BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. OLYMPIC PIPE LINE COMPANY, INC., Respondent.	Docket No. TO-011472 **TOSCO CORPORATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. FINDINGS OF FACT

1 The test year October 1, 2000 through September 30, 2001 represents the most reliable data from which the Company's intrastate rates should be derived. Tosco Corporation's Opening Post-Hearing Brief at pg. 28 ¶¶ 64-66.

2 The Company's books and records are an unreliable source from which to justify its cost of service presentation. Ex. 2401T at pg. 7 lines 12-14.

3 The Company has not provided actual results of operations per books, or any fully restated actual and pro forma results of operations in this proceeding. Ex. 1901T at pg. 6 lines 1-2.

4 The Company has not provided revenues per books, restated and pro forma adjusted. Ex. 1901T at pg. 6 lines 4-5.

5 The Company has not provided its rate base per books, restated and pro forma adjusted. Ex. 1901T at pg. 6 lines 4-5.

6 The Company's investors/owners have not justifiably relied on any particular ratemaking methodology. Tr. at pg. 3911 lines 17-20; Tosco Corporation's Opening Post-Hearing Brief at pg. 17 ¶¶ 38-40.

7 The depreciated original cost ratemaking methodology traditionally applies to public service companies in the State of Washington. Ex. 1901T at pg. 11 line 11-19.

8 The Company has not presented a witness to support the use of the FERC ratemaking methodology before this Commission. Tosco Corporation's Opening Post-Hearing Brief at pg. 16 ¶36.

9 The Company's rebuttal test period contains, along with 7 months of actual data, 2 months of budgeted figures and 3 months of averaged data, thus making it unreliable for purposes of establishing rates. Ex. 727.

10 The Company has included $5.6 million of one-time maintenance costs in its cost of service that, by definition, are non-recurring expenses. Ex. 2301T at pg. 41 lines 19-21.

11 Line lowering improves a pipeline over its remaining life because the line is protected from further hazardous exposure. Ex. 1801T at pg. 11 lines 29-30.

12 The Company has not justified that its $2.6 million in legal fees were prudently incurred or that they were properly included in regulatory costs. Tosco Corporation's Opening Post-Hearing Brief at pg. 33 ¶78-79.

13 The Company incurred $455,000 of transitional costs relating to an event that occurred prior to its proposed test year of October 1, 2000 through September 30, 2001. Ex. 2301T at pg. 44 lines 8-21.

14 Costs incurred relating to a change in majority ownership of the Company are not related to providing service to the shippers on the Company's pipeline. Ex. 2301T at pg. 44 lines 8-21.

15 The Company's actual fuel and power expenses are depressed due to restricted throughput. Olympic's fuel and power expenses, based on 130 million barrels, should be set at $10.3 million. Tosco Corporation's Opening Post-Hearing Brief at pg. 35 ¶81-82.

16 The Company has not obtained an accounting order from this Commission that permits the Company to defer any portion of its return. Ex. 1901T at pg. 19 line 21 through pg. 20 line 4.

17 The Company did not actually defer any portion of its return. Ex. 1901T at pg. 19 line 21 through pg. 20 line 4; Ex. 2401T at pg. 30 lines 5-8.

18 Amortized deferred return is neither an operating expense nor tax necessary to provide service, nor is a return on the investments used to provide regulated service. Ex. 1901T at pg. 18 lines 20-22.

19 Using an end-of-period rate base, as recommended by Commission Staff, is a proper means to mitigate regulatory lag for the Company. Ex. 1901T at pg. 44 line 13 through pg. 45 line 14.

20 The Company's obligations exceed the net book value of its assets. Ex. 2201T at pg. 19 lines 9-10.

21 A capital structure of 47.4 percent equity and 52.6 percent debt strikes the appropriate balance between economy and safety. Tosco Corporation's Post-Hearing Brief at pg. 44 ¶104, pg. 46 ¶108.

22 The oil pipeline proxy group has a median capital structure that consists of 47.5 percent equity and 52.6 percent debt. Ex. 2205.

23 The Company faces significantly different business risks than its corporate parents. Ex. 2201T at pg. 19 lines 15-21.

24 The Company's corporate parents are subject to the fluctuations of the world oil markets. Ex. 2201T at pg. 19 lines 15-21.

25 The Company's throughput has experienced a steady and consistently upward trend during the period 1982 to 1998. Ex. 2201T at pg. 19 lines 16-18; Ex. 2209.

26 The Company is the only pipeline that can service the four refineries manufacturing petroleum products within the State of Washington. Ex. 2301T at pg. 28 lines 4-5.

27 The Company faces no substantially greater risk than the companies in the oil pipeline proxy group. Tr. at pgs. 2503, 2522-2523.

