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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND) Docket No. TO-011472
4 TRANSPORTATION COMMISSION,) Volume IV
) Pages 271 to 313
5 Complainant,)
)
6 vs.)
)
7 OLYMPIC PIPELINE COMPANY,)
INC.,)
)
8 Respondent.)
)
9 _____)

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11 A prehearing conference in the above matter
12 was held on December 14, 2001, at 1:30 p.m., at 1300
13 South Evergreen Park Drive Southwest, Room 206, Olympia,
14 Washington, before Administrative Law Judge ROBERT
15 WALLIS and CHAIRWOMAN MARILYN SHOWALTER and COMMISSIONER
16 PATRICK J. OSHIE.

17 The parties were present as follows:

18 THE COMMISSION, by DONALD T. TROTTER, Senior
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22 TOSCO CORPORATION, via bridge line, by EDWARD
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25 Joan E. Kinn, CCR, RPR
Court Reporter

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P R O C E E D I N G S

JUDGE WALLIS: Let's be on the record, please. This is a prehearing conference in the matter of Commission Docket TO-011472, which is a complaint by the Commission against Olympic Pipeline Company, the respondent, relating to a request for an increase in rates for the provision of pipeline services. This is a pre-hearing conference before the Commission. It is being held in Olympia, Washington on December 14 of the year 2001 pursuant to due and proper notice to all interested persons before Chairwoman Marilyn Showalter and Commissioner Patrick Oshie of the Commission and myself, Administrative Law Judge Robert Wallis.

Let's take appearances, and if counsel would please state your names and the name of the party that you represent. Let's begin with the respondent Olympic.

MR. MARSHALL: Yes, Your Honor, thank you. I'm Steven Marshall for Olympic Pipeline Company.

JUDGE WALLIS: For the interveners.

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

MR. FINKLEA: This is Ed Finklea on behalf of Tosco.

JUDGE WALLIS: And Commission Staff.

MR. TROTTER: For the Commission Staff,

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1 Donald T. Trotter and Lisa Watson.

2 JUDGE WALLIS: Thank you. Let's begin with a
3 report on the status of discovery and discovery
4 responses.

5 Mr. Brena, may we start with you.

6 MR. BRENA: You may. We just received about
7 a half an hour ago an E-mail that we have had copied off
8 that indicates that there are some discovery responses
9 in it. We have gone through it quickly one time. We
10 believe they also indicated that they intended to
11 provide supplemental responses by the end of today. So
12 as my brief review of their responses indicates that
13 they're not responsive to the questions that I asked.
14 We still don't have the information we talked about
15 needing with regard to the limited responses that we
16 have seen to date.

17 In addition, we have -- we had served a
18 second set with four interrogatories, a second set of
19 discovery with four simple interrogatories, and we have
20 gotten those back. I had hoped to argue if there was
21 going to be objections to that in the last prehearing
22 conference. We have received it back, and we do not
23 consider the responses to any of the interrogatory
24 requests as adequate.

25 So incomplete with regard to the information

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1 that they have said that they would provide today. We
2 have only had an opportunity to go through it quickly.
3 They have indicated that they're going to continue to
4 supplement it through the day. And nothing with regard
5 to the second set.

6 MR. FINKLEA: This is Mr. Finklea for Tosco.
7 We received at 12:25 this afternoon a set of
8 supplemental responses to Tesoro's first set of
9 discovery requests, and our E-mail indicates that
10 additional supplemental answers --

11 JUDGE WALLIS: Mr. Finklea, I could not
12 understand the latter part of your response. Could you
13 repeat that, please.

14 MR. FINKLEA: Yeah, there was a beep in the
15 middle of that.

16 And then additional supplemental answers
17 would be provided later today. Then at 1:31, I got a
18 second E-mail that said:

19 Attached are further supplemental
20 answers. Please replace the answers
21 sent out earlier today. We are working
22 on further supplemental answers and will
23 provide them later today.

24 So I only one minute after the 1:30
25 conference call was to begin received the second E-mail.

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1 JUDGE WALLIS: Mr. Marshall, what's your view
2 of the status of discovery responses?

3 MR. MARSHALL: Well, we have sent also to
4 Your Honor a copy of both E-mails that we sent out
5 today. As Your Honor requested, we pulled together all
6 of the responses as quickly as we could to get it to
7 everybody by noon today. As I understood it from our
8 earlier conference, we were to get as much as we could
9 and then to continue to supplement as fast as we could,
10 so that's what we have been doing. We didn't delay
11 getting a second supplemental set out, as Mr. Finklea
12 pointed out, at 1:31 today, and we're continuing to pull
13 together information from -- that we can to the couple
14 of responses that we still have not covered. We're only
15 I believe out of the all of the requests that they have,
16 we only have a few outstanding.

17 The ones that were particularly important,
18 reply to the issue of debt financing and other
19 financing, we have responded to that in great detail,
20 and we have taken care to point out the information that
21 Tesoro has from other sources is responsive to
22 interrogatories. But more importantly, from the
23 December 4th technical conference where, although it was
24 not on the record, the parties spent six hours or more
25 questioning the people from Olympic Pipeline, Mr. Howard

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1 Fox, Ms. Bernadette Debranski, and Ms. Cindy Hammer,
2 about all of these issues. What we have done is we have
3 -- that and the responses to those interrogatories that
4 Mr. Brena had by pointing out what was said at the
5 conference and confirming that in writing. As you all
6 know, those materials at the technical conference aren't
7 transcribed. Notes could be taken, but we have taken
8 care to try to provide that.

9 There are just a few of these responses that
10 have not yet been provided, and we're going to be
11 providing those. Some of the supplemental provisions
12 really relate to trying to find out what Equilon did,
13 the prior manager and operator. And all we can say to
14 that is that although we're continuing to look for that
15 information, that may never become available. The
16 records from those folks are hard to come by. So what
17 we tried to do is to provide all information in our
18 possession. We're trying to obtain information and
19 clarification on the other questions.

20 One other open question remains, and that's
21 about the shipper information in terms of volume and so
22 on. And that, of course, is subject to a federal law
23 prohibiting and making it illegal to provide that
24 information. And our suggestion there, we have that
25 material, but our suggestion is to avoid a conflict

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1 between a federal law and the provisions here that we
2 see if the parties would agree to allowing the redaction
3 of the names of the shippers involved so that we don't
4 have to face the question of our having violated federal
5 law on providing that kind of information. People at
6 Olympic have looked at that issue and have voiced
7 significant concerns I think would be taken care of by
8 redacting the shipper names from that information.

9 We would be willing to name, of course,
10 Tosco, Tesoro, and any other shipper that cares to, to
11 name them, to not redact their names from that
12 information. But as to the other shippers, we are
13 concerned, and we have not been able to obtain
14 permission from the other shippers. We have notified
15 them of this request to make sure that they understand
16 that under the federal law, which I think obliges us to
17 indicate whether there is a request for this
18 information, and I -- there has been expression of
19 concern, as I mentioned, about the names of shippers.

20 So I think we responded in great detail on
21 the financial information, which is, of course, that the
22 -- due in the interim case, in great detail. I think
23 our responses total over 40 pages. We have sent out a
24 second supplemental response after the one shortly after
25 noon today that got to people at 1:30, and we're

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1 continuing to make sure that we answer the remainder of
2 that by today.

3 JUDGE WALLIS: Mr. Marshall, do you -- when
4 do you believe that you will have fully responded to the
5 interveners' data requests?

6 MR. MARSHALL: Well, of course, we hoped to
7 have it done all by noon, and the few that we have
8 outstanding I think we can provide certainly by the end
9 of today, and more than that time for Mr. Brena up in
10 Alaska.

11 What are you, two hours ahead or three hours
12 behind us?

13 MR. BRENA: You're one hour ahead.

14 MR. MARSHALL: One hour ahead. We could
15 certainly provide that by 4:00 our time.

16 Again, the one remaining question is about
17 the shipper information that we should get clarification
18 on.

19 With regard to the second set of
20 interrogatories that were filed by Tesoro against us and
21 that were not a part of Your Honor's order, we have --
22 we believe that those do go well beyond the interim
23 case, details about the general case that we can go into
24 or not. The very fact that they were filed as late as
25 they were indicates to us that they really aren't

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1 essential to the case, to the interim case, and they do
2 go beyond the details of what's required for the interim
3 case.

4 One, for example, asks for everything about
5 the insurance claims Olympic has made about the Whatcom
6 Creek accident. But even assuming that there are
7 claims, there won't be any resolution of any claims, and
8 it's hard to imagine how that's relevant to anything in
9 the interim case. Same type of question, Interrogatory
10 Number 2 asked, by defendants, case number, and dollar
11 amount all losses for which Olympic has filed legal
12 action for recovery relating to the Whatcom Creek
13 accident. That too is more appropriate for the general
14 case. Interrogatory Number 3 in their second set asks
15 for information about something called a cross Cascade
16 pipeline project, which again is if they want to get
17 into that in the general case, that's something that we
18 could. It doesn't have any bearing on the interim case.
19 And the final interrogatory in their second set of
20 discovery requests asks the dollar amount of the total
21 casualty and other loss relating to the Whatcom Creek
22 accident which Olympic has booked to date. And again, I
23 think that's an issue if people want to get into it in
24 the interim case, we can talk -- or in the general case,
25 we can talk about it then, but it's not appropriate at

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1 this late stage, and it has only marginal relevance, if
2 any at all, to the interim case.

3 JUDGE WALLIS: Mr. Marshall, do I not recall
4 correctly that the result of the discussion about the
5 confidentiality of shipper information was subject to a
6 provision in the same law that created the
7 confidentiality that information could be released to
8 regulators such as state regulators without violating
9 the requirement of confidentiality?

10 MR. MARSHALL: Yes, Your Honor, but this
11 would be released to more than just regulators. This
12 would be released to other shippers, and that's the only
13 concern that we have. I mean if we're ordered by this
14 Administrative Law Judge to turn over all shipper
15 information including shipper names, we will do so. Our
16 suggestion simply was to try to avoid what we think is
17 probably a problem with violating of the federal law
18 that we redact those names.

19 The provisions of Section 15, Part 13 of that
20 law says that:

21 Nothing in this chapter shall be
22 construed to prevent the giving of such
23 information in response to any legal
24 process issued under the authority of
25 any state or federal court.

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1 It doesn't discuss whether regulatory
2 agencies can do that. That was one problem that was
3 identified.

4 But again, I think that that problem can be
5 remedied by redacting the names of the shippers. I'm
6 not certain to what effect that information would
7 provide any information to the parties in this interim
8 proceeding in any event. But we did get considerable
9 concern expressed that we were about to violate this
10 federal law, and we looked for a way of doing it. If
11 we're ordered by this administrative agency to turn it
12 over, we will. We just wanted to bring to the
13 Administrative Law Judge's attention that that was a --
14 continued to be an issue. We do think that we have a
15 proposed solution that would satisfy the problem that we
16 have identified.

17 JUDGE WALLIS: Mr. Trotter, do you have any
18 observations or comments at this time?

19 MR. TROTTER: Just briefly, Your Honor. It
20 was my recollection that the issue of the shipper
21 volumes was resolved in our last conference when I
22 believe you did order the material to be produced. It
23 was my understanding that Olympic agreed that that was a
24 way to comply with the statute.

25 CHAIRWOMAN SHOWALTER: What was, to redact

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1 the --

2 MR. TROTTER: No, to have an affirmative
3 order by the Commission to have it produced.

4 MR. MARSHALL: By the Commission itself?

5 MR. TROTTER: Yes.

6 MR. MARSHALL: I didn't remember that part of
7 it.

8 MR. TROTTER: That was my recollection, that
9 the statement was made that if the Commission orders it
10 be produced, then that invokes the protection of the
11 statute. And that, Your Honor, my recollection was, and
12 the record will speak for itself, but that you did
13 require that it be produced.

14 Staff does not have a problem. This was not
15 our request. We have different needs for volume data
16 that don't include shipper names, so if it is redacted,
17 that's okay with us. But I can't speak -- we didn't
18 request this in this form, so the interveners can speak
19 for themselves.

20 I think I mentioned the other day that there
21 are still four Staff data requests still outstanding.
22 We haven't received those yet. But they said they would
23 -- they were to be supplied, so we assume they are still
24 working on those.

25 JUDGE WALLIS: Mr. Marshall, do you know the

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1 status of those requests?

2 MR. MARSHALL: Yes. We, of course, are
3 trying to comply with Your Honor's order first with
4 regard to Tosco, and keeping in mind Tosco's I believe
5 to be shown preference to the Staff, the UTC Staff. But
6 we are preparing those, and we will have those out as
7 soon as we complete the responses to Tesoro.

8 JUDGE WALLIS: And just to be sure that I
9 understand, you're representing that you believe your
10 response will be complete by the close of business
11 today; is that correct, to Tesoro?

12 MR. MARSHALL: Yes, we have been told by the
13 people that are gathering this information that we will
14 provide all information that we physically have and can
15 obtain, understanding of course that because of
16 Equilon's records and so forth, we don't have all of the
17 records. But we will provide everything that we can by
18 the end of the day to the Tesoro responses.

19 JUDGE WALLIS: Very well.

20 Mr. Brena.

21 MR. BRENA: Yes, Your Honor, we have covered
22 quite a bit of ground. First, in my cursory review of
23 their responses, I do not believe that they are being
24 responsive at all, and they're not providing the
25 information we need. But it doesn't do us any good to

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1 just sit and talk about it in generalities. I think
2 what we need to do is go ahead and get everything that
3 they think is responsive and then have a prehearing
4 conference where we go through the things one at a time
5 and decide if they're responsive.

6 But just to name a few examples, just a few
7 examples, they have essentially set up an internal
8 lending program that forecloses the use of external
9 sources of funds. Under their own loan documents, they
10 can not borrow funds from external sources, so that
11 leaves the shareholders as the funding source as
12 possible under the way that they had put this plan in
13 place for funding. We had asked them to describe the
14 process by which they request those funds from their
15 shareholders, and they have responded to us that
16 Olympic's board of directors authorizes funds.

17 And I had pointed out in the last prehearing
18 conference that it isn't Olympic's -- it isn't Olympic
19 that we were directing the interrogatory to. We asked
20 for the authorization and budgeting process by which
21 Olympic's shareholders would fund internal loans.
22 Because as I understand their case, it's based on two
23 grounds. One is that they're in a deteriorating
24 financial position. And second is that they need it --
25 they need -- they need this interim rate increase in

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1 order to go forward with the capital improvements that
2 are budgeted for 2001.

3 So we asked -- we asked, you know, how are
4 you going to get the money, and how do you normally get
5 the money, and what's that process. They haven't
6 responded to that at all. They have continued on
7 describing Olympic Pipeline's internal budgeting process
8 and not the budgeting process where Olympic Pipeline
9 requests funds from its shareholders.

10 We asked where in the process are you with
11 asking for money from your shareholder. And again, they
12 just referred back to Olympic's internal budgeting
13 process.

14 So one of the key things in this case is that
15 they're saying that they don't have the money and can't
16 get the money to do capital improvements for 2002 even
17 though they have a line of credit that's a \$30 Million
18 line of credit from Arco that they have only drawn down
19 \$10 Million on and even though their normal operating
20 expenses greatly exceed their normal operating cost. So
21 we want to know, why don't you just ask Arco for the
22 money under the revolving line of credit, what's the
23 process you go through to do that, and where are you in
24 the process, have you asked. They haven't answered any
25 of those questions. That's just an example.

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1 Well, I think just to cite one more example

2 --

3 MR. MARSHALL: First of all, that isn't the
4 case.

5 JUDGE WALLIS: Mr. Marshall, would you hold
6 off for a few moments, please. I would like to hear
7 Mr. Brena first, and then we will allow a full
8 opportunity to respond.

9 MR. BRENA: Just to use one other example,
10 it's very, very important, and they have put on a case
11 that says that they're in a deteriorating financial
12 position even though beginning in July of this year, all
13 four refineries have come back on line and their
14 throughput has shot up and their revenues have shot up,
15 and even though in September of this year they have --
16 they have a tremendous rate increase in effect on the
17 federal side. In fact, you know, they -- this is a
18 company that was doing fine before Whatcom Creek and
19 then just finished -- had just finished a rate filing
20 and had their rate approved without opposition, and that
21 was sufficient revenue for them to build equity but for
22 Whatcom Creek.

