

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

OLYMPIC PIPE LINE COMPANY'S
ANSWER TO TESORO REFINING
AND MARKETING COMPANY'S
MOTION FOR SANCTIONS

1. Olympic Pipe Line Company (“Olympic”) submits this Answer to Tesoro Refining and Marketing Company’s Motion for Sanctions filed on April 25, 2002 (the “Motion”). Olympic hereby requests that the Commission deny the Motion for these reasons: First, Olympic complied with Tesoro's request for engineering documents in Tesoro Data Request No. 102 when Olympic agreed on February 22, 2002, to make all of its voluminous engineering drawings, specifications and design information available at its offices in Renton, Washington. Second, following two technical conference calls and letters to identify the engineering material to be copied, Olympic produced all the requested documents it had in its possession, including the voluminous, bulky and expensive to reproduce daily green sheets on throughput. This complied with Tesoro’s April 5, 2002, letter confirming what it had requested Olympic to produce. Third, Olympic now has actual throughput data for the past nine months, which is the best evidence of actual downtime and throughput. In other words, making estimated downtime and other adjustments to July 2001

data is no longer needed, because actual throughput data is available. The actual data for the last nine months is the best evidence of actual throughput, not estimates of throughput.

Finally, Tesoro's Motion omits a number of key facts. Tesoro, for example, fails to refer to or attach Tesoro's April 5, 2002, letter that confirmed that Olympic could comply with Tesoro's data request by providing the green sheet source documents, which Olympic has done. The name and address of Olympic is as follows:

Steven C. Marshall
William R. Maurer
Perkins Coie LLP
One Bellevue Center, Suite
1800
411 – 108th Ave. Northeast
Bellevue, WA 98004-5584
Telephone: (425) 453-7314
Facsimile: (425) 453-7350
Marss@perkinscoie.com
Maurw@perkinscoie.com

Robert C. Batch, President
Olympic Pipe Line Company
2201 Lind Ave., S.W.
Suite 270
Renton, WA 98055
Telephone: (425) 235-7736
Facsimile: (425) 981-2525

Bernadette J. Zabransky
Director – Pipeline Tariff &
Regulatory Affairs
BP Pipelines (North
America) Inc.
801 Warrenville Rd.,
Suite 700
Lisle, Illinois 60532
Telephone: (630) 434-2680
Facsimile: (630) 493-3707
Zabranbj@bp.com

2. This Answer brings into issue the following statutes and regulations: RCW 81.04.130, RCW 81.04.250, RCW 81.28.010, RCW 81.28.050, WAC 480-09-425.

I. FACTS

3. Olympic takes this opportunity to lay out at length the entire facts regarding Tesoro's Motion because Tesoro's Motion omits a number of key facts and documents necessary to the Commission's full consideration of the Motion.

4. Because Olympic's entire pipeline system was not operational at 80% of maximum allowable operating pressure until June 2001, Olympic, in its direct testimony, used July 2001 as the basis for its throughput assumptions and then adjusted these numbers

to achieve an estimated throughput for ratemaking purposes. In Cindy Hammer's direct testimony, Ms. Hammer testified how Olympic calculated throughput for the test period:

Test period throughput was calculated using a two-cycle period in July 2001 where the pipeline was fully operational at 80% of maximum operating pressure. During this period Olympic ran the line continuously with no down time that resulted in a throughput level of 315 MBD. This throughput level was adjusted to include average annual downtimes of 3% used in scheduling and 3% for expected maintenance and project work resulting in a throughput level of 295.4 MBD. Since seasonal patterns result from varying product mix, 1998 volume data was used to determine a seasonality percentage compared to annual average throughput. The 1998 volume data is the most recent calendar year with total system volume information. July's 1998 seasonality percentage was then applied and resulted in an average annual throughput level of 290.1 MBD and 91 percent of 1998 volumes.

Exhibit __; CAH-1 at 9. July 2001 was the basis for throughput estimates when Olympic filed its tariffs at the Federal Energy Regulatory Commission (FERC) in August 2001.

5. Subsequently, Tesoro submitted the following data request, No. 102, to Olympic in the parallel proceedings taking place at FERC: "Produce all engineering studies and documents that discuss the design capacity of the pipeline system."

