BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. OLYMPIC PIPE LINE COMPANY, INC., Respondent.	DOCKET NO. TO-011472 ANSWER TO OLYMPIC'S MOTION FOR RECONSIDERATION ON BEHALF OF COMMISSION STAFF

I. INTRODUCTION

Olympic Pipe Line Company filed a Motion for Reconsideration from the Commission's January 31, 2001, Third Supplemental Order in this docket. In that Order, the Commission granted an interim rate increase of 24.3% subject to refund.

Commission Staff respectfully requests the Commission to deny Olympic's Motion.

II. PRELIMINARY MATTERS

A. Olympic's Motion is Based on New Evidence, in Violation of WAC 480-09-810

Olympic's Motion relies in part on an attached February 11, 2002, Declaration of Howard B. Fox. *See* Motion at ¶ 4. That declaration is not evidence of record.

Commission rules expressly require motions for reconsideration to be based on the record. *See* WAC 480-09-810(3). This new declaration of Mr. Fox is not part of the evidentiary record, and it contains new allegations of fact. Thus, Olympic's use of Mr. Fox's declaration violates WAC 480-09-810(3), and as such should not be given any consideration.

Moreover, among the other information used by Olympic to support its Motion is what Olympic called its "Supplemental Memorandum," filed January 30, 2002. *See* Motion at ¶ 13. That pleading is unauthorized. It also should be given no consideration.[1] If the Commission determines to give consideration to that pleading now, fairness dictates the Commission provide the parties an opportunity to file motions to strike it.

Olympic knows the rules. It must obey them. If Olympic wishes to bring new evidence before the Commission, it should file a motion for rehearing. *See* WAC 80-09-820(2)(b). That process, once invoked, allows all parties a fair opportunity to present and respond to new evidence. The procedure Olympic contemplates does not.

The Commission should state it will consider neither Mr. Fox's declaration nor Olympic's Supplemental Memorandum for purposes of reconsideration.

B. Olympic's Motion is Based on a Misinterpretation of the Order

Olympic uses a single paragraph of the Commission's Third Supplemental Order to level a substantial challenge to the legal basis for Commission regulation of Olympic's intrastate rates. Olympic's focuses on ¶ 48 of the Order, where the Commission stated:

> 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.

See Motion at ¶ 10.

[1] Staff has filed no motion to strike because that pleading since it was filed too late to be considered by the Commission in its Order.

Olympic thinks ¶ 48 of the Commission's Order is incorrect. According to Olympic, the Company has "consistently raised the intrastate/interstate issue." Olympic believes the Commission should grant the full 62% rate increase to "avoid" constitutional issues. Motion at ¶¶ 12-28.

Olympic's position is unsustainable. In fact, Olympic tried its claim for interim rate relief under the Commission's interim rate relief standards. Though Olympic now insists it "consistently raised" the federal issues it is now urging the Commission to avoid, the Company's Prehearing Brief does not include the legal arguments Olympic now advances.

Moreover, ¶ 48 of the Commission's Order is correct.[2] It appears that the Commission used the term "FERC matters" to refer to the issues regarding the use of the FERC methodology. That is a correct reference. Olympic's case for interim rate relief was not based on the FERC methodology. No party argued that it was necessary to resolve the methodology issue during the interim phase of these proceedings. Paragraph 48 of the Commission's Order is also correct in stating that Olympic contended that review under the pertinent PNB factors would support its request for interim rate relief. *See* Olympic's Prehearing Brief at ¶20-39.

Indeed, Olympic testified it wished to "avoid potential confusion with general rate case issues." (Mr. Batch, Ex. 2-T at 2, ll. 4-7). Staff testified that FERC methodology was not an issue in the interim phase of this docket. (Mr. Elgin, Tr. 1029-30).

