

Law Offices

KARR · TUTTLE · CAMPBELL

Founded 1904

A Professional Service Corporation

1201 Third Avenue, Suite 2900, Seattle, Washington 98101
Telephone (206) 223-1313, Facsimile (206) 682-7100

Portland Office
1212 Standard Plaza, 1100 S.W. Sixth Avenue, Portland, Oregon 97204
Telephone (503) 248-1330, Facsimile (503) 222-4429

Please reply to Seattle Office

William H. Beaver
(206) 224-8054
wbeaver@karrtuttle.com

January 20, 2005

Ms. Carole Washburn, Secretary
Washington Utilities and
Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

RE: **Olympic Pipe Line Company Comments to Proposed Rules;
Docket No. A-021178**

Dear Ms. Washburn:

Please accept the below comments made on behalf of Olympic Pipe Line Company to the Commission's proposed rules at WAC 480-73 under Docket No. A-021178. We greatly appreciate the Commission's consideration of these comments.

WAC 480-73-160 Annual Reports

(5) Economic Regulatory Fees.

The Commission's draft regulation at WAC 480-73-160(5) proposes to assess an economic regulatory fee "at one-tenth of one percent of the first \$50,000 of gross operating revenue plus two-tenths of one percent of any gross operating revenue in excess of \$50,000." As you know, Olympic Pipe Line Company is an interstate petroleum products pipeline in that it transports a substantial quantity of product to points in Oregon. We believe that the Commission's economic regulatory fee must necessarily be based upon the revenue generated from Olympic's operations in the state of Washington. This is also consistent with the Commission's practice. We thus recommend that the referenced section should be revised to provide that the maximum economic regulatory fee be set at:

. . . one-tenth of one percent of the first \$50,000 of gross *intrastate*
operating revenue plus two-tenths of one percent of any gross

intrastate operating revenue in excess of \$50,000. (***Proposed Revisions***)

WAC 480-73-190 Affiliated Interests – Contracts or Arrangements

The proposed regulation purports to require that “prior to the effective date of any contract or arrangement . . . with any affiliated interest,” Olympic must file with the WUTC a verified copy or summary of the contract or arrangement. The proposed regulation goes on to state that the “commission may institute an investigation and disapprove the contract or arrangement if the commission finds the company has failed to prove that it is reasonable and consistent with the public interest.” Olympic provides the following comments to this proposed regulation.

First, some of the Olympic’s customers are “affiliated” with Olympic. Olympic is obligated by federal law not to provide information regarding the products shipped by Olympic’s customers. Specifically, Section 15(11) of the Interstate Commerce Act provides in pertinent part the following:

It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, with the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; . . .

(See also 49 USC § 16103 containing essentially the same language and applicable to certain other interstate pipelines.)

Olympic notes that this issue appears to have been addressed by the Commission’s new proposed regulation WAC 480-73-210 in that it expressly excludes transactions between Olympic and affiliated entities that are “provided at tariff rates.” Olympic suggests that at a minimum, all such transactions “provided at tariff rates” between Olympic and affiliated entities also be expressly excluded from the reporting obligations of WAC 480-73-190.

Second, the proposed regulation suggests that the Commission has the authority to disapprove any contract or arrangement that Olympic might enter into with an affiliated entity.

Olympic is an interstate petroleum pipeline and as such, it is extensively regulated by the federal government. The principals of federal preemption and the Commerce Clause of the United States Constitution preclude any state from being able to disapprove a contract governing the operation of an interstate petroleum pipeline company like Olympic. See *Schneidewind v. A N R Pipeline Company*, 485 U.S. 293 (1988). See also, Appendix A to 49 CFR § 195 entitled “Delineation Between Federal and State Jurisdiction – Statement of Agency Policy and Interpretation” which states in pertinent part:

The HLPESA leaves to exclusive Federal regulation and enforcement the “interstate pipeline facilities,” those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce. For the remainder of the pipeline facilities, denominated “intrastate pipeline facilities,” the HLPESA provides that the same Federal regulation and enforcement will apply unless a state certifies that it will assume those responsibilities.

Olympic’s principal “affiliated interest” contract is the very agreement governing the operation of Olympic’s pipeline system. Currently, Olympic’s “operator” contract is with BP Pipelines (North America), an entity related to one of Olympic’s shareholders. Historically, Olympic’s operator has been an entity affiliated in some way with one of Olympic’s shareholders. Olympic believes that the operation of interstate pipeline facilities such as Olympic’s system is subject to the exclusive jurisdiction of the federal government. As such, a state does not have the ability to dictate the terms, conditions and requirements of a contract governing the operation and maintenance of Olympic’s interstate pipeline facility. If it did, the different states through which the pipeline ran could effectively shut down an interstate pipeline by requiring conflicting operating provisions.

WAC 480-73-210 Affiliated Interest and Subsidiary Transactions Report

This new proposed regulation purports to require Olympic to provide a detailed annual report to the Commission summarizing all transactions (except those provided at tariff rates) between Olympic and any affiliated interest. As indicated above, Olympic is operated by an entity which is affiliated with one of its shareholders. All of the individuals involved with operating Olympic are employees of that affiliated interest. The roles of Olympic’s operator are set forth in great detail in the above-referenced Operating Agreement. Read literally, the proposed regulation would require extensive reporting on each and every activity and “transaction” governed by the operating agreement which necessarily involves Olympic’s operator, an “affiliated” entity. This contract is already provided to the Commission per WAC 480-73-190. Olympic thus suggests that to the extent transactions with affiliated entities are governed by and required by its operating agreement, those transactions should be excluded from the reporting obligations of this proposed regulation.

Ms. Carole Washburn, Secretary
January 20, 2005
Page 4

Further, this regulation purports to require Olympic to provide balance sheets and income statements of certain affiliated entities. Olympic's two shareholders are ultimately affiliated with two of the world's largest corporations, BP and Shell. As a result, there are literally hundreds of entities "affiliated" with Olympic. Yet only Olympic is subject to the Commission's regulation. Olympic, may not have access to the balance sheets and income statements of those affiliated entities which are not publicly traded. Olympic thus does not believe the Commission has the authority to compel Olympic to provide to the Commission financial information which is not Olympic's property, is not "public" information, and is instead the property of entities which are not subject to the Commission's regulatory authority. However, Olympic necessarily could provide annual financial statements and reports of both BP and Shell which are publicly traded and thus their financial information is available.

We greatly appreciate the Commission's consideration of the above written comments. If the Commission or its staff have any questions regarding the above comments, please feel free to contact me at your convenience.

Very truly yours,

William H. Beaver

WHB/jn