

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

OLYMPIC PIPE LINE COMPANY,  
Respondent.

DOCKET NO. TO-011472

MOTION OF OLYMPIC PIPE LINE  
COMPANY TO AMEND HEARING  
SCHEDULE

1. Olympic Pipe Line Company ("Olympic") hereby moves for an order from the Washington Utilities and Transportation Commission (the "Commission" or the "WUTC") to amend the schedule for hearings in this docket to commence after the conclusion of the Federal Energy Regulatory Commission's (FERC) hearings on Olympic's interstate rates and the issuance of an order by the FERC administrative law judge. Olympic makes this motion (i) to allow the creation of a full and complete record on the application of federal methodology to the facts of this case; (ii) for administrative efficiency in order to avoid unnecessary expense and duplication to Olympic, which is in dire financial condition, and (iii) because Olympic will be denied due process if it must respond to overlapping and conflicting schedules at FERC and the WUTC and in a wrongful death trial that will start in April, as well as conducting its normal day-to-day business. In accordance with WAC 480-09-420, the name and address of Olympic is shown below. Please direct all correspondence related to this Motion as follows:

MOTION - 1

[33202-0006/011472, Olympic, Motion to Amend Hearing  
Schedule, 3-21-02.doc]

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2. This Application may bring into issue the following statutes and rules: RCW 81.28.050, RCW 81.04.030; WAC 480-09-420, WAC 480-09-440.

#### **I. BACKGROUND**

3. Olympic owns and operates 400 miles of oil pipeline and related facilities between Blaine, Washington and Portland, Oregon. Olympic's pipeline system ships petroleum products in both interstate and intrastate commerce. On October 31, 2001, Olympic filed a request with this Commission for an increase in its rates and also submitted a Petition for a Policy Statement and Order Clarifying Oil Pipeline Rate Methodology (the "Petition"). The Petition sought a Policy Statement from the Commission that clarified that the Commission would formally adopt the federal rate setting methodology with supporting data in the form used since 1983 as the basis for intrastate rates for transportation of petroleum products on Olympic's pipeline system. On November 20, 2001, the Commission issued an order stating that the question of methodology should be addressed in the context of the general rate case. See "Complaint and Order Suspending Tariff Revisions and Instituting Investigation; Denying Request for Policy Statement or Declaratory

Order,” issued November 20, 2001 (“November 20, 2001 Complaint and Order”). In that order, the Commission stated:

The Commission also has determined, pursuant to RCW 34.05.413(1) and RCW 34.04.422, that Olympic's petitions should be considered in an adjudicative process. Therefore, the Commission denied the request for policy statement or declaratory order on procedural grounds, inasmuch as the questions raised in the petition will be addressed in the adjudication.

November 20, 2001 Complaint and Order at 1.

4. On January 31, 2002, the Commission issued its Third Supplemental Order addressing Olympic’s request for interim relief (the “Interim Order”). In the Interim Order, the Commission found, among other things, that Olympic was in dire financial condition. Interim Order at 3, ¶ 8. The Commission authorized Olympic to institute an immediate interim rate increase of 24.3%, subject to refund. In the Interim Order, the Commission declined to specify the methodology it would use to determine Olympic’s general rates. *Id.* at 16.

5. Because Olympic’s pipeline system involves shared, common facilities for the transport of products in both intrastate and interstate commerce,<sup>1</sup> the rates it charges to shippers are subject to regulation by both this Commission and FERC. Olympic currently has a rate case pending before FERC regarding its interstate rates (Docket No. ISO1-441-000). On November 20, 2001, FERC issued an order denying Tesoro’s motion for rehearing, which continued to permit rates for Olympic’s interstate rates to stay in effect, subject to refund. The FERC order said that denial of the rate would create irreparable harm to Olympic and allowing the rate to go into effect, subject to refund, would not harm the Intervenors. The FERC rate increase of 62%, subject to

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<sup>1</sup> See the Direct Testimony of Bobby Talley and Bob Batch filed on December 13, 2001. The same Olympic pipes, controls, valves, communication system, schedules and computers can be used for both intrastate and interstate shipments on the same day.

refund, went into effect on September 1, 2001. The WUTC interim rate increase of 24.3%, subject to refund, went into effect five months later on February 1, 2002.

6. The chart below summarizes the current schedules, as proposed, in both Olympic's WUTC and FERC<sup>2</sup> rate cases:

|                            | WUTC (Staff Proposal)   | FERC (Revised Schedule)            |
|----------------------------|-------------------------|------------------------------------|
| Intervenor Testimony       | April 17, 2002          | April 5, 2002                      |
| Staff Testimony            | April 29, 2002          | April 29, 2002                     |
| Olympic Rebuttal           | May 20, 2002            | May 21, 2002                       |
| Prehearing Conference      | June 10, 2002           | July 1, 2002 (Pretrial Briefs Due) |
| Hearing                    | June 17-18, 24-28, 2002 | July 9, 2002 to conclusion         |
| Briefs (All Parties)       | July 19, 2002           | August 6, 2002                     |
| Reply Briefs (All Parties) | August 2, 2002          | September 3, 2002                  |
| ALJ Decision               | N/A                     | October 22, 2002                   |

**II. THE COMMISSION SHOULD POSTPONE THE HEARING IN THIS DOCKET UNTIL FERC HEARINGS ARE COMPLETED**

7. Olympic respectfully requests that the hearing before this Commission on Olympic's intrastate rates be postponed until after the Administrative Law Judge in Olympic's ongoing FERC rate case issues her order, which is scheduled for October 22, 2002. Olympic

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<sup>2</sup> On March 15, 2002, the Administrative Law Judge at FERC amended the procedural schedule for FERC Docket No. IS01-441-000. See Order Amending Procedural Schedule, FERC Docket No. IS01-441-000, issued March 15, 2002, attached hereto as Attachment A.

hereby waives the statutory suspension period set in RCW 81.04.030 and RCW 81.28.050<sup>3</sup> in order to accommodate this amended schedule. Because the interim rate is subject to refund, Intervenor will not be harmed. In fact, an amended WUTC schedule would still provide for a lower interim rate than at FERC for approximately the same period of time because the FERC rates subject to refund went into effect on September 1, 2001 – five months prior to the WUTC interim rates.

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<sup>3</sup> The Commission has noted that Olympic may waive the statutory suspension period:

I don't have the statute in front of me, but am I correct or not that it's the company's right and ability to waive the extension, that this is not actually a request from anybody that we then rule on. They just, the company simply waives its right to a statutory deadline from July 1 to August 1. That then becomes a done deal. Then it's up to us to work out a reasonable schedule, which we will try to do.

Transcript p. 61 (Statement of Chairwoman Showalter) (November 21, 2001).

I will just make the comment, it would seem appropriate to me for the company on the record today to agree to the extension, again whether it's August 1<sup>st</sup> or 23 or 24 days, that, you know, is again the company's choice.

Transcript p.62 (Statement of Commissioner Hemstad) (November 21, 2001).

Two comments[.] I think you're generally correct. I think I would have always considered the suspension period to be a right of the company to extend or not. The impact of interim relief creates an odd switching in interests here, but I think it is the company's prerogative. Another way to deal with it in another way procedurally would be simply to permit a change in the effective date of the tariff. So you're really accomplishing the same thing.

Transcript p. 61-62 (Statement of Mr. Trotter) (November 21, 2001).

**A. The FERC Proceeding Will Address, and Resolve, Issues To Be Addressed at the WUTC**

8. In the Interim Order, this Commission declined to state which methodology it would use in determining Olympic's general rates and has expressly kept an open mind.<sup>4</sup> Thus, in Olympic's general rate case, the Commission will either choose the federal methodology that has been the basis for the tariffs Olympic has filed since 1983, revise this methodology, or adopt an entirely different methodology. At the hearings before FERC, however, and in the subsequent order to be issued by the ALJ, the federal methodology *will* be applied to determine rates for interstate shipments on Olympic's pipeline system. The pipes, controls, valves, communications and other pipeline system facilities are shared in common for both Olympic's intrastate and interstate shipments, and the federal methodology that will be employed by FERC will produce information and analysis appropriate for use by this Commission.

9. If this Commission proceeds with hearings prior to the FERC hearings, it will need to develop a record on application of the federal methodology that will then be redeveloped and reapplied at FERC shortly thereafter. This would be duplicative and wasteful of the Commission's and the parties' time. A more efficient and economical approach would be for the Commission to allow the FERC hearings to proceed, with the federal methodology developed and applied in that forum, and then apply that methodology in the Commission's analysis of Olympic's intrastate facilities. The Commission could then also take the results of FERC's application of the federal methodology and modify, as the Commission deems appropriate, those findings to Olympic's intrastate facilities.

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<sup>4</sup> Chairwoman Showalter stated during at the January 16, 2002 interim hearing that "I think we shouldn't revise [the methodology] until we've had a full hearing." Transcript p. 1052 (January 16, 2002).

10. Under the amended schedule, the Commission would have the benefit of a complete record and transcript of the hearings before FERC in which FERC will apply the federal methodology to the physical and financial facts of this case. Allowing FERC to develop the record and apply its ratemaking principles to the facts of this case would provide the Commission with the full and complete context for a determination of appropriate rate methodology for Olympic's rates.

**B. Scheduling Hearings After Conclusion of the FERC Proceedings Will Provide Olympic Time to Complete the 1999 Audit and to Provide Additional Financial Information**

11. As discussed in the Declaration of Howard B. Fox (Attachment B), if the schedule in this case is reset so that hearings will occur after FERC hearings are complete and the ALJ's order released, Olympic will have the opportunity to have an independent audit of its books and accounts completed. If the schedule is not amended, there will be no opportunity for the independent audit to be completed. Commission Staff has raised significant concerns with the lack of audited financial records in this case. See Transcript p. 1014-15 ("[T]he Commission should evaluate [Olympic's inability to get a certified audit] and look at the books and records and understand the circumstances surrounding this company and should evaluate the weight it gives to Olympic's inability to get a qualified – an unqualified financial statement.") (Statement of Mr. Elgin) (January 16, 2002); Transcript at 1080 ("Q: You listed some steps in response to the Chair's question regarding the steps that the company would need to take to move forward, in your judgment. Would the provision of an unqualified audit statement, would that be appropriate to include on that list?" "A: Yes, it would.") (Direct examination of Mr. Elgin by Mr. Trotter) (January 16, 2002).

12. Olympic should have audited financial records for 1999, 2000 and 2001 verified by an outside, independent, third-party auditor by late November or December 2002. (Fox

Declaration ¶8) Even though the Company is currently working with its auditors to expedite the independent audits, the audited financial statements will not be available if the schedule proposed by Staff in this case is adopted. Staff has already indicated that the consequence of not having independent audited financial statements will be to reduce Olympic's rate request. (Fox Declaration ¶8). Thus, unless the schedule is amended, Olympic may be irreparably harmed.

**C. The Overlapped and Parallel Proceedings Will Prevent Olympic From Being Able to Present a Full and Fair Response to Staff and Intervenors**

13. Olympic has 75 employees, only a handful of whom are qualified or knowledgeable enough to assist in data requests or participate in hearings. See Declaration of Bob Batch (Attachment C). The scope and intensity of this proceeding has expanded far beyond what Olympic anticipated, as Tosco and Tesoro have pursued a litigation strategy far more time-consuming and detailed than what is called for by the amounts at issue. The Intervenors' discovery strategy has caused Olympic to produce an enormous amount of data and expend countless hours in response. It can be anticipated from the depth and detail of the discovery undertaken by the Intervenors that their direct testimony will be complex and detailed. Their testimony will call for a thorough and detailed response from Olympic. But under the proposed schedule, Olympic will have inadequate time for a response.

14. The hearing schedule for the parallel FERC and WUTC proceedings now overlaps. Olympic cannot meet both schedules at the same time. See Letter to Judge Wallis from Olympic Counsel dated March 11, 2002, attached hereto as Attachment D. For instance, Olympic's rebuttal to FERC Staff and intervenor testimony is due May 20, 2002. Its rebuttal to WUTC Staff and intervenor testimony is due the next day. Hearings at FERC in Washington, D.C. are scheduled to commence less than two weeks after hearings at the WUTC are scheduled to conclude, meaning that Olympic witnesses will be deprived of an opportunity to adequately



prepare for the FERC hearings because they will be participating at the WUTC hearings. Briefs would be due at the WUTC as hearings at FERC would be concluding.

15. At the same time that the two administrative hearings are producing time constraints on the company, a major civil trial involving Olympic is scheduled to begin in April, which will also consume the time and attention of Olympic's management and personnel. See Declaration of Bob Batch (Attachment C) and the March 13 and March 20, 2002, *Seattle Times*. Olympic's personnel must also actually run the company. Even under an amended schedule, the company's resources and personnel will still be strained.

16. As the Commission itself has found, the company is in dire financial condition. Olympic is struggling to accomplish all that is demanded of it in the prehearing stages of both the FERC and Commission proceedings. Batch Declaration at ¶¶2-8. Simultaneous proceedings involving the same company personnel, occurring three thousands miles away from each other, will deprive the company's ability to present an effective case in either the FERC or Commission hearings. See Batch Declaration at ¶¶2-8.

17. Proceeding with hearings prior to the issuance of the FERC ALJ's order will severely interfere with Olympic's ability to prepare for, present, and argue its case before the Commission and before FERC. Olympic's staff has limits to their time and ability to participate in multiple proceedings. Proceeding with the WUTC case on the schedule suggested by Staff would prevent the company from adequately preparing its challenge to the intervenors' arguments. Simultaneously scheduling the WUTC hearing while the FERC proceeding and the civil trial are proceeding would deny Olympic an adequate and fair opportunity to be heard and deprive Olympic of the due process of law to which it is entitled under the State and Federal Constitutions.

**D. Postponing the WUTC Hearings Until After the ALJ Issues Her Opinion Will Not Prejudice the Intervenors in This Case**

18. The Interim Order provided for higher rates to be in effect, subject to refund, until the disposition of Olympic's general rate case. Because the interim rates paid by the intervenors in this case are subject to refund, the intervenors would not be harmed if this case were postponed until after the ALJ's order is released, with interim rates remaining in effect until that time. If the hearing were to proceed as proposed by Staff, however, Olympic would be prejudiced. When FERC ruled in its order denying Tesoro's motion for reconsideration on rates for Olympic's interstate facilities subject to refund, it said that Olympic would be irreparably harmed by a delay in rate relief, but Tesoro would not be harmed because rates would be subject to refund:

Revenue lost during a suspension period is lost forever. To have suspended the rate increase for seven months would have produced a harsh and inequitable result in these circumstances. Further, Tesoro has asserted no anticompetitive circumstances and the Commission has no good reason to believe the rate increase imposes an undue hardship on the shippers. *Tesoro's economic interests are fully protected as the entire rate increase is subject to revision at the conclusion of the hearing and it will, to the extent part or all of the rate increase is found to be unjust or unreasonable, receive refunds with interest, as prescribed in the Commission's regulations.*

Olympic Pipe Line Co., 97 F.E.R.C. ¶ 61,210, at 61,918 (2001) (emphasis added). The Intervenors should be bound by this finding.

19. The FERC increase in rates of 62% subject to refund went into effect on September 1, 2001. By contrast, the WUTC interim rates of 24.3%, subject to refund, went into effect five months later on February 1, 2002. That five month period is comparable to the period by which Olympic wishes to amend the schedule pursuant to this Motion. Thus, Intervenors cannot legitimately claim irreparable harm by an amended schedule here. If FERC found that Tesoro and

Tosco were not harmed with a rate increase in effect of 62% subject to refund from September 1, 2001 to October 22, 2002, the Intervenor here will not be harmed in this proceeding with an interim rate subject to refund of 24.3% from February 1, 2002 to as late as March 2003.

**E. Amending the Hearing Schedule Will Permit Olympic to Complete Existing and Recently Filed Data Requests**

20. Olympic is attempting to provide the information requested in multiple data requests filed here and at the FERC, but the number of requests and detail have been overwhelming. See generally the Declaration of Bob Batch. Olympic filed a status report earlier this month on its discovery efforts, and will file additional responses with a further report on March 22<sup>nd</sup>. Since the last prehearing conference on March 8, Olympic has received new data requests and a new motion by Tesoro have been filed at the FERC making a full response to all of the multiple requests problematic. In addition, two technical conference calls on capacity and throughput issues by Tesoro with Olympic's witness Bobby Talley have been held since March 8, and Tesoro has indicated that these will result in new requests for additional documents from Tesoro.

**III. REQUEST FOR RELIEF**

Olympic requests that the Commission set hearings in this matter to commence after the issuance of an order by the FERC ALJ in Olympic's ongoing rate case before FERC.

DATED this \_\_\_\_ day of March, 2002.

**PERKINS COIE LLP**

By \_\_\_\_\_  
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