

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

)	
WASHINGTON UTILITIES AND)	DOCKET NO. TO-011472
TRANSPORTATION COMMISSION)	
)	THIRD SUPPLEMENTAL
Complainant,)	ORDER
)	
v.)	
)	
OLYMPIC PIPE LINE COMPANY)	ORDER GRANTING
)	INTERIM RELIEF,
Respondent.)	IN PART
.....)	

1 ***Synopsis:** The Commission grants in part a request by Olympic Pipe Line Company for an interim increase in its rates and charges. The Company asked for an interim increase of 62%; the Commission authorizes an interim increase of 24.3%, or \$3,395,000, subject to refund if the Commission determines in the Company’s pending general rate proceeding that the proper rate for continuing application is lower than the rate approved in this order.*

I. PROCEDURAL HISTORY

2 **Proceeding:** Docket No. TO-011472 is a filing by Olympic Pipe Line Company on October 31, 2001, for a general increase in its rates and charges for providing pipe line transportation service within the state of Washington.

3 In its filing, the Company asked for three separate Commission actions. It included a request for a substantial – 62% – increase in its rates; it included a petition for immediate (December 1, 2001) implementation of the rates it requested, subject to refund; and it included a request for a determination in a policy statement or declaratory order of the methodology to be used to calculate the company’s need for a rate increase: rate-base/rate-of-return methodology customarily used in determining the rates of Commission-regulated companies, or the methodology used in calculating rates for oil pipeline companies by the Federal Energy Regulatory Commission (FERC).

4 At its open public meeting of November 16, 2001, the Commission suspended the operation of the tariff that would effect the general rate increase. In addition, it determined to consider in an adjudication the request for immediate implementation of rates (referred to as “interim” in this order) and to address the question of methodology in the context of the general rate proceeding. The Commission entered an order on November 20, 2001, effecting the suspension and – because it had committed to address the issue of methodology in the context of the general rate proceeding – denying the requested policy statement or declaratory order. The Company submitted an amended petition for immediate rate relief on November 21, 2001.

5 **Hearings.** The Commission convened hearings on the interim proposal on January 14, 15, and 16, 2002. The parties provided prehearing memoranda on Friday, January 11, and concluded their presentations on the interim proposal with oral argument and citations of authority on Thursday, January 24, 2002. The proceedings were heard before Chairwoman Marilyn Showalter, Commissioners Richard Hemstad and Patrick Oshie, and Administrative Law Judge C. Robert Wallis.

6 **Appearances.** The following persons entered appearances. Respondent Olympic Pipe Line Company (“Olympic”) appeared by Steven Marshall and William Beaver, attorneys, Seattle. Intervenor Tesoro Refining and Marketing Company (“Tesoro”) appeared by Robin Brena and David Wensel, attorneys, Anchorage, AK, and intervener Tosco Corporation (“Tosco”) appeared by Edward Finklea, attorney, Portland, OR. Commission Staff appeared by Donald T. Trotter and Lisa Watson, Assistant Attorneys General, Olympia.

II. INTRODUCTION

7 This order addresses a request for interim rate relief. The request is unlike any other that the Commission has seen. The Company’s circumstances as set out in the limited record generated to date pose many questions. The Commission will defer answers to most of these questions until it receives more complete evidence in the record of the general rate proceeding. We introduce our discussion of the interim rate issues, however, by focusing on three starkly apparent features of this case.

8 *First*, it is clear that the Company¹ is in dire financial straits, in large part due to the need for safety improvements. Its case on this issue is compelling. It has no shareholder equity, as such. It owes substantially more money than the book value of its assets. It has seen its throughput plummet because of mandated closure. Its only means to acquire funding for its operations and needed capital projects are loans or capital investments from its owners, or revenues from transportation rates. The Company is not financially sound and it needs funds.

9 *Second*, it is equally clear that safety must continue to be a top priority for this Company. It is essential that the Company have the means to buttress its ability to operate safely, to support public confidence that it will operate safely, and to avoid the occurrence of a major event that could precipitate complete financial meltdown and deprive the shippers and the region of an efficient and cost-effective means of transportation.

10 *Third*, it is also clear that this record poses more questions than it answers. How the Company came to this situation, what regulatory consequences should flow from the Company's actions, and what the Company should do in the future are matters that parties are certain to address during the general rate proceeding. Questions exist with regard to the Company's financial structure, its plans for the future, and its ability to operate soundly. Questions exist with regard to the Company's cash flow, its lack of audited financial reports, its failure to notify the Commission of its debt financing, its ability to secure capital in a rational manner to assure its future operations, its ability to shed the ghosts of its past, its owners' willingness to support -- or share in the support of -- its long-term financial needs. Questions exist with regard to the status of its investments in the Bayview Terminal and the Cross-Cascade Pipeline; whether a firm with a more traditional capital structure would have fared better than Olympic through its recent circumstances; how to gauge the effect of capital structure in determining long-term fair, just, and reasonable rates; the level of current management fees and whether the management contract may have required prior approval; and how to account for the Bayview Terminal, the investment in the Cross-Cascade Pipeline, and the Whatcom Creek expenses for ratemaking purposes.

11 Most of these questions we expect to address in the general rate case in this docket. A request for interim relief, as we discuss at greater length below, presents only the

¹ In this context, we mean the Washington intrastate jurisdictional operations.

opportunity to review a short-term snapshot of the extent of need and to examine whether circumstances allow for a longer-term review or require that we take action immediately. Here, we decide that immediate rate relief is needed.

12 Finally, we emphasize that the circumstances of this company and of this proceeding are truly unusual. We examine the situation carefully and thoughtfully, but find it so different from past proceedings and so different from the combination of circumstances that we can reasonably anticipate in the future that we caution against the use of elements of this decision as a model for future decisions.

III. BACKGROUND

13 **The Company.** Olympic Pipe Line Company operates a common carrier pipeline from four refineries located in Whatcom and Skagit Counties near the Canadian border in western Washington, to the state's border with Oregon. Along the way, it delivers refined petroleum products to various facilities for retail distribution.

14 **The Owners.** BP Pipelines (North America), Inc. ("BP"), owns 62.55% of Olympic's shares, and Equilon Pipeline Company, LLC ("Equilon") owns 37.45%. The two shareholders each operate a refinery at a northern terminal of the pipeline.

15 **The Shippers.** Olympic serves its shareholders' refineries. In addition, it serves two other refineries in northern Washington State, operated by intervenors Tesoro and Tosco. All of the product transported by the pipeline originates at one of the four refineries. In addition to the four refineries' shipments on their own behalf, which comprise the bulk of the pipeline's traffic, more than 65 individual shippers purchase the product from the refineries and purchase transportation directly from the pipeline.

16 **The Intervenors.** Tesoro and Tosco are intervenors, and oppose an increase in rates. Between them, their traffic totals about 23 per cent of the pipeline's transported volume, called "throughput."

17 **The Operator.** Olympic is now managed by a BP subsidiary, BP Pipe Lines, which is the second largest liquid pipeline company in the United States, operating in 33 states. In July 2000, BP Pipe Lines became the operator of Olympic Pipeline Company, replacing Equilon, Olympic's prior management. All officers and

personnel of Olympic are employees of BP. Olympic pays BP a fee for management services.

18 **The Witnesses.** Witnesses in this docket for Olympic included Robert Batch, Olympic's President; Howard Fox, and George Schink. The Intervenor's witnesses were Frank Hanley, John Brown, and Gary Grasso. Commission Staff witnesses were Kenneth Elgin and Robert Colbo.

IV. OLYMPIC'S FINANCIAL CONDITION

19 **Historical background.** The background against which this proceeding has been played out is colored by three factors, each with major financial consequences to the company. All three cast shadows that affect the Company's financial circumstances.

20 **Whatcom Creek.** The first significant factor is referred to as the Whatcom Creek incident, or "Whatcom Creek." The pipeline crosses Bellingham, Washington. Because of circumstances that are not here at issue, the pipeline developed a leak during the summer of 1999; a large volume of product (gasoline at the time) escaped and flowed into Whatcom Creek. Fumes from the gasoline exploded in a city park surrounding the creek, resulting in three deaths.

21 In the aftermath of the explosion, the northern portion of the pipeline was shut down. Safety improvements have been mandated and many have been made. The federal Office of Pipeline Safety (OPS) is involved in inspections of the line and has required certain safety-related improvements to be made as a condition of putting the line back in service. In addition, BP Pipe Lines' management professes pride in its ability to operate pipelines safely and has proposed additional improvements aimed at enhancing safety. The Commission is reviewing its own pipeline safety regulations for intrastate safety purposes, and it is possible that the public safety lessons learned in the aftermath of the Whatcom Creek incident will drive enhanced or additional safety-related requirements.

22 The incident has produced large financial consequences for the pipeline company. The incident has generated considerable litigation. More than 40 lawsuits are pending. Insurers appear to be responsible for defending the civil suits. Some losses and related expenses will presumably be paid or reimbursed by insurers. Olympic has expressly stated that it does not seek reimbursement in interim rates for any of the

direct expenses caused by the Whatcom Creek incident. Many of the results cannot be quantified at the present time, and the extent of insurance reimbursement also cannot be determined. The costs of response and correction, the costs of enhanced safety measures, the lost revenues from closure and reduced throughput, and the exposure to liability claims are substantial.

- 23 **The Cross-Cascade Pipe Line.** Olympic filed and prosecuted an application before the Washington State Energy Facility Site Evaluation Council for authority to build a pipeline between western Washington and the Tri-Cities area of eastern Washington, crossing the Cascade mountain range and the Columbia River. The Whatcom Creek incident occurred during the hearing process, which was immediately suspended. Olympic withdrew the application soon thereafter. Olympic still carries the costs of the application – more than \$20 million – on its books.
- 24 **The Bayview Terminal.** Olympic has made a \$24 million investment to construct its Bayview Terminal facility at Mount Vernon, Washington . The facility was intended for use in holding, combining, and equalizing shipments. Its use would allow the Company to increase its throughput and make its operations more efficient. The facility was completed and tested prior to the Whatcom Creek incident, and it was put into service for its intended purpose. It was bypassed for product shipments after the Whatcom Creek incident. Since that time it has been used for storage and to facilitate electromechanical testing and hydro-pressure-testing the line. The Company plans to begin using the facility for its intended purpose when the line resumes full operation.
- 25 **The Whatcom Creek Aftermath.** The Whatcom Creek event requires additional discussion. As noted above, the consequences of the Whatcom Creek incident have been severe. They have included the obligation to make certain capital improvements, the obligation to meet certain expenses, and the lack of income for an extended period while the line was shut down and eventually ramped back up. The limitations continue today, at least to the extent that throughput is limited to 91% of capacity, as the line remains obligated to operate at no more than 80% of normal operating pressure pending other improvements.²
- 26 Irrespective of fault, those factors affect the Company's present circumstances, its ability to obtain financing for capital improvements, and its ability to provide service.

² The use of friction-reducing additives allows an increase in throughput at any given pressure level.

The Company has voluntarily removed from consideration the direct costs of Whatcom Creek, so we need not consider whether they are proper considerations, nor how to calculate any offsetting factors. To determine the Company's need and our appropriate response, we will look at the Company as it is, with any adjustments that are necessary.

- 27 **Multijurisdictional operations.** This Company transports product in both Washington intrastate commerce and in interstate commerce. It is subject to economic regulation by both this Commission and FERC. The Company and the intervenors ask us to consider events under federal regulation – the Company points to the FERC process that has allowed it to collect a rate increase speedily, and the intervenors to the cash flow that the rate increase has generated. We need to make clear that we have no jurisdiction to regulate interstate commerce. We must look at the intrastate portion of the operations as though it were independent. Occasionally in this order we may refer to Company total figures. In determining rates, however, we consider only the intrastate revenues and only the intrastate-allocated portion of the Company's investment and expenses.
- 28 **Olympic's Ownership Structure.** Olympic is a Delaware corporation. BP owns 62.55% of Olympic's shares, and Equilon owns 37.45%. BP acquired its ownership first by acquiring ARCO, which owned 37.45% of Olympic, in April 2000. In September, 2000, BP acquired 25% of Olympic from GATX for \$7 million.³ We will follow the parties' lead in concluding that for all practical purposes the acquisition means that ARCO and BP are presently the same entity. We see no legal need, for purposes of this decision, to inquire further.
- 29 **Capital Structure.** Olympic has no equity in its capital structure. Its capital structure consists of 100% debt. According to Exhibit No. 3-T, page 3, it has loans outstanding in the amount of \$141.8 million, while its plant in service is valued at \$98 million. It is in arrears on payments of some \$9 million in interest on its debt, which continues to accrue at about \$750,000 per month. In effect, it has a negative equity of more than \$50 million.

³ Mr. Marshall contended at oral argument that the payment of \$7 million for a 25% share demonstrated a total company valuation of \$28 million. We observe that a single transaction has no necessary relationship with fair market value and that rates are not set on fair market value but on regulatory valuations. We note that the purchase included acquisition of a 25% share of the debt.

30 Allegations were made and contentions traded regarding the reasons for this situation. Olympic points to other pipelines, especially the Colonial Pipeline, which it contends has a capital structure at or approaching 100% debt, to illustrate that its capital structure is not unusual in the pipeline industry. Intervenors point to still other pipelines, which they contend have more traditional capital structures that include owners' equity.

31 **Source of funding.** Olympic has two commercial loans, one from Chase Manhattan Bank ("Chase") and the other from Prudential. The Chase loan is guaranteed by BP. The Prudential loan is not guaranteed, and while the loan has not been declared in default, conditions for such a finding may have been met. The bulk of Olympic's financing, however, is provided by its owners, Equilon and Arco/BP.

32 The Company owes Equilon approximately \$43 million. The parties to the loan have disagreements with regard to the existing indebtedness; litigation is a possibility. Equilon does not appear to be a realistic source of further funding. That leaves BP, the successor-in-interest by its acquisition of Arco to a series of loans and to a line of credit that at this juncture has \$20 million undrawn. Mr. Fox, Olympic's assistant treasurer, testified that he has been discussing another potential draw with his colleagues at BP and that they are cool to the idea based on the Company's financial condition and prospects, but he has not made a "firm" or written request for financing that has been rejected and he has not made a recommendation to BP to grant or deny such a request. He expressed his and his colleagues' sense of frustration by asking the rhetorical question, "Would you make a loan to this company?"

33 The relationships of the owners with the Company, its financing, and the Company's future is another topic that raises more questions than can be resolved by information within the current record. What is a sound fiscal course for this company? What are the appropriate regulatory consequences of the decisions it has made? Is it possible to segregate the roles of the same entities as shareholders, creditors, operator, and shippers? What bearing will that have on a longer-term regulatory solution?

34 Allegations were also made regarding How It Got That Way.⁴ Intervenors argue that the Company has passed its earnings, in excess of \$50 million since 1990, to its owners, rather than accumulating or retaining an equity capital component in the capital structure. The Company responds that it did have an equity component in its capital structure until relatively recently, and that it has not paid a dividend to its owners since 1997, long before Whatcom Creek. The Company also argues that its owners' loans serve the function of equity capital in the capital structure, because the owners put their money at risk of loss by making the loans. We state the arguments not to resolve them but to acknowledge them, and to reiterate our expectation that the record in the general rate case will be sufficient to identify whether any of the questions have bearing on the appropriate regulatory result and, if so, to resolve them.

35 **Acceptance of Capital Structure for purposes of the Interim Proceeding.** The Company's capital structure is one of the many intriguing but as yet unresolved aspects of this matter. For purposes of the interim proceeding, we will accept the Company's actual capital structure, consisting of 100% debt. Issues of whether the Commission will accept the actual structure or any of various hypothetical capital structures for purposes of setting long-term rates, and whether the Commission will require the owners to commit to changing the Company's capital structure, are matters that can be addressed during the general rate proceeding. For purposes of the interim, we focus on the debt component, as it represents the reality that the Company faces today.

36 **The Company's current situation remains critical.** It is true, as the intervenors note, that the Company's current situation is improving. It is also true, however, that the Company's situation remains so bad that considerable further improvement would not likely cause a material change in its condition. It contends that, without relief, its anticipated rate of return for 2002 will be a *negative* six per cent. Bright spots include the resumption of operations in the northern portion of the pipeline, the transportation of considerable traffic that is generating revenues, substantial progress

⁴ The Company argues that its capital structure relates in part to a common means of raising capital in the pipeline industry, called "T & Ds" or Throughput and Deficiency agreements. Such agreements represent shippers' commitments to ship or to pay for the transportation of a certain level of product, and guarantee a level of income to the pipeline. The pipeline can then use those agreements as security for financing. These instruments were apparently used in connection with financing Olympic's investment in its application for authority to build the Cross Cascade Pipeline, but are not shown otherwise to be an element in overall Company financing.

in meeting capital needs, and progress toward resolving the Company's management and organizational challenges.

V. SHOULD INTERIM RATE RELIEF BE GRANTED?

37 **The Nature of Interim Relief.** It is important at the outset of this discussion to identify the nature of interim relief and the context in which requests for interim relief have been considered. Interim relief is a mechanism to provide limited support to a public service company facing an immediate need and whose other immediate options are not viable. The question that the Commission must answer in determining whether to grant a request for urgent relief is whether the grant would be consistent with the public interest – that is, whether the Company needs the relief urgently enough that the Commission should grant it, given the agency's role as substitute for the marketplace, balancer of stakeholder interests that sometimes coincide and sometimes do not, and custodian of statutory policy that recognizes that public service companies do serve a public purpose and that the public interest in access to the services may bear on what otherwise might be a mere private disagreement.

38 **Relevant Factors.** The Company and the intervenors agree that the pertinent factors for consideration here are "The PNB standards," a set of factors that the Commission identified in a 1972 decision, *WUTC v. Pacific Northwest Bell Telephone Co., Cause No. U-72-30 (October 1972) (hereinafter "Pacific Northwest Bell")*. The factors were reiterated most recently in orders during 2001 regarding Avista and Puget Sound Energy.⁵ Commission Staff acknowledges the existence of the factors, argues that the factors do not make sense if mechanically applied to the Company's circumstances, and proposes an approach that it contends is consistent with what it calls "The Spirit of PNB."

39 We note that the essence of interim relief – indeed, the essence of regulation itself, is set out in the sixth PNB factor *Id.*:

As in all matters, we must reach our conclusion with the statutory charge to the Commission in mind, that is, to 'Regulate in the public interest.'

⁵*In re Avista Corporation, Docket No. UE-010395 (Sixth Supp. Order), Washington Utilities and Transportation Commission v. Puget Sound Energy Co., Docket Nos. UE-011163 and UE-011170 (Sixth Supp. Order), 2001*

(RCW 80.01.040). This is our ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors.

40 **The PNB factors.** The PNB factors ⁶are the following.

41 *First*, “the Commission should exercise its authority to grant interim rate relief only after an opportunity for an adequate hearing.” *Id.* Here, there has been a full albeit expedited opportunity for an adjudicative proceeding appropriate for exploring the narrow issues pertinent to the authorization of temporary rates.

42 *Second*, an interim 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.*” *Id.* Here, the Company has demonstrated the existence of an emergency. Funding is imminently needed. In particular, capital expenditures to ensure the continued safe operation of the pipeline have been made, and continuing funding is needed to maintain and enhance the pipeline’s safe operations. The Company’s ability to make those improvements depends on the Company’s ability to fund capital projects.

43 *Third*, “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.” *Id.* Here, the Company has earned, is earning, and projects to earn a negative rate of return. Pending a thorough review of the basis for those calculations, and updated information for the intrastate performance, we conclude that the Company’s situation reflects considerably more need than the mere failure to achieve its authorized rate of return.

44 *Fourth*, “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

⁶ We think that “Standards” is a term that may overstate the significance and the purpose of the elements, and suggest using the term “factor” instead. They are factors to consider in making a decision about whether interim rates are both needed and appropriate, and in most instances historically they have been relevant and valid indicators of a proper result. They are not, however, “standards” to be mechanically applied.

interest.” *Id.* Many of the financial indices pertinent to a publicly traded public service company have no meaning in application to this company. It is not publicly traded, and its shareholders’ other roles as refiners and shippers may color their design of – or their willingness to suffer – a company for which financial indices are largely meaningless. It is clear that with earnings insufficient to cover the carrying costs of debt, and with debt exceeding the book value of assets, the company is in a critical situation. It is also clear that, while the return to operation and achieving 90-plus per cent throughput signal improvement, the Company remains in very poor financial condition. The degree of improvement, the ability of that improvement to lift the company into stability, and the Company’s financial and operating plans to achieve and maintain stability, remain to be seen in the general rate proceeding.

45 *Fifth*, “In the current economic climate the financial health of a utility may decline very swiftly. 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 must be applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That 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.” *Id.* Here, disaster has struck. There is clear jeopardy to the utility and to the ratepayers from the Company’s financial situation.

46 *Sixth*, “As in all matters, we must reach our conclusion with the statutory charge to the Commission in mind, that is, to ‘Regulate in the public interest.’ (RCW 80.01.040). This is our ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors.” *Id.* This is the essence of our review of any request for interim rates. Here, we do weigh the salient factors. They include the Company’s dire financial circumstances and the Company’s need to pursue and fund capital projects related to public safety. They include the concern that there are many pending questions that need resolution but cannot be resolved in the time frame and limited review inherent in an interim proceeding. Finally, the salient factors include the fact of a pending general rate case – on a very speedy schedule – in which the parties have the opportunity to bring us evidence regarding the pending matters for our resolution.

47 We conclude, based on the evidence, examination, and argument of record, that Olympic has demonstrated its circumstances to be critical and to call for a portion of the extraordinary relief that it seeks.

VI. CALCULATION OF THE PROPER LEVEL OF INTERIM RELIEF

48 **The Company's Request.** The Company filed its request parallel to its request of the Federal Energy Regulatory Commission, or FERC, for a 62% increase in its interstate rates. The federal agency did allow the request to become effective, subject to refund, or its equivalent. The Company does not contend that the Commission should apply FERC methodology to support the Company request for interim rates. Instead, it asks us not to consider FERC matters at all, and contends that review under the pertinent PNB factors will support its need. They suggest looking to the Company's total debt to develop a debt coverage⁷ requirement, and suggest that coverage of 2.6 times is necessary. They point repeatedly to the existence of a capital spending budget of more than \$20 million and equate it with the need for rates of that level.

49 **Intervenors** find fault with the Company's approach. Intervenors contend that Olympic has not met its obligation to support any interim rate increase. They argue that the owners can simply write a check to increase an owner's loan or pay off a third-party loan, make a capital investment, or guarantee a third party's loan. They find no support for the calculation of the proposed increase; they believe no increase is warranted.

50 **Commission Staff** supports a grant of rate relief, acknowledging the Company's level of need, but suggests that the Commission tie it to familiar regulatory principles. It proposes two principal means of doing so.

51 *First*, Commission Staff acknowledges that the privately held nature of the corporation and its capital structure render the concept of "coverage ratio" inapplicable in a strict sense. Staff notes, however, that the Company's ability to meet its obligations from income is a measure of financial health and could affect

⁷ "Debt coverage" is a common measure of the financial health of publicly traded companies and may be established by an indenture relating to debt. The coverage ratio is the ratio of the interest charges on the company's debt to the revenues available to pay the interest. A 2.6 ratio would mean that the company's revenues were at least 2.6 times the interest charges on the company's debt.

potential lenders' (here, likely the owners') willingness to invest or provide funds. Staff has proposed a pre-tax fixed-charge coverage factor of 1.5. Intervenors oppose the suggestion. They argue that the owners have made prior loans without the comfort of a coverage factor and that none is called for now. The Company argues that its ability to weather its current emergency depends on allowance of the largest possible increase.

52 The Commission accepts the Commission Staff approach. Staff's approach enables us to fulfill our obligation to consider the salient factors, by providing an objective and rational methodology to measure the Company's interim need – the ability to draw capital from the sources available to it. Prior loans were not made under the present circumstances. We find Staff's proposed methodology a rational and well-based approach to a difficult question. We acknowledge that the Company's intrastate share of its capital needs may exceed the revenues to be gained from this increase, but note that the purpose of the increase is to alleviate the Company's short-term crisis, pending review of ongoing rates, and to enable it to secure financing, not to provide direct funding for capital improvements.

53 *Second*, Commission Staff proposes to limit the consideration of debt to the extent of the Company's plant in service, or rate base. In calculating plant in service, Staff would exclude investment in the Cross Cascade Pipe Line because it is not now providing service and there are no plans for its completion. Staff proposes to include investment related to the Bayview Terminal, because the facility has been tested and was placed in use.⁸ It is ready for service and it is now being used, albeit not for the original intended purpose. Having calculated intrastate, utility-related debt, they then adjust for *pro forma* intrastate pre-tax results of operation. The Commission accepts these decisions as proper and fully consistent with regulating principles and the evidence of record.

54 As a result of these adjustments, Commission Staff supports a rate increase of **19.5%**.

55 "*Spirit of PNB.*" Commission Staff calls this approach consistent with the spirit of PNB, in that it acknowledges the Company's dire circumstances and offers a pragmatic solution that is based firmly in regulatory principle. We view the proposal

⁸ The Bayview Terminal facts are disputed. For this interim order we accept the testimony of Mr. Batch at pp. 649 – 650 of the transcript.

as consistent with our basic role in evaluating requests for urgent relief, expressed in the sixth PNB factor – determining upon review of all salient factors whether the action is consistent with the public interest – and note specifically the significance of public safety concerns here, among the other elements of the public interest.

56 *The Commission adjusts the calculation.* We think it appropriate to adjust the Commission Staff’s proposal, however. We decline to consider *pro forma* operating results for the narrow purposes of our interim rate decision. The Company is emerging from an extended period of very limited operations. We believe that the operating results from the limited period of recent operations are preliminary. There may also be questions associated with the speed of the review and the availability of information. For example, it appears from the testimony of Mr. Fox that the public relations expense had been removed prior to the Staff adjustment removing it.

57 We note the large number of unanswered questions that we have deferred to, or stated a desire to hear more about in, the general rate proceeding. Given the degree of need, the refundability of rates, the number of issues that must be addressed in the general rate proceeding, and the nearness of the general rate proceeding, we decline to consider a results of operation *pro forma* statement, or the adjustments within it.

58 **Conclusion.** The result of our calculation yields an authorized interim rate increase of **24.3%** . The derivation of this figure is shown in Table I, attached as Appendix A.

VII. OTHER MATTERS

59 The Commission noted other matters during the parties’ presentations that appear to warrant comment.

60 **Consistency between Interim and General rate proceedings.** We noted in the recent PSE order, *Washington Utilities and Transportation Commission v. Puget Sound Energy Co.*, Docket Nos. UE-011163 and UE-011170 (*Sixth Supp. Order*), 2001,

An interim request is processed swiftly, without the full time for review afforded in a general rate case. It is more narrowly focused than a general rate proceeding. But it draws upon and rests in the context of the fully prepared evidence. * * * The evidence is interrelated and consistent.

The proceedings are independently prosecuted, but the two are not independent in context or content.

61 Commission Staff concludes from this language, which it refers to as a “holding,” that a company’s theories in a general rate case must be consistent with its theories in the interim. We do not agree. The language of the order is descriptive, not prescriptive. We certainly believe that – barring updates or corrections reasonably needed in any proceeding – the evidence will be consistent and the context will be the same. But the interim proceeding entertains a short-term solution to an asserted urgent problem. A company’s short-term need may require a different approach from the approach required to solve its long-term need. The coming general rate request proceeding in this docket will allow a closer and more studied analysis and review.

62 **Conditions.** Counsel for Tosco, Mr. Finklea, in argument called for conditions on any grant of interim relief. *Inter alia*, he called for Olympic to present a plan for emerging from its present financial troubles. While we decline to condition this interim, we agree that such a plan would provide helpful information relief in our general rate proceeding record and that it could enhance our deliberations in that phase of the proceeding.

63 **Subject to refund.** The Company asks that the increases be subject to refund. We think that is appropriate. If a refund is necessary as a result of the general rate proceeding, the Commission will hear the parties’ views on the form it should take. The Company must maintain sufficient records to enable the speedy and accurate calculation of any amounts to be refunded.

VIII. CONCLUSION

64 This proceeding has presented a truly unusual company in a truly unusual situation. Olympic’s ownership, its capital structure, its safety crisis, its seemingly aborted attempt to site a pipeline across the Cascade mountains, its recent change in management – each of these alone is significant, and all of them together present major challenges.

65 The Company’s first challenge is to ensure that its operations are safe, by complying with state and federal requirements and by taking such other reasonable steps as may

be necessary to ensure safety. Then the Company's task is to stabilize its operations and deal with the other challenges that it faces.

66 The interim increase that we authorize is strictly short-term in nature, designed to meet short-term needs. The number of questions to be resolved in the general rate proceeding is considerable. The general rate proceeding, however, is expected to produce a thorough financial analysis, based on sound regulatory principles, and to yield a result that is fully appropriate for the Company's long-term operations.

