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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4)
Complainant,)

5)

6 vs.) DOCKET NO. TO-011472

7 OLYMPIC PIPELINE COMPANY,) Volume III

8 INC.,) Pages 240 - 270

9)

10 Respondent.)

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A prehearing conference in the above matter

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was held on December 12, 2001, at 2:06 p.m., at 1300

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South Evergreen Park Drive Southwest, Olympia,

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Washington, before Administrative Law Judge C. ROBERT

17

WALLIS.

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The parties were present as follows:

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WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by DONALD T. TROTTER and LISA WATSON,
Assistant Attorneys General, 1400 South Evergreen Park
Drive Southwest, Post Office Box 40128, Olympia,
Washington 98504.

22

OLYMPIC PIPELINE COMPANY, INC., by STEVEN C.
MARSHALL, Attorney at Law, Perkins Coie, 411 108th
Avenue Northeast, Suite 1800, Bellevue, Washington
98004 (via bridge).

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24

TESORO WEST COAST COMPANY, by ROBIN O. BRENA
and DAVID WENSEL, Attorneys at Law, Brena, Bell &
Clarkson, 310 K Street, Suite 601, Anchorage, Alaska
99501 (via bridge).

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Kathryn T. Wilson, CCR
Court Reporter

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1 P R O C E E D I N G S

2 JUDGE WALLIS: The conference will please
3 come to order. This is a prehearing conference before
4 the Washington Utilities and Transportation Commission
5 in the matter of Docket No. TO-011472, which is a
6 complaint by the Commission against Olympic Pipeline
7 Company, respondent, relating to a proposal for general
8 and interim rates filed by the pipeline company.

9 For the record, I'm wondering if we can have
10 appearances stated at this time beginning with the
11 pipeline company.

12 MR. MARSHALL: This is Steven Marshall,
13 Perkins Coie, on behalf of Olympic Pipeline Company.

14 JUDGE WALLIS: Intervenor Tesoro?

15 MR. BRENA: This is Robin Brena and David
16 Wensel, on behalf of Tesoro.

17 JUDGE WALLIS: On behalf of Commission staff?

18 MR. TROTTER: Donald T. Trotter and Lisa
19 Watson, assistant attorneys general, for Commission
20 staff.

21 JUDGE WALLIS: Is there a representative on
22 the line from Tosco? Let the record show that there is
23 no response.

24 MR. BRENA: I just talked to Sharon with Ed
25 Finklea's office about 15 minutes ago. She said she

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1 would be joining us. She will contact my secretary and
2 get her patched in.

3 JUDGE WALLIS: Thank you very much,
4 Mr. Brena. Because we are operating on the bridge line
5 today, I'm going to begin with a request that all
6 parties keep your telephone instrument very close to
7 your mouth and speak up. It helps us a great deal
8 hearing here in the hearing room and also helps other
9 parties on the bridge line. Conversely, if any of us
10 are difficult to hear -- we don't necessarily know that
11 intuitively because we can hear each other -- if you
12 will let us know that you are having difficulty
13 hearing, we will do our best to remedy the situation
14 and make ourselves audible.

15 We have a list of five or six different items
16 to cover today. These include the status of discovery
17 responses; the determination, if necessary, of dates
18 for compliance with discovery requests; determine
19 whether it's feasible to reconvene the technical
20 conference, and if so, when; determine a date for the
21 filing of Intervenor and Commission staff's direct
22 testimony if the current date is not feasible;
23 determine whether it's necessary to continue the
24 hearing on the interim request that is presently set
25 for January 7, and other matters as the parties may

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1 raise. I have asked whether there are any other
2 matters, and as of right now, the response has been in
3 the negative and parties do not have any others to add.

4 I would like to begin with the status of
5 discovery responses. In communications from Mr. Brena,
6 I had understood that -- I'm hunting for words here --
7 that some responses had not been received to requests
8 that had been made, and there was a question about
9 those. Mr. Marshall was here on another matter and
10 indicated that some responses had been sent. Perhaps
11 we could start with Mr. Brena for a statement for the
12 record about your perception of the status of responses
13 to the discovery requests that you have made;
14 Mr. Brena?

15 MR. BRENA: Since December 6th in your
16 judge's order compelling the discovery responses that
17 we have gotten have been Olympic's responses to Staff's
18 discovery requests. So far as I'm aware -- I
19 double-checked today right before the prehearing
20 conference -- we haven't received any additional
21 discovery that was compelled.

