

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION	)	DOCKET NO. TO-011472
	)	
Complainant,	)	
	)	
v.	)	
	)	
OLYMPIC PIPE LINE COMPANY, INC.,	)	SEVENTH SUPPLEMENTAL
	)	ORDER: AMENDING
Respondent.	)	PROTECTIVE ORDER
	)	
.....	)	

1     **PROCEEDING:** Docket No. TO-011472 is a filing by Olympic Pipe Line Company on October 31, 2001, for a general increase in its rates and charges for providing pipe line transportation service within the state of Washington.

2     **PARTIES:** Patrick W. Ryan and Steven C. Marshall of Perkins Coie, Bellevue, WA, represent Olympic Pipe Line Company, Robin O. Brena, Brena, Bell & Clarkson, P.C., Anchorage, AK, represents Tesoro, Inc., Edward Finklea, attorney, Portland, OR, represents Tosco Corporation, Donald T. Trotter and Lisa Watson, Assistant Attorneys General, Olympia, WA, represent Commission staff.

3     **MOTION TO AMEND PROTECTIVE ORDER:** At the prehearing conference on March 8, 2002, Olympic requested and all parties agreed to an amended protective order to provide for separate designation and a higher order of protection for documents asserted by parties to be highly confidential.

4     Subsequently, Tesoro and Tosco asked that the form of the order be limited from the model used in prior proceedings. Olympic did not respond to their requests.

5     The Commission enters this order, which is based upon the form of orders entered in prior proceedings. Some provisions facilitate the Commission’s internal document handling processes. The Commission requires that these measures be consistent from proceeding to proceeding, to help assure that staff handling confidential documents do so correctly. No variance is appropriate.

6     Others are implemented to assure the integrity of the protections afforded in the parties’ handling of documents and to assure the confidentiality that is appropriate for highly confidential information. Tesoro and Tosco raise no points that differ from

those affecting parties in prior proceedings. The Commission will not alter the format, but will provide that any of the provisions relating to Intervenor or Commission Staff handling of highly confidential documents may be waived by the Company, whose information is being protected. Parties may secure the waiver as to the identity of parties entitled to see the documents by submitting names; if Olympic interposes no objection, the named person may have access. Parties may also ask Olympic for a waiver of handling protections of the order. To the extent that a waiver is granted in writing and filed with the Commission, parties may alter the order's handling requirements.

7 The request for highly confidential protections appears to serve the interests of justice and to be consistent with the public interest by facilitating the availability of information relevant to the proceeding. The request should be granted.

### ORDER

8 THE COMMISSION ORDERS That its Second Supplemental Order/Protective Order, entered in this proceeding on November 27, 2001, is amended by adding the following Section 6 to **Part B - Disclosure of Confidential Information**:

**6. Intervenors in this proceeding are competitors. Respondent and Intervenors are carrier and customers, as well as competitors. In addition, Respondent is engaged in litigation with third parties. No party to this lawsuit other than Respondent has an interest in the result of that litigation, but information relevant to the litigation may be relevant to this proceeding. Any of these parties may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of severe competitive or other harm to the disclosing party. Parties may designate documents or information they consider to be of that nature as "Highly Confidential" and such documents or information will be disclosed only in accordance with the provisions of this Section.**

**Parties must scrutinize carefully responsive documents and information and must limit the amount they designate as highly confidential information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly Confidential Per Protective Order in WUTC Docket No. TO-011472." Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or**

**more pages contains highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be marked separately to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the “Highly Confidential . . .” stamp and must be submitted on paper distinct in color from non-confidential information and “Confidential Information” as described in Part A.1. of this Protective Order.**

**Parties other than Commission Staff who seek disclosure of highly confidential documents or information must designate one outside counsel and no more than one outside consultant, legal or otherwise, to receive and review materials marked “Highly Confidential . . .” In addition to executing the appropriate Agreement required by this Protective Order for “Confidential Information” each person designated as outside counsel or consultant for review of “Highly Confidential” documents or information must execute an affidavit, under oath, certifying that:**

- a. They do not now, and will not for a period of five years, involve themselves in competitive decision making by any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information.**
- b. They have read, they understand, and they agree to be bound by, the terms of the Protective Order in this proceeding and by this Amendment to the Protective Order.**

**Any party may object in writing to the designation of any individual counsel or consultant as a person who may review highly confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of highly confidential documents or information. Written response to any objection must be filed within three days after service of the objection.**

**Designated outside counsel will maintain the highly confidential documents and information and any notes reflecting their contents**

**in a secure location to which only designated counsel has access. No additional copies will be made. If another person is designated for review, that individual must not remove the highly confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that reflect highly confidential information must be maintained in the secure location until removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review highly confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. Appropriate procedures for including such documents or information will be determined by the presiding Administrative Law Judge following consultation with the parties.**

**The designation of any document or information as “Highly Confidential . . .” may be challenged by motion and the classification of the document or information as “Highly Confidential” will be considered in chambers by the Presiding Administrative Law Judge, or by the Commission.**

**At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated outside counsel must return all highly confidential documents and information provided during the course of the proceeding, and must certify in writing that all notes taken and any records made regarding highly confidential documents and information have been destroyed by shredding or incineration.**

**Highly confidential documents and information will be provided to Commission Staff under the same terms and conditions of this Protective Order as govern the treatment of “Confidential Information” provided to Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this Section 6.**

DATED at Olympia, Washington, and effective this \_\_\_\_ day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner