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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND            ) Docket No. TO-011472  
4 TRANSPORTATION COMMISSION,        ) Volume 1  
  ) Pages 1 to 94  
5                   Complainant,        )  
  )  
6                   vs.                    )  
  )  
7 OLYMPIC PIPELINE COMPANY,         )  
INC.,                                    )  
  )  
8                   Respondent.         )  
  )  
9 \_\_\_\_\_)

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11                   A prehearing conference in the above matter  
12 was held on November 21, 2001, at 1:30 p.m., at 1300  
13 South Evergreen Park Drive Southwest, Room 206, Olympia,  
14 Washington, before Administrative Law Judge ROBERT  
15 WALLIS and CHAIRWOMAN MARILYN SHOWALTER and COMMISSIONER  
16 RICHARD HEMSTAD and COMMISSIONER PATRICK J. OSHIE

17                   The parties were present as follows:

18                   THE COMMISSION, by DONALD T. TROTTER, Senior  
19 Assistant Attorney General, and by LISA WATSON,  
Assistant Attorney General, 1400 South Evergreen Park  
20 Drive Southwest, Olympia, Washington 98504-0128.

21                   TOSCO CORPORATION, by EDWARD A. FINKLEA,  
22 Attorney at Law, Energy Advocates, LLP, 526 Northwest  
18th Avenue, Portland, Oregon 97209.

23

24                   Joan E. Kinn, CCR, RPR  
25 Court Reporter

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1                   OLYMPIC PIPELINE COMPANY, INC., by STEVEN C.  
2   MARSHALL, Attorney at Law, Perkins Coie, 411 - 108th  
3   Avenue Northeast, Suite 1800, Bellevue, Washington  
4   98004, and by WILLIAM H. BEAVER, Attorney at Law, Karr  
5   Tuttle, 1201 Third Avenue, Suite 2900, Seattle,  
6   Washington 98101.

7  
8                   TESORO WEST COAST COMPANY, by ROBIN O. BRENA,  
9   Attorney at Law, Brena, Bell & Clarkson, 310 K Street,  
10   Suite 601, Anchorage, Alaska 99501.  
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P R O C E E D I N G S

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JUDGE WALLIS: The conference will please  
3 come to order. This is a prehearing conference in the  
4 matter of Commission Docket Number TO-011472, which is a  
5 request by the Olympic Pipeline Company Inc., for an  
6 increase in its rate and charges for the transportation  
7 of product within the state of Washington. This  
8 conference is being held at Olympia, Washington on  
9 November 21 of the year 2001 and before Chairwoman  
10 Marilyn Showalter, Commissioners Richard Hemstad and  
11 Patrick Oshie, and myself, Administrative Law Judge  
12 Robert Wallis.

13

I would like to begin with appearances from  
14 the parties. What I would ask that you do is the lead  
15 counsel for each participant state an appearance with  
16 your relevant information, address, voice phone, fax,  
17 and E-mail, so that we have that in the record as well  
18 as otherwise provided. If you are to be assisted by  
19 co-counsel, I would ask that you state the name of your  
20 co-counsel only, and that person need not state an  
21 appearance.

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Let's begin with the applicant for rate

23

relief, Mr. Marshall.

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MR. MARSHALL: Thank you, Mr. Wallis. My

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name is Steven Marshall. I am an attorney with Perkins

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1 Coie representing Olympic Pipeline Company. The address  
2 is 411 - 108th Avenue Northeast, Suite 1800, Bellevue,  
3 Washington 98004. The telephone number is (425)  
4 453-7314, the fax is (425) 453-7350, and the E-mail  
5 address is marss@perkinscoie.com. And don't ask me how  
6 we came to those; I have no idea.

7 With me at counsel table is Mr. William  
8 Beaver from the Karr Tuttle law firm. Would you like me  
9 to introduce people from Olympic Pipeline Company at  
10 this time?

11 JUDGE WALLIS: Not unless they're appearing  
12 in a representative capacity.

13 MR. MARSHALL: Okay.

14 CHAIRWOMAN SHOWALTER: Isn't M-A-R-S-S the  
15 first four letters of Marshall plus Steve?

16 MR. MARSHALL: It is, you're right.

17 CHAIRWOMAN SHOWALTER: Isn't that how they  
18 came to it?

19 JUDGE WALLIS: For Commission Staff.

20 MR. TROTTER: For the Commission Staff, my  
21 name is Donald T. Trotter. My co-counsel is Lisa  
22 Watson. The phone number is (360) 664-1189, fax is  
23 (360) 586-5522, E-mail dtrotter@wutc.wa.gov.

24 JUDGE WALLIS: I'm going to ask everyone to  
25 check to see that the little red button on your

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1 microphone is in the up position and ask that everyone  
2 talk directly into the microphone. Sometimes it needs  
3 to be very close to your mouth for everyone to hear. A  
4 good key is whether you hear your own voice out of the  
5 speakers. That's probably an indication that things are  
6 working.

7           Are there petitioners for intervention in  
8 this docket?

9           MR. BRENA: Yes, Your Honor. My name is  
10 Robin, middle initial O, Brena, B-R-E-N-A. I'm with the  
11 firm of Brena, Bell & Clarkson. Our address is 310 K  
12 Street, Suite 601, Anchorage, Alaska 99501. I'm here on  
13 behalf of Tesoro West Coast Company. The phone number  
14 is area code (907) 258-2000, and the fax number is 2001.  
15 The E-mail address would be rbrena@brenalaw.com.

16           MR. FINKLEA: On behalf of Tosco Corporation,  
17 I am Edward A. Finklea. My office is Energy Advocates  
18 LLP. Our address is 526 Northwest 18th Avenue,  
19 Portland, Oregon 97209. Phone number is (503) 721-9118,  
20 fax is (503) 721-9121, and E-mail is  
21 efinklea@energyadvocates.com.

22           JUDGE WALLIS: Let me ask at this time if  
23 there is any other person present in the hearing room  
24 that desires to participate in this docket in a  
25 representative capacity.

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1                   Let the record show that there is no  
2 response.

3                   Let the record also reflect that we have  
4 received communication from Public Counsel of the  
5 Attorney General's office, who has indicated that Public  
6 Counsel will not be present today and does not intend to  
7 participate in this docket.

8                   The next matter to take up is the question of  
9 petitions for intervention. Am I correct that both  
10 Tesoro and Tosco have filed such petitions?

11                   MR. FINKLEA: Tosco filed its petition this  
12 afternoon, yes, Your Honor.

13                   MR. BRENA: We have not filed, but we intend  
14 to. Or if I can orally file, I will do that now.

15                   JUDGE WALLIS: You may state the petition  
16 orally.

17                   Because Tosco has filed, let's begin with  
18 them. If you would just state the basis for your  
19 request to participate in this docket.

20                   MR. FINKLEA: Tosco Corporation ships  
21 substantial volumes of petroleum products over Olympic's  
22 Pipeline, and as a major shipper on Olympic, any  
23 resolution of the instant proceeding will have a direct  
24 effect on Tosco's financial interest. Therefore, Tosco  
25 has a direct and substantial interest that would not

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1 otherwise be adequately represented by another party in  
2 the proceeding.

3 JUDGE WALLIS: Mr. Brena.

4 MR. BRENA: Tesoro is also a major shipper on  
5 the line, therefore, major shippers, and Tosco and  
6 Tesoro are the two major unaffiliated shippers. We have  
7 a direct financial stake in the outcome of this  
8 proceeding in terms of its impact on our cost of  
9 operation.

10 JUDGE WALLIS: Is there objection to either  
11 of the petitions for intervention?

12 MR. MARSHALL: No, Olympic has no objection  
13 to either of the two petitions for intervention.

14 JUDGE WALLIS: Commission Staff?

15 MR. TROTTER: No objection.

16 JUDGE WALLIS: The petitions are granted.

17 The order of suspension stated the basis for  
18 invoking the discovery rule. We therefore do invoke the  
19 discovery rule and ask the parties to be forthcoming  
20 with information. The degree to which information is  
21 freely shared will affect the parties' ability to  
22 prepare their presentations and will affect the  
23 Commission's ability to resolve the issues that it is  
24 presented in this docket.

25 Is there a perceived need for a protective

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1 order in this docket?

2 MR. MARSHALL: There may well be, Your Honor.

3 And I'm not sure how that will work given the situation  
4 with the title number faced with here in common  
5 carriers, whether that protective order would be upheld  
6 if challenged or not. But apart from that, I think that  
7 there are -- can and will be a number of sensitive  
8 pieces of information that need to be disclosed, and we  
9 would like to disclose it to the parties so they can do  
10 their jobs, but not to the rest of the world. And there  
11 are ways for this information unfortunately to be  
12 misused.

13 In particular, the promissory notes, for  
14 example, that we refer to in Mr. Batch's testimony, his  
15 amended testimony, contain information that probably  
16 isn't relevant to anybody outside of this docket, and we  
17 would like to have a protective order if it's required  
18 that we produce the promissory notes themselves as  
19 opposed to taking this data, the summary of this data as  
20 it is, then we would prefer a protective order on that  
21 and possibly for other kinds of information as well that  
22 could be requested by the parties.

23 JUDGE WALLIS: Mr. Brena.

24 MR. BRENA: Well, I -- the shippers are to  
25 some degree also competitors, and so the protective



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1 order, I think that there would -- it would be helpful  
2 to have one necessary that specific shipper volumes in  
3 particular months from -- and to particular locations  
4 may be competitively sensitive information that the  
5 shippers would want to protect, so we would request --  
6 we would support their position with regard to a  
7 protective order.

8 JUDGE WALLIS: Mr. Finklea.

9 MR. FINKLEA: We would as well, Your Honor.

10 JUDGE WALLIS: Mr. Trotter.

11 MR. TROTTER: We support the request for a  
12 protective order. There is, as you know, a difference  
13 in Title 81 from Title 80 with regard to the standard  
14 and, in fact, disclosability of documents received by  
15 the Commission under the open public records law. So if  
16 a member of the public asked for documents provided to  
17 the Commission, unless there is an independent exemption  
18 under the public records law, Commission would have to  
19 provide it. That's not so under Title 80 because of the  
20 provision of the law.

21 So I do think the Commission can enter a  
22 protective order to regulate the conduct between the  
23 parties. If we do get for some reason that I don't  
24 anticipate a public records request from a third party,  
25 unless there is a specific exemption from public

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1 disclosure that applies, that information would be  
2 disclosed.

3           JUDGE WALLIS: We understand that there is a  
4 difference between the provisions of Title 80 with  
5 regard to confidential material and general provisions  
6 of law. I'm sorry, Title 81 contains a specific  
7 Commission pertinent standard that does not appear in  
8 Title 80. However, the Administrative Procedure Act  
9 does grant the Commission the authority to enter  
10 protective orders, and we will enter such an order for  
11 this docket, understanding the concerns that the parties  
12 raise and believing that they are valid concerns.

13           Mr. Trotter indicates that there may be some  
14 questions as to the ultimate effect of such an order in  
15 certain circumstances. I'm not sure that we're able to  
16 predict those accurately. They may be matters for  
17 resolution in litigation at some point in the future.  
18 But for what it's worth, we will enter a protective  
19 order under the law that is applicable to this case.

20           CHAIRWOMAN SHOWALTER: I guess I -- because  
21 the ultimate disclosability of a document is either not  
22 known or is known, that is it must be disclosed, it  
23 doesn't resolve completely the issue of whether we  
24 receive complete documents or receive summaries of them.  
25 And I guess the company and perhaps the parties as well

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1 will have to be sensitive to that, or I hope they are  
2 sensitive to that. The Commission itself needs  
3 sufficient information to act on, and whether that must  
4 be a complete document or can be a summary if all of the  
5 other parties agree it's an accurate summary and it's  
6 relevant, these are things I guess will have to be done  
7 on a document by document basis, which I think is  
8 unfortunate, but I don't really see any other  
9 alternative.

10 MR. MARSHALL: We agree, Chairwoman  
11 Showalter, that it's been a concern of ours with the  
12 informal data requests, and we have been trying to  
13 figure out how to deal with the sensitivity of the  
14 information yet supply the material in a timely way,  
15 trying to be responsive as quickly as possible. And the  
16 only thing I can suggest is that the parties ought to be  
17 sensitive to the ultimate disclosability of this. And  
18 if there are ways of narrowing to summaries or to do  
19 other things, that would be appreciated.

20 But in the end, we realize that if the  
21 parties insist as regards to promissory notes, we have  
22 them here today, and if they were to be important in  
23 order to get the immediate rate relief that those be  
24 disclosed, well, we would disclose them. I mean that's  
25 the kind of thing that would ordinarily be protected in

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1 the other title. So I agree, we don't have much of a  
2 choice in the matter, and I guess all we can do is  
3 request restraint from the parties and make sure that  
4 the materials that are being requested are necessary,  
5 that are directly relevant to an issue and not just by  
6 way of kind of generalized interest. So with that,  
7 that's about all we can say.

8           COMMISSIONER HEMSTAD: Well, I would just add  
9 I assume parties are getting requests, that you can have  
10 your informal discussions back and forth to see what is  
11 the appropriate level of detail needed and to the best  
12 of your ability to work that out among yourselves.

