

2014

1                               BEFORE THE WASHINGTON UTILITIES AND  
  TRANSPORTATION COMMISSION  
2 WASHINGTON UTILITIES AND                )  
TRANSPORTATION COMMISSION,            )  
3    )  
                                  Complainant,                )  
4    )Docket No. TO 011472  
                                  vs.                                )Volume XX  
5    )Pages 2014 to 2066  
OLYMPIC PIPELINE COMPANY, INC.,        )  
6    )  
                                  Respondent.                    )  
7  
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9                               A prehearing conference in the above matter was held  
10 on June 18, 2002, at 10:00 a.m., at 1300 South Evergreen Park  
11 Drive Southwest, Room 206, Olympia, Washington, before  
12 Administrative Law Judge ROBERT WALLIS.

13

14                               The parties were present as follows:

15

16                               THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by DONALD T. TROTTER, Senior Assistant  
17 Attorney General, and LISA WATSON, Assistant Attorney  
General, 1300 South Evergreen Park Drive Southwest,  
Olympia, Washington 98504-0128, telephone  
18 (360) 664-1189, Fax (360) 586-5522, E-mail,  
dtrotter@wutc.wa.gov.

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20                               OLYMPIC PIPELINE COMPANY, INC., by STEVEN C.  
MARSHALL, Attorney at Law, Perkins Coie, 411 108th  
21 Avenue Northeast, Suite 1800, Bellevue, Washington  
98004, Telephone, (425) 453-7314, Fax (425) 453-7350,  
22 E-mail marss@perkinscoie.com, and WILLIAM H. BEAVER,  
1201 3rd Avenue, Suite 2900, Seattle, Washington, 98101,  
23 Telephone (206) 224-8054.

24

Deborah L. Cook  
25 Court Reporter

2015

1                                   TESORO REFINING AND MARKETING COMPANY,  
2 by ROBIN O. BRENA, Attorney at Law, Brena Bell &  
3 Clarkson, PC, 310 K Street, Suite 601, Anchorage,  
4 Alaska, 99501, Telephone, (907) 258-2000, Fax,  
5 (907) 258-2001, E-mail, rbrena@brenalaw.com.

6  
7                                   TOSCO CORPORATION, by EDWARD A. FINKLEA,  
8 Attorney at law, Energy Advocates, LLP, 526 Northwest  
9 18th Avenue, Portland, Oregon 97209, Telephone,  
10 (503) 721-9118, Fax (503) 721-9121, E-mail  
11 efinklea@energyadvocates.com  
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PROCEEDINGS

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JUDGE WALLIS: Let's be on the record, please.

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This is a continuation of a prehearing

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conference established in docket TO-011472 for the

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purpose of discussing procedural and administrative

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matters for the hearing that is scheduled to begin at

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1:30 this afternoon.

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This session is being held at Olympia,

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Washington, in the Commission's headquarters building

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pursuant to notice given to parties previously in

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writing and on the record before Administrative Law

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Judge, C. Robert Wallis.

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We have a preliminary matter to take up at this

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time concerning the appearance of Olympic's witness,

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George R. Schink. Olympic agreed at the prehearing

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conference on Thursday, last, that Mr. Schink would

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appear on Wednesday and stand cross examination. And it

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is now asking that Mr. Schink not appear on Wednesday,

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but that he appear on Thursday instead.

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Is that correct, Mr. Marshall?

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MR. MARSHALL: Yes, it is.

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JUDGE WALLIS: And the basis for your request

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is?

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MR. MARSHALL: Again, Mr. Schink was going to

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be going on Wednesday in order to accommodate Mr. Wilson

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1 and Mr. Hanley who could not appear next week. They are  
2 witnesses out of order. And while we were willing to  
3 accommodate them, we needed an accommodation for  
4 Mr. Schink now, because he has another conflict trying  
5 to get testimony out on Friday in another matter.

6 He sent me an urgent e-mail on Sunday  
7 indicating that if there was any way at all that he  
8 could go out on Thursday, that would be much preferable  
9 to his schedule.

10 I have checked with Mr. Trotter and Staff, and  
11 Mr. Finklea of Tosco, and they do not have any  
12 objections to that. And, of course, it's Mr. Wilson of  
13 Staff who needed to go out of turn, and then also  
14 Mr. Hanley of Tesoro needed to go out of turn.

15 So what we are asking for is an accommodation  
16 for our witness who has been scheduled to accommodate  
17 witnesses for the other parties.

18 JUDGE WALLIS: Very well. Mr. Trotter.

19 MR. TROTTER: Frankly, I do not recall being  
20 contacted on this specific issue, but things have been  
21 flying by so fast it's hard to recall.

22 Our witness, Dr. Wilson, I believe, is  
23 available Wednesday and Thursday. So if we wanted to  
24 do -- I can't speak for Mr. Hanley, but his preference  
25 is to testify on Wednesday. He was hoping to get a

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1 flight out Thursday, but he has a back-up plan for  
2 flying out Friday.

3 So if you want to do the cost of money people  
4 in sequence, we could do Mr. Schink first thing  
5 Thursday, and proceed to the other witnesses. The time  
6 estimates were in the range of perhaps getting it done  
7 in a day, I think. But other than that, I have nothing  
8 further to offer.

9 JUDGE WALLIS: Thank you. Mr. Finklea.

10 MR. FINKLEA: Your Honor, Dr. Means, our  
11 witness, won't be one of the witnesses. So it's not a  
12 matter of accommodating our witness.

13 I do understand the concern that if we're going  
14 to have cost of money witnesses, that the order normally  
15 would be for the company's cost of money witness to  
16 testify first. I think that's the reason for the  
17 concern.

18 As far as accommodating individuals' schedules,  
19 I think what Mr. Trotter just suggested might be the  
20 best way to go. But then we would have to have  
21 different witnesses available on Wednesday so we don't  
22 have a dead day.

23 JUDGE WALLIS: Mr. Brena.

24 MR. BRENA: Allow me to discuss this within a  
25 slightly broader context, and then to respond to this.

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1 I mean, within the last week they have filed a rebuttal  
2 case that's twice the size of their direct case with 16  
3 rebuttal witnesses.

4 They have changed the order of the witnesses  
5 twice. This would be the third time. They have  
6 withdrawn the testimony of three witnesses. And today,  
7 and one business day ago, they substituted in new  
8 rebuttal testimony for Witness Fox and Witness Batch.

9 Now, their recommended order of witnesses  
10 doesn't only go to the Schink issue. Schink, they have  
11 asked to split his time, which is a tactical move,  
12 because now they want him to be last. And in their  
13 letter explaining their reason for that, the first  
14 reason they mention is most of Mr. Schink's testimony  
15 needs to be at the conclusion of Olympic's case in order  
16 to handle questions that might arise with the other  
17 witnesses.

18 And in addition, Mr. Schink has testimony that  
19 must be filed in another matter Friday. I don't -- I  
20 mean, it doesn't make any difference. If you are going  
21 to lose a day this week by testifying, whether that day  
22 is Wednesday or Thursday or Friday, I don't see that  
23 we're accommodating a schedule.

24 He can write the testimony a day later rather  
25 than on the day he's scheduled to testify at this

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1 hearing. I don't see why that is not plausible. I  
2 mean, if he has the testimony due Friday, if he's going  
3 to be here Thursday, then why doesn't he show up  
4 Wednesday and write the testimony on Thursday? So I  
5 think that this is largely just a tactical move to put  
6 the -- change the order of the witnesses and put him  
7 last. And that is, frankly, the way they describe it in  
8 their letter.

