BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. OLYMPIC PIPE LINE COMPANY, INC. Respondent.	)	DOCKET NO. TO-011472

TESORO REFINING AND MARKETING COMPANY=S
POST-HEARING REPLY BRIEF

1. Introduction.

1 Olympic and its owners want the benefits of ownership but not the responsibilities. When Olympic was realizing a 118 percent return on equity, Olympic=s ratepayers were not asked to share in these benefits. Now, when Olympic is realizing losses due to its own imprudent financial and operational management of the pipeline, Olympic=s ratepayers are being asked to share in the losses. Now, when Olympic needs funds for future capital improvements, Olympic=s ratepayers are being asked to share in those costs.

2 Ratepayers are not owners. Owners, not ratepayers, are responsible for losses due to imprudent operation. Owners, not ratepayers, are responsible for funding future capital improvements.

3 The responsibilities of Olympic=s ratepayers in this situation should be determined under the Ajust and reasonable@ rate standard. AJust and reasonable@ rates are rates designed to allow Olympic the opportunity to recover prudently incurred and recurring operating expenses, a return Aof@ its

investment, and a reasonable return Aon@ its unrecovered investment. Just and reasonable@ rates are not rates designed to Abailout@ Olympic and its owners from their own financial and operational imprudence or to fund future capital improvements which are not used and useful to the service currently being provided.[1]

I. Legal Standards and Governing Principles.

A. Burden of Proof.

4 While Olympic, Staff, and Intervenors agree that Olympic has the burden of proof in this proceeding, only Staff and Intervenors actually apply that standard in the proceeding. Throughout Olympic=s brief, Olympic attempts to shift the burden onto the Staff or the Intervenors.

[1] Olympic=s opening brief begins with selective quotes from this Commission=s comments in permitting interim relief. Olympic=s use of these selective quotes seems intended to suggest that many of the issues in this general rate case have already been determined by the Commission in the interim proceeding. Tesoro disagrees. In allowing interim relief, the Commission was quite clear that the ACommission will defer answers to most of these questions until it receives more complete evidence in the record of the general rate proceeding.@ [Third Supplemental Order Granting Interim Relief, In Part (Jan. 31, 2002), at 2 & 7.]

5 To cite one example, Olympic asserts that Mr. Brown=s adjustments to one-time maintenance costs and remediation costs are speculative and lack factual basis.[2] In so doing, Olympic ignores that Mr. Brown=s position is that Olympic has failed to offer an adequate factual basis for the inclusion of these costs and, therefore they must be excluded. Rather than meeting its burden and indicating the factual support for the inclusion of these costs, Olympic shifts the burden to Mr. Brown to provide a factual basis for their exclusion. The burden is on Olympic to demonstrate challenged costs meet the standards for inclusion. In the absence of such a demonstration by Olympic, the challenged costs must be excluded. It only stands to reason that other parties will be left to speculate as to the proper treatment of unsupported costs. In the absence of Olympic providing a factual record, nothing else but speculation by the other parties is possible.

B. Fair, Just, Reasonable and Sufficient Rates.

[2] OPL Opening Brief, at 30.

6 Again, while Olympic, Staff, and Intervenors agree that Olympic=s rates should be just and reasonable, only Staff and Intervenors actually apply that standard in this proceeding. To cite one of several potential examples, Olympic does not apply proper regulatory standards for the inclusion of costs in rates to its raw financial information. To be included within rates, expenses must be (1) related to the service provided, (2) prudently incurred, (3) representative of the lowest, reasonable costs possible, (4) recurring in nature and not one-time or extraordinary in nature, and (5) adjusted to take into consideration future events which are known and measurable and which may be quantified with a reasonable degree of certainty.[3] Similarly, Olympic does not apply the heightened standards for affiliated transactions to its many affiliated costs. As with other regulatory standards for inclusion of costs, Olympic merely ignores its affiliated transactions.[4]

