

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

OLYMPIC PIPE LINE COMPANY'S
MOTION TO COMPEL ATTENDANCE
AT DEPOSITION

1. Olympic Pipe Line Company ("Olympic") submits this Motion to Compel Attendance at Depositions of witnesses sponsored by the Tesoro Refining and Market Company ("Tesoro"). The name and address of Olympic is as follows:

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2. This Motion brings into issue the following statutes and regulations: WAC 480-09-480.

I. FACTS

3. On May 30, 2002, Olympic provided notices of deposition of witnesses sponsored by Tesoro to Tesoro, to the parties to this proceeding, and to Judge Wallis. Olympic scheduled these depositions for Thursday, June 6, and Friday, June 7, and had previously contacted Tesoro to schedule these depositions at times that were convenient to and consistent with these witnesses' schedules. The notices received by Tesoro were all within the five-day notice provisions of WAC 480-09-480(6)(b). Copies of the Notices submitted by Olympic are attached hereto as Attachments A, B and C.

4. Olympic needs to depose Tesoro's witnesses next week in order to prepare its rebuttal testimony due June 11, 2002.

5. On May 30, 2002, Tesoro sent an email message (Attachment D). Tesoro states that it will not comply with the Notices sent by Olympic.

II. ARGUMENT

Tesoro's Witnesses Should be Compelled to Attend the Scheduled Depositions

6. The Commission should compel the appearance of Tesoro's witnesses for depositions. In order to prepare its rebuttal testimony, Olympic needs to depose Tesoro's experts, just as Tesoro deposed Olympic's witnesses.

7. Tesoro argues in the email that "WAC 480-09-480(b) allows depositions to be taken only during 'one or more conferences scheduled in the prehearing order.'" (emphasis in the original). Tesoro is presumably referring to WAC 480-09-480(6)(b), which states that "Depositions may be available during one or more conferences scheduled in the prehearing order." (emphasis added). This regulation is permissive; it recognizes that depositions "may" be scheduled during such conferences, but does not require them to be. In Washington jurisprudence, "may" is permissive or permissible in the sense of allowable. State v. Nolan, 141 Wn.2d 620, 628 (2000);

see also Yakima County Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 381 (1993) (“may” is permissive or discretionary). Thus, the Commission has not bound itself or parties to its proceedings to scheduling depositions pursuant to prehearing orders.

8. Tesoro represents that it is only available for oral argument on May 31, 2002, or after June 5, 2002. This is a straightforward and simple issue. Olympic should be accorded the same due process right to take depositions of Tesoro witnesses as Tesoro had of Olympic’s witnesses. Olympic must submit its rebuttal testimony in this case on June 11, 2002.

III. REQUEST FOR RELIEF

Olympic respectfully requests that the Commission issue an order compelling appearance of Tesoro’s witnesses at the depositions scheduled pursuant to Olympic’s Notices.

DATED this ____ day of May, 2002.

Respectfully submitted,

PERKINS COIE LLP

By _____
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