

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
ANSWER OPPOSING OLYMPIC'S
PETITION FOR ADMINISTRATIVE
REVIEW OF EVIDENTIARY
RULING**

I. INTRODUCTION

1 Pursuant to Washington Administrative Code (“WAC”) § 480-09-420, Tosco Corporation (“Tosco”) hereby Answers Olympic Pipe Line Company’s (“Olympic’s”) Petition for Administrative Review of Evidentiary Ruling filed September 16, 2002 (“Petition”). Olympic is seeking review of the Nineteenth Supplemental Order, rejecting Olympic’s audited financial statements. WUTC v. Olympic Pipe Line Co., Docket No. TO-011472, Nineteenth Supplemental Order at ¶¶ 3-4. The Washington Utilities and Transportation Commission (“WUTC” or “Commission”) should reject Olympic’s Petition because: 1) Olympic has not raised any argument that justifies admitting the audited financial statements into the record at this stage of the proceeding; 2) Allowing the statements into the record would require an extension of this proceeding to give Staff and Intervenors time to conduct additional discovery, hearings and briefing, and 3) Olympic failed to comply with the time limits in WAC § 480-09-760.

II. BACKGROUND

2 At the close of the evidentiary hearing, Olympic requested that the record remain open in order for its audited financial statements to be allowed in the record. This issue was discussed in the transcript at 5283 line 10 to 5286 line 14. Tosco and Tesoro Refining and Marketing

Company (“Tesoro”) opposed Olympic’s request. While Staff did not object to the late filed exhibit, Staff did note that “there may be significant issues raised by that, and I’m not quite sure how to deal with it, since the briefs would be due six days later.” Tr. at pg. 5283 lines 14-23. The Commission took Olympic’s request under advisement. Tr. at pg. 5286 line 8-10. On August 12, 2002, Olympic filed its audited financial statements with the Commission. On August 13, 2002, Olympic filed its Summary of Required Communications with the Commission. On August 15, 2002, Tosco and Tesoro reaffirmed their objections to allowing the record to remain open to accommodate Olympic’s untimely audit reports.

3 On August 26, 2002, Administrative Law Judge Wallis issued his Nineteenth Supplemental Order rejecting Olympic’s audited financial statement. WUTC v. Olympic Pipe Line Co., Docket No. TO-011472, Nineteenth Supplemental Order at ¶ 3-4. That Order stated:

Olympic’s inability to produce an audited financial statement has been a matter of concern to the parties and to the Commission throughout this proceeding. Olympic has repeatedly stated that an audited statement would be produced. It was not yet available at the conclusion of the evidentiary hearing. The Commission neither agreed to accept the statement as a late-filed exhibit nor refused to receive it; instead, Olympic was granted leave to offer it, if it became available, and other parties to respond.

Reviewing the request and the responses, we believe that the proposed exhibit should be rejected. At some point, a proceeding must conclude. Receiving the document would require additional briefing, and would invite further discovery, and reopening the record for further cross examination. Olympic already has presented a considerable volume of evidence on its own financial circumstances, its financial condition, and its financial records.

4 On September 16, 2002, Olympic filed its Petition for Administrative Review of Evidentiary Ruling, arguing that the desire for finality must be weighed against the costs of an entirely new proceeding; that the audit provides valuable information to the

Commission, and is in the Public interest. Petition at ¶ 5. Olympic further argued that the report was not available previously due to unavoidable circumstances; its receipt into evidence will prejudice no party; and the report will address the concerns stated at various times by Intervenors, Staff and the Commission regarding the accuracy and reliability of Olympic's financial information. Id.

III. ARGUMENT

5 Olympic has never adequately explained why the audited financial statements could not have been provided earlier. As described in Tosco's Opening Brief, during the Interim proceeding Olympic committed to having audited financial statements "in the next couple weeks before, much before the end of the general rate case, before I think, the Commission Staff has to put on their rate case...." WUTC Interim Hearing Tr. at pg. 1304 lines 17-21. Later, the Company committed to having unqualified audited financial statements "...by the end of the year, or perhaps the first quarter of 2003." Ex. 603 at pg. 14 lines 20-21. Finally, at the hearing, the Company requested to leave the record open until August 15, 2002, to submit audited financial statements only for the most recent year. Tr. at pg. 5280 lines 16-22. Merely asserting that the report was not available previously due to unavoidable circumstances, without explaining the circumstances, does not bolster Olympic's position. The issues surrounding the audited financial statements, or lack thereof, go back to 1999. There is simply no excuse for Olympic's inability to produce audited financial statements, and no justification for an extension of this proceeding.

6 Judge Wallis correctly concluded that allowing the audited financial statements into the record would require additional hearing time to address significant issues raised

by the audits. Counsel for Tesoro explained “I don’t know how they can get an unqualified opinion on a balance sheet when they have two open years that they are not even auditing and they are auditing the next one...and I don’t see how its possible for them to produce the document that they’ve said, and if they do, then I would like an opportunity to depose the auditor that came up with it and I’d like to take a look at his work papers and I’d like to know what he considered and what he didn’t consider. Tr. at pg. 5285 lines 8-19. Furthermore, Ernst & Young’s Summary of Required Communications filed August 13, 2002, noted that: a) The accounting for certain decisions made by management of the Company were not recorded on a timely basis; b) Certain accounts or accounting entries lacked adequate supporting documentation; and c) Many expenses were recorded in the period paid, rather than the period incurred. *See* Ernst & Young Summary of Required Communications; Material Weakness In Internal Control (Aug. 13, 2002). Notably, Ernst and Young state that they will provide management, and the Board of Directors of the Company, a separate letter including detailed comments and observations resulting from the audit. Id. Tosco has not been served with a copy of this letter. The discussion above illustrates the types of problems that would need to be addressed if this report was allowed into the record of this proceeding at this late date. As it stands, the audit seems to raise at least as many questions as it was intended to answer. Thus, Olympic’s argument that the report will address concerns stated at various times by Intervenors, Staff and the Commission regarding the accuracy and reliability of Olympic’s financial information, is just not accurate.

7 Olympic's assertion that the desire for finality must be weighed against the cost of an entirely new proceeding should be rejected outright. The issues in this proceeding affected by the absence of an audited financial statements are serious, but pale in comparison to the larger financial issues that will dramatically impact the outcome of this proceeding, namely: methodology, rate of return, capital structure and throughput. Furthermore, as Judge Wallis correctly noted, "Olympic already has presented a considerable volume of evidence on its own financial circumstances, its financial condition and its financial records. WUTC v. Olympic Pipe Line Co., Docket No. TO-011472, Nineteenth Supplemental Order at ¶ 4.

8 Finally, Olympic's Petition should be rejected because it is procedurally untimely. Olympic incorrectly filed its Petition pursuant to WAC § 480-09-780, instead of WAC § 480-09-760, relating to interlocutory orders. WAC § 480-09-760 (2) states that "Any aggrieved party may petition for review of an interlocutory order. Petitions for interlocutory review must be filed with the Commission and served on other parties within 10 days after entry of the order, stating clearly why the order is in error and citing reasons in support of the petition." Olympic is requesting review of the Nineteenth Supplemental Order, filed August 26, 2002. Its Petition was due September 5, 2002. Olympic did not file its Petition until September 16, 2002. The Commission should therefore reject Olympic's untimely Petition.

V. CONCLUSION

9 For the reasons described above, the Commission should affirm the Nineteenth Supplemental Order, which properly excluded Olympic's late filed audited financial report from the record in this proceeding.

Dated: September 23, 2002

Respectfully submitted by:

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