordinated with
12 each other in terms of the data requests that you have
13 made.

14 MR. TROTTER: I'll start with that, Your
15 Honor. This is Don Trotter for staff. We do review
16 the data requests that come in from the intervenors in
17 this docket, and that has minimized or lessened the
18 number that we would have issued because they've asked
19 for some things that we would like to see also.

20 In my data requests of the company, I did not
21 ask them to send me the FERC data requests. I only
22 asked for the responses, and perhaps I should have
23 asked for the DR's because that might have lessened the
24 number that we would have issued as well. On the other
25 hand, they could have forwarded those on to us as well

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1 just informally. So that has not been done, and that
2 could be an improvement, and we would commit to do
3 that. If we can issue another data request for those
4 or they can give them to us informally, but that sort
5 of coordination has not occurred, but on the state data
6 requests, we have examined those, and I'm not saying
7 there has been zero duplication, but we have tried to
8 minimize it.

9 JUDGE WALLIS: Mr. Stokes?

10 MR. STOKES: We've also examined other
11 parties' requests and to the extent possible not asked
12 repetitive requests, and I would note that we asked 33
13 to start with, and we've now knocked that down to 24,
14 which I think is pretty reasonable as far as number.

15 JUDGE WALLIS: Mr. Brena?

16 MR. BRENA: Could I ask Ms. Hammer a question
17 or two?

18 JUDGE WALLIS: Yes.

19 MR. BRENA: Is there any effort to prioritize
20 which data requests should be responded to when, and if
21 so, what is the order of priority that you assign?

22 MS. HAMMER: We have not prioritized an order
23 in which the response would be responded to, other than
24 last week when we did get the priority list that came
25 out of the conference last week I got for the priority

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1 requests. Those were the ones we have focused on this
2 week.

3 MR. BRENA: With regard to Tesoro's requests,
4 when did you begin to respond to those?

5 MR. MARSHALL: I think this is beyond the
6 issue of the coordination. We are kind of getting
7 cross-examination on the discovery process. I think
8 Your Honor had asked what has Mr. Brena done to
9 coordinate with people at the FERC and the other
10 cointervenors. That's the issue on the table right
11 now.

12 MR. BRENA: What I'm trying to do is --
13 typically in these situations when there is a lot of
14 requests coming in, at least in my experience, I sit
15 down, and to the degree that they are duplicative, you
16 respond to one and you indicate you are responding to
17 every duplicative response, so you coordinate and
18 prioritize that, and if you have more requests than
19 what you can do, and so that it's burdensome, you raise
20 burdensomeness as an objection or you contact the
21 counsel and say, "I can't get it done" --

22 MR. MARSHALL: Your Honor --

23 MR. BRENA: So I would like to finish what
24 I'm saying, please.

25 JUDGE WALLIS: Let's let Mr. Brena finish.

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1 MR. BRENA: We don't have enough resources to
2 get it done. What's important to you? So I either
3 file an objection as burdensomeness or I try to
4 coordinate it or simply respond to duplicative
5 requests. If all three of us were to make a
6 duplicative request, I would just say, "Response to
7 Tesoro 1 and Staff 3 and Tosco 4," so the duplicative
8 requests don't usually represent too much additional
9 burden if that sort of priority system is in place.

10 That's what I was trying to explore. To the
11 degree they are taking these as individual items, then
12 they are creating a whole lot more work for themselves
13 than need be, and one thing that could be done, first
14 of all, is to determine which are duplicative. To the
15 degree that there is any question about that, I'm
16 always happy to participate in any kind of -- there is
17 not that many data requests out there right now on the
18 state side. We could sit and go through them in an
19 hour, and to that degree, we could talk about the
20 information we need and all four of us could
21 coordinate. I've tried to answer your question. I've
22 tried not to ask questions where I don't need answers
23 to.

24 Now, the problem is that I have a right to
25 compel my requests but not somebody else's, and my

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1 experts, I ask them to produce it, so there is going to
2 be a certain amount of overlap that happens, and
3 usually where it's filtered out of the system isn't in
4 the asking. It's in the answering or the coordination
5 once they've been asked. So in terms of that, we have
6 reviewed what other people have asked for. We've asked
7 for half the questions that our experts said they
8 initially need, and then we've cut that down.

9 So now what I was trying to explore with her
10 was I'm real curious about that spreadsheet, because it
11 sounds to me like they've got a spreadsheet that's got
12 everything logged in, when it's due, and when they can
13 likely respond to it. So to the degree that we aren't
14 getting objections and not getting responses, I would
15 like to see their spreadsheet, because that's the best
16 evidence of when they are going to respond and what
17 their efforts are.

18 MS. HAMMER: Let me say this; that the
19 spreadsheet doesn't necessarily say when we are going
20 to have them completed. It just has on it when they
21 are due and who it's assigned to and who it came from,
22 whether it's a UTC staff request or whether it was a
23 Tesoro request, to try and keep track of what responses
24 are out there that we have answered and ones we haven't
25 answered.

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1 As far as the duplicative questions, we do
2 try when we get the request to go through and identify
3 ones that have been answered before. Most of the time,
4 the data requests are coming in slightly different.
5 Even though it may be the same information, it's a
6 different request and that it's a different view, so we
7 have to go back and either create another document or
8 cut another view of the same information that we had
9 already provided.

10 The other problem we have with these data
11 requests is that BP as operator only came into
12 operating Olympic as of July 2000, and we have access
13 and rate access to our information or BP's information,
14 but prior to that, the historical information was under
15 Equilon's operatorship. A lot of those people, the
16 people that were responsible for those records, are no
17 longer at Olympic. We have been having to send people
18 off site to go through boxes of data and file folders
19 in order to try and obtain the information that's
20 requested as well as trying and contact our contacts at
21 Equilon to see if they have it at their corporate
22 office to try and get information. So it's not only
23 the fact that it's duplicated, but it's finding the
24 information within what we have to deal with right now.

25 MR. BRENA: I was just going to inquire with

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1 regard to what is the status of the historical
2 documents from Equilon.

3 JUDGE WALLIS: Ms. Hammer, are you able to
4 respond to that?

5 MS. HAMMER: As far as the historical
6 information from Equilon?

7 MR. BRENA: Yes.

8 MS. HAMMER: We have not been very successful
9 in finding the information from Equilon.

10 MR. MARSHALL: Mr. Fox could give a more
11 complete answer to that because he's been the one
12 that's mostly been in contact, and the report we have
13 is that they have referred all efforts and requests to
14 an Equilon attorney for that, which has complicated the
15 ability to get historical information. To continue to
16 operate a pipeline doesn't require historical
17 information when you are trying to do your day-to-day
18 operation. The only time those historical documents
19 come into any relevancy would be more for something
20 like that, so there has been no indication to try to
21 get a lot of that information from July 1st up until
22 now.

23 So the fact that these efforts are now
24 undertaken isn't unusual, but what we are encountering
25 is people who are no longer interested in spending

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1 their time to obtain those documents because of obvious
2 other litigation issues, having a different view as to
3 perhaps why the documents are being requested, to say
4 they are being requested for this proceeding, but I
5 think there is a view, given other litigation, that it
6 may be not confined to that, but Mr. Fox is much more
7 capable in responding to efforts to try to get
8 documents from third parties.

9 JUDGE WALLIS: I was glancing at the clock,
10 and having Mr. Trotter's scheduling request in mind, I
11 would like to move off of the topic of what is the
12 company doing and start talking about what the parties
13 can do to optimize their achieving the goals that they
14 have of receiving information. Would that work for
15 folks?

16 MR. MARSHALL: Yes.

17 MR. BRENA: Yes.

18 JUDGE WALLIS: If we were just beginning this
19 process and had anticipated the challenges that we
20 would face, what I would suggest is that each of you
21 who has a counterpart at the federal level talk with
22 that counterpart to coordinate the requests that you
23 are making with the requests that they are making to
24 avoid duplication and to come up with a common set of
25 requests. Then I would ask each of you, each of the

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1 parties other than the company, to coordinate to the
2 extent that duplication is reduced to the lowest
3 possible level, and if that took an agreement that any
4 party could compel any response to any other parties'
5 requests, that might be something that the company
6 would agree to in order to minimize the level of
7 difficulty.

8 MR. MARSHALL: We would, Your Honor.

9 JUDGE WALLIS: The concern that I have about
10 making that suggestion right now is we are not at the
11 beginning. There are a lot of alphabet letters in the
12 soup at this point, and I'm not sure how we can strain
13 it so we are left with something readable and the
14 nonessential material, the nonduplicative material, is
15 reduced, and I would like to hear your observations on
16 what approach you believe would be optimal proceeding
17 from where we are at this juncture. Mr. Trotter, let's
18 start with you.

19 MR. TROTTER: I've given this a little
20 thought but not a lot of thought. I think what staff
21 could commit to do is to review the responses that we
22 have received, including those responses to data
23 requests of other parties, including FERC, and pour
24 through that material and then make an evaluation of
25 what is essential to receive in order to prepare for

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1 testimony and depositions and to get those additional
2 DR's, if any, out promptly with in mind that there
3 would be a discovery cutoff, and that would include
4 contact with FERC counsel to see if they will confer
5 with us on the subject, the status of any additional
6 discovery they may have.

7 Obviously, we need responses before we can
8 know exactly where we are. We had anticipated a couple
9 of rounds of written discovery before the depositions,
10 but we can commit to that effort. It may take a week,
11 next week for example, to get through all the discovery
12 and hone in where we need the additional information in
13 order to get the deps and to prepare a case. We could
14 commit to that effort next week, I think, without
15 having talked to my staff. We would make that effort
16 and do the contacts with the FERC, look through their
17 DR's and see what they have planned for the future, as
18 well as to try to minimize the impact of the company
19 but maximize our ability to prepare. That seems to be
20 the best starting point for that inquiry.

21 I'm a little concerned about Ms. Hammer's
22 statement that some of these DR's, and I don't know
23 whose they are, whether they are at the federal or the
24 state level, are going to take several more weeks to
25 respond to, but I think we can work within a framework

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1 to get that job done. To me that's the best effort. I
2 have seen evidence of similar effort from intervenors
3 in terms of eliminating DR's, prioritizing DR's, and we
4 can certainly try to do better on that front. But I
5 think a discovery cutoff coupled with a commitment of
6 the company to get responses in a timely way can go a
7 long way towards doing that, but we will redouble our
8 efforts in terms of looking at all the DR's and making
9 sure that what we need hasn't already been asked for
10 and address that with federal people to, to the extent
11 they will deal with us. That's the best suggestion, I
12 think, at this point.

13 I think I would join Mr. Brena's point that
14 perhaps we need another prehearing conference just as a
15 placeholder with the commitment that parties would
16 discuss it in detail before that of any lingering
17 compel-type motions and that sort of thing, but I think
18 with those tools in place, we can get progress.

19 JUDGE WALLIS: Mr. Stokes?

20 MR. STOKES: The only thing that I can think
21 of to expedite this process at this point on our side,
22 we can try to coordinate with our FERC counsel to make
23 sure that we are not asking the same responses at both
24 the federal and state level. We've already attempted
25 to do that, and to the extent we have any repetitive

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1 requests, we can try to eliminate that.

2 My concern is that we slow down the process
3 at this point. We've only asked 33 responses on the
4 state side and taken that down to 24. I don't think we
5 can take that down any more unless we receive responses
6 on the federal side. I haven't seen the responses that
7 they filed yesterday to our FERC counsel. So beyond
8 that, I'm not sure what else we can do at this point.

9 JUDGE WALLIS: Mr. Brena, you are in the
10 enviable position of knowing what's going on in both
11 proceedings and in the best position of any of us to
12 coordinate your requests.

13 MR. BRENA: And I have. We served 95 percent
14 identical requests in both forums, and as I've
15 indicated in the last prehearing conference, and I
16 expected fully a response to one is a response to the
17 other, and that's fine. So to the degree we've created
18 duplicative requests that are exactly duplicative, all
19 they have to do is add three words and just say, "WUTC
20 and FERC" and put the request date, and we'll accept it
21 as a response to both. We've done that, and I don't
22 know what more I can do on that front. We've also
23 prioritized. We've also indicated which responses we
24 think go to outside counsel. We have also eliminated,
25 and we've also indicated those which have a flexible

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1 schedule, which are things we need in a reasonable time
2 prior to the hearing.

3 I would like to add a slightly different
4 perspective on this though. What we should be doing is
5 following the discovery rules, and what we should be
6 doing is doing that strictly. We are in a situation
7 where none of our data requests have been objected to,
8 but none of them have been responded to. So I think
9 something that the parties can do is participate
10 meaningfully with the discovery rules that are in place
11 by this commission. I've never been in a position
12 where I've been asked by a forum to go through and
13 review my discovery requests without there even being
14 an objection to those discovery requests before. So I
15 think that to the degree we start deviating from
16 standard discovery practice, I think we build in more
17 problems than we solve.

18 So my suggestion is let's follow the rules.
19 Let's strictly interpret them. I would point out to
20 Your Honor that the discovery that we got in the
21 interim case followed by a few days and never preceded
22 the granting of a motion to compel, in every instance.
23 In the interim case, likewise, we didn't get an
24 objection and didn't get a response. We came before
25 Your Honor and asked for you to compel them to give us

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1 a response. Then we got the response that we compelled
2 back. So I guess if the track record of the past is
3 proving up to the future, I think we are talking about
4 the wrong topic, and I think the right topic is there
5 should be some motions to compel.

6 Take Equilon for example. Equilon is not a
7 third party to this proceeding. They are an owner of
8 this pipeline. There should be a motion by this
9 commission, and I'll make it verbally, to compel
10 Equilon to respond to the discovery responses so that
11 Olympic can produce them. We have heard for three
12 months that Equilon is not meaningfully participating
13 in data requests by parties. They are an owner. They
14 benefit from this rate increase. There is no reason
15 they are not doing that. The commission should assist
16 Olympic in its efforts to get information from Equilon
17 through granting a motion to compel and having Equilon
18 put some resources into solving that problem. It's
19 been a problem now for months and should be solved.

20 And then I guess finally, I think in the next
21 prehearing conference, not this one, we need to go
22 through and determine whether our responses are
23 responsive, and to the degree they are not at this
24 point, start talking about some sanctions. I've done
25 everything I can do. There hasn't been a single

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1 objection filed to a single data request. I've cut
2 them down as much as I can. I've coordinated with
3 federal and state. I need some information, and at
4 some point, this conversation has to be, "When am I
5 going to get the information, and what have we got to
6 do to get it?" The only thing I can say is, let's
7 start following the discovery rules strictly. Let's
8 start granting motions to compel. Let's start talking
9 about the issue of preclusion and other sanctions when
10 these are not done.

11 I can't do anything more than I've done to
12 help them respond to data requests; that I've never
13 received a call in trying to thin down and coordinate
14 and never receiving a single objection. So at some
15 point, I need information or I need for them to
16 meaningfully participate with me in order to solve
17 their problem.

18 JUDGE WALLIS: Mr. Marshall, you heard the
19 parties' comments. What can the company do and what is
20 its preference in terms of process from this point
21 forward?

22 MR. MARSHALL: We share the observations by
23 everybody on the need to have better coordination with
24 FERC and better coordination between parties with
25 similar interests to avoid duplication and to

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1 coordinate the frequency and extent of discovery. In
2 that regard, I would just point out to Mr. Brena that
3 the commission rules provide that the frequency extent
4 of the scope of discovery shall be limited by the
5 commission if it determines that the discovery sought
6 is unreasonably cumulative or duplicative or available
7 from some other source that is more convenient, less
8 burdensome, or less expensive, and that's what we are
9 trying to do. Our objection that we did file a motion
10 to limit discovery because of the frequency and extent
11 and cumulative nature of it here, of 10 days or more
12 ago, and I think that's what we are talking about
13 trying to do here.

14 Any particular request may not by itself be
15 burdensome. What we are faced with, of course, is
16 although discovery started both at FERC and here for
17 this general rate case phase on December 13th, no FERC
18 requests from the intervenors in this case were filed
19 for two-and-a-half or three months. Then all of a
20 sudden, FERC requests and requests here started coming
21 at the same time, and that's provided the difficulty
22 that we've had in trying to respond.

