

**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
RESPONSE TO OLYMPIC'S SCHEDULING LETTER**

I Tesoro Refining and Marketing Company (ATesoro@), by and through its attorneys, Brena, Bell & Clarkson, P.C., hereby responds to Olympic's scheduling letter, pursuant to the Request for Comments of the Washington Utilities and Transportation Commission (AWUTC@), dated March 13, 2002. 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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2 Comments to Procedural Schedule

This is in response to the proposed schedule submitted by Staff. Tesoro is in favor of the proposed schedule for several reasons. First, Olympic has lost no opportunity to assert that it is in Adire financial condition.@ The current hearing dates reflect this Commission's response to this concern and its understanding of the need to establish the permanent rate as soon as is feasible to minimize rate uncertainty for Olympic's owners and prevent injustice to shippers should Olympic's current rates not be just and reasonable.

3 Second, the prior procedural schedule had to be vacated twice because Olympic was unwilling to respond meaningfully to discovery requests in a timely fashion. The Staff's proposed procedural schedule gives Olympic additional time to respond to discovery requests; most of which were served over a month ago and are the subject of an order to compel. However, if Olympic continues to avoid responding to discovery, this Commission is going to have to resolve issues through discovery sanctions, because merely continuing to change the procedural schedule will not solve the problem of Olympic's continued refusal to provide responsive discovery.

4 Third, the procedural schedule allows Olympic adequate time to conduct discovery on the intervenors' and Staff's testimony. The time allowed is more than adequate time to conduct discovery where the parties comply with the Commission's discovery rules. Moreover, intervenors' and Staff's testimony and exhibits will be based predominately upon financial information provided by Olympic. Therefore, since Olympic has all of its financial records in its possession, Olympic's

requests will likely be directed at testing the basis for each expert's analysis and opinion. These are typically the requests that are the easiest to answer with responses to written requests or in a couple of days of depositions.

5 Finally, the Staff's proposed procedural schedule is a good attempt at coordinating with the procedural schedule at FERC. Olympic, Tosco, and Staff have separate counsel for each proceeding. Therefore, if there is any burden of the schedules running simultaneously, it falls mostly on Tesoro. However, even Tesoro has co-counsel standing by to minimize this burden should such assistance be necessary.

6 The proposed procedural schedule should be adopted. It balances the interests of the parties and recognizes the need for a timely hearing where Olympic's shareholders are asserting the need for immediate rate relief and rate certainty before they will resolve Olympic's self-inflicted financial problems.

7 Olympic's Motion/Proposal to Delay Proceedings

Olympic's proposal¹ to delay this proceeding for another 10 months is surprising considering the fact that it is asserting the need for immediate increases in its rates. This Commission should reconsider its decision to provide emergency interim rate relief. It is becoming more evident that Olympic seems content to delay this proceeding for its own strategic reasons notwithstanding its assertions that emergency interim relief is necessary. It seems that Olympic has an emergency when it wants interim rate relief, but does not have an emergency when it comes time to setting permanent rates. If this Commission is going to stay these proceedings, then it must vacate its interim order.

8 Olympic asserts that this stay will provide additional context and information to make an initial determination on methodology, which would help to further simplify this proceeding. The stay will accomplish neither goal. The stay will unnecessarily increase the record in this proceeding by adding thousands of pages of transcripts, exhibits and briefs of marginal relevance thereby increasing costs and adding complexity. If the stay were granted, the transcripts of the proceedings, assertions in the briefs, and admitted hearing exhibits will generate another round of WUTC discovery designed to evaluate the witnesses' responses to cross examination in the FERC proceeding and to locate additional exhibits to supplement the record. This additional discovery would not occur absent the proposed stay. Olympic's proposed stay of the proceedings will do nothing more than double the record in this proceeding and add another layer of complexity.

¹ Olympic filed both a motion to delay the proceedings and comments on the proposed procedural schedule of Staff. Tesoro is responding to both pleadings with these comments.
TESORO'S RESPONSE TO OLYMPIC'S SCHEDULING LETTER
Docket Topic
Page 4 of 10

9

Olympic asserts that this stay will result in a significant savings in cost.² The stay will not result in any cost savings. Instead, it will unnecessarily prolong and complicate what should be a relatively simple rate proceeding. Instead, Olympic has repeatedly found ways to complicate and delay this proceeding. It has been compelled to cooperate in the discovery process on several occasions, has opposed any changes in the FERC procedural schedule², and has litigated all discovery issues until they had to be resolved by Judge Wallis. In almost every instance, Judge Wallis has ruled the information should be provided. To date, Olympic still has not produced a detailed general ledger disclosing its costs during the base period so the parties can prepare alternative cost-of-service presentations for the Commission.

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In its comments, Olympic raises many concerns regarding Staff's proposal. Many of these concerns are speculative or not supported by any substance. First, Olympic asserts that it has another trial that starts in April which will directly compete with the time available for Olympic to file its rebuttal testimony in this case. Olympic provides no details about this trial, its schedule, or why it will prevent Olympic's counsel from preparing rebuttal testimony. Also, Olympic does not explain why this is not a problem for its FERC counsel in preparing Olympic's rebuttal testimony in the FERC proceeding which is presently due May 21, 2002. In fact, Olympic's FERC counsel argued to **keep** this procedural deadline.

