

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

OLYMPIC PIPE LINE COMPANY

For an Order Authorizing an Immediate Rate
Increase

DOCKET NO. TO-011472

PREHEARING BRIEF OF PETITIONER
OLYMPIC PIPE LINE COMPANY

1. Petitioner Olympic Pipe Line Company submits this prehearing brief seeking an immediate interim rate increase from now to August 1, 2002, when new general rates are scheduled to become effective. This brief is in support of the Company's Amended Petition for An Order Authorizing Immediate Rate Relief filed November 21, 2001 (the "Interim Petition").¹ The name and address of Olympic is as follows:

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¹ On October 31, 2001, Olympic submitted its "Petition of Olympic Pipe Line for an Order Authorizing an Immediate Rate Increase Subject to Refund" (the "Initial Petition") containing a petition for general and immediate rate relief and related testimony. Olympic amended the Initial Petition with the Interim Petition on November 21, 2001.

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2. This brief brings into issue the following statutes and regulations: 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, and WAC 480-09-770.

I. BACKGROUND

A. Identity of Petitioner

3. Olympic is engaged in the business of transporting oil and other petroleum products (unleaded gasoline, diesel fuel, and jet fuel) within and beyond the State of Washington as a common carrier. Olympic owns approximately 400 miles of trunk and lateral oil pipelines between Ferndale, Washington and Portland, Oregon. Direct Testimony of Bob Batch (BCB-1T) at 3. Olympic is a Delaware corporation with individual shareholders. BP Pipelines, (North America), Inc. (“BP Pipelines” or “BP”) owns 62.55% of Olympic, and Equilon Pipeline Company LLC (“Equilon”) owns 37.45%. BCB-1T at 5. BP is a relative newcomer to Olympic. In April 2000, BP acquired ARCO, which owned 37.45% of Olympic. *Id.* At that time, GATX Terminals owned approximately 25% of the Company, and Equilon owned the remainder. In June 2000, BP Pipelines was chosen by Olympic’s Board of Directors to operate Olympic under a management contract, replacing Equilon’s management contract. *Id.* In September 2000, BP purchased GATX’s ownership share. BCB-1T at 5. Personnel working on the Olympic system are employees of BP Pipeline and are governed by BP Pipeline standards for safety and reliability. *Id.*

4. Unlike most of the companies regulated by the Commission, Olympic does not serve end-use retail customers. Rather, Olympic operates as a common carrier pipeline system that transports petroleum products from their point of origin (primarily four refineries located in

northern Washington State) to various terminals in Western Washington and Oregon. Olympic has approximately 70 different shippers, not all of whom ship on a regular basis. BCB-1T at 4. Two of Olympic's shippers have intervened in this docket.

B. Olympic's Current Financial Condition

5. Olympic's current financial condition is dire. There may have been no company in a worse financial condition than Olympic to come before the Commission seeking interim relief.

6. Olympic's current debt is about \$150 million. BCB-5 at 3. Olympic owes a total principal amount of \$141,800,000 and has \$8,000,000 in accrued but unpaid interest. Id. Olympic's interest obligations are \$750,500 a month. Id.

7. As Olympic witness Howard B. Fox has testified:

There is no question that Olympic Pipe Line Company is suffering on the financial side of the business. Part of my job function is to model pipeline assets and report them for our long-term plan. I have done so for Olympic, and its future from a financial perspective is not bright. Olympic's operating costs – excluding extraordinary events such as Whatcom Creek – have skyrocketed during the 1990's. During the period 1991 through 1997, operating costs increased substantially, resulting in a compounded annual growth rate of over 8% per year. At the same time, revenue per barrel increased at a much lower rate. This situation (coupled with the Whatcom Creek incident) has contributed to Olympic's bleak financial prospects. This financial picture has severely degraded Olympic's ability to attract capital. There are no financial institutions willing to loan money to Olympic on reasonable terms given this outlook. Further, our 10-year forecast indicates the need for additional loans of \$150 million if tariffs are not increased. Even with the Staff's recommended increase of 20%, Olympic would still require additional loans of \$100 million dollars and the lenders face the high likelihood of little significant repayment of principal by the end of 2011.

Rebuttal Testimony of Howard Fox (HBF-1T) at 2-3.

8. Mr. Fox also has testified:

[S]everal things have occurred recently which are indicative of Olympic's worsening financial condition. First, Olympic has been notified by Prudential that it is in further default on its loan. Prudential has also informed Olympic that the National Association of Insurance Commissioners (NAIC) has lowered Olympic's creditworthiness rating from a "1" rating (the highest) to a "5." The result of this downgrade is that Prudential must set aside a significant amount of additional funds – now 20% related to the downgrade as opposed to .3% required previously – in order to satisfy the requirements of the NAIC. Prudential has indicated that this additional cost of \$400,000 will be passed on to Olympic pursuant to its master agreement with Olympic. Additionally, Chase has informed Olympic that it is unwilling to loan any more money without significant security provisions.

Olympic's actual rate of return for 2001 was negative. No dividends have been paid since 1997. Without any interim or other rate increase, its rate of return in 2002 is anticipated to be minus six percent (-6%).

HBF-1T at 4-5.

C. Olympic's Need for Immediate Rate Relief

9. Olympic plans to make safety-related capital investments of \$23.8 million in 2002. BCB-22T at 6-7. The need for this investment is the result of a rigorous safety inspection, repair and replacement program to meet internal and government-mandated safety standards. See BCB-6. Bob Batch has summarized some of the safety investments that Olympic has made and plans to continue in Washington State:

We are conducting internal inspections using three state-of-the-art devices to verify the integrity and safety of the pipeline system from Ferndale to Portland, including the inspection of the lateral lines. These tests will continue over the next several years – meeting and exceeding federal requirements for internal inspections of pipeline systems.

We intend to complete an analysis of Olympic's system using the most sophisticated inspection device available, a transverse flux inspection tool.

We have conducted a valve effectiveness study along Olympic's pipeline corridor. We retained an independent consultant to reevaluate valve locations. As a result of this evaluation, numerous additional valves are being installed.

In several locations, the pipeline is being relocated (e.g., the pipeline is being directionally drilled below a stream bed replacing sections that currently sit on the stream bottom, and in other sections the pipeline is being directionally drilled down to bedrock for earthquake/landslide protection).

We are implementing secondary containment at our pump stations and valve sites.

New management has instituted right-of-way protection procedures to minimize and improve monitoring of potential third-party construction damage to pipelines. These include weekly overflights of the entire pipeline system.

We are aggressively supporting measures to prevent damage to the pipeline from construction, including the "One Call" system that requires excavators to call a phone number for instructions and assistance before digging near the pipeline or other underground infrastructure.

BCB-1T at 9-11. These capital investments are necessary and in the public interest.

10. Olympic must be able to attract capital on reasonable terms in order to fund its 2002 capital budget of \$23.8 million. Olympic does not have tariff revenues sufficient to fund its capital budget; Olympic cannot pay interest on its current debt. BCB-5 at 4-5. In order to attract outside capital, Olympic must be able to demonstrate that it can pay both the accrued and ongoing interest on its existing debt. Without immediate rate relief, Olympic cannot demonstrate financial

stability sufficient to attract capital on reasonable terms to make its planned safety-related investments in 2002. Id. at 4.

11. On November 21, 2001, Olympic filed an amended Interim Petition, requesting interim rate relief for intrastate rates of \$8.74 million per year. Olympic has also filed a proposed tariff (WUTC No. 23) that would, if approved, go into effect on August 1, 2002. Thus, if the Commission issues an order by February 1, 2002, the interim relief requested by Olympic would be for a six-month period, resulting in an interim increase of \$4.37 million. This is in contrast to the Company's capital budget needs in 2002 of \$23.8 million.

12. Only two of Olympic's 70 shippers, Tesoro Marketing and Refining ("Tesoro") and Tosco Corporation ("Tosco"), oppose Olympic's request for interim rate relief. The effect of the interim rate on Tesoro would be \$633,000 for the six-month period and on Tosco it would be \$527,000. Rebuttal Testimony of Bob Batch (BCB-22T) at 16. Tesoro and Tosco are multi-billion dollar international oil companies. Olympic's requested interim rate would add approximately ¼ a cent per gallon (\$0.0025/gallon). BCB-1 at 3. Retail gasoline and petroleum product sales by Tesoro and Tosco to Washington State residents are not regulated by the WUTC, and thus they may or may not pass interim amounts on to their retail customers. If Tesoro and Tosco were to pass the entire increase on to their retail customers, the cost to the average driver in Washington State would be less than three dollars (\$3.00) a year. Id. at 4.

II. ARGUMENT

Olympic Is Entitled To Interim Rate Relief

A. Olympic's Rates Must Be Set At A Level That Will Continue To Attract Capital And Not Discourage Investments In System Upgrades And Safety

13. Pursuant to RCW 81.88.030, pipeline carriers such as Olympic are regulated as common carriers under Chapter 28 of Title 81 of the Revised Code of Washington. Under RCW

81.28.010, the charges for services rendered by common carriers are to be just, fair, reasonable and sufficient; a common carrier is entitled to reasonable compensation for the service it provides. Puget Sound Traction Light & Power Co. v. Pub. Serv. Comm'n, 100 Wash. 329, 334 (1918). In Washington, public service companies are “entitled to the opportunity to earn a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk.” WUTC v. Avista Corp., Docket No. UE-991606, 2000 Wash. UTC LEXIS 558, at *152-53 (Sept. 29, 2000) (citing Duquesne Light Company v. Barasch, 488 U.S. 299, 310, 312, (1989); Federal Power Comm'n v. Hope Natural Gas Co. I, 320 U.S. 591 (1944); Bluefield Water Works Improvement Co. v. PSC of West Virginia, 262 U.S. 679 (1923)); see also In re GTE Northwest Inc., Docket No. UT-931591, 1994 Wash. UTC LEXIS 92 (Dec. 21, 1994); In re GTE Northwest Inc., Docket No. UT-931591, 1994 Wash. UTC LEXIS 92 (Dec. 21, 1994); WUTC v. Puget Sound Power & Light Company, Docket No. UE-920433, 1993 Wash. UTC LEXIS 84 (Sept. 21, 1993); WUTC v. the Washington Water Power Company, Docket No. U-88-2380-T, 1989 Wash. UTC LEXIS 81, (Oct. 19, 1989); WUTC v. Harbor Water Company, Inc., Docket No. U-87-1054-T, 1988 Wash. UTC LEXIS 68 (May 7, 1998); WUTC v. Harbor Water Company, Inc., Docket No. U-87-1054-T, 1988 Wash. UTC LEXIS 30 (Mar. 21, 1988); In re Petition Of Washington Water Power Co., Docket No. U-87-795-P, 1987 Wash. UTC LEXIS 62 (Aug. 26, 1987); In re Puget Sound Power & Light Co., Docket No. U-86-115, WUTC 1986 Wash. UTC LEXIS 2 (Dec. 23, 1986); WUTC v. Pacific Power & Light Co., Docket No. U-86-02, WUTC, 1986 Wash. UTC LEXIS 7 (Sept. 19, 1986); WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, 1986 Wash. UTC LEXIS 37 (May 16 1986); WUTC v. Washington Water Power Co., Docket No. U-85-36, 1986 Wash. UTC LEXIS 51 (Apr. 4, 1986); WUTC v. Pacific Power & Light Co., Docket No. U-84-65, 1985 Wash. UTC LEXIS 45 (Aug. 2, 1985); WUTC

v. PACIFIC Northwest Bell Telephone Co., Docket No. U-82-19, 1983 Wash. UTC LEXIS 64; 51 P.U.R.4th 335, (Feb.10, 1983); WUTC v. Pacific Power & Light Co., WUTC v. Pacific Power & Light Co., Docket No. U-82-35, 1983 Wash. UTC LEXIS 65 (Feb. 1, 1983); WUTC v. Washington Natural Gas Co., Docket No. U-82-22; WUTC v. Washington Natural Gas Co. Docket No. U-82-37, WUTC, 1982 Wash. UTC LEXIS 2 (Dec. 29, 1982)' WUTC v. Northwest Natural Gas Co., Docket No. U-80-30, 1981 Wash. UTC LEXIS 11 (Feb. 10, 1981); WUTC v. Washington Natural Gas Co., Docket No. U-79-15, 1979 Wash. UTC LEXIS 2 (Sept. 24, 1979); WUTC v. Puget Sound Power & Light Co., Docket No. U-78-21, 1979 Wash. UTC LEXIS 5 (Mar. 8, 1979); WUTC v. Pacific Power & Light Co., Docket No. U-77-25, 1978 Wash. UTC LEXIS 4 (Jan. 19, 1978); WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-76-37, 1977 Wash. UTC LEXIS 4 (May 6, 1977); WUTC v. Pacific Power & Light Co., Docket No. U-76-18, 1976 Wash. UTC LEXIS 1; 18 P.U.R.4th 316 (Dec. 29 1976); WUTC v. The Washington Water Power Co., Docket No. U-76-9, 1976 Wash. UTC LEXIS 2; 18 P.U.R.4th 154 (Dec. 23, 1976); WUTC v. The Washington Water Power Co., Docket No. U-76-8, WUTC, 1976 wash. UTC LEXIS 3; 18 P.U.R.4th 131 (Dec. 23, 1976); WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-75-46, 1976 Wash. UTC LEXIS 8 (Apr. 2, 1976); WUTC v. Northwest Natural Gas Co., Docket No. U-74-32, WUTC, 1975 Wash. UTC LEXIS 8 (Mar. 21, 1975); WUTC v. Pacific Power & Light Co., Docket No. U-74-8, 1974 Wash. UTC LEXIS 2 (Nov. 20, 1974) .

14. The regulatory structure under which Olympic operates differs from other regulated companies. Olympic does not have a duty to serve similar to that imposed by RCW 80.28.110 and does not have restrictions on its ability to discontinue service similar to those found in WAC 480-100-071.

15. As opposed to utilities delivering essential services for which no alternative exists (such as water or electric power), there are alternatives in Washington State for transporting petroleum products, including tanker trucks, barges, and ships. When alternatives exist an oil pipeline (and other common carriers) may discontinue and withdraw from providing local service. See State v. N. Express Co., 80 Wash. 309, 323-24, 329 (1914). If a petroleum pipeline were to discontinue service, petroleum could still be distributed to Tosco and Tesoro retail suppliers across the state using available alternative transportation means.

16. As further regulatory context, the commission does not regulate the retail prices Tosco or Tesoro charge at their gas stations. The Commission does not regulate the prices Tosco and Tesoro charge for their refinery products to independent gas stations, who buy their refinery output. Finally, the Commission does not regulate the price charged for alternative transportation means such as tanker trucks, barges or ships.

17. Within this context, the Commission must decide what constitutes the public interest with regard to the regulation of oil pipelines. RCW 81.01.010; RCW 80.01.040. What constitutes the “public interest” is within the reasoned discretion of the Commission. See In the Matter of Application of Provisions of WAC 480-12-033, 1998 Wash. UTC LEXIS 228, at *6 (1998). Because there are existing available, unregulated, and currently used transportation alternatives to pipeline transportation (a situation not found, for example, in the delivery of electricity or water), the public interest appears to be served primarily by ensuring the provision of the public service in a safe and efficient manner.

18. Oil pipeline service is, in general, a safer means of transporting petroleum products than by tanker truck, barge or rail. Oil transport by tanker trucks result in 35 times more fires/explosions, 87 times more deaths, and twice as many injuries, based on volume of oil transported over a given distance than oil pipelines. Cheryl Trench and Charlene Sturbitts, Oil

Pipeline Safety; A Research Update from the Association of Oil Pipelines at 3 (April 2000), available at www.aopl.org/pubs/pdf/Record.pdf.

19. Olympic has a clear need for interim rate relief. As Howard Fox has testified:

[T]his Commission has consistently held that rates must be set at a level sufficient to allow a regulated company to attract sufficient capital on reasonable terms. Prior testimony and analysis in this matter show that Olympic cannot borrow from external sources or Equilon, and has no legal right to borrow against a BP/ARCO revolving note. The proposals of WUTC Staff witnesses and the witnesses for Tosco and Tesoro, if implemented, would continue to leave Olympic in a financial position in which it would not only be unable to attract sufficient capital on reasonable terms, but would be unable to attract capital on *any* terms.

The consequences of being unable to attract capital would be the deferral of planned capital improvements related to the safety and reliability of the pipeline system, and deferral of the capital expenditures required to increase throughput by increasing the operating pressure of the pipeline from 80% to 100%.

HBF-1T at 3.

B. Standard for Interim Rate Relief

20. In WUTC v. Pacific Northwest Bell Tele. Co., Cause No. U-72-30, Second Supplemental Order Denying Petition for Emergency Rate Relief (October 1972) (“PNB”), the Commission sets forth a six-part standard for interim rate relief:

1. The Commission has the authority in proper circumstances to grant interim rate relief to a utility but this should be done only after an opportunity for adequate hearing.
2. An interim rate increase is an extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or gross inequity.

3. The mere failure of the currently realized rate of return to equal that approved as adequate is not sufficient standing alone to justify the granting of interim relief.

4. The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage, and the growth, stability or deterioration of each, together with the immediate and short term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest.

5. The financial health of a utility may decline very swiftly and interim relief stands as a useful tool in an appropriate case to stave off impending disaster. However, this tool must be used with caution and applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and its shareholders. This is not to say that interim relief should be granted only after disaster has struck or is imminent, but neither should it be granted in any case where full hearing can be had and the general case resolved without clear detriment to the utility.

6. Finally, as in all matters, the Commission must reach its conclusion with the statutory charge to the Commission in mind, that it is to "Regulate in the public interest." . . . This is the Commission's ultimate responsibility and a reasoned judgment must give appropriate weight to all salient factors.

PNB at 13. The Commission will accept evidence of existing and actual conditions and short-range projections. WUTC v. Wash. Water Power Co., Cause No. U-80-13 (June 1980).

C. Olympic Is Entitled To Interim Rate Relief Based On Application Of The Commission's Standard For Interim Rate Relief

21. Applying the evidence submitted by Olympic in this proceeding to the Commission's standards for interim rate relief demonstrates that Olympic is entitled to such relief:

- The Company is currently in the adequate hearing required by PNB and has also filed a general rate case that will conclude on August 1, 2002.

- Olympic's financial condition and its need for safety-related capital improvements for 2002 of \$23.8 million constitutes an actual emergency, and relief is necessary to prevent gross hardship and gross inequity.
- Olympic has not paid dividends since 1997, has a negative rate of return and likely has negative book equity. Olympic is unable to pay accrued interest on its existing debt, is prohibited by its note with Prudential from seeking outside sources of capital, and has been refused new loans from Equilon, with whom it is in litigation over an existing note. Olympic is in default on all of its existing loans except for the loan from Chase. Olympic financed needed capital improvements in the last three months from a one-time IRS refund of \$5.6 million and from interim refundable relief from the Federal Energy Regulatory Commission granted on September 1, 2001. BCB-22T at 23.
- Denial of interim relief would cause clear jeopardy to the utility and detriment to the public.
- Interim relief, and the safety-related capital investments that would result from such relief, is in the public interest. The safety-related investments will stay in Washington State to benefit the state. Tosco and Tesoro may not pass the comparatively small $\frac{1}{4}$ ¢ a gallon increase to their retail customers.

Application of each of these standards is discussed below.

1. Hearing Requirement

22. The Commission has the authority to grant immediate rate relief to a utility under proper circumstances, but only after an opportunity for an adequate hearing. In re Avista Corp., Docket No. UE-010395, Sixth Supplemental Order, at 12 (2001) (hereinafter, "Avista"). This

power, subject to appropriate terms and conditions, is necessarily implied in the Commission's authority to suspend tariff changes. Id.

23. Since Olympic filed its first petition for interim relief on October 31, 2001, there has been considerable administrative process in this docket. There have been several prehearing conferences and resulting orders. On November 21, 2001, the Commission held an initial prehearing conference and established the appropriate scope of these proceedings, the appropriate processes, and a procedural schedule. The Commission authorized discovery and entered a protective order to facilitate that process. Since November, Olympic has responded to 22 informal data requests and 138 formal data requests and produced thousands of pages of documents in less than six weeks. BCB-22T at 9. Olympic also made its employees available on December 4, 2001 for a technical conference attended by all parties. Id. at 8. The parties to this proceeding are fulfilling the Commission's requirement that interim relief be granted only after an adequate hearing.

2. An Actual Emergency Exists

24. An actual emergency exists and interim relief is necessary to prevent gross hardship or inequity. Olympic cannot attract sufficient capital on reasonable terms and cannot finance the safety-related capital improvements in its 2002 budget.

3. The Relevant Indices Demonstrate That Olympic's Financial Health Has Deteriorated To The Point Where Interim Relief Is Appropriate

25. The Commission considers five economic indicators in deciding whether interim relief is appropriate:

1. The company's rate of return;
2. interest coverage;

3. earnings coverage;
4. demands for new financing; and
5. whether the granting or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest.

PNB at 13.

26. In applying these factors, the Commission typically examines: (i) whether a company's actual rate of return is less than its allowed rate of return, (ii) whether the market value of a company's stock is below its book value, (iii) whether the earnings per share of a company's stock is falling in relation to its current dividend, (iv) whether the company is able to issue first mortgage bonds, (v) whether the company's credit line is, or is close to being, exhausted, and (vi) whether the company's credit rating has been reduced. See, generally, PNB at 13; WUTC v. Puget Sound Power & Light Co., Cause No. U-80-10 (1980); WUTC v. Wash. Water Power Co., Cause N. U-77-53 (1977); Avista at 15-21 (2001). Each of these factors is examined below.

a. Actual v. Allowed Rate of Return

27. Without Olympic's requested interim rate increase, Olympic's anticipated rate of return for 2002 will be a *negative* six percent (-6%). HBF-1T at 5. Given that the Company's current allowed rate of return is 10.4, a shortfall of over 150% exists between its allowed and actual rates of return.

28. The Commission has granted interim relief where the shortfall between actual and allowed rates of return has been only 12%, WUTC v. Puget Sound Power & Light Co., Cause No. U-80-10 (1980), and 10%, WUTC v. Puget Sound Power & Light Co., Cause No. U-73-57 (1974). Here the shortfall between actual and allowed rate of return is ten times greater.

b. Market Value v. Book Value of Stock

29. Olympic is not a publicly traded company, so this factor technically does not apply to Olympic. However, the Company is in severe financial trouble and must receive increased revenue to attract new capital. Purchasers of shares in the Company would be investing in a company heavily leveraged and losing money. It is therefore not unreasonable to assume that, if the Company were a publicly traded company, the market value of its shares would be significantly lower than the value of those shares based on the Company's book value.

c. Earnings Per Share Falling with Regard to The Company's Current Dividend

30. Because Olympic is not a publicly traded company, this standard does not strictly apply to Olympic. However, comparable financial indicators for Olympic indicate that the Company is in similar, if not significantly worse, shape than other companies that have received interim relief from the Commission.

31. Tesoro and Tosco agree that Olympic has not paid a dividend since 1997. Direct Testimony of Gary Grosso (GG-1TC) at 5; HBF-1T at 5.