22 JUDGE WALLIS: Mr. Marshall, can you share
23 your perceptions of the status of discovery responses?

24 MR. MARSHALL: Yes, I would be pleased to.
25 Olympic has responded to all of Staff's data requests

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1 regarding Olympic's interim rate requests. I think
2 there are 12 of 40 data requests that require the
3 production of hundreds of pages of documents, and on
4 December 4th, Olympic presented four of its employees
5 for a technical conference at which it responded openly
6 and fully to questions presented there.

7 The next day, December 5th, following that
8 conference, Staff served on Olympic 25 additional data
9 requests to which Olympic has also responded, and to
10 date, Olympic has not been physically able to respond
11 to all the data requests by Tesoro; although, it's been
12 attempting to do so as fast as it can with limited
13 staff and the other deadlines we've had.

14 It's our belief that we should and we did
15 concentrate on responding to Staff's 40 data requests
16 in the technical conference and believe that those
17 responses are all that are reasonably and legitimately
18 needed for the parties to respond to Olympic's request
19 for interim rate relief with their testimony that they
20 are going to be filing, but we would have liked to
21 responded to all of Tesoro's requests.

22 Tesoro's first set of discovery requests to
23 Olympic consisted of requests for admission of 42
24 interrogatories and 16 requests for production. We
25 have tried with all of the Staff requests and the

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1 technical conference and the deadline for filing the
2 main case at the FERC and WUTC. The testimony due at
3 the FERC and the UTC tomorrow has also, of course,
4 taken the limited resources that Olympic has had.

5 We appreciate the business on our interim
6 case basis, and we understood the prehearing conference
7 on the 21st, that because this was an interim case, it
8 wouldn't have the intensity and all that a normal main
9 case would have. In fact, at Page 47 of the
10 transcript, Tesoro's counsel acknowledged that they
11 would not seek that kind of intensity that you would
12 have in a regular case, and they would limit their
13 requests to, quote, "some pointed interrogatories and
14 requests for admission and a little bit of request for
15 production." That was a statement made by Tesoro's
16 counsel, and the judge at the same time on the 21st
17 indicated that, quote, "By the same token, I do believe
18 that it is essential if we are going to have the
19 Company able to respond with the limited resources it
20 does have to confine the scope of the requests, the
21 depth of the requests clearly in a way that allows them
22 the opportunity to respond with the information that
23 really is essential for the preparation of the Staff
24 and the Intervenors' case."

25 Now, we have responded to all of Staff's data

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1 requests in the technical conference. I think that
2 sets the standard for what is reasonably required and
3 maybe even beyond that in order to prepare for a
4 response to this interim request. Tesoro, of course,
5 has put on physically an impossible schedule to try to
6 meet, knowing full well at the prehearing conference of
7 the limited capability of Olympic to respond at this
8 point.

9 Now, having said all that, Olympic, if the
10 administrative law judge believes this data is
11 essential that Tesoro is requesting, despite the fact
12 that all of Staff's requests in the technical
13 conference had provided volumes of information, if the
14 administrative law judge believes that further
15 responses to Tesoro's requests are essential to keeping
16 the schedule, then what we would propose to do is
17 respond to Tesoro's remaining data requests on Tuesday,
18 December 18th, and in that event, proposes the
19 remaining schedule be pushed by one week so that the
20 date for Tesoro to respond would not be the 14th of
21 December but would be the following Friday and so on.
22 The schedule could be slipped one week.

23 We don't propose that as our personal
24 alternative, but we feel we've been put in a position
25 of having been, frankly, inundated by discovery to

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1 which we've tried as best as we can to respond. Just
2 by way of noting, the federal rules of procedures limit
3 the number of interrogatories the parties can request
4 just for fear of this kind of thing happening. We've
5 not only exceeded that, but we've done it in a time
6 frame that's much shorter than the federal rules of
7 discovery would otherwise require on an issue for an
8 interim request that I think the parties going in
9 should be confined and limited. Although we wish that
10 we had been able to do more, faster, we have provided
11 an enormous amount of information in a very short time
12 frame.