6. Olympic responded, "The engineering drawings, specifications and design information on capacity for Olympic's 400 mile system are so voluminous, bulky and expensive to reproduce that Olympic will make them available at its offices in Renton." Olympic submitted this response in the WUTC proceedings on February 22, 2002 – two months ago.

7. From February 22 to March 20, Tesoro did not follow up formally or informally to set a time to come to Olympic's Renton offices to review any engineering drawings, specifications or design documents Olympic had in its possession.¹

8. Tesoro then filed a motion to compel at FERC in response to Olympic's response. Specifically, Tesoro's Motion to Compel, dated March 20, 2002, made the following request regarding Tesoro's FERC Data Request No. 102:

Arrange a time when Tesoro's expert can inspect the engineering studies and documents that discuss the design capacity of the pipeline.

Tesoro Motion to Compel, March 20, 2002, at 11. Tesoro identified the following "Problems with the Response".² "*Tesoro has not been given access to documents.*" *Id.*, Exhibit C at 2 (emphasis added). Tesoro's Motion to Compel did not allege that Olympic refused any access, because Olympic had not refused. Tesoro had simply not called to set a time for any such review. Tesoro's Motion failed to state that it had not attempted to arrange a time to review any of Olympic's engineering documents.

9. Olympic again explained informally the vast amount of engineering drawings available at Renton and subsequently Olympic made Bobby Talley, its Vice President and District Manager, available to Tesoro in two informal technical conferences to discuss the specifics of Olympic's engineering drawings and specifications on its pipeline system.

¹ In a similar fashion, Tesoro failed for weeks to arrange to review eight boxes of documents on Office of Pipeline Safety matters available for review at the Karr Tuttle Campbell law firm. See attached letter, Attachment I.

² Despite the use of the plural "problems," this was the only problem identified by Tesoro for No. 102.

10. At the informal technical conferences held on March 15 and 21, 2002, Mr. Talley discussed the engineering drawings, specifications, and design information requested by Tesoro in its Data Request No. 102. As early as February 22, 2002, Olympic had agreed to make all of its engineering drawings, specifications and design information available at its offices in Renton because such documents on Olympic's 400 mile system are too voluminous and expensive to reproduce. Talley Declaration at ¶ 3, attached to this Answer as Attachment A. Mr. Talley also discussed Olympic's pipeline system and referenced what are referred to in the company as "green sheets." These green sheets are a tool used by Olympic's pipeline controller to document batches of products as they travel from input to output destinations. They are developed daily and are typically comprised of three 15-inch by 22.5-inch double-sided "green" sheets for each day. They are not specifically designed to track downtime, strip run times, average throughput, or batch size, although such information can be extracted from these sheets. These sheets were intended to be used by the controller to track information regarding product movement through the pipeline system (such as tank level information, personnel (internal and external) notifications of event timing, transmix injections, batch change times, total net volumes printed for custody transfer measurement (verified daily by the product accounting department)), and implemented product schedules set by the scheduling department, based on shipper nominations. In that regard, these sheets are not used to catalogue shipping information and are not used to, and are not intended to, preserve historical data. Talley Declaration at ¶ 4.

11. During the March 15, 2002, conference and again at the conference on the 21st, Tesoro requested analyses³ of green sheet data and a summation, based on such analyses, of average downtime, strip runs, throughput, and batch size, based on the information contained on the green sheets. At that conference, Mr. Talley explained to Tesoro that Olympic does not perform such analyses and the green sheets are not designed to be used as the basis for such analyses. Talley Declaration at ¶ 5. Mr. Talley further explained that analyses of this type would be extremely time-consuming, as it would require Olympic's product movement specialist – who is currently managing or supporting product scheduling, product volume accounting, DRA management and project planning – to work six weeks at full-time to perform the analysis requested by Tesoro. BP employees unfamiliar with the Olympic system would require even more time to be trained on the recording system and the necessary codes and terminology. Id.

12. On March 27, 2002, twelve days after the March 15 conference and six days after the March 21 conference with Mr. Talley, Tesoro sent an email requesting, among other things, the following documents, despite Mr. Talley's explanation that, apart from the green sheets themselves, no such documents existed:

³ Terms such as "list" or "summary" does not adequately convey the scope of the work Tesoro was calling upon Olympic to perform. In order to provide an average for the factors listed, an Olympic product movement specialist would have to read each green sheet and extract downtime, strip runs, throughput and batch size from the green sheets, given that such information is not categorized or summarized anywhere on the green sheets and such green sheets are not designed or used to provide such summaries. For instance, downtime would need to be calculated by reading each green sheet and identifying those times that product did not pass through a certain segment of pipe as "downtime." Even then, such an analysis would not capture all the operational variables that affect capacity or throughput on the line. Thus, the "summary" or "lists" requested by Tesoro could only be produced after a thorough and complete analysis of data both contained in and omitted from the green sheets. Talley Declaration at ¶ 6.

- a list of average downtime by month and for 1998 and July 1, 2001 to date;
- a list of strip runs by month for 1998 and July 1, 2001 to date;
- a list of average throughput by product by month for 1998 and July 1, 2001, to date; and
- a list of average batch size by product by month for 1998 and July 1, 2001, to date.

A copy of Tesoro's March 27, 2002, email is attached to this Answer as Attachment B.

13. On March 28, 2002, counsel for Tesoro made the following statement to the FERC Administrative Law Judge regarding the March 21, 2002, conference with Mr. Talley and Tesoro representatives:

102(c), which concerns throughput and capacity information, and this is a general comment. We have sat down in two different conferences with their engineer in informal discovery conferences with their engineer, Mr. Calley [sic], so that we could try to narrow this down and learn what information Olympic had available on throughput and capacity.

We met with him for three hours. Our last meeting was completed on March 21st. *I e-mailed yesterday to Mr. Marshall a list of 11 items, and we have agreed that those 11 items on that e-mailed list should be compelled.*

FERC Hearing Transcript, March 28, 2002 at 84-85 (emphasis added).⁴

14. The exact nature of Tesoro's representation to the FERC ALJ depends on the meaning of the word "we" in the statement "we have agreed that those 11 items on that e-

⁴ At the March 28, 2002, hearing, Olympic was represented by the law firm of Sidley Austin Brown and Wood LLP. Perkins Coie LLP represents Olympic in the proceeding before the WUTC. Counsel for Olympic at the FERC hearing did not object to counsel for Tesoro's characterization that Olympic had agreed to provide such lists because Olympic's FERC counsel was not familiar with the discussions between Tesoro's counsel and Olympic's counsel at the WUTC.

mailed list should be compelled.” If by “we,” counsel for Tesoro meant him and Mr. Marshall, Mr. Marshall never made any such agreement with counsel for Tesoro. See Marshall Declaration, attached to this Answer as Attachment C. If by “we,” counsel for Tesoro meant him and Mr. Miller, Mr. Miller communicated that no such lists existed on April 4, 2002, as discussed below.

15. Based on Tesoro’s counsel’s representation, the FERC ALJ issued an order compelling the following information:

- Discovery request 102(c) engineering documents and studies which discuss the design and capacity of the system. It is acknowledged that Tesoro met with Olympic’s engineer on two different occasions, the last being March 21, 2002. Tesoro requested additional information, summarized below as eleven specific items. It is agreed that these eleven items shall be produced.

Order Compelling Responses to Discovery Requests, FERC Docket No. IS01-441-003, slip op. at 2 (April 1, 2002). Among the eleven items listed were the “lists” requested by Tesoro in its March 27, 2002, email.

16. In reliance on their discussions regarding what material could and would be produced during the course of the March 28, 2002, FERC hearing, Mr. Miller sent a letter on April 4, 2002, to counsel for Tesoro regarding, among other things, counsel for Tesoro’s request for the “lists.” In his letter, Mr. Miller explained that no such “lists” were prepared or maintained by Olympic, “although such a list could be compiled from the green sheets by your consultants. Olympic will provide an explanation of how such information can be calculated as soon as possible by or before April 12, 2002.” Olympic provided such an explanation by April 12. A copy Mr. Miller’s April 4, 2002, letter is attached to this Answer as Attachment D.

