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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Request of OLYMPIC PIPE LINE COMPANY For a General Rate Decrease, Pursuant to the Terms of an Earlier Approved Settlement Agreement in Docket TO-031973	Docket No. TO-040992 PETITION OF OLYMPIC PIPE LINE COMPANY PURSUANT TO DECISION OF ARBITRATOR

IDENTITY OF PETITIONER

1. Olympic Pipe Line Company ("Olympic") is a petroleum products pipeline company, currently in bankruptcy, offering intrastate and interstate transportation services in Washington. Olympic is subject to regulation by the Washington Utilities and Transportation Commission ("Commission") under Title 81 RCW, including Chapters 81.28 RCW and 81.88 RCW. In accordance with WAC 480-09-420(3), Petitioner's name and address is shown below. Please direct all correspondence related to this Petition as follows:

Olympic Pipe Line Company

Bobby Talley, President
2201 Lind Avenue, Suite 270
Renton, WA 98057-1800
Telephone: (425) 235-7736
Facsimile: (425) 981-2525

Mitchell D. Jones
Manager – Tariff & Regulatory Affairs
BP Pipelines (North America) Inc.
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Warrenville, IL 60555
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Arthur W. Harrigan, Jr.
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karlo@dhlt.com

RELEVANT STATUTES AND REGULATIONS

2. This Petition is based upon, or may bring into issue, the following statutes and rules: RCW 81.04.130, RCW 81.04.250, RCW 81.28.010, RCW 81.28.050, WAC 480-09-200, WAC 480-09-230, WAC 480-09-330, WAC 480-09-420, WAC 480-09-460, and WAC 480-09-466.

RELIEF REQUESTED

3. The Petitioner respectfully petitions the Commission for an order implementing an arbitration decision resolving a dispute between Olympic and one of its shippers, Tesoro Refining and Marketing Company ("Tesoro"), by (a) dismissing the June 30, 2004 Complaint and Order Suspending WUTC Tariff No. 26 in Docket No. TO-040992, (b) granting revised (decreased) rates as set forth in Exhibit A hereto to become effective on November 1, 2004, and (c) granting refunds with respect to rates collected from July 1, 2004 through the effective date of the revised rates.

BACKGROUND FACTS

4. In December 2003, in Docket No. TO-031973, the Commission issued an order accepting a five-year Settlement Agreement ("Settlement") between Olympic, Tesoro, and another shipper, ConocoPhillips Company. The Commission found that the Settlement was in the public interest and ordered the Initial Rates stated in the Settlement to go into effect on January 1, 2004. The Settlement was also approved by the FERC and by the United States Bankruptcy Court, Western District of Washington.

5. Among other provisions, the Settlement provided for annual rate filings to become effective on July 1st of each year and to be made according to the procedures and formulas set forth in the Settlement.

6. The parties to the Settlement agreed to resolve any disputes concerning the annual rate filings through negotiation and arbitration, though nothing in the Agreement limited the regulatory jurisdiction of the WUTC in any regard.

7. On May 28, 2004, Olympic filed its first annual rate filing under the Settlement seeking a general rate increase of $3,796,000 (18.59%) annually on Washington intrastate traffic proposed to become effective July 1, 2004. The filing was new WUTC Tariff No. 26, and assigned Docket No. TO-040992. An identical, concurrent filing also was made with the FERC for interstate shipments terminating in Portland, Oregon.

8. On June 1, 2004, Olympic informed the Commission that Tesoro objected to its 2004 annual filings (both at the WUTC and at FERC), and the dispute resolution process called for in the Settlement was therefore in effect. Olympic asked the Commission to allow the proposed rates in WUTC Tariff No. 26 to go into effect, subject

to refund, and to permit the dispute resolution process in the Settlement to run its course. In a letter dated June 25, 2004, Olympic told the Commission that if the arbitrator determined that its rates were to be lower than those currently on file, Olympic would promptly file such reduced rates and ask the Commission for authority to make the appropriate refunds.

9. On June 30, 2004, the Commission signed a Complaint and Order that suspended the tariff provisions filed by Olympic on May 28, 2004, and allowed Olympic's proposed $3,796,000 (18.59%) rate increase in Tariff No. 26 to become effective July 1, 2004, subject to refund. The Commission retained jurisdiction over the matter.

10. Tesoro presented its objections to Olympic's rate filing in a three-day arbitration proceeding. The parties agreed that the Settlement provided the rules for Olympic's annual tariff calculation, but they disagreed about the meaning of the Settlement's provisions. The arbitrator rendered a written decision, a copy of which is attached as Exhibit B hereto. Briefly, the arbitrator interpreted the Settlement Agreement to require two changes to Olympic's rate calculation: (a) Olympic was not entitled to any Net Carryover relating to calendar year 2003; and (b) Olympic was required to use prior calendar year data as its estimate for future tariff year revenues and expenses.

11. Olympic has revised its tariffs in accordance with the arbitrator's ruling. Instead of increasing by 18.59% starting July 1, 2004, Olympic's rates remain essentially unchanged (+0.13%) from the Initial Rates that went into effect on January 1, 2004. Consequently, Olympic must refund a portion of the rates it has collected since July 1. Olympic's refunds for shipments during the period July 1 through September 30, 2004,

will be paid by November 1, 2004, with interest at the "Net Carryover Interest Rate" set forth in the Settlement Agreement. Olympic's refunds for shipments from October 1, 2004, to October 31, 2004 (should this Petition be approved) will be paid with interest on or before November 20, 2004.

12. In accordance with the Complaint and Order, Olympic has promptly filed this Petition seeking the Commission's approval to file reduced rates and make refunds.

13. While the parties have agreed to be bound, as between themselves, by the outcome of their arbitration, their Settlement does not affect the authority of the Commission to review any resulting tariff filing. Thus, Olympic is asking the Commission to implement the arbitrator's decision and approved the revised rates and refunds.

ARGUMENT IN FAVOR OF RELIEF

14. The Commission has already found that the parties' Settlement is fair, reasonable, and in the public interest. It provides a framework for stable and consistent rate regulation of Olympic by allowing Olympic's rates to be readily adjusted as Olympic's throughput increases, as Olympic's investment increases, or as Olympic's project and operating costs vary.

15. The public interest will be served by implementing the arbitrator's decision. That decision clarifies the Settlement and resolves outstanding disputes between the parties to the arbitration as to the proper implementation of the Settlement.

16. By copy of this Petition, the arbitrator's decision will be provided to all of Olympic's shippers.

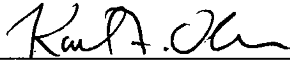
PRAYER FOR RELIEF

17. Olympic respectfully requests that the Commission issue an order implementing the arbitrator's decision resolving the dispute between Olympic and Tesoro by (a) dismissing its Complaint and Order dated June 30, 2004, (b) granting revised (decreased) rates as set forth in Exhibit A hereto to become effective on November 1, 2004, and (c) granting refunds with respect to rates collected from July 1, 2004 to the effective date of the Commission's order.

DATED this 20th day of October, 2004.

Respectfully submitted,

OLYMPIC PIPE LINE COMPANY



Arthur W. Harrigan, Jr.
Karl F. Oles
Michael Hemphill
Danielson Harrigan Leyh & Tollefson LLP

VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Mitchell D. Jones, being first duly sworn, on oath deposes and says:

That he is the legal representative of Olympic Pipe Line Company, that he has read the foregoing Petition of Olympic Pipe Line Company Pursuant to Decision of Arbitrator, that he knows the contents thereof, and that he believes the same to be true to the best of his knowledge and belief.

Mitchell D. Jones

SUBSCRIBED AND SWORN to before me this 20th day of October, 2004.

Lisa Krenz
Print Name: Lisa Krenz
Notary Public in and for the State of Illinois,
Residing at DuPage County, Illinois
My Commission Expires: 7/12/2005

OFFICIAL SEAL
LISA KRENZ
Notary Public - State of Illinois
My Commission Expires Jul 12, 2005

EXHIBIT A

WUTC No. 27
(Cancels WUTC No. 26 and all supplements thereto)

OLYMPIC PIPE LINE COMPANY

LOCAL TARIFF

APPLYING ON THE TRANSPORTATION OF

PETROLEUM PRODUCTS

FROM
POINTS IN WASHINGTON

TO
POINTS IN WASHINGTON

The rates published in this tariff are for the Intrastate transportation of PETROLEUM PRODUCTS through the pipelines of Olympic Pipe Line Company and are subject to the rules and regulations contained in WUTC No. 17, supplements thereto or successive reissues thereof.

Note: This Tariff filing is made in accordance with the Olympic Settlement Agreement approved by the Commission on December, 23, 2003 in Docket No. TO-031973.

ISSUED: EFFECTIVE:

Issued by:
Bobby Talley, President
OLYMPIC PIPE LINE COMPANY
2201 Lind Ave. , Suite 270
Renton, WA 98055

Compiled by:
Mitch D. Jones
Manager, Tariff & Regulatory Affairs
BP Pipelines (North America) Inc.
28100 Torch Parkway
Warrenville, Illinois 60555
(630) 836-3446
Fax(630) 836-3580

(Rates in cents per barrel of 42 United States Gallons each)

[ID] All rates, fares or charges in this issue have been decreased.

ROUTE No.	DESTINATION POINTS IN WASHINGTON	ORIGIN POINTS IN WASHINGTON	RATE
01	Bayview Terminal, or Fredonia Delivery Facility, Skagit County	Anacortes, Skagit County	10.69
02		Ferndale, Whatcom County	16.39
03		Cherry Point, Whatcom County	17.64

ROUTE No.	DESTINATION POINTS IN WASHINGTON	ORIGIN POINTS IN WASHINGTON	Fungible Shipments Not Requiring Batching	Non-Fungible Shipments Requiring Batching
04	Seattle, King County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	28.62 34.31 35.57	32.77 38.48 39.72
05	Sea-Tac International Airport, King County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	29.31 35.02 36.26	33.48 39.17 40.41
06	Renton, King County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	26.40 32.08 33.33	30.55 36.26 37.51
07	Tacoma, Pierce County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	32.08 37.79 39.03	36.26 41.95 43.20
08	Spanaway, Pierce County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	32.92 38.61 39.86	37.09 42.79 44.04
09	Olympia, Thurston County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	41.40 47.08 48.34	45.57 51.26 52.50
10	Vancouver, Clark County	Anacortes, Skagit County Ferndale, Whatcom County Cherry Point, Whatcom County	60.97 66.68 67.92	65.15 70.85 72.10

EXPLANATION OF REFERENCE MARKS:

[D] Decrease

EXHIBIT B

Tesoro Refining and Marketing Company

v.

Olympic Pipe Line Company

ARBITRATOR'S DECISION

October 1, 2004

Appearances: Robin O. Brena, David W. Wensel on behalf of Tesoro Refining and Marketing Company; Karl F. Oles and Michael M.K. Hemphill on behalf of Olympic Pipe Line Company

Before Jon G. Lotis: Arbitrator

Summary

This arbitration concerns the proper interpretation of the Settlement Agreement dated November 7, 2003, between Tesoro Refining and Marketing Company ("Tesoro") and Olympic Pipe Line Company ("Olympic").[1] The dispute arises from Olympic's first annual rate filing under the Settlement Agreement covering the period July 1, 2004 through June 30, 2005.

Tesoro raises two challenges to Olympic's filing that are the subject of this arbitration. It argues that the Settlement Agreement (1) does not allow Olympic to use the Net Carryover provision (Section 3.12) to recover additional revenues from periods prior to the effective date of the Agreement and (2) requires the 2004 annual filing to be based upon actual costs for 2003 as reported in the Uniform System of Accounts (USOA).[2]

An arbitration hearing was held September 13, 14 and 15 in Seattle, Washington. Olympic and Tesoro presented witnesses and accompanying exhibits to support their respective positions.

Upon review and consideration of the evidence and arguments presented, the Arbitrator finds that (1) the Settlement Agreement does not allow Olympic to use the Net Carryover provision to recover additional revenues from periods prior to the effective date of the Agreement and (2) actual calendar year 2003 data as reported in the USOA should be used by Olympic in the calculation of its 2004 annual filing.

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[1] Conoco Phillips Company is also a signatory to the settlement, but it is not a party to this arbitration.
[2] Tesoro's Notice of Dispute (May 19, 2004).

Legal Standard

As in the case of contract interpretation, the focus of this inquiry centers on the parties' intent at the time they entered into the Settlement Agreement. That intent is best evidenced by the words chosen by the parties in the Agreement to memorialize their intent. It is well settled law that in interpreting an agreement, the agreement must be read as a whole, giving effect and meaning to each of its provisions. Extrinsic evidence may be of assistance in confirming and shedding further light on that intent, but it may not be used to change or vary the terms of the parties' written agreement.

Background

The following background provides context to the issues and arguments raised in this dispute.

In October 2001, Olympic filed a tariff with the Washington Utilities And Transportation Commission ("WUTC") in Docket No. TO-11472 seeking a 62% rate increase. The WUTC entered an order dated January 31, 2002, in which it authorized an interim rate increase of 24.3%, subject to refund. By order dated September 27, 2002, the WUTC granted Olympic a rate increase of $367,643.00 or 2.52% and directed that refunds with interest be made of the excess collections by means of a discount over a two-year period.[3] The rates set by the WUTC's September 27, 2002 order remained in effect through December 31, 2003.

By order dated December 23, 2003, in Docket No. TO-031973, the WUTC approved the Settlement Agreement that is the subject of the current dispute. Under the terms of that Agreement, the new settlement rates applicable WUTC's regulated sales took effect January 1, 2004.

In July 2001, Olympic filed a 62% increase in its Federal Energy Regulatory Commission (FERC) tariff rates. In November 2002, the FERC affirmed the Presiding Judge's initial decision rejecting that rate increase and ordered refunds with interest of all revenues collected.[4] In March 2003, Olympic filed for a 54.46% increase in its FERC tariff rates. In April 2003, the FERC suspended those tariff rates and allowed them to become effective May 1, 2003, subject to investigation and refund.[5]

By letter order issued December 29, 2003, the FERC also approved the Settlement Agreement that is the subject of the current dispute. And, pursuant to that Agreement, the new settlement rates applicable to FERC regulated sales took effect January 1, 2004.

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[3] The foregoing account is taken from the WUTC's September 27, 2002 order, WUTC v. Olympic Pipe Line Co., Docket No. TO-011472, Twentieth Supplemental Order.
[4] Olympic Pipe Line, 101 FERC ¶ 61,245 (2002).
[5] Olympic Pipe Line, 103 FERC ¶ 61,101 (2003).

On March 27, 2003, while the FERC proceeding was pending, Olympic filed for reorganization under Chapter 11 of the United States Bankruptcy Code in the Western District of Washington. After that filing, Olympic ceased making the refund payments that had been ordered by the WUTC and the FERC.

The First Annual Filing Under the Settlement

Section 1.4 of the Agreement requires Olympic to make annual rate filings for the five-year term of the Agreement. The filings are to be made by May 30 of each year (after 2003) for intrastate and interstate rates to be effective July 1 of each year through June 30 of the following year. The prescription for calculating those rates is set forth in the Settlement Agreement. By letters dated May 27, 2004, Olympic made the first of such filings with the FERC and the WUTC.

In advance of those filings, on March 30, Olympic provided Tesoro with the backup information used to calculate the rates as required by Sec. 1.5 (a). By letter dated May 19, Tesoro took issue with Olympic's Net Carryover calculation and its failure to use actual calendar year information. That same letter invoked the dispute resolution processes of the settlement, Section 4.5.[6]

Position of the Parties- The Numbers

Olympic calculated its revenue requirements (including Net Carryover) to be $60,280,000 for this first annual tariff period July 1, 2004 – June 30, 2005. This number was based on a 14-month period consisting of actual costs for the 8-month period May – December 2003, and estimates for the 6-month period January – June 2004. As part of the $60,280,000 revenue requirement, Olympic included a Net Carryover of $5,180,000. Olympic's calculation results in an increase of 18.59%, or approximately $9.3 million, over its initial tariff rates that became effective January 1, 2004, under the Settlement.

Tesoro calculated Olympic's revenue requirements to be $ 51,321,000 for the July 1, 2004 – June 30, 2005 period. Tesoro's used actual calendar year costs for the year 2003 with no Net Carryover. Tesoro's calculation results in a .8% increase, or approximately $300,000, over Olympic's January 1, 2004, initial tariff rates under the Settlement.

Discussion

(a) Actual vs. Estimates/Period Covered

The Settlement Agreement consists of text, i.e., language describing the terms and conditions of the Agreement, and attachments including a model ("Olympic Settlement Methodology" or "OSM Model") found in Exhibit 1.4 (a).

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[6] By letter dated July 14, 2004, the parties appointed the undersigned to serve as the arbitrator in this dispute.

With respect to annual tariff filings, Section 1.4 states, "interstate and intrastate rates shall be calculated using the Olympic Settlement Methodology ("OSM") set forth in Section 3 of this Agreement and the cost of service model in Exhibit 1.4(a)." During this proceeding, the parties also referred to Exhibit 1.4(a) as the OSM Model. This decision will do likewise.

While Section 1.4 cross references the OSM Model in Exhibit 1.4(a) as one of the means for calculating the rates to be used in the annual filings, the application of that model must be consistent with the intent of the parties as expressed in the language of the Agreement. From examination of the OSM Model (Exhibit No. 1.4(a)) it is apparent that it is not self-executing, i.e., standing alone it does not provide sufficient detail to ascertain precisely what it means or how it will be implemented. Because of the OSM Model's vagueness, the essence and meaning of what the parties intended it to convey and to portray are rooted in the language of the Settlement Agreement.

Section 3 of the Agreement describes the costs that Olympic may recover in its annual filings. More specifically, Section 3.2, titled "Total Revenue Requirements", states the "[t]otal revenues that Olympic is entitled to for a 12-month period is the sum of: Operating Expense; Depreciation Expense; Amortization of AFDUC; Return on Rate Base; Income Tax Allowance; and Net Carryover. These elements are described below."

The Arbitrator finds that in determining Total Revenue Requirements ("TRR") pursuant to Section 3.2, the Agreement is most reasonably construed to require Olympic to use actual data for the twelve month calendar year 2003, rather than the combination of actual data and estimates for the 14-month period May 2003 – June 2004. Support for this finding is found in the following provisions of the Agreement and in the Net Carryover (True Up) section of this decision.

Section 3.4 (b) states "[a]ccumulated Depreciation at the beginning of a year equals Accumulated Depreciation at the beginning of the previous year, plus Depreciation Expense for the previous year, net of Depreciation retirements and other adjustments <u>recorded</u> in Account No. 31 of the USOA as described in 18 C.F.R. ¶ 352.4. <u>The balance of Accumulated Depreciation at the beginning of 2003 is stipulated to be $50,350,905</u>." (Emphasis added).

Similarly, Section 3.4 (c) states the "[a]ccumulated Depreciation for Bayview Terminal as of the beginning of the year 2003 is $2,362,036"; Section 3.5(b) states the "[a]ccumulated Equity AFDUC at the beginning of 2003 is stipulated to be $3,936,145"; Section 3.5(e) states "[t]he balance of Accumulated Amortization of Equity AFDUC at the beginning of 2003 is stipulated to be $438,343"; Section 3.5 (g) states "[t]he Accumulated Debt AFDUC at the beginning of 2003 is stipulated to be $ 2,431,828"; Section 3.5 (j) states "[t]he balance of Accumulated Amortization of Debt AFDUC at the beginning of 2003 is stipulated to be $259,181"; Section 3.8 (a) states "[c]arrier Property at the beginning of 2003 is stipulated to be $138,272,430"; Section 3.8 (c) states "[t]he Carrier Property Balance for Bayview as of beginning of the year 2003 is stipulated to be $ 24,036,869 as shown in Exhibit 3.4(c)"; Section 3.9 (d) states "[t]he ADIT

[accumulated deferred income taxes] Balance at the beginning of 2003 is stipulated to be $11,901,259" and; Section 3.10 states "[t]he Working Capital Balance at the beginning of 2003 is stipulated to be $2,030,244".

Thus, in defining elements of rate base and associated items detailed above, the Agreement makes clear that the calendar year 2003 should be used in making the first annual filing. With respect to Section 3.3, "Operating Expenses", no mention can be found concerning the use of estimates in calculating Olympic's TRR.

Further, to construe the language of the Agreement as sanctioning the use of cost estimates, suggests that the parties gave Olympic blanket authority to plug in whatever estimates it chose without guidelines or directions on how those estimates were to be arrived at and without regard to their consistency with regulatory policies of either the FERC or the WUTC. There is nothing in the Agreement to suggest that the parties gave Olympic the right to exercise its own discretion in deciding what costs could be included as part of its total revenue requirements. To the contrary, the various subsections of Section 3 indicate that the parties were taking particular effort to specify in detail the allowable costs, and by cross-referencing just about everything to the USOA and the FERC account numbers.

The use of actual data as opposed to estimates is also consistent with Section 1.5, Provision of Information, which gives Tesoro the right "to verify the data used in calculating the new maximum rate... which shall include, if requested, an audit consisting of direct examination of original source material identified by Olympic as being all of the data relied upon in calculating the maximum rate." To the extent that Olympic relied upon estimates in making its annual rate filings, the data could not be verified or audited as those terms are generally used in a regulatory setting.

Olympic relies upon the OSM Model contained in Exhibit No. 1.4(a) of the Agreement, which shows an asterisk aside the column entitled "Year 1" (Schedule 3). The asterisk refers to a footnote, which says, "Year 1 reflects 14 month period." The footnote does not cross-reference any language in the Agreement that authorizes the use of a 14-month period. Nor can such language be found.[7] The columns headed "Year 1,2,3" etc. do not specify the precise years or period to which they pertain. Further, the OSM Model, Exhibit No. 1.4(a) shows the Net Carryover as "N/A", i.e., not applicable, to Year 1 and shows no Net Carryover for any of the remaining 9 years shown.[8]

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[7] In the glossary of the Agreement there is a term "Initial Tariff Rate", which refers to FERC Tariffs after April 30, 2003 and prior to July 1, 2004. But, nothing appears in the Index of Defined Terms or the Agreement related to this period.

8 While one may argue that the OSM model was attached to the settlement for illustrative purposes, nonetheless, it does not provide the crucial details on how it will be executed in the key areas related to this dispute.

(b) Net Carryover (True Up)

As previously noted, Section 3.2 titled "Total Revenue Requirements" allows Olympic to recover for a 12- month period "Net Carryover" in addition to operating expenses, depreciation, rate base items, and related return and taxes.

Section 3.12 (a) says, "[t]he Net Carryover is equal to the sum of the Revenue Excess (Deficit), plus the Interest on Revenue Excess (Deficit)." Section 3.12(b), in turn, states "[t]he Revenue Excess (Deficit) is based on the difference between the Tariff Revenue as reported in USOA Account 600, Sub accounts 200-260, (except Sub account 250) minus the Total Revenue Requirement for the period that the prior tariff(s) have been in effect."

It is clear that subsection (b)'s reference to Tariff Revenue as reported in USOA Account 600 is a reference to a period that is closed in which revenues have already been reported, i.e., actual revenue data.

Olympic argues that Section 3.12(b)'s reference to "the Total Revenue Requirement for the period that the prior tariff(s) have been in effect" means the 14- month period May 1, 2003 through June 30, 2004, the period it uses to calculate Net Carryover. The problem with this interpretation is two-fold. First, the tariff(s) in effect prior to the July 1, 2004 tariffs would be the FERC and WUTC tariffs in effect January 1, 2004 by virtue of the Settlement Agreement approved by both agencies. Second, the tariffs in effect prior to January 1, 2004 took effect October 15, 2002, with respect to WUTC sales and May 1, 2003, with respect to FERC sales. Olympic's 14-month period could not coincide with the two different periods associated with the effective dates of the FERC and the WUTC tariffs. Alternatively, because the financial dollar impact associated with a tariff effective date can be enormously significant, the quoted language cannot be reasonably construed to give Olympic a choice of dates and periods in which to measure its revenue requirements.

Section 3.12 (c) states "[t]he Interest on Revenue Excess (Deficit) equals the Revenue Excess (Deficit) for a year, multiplied by the interest rate used to compute Interest on Revenue Excess (Deficit)." This language clearly implies that the excess or deficiency is keyed to a yearly amount.

Further, Section 3.12 (d) states that the interest rate used to compute the interest on the excess or deficiency is "obtained by taking the arithmetic average of the 12 monthly prime rates...for the 12 months starting with January of the previous year and ending with December of the previous year.... ." This suggests the use of a calendar year period. It would appear incongruous and asymmetrical for the parties to base the interest on the excess or deficiency for a calendar year if the excess or deficiency was applicable to another time period.

As previously found with respect to all other elements of Olympic's TRR (operating expense, depreciation expense, amortization of AFDUC, return on rate base, and income tax allowance) the Agreement is most reasonably construed to require the use of actual

calendar year data. Similarly, the Net Carryover Section 3.12, read as a whole and in conjunction with other sections of the Agreement, lead to the conclusion that the Net Carryover applies to a calendar year period.

An important and perhaps more fundamental issue is raised by Olympic's application of the Net Carryover provision. By the language of the Agreement, did the parties intend the Net Carryover to reach back and allow Olympic to recover additional revenues from periods prior to the effective date of the Agreement? A review of the Agreement in its entirety reveals no such intent.

A cornerstone of the parties' Settlement was their agreement to put to rest past disputes concerning Olympic's rates and rate setting processes. To this end the parties stipulated, among other things, (1) the total revenue requirement for the purpose of determining the initial tariff rates is $51 million, (2) the tariff revenues prior to the setting of the initial tariff rates is $37,689,864, and (3) the rate increase under the initial tariff rates is 35.3149 %. (Sections 1.2 (b), (c) and (e)). As to the period prior to January 1,2004, the Settlement (p.10) makes clear that the parties intended to resolve their differences related to interstate and intrastate rates by this Agreement.

Olympic did not raise its intrastate rates during the 14-month period May 1, 2003 through December 31,2003. The effect of Olympic's Net Carryover calculation is to allow it to recover (albeit prospectively effective July 1, 2004) a revenue shortfall associated with its operations during the period May 1 – December 31, 2003. This result is at odds with the stipulations expressly set forth in the Settlement Agreement.

Consistent with the stipulations noted above and the previous findings with respect to the OSM Model, the Agreement does not allow the use of the Net Carryover to recover additional revenues prior to January 1, 2004, the effective date of the settlement rates.

Extrinsic Evidence

This decision rests exclusively on the Arbitrator's interpretation of the Settlement Agreement as detailed above. A few comments, however, are warranted to address several arguments that arose through the presentation of extrinsic evidence.

Olympic cites a WUTC staff memorandum dated December 10, 2003, recommending that the WUTC approve the Settlement Agreement. The memorandum was sent to representatives of Olympic and Tesoro by email dated December 19, 2003. The memorandum notes that the first Net Carryover/True Up will be for the 14-month period from May 1, 2003 through June 30, 2004. Olympic argues that Tesoro had the opportunity, but raised no objection to the use of that period.

The OSM Model, the earlier settlement drafts, the written communications between the parties and the letter of intent show no Net Carryover number related to this 14-month period. Further, as previously found, the OSM Model must be read in conjunction with

the language of the Agreement which makes no reference to the use of a 14-month period and makes reference only to calendar year cost recovery.

In circumstances where, as here, Tesoro never saw a Net Carryover number associated with the 14-month period and the Settlement text referenced only actual and calendar year numbers, the Staff memorandum is not inconsistent with Tesoro's view of how the Net Carryover provision would be interpreted and implemented.[9]

Finally, there is no indication from a review of the WUTC December 23, 2003 order, the extent if any, that it relied upon that portion of the staff memorandum in approving the Settlement Agreement.

At the arbitration hearing, Tesoro played a video recording of the WUTC's December 23, 2003 meeting at which the Settlement Agreement was considered for approval. In response to Commissioner Oshie's question related to the true up provision of the Settlement, Olympic's Mr. McGrath stated that the true up would be done on a calendar year basis and the books would be closed at the end of December. Reading Mr. McGrath's comments in their entirety, his remarks can neither add nor detract from the parties' expression of intent as evidenced on the face of the Settlement Agreement.[10] And, as previously emphasized, this issue has been resolved on the basis of the settlement document.

The WUTC's December 23, 2003, order cites the Joint Petition for approval of the settlement signed by Olympic and the shippers including Tesoro. While the Joint Petition describes the settlement features in broad-brush strokes, it does not address in a dispositive manner, the specific issues raised in this arbitration. It is noted, however, that the general principles outlined in the Joint Petition are consistent with the findings of this decision.

<u>Arbitrator's Comments</u>

Based on the testimony and conduct of witnesses for both parties, it appears that this dispute arose from a good faith disagreement on how the Settlement Agreement was intended to operate. Neither party appears to have attempted to "game" the system by crafting settlement language to achieve a hidden advantage unbeknownst to the other side. The parties, their counsel, and the witnesses are to be commended for the courteous and professional manner in which they comported themselves during the arbitration.

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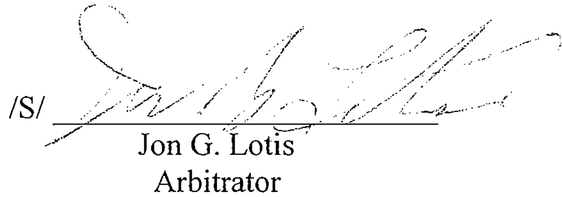
[9] Olympic's May 27, 2004, first annual filings under the Settlement Agreement with the WUTC and the FERC showed for the first time in work papers 1-12 that there would be a Net Carryover, <u>i.e.,</u> an actual number, applied to the 14-month period May 1, 2003 - December 31, 2003.
[10] The audio of the video recording was transcribed at the arbitration hearing.

Conclusion

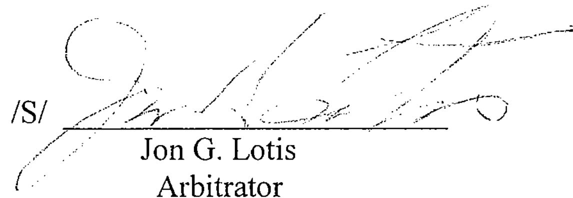
The Settlement Agreement does not allow Olympic to use the Net Carryover provision to recover additional revenues from periods prior to the effective date of the Agreement. Actual calendar year 2003 data as reported in the USOA should be used by Olympic in the calculation of its 2004 annual filing.



/S/
Jon G. Lotis
Arbitrator

CERTIFICATE OF SERVICE

This document has been served by electronic and facsimile transmission on counsel for Olympic Pipe Line Company, Mr. Karl F. Oles and counsel for Tesoro Refining and Marketing Company, Mr. Robin O. Brena, this 1st day of October 2004.



/S/
Jon G. Lotis
Arbitrator

Tesoro Refining and Marketing Company

v.

Olympic Pipe Line Company

ERRATUM TO
ARBITRATOR'S DECISION
DATED OCTOBER 1, 2004

October 6, 2004

The following correction is made to the Arbitrator's Decision dated October 1, 2004: Page seven, third full paragraph, first sentence, change "14-month" to 8-month" so that the sentence now reads, "Olympic did not raise its intrastate rates during the 8-month period May 1, 2003 through December 31, 2003."

/S/ ______________________
Jon G. Lotis
Arbitrator

CERTIFICATE OF SERVICE

This document has been served by electronic and facsimile transmission on counsel for Olympic Pipe Line Company, Mr. Karl F. Oles and counsel for Tesoro Refining and Marketing Company, Mr. Robin O. Brena, this 6th day of October 2004.

/S/ ______________________
Jon G. Lotis
Arbitrator