

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	)	DOCKET NO. TO-011472
	)	
Complainant,	)	SECOND SUPPLEMENTAL ORDER; PREHEARING CONFERENCE ORDER
	)	
v.	)	
	)	ORDER CLARIFYING PRIOR RULING AND ORDER; GRANTING DISCOVERY MOTION; DENYING CONTINUANCE OR SUSPENSION OF SCHEDULE
OLYMPIC PIPE LINE COMPANY	)	
	)	
Respondent.	)	
	)	
.....)		

1     **Proceeding:** Docket No. TO-011472 is a filing by Olympic Pipe Line Company on October 31, 2001, for a general and interim increase in its rates and charges for providing pipe line transportation service within the state of Washington. The Commission convened a prehearing conference on November 21, 2001, resulting in establishment of a schedule for the request for interim rates, a schedule for discovery, and the granting of intervention to two of the respondent’s customers.

2     **Conference:** The Commission convened a second prehearing conference in this docket at Olympia, Washington on December 3, 2001, before Commissioner Patrick Oshie and Administrative Law Judge C. Robert Wallis, pursuant to agreement of the parties and notice in the first prehearing conference order.

3     **Appearances.** The following persons entered appearances. Respondent Olympic Pipe Line Company appeared by Steven Marshall, attorney, Seattle. Intervener Tesoro appeared by Robin Brena, attorney, Anchorage, AK,<sup>1</sup> and intervener Tosco Corporation appeared by Edward Finklea, attorney, Portland, OR. Commission Staff appeared by Donald T. Trotter and Lisa Watson, Assistant Attorney Generals, Olympia, WA.

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<sup>1</sup> Contact information attached to the first prehearing order inaccurately stated Mr. Brena’s electronic mail address. It is [rbrena@brenalaw.com](mailto:rbrena@brenalaw.com). A revised complete list showing this correction is attached for parties’ convenience.

- 4 **Purpose of the prehearing conference.** The conference was established to monitor parties' progress at prehearing process, especially discovery, and to consider such procedural matters as the parties or the Commission may raise. Each party related its views as to the progress of discovery. No technical conference was held on Monday, December 3, 2001, but a conference for December 4, 2001, was possible. Olympic and Tesoro both raised procedural matters.
- 5 **Modification of technical conference.** Mr. Marshall asked on behalf of Olympic that the technical conference be limited to three hours and that it be moved from Olympia to Bellevue, Washington, to reduce travel time for Olympic's out-of-town experts so they could better assist with discovery requests. Tesoro, supported by Tosco, asked that the conference be continued indefinitely because their counsel and experts had received no response to their own discovery requests and because their copies of Olympic's responses to Commission Staff data requests were not served upon them until shortly before the hearing.<sup>2</sup> The request to change venue was granted because the conference offered some opportunity for closure of pending data requests. The request to shorten the length of the conference was denied because it was impossible to determine in advance what length of time would be necessary to complete the review and clarification of technical and other information relied upon by Olympic. Parties were instructed that the conference was not to be concluded, but merely continued, in light of some parties' lack of access to information they contended was needed to prepare adequately. Parties are free to ask for or to arrange the setting of a continued conference, or may pursue depositions in lieu of doing so.
- 6 **Clarification of the ruling and order relating to service of discovery responses.** The intervenors asked the Commission to clarify the ruling and the order relating to discovery, and to specify that all parties be served with responses to other parties' requests at the same time and in the same manner as served to the requesting party. We reiterate that service of discovery request responses must be made swiftly and uniformly in order to allow the Commission and the parties to meet the proposed schedule. It is unacceptable to delay delivery of available responses, whether to one or to all parties entitled to them, or to serve responses in a manner that allows one party preferential access to provided information. **We also direct the parties to provide by electronic mail (or by posting on a web site accessible to the parties, concurrent with an e-mail notification of availability) a courtesy copy of every non-confidential document that is available in electronic format.**
- 7 **Motion to compel responses.** Tesoro asked for an order to compel Olympic to respond to Tesoro's data requests. Olympic did not dispute that it had failed to respond to the requests – by providing the information, by explaining when it would be available, or by stating an objection to providing it – within the three days

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<sup>2</sup> Olympic noted that a mistake had been made and Tesoro's packet of information had been routed to Japan and considered lost in transit.

established for responses. It argued that Olympic is a small company, with few employees, that its President, Mr. Batch, had been confined to his house on doctor's orders not to work and was unavailable for consultation, and that it prioritized discovery efforts by responding first to Commission Staff data requests. Tesoro replied, observing that Olympic is managed by a corporation having considerable assets and that it could, if it wished, secure sufficient assistance to make a timely response to all inquiries. We note that Olympic has access to resources in Chicago for purposes of the technical conference, so presumably Olympic's small staff, even without assistance, would be free to respond to requests on other topics. We conclude by noting that the rate request Olympic seeks is considerable. We believe that the magnitude of the request, coupled with Olympic's statements of immediate need for financial assistance through rates, should provide the motivation to secure the resources to enable a swift resolution of the issues, even if it requires additional resources from its management or its attorneys, or working evenings or weekends. The motion to compel responses was granted, with responses due on December 4, 2001.