17. Also on April 4, 2002, this Commission held a prehearing conference in response to Staff's Motion to Dismiss. During the course of that hearing, counsel for Olympic made the following statement regarding the request for "lists":

I do note for the record that I have gone through the FERC order, and I think that there are very few outstanding requests that haven't been responded to except for this throughput and capacity issue, which is, as of the 27th of March, it has 11 elements to it, it is very detailed and very burdensome. *My guess is that we couldn't respond to that by next Tuesday*

Transcript, April 4, 2002, at 1798 (Statement of Mr. Marshall) (emphasis added).⁵ At that prehearing conference, Olympic was ordered by Judge Wallis to produce the material compelled to the intervenors by the FERC ALJ by April 12, 2002.

18. On April 5, 2002, David Wensel, counsel for Tesoro, responded to Mr. Miller. Mr. Wensel's letter stated (with emphasis added):

We are writing to follow up on your letter of April 4, 2002, in which you indicated that Olympic does not prepare or maintain lists of average down time, strip runs by month, average throughput by product by month, or average batch size by product by month. *Therefore, it appears that this summary data which would be responsive to Tesoro's discovery requests is not available. Please confirm with us as soon as possible whether or not Olympic intends to compile the summary data in lieu of producing the source documents. If Olympic doesn't intend to compile such summary information, then we will have to arrange for the source documents to be copied.*"

A copy of Mr. Wensel's April 5, 2002, letter is attached to this Answer as Attachment E.

⁵ Tesoro's Motion implies that Mr. Marshall agreed that Olympic would provide the "lists" to Tesoro by April 12, 2002. The portion of Mr. Marshall's presentation to which Olympic cites, p. 1750, discusses "documents" needed to be produced regarding throughput and capacity issues. Olympic has made clear since the beginning that no such documents exist. Mr. Marshall's statement does not agree to create new analysis or "lists."

19. Olympic responded to Mr. Wensel's letter that it would produce the source documents, but had no separate summary documents. Specifically, Lorrie Marcil of Sidley Austin replied on April 8, 2002, and "confirm[ed] that Olympic does not intend to compile data regarding average down time, strip runs by month, average throughput by product by month, and average batch size by product by month. Olympic will produce the source documents, referred to as 'green sheets,' from which such data may be compiled by Tesoro. Please give me a call regarding their copying." A copy of Ms. Marcil's April 8, 2002, letter is attached to this Answer as Attachment F.

20. On April 15 and 16, 2002, Mr. Wensel reviewed the green sheets at the law offices of Karr Tuttle Campbell in Seattle. Olympic has also arranged for the green sheets to be copied and sent to Tesoro in response to Tesoro's request.

21. On April 16, 2002, four days after discovery responses were due to Tesoro, Steve Marshall and William Maurer of Perkins Coie LLP called Robin Brena, counsel for Tesoro, to see if there were any issues with discovery that Olympic could address prior to the prehearing conference on discovery set to be held on April 18, 2002. Mr. Brena indicated that he did not have any but that he was not finished reviewing the green sheets. Mr. Brena asked for an additional week to analyze the data, a proposal to which Mr. Marshall and Mr. Maurer agreed. See Marshall Declaration; Maurer Declaration, attached to this Answer as Attachment G.

22. On April 17, 2002, Tesoro filed its motion to postpone the conference scheduled for April 18, 2002. Tesoro's motion indicated that Tesoro needed the extra week to complete review of the materials submitted by Olympic, "*discuss any inadequacies in the discovery with counsel for Olympic, and prepare a motion for sanctions, if necessary.*"

Tesoro Motion dated April 16, 2002 (emphasis added). No mention was made of summary lists.

23. Tesoro's counsel did not discuss, and still has not discussed, any inadequacies in such discovery with Olympic's counsel, with the exception of stating that Tesoro intended to file a motion for sanctions. This does not constitute the "discussion" contemplated by Tesoro's motion.

24. On April 22, 2002, Steve Marshall asked Tesoro at the morning deposition session if there were any discovery issues outstanding that Olympic could address. Counsel for Tesoro did not indicate that there were any.

25. At the deposition session that began on the afternoon of April 23, 2002, Cindy Hammer, in response to questions from Staff, stated that she would be updating the capacity and throughput data contained in her testimony. Ms. Hammer testified that Olympic had already provided an update to the throughput data to provide nine-month of actuals, see Hammer Deposition at 7. On April 22, 2002, Bobby Talley in his deposition had also referred to and calculated for the record the nine month actual information. Counsel for Tesoro was present at both depositions.

26. Subsequent to Ms. Hammer's deposition on April 23, 2002, counsel for Olympic asked counsel for Tesoro if a motion for sanctions was forthcoming from Tesoro. Maurer Declaration. Tesoro responded that such a motion would be forthcoming.

27. This was the first discussion any representative of Olympic had with Tesoro since April 5, 2002, when Mr. Wensel sent his letter, which even hinted that Tesoro was not satisfied with Olympic's response to DR 102. Counsel for Olympic responded with a letter dated April 25, 2002, that recited the course of the conversations on this issue and stated that had Tesoro conferred with counsel for Olympic, as Tesoro promised the Commission and

the parties it would in its April 16 motion, Olympic could have produced an analysis of a few months of the sheets. A copy of this April 25 letter is attached to this Answer as Attachment H. Rather than confer with Olympic's counsel regarding this proposal, Tesoro filed its Motion.

28. It should be noted that at no time did Tesoro respond to Ms. Marcil's April 8 letter by suggesting that Tesoro believed production of the green sheets was not a sufficient response. Olympic reasonably understood, based on Mr. Wensel's April 5 letter, that it could either perform the requested new analyses or produce the green sheets so that Tesoro's experts could perform such analyses. See Wensel letter ("Please confirm with us as soon as possible whether or not Olympic intends to compile the summary data *in lieu of producing the source documents*. If Olympic doesn't intend to compile such summary information, then we will have to arrange for the source documents to be copied."). Olympic has produced the green sheets in lieu of compiling the summary data so that Tesoro could "arrange for the source documents to be copied." Olympic thus complied with Mr. Wensel's April 5 letter, as confirmed by Ms. Marcil's April 8 letter. At no time from April 5 to April 23 did Tesoro raise any questions about this compliance.

II. ARGUMENT

Tesoro's Motion Should Be Denied

A. Tesoro's Motion Is Now Moot

29. Tesoro's Motion regards "throughput and capacity documents."⁶ Tesoro Motion at 2. Presumably, Tesoro seeks to challenge the adjustments made by Olympic to

⁶ As discussed above, Olympic has made it clear since March 15, 2002, that there are no such documents containing the "lists" sought by Tesoro.

the throughput information Olympic produced for July 2001. However, as Ms. Hammer's deposition testimony indicates, Olympic has already provided updated information with nine months of *actual* throughput data. Nine months of actual throughput information will provide a better indicator of Olympic's anticipated throughput than one month of throughput adjusted using certain assumptions. The nine months of information thus represents the best evidence available to the Commission and Tesoro's desire to challenge data that will be obsolete and superseded by the time of hearings in this proceeding is irrelevant.

30. Tesoro argues that Olympic should not make itself a "moving target," Motion at 9, by offering up-to-date actual information on throughput. The unusual circumstances of this case refute this argument, however. In this case, the Commission is examining a pipeline that had major portions of its operations shut down until June 2001, when the pipeline resumed restricted operations. Olympic used adjusted July 2001 throughput data in its direct case because that was the best data available at that time. Now the pipeline has been operating since June 2001 and actual evidence of throughput exists and has been compiled and will be provided by Olympic well in time for the hearings in this proceeding. Rather than use this evidence, however, Tesoro requests the Commission to arbitrarily set a throughput number as a sanction for an alleged failure to comply with discovery.

31. The Commission should fulfill its statutory mandate using the best evidence available to it. The nine months of actual throughput data constitutes such evidence and Tesoro's request for an assumed throughput amount should be rejected.

B. Olympic Is Not Obligated to Analyze Olympic's Discovery Data For Tesoro

32. In its Motion, Tesoro fails to cite a single statute, regulation, court case, or Commission decision that requires Olympic to do Tesoro's analysis of throughput data for it

from the green sheets that are in Tesoro's possession (and have been available to Tesoro since February 22, 2002). To the contrary, Commission precedent suggests that no such obligation exists.

33. In WUTC v. US West Communications, Inc., 1997 Wash. UTC LEXIS 66 (1997), Public Counsel requested that US West produce a cost study. US West contended that such information was irrelevant. The Commission concluded:

Information that the Company has in its possession is subject to discovery. If it has run its cost study, that is subject to discovery. *The Company is not required to create a cost study or to run another's cost study.*

US West, 1997 Wash. UTC LEXIS at *3 (emphasis added).