9           But this issue of shifting the witness order  
10 doesn't stop with Mr. Schink. They are now proposing  
11 that Bob Talley go next. He was 15 on the list, and  
12 they are trying to move him into the 2 spot. Leon  
13 Smith, he was 11 on the witness list we agreed to on  
14 Thursday. Now he's No. 3. Bill Beaver, he was No. 9 on  
15 the witness list that we agreed to on Thursday, and now  
16 he's fourth. Dan Cummings, he was 13 on the list, and  
17 now he's 5. George Ganz was 10 on the witness list, and  
18 now he's 6. Howard Fox was 16, and now he's 7.  
19 Wicklund was 14, and now he's 8. Cynthia Hammer was 7,  
20 and now she's 9. Brent Collins was 6, and now he's 10.  
21 Jim Mach was 8, and now he is 11. Christy Omohundro  
22 stayed in the same spot.

23           Larry Peck, who was scheduled to go if we had  
24 extra time today, so he would either be 1 or 4, is now  
25 scheduled 13. Bob Batch, who was scheduled to be 5, one

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1 of the up-front witnesses, is now 14. And George  
2 Schink, who was No. 1 for everything but cost of the  
3 capital and return, is put in the 15 spot.

4 This is a complete flipping of their witness  
5 schedule the day before the hearing begins on a  
6 comprehensive rebuttal case.

7 JUDGE WALLIS: Well, whether or not what -- the  
8 order in which the witnesses appear was determined on  
9 Thursday, and so far it has not changed. So let's --

10 MR. BRENA: I understand, Your Honor. But in  
11 the letter where he's asking for the accommodation of  
12 Witness Schink, he is also setting forth a new order of  
13 the witnesses.

14 So I think it's appropriate that we address not  
15 just Witness Schink, but what the order of the witnesses  
16 is. And all I can say is we're doing the best we can  
17 not to have the rebuttal case overrun this proceeding  
18 entirely, doing the best we can to prepare cross  
19 examination in the order, and we relied on the order  
20 this Thursday. This is precious last minutes, and this  
21 kind of unexplained tactical flip-flopping should not be  
22 allowed.

23 So we want Witness Schink to show up and  
24 testify Wednesday in the order that we agreed to. And  
25 we resist the suggestion that the rate of return and



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1 capital structure witnesses were grouped together, were  
2 merely an accommodation to Tesoro's witness. It was my  
3 understanding that the Commission's preference was to  
4 have those cost of capital and rate of return witnesses  
5 grouped. And then within that context, I mentioned that  
6 Mr. Hanlon has to be in court in a hearing the second  
7 week, and so I had asked that if you are going to group  
8 them together, that they be grouped together the first  
9 week.

10 And we have accommodated two dramatic changes  
11 to the witness schedules in the last week, and I just  
12 think at some point we have to -- I mean, I have work to  
13 do. I may have to cross examine someone today. It's  
14 Mr. Peck that's on the order, and he's now No. 15. So I  
15 have spent my time preparing cross examination for  
16 Mr. Peck and Mr. Schink, and now they are 15 and 16 on  
17 the list.

18 So we think that the order that they agreed to  
19 on Thursday should be adhered to. Other parties have  
20 other things, and have to accommodate -- I have my  
21 experts that have to accommodate certain -- that have to  
22 support cross of their experts, that they are scheduling  
23 their work as well.

24 So I don't agree that Mr. Schink isn't  
25 available. I don't agree he can't be made available.

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1 Two business days ago he was, and I don't think -- in  
2 terms of his schedule, if he's going to lose a day, let  
3 it be Wednesday instead of Thursday.

4 JUDGE WALLIS: Mr. Marshall.

5 MR. MARSHALL: Many of our witnesses, in fact,  
6 most are from out of town. And trying to schedule these  
7 witnesses with everybody else's schedules moving around  
8 has been something that we have all tried to  
9 accommodate. We did accommodate Mr. Hanley because he  
10 isn't available next week by having had him come first,  
11 out of order. And our case in chief, Mr. Schink needs  
12 to be here to hear that, but he can do that by phone.  
13 He's asked for an accommodation to appear on Thursday  
14 for cross examination. It doesn't seem like an  
15 unreasonable accommodation for Mr. Schink to have him  
16 appear at that time on cost of capital issues.

17 On other issues we would prefer to have him,  
18 because I think it's necessary for a fair presentation  
19 of our case to be able to take on questions that are  
20 referred to him by other witnesses. He is a key witness  
21 in this matter.

22 With regard to the other witnesses, we have  
23 removed three witnesses. Mr. Brena has indicated that  
24 we have changed by changing testimony. We have actually  
25 tried to shorten our list of witnesses, and we have

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1 removed three. That required a change in the schedule,  
2 but I think it's all in the interest of trying to make  
3 the hearing move more quickly, and be over in the time  
4 frame that has been calculated here.

5 We're trying to move people in this week who we  
6 know can be here in town, such as Bobby Talley.  
7 Mr. Smith is on his way from Washington, D.C. Dan  
8 Cummings and Mr. Beaver are also available, so that  
9 depending on how long these witnesses go, we can move  
10 people in and not have any dead time.

11 We're trying to do our best to make sure that  
12 we have all of the witnesses in as efficient a way as we  
13 can, and Mr. Schink has asked for this accommodation  
14 because of a schedule problem he has, just like  
15 Mr. Hanley had. They are both busy people, and  
16 Mr. Schink would greatly appreciate this accommodation,  
17 just as we have accommodated the others.

18 JUDGE WALLIS: Thank you, Mr. Marshall. The  
19 Commission conducts many proceedings in which expert  
20 witnesses appear, and we are very conscious of the  
21 demand on expert witnesses, and their needs for  
22 scheduling. We attempt to accommodate scheduling to the  
23 extent that it's feasible.

24 In this situation, I believe that there is a  
25 substantial difference between the accommodation of

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1 Mr. Hanley and the accommodation of Mr. Schink, and that  
2 is that Mr. Hanley's schedule was known in advance, and  
3 it was confirmed, and the witness arrangements were made  
4 on Thursday.

5 And Mr. Schink's problem does not appear to be,  
6 at least from what you have said, related to emergency  
7 or something that's come up at the last minute, but a  
8 scheduling issue.

9 You have indicated that Mr. Schink would be  
10 listening to testimony on the telephone. It may be more  
11 effective for him to be here in person to listen to that  
12 testimony. The Company's case is the direct case in  
13 this proceeding, and in the ordinary course of events,  
14 we would expect and ask that the Company present its  
15 case first.

16 So all things considered, I am very reluctant  
17 to change the order of witnesses that was determined on  
18 Thursday, and would ask that Mr. Schink be here to be  
19 the Company's first witness, or second witness, if  
20 Mr. Peck comes on first.

21 MR. MARSHALL: Your Honor, we also have, as we  
22 have said in this letter that we sent out on Monday, we  
23 have tried to have an accommodation for the other  
24 witnesses coming, including Mr. Talley and Mr. Smith,  
25 and so we would like to have those witnesses go instead

1 of Mr. Peck following Mr. Schink. And then if we need  
2 to have Mr. Beaver and Dan Cummings fill in as well --

3 JUDGE WALLIS: Well, Mr. Marshall, we did have  
4 a proceeding on Thursday whose design was to establish a  
5 witness list. We have taken a great number of exhibits,  
6 and we have marked exhibits on the basis of the witness  
7 list.

8 As Mr. Brena points out, parties have begun  
9 their preparation for cross examination based on that  
10 list. The Commissioners have begun reading the  
11 testimony based on that list. They are very anxious to  
12 be prepared, and to be able to follow the testimony to  
13 ask their own questions. So I am very reluctant  
14 at this point to change the order of witnesses, and  
15 would ask that the Company hold to the order of  
16 witnesses that was agreed to by the Company on Thursday.

17 I am not -- I don't understand why the  
18 arrangements for travel could not have been made in  
19 advance so that the witnesses could appear in the order  
20 in which the Company asked them to appear.

21 Now, there is some discussion going on on the  
22 bridge line that is showing up in our hearing room, and  
23 I am going to mute the bridge line.

24 MR. MARSHALL: We do have difficulties with  
25 Mr. Peck. He won't be available until the 26th. We're

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1 going to have some other schedules that we need to have  
2 an accommodation on. We're trying to move people  
3 around, and knowing that these schedules will depend on  
4 how long the other witnesses will take, we're trying to  
5 sequence these people in in a way that makes the most  
6 sense for their schedules, and the schedule here to make  
7 sure there aren't any gaps.

8           The very next witness, after the cost of  
9 capital witnesses, would be, we believe, best to have  
10 Bobby Talley come in and present that testimony. I  
11 would ask that the parties accommodate that for us so we  
12 can do that, and then contact these other witnesses and  
13 make sure that we can sequence them in in a way that  
14 meets their schedules. We're running into a number of  
15 scheduling problems. That's why we sent this letter  
16 out. Things have changed since Thursday, and I --  
17 again, I think what we're trying to do here is we're  
18 trying to present a schedule that works for the  
19 witnesses, as well as the parties here.

20           Everybody is prepared. The testimony is going  
21 to be over in two weeks. It's just a question of are  
22 they on the first week, or are they on on the second  
23 week.

24           And, again, if we do this today, we will have  
25 two days before Mr. Talley goes on, and Mr. Smith goes

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1 on, so I would think that that would be a reasonable  
2 accommodation to make for those witnesses. And then we  
3 can do the ones following in the week, and the sequence  
4 we can talk about after that time.

5 JUDGE WALLIS: Mr. Trotter, do you have any  
6 observations?

7 MR. TROTTER: It's a very difficult problem.  
8 Frankly, starting last Thursday, after that prehearing I  
9 started preparing my cross based on the witness list I  
10 knew at the time. And after getting the letter, I  
11 shifted gears a little bit, but I am still plugging  
12 away.

13 I also don't understand why there would be a  
14 witness list that was appropriate on Thursday, and a  
15 different one on Monday. But I do understand the  
16 problems of getting people in and out of town, but these  
17 people knew they were going to be available on Thursday  
18 and they were presented.

19 So it is correct that the witness list has kind  
20 of flipped. The witnesses that were last are first, and  
21 that has placed a burden on us. But you have all the  
22 discretion on this issue, and I can't disagree with your  
23 comments today.

24 JUDGE WALLIS: Mr. Finklea.

25 MR. FINKLEA: Your Honor, I am sort of exactly

1 where Mr. Trotter is on this. This is going to be a  
2 challenging hearing as it is, because of the way the  
3 rebuttal case came in so close to the hearing, and as  
4 many witnesses as we have.

5 We're endeavoring to prepare cross for all of  
6 these witnesses, and we took the order that came out of  
7 the prehearing on Thursday to be how this was going to  
8 proceed, and to have things in a constant state of flux  
9 makes it very difficult to have effective cross  
10 examination.

11 If you think on Tuesday you are cross examining  
12 A and B, and Wednesday you find out, no, Z is going, it  
13 impairs the ability to have effective cross examination.

14 JUDGE WALLIS: Mr. Brena.

15 MR. BRENA: I would echo the comments of  
16 co-counsel, and also add that the arrangement on  
17 Thursday was a rejugling of the witnesses on that day  
18 to accommodate Olympic. So it isn't as though there's  
19 only been -- I mean, we have had two accommodations of  
20 Olympic in a week.

21 And the request we're discussing is to  
22 completely rearrange their witness order for a third  
23 time in a week. There are a lot of variables that have  
24 been introduced into this case that are going to be very  
25 hard to manage. It's going to be very hard to keep the



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1 rebuttal case from overrunning the entire proceeding in  
2 the time allocated. There is no time to have these  
3 kinds of things, and not have them greatly prejudice  
4 what is already a tremendous workload imposed on us at  
5 the last minute.

6 JUDGE WALLIS: Mr. Marshall.

7 MR. MARSHALL: On Thursday, as Your Honor will  
8 recall, we were responding to a couple of motions for  
9 summary determination. We had just filed rebuttal  
10 testimony on the 11th. We didn't have enough people to  
11 be in all places at once. We were trying to reach all  
12 the witnesses to try to ensure they could come in in the  
13 sequence that would fit with their schedules, and made  
14 sense for the ability to run this efficiently.

15 This schedule that we have here will be known  
16 sufficiently in advance for people to prepare, because  
17 they are already prepared in any event for all the  
18 witnesses -- but to prepare the sequence. We're not  
19 talking about adding new witnesses, or adding new  
20 testimony.

21 But we are asking that because of all of the  
22 other things that had been going on here, that we take  
23 Bobby Talley, Leon Smith, Bill Beaver, and Dan Cummings  
24 in this first week. The second week we can revert to  
25 continuing the same format that we had.

1 Bobby Talley and Leon Smith, I think, are  
2 witnesses that fit with this case. They will be on.  
3 People can be prepared, because they are two days away.  
4 And, frankly, we need this accommodation, because there  
5 are witnesses in the second week who cannot be here in  
6 the first week. I can't go through each and every one,  
7 but we have been trying to coordinate with all the  
8 schedules.

9 But with everything else going on -- we're one  
10 party. We're having to respond to three parties. We're  
11 having to respond to three motions. We're having to do  
12 all the rebuttal testimony that we had to do.

13 This scheduling issue is an issue that we're  
14 trying our best to make sure is efficient and having the  
15 witnesses come in in the right sequence.

16 If we try to revert to a schedule that was  
17 discussed on Thursday, we're going to have witnesses who  
18 aren't available because they just simply aren't going  
19 to be in from out of town.

20 This way, we can take the people who we have  
21 set for this week, in the letter that we sent out,  
22 Mr. Talley and Mr. Smith and Mr. Beaver, and then follow  
23 up on the second week in the way that the parties will  
24 agree on. The people in the second week are all set to  
25 be here. They can all be here on that second week.

1           But I realize the difficulty in trying to  
2     coordinate with so many people from out of town with  
3     different schedules. If we had more people to respond  
4     to more of the things that we had to do last week, that  
5     would be different.

6           I think we filed somewhere in the vicinity not  
7     only of the rebuttal testimony, but nine substantive  
8     motions last week at the same time. But we have been  
9     working literally around the clock, getting two or three  
10    hours of sleep, trying to coordinate with all of these  
11    witnesses, and do this.

12           We're asking not that we have this schedule  
13    done for anything other than the accommodation of the  
14    witnesses. So, again, I would urge the ALJ,  
15    Administrative Law Judge Wallis, to allow Mr. Talley,  
16    Mr. Smith and Mr. Beaver to go following the Wilson,  
17    Hanley, and Schink testimony.

18           MR. BRENA: Your Honor, if I may, one comment.  
19    Counsel for Olympic hasn't given a single reason why a  
20    single witness can't occur in the order that they agreed  
21    to on Thursday. There are lots of reasons not to  
22    rearrange this. Let me give you one small example.

23           Mr. Talley gives highly technical rebuttal  
24    testimony with regard to engineering matters. I have  
25    not yet begun to prepare that cross examination. He was

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1 No. 15 on the list. It's going to take -- that  
2 testimony has to be distributed to engineers for review,  
3 to comment, cross examination points, and the like. It  
4 does not accommodate any schedule to move it. They have  
5 put such highly technical engineering rebuttal, move it  
6 up 13 spots in a day, that is -- it's just not  
7 reasonable to ask.

8           In terms of the hardship, the relative hardship  
9 of the parties, I would just point out that they filed  
10 their rebuttal case a week ago. And in terms of who's  
11 doing the work in this phase of the proceeding, I have  
12 to tell you that we're the ones that have to review and  
13 analyze and prepare cross for the rebuttal case. All  
14 they have to do is some motion practice.

15           So this is not a reasonable accommodation  
16 request that they be allowed to rearrange their  
17 witnesses three times in a week. It's just not  
18 reasonable.

19           JUDGE WALLIS: Mr. Marshall, it just strikes me  
20 that the Company is sponsoring the witnesses that the  
21 Company knew that Thursday was the time in which it must  
22 present an order of witnesses. The Company did have  
23 from the time those witnesses were approached for the  
24 purpose of preparing rebuttal testimony to begin  
25 arranging the order of witnesses.

1           Our schedule, the general time frame has been  
2 known for quite a long time. The Company presented its  
3 proposed order on Thursday. There were no objections to  
4 that. We, I believe, accepted every suggestion that the  
5 Company made.

6           The parties were quite willing to accommodate  
7 that, and then the parties relied on that. It is a  
8 difficult time for all of the parties, not just  
9 yourselves. Many of us have spent short nights. Some  
10 of us have done reading and other preparation on  
11 airplanes in the recent past, and I count myself among  
12 those.

13           And I think that the hardship imposed on the  
14 parties by rearranging the witness schedule at this  
15 juncture is so great that we should not do that. As  
16 Mr. Brena points out, other than an example for  
17 Mr. Peck, you have not indicated what the scheduling  
18 problems with these people are, or conversely, why these  
19 scheduling issues could not have been considered when  
20 the Company actually prepared the list of the order of  
21 witnesses in which the Company wanted them to appear,  
22 which was accepted.

23           So, again, I am reluctant to make changes at  
24 this juncture in the proposed order of witnesses.

25           MR. MARSHALL: Well, Your Honor, Mr. Smith is

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1 on his way out from Washington, D.C. on an airplane  
2 right now. He is scheduled to go, we would have  
3 thought, this week. We would like if at all possible to  
4 take him following the witnesses on cost of capital,  
5 because he is already on his way out here.

6 I think, from what I have heard, people have at  
7 least prepared for him for this week. He would  
8 probably be on on Thursday following the cost of capital  
9 witnesses on Wednesday. We would like that  
10 accommodation if we could right now, and then I will  
11 seek to try to find out from the other witnesses what  
12 their ability to rearrange schedules might be.

13 But that will give us at least a day and a half  
14 cost of capital witnesses, and then Mr. Smith on  
15 Thursday morning, to see what we can do on the rest of  
16 the schedule, and work with the other parties.

17 JUDGE WALLIS: Thank you very much. I have a  
18 witness list with the order of witnesses and parties'  
19 estimates of time on cross examination. The list that  
20 my associate circulated, I think -- I believe omitted  
21 Mr. Batch, and consequently I have an estimate of time  
22 on cross examination for Staff, but not Tesoro and Tosco  
23 of examination for Mr. Batch.

24 MR. BRENA: 90 minutes, Your Honor.

25 MR. FINKLEA: 45 minutes.

1           JUDGE WALLIS: That, for the parties'  
2 information, brings the total estimated time on cross  
3 examination to approximately 60 hours, give or take a  
4 couple. And the eight and a half days that we have  
5 allocated for the hearing, given the realities of  
6 scheduling, provide about 42 or 43 hours in which to  
7 conclude the hearing.

8           This puts us in a similar situation to our  
9 situation with the interim proceeding, and I am going to  
10 ask the parties' cooperation and indulgence over the  
11 next couple of days as we firm up this schedule, and the  
12 order of proceeding. And then we will do our best to  
13 get a workable schedule that will let us conclude the  
14 hearing in the time that's available for it.

15           So with that, I would like to go off the record  
16 at this point, and I would like the parties to review  
17 the exhibit list that we have, and ask you to get your  
18 materials to us so that we can -- if they are not  
19 already here, so we can complete our exhibit list and be  
20 prepared to begin our afternoon session, which will  
21 consist of arguments on the various motions.

22           So with that, let's be in recess for about ten  
23 minutes. And, again, I do ask that the parties review  
24 the exhibit list carefully to make sure that there are  
25 no errors, and that when the hearing proceeds tomorrow





1           The second proposed change is to accommodate  
2 the schedule of Mr. Smith, who apparently, Mr. Marshall  
3 indicates, is on his way to Olympia from the East Coast  
4 and would be available, and asked to testify after the  
5 examination of Mr. Hanley.

6           Mr. Marshall, did I get your request correct?  
7 Is there anything you would like to add or change about  
8 my description?

9           MR. MARSHALL: Sure. The only thing I would  
10 add, Mr. Peck, Tesoro indicated zero time to cross  
11 examine; Tosco, three-quarters of an hour; and Staff, 40  
12 minutes. So the accommodation we're asking for to have  
13 Mr. Peck go next week shouldn't impact Tesoro's schedule  
14 at all, because they haven't indicated any questions  
15 that they intend to ask of Mr. Peck. And also, since  
16 Mr. Peck is going to testify in such a short time frame,  
17 having his schedule come in next week does not put  
18 anybody at a disadvantage.

19           MR. BRENA: Well, Your Honor, the zero by  
20 Mr. Peck is an oversight, so we intend to cross examine  
21 Witness Peck for about an hour and a half.

22           With regard to the -- I mean, I don't choose to  
23 repeat arguments that I have already made. I have spent  
24 a good part of this morning preparing Mr. Peck's cross  
25 examination, because he is a possible witness today.

1           So to come here today when he is scheduled to  
2 be a potential witness, and to hear he's chairman of the  
3 board, and not even to have his conflict defined for  
4 Your Honor, that doesn't work for me.

5           I am happy to accommodate real scheduling  
6 problems when they arise in the real world. The fact  
7 that Mr. Peck chooses not to come this week doesn't  
8 qualify. He was scheduled to be a witness today, so I  
9 would ask that -- he's not likely to be a witness today,  
10 but he was scheduled to be. So I would ask that he  
11 remain where it is that he's scheduled to be, which is  
12 not likely to be today. He also had a couple of more  
13 days of time to get here.

14           With regard to Mr. Smith, you know, I don't  
15 know on what basis he went and got on that plane. If it  
16 is Your Honor's intention to allow him to move up, he is  
17 the subject of three motions to strike his testimony.  
18 Before he takes the stand, it makes a certain amount of  
19 sense that the Commission would resolve the motions to  
20 strike with regard to him.

21           He's the only methodology witness they put on,  
22 and they put him on in their rebuttal case. So I am not  
23 sure whether or not -- I mean, with three motions to  
24 strike, and not scheduled to be here for 10 days, why  
25 exactly he went and hopped on that plane.

1                   But I would ask that he stay in the order that  
2 he's in. If Your Honor intends to accommodate this  
3 request notwithstanding the prejudice to the parties,  
4 then I would ask that he be the last witness of the  
5 week. But with regard to Mr. Peck, he should be out  
6 here.

7                   The other thing about Mr. Peck is -- well, let  
8 me -- I will just stop there. I want everybody to stay  
9 where they are at.

10                  JUDGE WALLIS: Mr. Finklea.

11                  MR. FINKLEA: I concur, Your Honor. I think  
12 everybody should stay where they are at. We do have  
13 limited cross for Mr. Peck. We could accommodate by  
14 going next week with our cross for Mr. Peck, but I  
15 understand the problem with them moving Mr. Smith up.

16                  So as we discussed earlier this morning, it  
17 just becomes problematic that things are as fluid as  
18 they are when we have so much of this case on rebuttal.

19                  JUDGE WALLIS: Mr. Trotter.

20                  MR. TROTTER: I just stuck with the point when  
21 I did hear the Company selected Mr. Peck as the witness  
22 who was able to fill in for today, that was the very  
23 first witness I began my preparation on. But this is a  
24 matter for your discretion, and we can take him out of  
25 order if you so rule.

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1           But I want to impress upon you when these  
2 orders are set this close to the hearing, the order of  
3 witnesses, we do definitely focus our efforts and  
4 reliance on that. That's just human nature. And we are  
5 not prepared today to cross every witness. That  
6 preparation is going to go on this week and over the  
7 weekend.

8           JUDGE WALLIS: If we ask Mr. Smith to be a  
9 witness on Friday, would that allow parties the  
10 opportunity to prepare for his examination?

11           MR. TROTTER: Staff will be prepared, Your  
12 Honor, on Friday.

13           MR. BRENA: It would be difficult to do, but --  
14 he is a substantial witness in this proceeding. He is  
15 the only methodological witness. Being moved up eight  
16 spots -- or six spots, I am sorry. But if he were -- if  
17 I were to have -- if everything else were to remain the  
18 same, and that would be the only accommodation, then,  
19 yes, we could do it.

20           JUDGE WALLIS: Very well. And prefacing this,  
21 I will note for the record that there are a number of  
22 pending motions. We will be discussing the order of  
23 argument on those motions momentarily, and our  
24 discussions as to the witness list and the witnesses to  
25 appear are subject to the Commission ruling on motions

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1 to strike. So that it is possible that the Commission  
2 could rule to strike some of the testimony of some  
3 witnesses, or all of the testimony of some witnesses.  
4 And if that ruling is made, then, of course, that would  
5 control over any decision that we make now.

6 I am inclined to indicate that we would not  
7 guarantee Mr. Smith a spot on Friday, but based on the  
8 flow of the proceedings and the opportunity to get him  
9 on and off while he is here that -- I would be inclined  
10 to look to having him appear.

11 I understand the frustration of the parties who  
12 have prepared to examine Mr. Peck today, only to learn  
13 at a later time that he is not available, for whatever  
14 reason. But I am inclined to take Mr. Peck as the first  
15 witness on Monday in accommodation of the Company's  
16 professed needs.

17 MR. MARSHALL: That would be fine. We will --

18 JUDGE WALLIS: Excuse me, not Monday, but  
19 Tuesday.

20 MR. MARSHALL: We will call Mr. Peck to see if  
21 there's any difficulty with Tuesday. Barring any  
22 scheduling problem with that, we will agree and we will  
23 make every effort to have him clear that schedule.

24 I will note for Mr. Peck, Tesoro said it was an  
25 oversight that they had no time at all on their list for

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1 cross examination. Now they want an hour and a half.

2 A lot of what we are going to be experiencing  
3 here in the next two weeks will require accommodations  
4 for oversight, such as the one that Tesoro identified  
5 that they made on this very first witness. And that's  
6 all we're asking is for accommodation of our needs, too.  
7 This will happen, no doubt, with some regularity. So I  
8 appreciate Your Honor's accommodation.

9 JUDGE WALLIS: We hope the need will be  
10 minimized, but we do acknowledge that all of us are  
11 human, and are prone at various times to err. In  
12 administering the proceeding, we will do our best to  
13 accommodate the real needs of the parties, considering  
14 the nature of other preparations that they make.

15 MR. BRENA: Your Honor.

16 JUDGE WALLIS: Mr. Brena.

17 MR. BRENA: If I could make one point with  
18 regard to Mr. Smith. You indicated -- well, not a  
19 commitment. You would try to get him in as the last  
20 witness on Friday. I will have to do what I need to do  
21 to cross him, so could I request that he be the first  
22 witness available following the weekend, if we don't get  
23 him in on Friday?

24 JUDGE WALLIS: I would suggest that he follow  
25 Mr. Peck on Tuesday, if we do not reach him on Friday.

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1                   MR. MARSHALL:  Might I make a suggestion on  
2  that?  In court proceedings when witnesses are in from  
3  out of town they sometimes are taken out of order in  
4  order to make sure they can come on and return home,  
5  because Mr. Smith is from Washington, D.C., and it looks  
6  like there's a total of four hours of time listed here  
7  by the Staff, Tesoro, and Tosco for him.  His time, if  
8  we could start his testimony after the lunch hour, or on  
9  Friday, or for that matter at noon.  And whatever  
10 witness is on at that time, have that witness resume  
11 following that testimony.

12                   MR. BRENA:  Your Honor, to state the obvious,  
13 if Mr. Smith -- he would save time if he flew back to  
14 D.C. and flew here Tuesday.  He's going to be out here  
15 today, tomorrow, and the next day, and perhaps over the  
16 weekend.  So he has five days that he may have to spend  
17 out here.

18                   I am happy to stipulate that he follow  
19 Mr. Peck, which would be done Tuesday morning, and we  
20 take him Tuesday so he could go back, spend the weekend  
21 with his family at home, and be here for less time than  
22 he will be here even if we take him on Friday.

23                   JUDGE WALLIS:  My concern is that we conclude  
24 the cost of money and capital structure witnesses this  
25 week.  And my review of the estimates and the realities

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1 of hearings, the accommodation of redirect, and  
2 Commissioner questioning lead me to the concern that we  
3 might not reach him, and that it would come down to a  
4 choice between two witnesses from out of town on Friday.

5 So I am willing and supportive of the idea that  
6 while he is here, if we can get to him on Friday that we  
7 do so, and allow him to go home for the weekend. But if  
8 Olympic would rather schedule him on Tuesday, we would  
9 do that as well. So if you want to consider that,  
10 Mr. Marshall, you may do so and let us know.

11 MR. MARSHALL: I think he also has difficulties  
12 with his schedule next week, so we prefer to go with  
13 Your Honor's first suggestion and finish him this week.

14 JUDGE WALLIS: Very well. Are there any other  
15 corrections to the witness list, or time on cross  
16 examination?

17 (No response.)

18 JUDGE WALLIS: Very well. The next matter that  
19 I would like to take up is the motions and other matters  
20 for argument this afternoon. And I would like to list  
21 what I have, and make sure that we have everything we  
22 need for the argument, and then I would like to engage  
23 in a discussion about the order of attacking these  
24 motions, and what makes sense in terms of a logical  
25 arrangement.



1           The first matter that I have listed is Tesoro's  
2 motion for summary determination, and to strike certain  
3 testimony. I have that split into two parts. One part  
4 is the motion for summary determination, and the second  
5 is the motion to strike.

6           I have a motion from Olympic for an extension  
7 of time to reply to Commission Staff, and would deny  
8 that motion with the understanding that Olympic has  
9 presented some argument in its motion for the extension  
10 of time, and that it has the opportunity to respond  
11 orally this afternoon during argument to the issues that  
12 Staff raises.

13           MR. BRENA: And that is Staff's --

14           JUDGE WALLIS: -- answer. So Olympic was  
15 asking to reply to Staff's answer.

16           We note that Olympic does have the opportunity  
17 to make that reply, has done so, at least partially, if  
18 not completely, in its motion, and will have the  
19 opportunity this afternoon.

20           Olympic has presented a motion for a  
21 continuance of the hearing, and I show that we have  
22 responses to that motion from Commission Staff and from  
23 Tesoro.

24           MR. FINKLEA: Your Honor, Tosco also filed  
25 yesterday afternoon, filed a motion for the continuance.

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1 JUDGE WALLIS: Very well. Very well. I will  
2 ask my associate to see if she can run that down.

3 MR. MARSHALL: By my silence, I am not waiving  
4 my objection on timeliness. I don't know if that's a  
5 timely response or not, and I don't know. We may have  
6 seen it, but I am not sure.

7 JUDGE WALLIS: Mr. Finklea, can you provide  
8 copies of that, please?

9 MR. FINKLEA: Yes, Your Honor. It was filed  
10 before 3:00 yesterday.

11 JUDGE WALLIS: I have a second motion to strike  
12 portions of the rebuttal testimony filed by Tesoro, to  
13 which I show no responses. I have Tesoro's motion  
14 challenging the confidentiality of exhibits to which I  
15 have no responses, and we have already addressed  
16 Olympic's request to change the order of witnesses.

17 Now, am I missing anything here?

18 MR. BRENA: Yes.

19 MR. TROTTER: Your Honor, this is Commission  
20 Staff. We filed a motion to strike yesterday, also.

21 MR. MARSHALL: The reason there haven't been  
22 responses to these motions to strike rebuttal witnesses  
23 is because they were served here just within the last  
24 day.

25 JUDGE WALLIS: Yes, we understand.

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1                   MR. MARSHALL: We haven't had the opportunity  
2 to respond.

3                   JUDGE WALLIS: So you will have the opportunity  
4 to respond this afternoon.

5                   MR. MARSHALL: One of the issues on scheduling  
6 these that we would like to do is have those motions  
7 heard prior to the witnesses for which they appear so  
8 we would have an opportunity to respond, rather than  
9 just have to make oral presentations given the short  
10 time that we have had these motions to consider.

11                   And considering the importance, obviously we  
12 don't want to just respond to these in a matter of  
13 hours.

14                   JUDGE WALLIS: Yes, we understand your  
15 concerns, Mr. Marshall, but we have already noted that  
16 the proposed time on cross examination exceeds the total  
17 time allotted for this hearing.

18                   I am concerned if we hear a number of motions  
19 to strike rebuttal testimony with each of the witnesses  
20 that are affected, that that could add a considerable  
21 length of time to the time of the hearing.

22                   An alternative might be to allow written  
23 responses on a very short time frame, and then take  
24 those up without argument. But I think the  
25 Commissioners would prefer to hear your views in a

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1 general sense, at least, today.

2 MR. MARSHALL: We could probably respond in a  
3 general sense. But in trying to respond to a motion,  
4 for example, filed yesterday, on a motion to strike,  
5 there just isn't enough time to respond in any detail.

6 MR. BRENA: Your Honor, if I may, at the  
7 prehearing conference, Tesoro, and in our pleadings in  
8 the prehearing conference, Tesoro put the parties on  
9 notice of the likelihood of the motion to strike. Also,  
10 the problem caused, is caused by the scope and size  
11 of the rebuttal case that was originally filed as 16  
12 witnesses, and is twice the size of the direct.

13 There should be no reasonable doubt that that  
14 type of rebuttal case is likely to draw these types of  
15 motions. So it's been stated by us in pleadings and in  
16 the record that we intend to file such a motion as soon  
17 as we saw it.

18 The problem with the timing has to do with the  
19 schedule. If you go out and file a second direct case  
20 on rebuttal, then you are going to have to expect to  
21 argue it before the witnesses hit the stand. So under  
22 these circumstances, I would like not only their  
23 response, but I would like the Commission's rulings  
24 before these witnesses take the stand, because this  
25 proceeding -- the biggest single risk to the time frame

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1 in this proceeding is caused by a huge rebuttal case  
2 getting put on, putting on a whole new case. And that  
3 issue needs to be addressed.

4 JUDGE WALLIS: I cannot speak for the  
5 Commissioners. It's possible they may wish to take the  
6 motions and arguments that they hear under advisement  
7 and not make a ruling. It's possible they may be  
8 prepared to make rulings today, whatever their comfort  
9 level is about the level of their understanding, and the  
10 process.

11 So I am going to ask Olympic to respond to the  
12 motions orally today. We will ask parties to specify  
13 their objections to individual witnesses, and the  
14 Company will have the opportunity to respond.

15 Mr. Finklea.

16 MR. FINKLEA: Yes, Your Honor. In addition to  
17 the answer, in opposition to Olympic's motion for a  
18 continuance, Tosco did, yesterday afternoon, also file a  
19 motion to strike certain rebuttal testimony. And I  
20 believe Mr. Marshall has that. I have hard copies with  
21 me that I can supply if they are not here. But it was  
22 my understanding that they did get here yesterday.

23 JUDGE WALLIS: Very well. I will ask that we  
24 try and run those down.

25 MR. FINKLEA: Thank you, Your Honor.

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1           MR. BRENA: Your Honor, similarly with regard  
2 to the motion concerning the confidentiality of the  
3 exhibits, that is a motion that we indicated we would  
4 file at the prehearing conference on Thursday, and it  
5 was my understanding that it was supposed to get some  
6 sort of communication with regard to the Company's  
7 position prior to having actually had to argue it.

8           And I have not received anything one way or the  
9 other on it. So again, I would say that -- I mean, as  
10 soon as it became apparent to me that the motion was  
11 necessary, I filed it. So --

12           JUDGE WALLIS: Mr. Marshall, is the Company  
13 prepared to respond to the motion challenging  
14 confidentiality?

15           MR. MARSHALL: No, we're not, Your Honor.

16           JUDGE WALLIS: Do you continue to contend that  
17 there's certain confidentiality over each of the  
18 documents you have marked at this point?

19           MR. MARSHALL: We will make every effort we  
20 can, as we have been doing, to waive confidentiality.  
21 But we haven't had any opportunity to review the motion  
22 to understand what documents he's talking about, or to  
23 consult with our client to determine the nature of the  
24 confidentiality.

25           We will, as we did in the interim case, we were

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1 quite willing to accommodate that, and to remove from  
2 the confidentiality those portions that people wanted to  
3 introduce. And I think we would, again, try to do the  
4 same thing here.

5 JUDGE WALLIS: Very well. We do note that  
6 during the interim phase of the proceeding the Company  
7 ultimately waived confidentiality on all of the  
8 documents that were proposed for the record, and we are  
9 confident that that spirit will continue.

10 I will note that the motion does not address  
11 specific exhibits, does not address specific rationale  
12 for challenging confidentiality. Consequently, we would  
13 deny the motion at this time subject to it being raised  
14 regarding individual documents with specific grounds for  
15 the motion, and in the context that the Company has  
16 indicated a willingness to waive confidentiality on  
17 documents generously.

18 MR. BRENA: Your Honor, if I may make just one  
19 comment with regard to the motion, and also with regard  
20 to as the proceeding moves forward, the motion refers to  
21 every marked exhibit.

22 JUDGE WALLIS: Yes.

23 MR. BRENA: So every marked exhibit that has  
24 a -- highly confidential exhibit has been designated  
25 by the motion. So it does intend to be specific. It's

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1 a defined universe, and it's every exhibit.

2           With regard to the grounds, it wasn't my  
3 understanding of the protective order that grounds need  
4 be stated for the undesignation of it, only that the  
5 confidentiality need be challenged. Then it would be  
6 the Company's burden to demonstrate that the  
7 confidentiality should continue.

8           So I am not sure what grounds, but as it  
9 states, there's no apparent reason for the  
10 confidentiality designation with regard to any of the  
11 exhibits, and I don't know what further grounds there  
12 are that I could state.

13           JUDGE WALLIS: Mr. Marshall.

14           MR. MARSHALL: Well, I mean, the idea that you  
15 can shift a burden on a motion by just making the  
16 statement that they would rather not have them  
17 designated doesn't seem to be appropriate. I think they  
18 would need to be specific on why they don't believe it's  
19 confidential, and why they need it to be other than  
20 confidential. They haven't done so.

21           JUDGE WALLIS: Mr. Finklea.

22           MR. FINKLEA: Your Honor, I do think that  
23 during the interim we found a way to accommodate this,  
24 and it will be even more troublesome in general at the  
25 end of the proceeding. There's a number of confidential



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1 exhibits, and we have had to clear the room off and on.  
2 The time estimates, I don't think, are built into them  
3 clearing the room every 10 minutes.

4           And then you get to the point of having to  
5 bring a brief and having to worry about having pages in  
6 blue, versus pages that are white. I've been down this  
7 path. It can be done. It is cumbersome. I would hope  
8 that instead of Olympic saying, "Let's have the parties  
9 tell us why this shouldn't be confidential," unless  
10 Olympic is really concerned about something, that we  
11 work through the protective order, and that Olympic  
12 accommodate things to the extent that they can. And  
13 then we move forward.

14           This is going to be a very long two weeks if  
15 we're clearing the room every so often.

16           JUDGE WALLIS: Mr. Trotter.

17           MR. TROTTER: It is the Company's  
18 responsibility to mark exhibits in compliance with the  
19 protective order that are truly confidential. It's  
20 appropriate for parties to challenge that.

21           I do think Your Honor's initial take on this is  
22 right. It's hard to rule without looking at each  
23 individual exhibit, and understand why it was  
24 confidential, and put the Company to the test.

25           And we haven't had that opportunity to do that

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1 yet. And I personally think that there has been a  
2 lot -- there are a lot of documents, I was surprised,  
3 that would be designated confidential, and the effort to  
4 go undeclare it is very difficult, given everything that  
5 is going on, so we haven't undertaken that.

6           So I think whether you deny or have a special  
7 time and place for going through them, and have the  
8 Company put the confidentiality suit back on and see  
9 what filters out, I don't know. But I do think in order  
10 to make a proper decision on this type of motion, I  
11 would have to take a look at each and every one of them.

12           MR. BRENA: Your Honor, if I may respond to a  
13 few of these question comments.

14           First, there seems to be a disagreement with  
15 regard to what the applicable law is, and who has the  
16 burden to do what. It's my understanding under the  
17 protective order that any party who challenged the  
18 confidentiality designation of a party designated a  
19 document confidential -- the protective order doesn't  
20 set forth that there needs to be an affirmative  
21 statement of why something isn't confidential, it just  
22 says it needs to be challenged.

23           It's my understanding the burden to demonstrate  
24 confidentiality begins and ends with the Company, and  
25 that's my -- that was my reading of the protective

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1 order. So I don't -- besides which, if you don't  
2 understand, I am explaining to you, I have reviewed the  
3 documents and I do not understand why they are  
4 designated confidential.

5 I don't know what further it is that I could  
6 argue, that there's no competitive harm from their  
7 disclosure. If you apply the standard set forth in the  
8 protective order in this Commission's regulations, there  
9 is no apparent reason why those documents are  
10 confidential. That's what we have asserted. So we have  
11 asserted -- we challenged it, said we don't understand  
12 why they are designated confidential. And we have  
13 identified a specific universe of documents. I don't  
14 know what else needs to be done.

15 Also, the reason that I did this was so that we  
16 weren't dealing with a document at a time through an  
17 entire hearing to try and get this waiver, not as we go  
18 along through the course of dealing with 60 or 70 or 80  
19 different exhibits, that we take up the Commission's  
20 time arguing over whether or not the Company will waive  
21 the confidentiality in reviewing that.

22 The purpose for me doing that is to have the  
23 Company -- they over-designated in the interim, they  
24 ended up waiving everything. Why not do that up front?  
25 We challenged it up front. The Company is under the

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1 burden to demonstrate it. The process in the protective  
2 order isn't, let's wait to hearing and then sort it out.

3 The process in that protective order is that when  
4 confidentiality is challenged, the burden is on the  
5 Company to demonstrate it, or the confidentiality is  
6 waived. That works.

7 So what we're asking the Commission to do is to  
8 apply that so we can narrow down these confidentiality  
9 documents to just a few documents. And I think if the  
10 Company just does a couple of hours of work that the  
11 result will be that it will save us all tens of hours of  
12 work.

13 JUDGE WALLIS: Yes. And a significant factor  
14 in my ruling on this is that while there was no  
15 limitation on the time period for making such a motion,  
16 or asking for review of the confidentiality, at the  
17 present time, from a practical standpoint, it is just  
18 not practical for us to proceed to review each of the  
19 documents one by one, and have arguments on those.

20 In the context of the Company's commitments, it  
21 has a demonstrated record of waiver of confidentiality  
22 that it demonstrated during the interim phase. I am  
23 confident that the Company will continue in the same  
24 spirit, and that the number of documents that wind up as  
25 confidential are truly diminimus in the scope of the

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1 proceeding.

2 I am also confident that as we approach the  
3 testimony of witnesses, the Company will indicate a  
4 waiver of many or all of the documents associated with  
5 the witness; that as to documents that are not waived,  
6 that we will be able to accommodate the needs of  
7 confidentiality by the manner in which questions are  
8 phrased, and that it will be truly unnecessary to fill  
9 our transcript, and our exhibit file with blue pages.

10 So the consequence is that the motion is denied  
11 at this time in light of the Company's commitment.

12 I will ask the Company for a commitment today that it,  
13 before the start of tomorrow's proceeding, review the  
14 documents that are associated with the cost of capital  
15 and rate of return witnesses for confidentiality, and  
16 that it be prepared at the beginning of tomorrow's  
17 session to indicate the extent of its waiver at that  
18 time.

19 Is that something that the Company will be able  
20 to do?

21 MR. MARSHALL: Yes, we will identify those that  
22 have been marked as confidential. I am not -- at this  
23 time I am not aware of the ones that are marked as  
24 confidential for those witnesses, but we will identify  
25 those and consider those.

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1           I just note that although each individual  
2 request for the company to do certain things may seem  
3 small and reasonable, the accumulation of things is  
4 overwhelming. We now are dealing with 58 Data Requests  
5 that are also the subject of great effort by Olympic to  
6 try to respond.

7           We're going to file a supplemental paper on  
8 that indicating that that also creates a huge difficulty  
9 to have to respond to that kind of data request. So  
10 that, on top of many other things, considering the  
11 people who can only -- who know these documents who can  
12 make a decision on whether something is confidential.

13           We will do our best. And I think the best way  
14 to do it is to do it with the people in the room from  
15 the company who will be here beginning tomorrow who can  
16 give us the background.

17           Just as a footnote, some of the documents that  
18 are marked as confidential reflect current information,  
19 such as current through-put. As that through-put gets  
20 older, it becomes less worthy of protection, because  
21 it's of less commercial value.

22           So that's one of the things I would seek advice  
23 from, for example, from the people at Olympic. But  
24 there's no doubt that as designated, current through-put  
25 information is not only needed for business

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1 confidentiality, but it's becoming a matter of security  
2 issues as well.

3 JUDGE WALLIS: Very well. We have the  
4 commitment from the company that it will make a good  
5 faith effort that it will review the documents, and that  
6 it will, if feasible, waive confidentiality. And on  
7 that basis, we deny the motion.

8 Now, I am going to suggest that we go off  
9 the record for a brief discussion about the order of  
10 proceeding this afternoon. Is that acceptable to the  
11 parties?

12 Very well. Let's be off the record for  
13 engaging in that discussion.

14 (Brief recess.)

15 JUDGE WALLIS: During our scheduling discussion  
16 we have determined the following divisions of time for  
17 the argument on motions that are pending amongst the  
18 parties relating to those motions.

19 We will begin at 1:30 with arguments on the  
20 motion for continuance. And Mr. Marshall will take the  
21 lead on that, and he will have 10 minutes to present his  
22 views on it. Responding parties will have 5 minutes  
23 each, and Mr. Marshall will have 5 minutes to reply, for  
24 a total of 30 minutes.

25 On the motion of summary determination and to

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1 strike witnesses, that will be divided into two parts.  
2 The first part, that is the motion for summary  
3 determination, and excluding the motion to strike,  
4 Mr. Brena will begin with a 15-minute argument,  
5 reserving 5 minutes for reply -- an additional 5 minutes  
6 for reply. Then Staff will have a 10-minute opportunity  
7 for presentation; Tosco 5 minutes, and Mr. Marshall 20  
8 minutes to respond to the parties, followed by  
9 Mr. Brena's 5 minute reply.

10           The third group of motions that we will be  
11 addressing will be the motions to strike the testimony  
12 of certain of the rebuttal witnesses. In this matter,  
13 the proponents of the motions will have 20 minutes  
14 addressed to general principles, that is, those  
15 arguments that apply to more than one witness. And  
16 Mr. Brena will have 10 minutes to begin; Mr. Trotter, 5  
17 minutes; and Mr. Finklea 5 minutes. Then the Company  
18 will have 10 minutes to respond to those general  
19 statements.

20           As to arguments that are specific to individual  
21 witnesses or groups of witnesses, Tesoro will begin that  
22 phase of the argument with 15 minutes; Staff will take 5  
23 minutes for response; Tosco, 5 minutes; the Company will  
24 have 30 minutes to answer; and Tesoro will reserve 10  
25 minutes for reply. Tesoro may also choose to reserve a



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1 portion of its general statement for reply.

2 MR. BRENA: And, well, that correctly states  
3 it, Your Honor. I was just looking at, I have 15  
4 minutes. If I can have the option of reserving part of  
5 that time for reply, it might make sense as well.

6 JUDGE WALLIS: Very well.

7 MR. MARSHALL: Now that we're on the record,  
8 Your Honor, I would like to note for the record that  
9 Olympic objects to having this done at this expedited  
10 stage, rather than having it occur after we have had a  
11 chance to review the motions that have just been made  
12 yesterday, some of them, to be able to respond by  
13 referring to why it is that certain witnesses are  
14 testifying in response to testimony that -- our proposal  
15 would be to take these individual witnesses up as they  
16 come up.

17 And what I would ask is that any of these areas  
18 where the Commission is inclined to grant a motion to  
19 strike, that we have an opportunity to visit with those  
20 issues with those witnesses to look at those issues, and  
21 explain further why a motion to strike would not be  
22 appropriate or proper.

23 JUDGE WALLIS: Thank you, Mr. Marshall.  
24 Mr. Brena.

25 MR. BRENA: Your Honor, if I could make clear

1 on the record, that Tesoro certainly filed its motions  
2 as soon as it was possible to file its motions, as soon  
3 as we saw the witness list they submitted a week or 10  
4 days ago, and even prior to the filing of the rebuttal  
5 case, Tesoro noted that a motion to strike would  
6 probably be made. Tesoro also made that same comment  
7 with regard to the prehearing conference.

8           So Tesoro has been on record for some time with  
9 a proposition that if they really intended to file 16  
10 witnesses on rebuttal, that to the degree that the  
11 rebuttal was improper, it went beyond the scope of  
12 proper rebuttal, that we intended to file a motion to  
13 strike it. So they had a week or 10 days to prepare for  
14 the motion that finally came.

15           I would also like to just object to the idea  
16 that after oral argument, and all the positions are  
17 heard, that somehow they have an opportunity to  
18 supplement their argument. If the Commissions'  
19 predisposed notion that we're in the position we're  
20 in -- it doesn't do any good to point fingers, but  
21 there's a huge rebuttal case that's been filed well  
22 beyond the scope this Commission or the parties  
23 anticipated to have happen a week before the hearing.  
24 So I would just like to note those points for the  
25 record.

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1 JUDGE WALLIS: Thank you, Mr. Brena.

2 Mr. Finklea.

3 MR. FINKLEA: I think what you set out for this  
4 afternoon will be challenging, but it will meet our  
5 objectives.

6 JUDGE WALLIS: Mr. Trotter.

7 MR. TROTTER: No further comments, Your Honor.

8 JUDGE WALLIS: Thank you.

9 MR. MARSHALL: May I make one. First, a  
10 notification that there might be a motion to strike  
11 rebuttal testimony that hasn't even been filed is far  
12 different than receiving a motion and having to respond  
13 to that. We have not 16 witnesses, but 13. We have  
14 tried to narrow those down.

15 We have done everything we can to make sure  
16 that our testimony is limited to the rebuttal of issues,  
17 policy statements that have been made by the other  
18 parties.

19 What we're fearful of is we won't have an  
20 opportunity to advise, in the limited time that we have,  
21 the Commissioners of the facts that show that there is a  
22 direct rebuttal link, and, in fact, having the witnesses  
23 available to help answer those questions. "Why did you  
24 state certain things?" "Well, it was in response to  
25 what Mr. Brown said."



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ENDING TIME: 1:10 P.M.

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