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[3] WUTC v. Pacific Northwest Bell Tele. Co., 1978 Wash. UTC LEXIS 2 at * 47, 26 PUR 4th 495 (Oct. 18, 1978) (abnormal and nonrecurring expenses should be excluded from rates); WUTC v. Puget Sound Power & Light Co., 1989 Wash. UTC LEXIS 32 at * 8 (Apr. 19, 1989) (ANonoperating, nonrecurring, extraordinary items, or any other item that materially distorts test period earnings or expenses shall be removed from book results of operations before the achieved return is calculated.@); People=s Org. for Wash. Energy Res., 711 P.2d 319, 327 (Dec. 12, 1985) (AA utility cannot include every expense it wishes in this operating expense category since the regulatory agency has the power to review operating expenses incurred by a utility and to disallow those which were not prudently incurred.@); WUTC v. Pacific Northwest Bell, 26 PUR 4th 495, 1978 Wash. UTC LEXIS 2 at * 9 (Oct. 18, 1978) (ARegulation acts as a substitute for competition; it allows the utility the opportunity to recover its costs of providing service to the public while assuring that rates are maintained at the lowest level which will meet those costs.@); WUTC v. Avista Corp., 204 PUR 4th 1, 2000 WL 1532899 at * 14 (Wash. UTC Sept. 29, 2000) (AThese results are adjusted for unusual results during the test period, and for known and measurable events, in order to reflect changes to the test year that will make it a better predictor of what the Company can expect its operations to cost in the rate year.@); Id., at * 43 (AThe purpose of a test year, and of restating and pro forma adjustments to test year data is to develop a >normal= level of expenses that is expected to match the Company=s expenses in the rate year.@); People=s Org. for Wash. Energy Res., 711 P.2d 319,326 (Dec. 12, 1985) (Reviewing the regulatory equation that a company=s revenue requirement equals its operating expenses plus its rate of return on its rate base (R=O+B(r)) where >operating expenses= refers to the operating expenses a utility incurs to provide the regulated produce or service.@)

[4] In Tesoro=s opening brief, Tesoro expressed the view that, at least, Olympic had applied the regulatory standards governing the inclusion of costs in rates to the Adirect@ Whatcom Creek expenses. Even Tesoro=s limited view proved to be wrong. Olympic has, instead, taken the position in its opening brief that it could have included the Adirect= Whatcom Creek expenses within rates. This is ludicrous.

7 Notwithstanding its failure to actually apply proper regulatory principles, Olympic acknowledged that Athe Commission need not deviate from normal ratemaking principles@ to achieve the goals it has identified.[5] Olympic=s admission that the Commission need not deviate from normal ratemaking principles is an important judicial admission. Tesoro agrees with Olympic that this Commission need not deviate from Anormal ratemaking principles@ in setting Olympic=s rates. From Tesoro=s perspective, much of Olympic=s rate case is a request to deviate from normal ratemaking principles and make exception after exception to those principles to achieve the result desired by Olympic. The Commission should take Olympic at its word and apply normal ratemaking principles in setting Olympic=s rates.

8 As a final point, Olympic advances the public interest as though it somehow supports its positions in this proceeding or grants license to set rates without regard to the Ajust and reasonable@ rate standard. It does not. The public interest does not support forcing ratepayers to pay unjust and unreasonable rates. The public interest does not support forcing ratepayers to pay unsupported expenses, unsupported affiliated expenses, expenses unrelated to service, or nonrecurring expenses in future rates. The public interest does not support having ratepayers fund future capital improvements for multibillion dollar owners just to have to pay for those capital improvements a second time through rates as though the owners had invested the funds. The public interest does not support allowing a public service company to recover a return on investment it never made. The public interest does not support allowing the recovery in future rates of a deferred earnings calculation from prior periods during which there were excess collections. The public interest does not support rewarding the owners of a

[5] OPL Opening Brief, at 6 (emphasis added).

public service company for gutting the financial viability of the company through imprudent financial management, failed investments, and nonperforming investments and then refusing to contribute needed equity investment. The public interest does not support shifting the economic consequences for imprudent operation from the company to its ratepayers. The public interest does not support allowing equity returns when only debt costs are incurred and needed equity investment is being withheld. The public interest does not support the Abailout@ of multibillion dollar companies for their failure to prudently fund and operate a pipeline. There is nothing about the public interest, even if wholly the point of this proceeding, that supports Olympic=s positions in this proceeding.

IV. Ratemaking Methodology.

A. Investor Expectations; Right to Methodology.

When BP Pipelines became the operator after the Whatcom Creek accident and the seam failure from the Whatcom Creek testing, BP Pipelines advanced a plan to Olympic=s Board of Directors to comply with the Corrective Action Order (ACAO@) and return the pipeline to safe and normal operations.[6] The plan was for Olympic to spend $55.9 million for capital improvements during 2000 and 2001, to return the pipeline to normal operations late in 2003, and then to request a 10 percent rate increase in 2002.[7] Instead of spending $55.9 million in 2000 and 2001, Olympic has only spent $35.4 million for 2000 and 2001or 37 percent less than it intended. Instead of a 10 percent rate increase in 2002, Olympic requested a 62 percent rate increase or 520 percent more than it intended. Stated

[6] Ex. BCB-630.

[7] Ex. BCB-630, at 7 of 9 (Assume tariff increase (10% in 2002), p. 9 of 9, capital expenditures of $24.2 million in 2000 and $31.7 million in 2001).

differently, since BP Pipeline=s initial plan, Olympic has spent far less on capital improvements and asked Olympic=s ratepayers to pay much more than Olympic and its owners originally intended.

10 Olympic=s arguments that its investors have relied upon the likelihood of a 62 percent rate increase flounder once those arguments are compared with their owners= actual expectation of only two years ago, as set forth in BP Pipeline=s presentation to the Olympic Board of Directors. Olympic=s owners did not anticipate, expect, or plan on a rate increase even close to the one they are now asserting they must have to avoid a frustration of their prior expectations. Frankly, Olympic=s investor-reliance arguments lack candor when viewed in light of BP Pipelines=s actual planning and expectations.

B. FERC Methodology.

ii. Rationale for FERC methodology.

11 As Staff and Tosco have properly noted, Olympic has not advanced evidence to support the application of the FERC=s 154-B methodology to Olympic. ABecause FERC does it@ does not form a rational basis for rate regulation in the State of Washington.

iii. Elements of FERC Methodology.

3. Deferred Return.

12 Among its more novel arguments, Olympic suggests that the Commission=s use of a DOC methodology will Astrand investment@ which would require a transitional mechanism compensating for the accumulated deferred return balance.[8] Olympic also asserts that under FERC precedent, an actual deferral of earnings does not need to be demonstrated.[9] Olympic ignores that to have an accumulated deferred return balance in the first place, this Commission would have had to have adopted FERC=s 154-B deferral methodology for setting rates in 1984. This Commission has never adopted FERC=s 154-B methodology. As Staff has properly pointed out, any such deferral accounting within the State of Washington requires a special order of the Commission. Even Olympic did not apply FERC=s 154-B methodology for the majority of the periods for which it is now claiming an accumulated deferred earning balance.

13 Apparently, Olympic believes that it can collect its full return under a nondeferral methodology and then years later present a calculation of deferred returns for those same prior periods without demonstrating it used a deferral methodology, without demonstrating it actually deferred returns, and without demonstrating it had a return deficiency. Olympic=s hypothetical calculation of nonexistent deferred returns is apparently sufficient, from Olympic=s perspective, to collect the calculated amounts from future ratepayers. Olympic=s hypothetical calculation of nonexistent deferred returns is apparently

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[8] OPL Opening Brief at 17.

[9] OPL Opening Brief at 17.

Olympic=s view of Astranded investment.@ Olympic seems to believe its overcollections during those same prior periods should not be considered. Tesoro simply disagrees. Including deferrals from prior periods is problematic under the best of circumstances. This is due to intergenerational inequities and retroactive ratemaking concerns raised by such practices. Under Olympic=s circumstances, it is just factually wrong that there was any deferral to even consider in future rates.

V. Test Year and Jurisdictional Separations.

14 Tesoro believes Olympic=s original test year is appropriate. The use of this period is not compromised because it is not a calendar year. Given Olympic=s circumstances, calendar-year information adds little to the reliability of the test year. The overlap resulting from Olympic=s shifts from a cash to accrual accounting will exist whether a calendar year is utilized or not.

VI. Operating Expenses.

D. One-Time Maintenance Costs.

15 Olympic has failed to support the inclusion in rates of $5.6 million in one-time maintenance expenses. Olympic=s approach of attacking the messenger instead of the message does not change its lack of support for the inclusion of these expenses. Mr. Brown has summarized Olympic=s varying positions with regard to this expense item in his Ex. JFB-2305. In that exhibit, Mr. Brown summarizes the varying positions Olympic has adopted with regard to these expenses. For the reasons set forth in Tesoro=s opening brief, it is not even clear what projects are included within this $5.6 million or what sums have been actually spent for those projects. What seems clear from the limited explanations is that the projects are nonrecurring rather than recurring, and perhaps are capital projects rather than expenses. Staff=s approach of capitalizing many of these expenses would be tenable if Olympic had

better supported the expenses and it was clear that the sums have actually been expended. Given the complete lack of support and Olympic=s varying stories, these sums should be excluded from future rates.

VII. Rate Base.

16 In its opening brief, Olympic attempts to attach significance to the $66 million in capital improvements it has suggested it may need within the next three years. At one point Olympic even suggests:

> [It is] undisputed that OPL needs $66 million of new capital over the next three years to continue compliance with new federal pipeline regulations that implement HCA rules and Integrity Management Plans and to restore the pipeline system to 100% operating pressure, continue OPL=s ongoing effort to make safety upgrades, and institute other capital improvements.[10]

17 There is nothing about Olympic=s statements, however grand sounding they may be, that is supported by the record. Olympic mentioned for the first time the need for $66 million in its rebuttal case a few days before hearing. When Commissioner Oshie asked Mr. Fox which projects are covered by the $66 million, Mr. Fox responded, AI haven=t memorized them, I believe I=ve got them on a piece of paper somewhere, several pieces of paper.@[11] When Commissioner Oshie asked if the capital projects had been approved by Olympic=s Board of Directors, Mr. Fox responded, ANo.@[12] The simple fact is no one for Olympic, including the originator of the $66 million figure, Mr. Fox, could even explain what the $66 million was to be spent on. There is no evidence that this sum must be

[10] OPL Opening Brief at 6.

[11] Olympic Witness Fox, Tr. Vol. 34 (7/9/02), p. 4484, l. 5-9.

[12] Olympic Witness Fox, Tr. Vol. 34 (7/9/02), p. 4485, l. 4-6.

expended over the next three years or that it need ever be expended. There is also no indication that the $66 million needs to be funded by Anew capital.@

18 The only thing that is known about the $66 million is that Olympic is not asking for any of these funds in this rate case, but does expect to request higher rates if it actually expends the sums.[13] What seems clear is that Olympic is attempting to use the $66 million in its opening brief to support its current rate increase, when the $66 million has nothing whatsoever to do with this rate case. If and when Olympic actually adds plant in service which is used and useful to the service currently being provided, Olympic will have every right to request an increase based on its additional investment. Until then, Olympic=s self-serving postulations of future and unsupported financial needs should be set aside.

VIII. Capital Structure.

19 Olympic first wrongly asserts that no party has argued to use its actual capital structure for ratemaking purposes.[14] Tesoro has done exactly that. Mr. Hanley was clear that in the event Olympic=s owners are unwilling to make equity investments into Olympic, he believed the Commission should use its actual capital structure for ratemaking purposes.[15] Tesoro will not repeat the arguments contained within its opening brief except to comment that there is no justification to compensate debt with equity returns and a tax allowance.

20 Olympic=s positions and analysis throughout this proceeding intentionally confuse debt with equity and claim credit for debt financing as Ainvestment@ or a portion of Anet investment.@[16] Debt is not

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[13] Olympic Witness Fox, Tr. Vol. 34 (7/9/02), p. 4477.

[14] OPL Opening Brief at 42, && 115.

[15] Ex. FJH-401T, p. 21, l. 18-21, and p. 7, l. 10-12.

[16] OPL Opening Brief at 43, && 117, and pp. 44-45, && 120.

equity. Debt is not Ainvestment.@ Debt is not part of Olympic=s owners= Anet investment.@ Debt is debt.