8 **Data request response.** Tesoro repeated its request for copies of material that Olympic had provided to Commission Staff prior to the earlier prehearing conference, and stated that it had filed a data request seeking the information, but that Olympic had not responded. The matter was also raised at the November 21, 2001, prehearing conference, but no ruling was made because prior to that time Tesoro had not held intervenor status, no discovery procedure had been invoked, and the issue was premature. In light of the arguments made at both prehearing conferences, Olympic was directed to provide the requested information to Tesoro on December 4, 2001.

9 **Request to suspend procedural schedule.** Tesoro requested that the procedural conference be suspended until discovery was completed to the parties' satisfaction. It noted that it had no responses to any of its data requests and pointed out the problems in attempting to prepare testimony and to participate in technical conferences without sufficient access to information to do a professional job. The motion was denied, without prejudice. Parties may raise the issue again following an opportunity for the discovery process to work; parties should have an opportunity to demonstrate that discovery will proceed smoothly, so that delays are not necessary.

10 **Further conferences.** The prior schedule for prehearing conferences is reaffirmed<sup>3</sup>. Additional conferences may be held upon parties' or the Commission's own initiative, as needed to resolve issues that may arise.

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<sup>3</sup> Mr. Brena stated that he has a conflict on January 3, 2002; the conference will be rescheduled.

Dated at Olympia, Washington , and effective this 4<sup>th</sup> day of December, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS  
Administrative Law Judge

**NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

## Appendix A

Olympic Pipe Line Company, 2001-2002 Rate Case TO-011472				
Party	Rep.	Address	Tel. (voice)	Fax/E-mail
Olympic Pipe Line Co.	Steven C. Marshall	Perkins Coie LLP, One Bellevue Center, Ste. 1800, 411-108 <sup>th</sup> Ave. NE., Bellevue WA 98004-5584	425-453-7314	425-453-7350  <a href="mailto:marss@perkinscoie.com">marss@perkinscoie.com</a>
	Patrick W. Ryan	Same		<a href="mailto:ryanp@perkinscoie.com">ryanp@perkinscoie.com</a>
	William H. Beaver	Karr Tuttle Campbell, 1201 Third Ave. Ste. 2900 Seattle, WA 98101	206-224-8054	<a href="mailto:wbeaver@karrtuttle.com">wbeaver@karrtuttle.com</a>
Tesoro, Inc.	Robin O. Brena	Brena, Bell & Clarkson, P.C., 310 K St., Anchorage AK 99501	907-258-2000	907-258-2001  <a href="mailto:rbrena@brenalaw.com">rbrena@brenalaw.com</a>
Tosco	Edward A. Finklea	Energy Advocates, LLP, 526 NW 18 <sup>th</sup> Avenue, Portland OR 97209-9118	503-721-9118	503-721-9121  <a href="mailto:efinklea@energyadvocates.com">efinklea@energyadvocates.com</a>
Commission Staff	Donald T. Trotter	1400 S. Evergreen Park Drive SW, Olympia, WA 98504	360-664-1189	360-586-5522  <a href="mailto:dtrotter@wutc.wa.gov">dtrotter@wutc.wa.gov</a>
	Lisa Watson	Same	360-664-1186	<a href="mailto:lwatson@wutc.wa.gov">lwatson@wutc.wa.gov</a>
Commission Records Center	Lisa Lloyd, manager	1300 S. Evergreen Park Drive SW, Olympia WA 98504- 7250	360-664-1234	<a href="mailto:records@wutc.wa.gov">records@wutc.wa.gov</a>
Administrative Law Judge	C. Robert Wallis	1300 S. Evergreen Park Drive SW, Olympia WA 98504-7250	360-664-1142	<a href="mailto:bwallis@wutc.wa.gov">bwallis@wutc.wa.gov</a>
Lead Support	Ms. Kippi Walker	Same	360-664-1139	<a href="mailto:kwalker@wutc.wa.gov">kwalker@wutc.wa.gov</a>

