

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

ANSWER BY COMMISSION
STAFF TO TESORO'S MOTION
FOR SANCTIONS

- 1 Commission Staff has reviewed the April 25, 2002 Motion for sanctions filed by Tesoro Refining and Marketing. The crux of the Motion is that Olympic has failed to comply with a Commission order to Olympic to answer all outstanding data requests by April 12, 2002.
- 2 The sanction Tesoro seeks is for the Commission to set the throughput for ratemaking purposes in this case at 121,349,000 barrels per year. Olympic used this level of throughput to justify its last rate increase in 1996.
- 3 Staff has not had the opportunity to review Olympic's position on the particular Tesoro requests for data that are at issue. Accordingly, Staff is unable to evenhandedly gauge the nature of the dispute.
- 4 Staff can offer its general impression that some of the information Tesoro requested relating to throughput, such as average down time per month, average batch size by product by month, and the average strips per month, are not kept by Olympic in the

format requested by Tesoro. These data can be extracted from extant records, but this (apparently) is time consuming.

- 5 So to some extent, the dispute here may center on the issue of production burden. This issue should have been addressed to the Commission by Olympic earlier, through objection, but it was not.
- 6 By the same token, Tesoro's Motion makes clear the difficulty in establishing an appropriate throughput figure for ratemaking purposes in this case. Accurate downtime data and related data are necessary to defend any throughput estimate based on current conditions.
- 7 On the issue of sanctions, the sanction sought by Tesoro seems to Staff to do too much. Tesoro argues in part that its proposed sanction is an appropriate response to Olympic's alleged unresponsiveness. (Motion at 8-9, ¶ 14, last sentence).
- 8 But other parts of the Tesoro's argument are that its proposed sanction will encourage Olympic's owners to conduct the tests necessary to bring the pipeline up to 100% pressure, shorten the hearing and resolve a difficult issue. (Motion at 8-9, ¶¶ 12-15). These do not appear to Staff to be appropriate justifications or purposes for a sanction for non-responsive discovery. Moreover, the throughput recommendations of the parties in this case may vary widely, with significant rate impact differences. Setting throughput as a sanction for non-responsive discovery does not permit the sort of circumspect consideration this issue deserves.
- 9 Should the Commission find that sanctions are appropriate, and depending on the severity of the conduct involved, Staff recommends the Commission consider: a) computing the number violations of WAC 480-09-480, with each day as a separate offense, and issue a

penalty assessment against Olympic as expressly authorized by RCW 81.04.405; b) adding one or more business days to Staff and Intervenor distribution dates, thus shortening Olympic's time to prepare rebuttal; or c) dismissal.

DATED this 30th day of April, 2002.

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