BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. OLYMPIC PIPE LINE COMPANY, INC., Respondent. Docket No. TO-011472

TOSCO CORPORATION'S SUPPLEMENTAL ANSWER TO TESORO'S MOTION FOR SUMMARY DETERMINATION AND TO STRIKE TESTIMONY

Pursuant to the Notice of Extension of Time to File Response to Tesoro Refining and Marketing Company's ("Tesoro's") First Motion for Summary Determination and to Strike Testimony ("Motion"), Tosco Corporation ("Tosco") hereby submits this Supplemental Answer to Tesoro's Motion in the above-captioned proceeding. Tosco previously filed an Answer to Tesoro's Motion to Strike Testimony but did not address Tesoro's Motion for Summary Determination. Tosco supports Tesoro's Motion for Summary Determination. Olympic Pipe Line Company, Inc. ("Olympic") has failed through its direct case to meet its burden to demonstrate the need for any, much less a 62 percent rate increase. *See* RCW 81.04.130. Therefore, the Washington Utilities and Transportation Commission ("WUTC" or "Commission") should dismiss this case until Olympic is able to advance a prima facie case in support of its own rate filing.

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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* <u>GTE Northwest, Inc. v. Whidbey</u> <u>Telephone Co.</u>, 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 is 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,

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