

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION)	
)	DOCKET NO. TO-011472
Complainant,)	
)	
v.)	
)	
OLYMPIC PIPE LINE COMPANY, INC.)	
)	
Respondent.)	
_____)	

**TESORO WEST COAST COMPANY-S
SECOND NOTICE OF OLYMPIC PIPE LINE COMPANY-S
NONCOMPLIANCE WITH ORDERS COMPELLING DISCOVERY**

I Tesoro West Coast Company dba Tesoro Northwest Company (ATesoro@), by and through its attorneys, Brena, Bell & Clarkson, P.C., hereby notifies the Washington Utilities and Transportation Commission (AWUTC@) that Olympic Pipe Line Company has not complied with the WUTC-s Order Granting [Tesoro-s] Discovery Motion, dated December 4, 2001. In accordance with WAC 480-09-420(3), the name and address of the pleading party is set forth below. Please direct all service and correspondence regarding the above-captioned docket to the following:

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2 This motion may bring into issue the following rules or statutes: WAC 480-09-420
[Pleadings and briefs--Applications for authority--Protests], WAC 480-09-480 [Methods for
obtaining data in adjudicative proceedings], and Washington Civil Rule No. 26.

1. Introduction

3 Tesoro has served two sets of data requests on Olympic. The first set of data requests was
served on November 26, 2001. On December 6, 2001, the Commission had to issue an order
compelling responses to Tesoro's first set of data requests. On December 17, 2001, the
Commission had to again issue an order compelling responses to Tesoro's first set of data requests.
This Notice provides status regarding Olympic's compliance with both orders to compel.

4 On December 7, 2001, Tesoro served its second set of discovery requests on Olympic.
This set included four requests. On December 17, 2001, the Commission had to issue an order
compelling responses to Tesoro's second set of data requests. This Notice also provides status
regarding Olympic's compliance with this order to compel

5 The parties participated in prehearing conferences on November 21, 2001, December 3, 4,
12, 14, and 17, 2001. In those hearings various representations were made as to the method of
service the parties would use and upon whom that service would be made. The parties agreed to
serve discovery by email, fax, and express courier service (i.e., Federal Express or DHL).

6 In the December 12 hearing, counsel for Olympic agreed to serve Tesoro's experts with
discovery.

I would like to just point out that in any schedule, again, it takes us
time to distribute this information. We are not just next door. We

have experts all over the country that we are working with that need to come to Alaska. Mr. Marshall has courteously agreed to serve the discovery directly to our experts, and that's a very important thing, but it takes time once they do comply to get it here.

Robin O. Brena, Prehearing Conference Tr., Vol III., Dec. 12, 2001, Docket TO-011472, p. 260,

l. 21 through p. 261, l. 3. However, in recent email correspondence, Olympic has changed its position as follows:

We will be happy to e-mail to the following [Tesoro experts] after any deadlines to the service list have been made, but any other form of communication (i.e., fax or hard copies) should be forwarded though [sic] your office. Thanks.

Email from Cindy Peterson, Secretary to Steve Marshall, to Elaine Houchen, Secretary to Robin Brena, dated December 19, 2001. Olympic's failure to directly serve discovery on Tesoro's expert witnesses is unfortunate given the current schedule and will simply result in further delay in Tesoro's ability to prepare its testimony.

7 Also, in the December 17, 2001, hearing, Olympic again agreed to serve discovery by fax, email and Federal Express. However, in recent email correspondence, Olympic has changed its position as follows:

Olympic has assembled a box of documents far too numerous to fax or electronically distribute. More is coming in from other parts of the country tomorrow. The voluminous number of documents (app. 500 pages) already assembled prevents a quick construction of an index. We therefore intend on copying these documents and sending them out Federal Express as soon as possible unless Tesoro or Tosco prefers to review them here. Please indicate your preference as we must get started copying these many documents quickly. (Emphasis added).

Email from Patrick Ryan to Robin Brena, et al., dated December 18, 2001 (emphasis added). Attached as Exhibit A. Again, Olympic's failure to properly serve discovery despite numerous clarifications is unfortunate and will further delay Tesoro's ability to prepare testimony.

8 This notice contains no arguments supporting the need for meaningful responses to the data requests. This Commission has already heard those arguments in two hearings focused solely upon Tesoro's motions to compel. Therefore, the time for arguments has passed. Instead, this Notice discusses only Olympic's compliance with this Commission's orders to compel discovery. In order to simplify this Notice, Tesoro has eliminated extensive quotes from the record, data requests that have received, meaningful responses, responses that have been provided since December 17, 2001, and arguments that have already been presented.

9 Tesoro has also omitted those areas which were resolved at hearing through the representation of Olympic's counsel that their responses to date were their complete responses.¹ However, in order to clarify the record, Tesoro would ask for a final ruling that (1) the responses by Olympic which were resolved by representation of counsel in the December 17, 2001, hearing are deemed to be Olympic's complete response, (2) these are Olympic's admission of facts, and (3) the other parties are entitled to rely upon them for purposes of preparing their testimony for the interim hearing.

I. Second Set of Discovery Requests

¹ The following data requests (listed by roman numeral of subject matter from Tesoro West Coast Company's Notice of Olympic Pipe Line Company's Noncompliance with Order Compelling Discovery) were resolved in this manner: XI, XII, XIV, XV, XVI, XVII, XVIII, and XIX.
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10 **A. Judge Wallis=s Order.** Olympic was compelled to respond to Tesoro=s Second Set of data requests by the close of business on December 18, 2001. Tesoro agreed to modify all four data requests to accept a **Yes or no** answer to the second question in each request.

11 **B. Olympic's Supplemental Response**

No response to date.

12 **C. Analysis of Response and Status**

Olympic has simply not complied with the order to compel. Olympic should be ordered to provide the information by the close of business on December 21, 2001. If it fails to comply, then the other parties should be entitled to sanctions including admission of facts that can be briefed on December 26, 2001.

II. Throughput.

13 **A. Judge Wallis=s Order.** Olympic was compelled to provide complete throughput information by refinery..

14 **B. Olympic=s Supplemental Response**

Olympic supplied a list by refiner of throughput information.

15 **C. Analysis of Response and Status**

Olympic may well have complied with Judge Wallis=s order with regard to this response. Tesoro does, however, need clarification that the information provided is the total throughput by refinery.

III. Monthly Financial Statements

16 **A. Judge Wallis=s Order.** Olympic was compelled to produce monthly financial statements (cash flow statements, income statements, balance sheets, and budget reports [including financial forecasts]) for the period Janaury1, 2000, to date.

17 **B. Olympic's Supplemental Response**

Olympic has provided additional financial statements. However, Tesoro has still not received (1) cash flow statements for July 2000 through December 2000 and (2) income statements for October 2001 through December 2001. In addition, Tesoro has received by facsimile a balance sheet and financial statement for October 2001 through December 2001 that is illegible.

18 **C. Analysis of Response and Status**

Tesoro needs the above-described accounting records to be served by email. Tesoro cannot analyze Olympic=s allegations of financial emergency without these records being provided in a legible format. In addition, Tesoro needs Olympic to provide December 2001 financial statements prior to hearing.

19 Olympic needs to complete its compliance with the order to compel. Olympic should be ordered to provide the information by the close of business on December 21, 2001. If it fails to comply, then the other parties should be entitled to sanctions including admission of facts that can be briefed on December 26, 2001.

IV. Operating and Capital Expenses that are Directly Related to the Whatcom Creek Accident

20 **A. Judge Wallis's Order.** Olympic was compelled to identify the operating and capital expenses that are directly related to the Whatcom Creek accident including those costs incurred as a result of the corrective action order (letter).

21 **B. Olympic's Supplemental Response**

Olympic's most recent response indicates that with BP as operator the directly related expenses are in two accounts.

22 **C. Analysis of Response and Status**

Olympic's response provides information only since July 1, 2000 (time when BP began as operator). However, the response provides no information regarding the accounting for directly related expenses prior to July 1, 2000 (time when BP began as operator). Therefore, this response leaves almost a year of expenses (accident in June of 1999) for which Olympic has not accounted.

