

125 FERC ¶ 61,276  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 3, 2008

In Reply Refer To:  
Olympic Pipe Line Company  
Docket No. OR08-16-000

Sidley Austin LLP  
1501 K Street, N.W.  
Washington, DC 20005

Attention: Lorrie M. Marcil, Esq.  
Counsel for Olympic Pipe Line Company

Reference: Approval of Offer of Settlement

Dear Ms. Marcil:

1. On September 30, 2008, Olympic Pipe Line Company (Olympic) filed in Docket No. OR08-16-000 an Offer of Settlement and an Amended Settlement Agreement (Amended Settlement), which amends and extends for a term of five years the Settlement Agreement entered into by Olympic, Tesoro Refining and Marketing Company (Tesoro) and ConocoPhillips Company (ConocoPhillips) (collectively the Parties), in Docket No. IS03-218 and approved by the Commission on December 29, 2003.<sup>1</sup> The Commission hereby approves the proposed Amended Settlement as fair and reasonable and in the public interest.

**Background**

2. Olympic is a common carrier oil pipeline that transports petroleum products within the State of Washington subject to the regulation of the Washington Utilities and Transportation Commission (WUTC) and from origins in the State of Washington to destinations in the State of Oregon subject to regulation by the Federal Energy Regulatory Commission (the Commission) under the Interstate Commerce Act. On March 31, 2003, Olympic filed with the Commission an increase to its interstate rates,

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<sup>1</sup> *Olympic Pipe Line Company*, 105 FERC ¶ 61,385 (2003).

and Tesoro and ConocoPhillips protested the rate increase in Docket No. IS03-218. On November 7, 2003, the Parties entered into a Settlement Agreement to resolve the issues before the Commission. The Settlement Agreement also addressed separate litigation before the WUTC and the United States Bankruptcy Court in the Western District of Washington.<sup>2</sup> The Settlement Agreement was approved by the Commission on December 29, 2003.<sup>3</sup>

3. Under the Settlement Agreement, Olympic may recover its total revenue requirement each year for the term of the settlement. The revenue requirement consists of the 12-month period sum of: Operating Expense, Depreciation Expense, Amortization of AFUDC, Return on Rate Base, Income Tax Allowance, and Net Carryover.

4. The Settlement Agreement identifies different categories of Operating Expenses. The Settlement Agreement allows Olympic to fully recover “Pass-Through Operating Expenses,” defined by the Settlement Agreement to include expenses related to fuel and power, project expenses, and the pipeline’s drag reduction agent costs. Under the Settlement Agreement, Olympic may also recover, subject to certain caps as defined by the agreement, “Transition Costs” (costs related to resolving 2003 rate matters and compliance with Chapter 11 bankruptcy requirements) and “Other Operating Expenses.” The Settlement Agreement excludes from recoverable operating expenses “Whatcom Creek Costs” associated with a rupture of the pipeline that occurred in 1999.

5. Also, under the Settlement Agreement, the Bayview Storage Facility is included in Olympic’s rate base subject to certain deadlines for entering into intended service.

6. The Settlement Agreement’s term is five years; thereafter, Olympic explains, the Settlement Agreement remains effective subject to termination upon proper notice. Olympic explains that the five-year term was set to expire December 29, 2008.

### **Amended Settlement**

7. As the conclusion of the Settlement Agreement’s five-year term approached, Olympic states that the Parties agreed to extend the deadline for providing notice of

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<sup>2</sup> Olympic filed for reorganization under Chapter 11 of the United States Bankruptcy Code in the Western District of Washington on March 27, 2003.

<sup>3</sup> *Olympic Pipe Line Company*, 105 FERC ¶ 61,385 (2003). Olympic states that the WUTC approved the Settlement Agreement on December 23, 2003, and, in a prior filing, Olympic represented that the bankruptcy court also approved the Settlement Agreement.

termination in order to reach agreement regarding the terms of a second, five year rate-setting methodology.