23 I don't think that up to this point that the
24 intervenors themselves have coordinated at FERC and
25 here to avoid duplication between themselves. They

1400

1 have put on joint witnesses in the interim case.
2 They've made joint position statements. I don't think
3 their interests verge one jot. Apparently, they are
4 going to present the same witnesses both here and at
5 FERC, but even if they don't, their interests are
6 identical. I don't think that Tosco has coordinated,
7 with what I've just heard, with its own counsel back in
8 Washington D.C. They apparently haven't seen the
9 responses that have been made to the Tosco requests.

10 JUDGE WALLIS: Mr. Marshall, I'm going to ask
11 you to focus on the future rather than the past. Where
12 can we go from here in order to meet your interests in
13 providing adequate information to the parties to allow
14 this process to go forward?

15 MR. MARSHALL: I think the first step would
16 be for intervenors and staff to look at the material
17 that has been produced and their own requests that are
18 outstanding to see if they are overlapping and
19 duplicative, to help us out on that, but we can try to
20 find out whether they are overlapping or duplicative,
21 but that takes an enormous amount of time. The rules
22 seem to require intervenors to coordinate on that.
23 That would be an immense help to try to cut out those
24 materials that are really duplicative and perhaps not
25 necessary because of other answers.

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1 The second thing we can do and have done is
2 try to make sure, to the extent we can, is respond to
3 the duplicative questions at all by reference to prior
4 answers, and we will continue to do that. We have
5 provided a discovery status report that I think
6 indicates exactly what we've been trying to do with the
7 staff that we have, and we now have more requests due
8 next week that we will continue to work on getting out.

9 One of the things that would be very helpful
10 would be to have an order indicating that anything that
11 requires Olympic to create a new document as opposed to
12 finding material or answering questions about a fact
13 issue be prohibited. Some of what we are having to do
14 that takes the most amount of time is put data into new
15 formats, which is not required by the rules, and I
16 think that our simple provision of data ought to be
17 enough.

18 With regard to historical documents, I think
19 that one of the things that could be done is do people
20 really need things going back to 1960 when the pipeline
21 was first built? Do they need things going back to
22 1990? The historical documents might be of some
23 marginal interest, but I don't believe that if we focus
24 on what the current financial situation is and not
25 going back to the historical side, we can avoid a lot

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1 of the difficulty in trying to create enough work to
2 find all of that old material. I don't think the old
3 material is all that helpful or adds much to this
4 particular case. If they believe absolutely that they
5 have to have it, then that provides a challenge.

6 Olympic is coordinating with Olympic's
7 Washington D.C. counsel. Ms. Hammer indicated the
8 system we now have in place has been very helpful to
9 intervenors and staff indicate their priorities.
10 Unfortunately, we just got yesterday late letters from
11 Tosco and Tesoro withdrawing some of theirs and some
12 others. If things really don't need to be done, it
13 would have been much more helpful to us not to have the
14 requests to begin with, and I don't even know if we've
15 been able to get the Tesoro withdrawals to our
16 Washington D.C. counsel because they came in after they
17 were gone last night, and I was on the road this
18 morning and frankly didn't have those 12 that have been
19 withdrawn in front of me. So that's the first thing
20 I've got to do is let them know they don't have to do
21 12 of them that are due, I think, on the 26th back at
22 the FERC.

23 We are working night and day, and Ms. Hammer
24 can talk about the amount of sleep and time she's been
25 getting here recently, but I think it goes for all of

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1 us that we are working literally at the extent and
2 beyond the capacity, and you can certainly do that for
3 short periods of time, for three or four days at a
4 time, but if we continue to get multiple waves of
5 discovery in both proceedings in the future, the only
6 way to handle that is by invoking this rule on the
7 frequency and standard scope of the discovery and just
8 try to keep these priorities. Again, I'll say it's
9 very helpful to know what the priorities of the
10 intervenors and staff are. Something is needed so they
11 can present their case, it should be identified. If
12 it's needed only for cross-examination, that gives us
13 an awful lot longer time to respond, and we don't have
14 that kind of indication yet. We have priorities, but
15 nothing to indicate that this is needed to put on a
16 case versus this is needed to do some
17 cross-examination, say, of Mr. Batch that might be done
18 much later.

19 I kind of rambled because I'm sleep deprived
20 myself. I'm sorry. We have taken Your Honor's
21 admonition last Friday to heart, and we have worked
22 very hard to try to do what we can, and we are open to
23 other suggestions.

24 JUDGE WALLIS: I would like to offer some
25 observations at this point as a basis for letting us

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1 move forward. I think that it is essential to
2 recognize that, as parties in limiting their discovery
3 requests have done, that there are some finite limits
4 to the company's resources and that the time frame is
5 forcing, as it were, a small snake to eat a large pig,
6 and while we do not view that as an excuse, we just
7 have to recognize the practicality. I would suggest
8 that we take the next week on the part of the staff and
9 intervenors to do the coordination with your federal
10 counterparts and to do the coordination with each other
11 to identify a set of requests that will get us beyond
12 this point and moving forward.

13 I would suggest that the company's concerns
14 about limiting discovery have already been addressed,
15 and if you have an objection to a specific request or a
16 specific genera of requests that you voice those
17 objections first to counsel, and then if necessary,
18 bring them to the commission for resolution. I do not
19 think that it is appropriate to view the mere number of
20 requests as an indication that discovery is
21 impermissibly broad. While a mere three or six or
22 eight million dollars a year may be relatively small in
23 terms of some massive litigation, it is, nonetheless, a
24 very significant amount and one that the commission
25 believes should be afforded sufficient discovery to

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1 allow the parties to prepare a case, and in complex
2 litigation, which this is, that may mean a number of
3 requests. We are, as we've indicated, concerned about
4 minimizing duplication and we are asking parties to
5 confer with counterparts to achieve that.

