

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	Docket No. TO-011472
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	TOSCO CORPORATION'S
v.)	ANSWER TO STAFF'S
)	MOTION TO DISMISS
)	
OLYMPIC PIPE LINE COMPANY, INC.,)	
)	
Respondent.)	
_____)	

Pursuant to the Notice issued by Administrative Law Judge (“ALJ”) Wallis on March 28, 2002, Tosco Corporation (“Tosco”) hereby submits this Answer to Staff’s Motion to Dismiss (“Motion”) the above captioned proceeding. Staff contends in its Motion that it is unable to proceed due to Olympic Pipe Line Company’s (“Olympic’s”) failure to comply with the March 22, 2002 deadline to respond to Staff’s priority data requests. Motion at 2. As a result, Staff concludes that there is no chance Staff will receive timely responses from Olympic, so that Staff has the data and information necessary to prepare its case on time. Id. Therefore, Staff recommends that this case should be dismissed, and if Olympic wants to refile tariffs, it should do so only after Olympic has made the commitment necessary to enable it to actually respond accurately and timely to reasonable requests for information. Id. Staff’s Motion, based on Olympic’s repeated failure to timely or completely respond to Staff’s data requests, comes after numerous prehearing conferences, conference calls, correspondence between the parties, and discovery conferences. However, none of the parties’ efforts have succeeded in compelling

Olympic to timely provide the required information to support its requested substantial 62 percent increase in its rates and charges for providing pipeline transportation of petroleum products in the state of Washington.

Staff raises many valid arguments and Tosco shares Staff's frustration. Olympic's repeated disregard for the discovery process should not be tolerated. All parties have spent excessive time and effort attempting to resolve discovery disputes, including developing a minimal list of priority data requests, coordination between the parties and coordination of the FERC and Washington proceedings to minimize overlap. Despite these extensive efforts, Olympic's stalling, whether tactical or because Olympic is simply unable to answer the data requests, has made this proceeding significantly more time consuming and difficult than otherwise necessary. Olympic's behavior has put Staff and the Intervenors in a difficult position, and Staff has concluded that at this juncture, it simply cannot proceed.

Tosco supports a resolution that will allow Staff the opportunity to adequately prosecute its case. However, the ultimate consequence for Olympic's inappropriate behavior should be left for the Washington Utilities and Transportation Commission ("WUTC" or "Commission") to determine in its sole discretion. The proper remedy, whether dismissal of the proceeding, issue preclusion, sanctions or some other penalty, must allow Staff and Intervenors the ability to properly prepare a case, while also not giving Olympic a strategic advantage in this proceeding and also sending a clear message to Olympic, and other litigants, that such gross discovery abuses will not be tolerated. Tosco notes that Olympic has repeatedly attempted to delay this proceeding so that the Washington case drags behind the FERC case. As an alternative to Staff's Motion to Dismiss, the WUTC should also consider moving forward with the proceeding as soon as Staff has the information necessary to prosecute its case. Olympic has repeatedly made the

unsupported argument that scheduling the Washington case behind the FERC case will be helpful to the outcome of this proceeding. Tosco, Tesoro Refining and Marketing Company (“Tesoro”) and Staff have submitted compelling arguments to rebut Olympic’s argument that an initial decision by the Presiding ALJ in the FERC proceeding is somehow helpful in the instant proceeding, and in fact demonstrated how this result would broaden the scope of the Washington proceeding. Regardless of these arguments, because Olympic has specifically sought to delay this proceeding, moving forward as soon as practicable for Staff, Intervenors and the Commission’s schedule may act as a partial sanction for Olympic’s refusal to comply with discovery.

It is unprecedented in Washington for a public service company under the Commission’s regulation to repeatedly disregard discovery requests necessary to support the Company’s request for a rate increase. This situation is particularly egregious because Olympic is seeking a 62 percent rate increase, claims to be in a financial emergency, and fails to respond to discovery even after being ordered through motions to compel. In a case of first impression such as this one, the Commission should balance the interests of the parties and the public interest to determine the proper consequence for Olympic’s failure to comply with the rules of discovery. It is clear however, that the ultimate remedy adopted by the Commission must not prejudice Staff or Intervenors.

Dated: April 3, 2002

Respectfully submitted,

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