

1455

1 TOSCO CORPORATION, by EDWARD A.
2 FINKLEA, Attorney at Law, Energy Advocates, LLP, 526
3 Northwest 18th Avenue, Portland, Oregon 97209,
4 Telephone (503) 721-9118, Fax (503) 721-9121, E-mail
5 efinklea@energyadvocates.com.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1456

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MORNING SESSION

10:15 A.M.

JUDGE WALLIS: Let's be on the record, please. This is a prehearing conference in the matter of Commission Docket No. TO-011472, which is denominated a complaint by the Washington Utilities and Transportation Commission versus Olympic Pipeline Company. The subject of this proceeding is the filing by Olympic of a request for an increase in its rates and charges for providing service within the State of Washington.

This prehearing conference was noticed for 9:30 this morning. We have engaged in some administrative discussions and find the time approaching 10:30. I would like to summarize, for record purposes, the elements of the discussions that are relevant to the matters before us.

The parties have agreed, after some description of yesterday's technical or inquisitorial session held at the offices of the Olympic Pipeline Company in Renton, that it would be advantageous to the parties and to the process that they continue their informal off-the-record discussions today, and that we reconvene tomorrow for the purpose of stating for the record the agreements that the parties have

1457

1 reached and seeking resolution through ruling on
2 matters on which the parties have not agreed.

3 Is that a fair statement?

4 MR. MARSHALL: Yes, Your Honor.

5 MR. BRENA: It is, Your Honor.

6 MR. FINKLEA: Yes, Your Honor.

7 JUDGE WALLIS: Very well. I would like
8 for the record to ask for appearances for each of the
9 parties today. If you just state your name and the
10 name of the party you are representing, I believe
11 appearances have previously been entered for all of
12 the participants. Beginning with the company.

13 MR. MARSHALL: I am Steve Marshall of
14 Perkins Coie, representing Olympic Pipeline Company.

15 MR. BRENA: Robin Brena on behalf of
16 Tesoro Refining and Marketing.

17 MR. FINKLEA: Ed Finklea on behalf of
18 Tosco Corporation.

19 MS. WATSON: Lisa Watson, Assistant
20 Attorney General, on behalf of Commission staff.

21 JUDGE WALLIS: Very well. In terms of
22 the discussions, I would like to note that the parties
23 have been communicating with parties to the FERC
24 proceeding and believe that a schedule is developing
25 for both proceedings that would allow integration and

1458

1 minimize the disruptions in both of the matters that
2 would involve filing for intervenors in this
3 proceeding on April 11.

4 I have shared with the parties that the
5 Commissioners have adjusted their schedules to allow
6 a hearing that would begin on June 17 to continue
7 through the week of June 17; then take up on Tuesday
8 of the following week and have the following four
9 days available for that. Now, by making those days
10 available, the Commission is not requesting that the
11 hearing consume all of those days.

12 Is there anything further that the
13 parties would like to memorialize at this juncture?

14 MR. FINKLEA: Your Honor, Ed Finklea, on
15 behalf of Tosco.

16 JUDGE WALLIS: Mr. Finklea.

17 MR. FINKLEA: I believe that the
18 proposal that we forwarded had intervenor testimony
19 due April 17th rather than April 11th.

20 MR. BRENA: That's my understanding as
21 well.

22 JUDGE WALLIS: It was my intention to
23 say 17. I apologize if I misspoke and said 11.

24 MR. FINKLEA: Every hour becomes
25 critical.

1459

1 JUDGE WALLIS: With that, the parties
2 are agreed that we will take up tomorrow morning, and
3 we will begin tomorrow morning at the hour of 8:30 in
4 the morning. The room number for those discussions
5 and the availability of the bridge line are matters
6 that I will determine. Parties will be remaining in
7 the building and using facilities here for at least a
8 portion of today, and I will advise the parties.

9 Will that be sufficient notice for you?

10 MR. MARSHALL: Yes.

11 MR. BRENA: Yes, Your Honor.

12 MR. FINKLEA: Yes, Your Honor.

13 JUDGE WALLIS: Very well. Is there
14 anything further to come before the Commission at this
15 time? Mr. Marshall.

16 MR. MARSHALL: Just one comment on the
17 filing of the intervenors' case on April 17th. I
18 haven't worked backward on the schedule for filing of
19 rebuttal testimony by the company and discovery of
20 intervenors and staff.

21 That poses some problems with having a
22 very limited window of discovery depositions of
23 intervenors and staff in a case that's one of
24 importance because methodology will be determined,
25 among other things.

1460

1 So I, by my silence on that date, I
2 haven't had a chance to find out whether that lengthy
3 extension is appropriate, and I would hope that, on
4 the FERC side, my silence hasn't led anybody
5 misinterpreting consent. I think the original
6 schedule for the filings of the material by
7 intervenors in their direct case at FERC is
8 appropriate and should be done.

9 That schedule has not been interrupted
10 by anything, and that ought to proceed. That's my
11 own personal view but I don't have anything to say
12 about that, so I just wanted the parties to know that
13 I wasn't speaking on behalf of Olympic's FERC counsel
14 or, by my silence, assenting to any of that.

15 JUDGE WALLIS: Very well. The proposed
16 schedule has been a matter of record for some time,
17 and we have afforded the parties the opportunity to
18 comment on it. I would suggest that you pursue that
19 matter today, and if you have any difficulties with
20 that schedule that you let us know tomorrow.

21 If you have the opportunity to discuss
22 that with the other parties so that a ruling is not
23 necessary, that would be very helpful to us.

24 MR. MARSHALL: But I make that comment
25 in light of the request by the parties that we not

1461

1 engage in any discovery against intervenors or staff
2 until after they file their case. If discovery is
3 permissible for us to do on staff and intervenors, and
4 we pretty well know where they're going to be coming
5 from, based on what's occurred in the interim case,
6 that would take care of a lot of the problem.

7 If, however, we're not permitted to
8 engage in discovery with depositions ahead of time,
9 that will create a very real problem.

10 JUDGE WALLIS: We indicated that we
11 would have some discomfort with the concept that no
12 discovery at all could be conducted during that
13 prefiling period so long as the time for responses
14 were tolled -- or unless the time for responses were
15 tolled.

16 In other words, while we haven't really
17 fleshed this out, my personal comfort level is that
18 discovery requests could be made, but that responses
19 would be tolled during that prefiling period to allow
20 parties to concentrate on their preparation of their
21 materials.

22 And with that comment, I'm going to
23 commend this matter, amongst others, to the parties
24 as a wonderful opportunity for them to demonstrate
25 the spirit of cooperation that would enhance

1462

1 settlement discussions. So with that, let's conclude
2 this morning's session and state that we will be back
3 tomorrow morning at the hour of 8:30 for the purpose
4 of memorializing and, to the limited extent
5 necessary, ruling upon the discovery matters that are
6 at issue.

7 Is there anything further?

8 MR. MARSHALL: No, Your Honor.

9 MR. BRENA: No.

10 MR. FINKLEA: No.

11 JUDGE WALLIS: Let the record show that
12 there is no affirmative response, and this matter is
13 adjourned until tomorrow until the hour of 8:30.

14 Thank you.

15 (PREHEARING CONFERENCE ADJOURNED AT
16 10:30 A.M.)

17

18

19

20

21

22

23

24

25