

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3	WASHINGTON UTILITIES AND	)	
	TRANSPORTATION COMMISSION,	)	
4		)	
	Complainant,	)	
5		)	
	vs.	)	DOCKET NO. TO-011472
6		)	Volume XIV
	OLYMPIC PIPE LINE COMPANY,	)	Pages 1426 - 1453
7	INC.,	)	
		)	
8	Respondent.	)	

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10 A prehearing conference in the above matter  
11 was held on March 4, 2002, at 10:39 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 and LISA WATSON,  
18 Assistant Attorneys 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 (via bridge), Attorney at  
22 Law, Perkins Coie, 1201 Third Avenue, Suite 4800,  
Seattle, Washington 98101.

23 OLYMPIC PIPE LINE COMPANY, INC., by LORRIE  
24 MARCIL and LAWRENCE MILLER (via bridge), Attorneys at  
25 Law, Sidley, Austin, Brown, Woods, 1501 K Street  
Northwest, Washington, D.C. 20005.  
Kathryn T. Wilson, CCR  
Court Reporter

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

5           TOSCO CORPORATION, by EDWARD A. FINKLEA,  
6           Attorney at Law, Energy Advocates, LLP, 526 Northwest  
7           18th Avenue, Portland, Oregon 97209.

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

2 JUDGE WALLIS: Let's be on the record,  
3 please. This is a prehearing conference in the matter  
4 of commission Docket No. TO-011472, captioned  
5 Washington Utilities and Transportation Commission  
6 versus Olympic Pipe Line Company, Inc. This matter  
7 relates to a request by Olympic for an increase in its  
8 rates and charges providing service within the state of  
9 Washington.

10 This conference is being held at Olympia,  
11 Washington on March 4 of the year 2002 pursuant to  
12 notice to all interested parties. I'm going to ask for  
13 appearances at this time and ask those persons who have  
14 previously appeared merely to state their name, the  
15 name of associate counsel, if any, and for any new  
16 appearances to make a full appearance, beginning with  
17 the company.

18 MR. MARSHALL: I'm Steve Marshall of Perkins  
19 Coie representing Olympic Pipe Line Company.

20 JUDGE WALLIS: For intervenor Tosco?

21 MR. FINKLEA: I'm Ed Finklea, Energy  
22 Advocates, LLP, on behalf of Tosco Corporation.

23 JUDGE WALLIS: Commission staff?

24 MR. TROTTER: Donald T. Trotter and Lisa  
25 Watson for Commission staff.

1429

1 JUDGE WALLIS: For intervenor Tesoro?

2 MR. BRENA: Robin Brena, and with me is David  
3 Wensel.

4 JUDGE WALLIS: And for Olympic's FERC counsel  
5 who have participated and will participate this  
6 morning?

7 MS. MARCIL: Lorrie Marcil, L-o-r-r-i-e,  
8 last, M-a-r-c-i-l, and with me is Lawrence Miller,  
9 L-a-w-r-e-n-c-e, last name M-i-l-l-e-r. We are with  
10 the firm of Sidley, Austin, Brown, and Woods. Our  
11 address is 1501 K Street Northwest, Washington, D.C.  
12 Zip code is 20005.

13 My phone number is (202) 736-8273. My fax is  
14 (202) 736-8711. My e-mail is lmarcil@sidley.com.  
15 Mr. Miller's phone number is (202) 736-8209. His fax  
16 is (202) 736-8711, and his e-mail is  
17 lmillers@sidley.com.

18 JUDGE WALLIS: Thank you very much for  
19 Olympic's FERC counsel. This morning, we began at the  
20 appointed hour, 9:30, with discussions regarding the  
21 status of discovery and other procedural matters, and  
22 during the course of those discussions reached some  
23 conclusions and some agreements. We heard status  
24 reports from the parties regarding the status of  
25 discovery. We discovered that there are a few glitches

1430

1 remaining in the discovery process.

