BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. OLYMPIC PIPE LINE COMPANY, INC., Respondent.	DOCKET NO. TO-011472 OLYMPIC'S RESPONSE TO TESORO'S COMMENTS ON THE RECOMMENDATION FOR SANCTIONS

Tesoro argues for the first time that its agreement to clarify and modify the FERC Order due on April 12th, as memorialized in letters of April 4, April 5 and April 8 was not an agreement at all. This is despite the fact that the letter specifically said that this issue needed to be clarified before the "drop dead date of April 12". Tesoro's letter confirming the clarification and modification stated:

> We are writing to folloiw up on your letter of April 4, 2002, in which you indicated tht Olympic does not prepare or maintain lists of average down time, strip runs by month, average throughput by product by month, or average batch size by product by month. Therefore, it appears that this summary data which would be responsive to Tesoro's discovery requests is not available. Please confirm with us as soon as possible whether or not Olympic intended to compile the summary date in lieu of producing the source documents. If Olympic doesn't intend to compile such summary information, then we will have to arrange for the source documents to be copied.

Olympic reasonably understood that it was obligated by the WUTC to produce the same documents due to Tesoro as it was ordered to produce by the FERC ALJ. Olympic also reasonably believed that the letters of April 4, 5 and 8 between Olympic's FERC counsel and Tesoro's counsel constituted an agreement to modify what Olympic was to produce to Tesoro pursuant to the FERC order.

If Tesoro's new theory that it did not have an agreement at FERC is true, then it would have filed a motion at the FERC on April 12th when it did not receive the documents that FERC ordered. It did not do so. The whole point of the exchange of the letters was to avoid the expense and burden of creating new lists of summaries by Olympic before the April 12th deadline. Tesoro has done nothing to contradict this understanding at the FERC or with counsel for Olympic at the FERC.

The only question open is whether Tesoro's modification and clarification also applies to the identical order with the identical deadline at the WUTC. The whole point of the clarification was to avoid the burden and effort for Olympic as a company and because the two requests were identical with an identical deadline, it would have been pointless for Olympic's counsel to have clarified what it had to do in the one proceeding before April 12th, when it would have had to have done the same thing anyway in the other proceeding. This is why Olympic was reasonable in its reliance on that exchange of letters and clarification made before the April 12th deadline. Further, if Tesoro's new theory were correct, Tesoro could have raised this point long before it did, including at the April 16th telephone conference in which Administrative Law Judge Wallis participated. At that time, knowing that the April 12th deadline had passed, counsel for Tesoro was asked if there was anything Olympic needed to do that it had not done in compliance with any of its discovery obligations. Tesoro said nothing about the matters that were clarified by the exchange of letters. Olympic on two other occasions asked Tesoro if it had any specific issues on discovery and

Tesoro did not raise the issue it now raises. Tesoro ignored the requirement for conference of counsel which could have been held as early as April 12th, which is additional evidence that Tesoro believed on April 4, April 5, April 8, April 12, April 16 and later that the FERC (and the identical WUTC) order was clarified and modified by the exchange of letters. Otherwise there is no good explanation for Tesoro's refusal to bring this matter up at the FERC, at the time of the telephone conference with the Administrative Law Judge on April 16, or a conference of counsel required under the provisions of the Washington Administrative Code.

Tesoro repeats its incorrect observation that Mr. Talley could not derive information from the controller sheets, when the transcript shows that he was in the process of doing so and required a calculator to add up some numbers. Tesoro did not proceed the line of questioning and did not provide a calculator for Mr. Talley to do the calculations. Olympic has said that deriving the information from the green sheets would be a time-consuming process and that is why it did not want to undertake to create the summaries from the green sheets that Tesoro had requested. It, in other words, wanted to have Tesoro take the time to do that work if it thought it was relevant.

Finally, with the production of data on actual throughput for the last ten months, this issue of how to adjust throughput to come up with known and measurable adjustments is no longer an issue. Instead of relying on speculative adjustments to the data for July 2001, the parties now have ten months of data on actual throughputs and by the time of the hearing will have eleven months of such data. The actual data is the only known and measurable data that should be used to adjust the test year throughput.

Comments on Bayview

Olympic has repeatedly stated that it has looked for reporting information regarding whether the Bayview Terminal would increase capacity by 35,000-40,000 bpd. In its response, Olympic stated the steps it has taken to locate this information and confirmed that Olympic cannot

find any support for that capacity assumption. On June 11, Olympic reconfirmed this in the rebuttal testimony of Bobby Talley:

> Q. Have you attempted to determine how the Bayview *capacity* assumption of 35,000 to 40,000 barrels per day was calculated?
>
> A. Yes, we understand that the prior operator, Equilon, made statements that capacity would be increased by that amount. However, we have looked through all the records available to us, we have asked the Equilon employee who filed the Bayview tariff, Joan Weessies, as well as other Equilon employees who may have been involved in the December 28, 1998 filing. Having made all of those inquiries and looked for any basis for the calculations, we cannot find any support for that capacity assumption. It appears to us to be wrong.

Exhibit No. ____ (BTJ-11-T) at pgs. 17-18.

In addition, Mr. Talley said that the parties had confused capacity with throughput. Olympic has looked further for the background calculations to support the 121,349,000 barrel per year throughput number. A copy of Mr. Talley rebuttal testimony on the confusion between capacity and throughput and the steps Olympic has taken with regard to capacity is attached to these comments. It should be clear that Olympic has checked and rechecked and it has stated unequivocally that it not only cannot find support for the capacity assumption, "it appears to us to be wrong." The throughput number, however, in the 1998 rate filing that was represented to be the throughput for the rate period following the placement of Bayview in service, however, does appear to be in thee ballpark of expectations, even though BP cannot find the background calculations to support the 121,349,000 barrel per year throughput number. It should be noted, that Bayview was placed in service by the prior operator of Olympic, Equilon, and even though BP Pipelines as the new operator of Olympic has checked with these prior Equilon employees, including Joan Weessies and other Equilon employees who may have been involved in the December 28, 1998 filing that it has not been unusual to encounter gaps in records predating

July 1, 2000, when BP Pipelines took over operations. If further detail on the efforts by Olympic is deemed necessary in any way, Mr. Talley's rebuttal testimony is subject to cross-examination by Tesoro and he would be able to respond to any other specific questions that Tesoro has regarding that testimony.

Tesoro argues that it "has in its possession documents which Olympic has represented do not exist." That is incorrect. At the May 21st hearing, Olympic stated that it had in fact produced the "tariff filing and with the presentation materials that we had produced earlier." (Tr. at 1921). Olympic understood this request to be for materials that it had not already produced, such as the tariff itself, the backup material attached to the tariff itself and the presentation materials that were previously produced and the information provided to its Board of Directors. Those materials, in fact, were also used during the depositions of Olympic personnel in April by Staff's counsel, Mr. Trotter, in his questioning. Those presentation materials, incidently, do not provide any backup information on how that number was derived. Olympic has not stopped looking for these materials, and as Mr. Talley reconfirmed on June 11 in his rebuttal testimony, we have not been able to locate those despite the extension search that has been made and documented in his testimony.

DATED this ____ day of June, 2002.

Respectfully submitted,

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