8. The Amended Settlement extends and modifies aspects of the prior agreement. For the purposes of calculating rates under the Amended Settlement, Olympic explained that substantial portions of the Bayview Storage Facility are removed from its rate base calculations. Olympic also identifies changes to the calculation of the pipeline's Operating Expenses. Specifically, Olympic explains that pipeline taxes have been re-classified as "Pass-Through Operating Expenses," and that normal right-of-way maintenance expenses have been re-classified as "Other Operating Expenses." The Amended Settlement removes from "Transition Costs" expenses associated with rate litigation. Olympic also states that under the Amended Settlement, capital expenses may include an estimate of known, measurable, and reasonably expected capital expenditures to be made during the upcoming year. Under the Amended Settlement, Olympic also agrees to seek economic enhancements to increase throughput capacity in the Renton, Washington to Portland, Oregon segment.

9. Olympic states that other modifications clarified settlement terms or reflected changed circumstances. For example, Olympic states that the Amended Settlement removes a provision relating to deadlines for Olympic to achieve 100 percent Maximum Allowable Operating Pressure since Olympic is already operating at this level. Under the Amended Settlement, Olympic agrees to continue to use its best efforts to maintain this level of operation.

10. The term of the Amended Settlement is for five years after which it continues on a year-to-year basis subject to termination by any party giving notice within specified time periods. Additionally, under the terms of the agreement, Olympic states that it may terminate the Amended Settlement if the WUTC does not approve a lease of the Bayview Storage Facility to BP West Coast Products, LLC. Olympic also states that Tesoro or ConocoPhillips have the right to terminate the Amended Settlement if either the Commission or the WUTC requires all aspects of Olympic's Bayview Storage Facility to remain in the rate base.

11. New rates under the Amended Settlement will be effective as of the later of January 1, 2009, or final orders approving the Settlement by the Commission and the WUTC. Olympic states that the Amended Settlement will automatically terminate if it has not become effective (i.e., if all regulatory approvals are not in place) by February 1, 2009.

12. Olympic urges the approval of the Amended Settlement as fair, reasonable, and in the public interest. Olympic states that the Amended Settlement provides a rational methodology, predictable transportation costs to shippers, and continued stable and consistent rate regulation. Olympic also emphasizes that approval of the Amended

Settlement decreases the likelihood of future disputes. Olympic expects the Amended Settlement to provide funding necessary to ensure safe and efficient pipeline operations.

13. Olympic adds that the Amended Settlement reduces all rates for all shippers as of January 1, 2009, by approximately 2.7 percent primarily due to the removal of the Bayview Storage Facility from rate base.

14. Olympic states that the Amended Settlement may, in certain respects, conflict with otherwise applicable regulations, including the rate indexing provisions of 18 C.F.R. § 342.3 (2008). Olympic requests relief from the Commission's regulations to the extent necessary to comply with the terms of the Amended Settlement.

15. Olympic states that nothing in the Amended Settlement is intended to supplant or to affect the authority of the Commission to review and approve or disapprove rates. The Parties acknowledge that any filings with the Commission or the WUTC are subject to their normal regulatory authority and that no provision of the Amended Settlement restricts or supersedes their authority in any regard.

16. Olympic states that the Amended Settlement reflects extensive negotiations among the Parties over approximately nine months and reflects the parties' nearly five years of experience with the existing Settlement Agreement's rate-setting methodology. Olympic states that Tesoro and ConocoPhillips, together with an affiliate of Olympic's shareholders, represent the majority of the volume produced for transport on the Olympic system. Olympic states that Tesoro's and ConocoPhillips' interests are consistent with those of Olympic's other shippers. No party has filed comments or protests to the Amended Settlement.

17. Inasmuch as the Amended Settlement is uncontested and its approval would further the Commission's policy of favoring settlements as a means for parties to avoid litigation and thereby lessen the regulatory burdens of all concerned, the Commission approves the Amended Settlement on the grounds that it is fair, reasonable, and in the public interest. As requested by Olympic, the Commission grants waiver of the Commission's indexing regulations under 18 C.F.R. §§ 342.1, 342.3(a), and 342.4, in order to implement the rates as delineated in the Amended Settlement. The

Commission's approval of the Amended Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: All Parties

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