2           As a result of the discussions, we determined  
3 and the parties agreed to convene a meeting of the  
4 parties, perhaps in the nature of a technical  
5 conference because Olympic has agreed to make staff  
6 persons available to assist, on Wednesday of this  
7 week -- that is, the day after tomorrow -- at Olympic's  
8 Renton offices beginning at 10 o'clock in the morning.

9           The time between now and then will be  
10 available to the parties, particularly Olympic, to  
11 review concerns raised by Tesoro and by Commission  
12 staff, also by Tosco, if any they may need, relating to  
13 discovery and where parties believe that they have not  
14 yet received full responses to discovery requests. I  
15 have asked the parties and directed the parties to  
16 focus the issues in those discussions not on whether  
17 the discovery request is ambiguous or confusing or  
18 improperly phrased but to identify what the parties  
19 want and how it can be provided, if there is any  
20 objection that those objections be clearly stated and  
21 discussed.

22           Following the opportunity for this conference  
23 on Thursday of this week, I will set a prehearing  
24 conference. It's my expectation that we will convene  
25 that conference at 9:30 on Thursday morning, but I must

1431

1 see if the arrangements can be made in order to do  
2 that. The result of the conference we expect will not  
3 be the filing of new DR's -- that is, data requests --  
4 but it would be clarification of the existing data  
5 requests and the company's either response or  
6 commitment to provide a response on a specific time  
7 schedule or the statement of an objection. On Thursday  
8 as to any matters on which the parties have not reached  
9 agreement, we will hear those matters. Parties then  
10 will be prepared to focus on areas of disagreement, and  
11 we trust that many of the concerns that have been  
12 raised will be largely or completely resolved at that  
13 time.

14 I promised the parties the opportunity to  
15 argue, to supplement, or to correct any of my  
16 statements. I will note that a proposed schedule has  
17 been submitted both by Mr. Finklea and by Mr. Trotter.  
18 Subject to the resolution of concerns regarding data  
19 requests, it appears that that schedule is a workable  
20 schedule. We understand that there is a potential  
21 concern relating to the FERC schedule and how that  
22 schedule interfaces with the one we have seen that's  
23 been suggested, and we trust that that matter will be  
24 taken up with FERC at the earliest feasible time.

25 Is there anything that parties wish to say at

1432

1 this juncture, beginning with Mr. Marshall?

2 MR. MARSHALL: Thank you, Your Honor. I  
3 would just repeat what I said initially. In addition  
4 to our discovery report and our addendum to a discovery  
5 report, we have now received some new FERC data  
6 requests, 27 to 51, in addition to the new staff  
7 requests. Since we filed our initial discovery report,  
8 we have this past week responded to over 100 data  
9 requests. We think that we've responded to all of  
10 Tosco's second and third Data Requests Nos. 43 to 64  
11 combined, and that appears to have largely taken care  
12 of the Tosco data requests that are outstanding.

13 We did mention that we know that we have some  
14 further responses, supplemental responses to make to  
15 staff, but we have as requested by the last  
16 commission's order sequenced our responses so as to get  
17 the Tosco and Tesoro data responses out before going  
18 back and doing that, but that's on track too to respond  
19 to what staff has done, and we believe we have  
20 responded to the vast bulk of what Tesoro has requested  
21 and identical requests made to FERC and to the UTC  
22 level. There are some interpretive issues that we hope  
23 to work through.

24 But with regard to the schedule, we have not  
25 been able to check with our witnesses or with FERC

1433

1 counsel, as you mentioned. We still believe that the  
2 best sequencing of these two proceedings would be to  
3 have the FERC proceeding go first. If the commission  
4 schedule opens up, and there are discussions, I  
5 understand, in the various other cases pending, so that  
6 is an opportunity that we still want to make sure is  
7 kept open.

