

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	)	
	)	DOCKET NO. TO-011472
	)	
Complainant,	)	TENTH SUPPLEMENTAL ORDER
	)	
v.	)	
	)	ORDER DENYING MOTION FOR
OLYMPIC PIPE LINE COMPANY,	)	DISMISSAL; NOTICE OF
	)	HEARING (JUNE 17, 2002);
Respondent	)	NOTICE OF PREHEARING
	)	CONFERENCE (APRIL 18, 2002)
.....	)	

1     ***Synopsis:** The Commission denies a motion by Commission Staff for an order dismissing Olympic Pipe Line Company's request for a general increase in its rates and charges, without prejudice to a similar future motion based on future events. The Commission establishes a schedule for hearing that will begin on June 17, 2002, and notices a prehearing conference for administrative matters and to accommodate the possibility of motions for sanctions for failure to provide discovery*

2     **Nature of the proceeding:** This is a proceeding established to review a filing by Olympic Pipe Line Company for an increase in its rates and charges for providing transportation of petroleum products within the state.

3     **Relief requested:** Commission Staff filed a motion to dismiss the proceeding on March 27, 2002. Parties were given the opportunity to respond in writing and orally.

4     **Prehearing Conference:** The Commission convened a prehearing conference on Thursday, April 4, 2002, for argument on the request for dismissal and to address as necessary the status of discovery and the schedule for the remainder of the proceeding.

5     **Commission Staff motion to dismiss:** The Commission Staff filed a motion to dismiss the proceeding because the Company's repeated and consistent failure to respond to discovery requests was rendering it impossible for Staff to prepare for the hearing. At the hearing, Commission Staff stated that it has received late responses to some requests and that it could file testimony four weeks after it received adequate responses to all of its outstanding requests.

- 6       Tosco has no outstanding Washington requests but is awaiting responses to its requests in a parallel proceeding before the Federal Energy Regulatory Commission.
- 7       Tesoro supported Commission Staff's statements of frustration at the Company's repeated pattern of nonresponsiveness, but expressed reservations about the efficacy of dismissal. It urged maintaining the proposed hearing schedule, if possible.
- 8       The Company opposed dismissal. It contended that it has not acted intentionally to impede discovery. It again repeated excuses it has stated in the past, and that have been discredited in prior rulings. It stated that it is a small company, that only a small number of Company staff persons can provide responses, that it does not understand some requests, and that the press of other business impedes its ability to respond. It again stated that the volume of data requests exceeded its expectations and counsel's experience regarding volume of discovery in other litigation. It again stated that it has provided a considerable volume of material in response to data requests. It acknowledged that no single request is of itself burdensome, but contended that the volume of material rendered difficult its challenge in preparing and submitting responses. Counsel did not explain the consistent failure to respond within five days of data requests with information about responses that it will be unable to provide on the required schedule or with questions about or objections to requests, but challenged other parties' failure to object or inquire about inadequate information that the Company had not timely provided.
- 9       The Company on February 22, 2002, and again on March 11, 2002, filed requests that the hearing schedule be continued so that the hearing would not begin in the Washington State proceeding until an initial order is entered by the administrative law judge in the federal rate proceeding. It suggests that the Commission could incorporate testimony from the federal record to condense its schedule, that the Commission would benefit from seeing FERC's response to the Company's rate request (in the form of an initial order). The Company stated that it could respond to outstanding requests of Commission Staff by midweek and that it could respond to other parties' requests by April 12, the deadline for FERC proceeding responses. It did express some reservations as to some items. We are confident that it can respond in that time frame to all requests for which answers exist, given the length of time the requests have been pending and the efforts to compile responses that have been made.
- 10       After hearing the parties' arguments, the Commission denied the motion to dismiss. The interests of fairness to the pipeline and its customers (and the ultimate customers of those customers) demand that the Company's request be heard on a prompt schedule, if consistent with fairness and a complete record. The Commission adopted the proposed hearing schedule offered by Commission Staff, subject to refinement of details as to procedural scheduling.

- 11 The Commission does not find credible the Company's excuses. We see no reason why it could not have secured supplemental skilled resources to assist with discovery matters.<sup>1</sup> Similarly, counsel who have appeared for the Company in this docket are members of a large firms with extensive experience, including experience in rate proceedings before the Commission. One of the Company's consultants also has experience in such matters. It is simply not credible that the company could not have provided timely responses – at the very least, to the extent of compliance with the Commission rule requiring timely explanation of reasons for delay.
- 12 Delays were associated not only with requests to the company but also with requests of witnesses who are not associated with the company and as to whom the Company's stated excuses do not apply. Other parties have made concessions that should not have been necessary, including their prioritizing of needed responses, their agreement to coordinate, their acceptance of chronically late responses, repeated scheduling delays and uncertainties, repeated impositions upon their own schedules, and their accommodation to the Company's professed problems.
- 13 While denying the motion to dismiss, the Commission directs and compels Olympic to respond to all outstanding<sup>2</sup> data requests on the following schedule: responses to requests by Commission Staff must be delivered by noon, Tuesday, April 9, 2002, and responses to requests by intervenors must be delivered by 2:00 p.m. on Friday, April 12. Both times are the legal Pacific time zone time in Washington State, and responses must be completely received by that time by the requester and other parties.
- 14 The denial of Staff's motion is without prejudice, and the Commission will not foreclose any party from refileing such a motion or seeking other remedies based on future events. In furtherance of maintaining an elevated interest as to discovery concerns and in furtherance of maintaining an orderly process, the Commission anticipates the possibility of requests for sanctions for failure to meet the assigned schedule, and sets a prehearing conference as follows:
- 15 **NOTICE OF PREHEARING CONFERENCE. ALL PARTIES PLEASE TAKE NOTICE** that the Commission hereby sets a prehearing conference in this docket on **April 18 at 1:30 p.m. in Room 206 of the Commission's headquarters building, 1300 S. Evergreen Park Drive SW, Olympia, Washington.** The purpose of this conference will be to consider any allegations of failure to respond, and any requests for sanctions based upon such failure. Counsel are requested to attend in person if making or responding to any allegation of failure and request for sanction.

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<sup>1</sup> This is particularly true here, where the manager is part of an international firm with a vast bank of personnel resources.

<sup>2</sup> For purposes of this ruling, an outstanding request is one to which the requesting party (a) has not received an adequate response (if it has objected to the inadequate response informally or in a pleading) or (b) has received no response.

Allegations and requests for sanctions must be filed no later than the close of business on **Tuesday, April 16, 2002.**

- 16 In addition, the prehearing conference will consider other procedural matters necessary to implement the schedule adopted by the Commission. These include a schedule for dispositive motions, a schedule for a prehearing administrative conference, a schedule for preparation of an agreed issues list or briefing table of contents so parties can provide optimal arguments; a schedule for post-hearing briefs, a determination of whether the Company is willing to further extend the current suspension date without its requested extension of the hearing schedule; and other procedural matters that may arise.
- 17 **NOTICE OF HEARING.** ALL PARTIES PLEASE TAKE NOTICE THAT The Commission sets this matter for hearing to begin at **9:30 a.m. on Monday, June 17, in Room 206 of the Commission's headquarters building, 1300 S. Evergreen Park Drive SW, Olympia, Washington.**
- 18 In conjunction with the hearing, the following dates are established for the submission of prefiled evidence.
- |                  |               |
|------------------|---------------|
| Intervenors:     | May 13, 2002  |
| Commission Staff | May 24, 2002  |
| Company:         | June 10, 2002 |
- 19 The Company objected to a schedule leaving it one week to respond, contending that its constitutional rights to due process would be violated by failure to allow it time for discovery upon others' answering presentations. We do not find that the argument is well taken. All of the financial information is within the control of the Company. Its own theories are within its knowledge. It has already filed its own extensive general rate case. Its rebuttal opportunity is designed by law and rule to allow it to respond to specific matters, as to which extensive discovery should not be anticipated. The time for response is shortened to five business days; this schedule allows the Company seventeen days to prepare and submit its response. In the unlikely event that it is unable to receive discovery within that time frame on a specific item, and that failure reasonably prevents it from preparing a portion of its rebuttal case, it may ask leave to extend the filing date or to respond orally to the point at the hearing. That will not affect its ability to provide adequate rebuttal testimony on other points.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner