

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

v.

OLYMPIC PIPE LINE COMPANY, INC.,

Respondent.

DOCKET NO. TO-011472

OLYMPIC PIPE LINE COMPANY'S  
PROPOSED REPLY TO ANSWER OF  
COMMISSION STAFF

**I. INTRODUCTION**

1. Olympic Pipe Line Company (“Olympic” or “Company”), pursuant to WAC 480-09-425, hereby replies to the Answer on Behalf of Commission Staff Opposing Olympic’s Petition for Administrative Review of Evidentiary Ruling, dated September 19, 2002 (“Answer”). The names and addresses of Olympic and its representatives are as follows:

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2. This Reply involves the following regulations and rules: RCW 34.05.461, WAC 480-09-010, WAC 480-09-760, and WAC 480-09-780.

**II. DISCUSSION**

3. In its Answer, Commission Staff states that “Olympic’s Petition should be rejected because

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Olympic failed to comply with the time limits in WAC 480-09-760.” Answer at ¶2. Staff further supports its position in the first footnote by stating:

The 19<sup>th</sup> Supplemental Order is not an “initial order” subject to WAC 480-09-780, as Olympic assumes. *E.g.* Petition at 1, ¶ 1. WAC 480-09-780 involves orders determining litigation that will be resolved by a later final order.

Id. at n.1

4. Olympic relied upon RCW 34.05.461 (“Entry of orders”), as specifically contemplated by WAC 480-09-780, for the definition of an “initial order.” RCW 34.05.461(1)(c) states that “[i]f the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.” Olympic’s reading of RCW 34.05.461(1)(c) is that any order issued by an administrative law judge is an “initial order.” Administrative law judge Wallis (“ALJ Wallis”) was the only signatory to the Nineteenth Supplemental Order<sup>1</sup>, thereby making it an “initial order” under Olympic’s reading of RCW 34.05.461(1)(c).
5. As an “initial order” under RCW 34.05.461(1)(c), Olympic had 20 days to prepare a petition for administrative review under WAC 480-09-780. Olympic filed the Petition within this 20-day time limit, thereby fulfilling this procedural requirement.
6. If Olympic’s reliance on RCW 34.05.461(1)(c) was in error, then the Commission should “make exceptions to [procedural] rules in individual cases when doing so is just and reasonable.” WAC 480-09-010(3). Olympic’s Petition should be judged on its merits and not on an interpretation of the ambiguous distinction between “interlocutory orders” and “initial orders” under the procedural rules.
7. With respect to Staff’s assertion that “Olympic has yet to move into evidence the documents [the 2001 audited financial statement] it filed,” Olympic intended that its July 12, 2002 request to keep

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<sup>1</sup> Compare the Nineteenth Supplemental order with the Sixteenth Supplemental Order in this proceeding. In the former, ALJ Wallis is the only signatory, whereas Chairwoman Showalter and Commissioners Hemstad and Oshie all signed the latter. Furthermore, the Sixteenth Supplemental Order unambiguously notes at the end that “[t]his is a final order of the Commission.”

the evidentiary record open until August 15, 2002 serve as a motion to admit the 2001 audited financial statement when available. Specifically, Mr. Beaver stated:

The first issue that I would like to address, at least on behalf of Olympic, is a request that the record, the evidentiary record be allowed to remain open until August 15 for us *to submit to this Commission what I expect to have by then, which is our audited financial statement by Ernst & Young.*

Tr. 5280:16-22 (emphasis added). Mr. Beaver's request is clear that Olympic intended to offer the 2001 audited financial statement into evidence by August 15, 2002, if available. The fact that the cover letter submitting the financial statements stated that they were "for filing" and did not request admission as evidence is immaterial given Mr. Beaver's previous request. To remove any question, Olympic hereby moves that the 2001 audited financial statement be admitted into evidence.

### **III. PRAYER FOR RELIEF**

8. Olympic respectfully requests that the Commission issue an order on administrative review admitting Olympic's 2001 Audit into the record of this proceeding.

DATED this \_\_\_\_ day of September, 2002.

**Respectfully submitted,**

**PERKINS COIE LLP**

By \_\_\_\_\_  
Steven C. Marshall, WSBA #5272  
Attorneys for Olympic Pipe Line Company

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 24, 2002, I caused to be served copies of Olympic Pipe Line Company's Proposed Reply to Answer of Commission Staff via email, facsimile, and U.S. Mail to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_ day of September, 2002, in Bellevue, Washington.

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Cindy Peterson