FINDINGS OF FACT

67 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

68 (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 pipeline companies. *Chapter 80.01 RCW.*

69 (2) Olympic Pipe Line Company is a "public service company" as that term is defined in RCW 81.04.010, and a common carrier pipeline company under RCW 81.88.030, and as those terms otherwise may be used in Title 81 RCW. Olympic is engaged in Washington State in the business of providing the transportation of refined petroleum products by pipeline to the public for compensation.

70 (3) Olympic filed on October 31, 2001, certain tariff revisions that were suspended by Commission order entered in this docket on November 20, 2001. In its filing, Olympic asked that the rates be authorized on an interim basis. This order considers only the interim application of the requested rates.

71 (4) The rates proposed by Olympic's as-filed tariff revisions that are the subject of the Commission's inquiry in this proceeding, if implemented, would not be fair, just, and reasonable.

- 72 (5) A temporary rate increase in the form of a surcharge to all of Olympic's pipeline transportation rate schedules in a uniform amount of 24.3 percent is required, beginning on February 1, 2002, to provide sufficient revenue to yield reasonable compensation to Olympic for the service rendered. All surcharge revenues are subject to refund, with interest, pending review in Olympic's pending general rate proceeding.
- 73 (6) The rates that result from this Order are subject to refund and are, with that condition, just and reasonable rates.
- 74 (7) The rates that result from this Order are neither unduly preferential nor discriminatory.

CONCLUSIONS OF LAW

- 75 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- 76 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceedings. *Titles 80 and 81 RCW.*
- 77 (2) The rates proposed by tariff revisions filed by Olympic Pipe Line Company on October 31, 2002, and suspended by prior Commission order, are not just, fair, or reasonable and should be rejected. *RCW 81.04.250.*
- 78 (3) Olympic Pipe Line Company's existing rates for pipeline transportation service are insufficient to yield reasonable compensation for the service rendered and are insufficient to attract necessary capital.

- 79 (4) Olympic Pipe Line Company requires immediate rate relief, subject to refund, pending full review by the Commission of its general rate proceeding now scheduled for hearing during May 2002.
- 80 (5) The Commission must determine the just and reasonable rates to be temporarily observed and in force, subject to refund.
- 81 (6) The temporary rates that result from this Order are subject to refund and are, with that condition, just, reasonable, and compensatory.
- 82 (7) The temporary rates that result from this Order are neither unduly preferential nor discriminatory.
- 83 (8) The Commission should retain jurisdiction over the subject matter and the Parties to effectuate the provisions of this Order. *Titles 80 and 81RCW.*

ORDER

- 84 (1) THE COMMISSION ORDERS That motion for interim application of the proposed tariff revisions filed by Olympic Pipe Line Company on October 31, 2001, and suspended by prior Commission order, is denied.
- 85 (2) THE COMMISSION ORDERS FURTHER That Olympic Pipe Line Company is authorized to initiate a temporary rate increase in the form of a supplemental tariff operating on all of its pipeline transportation rate schedules in a uniform amount of 24.3 percent beginning on February 2, 2002; all revenues collected by under the surcharge are subject to refund.
- 86 (3) THE COMMISSION ORDERS FURTHER That Olympic Pipe Line Company is authorized and required to file a supplemental tariff consistent with the terms of this order no later than noon on February 1, 2002 for effect on February 2. The tariff filing must contain the following provisions:
- Any revenues collected under this tariff sheet are collected subject to refund, based on the level of permanent rates found to be appropriate in the review of the Company's general rate proceeding in Docket No. TO-011472. If refunds are required, the Company will pay interest on

the refunds based on the fair rate of return determined by the Commission in calculating permanent rates in Docket No. TO-011472.

- The tariff sheet will expire on the filing date for permanent rates that the Commission establishes in its order in Docket No. TO-011472. If the Commission authorizes no change in permanent rates, the tariff sheet will expire on the service date of the Commission order.
- The Commission has retained jurisdiction over the rates set forth in this tariff sheet, and the Commission has expressly reserved the right to make whatever changes are necessary and appropriate, if any, pending a final order in Docket No. TO-011472.

87 (4) The Commission orders the application of the provisions described in the tariff provisions set out above and authorizes the Commission Secretary to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this order.

88 (5) THE COMMISSION ORDERS FURTHER That it retains jurisdiction over the subject matter and the Parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 31st day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).