

**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  
ANSWER TO THE MOTION ON BEHALF OF COMMISSION STAFF TO  
DISMISS CASE AND REJECT TARIFF FILING OF OLYMPIC PIPE LINE**

**I. Introduction.**

*I* Tesoro Refining and Marketing Company (ATesoro@), by and through its attorneys, Brena, Bell & Clarkson, P.C., supports the Washington Utilities and Transportation Commission Staff's (AStaff@) motion to dismiss case and reject tariff filing of Olympic Pipe Line (AOlympic@). For whatever reasons, Olympic has been unwilling or unable to properly prosecute what should have been a routine rate filing before this Commission. Accordingly, Olympic's rate filing should be dismissed until it is willing and able to move its rate filings forward. In the event the Commission determines that dismissal is an inappropriate sanction, however, Tesoro respectfully requests the Commission (1) set a briefing schedule to address appropriate sanctions including the preclusion of issues for which discovery has not been forthcoming, and (2) set a procedural schedule which does not prejudice Intervenors for Olympic's failure to provide timely and responsive discovery.

## **II. Olympic Has the Resources Necessary to Properly Prosecute Its Filings.**

2           Given the filing of a 62 percent increase in its rates within a few years of this Commission approving a full rate increase for Olympic, Olympic should reasonably have expected its shippers to question the need and costed-based support for Olympic's most recent rate filing. For sometime now, Olympic has attempted to justify its failure to respond timely or adequately to routine discovery requests by attributing it to its lack of staffing and resources. Tesoro does not believe such a claim has merit.

3           Olympic is operated by BP Pipelines, the second largest liquids pipeline company in the United States. BP Pipelines transports over 450 million barrel miles of liquids each day. About 9 percent of the entire United States= liquids pipeline market. To put this in context, Olympic transports 300 thousand barrels each day or two-thirds of 1 percent of the total liquids BP Pipelines transports each day.

4           Given these vast resources, Olympic has not assigned discovery responsibility to a single BP employee who has participated in a rate case. Throughout this proceeding, BP Pipelines has consistently understaffed efforts to respond to routine discovery and then used its own lack of staffing as an excuse not to respond in a timely or complete fashion. There is simply no excuse for BP Pipelines to be unable to staff appropriately to respond to routine discovery requests.

## **III. Dismissal is Appropriate.**

5           Olympic did not timely object to any of Tesoro's discovery requests, as required by the Commission's regulations. Olympic did not indicate any inability to provide discovery on time, as

required by the Commission's regulations. Olympic did not provide discovery, as required by the Commission's regulations. Olympic's failure to participate in the discovery process by timely serving objections, noticing delays, and providing a proposed schedule are activities of counsel and not the result of Olympic being understaffed.

6           Finally, Olympic has not responded adequately or fully to the discovery Olympic was compelled to provide to Tesoro on or before March 22, 2002. On April 1, 2002, the FERC issued a nonopposed order compelling the remainder of Olympic's March 22, 2002, responses be produced by April 12, 2002. Attached as Appendix A is a copy of the FERC order. Tesoro brings this order to the Commission's attention because it sets forth item by item the remaining discovery Olympic was compelled by this Commission to provide but which was not timely provided. Under such circumstances, dismissal would be appropriate.

**IV.     Alternatively, Sanctions Suited to Failure to Respond Are Appropriate.**

7           While supporting Staff's dismissal motion, Tesoro also understands that lesser sanctions are usually considered first. In the event the Commission determines to consider a lesser sanction, Tesoro would support Staff's request for an opportunity to be heard with regard to what lesser sanctions are appropriate within the context of this proceeding.

**V.     Intervenors Should Not be Prejudiced.**

8 Tesoro is very concerned that Olympic's delay in providing meaningful discovery will ultimately work to prejudice the Intervenor. As an Intervenor, Tesoro is entitled to receive full and timely responses to its discovery requests. Since Intervenor file their answering case first, it is the Intervenor who are most pressured by Olympic's delays in responding to discovery. Tesoro respectfully requests an adequate opportunity to file its case once discovery is adequate and complete or once sanctions have addressed the factual issues surrounding Olympic's failure to adequately provide discovery.

**VI. Further Delay is Not Appropriate.**

9 Olympic's proposed solution to its failure to provide timely discovery may be expected to be to further delay the proceeding. Tesoro opposes this as a solution. Olympic is currently collecting a 24.3 percent rate increase which has not been supported by its costs of providing service. Instead, this rate increase is based upon its claims of financial hardship.

10 Since the Commission has granted interim relief, Olympic has acted like anything but a company facing financial hardship. Olympic has delayed the procedural schedule two, and now perhaps three times, as the result of its failure to respond to routine discovery. Olympic has sold the Sea-Tac terminal for three times as much as the Commission granted in interim relief. Olympic has considered and proposed to pay off underlying debt which is not in default. Olympic has proposed to delay the Commission's consideration of the cost of providing service at every opportunity, seeking delays of several months. Under these circumstances, rewarding Olympic with further delay should not be a solution. Tesoro simply does not believe it continues to be in the

public interest to allow Olympic to continue to collect interim relief based on financial hardship under the developing circumstances of this case. Accordingly, Tesoro would respectfully request an opportunity to be heard with regard to the appropriateness of Olympic continuing to collect interim relief if any significant delay results from Olympic's failure to provide meaningful and timely discovery.

**VII. Conclusion.**

11 Staff's motion to dismiss should be granted. In the alternative, lesser sanctions should be considered as appropriate under the circumstances of this case. Intervenors should not be prejudiced by Olympic's failure to provide meaningful and timely discovery. Finally, delay should not be considered as an alternative to appropriate sanctions without an opportunity to also address whether it continues to be in the public interest to allow Olympic to collect interim relief under the developing circumstances of this case.

DATED this 3<sup>rd</sup> day of April, 2002.

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By

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2002,  
a true and correct copy of the foregoing  
document was faxed and emailed, and mailed  
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