

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION)	DOCKET NO. TO-011472
)	
Complainant,)	TWELFTH SUPPLEMENTAL ORDER
)	
v.)	
)	
OLYMPIC PIPE LINE COMPANY)	ORDER DENYING, IN PART, MOTION FOR SANCTIONS; ORDERING FURTHER PROCEEDINGS AND REPORT
)	
Respondent.)	
)	
.....)	

1 **Synopsis:** *The Commission denies a request by Tesoro Refining and Marketing Company to preclude Olympic Pipe Line Company from denying certain facts in issue due to asserted failures by Olympic to respond to discovery. The Commission directs the Administrative Law Judge to prepare a report to the Commission as to whether discovery failures occurred in violation of Commission rule or order and, if so, what sanctions other than issue preclusion may be appropriate.*

2 **Proceeding.** Docket No. TO-011472 is a filing by Olympic Pipe Line Company on October 31, 2001, for a general increase in its rates and charges for providing pipe line transportation service within the state of Washington.

3 **Motion.** Intervenor Tesoro filed a motion asking the Commission to impose sanctions on Olympic, alleging that Olympic has failed to provide responses to discovery requests and that the failure violates Commission rules and orders. Tesoro asks that the subject of the discovery, information related to throughput in Olympic’s pipeline, be resolved against the Company pursuant to WAC 480-09-480.

4 **Responses.** Commission Staff and Olympic both filed responses to the motion.

5 **Appearances.** The following parties appeared. Respondent Olympic Pipe Line Company appeared by William Maurer, attorney, Seattle. Intervenor Tesoro appeared by Robin Brena, attorney, Anchorage, AK. Commission Staff appeared by Donald T. Trotter, Assistant Attorney General, Olympia.

6 **Background.** The Commission entered its Tenth Supplemental Order in this docket on April 8, 2002. The Order established a time for responses to discovery requests whose responses were due on or before the deadline. In the order, the Commission acknowledged the possibility of requests for sanctions related to discovery issues. The order provided a time for filing requests for sanctions; the time was extended until April 25, 2002, at the request of Tesoro.

7 **The Motion.** Tesoro's motion identified seven items or categories of items that it contends Olympic failed to provide by the deadline. It contends that its ability to prepare its case is impeded by this failure, and it asks that the Commission sanction the failure by directing that Olympic be foreclosed from denying that the appropriate throughput for consideration in the consideration of this matter.

8 **Responses.** Olympic responds that it has provided information in its possession; that it has no obligation to make further responses; that it has no obligation to prepare studies that it does not have in its possession; and that it has provided additional information consistent with Olympic's view of the matter.

9 Commission Staff responds that throughput is one of the more critical issues in the proceeding. It suggests that if the Commission determines that the asserted failure to provide discovery occurred, and if the Commission considers the occurrence to be a serious violation of the terms of a rule or order, the Commission should consider other sanctions, including dismissal, rather than foreclosing the issue.

10 **Commission discussion and decision.** The Commission denies Tesoro's request for resolution of the throughput issue against Olympic. Unlike a court of general jurisdiction, the Commission is obligated to regulate "in the public interest." RCW 80.01.040(2). The parties agree that the question at issue is of considerable significance in the determination of the result in the proceeding. The public interest would not be served by resolution of this significant matter irrespective of the Commission's determination of the actual facts. A Commission order on the merits could thereby result in a decision that failed to allow Olympic an opportunity to earn a fair return, or that allowed Olympic a windfall return at the expense of ratepayers.

11 We have read the motion and the answers. From the descriptions in those documents it is not clear to us exactly what information was requested, what information was available to Olympic, what information could have been prepared at minimal burden, and what information Olympic actually did provide in response to the requests. Neither is it clear what sanction should be applied if Olympic failed to respond to the discovery requests as the rule provides or as the Commission ordered.

12 Discovery has been a particularly thorny issue in this proceeding, and we believe it essential that when we act on this motion we do so with a sound grasp of the events

that actually occurred and with a sound understanding of responsibility for any failures that occurred.

13 Because discovery has been a recurring issue in this docket, if we find that violations occurred we are prepared to consider the assessment of monetary penalties, dismissal of the proceeding, or other sanctions depending on the events and the nature and seriousness of any violation.

14 **Setting for further proceedings.** We direct the presiding administrative law judge to convene a discovery conference for the specific purpose of determining whether Olympic did fail to provide information as alleged in the motion. If he finds that failure did occur, we direct the administrative law judge to prepare a recommendation as to the nature and the level of sanctions that may be appropriate. We will review the report and the recommendation after parties have the opportunity to comment.

15 We further direct the administrative law judge to determine a time and place for the proceedings directed in this order after consultation with the parties as to schedule.

16 It is so ordered.

DATED at Olympia, Washington, and effective this _____ day of May, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner