

Tesoro argues that: a) Olympic bears the burden of proving the rates it filed are fair, just, reasonable, and sufficient; b) Olympic must file a direct case establishing a prima facie case for the rates it has filed; and c) Olympic has failed on both accounts. Furthermore, Tesoro argues that rebuttal is not the place for Olympic to make its prima facie case. Tosco agrees. Olympic has failed to establish through its direct case that its filed rates are fair, just and reasonable and sufficient. Perhaps recognizing the inadequacy of its case, Olympic now seeks to supplement its case through rebuttal testimony. Olympic should be held to its legally deficient direct case. Intervenors and Staff should not be prejudiced by Olympic's last minute attempt to put on a direct case through rebuttal filed one week prior to the commencement of the hearings. This Commission has previously dismissed cases where the Complainant has failed to meet the burden of a moving party in a complaint proceeding. *See GTE Northwest, Inc. v. Whidbey Telephone Co.*, Docket No. UT-950277, Fifth Supplemental Order (April 2, 1996). The standard is no different here where the public service company has the burden to demonstrate that an increase in rates would be just and reasonable.

For the reasons described above, the Commission should grant Tesoro's Motion for Summary Determination. Olympic has completely failed to support its filing in its direct case, and the Commission should not allow Olympic to satisfy its burden through rebuttal testimony. Therefore, the Commission should dismiss Olympic's rate filing without prejudice for Olympic to refile a proper rate filing and direct case.

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Respectfully submitted,

Edward A. Finklea OSB # 84216
Chad M. Stokes OSB #00400
Energy Advocates LLP
526 N.W. 18th Avenue
Portland, OR 97209-2220
Telephone: (503) 721-9118
Facsimile: (503) 721-9121
E-Mail: mail@energyadvocates.com

Of Attorneys for Tosco Corporation