21 The difference between debt and equity is important to rational economic regulation. Debt has less risk, is to be repaid, and represents a priority demand over the owners= rights to cash from operations. Olympic=s owners= method of funding through secured debt has even less risk, yet, under proper ratemaking principles, Olympic=s affiliated and nonaffiliated debt should be recovered as a cost.

22 Olympic asserts, Aequity is not cash.@[17] Tesoro believes in Olympic=s case, equity should be cash. Specifically, equity should be in the form of owners= contributions and retained earnings. A reduction in affiliated debt would also be helpful, however, because Olympic=s ability to attract capital from the debt marketplace has been compromised by its owners= decision to fund prior losses through affiliated debt. Absent the high levels of affiliated debt, Olympic=s balance sheet would be strong, there would be no priority demand on the cash due to the affiliated debt, and Olympic=s ability to raise capital in the debt marketplace would be enhanced.

IX. Rate of Return.

B. Return on Equity.

[17] OPL Opening Brief at 43, **&** 117.

23 A great deal of Olympic=s return on equity analysis is based upon its assertion that Olympic Ais much riskier than the companies in the oil pipeline proxy group.@ OPL Opening Brief at 57. Olympic=s opening brief directly contradicts its own witnesses. As Mr. Peck acknowledged, ABP=s current operation of Olympic is well above the industry standard.@[18] To the degree Olympic is seeking a higher rate of return as the result of it financial difficulties arising out the Whatcom Creek accident, this is both a new theory that is inconsistent with the manner in which its own rate of return expert, Dr. Schink, calculated a return on equity and it is also improper. Olympic should not be enriched by its own imprudence through a higher rate of return on equity.

X. Revenues.

A. Test Year Revenues.

24 In various parts of its opening brief, Olympic suggests that Staff=s and Intervenors= cases are deficient because the revenues under their cases Abarely exceeds reasonable operating and maintenance costs when the Aindustry standard@ is a ratio of two-to-one.@[19] The ratio that they reference is not an Aindustry standard@ for evaluating rates. Instead, the ratio is Mr. Fox=s private ratio which has never been used for any financial or rate setting purpose before. Mr. Fox suggested from the stand that with regard to the pipelines BP is involved in, the ratio of revenue to operating and maintenance expenses is

[18] Olympic Witness Peck, Tr. Vol. 25 (6/28/02), p. 2793, l. 5-11.

[19] OPL Opening Brief, at 6.

Asomewhere in the range of 1.75 to 2.25.@[20] Mr. Fox went on to comment that Staff=s case would only provide a 1.07 ratio which would be insufficient based on his experience.

[20] Olympic Witness Fox, Tr. Vol. 35 (7/9/02), pp. 4522-23.

25 Mr. Fox did not suggest his ratio was an Aindustry standard@ but only that it was based on BP=s pipelines. Mr. Fox did not offer a single example in which his ratio had been used for any purpose much less for rate purposes. Mr. Fox=s ratio was not mentioned in Olympic=s prefiled direct or rebuttal case. There is no collaborative evidence whatsoever in the record that Mr. Fox=s ratio has ever been used for rate purposes in any jurisdiction.[21] Olympic has not cited a single case in which Mr. Fox=s ratio was ever even mentioned. Mr. Fox=s ratio means absolutely nothing and certainly is not the Aindustry standard@ it has been elevated to in Olympic=s opening brief.

26 Aside from its inauspicious beginning, Mr. Fox=s ratio was wrongly calculated on Staff=s case. Mr. Fox compared Staff=s revenue with Olympic=s operating and maintenance expenses. Mr. Fox should have compared Staff=s revenue with Staff=s operating and maintenance expenses. Further, Mr. Fox=s calculation of his ratio for Staff assumed that Olympic=s operating and maintenance expenses are correctly stated and then compared them with the revenue generated under Staff=s case. Mr. Fox=s conclusion that his ratio suggests insufficient revenues is also wrong. Mr. Fox=s ratio, even if correct, suggests excessive operating and maintenance costs. At any rate, Olympic=s use of this Aindustry standard@ is simply unsupported by the record.

B. Throughput.

[21] Mr. Elgin came closest by acknowledging that the Commission used similar ratios in the economic regulation of companies for which rate of return regulation would be inappropriate due to the lack of rate base. [WUTC Staff Witness Elgin, Tr. Vol. 38 (7/11/02), at 4912-13.]

27 Olympic=s opening brief suggests that its third approach[22] to calculating throughput in this proceeding that of Aannualizing the most recent ten months@ of actual throughput is the Amost accurate basis@ for predicting likely future volumes.[23] Olympic=s opening brief suggests the use of its actual throughput would be representative of future throughput.[24] Olympic=s opening brief does not address whether it is proper to use actual throughput given that the actual throughput is restricted due to its prior imprudent operation of the pipeline.

28 Olympic=s most recent ten months of actual throughput is not representative of likely future volumes. To state the most obvious reason, Olympic=s pipeline is currently operating at 80 percent of normal operating pressure. Olympic has indicated that this pressure restriction will be lifted by March of 2004. Olympic will recover a Awindfall@ if its rates are set based on pressure restricted throughput and it is allowed to continue to collect those rates after the pressure restriction is lifted.

29 Setting aside the impact from the 80 percent pressure restriction, Olympic=s most recent ten months of actual throughput still is not representative of likely future volumes because the actual throughput has not been normalized to reflect likely future volumes. The record suggests that Olympic=s actual throughput reflects a disproportionate level of downtime due to capital projects and hydrostatic testing (which requires the pipeline to be offline). Given the uncharacteristically high level of downtime

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[22] Olympic=s current approach to throughput was first set forth in its rebuttal case. It advanced a different basis for calculating throughput in its initial filing and a different approach in its direct case. Prior to filing its rebuttal case, Olympic ignored actual throughput notwithstanding having five months (July through November of 2001) of actual throughput information available to it prior to filing its direct case. Now, Olympic has taken the position that the identical five months of actual throughput information which it had ignored entirely in its direct case plus five additional months forms the Amost accurate@ information available. This contradiction should not be ignored.

[23] OPL Opening Brief at 60 (**&** 158).

[24] OPL Opening Brief at 60-62 (**&&** 158-162).

in Olympic=s actual throughput information, there should have been some attempt to normalize throughput to reflect likely future volumes. Olympic made no effort whatsoever to normalize throughput and simply refused to provide the discovery information which would have allowed other parties to make such normalizing adjustments**B**notwithstanding this Commission=s order compelling the production of such information.

30 This Commission should not adopt Olympic=s actual throughput as Athe most accurate basis for predicting likely volumes@ because its actual throughput has not been normalized to reflect likely future volumes and because Olympic has simply ignored this Commission=s order compelling the information necessary to make such normalizing adjustments. Tesoro specifically sought information which would have allowed normalizing adjustments to be made to Olympic=s actual throughput. Specifically, on March 27, 2002, Tesoro requested information on the throughput impact of (1) downtime, (2) stripping operations, (3) throughput by product mix, (4) average batch sizes, (5) Bayview, and (6) the 80 percent pressure restriction. Such information would have allowed the other parties to make normalizing adjustments to Olympic=s actual throughput.

31 Consistent with its pattern of disregarding this Commission=s discovery rules, directives, and orders,[25] Olympic refused to provide this critical information which would have allowed the parties to make normalizing adjustments to actual throughput. As Judge Wallis noted, with regard to these specific requests, AWe believe that Olympic has violated the clear terms of the Commission order and

[25] As Judge Wallis has generally noted, AOlympic has repeatedly failed to respond to data requests with the data requested, or to supply information about the status of Olympic=s response, or to state objections.@ Thirteenth Supplemental Order at 5. As this Commission has generally noted, AOlympic has repeatedly failed to comply with discovery rules, directives, and orders in this docket.@ Sixteenth Supplemental Order at 1. In no area was Olympic=s disregard of this Commission=s discovery rules, directives, and orders more apparent than with regard throughput.

terms of WAC 480-09-480 in its failure to supply the requested information . . . @[26] As this Commission noted as to these same requests, AOlympic failed on April 12 to produce seven of the eleven documents that Tesoro had requested on March 27 . . . .@[27] Surely, Olympic=s dilatory tactics will not be rewarded by this Commission=s adoption of Olympic=s last-minute approach to throughput as the Amost accurate@ approach.

32 Olympic=s opening brief has also not even addressed the major prudency arguments Tesoro has raised regarding throughput in a transparent attempt to deprive Tesoro of the opportunity to respond to Olympic=s position on this central issue. Again, Olympic has chosen to ignore this Commission=s directives and has Asandbagged@ Tesoro on this central issue. Judge Wallis was clear in directing the parties that the content of the opening brief should include issues which may reasonably be Aanticipated.@[28] Mr. Marshall indicated he understood Judge Wallis=s directive on two separate occasions.[29]

33 Olympic may be expected to argue that the 80 percent pressure restriction on throughput is not a prudency issue because the pressure restriction was imposed system wide in the Second Amendment to the CAO as the result of a seam failure. Nothing in Olympic=s expected logic is supported by the

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[26] Thirteenth Supplemental Order (6/3/02), at 8.

[27] Sixteenth Supplemental Order (7/23/02), at 2.

[28] In setting short page limits for the reply briefs, Judge Wallis stated that reply briefs could be at Aminimum length@ because parties Acan anticipate what others are going to say@ through opening brief. Tr. Vol. 42 (7/18/02), p. 5328, l. 12-19.

[29] In arguing for a longer opening brief, Mr. Marshall argued that Athe issues are very clear on everything from throughput to major maintenance costs to capital structure. All those things are already there, and we do have to respond to each.@ Tr. Vol. 42 (7/18/02), p. 5306, l. 1-12. Further in agreeing that reply briefing should be limited, Mr. Marshall agreed that he Acan=t conceive of very many surprising arguments@ that could arise in opening briefs. Id., at 5330, l. 2-9.

record. As Tesoro noted in its opening brief, the 80 percent pressure restriction set forth in the initial CAO lowered the operating pressure on the entire system. The seam failure was due to Whatcom Creek testing, and neither the seam failure due to the Whatcom Creek testing nor the Second Amendment to the CAO had any impact on the actual operation or throughput of the pipeline.

34 Also as noted in Tesoro=s opening brief, setting the Whatcom Creek accident completely aside, Olympic was imprudent in not addressing the pre-1970 ERW pipe issue years before the seam failure due to Whatcom Creek testing. Olympic=s former Aignore known safety conditions until the pipe bursts@ approach to maintaining its pipeline was imprudent. A proactive maintenance approach is the only prudent approach to addressing known safety conditions for a pipeline transporting petroleum products.[30] Even today, Olympic has not even asked its owners for the funds necessary to address its known safety conditions and comply with the CAOBthree and one-half years after the CAO was issued.

35 Olympic=s expected logic is also flawed in two other fundamental respects: (1) Olympic falsely assumes the pre-1970 ERW pipe issue arose as the result of the seam failure due to Whatcom Creek testing; and (2) Olympic falsely assumes that the Second Amendment to the CAO was issued as the result of the seam failure due to the Whatcom Creek testing. Neither is supported by the record.

[30] Even today, Olympic is attempting to use permitting difficulties and delays as a reason for its failure to promptly respond to known safety conditions and comply with the CAO. These permitting difficulties are only one of the many reasons why a proactive maintenance approach is the only prudent approach.

36 In relevant part, the OPS was concerned with Olympic=s continued use of pre-1970 ERW pipe in its initial CAO (imposing the pressure restriction on two major segments and lowering the operating pressure on the entire system) prior to the subsequent seam failure. The OPS noted in their preliminary findings that (1) Olympic used pre-1970 ERW pipe and that the 1988 and 1989 Alert Notices Aadvised pipeline operators with such pipe in their systems to take additional precautions to limit pressure, to hydrotest, and to assure adequate cathodic protection@[31] (Preliminary Finding No. 5); (2) the operating pressure at the time of the Whatcom Creek accident was unknown[32] (Preliminary Finding No. 7); and (3) there was a mainline blocked valve failure immediately upstream of the site of the Whatcom Creek accident[33] (Preliminary Finding No. 8).

