January 16, 2004

Ms. Carole Washburn, Secretary
Washington Utilities and Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

Re: Proposed Rules Docket No. A-021178

Dear Ms. Washburn:

Olympic Pipe Line Company provides the following comments to the Commission's proposed amendments to its financial reporting rules applicable to petroleum pipelines. These comments supplement those we previously provided at the prior workshops with Commission representatives regarding the proposed amendments.

Olympic has expressed before its view that attempted state regulation of petroleum transportation must necessarily differentiate between interstate and intrastate pipelines. Olympic, as an interstate shipper, must comply with extensive and preemptive federal regulation governing all aspects of its operations.

The United States Supreme Court previously has directed that a state may not impose regulations on common carriers subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), such as Olympic, if to do so "affects the ability of FERC to regulate comprehensively … the transportation and sale of [petroleum products] ... or presents the prospect of interference with the federal regulatory power …." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988). Thus, for example, a state may not impose an approval process on an interstate pipeline's issuance of securities. *Id.*

As an interstate petroleum pipeline, the federal government is responsible for regulating Olympic's operation, although as the Commission is aware, certain safety related functions have been delegated to the Commission. If the states through which Olympic's system traverses could impose their own independent regulations on Olympic's operations, there would be a significant risk of inconsistent regulation and interference with the interstate transportation of petroleum products.

This same concept recently prompted Federal District Judge Lasnick to rule that the City of Seattle could not impose safety related requirements on Olympic's operations.

Olympic Pipe Line Co. v. City of Seattle, C03-2343L. As Judge Lasnick pointed out, what is a pipeline to do when faced with one jurisdiction demanding hydrotesting while another forbids it demanding instead inline inspection? Clearly, uniformity of regulation is paramount to the public's interest.

Approximately one half of Olympic's shipments are interstate. Olympic has but one operator, one control center and, for the most part, its entire system is used for interstate transportation. The federal government necessarily has the exclusive ability to regulate and approve contracts and financing that impact Olympic's interstate shipments. It also has enacted detailed guidelines strictly limiting Olympic's release of information pertaining to its customers' shipments. Olympic's two largest customers are "affiliates."

As we indicated at the April 10th workshop, Olympic also does not believe that any benefit will be achieved by the vast majority of the proposed regulations for the liquids pipeline industry. In addition to its interstate transportation model, Olympic serves a relatively small number of very sophisticated businesses and municipal corporations. It is not analogous to the electric and natural gas industries which serve millions of individual consumers. Yet the proposed rules mirror those designed for electric and natural gas distribution utilities.

We can envision no benefit to either the consuming public or Olympic's business customers that will be achieved by most of the proposed amendments. However, the changes are certain to increase transaction costs which necessarily would be passed on to Olympic's customers and the consuming public.

Below, we provide comments to specific proposed regulations.

1) **Application of rules** (WAC 480-73-010): The Commission proposes that its rules apply to all hazardous liquid pipeline companies "that are subject to the jurisdiction of the commission under Title 81 RCW." Title 81 RCW contains a variety of provisions, some of which expressly apply to pipelines such as Olympic (e.g., RCW 81.24.090). However, our state's legislature clearly intended to acknowledge the preemptive impact of federal regulation over interstate pipelines with regard to certain financial and transaction reporting requirements set forth in Title 81 RCW. For example, interstate pipelines subject to federal regulation such as Olympic are expressly excluded from the obligations set forth in RCW 81.08 and 81.12. As noted more specifically below, Olympic believes the Commission is attempting to impose with its proposed regulations notice and reporting obligations on interstate pipelines subject to federal jurisdiction contrary to legislative directive.

2) **Annual reports** (WAC 480-73-170): Olympic has no objection to providing to the Commission annually a copy of the FERC Form 6 it submits to the Federal Energy Regulatory Commission. This report is already provided regularly to the Commission.

3) **Special Reports**:

a. **Financial transaction advance notice and reports** (WAC 480-73-180): Olympic believes that advanced notice to the Commission of such transactions in the interstate pipeline industry is not warranted and serves no purpose. The Commission does not have the authority to approve or disapprove such transactions, as recognized by the Supreme Court's *Schneidewind* decision referenced above. Further, the advance notice and report preparation requirement could delay and unduly burden the decision making process impacting pipeline operations. Finally, Olympic believes that this state's legislature expressly excluded interstate pipelines subject to federal jurisdiction from the notice and reporting obligations that this proposed regulation attempts to impose. See RCW 81.08.010, first proviso.

b. **Affiliated interests—Contracts or arrangements** (WAC 480-73-200): This proposed regulation would require prior notice of, and acknowledges the Commission's right to approve or disapprove, all contracts or arrangements between any interstate pipeline also engaged in intrastate transportation in Washington, and an entity or person owning directly or indirectly at least five percent of the pipeline. The regulation is based on RCW 81.16. Olympic does not believe the state has the authority to approve or disapprove all contracts with "affiliates" as the terms of many such contracts, such as those governing the operation of Olympic's pipeline which necessarily includes its interstate operations, are subject to exclusive federal jurisdiction. Further, Olympic's two largest shippers fall within the "affiliated interest" definition. Olympic is obligated by federal law not to divulge the specifics of its customers' shipping arrangements to third parties. Olympic assumes, at a minimum, that this regulation is not intended to cover such contracts and arrangements.

c. **Affiliated interest and subsidiary transactions reports** (WAC 480-73-220): Olympic restates its comments made above regarding proposed regulation 480-73-200. As pointed out previously, under the Interstate Commerce Act, Olympic is not allowed to share shipper's volumes or revenues whether affiliated with Olympic or not. This proposed rule would appear to require that Olympic report the details of each shipment it made for an "affiliated" shipper even though it is precluded from doing so by federal law. Further, Olympic has no employees. All of the individuals who perform services for Olympic, and all of its officers and directors, are employees of Olympic's "affiliates," not Olympic. It appears that this rule could be interpreted to require reporting on details of even expense reimbursements for directors and officers to attend Olympic board of directors' meetings. Such reporting would serve no useful purpose and would be quite burdensome.

d. **Securities report** WAC 480-73-210): This state's legislature recognized the preemptive effect of federal regulation regarding an interstate pipeline's issuance of securities when it exempted such entities from the requirements of RCW 81.08. See first proviso of RCW 81.08.010. The Commission does not have the authority to regulate the transactions at issue under this proposed rule. Requiring the preparation of such detailed and time consuming reports regarding the transactions will not serve any benefit to Olympic's customers or the consuming public, but the requirement would increase costs that ultimately would be paid by Olympic's customers and the public.

In conclusion, we are concerned that the proposed regulations infringe on the exclusive nature of federal jurisdiction over the operation of interstate pipelines. We also believe that many of the proposed regulations would serve only to generate reports and data for data's sake, but would have no real benefit to Olympic's customers or to the consuming public. However, they would serve to increase costs ultimately paid by those served by Olympic's services.

We appreciate the Commission's consideration of our comments. We would welcome the opportunity to respond to any questions you might have or provide additional information.

Sincerely,

Mitchell D. Jones
Director, Tariffs and Regulatory Compliance
BP Pipelines (North America) Inc. as Operator of Olympic Pipe Line Company