

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET TO-031973
)	
OLYMPIC PIPE LINE COMPANY,	)	ORDER 05
TESORO REFINING AND)	
MARKETING COMPANY AND	)	INITIAL ORDER GRANTING
CONOCOPHILLIPS COMPANY,	)	MOTION TO REOPEN DOCKET
	)	TO-031973, AND APPROVING AND
for an Order Approving Terms of a	)	ADOPTING SETTLEMENT
Settlement Agreement Between	)	AGREEMENT
Olympic, Tesoro, and ConocoPhillips)	
and Approving Rates Set Pursuant to)	
Said Agreement.)	
.....)	
)	
In the Matter of the Petition of	)	DOCKET TO-081785
)	
OLYMPIC PIPE LINE COMPANY,	)	ORDER 04
)	
for an Order Approving Terms of a	)	INITIAL ORDER APPROVING AND
Storage Lease Agreement with BP	)	ADOPTING SETTLEMENT
West Coast Products, LLC.	)	AGREEMENT, AND GRANTING
	)	PETITION FOR APPROVAL OF
	)	PROPERTY TRANSFER
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order grants Olympic Pipe Line Company’s motion to reopen Docket TO-031973 to consider an amendment to the Tariff Settlement Agreement,¹ approves and adopts the Amended TSA, approves and adopts the Settlement Agreement between Commission Staff and Olympic, and grants the company’s petition requesting approval of the*

¹For clarity, the TSA approved by the Commission in Docket TO-031973 on December 23, 2003, will be referred to as the 2003 TSA, and the TSA including Amendment No. 7 will be referred to as the Amended TSA.

*transfer of property intended in the Storage Lease Agreement between Olympic and BP West Coast Products, LLC.*²

SUMMARY

- 2 **NATURE OF PROCEEDING.** Docket TO-031973 involves Olympic Pipe Line Company's (Olympic's or Company's) request for approval of an amendment to the 2003 Tariff Settlement Agreement (2003 TSA) between Olympic, Tesoro Refining and Marketing Company (Tesoro), and ConocoPhillips Company (Conoco, collectively with Olympic and Tesoro, "the Parties").³ The 2003 TSA, approved by the Commission in Order 01 in this docket, established Initial Tariff Rates and provided a depreciated original cost methodology for Olympic to recover its costs from shippers.⁴ The 2003 TSA resulted only after a period of contentious litigation among the Parties in many forums.⁵
- 3 Docket TO-081785 involves a related request filed by Olympic for approval of a lease between the Company and BP West Coast Products, LLC (BPWCP) in which BPWCP would lease 85 percent of Olympic's storage capacity at the Bayview facility for a five-year term.⁶ The proceeds BPWCP will pay under the lease enables Olympic to remove that portion of the storage facility from its rate base.⁷
- 4 **PARTY REPRESENTATIVES.** Arthur W. Harrigan, Jr. and Christopher T. Wion, Danielson Harrigan Leyh & Tollefson, LLP, Seattle, Washington, represent Olympic. Robin O. Brena, Brena Bell & Clarkson, P.C., Anchorage, Alaska, represents Tesoro.⁸

²BP West Coast Products, LLC is an affiliate of Olympic. Narrative Statement, *Exhibit 10*, at 5, ¶ 12. On September 30, 2008, Olympic filed a Notice of Affiliate Transaction regarding the Lease with BPWCP. Staff and Olympic note that BPWCP is an affiliate of Olympic's minority shareholder and that Olympic's majority shareholder owns no interest in BPWCP. Further, both Staff and Olympic assert that the transaction is compensatory and does not prejudice the other shippers. Narrative Statement, *Exhibit 10*, at 6, ¶ 17. *See also, Exhibit 5.*

³*Exhibit 1*, at 3, ¶ 3.

⁴*Exhibit 7*, Attachment 1, at 8, ¶ 19.

⁵*Ibid.*, at 5, ¶ 13. *See, Docket TO-011472*, Sixteenth Supplemental Order, July 23, 2002.

⁶*Exhibit 8*, at 2, ¶ 3.

⁷On October 14, 2008, the Commission consolidated Dockets TO-031973 and TO-081785.

⁸During the course of the proceeding, no one appeared on behalf of shippers Conoco and BPWCP.

DOCKET TO-081785
ORDER 04 (consolidated)

Donald T. Trotter, Assistant Attorney General, Olympia, WA, represents the Commission's regulatory staff (Commission Staff or Staff).⁹

5 **PROCEDURAL HISTORY.** On September 30, 2008, Olympic filed its Motion to Reopen Docket TO-031973 to allow the filing of the Petition for Approval of the Amended TSA (Motion), Motion for a Protective Order, and Petition for Approval of the Amended TSA (TSA Petition), together with a copy of the Amended TSA.¹⁰ Also on September 30, 2008, Olympic filed its Petition for Approval of Transfer of Property (Lease Petition) in Docket TO-081785 requesting Commission approval of the Lease.¹¹ The Parties argue that the 2003 TSA has worked to bring rate stability to shippers and the Company for the last five years. It established a cost-based methodology for determining rates charged by Olympic to the shippers for transporting the shippers' petroleum products.¹² The Amended TSA follows the 2003 TSA very closely and remains largely unchanged, according to the Parties, with the main exception being the Bayview storage facility lease.¹³

6 The Parties had the opportunity to terminate the agreement effective December 29, 2008, with one year's notification.¹⁴ In advance of the deadline, the Parties

⁹In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

¹⁰Olympic has not filed its revised tariffs reflecting the rate changes it has proposed in the Petition and the Amended TSA. However, the Company is aware of this responsibility as the Narrative Supporting the Staff Settlement Agreement (Narrative Statement) states, "[i]n order to effectively implement the [Staff] Agreement, Olympic needs to make a tariff filing under the Amended TSA to be effective January 1, 2009." Narrative Statement, *Exhibit 10*, at 3, ¶ 8. The Narrative Statement also clarified that Olympic understands that it may seek permission for less than statutory notice in order to effectuate the rates in the timeframe stated in the Amended TSA and Staff Agreement. *Id.*, at 4, ¶ 8. *See*, *WAC 480-80-122* and *RCW 81.28.050*. Furthermore, implementation of the new rates is conditioned upon approval by the Federal Energy Regulatory Commission (FERC) of the Amended TSA by February 1, 2009. Should FERC withhold its approval until after February 1, 2009, the Amended TSA would automatically terminate. *See*, *Exhibit 2*, at 35-6, Section 4.1(b). If FERC rejects the Amended TSA outright or in part, then any Party may terminate the Amended TSA with written notice. *Id.*, at 36, Section 4.3(a).

¹¹*Exhibit 8*, at 2, ¶ 3.

¹²*Exhibit 1*, at 5, ¶ 12-13.

¹³*Id.*, at 3, ¶ 12.

¹⁴*Exhibit 1*, at 5, ¶ 15. The Commission opened Docket TO-031973 on December 2, 2003, with Olympic's Joint Petition for approval of the 2003 TSA. On December 23, 2003, the Commission granted the Joint Petition and approved the 2003 TSA. *Id.*

negotiated six prior amendments to the 2003 TSA, each of which extended the notification deadline.¹⁵ The Parties stipulated to the Amended TSA which proposes to revise the shipping rates charged by Olympic by excluding 85 percent of Olympic's Bayview storage facility from rate base, effective January 1, 2009.¹⁶

- 7 On October 6, 2008, the Commission issued Order 02 in Docket TO-031973, a Protective Order. On October 14, 2008, the Commission issued Order 03 in Docket TO-031973 and Order 01 in Docket TO-081785, consolidating the two matters for hearing purposes and setting the matters for a prehearing conference. Following the issuance of Order 03 consolidating the dockets, the Commission issued a Correction Notice to Order 02 in Docket TO-031973 to include Docket TO-081785 in the Protective Order.
- 8 Olympic filed an unredacted version of the Lease with BPWCP on October 20, 2008.
- 9 On November 7, 2008, Staff and Olympic filed a Settlement Agreement (Staff Agreement) and a Narrative Statement.¹⁷
- 10 The Commission convened a prehearing conference at its offices in Olympia, Washington, before Administrative Law Judges Marguerite E. Russell and Ann E. Rendahl on November 10, 2008. The Commission also issued a Prehearing Conference Order¹⁸ on November 10, 2008.
- 11 On November 13, 2008, the Commission convened a hearing in Olympia to examine the issues in this proceeding. Olympic and Staff offered their witnesses, Mitchell D. Jones and Layne Demas, respectively, for questioning.

MEMORANDUM

- 12 On September 30, 2008, Olympic filed an Amended TSA which purports to resolve all disputed issues between the Parties. In particular, the Amended TSA proposes to:

¹⁵*Id.*, at 3, ¶ 5.