6 In the meantime, I would suggest that the
7 company work, both counsel and staff, to assess where
8 you are, particularly where you are with the priority
9 requests that parties have made and be able to respond
10 early next week to parties as to the status of those
11 requests, and if you have any objections, voice those
12 to the parties so that the issues can be fairly
13 circumscribed and presented to the commission in a way
14 that the commission will be able to make an appropriate
15 ruling. It is quite possible that in the discussions
16 you have with parties relating to these matters that
17 some of the concerns can be eliminated and we can get
18 on with solving the problem instead of other behavior
19 that is not aimed at solving the problem. So to the
20 extent there is a motion to limit, please consider that
21 to be denied pending the reevaluation and review of
22 information in the nature of requests that are
23 forthcoming.

24 There has been some discussion; Mr. Brena
25 offered an oral motion to compel Equilon to produce

1406

1 discovery. I would frankly like to have some
2 discussion of that, at least to highlight the
3 commission's authority to make such an order, and
4 whether the effect might be accomplished by the
5 presentation of a subpoena duces tecum or other
6 mechanism that would finesse possible procedural
7 concerns. It appears to be from parties' comments
8 acceptable to pend the discussion of sanctions until a
9 later time, but I would like to note that we are
10 concerned about issues of timeliness, and we are
11 prepared to engage in discussions of sanctions if that
12 becomes necessary. I would like to emphasize that it
13 is the commission's view that responses are necessary
14 for all of the requestors, and I trust that we will not
15 have not have a situation in this part of the
16 proceeding, as we did earlier, where one of the party's
17 requests were not responded to until very late in the
18 process. That is simply not acceptable.

19 There was a concern about the creation of new
20 documents. That has been a matter that the commission
21 has come across in the past. There may be some
22 situations in which it is necessary or appropriate that
23 a responding party do create new documents, but those
24 should be addressed on a case-by-case basis, and if you
25 have objections, again, the way to deal with those

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1 objections, Mr. Marshall, is to first discuss the
2 matter with opposing counsel, see what you can work
3 out, and failing that to make an objection to the
4 commission that is specific in terms of what it is and
5 what your view is on it and how we can approach it. It
6 may be that providing data in a format that you have
7 will allow the parties to reformat it. It's just
8 something that parties need to talk about.

9 In terms of historical documents, going back
10 a great length of time, just in the abstract, it's
11 difficult for me to see how that may be an appropriate
12 request for discovery, but I can certainly envision
13 situations in which it might be. So there again, I
14 would suggest that if you have a concern about that,
15 the first matter to attend to is responding to the
16 party, stating the concern, attempt to work it out
17 informally. Failing that, to bring it to the
18 commission, and put some details into it, and then we
19 can take a look at it and hear both parties' views on
20 it and address it.

21 So I know this puts a burden on the company
22 and on counsel. It's a lot of work to coordinate with
23 your parties' staff, to be on top of what is a large
24 number of documents, but in the coming week, it would
25 be my suggestion that you sit down with Mr. Fox,

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1 Ms. Hammer, perhaps with your FERC counsel on the line,
2 and discuss from the company's perspective how it can
3 best proceed optimally to get through these stages of
4 the process in a way that will get all of us to the
5 point that we want to be ultimately; that is, making a
6 sound decision upon good record. I've hogged the
7 microphone here for awhile, and if parties have
8 responses or observations of their own, you may do so.

9 MR. MARSHALL: I think from my standpoint, I
10 just want to say that all of your comments are very
11 helpful and useful. In terms of making specific
12 objections, if we had a request that asked us to, say,
13 create a new document, we might not ordinarily have an
14 objection. It's only in the context of how do you
15 prioritize and get things to people that people need,
16 we have not wanted to object. Same thing with going
17 back in time. If we only had one or two data requests
18 that required us to go back in time, that would be
19 something we probably wouldn't have any problem with.
20 It's just in the context of the massive amount.

21 I think we are doing a much better job of
22 coordinating with respect to your suggestion just a
23 moment ago about getting everyone to sit down. We are
24 going to be doing that in a conference Monday morning.
25 We wanted to have the advantage of this discussion of

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1 trying to get out all these materials. We do commend
2 the parties to look at everything we produced
3 yesterday. It's been an enormous volume produced. I
4 think there is a lot to be gained by having other
5 parties other than Olympic look and scrub through and
6 decide, do they really want us to be busy doing
7 something they already have or don't really need. That
8 has eliminated some. We appreciate the ones that have
9 been eliminated and deferred. Any kind of relief on
10 that line has been very positive and helpful. We would
11 encourage more on that.

12 We will continue to work very hard. We are
13 not taking vacations or watching the Olympics or
14 reading newspapers. At least from my perspective,
15 we're trying to do this as quickly as we can, and we
16 will continue to do that, to make that commitment. I
17 may watch a little bit of the Olympics over the
18 weekend, but not much. That's all I have to say. We
19 will look at some of these in terms of making specific
20 objections and talk to counsel before we bring that to
21 Your Honor's attention.

22 The final observation we have is that we too
23 have some discovery requests we need to get out, and
24 some of those are necessary in order to answer
25 questions we have and to more fully answer questions,

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1 for example, about alternative transportation, barge,
2 ships, tanker trucks, that commission staff has asked
3 about, and Tesoro does ship by barge and tanker truck
4 and so on, have data on.