13           MR. MARSHALL: And we have been trying to  
14 with the informal data requests of Staff, we have been  
15 trying to work out some sort of an arrangement that does  
16 that. We have been kind of stumbling and moving toward  
17 that goal. Entering a protective order, of course, will  
18 help some on that, because it does provide at least one  
19 level of -- to people who are not persistent, it's  
20 probably a good level.

21           MR. TROTTER: Your Honor, if I could comment  
22 to this point. Prior to this case being initiated, the  
23 company assured Staff that it would get the information  
24 it wanted and that the company did not have any  
25 confidentiality concerns. That has changed

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1 dramatically, and we are simply asking let's see the  
2 notes and the terms and conditions, which is very  
3 standard and we get them from every other regulated  
4 company that the Commission deals with. Perhaps there  
5 is a unique set of circumstances here, but we have made  
6 attempts to meet with the company to resolve these  
7 issues, ask follow-up requests, get the details of what  
8 we want. We were promised information last Friday, we  
9 didn't get it. We asked for it in a detailed letter  
10 sent yesterday, we asked for it today, I don't know if  
11 we're going to get it. So we're doing our best, but we  
12 have -- it's a two-way street, and we're going to have a  
13 compressed schedule for the interim case, it simply has  
14 to -- we have to get better information more promptly.

15 JUDGE WALLIS: I will drop back to the  
16 admonition earlier in today's session that parties must  
17 be forthcoming if we are to give the question of interim  
18 relief the timely consideration that it is due. And if  
19 information is not made available to parties, that has  
20 the direct potential to affect the schedule by which the  
21 Commission can operate.

22 MR. BRENA: If I may, just a brief comment,  
23 interveners are even further behind the Staff. We have  
24 asked the company if they would at least give us what  
25 they have already given the Staff as well as anything

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1 else that will be provided to Staff, and so far that  
2 hasn't been forthcoming either. I'm assuming that the  
3 entrance of a protective order may help that, although I  
4 don't understand why.

5           Also, you know, I want to be clear that there  
6 are unusual circumstances with this rate increase. It's  
7 a rather dramatic rate increase. And I do not want the  
8 uncertainty associated with the discovery to limit it in  
9 some fashion. You know, we need full and forthright  
10 information from the company to properly assess what is  
11 a dramatic rate increase, and there are going to be very  
12 difficult issues of fact that are going to be before  
13 this Commission to try to sort through these dramatic  
14 increases to determine to what degree they are  
15 associated with what degree directly, to what degree  
16 they are associated with it indirectly, those sorts of  
17 issues. They are not going to be easy to sort out. So  
18 just in terms of speaking from a shipper just trying to  
19 get a handle on where this increase is coming from, you  
20 know, I don't want my silence to mean that we will get  
21 anything other than full and complete information we  
22 need to advance with the rate case.

23           JUDGE WALLIS: Any other thoughts on  
24 discovery?

25           Let's move on then and ask whether any of the

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1 parties contemplate filing a dispositive motion.

2           Let the record show that there is no  
3 response, and we will take it from that that there is no  
4 need to provide for such motions other than as contained  
5 in the Commission's rules. We do ask that any party who  
6 subsequently determines that it may file a dispositive  
7 motion immediately notify the Commission and the other  
8 parties so that the scheduling and consideration of such  
9 a motion may be accomplished in a timely manner and as  
10 smoothly as possible.

11           MR. BRENA: Excuse me, if I may, just one  
12 brief comment, I wanted to ask a question, and it's  
13 because of my unfamiliarity with your rules, but is this  
14 -- are you asking prior to the filing of the direct case  
15 or at any point in the proceeding?

16           JUDGE WALLIS: At this juncture, we are most  
17 concerned prior to the filing of the direct case.

18           MR. BRENA: I would just note that after the  
19 filing of the direct case, of course --

20           JUDGE WALLIS: Yes.

21           MR. BRENA: -- it's their burdon to  
22 demonstrate, put forward a prima facie case in support  
23 of their rate increase, and it's often the case that I  
24 would test that with a summary motion.

25           JUDGE WALLIS: If you decide to do that, if

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1 you would advise us as soon as you have made that  
2 decision, it would assist us in scheduling the matter.

3 MR. BRENA: Okay.

4 JUDGE WALLIS: Is there anything further  
5 relating to dispositive motions?

6 Let's move on then. The next item that  
7 appeared on my list of things to discuss was the  
8 relationship between the issue of methodology and rate  
9 decisions, especially timing. In light of the amended  
10 petition that Mr. Marshall and Mr. Ryan have prepared  
11 and filed, perhaps it would be appropriate to take up at  
12 this time the discussion of the petition.

13 Mr. Marshall, did you wish to summarize the  
14 petition and speak in favor of it at this time?

15 MR. MARSHALL: Yes, and what we have done in  
16 the amended petition as we indicate here is to try to  
17 make sure that there's no link between the request for  
18 immediate rate relief and the issue of the general rate  
19 case, including methodology issues and other issues. We  
20 felt that that was beginning to cause a potential --  
21 some confusion. But more importantly, from a practical  
22 standpoint, it just didn't seem to be possible to do all  
23 of that work in a compressed time period.

24 In essence, what we are being asked to  
25 provide was all the data, all the backup that you would



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1 have in a seven month period for a general rate case on  
2 methodology and other issues in a compressed one month  
3 time. With 75 employees and just a handful of people  
4 and with a filing of the general case scheduled for mid  
5 December with the holidays right after that, it just  
6 didn't seem workable or feasible. So we wanted to break  
7 that link completely, fully, and separate out the  
8 request for interim relief on an entirely different  
9 basis than on filing Tariff 23 and having that go into  
10 effect immediately subject to refund.

11 So instead, what we have done is we filed a  
12 case that says basically there's an enormous amount of  
13 debt, \$150 Million. The company's financial position  
14 has deteriorated rapidly. At the same time there is a  
15 need, and we believe a very clear need, to prudently  
16 invest an additional \$23.8 Million here in the year  
17 2002. Similar amounts have been invested this year.

18 So it's one of those cases where in looking  
19 at the prior Commission precedent, there's probably  
20 never been a company that has been so badly in debt and  
21 in need of financing and yet having such a strong need  
22 for capital expenditures in the future, not only this  
23 coming year but in years following, that we decided that  
24 it would be best to make the interim case rest on that,  
25 the interest coverage, the financial deterioration, the

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1 need for other capital, so that's what we focused on.

2           We have taken out, and Mr. Trotter was quite  
3 right to request that clarification, anything in the  
4 interim case relating to methodology, what FERC might do  
5 or what might not do. We have simply noted, however, in  
6 Mr. Batch's testimony that FERC did issue an order  
7 yesterday noting the dire financial condition of Olympic  
8 Pipeline, but we're not trying to seek FERC methodology  
9 for the interim case.

10           We think this will actually help speed things  
11 up tremendously, that's our hope, to be able to focus on  
12 the debt issues and the need for the capital and to make  
13 that the focus of the discovery going forward here in  
14 this compressed time frame that we have allowed for.

15           You know, I don't want to pretend to try to  
16 summarize Mr. Batch's testimony. I think it is fairly  
17 short and it speaks for itself well. But again, I can't  
18 think of another company that's been in these financial  
19 conditions any worse, yet having any more need than  
20 Olympic does to continue on investing these amounts of  
21 moneys in the future.

22           On the refund issue, we I guess mentioned  
23 that before, that is an issue that we do commend to the  
24 Commission. But unlike if you were filing a rate to go  
25 into effect immediately under a tariff, at the end of

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1 the day, if you didn't get all of that that you had  
2 asked for in the tariff, you could refund that part of  
3 it. The question is, what do you do in a situation like  
4 this in devising a refund program.

5 But more important and what I was trying to  
6 mention in response to a question earlier is that if  
7 what you're trying to do is to stop the further  
8 deterioration of a financial condition and if you're  
9 trying to enable access to external capital sources,  
10 having an interim rate relief that is then subject to  
11 refund sort of defeats the purpose.

12 MR. TROTTER: Your Honor, did you ask for  
13 argument or a discussion between the relationship of  
14 methodology issues and rate design?

15 JUDGE WALLIS: I asked Mr. Marshall to  
16 present his motion.

17 MR. MARSHALL: That's what I understood. I  
18 wasn't going to try to spend much more time than I just  
19 did, so I think I'm at a close on that.

20 So I think, again, the documentation on this,  
21 if there is a need for more, we will be willing to  
22 provide the details. We have attached not only the  
23 schedule of the loans, but we have also attached to  
24 Mr. Batch's testimony the breakdown of capital  
25 expenditures both for 2001, and why we say it's expected

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1 is because this year isn't quite over yet, and for the  
2 2002 proposed spending. We tried to detail as we have  
3 shown in Schedule D here, the attachment which is I  
4 think DCB-6, Exhibit 6 to Mr. Batch's testimony. That I  
5 know that there may be other requests for data on more  
6 detail about the capital expenditures, and we're working  
7 to try to gather that together, again with the limited  
8 staff that we have.

9           But that's the sum and substance of why we're  
10 here. We have got to stop the deterioration. We have  
11 got to have the capital. The \$8.74 Million I should  
12 add, when you compare it to the \$23.8 Million needed for  
13 next year, clearly the question would arise, well, that  
14 doesn't quite cover that, and that's true. But it does  
15 go toward that, and without that rate relief, it becomes  
16 that much more difficult to cover just the ongoing debt.  
17 The ongoing debt level, the interest alone is \$9 Million  
18 a year. The company has accrued \$8 Million in unpaid  
19 interest to this point. There would be further interest  
20 that would go along with borrowing the additional \$23.8  
21 Million for continued capital improvements. So that in  
22 a nutshell is the need side of what we're seeking by way  
23 of this interim rate relief.

24           We have kept the \$8.74 Million number not  
25 because we think that that is all that could be

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1 justified by reliance on these factors, but because  
2 that's what we had asked for to begin with. That's what  
3 would have been produced if you had had interim rates go  
4 into effect under Schedule 23 for the following year.  
5 We didn't think given the notice provisions of the  
6 Commission, and this was a judgment call of ours, that  
7 it would be appropriate to increase that above \$8.74  
8 Million, so we have left it at that level. So that's  
9 the summary of what we have presented here in this  
10 amended petition.

11 CHAIRWOMAN SHOWALTER: Can you just remind  
12 me, is that \$8.74 Million the equivalent of 62% rate  
13 increase over between now or between whenever we would  
14 grant it and July; is that right?

15 MR. MARSHALL: It would be for both the --  
16 that would be for the intrastate part of the total rate  
17 if you added up everything under what has been filed at  
18 FERC and what's been filed here, it would be a total for  
19 the year. So the 8.74 is actually a year long figure.  
20 In other words, it would -- if the rates were left into  
21 effect for an entire year, that's the number it would  
22 produce for the intrastate portion of the rates.

23 The rest of the money I think is around \$14  
24 Million for the interstate. Is that about correct?  
25 That's what the FERC has -- the breakdown that we have

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1 in the work papers that have been filed with the actual  
2 Tariff 23 itself points that part out.

3 So that's how -- I don't know if that  
4 answered your question directly.

5 CHAIRWOMAN SHOWALTER: No, it didn't.

6 MR. MARSHALL: Okay, sorry.

7 CHAIRWOMAN SHOWALTER: But does the \$8.7  
8 Million interim rate relief request represent 62% of the  
9 current intrastate rate?

10 MR. MARSHALL: It does.

11 CHAIRWOMAN SHOWALTER: Okay.

12 MR. MARSHALL: I mean that's what we did in  
13 our original filing.

14 CHAIRWOMAN SHOWALTER: I just wanted to make  
15 certain I remembered.

16 MR. MARSHALL: Yeah.

17 CHAIRWOMAN SHOWALTER: You didn't have the  
18 62% in this document, and I just wanted to make sure I  
19 remembered it correctly.

20 MR. MARSHALL: Right, it still resides in the  
21 Tariff 23 that we have filed or will file, we filed  
22 initially and will file the supporting documentation on  
23 December 13th. But yes, that does calculate to that.  
24 It's about a quarter of a cent a gallon as it turns out.

25 JUDGE WALLIS: Do the interveners have any

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1 comment on the petition?

2 MR. BRENA: I do have a few comments, thank  
3 you.

4 JUDGE WALLIS: Mr. Brena.

5 MR. BRENA: The first comment I would like to  
6 make is that I would like more than half an hour of  
7 looking at something before -- I mean I would like  
8 proper due process. And to some degree I thought what  
9 we were here to work out was a schedule to determine,  
10 you know, when discovery would go forward and when there  
11 would be briefing and the like so that this issue could  
12 be heard properly.

13 The situation that I'm in is that every time  
14 I take an arrow out of my quiver and shoot it at the  
15 target, they move down range and move the target over to  
16 the next field. In May they filed their rate increase,  
17 and there was no request at all for interim rate relief  
18 or for any sort of emergency relief. There was no  
19 linkage of future expenditures to the rate increase at  
20 all. It was an entirely different proposal then. The  
21 one when we were here last was a request to allow Tariff  
22 Rate Number 23 to go into effect on an expedited basis,  
23 and it would be refundable. And now what we're here to  
24 is yet a third request. It's not a supplemental  
25 request. It is an entirely different request. It is

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1 not an increase to allow Tariff Rate 23 to go into  
2 effect. It is a request for some sort of emergency  
3 relief, linked focus on lending, that would allow them  
4 to collect in effect the 62% increase for a year.