² Pursuant to Judge Wallis's request that the parties coordinate the proceedings, Tesoro moved to modify the procedural schedule to take into consideration Olympic's problems with discovery. Olympic opposed the modification. Olympic's FERC counsel asserted that (1) the time for filing a motion to compel in the FERC proceeding had passed, (2) he had not been a party to any of the attempts to resolve the discovery problems, and (3)

Tesoro created the delay in discovery by not filing the discovery sooner. Olympic then requested that Tesoro be forced to file its FERC testimony on March 22, 2002, irrespective of the fact that Olympic could not provide responsive discovery by that date.

11 Second, Olympic asserts that Staff's proposal will prevent it from adequately preparing for the FERC proceeding. Again, Olympic provides no specifics. Olympic has separate counsel for both proceedings, and in the unlikely event that this hearing extends until June 28, 2002, Olympic's FERC counsel will still have almost 11 days to prepare its witnesses for cross examination. This is a considerable amount of preparation when one considers the fact that these same witnesses will have already had the benefit of **actual** cross examination in the WUTC proceeding.

12 Third, Olympic asserts that the intervenors and Staff will likely file complex cases that will require extensive discovery and result in longer hearings than anticipated. This is pure speculation. Unless Olympic provides responsive discovery, no one other than Olympic will be in the position to file meaningful testimony let alone complex testimony. The issues in this proceeding have the potential to be clear and simple provided **all expert witnesses** are given access to the relevant evidence. Olympic will have more than enough time to conduct discovery since the entire basis for the other witnesses' opinions will be the discovery provided by Olympic and the analysis contained in the workpapers of the experts.

13 Fourth, the briefs will be due during the time of the FERC hearing. There is no prejudice from this schedule. The briefs will be based upon the **hearing record** not supplemental evidence of witnesses. All that will be left for counsel to do is to make the legal arguments based upon the record. To the extent that counsel needs to consult with FERC counsel, Olympic's counsel will have almost 11 days between hearings. No one is prejudiced by this more than Tesoro because it is represented by the same counsel in both proceedings. Nevertheless, Tesoro supports this

schedule. A way to alleviate this problem would be to set page limits on the briefs, deny any supplementation of the record in advance, and stipulate to **the issues that should be briefed.**³

This Commission has extensive experience setting rates for regulated entities, understands the legal issues, and therefore has the ability to focus the briefing to answer the questions that it wants answered in order to minimize the deluge of materials through which it must wade in order to render its decision.

³ For example, the Commission could order that briefs be limited to 50 pages with 30 pages allocated to specific issues it identifies and 20 pages left to the parties' discretion.

14 Fifth, Olympic asserts that staying the proceedings until after a final decision in the FERC case will somehow make the hearings less complex because of the conflict in methodologies. This perceived conflict exists, if at all, because Olympic made a strategic decision to ignore this Commission's past precedent in other rate cases involving regulated entities and advance a new rate methodology for oil pipelines it labels as the FERC methodology. **Prior to Olympic filing their case in chief**, this Commission made Olympic aware of their commitment to address this issue within the context of the general rate proceeding.⁴ Moreover, as a practical matter, the adjustments to rates resulting from the application of one methodology or the other are relatively simple adjustments. Finally, a final decision from FERC may not be made for several years, so, even if a stay was granted until next winter, the stay probably would not achieve its stated purpose. Therefore, it makes no sense to stay the proceedings to wait for a FERC decision.

15 Finally, Olympic asserts that the proposed schedule will conflict (1) with its construction season, (2) with other trials, and (3) with work obligations in running a pipeline. Again, no specifics are provided, and the potential conflicts are speculative at best. In fact, these speculative concerns lose all credibility when one considers that there was no objection to a May hearing date in this proceeding, and the one month delay is a direct result of Olympic's failure to comply with the

⁴ On November 26, 2001, this Commission denied Olympic's Petition for a Policy Statement and Order Clarifying Oil Pipeline Rate Methodology. This Commission denied the petition because it had committed to address the issue of methodology in the context of the rate proceeding. First Supplemental Order, November 26, 2001, ¶ 3. Any petition for reconsideration would have had to have been filed within 10 days after the order. WAC 480-09-810. No petition for reconsideration was filed by Olympic. Olympic filed its

discovery rules and commit the resources necessary to maintain the schedule. Moreover, if Olympic is not prepared to properly prosecute its rate filing, it should be withdrawn. Olympic should not be heard to file a rate revision and then argue it lacks time to proceed with ratesetting.

16 Olympic's approach to discovery has resulted in two delays to the schedule already. Now that Olympic has delayed this proceeding twice, Olympic now asserts that the current schedule is not fair. This Commission should adopt Staff's proposal. The short time frame will focus the parties' efforts and minimize the Commission resources needed to set a rate on this pipeline. Delaying the proceedings will do nothing more than increase the complexity and cost of this proceeding which require more of the Commission's resources.

17 If Olympic's stay is granted and the interim relief is not vacated in the order of reconsideration, then the stay will do nothing more than allow Olympic to continue to receive an unsupported and significant rate increase for its shippers for several more months. Shippers deserve rate certainty. There is no justification for further delay. The Staff's proposal strikes a fair balance of the parties' interests and acknowledges the reality that, if Olympic is not going to provide responsive discovery, no amount of delay is going to make a difference.

DATED this 19th day of March, 2002.

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

testimony on December 13, 2001.

By

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2002,
a true and correct copy of the foregoing
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