32. The Commission has granted interim relief where the subject company's earnings per share are in danger of falling below its current dividend. See WUTC v. Puget Sound Power & Light Co., Cause No. U-80-10 (1980). These facts indicate that Olympic is in an emergency sufficiently grim to warrant the granting of interim relief.

d. Ability to Issue First Mortgage Bonds

33. While Olympic does not issue first mortgage bonds, Commission Staff witness Mr. Elgin has noted that the Company does not have sufficient interest coverage to be able to issue first mortgage bonds. Testimony of Kenneth L. Elgin (KLE-1T) at 15. While Olympic contests some of the assumptions Mr. Elgin has made in his testimony, see Section II.E.1 below and HBF-1T at

5-10, even with these assumptions Olympic does not currently have one and one-half times interest coverage for purposes of issuing debt, much less the 2.5 times that would be appropriate given the Company's current situation. See discussion below.

e. Exhaustion of the Company's Credit Line and Reduction of its Credit Rating

34. Olympic does not have publicly traded debt either and does not have a bond rating. However, the Company owes \$150,000,000 in principal and accrued but unpaid interest debt and is continuing to accrue further unpaid interest at a rate of over \$750,000 a month. Moreover, Prudential has informed Olympic that the National Association of Insurance Commissioners (NAIC) has lowered Olympic's creditworthiness rating from a "1" rating (its highest) to a "5" rating, thus making Olympic's debt to Prudential more expensive. HBF-1T at 5. Olympic is in default on all of its loans except Chase.

4. Emergency Nature of Circumstances

35. Olympic cannot wait to begin its safety-related capital expenditures until the conclusion of the general rate case on August 1, 2002. Those improvements need to be made as soon as scheduled. Current tariff rates imposed by the pipeline do not cover Olympic's debt service.

5. Regulation in the Public Interest

36. As described above, it is in the public interest to allow Olympic the financial means to operate its pipeline system in a safe and reliable manner.

D. The Commission Has Granted Interim Relief In The Past Where Such Relief Is For Funding Necessary Capital Improvements

37. In the past, the Commission has granted interim rate relief when such relief is necessary for the funding of necessary capital improvements. In the following cases, the Commission granted interim relief on such grounds:

- WUTC v. Puget Sound Power & Light Co., Cause No. U-80-10 (1980). The Commission granted an interim increase of 5 percent, in part because these funds were necessary to fund construction at the level of \$110,000,000, the minimal level necessary to maintain minimum service requirements.
- WUTC v. Wash. Water Power Co., Cause No. U-77-53 (1977). The Commission granted an interim increase of approximately \$3.5 million. The company anticipated a construction program that required substantial financing, including the acquisition of expensive thermal generating plants to handle growing demand.² The Commission held that in order to meet such growing demand, the company had to continue to participate in construction projects. This necessitated stable earnings that would permit the company to attract capital when needed at rates favorable to its customers.
- WUTC v. Wash. Water Power Co., Cause No. U-80-13 (1980). The Commission granted an interim increase of approximately \$9.1 million. The Commission held that absent interim relief, the company was unable to generate sufficient capital from internal sources to finance needed construction projects.

² In that regard, interim relief is necessary to bring operating pressure of the system up to 100%. BCB-22T at 9-10.

- WUTC v. Wash. Nat. Gas Co., Cause No. U-80-111 (1981). The Commission granted an interim increase of \$16 million based on the company's assertion that its then-current and projected earnings were not adequate to generate sufficient funds to meet the company's budgeted capital expenditures.

38. In contrast, the Commission has denied interim relief where the petitioner did not require the additional revenue requested for necessary capital expenditures. See WUTC v. S. Bainbridge Water Sys., Inc., Docket Nos. U-87-1355-T, U-83-50 (1988); WUTC v. Ludlow Util. Co., Docket No. U-87-1550-T (1988); WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041 (1992).

39. In the present case, Olympic has demonstrated that it is unable to generate funds from current tariff revenues or to attract sufficient capital on reasonable terms. Its current earnings do not permit it to meet or generate the funds necessary to operate the pipeline safely and in an environmentally responsible way. Interim relief is necessary and justified.

E. Errors in the Responsive Testimony of Intervenors and Staff

1. The Commission Should Modify Some of the Assumptions Used by Staff in Its Testimony

40. While Olympic largely finds the analysis and methodology employed by Staff witness Ken Elgin in his testimony to be useful and persuasive, Olympic suggests that the Commission modify some of the assumptions made in Staff's testimony to more accurately reflect the Company's financial condition.

41. Olympic would revise Staff's recommendations to reflect all of Olympic's outstanding debt, interest, and principal. Olympic would also apply an actual aggregate interest rate to its debt, rather than the 6.04% suggested by Staff, in order to represent the fact that, for

interim rates, Olympic's debt is what it is. No revision to this debt amount and related interest is appropriate in determining the Company's actual need for interim rates.

42. Olympic also suggests that an interest level of 2.5 times actual interest is necessary for the Company to meet its current financial obligations and begin to once more attract capital. Even with an interest level set at 2.5 times actual interests, most of Olympic's creditors will not be repaid until 2011, long after those notes are formally due. HBF-1T at 8.

43. Olympic would revise certain of Staff's restating and pro forma adjustments, which are issues more appropriately addressed in the general rate case. A full description of Olympic's suggested modifications to Staff's approach is contained in the testimony of Howard B. Fox, HBF-1T at 5-10.

2. The Commission Should Disregard the Testimony of Tosco and Tesoro

44. The testimony submitted by Tosco and Tesoro concerns matters outside the scope of an interim rate proceeding. Moreover, Tosco and Tesoro argue for retroactive perspective regarding the Company's activities in the 1990s. The Commission should disregard Tosco and Tesoro's testimony.

45. The testimony of Tosco and Tesoro addresses the following topics:

- The throughput on the Olympic pipeline system (GG-1TC at 3);
- Olympic's revenues over the three months of September through November, 2001 (GG-1TC at 3);
- Olympic's operating expenses from 1997-1999 (GG-1TC at 4);
- Olympic's cash on hand and receivables for the months of September through November, 2001 (GG-1TC at 6);

- The prudence of expenditures made by the Company in the 1990s (JFB-1TC at 3, 15-24);
- The financial condition of the shareholders and creditors of Olympic (JFB-1TC at 10-13); and
- Olympic's proposed capital structure in the general rate case (JFB-1TC at 14; FJH-1T at 4-17).

46. Absent from this discussion is an application of the PNB standards to Olympic's situation. While Tosco and Tesoro mention the PNB standards for interim relief, JFB-1TC at 4-5, there is no substantive application of these standards and no discussion of the financial indicators upon which the Commission will grant interim relief.

47. Instead, Tosco and Tesoro wish to analyze Olympic's request for interim relief with general rate case standards. Issues of prudence, the correct capital structure to apply, debt to equity ratios, and the financial condition of the creditors and shareholders of Olympic are issues that will be examined in Olympic's general rate case. Tosco and Tesoro make no attempt to analyze the interest and earnings coverage of the Company (as Commission Staff does), its rate of return, and the market value of the Company. The testimony of these Intervenors is irrelevant and should be disregarded.

48. Moreover, Tosco and Tesoro's analysis is fundamentally flawed in that it compares the Company's capital expenditures and dividend payments in the 1990s with its earnings in the months of September through November, 2001. This is like saying that because the Pacific Gas & Electric Company paid a dividend and invested in capital improvements in 1998 and earned money in the last three months, it is a financially healthy company even though it is now in bankruptcy. This method of analysis is unreasonable.

49. The Company's past dividend payments and capital investments made in the 1990s were the subject of Olympic's 1999 general rate proceedings before this Commission, which resulted in the Commission's approval of WUTC Tariff No. 20. BCB-22T at 20. Tosco and Tesoro did not intervene in that proceeding and should not be allowed to raise past issues now.

III. PRAYER FOR RELIEF

50. Based on the foregoing, Olympic respectfully requests that the Commission issue an order approving an immediate rate increase for intrastate rates of \$8.74 million to become effective December 1, 2001, as described in the Interim Petition.

DATED this ____ day of January, 2002.

Respectfully submitted

PERKINS COIE LLP

By _____
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