

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION)	
)	DOCKET NO. TO-011472
)	
Complainant,)	FOURTEENTH SUPPLEMENTAL ORDER
)	
v.)	ORDER DENYING
)	MOTION TO COMPEL
OLYMPIC PIPE LINE COMPANY)	DEPOSITIONS
)	
Respondent.)	AMENDED NOTICE
)	OF HEARING
)	(June 18, 2002)
.....)	

***Synopsis:** This order denies a motion by Olympic Pipe Line Company (Olympic) to compel depositions of three witnesses scheduled to appear for intervenor Tesoro Refining and Marketing Company (Tesoro), on the basis that Olympic failed to comply with the provisions of the rule for scheduling depositions and that the proposed scheduling would impose an undue hardship on other parties.*

1 **Background:** This matter is a proposal by Olympic Pipe Line Company (Olympic) for a 62% increase in its rates and charges for transporting refined petroleum products within the state of Washington.

2 **The Issue:** The issue presented to us is whether the commission should grant a motion by Olympic to compel the depositions of Tesoro’s witnesses.

3 Tesoro, pursuant to the schedule previously adopted, served its prefiled testimony on other parties on Monday, May 13. The Commission’s rule provides that depositions shall be set by order. WAC 480-09-480(6)(b). Olympic did not ask for a conference for the purpose of scheduling depositions and did not raise the issue at a conference established for other purposes. Olympic served a demand for the depositions of three witnesses on Tesoro on Thursday, May 30, and served and filed a motion to compel the depositions on Friday, May 31. Tesoro opposes the depositions and the motion to

compel. The Commission scheduled argument on the motion at 4:00 p.m. on Tuesday, June 4, 2002, before Administrative Law Judge C. Robert Wallis.

4 Parties appearing by teleconference at the argument were Olympic, by William Maurer; Tesoro, by Robin Brena; and Tosco Corporation, by Edward Finklea. Commission Staff, by Donald T. Trotter and Lisa Watson, appeared in person.

5 This issue is brought to us by Olympic, who seeks an order compelling depositions. It filed its motion on May 30; Tesoro answered on June 3; and argument on the motion was heard June 4. Olympic's motion seeks to compel production of three Tesoro witnesses on June 6 and 7 at Olympic's lawyers' offices in Seattle.

6 WAC 480-09-480 sets out the requirements for conducting depositions (emphasis added):

480(6)(b) Depositions. Depositions **may** be available **during one or more conferences scheduled in the prehearing order**. A party who intends to depose a witness will give at least five days' notice to the commission and all parties **prior the scheduled conference**. The conference will be convened at Olympia unless the commission and all parties agree to another venue.

Olympic argued in support of its motion that Tesoro's prefiled evidence, served upon Olympic on May 13, is complex and that Olympic needs the depositions to prepare its rebuttal testimony. Olympic argues that failure to provide the depositions as requested will impinge upon its due process rights to a fair hearing. It asks, however, that the schedule be delayed until the following week so Olympic can be better prepared with the results of data requests. Olympic would accept an opportunity for brief telephonic depositions held on the same day as depositions of Staff witnesses.

7 Tesoro opposes the motion. It argues that Olympic failed to comply with the rule's scheduling provisions by failing to ask that a conference be set in advance. Tesoro's counsel urges that his time is now spent in preparing for the upcoming hearing, in preparing pleadings for submission in this docket, and by attending depositions that Commission Staff has permitted be held of its witnesses. Tesoro is especially opposed to rescheduling the depositions for the week of June 10, inasmuch as Olympic has stated its intention to file the rebuttal testimony of 16 witnesses on June 10 and Tesoro's counsel and witnesses will be busy working with the Olympic filing

in their preparations for the hearing and in preparing for and attending the administrative conference scheduled for June 13. Tosco supports Tesoro's position, and Commission Staff opposes any depositions during the week of June 10.

8 The motion to compel depositions is denied.

9 The timing of the proposal simply will not work. The Commission rule is clear. Depositions are not stated in the rule as a right; they are within the discretion of the Commission. Olympic did not cite any rule, statute, or case that supports its view that denial of an opportunity for depositions impinges on due process.

10 Here, it is clear that Olympic did have the opportunity for depositions. It could have requested at the scheduling conference that established Intervenors' filing date that dates be set for conferences permitting depositions. Commission Staff asked and received such a schedule for the depositions of Olympic's witnesses, and the rule is clear, so there should have been no uncertainty about the need or the procedure for seeking such conferences. It could also have requested an order establishing a firm or contingent deposition conference within a short time after receiving the testimony – Olympic shared and Tesoro confirmed that Olympic has prepared and served data requests seeking a considerable volume of discovery based upon the prefiled testimony.

11 A request for a deposition conference date, made earlier in the process, could have allowed all parties to share scheduling concerns, to make timely arrangements, and to accommodate Olympic's preparation of its rebuttal. Olympic's current motion is not in compliance with the Commission's discovery rule, which allows five-day advance notice of which witnesses depositions are asked to be taken at a previously-scheduled conference. Here, Olympic did not request and the Commission did not schedule a conference for the purpose of taking depositions.

12 Convening depositions on the schedule that the Company proposed in its motion, on short notice, would unduly and without good cause interfere with aspects of other parties' pre-trial preparation. Convening depositions on the modified schedule proposed at the argument would substantially harm other parties' ability to prepare for the hearing.

Supplemental Notice of Hearing

- 13 **Notice of amended hearing schedule.** Parties convened for the argument discussed the schedule for the hearing. Confirming indications at earlier prehearing conferences, the Commission establishes the following dates and times:
- 14 **All parties please take notice, That the hearing in this matter will commence on Tuesday, June 18, 2002 in Room 206 of the Commission offices (the hearing room) at 1:30 p.m.** Parties must be prepared to proceed at the time and place designated. The first matters to be addressed at the beginning of the hearing session on that date will be dispositive motions and any other procedural matters that require the Commissioners' attention.
- 15 The hearing will proceed from day to day, except that it is not expected to convene on Monday, June 24, 2002, and that it will be in recess on the morning of June 26, 2002, during the Commission's regular open meeting. The hearing may need to recess before 5:00 p.m. on Friday, June 21, because of Commissioner conflicts. Time for the hearing will likely not be available beyond Tuesday, July 2.
- 16 Parties should take notice that the prehearing administrative conference now scheduled to convene on Thursday, June 13, may be continued until the morning of Tuesday, June 18, depending on the administrative and procedural needs of the parties and the Commission. Parties who have matters that they wish to raise (other than the marking of exhibits previously identified)

ORDER

- 17 Olympic's motion of May 30, 2002, to compel depositions of witnesses who will appear on behalf of Tesoro Refining and Marketing, Inc., is denied for the reasons stated in the body of this order.

Dated at Olympia, Washington and effective this fifth day of June, 2002.

C. ROBERT WALLIS
Administrative Law Judge