¹⁶The Parties have explained that, if the Amended TSA is approved, Bayview will formally be removed from Olympic's rate base effective July 1, 2009. *See, Exhibit 2*, at 19, Section 2.2(f). However, Initial Tariff Rates from January 1, 2009 to June 30, 2009 will be calculated as though Bayview had already been removed from rate base. *See, Exhibit 2*, at 12, Section 1.2(c).

¹⁷The Staff Agreement, with Olympic and Commission Staff as signatories, proposes to resolve Dockets TO-031973 and TO-081785. *See Staff Agreement, Exhibit 10*, at 2, ¶ 5.

¹⁸Order 04 in Docket TO-031973 and Order 03 in TO-081785, respectively.

- Remove 85 percent of Olympic's Bayview storage facility from rate base, resulting in a tariff reduction (excluding the effect of other factors) of approximately 2.7 percent;¹⁹
- Clarify that Pass-Through Operating Expenses will include pipeline taxes recorded in the FERC Uniform System of Accounts (USOA) 610.580;²⁰
- Obligate Olympic to seek economic means to enhance throughput capacity along its pipeline from Renton, Washington to Portland, Oregon and to continue to use its best efforts to operate at 100 percent Maximum Allowable Operating Pressure;²¹
- Classify normal right-of-way maintenance expenses as Other Operating Expenses, and special right-of-way projects, such as major tree-clearing and other right-of-way work requiring permits, would continue to be treated as a Project Expense;²²
- Include in capital expense for each year the projected Additions to Carrier Property if such sums are: 1) known, measurable, and reasonably expected to occur during the calendar year; 2) normally recoverable and reasonable capital expenses that are related to providing regulated service; and 3) capital expenses that would be properly included in Accounts 101 through 186 of the USOA carrier property accounts;²³
- Reduce the termination notice period;²⁴
- Require that the Parties support the approval of the Lease and the Amended TSA;²⁵

¹⁹See, *Exhibit 1*, at 6, ¶ 19. Olympic will continue to include the following elements of Bayview within rate base: the operations building and warehouse, all furnishings, all mainline equipment, tools, spare parts, and vehicles, and the pressure relief surge tank and related fittings and equipment necessary for the tank to perform its function. *Exhibit 2*, at 18, Section 2.2(a).

²⁰*Id.* See also, *Exhibit 2*, at 21, Section 3.3(a).

²¹*Exhibit 2*, at 17, Section 2.1. In his testimony at the November 13, 2008, hearing, Olympic witness Mitchell D. Jones stated that the need for the enhanced throughput from Renton to Portland stems from the narrow pipe diameter in the last segment of pipe leading into Portland. The pipe is 14 inches in diameter in comparison with larger, and, in some instances, multiple pipes along the rest of the line, leading to bottlenecks in the Renton to Portland section. Instead of laying new, wider capacity pipes to resolve the bottleneck, which would be a very expensive approach, Mr. Jones discussed Olympic's tactic of working with the shippers on a behavior-oriented correction to the problem. *Jones*, TR 27:22-28:6.

²²*Id.*, at 22-3, Section 3.3(e).

²³*Id.*, at 28-9, Section 3.7(a).

²⁴*Exhibit 2*, at 35-6, Section 4.1(b).

²⁵*Id.*, at 19, Section 2.2(h).

DOCKET TO-081785
ORDER 04 (consolidated)

- Preserve Olympic's right to terminate the Amended TSA if the Commission or FERC approve the Amended TSA but reject the Lease;²⁶ and
- Preserve Tesoro's and Conoco's right to terminate the Amended TSA if the Commission or FERC approve the Amended TSA but reject the Lease.²⁷

13 The Parties negotiated the Amended TSA over a nine month period.²⁸ Based on five years of experience with the 2003 TSA's rate methodology, the Parties addressed the various concerns that had arisen during the lifespan of the 2003 TSA within the Amended TSA.²⁹

14 For example, the shippers had expressed reservations over the continued impact of Olympic's Bayview storage facility on rates.³⁰ In exchange for Olympic removing a large portion of the Bayview facility from rate base, Tesoro and Conoco have agreed to accommodate some of Olympic's ongoing concerns, such as the timing of the recognition of capital expenditures and clarification of the treatment of right-of-way maintenance costs and pipeline taxes.³¹

15 The Amended TSA employs a formula for determining rates, at least on an annual basis,³² and potentially on a quarterly basis,³³ using a depreciated original cost

²⁶ *Id.*, at 43, Section 4.13(a). At the November 13 hearing, Mr. Jones stated that he has had conversations with FERC officials regarding the Petitions and the Lease. Mr. Jones indicated that, when he requested that FERC staff contact him if they had any questions, the agency representative stated that the matters were noncontroversial. *Jones*, TR 25:5-10.

