BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	)	
Complainant,	)	DOCKET NO. TO-011472
v.	)	
OLYMPIC PIPE LINE COMPANY, INC.	)	
Respondent.	)	

_____)

TESORO REFINING AND MARKETING COMPANY=S ANSWER TO THE MOTION OF OLYMPIC PIPE LINE COMPANY TO AMEND HEARING SCHEDULE

1 Tesoro Refining and Marketing Company (ATesoro@), by and through its attorneys, Brena, Bell & Clarkson, P.C., hereby answers Olympic Pipe Line Company=s (AOlympic@) motion to amend hearing schedule. In accordance with WAC 480-09-420(3), the name and address of the pleading party is set forth below. Please direct all service and correspondence regarding the above-captioned docket to the following:

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2 This motion may bring into issue the following rules or statutes: WAC 480-09-420 [Pleadings and briefs--Applications for authority--Protests], WAC 480-09-440 [ContinuancesBExtensions of time]; RCW 81.04.030 [Number of witnesses may be limited]; and RCW 81.28.050 [Tariff changes--Statutory Notice--Exception].

I. Introduction

3 For the third time in less than a month, Olympic has filed a pleading seeking to stay this proceeding for at least another eight months. Apparently, Olympic is either unwilling or unable to meaningfully participate in this Commission=s proceedings on its own rate filings. If so, Olympic should withdraw its rate filing altogether and refile when it is prepared to move forward. Absent the withdrawal of its rate filing, there is no justification for not timely proceeding with setting permanent rates for Olympic under this Commission=s normal rate-setting procedures. The timely resolution of rate proceedings is in the public interest, and continuing to devote resources to coercing Olympic to provide necessary discovery and move its own rate filing forward has been a trying waste of resources for all parties and the Commission.

4 Once again, Olympic offers the same rationale for staying the proceedingsBthe WUTC should wait for and then follow the AFERC decision.@ The State of Washington exercises concurrent regulatory authority over oil pipelines with the FERC. The WUTC is charged with the statutory responsibility to set just and reasonable rates under the Washington statutes. Olympic seems to believe the Commission should ignore its own

statutory authority and simply adopt the FERC=s resolution of Olympic=s rate filings under the Interstate Commerce Act. No state has ever adopted the FERC approach to regulating oil pipelines. To state the obvious, the Interstate Commerce Act is a different statutory regime from the Washington statutory regime and is not the statutory regime which does or should guide this Commission=s regulatory decision making over common carriers in the State of Washington.

II. FERC=s Regulation Under the Interstate Commerce Act Should Not Determine the Substance or Procedure for the WUTC=s Regulation Under the State of Washington=s Statutes.

5 The primary motive for the stay of this proceeding is so Olympic will have the opportunity to supplement the record in this proceeding with the preliminary decision of the administrative law judge in the FERC proceeding. Olympic=s purpose for supplementing the record is to illustrate to this Commission how to properly apply the AFERC methodology@ it advocates. This Commission does not need this unnecessary increase in the record in order to set an intrastate transportation rate. This Commission is statutorily mandated to exercise its regulatory authority and to set intrastate rates under the Washington statutes without waiting to see how an administrative law judge at the FERC exercises her regulatory authority to set interstate rates under the Interstate Commerce Act.

6 Even if the Commission were inclined to delay this proceeding and follow the FERC=s application of the Interstate Commerce Act, delaying this proceeding until an initial decision by an administrative law judge at the FERC would provide no true guidance to the resolution of the methodology issues pending in this proceeding. Unlike this Commission which will issue a final order setting intrastate rates at the conclusion of this proceeding, the administrative law judge=s decision due out this fall is only an initial decision which will then be appealed to the FERC. Often times the FERC=s review of the administrative law judge=s initial decision results in some modification to the initial decision and a remand back to the administrative law judge for further hearings consistent with those modifications. Even assuming no remand, in all likelihood, the FERC will not issue a final order setting Olympic=s interstate rates within the next two years.[1] Given these inherent delays in the federal regulatory process, this Commission should not suspend its statutory time frames and duties awaiting the conclusion of the federal regulatory process.

III. FERC=s 154B Methodology is Poorly Suited for State Regulation.

[1] This time frame does not take into consideration the time for an appeal of the FERC=s final order to the D.C. Circuit Court that may take an additional year or

7 The AFERC 154B methodology@ was adopted by the FERC to solve problems which were unique to federal (and not state) oil pipeline regulation. It is poorly suited for state regulation which explains why it has never been adopted by a single state and has been rejected by those states to have considered it. The unique characteristics of the FERC 154B methodology when compared with the more commonly employed depreciable original cost methodology[2] are that the FERC 154B methodology (1) trends the rate profile to allow for the competitive entry of new oil pipelines in those situations in which a new oil pipeline is forced to compete with existing and fully depreciated oil pipelines, and (2) uses a Atransition rate base@ to allow oil pipelines previously regulated under the ICC Afair value@ approach to realize additional return unrelated to the actual plant in service. Neither of these unique characteristics are helpful or relevant to the establishment of fair, just, and reasonable intrastate rates for Olympic or to the regulation of oil pipelines in general within the State of Washington.

8 Olympic is neither a new pipeline nor a pipeline which would benefit from a trended rate profile. Olympic is not forced to defer current costs into future periods in order to compete today with older and fully depreciated pipelines. Instead, Olympic is largely depreciated and enjoys a natural monopoly. There simply are no other oil pipelines which do or could compete with Olympic for the transportation of refined

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[2] This Commission=s regulation of utilities is consistent with the commonly used depreciable original cost methodology.

products within the State of Washington. Under these circumstances, trending Olympic=s rates does not meet any of the regulatory purposes for which trending has ever before been allowed.

9 Similarly, this Commission has never adopted any regulatory methodology for setting fair, just, and reasonable rates for Olympic much less the ICC Afair value@ approach. For its part, Olympic does not even argue that this Commission has set its rates based on the ICC Afair value@ approach. The ICC Afair value@ approach is not a cost-based rate methodology and has been discredited as a noncost-based methodology by every modern court to consider it. The AFERC 154B methodology@ contains a noncost-based rate element as an accommodation to the ICC Afair value@ approach referred to as a Atransition rate base@ that allows the common carrier to recover investment, return, and taxes on investment which was never actually made. This step-up in the original rate base under FERC 154B methodology has never yet been judicially tested and may well fail when finally subjected to a judicial test as an impermissible deviation from cost-based regulation. So far as Tesoro can determine, this Commission has never allowed a common carrier or a utility to recover investment, return, and taxes based on investment never actually made by the regulated entity. To the contrary, this Commission has repeatedly established the rate base for regulated common carriers and utilities based on their actual investment. As with trending, under these circumstances, allowing Olympic to include a noncost-based rate element based on investment it never

actually made and a transition it never actually underwent does not meet any of the regulatory purposes for which a transition rate base has ever before been allowed. *10*

Because of these unique and judicially untested characteristics of the FERC 154B methodology, it is not employed in any regulatory setting other than for setting interstate rates under the Interstate Commerce Act for a limited number of federal oil pipelines. The FERC 154B methodology is not used (1) for the regulation of all federal oil pipelines, (2) for the regulation of any federal gas pipelines, (3) for the regulation of any other federal common carrier, or (4) for the regulation of any state oil pipeline, gas pipeline, common carrier, or utility.

11 Instead, the methodology commonly used by this Commission for regulatory purposes is the most common regulatory methodology employed at both the federal and state levels. At the federal level, for example, all natural gas pipelines are regulated under a similar methodology as the one commonly used by this Commission. At the state level, all utilities and pipelines have been regulated under a similar methodology as the one commonly used by this Commission. The reason the methodology is so commonly used is because it works by setting cost-based rates calculated from the regulated entity=s actual investment and costs of providing service. This methodology is clearly within the scope of the statutory authority of the Commission and has often been judicially tested. There is absolutely no reason or justification to discard the basic

regulatory methodology employed by this Commission for years to set fair, just, and reasonable rates within the State of Washington.

12 Olympic has twice petitioned to have this Commission adopt AFERC methodology@ for setting rates. In practical effect, its current motion to delay the proceeding is another form of the same motion. At a minimum, one would expect Olympic to at least identify specific reasons why the Commission should delay the prompt resolution of Olympic=s rate filing. Instead, Olympic advanced a Awholesale@ argument devoid of specifics.

13 In essence, these general petitions request an order that will bind this Commission and future Commissions to doing nothing more than Arubber stamping@ the decisions of the FERC. If the Washington Legislature had wanted to delegate responsibility for setting oil pipeline rates to the federal government, it could have done so. It did not. Instead, it adopted its own statutory scheme for the regulation of oil pipelines and utilities within the State of Washington. Olympic=s repeated motions are an attempt to *de facto* repeal the relevant Washington statutes and to substitute an administrative law judge=s initial decision under the Interstate Commerce Act. This simply makes no sense whatsoever.

IV. Intrastate Rate Setting Methodology is an Issue for Hearing.

14 This Commission and future commissions must establish and refine the methodology that is best suited for setting rates on intrastate transportation in

Washington. To the extent that this approach must be adjusted because the common carrier is transporting oil, the decision should be made only after all parties have had the opportunity to address the merits for the adjustment in a hearing.

15 Olympic has filed testimony in support of the methodology it proposes to be used in setting its rates. The shippers have opposed setting rates in the manner advocated by Olympic. At the hearing in June, Olympic will have the opportunity to cross examine the intervenors= witnesses with respect to why they oppose using the method Olympic advocates for setting rates. There is little or no benefit in delaying this proceeding for 10 months in order to supplement the record with an administrative judge=s decision because the same basic issues will not even be litigated before the FERC. A hearing concerning the implementation of a methodology simply does not involve the same issues as a hearing concerning whether to adopt the methodology in the first instance. FERC has already adopted the FERC 154B methodology to meet its unique regulatory goals. So while the details of the proper implementation of the FERC 154B methodology may be at issue before the FERC, whether it should be adopted at all will not be. Stated differently, the record before the administrative law judge will provide no guidance whatsoever on the core issue of whether to adopt the FERC 154B methodology or to use the methodology commonly used by the WUTC for state ratemaking purposes.

16 Therefore, this proceeding should not be delayed for 10 months simply to give Olympic the opportunity to supplement the record in this unnecessary way. Olympic will have the opportunity at the hearing to justify its rate increase in any manner it chooses and test the other parties= alternative cost-of-service calculations. Waiting 10 months for the hearing will serve no purpose whatsoever.

V. No Justification for Stay

17 The reasons Olympic gives in support of its motion do not justify a 10-month delay in this proceeding. First, Olympic argues that the stay will avoid unnecessary expense and duplication. Nothing could be further from the truth. The hearing in June will be focused solely upon setting a just and reasonable rate in the same manner that this Commission sets rates for other regulated entities. However, if Olympic=s proposal is accepted, then the hearing next winter will include a complete review of the FERC proceeding regarding the supposed AFERC Methodology,@ additional testimony regarding the policy implications resulting from the wholesale adoption of the AFERC Methodology,@ alternative cost-of-service calculations applying traditional methodologies, exhibits from the FERC proceeding, transcripts from the FERC proceeding, and briefing from the FERC proceeding. Olympic=s proposed stay will unnecessarily increase the cost and complexity of this proceeding and will insure the duplication that Olympic is trying to avoid.

18 Second, Olympic argues that its Adue process@ rights will be violated from Aconflicting@ and Aoverlapping@ proceedings.[3] Olympic cites no authority for this novel position. The credibility of this argument is severely weakened when one considers the fact that **Olympic has opposed any delay to the FERC procedural schedule**. Obviously, if the overlapping schedules were prejudicial, Olympic could seek delays in either the FERC proceeding or the wrongful death proceeding. It has not. Instead, Olympic has attempted to delay the WUTC discovery and timetable to the tactical disadvantage of intervenors and Staff in both proceedings.

19 Third, Olympic argues that the Ascope and intensity@ of this proceeding has been expanded by Tesoro and Tosco beyond what it anticipated and that Olympic will not have the opportunity to respond to the Acomplex and detailed@ testimony it expects from the intervenors. Olympic was well aware of the need to provide support for its rate filings. Olympic was also well aware that filing an initial 76 percent increase and then refiling a 62 percent increase merely three years after being granted a full rate increase would merit close review. Olympic=s proposed rate increase seems entirely unjustified and will cost shippers millions of dollars in future transportation costs. Tesoro expects to present a proper cost-of-service analysis regarding a fair, just, and reasonable rate. The scope in this proceeding has never changed.

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[3] The only apparent conflict in the proceedings is the overlapping dates. But, since Olympic has separate counsel for each proceeding, the prejudice from overlapping is minimal.

20 The only change in the intensity is due to Olympic=s refusal to provide timely discovery or in many cases to even respond at all to discovery by other parties. As Assistant Attorney General Donald Trotter has observed:

> MR. TROTTER: Thank you, Your Honor. It was our motion that put all this in motion, but just a couple of comments. Number one, I think in my entire career involving the commission, I have not had, both from staff and me personally, a higher sense of frustration in terms of getting data from any regulated company in my 20-plus years experience.

Prehearing Conference Tr., WUTC Docket TO-011472, Vol. 12, p. 1332, l. 17-23. In short, had Olympic been forthcoming in providing the necessary financial information, this would have been a routine rate proceeding which would have been resolved by a hearing that was scheduled for May.[4]

21 Finally, Olympic provides an apparent incentive for this Commission to grant its request. Olympic now states that it will provide audited financial statements (by the date of the delayed hearing) if its request is granted. Olympic originally promised Commissioner Hemstad that such audits would be completed by May. At this point, it is clear that the financial statements will only be audited when Olympic wants them to be audited. To date, Olympic has not even provided the parties with a detailed general

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[4] Tesoro served its discovery requests February 1, 2002. Responses were due February 15, 2002. None were served. On February 20, Olympic responded to only a few of Tesoro=s requests and some of those responses were evasive. On March 1, 2002, Olympic withdrew all of those responses and adopted the responses of FERC counsel (which included many new objections to requests) to virtually the identical requests. This necessitated a hearing which resulted in an order to compel responses. To date, Olympic has still not complied with the order to compel.

ledger during the base period where the expenses are organized by category. So, it remains to be seen if they can produce one for their auditors. Also, of relevance, Olympic has recently changed auditors and indicated that it is no longer even attempting to obtain an unqualified auditors opinion as to its financial books and records. While time will judge, based on Olympic=s own representations, at this point it is unlikely that Olympic will ever have an unqualified auditor=s opinion.

VI. Conclusion

22 Olympic=s most recent motion to stay these proceedings offers little new. What is obvious, is that Olympic wants to delay the proceedings in order to have the Commission follow the AFERC decision.@ None of the arguments advanced by Olympic justify the stay. What should be a simple rate proceeding has been made complex by Olympic=s repeated failure to provide timely and relevant discovery supporting its rate filings and its filing of motion after motion to avoid simply having this Commission set rates. If Olympic does not wish to pursue its rate filing, it may withdraw it; otherwise, the Commission should move forward and set rates notwithstanding Olympic=s apparent reluctance to meaningfully participate. Further delay will only add layers of unnecessary costs and complexity to what has already been layers of unnecessary costs and complexity. In conclusion, Tesoro respectfully requests this Commission to move this proceeding forward.

DATED this 25th day of March, 2002.

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CERTIFICATE OF SERVICE
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