[31] Ex. BCB-30, p. 2 of 21.

[32] Ex. BCB-30, p. 2 of 21.

[33] Ex. BCB-30, p. 2 of 21.

37 Further, the Second Amendment to the CAO (extending the pressure restriction to the other segments but having no impact on the operating pressure on the entire system) was issued because OPS had learned that its safety concerns with Olympic should not be restricted to particular segments because the safety concerns arose from Olympic=s system-wide failure to operate its system safely. In issuing the Second Amendment, the OPS noted that A[s]ince the August 10, 1999 amendment [First Amendment], several events have occurred and information has been discovered which indicate the need for further amendment including an extension of the findings with respect to the entire Olympic pipeline system.@[34] Among the events and information causing OPS to extend its findings to the entire Olympic pipeline system were the following: (1) ADuring the investigation of the June 10, 1999 failure [Whatcom Creek], investigators for the [OPS] became aware@ that A59 mainline valve closures not commanded by the operator@ had occurred just upstream of the Bayview terminal making possible that the Aunusually high number of closures could increase cyclic fatigue on the line;[35] (2) In response to a request for training records in August 1999 (prior to the seam failure due to the Whatcom Creek testing), A[t]he most current training records that have been made available were 1994@Bfive years before the Whatcom Creek accident;[36] (3) On August 26, 1999, OPS learned that a longitudinal seam failure had occurred during the original pressure testing in 1965;[37] (4) On August 30, 1999, there was another spill due to a mechanical failure (unrelated to either Whatcom Creek or the seam failure due to Whatcom Creek testing) which contaminated the water table and the raised concerns about pipeline

[34] Ex. BCB-30, p. 14 of 21.

[35] Ex. BCB-30, p. 14-15 of 21(Preliminary Finding No. 13).

[36] Ex. BCB-30, p. 15 of 21(Preliminary Finding No. 14).

[37] Ex. BCB-30, p. 15 of 21 (Preliminary Finding No. 15).

operations and design;[38] (5) OPS learned that Olympic=s system had pre-1970 ERW pipe manufactured by Lone Star which is, Aactually@ not merely, presumptively subject to failure; and (6) the logs of three previous internal inspections did not indicate that the safety problems were located, investigated, and corrected in a timely fashion.[39]

38 After setting forth its findings, OPS specifically extended its restrictions to Olympic=s entire system through the following statement:

> I note the continued concern about the operations and management of the pipeline, the existence of pre-1970 ERW pipe in the system, and the possibility that operational irregularities may have increased the chance that latent defects in pre-1970 ERW pipe could have grown. Accordingly, I extend the findings that corrective measures are needed to the remainder of the Olympic Pipeline system.

[38] Ex. BCB-30, p. 15 of 21(Preliminary Finding No. 16).

[39] Ex. BCB-30, p. 16 of 21(Preliminary Finding No. 24).

39 As may be seen, the seam failure resulting from the Whatcom Creek testing was not even mentioned in the operative language explaining the reasons for the extension of the restriction to the entire system. The simple fact is that the OPS extended the restriction to Olympic=s entire system because OPS learned that the safety problems were the result of system-wide failures to operate and maintain a safe pipeline.[40]

XIII. Other.

40 The Commission should apply proper ratemaking principles to Olympic and set Ajust and reasonable@ rates.

DATED this 28th day of August, 2002.

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[40] To return to normal operations all Olympic need do is comply with the CAO. Essentially, Olympic need only demonstrate that it is capable of safely operating its pipeline system under normal conditions. At this point, Olympic has had three and one-half years to make this demonstration and return to normal operations. In lieu of compliance with the CAO, Olympic offers assurances that the pipeline is operating safety. In lieu of compliance with the CAO, Olympic offers excuses why it has been unable to comply. Olympic=s assurances and excuses should not substitute for proper safety regulation. This Commission should specifically order Olympic to comply with the CAO within the time frame Olympic has represented it will return to normal operations, March 2004, and should require the necessary compliance filings to track Olympic=s progress toward that goal.