28 The companies in the oil pipeline proxy group are not protected with a layer of vertical integration like Olympic. Tr. at pg. 2503 lines 8-19.

29 A return on equity of 13.00 percent is commensurate with returns on investments in other enterprises having corresponding risks and is sufficient to ensure confidence in the financial integrity of the Company. Tosco Corporation's Opening Post-Hearing at pg. 47 ¶110.

30 The Company faces no market risk significant enough to warrant a risk premium adder to the ROE. Tosco Corporation's Opening Post-Hearing Brief at pg. 51 ¶119.

31 The Company did not examine the cost of waterborne carriage to determine if it offers a competitive advantage. Ex. 2201 at pg. 17 lines 4-6; Ex. 2208.

32 A Company representative admitted in the evidentiary hearing that waterborne transportation is not a cost-effective alternative to pipeline transportation. Tr. at pg. 2785 line 24 through pg. 2786 line 18.

33 The Company's corporate parents systematically drained the equity from Olympic. The corporate parents can control the amount of equity or debt comprising Olympic's capital structure to suit their larger corporate objectives. Tosco Corporation's Opening Post-Hearing Brief at pg. 53 ¶123.

34 Shippers on the pipeline should not bear the financial responsibility for the Company's business strategy. Tosco Corporation's Opening Post-Hearing Brief at pg. 11 ¶23.

35 The 17.94 percent ROE for Kinder Morgan heavily influences the mean ROE value of the oil pipeline proxy group, making the mean an inappropriate measure for the ROE. Ex. 2201T at pg. 9 lines 17 through pg. 10 lines 20.

36 The median ROE for the oil pipeline proxy group is the appropriate measure to set Olympic's ROE. The median value does not face the problem of outliers because, by definition, it is the value above and below which there are an equal number of values, regardless of what those values are. Tosco Corporation's Opening Post-Hearing Brief at pg. 49 ¶¶115-117.

37 The Company's 1998 throughput is a volume it can achieve without the additional volumes of the Bayview Terminal. Ex. 2201T at pg. 29 lines 15-18.

38 The actual 1998 volume reflects the effects of any typical shutdowns or seasonal variations. Ex. 2201T at pg. 30 lines 1-5.

39 The Bayview Terminal adds 13.5 million barrels per year in throughput to Olympic's system. Ex. 2201T at pg. 29 lines 7-10.

40 Olympic's throughput for the test period should be set at 130 million barrels, consistent with Dr. Means' recommendations. Ex. 2201T at pg. 29 lines 7-10.

41 Dr. Means' adjustment mechanism gives the Company incentive to restore the pipeline to 100 percent operating pressure. Dr. Means' adjustment mechanism is preferable to other mechanisms that merely track the changes in Olympic's throughput. Ex. 2201T at pg. 36 line 1-6.

42 Dr. Means adjustment mechanism should be adopted. Ex. 2201T at pg. 28 line 10 through pg. 38 line 9.

43 The Company exercises some degree of control over restoring its operating pressure to 100 percent. Ex. 2201T at pg. 32 lines 19-21.

II. CONCLUSIONS of LAW

44 The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including pipeline companies. Chapter 80.01 RCW.

45 Olympic Pipe Line Company is a "public service company" as that term is defined in RCW § 81.04.010, and a common carrier pipeline company under RCW § 81.88.030, and as those terms otherwise may be used in Title 81 RCW. Olympic is engaged in Washington State in the business of providing the transportation of refined petroleum products by pipeline to the public for compensation.

46 The Company has not met its burden to prove that its proposed rate increase is just and reasonable. RCW § 81.04.130.

47 The Washington DOC ratemaking methodology applies to this proceeding.

48 The Commission is not bound by tariff filings allowed to go into effect by operation of law and has discretion to choose any methodology that will result in just and reasonable intrastate rates for the Company in this proceeding. RCW § 81.04.250

49 Tariffs put in effect by operation of law do not have the same legal effect of an Order. Tosco Corporation's Opening Post-Hearing Brief at pg. 24 ¶¶56-59.

50 Staff Memos responding to a Company's tariff filing do not constitute agency action. Tosco Corporation's Opening Post-Hearing Brief at pg. 26 ¶¶60-61.

51 The Commission has exclusive jurisdiction over the Company's intrastate rates. RCW Titles 80 and 81.

52 The Commission's only obligation is to set fair, just, reasonable and sufficient rates and it may set intrastate rates for Olympic differently than its interstate rates that currently exist without raising any constitutional issues. RCW § 81.28.230.

53 The Company's customers are entitled to a refund because the Commission determines that the final rates established in this proceeding should be lower that those authorized in the Interim Order. Tosco Corporation's Opening Post-Hearing Brief at pg. 61 ¶¶137-141.