²⁷ *Id.*, at 43, Section 4.13(b). The Amended TSA also provides for Olympic to file annual tariff filings. *See, Id.*, at 14, Section 1.4, *et seq.* Interim tariff filings will only be made under limited circumstances. *See, Id.*, at 13, Section 1.3, *et seq.*

²⁸ *Exhibit 1*, at 3, ¶ 5.

²⁹ *Exhibit 1*, at 3 and 5, ¶¶ 5 and 16, respectively. All Parties agree that the Amended TSA resolves concerns associated with the 2003 TSA. Furthermore, the basic mechanisms of the Amended TSA echo the 2003 TSA, absent the list above at ¶ 10. *Exhibit 1*, at 8, ¶ 24 and 28.

³⁰ *Exhibit 1*, at 8, ¶ 25.

³¹ *Id.*, ¶ 26.

³² By May 30, 2009, and by May 30th of every year thereafter, Olympic will file its interstate and intrastate rates for the period beginning immediately following July 1st and ending on June 30th of the following year or on the date on which this Amended TSA expires or is terminated. The rates will be calculated using the Olympic Settlement Methodology originally employed in the 2003 TSA. *See, Exhibit 2*, at 14, Section 1.4.

³³ At the end of each calendar quarter beginning with the first calendar quarter following June 30, 2009, Olympic will calculate current throughput by aggregating the total deliveries for each of the

methodology.³⁴ The Bayview component of the calculation has been reduced by 85 percent.³⁵ The Parties maintain that, “[c]ontinuing an agreed rate-setting method for an additional five years benefits the shippers, Olympic and Olympic’s regulators through avoiding the monetary and resource costs attendant upon such disputes and proceedings.”³⁶ Furthermore, the Commission can suspend the effect of any rate change filed under the Amended TSA and set the matter for hearing if an issue arises as to the rate modification’s reasonableness.³⁷

16 The Amended TSA provides for arbitration to resolve conflicts that arise, as did the 2003 TSA.³⁸ Under the 2003 TSA, only one disagreement occurred between Olympic and the shippers, and it was resolved in arbitration.³⁹

17 Under RCW 81.12.020, a public service company is prohibited from leasing any part of its facilities which are necessary or useful in the performance of its duties to the public without having first secured Commission approved of the transaction. Olympic asserts that the Lease Petition should be granted as leasing a portion of Bayview to BPWCP allows the Company “to adjust for the economic impact of [removing that portion of Bayview from rate base].”⁴⁰ Olympic also states that it has provided notice of the Lease to all of its customers.⁴¹

18 According to Olympic, some shippers who have not used the Bayview facilities objected to paying rates based on the inclusion of the storage facilities.⁴² BPWCP, on the other hand, wishes to utilize the storage capacity at Bayview.⁴³ The two shippers

prior 12 calendar months ending with the calendar quarter for which the calculation is made. If the current throughput exceeds the base throughput (the total deliveries for the 12-month period used for the calculation of the Tariff rates then on file) by at least two percent, Olympic will make an interim tariff filing. Interim interstate and intrastate rates will then be determined by proportional adjustment of each of the tariff rates then on file. *See, Exhibit 2*, at 13, Section 1.3.

³⁴Narrative Statement, *Exhibit 10*, at 11, ¶ 30.

³⁵*Id.*

³⁶*Exhibit 1*, at 7, ¶ 23.

³⁷Narrative Statement, *Exhibit 10*, at 7, ¶ 23.

³⁸Narrative Statement, *Exhibit 10*, at 11, ¶ 30.

³⁹*Exhibit 1*, at 8, ¶ 24.

⁴⁰*Exhibit 8*, at 4, ¶ 13.

⁴¹*See, Exhibit 6.* Mr. Jones stated that one of the shippers used the facility approximately 3 times in as many years and did not object to the Lease. Another shipper who recently began using the facility more frequently ships a product that is being phased out, so the shipper reported to Olympic that the timing for its discontinuing use of Bayview was perfect. *Jones*, TR 30:18-31:2.