23 At this point, the other parties are entitled to a ruling that, for expenses after July 1, 2001, this is Olympic's admission of fact for purposes of preparing their testimony for the interim hearing. Olympic needs to complete its compliance with the order to compel with respect to expenses prior to July 1, 2001. Olympic should be ordered to provide this information by the close of business on December 21, 2001. If it fails to comply, then the other parties should be entitled to sanctions including admission of facts that can be briefed on December 26, 2001.

V. Documents Evidencing a Deterioration of Olympic's Financial Condition

24 **A. Judge Wallis's Order.** Olympic agreed to identify and produce documents that concern the deterioration of its financial condition@ including, without limitation, any correspondence, memoranda, or notes of discussion in which this was discussed.

25 **B. Olympic's Supplemental Response**

Olympic indicated by letter dated December 19, 2001, that Olympic has assembled a box of documents far too numerous to fax or electronically distribute. More is coming in from other parts of the country tomorrow. The voluminous number of documents (app. 500 pages) already assembled prevents a quick construction of an index.@

26 **C. Analysis of Response and Status**

Today, at 10:00 a.m. Alaska time, Tesoro received a box of discovery by Federal Express from Olympic. Tesoro has not had a chance to review the documents to make a conclusion as to their responsiveness.

VI. Causes of Olympic's Deteriorating Financial Condition

27 **A. Judge Wallis's Order.** Olympic agreed to confirm that its response was complete and to identify and produce any documents to support its response regarding the causes of Olympic's deteriorating financial situation.@

28 **B. Olympic's Supplemental Response**

Olympic has referred the parties to its testimony submitted in support of its interim request for emergency relief.

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C. Analysis of Response and Status

Tesoro had hoped to be served with a complete list of all causes Olympic believes have contributed to its alleged deteriorating financial condition. Instead, Olympic has simply relied upon those reasons stated in the testimony submitted in its interim case.

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At this point, the other parties are entitled to a ruling that this is Olympic's admission of fact regarding this issue, and the other parties are entitled to rely upon it for purposes of preparing their testimony for the interim hearing.

VII. Minutes of Board Meetings Including Attachments

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A. Judge Wallis's Order. Olympic agreed to provide copies of the minutes for all Board of Director's meetings as well as the memoranda, reports, or documents provided to individual Board members beginning from January 1, 1998, to date. Olympic agreed to identify any document it considered as privileged and explain the nature of the privilege that it is asserting. Tesoro agreed to review the list of documents to narrow the scope of the documents that Olympic would have to produce.

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B. Olympic's Supplemental Response

Olympic has provided the draft minutes of three meetings since March 2001. With respect to the other documents, Olympic indicated by letter dated December 19, 2001, that Olympic has assembled a box of documents far too numerous to fax or electronically distribute. More is coming in from other parts of the country tomorrow. The voluminous number of documents (app. 500 pages) already assembled prevents a quick construction of an index. @

33 **C. Analysis of Response and Status**

Today, at 10:00 a.m. Alaska time, Tesoro received a box of discovery by Federal Express from Olympic. Tesoro has not had a chance to review the documents to make a conclusion as to their responsiveness.

VIII. Capital Improvements Done to Comply with Safety Standards

34 **A. Judge Wallis=s Order.** Olympic was compelled to identify the capital improvement items ~~has~~ to whether they are to comply with the Office of Pipeline Safety Corrective Action Order, and if the information is readily available, whether it is required to be done to comply with any other safety standard.@

35 **B. Olympic's Supplemental Response**

Olympic has referred the other parties to Exhibit BCB-21 as its response.

36 **C. Analysis of Response and Status**

Exhibit BCB-21 lists improvements but does not identify whether the improvements are being done pursuant to the corrective action order or pursuant to some other identified safety standard. Olympic should be compelled to identify the safety basis for its improvements or it should be held that none of the proposed improvement are being done pursuant to either the corrective action order or any industry safety standard.

DATED this 20th day of December, 2001.

BRENA, BELL & CLARKSON, P.C.
Attorneys for Tesoro West Coast Company

By

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2001,
a true and correct copy of the foregoing
document was faxed, emailed, and mailed
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