13 So our first preference would be to keep the
14 schedule as it is. We would respond in any event to
15 further data requests to be used in cross-examination
16 of Olympic's witnesses at the time of hearing so that
17 those requests could still go forward. We believe that
18 Tesoro's experts are going to say what they are going
19 to say regardless of what we do on these data requests,
20 and they are going to make arguments that they are
21 going to make regardless of what further information
22 they get. They have got quite enough to prepare their
23 case and to do it within the confines of an interim
24 case. So having said that, I will conclude.

25 JUDGE WALLIS: Mr. Marshall, it strikes me

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1 that your comments today are very appropriate comments
2 and remarks to be made in response to a motion to
3 compel, but we've already done that, and I have
4 directed that your company respond. Perhaps you can
5 explain why you are not considering the order to
6 respond in your remarks today.

7 MR. MARSHALL: Your Honor, we can respond and
8 we will respond. The soon as we can respond is the
9 18th because of having to respond to Staff's requests
10 following up on the decision they had, which we got
11 out, and got out to all the parties here, what was it,
12 two days ago, Don? Whatever it was, in a timely way to
13 Staff's responses, and also because of, frankly, we ran
14 out of the ability to contact the people that we needed
15 to contact, but we are not telling the administrative
16 law judge that we will not respond. It's just a
17 question of when we can, and we do plan to respond as
18 Your Honor requested by the 18th --

19 MR. BRENA: If I may be allowed to reply.

20 JUDGE WALLIS: If you will wait, please.

21 MR. MARSHALL: We would have liked to have
22 responded earlier but are physically incapable of doing
23 all things at the same time, and we are trying to
24 respond in the best order we can.

25 JUDGE WALLIS: Mr. Trotter?

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1 MR. TROTTER: Just a couple of comments. We
2 issued 14 data requests on November 26th, and then
3 pursuant to the prehearing order and the philosophy
4 regarding the technical conference, according to the
5 prehearing order, we cannot cite to statements made in
6 the technical conference, so the day after the
7 conference, we issued additional data requests which
8 followed up on issues addressed at the technical
9 conference, and those have been numbered up to No. 40.
10 There are four responses which the Company said they
11 would be provided, so to my knowledge, there are four
12 that remain outstanding.

13 Staff is proceeding ahead. I think one of
14 those is probably not necessary for interim. The other
15 three deal with the accounting issues that the Staff
16 would like to see, but we are proceeding to draft our
17 testimony as currently we have a Friday deadline, but
18 that is the status of our discovery responses that we
19 have received, and we have not received any of the
20 responses to Tesoro's is obvious.

21 JUDGE WALLIS: Mr. Brena?

22 MR. BRENA: A few comments, Your Honor.
23 First, our motion to compel is trying to compel
24 discovery which was served on Olympic after the close
25 of business on November 26th. The pretrial order had

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1 originally contemplated the discovery served on the
2 26th would be responded to by the 29th, even taking
3 into consideration that it would be an extra day; it
4 would the 30th. Because of the lack of responsiveness
5 to that, we filed the motion to compel which was heard
6 by Your Honor, and the discovery was compelled on
7 December 6th, and now it's December 12th, and we are
8 hearing a couple of things.

9 One is my understanding was the Company made
10 the representation that it would try to respond on
11 three-days notice in best faith. Many of the things
12 we've requested don't require a lot of resources, don't
13 require a lot of time. They go to the incompleteness
14 of the response, and I won't go back and argue what we
15 argued in the motion to compel, but it seems to me
16 we've had a motion to compel out there December 6th,
17 and if I understand the comments Mr. Marshall has just
18 made, they haven't even begun to respond to Your
19 Honor's motion to compel being granted.

20 So I guess this is kind of stunning to me
21 that they are making the argument after the motion to
22 compel has been granted with regard to a great many
23 things. The argument of relevancy to the interim case,
24 those arguments were made at that time. Your Honor
25 made the ruling that Your Honor made, and I guess we

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1 are sitting out there waiting for responses, and it
2 doesn't seem as though they have even begun to work on
3 them.

4 Now, one of the things I'm concerned with is
5 they seem to be responding to Staff's second set of
6 discovery requests before they've even responded to the
7 motion to compel for our first, so we are getting
8 further and further behind the eight ball because of
9 the preferential treatment in the way they are giving
10 out discovery, and that causes me a great deal of
11 concern. The original schedule anticipated that we
12 would have our discovery on the 29th of November, and
13 their case would be due December 14th. That gave us 15
14 days after responsive discovery to put our case
15 together, and what is happening is that we are being
16 crunched and crunched and crunched.