⁴²Narrative Statement, *Exhibit 10*, at 4, ¶ 10.

⁴³*Id.*

DOCKET TO-081785
ORDER 04 (consolidated)

who previously had used the facilities incidentally indicated to Olympic that they have no objection to the lease transaction.⁴⁴

19 During the Amended TSA negotiations, Olympic asserts that the Parties all recognized that the Lease was an important factor in achieving a mutually acceptable amendment.⁴⁵ Olympic argues that the Amended TSA is only economically feasible for the Company if the Commission also approves the Lease.⁴⁶

20 After reviewing the Amended TSA and Lease, on November 7, 2008, Commission Staff and Olympic filed a Settlement Agreement and Narrative Statement which stipulates that:

- The Amended TSA is in the public interest, and should be approved;
- The Lease meets the public interest standard in RCW 81.12, and the application in which the Lease was filed should be approved;
- Notwithstanding the Settlement Agreement, Staff and Olympic confirm that the Commission's authority to adjust Olympic's intrastate tariff rates, at a later date upon due consideration, is not restricted or limited in any way; and
- Olympic agrees that, should FERC modify the Amended TSA after the Commission enters an order in these proceedings, the Commission shall have the opportunity and the authority to consider and adopt the modifications.

21 Staff reiterates that only one shipper, BPWCP, wishes to use the Bayview facility.⁴⁷ The Lease appears to satisfy the needs and interests of both shippers, who do not want to pay for facilities they are not using, and Olympic, since the Lease rate provides adequate compensation given Olympic's prior bankruptcy.⁴⁸

22 Staff has reviewed Olympic's TSA Petition, the Amended TSA and related documents and recommends that the Commission grant the Motion, approve the Amended TSA, the Staff Agreement, and the Lease Petition.⁴⁹

⁴⁴*Id.*, at 5, ¶ 11.

⁴⁵Narrative Statement, *Exhibit 10*, at 11, ¶ 31.

⁴⁶*Id.*, at 12, ¶ 32.

⁴⁷Narrative Statement, *Exhibit 10*, at 10, ¶ 25.

⁴⁸*Id.*

⁴⁹Staff Agreement, *Exhibit 10*, at 4 and 5, ¶¶ 13-15.

- 23 Specifically, Staff argues that the Amended TSA retains the rate formula of the 2003 TSA that, “tracks through to rates the benefits of increased pipeline throughput.”⁵⁰ Staff asserts that the Amended TSA does not contain language that would purport to inhibit the Commission’s regulatory authority or “affect [Commission] Staff’s ability to recommend any particular action to the Commission regarding any tariff filing Olympic may make.”⁵¹
- 24 Staff maintains that the Amended TSA is in the public interest.⁵² Olympic has acknowledged that, should FERC make changes to the Amended TSA after the Commission enters an order in this matter, the Commission shall have the opportunity and authority to review the modifications.⁵³
- 25 Staff notes that Olympic has achieved the Commission’s original goals for the Company, set down in the December 23, 2003, Order, including that the Company:
- Obtain the monies necessary to reorganize Olympic’s business debts;⁵⁴
 - Emerge from bankruptcy;
 - Return to normal throughput;
 - Return the Bayview facility to service; and
 - Complete projects necessary to ensure a safe pipeline.⁵⁵
- 26 **DISCUSSION AND DECISION.** The Commission must first consider the Parties’ request to reopen Docket TO-031973, the docket under which the Commission originally approved Olympic’s 2003 TSA, to evaluate the Amended TSA.⁵⁶ The 2003 TSA and the Amended TSA are interrelated documents with the Amended TSA mirroring in large part the 2003 TSA. Reopening Docket TO-031973 to address the Amended TSA would serve to promote administrative efficiency by avoiding the

⁵⁰Narrative Statement, *Exhibit 10*, at 8, ¶ 24 (citing to the December 23, 2003, Order, at ¶ 10).

⁵¹Staff Agreement, *Exhibit 10*, at 4, ¶ 12.

⁵²*Id.*, ¶ 13.

⁵³*Id.*, at 5, ¶ 19.

⁵⁴The Commission questioned Mr. Jones at hearing regarding the financial health of Olympic. Mr. Jones responded that, “[t]he financial state of Olympic is much better than it was five years ago. With the lease that we have in place, we feel comfortable that it’s a non-issue.” *Jones*, TR 32:5-8.

