

Agenda Date: January 25, 2006
Item Numbers: B2 and B3

Dockets: TO-051879 and TO-051977

Company Name: Olympic Pipe Line Company

Staff: Gene Eckhardt, Asst. Director of Transportation and Water

Recommendation:

Take no action on the filing, Notice of Change in Parties to the Shareholders Agreement, made by Olympic Pipe Line Company in Docket TO-051879.

Dismiss the Application of Olympic Pipe Line Company, ARCO Midcon LLC, and Enbridge, Inc., for an Order Approving the Sale by ARCO Midcon LLC of a Portion of its Shares in Olympic Pipe Line Company to Enbridge, Inc., as filed in Docket TO-051977.

Docket No. TO-051879

Since September 2000, Equilon / Shell have owned 37.45 percent of Olympic Pipe Line Company (Olympic) stock and ARCO Midcon, LLC (ARCO) has owned 62.55 percent. In the fall, 2005, Shell entered into an agreement to sell its shares to a third party. Effective December 1, 2005, ARCO exercised a right of first refusal under the Shareholders Agreement and acquired Shell's shares. Olympic notified the Commission of this anticipated transaction on November 30, 2005, because of the possibility that it may be considered an affiliate transaction under RCW 81.16.¹

RCW 81.16 requires a public service company to file verified copies of contracts or summaries of arrangements for certain transactions between a public service company and any affiliated interest as defined in that chapter. Although Olympic is a public service company under RCW 81.16, it did not participate in the stock transaction. The seller, Shell, and the buyer, ARCO, are "affiliated interests" of Olympic because they each hold more than five percent of Olympic's voting securities. However, the stock sale took place between the two "affiliated interests," not between the public service company and an affiliated interest. Therefore, the commission has no jurisdiction over that transaction under RCW 81.16.

¹ Olympic was a party to the Shareholders Agreement.

Docket No. TO-051977

On November 22, 2005, ARCO entered into a Stock Purchase Agreement ("SPA") with Enbridge, a Canadian corporation. The SPA was not effective until the Shell share transfer was complete and, by its terms, will not close until all required regulatory approvals are secured. Under the terms of the SPA, Enbridge will acquire a sixty-five percent interest in Olympic with ARCO retaining a thirty-five percent interest. Under a Shareholders Agreement that is required to be entered into as part of the SPA, control over major decisions and over such matters as asset dispositions is joint between the shareholders to a degree that parallels the shared control under the previous Shell/ARCO Shareholders Agreement. In other words, both shareholders must act jointly on all major decisions.

In addition to personal contacts with shippers, safety and regulatory agencies, and other key stakeholders, Olympic mailed a written notice to fifty-eight key stakeholders. The notice advised parties that the Commission would consider this matter at the Commission's January 25, 2006, open meeting, and that parties could send comments to the Commission. Also, the Commission's Pipe Line Safety Section discussed the proposed stock transaction at the January 12, 2006, meeting of the Citizens Committee on Pipeline Safety. The Commission has received no comments.

Under RCW 81.12.010, federally regulated common carriers are exempt from application of the transfer of property statutes. ("The term 'public service company,' as used in this chapter . . . shall not include common carriers subject to regulation by the Interstate Commerce Commission. . . .") Under RCW 81.88.030, pipeline companies are regulated as common carriers. As Applicants argue, "the authority exercised by the ICC at the time the exemption was adopted is substantively identical to the authority exercised by FERC today—i.e., there is no reason to infer that the legislative intent underlying the exemption depended upon which federal agency exercised that regulatory authority." Application at 33.

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