Now, by asking the Commission to reconsider ¶ 48 of its Order, Olympic essentially contends the standards for interim rate relief are superfluous, and that it should get a 62% increase in order to "avoid" federal issues. That is simply not justified by what the Commission

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[2] If the Commission believes ¶ 48 of its Order is unclear, the solution is to simply replace the term "FERC matters" with "FERC methodology."

said in ¶ 48 of its Order. In any event, we proceed to analyze the legal issues now raised by Olympic.

III. SUMMARY OF STAFF'S ARGUMENT IN OPPOSITION TO OLYMPIC'S MOTION

Olympic's Motion makes two basic arguments: 1) rates for intrastate pipeline transportation should be the same as rates for interstate transportation, and 2) a 62% increase in intrastate rates is justified because it would be subject to refund.

Olympic's arguments lack merit. As we demonstrate below, the Commission acted within its jurisdictional prerogative by allowing a 24.3% increase in interim rates. The Commission's action is proper, even though the resulting rates may differ from the rates allowed for transportation in interstate commerce by the Federal Energy Regulatory Commission[3] (FERC). Moreover, higher rates are not justified simply because they may be subject to refund.

IV. ARGUMENT

A. State and Federal Pipeline Rate Jurisdiction Are Separate

Olympic urges that in order to "avoid a divergence between rates paid by interstate shippers and intrastate shippers," the Commission should grant a 62% increase, the same as that granted by FERC. Motion at ¶ 18. Olympic claims this is necessary to "avoid constitutional issues." *Id.* at ¶¶ 18 – 28.

Olympic's arguments are without substantial legal basis. Intrastate and interstate regulation of pipeline rates are separate. It is lawful for the Commission to regulate intrastate rates so long as the result is fair, just, reasonable, and sufficient rates. Olympic does not claim that the interim rates granted fail to meet this standard. Moreover, if intrastate rates were

[3] The Interstate Commerce Commission regulated petroleum pipelines until 1977. In 1977, jurisdiction over petroleum pipelines was transferred to FERC.

required to be identical to interstate rates, state regulation would be superfluous, contrary to any rational reading of the applicable statutes and case law.

Because Olympic argues that any difference between state and federal rates will burden interstate commerce and violate federal statutes, it is important to resolve these issues rather than avoid them, as Olympic proposes.

If a difference between intrastate and interstate pipeline transportation rates was *per se* improper from a federal perspective, either Congress would have enacted legislation preempting the states, or there would be a substantial body of case law so holding. Instead, both Congress and the courts have honored the respective spheres of federal/state pipeline transportation rate-setting jurisdiction.

In sum, the Commission has jurisdiction to set intrastate pipeline transportation rates. Not a single case has been cited by Olympic where a cost-based intrastate pipeline transportation rate has been invalidated based on the theories it espouses.

B. The Commission Acted Within Its Authorized Sphere of Regulation

Olympic is subject to both federal and state regulation because it ships petroleum products in both intrastate and interstate commerce. However, federal and state rate-setting jurisdiction are separate.

As relevant here, the Interstate Commerce Act[4] limits federal pipeline rate-setting jurisdiction to pipeline transportation from one state to another state:

[4] The Interstate Commerce Act was repealed and recodified in 1978. Section 4(c) of the Recodification Act of 1978, Pub. L. No. 95-473, 92 Stat. 1466, states that oil pipelines were exempt from the Act's repeal and recodification:

> "The laws specified in the schedule in subsection (b) of this section, as they existed on October 1, 1977, are not repealed to the extent –
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> "those laws (A) vested functions in the Interstate Commerce Commission, or in the chairman or members of the Commission, related to the transportation of oil by pipeline, and (B) vested functions and authority in the Commission, or an officer or component of the Commission, related to the establishment of rates or charges for the transportation of oil by pipeline or the valuation of any such pipelines. . . ."

> (1) That the provisions of this part shall apply to common carriers engaged in –
> …
> (b) the transportation of oil or other commodity … by pipe line … from one State … of the United States … to any other State …

49 U.S.C. §1(1)(b)).[5]

Conversely, RCW 81.28.230 restricts this Commission's pipeline rate jurisdiction to common carrier transportation "within the state."[6]

The Court has recognized that this dual regulatory scheme is explicit Congressional recognition that the state's role is to set intrastate transportation rates. In *Simpson v. Shepard,* 230 U.S. 352, 33 S. Ct. 729, 57 L. Ed. 1511 (1913), the Court examined the scope of the Interstate Commerce Act (which included interstate rate regulation for petroleum pipelines). The Court stated in as clear terms as possible that there was no federal attempt to interfere with intrastate rate regulation by the states: Congress "expressly provided that [the scope of federal regulation] was not to extend to purely intrastate traffic." 230 U.S. at 418. The Court then concluded:

> Having regard to the terms of the Federal statute, the familiar range of state action at the time it was enacted, the continued exercise of state authority in the same manner and to the same extent after its enactment, and the decisions of this court, recognizing and upholding this authority, we find no foundation for the proposition that the act to regulate commerce contemplated interference therewith.

230 U.S. at 420.

Thus, the Act as it existed prior to the recodification applies to oil pipelines, and citations are made to the prior Act accordingly. See below for a more detailed analysis of relevant sections.

[5] For this law, we previously (and incorrectly) cited the Commission to 49 U.S.C. §15301(a)(2). *See* Statement of Authorities of Commission Staff (January 23, 2002) Item 11. Because oil pipelines were exempt from the recodification (see footnote 4), we now correct that citation: 49 U.S.C. §1(1)(b) is the proper statute. We regret the earlier citation error.

[6] Under RCW 80.88.020, the Commission is charged with regulating common carriers of petroleum products 'in the same manner and to the same extent as other public service corporations." RCW 81.28 contains the rate-setting jurisdiction and standards for such public service corporations.

In its Third Supplemental Order at ¶ 27, the Commission correctly observed that in determining intrastate rates, the Commission treats the Company's intrastate operations as completely independent from its interstate operations. That observation is consistent with, and justified by, the statutory separation between intrastate and interstate rate-setting jurisdiction.

Courts normally respect this sort of statutory division between intrastate and interstate rate regulation, when faced with arguments similar to those proffered by Olympic. For example, in *Louisiana Public Service Comm'n v. Federal Communications Comm'n*, 476 U.S. 355, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986), the FCC issued an order that attempted to assert jurisdiction over the establishment of intrastate depreciation rates for telecommunications companies that also operated in interstate commerce. The Court recognized that federal and state rate-setting jurisdiction was separate under the Communications Act, and reversed the FCC order. The Court emphasized that the Communications Act limited the FCC's jurisdiction to "regulating interstate and foreign commerce," and the FCC had no jurisdiction over intrastate rates. 476 U.S. at 369.

In the context of petroleum pipeline rate regulation, the courts have explicitly recognized that it is appropriate to have different pipeline rates for intrastate and interstate transportation under the statutory scheme that applies here. In *Cook Inlet Pipe Line Co. v. Alaska Public Utilities Comm'n,* 836 P.2d 343, 352 (Alaska, 1992), the state commission used a different rate setting method than that used by FERC, which resulted in intrastate petroleum pipeline rates that were substantially lower than interstate rates. 836 P.2d at 344. The court acknowledged that interstate and intrastate rates were not required to be identical, and that intrastate rates could be different so long as the difference did not cause unjust discrimination against interstate commerce. *Id.* at 353 (citation omitted).

Like Olympic here, Cook Inlet Pipeline Company argued that federal law preempted state regulation, and, as a matter of law, discrimination against interstate commerce exists when the intrastate rate is lower than the interstate rate for identical service. *Id.* at 353. The court rejected those arguments, and upheld the intrastate rate.

The arguments proffered by Olympic in this case are similar to the failed arguments of the pipeline in *Cook Inlet* and the FCC in *Louisiana Public Service Co., supra.* Olympic's arguments fail for the same reasons.

C. Olympic's Argument Renders State Regulation of Intrastate Rates Superfluous, Contrary to Congressional Intent

Olympic argues that an "interim rate divergence should be avoided" due to the federal/state issues allegedly created by such a divergence. Motion at ¶ 28. Citing to §§ 2 and 13(4) of the Interstate Commerce Act, Olympic points out that FERC has authority to fix intrastate rates when such rates result in unjust discrimination against, or undue burden on, interstate commerce. Motion at ¶¶ 24 - 27 (citation omitted). Olympic also argues that every divergence in rates are unlawfully discriminatory because such a difference prevents equal treatment among all shippers.[7] Motion at ¶ 26.

But applying the notion that states must set intrastate rates at the same level as interstate rates proves too much, since it would nullify the Commission's authority to independently regulate intrastate rates. The Commission would no longer have the authority to determine what intrastate rate is fair, just, reasonable, and sufficient. That result is inconsistent with the regulatory scheme contemplated by the state legislature in enacting Title 81, and by Congress in

[7] Olympic cites *Nashville, C. & S. L. Ry v. Tennessee*, 262 U.S. 318, 43 S. Ct. 583, 67 L. Ed. 999 (1923). Motion at ¶ 26. But in that case, the Court acknowledged that not every difference in intrastate rates constituted unlawful discrimination: "Every rate which gives preference or advantage to certain persons, commodities, localities or traffic is discriminatory. . . .*But discrimination is not necessarily unlawful.* . . .The [federal] Commission may

carefully defining the sphere of federal rate regulation to exclude intrastate pipeline transportation rates. The Commission should deny Olympic's Motion for that reason.

D. Olympic Fails to Prove that Cost-Based Intrastate Rates are Discriminatory

Olympic argues that federal law may preempt the Commission's regulation of intrastate rates. It bases this argument on the Interstate Commerce Act, 49 U.S.C. §§ 2[8] and 13(4).[9] Motion at ¶ 24 – 25.

Both § 2 and § 13(4) govern rate regulation of an oil pipeline by FERC. Thus, claims based on either of these sections should be brought before FERC, not this Commission. Olympic cites no case supporting the proposition that an inquiry before a state regulatory agency based on

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conclude that the preference given is not unreasonable, undue or unjust, since it does not, in fact, result in any prejudice or disadvantage." 262 U.S. at 322 (emphasis added).

[8] 49 U.S.C. § 2 states:

> If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

[9] 49 U.S.C. § 13(4) states:

> Whenever any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum or minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden: *Provided*, That upon the filing of any petition authorized by the provisions of paragraph (3) of this section to be filed by the carrier concerned, the Commission shall forthwith institute an investigation as aforesaid into the lawfulness of such rate, fare, charge, classification, regulation, or practice (whether or not theretofore considered by any State agency or authority and without regard to the pendency before any State agency or authority of proceeding relating thereto) and shall give special expedition to the hearing and decision therein. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affted thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

§2 or §13(4) is appropriate. But even if Olympic's claims are properly before the Commission, Olympic has failed to prove it is entitled to relief.

1. Olympic Fails to Prove that Cost-Based Intrastate Rates are Unjustly Discriminatory

Although both 49 U.S.C. § 2 and § 13(4) describe undue discrimination, the two sections address different types of discrimination. Section 2 addresses discrimination by a carrier against customers, *i.e.* charging different rates to different customers for similar services. Section 13(4) addresses discrimination by a carrier against interstate commerce.

Olympic argues that unlawful rate discrimination will result if it charges different rates set by the Commission and FERC. That is not enough. Indeed, Olympic fails to cite any case in which a cost-based intrastate pipeline transportation rate was held to be unlawfully discriminatory compared to a federal rate. That is not surprising, since Congress anticipated differences in interstate and intrastate rates when it created the interstate regulatory scheme. *See Simpson v. Shepard, supra,* 230 U.S. at 418-420.