17 Now, we've done everything we can to comply
18 with their schedule. Our discovery was abbreviated.
19 We explained the reasons why we need the information in
20 the motion-to-compel hearing. Your Honor made the
21 rulings you made. Since that time, we served a second
22 set of discovery responses, four interrogatories, four
23 simple interrogatories, and we haven't heard anything
24 about those at all either. So I guess the first
25 observation that I have would be that Mr. Marshall's

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1 comments went to whether the motion to compel should
2 have been granted, and it was granted, and now we just
3 want enforcement of it.

4 What I want is discovery because I need to
5 put my case together, and Olympic has it, and we need
6 it to put together the things of the case we asked for.
7 So what I would like to do is know when Your Honor's
8 motion to compel will be complied with, and then what I
9 would like to do at that point is I would like to have
10 a prehearing conference the day after the day that they
11 are supposed to comply with the order so that then we
12 can set the rest of the schedule, because I am not at
13 all confident that the responses we get, whether they
14 be the 18th, which is 25 days after the date that we
15 served them, whether those responses will be responsive
16 or not. So I don't want to lock in one schedule and
17 move everything by a week and assume that we are going
18 to have responsive discovery when we don't have
19 responsive discovery, apparently, can't have responsive
20 discovery at the earliest date by the 18th for stuff we
21 served on the 26th.

22 So my proposal is let's set some dates for
23 when Your Honor's motion to compel will be complied
24 with, and then let's hold a prehearing conference. We
25 are willing to condense somewhat. We had 15 days after

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1 responsive discovery to prepare our case. We are
2 willing to go down to 10 days or even a week, but we
3 need the discovery to finalize our case. So my
4 suggestion is let's set some dates, and then let's set
5 a prehearing conference where we have an opportunity to
6 go through finally any remaining discovery issue and
7 then we set a date for the filing of testimony and the
8 rest of the schedule.

9 JUDGE WALLIS: Mr. Marshall?

10 MR. MARSHALL: I proposed two alternatives at
11 the outset, Your Honor.

12 JUDGE WALLIS: We have those in mind.

13 MR. MARSHALL: We would propose that what we
14 do is respond on the 18th, keep the schedule in place,
15 and then on the 18th, if there are issues to be raised
16 about the inability to keep the schedule that has been
17 delayed by a week that that be raised, but we have to
18 have everybody clear their calendars for these dates,
19 and if we don't do that today, subject to change later
20 on, those dates may well disappear.

21 MR. BRENA: If I may make one comment with
22 regard to the 18th suggestion specifically. Assuming
23 responsive discovery on the 18th, it would get
24 distributed for us to the people that needed it for the
25 purposes of finalizing their testimony on the 19th or

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1 20th. Our case is due the 21st. So it would give us
2 one day to finalize our testimony after responsive
3 discovery in practical terms; whereas the original
4 schedule allowed 15.

5 Now, we should not be penalized because they
6 have not responded to our discovery. We are entitled
7 to discovery. We are entitled to a reasonable amount
8 of time to finalize our testimony after they've
9 responded to discovery. If they don't choose to
10 respond to discovery or comply with the motion to
11 compel, then the date of the hearing should change, and
12 it should change in a way so that our rights are not
13 significantly prejudiced. Under the original schedule,
14 we had 15 days. Like I said, we are willing to go down
15 to a week or 10 days from the point at which there is
16 responsive discovery on the table, but it cannot be
17 that they can ignore a motion to compel and squeeze us
18 down to a day or two to finalize our testimony. That
19 cannot be the result.

20 JUDGE WALLIS: Mr. Trotter, do you have any
21 further thoughts?

22 MR. TROTTER: I think there might be some
23 imprecision in some of the statements. I think
24 Mr. Marshall said that responsive discovery would be
25 had by the 18th. It was unclear whether all the

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1 responses would be served that day or whether only the
2 last two, but most of them would be provided on the
3 14th, for example. That might have different
4 implications for a schedule, so perhaps Mr. Marshall,
5 if he can commit to what's going to be served and when,
6 that might help, but I certainly think that the request
7 for a week from responsive discovery is not
8 unreasonable.

9 JUDGE WALLIS: Mr. Marshall, I am deeply
10 troubled by your comments today. Many of the requests
11 that are the subject of this discussion have been
12 outstanding for longer than three weeks. You are
13 proposing to have longer than four weeks' time to
14 respond to them when you have committed, and the
15 Commission has directed that parties make good faith
16 efforts, to respond within three days.

17 You have not indicated beyond general
18 realities why the Company is not able to respond. You
19 have not indicated why the remarks that you've made are
20 timely now when they could and should have been made at
21 the time of the discourse on the discovery motion. I
22 would like to see the Company providing its response to
23 the Intervenors and all other parties no later than
24 Friday morning the 14th. Is there any reason, and I'm
25 asking for an explanation of reasons why that would not

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1 be possible.

2 MR. MARSHALL: One of the main reasons why we
3 are so short of time is what I said at the prehearing
4 conference, and we noted, particularly on Page 52 of
5 the transcript, that we have to file direct testimony
6 to FERC as well as here on the main case on December
7 13th, which is Thursday, tomorrow. That has required,
8 and the parties will see it has required, an enormous
9 effort from a company that doesn't have that many
10 employees. We are mindful of that, and we know that
11 that schedule has been set by FERC. It's been set by
12 the UTC, and that deadline has to be met. We wish we
13 could delay that, but that is one that is less likely
14 to be able to be delayed, so the resources we've had in
15 the last couple of days have been devoted to trying to
16 get that finalized and out the door in the best way we
17 possibly can.

18 We started out at the beginning of this
19 conference by saying we have used our best efforts with
20 all the resources. We have gotten up at 5:30 in the
21 morning and worked on weekends. We have tried to do
22 all things to all people at all times. I know if we
23 could have done more, we would have done more, but that
24 was just physically impossible to do. We thought we
25 could do more with a limited staff, but as it turns

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1 out, a lot of these things turned out to be more
2 difficult to respond to than we thought.

3 Insofar as Staff's requests following the
4 technical conference on the 4th, we did receive them on
5 the 5th. That was before the meeting on the 6th for
6 Mr. Brena's motion. We weren't trying to accord Staff
7 preferential treatment, but I do think Staff and their
8 requests have been reasonable, and they have set a
9 standard for what is required to respond to the interim
10 case.

11 The best we can do at this time is to say
12 after we have this testimony filed, and it won't be
13 filed until the end of the day tomorrow, we will turn
14 all of our efforts to responding to Mr. Brena's
15 requests as ordered by Your Honor and get that out as
16 quickly as we can. The practical measure, and not to
17 try to raise expectations that we can't physically
18 meet, we have said we could do that by the 18th. I
19 don't think there is any possibility for Olympic with
20 the staff that it has to do it before then. Although,
21 we will certainly give that a try and provide anything
22 we can ahead of time that we are able to provide ahead
23 of time.

24 Tesoro's second request for discovery
25 requests, we believe, are more appropriate for the main

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1 case and not the interim case, and there again, I think
2 there has to be some judgment call on how expensive and
3 how deep will this additional discovery be that they
4 just served two days ago on Olympic. We can't do these
5 things in isolation as we said at the prehearing
6 conference. The number of requests we got from Staff
7 in addition to the technical conference in addition to
8 the commitment to supply testimony in the main case on
9 the 13th, all was discussed, and we said that the
10 parties had to limit their discovery as narrowly as
11 they could because otherwise, we wouldn't have the
12 physical capability to comply, but I assure Your Honor
13 we are doing our best. We are not try to delay these
14 proceedings. It's not in our interest to delay this
15 interim case at all, so we've had every incentive to
16 supply as much as we can as quickly as we can.

17 The question is whether the discovery is all
18 necessary to respond to the interim case or the other
19 case, and Your Honor to the extent that he's ruled on
20 the Olympic responses to Tesoro's, we'll try to respond
21 to that, and we will commit to respond that on the
22 18th.

23 MR. BRENA: May I be allowed a brief reply?

24 JUDGE WALLIS: Mr. Brena?

25 MR. BRENA: Three or four points. The first

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1 point is that the date for their filing of the
2 testimony is weeks after it was originally due to the
3 Commission. Tesoro did not agree to any sort of
4 extension of that date. That was an accommodation to
5 them. They were aware of that accommodation when they
6 made the good faith agreement to respond in three days.

7 There is a factor that Mr. Marshall has
8 pointed out that wasn't in play or apparent at the time
9 when they agreed to respond to discovery within three
10 days with good faith. In the technical conference,
11 they flew in folks from BP Pipeline. It's one of the
12 largest most well-funded, well-staffed pipeline
13 operators in the United States, and they had in that
14 room more than sufficient resources to respond to the
15 interrogatories or the requests that we made.

16 Regardless of the date that is set, be it the
17 14th or be it the 18th, we request a prehearing
18 conference the day after that because we have no reason
19 to believe the discovery that will be provided to us
20 will truly be responsive. It hasn't been to date.
21 It's weeks old. They've ignored a motion to compel.
22 So we don't want to sit here in an empty exercise and
23 set dates for everything else assuming that they are
24 suddenly going to begin to provide responsive discovery
25 to us. So I would just go back to saying whatever date

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1 Your Honor sets for compliance, let us take up the next
2 day after we've had an opportunity to review it and
3 comment on it and argue over any other outstanding
4 motion to compel or any way they may not have complied
5 with the existing motion to compel, and Your Honor has
6 an opportunity to hear those arguments and rule on
7 them. Then we are in a position to set the rest of the
8 schedule.

9 And then finally, it sounded to me as though
10 we need a hearing with regard to our second set. We
11 need to argue our second set, our four interrogatories
12 that we served. If we need to argue that, then we
13 should go ahead and add that on the to-do list and
14 argue it. I don't want to be on the 14th or 18th and
15 hear these same arguments over again that they are
16 serving objections up to our second set of discovery
17 requests, which were straightforward interrogatories
18 that go to the heart of the financial distress that
19 they've alleged. If we've got something to take on,
20 then let's go ahead and do it.

21 I would like to just point out that in any
22 schedule, again, it takes us time to distribute this
23 information. We are not just next door. We have
24 experts all over the country that we are working with
25 that need to come to Alaska. Mr. Marshall has

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1 courteously agreed to serve the discovery directly to
2 our experts, and that's a very important thing, but it
3 takes time once they do comply to get it here.

4 So let's set a date for compliance. Let's
5 have a prehearing conference that allows us an
6 opportunity -- probably not the next day because it
7 takes a day to get it here. Probably two days after
8 that compliance date, let's have a prehearing
9 conference to see where we are at, and then let's take
10 on discovery and scheduling issues that may remain.

11 JUDGE WALLIS: Does Commission staff have
12 anything further?

13 MR. TROTTER: No, Your Honor.

14 JUDGE WALLIS: I do not understand why if
15 testimony is due to be filed tomorrow that a large
16 number of persons would be required between this
17 afternoon and tomorrow afternoon to see to that filing.
18 I still do not understand why the Company has, given
19 the longer than three weeks that it's had, has not made
20 more effort that it has to comply with the discovery
21 requests. I would like the Company to send to the
22 intervenor by the means that we have agreed are
23 appropriate all of the information that it now has in
24 response to the discovery requests and whatever other
25 information can be provided tomorrow to be received by

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1 the intervenor on Friday before noon, and I'll do my
2 best to schedule a prehearing conference for Friday
3 afternoon to assess the status of the documentation of
4 the responses.

5 If the responses are substantial and
6 meaningful by Friday, and if the remainder of the
7 discovery is supplied by Tuesday, then it would make
8 sense to me to schedule the date for filing of the
9 intervenor and staff testimony on Friday the 28th of
10 December and to schedule the Company rebuttal for
11 Thursday, January 3rd, and to hold to the hearing dates
12 of January 7 and 8.

13 I am concerned that failure to make
14 substantial responses, substantial and meaningful
15 responses on that time line would require an extension
16 of time for the hearing, and as I have explained and
17 parties are aware, the Commission has a number of other
18 matters pending that foreclose a number of options in
19 terms of scheduling and processing this request.
20 Mr. Marshall, will the Company make the responses that
21 I've requested?

22 MR. MARSHALL: Yes, Your Honor. We will with
23 all the resources that we can bring to bear, and I will
24 convey in the strongest terms possible your concern to
25 this so that they have that well in mind. I do want to

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1 again emphasize that this really isn't a big company,
2 and people from Chicago they are talking about were
3 two, the assistant treasurer and a tariff's person.
4 There aren't a lot of people that know about this, and
5 I just want by way of assurance and not by way of
6 further argument to let you know that we are putting
7 all the people that we can on this, and we will
8 redouble our efforts and work all night and tomorrow
9 night if we have to to get this out for Mr. Brena to
10 receive by noon on Friday, and then anything we can't
11 do by noon on Friday, we will continue to work on and
12 turn around as quickly as we can, keeping in mind
13 everything Your Honor has said about the need to
14 provide as much as we can and as fast as we can.

15 JUDGE WALLIS: Thank you, Mr. Marshall. The
16 question has been raised whether it is feasible to
17 reconvene the technical conference. Mr. Brena, what
18 are your thoughts on that?

19 MR. BRENA: May I suggest that the
20 reconvening of the technical conference be a subject
21 for the prehearing conference, and that would be next
22 Tuesday, I guess? Part of the problem here is that the
23 purpose for the technical conference was to clarify
24 questions that you may have that may be raised by
25 either their testimony or by their discovery. I

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1 thought the last technical conference was helpful to
2 all parties in defining the issues and focusing the
3 discovery, and I would like to have the opportunity for
4 a technical conference with regard to Olympic's
5 responsive discovery to our requests, and we have not
6 had that opportunity yet substantively, so I'm not sure
7 that it's something in Your Honor's schedule. Their
8 case was filed, and they would have responded to all
9 discovery requests by next Tuesday, the 18th. We would
10 have a prehearing conference, I'm assuming, on the 19th
11 or 20th, and then maybe a technical conference on the
12 21st would be entirely appropriate, and we would like
13 the opportunity to have one.

14 JUDGE WALLIS: Mr. Marshall?

15 MR. MARSHALL: I guess again before we had
16 the last technical conference, the parties indicated
17 exactly what it was they needed to have clarified so we
18 could figure out who was appropriate to bring, and I do
19 agree with Mr. Brena, maybe for the first time, that
20 the technical conference we did have the last time was
21 very helpful. I think all parties did believe that the
22 people from Olympic testified and gave information
23 fully and completely helping to define the issues.
24 Because that was so complete and so expensive, I really
25 am unsure of the need for a further technical

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1 conference at all, but if somebody could explain what
2 the topics would be and we could make sure that the
3 people who could respond to that are available, that
4 would be fine.

5 One of the things Mr. Brena asked here, for
6 example, in his second set of requests was information
7 about the cross-Cascades pipeline. That's not anything
8 that anybody at Olympic knows about, for example, and
9 would involve either prior management Equilon, so it
10 wouldn't do much good to ask about that. That example
11 just happened to pop in mind. So I guess what I'm
12 saying is the technical conference we did have was
13 wide-range and expensive and seemed to go to all the
14 issues that were raised by the testimony, and I'm not
15 sure anything more would need to be had, but if
16 somebody can say what it is and be precise about it, we
17 can inquire.

18 MR. BRENA: If I may briefly reply, Your
19 Honor?

20 JUDGE WALLIS: Let me see if I can summarize
21 my perception of where we are. Fundamentally,
22 Mr. Marshall, you are saying that you don't know what
23 topics might be addressed, and you can't say at this
24 juncture who might be available to address those
25 topics. Mr. Brena, you are saying you don't have the

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1 responses to your data requests and consequently can't
2 define topic areas with any precision at this juncture.
3 Does that fairly anticipate your response?

4 MR. BRENA: Well, I would be happy to, the
5 day after we get responsive discovery, to provide a
6 list of topics that we feel a technical conference
7 would be helpful for, and perhaps in the prehearing
8 conference following that to address any outstanding
9 discovery issues, and that list could be discussed and
10 this conference, perhaps, would have more focus and
11 substance.

12 JUDGE WALLIS: Very well. My assessment is
13 that it is not feasible to come to any conclusion with
14 regard to the technical conference and that that
15 question must abide other events. I will ask,
16 Mr. Brena, when you receive the information on or
17 before Friday if you would review it to determine
18 whether, if we have a conference on Friday afternoon,
19 you are able to identify any topics for such a
20 conference.

21 MR. BRENA: Yes, Your Honor.

22 JUDGE WALLIS: So at this juncture, I believe
23 we have addressed all of the matters on our list of
24 things. I have postulated a fallback filing schedule
25 that would allow us to retain the hearing dates that we

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1 have scheduled. It is heavily dependent upon the
2 Company's success and its efforts to respond fully and
3 meaningfully to the discovery requests. There is a
4 schedule for providing responses. Is that a fair
5 assessment of where we are?

6 MR. MARSHALL: Yes, Your Honor.

7 MR. BRENA: Yes, Your Honor.

8 JUDGE WALLIS: Are there any other questions
9 that it would be productive for us to address today?

10 MR. BRENA: I have some questions or concerns
11 with regard to the proposed procedural schedule, but I
12 will just hold them until we take a look at the
13 discovery and make those arguments at that time, if
14 that's acceptable.

15 JUDGE WALLIS: What are the concerns that you
16 have, Mr. Brena?

17 MR. BRENA: One of the big concerns I have is
18 under the existing schedule that the prefile of Company
19 rebuttal was due December 21st and the hearing was
20 January 7th. That gave 17 days from the filing of the
21 rebuttal until the hearing. Under the revised schedule
22 or potential schedule that you set forth, their
23 rebuttal case would be due the 3rd.

24 Under the original schedule, there was an
25 opportunity to serve and get discovery in their

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1 rebuttal case. Under the revised schedule, there is
2 not, so whatever they put in their rebuttal case, and
3 frankly, the effect of that is twofold. It's not to
4 allow responsive discovery on their rebuttal case and
5 also not to focus the hearing as much as it could have
6 been focused. That's one concern that I have, and then
7 we are crunching the hearing date, and in effect, the
8 proposed new schedule eliminates the right of discovery
9 on the rebuttal case, and that affects us first of all
10 because we don't have that advantage where we had it
11 before, which is the right of discovery, and secondly,
12 that impacts us because it will make a less efficient
13 hearing.

14 JUDGE WALLIS: Mr. Marshall, what are your
15 thoughts on that?

16 MR. MARSHALL: I think our testimony is due
17 on the 28th, which means that we will be working over
18 when normally people would take off on Christmas, so I
19 guess there is a downside for us too on this, but we
20 are willing to do that. Again, the focus of this is to
21 be narrow in an interim case. It's not to be as
22 extensive as you would in a normal case. Rebuttal is
23 designed to be just that, rebuttal, and not to go into
24 new issues that could have been addressed in direct and
25 then don't speak to that. So I would imagine not

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1 having seen the cases by any party that the rebuttal
2 would be fairly narrow, and the issues are already
3 fully discovered already. So I don't think that puts
4 anybody at a great disadvantage, and I think the
5 Commission, as well as the administrative law judge,
6 can keep the hearing very narrowly focused.

7 Again, I don't want to reargue anything, but
8 I don't think the discovery has been anywhere near as
9 focused as we thought it would be up to this point. We
10 think it could have been a lot more precise and
11 pointed, but that's over and done with. I think from
12 this point on that everything ought to be focused on
13 the interim issue only and not the general case. So
14 having said that, I think the scope of this proceeding
15 in general should have been limited, and the scope on
16 the rebuttal will certainly be very limited.

17 JUDGE WALLIS: Mr. Trotter, do you have
18 thoughts?

19 MR. TROTTER: Your Honor, the filing of
20 rebuttal on the 3rd of January with the hearing on the
21 7th does preclude any sort of discovery. That's a
22 concern. If the rebuttal is very short, directly
23 responsive and doesn't raise any new issues, we might
24 survive, but it is a legitimate concern, and it could
25 be a potential problem that impairs our ability to

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1 bring an adequate case.

2 MR. MARSHALL: My thought, if I may, Your
3 Honor, would be to say that if that does present an
4 issue that it be raised at that time, not to anticipate
5 a problem that may or may not arise.

6 JUDGE WALLIS: I think that Mr. Marshall's
7 take on this is an accurate one. I don't know that
8 there is a right of discovery on any aspect of a case.
9 Whether there is a need for discovery as to rebuttal is
10 a question that -- let me rephrase that. Whether
11 discovery on rebuttal would be helpful to other parties
12 is a question that we will not know until rebuttal is
13 filed, and if at that juncture the rebuttal is of such
14 a scope or volume or addresses subjects that are of
15 such a surprise, even if within the scope of the direct
16 testimony that is advanced by the responsive testimony,
17 that's advanced by the other parties, then those are
18 matters that can be raised at the time and should not
19 foreclose our setting a schedule that meets the
20 Commission's needs and does its best to accommodate to
21 the needs of the parties. Is there anything further?

22 MR. MARSHALL: No, Your Honor.

23 JUDGE WALLIS: I want to thank you very much,
24 and this conference is adjourned.

25 (Prehearing conference concluded at 3:00 p.m.)

