

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

MOTION ON BEHALF OF  
COMMISSION STAFF TO  
DISMISS CASE AND REJECT  
TARIFF FILING OF OLYMPIC  
PIPE LINE

**I. Moving Party; Relief Sought**

Commission Staff, by and through its counsel, moves for a Commission order to dismiss this case and reject the tariffs filed by Olympic Pipe Line. The basis for the motion is Olympic's unwillingness or inability to respond to reasonable requests for information.

This motion is based on attached Exhibits A, B, C and D, and the Joint Declaration of Mr. Colbo and Mr. Twitchell, the Commission Staff accountants assigned to this matter.

**II. Statute and Rules Involved**

WAC 480-09-480, RCW 81.28.240 (Commission may order reasonable practices), RCW 34.05.449 (presiding officer shall regulate the course of proceedings).

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### **III. Overview**

The Commission set a deadline of March 22, 2002, for Olympic Pipe Line (Olympic) to file responses to all outstanding priority data requests. Olympic did not comply.

On Friday, March 22, 2002, Olympic Pipe Line provided certain responses to some outstanding Staff priority data requests. Two of the data requests were Staff Data Request Nos. 376 and 377. These were critical requests that were necessary in order for Staff to prepare its case.

Earlier, on January 17, 2002, Staff met with Olympic personnel and in the course of that meeting, specifically discussed the need for this data that Olympic staff agreed to provide. Staff issued the requests on February 5, 2002. Olympic did not respond to this data request until March 22, 2002, and Olympic did not respond as requested.

For several other priority Staff data requests, Staff either has received no responses or incomplete responses. These results occurred after correspondence specifically citing the deficiencies was sent to Olympic, after a two-day conference on March 6 and 7 in which data requests were discussed with Olympic, and after the Commission's ALJ required responses by March 22, 2002.

Given these extraordinary and failed efforts by the parties and the Commission, Staff is now convinced there is no chance Staff will get responses from Olympic that Staff needs to prepare its case on time, if at all.

This case should be dismissed. If Olympic wants to refile tariffs, it should do so only after it has made the commitment necessary to enable it to actually respond accurately and timely to reasonable requests for information.

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#### **IV. Information Relied Upon for this Motion**

This motion is supported by the following exhibits:

Exhibit A contains the letters (excerpted) issuing data requests discussed below.

Exhibit B contains any responses received to date, in numerical order. The exception is that the complete Company response to Staff Data Request Nos. 376 is not provided. Only a few select pages are provided, which is enough to show the deficiency in the response. All of these responses were declared confidential by Olympic.

Exhibit C is Staff's the March 4, 2002, letter to Olympic. Exhibit C also contains a February 26, 2002, email and a February 8, 2002, letter from Staff to Olympic. These documents are attachments to the March 4 letter. All of this correspondence pertains to Staff's efforts to receive responsive discovery.

Exhibit D is Staff's March 11, 2002, letter to Olympic. This letter summarizes the pertinent results of the discovery conferences held March 5 and 6, 2002, and notes Staff's priority data requests.

#### **V. Discussion of the Staff's Data Requests and the Status of Olympic's Responses**

##### **A. Staff Data Request Nos. 376: Request to Update the Test Period**

Staff Data Request No. 376 stated as follows:

Provide for the twelve months ended December 31, 2001 an update to your Exhibit OPL-31 and all the schedules. This information should be in accordance as it was requested during the Staff visit of January 17, 2002.

This data request was issued February 5, 2002 (Exhibit A). Olympic's response was due February 19, 2002. Olympic provided no response to the merits of this request until 43 days later, on March 22, 2002. Olympic did not object to this data request.

Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Staff communicated with Olympic on the need for this data. Staff met with Olympic personnel on January 17, 2002 to discuss what could be provided. (Colbo/Twitchell Declaration at ¶5).

Exhibit C, Staff's March 4, 2002, letter to Olympic (page 2), noted that no response had been timely received by that that time. A schedule for response was requested. None was provided.

Exhibit D, Staff's March 11, 2002, letter to Olympic (pages 1 and 4), stated that this was priority data request and noted Staff's understanding that Olympic had agreed to provide the information as requested.

Staff data request No. 376 related to Olympic's Exhibit OPL-31. This exhibit is Olympic's portrayal of a test period ended September 30, 2001, using actual data through that date. Staff Data Request No. 376 plainly asked for an update to this exhibit based on actual results through December 2001. The need for this information was discussed in detail between Staff and Company personnel on January 17, 2002. (Colbo/Twitchell Declaration at ¶5).

This was a critical data request for Staff. Staff is concerned the test period used by Olympic (using actual results through October 2001) is not representative. The section of Olympic's pipeline serving the refineries to the north was restored to service in July 2001. Staff wanted to use the most recent actual data reasonably available in order to have some semblance of a representative test period, and to avoid problems with year 2000 data. (Colbo/Twitchell Declaration at ¶8).

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On March 22, Olympic did not respond as Staff requested. Instead of starting with calendar year 2001 actual results, Olympic started with calendar year 2000 results and adjusted to year 2001. It made other changes to underlying assumptions without explanation. (Colbo/Twitchell Declaration at ¶16).

Staff is unable to develop the cost of service analysis it needs to develop since it lacks the data Staff requested, in the form Staff requested it. It took Olympic over two months to respond to this request after being advised of Staff's need for it, and over six weeks from the actual data request issuance date.

Olympic's response to what Staff requested has still not been received.

**B. Staff Data Request Nos. 397, 405 and 414: Data Requests for which Olympic has provided no answer**

Staff issued Data Request No. 397 on February 11, 2002. Olympic's response was due February 25, 2002. Staff issued Data Request No. 405 on February 26, 2002. Olympic's response was due March 12, 2002. Staff issued Data Request No. 414 on March 1, 2002 (Exhibit A). Olympic's response was due March 15, 2002. Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Exhibit C, Staff's March 4, 2002 letter to Olympic noted Olympic's response to WUTC Staff Data Request Nos. 397 was past due, and asked Olympic for a schedule when responses would be supplied. Olympic provided no schedule.

Exhibit D, Staff's March 11, 2002 letter to Olympic (page 5) noted that it was Staff's understanding Data Request No. 397 was a request the Company agreed to respond to. Staff Data Request Nos. 397, 405 and 414 were identified as priority Staff data requests (page 1).

To date, Olympic has not responded to any of these data requests. Olympic has not timely provided any schedule for responses.

**C. Staff Data Request No. 323: Olympic's answer did not contain the documents it said it contained (WUTC Staff Data Request No. 323)**

Staff issued Data Request No. 323 on January 25, 2002 (Exhibit A). Olympic's response was due February 8, 2002. Olympic provided a late and incomplete response on February 21, 2002. Olympic's response (in Exhibit B) stated the response contained documents, but none were provided. Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Staff followed up. Exhibit C, Staff's March 4, 2002 letter to Olympic (page 2) noted this problem and asked for the referenced documents. Exhibit D, Staff's March 11, 2002 letter to Olympic (page 5) again noted the lack of documents, and Staff's understanding that the Company agreed to supply the requested documents (page 3). This was identified as a priority Staff data request (page 1).

To date, the documents have not been produced. Olympic made no objection to providing the requested information.

**D. WUTC Staff Data Request Nos. 339, 341, and 355: Staff Data Requests relating to pricing information for which Olympic provided non-responsive answers**

Staff Data Request Nos. 339, 341 and 355 were issued January 25, 2002 (Exhibit A). Olympic's responses were due February 8, 2002. Olympic provided late and incomplete responses on February 21, 2002 (in Exhibit B). Olympic made no objection. Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Each of these requests relate to specific statements made by Olympic in pre-filed testimony. Olympic's Ms. Omohundro's testimony states that current rates are not high enough for Olympic "to attract capital sufficient to create an economic incentive to build more capacity to meet demand." (Exhibit No. CAO-3 at 6). Staff Data Request No. 339 asked for the price level that would satisfy that condition. None was supplied.

Ms. Omohundro's testimony also states that the "existence and pricing of substitutes...provides guidance to the optimal pricing of pipeline transportation services." (Exhibit CAO-3 at 7). Staff Data Request No. 341 asked for the prices used to make that comparison. None were supplied.

Ms. Omohundro's testimony states that "in an unregulated environment, pipeline prices would rise and the pipeline would be expanded to a level in which supply and demand would be in balance." (Exhibit CAO-3 at 6). Staff Data Request No. 355 asked for what Olympic's prices would be at that level. None were supplied.

Each of these requests plainly asked for specific pricing information. Each request was directly tied to specific testimony. As Olympic's responses to these requests (in Exhibit B) show, Olympic supplied no pricing information.

Staff followed up. Exhibit C, Staff's March 4, 2002 letter (pages 2-3), pointed out the deficiencies in Olympic's responses. Exhibit D, Staff's March 11, 2002 letter (pages 3-4), reiterated these deficiencies, and noted Staff's understanding that Olympic agreed to provide the requested information. These were identified as priority Staff requests (page 1).

To date, Olympic has not provided information responsive to these data requests.

Olympic made no objection to providing the requested information.

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**E. Staff Data Request Nos. 319, 345, 364, 400 and 401: Other Staff Data Requests for which Olympic provided incomplete answers**

Staff issued Data Request Nos. 319 and 345 on January 25, 2002 (Exhibit A).

Olympic's response was due February 8, 2002. On January 29, 2002, Olympic responded in part to Data Request No. 319, but indicated it was still compiling data (in Exhibit B). Olympic provided late and incomplete responses to Data Requests 319 and 345 on February 22, 2002 (In Exhibit B). Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Staff issued Data Request Nos. 362, 400 and 401 on February 11, 2002 (Exhibit A). Olympic's responses were due February 25, 2002. Olympic provided a late and incomplete response to Data Request No. 362 on February 21, 2002 (in Exhibit B). Olympic provided late and incomplete responses to Data Request Nos. 400 and 401 on March 22, 2002 (in Exhibit B). Olympic did not timely provide a schedule for its response as required by WAC 480-09-480.

Data Request No. 319 asked Olympic to provide "all supporting documents, calculations and assumptions" to develop federal and state tax expenses. The Company's response provided no details regarding how the amounts were computed, what tax rates were assumed, etc.

Staff followed up. In Exhibit C, Staff's February 8, 2002 letter (page 2), Staff noted this deficiency. In Staff's March 4, 2002 letter (page 1) (also in Exhibit C), Staff reiterated this deficiency. In Exhibit D, Staff's March 11, 2002 letter (page 3), Staff noted its understanding that Olympic agreed to supply the information. No supplemental response was supplied.



Data Request No. 345 asked Olympic to provide any WUTC rule or order which prescribed, found or concluded that any particular rate methodology was appropriate for Olympic. The Company's response (in Exhibit B) cited no such rule or order.

Staff followed up. In Exhibit C, Staff's March 4, 2002 letter (page 2), Staff noted this deficiency and stated that a citation would be acceptable. In Exhibit D, Staff's March 11, 2002 letter (page 3), Staff noted that if Olympic objects that the request relates to "legal briefing issues," then Olympic should provide any order or rule relied on by any witness and to identify the witness. No supplemental response was supplied.

Data Request No. 364 asked Olympic to state, for the amounts of debt shown on Mr. Batch's Exhibit 2-T, page 3, the purpose for which the amount of money was expended. The Company's response (in Exhibit B) did not provide any specific breakdown of each debt amount for any specific purpose.

Staff followed up. In Exhibit C, Staff's March 4, 2002 letter (page 3), Staff noted this deficiency. In Exhibit D, Staff's March 11, 2002 letter (page 4), Staff indicated its understanding the Company was still examining this request. No supplemental response was received.

Data Request No. 400 asked for specific information regarding the Company's annuitants expenses, and asked that it be provided "by account." Olympic's response (in Exhibit B) provided no information by account.

Data Request No. 401 in part asked for specific payroll information, by amount, account and by month, related to Olympic's employee Mr. Cummings. Olympic's response (in Exhibit B) provided no information specific to Mr. Cummings.

Exhibit D, Staff's March 11, 2002 letter (page 1) identified all of these data requests as priority Staff data requests. To date, no complete responses to these data requests have been received. Olympic made no objection to providing the requested information. To the extent Olympic raised a concern about Data Request No. 345, that was accommodated.

## **VI. Dismissal is Appropriate**

For whatever reason the foregoing shows, Olympic is unwilling or incapable of complying with reasonable requests for information, either on a timely basis, or by the Commission imposed deadline.

The Commission, its Staff, and other parties simply cannot function in this environment. If all public service companies acted this way, the agency's regulatory process would grind to a halt.

In this case, Staff was required to make numerous and repeated requests of Olympic for follow-up, responsive information. That information should have been provided by Olympic in the first instance, and on time. Many of the foregoing requests related to Company witnesses who are not employees of Olympic, and whose participation in responding should not cause a significant drain on Company employee time.

Staff has made Olympic specifically aware of the deficiencies in Olympic's responses, often more than once. Still, no responses have been provided to cure the deficiency.

Olympic has refused to respond to none of the data requests by way of objection. To the extent one of Olympic responses hinted at an objection, it was accommodated.

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WAC 480-09-480 (6)(a)(v) requires that parties respond to data requests within 10 days of their receipt. If that cannot happen, the responding party “shall notify the requesting party, in writing and within five days of the request, of the reasons why the ten-day limit cannot be met. In this event, the responding party shall also provide a schedule for producing the requested data or shall explain why the portions of the data will not be supplied.”

Olympic repeatedly violated of WAC 480-09-480. Every day Olympic has not responded to a data request on time, or failed to timely provide a schedule for when it would respond, is a separate violation of WAC 480-09-480. *See* RCW 81.04.405. While Olympic seldom (if ever) has complied with the ten-day requirement in WAC 480-09-480 (6)(v) in this case, it never timely supplied a schedule for when it would respond.

Olympic has violated the Commission’s requirement that Olympic respond to all priority data requests by March 22, 2002. Despite clear Staff data requests for specific data in a specific form, or a request for a specific document, accompanied by repeated notices by Staff to Olympic of the deficiencies in specific Olympic responses, Staff still has not received the responses it requested.

The Commission has stated it will not tolerate unreasonable delay in responding to discovery requests. *Washington Utilities & Transp. Comm’n v. US WEST Communications, Inc.*, Docket No. UT-950200 (January 1996)(11<sup>th</sup> Supp. Order).

Parties in litigation under the Civil Rules of Procedure have an obligation to provide full answers to discovery requests unless a clear objection is made. *Physicians Insurance Exch. v. Fisons Corp.*, 122 Wn.2d 299, 345, 353-54, 858 P.2d 1054 (1993).

The Commission should apply no lower standard. Olympic has failed that standard, and any other standard based on reasonableness.

Commission Staff therefore requests dismissal of this docket. Olympic should refile when it has sufficient capability to respond accurately and timely to reasonable requests for information.

DATED this 27<sup>th</sup> day of March, 2002.

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