

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

**EXPEDITED TREATMENT
REQUIRED**

OLYMPIC PIPE LINE COMPANY'S
MOTION TO STRIKE ALL OF
TESORO'S REFERENCES TO
CRIMINAL ALLEGATIONS

Olympic Pipe Line Company ("Olympic") submits this motion to strike all references to improper criminal allegations, including but not limited to portions of Tesoro's Answer to Olympic's Motion to Strike ("Answer") that quote and refer to unproven allegations. Olympic requests that the ultimate fact finders in this proceeding, the Commissioners, not be shown any portion of allegations of criminal conduct—including those in Tesoro's Answer—as it would unfairly inject an inadmissible and potentially highly prejudicial issue into the proceeding. Pursuant to WAC 480-09-135(2), Olympic requests expedited treatment of this motion.

This Motion also brings into issue the following statutes and regulations: Amend. V of the United States Constitution; Article I, § 3 of the Constitution of the State Washington; RCW 35.05.452(1); WAC 480-09-425; WAC 480-09-750.

I. Introduction

1. Tesoro has attempted to inject improper unproven allegations of criminal conduct. See Tesoro's Answer at paragraphs 7, 8, 15, 16, 18.

2. The Commission has previously refused to allow Tesoro to inject unproven allegations of criminal conduct into this Docket. See Attachment A to Olympic Pipe Line Company's Motion to Strike, filed with the WUTC on May 23, 2002 (Exhibit List of the Interim proceeding, rejecting Tesoro's request to include a criminal indictment as an exhibit).

II. References To Unproven Criminal Allegations Should Be Stricken

3. The Commission should strike all of Tesoro's references to unproven criminal allegations as prejudicial, inflammatory, and without proof. Allegations are not evidence of wrongdoing, culpability, or fault. *By including extensive quotes from unproven criminal allegations, (and hearsay quotes from newspaper articles) Tesoro's Answer itself seeks to prejudice the fact finders and to introduce through the back door the very unproven allegations that the Administrative Law Judge previously ruled were not admissible.*

4. The basis for Olympic's motion to strike statements that Tesoro's witness Brown made was to preclude the use of allegations in violation of well established rules of evidence and Constitutional rights. The entire point of the motion to strike Mr. Brown's unsupported statements was to preclude injection of an inadmissible and potentially prejudicial issue into the minds of the fact finders. That was also the entire point of Olympic's objection to the introduction into evidence of the allegations that Tesoro attempted to introduce in January. As Olympic said then:

These are nothing but allegations. They have not been proven. They probably never will be proven. They are, in the essence of federal and state rules of evidence, highly prejudicial. We don't know who made these allegations, with what evidence, we have no foundation for any

of the allegations in this case. I objected to it in a timely way during cross-examination, and it was said that we could look at the front sheet of this. But it was not inquired in further in any of the details of the indictments and we didn't want the cross-examination to go into this arena.

Mr. Brena elicited from Mr. Batch, over our objections in this area, the question and answer that he made. He can't open the door by himself on his own exhibit here, which, again, is nothing but a collection of prejudicial allegations. So I most strenuously object to this. I don't say strenuously very often, but this one is beyond the pale.

Tr. Vol. X, pp. 1204-05. Exhibit 43 was not entered into evidence in the Interim proceeding.

5. The use of unproven criminal allegations is highly prejudicial and inconsistent with constitutional protections. See ER 403 (evidence may be excluded if it results in unfair prejudice). "The law presumes one so accused to be innocent until his guilt has been established in a court of competent jurisdiction, by legally admissible evidence, beyond reasonable doubt." Lundberg v. Baumgartner, 5 Wn.2d 619, 623 (1940) (discussing the consequence of an arrest). The Washington Administrative Procedure Act requires that evidence that contradicts a party's constitutional rights must be stricken. "The presiding officer *shall* exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state." RCW 34.05.452(1) (emphasis added).

6. Tesoro attempts to "backdoor" allegations by quoting unproven allegations in its Answer. Those portions of Tesoro's Answer that quote or refer to such allegations must be stricken. Tesoro knows the shock value of allegations of criminal conduct are not

admissible and why fact finders – even sophisticated fact finders who are attorneys¹—should not be presented with such allegations. Olympic also requests an order from the Administrative Law Judge that Tesoro not be permitted to orally mention or quote from any such allegations or refer in any way to unproven criminal charges at the hearings or at any other conference with the Commissioners who are the ultimate fact finders here.

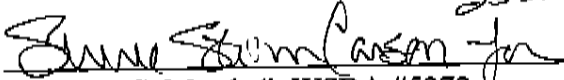
III. Conclusion

Olympic respectfully requests that the Commission issue an order striking those portions of Tesoro's Answer quoting and referring to unproven criminal allegations against Olympic and ensuring that the ultimate fact finders in this matter are not presented with potentially prejudicial and unproven allegations whether in writing or orally.

DATED this 12 day of June, 2002.

Respectfully submitted,

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¹ As Olympic noted at the Interim Rate hearing, "it is difficult to take out of your mind something that may have absolutely no factual foundations at all, regardless of training." Tr. Vol. X, p. 1205.