5           When we were here before, they were asking  
6 for an interim rate, and if we got to it in 45 days or 2  
7 months, then they would have 5 months of the increase  
8 subject to refund. And now they're back, they have  
9 annualized it so they're not asking for 5 months at 62%  
10 increase, now they're asking for 12 months at 62%  
11 increase. They're not linking it to their proposal, and  
12 they're trying to only step forward and say look at our  
13 debt level and nothing else. Well, I have a problem  
14 with that.

15           Their attempt isn't an attempt to narrow the  
16 issues, because the issues are the same. Are they  
17 entitled to this on an emergency or interim basis or  
18 aren't they under the standards of this Commission. And  
19 while I understand their desire to just say we have this  
20 affiliate debt of \$70 Million and therefore give us \$8  
21 Million, I don't see any necessary nexus between those  
22 two concepts at all. They haven't said that the \$23.8  
23 Million wouldn't be invested. In fact, they step  
24 forward and say that we're BP Pipelines, and what we're  
25 going to do is operate to our standards and we will make



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1 these investments.

2           So I guess -- I guess to the degree that  
3 they're trying to narrow the scope of what we need to  
4 know about in order to advance our case, I don't think  
5 that they have done it. I'm still going to want to ask  
6 the question so that I can properly test under this  
7 Commission's standards whether they're entitled to this  
8 interim relief under a short-term or long-term basis.  
9 My thought is is that any rate that this Commission  
10 approves, particularly one that is not refundable,  
11 should be just and reasonable, and they shouldn't be  
12 able to just point at we have a lot of affiliate debt,  
13 give us money.

14           So to kind of organize this, and we haven't  
15 -- so we haven't tested their actual willingness -- I  
16 mean for all we know, the \$23.8 Million has already been  
17 budgeted and approved by BP Pipelines to be used by  
18 this. We just don't know that. We don't know if a lot  
19 of these expenses that they have incurred, therefore  
20 their debt has gone up quite a bit. We don't know if  
21 they had a self insurance program to protect the rate  
22 payers against the sort of extraordinary tragedies that  
23 has happened in the last couple of years. So we simply  
24 don't have any information.

25           And for many of the issues that I raised to

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1 the Commission the last time I was before it, we don't  
2 know whether or not this 62%, which is now if you take  
3 the 62% for five months and you turn it into 62% for a  
4 year, it's like 130% rate increase for five months until  
5 this Commission can get to the rate issues, we don't  
6 know if that's justified at all, because we have tried  
7 to get information. I gave examples of the different  
8 cost categories. We have asked for the information they  
9 provided to Staff. We just don't have it, and we don't  
10 have the discovery to do it.

11 So I guess what I would ask this Commission  
12 to do -- and when we got together, we had met with Don  
13 and we had said let's work out a -- we asked Staff to  
14 put together some sort of letter with some sort of a  
15 schedule that the parties could have in advance to try  
16 and address the interim rate issue on an expedited  
17 basis, because the Commission I understand, and  
18 properly, wants to get to this issue, and he laid out  
19 some dates. His schedule allows discovery, which I'm  
20 saying I need, and allows an opportunity for us to file  
21 our responding case. It allows them an opportunity to  
22 file their rebuttal case and allows for -- allows for  
23 the possibility of a tight briefing schedule and then  
24 argument as necessary.

25 And I guess my main comment is is that if I'm

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1 substantively arguing a motion that's been filed a half  
2 an hour ago that I have had one opportunity to go  
3 through that's a substantial change from anything that  
4 the Commission noticed out for this meeting, then I  
5 would like to get -- again come back, let's have  
6 procedural due process, let's not be in such a hurry.  
7 Nothing has changed. They had \$70 Million of affiliate  
8 debt a year ago. They had \$40 Million before that.  
9 Nothing has changed in two or three years. The fact is  
10 is that they have been using affiliate debt to expand  
11 their capital improvements and that we need to take the  
12 time to address the issue properly.

13           Finally, I would like to point out that to  
14 the degree that they're trying to solve the regulatory  
15 lag problem by asking for it all up front, I mean when  
16 they invest the \$23.8 Million in capital improvements,  
17 that will go into rate base. When it is in rate base,  
18 they're entitled to come before this Commission and ask  
19 for a reasonable return on that rate base and the  
20 recovery of that investment through depreciation  
21 allowances. Now Tesoro has not taken any objection, has  
22 not raised a single issue with this Commission with  
23 regard to one penny that they have actually spent for  
24 capital improvements, for safety, or otherwise. So I  
25 guess what's wrong with having them invest first like

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1 every utility in this state does and then get their  
2 return, you know.

3           And then -- and then final observation, you  
4 know, there's something to be said for the owners of a  
5 pipeline carrier actually having some equity in their  
6 company, and in effect what they're doing is they're  
7 supplying equity through affiliate loans to resolve  
8 non-shipper problems. Now the tragedy that happened and  
9 all the costs associated with it are what drove the  
10 affiliate debt. Those costs can not be properly flowed  
11 through to the rate payer in a permanent final just and  
12 reasonable rate, and so how can they possibly be in an  
13 interim rate. One of the most difficult issues this  
14 Commission is going to have to face is what's a  
15 shareholder issue and what's a rate payer issue, and we  
16 need the discovery necessary to sort through that in  
17 order to properly respond to this request.

18           JUDGE WALLIS: Mr. Finklea.

19           MR. FINKLEA: Tosco has --

20           CHAIRWOMAN SHOWALTER: May I just interrupt  
21 you.

22           I just want to make it clear, you aren't  
23 arguing this petition on the merits. We're just trying  
24 to scope the issue to see how we need to handle it. But  
25 I don't think there's any anticipation we're going to

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1 rule this afternoon.

2 MR. BRENA: No, I understood that.

3 CHAIRWOMAN SHOWALTER: We're trying to get a  
4 sense of what the issues are so that we can get a sense  
5 of --

6 MR. BRENA: What process to put in place.

7 CHAIRWOMAN SHOWALTER: Right.

8 MR. BRENA: Thank you. I hoped that, thank  
9 you.

10 JUDGE WALLIS: Mr. Finklea.

11 MR. FINKLEA: Tosco has similar concerns to  
12 what Mr. Brena just raised. Procedurally I do think  
13 that the concerns we had at the meeting last week are  
14 just as present in the current filing and perhaps more  
15 so because of the, now, the request that they get  
16 immediate rate relief without it necessarily being  
17 subject to refund.

18 JUDGE WALLIS: Mr. Trotter.

19 MR. TROTTER: Yes, just a few comments.

20 First of all, I think Chairwoman Showalter pointed out a  
21 key issue, because it is ambiguous, this petition, as to  
22 what they're asking for, and we also assume it is asking  
23 for a 62% increase in rates, not a specific amount of  
24 revenue to be recovered over a short time frame, so I  
25 think we're together on that based on what Mr. Marshall

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1 said. This is just -- they're asking for a 62% increase  
2 in rates on an interim basis. If that, I think to tie  
3 that knot, if that rate was in effect for a full year,  
4 the revenue impact would be approximately \$8.74 Million.  
5 That's how we understand it, and if that's wrong, then  
6 we need to know immediately. I think the Commission is  
7 entitled to a firm position from the company on whether  
8 they're requesting --

9 CHAIRWOMAN SHOWALTER: Mr. Trotter, you've  
10 got to be a little closer to the microphone. It's hard  
11 to hear you.

12 MR. TROTTER: Thank you. I think --

13 JUDGE WALLIS: Is your microphone on,  
14 Mr. Trotter?

15 MR. TROTTER: I believe it is.

16 I think the Commission and the parties are  
17 entitled to a firm position from the company now on  
18 whether these rates are being sought on an interim basis  
19 to be placed into effect subject to refund or not.

20 In addition, the testimony that they filed on  
21 October 31st in this interim relief aspect of the case  
22 is not being replaced, it's being supplemented, and that  
23 testimony does contain elements related to methodology  
24 issues which the company now says are not part of its  
25 case. So I would also ask that the company as soon as

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1 physically possible to identify the portions of that  
2 testimony that are no longer its direct case so that we  
3 can tailor our discovery accordingly.

4           COMMISSIONER HEMSTAD: Mr. Trotter, its  
5 direct case for emergency relief or its direct case for  
6 its full rate case?

7           MR. TROTTER: The former. I'm just speaking  
8 to the testimony they filed on October 31st, which was  
9 directed to the interim rate.

10           The meeting that Mr. Brena referred to  
11 pursuant to Your Honor's admonition at the open meeting  
12 last Friday, we met Friday afternoon, the attorneys  
13 sitting at the table today, and had some discussions,  
14 and we did circulate a letter Tuesday morning trying to  
15 focus the issues and proposing the schedule obviously  
16 subject to your approval. We didn't get any feedback on  
17 that, but we have at least made the effort to push  
18 forward, and I assume we will have discussions about  
19 that later today.

20           We have likewise, I think we actually got  
21 this in the building at shortly before noon and  
22 literally have had a very short time to look at it, so  
23 we really can't respond further, but the company says  
24 that it has debt totalling \$150 Million. Its rate base  
25 on an historical basis is around 80 and even on a FERC

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1 basis is around 112. That is a very significant  
2 difference and something that's going to -- and is  
3 highly unusual and -- that you would have debt that  
4 exceeds your rate -- what you have invested in your  
5 plant. I mean these are issues that are going to  
6 require a lot of questions and a lot of answers, and  
7 we're going to propose I think a couple of items down on  
8 our agenda a technical conference to try to get to that  
9 in the most efficient way possible. But this is a very,  
10 on its face, a very unusual situation, and we need to  
11 get behind it and find out what the details are. We  
12 don't have it yet. We have tried, but we don't have it  
13 yet.

14 JUDGE WALLIS: Are you addressing that issue  
15 in the context of the amended motion or in the context  
16 of the request for interim relief globally or both?

17 MR. TROTTER: Both.

18 MR. BRENA: And could I just ask, Don's  
19 clarification was that they were asking for a 62%  
20 increase in rates.

21 JUDGE WALLIS: Referring to Mr. Trotter?

22 MR. BRENA: Yes, Mr. Trotter. And I would  
23 like to know if, I read quickly, but I read their  
24 petition to ask for a dollar sum.

25 JUDGE WALLIS: We will allow Mr. Marshall to



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1 respond, and I believe he will address that.

2 MR. MARSHALL: Right, there are --

3 JUDGE WALLIS: Mr. Marshall.

4 COMMISSIONER HEMSTAD: Before you in your  
5 response address -- further question, what is the  
6 relationship between what you are asking for here with  
7 respect to the issue of subject to refund and what FERC  
8 has directed in its order?

9 MR. MARSHALL: The FERC, as Mr. Batch's  
10 testimony indicates, had ruled yesterday on a motion for  
11 rehearing that Tesoro had brought. Tesoro had not liked  
12 the idea of the FERC ordering rates to go into effect  
13 immediately subject to refund, and they did go into  
14 effect in September. Those rates will go through that  
15 process at the FERC until the end of the process and  
16 then be subject to refund. There are amounts of money  
17 that will be produced by that that wouldn't have been  
18 produced if Tesoro had its way and those rates had not  
19 gone into effect immediately. Tesoro has indicated that  
20 they're going to challenge that, and those rates may not  
21 be there at the end of the day. They may have to be  
22 refunded.

23 The question that was asked here last Friday  
24 was, well, what does a company like this do that has so  
25 much debt when you're asked to refund something. Do you

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1 go out and borrow money to refund. How on earth do you  
2 do that.

3 COMMISSIONER HEMSTAD: My question really was  
4 going to you're leaving open ended the matter of whether  
5 should your case have merit whether an interim rate  
6 would be subject to refund. FERC has made its subject  
7 to refund. I'm having some difficulty in then seeing  
8 how we would enter an order not subject to refund or how  
9 that would affect your ability to borrow.

10 MR. MARSHALL: Well, having a FERC rate  
11 subject to refund doesn't add -- it adds some, but it  
12 doesn't add a lot to the ability to go out and commit to  
13 a capital program of spending 2002 and beyond. Because  
14 you don't know if you're going to be able to actually  
15 retain that or not. It's helpful somewhat in making the  
16 payments as you go along.

17 But as, again, as people raised on Friday --  
18 and when that question was raised, we were asked, well,  
19 what would you do about that, and frankly that was the  
20 first time we really stopped to think about that issue.  
21 And I think it was Commissioner Oshie that asked or  
22 Chairwoman Showalter that asked, well, what would you  
23 do, and we hadn't thought it through, and the answer is  
24 that's a really good question, because if you have this  
25 amount of debt --

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1                   COMMISSIONER HEMSTAD: No, but my point is,  
2 does it make it any easier for you to go borrow if we  
3 would not make it subject to refund when FERC has made  
4 it subject to refund, when a portion of --

5                   MR. MARSHALL: The answer is yes, it does,  
6 and that's what we concluded Mr. Batch's testimony by  
7 stating, which was we leave that to the Commission's  
8 discretion on refund or not. And you can look at what  
9 FERC has done or not done.

10                   But the other day, the real question is how  
11 do you get the money to do the future capital  
12 improvements. You just can't adopt a budget and hope  
13 the money will appear. We would like to do that. We  
14 would like to be able to commit and say that's fine, all  
15 these needed improvements that we have going forward,  
16 that's not to talk about the ones in the past, will  
17 happen, that somehow the money will materialize.

18                   But in truth, if you want to compare  
19 anything, the comparison to make is the \$8.74 Million to  
20 the \$23.8 Million of needed capital improvements, and  
21 that doesn't quite cover all of that, but it's a  
22 movement in the right direction, and it would allow,  
23 particularly if it's not subject to refund, those items  
24 to be put into effect.

25                   There is -- there's probably a way for the

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1 Commission in ordering rates in the direct case to say,  
2 well, if we decide to lower that, that might come out of  
3 some future stream of income. That is, if you're  
4 overearning or if you're doing these other things, then  
5 over time there can be an adjustment that would be made.  
6 You know, this isn't an easy --

7 CHAIRWOMAN SHOWALTER: Well, why isn't that,  
8 why isn't just what you said subject to refund? In  
9 other words, if you got an increase of 62% and at the  
10 end of the rate case we decided that you were entitled  
11 to 20%, then if we did as you just suggested take into  
12 account the lump you had just gotten and essentially  
13 dock that amount over some period of time in the future,  
14 isn't that the same as subject to refund?

15 MR. MARSHALL: That could be. That's why we  
16 didn't take a hard and fast position on the subject to  
17 refund and commended it to the Commission's discretion.  
18 We haven't frankly been able to think it all the way  
19 through. It first occurred to us on Friday that this  
20 was an issue of some importance. It wasn't just a kind  
21 of a housekeeping issue. This was an issue of fairly  
22 dramatic importance. If you have the money and it's  
23 subject to refund -- if I went to a bank and I wanted to  
24 borrow money for my house and I said, well, my salary is  
25 subject to refund, I'm not sure I would get a loan. I'm

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1 not sure why anybody would want to do that under those  
2 circumstances.

3           So as we got to thinking about that, we  
4 thought the best we can do in this petition right now,  
5 and I know that the parties would like us to take a hard  
6 and fast position, is to say this is an important  
7 consideration that ultimately will be up to the  
8 Commission, there are factors that ought to be explored  
9 and discussed, and at the end of the day the test will  
10 be can you prevent the further deterioration of the  
11 financial condition enough so these needed improvements,  
12 capital improvements, can go forward in the future. So  
13 it's an ambiguous answer to an ambiguous situation.

14           And I think that's the best we can do at the  
15 moment. We will try to refine it, and maybe there will  
16 be some data requests that will help sharpen that. But  
17 at the moment, our preference would be to make it not  
18 subject to refund at the immediate end of this case in  
19 2002 at some time. But if it were to be subject to  
20 refund, to do it over a period of time so that that  
21 wouldn't reduce the ability of the company to continue  
22 making capital investments.

23           CHAIRWOMAN SHOWALTER: So a gradual subject  
24 to refund?

25           MR. MARSHALL: Right, that would be our

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1 preference. If we had to ultimately commit today and  
2 you were about to sign an order, then that would be our  
3 recommendation.

4 CHAIRWOMAN SHOWALTER: Subject to gradual  
5 refund.

6 COMMISSIONER HEMSTAD: Well, again, we're  
7 here today to talk about scheduling.

8 MR. MARSHALL: Correct.

9 COMMISSIONER HEMSTAD: So not a detailed  
10 discussion of merits of the case.

11 MR. MARSHALL: But this is -- I believe this  
12 is -- these are all important issues, and I'm glad the  
13 Commission has some thought on the questions.

14 JUDGE WALLIS: Mr. Marshall, did you wish to  
15 respond to anything else that intervenors or Commission  
16 Staff raised in earlier discussions?

17 MR. MARSHALL: Probably, but I have  
18 forgotten. I think Mr. Trotter asked me something that  
19 I don't know if I responded to that yet, Mr. Trotter, or  
20 not.

21 MR. TROTTER: Well, I think the key one was  
22 whether you're seeking interim rates the equivalent of a  
23 62% rate increase or a 62% revenue increase over a short  
24 period of time. I assumed it was the former, and if  
25 it's not, then I would request that you indicate that.

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1                   MR. MARSHALL: The question is whether we are  
2 asking for the lump sum so that it would be recovered in  
3 the rates in a short period of time or over a year  
4 period of rates?

5                   MR. TROTTER: No. The question is, is the  
6 company's request for interim rate relief expressed as a  
7 request for a 62% increase in a tariff rate?

8                   MR. MARSHALL: I guess I don't know the  
9 answer to that off hand. I think what we have asked for  
10 is we have not asked for Tariff 23 to go into effect,  
11 and what we do ask for is \$8.74 Million in order to  
12 address the need for additional amounts of money. That  
13 would be recovered, I suppose, by order of the  
14 Commission. How the Commission wants to impose it would  
15 be through rates.

16                   MR. TROTTER: May I just ask one follow up?

17                   CHAIRWOMAN SHOWALTER: (Nodding head.)

18                   MR. TROTTER: Is the company's request for  
19 \$8.74 Million, is the company requesting that to be  
20 recovered over a one year period through an interim  
21 rate?

22                   MR. MARSHALL: As opposed to?

23                   MR. TROTTER: As opposed to recovering \$8.74  
24 Million by July of 2002.

25                   MR. MARSHALL: Yes, it would be over a one

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1 year period.

2 CHAIRWOMAN SHOWALTER: Then if that's the  
3 case, then if we had completed the rate case by July  
4 1st, do you assume that post July 1 it would -- the rate  
5 would be whatever we had decided in the rate case?

6 MR. MARSHALL: Yes.

7 CHAIRWOMAN SHOWALTER: As opposed to a  
8 continuation of the \$8.74 Million?

9 MR. MARSHALL: Yes, that would be in effect  
10 kind of a pre-refund situation.

11 CHAIRWOMAN SHOWALTER: So is another way to  
12 put this that you want \$8.74 Million over the period of  
13 a year, which is equivalent to a 62% rate increase,  
14 through the end of the rate case? And at the end of the  
15 rate case, whatever the rate is, is; is that correct?

16 MR. MARSHALL: Correct.

17 CHAIRWOMAN SHOWALTER: So that if we finished  
18 in June, you would get less money.

19 MR. MARSHALL: Correct.

20 CHAIRWOMAN SHOWALTER: For this interim  
21 method than if we finished in July.

22 MR. MARSHALL: That's correct.

23 CHAIRWOMAN SHOWALTER: This brings me back to  
24 it seems to me you are asking for a 62% rate increase  
25 pending the outcome of the rate case.



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1                   MR. MARSHALL: It may well be, but we're not  
2 trying to link it to the tariff itself, Tariff 23 that  
3 we filed with the methodology and other issues. We're  
4 trying to rest it entirely on the issue that the  
5 Washington Natural Gas case identified in terms of  
6 deteriorating financial condition and need for capital  
7 for future for construction, safety related construction  
8 projects.

9                   JUDGE WALLIS: How would you propose to  
10 implement the increase?

11                   MR. MARSHALL: There would be a surcharge on  
12 current rates, and if it ended in July, it would be 7/12  
13 by the time the end of July came about.

14                   JUDGE WALLIS: And you would file a surcharge  
15 showing a 62% surcharge.

16                   MR. MARSHALL: We could do that, yes. I mean  
17 if that's -- in talking with Staff, if that's what Staff  
18 would prefer, that would be acceptable. I think this is  
19 probably the only way that we could do the \$8.74  
20 Million, because in our initial presentation asking for  
21 that money, that's how it would have occurred, and we  
22 didn't feel like we could ask for more in this amended  
23 petition due to the notice requirements. So I'm trying  
24 to be true to that touchstone in terms of what we were  
25 attempting to do to come up with that \$8.74 Million

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1 number. It could be under the Washington Natural Gas  
2 case that we cited under the financial conditions that  
3 we could have asked for more, but we made a  
4 determination judgment call not to ask for additional  
5 amounts. So we're trying to be true to what we filed  
6 before only on a different basis, true to the amount but  
7 not the ultimate underlying basis.

8 CHAIRWOMAN SHOWALTER: But if we keep to the  
9 statutory schedule for this case, it will not be \$8.74  
10 Million; do you agree?

11 MR. MARSHALL: I agree.

12 CHAIRWOMAN SHOWALTER: Okay.

13 MR. MARSHALL: And it wouldn't have been on  
14 the --

15 CHAIRWOMAN SHOWALTER: I think we understand.

16 MR. MARSHALL: Yeah, and it wouldn't have  
17 been either under the Tariff 23. It would have been  
18 7/12 if we ended it by July under the prior filing.

19 JUDGE WALLIS: Let me ask the interveners,  
20 did you participate in the FERC proceeding?

21 MR. BRENA: Yes.

22 JUDGE WALLIS: Did you engage in discovery in  
23 that proceeding?

24 MR. BRENA: FERC has a regulatory policy in  
25 crude oil pipelines and refinery product pipelines of

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1 suspending the tariff for a day, allowing it to go into  
2 effect subject to refund. That's their policy. That's  
3 the way that they treat every pipeline under every  
4 situation. That's what they did in this case. It takes  
5 extraordinary circumstances for them to deviate from  
6 that.

7           And with regard to their first increase  
8 before FERC that they filed in May, the FERC rejected it  
9 outright. FERC has rejected tariff filings in my  
10 experience, rate increases, general rate increases, only  
11 twice that I'm ever aware of, rejected the filing  
12 outright, and they rejected their filing outright as  
13 unsupported. They came in with the same filing again,  
14 and FERC used the one day suspension and allowed it to  
15 go into effect subject to refund. And FERC is on a  
16 relatively tight track as well. In fact, I think it's  
17 seven months.

18           So no, the issue of -- they do not have a  
19 standard at FERC that this Commission has of need to  
20 demonstrate emergency relief for dire circumstances.  
21 You just go in with a rate increase, and in effect they  
22 say, we will let you collect it and sort it out later.  
23 So their statutory scheme under the Interstate Commerce  
24 Act and under the regulatory policy before FERC has  
25 evolved in quite a different way than it has before this

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1 Commission. And as I understand this Commission's  
2 policies, that to allow a rate to be collected prior to  
3 a determination that it's just and reasonable, that  
4 there has to be some demonstration of extraordinary  
5 circumstance. That standard does not apply to FERC.

6 JUDGE WALLIS: My question was whether you  
7 have engaged in discovery at the FERC level.

8 MR. BRENA: I'm sorry, I didn't know the  
9 question was restricted to that. With regard to  
10 discovery, the parties agreed not to. The only issue  
11 there is the long-term rate, and what we said is we take  
12 a look at their direct case and serve discovery after  
13 that.

14 JUDGE WALLIS: And the direct case will be  
15 filed December 13?

16 MR. BRENA: That's correct, yes. And before  
17 FERC, there was no issue with regard to the interim rate  
18 relief that required discovery as there is here.

19 JUDGE WALLIS: Mr. Finklea, do you have  
20 anything to add?

21 MR. FINKLEA: Tosco has also participated at  
22 FERC in a similar manner, and we're also awaiting the  
23 December 13th filing.

24 JUDGE WALLIS: Mr. Brena, did I hear you  
25 correctly earlier to say that you would require all of

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1 the discovery for the interim that you would require for  
2 the case in chief?

3 MR. BRENA: No.

4 JUDGE WALLIS: What is the difference?

5 MR. BRENA: Well, it's a little hard for me  
6 to define my exact scope of discovery today, but I think  
7 the difference --

8 JUDGE WALLIS: I'm not asking for an item by  
9 item response, but for your approach to the extent that  
10 we can get a feeling for the need for discovery on the  
11 interim and how that differs from need for discovery on  
12 the general rate increase.

13 MR. BRENA: I think the fairest answer to  
14 that that I can give right now is one of intensity, that  
15 we do not anticipate with the shortened time frames  
16 associated with an interim motion on an expedited basis  
17 to serve or receive the same depth of discovery that we  
18 would otherwise expect. So I would ask more -- so it  
19 just -- it wouldn't be the type of -- it would be on the  
20 same topics, but it would be summary sorts of things.  
21 And then -- and then with regard to the debt issues, it  
22 would probably need to be a little more detail there.  
23 But I would anticipate far less discovery on the interim  
24 motion than in the regular case.

25 JUDGE WALLIS: Mr. Finklea, did you wish to

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1 respond?

2           MR. FINKLEA: Yes, Your Honor. I think that  
3 that is correct as to the justification for the size of  
4 the increase, that while we need some discovery on that  
5 in the interim process, it would be much shorter than  
6 what we would normally do in the general proceeding. I  
7 think at the same time that because of the way  
8 particularly today's petition has been framed, it raises  
9 a different set of issues that we wouldn't normally look  
10 into in a general rate case, which is the legitimacy of  
11 the "financial hardship" that the company is facing. We  
12 wouldn't normally spend any time in a general rate case  
13 focused on that.

14           So in some sense, it's less than we would do  
15 because we know in the general we will get to the issue  
16 about every dime. But we also have this broader  
17 question that is presented because of the request and  
18 especially if it's being framed as something that would  
19 be an increase that would not be subject to refund.

20           MR. BRENA: If I could just add to my earlier  
21 comments too. For example, when we met informally, I  
22 said I didn't think that for the interim rate increase  
23 that I would need to take anybody's deposition, for  
24 example. Those can be very time consuming, difficult to  
25 schedule, particularly at this time of the year.

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1 Staff's suggestion was one of a technical conference,  
2 and we certainly support that. I mean if they can bring  
3 in the folks and let us ask them some questions and  
4 serve some pointed interrogatories and requests for  
5 admissions and a little bit of requests for production,  
6 which would include those original notes by the way,  
7 then I think that that would adequately prepare us to  
8 move forward on this. But that's an example, specific  
9 example.

10 JUDGE WALLIS: Mr. Trotter.

11 MR. TROTTER: What is the question?

12 JUDGE WALLIS: The question is the difference  
13 in the requirement for discovery for a request for  
14 interim rates as opposed to a general rate increase,  
15 with the focus on this particular docket, of course.

16 MR. TROTTER: In this particular docket, I  
17 think we are at this point in time satisfied in looking  
18 at the financial issues that have been raised. There  
19 were some big ones that have been alleged here. And so  
20 we think we can, if we can get answers to our questions,  
21 we can do this in a fairly expedited way. We have a  
22 feel for the numbers in the general rate case, but we  
23 don't think we have to go too far down that path given  
24 the company's revised case, so. And we have outlined in  
25 our letter which we sent to the parties Tuesday morning

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1 the parameters of, general parameters, of the type of  
2 information that we have asked for. We have heard no  
3 negative feedback, but we haven't heard positive  
4 feedback either. So we think we can be focused and act  
5 responsibly within the ambit of the revised petition.  
6 The discovery needs are substantially different and I  
7 think more focused and hopefully narrower in scope, but  
8 there are some big issues out there.

9 JUDGE WALLIS: The parties indicated,  
10 Mr. Trotter, that you had prepared a schedule or a  
11 tentative discussion schedule in this docket. What  
12 effect does the petition or amended petition have on  
13 that schedule, if any?

14 MR. TROTTER: Yeah, our schedule was premised  
15 on their previous case being their direct case, but I  
16 have asked Staff to take a look to the extent they can  
17 on the new filing today, and we think we can still meet  
18 the schedule as long as we have a quick turn around on  
19 discovery. And I have a piece of paper here I can  
20 circulate. It's our proposal, but it is premised on a  
21 three day turn around for data requests and a technical  
22 conference. I would be happy to distribute -- I  
23 actually have schedules for the rate case and the  
24 interim case I would be happy to circulate if you would  
25 be interested in looking at them. This is just



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1 obviously the Staff proposal only, but we did go through  
2 the effort, and we didn't confirm the dates of anyone's  
3 availability on the Bench. So with those two caveats, I  
4 would be happy to circulate.

5 JUDGE WALLIS: Was there any discussion with  
6 me or the commissioners in preparing this proposal?

7 MR. TROTTER: I called your office and asked  
8 for feedback on the dates that are on here, and I didn't  
9 get any feedback. So I tried, but I was unsuccessful.

10 CHAIRWOMAN SHOWALTER: I took Judge Wallis's  
11 earlier question to be, does the new assertedly narrower  
12 petition mean that the schedule could be speeded up from  
13 what you had discussed earlier.

14 JUDGE WALLIS: Or is the converse true, if we  
15 have to give parties the opportunity to respond to this  
16 proposal to amend prior to making a ruling on whether to  
17 accept it, does that, in fact, extend the time that  
18 would be required for a decision?

19 MR. TROTTER: I will answer both of those.

20 JUDGE WALLIS: Thank you.

21 MR. TROTTER: The schedule that we offered  
22 has the case being submitted to you on December 27, so  
23 it's very ambitious to start. I don't think it can be  
24 narrowed or shortened, but we think we can still meet  
25 it.

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1                   With respect to the point do we need  
2 additional process to decide whether this petition ought  
3 to be allowed, I think from Staff's perspective at this  
4 point having read it briefly that we're prepared to move  
5 forward if the amendment is permitted. You know, at  
6 this point, we're not opposing it, let's just get going  
7 is kind of I think the sense we have right now.

8                   JUDGE WALLIS: Do other parties wish to make  
9 any comments on the discussions to date?

10                   MR. BRENA: I would just like to --  
11 Mr. Trotter did circulate that. I do have a schedule in  
12 conflict with the schedule that he has put together.  
13 But in terms of overall, it's with a specific date, in  
14 terms of overall, Tesoro is willing to do what's  
15 necessary to meet that schedule.

16                   MR. FINKLEA: Tosco would endeavor to do  
17 that. We are a little concerned with setting the oral  
18 argument for the week between the last week of the year  
19 just because we're not certain on the availability of  
20 everyone that would be involved. And in light of what  
21 has occurred today, we would suggest that we push this  
22 at least a week or two into the new year but not any  
23 further than that.

24                   MR. BRENA: And Staff's schedule, if I may,  
25 and it says briefs can be included in the schedule if

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1 the Commission or other parties desired to be filed  
2 sometime after December 27, and we think that it would  
3 be helpful to have limited briefing, you know,  
4 simultaneous briefing and response briefing, a limited  
5 cycle of that, probably within the first couple of weeks  
6 of the new year.

7 JUDGE WALLIS: Mr. Brena, you indicated  
8 surprise at the filing of the motion and requested an  
9 opportunity to, excuse me, not a motion but an amended  
10 petition, and an opportunity to respond. I'm noting  
11 that and perhaps would ask if we take a brief recess  
12 before we get into the nuts and bolts of scheduling if  
13 that would -- if that might give you enough opportunity  
14 to respond or if you in effect are asking for a delay in  
15 the institution of a schedule until you have had the  
16 opportunity to respond.

17 MR. BRENA: I'm asking for neither. My  
18 comment was an opportunity to substantively respond, not  
19 procedurally respond, that what we get to was a  
20 procedural schedule that allowed Tesoro the opportunity  
21 to put a case together, put a short brief together, and  
22 argue the issue once we have had an opportunity to look  
23 at it. I don't need -- I know what they have said, and  
24 it doesn't change my commitment to meet this schedule.

25 JUDGE WALLIS: Mr. Marshall, do you have any

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1 observations at this point?

2 MR. MARSHALL: Again, the only observation we  
3 would make is that after the open meeting on Friday and  
4 after further discussions, this was our good faith  
5 effort to try to narrow the issues as much as we  
6 possibly could, making a lot of the effort this holiday  
7 season unnecessary and not relevant to the basis on  
8 which we made the request so that we could all meet the  
9 schedule that Mr. Trotter outlined.

10 I would note that we do have direct testimony  
11 at the FERC and as well as here on the main case due on  
12 the 13th of December and a limited number of people that  
13 work at Olympic. Most of those people, of course, are  
14 operations people. We only have literally a handful of  
15 people that know financial. Two of them are here.  
16 There's another two. That's pretty much it. So we do  
17 -- and we will work with Mr. Trotter, Staff, and with  
18 interveners to try to get them data that is particularly  
19 priority oriented.

20 We will also work with them to try to see if  
21 we can't say, do you really need that now versus in the  
22 main case. I think if we have everybody operating with  
23 the idea that time is limited and resources are  
24 stretched and this is an important issue, we can  
25 probably get this done in this time.

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1           I would hope that frankly we could have  
2 gotten it done on a more expedited basis but -- because  
3 we think that the evidence is fairly compelling.  
4 There's not a lot that can be said that would show that  
5 there are any other companies that have a worse  
6 financial situation coupled with a demonstrable need for  
7 additional capital going forward. But I understand that  
8 all the parties will want to look at least at those two  
9 issues, and we will be prepared to turn data around on  
10 that as quickly as we can with the resources that we  
11 have.

12           JUDGE WALLIS: Without going into any  
13 details, would Mr. Trotter's proposal for a schedule be  
14 satisfactory to the company?

15           MR. MARSHALL: Well, the timing, I think  
16 Mr. Brena mentioned that the technical conference date  
17 has -- he has a conflict on the 28th. We could also,  
18 this is a good point, the people that would have to meet  
19 the schedule, maybe we can take a five minute break and  
20 let us know which of these dates might present a  
21 potential scheduling problem.

22           CHAIRWOMAN SHOWALTER: I guess before we take  
23 the break, the question I was interested in is, given  
24 with a day or two difference, I mean regardless of the  
25 precise dates, are you agreeable to the general

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1 timetable laid out here?

2 MR. MARSHALL: We are.

3 CHAIRWOMAN SHOWALTER: So that we're --

4 MR. MARSHALL: Yes.

5 CHAIRWOMAN SHOWALTER: -- we can get the  
6 dates pinned down.

7 MR. MARSHALL: Yes.

8 COMMISSIONER HEMSTAD: And the question I  
9 have, we typically don't have oral argument. We decide  
10 cases on brief. Not that we never do, but apparently  
11 you're building into this an opportunity for oral  
12 argument first, then briefs. Usually when we do hear  
13 them, it's usually the other way around, we have briefs  
14 and then oral argument. But my point is that do we  
15 really need oral argument on this, or can we submit it  
16 on briefs alone?

17 MR. TROTTER: Commissioner Hemstad, noting  
18 that you haven't seen the schedule yet, but the idea was  
19 to get -- I think the idea was to get it submitted to  
20 you in an expeditious manner, we would just have a  
21 hearing and oral argument. But certainly if you would  
22 prefer briefs, it adds additional time for that, that's  
23 perfectly doable. And I can understand --

24 COMMISSIONER HEMSTAD: Without briefs and on  
25 oral argument, okay, I understand.

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1 MR. TROTTER: Yeah, and we didn't put in an  
2 order date. So in any event, again, I count that kind  
3 of as the details that the Chairwoman said.

4 JUDGE WALLIS: Very well, and I would  
5 interject here if I may that the Commission may reach  
6 the conclusion of the evidentiary proceeding and  
7 determine then whether it would prefer oral argument or  
8 briefs based on its needs.

9 MR. TROTTER: That was our -- I think that  
10 was the spirit of our proposal.

11 JUDGE WALLIS: Very well. Should we take a 7  
12 to 10 minute recess at this point.

13 CHAIRWOMAN SHOWALTER: Let's make it 15.

14 JUDGE WALLIS: It may always end up being 15,  
15 but if we say it's 10, then we're more likely to have  
16 people back in 15 than if we say it's 15.

17 MR. TROTTER: Your Honor.

18 JUDGE WALLIS: Mr. Trotter.

19 MR. TROTTER: The Bench hasn't seen our  
20 schedule, so I will just circulate those and to the  
21 parties.

22 JUDGE WALLIS: If you would, please.

23 CHAIRWOMAN SHOWALTER: And to us as well,  
24 right. We might as well go look at our calendars.

25 MR. TROTTER: I will do that, and then are we

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1 off the record?

2 JUDGE WALLIS: Yes.

3 (Brief recess.)

4 JUDGE WALLIS: Let's be back on the record,  
5 please, following a discussion that may best be  
6 described as related to scheduling. There are two  
7 aspects of scheduling that the Commission needs to  
8 address.

9 The first is the scheduling of what we may  
10 term a request for interim rate relief, that is before  
11 the resolution of the general rate increase request with  
12 some finality. As to that schedule, the parties are  
13 agreed that we will go to hearing on that on January 7th  
14 and 8th of the year 2002, the 7th being a Monday and the  
15 8th being a Tuesday. There are other elements which  
16 relate to achieving that schedule, including the  
17 scheduling of a technical conference, distribution of  
18 direct cases, and rebuttal case. The details remain to  
19 be worked out amongst the parties and will be resolved  
20 before we conclude today's session. In addition, it is  
21 anticipated that the parties will file a prehearing  
22 memorandum at the time the hearing begins and supplement  
23 that as required by the evidence that comes out during  
24 the hearing with a brief concluding oral argument and  
25 that we will not ask for briefs at the conclusion of the



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1 proceeding.

2 Does that adequately express the situation  
3 with regard to the interim order? Is there something  
4 that needs to be added?

5 Hearing nothing, let's move on. Commission  
6 Staff has proposed a rate case schedule for the general  
7 rate case that involves the extension of the suspension  
8 date from July 1, 2002, to August 1, 2002. And there  
9 has been some discussion relating to the propriety of  
10 doing that and the necessity for a statement of the  
11 applicant's commitment to that extension on the record.  
12 So at this point, having raised the issue, I'm going to  
13 call first on Staff for a statement of the circumstances  
14 that arose there, then call on the company for a  
15 confirmation of its commitment to the extension and  
16 waiver of the statutory suspension period, and then upon  
17 the interveners for a statement in opposition to the  
18 extension, and then allow parties the opportunity to  
19 respond, and then call on the Commissioners for a  
20 ruling. Is that acceptable?

21 Very well, Mr. Trotter, may we begin with  
22 you.

23 MR. TROTTER: Yes, Your Honor. The notice of  
24 prehearing conference called for Olympic to file its  
25 direct case today on its general rate case. It's clear

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1 that that case will not be ready until December 13th.  
2 Mr. Marshall and I had an understanding subject to  
3 obviously your approval and so on that the suspension  
4 period be extended to accommodate the difference in  
5 those two dates, today's date versus the 13th. I  
6 believe that's 23 or 24 days, and I in the schedule that  
7 I proposed added I guess an additional week just because  
8 it fit frankly. So I think the literal agreement was  
9 the same number of days added on to the suspension  
10 period would be whatever it is, 23 or 24, or 30 if the  
11 company is willing to do it, again subject to Commission  
12 approval. So that was the understanding and the basis  
13 for it.

14 JUDGE WALLIS: Mr. Marshall.

15 MR. MARSHALL: We would agree to either the  
16 number of days or August 1st, whichever the Commission  
17 prefers.

18 JUDGE WALLIS: Very well.

19 Mr. Brena, you have some concerns about that  
20 extension. Would you care to state those now for the  
21 record?

22 MR. BRENA: Yes, thank you, Your Honor. We  
23 think that it's very important that this Commission get  
24 to the substance of this rate increase as soon as  
25 possible. The statutory period provides for that. We

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1 are very concerned with their interim rate request that  
2 our costs of shipping on this facility may go up 62% and  
3 may not be reviewed for months. We don't want to do  
4 anything to make that worse. We're concerned with that  
5 with regard to an interim rate request regardless of  
6 whether it's refundable. But if it is not refundable,  
7 this is harm that we believe that we may suffer that  
8 would be the effect of paying an unjust and unreasonable  
9 rate without an opportunity for a full review during  
10 this interim period. That would be funds that we could  
11 never get back.

12 Our understanding and our appeal to the  
13 Commission is to set rates that are just and reasonable  
14 and not to set rates and then determine down the road if  
15 they're just and reasonable. This is a substantial  
16 impact to our company and our operations, and we think  
17 that the way that the Commission has treated these  
18 issues in the past, it should continue to do so in the  
19 future.

20 So with those -- with those comments in mind,  
21 we would like to see the statutory period -- we would  
22 like to see -- first we would like to see this  
23 conversation occur within the context of an effort to  
24 schedule. Part of the problem that we have here is that  
25 we have made no effort to schedule first, but we're

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1 already extending the tail end date. If we put together  
2 a schedule and it can't work for some reason, then  
3 that's one -- then we would be happy to look at that and  
4 review our position with regard to that month. But  
5 absent that sort of effort going into it, if it's  
6 possible to get it done, let's get it done. And we  
7 don't want to be in a position I mean let's hurry up and  
8 get an unreviewed rate in effect and then slow down the  
9 ultimate review of the rate that harms shippers. Thank  
10 you.

11 JUDGE WALLIS: For response beginning with  
12 Mr. Trotter.

13 MR. TROTTER: Just briefly. Certainly if the  
14 Commission makes a decision on interim rate relief, and  
15 that is an increase in rates, then that rate would be  
16 found by the Commission to be fair, just, and  
17 reasonable.

18 We have ourselves the following situation.  
19 The notice of hearing says distribute today. That  
20 didn't happen. It's not Staff's fault it didn't happen  
21 or the Commission's fault it didn't happen, but we have  
22 now lost 23 days of an already short suspension period.  
23 We don't have their testimony and exhibits, and we have  
24 agreed to delay discovery until the 13th, and it's all  
25 part of one package. So we think the ability of Staff

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1 to process this case in a rational way demands the  
2 extension. Now if it's just 23 days, so be it, 24, so  
3 be it, but we need the additional time. That's almost a  
4 month and on an already short suspension period, it's  
5 essential.

6 CHAIRWOMAN SHOWALTER: I have a question. I  
7 think probably Mr. Trotter is the best one to ask. I  
8 don't have the statute in front of me, but am I correct  
9 or not that it's the company's right and ability to  
10 waive the extension, that this is not actually a request  
11 from anybody that we then rule on. They just, the  
12 company simply waives its right to a statutory deadline  
13 from July 1 to August 1. That then becomes a done deal.  
14 Then it's up to us to work out a reasonable schedule,  
15 which we will try to do. But I realize we're -- we seem  
16 to be in a posture of entertaining a motion. I'm not  
17 sure it is one.

18 MR. TROTTER: Two comments. I think you're  
19 generally correct. I think I would have always  
20 considered the suspension period to be a right of the  
21 company to extend or not. The impact of interim relief  
22 creates an odd switching in interests here, but I think  
23 it is the company's prerogative. Another way to deal  
24 with it in another way procedurally would be simply to  
25 permit a change in the effective date of the tariff. So

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1 really you're accomplishing the same thing. So it's  
2 just a question of the necessities of we feel very  
3 strongly about Staff to get this case done rationally,  
4 and I think that goes to the shippers' benefit too. But  
5 I agree with -- I think I agree with the premise that it  
6 is the company's ability to waive.

7 CHAIRWOMAN SHOWALTER: So if that is the  
8 case, then if they have waived it until August 1st, then  
9 we are aware of that when we look at the schedule and  
10 when we entertain motions for interim rate relief with  
11 or without a refund.

12 MR. MARSHALL: That's correct. Just one  
13 further note, at the open meeting on Friday when we took  
14 up this docket, we put on the record then our  
15 stipulation that we would not be filing today testimony  
16 and exhibits. We worked with Staff on that, made that  
17 known, and that was agreed that we would extend it. And  
18 we stipulated at that time, Friday, that we would extend  
19 to the time that Mr. Trotter had mentioned earlier. So  
20 this, we thought this issue was all behind us as of  
21 Friday.

22 COMMISSIONER HEMSTAD: I will just make the  
23 comment, it would seem appropriate to me for the company  
24 on the record today to agree to the extension, again  
25 whether it's August 1st or 23 or 24 days, that, you

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1 know, is again the company's choice. Problem is we've  
2 still got to try to work out a schedule here. If this  
3 schedule can be compressed in a way that it works and it  
4 would be incumbent on the Commission to get its order  
5 out sooner, we can do it, you know. But it seems the  
6 orderly way to proceed here today would be for the  
7 company to extend and then the parties work on the  
8 schedule in a way -- and maybe it will be possible to  
9 accommodate the shippers' interests here and with an  
10 order that would be issued still within the seven month  
11 period. If not, then we have the additional time.

12 MR. BRENA: I certainly agree with that  
13 perspective, and I was thinking that what was before the  
14 Commission was a stipulation of some of the parties and  
15 not all of the parties. And if the company's right is  
16 to extend, then it's right is to extend, and I will take  
17 up my concerns with that regard within the context of  
18 scheduling.

19 JUDGE WALLIS: Very well. Is there anything  
20 further on the matter?

21 CHAIRWOMAN SHOWALTER: Is this on the record?

22 JUDGE WALLIS: Yes.

23 CHAIRWOMAN SHOWALTER: So the record heard  
24 the company extend?

25 JUDGE WALLIS: Yes.

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1 CHAIRWOMAN SHOWALTER: Although I don't know,  
2 you kind of were a little vague. Why don't you just  
3 state a date.

4 MR. MARSHALL: Well, I gave the option of the  
5 Commission, but if you want it, I think that August 1st  
6 sounds fine. We would actually prefer a shorter time  
7 despite the kind of indications that had been indicated  
8 by Mr. Brena.

9 COMMISSIONER HEMSTAD: Under the statute, I  
10 believe it's your choice.

11 MR. MARSHALL: August 1st sounds fine.

12 JUDGE WALLIS: Very well, all right, thank  
13 you very much.

14 Now I would like to move on to some of the  
15 nuts and bolts of the administrative aspects. I don't  
16 know if all of the parties are aware, but the Commission  
17 is facing the potential for a very challenging schedule  
18 over the next year. We have indications that Avista is  
19 going to be filing a general rate case with a request  
20 for interim relief, that PSE is going to be filing a  
21 general rate case with a request for interim relief,  
22 that those filings may occur within the next few days,  
23 and your being first in line lets you have some  
24 flexibility in scheduling.

25 But I wanted everyone to know that once we



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1 settle on a schedule, parties' opportunity for variances  
2 in that schedule are going to be very limited because of  
3 not only those matters but other matters that the  
4 Commission has before it that also have pressing issues  
5 to be resolved and will require commissioner hearing  
6 time. So we need to be as thoughtful about the time  
7 that's selected as possible. And to the extent that  
8 doing so permits a full hearing and everybody's  
9 participation, it is also to the parties' advantage to  
10 complete this in as expedited a manner as possible.

11 With that, let me state what I believe to be  
12 the agreement of the parties as to determination of the  
13 schedule in the rate case in chief. That is that the  
14 parties will engage in discussions about schedule, and  
15 to the extent that they may agree, that they will file  
16 on December 13, 2001, a statement of that agreement. To  
17 the extent that they do not agree, they will file a  
18 proposal as to their desired schedule and the reasons  
19 for identifying that schedule. The Commission will  
20 either make a ruling or schedule a conference shortly  
21 after December 13th, a teleconference if the parties are  
22 agreeable to that, for addressing the scheduling issue  
23 and any other administrative issue that may arise.

24 Have I stated accurately the parties'  
25 understanding of where we are with respect to the

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1 schedule of the main rate case?

2 MR. MARSHALL: Yes.

3 MR. TROTTER: Yes.

4 MR. FINKLEA: Yes.

5 MR. BRENA: Yes.

6 JUDGE WALLIS: Very well.

7 Other administrative issues, Mr. Trotter  
8 asked about the scheduling of response time for data  
9 requests. Mr. Trotter.

10 MR. TROTTER: Yes, Your Honor. We did the  
11 normal response time under the rule is ten, I believe  
12 it's ten working days, and that's simply not going to  
13 work, so we are asking for a three day turn around time.  
14 This would be on a best efforts basis, but if it can't  
15 be turned around in that time, then the parties would  
16 say, well, it could be -- this would be business days,  
17 the schedule that -- I think the only schedule you set  
18 for the interim case was the hearing. We still have to  
19 talk about distribution dates and so on. But if it goes  
20 as proposed, we're talking about Staff distributing its  
21 direct and interveners distributing their direct case on  
22 the 14th of December, and we'll probably -- so we're  
23 going to need a very short turn around time, so we would  
24 request a three day.

25 JUDGE WALLIS: Does this relate to

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1 information only as to the interim request or  
2 information as to the general request?

3 MR. TROTTER: Only as to the interim request.

4 JUDGE WALLIS: And the timing for responses  
5 on the general rate increase, which discovery presumably  
6 will begin on the 14th of December, would be the normal  
7 time?

8 MR. TROTTER: Yes.

9 JUDGE WALLIS: Comments from the interveners.

10 MR. FINKLEA: We can support the three day  
11 turn around.

12 MR. BRENA: Yes.

13 JUDGE WALLIS: Mr. Marshall, you earlier  
14 indicated some internal barriers through lack of  
15 resources to responding in a timely manner to some  
16 requests that have previously been submitted. Is that  
17 correct? Do you anticipate that those by and large have  
18 been resolved, and is the three day turn around for the  
19 most part workable for you?

20 MR. MARSHALL: The three day turn around time  
21 in -- a ten day working time frame is something that we  
22 could be -- would be required to meet on data requests.  
23 Three day turn around time I think depends on two  
24 things, one, how many data requests we're getting at the  
25 same time, and the degree of burdon that they have. So

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1 to say in the abstract that we can agree to a three day  
2 turn around time when we have two interveners and Staff  
3 and we already have 22 requests from Staff that are  
4 right now informal, but we need to have assurances from  
5 all parties that these requests will be narrowly  
6 tailored to data that is directly relevant to the issues  
7 raised in our amended petition for interim relief.

8           And I guess we're not being asked to do much  
9 other than, as Mr. Trotter indicated, that within three  
10 days if we couldn't turn around in three days to let  
11 people know when we could. It's to our clear interest  
12 to answer all relevant questions as promptly as we can,  
13 and we will definitely do that. We will work with the  
14 parties to ensure that that happens. If these requests  
15 become too burdensome, we will, as we indicated to the  
16 Commission, may have to seek relief from that after  
17 trying to work that out with the parties. But if the  
18 request is that after three days we let the parties  
19 asking for the information know whether we can do it  
20 then or we have to have the additional time, I suppose  
21 that's fine.

22           MR. TROTTER: Your Honor, that wasn't the  
23 request. The request was that the general rule would be  
24 three days response time. If that can't be done, then  
25 notify the other party when it will be done. You know,

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1 we have had some problems here, we ask for files that we  
2 know exist in electronic form, all it takes is to be  
3 sent an E-mail with the attachment, and we don't get it.  
4 It's promised on a day, and we don't get it that day.  
5 This isn't -- we may have asked for information that did  
6 take more time, but some of it we believe was extant  
7 information in electronic form, it was promised last  
8 Friday, and we still don't have it. So these are the  
9 kinds of things that we're worried about. But it's also  
10 just simply preparing for the 14th.

11 Now in conjunction with the technical  
12 conference which we're proposing for next Wednesday, if  
13 that works, you know, that can help I think a lot in  
14 scoping out the areas in which documentary evidence or  
15 other evidence is going to be needed. So we need a  
16 commitment that the company will use its best efforts  
17 and not just, oh, you know, automatic we can't do  
18 anything in three days and so -- and I'm not suggesting  
19 that was what he said, but if it's just going to be  
20 that, that nothing is going to be responded to on a  
21 quick turn around basis, then our hearing date may be in  
22 jeopardy.

23 JUDGE WALLIS: Mr. Finklea, Mr. Brena.

24 MR. BRENA: We support the three day turn  
25 around on the best efforts basis. If they can turn it

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1 around, then they ought to. This is an expedited motion  
2 that we have undertaken at their request, so the  
3 information should be forthcoming as quickly as  
4 possible. If it's not possible, I understand what not  
5 possible means, and best efforts doesn't require what  
6 isn't possible.