⁵⁵Narrative Statement, *Exhibit 10*, at 9, ¶ 24.

creation of an additional and unnecessary ancillary docket. Historically, Olympic does not file tariff revisions with great frequency, and keeping the evaluation of the Company's proposed revisions within one docket would serve to minimize any potential confusion generated by multiple dockets. Furthermore, none of the Parties to the consolidated dockets have voiced opposition to Olympic's request. The Commission finds that Olympic's Motion to reopen Docket TO-031973 is in the public interest and should be granted.

- 27 The Parties represent that the Amended TSA and Staff Settlement resolve the remaining issues in these dockets relating to the Lease and the proposed revisions to the 2003 TSA. The Commission has noted previously that full settlement by disputing parties can conserve valuable party and Commission resources that would otherwise be devoted to litigating and analyzing Olympic's pipeline rates and storage lease requests.
- 28 The Commission "may accept the proposed settlement, with or without conditions, or may reject it."⁵⁷ The Commission must "determine whether a proposed settlement meets all pertinent legal and policy standards."⁵⁸ The Commission may approve settlements "when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the [C]ommission."⁵⁹
- 29 The Amended TSA and Lease are interdependent upon one another and will be examined together. If approved, the Amended TSA and Lease will provide Conoco and Tesoro with lower rates as well as the stability of an agreed rate setting methodology for a five-year time period. The Amended TSA and Lease also offer Olympic adequate revenue to operate with financial security, and give BPWCP needed storage capacity. Should any disputes arise among the Parties, they have agreed to use arbitration, a process with a proven track record for resolving disputes relating to the 2003 TSA; thus alleviating needless acrimony, litigation, and expense.

⁵⁶While WAC 480-07-830 addresses motions to reopen the *record* prior to entry of a final order, the Parties in this proceeding are requesting that the *docket*, not the record, be reopened. Therefore, WAC 480-07-830 is not applicable to the instant matter.

⁵⁷ WAC 480-07-750(2).

⁵⁸ WAC 480-07-740.

⁵⁹ WAC 480-07-750(1).

DOCKET TO-081785
ORDER 04 (consolidated)

- 30 The Amended TSA, like the 2003 TSA before it, will provide a framework for consistent rate regulation because it permits Olympic's rates to be readily adjusted, both on an annual or quarterly basis, as Olympic's throughput, investment, and operating costs vary.
- 31 With regard to the proposed lease transaction between Olympic and BPWCP, the Commission's regulations provide that a public service company is prohibited from leasing any part of its facilities which are necessary or useful to the performance of its duties to the public without having first secured Commission approved of the transaction.⁶⁰ The Commission has examined the confidential lease agreement and finds its terms to be in the public interest.
- 32 As the Staff Agreement indicates, nothing contained within the Amended TSA, Lease, or the Staff Agreement limits the Commission's regulatory authority⁶¹ or Staff's ability to make recommendations to the Commission regarding any of Olympic's tariff filings.⁶²
- 33 The record shows the Amended TSA and Staff Settlement terms are well supported by the evidence.
- 34 Pursuant to WAC 480-07-375, the Commission concludes that granting the Motion is reasonable and in the public interest and that Docket TO-031973 should be reopened. Consistent with WAC 480-07-750, the Commission concludes that approval and adoption of the Amended TSA and Staff Agreement is in the public interest; that the Amended TSA and Staff Agreement are supported by an appropriate record; and that approving the Amended TSA and Staff Agreement is lawful.
- 35 The Commission concludes that the lease of Olympic's Bayview storage facility by BPWCP is consistent with the public interest and will benefit all parties involved.
- 36 Based on the foregoing, the Commission concludes that it should grant the Motion, approve and adopt the Amended TSA and Staff Agreement, and approve the Lease Petition authorizing Olympic and BPWCP to fulfill the provisions of the Lease.

⁶⁰ RCW 81.12.020.

⁶¹ *Exhibit 2*, at 40, Section 4.5(d) and *see also*, Staff Agreement, *Exhibit 10*, at 6, ¶ 20.

⁶² Staff Agreement, *Exhibit 10*, at 4, ¶ 12.

FINDINGS OF FACT

37 Having discussed above in detail the evidence received in this proceeding concerning
all material matters, and having stated findings and conclusions upon issues in dispute
among the parties and the reasons therefore, the Commission now makes and enters
the following summary of those facts, incorporating by reference pertinent portions of
the preceding detailed findings:

- 38 (1) The Washington Utilities and Transportation Commission is an agency of the
State of Washington, vested by statute with authority to regulate rates, rules,
regulations, practices, and accounts of public service companies, including
petroleum pipeline companies. *RCW 80.01.040; RCW 81.04.010; RCW 81.28
and RCW 81.88.*
- 39 (2) Olympic Pipe Line Company is a pipeline company and a public service
company subject to Commission jurisdiction.
- 40 (3) On September 30, 2008, Olympic filed its Petition for approval of Amendment
No. 7 to the Tariff Settlement Agreement of 2003, a Motion for a Protective
Order, a Motion to Reopen Docket TO-031973, and Petition for Approval of
Transfer of Property, which is a lease agreement between Olympic and BP
West Coast Products, LLC.
- 41 (4) Amendment No. 7 to the Tariff Settlement Agreement of 2003 (Amended
TSA) varies only slightly from the previously approved Tariff Settlement
Agreement of 2003, with the main difference being the removal of 85 percent
of Olympic's Bayview storage facility from rate base and the timing of the
recognition of capital expenditures and clarification of the treatment of right-
of-way maintenance costs and pipeline taxes.
- 42 (5) The Storage Lease Agreement between Olympic and BP West Coast Products,
LLC (BPWCP), would lease 85 percent of the storage capacity at the Bayview
storage facility to BPWCP, which would enable Olympic to remove that
portion of the storage facility from rate base and reduce rates to all shippers.
- 43 (6) On November 7, 2008, Staff filed a Settlement Agreement (Staff Agreement)
and a Narrative Supporting the Settlement Agreement.

CONCLUSIONS OF LAW

- 44 Having discussed above all matters material to this decision, and having stated
detailed findings, conclusions, and the reasons therefore, the Commission now makes
the following summary conclusions of law, incorporating by reference pertinent
portions of the preceding detailed conclusions:
- 45 (1) The Commission has jurisdiction over the subject matter of, and parties to,
these proceedings. *Title 81 RCW.*
- 46 (2) Olympic's Motion to Reopen the proceeding in Docket TO-031973 is in the
public interest and should be granted.
- 47 (3) The Commission will approve settlement agreements when doing so is lawful,
when the settlement terms are supported by an appropriate record, and when
the result is consistent with the public interest in light of all the information
available to the Commission. *WAC 480-07-750(1).*
- 48 (4) The Amended TSA, attached to this Order as Appendix A and incorporated by
reference as if set forth here, is lawful, supported by an appropriate record, and
in the public interest.
- 49 (5) The Staff Settlement, attached to this Order as Appendix B, and incorporated
by reference as if set forth here, is lawful, supported by an appropriate record,
and in the public interest.
- 50 (6) The Lease Petition, which requests approval of the lease of 85 percent of the
Bayview storage facility by BPWCP from Olympic, is in the public interest.
- 51 (7) The Amended TSA, Staff Agreement, and the Lease Petition should be
approved by the Commission as a reasonable resolution of the issues
presented.
- 52 (8) Olympic should be authorized to lease 85 percent of the storage capacity at its
Bayview facility to BPWCP in exchange for adequate compensation from
BPWCP pursuant to RCW 81.12.020.

- 53 (9) The Commission should retain jurisdiction over the subject matters and the parties to these proceedings to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 54 (1) Olympic Pipe Line Company's Motion to Reopen Docket TO-031973 to Allow the Filing of the Petition for Approval of Amendment No. 7 to the Tariff Settlement Agreement of 2003 is granted.
- 55 (2) Olympic Pipe Line Company's Petition for Approval of Amendment No. 7 to the Tariff Settlement Agreement of 2003 is granted.
- 56 (3) Amendment No. 7 to the Tariff Settlement Agreement of 2003, attached to this Order as Appendix A, and incorporated by reference as if set forth in full here, is approved and adopted.
- 57 (4) Olympic Pipe Line Company and Commission Staff's Settlement Agreement, attached to this Order as Appendix B, and incorporated by reference as if set forth in full here, is approved and adopted.
- 58 (5) Olympic Pipe Line Company's Petition for Approval of Transfer of Property is granted and Olympic and BP West Coast Products, LLC are authorized to carry out the provisions of the Storage Lease Agreement.

DATED at Olympia, Washington, and effective December 4, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. RUSSELL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **5** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250