

- (a) Approving the Agreement as being in the public interest;
- (b) Allowing the Initial Tariff Rates for intrastate shipments as defined in the Agreement to go into effect on January 1, 2004, without suspension and by operation of law;
- (c) Approving the methodology for preparing future rate filings under the Agreement;
- (d) Approving the Total Revenue Requirement “true-up” elements as defined in Sections 3.3 through 3.12 of the Agreement;
- (e) Approving the refund schedule in the Agreements as satisfying the requirement in paragraph 349 of the Final Order in Docket No. TO-011472;
- (f) Approving the Joint Petition and the associated rate filing in Docket No. TO-032023 as satisfying the requirement in paragraphs 256-258 of the Final Order in Docket No. TO-011472 (requiring Olympic to make a new rate filing between July 1 and October 1, 2004); and
- (g) Stating that the Agreement, the Commission’s approval of the Agreement, and any subsequent rate filings made pursuant to the Agreement shall have no precedential effect in any future rate proceeding regarding rates in effect beyond the term of the Agreement. *See Settlement Agreement at 40, ¶ 4.5(d).*

3 A tariff filing by Olympic accompanied the Joint Petition. The tariff filing proposes to increase Olympic’s intrastate pipeline rates approximately 35.3% or

\$5,256,400 annually. The proposed effective date on the tariff is January 1, 2004. The tariff filing was assigned Commission Docket No. TO-032023.

4 The tariff filing in Docket No. TO-032023 is related to the Petition in this docket because the tariff filing is made pursuant to the Agreement for which the Joint Petitioners seek approval.

5 Olympic filed a similar tariff filing, seeking the same rate structure for Olympic's interstate rates, and a similar petition seeking approval of the same Agreement, with the Federal Energy Regulatory Commission (FERC).

6 Olympic is currently in bankruptcy. Olympic filed the Settlement Agreement for approval by the United States Bankruptcy Court, Western District of Washington (Docket No. 03-14059). On November 26, 2003, the Honorable Judge Samuel J. Steiner, Bankruptcy Judge, approved the Settlement Agreement.

PROCEDURAL HISTORY

7 Olympic's tariff filing (Docket No. TO-032023) and the Joint Petition (Docket No. TO-031973) came before the Commission at its regular open public meeting on December 10, 2003. At that open public meeting, the two items were recessed to an open meeting scheduled for December 23, 2003.

8 At the December 23, 2003, open public meeting, the Commission considered the two items. It heard comments from Commission Staff, Olympic, Tesoro and CP. The Commission addresses the Joint Petition and Settlement Agreement in this Order. The Commission took no action in Docket No. TO-032023. Accordingly, the tariff in Docket No. TO-032023 will go into effect on January 1, 2003, as filed, by operation of law, on less than statutory notice (LSN). An order was issued in that docket permitting LSN treatment.

DISCUSSION

- 9 Having considered the pleadings filed and comments presented in this docket, the Commission approves the Settlement Agreement as appropriate and consistent with the public interest.
- 10 The Agreement calls for Olympic to file on a periodic basis certain tariff filings prepared pursuant to a methodology described in the Agreement. In general, the methodology in the Agreement is a cost-based, depreciated original cost rate base methodology. All costs and the revenue requirement are subject to a “true-up” mechanism. This will require deferred accounting by Olympic, which is approved by this Order. The Agreement also sets forth a procedure for promptly tracking through to rates the benefits of improved throughput on the pipeline.
- 11 The Agreement arises under unique circumstances that merit a unique solution. The most significant of these is that Olympic currently is in bankruptcy. The Petition characterizes the Agreement as “a critical element of [Olympic’s bankruptcy] reorganization plan that is designed to allow Olympic to remain in business and to return to normal operations,” and will improve Olympic’s ability to attract financing and emerge from bankruptcy. *Petition at 4, ¶ 8.*
- 12 In addition, the Agreement addresses certain requirements the Commission imposed on Olympic in the Final Order in Docket No. TO-011472, namely (1) the requirement in paragraph 349 of the Final Order that Olympic pay refunds to repay with interest the difference between the permanent rates set by the Final Order, and the temporary rates set by an earlier order in that docket to address Olympic’s request for interim rate relief; and (2) the requirement in paragraphs 256-258 of the Final Order that Olympic file a general rate case between July 1 and October 1, 2004.

- 13 The Agreement assures that the required refunds will be made, albeit on a longer schedule than the Commission previously ordered. However, the status of the refunds has been uncertain, as Olympic stopped paying refunds when it filed for bankruptcy. The issue of the refunds was a contested issue in Olympic's bankruptcy proceeding. The Agreement resolves that issue in a manner consistent with the spirit of the Commission's Final Order. It makes more certain the shippers' ability to recover the refunds ordered by this Commission.
- 14 The Agreement also resolves the rate case filing requirement in a manner consistent with the Final Order. The Agreement, if it is implemented as contemplated by the signatories, will provide a mechanism for Olympic to update its costs and throughput, and have those costs and throughput reflected in rates.
- 15 The Commission has considered these unique factors in determining whether to approve the Agreement. The Agreement is the product of arms length negotiation between Olympic and two large, sophisticated and unaffiliated shippers. The Agreement should result in rate stability and predictability for shippers, and more prompt cost recovery for Olympic.
- 16 The Joint Petitioners state: "The Agreement makes it more likely that Olympic will: 1) realize the revenue necessary to reorganize its business debts arising from its unfortunate and unique financial circumstances, 2) emerge from bankruptcy, 3) return to normal operating throughput levels, 4) return Bayview [Terminal] facilities to service, and 4) (sic) complete the projects necessary to ensure the continued safe and environmentally sound operation of the pipeline." *Petition at 8, ¶ 22.*
- 17 The Commission has no information or present basis on which to disagree with the statements in paragraph 16, above, of the Joint Petitioners.

18 The Joint Petitioners further state: “Nothing in the Agreement is intended to supplant or affect the authority of the Commission to review and approve or disapprove [rates filed pursuant to the Agreement].” *Petition at 4, ¶ 6; see also Settlement Agreement at 40, ¶ 4.5(d).*

19 The Agreement does not require the Commission to automatically approve, or allow into effect, any tariff filing filed pursuant to the Agreement. The Agreement is acceptable to the Commission with that explicit understanding. Accordingly, the Commission’s approval of the Agreement will allow Olympic the ability to make the described tariff filings, including the proposed deferred cost accounting treatment.

20 The Commission finds that Sections 3.1 (b) and (c) of the Agreement resolve the refund requirement contained in the Commission’s Final Order in Docket No. TO-011472, described above, so long as the refund schedule set forth in the Agreement is carried out. The Commission also finds that the associated tariff filing in Docket No. TO-032023 that implements the terms of the Agreement satisfies the rate case filing requirement in the Commission’s Final Order in Docket No. TO-011472.

FINDINGS AND CONCLUSIONS

21 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters to this decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact and conclusions of law. Those portions of the preceding detailed discussion that state findings and conclusions pertaining to the ultimate decisions of the Commission are incorporated into the ultimate findings and conclusions by this reference.

- 22 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, and transfers of public service companies, including pipeline companies. *RCW 80.01.040; RCW 81.04.010; Chapter 81.28 RCW and Chapter 81.88 RCW.*
- 23 (2) Olympic Pipe Line Company is a pipeline company and is a public service company subject to the jurisdiction of the Commission.
- 24 (3) Pursuant to RCW 34.05.060 and WAC 480-09-466, the Commission favors the voluntary settlement of disputes. The Commission “will approve settlements when doing so is lawful and when the result is appropriate and consistent with the public interest in light of all the information available to the commission.” *WAC 480-09-466.*
- 25 (4) Staff has reviewed the request in Docket No. TO-031973 and recommended the relief requested in the Joint Petition be granted and the Settlement Agreement be approved.
- 26 (5) This matter was brought before the Commission at a recessed open meeting on December 23, 2003.
- 27 (6) After examining the Joint Petition and Settlement Agreement filed by Olympic, Tesoro and CP on December 2, 2003, the Supplement to the Joint Petition filed on December 16, 2003, and considering all pleadings filed and comments presented in this matter, the Commission finds the settlement agreement appropriate and consistent with the public interest, in light of all the information available to the Commission.

ORDER

THE COMMISSION ORDERS:

- 28 (1) The Commission grants the relief requested in the Joint Petition as follows:
- 29 (2) The Settlement Agreement between Olympic Pipe Line Company, Tesoro Refining and marketing Company and ConocoPhillips Company dated November 7, 2003, and attached to this Order as Appendix A is approved as in the public interest.
- 30 (3) The Commission approves Olympic's ability to file with the Commission the tariff filings described in the Agreement.
- 31 (4) The Commission authorizes Olympic to use deferred accounting to account for the "true-ups" described in the Settlement Agreement. Olympic shall separately identify and maintain these accounts for purposes of implementing the Settlement Agreement, and like all other accounting records of Olympic, these records shall be subject to audit and inspection by the Commission. Neither the Commission's approval of deferred accounting, nor the existence of amounts in deferred accounts, necessarily entitles Olympic to recover those amounts through rates. Olympic must make a rate filing for that purpose, seeking recovery, subject to review by the Commission.
- 32 (5) The refund schedule in the Settlement Agreement, if completed, satisfies paragraph 349 of the Commission's Final Order in Docket No. TO-011472.

- 33 (6) The tariff filing in Docket No. TO-032023 satisfies the rate case filing requirement in paragraphs 256-258 of the Commission's Final Order in Docket No. TO-011472.
- 34 (7) The Commission's approval of the Settlement Agreement, and any rate filings made pursuant to that Agreement, have no precedential effect in any future rate proceeding regarding rates in effect beyond the term of the Agreement.
- 35 (8) No provision of the Settlement Agreement or this Order approving the Settlement Agreement, is intended, nor shall be interpreted to, limit the regulatory jurisdiction or authority of the WUTC in any regard.
- 36 (9) The Commission retains jurisdiction over this matter.

DATED at Olympia, Washington, and effective this 23rd day of DECEMBER, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner