

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	Docket No. TO-011472
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	<b>TOSCO CORPORATION'S</b>
	)	<b>ANSWER TO OLYMPIC'S</b>
	)	<b>MOTION TO AMEND</b>
	)	<b>HEARING SCHEDULE</b>
	)	
OLYMPIC PIPE LINE COMPANY, INC.,	)	
	)	
Respondent.	)	
_____	)	

**INTRODUCTION**

Pursuant WAC § 480-09-420, Tosco Corporation (“Tosco”) hereby submits this Answer to Olympic Pipe line Company’s (“Olympic’s”) Motion to Amend the Hearing Schedule (“Motion”) in the above-captioned proceeding. The Washington Utilities and Transportation Commission (“WUTC” or “Commission”) should deny Olympic’s request as yet another strategic attempt to use the Federal Energy Regulatory Commission’s (“FERC’s”) proceeding in lieu of a thorough review by the WUTC of the merits supporting Olympic’s requested rate increase in this proceeding. Olympic has failed to support its Motion with any compelling arguments. Instead, Olympic weakly asserts that granting its Motion will allow for: 1) the creation of a full and complete record on the application of federal methodology to the facts of this case; 2) administrative efficiency in order to avoid unnecessary expense and duplication; and 3) Olympic to be granted due process, claiming that because it must respond to overlapping and conflicting schedules at FERC and the WUTC and in a wrongful death trial, it will be denied due

process unless the WUTC case goes to hearing after the presiding ALJ makes an initial decision in the FERC proceeding. Motion at 1. However, these arguments are transparent, unsupported, and should be rejected.

The only delay appropriate in this proceeding would be one that would come on a Motion of Staff or Intervenors. If due to Olympic's clear disregard of the discovery process, the parties are unable to properly prepare their respective cases, then a delay would be warranted. Otherwise the hearings should proceed as proposed by WUTC Staff and Tosco. Under no circumstance should Olympic's requested substantial delay in this proceeding be granted to Olympic's strategic advantage.

**A. The WUTC Proceeding Should Not Lag Behind the Preliminary Decision of the FERC Presiding Administrative Law Judge**

Olympic's proposal that the WUTC schedule be significantly delayed so that the WUTC case goes to hearing after the FERC presiding Administrative Law Judge ("ALJ") makes an initial decision is unwarranted. Furthermore, the inference that this Commission can ignore its regulatory mandate and merely adopt the preliminary decision of the FERC presiding Administrative Law Judge is offensive and disregards this Commission's obligation to set just and reasonable rates for common carrier pipelines that operate within Washington State. There is simply no justification for the WUTC to wait until the presiding ALJ in the FERC case makes an initial decision.

Despite Olympic's repeated attempts to apply FERC methodology to this proceeding, the WUTC must independently exercise its jurisdiction over Olympic. Furthermore, Olympic's argument that the WUTC should apply FERC methodology ignores the difference between

FERC and the WUTC. The FERC process, unlike the WUTC proceeding, will take many months, and in all likelihood more than a year. After the hearings at FERC, first the assigned Presiding ALJ must render an initial decision. Then, after receiving briefs on exceptions from the parties regarding the correctness of the Presiding ALJ's decision, the Commission will review the Presiding ALJ's initial decision and issue an Order. The Order is then subject to requests for reconsideration. It is not uncommon for FERC proceedings to last several years before that Commission makes a binding, final decision. Olympic's strained argument that somehow an initial decision by an ALJ in the FERC proceeding is beneficial to this Commission is unsupported and should be properly dismissed.

**B. Olympic's Argument That Applying FERC Methodology Will Avoid Unnecessary Expense and Duplication to Olympic Is Misleading**

Olympic's argument that applying FERC methodology will avoid unnecessary expense and duplication is misleading. Assuming, *arguendo*, that Olympic's Motion is granted, the scope and complexity of this proceeding would be magnified. Intervenors would be required to put on additional testimony and witnesses on alternative methodologies, and Olympic would be required to rebut Intervenors' testimony and witnesses. Instead of properly focusing on the determination of a just and reasonable rate for intrastate service of a petroleum products pipeline, substantial time and expense would be incurred reviewing and rearguing the FERC proceeding. Furthermore, with the passage of time, the use of the 2001 test year becomes more questionable. If Olympic doesn't want to move forward with its requested rate increase, it should withdraw its rate increase request, abandon its interim increase, and refile a rate case after the presiding FERC

ALJ issues an Order. Olympic's Motion would unnecessarily broaden the scope of this proceeding and force the parties to use stale data. The request for an extended delay should be denied.

**C. Olympic's Argument That its Due Process Rights Will Be Violated is Completely Unsupported.**

Olympic's allegation that it will be denied due process if it is required to respond to overlapping and conflicting schedules is puzzling. Notably, Olympic has different counsel for the FERC and WUTC proceedings. Tosco also notes that Olympic's alleged concerns with its ability to respond to WUTC Staff and Intervenors are grossly overstated. The schedule as proposed by WUTC Staff and Tosco has the same intervals between deadlines as was established in the original schedule. Thus, there is no hardship to Olympic in meeting this procedural schedule and Olympic's tenuous due process arguments should be rejected. It is Olympic that chose to seek simultaneous increases to its intrastate and interstate rates. It can not now complain about the burden of having to prosecute both cases.

**CONCLUSION**

For the reasons described above, Olympic's Motion to amend the hearing schedule beyond the date proposed by WUTC Staff and Tosco should be denied. If, however, Intervenors or Staff require additional time to prepare their case because of Olympic's failure to timely respond to discovery, a limited delay in the schedule would be appropriate, but hearings should be scheduled in the next available time period for the Commission.

Dated: March 27, 2002

Respectfully submitted,

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Of Attorneys for Tosco Corporation