8           Our goal, of course, as with everything else  
9 given the financial difficulties faced by Olympic, is  
10 to do whatever we are going to do in both proceedings  
11 the most efficient way, and our view is that this case  
12 would be very easy to resolve if FERC methodology were  
13 to be applied. That's an open issue for the  
14 commission. The commission has not determined which  
15 methodology to apply. If indeed it has an open mind,  
16 and we believe they have been very careful to state  
17 that they have, then it's been our position we ought to  
18 see what FERC does, applying that methodology to the  
19 facts of this case, and then do a supplement later on.  
20 That would be the ideal sequencing for us.

21           So having said that, we want to continue to  
22 work at both the FERC side and this side to coordinate  
23 to the maximum extent. We believe we have everybody on  
24 the record in the room at the same time doing the  
25 coordination that the commission and Your Honor has



1434

1 suggested. We do appreciate the fact that other  
2 counsel for intervenors and staff have begun to  
3 coordinate with each other to avoid overlapping  
4 duplicative requests, and we would ask that to  
5 continue. We were particularly concerned that a whole  
6 new FERC set of data requests have gone out, and I  
7 don't believe there has been any coordination on that.  
8 We are for our part trying to coordinate to make sure  
9 that answers we have answered that applied to other  
10 parties' requests have cross-references, and that  
11 process is going on as we speak.

12           But the last thing I would add is that if  
13 there could be a moratorium on new data requests, at  
14 least from this point, until we get these matters  
15 resolved that we are working on now, that would be  
16 appreciated. As we say, we got new staff requests, and  
17 I don't know if other requests are pending, but that  
18 would be a help, and I should have brought that up  
19 earlier in our informal discussions, but I wanted to  
20 bring that up now.

21           With that, I agree with Your Honor's  
22 suggestion about how we ought to proceed here in the  
23 next few days, so that concludes our remarks.

24           JUDGE WALLIS: Mr. Finklea?

25           MR. FINKLEA: Tosco has put forward a

1435

1 schedule that would result in hearings in June. We  
2 would be concerned if this proceeding would slide  
3 beyond the schedule that has been suggested. We don't  
4 believe that there is anything that would be an  
5 insurmountable obstacle to meeting the current  
6 schedule. We would be concerned with having the state  
7 proceeding slip significantly behind the FERC  
8 proceeding.

9           As to our data, we are going over the  
10 responses, and we have received -- I will work with our  
11 people so when we have the informal meetings later this  
12 week we make sure we have cleared up our data request  
13 problems, and I'm a little concerned with the  
14 suggestion of a moratorium on data requests, especially  
15 given the overlapping proceedings and the pendency of a  
16 due date at FERC, which I am not working the FERC side  
17 of the proceeding, but I am coordinating with Tosco's  
18 FERC counsel, and I know that given the deadlines there  
19 that the people working on the FERC case are having to  
20 work very hard right now in order to meet those  
21 deadlines.

22           JUDGE WALLIS: Mr. Trotter?

23           MR. TROTTER: Thank you, Your Honor. We did  
24 have extensive discussion off the record. Staff is  
25 agreeable to the schedule you've set forth for this

1 week. We had extensive discussion and prior  
2 conferences regarding the schedule, and your  
3 observation was if we delay our case very much, as a  
4 practical matter, there is really no available hearings  
5 in the fall, so this is the schedule that seems most  
6 workable. The company did not propose a specific  
7 schedule alternative.

8           We did contact FERC counsel. We sent her all  
9 the outstanding data requests in our case, not just  
10 staff but other parties, and I know she was working on  
11 new ones last Thursday. That's what she said to me, so  
12 I expect that she was unable to review them all and  
13 wanted to get some data requests out, but obviously, we  
14 can't force FERC staff to cooperate. In my discussion  
15 with her, she seemed very cooperative and interested in  
16 using whatever resources we had already generated here,  
17 so hopefully, that can work out.

18           With respect to a moratorium, staff did issue  
19 some data requests last Friday completely addressed to  
20 statements made by Mr. Schenk in his direct testimony.  
21 One, in fact, requested something in the form of a work  
22 paper that should have been filed with the case, but in  
23 any event, that should have posed little or no burden  
24 on Olympic's Renton resources. We see no reason for a  
25 moratorium at this point.

1437

1           We are hopeful that this process will work to  
2 get the parties in the same room talking about these  
3 issues, and we intend to fully participate in that.  
4 Thank you.

5           JUDGE WALLIS: Mr. Brena?

6           MR. BRENA: Thank you, Your Honor. As I  
7 understand your ruling, there will be a technical  
8 conference, and I believe you said tomorrow at 10. Did  
9 you mean Wednesday at 10?

10          JUDGE WALLIS: I meant to say Wednesday at 10  
11 a.m.

12          MR. BRENA: Wednesday at 10, and I would just  
13 ask specifically that if the company could have a full  
14 set of the discovery materials available to all parties  
15 so that all parties don't have to travel with them,  
16 that would be very helpful to conducting an efficient  
17 technical conference.

18          JUDGE WALLIS: Mr. Marshall, is that  
19 possible?

20          MR. MARSHALL: Cindy, do you have a full set  
21 there at Renton?

22          MS. HAMMER: I don't believe we do.

23          MR. MARSHALL: We will try to pull that  
24 together. Some of it is in Washington D.C. and some of  
25 it is in Chicago, but what I will do is pull together

1438

1 the materials that we've already provided to the  
2 parties and put them in the room.

3 MR. BRENA: If I could ask for  
4 teleconferencing capacity be made available so I may  
5 patch into the system my experts so they can  
6 participate, and that would be most efficient to focus  
7 what their needs are in preparing their testimony.

8 MR. MARSHALL: How many people can we patch  
9 in in Renton at any given time?

10 MS. HAMMER: We can probably get an 800  
11 number to go there for dial-in.

12 MR. BRENA: I would also add that there be  
13 sufficient and adequate company personnel available.  
14 Specifically, I would request for Mrs. Hammer and  
15 Mr. Tally at the technical conference. Mr. Tally  
16 because of the importance of the capacity issues of  
17 trying and recognizing that there are a great many  
18 documents in Renton that go to the capacity issue and  
19 the need to have him actually in the room to discuss  
20 what documents would be most responsive and most  
21 efficient to be produced, and Ms. Hammer because of our  
22 need for much of the accounting information where  
23 inlies many of the discovery disputes between the  
24 parties.

25 MR. MARSHALL: Ms. Hammer will be there, and

1439

1 as she indicated earlier, a lot of the engineering  
2 people are doing other things, but we will have  
3 somebody there that can answer capacity questions from  
4 the engineering side, whether it's Mr. Tally or  
5 somebody else --

6 JUDGE WALLIS: Mr. Brena, Mr. Marshall hasn't  
7 finished speaking.

8 MR. MARSHALL: Ms. Hammer indicated that the  
9 engineering people are doing other things, but we will  
10 have somebody there, whether it's Mr. Tally or some  
11 other engineering person, to talk about capacity issues  
12 and documents. We will have somebody there from the  
13 engineering in Renton.

14 MR. BRENA: The other place, the reason I  
15 asked for Mr. Tally, they've indicated in their  
16 testimony that with regard to the Whatcom Creek  
17 expenses that an engineer has coordinated that, and I  
18 don't know if that's Mr. Tally or someone else.

19 MR. MARSHALL: That's different than a  
20 capacity issue.

21 MR. BRENA: Yes, it is, and that's why I'm  
22 bringing it forward. That is another area in which we  
23 will need to interface with the engineering persons, so  
24 if you keep those two things in mind when you select  
25 the person that's familiar with the capacity records so

1440

1 that they can most efficiently focus our efforts in  
2 that regard and someone who's familiar with the Whatcom  
3 Creek improvement or the person that headed that, and  
4 that would be a very efficient use of our time.