23 So we have asked particularly for the
24 information since the rate increase that's been allowed
25 to go into effect since all shippers have started

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1 shipping. Because whatever financial pressure they were
2 under a couple years ago, they certainly aren't under
3 any now. And so we asked for September, October, and
4 November as well as ongoing. And again, what we've got
5 doesn't comply with that. We asked for their throughput
6 information, because their throughput is directly linked
7 to their improving financial condition, and we haven't
8 been provided with the relevant and current throughput
9 information to show how much more throughput revenue
10 that they're generating. I mean we need current
11 information, because this company's financial position
12 has improved geometrically since July, geometrically
13 since September, and they are not providing us the
14 information that shows that even though we know that to
15 be the case.

16 With regard to some of the other comments
17 that Mr. Marshall made, he mentioned Equilon as the --
18 that they may never get information from Equilon. Well,
19 I would like to point out that while there has been a
20 change of managers, there has been no change of
21 shareholders in this company, and what we asked for was
22 current board -- we asked for board minutes. We got
23 board minutes through March, so we got all the board
24 minutes except the ones most important to this interim
25 rate proceeding.

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1 With regard to information during the Equilon
2 period, they incurred all of this debt in about a year,
3 and we want to know where it went, what it was used for.
4 And what they're saying is that there's another manager,
5 therefore, we can't tell you. Well, Arco is the
6 majority shareholder before the change. This is the
7 people that served on the Arco served on the board of
8 directors. They have the same corporate counsel. They
9 put together the same sheets. You know, they have
10 financial statements, and they pass those out to the --
11 at their board of directors meetings every month. This
12 is -- it doesn't matter who your manager is, he still
13 reports to the board of directors the information
14 relative to operations. We asked for those board
15 packages that they must maintain individually that shows
16 that. We haven't gotten any of that stuff.

17 We asked for -- they had a finance committee,
18 because apparently what they intended to do was put
19 together an internal line of financing for \$100 Million.

20 JUDGE WALLIS: Mr. Brena, I don't want to cut
21 you off prematurely, but I think we're getting beyond
22 the issue of the adequacy of responses into argument on
23 substance, and I believe we're also retreading ground
24 that has been discussed in the past.

25 MR. BRENA: Okay, then I will modify and

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1 focus my comments.

2 My point is that Your Honor ordered them to
3 produce those documents to the degree that they were
4 available. They aren't only available from Equilon,
5 they're also available from the board members who are
6 the same board members for the same companies for the
7 same shareholders who have continuously owned this
8 company for quite some time.

9 With regard to the shipper information,
10 whether or not to name it by shipper, we asked for the
11 information in a very specific way so that we could
12 assess the financial impacts on their interim rate
13 request on all their shippers. They have indicated that
14 they have 70 shippers, and we want to see the specific
15 information by shipper. We argued this point, your
16 Honor ordered that it be compelled, and now we're back
17 rearguing whether or not there's compliance with federal
18 law. I cited the cases, I cited the authority that
19 indicated that this information may be provided under
20 service of law and routinely is provided. I have been
21 in rate cases against BP Pipelines in which it has been
22 provided. I have been in rate cases against Perkins
23 Coie in which it has been provided. At the federal
24 level, they have what they call a 13(15) order that they
25 routinely just issue. And what the law provides, and I

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1 cited the cases and we discussed this before, is that
2 this shipper information may be provided under -- if
3 they're compelled to give it, and they were compelled to
4 give it, and we don't have that either.

5 With regard to the second set of discovery
6 that we served, what -- we have asked four questions,
7 and he went into -- Mr. Marshall went into why he didn't
8 feel that that was relevant to the interim rate case.
9 We asked whether or not -- they put on Mr. Batch, and
10 Mr. Batch has testified in the interim rate case that
11 they are losing money and in a deteriorating financial
12 situation, so we have asked why. That is, you know,
13 that is directly relevant to their case. They're the
14 ones that put their deteriorating financial position at
15 issue. We think it's an improving one. They're the
16 ones that are talking about that they're losing money.
17 They're the ones that have introduced that issue into
18 their interim rate issue. We're entitled to -- we're
19 entitled to discovery reasonably designed to show that
20 they -- that to the degree that they are in a
21 deteriorating position, it's as a result of things that
22 should not be born by the rate payers.

23 JUDGE WALLIS: Mr. Brena.

24 MR. BRENA: Yeah.

25 JUDGE WALLIS: What would you like the

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1 Commission to do? And before you respond, I would like
2 to repeat comments that I have made before that the
3 Commission does have limited flexibility in scheduling.
4 The Commission heard all parties early on say that all
5 parties wanted a swift resolution of the interim
6 proceeding, and the Commission is still anxious to
7 provide an expedited process to resolve these issues, as
8 the parties have requested, while preserving fundamental
9 fairness in the process doing so.

10 So given that background, given our limited
11 flexibility, given the measures that are available to
12 the Commission for enforcement of discovery, for review
13 of discovery requests, what is it that you would like at
14 this juncture? We also recognize that all parties
15 acknowledge that Olympic has not concluded its responses
16 at this point.

17 MR. BRENA: I am interpreting Your Honor's
18 question to be in general rather than an answer by topic
19 or information or interrogatory.

20 JUDGE WALLIS: I'm asking you to address the
21 process that you would like the Commission to follow in
22 resolving matters involving the interim request from
23 this point forward.

24 MR. BRENA: Well, first let me say generally.
25 I would like an opportunity to meaningfully participate

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1 in the interim rate case. I would like an opportunity
2 to respond to the case that they have put forward that
3 they're in a deteriorating financial position and that
4 because of the way they have chosen to fund this company
5 that their capital budget for 2002 is somehow at risk.

6 So that being said, what I would like first
7 is I would like a date set for when they're going to
8 respond to the discovery. I would like for them to
9 comply with the motion to compel and the order to
10 compel. I would like them to give the information that
11 we went through, and I would like them to provide that
12 information to us. That information was asked for
13 almost three weeks ago, and we explained why it was
14 important over a week ago, two weeks ago in the motion
15 to compel. We still don't have it, and it doesn't look
16 like we're going to get it. I would like for this
17 Commission to either allow us the discovery, I would
18 like them to allow us the discovery that we have asked
19 for so that we can meet their interim case. So I would
20 like a date set.

21 If they're saying by 4:00 today they feel
22 that they're going to be done with responses, then as
23 soon as possible I would like an opportunity to go
24 through these responses and bring them back and be as
25 specific as I can about what information I need that

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1 they haven't provided. And that could be -- that could
2 be Monday. I mean that as -- that could be just as soon
3 as possible, as soon as it fits within your schedule.
4 Then I would like after -- after -- and Your Honor can
5 decide whether or not they complied with the motion to
6 compel based on the arguments. If not, force them to
7 disclose it.

8 After the point when we have responsive
9 discovery, then I would like a minimum of one week to
10 prepare my case. These are discovery requests, like I
11 said, that I served over three weeks ago. And in the
12 original schedule, they agreed to a three day good faith
13 effort. They haven't complied with that. And in that
14 original schedule, I had 15 days after responsive
15 discovery to put together my case. I would like a
16 minimum of one week to put together my case after I get
17 responsive discovery, and that discovery goes to their
18 losses that they put at issue, their deteriorating
19 financial position, which is a position they're stating,
20 and matters relating to the way that they have chosen to
21 fund this company, and whether or not, in fact, there's
22 any risk to the 2002 capital budget.

23 MR. FINKLEA: Your Honor, Tosco joins Tesoro.

24 JUDGE WALLIS: Let me ask at this juncture
25 what -- Chairwoman Showalter.

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1 CHAIRWOMAN SHOWALTER: Mr. Brena, I have a
2 question because I'm not sure I understood you. On the
3 information that you wanted by shipper, do you need the
4 shipper identified as to name, or is it sufficient for
5 you to get the information by shipper, like by shipper
6 number 1, shipper number 2, shipper number 3?

7 MR. BRENA: I would like it by name, Your
8 Honor.

9 CHAIRWOMAN SHOWALTER: And what is your
10 reason for that?

11 MR. BRENA: Because then we can put on a case
12 to show exactly who is impacted to what degree based on
13 their interim rate request. And there is -- there is no
14 issue with regard to this Commission's ability to compel
15 that information legally, and we want to be able to
16 assess the system and their claims and also determine
17 not just the impact on their shippers, but we're also
18 looking at for the interim rate issue the degree to
19 which it's an affiliate versus a non-affiliate rate
20 impact.

21 CHAIRWOMAN SHOWALTER: And my other question,
22 in the other proceedings that you have been in where
23 this information has been routinely provided, is the
24 information still in those proceedings confidential?
25 That is --

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1 MR. BRENA: Yes. The disclosure of this
2 information, this is a docket in which there is a
3 protective order in place, and --

4 CHAIRWOMAN SHOWALTER: Well, that doesn't,
5 unfortunately, that does not mean the information is
6 confidential, and that's what I'm getting at; that's why
7 I want to know a little bit more about this issue.
8 Because we can not guarantee the confidentiality of
9 information that comes to us in this proceeding. That
10 is it can be declared confidential for purposes of this
11 proceeding, but it doesn't mean that if somebody asks
12 for the information it can be kept confidential. In
13 fact, it most very probably is not confidential. And so
14 we do need to weigh the effect of that information
15 becoming public information against I think your need to
16 have the information identified by the name of the
17 shipper as opposed to just, you know, a shipper number 1
18 and number 2, and that's why I'm asking the question.

19 MR. MARSHALL: Yes, Your Honor, that was our
20 concern too, because of the lack of the ability to keep
21 the information confidential from third parties, which
22 is unusual, I believe, for administrative agencies that
23 would seek otherwise to compel this. That was why we
24 suggested that we redact the names. And insofar as
25 Tosco and Tesoro wish to talk about the impacts to them

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1 of whatever the rate increase is, it's \$9 Million a year
2 for all shippers, which is not -- the impact is not, I
3 guarantee, going to be that bad for a \$5 Billion a year
4 company, but if they want to show the impact on Tosco
5 and Tesoro, they can waive that as to themselves.

6 CHAIRWOMAN SHOWALTER: You can't see what's
7 happening here, but Judge Wallis has reminded me, which
8 is quite correct, that so long as whatever this
9 information is doesn't actually come into this
10 proceeding, it may not be a public document. But it is
11 the case that if it's any information that we ultimately
12 need to see, we don't have that ability under the title
13 we're in to assert the confidentiality.

14 MR. BRENA: Chairperson Showalter.

15 CHAIRWOMAN SHOWALTER: Yes.

16 MR. BRENA: This is Robin Brena, a couple of
17 observations. The first observation is the sensitivity
18 with regard to shipper information is a shipper
19 sensitivity, not a pipeline sensitivity. So to the
20 degree that -- I mean Tesoro realizes that it's putting
21 its throughput information potentially into the public
22 record, as does Tosco, who has joined in this request.
23 Potentially if there is a public documents request,
24 there is a way that at some point that it may be -- that
25 it may be exposed to the public, that they may have

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1 public access to it. With regard to Olympic Pipeline,
2 Olympic Pipeline's concern is that it comply with the
3 appropriate law, and in the last pre-hearing conference,
4 the Administrative Law Judge ordered them to provide it
5 by shipper name.