7           So I just want to -- I'm a little concerned,  
8 the interveners, at least Tesoro, and the company define  
9 or are likely to define what's relevant to their interim  
10 request differently, and so I just -- I think -- I think  
11 Your Honor asked me the question how would our requests  
12 to answer differ from the interim rate relief to the  
13 main case, and my answer was one in terms of the  
14 intensity of the information, not the scope of the  
15 information. And I think Mr. Finklea mentioned that  
16 because of the structure, the unique structure of the  
17 way they have requested interim relief, that they have  
18 raised additional issues that go beyond what would  
19 normally be explored. So I just put you on notice of  
20 that.

21           Now we support the three days. We don't want  
22 to burdon these guys down with a lot of discovery that  
23 they can't do. But to the degree they can respond in  
24 three days to simple discovery requests that scope out  
25 the issue, then we think it's reasonable given the

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1 extremely aggressive schedule put in place for their  
2 benefit.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: Well, I think I have made our  
5 statement clear, that if these requests are limited in  
6 scope to the issues raised in the interim case, we don't  
7 have a lot of them coming at the same time, we will  
8 certainly try to turn around as quickly, but we don't  
9 want to waive any of our statutory rights to have  
10 additional time if we need the time.

11 I mean I -- Mr. Beaver asked me, well, what  
12 was it that we were supposed to have sent to Staff in  
13 electronic form, and I confessed that I didn't know what  
14 it was. We have been trying to do that. We had one  
15 member of staff up yesterday to try to provide direct  
16 information as rapidly as we can. We have been down a  
17 couple of times to try to work with Staff. I think we  
18 have already established that we're working in good  
19 faith to provide information, and any insinuation that  
20 we're withholding information is incorrect, and we want  
21 to make that known on the record, that we have not been  
22 delaying or withholding information relevant to these  
23 proceedings at all. It's not in our interests to do so,  
24 and we won't. But at the same time --

25 MR. TROTTER: Your Honor, may I ask -- excuse

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1 me.

2 MR. MARSHALL: But at the same time, we do  
3 need to preserve our rights to be able to not face  
4 sanctions from the parties when too many data requests  
5 come at once and we're unable because of the length and  
6 breadth of scope.

7 I just heard Mr. Brena say that he doesn't  
8 feel bound by limiting the scope because of what we  
9 tried to do to narrow the case. He's just going to  
10 limit his intensity, and I have to confess I don't know  
11 what that means, limiting intensity but not scope. I'm  
12 not positive, but I can't buy into a blank check and  
13 make a commitment until we actually see what kinds of  
14 requests we're going to be getting.

15 We need to sit down with Staff and narrow the  
16 requests that they have in light of the change that we  
17 made in the amended petition. I think that's the first  
18 step, and we will be more than happy to work with Staff  
19 to do that to make sure that they prioritize the data  
20 that they want and eliminate data that either is  
21 unavailable because Equilon had it and we can't let them  
22 know about that or eliminate whole categories of data  
23 that can wait for the general case itself.

24 We will work to the best of our ability with  
25 the resources that we have in consideration of the -- we



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1 haven't heard from the other side yet the willingness to  
2 limit themselves in discovery. Without that, it's  
3 difficult for us to voluntarily agree to limit our time  
4 to respond.

5           JUDGE WALLIS: I would -- I'm sorry,  
6 Mr. Trotter.

7           MR. TROTTER: Two points. His last statement  
8 is incorrect. We sent a letter Tuesday scoping out  
9 directly information that we needed for the interim  
10 case, and we believe many of those were scoped to what  
11 they have just filed.

12           Secondly, we asked for the work papers of  
13 their outside consultant on the rate case, which is in  
14 electronic form, we have it in hard copy, we asked for  
15 it in electronic form, we haven't gotten it yet. That's  
16 just one example.

17           They offered us information last night that's  
18 at their offices, but they didn't want to let us have it  
19 because of their concerns about sensitivity. We said if  
20 you can't let us have it, it's no good to just look at  
21 it. And so hopefully that barrier has been torn down  
22 with the protective order. But it's been a struggle,  
23 and it's been very frustrating and perhaps on both  
24 sides, but we've got to do better, and I will say that  
25 on all sides, but it's been very frustrating.

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1                   JUDGE WALLIS: I would, Mr. Brena, if I may  
2 jump in now, I would like to try to wrap this up. If  
3 after I have completed my observations you still want to  
4 say something, you may do so.

5                   I think it is essential with the accelerated  
6 schedule that now exists that the company make its best  
7 good faith effort to comply with a three day response  
8 time, and in the absence of ability to respond, to reply  
9 within that time stating the reasons for the lack of  
10 response. If the requests are burdensome, if you  
11 believe that they are so irrelevant that the time spent  
12 to contest them is better spent than responding, you may  
13 contest them. That certainly is within your  
14 prerogative.

15                   I would call attention of the parties to the  
16 Commission's rule that does require the parties to  
17 consult as to these matters. It is not acceptable to  
18 send a response that says, for example, I don't know  
19 what you meant by this, when you can have a Staff person  
20 get in touch or yourself get in touch with people who  
21 made the request so that the clarification can be made  
22 and a speedy response made.

23                   By the same token, I do believe that it is  
24 essential if we are going to have the company able to  
25 respond with the limited resources that it does have, to

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1 confine the scope of the request, the depth of the  
2 request, clearly in a way that allows them the  
3 opportunity to respond with the information that really  
4 is essential for the preparation of the Staff and the  
5 interveners' cases.

6 I am pleased that the parties are proposing a  
7 technical conference. I think that is one way to cut  
8 through some of the discovery issues that sometimes  
9 otherwise arise. And once we get into the scheduling of  
10 that technical conference, it may be advisable to pencil  
11 in a further prehearing conference for the purpose of  
12 getting a read on how discovery is going so that we are  
13 proactive and that we are able to hear from the parties  
14 what the status of the requests are, what the status of  
15 the responses may be, and to make whatever rulings are  
16 necessary at that point.

17 How do the parties feel about that?

18 MR. TROTTER: That would be acceptable to  
19 Staff. The technical conference, to be precise, is our  
20 proposal, and no party has agreed to it yet. We would  
21 agree to that proposal.

22 JUDGE WALLIS: Intervenors.

23 MR. FINKLEA: Tosco is amenable to that  
24 approach, and we think a technical conference would be  
25 very useful. We just noted that the 28th creates a

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1 problem.

2 JUDGE WALLIS: We will address the  
3 scheduling, yes.

4 MR. FINKLEA: But the actual approach is a  
5 very responsible way to go.

6 MR. BRENA: Yes, I agree.

7 MR. MARSHALL: I agree, except on the  
8 technical conference, we haven't talked to Staff about  
9 what that would mean or be and --

10 JUDGE WALLIS: I'm going to suggest --

11 MR. MARSHALL: -- we're a bit puzzled by  
12 that, particularly since so much of what we have  
13 presented is in the area of debt and the need for  
14 capital. Now I understand what technical conferences  
15 are when you're doing lots of calculations and so forth  
16 and you need to understand how certain calculations were  
17 done. The Bonneville Power rate case was certainly one  
18 of those cases where you benefited from technical  
19 conferences. I'm not sure, frankly we just haven't had  
20 a chance to talk to Mr. Trotter about what that would  
21 mean and how that would be accomplished and what it  
22 would be limited to.

23 JUDGE WALLIS: Very well. I'm going to  
24 suggest that we go through a couple of other items and  
25 then recess for the purpose of discussing the technical

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1 conference and the intervening dates on the interim  
2 proceeding.

3           I will be entering a prehearing conference  
4 order pursuant to the Commission's rules that will have  
5 attached to it the results of the information that you  
6 folks provide as to your names, addresses, and contact  
7 information. And it will have attached to it a page or  
8 two reminding parties of the provisions in the  
9 Commission's rules about the formatting and presentation  
10 of documents.

11           I mention this because it is sometimes the  
12 case that this information does not get to the staff  
13 people who actually are responsible for preparing and  
14 sending the paper itself, and it is an immense headache  
15 when people do not comply with the Commission's  
16 requirements. They are relatively small I believe in  
17 number, and when there is compliance, things go so much  
18 better on the administrative end. Our staff is much  
19 happier, the commissioners are much happier, the  
20 administrative law judges are much happier, and we  
21 encourage people when that comes out to read that and to  
22 talk about it with your staff and to assist us by  
23 complying.

24           One of the questions that sometimes has  
25 arisen in the past is whether on matters such as a three

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1 day turn around whether parties are willing to comply  
2 with that immediately or whether they will wait to  
3 comply until an order is entered. I'm not sure that  
4 that's much of an issue here because of the short nature  
5 of the turn around, but if necessary, I will see that an  
6 order is entered probably not today but on Friday. I  
7 will hold that off until the normal course of business  
8 on Monday or Tuesday if the parties are willing to  
9 commit that they do not need a written order in order to  
10 commit to compliance with the agreements and the rulings  
11 that are made today. Are the parties willing to make  
12 that commitment?

13 MR. TROTTER: Staff will comply.

14 MR. MARSHALL: Yes, if I think I understand  
15 it correctly.

16 MR. FINKLEA: Tosco will comply.

17 MR. BRENA: Yes, certainly.

18 JUDGE WALLIS: Very well.

19 Is there any other matter that we need to  
20 address either that we have deferred or that parties  
21 have thought of other than the scheduling of interim  
22 dates for the interim proceeding?

23 MR. MARSHALL: There is the addressing the  
24 question of the content of the protective order that  
25 Your Honor alluded to at the beginning of the

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1 conference.

2 JUDGE WALLIS: We --

3 MR. MARSHALL: We would like to see that  
4 entered in, but we don't know what the terms might be.  
5 If there is a standard form or if you would be able to  
6 send it out in draft so that we could make comments on  
7 it, that might be helpful.

8 JUDGE WALLIS: We will enter a protective  
9 order that is in the format of orders that the  
10 Commission has previously entered. Because of the  
11 situation with the statutory basis for the Commission's  
12 obligation to disclose information under the provisions  
13 of the Public Records Act, it will not cite to the  
14 provision in Title 81 that is applicable. In all other  
15 regards, it will be similar. The basis for a protective  
16 order is in Part 4 of the Administrative Procedure Act.

17 MR. TROTTER: Your Honor, you said Title 81,  
18 I think you meant Title 80.

19 JUDGE WALLIS: I'm sorry, Title 80, yes.  
20 It's late in the day, and my memory seems to be fading  
21 as it goes.

22 MR. TROTTER: I have one other item, Your  
23 Honor. I would ask that the company for the testimony  
24 on interim relief that they filed on October 31st, that  
25 they refile that excising, not adding to, not changing

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1 any words other than to excise the portions that deal  
2 with rate methodology, as they have indicated that's not  
3 an issue in the interim case.

4 MR. BRENA: And I just have a clarification,  
5 do they intend to rely on both filings for the purpose  
6 of their request or just on their most recent one?

7 MR. MARSHALL: The originally filed testimony  
8 of Mr. Batch on the interim rate case also talked about  
9 financial issues in terms of loss of money and so forth.  
10 That all continues to be relevant. We referred to that  
11 in the amended petition. The methodology issue does not  
12 pertain now to the issue of interim rate relief. We can  
13 do what Mr. Trotter suggests on that. But yes, we are  
14 relying on Mr. Batch's testimony in these other areas  
15 that will continue to be relevant on the financial  
16 condition of Olympic Pipeline.

17 JUDGE WALLIS: Would it be both helpful to  
18 everyone concerned and relatively easy for you to do a  
19 strike through version of the proposed testimony and  
20 file that as a revised version?

21 MR. MARSHALL: Sure, I think we can do that.

22 JUDGE WALLIS: Would that satisfy the  
23 parties' interests here?

24 MR. TROTTER: Yes.

25 MR. BRENA: Certainly, and could -- I don't



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1 know what the Commission's procedures are on fax  
2 service, but given the expedited nature of this, we  
3 would certainly request that a courtesy copy be provided  
4 by fax.

5 JUDGE WALLIS: Thank you for reminding me of  
6 that issue, Mr. Brena.

7 Because of the tight time frames, would it be  
8 feasible to ask the parties to send by electronic mail  
9 everything that is in digital format and to fax anything  
10 that is not in digital format at the same time as it is  
11 served.

12 MR. BEAVER: Your Honor, could I ask a  
13 question about that?

14 JUDGE WALLIS: (Nodding.)

15 MR. BEAVER: Thank you. The protective  
16 order, and I'm frankly not familiar with protective  
17 orders issued by this agency, I am obviously by various  
18 courts, and they normally require that the documents be  
19 stamped indicating that they are subject to a protective  
20 order. Is there some similar notation that this  
21 information will have to be so designated? And the only  
22 reason I raise that is in regard to electronic  
23 information, that becomes problematic.

24 JUDGE WALLIS: It does. I'm going to suggest  
25 that we go off the record for a discussion of some of

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1 these issues.

2           Let me conclude this discussion on the record  
3 by saying that it will be my goal to circulate to  
4 parties a draft of the protective order on Friday  
5 working from the template order that the Commission has,  
6 probably late in the day on Friday. And if you have any  
7 observations on it, if you can get back to me by Monday  
8 or Tuesday, I would appreciate that, say the end of the  
9 day on Tuesday.

10           MR. FINKLEA: Your Honor, before we go off  
11 the record, there was one other item, which was the  
12 making available to the interveners information that has  
13 thus far been made available to Staff, and we do request  
14 that the information that has been made available to  
15 Staff be made available to the interveners.

16           JUDGE WALLIS: Mr. Marshall, you have voiced  
17 some concerns about that. My observation is that it  
18 appears that making the information available would be  
19 in the best interests of your client in the sense that  
20 sooner information and more information seems to be  
21 better in the long run than less information or later  
22 information.

23           MR. MARSHALL: Two observations. I mean some  
24 of the information that was presented dealt only with  
25 the prior interim rate relief petition that has now been

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1 now completely revised. Second, almost all this  
2 information has been marked and discussed orally in the  
3 event as preliminary and subject to check and for  
4 discussion purposes only. We will work to get Staff  
5 data responses to what they have asked for that don't  
6 bear those problems, (a), they're relevant, (b), they're  
7 not preliminary, and (c), they're not for just  
8 discussion purposes so they might be tighter and less  
9 broad. But we will do that in the context of the data  
10 requests that Staff has sent, and we will send copies to  
11 interveners.

12 But it would be difficult for me to  
13 reconstruct at this time what we may have discussed with  
14 Staff before, and we just -- we can't do that. But we  
15 will commit from this point forward to give all  
16 information that we give to Staff in any kind of final  
17 form, and we will do that without hesitation for  
18 interveners.

19 MR. TROTTER: Your Honor, because the company  
20 is maintaining Mr. Batch's direct testimony other than  
21 as to rate methodology issues, the Staff data requests  
22 are still relevant to that testimony, so I just want  
23 that to be clear on the record.

24 MR. BRENA: Could -- I don't mean to put the  
25 Staff on the spot, but could the Staff provide us with

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1 the information that Olympic Pipeline provided you to  
2 some degree? I heard they would have difficulty  
3 reconstructing it.

4 MR. TROTTER: We can do that if asked and if  
5 there's no objection.

6 MR. MARSHALL: Well, we do object, Your  
7 Honor, because it was preliminary, it was for discussion  
8 purposes only. And I think that going forward we will  
9 make sure that the data requests that are out there that  
10 are continuing to be relevant we will make available.  
11 But this is something that we can't agree to, because it  
12 wasn't put in the format of a formal request, and the  
13 responses were certainly not meant to be formal  
14 responses or even definitive responses. I think it  
15 would put us at some disadvantage in trying to make sure  
16 that we can clarify what was preliminary, and that will  
17 all be taken care of when we make formal responses to  
18 the requests that Staff has out now that will be formal.

19 JUDGE WALLIS: The concern that I have about  
20 your objection is that I do not hear in it a reason that  
21 one customarily would find for granting an objection to  
22 a discovery request. While it's preliminary, that's  
23 also true, for example, of the work papers of  
24 consultants and other documents. I'm not aware that  
25 being a finished or final document is a sufficient

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1 ground for denying access to information.

2 MR. MARSHALL: Well, again, the understanding  
3 was that this was for discussion purposes only. It  
4 wasn't meant to be disclosed to anybody else. It was to  
5 help Staff understand readily some of the issues in the  
6 case without trying to be definitive. Interveners  
7 weren't even interveners in the case until today. They  
8 didn't have any standing to get any information. So we  
9 find that it's probably helpful to have working  
10 relationships to share information, and this would be I  
11 think objectionable because it undermines the very  
12 nature of what we were trying to accomplish by working  
13 informally.

14 And I strenuously object to the idea that  
15 these documents are relevant if they weren't meant to be  
16 definitive, if they were meant for discussion purposes  
17 only and to orient rather than to provide data. The  
18 data will be -- any data that we have that Staff wants  
19 from this point forward we will put into final form. It  
20 will be reviewed. It will be not for discussion  
21 purposes but for the purpose of proceeding with the  
22 case. Conversations that people might have, that's  
23 about that same kind of nature. We were simply trying  
24 to orient the Staff, and I think that would be against  
25 all understandings that we had as to the purpose for

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1 those discussions.

2 JUDGE WALLIS: The gravamen of your concern  
3 appears to be that the disclosure and sharing of  
4 information was to the benefit of the Staff and that  
5 consequently its disclosure would stifle such  
6 conversations in the future?

7 MR. MARSHALL: Our understanding was that  
8 this was done in an informal process to aid the  
9 understanding of this case and not for purposes of  
10 formal use in any kind of proceeding, so it wasn't  
11 prepared with the care that you would prepare data to be  
12 shared with other parties who weren't interveners at the  
13 time. There's no issue about that. There's no chance  
14 to obtain protective orders at that time with you, Your  
15 Honor. So I think this is, for all that we have said,  
16 this would chill those kinds of informal working  
17 relationships that make these things go a lot more  
18 easily in the future. We will try to do everything  
19 precisely from this point on, and anything that we give  
20 to one party, we will give to all so long as that's  
21 reciprocal and so long as the interveners agree to do  
22 the same.

23 JUDGE WALLIS: Mr. Trotter.

24 MR. TROTTER: I'm just a bit incredulous  
25 here, Your Honor. Staff did ask informal data requests

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1 because they have to be informal since the rule isn't  
2 invoked. We presented those requests for purposes of  
3 use in the proceeding. We talked to the company  
4 specifically about confidentiality concerns, and we  
5 didn't -- I think we indicated on as many occasions and  
6 in as clear terms as required that if they would not be  
7 able to give them to us due to proprietary concerns, we  
8 wouldn't take it, so I'm a bit mystified by this last  
9 statement that Mr. Marshall made.

10 I think though he is correct that they had  
11 qualifiers to it that the documents had not been  
12 proofread or there was -- they might be preliminary but  
13 -- and I guess the best numbers they had at the time.  
14 But beyond that, I find it difficult to agree with much  
15 else he said in his last response.

16 MR. BRENA: If I may, unless I misunderstood  
17 an earlier conversation or two, they're public documents  
18 that have been provided to Staff. We're a party. They  
19 go to our rate. They're in here asking for an expedited  
20 proceeding to jack our rates up 62%, and all we're  
21 trying to do is get the information we need to assess  
22 that staff had an opportunity that we did not have to  
23 gather.

24 Now request number one, first, a couple  
25 things. One is we have not agreed to limit discovery in

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1 this case to any particular point in time. I heard that  
2 Staff and the company agreed to December 13th. The  
3 number one discovery request they're going to get  
4 tomorrow is to provide the information that they  
5 provided to Staff, and they're going to get it tomorrow,  
6 and there's -- we have every right to do it.

7 MR. MARSHALL: On Thanksgiving, thank you  
8 very much.

9 MR. BRENA: Well, no.

10 JUDGE WALLIS: We could even consider it  
11 having been made the day before Thanksgiving.

12 COMMISSIONER HEMSTAD: We'll call it the  
13 first turkey of the day.

14 MR. BRENA: The idea that relevant  
15 information -- I mean Staff is out there trying to get  
16 more information. We're out there trying to get any.  
17 Now --

18 JUDGE WALLIS: Perhaps I can short circuit  
19 this by saying I simply don't see a basis on which we  
20 might properly deny discovery on this information. As  
21 Mr. Brena noted, the information may also be available  
22 merely through a request for public records.

23 MR. MARSHALL: But that's what we have  
24 agreed, I thought, not to do to one another in this  
25 process. So that maybe as to outside third parties that



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1 could be required, but I thought that was the purpose of  
2 the protective order, so that we wouldn't, particularly  
3 with shipper information, lots of other information, be  
4 attempted to take data and extend this case into areas  
5 that were tangential to the issues here, but could be  
6 useful in some other forum or some other competitive  
7 arena. This data, these kinds of issues do not just  
8 pertain to this case, but pertain to a lot of other  
9 potential areas where there are competitors, there are  
10 issues that are troublesome.

11 But I think the more important point is that  
12 we are going to be responding to Staff and all their  
13 data requests, we're not going to withhold that. The  
14 interveners will have data that is accurate and not for  
15 discussion purposes only and not preliminary the same as  
16 Staff.

17 MR. BRENA: If I could just make one  
18 observation, Staff's requests have been ongoing, so to  
19 the degree that we're going to take an ongoing discovery  
20 process and intercede in the middle of it and say, well,  
21 from now on at this point in the middle of it we will  
22 give you the information, that doesn't give us the full  
23 response. It doesn't give us the complete picture. It  
24 gives us an incomplete answer to many of the Staff's  
25 questions and just isn't helpful.

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1                   JUDGE WALLIS: Well, perhaps under the  
2 circumstances it would be best to let nature take its  
3 course, for you to transmit a data request immediately,  
4 for the company to respond immediately stating their  
5 grounds, and we can take that up if accommodation is not  
6 achieved by that point at the time of our discovery  
7 conference and get a formal ruling after the matter  
8 having been defined and discussed amongst the parties in  
9 a way that time available today does not permit.

10                   So let's be off the record for the purpose of  
11 determining the schedule of interim aspects of the  
12 interim proceeding.

13                   (Discussion off the record.)

14                   JUDGE WALLIS: Let's go back on the record,  
15 please, following a further scheduling discussion and  
16 say that the parties have agreed that there will be a  
17 technical conference that will take place on December 3  
18 and/or 4, it being anticipated that the total time  
19 consumed in that conference will not exceed one business  
20 day. The purpose will be to inquire of company resource  
21 people information as to the proposed testimony as  
22 amended and the basis for the company's case. The  
23 parties have agreed to -- interveners and Commission  
24 Staff have agreed to serve data requests on November  
25 26th, and responses would be due on November 29th.

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1 Parties will identify areas of inquiry and persons of  
2 inquiry following receipt of the data requests on the  
3 29th and make that information known on Friday the 30th  
4 to the company, and the company will make its best  
5 efforts to have the persons responsible for the  
6 information available on the 3rd and/or 4th as  
7 appropriate. Have I stated that correctly?

8 MR. MARSHALL: Just to add for clarifying  
9 purposes, the purpose of the technical conference is for  
10 clarifying questions to understand --

11 JUDGE WALLIS: Yes, that is correct.

12 MR. MARSHALL: -- things like calculations  
13 and not for cross-examination per se.

14 JUDGE WALLIS: It is not -- the purpose of  
15 the conference is not to conduct cross-examination.

16 Is that statement acceptable to the  
17 interveners and to the Staff?

18 MR. TROTTER: Yes.

19 MR. FINKLEA: Yes.

20 MR. BRENA: (Nodding head.).

21 JUDGE WALLIS: Very well. All parties have  
22 indicated agreement.

23 The Staff and intervener direct testimony  
24 will be filed on December 14, 2001. Olympic will file  
25 its rebuttal case on December 21, 2001. And parties

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1 will file simultaneous prehearing memoranda by providing  
2 informational copies of the final document no later than  
3 1:00 p.m. on Friday, January 4, via electronic mail to  
4 other parties and to the Commission and by filing paper  
5 copies prior to the beginning of the hearing on Monday,  
6 January 7th. Is that going to work for folks okay?

7           One last matter, the court reporter does  
8 provide not only expedited transcripts but real time  
9 transcripts. If parties wish to have access to real  
10 time transcripts, that must be arranged in advance, and  
11 I will ask that parties who wish to have the  
12 availability of a real time transcript make that known  
13 to us by the time of filing on December 13th so that we  
14 can make the appropriate arrangements with the court  
15 reporter. There is a charge for that service.

16           Is there anything further to come before the  
17 Commission at this time?

18           MR. BRENA: Just one question perhaps to  
19 clarify.

20           JUDGE WALLIS: Mr. Brena.

21           MR. BRENA: In the unlikely event there may  
22 be a discovery dispute with regard to one of the  
23 requests, is it the parties' contemplation that that  
24 dispute would be presented to Your Honor when? We have  
25 our direct case due the 14th. I would like it not to be

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1 longer than around the time of the technical conference  
2 if we have gone through the discovery, we have gone  
3 through the technical conference, and we have  
4 outstanding discovery issues, I would like them  
5 addressed.

6 JUDGE WALLIS: My thinking on that is this.  
7 Parties will have the discovery requests on the 26th,  
8 they will have the responses on the 29th, they will have  
9 the opportunity to communicate during that period, the  
10 opportunity to communicate on the 30th, and the  
11 existence of a dispute should be known by the 3rd. So I  
12 would suggest that those be taken up on the 3rd and/or  
13 4th at the parties' convenience, and we will commit to  
14 being available to address those matters.

15 Will that work for the parties?

16 MR. BRENA: Yes.

17 MR. TROTTER: Yes.

18 MR. MARSHALL: Yes.

19 JUDGE WALLIS: Very well. I again note for  
20 the record that all parties are indicating agreement.

21 Is there anything else?

22 I look forward to asking that question, but  
23 sometimes dread --

24 MR. MARSHALL: The answer.

25 JUDGE WALLIS: -- the actual response.

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1 I don't believe that there is anything  
2 further at this time. This conference is adjourned.  
3 Thank you all for your participation today.  
4 (Hearing adjourned at 5:35 p.m.)  
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