5 MR. MARSHALL: There is no single person on  
6 Whatcom Creek issues, Your Honor. That's a whole can  
7 of worms. Capacity we can do and engineering documents  
8 and all that we can, but Whatcom Creek, as you know,  
9 took place well before Mr. Tally was on board, so  
10 that's a whole set of different issues.

11 JUDGE WALLIS: To the extent possible given  
12 the company's resources, the greater degree that you  
13 are able to accommodate and anticipate Mr. Brena's  
14 concerns, it strikes me you are better off. All of us  
15 are in the long run. I understand your statement of  
16 the problem, but to the extent that it is possible to  
17 have one or more persons available who may be able to  
18 shed some light on the topic, it will likely work out  
19 to your and all parties' benefit.

20 MR. MARSHALL: As I understand, this is  
21 designed to find the documents that are responsive to  
22 requests that are at issue here in this discovery  
23 conference.

24 JUDGE WALLIS: Mr. Brena, anything further?

25 MR. BRENA: Yes. I would like to

1441

1 additionally point out that with regard to the  
2 accounting issues, they have indicated that those  
3 accounting issues are conducted in some other system,  
4 perhaps through insurance. I don't know if Ms. Hammer  
5 or they need someone other than her to be there to  
6 respond to questions with regard to insurance claims  
7 and accounting regarding Whatcom Creek. I would just  
8 bring that forward as well. I want to be as clear as I  
9 can with areas of our concern so that people may be  
10 available.

11 JUDGE WALLIS: Thank you, Mr. Brena.

12 MR. BRENA: I understand your directions to  
13 us not to focus on the language but to focus on the  
14 information that we need to advance our case.

15 JUDGE WALLIS: That's correct.

16 MR. BRENA: I agree with that focus. With  
17 regard to the proposed schedule, the schedule that's  
18 been proposed by staff and Tosco, Tesoro had an  
19 opportunity to review and comment on prior to its  
20 filing, and Tesoro agrees that we should keep a June  
21 date and get through these discovery issues as  
22 efficiently as we can. I may have a suggestion with  
23 regard to moving something a week, and I would defer  
24 those comments to Thursday if I may.

25 JUDGE WALLIS: Yes.



1           MR. BRENA: With regard to the restriction on  
2 any future discovery, I think that if what we focus on  
3 is the information that's needed and if we get into the  
4 prehearing conference on Thursday, Tesoro has only  
5 served one set of discovery requests, and it served  
6 them on February 1st. It was responded to partially  
7 February 21st and 22nd, and all of those responses were  
8 withdrawn by the response we received on March 1st. So  
9 effectively, the only response we've had to our  
10 February 1st discovery was served to us on March 1st.

11           Because of that timing, I agree with Your  
12 Honor's perspective to give the company an opportunity  
13 to review where we feel their discovery is deficient  
14 and give the parties an opportunity to get in the room  
15 with the appropriate company personnel to focus on what  
16 information we want and what information is contained  
17 within the Olympic system so we can get what we need  
18 and not focus on anything other than that.

19           I would oppose the idea of no new data  
20 requests, however, because I think that they just need  
21 to work through them in order and the order that they  
22 are advanced, and to the degree that there is  
23 additional burden associated with new responses that  
24 those be taken up in accordance with the normal course  
25 of conduct.

1443

1                   JUDGE WALLIS: Thank you, Mr. Brena. Does  
2 that conclude your comments?

3                   MR. BRENA: I'm just reviewing my notes, Your  
4 Honor. I do understand this to be a technical  
5 conference in nature. That concludes my comments.  
6 Thank you.

7                   MR. MARSHALL: A technical conference bounded  
8 by these requests. I don't want to open everything up  
9 to a wish list of things that weren't even touched on  
10 in these data requests and open up new areas. I think  
11 Your Honor's idea is to focus on the request and if  
12 there is some ambiguity in the request to get to the  
13 nature of the request, but not to open things wide up  
14 to a bunch of different inquiries.

15                  JUDGE WALLIS: That's our understanding.  
16 Mr. Brena, is that your understanding as well?

17                  MR. BRENA: Yes, that's my understanding. I  
18 made the comment just to be clear that a company  
19 personnel would be available for a full discussion with  
20 regard to the areas that are stated as implied in the  
21 discovery requests we served, not to go into whole new  
22 areas as Mr. Marshall clarified.

23                  JUDGE WALLIS: We perceive the focus of this  
24 conference to be on resolving discover issues, and to  
25 the extent that the availability of company personnel

1444

1 make it easier to identify the information that's  
2 available or to provide responses on the spot to some  
3 of the discovery issues, then I think that's  
4 appropriate.

5           To the extent that it would be deemed a full  
6 technical conference with much more open scope, we  
7 believe that it would be better to get the discovery  
8 issues out of the way first and then either conduct  
9 depositions or schedule a further discovery conference  
10 aimed at those purposes or both. Is that consistent  
11 with the thinking of persons in the room?

12           MR. MARSHALL: Yes. I believe that we are  
13 trying to get at exact data requests and to the extent  
14 there is an ambiguity in the request to resolve that,  
15 but not to go into areas beyond what the data request  
16 fairly looked to.

17           JUDGE WALLIS: Mr. Finklea, Mr. Trotter?

18           MR. FINKLEA: That's my understanding, Your  
19 Honor.

20           MR. TROTTER: Yes. I think, however, that  
21 the company keeps emphasizing whether there might be  
22 some ambiguity in the data requests, and I hope it  
23 doesn't devolve into wordsmithing and pulling out a  
24 dictionary. Your Honor emphasized that parties need to  
25 identify what they were asking for in the DR and

1445

1 clarify that and get the information they want. That's  
2 got to be in the company's best interest, and if they  
3 want another round of full discovery after that, so be  
4 it, but if there is a good-faith discussion about what  
5 the data request asked for, what the party wanted  
6 related to that request and directly relate it to it, I  
7 think we can make some progress.

8 JUDGE WALLIS: Our direction is that the  
9 focus not be on the language and whether it's  
10 ambiguous, but the focus is what information do they  
11 want and what does the company have and how can the  
12 company respond. Is that consistent with your  
13 understanding, Mr. Marshall?

14 MR. MARSHALL: Yes, but not just to take a  
15 statement in the data request that says, we want  
16 capacity, and then just to go into a whole bunch of  
17 other areas that loosely relate to capacity, say, but  
18 have nothing to do with the specific data requests.

19 What I don't want to do is make this a  
20 springboard to make a lot of informal data requests.  
21 The idea is to answer the data requests that are out  
22 there, to provide the documents that back that up, or  
23 to assure the parties that they have already been  
24 produced and report to the parties where they are. The  
25 capacity issue, which is Data Request 102, we did give

1446

1 them last week Exhibit B-1 for the current operational  
2 capacity figures. We thought they were asking for  
3 engineering drawings on the 400-mile system --

4 JUDGE WALLIS: I think we've touched on that  
5 already, and I'm not sure we need to go into it in any  
6 more detail.

7 MR. MARSHALL: Right, but that's just as an  
8 example, and to use that as a springboard to say, what  
9 capacity do you have on a particular date following the  
10 Whatcom Creek accident, that wouldn't be incorporated  
11 into that data request. We were asked for what the  
12 current pipeline capacity was. So that's an example of  
13 what I meant by focusing on a data request and not  
14 letting it get into a series of informal requests.

15 JUDGE WALLIS: It's not our intention that  
16 the conference be used to expand the requests that have  
17 been made but to identify the requests and the  
18 information that's available, to identify a schedule  
19 for providing information, to provide the information  
20 on the spot, if it is available, and to focus the  
21 discussions on a productive means of getting all of the  
22 parties in touch with the information that they need.  
23 Is that consistent with your understanding,  
24 Mr. Marshall?

25 MR. MARSHALL: Yes, it is.

1447

1                   JUDGE WALLIS: Mr. Brena, is that consistent  
2 with your understanding?

3                   MR. BRENA: Yes, it is, and I would go a step  
4 further. We have identified in Exhibit B to our motion  
5 to compel what specific information we are after, so we  
6 pretty much all listed it. In reviewing this between  
7 now and then, we may modify it to some regard, but for  
8 the purposes of this conversation, the information that  
9 we are after is specifically listed in Exhibit B, and  
10 so to the degree that the company can focus its  
11 resources on going through that list, that is certainly  
12 my intention, and I would hope the way the conference  
13 would proceed would be just to pull out Exhibit B and  
14 start on No. 1 and just work through it.

15                   So I have tried to identify it, and I would  
16 like to say also that Your Honor identified that there  
17 would be an opportunity for depositions with regard to  
18 matters, and I would ask that we take that up,  
19 deposition scheduling, Thursday as well, specifically  
20 because there is a tremendous need for depositions in  
21 this case.

22                   JUDGE WALLIS: I trust that the scheduling of  
23 depositions is a matter that the parties will be able  
24 to discuss on Wednesday in as much as you will all be  
25 there.

1448

1           MR. TROTTER: I included a date and Tosco,  
2 the week of April 1st is the date this we've proposed  
3 for beginning that, so if Olympic has response to that,  
4 we can certainly discuss that.

5           JUDGE WALLIS: There was a request for  
6 moratorium on additional data requests pending these  
7 discussions. I will ask the parties to examine the  
8 need for additional data requests over the next few  
9 days, but I will not impose a moratorium; particularly,  
10 as parties have indicated, if the information that's  
11 sought appears to relate to supporting materials for  
12 one of your expert witnesses who is not present in  
13 Renton or who is not subject to the staffing and  
14 resource restrictions that the company has. We really  
15 do not see why it would be difficult for the company to  
16 merely forward those requests to the expert witnesses  
17 and then follow-up with the witness in terms of  
18 response.

19           MR. MARSHALL: I have not yet had a chance to  
20 review those data requests that came in late Friday, so  
21 I couldn't speak to the problem those would cause.  
22 That was the nature of my request to have a moratorium  
23 is we can't even -- in order to respond to the existing  
24 things, we don't have time to view all the new things  
25 coming in.

1449

1                   JUDGE WALLIS: I do think we understand that  
2 your focus for right now must be of necessity on the  
3 information that's been requested and respond to. I am  
4 pleased that your FERC counsel is present for this  
5 discussion because I think it's essential that we  
6 implement the greatest degree of coordination and  
7 cooperation between the two dockets possible. I  
8 commend Mr. Trotter for pursuing the matter with the  
9 attorney for FERC staff as well, appreciate  
10 Mr. Finklea's efforts to coordinate with Tosco's FERC  
11 counsel. I think that the steps the parties have taken  
12 will help keep us on track for the hearing dates that  
13 appear to be feasible.

14                   I will, stepping back to a remark that  
15 Mr. Marshall made, ask Mr. Marshall to consult with  
16 your expert witnesses as to their availability during  
17 the dates that we've identified and let us know if  
18 there are any problems with those dates. I did  
19 describe earlier, and Mr. Trotter again referred to the  
20 scheduling problems that the commission faces in  
21 getting this matter heard in an expedited manner. We  
22 know that the company wants to get this matter resolved  
23 at the earliest possible time, and that certainly is  
24 the commission's desire as well.

25                   MR. MARSHALL: So to that I would only add



1450

1 that we do want to resolve in a short time, but also  
2 the most efficient way, particularly with the  
3 application of FERC methodology to these facts. We  
4 believe that that is the central issue in this  
5 proceeding as well as the FERC proceeding, and the more  
6 information we have on that the more likely the  
7 commissioners will have a full record on which to make  
8 a decision in their determination on which methodology  
9 to apply. That really does seem to be the only  
10 difference between the two proceedings. The financial  
11 records, the engineering records, they all are  
12 identical in both forms.

13 JUDGE WALLIS: You indicated that if you have  
14 areas to address that speak to that question that are  
15 not part of your direct case at this juncture, even in  
16 advance of the other parties' presentations, you would  
17 look to how you would like to supplement your direct  
18 case, and if you decide to make that request, proceed  
19 to make it.

20 MR. MARSHALL: When we filed the initial case  
21 in October, we filed a request to have the methodology  
22 issue determined ahead of the actual hearing so that we  
23 could speak directly to whatever methodology the  
24 commissioners had chosen. The commissioners wanted to  
25 look at the methodology and the context of the general

1451

1 rate case filing, but it may be appropriate now that  
2 the general rate case filings have been made to the  
3 FERC to raise that issue and have a determination made  
4 before the hearing that we will take Your Honor's  
5 suggestion and consider that. That might be one way in  
6 which we can reduce the duplication of effort.

7           If, for example, the commissioners were to  
8 choose to continue an application for these tariffs,  
9 the FERC methodology, which has been used since 1983,  
10 that would certainly narrow the issues greatly and  
11 resolve a lot of the duplication of effort. So we will  
12 have those further discussions and then talk to the  
13 parties about perhaps making that an issue that could  
14 be determined ahead of the hearing.

15           MR. TROTTER: We see no feasibility. I don't  
16 think that will help at all, Your Honor. We also have  
17 not had a clear statement by the company of what they  
18 consider the FERC methodology to be, so we've got a lot  
19 of work to do there that we are studying that issue. I  
20 don't think that issue is one that can be teed up  
21 summarily with the company, as you invited in your  
22 prior notice that people can file dispositive motions  
23 if they wish, but for staff, we don't see that as a  
24 fruitful one at this stage as an issue to resolve right  
25 now.

1452

1           JUDGE WALLIS: I want to also make it  
2 absolutely clear that I was not suggesting that the  
3 commission had any interest in changing its prior  
4 ruling. Is there anything further before we conclude?

5           MR. BRENA: Just one comment on the  
6 methodology issue. That issue has been teed up once,  
7 and the commission ruled and denied it, said  
8 appropriately that it wanted to consider it within the  
9 context of a general rate case. I don't believe any  
10 other underlying facts or circumstances have changed.

11           This is a case in which it's the case of  
12 first impression that the commission will rule on  
13 appropriate methodology to be applied for oil pipelines  
14 in the State of Washington. That is not the type of  
15 issue that should be summarily decided. With regard to  
16 his comments that they've been filing it that way since  
17 1983, the FERC methodology they are proposing wasn't  
18 even in existence in 1983. So I would just say that  
19 the commission ruled right on it. We shouldn't be  
20 encouraging them, and I certainly don't, as an  
21 opportunity to start changing their direct case at this  
22 point. I'm just trying to get information so that I  
23 can assess their current case.

24           So I would like to, in terms of moving this  
25 on efficiently, we are preparing our testimony assuming

1453

1 that's coming up. Our testimony is due on the 22nd.  
2 At some point, the target has to quit moving, and I  
3 would suggest on this particular point that this target  
4 should have stopped moving some time ago and shouldn't  
5 begin again.

6 JUDGE WALLIS: Thank you, Mr. Brena. Is  
7 there anything else? This conference is adjourned. I  
8 want to thank all of the parties for your participation  
9 this morning, and we will issue a notice for the --  
10 rather than adjourn this, continue it to a time and  
11 place on Thursday to be announced. Thank you.

12

13 (Prehearing conference adjourned at 11:19 a.m.)

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