34. Here, Tesoro has requested that Olympic create a new list or analysis for it from the green sheets. Olympic is unaware of any statute, regulation, court case or order that requires Olympic to undertake a new analysis and create a new document that was not in existence at the time the discovery request was filed. In the April 4 letter, Olympic made clear to Tesoro that the "lists" sought by Tesoro did not exist. Olympic also made clear that in order to obtain the information Tesoro said it needed, Tesoro would need the "source documents" (i.e., the green sheets). Olympic made such documents available to Tesoro, as Tesoro requested on February 22, 2002, and made colored copies for Tesoro at Tesoro's request.

35. In that regard, Tesoro alleges in its Motion that "Olympic knows that only its staff can readily interpret these controller sheets." Motion at 6. Tesoro further alleges that "[E]mployees of Olympic will have to teach Tesoro's experts how to interpret the data that is recorded on these controller sheets, adding further costs to the project. Finally, Tesoro's

experts will attempt to analyze these controller sheets.” Id. at 6. Tesoro also alleges that “Olympic is in sole possession of this information.” Id. at 7.

36. Tesoro’s does not support these allegations with any declarations from its experts or its own employees. As an initial matter, Tesoro’s allegation that “Olympic is in sole possession of this information” is simply not true. Olympic made the green sheets available to Tesoro. It is in possession of all the information that Olympic has.

37. Moreover, Tesoro’s Motion is not supported by any declarations from Tesoro’s experts testifying to an alleged inability to understand or analyze the green sheets. Instead, Tesoro’s Motion states without support that their experts cannot “readily interpret” the green sheets. Had Tesoro conferred with Olympic (as it promised it would in its Motion to Postpone), Olympic could have made its controller available to Tesoro’s experts to help interpret the data contained on the green sheets – but Tesoro never conferred with Olympic, despite its representations to this Commission to the contrary. Tesoro also could have continued to ask Mr. Talley to perform these calculations at his deposition, but it did not.

38. In short, Tesoro apparently wishes to take a shortcut to arrive at a throughput number it desires, without expending the necessary resources to support that number in its testimony. It was stated in the Tenth Supplemental Order that the operator of Olympic is a large, multinational corporation. Tesoro is also a large, multinational corporation. Tesoro could, if it wished, hire enough experts to analyze the green sheets with the assistance of Olympic’s pipeline controller.⁷ Tesoro has apparently chosen not to do so because having an artificially high throughput number works to its advantage.

⁷ Tesoro alleges that Mr. Talley had difficulty interpreting the data on the green sheets during his deposition. Tesoro cites to no specific portion of the deposition transcript to support this allegation. Moreover, as Mr. Talley made clear to Tesoro on March 21, Olympic’s pipeline product

C. Olympic Has Not Violated any Discovery Order

39. As noted above, Tesoro's Motion omits a number of key facts.

1. **On February 22, 2002, Olympic agreed to make all of its engineering documents available at its offices in Renton and thereby complied with DR No. 102.** Tesoro never arranged to visit Renton with its experts to review the voluminous engineering documents that Olympic had, in full compliance with discovery rules, agreed to provide.
2. **Mr. Wensel's April 5 letter requests that Olympic produce either the summaries or the source documents.** Mr. Wensel's April 5 letter requested that Olympic state "whether or not Olympic intends to compile the summary data in lieu of producing the source documents." Olympic replied that it would produce the source documents, i.e., the green sheets, and in fact did so. Mr. Wensel did not indicate in his letter that a failure to produce the summaries would constitute a discovery violation. Olympic reasonably believed the choices available to it were to produce the summaries or produce the source documents.
3. **Tesoro originally requested studies and documents on the design capacity of the pipeline system and Olympic made such documents available to Tesoro.** Tesoro's Data Request No. 102 requested that Olympic produce all engineering studies and documents that discuss the design capacity of the pipeline. Tesoro's Motion to Compel at FERC argued that Olympic had not produced such documents. On the contrary, Tesoro made these documents available to Tesoro at Olympic's Renton headquarters. Tesoro simply declined to review them. Moreover, by producing the green sheets,

specialist is the person who uses the information contained on the green sheets. Mr. Talley is a vice president of Olympic and in that capacity he manages Olympic's overall operations and maintenance. Tesoro has never requested that its experts be permitted to talk with Olympic's pipeline controller regarding the green sheets. Regardless, Mr. Talley was able to answer a number of questions regarding the green sheets before counsel for Tesoro inexplicably stopped asking questions about them. See Talley Declaration at ¶¶ 7-8.

Olympic has also fulfilled this request. Olympic also made Mr. Talley available to answer Tesoro's questions about the design capacity of the system. The lists requested by Mr. Brena in his March 27, 2002, email were not part of Data Request No. 102 and, regardless, Olympic had already indicated to Mr. Brena on March 21, 2002, that no such lists or summaries existed.

4. **Mr. Miller's April 4 letter clearly says that no lists exist.** In response to the FERC ALJ's Order of April 1, 2002, Larry Miller wrote to Mr. Brena informing him that the lists requested in Mr. Brena's March 27 email did not exist, but that such information could be culled from the green sheets. Tesoro's response was Mr. Wensel's April 5 letter, requesting that Olympic state whether it would produce summaries or the source documents. Tesoro did not respond by filing a motion at FERC, nor did it indicate at any subsequent time that the production of the green sheets was insufficient until it filed its Motion for Sanction with the WUTC.
5. **Tesoro represented to the Commission that it would confer with Olympic's counsel prior to filing a Motion for Sanctions, but did not do so.** Tesoro's April 16, 2002, Motion to Postpone clearly states that "Tesoro is respectfully requesting a one-week extension to allow it to complete the review, discuss any inadequacies in the discovery with counsel for Olympic, and prepare a motion for sanctions, if necessary." Tesoro never discussed any inadequacies in the discovery with counsel for Olympic, despite repeated inquiries from Olympic's counsel. The only conversation on this topic prior to Tesoro's Motion for Sanctions was instigated by Olympic's counsel, and in that conversation Tesoro only indicated that it intended to file a motion for sanctions. It is clear that Tesoro did not want to give Olympic a chance to address throughput issues prior to Tesoro's motion, preferring instead to have the Commission determine throughput in response to Tesoro's motion for sanctions.
6. **Tesoro did not need a one-week extension of the time to file a motion for sanctions based on the requested lists; Tesoro**

knew since April 4 that no such lists were forthcoming.

Tesoro represented to Olympic's counsel, and repeated this representation in its Motion to Postpone, that it needed additional time to review the documents produced by Olympic before it could determine whether a motion for sanctions was necessary. Tesoro knew on April 4, 2002, that the requested lists did not exist and that they would not be forthcoming from Olympic. Mr. Brena could have told Olympic's counsel this on April 16 when counsel for Olympic called him, but did not. Instead, Tesoro requested more time, presumably to review the green sheets Olympic provided to Tesoro. It is clear that as of April 16, Tesoro did not believe that Olympic's failure to turn over non-existent lists was a problem. It appears that the throughput issue became a problem for Tesoro when it realized that an analysis of the green sheets would be difficult and time-consuming.

40. Tesoro never told Olympic that production of the green sheets was insufficient, and counsel for Tesoro avoided discussing the issue with counsel for Olympic. This is despite repeated inquiries from counsel for Olympic and Mr. Brena's representation that he would confer with Olympic's counsel prior to filing a Motion for Sanctions.

41. In addition, the Commission should deny the Motion for Sanctions because Olympic has complied with what it reasonably believed was expected of it. Tesoro never indicated after April 8, when it knew that only the green sheets would be forthcoming, that the source documents themselves were insufficient. As discussed above, Tesoro's counsel had numerous chances to communicate to Olympic its position that the green sheets were insufficient, but never did so. Tesoro should not be rewarded for failing to clearly indicate to Olympic that Tesoro considered the production of the green sheets to be insufficient.

III. PRAYER FOR RELIEF

Olympic respectfully requests that the Commission issue an order denying Tesoro's Motion to Dismiss.

DATED this ____ day of April, 2002.

Respectfully submitted,

PERKINS COIE LLP

By _____
Steven C. Marshall, WSBA #5272
William R. Maurer, WSBA #25451