

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 STRIKE
TESTIMONY IN OLYMPIC'S
REBUTTAL CASE

1 This Motion to Strike Testimony in Olympic's Rebuttal Case is filed on behalf of
Commission Staff. If the Commission does not dismiss this case under the motions for
summary determination that have been filed, Staff requests the Commission to issue an
order striking certain Olympic evidence as improper rebuttal.

2 Below is as complete a list as Staff could provide under the circumstances.

Legal Standards for Proper Rebuttal Evidence

3 Evidence available to a party for its direct case generally is not proper rebuttal testimony.
Kremer v. Audette, 35 Wn. App. 643, 648, 668 P.2d 1315 (1983). Although rebuttal
evidence may overlap to some degree with the evidence presented in the case in chief, the
moving party may not withhold evidence supporting issues which it had the burden of
proving in its case in chief, only to present that evidence in rebuttal. *State v. White*, 74
Wn.2d 386, 395, 444 P.2d 661 (1968).

Olympic Knew it Needed to Defend the Ratemaking Methodology Supporting its Case¹

4 It is no surprise to Olympic that it needed to file a direct case on the propriety of the
FERC methodology it proposes. Olympic knew this as early as July 2001.

5 The last Olympic tariff filing was in Docket No. TO-010792, a rate case initiated by
Olympic seeking a 76% rate increase in general intrastate rates. That filing was
suspended by the Commission, and later withdrawn on motion of Olympic. In its July 3,
2001 “Motion to Withdraw Tariff Filing and Cancel Pre-Hearing Conference” page 3²
Olympic stated in part:

In light of the apparent rejection of the FERC methodology to support
Olympic’s tariff increase, Olympic believes it is in all parties’ interest that its
submission, predominantly based upon FERC methodology, be withdrawn
and that it be provided additional time to understand the methodology which
the Commission will accept and to prepare a cost of service analysis that fully
complies with the WUTC’s methodology and requirements.

6 The Commission granted Olympic’s motion by Order dated July 11, 2002.

7 Nearly four months later, on October 31, 2001, Olympic filed tariffs initiating the instant
case, Docket No. TO-011472, seeking a 62% rate increase. The same day, Olympic filed
a “Petition of Olympic Pipe Line Company for a Policy Statement and Order Clarifying
Oil Pipeline Rate Methodology” (“October 31, 2001 Petition.”)³

8 In its October 31, 2001 Petition, Olympic sought to have the Commission declare the
FERC ratemaking methodology to be appropriate. Olympic acknowledged that there was

¹ The text in this section is substantially the same as certain text contained in Staff’s June 13, 2001 Answer to Tesoro’s Motion for Summary Determination.

² This document is included as Exhibit A to Staff’s June 13, 2001 Answer to Tesoro’s Motion for Summary Determination. It is incorporated herein by this reference.

“uncertainty regarding what methodology and filing requirements would be formally adopted by the Commission for oil pipeline rates...” (See October 31, 2001 Petition at page 5, ¶ 12)). Olympic also acknowledged: “It appears that the Commission has not made a formal policy determination on the appropriate methodology for intrastate pipeline rates.” (*Id.* at page 5, ¶ 13).

9 On November 20, 2001, the Commission entered its “Complaint and Order Suspending Tariff Revisions and Instituting Investigation; Denying Request for Policy Statement or Declaratory Order” (Suspension Order). In its Suspension Order, the Commission denied Olympic’s request for a policy statement or declaratory ruling on the appropriate ratemaking methodology “[b]ecause the Commission has determined to address the question of applicable ratemaking methodology in the context of the adjudication...” Suspension Order at page 3, ordering ¶ 6.

10 More than three weeks later, on December 13, 2001, Olympic filed its direct testimony and exhibits in support of its case for general rate relief.

11 In sum, Olympic admitted last summer that the appropriate ratemaking methodology was an issue in this case. More than three weeks before filing its direct case in the instant docket, the Commission made clear the ratemaking methodology issue would be resolved in this docket. Olympic had ample time to provide a direct case on appropriate ratemaking methodology.

³ This document is included (without attachments) as Exhibit B to Staff’s Answer to Tesoro’s Motion for Summary Determination. It is incorporated herein by this reference.

Improper Rebuttal Evidence That Should be Stricken

12 Olympic's rebuttal case is really its direct case on ratemaking methodology issues. That is not appropriate and it should not be condoned. Olympic had ample opportunity to file direct testimony on this issue. It failed to do so. Rebuttal is not the place for Olympic to correct that failure. Therefore, the Commission Staff moves the Commission to strike the following rebuttal evidence filed by Olympic:

13 **Exhibit No. 1201-T (LPS-1T), the testimony of Leon P. Smith, in its entirety.** This testimony addresses the propriety of using the FERC methodology. This testimony could and should have been presented to support Olympic's direct case. It is improper rebuttal for that reason.

14 **Exhibit No. 201-T (GRS-4T), rebuttal testimony of Mr. Schink, at page 13, line 14, to page 26, line 16.** In this testimony, Mr. Schink defends the use of the FERC methodology and computes certain "transition" surcharges occasioned, in his view, to any "change" from FERC methodology to the Commission methodology. This testimony is inappropriate because as a matter of law, a regulated utility is not entitled to a particular ratemaking methodology. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314-316, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989); *Cook Inlet Pipeline Co. v. Alaska Public Utilities Commission*, 836 P.2d 343, 346 (Alaska 1992)(citation omitted). No "transition payment" is required. Moreover, even if this was proper testimony, it could and should have been filed in Olympic's direct case in support of Olympic's use of the FERC methodology. It is not appropriate rebuttal for that additional reason.

15 **Exhibit No. 1301-T (CAO-5T), rebuttal testimony of Christy A. Omohundro, page 5, line 11 to line 24.** This testimony refers to and quotes portions of Mr. Smith's and Mr. Schink's rebuttal testimony that Staff is moving to strike. It should be stricken for that reason.

16 **Exhibit No. 1701-T (HBF-6T), page 11, line 2, to page 25, line 23, rebuttal testimony of Mr. Fox.** This testimony refers to and quotes Mr. Smith's and Mr. Schink's rebuttal testimony that Staff is moving to strike. It should be stricken for that reason.

Respectfully submitted this 17th day of June, 2002.

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