

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

DOCKET TO-031973

OLYMPIC PIPE LINE COMPANY,
TESORO REFINING AND
MARKETING COMPANY AND
CONOCOPHILLIPS COMPANY,

For an Order Approving Terms of a
Settlement Agreement Between Olympic,
Tesoro and ConocoPhillips and
Approving Rates Set Pursuant to Said
Agreement

DOCKET TO-081785

In the Matter of the Petition of

OLYMPIC PIPE LINE COMPANY,

For an Order Approving Terms of a
Storage Lease Agreement with BP West
Coast Products, LLC

NARRATIVE SUPPORTING SETTLEMENT AGREEMENT

I. PRELIMINARY MATTERS

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(2)(a), on behalf of the parties signing the Settlement Agreement (“Agreement”), which is also filed today in these dockets. This Narrative

summarizes many aspects of the Agreement. It is not intended to modify any terms of the Agreement.

2 The Commission has set a prehearing conference for November 10, 2008, and one of the purposes for that prehearing conference is to take intervention. If any person intervenes in opposition to the Agreement, that could affect the Agreement. Agreement ¶ 10. If no such intervention materializes, this is a “full settlement,” as that term is defined in WAC 480-07-730(3).

A. Parties to the Agreement

3 The parties to the Agreement are the signatories: Staff of the Washington Utilities and Transportation Commission (“WUTC Staff”) and Olympic Pipe Line Company, (“Olympic”) (individually, “Party”; collectively, “the Parties”).

B. Status of Approvals in Other Jurisdictions

4 The Federal Energy Regulatory Commission (FERC) is the agency with jurisdiction over Olympic’s interstate pipeline transportation services. On September 30, 2008, Olympic filed for FERC approval of the Amended TSA. FERC has not made a decision on that filing.

C. Notice to Shippers

5 By letter dated September 30, 2008, Olympic notified all of its shippers of these dockets. Petition for Approval of Amended TSA, Exh. No. 6. Olympic also met separately with the two shippers who have used Bayview storage facilities, and was assured that such shippers (other than the shipper to which Olympic is leasing the use of Bayview’s storage capacity, which is the subject of Docket TO-081785) are willing and able to adapt to the consequences of the lease in light of the advance notice they have received.

D. Record for Commission Decision

6 The Parties do not intend to file documentation supporting the Agreement other than the Agreement, this Narrative, and the following pleadings on file with the Commission:

1. Motion of Olympic Pipe Line Company to Reopen Docket No. TO-031973 to Allow Filing of Petition for Approval of Amendment No. 7 to Tariff Settlement Agreement of 2003;
2. Petition of Olympic Pipe Line Company for Approval of Amendment No. 7 to Tariff Settlement Agreement of 2003 ("Petition for Approval of Amended TSA"), including Exhibit 1 (Amended TSA); Exhibit 2 (redline comparison between the current TSA and the amended TSA); Exhibit 3 (prior amendments to TSA); Exhibit 4 (total revenue requirement); Exhibit 5 (September 30, 2008, letter from Olympic's counsel to WUTC providing notice of affiliate transaction, assigned Docket TO-081786); Exhibit 6 (September 30, 2008, letter from Olympic to shippers advising of Amended TSA); Exhibit 7 (original petition in Docket TO-031973); and
3. Petition of Olympic Pipe Line Company for Approval of Transfer of Property ("Petition for Lease Approval"), assigned Docket TO-081785.

7 The Parties will be prepared to respond to questions from the Commission at any hearing on the Agreement, if the Commission decides such a hearing is necessary, and the Parties are willing to provide additional supporting documents should the Commission deem that necessary or appropriate. If the Commission holds a hearing on the Agreement, the parties will make available a panel of witnesses consisting of representatives of each Party, in order to respond to questions from the Commissioners at the time of such hearing.

E. Procedural Needs

8 In order to effectively implement the Agreement, Olympic needs to make a tariff filing under the Amended TSA to be effective January 1, 2009. Therefore, Olympic desires a Commission decision on these dockets by December 1, 2008, to

enable Olympic to make that filing on 30 days statutory notice. On the other hand, if Commission approval by December 1, 2008, is not possible, Olympic understands it may request Commission permission to file tariff on less than statutory notice. In that scenario, Olympic would still need a Commission decision on these dockets no later than December 15, 2008, to allow time to file a petition for less than statutory notice treatment for the Commission to consider at its December 23, 2008, open meeting, the last open meeting of the year.

9 The Agreement contains a “most favored nations” provision that sets forth procedures for considering any additional terms ordered by the Federal Energy Regulatory Commission, which is the other jurisdiction that must approve the Amended TSA. Agreement at ¶ 19.

II. NATURE OF THE PROCEEDINGS

10 These two consolidated dockets are interrelated. The persons who negotiated the current TSA wish to continue that agreement, with some changes. A principal change is the agreement to remove approximately 85% of Olympic’s investment in the Bayview facilities from the TSA rate formula. According to Olympic, certain shippers have not used, and do not intend to use, those facilities and they did not wish to pay rates based on those facilities. Others have made incidental use of the facility. Another shipper, BP West Coast Products, LLC (BPWCP) desires to use the storage capacity of those facilities.

11 Accordingly, the Amended TSA filed for Commission approval in Docket TO-031973 removes approximately 85% of the Bayview facilities from the rate formula, and the property transfer application in Docket TO-081785 proposes to transfer the

storage capacity of Bayview related to that portion of the facilities. According to Olympic, the two shippers that have made incidental use of the facility have indicated that they have no objection to the storage capacity transfer in light of the advance notice they have received, which will enable them to adapt to the change.

12 BPWCP is an affiliate of Olympic. Consequently, Olympic filed a notice of that affiliated interest, which is Exhibit 5 to the petition in Docket TO-031973. No Commission action is necessary on that affiliated interest arrangement at this time. Nothing in the Agreement or the affiliated interest contract affects the Commission's regulatory authority under RCW 81.16, including the Commission's supervisory authority under RCW 81.16.050, and the Commission's authority under RCW 81.16.030, to address the cost impact of this affiliated interest arrangement in an appropriate proceeding.

III. OVERVIEW OF THE PROPOSED SETTLEMENT AGREEMENT

13 The Agreement is subject to Commission approval. Agreement ¶¶ 18 & 22. The Agreement consists of one document: the document entitled "Settlement Agreement."

A. The Dockets Would be Resolved and Concluded.

14 If the Commission approves the Agreement, Docket TO-031973 would be concluded by the Commission issuing an order reopening the record and approving the Amended TSA. Docket TO-081785 would be concluded by the Commission issuing an order approving the property transfer. Agreement ¶¶ 15-16.

15 In effect, Commission approval of the Amended TSA would continue the rate filing procedures Olympic has used since the Commission issued Order 01 in Docket TO-031973 on December 23, 2003, approving the current TSA. The Amended TSA

changes the formula that would be used to establish rates, but the cost-based nature of the formula is not changed.

16 Also unchanged is the fact that the regulatory authority of the Commission is unchanged by the Amended TSA. Just as under the current TSA, the WUTC Staff and the Commission are able to review any tariff filing filed by Olympic and make a decision independent of the Amended TSA as to whether the filing should be suspended, or not. Essentially, the current and Amended TSA are both agreements between Olympic and certain of its shippers as to how rates will be calculated and filed. The Commission's review authority is not affected by the current or proposed agreement.

17 As to the property transfer application in Docket TO-081785, the Commission applies a general "public interest" standard to such applications. WAC 480-143-170. Given that this application is not an arms' length transaction because the parties to the transfer are affiliated, the Parties understand that the Commission needs to be assured that this transaction is compensatory and does not prejudice other shippers. Both Olympic and WUTC Staff believe the transaction meets these objectives (see separate statements below). It is noteworthy that the transferee is an affiliate of Olympic's minority shareholder; the majority shareholder owns no interest in the transferee.

B. Effective Date and Approval Procedures

18 The Agreement is effective upon Commission approval and issuance of the necessary orders. However, the Amended TSA will not go into effect unless and until it is also approved by FERC. In addition, all necessary regulatory approvals must be obtained by February 1, 2009, or the Amended TSA will automatically terminate according to its terms.

19 The approval process is addressed in ¶¶ 21-22 and 24-25 of the Agreement. If the Commission approves the Agreement in its entirety, the docket is complete, subject only to procedures under the “most favored nations” provisions. Agreement ¶ 19. If the Commission issues an order approving the Agreement with a material change, the Agreement is not effective if a party files a timely withdrawal from the Agreement. The matter would then be set for hearing, although subsequent settlements are not precluded. Agreement ¶¶ 25.

20 The Agreement is the entire agreement of the Parties, and the Parties recommend the Commission approve it in its entirety. Agreement ¶ 23. The Agreement sets no precedent. Agreement ¶ 26.

IV. STATEMENT WHY THE PROPOSED SETTLEMENT IS IN THE PARTIES’ INTEREST AND/OR THE PUBLIC INTEREST

21 WAC 480-07-740(2)(a) requires this Narrative to include a “statement of parties’ views about why the proposal satisfies both their interests and the public interest.” Each Party has contributed the following separate statements:

A. Statement by Commission Staff in Support of the Agreement

22 WUTC Staff reviewed the Amended TSA in detail and met with Olympic personnel to assure that WUTC Staff understands the changes from the prior version the Commission has approved. Staff believes the Amended TSA reflects a cost-based rate formula. In any event, as the prior-approved version of the TSA, the Amended TSA preserves the Commission’s ability to review any tariff filing.

23 For example, if an issue arises as to the reasonableness of any rate change filed under the Amended TSA, the Commission can suspend the effect of that rate change and set the matter for hearing. The WUTC Staff also notes that this process is

available under the current TSA since late 2003, but WUTC Staff did not have reason to recommend that procedure.

24

In its Order 01 in Docket TO-031973 (December 23, 2003), the Commission provided several reasons or points supporting its decision to approve the current TSA. Part of WUTC Staff's analysis in the instant dockets was to determine how those items apply in current times. Below we set forth those items and provide WUTC Staff's conclusions.

- In general, the rate formula in the TSA is a "cost-based, depreciated, original cost rate base methodology." Order 01 at ¶ 10.

WUTC Staff's analysis: The Amended TSA is still a cost-based, depreciated, original cost rate base methodology. The changes to the current TSA do not change these characteristics.

- The TSA's rate formula calls for true-ups for expenses and revenues, and requires deferred accounting, and OPL asked the UTC to authorize such deferred accounting. Order 01 at ¶ 10.

WUTC Staff's analysis: The Amended TSA retains these features.

- The TSA's rate formula promptly tracks through to rates the benefits of increased pipeline throughput. Order 01 at ¶ 10.

WUTC Staff's analysis: The Amended TSA retains this feature, which inures to the benefit of the shippers.

- OPL was in bankruptcy and the TSA was essential to allow OPL to remain in business, return to normal operations, and attract capital. Order 01 at ¶ 11.

WUTC Staff analysis: The TSA appears to have been helpful in assuring OPL recovered its costs on a timely basis and OPL has met its obligations to improve and maintain its pipeline system.

- The TSA will allow OPL to provide the refunds ordered by the UTC in TO-011472, albeit on a longer schedule, but it assures the refunds will be paid. This was a contested item in OPL's bankruptcy. Order 01 at ¶¶ 12&13.

WUTC Staff analysis: WUTC Staff understands that all such refunds have been paid.

- The TSA is a product of arms length negotiations between large, sophisticated and unaffiliated shippers. Order 01 at ¶ 15.

WUTC Staff analysis: This is also true of the Amended TSA.

- The TSA will allow OPL to (Order 01 at ¶ 17):
 - a. Realize the money necessary to reorganize OPL's business debts
 - b. Emerge from bankruptcy
 - c. Return to normal throughput
 - d. Return Bayview Terminal to service
 - e. Complete projects necessary to a safe pipeline.

WUTC Staff analysis: Olympic has achieved the above goals.

- The TSA does not supplant or affect the WUTC's authority to review and approve or disapprove OPL's intrastate pipeline transportation rates. The TSA does not require the WUTC to automatically approve or allow into effect, any tariff filing filed pursuant to the TSA. The TSA has no precedential effect in any future rate proceeding. Order 01 at ¶¶ 19 & 35.

WUTC Staff analysis: This is also true of the Amended TSA.

25

The proposed property transfer is also appropriate. WUTC Staff reviewed the underlying documents and agrees that the lease rate provides adequate compensation to Olympic. WUTC Staff understands that only one shipper desires to use the related portion of the Bayview facilities, so this transfer appears to satisfy the interests of both the shippers and Olympic, because the shipper using Bayview will pay appropriate compensation to Olympic for use of those facilities, and all shippers will no longer have approximately 85% of the Bayview facilities included in the rate formula that sets the rates for the pipeline transportation services they receive. The latter adjustment will be effective according to the terms of the Amended TSA on January 1, 2009, and will result in a rate reduction.

26

Finally, the Agreement appropriately preserves Commission discretion should a controversy arise in the future over an Olympic transportation rate or over the lease.

27

Consequently, Staff supports the Agreement as in the public interest.

B. Statement by Olympic in Support of the Agreement

28

Olympic believes that the terms of both the Amended TSA and the Lease are reasonable and consistent with the public interest. Olympic adopts in full the preceding statement in support by Commission Staff and supplements such statement as follows.

29

The Amended TSA is an arms' length agreement between Olympic and two major shippers whose interests in the matters that are addressed by the agreement coincide with the interests of the balance of the shippers. The Amended TSA is the result of negotiations among Olympic, Tesoro Marketing and Refining Company ("Tesoro"), and Conoco Phillips Company ("CP") that took place over a period of approximately nine months. Although other shippers did not directly participate in

these negotiations and are not parties to the agreement, their interests were effectively represented. Olympic gave notice to all shippers of the terms of the agreement at the time Olympic's Petition was filed with the WUTC, and Olympic has met with the shippers to inquire whether any shipper objects to the agreement. To date, no shipper has raised any concerns regarding the terms of the Amended TSA, either formally or informally.

30 The basic mechanism of the Amended TSA parallels that of the original TSA, which the Commission approved in 2003. The basic rate setting methodology of the TSA has worked well. The amendment does not change the methodology. For example, it preserves the mechanisms of the current TSA for auditing and testing the information that Olympic provides that drives the rate-setting formula, and for arbitration of any differences that may arise. The operation of the rate-setting formula has not materially changed. Rather, specific components that enter into the calculation have been adjusted based on the parties' experience under the current TSA and, in the case of Bayview, based on concerns the shippers have raised. Bayview is the single largest change but is representative. The formula still uses a depreciated original cost methodology, but the Bayview component of the calculation has been reduced by eighty-five percent.

31 During the course of their negotiations over the Amended TSA, Olympic, Tesoro, and CP recognized that the lease was an important factor in arriving at a mutually acceptable amendment. The Lease is a direct outgrowth of Olympic's agreeing to remove eighty-five percent of Bayview from the rate base as part of the Amended TSA. It is anticipated that the Lease will provide the revenue necessary for

Olympic to be able to accommodate the tariff revenue reduction inherent in largely removing Bayview from the rate base.

32

If approved, the immediate impact of the removal of Bayview from the tariff calculation will be to reduce rates below those that otherwise would apply under the original TSA as of January 1, 2009. The downward impact on rates from Bayview's removal from the rate base will apply throughout the term of the Amended TSA. From Olympic's perspective, the resulting reduction in rates is economically feasible only if the Commission also approves the Lease of storage capacity related to that portion of the Bayview facility. The Amended TSA and Lease represent a combined package the approval of which would, among other things: (1) allow both Olympic and its shippers to continue to realize the advantages of the predictable rate-setting model established under the original TSA; (2) reduce tariff rates immediately, resulting in cost-savings to shippers; and (3) provide, via the Lease, a necessary counter-balance to the economic impact of removing 85% of the Bayview facility from the rate base.

33

The Amended TSA, like its predecessor, provides a rational, cost-based methodology for establishing appropriate tariffs based upon agreed criteria that enable Olympic and its shippers to understand and to predict the transportation costs associated with transporting their refined products to the marketplace. Like the current TSA, the Amended TSA preserves the full authority of the Commission, but, subject to that authority, functions mechanistically and avoids the potential financial and regulatory costs of the alternative method.

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For all of the foregoing reasons, Olympic believes that approval of both the Amended TSA and the Lease is consistent with the public interest and therefore requests that the Commission approve the Settlement Agreement.

V. SUMMARY OF LEGAL POINTS THAT BEAR ON THE PROPOSED SETTLEMENT

35

The Parties do not believe there is anything significant to discuss under this topic listed in WAC 480-07-740(2)(a).

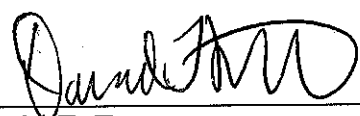
VI. CONCLUSIONS

36

The Parties respectfully request the Commission approve the Settlement Agreement filed in this docket. The Parties understand the Commission has certain discretion regarding the timing and procedures it will use to evaluate and reach a decision whether to approve the Agreement.

DATED this 7th day of November, 2008.

COMMISSION STAFF

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Counsel for Washington Utilities and Transportation Commission Staff

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DATED this 7th day of November, 2008.


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