

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

OLYMPIC PIPE LINE COMPANY'S
ANSWER TO MOTIONS FOR
RECONSIDERATION OF STAFF AND
TESORO

1. Pursuant to the Notice of Opportunity to File Answer and the Correction to Notice of Opportunity to File Answer each issued July 26, 2002, Olympic Pipe Line Company ("Olympic") submits this Answer to Tesoro Refining and Marketing Company's ("Tesoro") Motion for Reconsideration of Fifteenth Supplemental Order (the "Tesoro Motion") and Staff's Motion for Reconsideration or Clarification of the Commission's July 19, 2002, Prehearing Conference Order (the "Staff Motion"). Olympic opposes the Tesoro Motion and urges the Commission to deny Tesoro's requested relief. Olympic does not take a position on Staff's Motion.

2. The Tesoro Motion does not satisfy the Commission's standard for reconsideration. The Commission should deny the Tesoro Motion on this ground. WAC 480-09-810 states, with emphasis added, that a petition for reconsideration must "clearly identify each portion of the challenged order that the petitioner contends *is erroneous or incomplete* [and] must *cite those portions of the record and each law or rule of the commission* that the petitioner relies upon to support the petition . . ." Tesoro cites *no* law (other than a general reference to Title 81), nor does Tesoro cite *any* fact from the record in support of an assertion that the Order is erroneous or incomplete. The Motion is insufficient on its face. Tesoro merely disagrees with the content and structure of the suggested outline; that is, Tesoro prefers a different result. This does not meet the burden established in WAC

480-09-810 and for this reason the Tesoro Motion should be rejected.

3. Moreover, the Tesoro Motion should be rejected because it erroneously implies that the Fifteenth Supplement Order (the “Order”) is limiting in ways that it is not. In that regard, Tesoro seeks to limit the ability of the other parties to present their case.

The Order states:

Parties could not agree on a single outline. Olympic contended that failure to adopt its proposed outline would prejudice its presentation. As noted earlier in the proceeding, *the outline is not meant to confine or restrict, but is meant to organize parties’ arguments and so to assist the Commission in assuring that parties’ arguments are parallel* and to assist the Commission in comparing the parties’ views.

Order at 3 (emphasis added).

4. Tesoro’s Motion confirms that the parties still do not agree on a single outline. In light of this disagreement and the need to bring some order and structure to the briefing, Olympic believes that the outline provided by the Commission is and will be helpful to the Commission’s comparison and assessment of the parties’ views. However, more troubling than the veneer procedural tone of Tesoro’s Motion is that the Tesoro Motion seeks to remove or restate substantive topics Tesoro prefers not to address. Such limitations would prejudice Olympic’s ability to argue the law and facts Olympic views as essential to its case. If Tesoro does not choose to address all the topics included in the Commission’s outline, Tesoro has the option of remaining silent. The Order further states:

Parties are *not required* to address each element, but if they argue the issue, they should do so under the pertinent outline point.

Order at 3 (emphasis added).

5. The Order is therefore permissive. Tesoro need not address those topics it does not wish to address, and if Tesoro has a position on the merits (including, but not limited to, the relevancy of any such topic) it is free to present its position in the context of the outline presented by the Commission. The Commission is entitled to place reasonable restrictions on the right to argue or file briefs without violating due process guarantees.

See Messer v. Snohomish Cty. Bd. of Adjustment, 19 Wn. App. 780, 790 (1978) (quoting 2 Am. Jur. 2d, *Administrative Law* § 419, at 231 (1962)). The Order identifies a range of issues the Commission would like to see addressed in the briefs in a rational presentation that supports comparative analysis. The Order is thus reasonable and well considered in this regard, and the Tesoro Motion should be rejected.

6. Denial of the Tesoro Motion will cause no prejudice to Tesoro. For instance, if Tesoro has no position on, or does not consider it appropriate for the Commission to consider, the public interest standard and the end result test¹ when setting rates, it is free to not brief these issues. Likewise, if Tesoro, as is suggested by its Motion, does not wish to address the Commission’s safety responsibilities, its discretion in choosing a methodology, the history and nature of oil pipelines, the rationale for the FERC methodology, and the potential for underinvestment, the Order leaves it within Tesoro’s discretion to have the Commission consider the evidence without taking into account Tesoro’s position on these topics. As the Order states, “the outline is not meant to confine or restrict, but is meant to organize the parties’ arguments and so to assist the Commission in assuring that parties’ arguments are parallel and to assist the Commission in comparing the parties’ views.” Order at 3.

7. Tesoro also argues that the Commission should mandate that certain topics be merged in the briefing. See Motion at 4. Olympic does not read the Order as foreclosing a party from addressing subtopics within one larger topic. Certainly, the subtopics Tesoro would “merge” are important to the full and fair disposition of the case; however, the Order does not preclude Tesoro from summarily treating these issues in whatever larger context

¹ The Tesoro Motion suggests, incorrectly, that the end result test is inappropriate for the Commission to consider. This matter is appropriate for briefing and while Tesoro may advance this argument within the context of the brief, it may not advance legal arguments on ultimate issues for the Commission in a way that permits it to brief an issue outside the Commission’s 70-page limit on briefs. Moreover, the end result test is the loadstone of regulatory ratemaking – it is the standard with which this Commission must comply in setting rates.

Tesoro chooses to present as its view of the case. Leaving the Order intact, however, ensures that these topics will be addressed in a manner than makes it easier for the Commission to compare and contrast the parties' arguments.

8. Tesoro also argues that the Commission should adopt a subcategory labeled "One-Time Major Maintenance Costs." One of the major issues in the hearing was whether the Commission should reclassify, as urged by Tesoro, ongoing maintenance expenses such as mowing rights-of-way as capital expenses. Tesoro's proposed new "subcategory" suggests the conclusion Tesoro wishes the Commission to reach.

9. Olympic does not understand the Order to constrain any parties' ability, especially Olympic's as the party with the burden of proof, to argue its case to the Commission. To the extent that the Tesoro Motion suggests that any party should not be able to present and make its case as it sees fit, the Commission should reject this position as inconsistent with due process and a regulated utility's obligations under Washington statutes. See Kessen v. Industrial Comm'n of Arizona, 990 P.2d 689, 693 (Az. Ct. App. 1999) ("Procedural due process, however, requires nothing more than an adequate opportunity to fully present factual and legal claims.").

10. Tesoro's Motion should be rejected in its entirety. If and to the extent the Commission is concerned that the Tesoro Motion creates confusion in the record as to the intent of the outline, the Commission may wish to affirm that the Order does not constrain any party from presenting and making its case to the Commission as it sees fit, based upon good faith interpretation of the law and the evidence presented in this proceeding.

Olympic respectfully requests the Commission deny Tesoro's Motion for Reconsideration.

DATED this ____ day of July, 2002.

Respectfully submitted,

PERKINS COIE LLP

By _____
Steven C. Marshall, WSBA #5272
William R. Maurer, WSBA #25451