

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION)	
)	DOCKET NO. TO-011472
Complainant,)	
)	
v.)	
)	
OLYMPIC PIPE LINE COMPANY, INC.)	
)	
Respondent.)	
_____)	

**TESORO REFINING AND MARKETING COMPANY'S
COMMENTS REGARDING THE SEVENTH SUPPLEMENTAL ORDER:
AMENDING PROTECTIVE ORDER**

I Tesoro Refining and Marketing Company (ATesoro@), by and through its attorneys, Brena, Bell & Clarkson, P.C., pursuant to Administrative Law Judge Robert Wallis's request, hereby submits its comments regarding the Seventh Supplemental Order: Amending Protective Order of the Washington Utilities and Transportation Commission (AWUTC@). In accordance with WAC 480-09-420(3), the name and address of the pleading party is set forth below. Please direct all service and correspondence regarding the above-captioned docket to the following:

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At the prehearing conference on Friday, March 8th, 2002, in response to a general discussion about the disclosure of information relating to the Whatcom Creek incident which may be relevant to this proceeding, counsel for Olympic raised the concern that such information could be improperly used in the general civil litigation arising from the Whatcom Creek incident. Specifically, the parties' prehearing conference comments on this point are set forth as Appendix A.

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Tesoro is concerned that the proposed supplement to the protective order is far broader than meets Olympic's concern and raises additional issues because of its focus on information provided among competitors rather than the misuse of information by common litigants. Stated differently, the standard set forth in the proposed supplement concerns heightened competitive impacts from information which is unrelated to Olympic's concern. In addition, Tesoro is concerned with the limited handling, limited access, locked storage, and advanced notice requirements imposed by the proposed supplement on information designated highly confidential. To cite one example, outside counsel for Tesoro works with a team of experts and attorneys within two firms; therefore, adopting requirements limiting access among this team to ~~one~~ outside counsel~~s~~ and ~~one~~ outside consultant~~s~~ would be extremely burdensome.

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Tesoro believes the proposed supplement should be fashioned to meet Olympic's concern and not be expanded beyond the stated need. Accordingly, Tesoro would propose the following:

- C The current protective order simply be modified to have a highly confidential category that does not allow the review by in-house counsel (the current protective order does not allow review by other employees of the parties).
- C In all other respects, the highly confidential information be treated the same as confidential information under the existing protective order.

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This solution is intended to minimize the impact and burden of adding another category of confidential information while at the same time meeting Olympic's concern that in-house counsel not be permitted access to highly confidential information. Regrettably, counsel for Tesoro has not had

an opportunity to discuss this matter with counsel for the other parties to this proceeding prior to filing these comments.

DATED this 12th day of March, 2002.

BRENA, BELL & CLARKSON, P.C.
Attorneys for Tesoro Refining and
Marketing Company

By

Robin O. Brena, ABA #8410089
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2002,
a true and correct copy of the foregoing
document was faxed, emailed, and mailed
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APPENDIX A

TO-011472, -DRAFT- - Vol. 16 (3/8/2002), (Pages 124:6 to 127:10)

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6 MR. MARSHALL: One of the concerns that
7 I have, and it's a fairly deep concern, Your Honor, is
8 because these Whatcom Creek expenses relate to a
9 litigation that is currently in process. Including
10 Tosco, by the way. Tosco has a claim, as we've
11 mentioned, for \$30- to \$40,000,000 for lost income,
12 lost revenues due to the accident.

13 There is significant potential for
14 other uses, misuses, of information of any sort from
15 this, whether it be the identities of experts that
16 have been hired in litigation, how people consulted,
17 even the amounts of attorneys' fees that have been
18 paid by insurance.

19 So all of this is some concern because
20 the very people who are parties to this case may also
21 be, at least some of them, may be litigants.

22 JUDGE WALLIS: Mr. Finklea, would you
23 object if this information is withheld from you and
24 persons working with you on behalf of Tosco, and from
25 Tosco?

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1 MR. FINKLEA: Well, Your Honor, I
2 certainly wouldn't object from it being withheld from
3 people at Tosco that would be involved in that
4 litigation. I've signed a protective order, and I can
5 sign even a more serious one. I'm not involved in
6 anything for Tosco other than this proceeding.

7 JUDGE WALLIS: Very well. Mr. Marshall,
8 does that respond to your concern? There is a
9 protective order, and if you mark the information as
10 confidential, then that does offer some protections.
11 And the Commission does have provisions and, in the
12 past, has implemented protective orders that are even
13 more restrictive than the standard to very much limit
14 the accessibility to information.

15 I'm sensitive to that concern, I think
16 it's a real concern.
17 MR. MARSHALL: I agree.
8 JUDGE WALLIS: I believe that if you
19 requested that to occur, that we can accommodate that
20 request.
21 MR. MARSHALL: We would have to have
22 that as a minimum, because this really does, depending
23 on what the kinds of invoices and information in
24 general we're talking about --
25 JUDGE WALLIS: We will see that such an

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1 order is prepared. What I would like to do is
2 circulate a draft of that order to counsel to assure
3 that it is phrased in a way that actually does
4 identify and does protect the information that the
5 company seeks to protect.
6 Will that work for parties?
7 MR. BRENA: It will, Your Honor.
8 MR. FINKLEA: Yes.
9 MR. TROTTER: (Indicated affirmatively.)
10 MR. BRENA: And there is no reason for
11 rate purposes that I think that those kinds of issues
12 need be put forward in testimony.
13 JUDGE WALLIS: At this juncture we don't
14 know exactly what you're going to get back. It may or
15 may not provide information that is sensitive. If it
16 does, I just want us to be prepared so that the
17 information, such as it is, will flow freely.
18 MR. BRENA: Absolutely.
19 MR. MARSHALL: Again, we certainly want
20 that as a minimum protection in this area.
21 JUDGE WALLIS: Very well. I will see
22 that that is prepared, and I will circulate that in
23 the next few days to counsel.
24 MR. MARSHALL: Depending on the level of
25 detail produced by this insurance coordinator, we may

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1 also seek to have some of that information blocked out
2 as not appropriate at all.

3 JUDGE WALLIS: I believe that Mr. Brena
4 has indicated that he's not interested in specifics
5 that may be relevant to the insurance claims. To the
6 extent that that occurs, rather than spend your time
7 and the company's scarce resources in proceeding, I
8 would suggest you talk with Mr. Brena to work out a
9 way that minimizes the effort on everybody's part and
10 yet makes essential information available.