5 And finally with regard to Equilon, I don't
6 represent Equilon. Equilon is an independent entity.
7 I can't speak to that issue as to whether it would be a
8 good idea or bad. I would just note if we are going to
9 take that approach, the parties need to inform Equilon
10 somehow that they would intend to bring them into this
11 matter in some direct way. We will pass that on
12 indicating that this conversation has occurred. I will
13 use the transcript from this and let them know, but if
14 subpoena duces tecum are being suggested, then I think
15 it would be fair to provide some advance notice of that
16 to the actual structure of that entity.

17 Again, I think I mentioned that there are
18 other lawsuits going on. I think we already know about
19 the one that is a counterclaim to some other things
20 involving Equilon, but it is not a situation where that
21 entity has equal interests and equal legal
22 representation. They are quite distinct entities. I
23 probably made too much of a point on that, but I don't
24 want anybody to think that I represent Equilon because
25 I do not, and I don't represent BP or Arco. I

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1 represent Olympic, and that's it.

2 JUDGE WALLIS: Mr. Brena?

3 MR. BRENA: First, I would like to say that
4 aside from the stack that I received today, which is
5 that big (indicating), we've received one response, and
6 it was incomplete, in 21 days. Now, there is an awful
7 lot of conversation that went into a three-inch stack
8 of paper. We need some discovery.

9 JUDGE WALLIS: We understand that, and our
10 efforts, as you heard us earlier, are aimed at
11 accommodating that.

12 MR. BRENA: One thing I would like to comment
13 on specifically, we haven't had, and this is the 22nd
14 day, a single objection to a single discovery request.

15 JUDGE WALLIS: We understand that. We have
16 asked counsel to attend to that.

17 MR. BRENA: There inlies my concern. This
18 commission's rules apply to the discovery. They
19 indicate they have 10 days to respond. They didn't
20 respond with any objections. Your Honor indicated that
21 if they had objections to bring them forward at this
22 prehearing conference, as I recall that part of that
23 conversation, and they did not. And now they should
24 not be invited to raise objections 21 days after the
25 filing of the discovery requests. I think they should

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1 have to deal with the discovery requests that are
2 before them, and what I don't want to have happen now
3 in terms of the going-forward process is to start
4 arguing three weeks after the fact about discovery
5 objections that should have been solved long ago.

6 I think that they are untimely, and I think
7 they've waived the right to object under the
8 regulations. They've had two opportunities to object,
9 and they should not be given a third opportunity to
10 file an objection to any specific data request. I
11 think that time is long since gone, and to the agree we
12 are worried about the efficiency of discovery in the
13 future, that should not be permitted at this point, so
14 I would take that.

15 If I understood opposing counsel, they intend
16 to serve some discovery with regard to issues, and
17 there was one other way I think we could make things a
18 little bit easier for everybody, and that is to have
19 motions for summary disposition with regard to certain
20 issues. The competition of dual case and the impact to
21 the ultimate shipper are all three issues which we went
22 through in the interim case. I believe it was your
23 ruling that any impact with regard to the shipper's
24 customers was not relevant to the interim rate.
25 They've inserted it in their direct case, and we served

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1 and then withdrew discovery. Mr. Marshall mentioned
2 that we served something they didn't really need. We
3 served something we didn't really need. We served
4 something in our case. It had nothing to do with
5 setting rates. They went back to the impact or
6 whatever it is on our customers of this rate increase.
7 That simply is not relevant to setting a cost-based
8 rate for this commission. There is no reason for
9 discovery on it because it's not relevant to the
10 issues, so perhaps we should just take that issue
11 head-on in a motion for summary disposition.

12 The competition. We are starting to get in a
13 situation where staff, I noticed, served, and we did as
14 well, and now I understand Mr. Marshall is going to
15 serve discovery on all of these alternative costs of
16 transportation. The fact of the matter is this is
17 cost-based regulation. It's based on the cost of
18 providing service. It not based on the cost of the
19 alternative means of transportation, so there is an
20 entire theme in their case that is responding to a
21 great deal of discovery, a great deal of work that is
22 completely unrelated to setting a rate based on their
23 cost, so I think you can reasonably expect a motion
24 with regard to that issue. This commission doesn't set
25 competitive rates. They haven't advanced competitive

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1 rate setting methodology, but we are still talking
2 about what barges are doing. Who cares what barges are
3 doing? Rates are set based on their cost of providing
4 service to their customers, and what barges are doing,
5 what their trucks are doing, Your Honor has already
6 ruled once isn't relevant to this case, and apparently,
7 we are going to go back through that cycle again, and I
8 can't think of anything that is a greater waste of
9 time.

10 They don't have one case. They have two
11 cases. They have put forth case one and case two based
12 on two different test periods, and that has complicated
13 the discovery in this case a great deal, and I think
14 that taking that issue straight on, one case is based
15 on the commission's regulations and the test year that
16 is known, and the other one is based on projections.
17 So I think taking a look at that issue might help
18 simplify.

19 So simplifying the case by taking out issues
20 that aren't relevant to the commission's determination
21 would be helpful, and specifically what spawned these
22 series of comments is that he's getting ready to serve
23 discovery on Tesoro's cost of barge service. We've
24 already ruled that wasn't relevant once, so we've got
25 to go through that cycle again? We are just trying to

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1 get financial information, but we are going to put
2 resources into that? In the context of limited
3 resources, then we need to take a look at Olympic's
4 attempt to redirect this case in areas you've already
5 ruled are not even relevant.

6 So to summarize, I think it's long past time
7 for specific objections to specific discovery. I think
8 that motions for summary disposition on some of these
9 issues are responding to discovery but I think would be
10 helpful and you may expect them, and then with regard
11 to Equilon, I have not had an opportunity to fully
12 research this point to know whether or not an owner of
13 Olympic is subject to a motion to compel by this
14 commission. So perhaps some discussion of that is in
15 order. I do note that we've served subpoenas on
16 various and sundry accounting firms. They were having
17 a 1999 audit done by Price Waterhouse and now they've
18 changed to Ernst and Young. We have pending subpoenas
19 for all of those. We haven't gotten any information
20 back, and it's been a number of weeks. So I'm a little
21 hesitant to use the subpoena approach.

22 What we have is an owner of a regulated
23 company who is refusing to participate meaningfully in
24 a rate increase that it is requesting through its
25 company, so I would hope that the commission would send

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1 a message to Equilon that says, You've got a rate case
2 here. You are an owner. This is money in your pocket.
3 You guys need to provide information. So to me, that
4 would be a motion to compel or subpoena issued by the
5 commission. Please do not put in place a mechanism
6 where a party has to go out and try to get that
7 subpoena because that's not working real well, even
8 with regard to accounting firms, which I expected would
9 work very well with.

10 And then I would say I would like an
11 opportunity to review this. This three-inch stack is
12 responsive to a majority of our discovery requests. We
13 have spent a lot more man hours than this stack took in
14 trying to put together, so I'm suspicious it's fully
15 responsive. I have noticed the representation is of
16 the four highest priorities. One and a half of them by
17 their own admission have not been responded to at all
18 yet. So I would encourage them to continue working
19 priority list, and I would encourage the commission to
20 apply its discovery rules and to have as early as
21 possible a prehearing conference to review their
22 responsiveness to date and press any motions to compel
23 that may be necessary. Thank you.

24 JUDGE WALLIS: Mr. Stokes?

25 MR. STOKES: I have nothing to add.

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1 JUDGE WALLIS: Mr. Trotter?

2 MR. TROTTER: Just a couple, Your Honor. I
3 think your list of requirements is reasonable. It also
4 is reminiscent of similar comments you made in the
5 interim phase, so I'm a little concerned we are going
6 to get improvement, but I think you are doing the best
7 you can do to get there. Staff is willing to work with
8 all parties to minimize burdens in order to get what we
9 need.

10 I am a little concerned. The company has
11 indicated it's going to issue discovery regarding
12 competitive issues and mentioned staff's inquiry. I
13 want you to understand that we've only asked for
14 existing studies that they have and the basis for some
15 of their experts' statements in filed testimony. So
16 that should require them to do nothing other than to
17 review their staff documents and produce them.
18 Whatever they relied on, produce it. If they have any
19 studies, produce them. We were not intending to
20 require the company to do anything more than that in
21 our discovery comment point.

22 I am concerned at counsel's statement about
23 producing new documents or new information. The rule
24 does contemplate that a data request does include
25 compilation or summary of extant documents. It is

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1 limited in terms of cost studies and so on, but I hope
2 the company will read the rule carefully and then talk
3 to us about whether or not they will produce additional
4 data that may not be an extant document. We are
5 committed next week to doing all we can to go through
6 what we have and focus our efforts in what it is we
7 need and get it, and if there is cooperative support on
8 both sides of those efforts, I think we can move
9 forward.

10 I understood Your Honor to -- I don't know if
11 you had set the dates in June, but I think that's a
12 step forward, so we can work back from there -- maybe
13 not today, but at some point to establish the schedule
14 after we've had a chance to talk to FERC about how firm
15 their schedule is. So I think you're doing all you
16 can. We've been through this before. I remain
17 optimistic, but I also hope that counsel will try to
18 work more closely with the parties, all counsel work
19 together to try to move this forward. Thank you.

20 One final comment with respect to Equilon.
21 If we want to be efficient about this, I might just
22 suggest that Mr. Marshall tell us who the attorney is
23 at Equilon. I would commit to give that person a call
24 and indicate that the commission can issue a subpoena
25 duces tecum for these documents, and I think it may

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1 require the parties to make a motion to the commission
2 to do that, but if there is problems getting specific
3 documents from Equilon, let's have the company tell us
4 what those are, and I would be happy to call this
5 attorney and indicate, This is what we need and these
6 are processes for getting it and that parties may very
7 well be making a motion to get them. If that will
8 help, I'm committed to playing that roll if the parties
9 would so like rather than making a request of someone
10 and nothing coming back, if that's the problem.

11 MR. MARSHALL: I don't know the name of the
12 attorney. Mr. Fox inquired of Equilon at his level the
13 same type of person. He was told he would have to talk
14 with their Equilon attorneys without naming a specific
15 person, so neither Mr. Fox nor I know that, but what we
16 can do and I will commit to do is we will ask that
17 contact at Equilon for a name, and I will pass that on,
18 but I just wanted you to know that I have no idea who
19 that attorney might be.

20 MR. TROTTER: Whoever you tell me to call,
21 I'll call and try to work something out.

22 MR. BRENA: It occurs to me that as a
23 courtesy to Olympic, we stayed all discovery until the
24 filing of their direct case. Normally when you get
25 involved in these things, you know what you need and go

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1 ahead and file. They were putting together their
2 direct case, and they had asked, and we agreed to, to
3 not serve any discovery until after they filed their
4 direct case. I would like a similar courtesy back.