6 So first, we share -- this is -- Tesoro and
7 Tosco are the two people in the hearing room today who
8 have the most sensitivity to this issue, but we think
9 that it's worth the risk of doing it, because then we
10 can truly assess this system, the impacts of the interim
11 rates on all shippers. We can look at affiliate versus
12 non-affiliated use of this line on an interim basis. We
13 can look at their deteriorating financial position on an
14 integrated company basis if we choose. So, you know, we
15 think that it's information that's helpful.

16 With regard to the competitive sensitivity of
17 this information, everybody on this line overnominates.
18 Everybody gets as much usage as they can. There is more
19 demand on this line than there is supply, so it's not --
20 it's not the kind of thing where someone can go out and
21 gain some competitive advantage the next day, because
22 everybody overnominates for all movement. So in terms
23 of its competitive impact, it will be historic
24 information, and there's not a lot that can change the
25 information even once it's out there.

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1 And then just a practical observation, in my
2 experience in these kinds of information, everybody
3 starts out not wanting the public to know anything. And
4 then when it comes time and the Commission has put
5 pressure on the parties to put forward a record that can
6 be a public record that can justify the decisions that
7 they have made, then the parties usually find a way to
8 allow much of this information into the public record.
9 And in general, that is the way that Tesoro prefers for
10 this to all happen. It prefers for the public to have
11 access to the information if it does come in to the
12 degree that it doesn't actually result in competitive
13 harm.

14 So we would like the information. We would
15 like them to comply with the Administrative Law Judge's
16 motion to compel in the fashion that we asked for it by
17 shipper and by movement and destination point and rate.
18 It allows us a complete picture of this pipeline.

19 MR. MARSHALL: We have already received one
20 protest from a shipper that does not want this material
21 to be -- this confidential material to be disclosed.
22 That's what gave rise to our suggestion. I think it
23 still holds that this is - if Tosco and Tesoro want to
24 talk about the impacts to them, we don't have to redact
25 their names. They're one of a number of shippers.

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1 There are not 70 shippers on any given day, and over
2 time, there are probably 29 active shippers. There are
3 just two that have protested these rates. And Mr. Brena
4 admits there's more demand than supply, which would tend
5 to indicate that prices are too low to encourage the
6 increase of supply or decrease in demand for this
7 pipeline. I don't agree with Mr. Brena that --

8 JUDGE WALLIS: Mr. Marshall --

9 MR. MARSHALL: -- this is not competitive
10 information. It is competitive information.

11 JUDGE WALLIS: Mr. Marshall, again, I
12 appreciate your response, but I'm going to turn to
13 Mr. Trotter now and ask him to address this same
14 question that I addressed to Mr. Brena, which is, given
15 the status of this, the Commission's desire to proceed
16 responsibly but quickly, what are your suggestions as to
17 process?

18 MR. TROTTER: Well, Your Honor, I think
19 Mr. Brena's suggestion, initial suggestion about setting
20 yet another pre-hearing conference to see where we are
21 and hopefully foster some communication between the
22 pipeline and the interveners in the meantime so they can
23 talk about these precise needs and find out what the
24 deficiencies are and require them to work together
25 Monday morning say, and then Monday afternoon bring the

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1 problems to the Commission, to Your Honor. I know there
2 has been a lot of desire to maintain the hearing
3 schedule that we have for the interim case, and that I
4 see as the best way of preserving that.

5 And Mr. Brena asked for one week from
6 responsive -- receiving responsive information, and I
7 think that's reasonable. We need the same amount of
8 time, you know, to put together our case, but I think
9 the 28th is still achievable for that. So I think
10 that's a reasonable suggestion.

11 And one thing just on the shipper names,
12 there is a -- I can understand the need to know where on
13 the pipeline a certain volume is being delivered to,
14 because that affects the rate, the revenue. The longer
15 the trip, the more revenue. But it's not clear to me
16 whether that -- a compromise here might be that a
17 general location could be identified as opposed to a
18 shipper name. Having said that, maybe the location
19 itself defines the shipper. I'm not suggesting a street
20 address necessarily, but maybe a, you know, downtown
21 Seattle or something to that effect, if that is a way to
22 compromise what appears to be a log jam. But where
23 product is delivered on the line is pertinent
24 information.

25 CHAIRWOMAN SHOWALTER: Is there any kind of

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1 helpful distinction of affiliates and non-affiliates
2 where the affiliates might be identified but the
3 non-participating non-affiliates wouldn't be? Does that
4 compromise the information too much?

5 MR. TROTTER: That would be, I assume that
6 would be for Arco and Equilon to say, but that might be
7 a way to further advance the ball here.

8 MR. BRENA: Chairwoman Showalter, we would be
9 willing to give that a try to see if that would work, if
10 affiliates' and participating intervener's information
11 was indicated. One practical problem that Mr. Trotter
12 eluded to is that it depends on how far down the road
13 you go with this. You can say shipper A, but at certain
14 connections, there's only one shipper going through A.
15 There's four refineries, they have four different points
16 of accessing this. And so what we want is specific
17 information broken out by shipper. The identity of the
18 shipper as far as we're concerned, we would be willing
19 to go as long as the affiliated shippers were identified
20 and the participating shippers were identified, and then
21 the other shippers were simply designated as numbers. I
22 think that that would work.

23 JUDGE WALLIS: Mr. Marshall, now it's your
24 turn, and I would ask you to begin by responding to the
25 general question, which is what would Olympic like the

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1 Commission to do at this juncture given the
2 circumstances that we are facing?

3 MR. MARSHALL: Thank you, Your Honor. We
4 would urge the Administrative Law Judge and the
5 Commission to look at not only the supplemental
6 responses that we filed today, but all the responses and
7 the volumes and volumes of information that we have been
8 able to produce here in the last three weeks. It's been
9 a staggering amount of information. There is no doubt
10 in my mind that Tesoro and Tosco could provide a
11 response to the interim case today if they wanted to do
12 it today.

13 But we are willing to talk to Tesoro and
14 provide the few remaining out of the 75 or so requests
15 we have gotten from them and 40 from Staff. We have
16 provided an enormous amount. We're willing to talk to
17 them on Monday and see if they have anything that they
18 just can't possibly prepare their case on and then
19 adjust from there. But I think Mr. Trotter's right, we
20 ought to have that conversation Monday morning. If
21 there's a need to go back to the Administrative Law
22 Judge Monday afternoon and adjust the schedule, we can
23 talk about that.

24 A week from this information that they have
25 to have for the interim case to be provided still gives

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1 us sufficient time. The 28th is the date now set for
2 them to provide their brief on the interim case. That's
3 two weeks from today. So another week, I'm sure that we
4 will have this sorted out by Monday. If not by Monday,
5 we're sure to have it sorted out before the end of next
6 week without any question.

7 I would like to just make sure that the
8 record is clear on one key issue. If you look at the
9 supplemental responses, pages five and six alone, which
10 contain a lot of information before and after, the main
11 question about how are we going to get financing if we
12 don't get interim relief is addressed. And what we have
13 done there in that is we have identified what statements
14 were made by Olympic's assistant treasurer and Cindy
15 Hammer at the technical conference on December 4th.
16 Numerous questions were asked of Olympic by two counsel,
17 well, two counsel from Tesoro were present, three Tesoro
18 experts were present. They could ask and they did ask
19 every question that they had on how are we going to
20 obtain financing if we don't get the interim relief.
21 The answer that we have on pages five and six say this:

22 At the December 4, 2001, technical
23 conference, Mr. Fox took Olympic's prior
24 responses to UTC Question Number 12,
25 which was served weeks and weeks ago,

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1 and Tesoro's Request for Admission
2 Number 13. Mr. Fox said if Olympic is
3 not able to get adequate interim relief,
4 it is uncertain if and from whom Olympic
5 can obtain new financing for new capital
6 expenditures for 2002. Mr. Fox also
7 answered specific questions concerning
8 the conditions of the Prudential note
9 which effectively limits Olympic's
10 ability to borrow from sources other
11 than Olympic Pipeline shareholders.
12 Further Mr. Fox confirmed that one of
13 the shareholders, Equilon, has refused
14 to loan further funds to Olympic. As
15 stated in response to WUTC data
16 requests, Olympic is currently being
17 sued by Equilon regarding Equilon's \$45
18 Million note. Copies of the relevant
19 pleadings have been provided to the WUTC
20 and to interveners including Tosco.
21 Mr. Fox was questioned as to whether
22 Olympic was in default on its notes to
23 Arco, and Mr. Fox confirmed that all the
24 notes provide the best evidence of their
25 condition. It was his understanding

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1 that Olympic was in default on all notes
2 to Arco including the last one. Mr. Fox
3 was asked details about his
4 conversations and understanding as to
5 whether Arco would make any further
6 funds available under any existing or
7 future note. Mr. Fox replies that he
8 has had numerous conversations which
9 have been progressively more negative
10 due to Olympic's financial condition,
11 the regulatory uncertainties including
12 the uncertainties created by positions
13 Tesoro itself has taken at the FERC and
14 the UTC with regard to rates.

15 And then we went further about requests after
16 request for admissions, request after request on details
17 of the notes, request after request on whether we are in
18 default. All the notes have been provided, all the
19 backup, throughput and deficiency, securities, the shelf
20 notes, all of those have been provided. Income tax
21 forms have been provided. Financial statements of all
22 sorts including all the FERC Form 6's have been
23 provided. There is more information in this case in the
24 last three weeks that has been provided than information
25 in many general cases throughout the entire general

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1 case.

2 So although we could pick out some questions
3 that we haven't completely answered to the satisfaction
4 of Mr. Brena, the effort has been voluminous at the same
5 time that we have been in the middle of filing the
6 general rate case testimony at the FERC and at the WUTC.

7 So with that background, I just wanted to
8 make clear that there has been a massive effort to
9 comply with every legitimate request. Hours taken at a
10 technical conference, details of which have been
11 thoroughly explored. Then it comes down to only one
12 thing, why would anybody including Arco loan money to
13 this outfit. We can't speak on behalf of Arco. At the
14 end of the day, Mr. Fox's statement that we quoted in
15 pages five and six are about all that anybody can say at
16 this time about what Arco might or might not do with
17 response to making further money available.

18 MR. BRENA: This is Robin Brena, I would like
19 to briefly respond.

20 JUDGE WALLIS: Mr. Brena, I will say that our
21 interest at this juncture now that the parties have had
22 an opportunity to address specifics remains in the area
23 of process, and I would like you to focus on the
24 question of process, and you need not argue individual
25 items nor need you argue the ultimate issues in the

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1 proceeding.

2 MR. BRENA: Well, just a couple observations
3 then. First, Olympic did not respond to a single data
4 request by an intervener prior to the Judge ordering the
5 motion, prior to the Judge ordering them to comply.