Moreover, although FERC may prescribe intrastate rates under § 13(4), it generally does not have unbridled authority to regulate intrastate rates. *Florida v. United States*, 282 U.S. 194, 212, 51S. Ct. 119, 75 L. Ed. 291 (1931). Unless state action violates § 13(4), a state's authority to regulate intrastate rates is exclusive. *North Carolina v. United States*, 325 U.S. 507, 511, 65 S. Ct. 1260, 89 L. Ed. 1760 (1945).

Furthermore, the mere existence of a disparity between intrastate and interstate rates does not warrant preemption of the state's regulation of intrastate rates. *Florida v. United States, supra*, 282 U.S. at 212. Only discrimination which is unreasonable, undue, or unjust is prohibited by §13(4). *Nashville, C. & St. L. Ry. v. Tennessee*, 262 U.S. 318, 322, 43 S. Ct. 583, 67 L. Ed. 999 (1923). Thus, § 13(4) does not confer authority to FERC to adjust intrastate rates whenever intrastate rates are lower than interstate rates. *See North Carolina v. United States, supra*, 325 U.S. at 512. Again, Olympic cites no case that holds a cost-based intrastate pipeline transportation rate causes unlawful discrimination prohibited by § 13(4).

Thus, because the Commission acted within its jurisdiction in setting the interim rates, and the rates set meet appropriate standards, Olympic's motion for reconsideration should be denied.

2. The *Hope Natural Gas* Case and the *Duquesne Light Co.* Case Fully Support the Commission's Order

To support its case, Olympic cites *Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944), and *Duquesne Light Co. v. Barasch,* 488 U.S. 299, 310, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989). Motion at ¶¶ 19-20. In fact, these cases confirm the Commission was correct in asserting its jurisdiction over intrastate rates, and in rejecting Olympic's case.

In *Federal Power Comm'n v. Hope Natural Gas Co.*, the Court looked to the Company's return on plant in service, based on historical cost less depreciation, in determining whether the rate order under review met constitutional standards. 320 U.S. at 603. It is fundamental that a public service company is only entitled to a return on the plant it used to serve the public. *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 629, 692, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).

To our knowledge, no Court has required a regulatory agency to award a utility a return on total invested capital, as Olympic has requested, on constitutional grounds. (*See, e.g.* Mr. Batch, Ex. 2-T at 3-4 for the evidence that Olympic's request was based on total invested capital).

Additionally, *Duquesne Light Co. v. Barasch* offers no solace to Olympic. That case did not present the issue of whether it was unlawful for a state commission to set a cost-based intrastate rate using a methodology or approach different from that used to set interstate rates for similar service. Rather, it affirmed the principle that each state could decide for itself the appropriate methodology used to determine intrastate rates:

> The Constitution within broad limits leaves the States free to decide what ratesetting methodology best meets their needs in balancing the interests of the utility and the public.

488 U.S. at 316.

Thus, *Hope Natural Gas* and *Duquesne Light Co.* support only denial of Olympic's Motion.

3. Olympic's Reliance On *Schneidewind v. ANR Pipeline Co.* is Unjustified

Olympic also relies on *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 108 S. Ct. 1145, 99 L. Ed. 2d 316 (1988), to support its contention that "how pipelines are financed" is related to federal preemption issues. Motion at ¶ 16. *Schneidewind* is inapposite because the statutes, facts, and issues in that case are different from the instant case.

The statutes are different because *Schneidewind* arose under the Natural Gas Act, not the Interstate Commerce Act. 485 U.S. at 295. The facts are different because *Schneidewind* involved only transportation of natural gas in interstate commerce. No intrastate commerce was involved. *Id.* at 295-296 (footnotes and citations omitted). The issues are different, because *Schneidewind* addressed the issue whether a state can regulate an aspect of a company engaged in interstate transportation. *Id.* at 306. The Court found that the state's regulation of the issuance of securities was a regulation of an interstate rate. *Id.* at 308. Thus, the state was regulating "matters within FERC's exclusive jurisdiction." *Id.*

In the instant case, the Commission case is regulating only Olympic's intrastate transportation rates. The Commission's Order is fully appropriate and lawful. It is well within the Commission's jurisdiction, and it meets or exceeds the standards of a fair and sufficient rate. Nothing in *Schneidewind* dictates a contrary result.

4. Olympic's Legal Theories are Unsupported by the Facts

Olympic claims that any disparity between intrastate and interstate rates "will cause federal ratepayers to bear a disproportionate share of needed expenditures for safety-related costs and other costs." According to Olympic, this creates a disproportionate burden on interstate commerce. Motion at ¶ 23.

As we discussed above, the case law does not support Olympic. Neither do the facts. First, since FERC has yet to decide permanent rates, it is speculation that there will be any disparity between intrastate and interstate rates.

More to the point, even assuming there is eventually a disparity, the Commission determined a cost-based interim rate that was (from the perspective of Staff's case) generous. Recall that Staff's analysis justified no more than a 19.48% interim rate increase. That analysis included full consideration of Olympic's plant in service through 2001, *including all of Olympic's planned capital additions for 2001*. (Mr. Elgin, Ex. T-131, p. 18, ll. 5-11 and Ex. 134, l. 2). Staff then assured Olympic would have pretax income reflecting one and one half times the interest Olympic incurred to fund that investment in plant serving the public. ($8,880,000 per Mr. Elgin, Ex. 134, l. 13, and used by Mr. Colbo in Ex. 137, col. G, line 37).

Since the Commission granted interim rate relief of 24.3%, not 19.48%, it is plain that that Olympic has not been denied an opportunity to earn a fair return on the assets it has devoted to serve the public. That is the constitutional standard for a fair rate. *Federal Power Comm'n v.*

Hope Natural Gas Co. and *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of West Virginia, supra.* That is the standard that has been met or exceeded by the Commission in its Order.

Ultimately, Olympic's argument here proves too much. If Olympic's theory is correct, no intrastate cost-based rate could be determined on a basis different than an interstate rate, without creating the "disproportionate impact" of which Olympic now complains. Such a result is contrary to Congressional intent, and it finds no support in the case law. Olympic cites not a single case in which a cost-based intrastate rate was unduly burdensome on interstate commerce, in a context where the respective state/federal spheres of regulation are as clearly separate as they are here.

E. Designating Interim Rates As Subject To Refund Does Not Justify Higher Rates

Olympic argues that by making the interim rates subject to refund, a grant of a full 62% increase is justified. *E.g.* Motion at ¶¶ 15, 20. The flaw in this approach is that Olympic fails to illustrate why the full 62% is just and reasonable in the first place. Instead, Olympic asserts that since the rates are subject to refund, they will be reasonable because there can be no harm to shippers. Motion at ¶ 15.

It is true that because interim requests are processed quickly, the Commission and other parties are unable to conduct a full review as they otherwise would in a general rate case. As the Commission noted in ¶ 37 of its Third Supplemental Order, interim requests are more narrowly focused, and the resulting rates are intended to provide limited support to a company facing immediate need. Interim rates may be made subject to refund to assure that the rates charged are not ultimately excessive in light of rates determined through a general rate proceeding.

However, contrary to Olympic's argument, without more, a rate subject to refund is not automatically fair, just, reasonable, and sufficient. Any rate set by the Commission must be based on reasonableness. RCW 81.28.010.

As Commissioner Hemstad correctly observed during oral argument: "[I]t doesn't follow. . . *ipso facto*, that if a rate is made subject to refund it is automatically fair, just and reasonable." Tr. 1232. In this case, the Commission set rates based on assets devoted to public service, after determining that Olympic met the relevant factors for interim rate relief. The result is a rate that meets or exceeds the constitutional standards for a fair and sufficient rate.

V. CONCLUSION

For the reasons stated above, Olympic's Motion for Reconsideration should be denied.

DATED this 25th day of February, 2002.

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