5 All parties have limited resources, and
6 Olympic has far greater resources than -- and to the
7 degree that counsel has indicated they are going to
8 start serving discovery on parties when they are in the
9 middle of preparing their case and going through the
10 volume of discovery they are going to produce, that's a
11 tremendous burden on this process and an unnecessary
12 one, because there is discovery they can serve now that
13 they could not serve after our direct case is done. So
14 I would ask for a similar courtesy from Olympic. If
15 it's not extended, I would ask Your Honor to order it.

16 JUDGE WALLIS: What makes sense to me on that
17 last point is not a suspension of filing discovery but
18 a suspension of the time for response so that we avoid
19 the problem that Olympic was faced with; that is, a
20 sudden deluge of a massive number of responses that
21 they couldn't deal with, and if on seeing a request,
22 you understand that you can do some work now or farm it
23 out now and make the response more timely; that is,
24 make a response within 10 days after the filing of your
25 case that that could serve your interests as well as

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1 that of the process and getting the information
2 produced. So I certainly would entertain a suggestion
3 to that effect.

4 What I would like to do at this point, I note
5 that I have to be in Lacey in about 15 minutes for a
6 matter that I cannot reschedule. If the parties are
7 amenable to deferring discussions, specific discussions
8 of scheduling, until a prehearing conference on Monday,
9 March 4th, that would give the parties the opportunity
10 to talk with their witnesses and the people responsible
11 for providing documentation. It would give parties a
12 chance to talk with each other, and it would, I
13 believe, put us in a much better situation to make some
14 scheduling decisions.

15 I would ask the parties to the extent
16 feasible to discuss with each other potential schedules
17 based on a June 17 hearing and to no later than Friday
18 make a proposal to the commission, either individually
19 or as a group, as to how you would like this to fall
20 out, particularly with regard to coordination with the
21 FERC schedule.

22 MR. TROTTER: Friday the 1st of March?

23 JUDGE WALLIS: Yes. I understand this may
24 seem like taking a step back at this point, but I
25 believe that proceeding in this manner will make the

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1 remainder of this process more fair and more
2 expeditious if we do not engage in these matters right
3 now.

4 In the meantime, and I'm glad we still have
5 Ms. Hammer on the line, I would ask, and Mr. Marshall
6 and Ms. Hammer and Mr. Ryan and others to review the
7 pending requests with a focus on the priority requests
8 and to discuss matters of concern with opposing
9 counsel, particularly issues involving responses that
10 you believe will of necessity be delayed. Is that
11 something that the company is prepared to do?

12 MR. MARSHALL: Yes. As I indicated, we have
13 already scheduled a call on that exactly with people at
14 D.C. and Chicago and here. We will have further
15 conversations today on this as well, and I will report
16 back, as I'm sure Ms. Hammer will as well.

17 JUDGE WALLIS: With regards to Mr. Brena's
18 plea to make a strict application of the discovery
19 rules, I have a great deal of sympathy with that, but I
20 believe I have an obligation to the process going
21 forward to handle it in as practical a manner as
22 possible, and I will not grant that request or motion
23 at this time, but I do expect that the number of
24 concerns will be minimal, if any, and that by
25 instituting a dialogue between parties, many of these

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1 concerns could be avoided, and again that we ultimately
2 wind up with a good record upon which the commission
3 may make a sound decision.

4 So please note that that is not a perspective
5 ruling, and I really do expect the company will be
6 talking with the staff on the company, that the counsel
7 will talk with the staff, that problem areas will be
8 identified early, and that counsel will be engaging in
9 a dialogue with counsel to deal with those problems. I
10 do expect that by the end of next week that the
11 discussions among counsel will have been concluded,
12 among the staff and intervenor counsel, and that there
13 will be some communication with the company as to what
14 the status of discovery requests is. The company will
15 by that time be able to respond with information about
16 the status of responses to requests that have been
17 made, that you will talk with each other before the
18 prehearing conference on Monday the 4th, and that you
19 will be able to come into that conference knowing with
20 a large degree of assurance what information is
21 forthcoming, what requests are still outstanding, and
22 how best to proceed with a timely adherence to a
23 practical schedule that will get us where we need to be
24 when we need to be there.

25 MR. BRENA: Your Honor, can I just raise one

1 more issue? We have in the past had the discovery
2 served on us also served on two experts. It speeds
3 this entire review process up and creates great
4 efficiencies in the system, and we would ask that to be
5 an ongoing thing. My understanding is it was going to
6 be done and then it quit being done, and I would like
7 it if at all possible to be done again.

8 JUDGE WALLIS: Mr. Marshall, unless you have
9 a substantial objection to that, it's my observation
10 that it is a relatively efficient way to approach such
11 matters, and I would ask that you do so. Mr. Brena, I
12 believe, has volunteered to cover the additional costs
13 and shipping to see that that's done.

14 MR. MARSHALL: Mr. Ryan just told me we are
15 doing that. Mr. Brena said we aren't, but we have in
16 the past, and we are continuing to do that, so it's a
17 moot point. We will send them a bill, however.

18 JUDGE WALLIS: I will see that a notice is
19 served for a prehearing conference on the 4th. We will
20 identify some matters to be addressed, and parties
21 should feel free to raise other matters as appropriate.
22 Thank you all, and Mr. Trotter, I missed your goal by
23 about two minutes here, but I appreciate everybody's
24 willingness to work forward until this matter is
25 concluded.

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1 (Prehearing conference concluded at 12:00 noon.)

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