6 MR. MARSHALL: That's not true.

7 MR. BRENA: That --

8 JUDGE WALLIS: Excuse me, I would like to
9 interject at this point and with the understanding that
10 there are some disagreements about past issues, focus on
11 where we can go productively from here at this juncture.

12 MR. BRENA: Oh, okay. Well, I think that we
13 need to go ahead and have the pre-hearing conference.
14 We need to go through these issues in detail. And to
15 me, the question is compliance with the order to compel.
16 We need to argue the second, our second data requests
17 which they have said -- which they have objected to and
18 which we haven't had an opportunity to fully argue. And
19 then I think that they need to be ordered again to
20 compel, to provide that information next week.

21 Providing that the information is responsive
22 and we get it in time, then I think that the 28th
23 becomes possible to get done. I would like to -- I
24 would like to just point out to the Commission that once
25 we get responsive discovery, we have experts that are

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1 preparing testimony in New Jersey and the D.C. area and
2 in Texas, and it takes time for us to get the
3 information to them. It takes time for us to review it.
4 We have Christmas between now and when our case is due.
5 Assuming that we get responsive discovery and that -- so
6 I'm being just as reasonable as I can be in terms -- we
7 need information about the allegations that they have
8 made, and we can't put on an interim case if they just
9 want to say they're losing money in a deteriorating
10 situation and aren't willing to provide the documents so
11 that we can meet that statement. So in terms of
12 process, I mean you can't very well ask a party to move
13 forward without responsive discovery when it's been
14 compelled. We're asking for no more and no less than
15 that, an opportunity to put on a proper case.

16 And I would like to -- I would like to point
17 out to the Commission that in these rate cases, as you
18 know, you know, we have very little information about
19 what -- about what they -- about what they know or what
20 they do, and we want the information back. We need the
21 information from them. They have to provide the
22 information to us so that we can participate
23 meaningfully in these proceedings.

24 And then I guess the final thing is, you
25 know, this distinction between interim or the general

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1 rate case is becoming lost on me for a few reasons. One
2 reason is that the discovery rule in this case has been
3 evoked. They have filed their direct case. My
4 understanding was that they would respond in three days
5 with regard to our data requests on the interim rate
6 case. We have focused all of our discovery in this on
7 their claims of deteriorating financial position and
8 their financing programs. We haven't exceeded the scope
9 of the interim case, and we're in -- but we're in a
10 situation where that was three weeks ago. Even if this
11 would have been a data request in a general rate case,
12 it would have been responded to in ten days and it would
13 have been two weeks old now.

14 So this, you know, from my perspective, you
15 will have to appreciate that the three day good faith
16 rule has, you know, it was a week before we came before
17 Your Honor and said we don't have any responses to any
18 of our data requests, would you please tell them to
19 respond, and you ordered them to respond the next day.
20 So that -- and then from there, we went to a motion to
21 compel. So all I can say is that whether you -- no
22 matter how you characterize this discovery, it ought to
23 be -- and my understanding was is a general rate case is
24 ten days and interim rate requests were three days, and
25 this is all three weeks overdue now. So I would like to

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1 -- so that's the information I need to meet their
2 interim case.

3 I don't see any way to do it any other way
4 than for us to meet early next week and go through this
5 and order them to compel very specific things, because
6 we're not getting it.

7 JUDGE WALLIS: Very well, let's be off the
8 record for a brief recess.

9 (Brief recess.)

10 JUDGE WALLIS: Let's be back on the record,
11 please. We think that the parties' proposal has merit.
12 We are pleased at the extent of the responses that have
13 been made to date from the standpoint that it appears
14 that by the close of the day today that there may be
15 substantial and meaningful response. We want the
16 parties, as they have agreed to do, to engage in
17 discussions about remaining elements to resolve as much
18 of those as they can.

19 I will be available to the parties at 2:30 in
20 the afternoon on Monday for a continuation of these
21 discussions, hopefully to record the resolution of the
22 differences, and if not, to address matters that still
23 remain in contention amongst them.

24 In the meantime, speaking specifically to the
25 issue of customer information, we would ask Olympic to

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1 provide the throughput information in a redacted form
2 that shows the intervening customers and the ownership
3 customers' information. Is the company able to do that?

4 MR. MARSHALL: I believe so. I will have to
5 check with Ms. Bernadette Debranski in Chicago on that,
6 and I have asked somebody in this room right now to go
7 out and make that call right now.

8 JUDGE WALLIS: Very well.

9 Is there anything further that the parties
10 would like to say today?

11 MR. BRENA: This is Robin, no, Your Honor,
12 unless you wish to take argument on the second set of
13 discovery responses or I'm happy to do that Monday at
14 2:30 after discussion.

15 JUDGE WALLIS: I do not believe that we're
16 prepared to do that at this time and would prefer that
17 the matter be deferred. If you have a specific motion
18 with regard to those, you need to provide the underlying
19 information to me as soon as possible, along with your
20 specifics supporting your request. Is that something
21 that you will be able to do?

22 MR. BRENA: Yes, certainly.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: And just so I understand, I would
25 just have a motion to compel simply stated along with

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1 the second set and the responses?

2 JUDGE WALLIS: Yes.

3 MR. BRENA: And just fax -- serve that on

4 Your Honor and then --

5 JUDGE WALLIS: That will be sufficient.

6 MR. BRENA: I'm assuming that we will have an
7 opportunity to argue the merits.

8 JUDGE WALLIS: Yes, to the extent that on
9 Monday you're not able to resolve all of these matters.

10 MR. BRENA: Okay.

11 JUDGE WALLIS: All right, I want to thank
12 everybody again, and we are in recess until Monday at
13 2:30.

14 (Hearing adjourned at 2:40 p.m.)

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