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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
101 FERC ¶ 61,245

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Olympic Pipe Line Company Docket No. IS01-441-000

ORDER AFFIRMING INITIAL DECISION

(Issued November 26, 2002)

1. On July 19, 2002, the Presiding Administrative Law Judge (ALJ) issued an initial decision[1] recommending rejection of Olympic Pipe Line Company's (Olympic) rate increase filing in Docket No. IS01-441-000.[2] The initial decision is affirmed for the reasons stated below. This order benefits the public because it requires carriers filing cost-of-service rate increases to support their filings with case-in-chief evidence consistent with the Commission's regulations.

I. INTRODUCTION

Background

2. On July 30, 2001, Olympic submitted a tariff filing with a cost-of-service justification that proposed to increase Olympic's rates for transportation of petroleum products from Anacortes, Ferndale, and Cherry Point, Washington to Linnton and Portland, Oregon by 62 percent.[3]

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[1] 100 FERC ¶ 63,005 (2002).

[2] Order Accepting and Suspending Tariff, Subject to Refund and Conditions, and Establishing a Hearing and Settlement Procedures, 96 FERC ¶ 61,250 (2001), rehearing denied, 97 FERC ¶ 61,210 (2001).

[3] Supplement No. 4 to FERC Tariff No. 24. Olympic's rates for petroleum product transportation services within the State of Washington are regulated by the Washington Utilities & Transportation Commission (WUTC).

3. Olympic stated that the reasons for filing the rate increases were that it had an earnings gap due to increased power rates, system enhancements and an aggressive internal inspection and repair program.[4] Olympic estimated that it can transport about 90 percent of the volume that it transported in 1998 (the last full year before an explosion on its pipeline),[5] at 80 percent of its 1998 operating pressure. It stated that it excluded from its cost data all costs directly associated with the Whatcom Creek accident and its operator transition costs,[6] adjusted the base period data to reflect the pending sale of its SeaTac assets, and adjusted the additions to carrier property in service due to smart pigging, internal inspection repairs, hydrotesting, boring and rerouting of line segments, and control system upgrades.

4. Tosco Corporation (Tosco) and Tesoro West Coast Company d/b/a Tesoro Northwest Company (Tesoro) protested the filing. They questioned Olympic's cost-of-service data supporting the proposed rate increases related to the Whatcom Creek accident. They also asserted that an investigation was needed to determine the basis of unusual increases in Olympic's outside services and operating expenses. Tosco challenged Olympic's proposed equity ratio of 82.92 percent and Olympic's proposed 11.73 percent equity rate of return. Tesoro asserted that Olympic has not defined its base period or its test period, and that the test period data did not appear to conform to the nine-month adjustment period requirement. The Commission found that the issues in this case pertain to the data and methods used to determine Olympic's cost-of-service, and to

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[4]On May 30, 2001, Olympic submitted a cost-of-service justification that proposed to increase rates by 76 percent in Docket No. IS01-258-000. Tosco Corporation (Tosco) and Tesoro West Coast Company d/b/a Tesoro Northwest Company (Tesoro) protested. Tosco and Tesoro claimed, among other things, that Olympic's filing did not provide the data required by Part 346 of the Commission's regulations. The Commission rejected Olympic's tariff filing by letter order issued June 29, 2001. 95 FERC ¶ 61,488 (2001). The Commission found that Olympic did not provide the required "statements, schedules, and supporting workpapers" to support its filing, and that it had not properly defined a 12-month base period consisting of actual experience and a 9-month test period consisting of revenues and costs which are known and measurable with reasonable accuracy at the time of the filing. Further, Olympic did not include throughput data for the test period, as required by Section 346 of the Commission's regulations. 18 CFR § 346 (2002).

[5] In June 1999, there was an explosion on Olympic's pipeline in the Whatcom Creek area of Bellingham, Washington.

[6] BP Pipelines (North America) became the operator of Olympic after July 2000.

specific aspects of Olympic's present and historic business practices. The resolution of these factual disputes would affect the cost impact on Tosco and Tesoro as individual shippers on Olympic. The Commission found that there was insufficient data before the Commission to resolve these disputes. It was therefore appropriate to establish hearing procedures to examine the issues.[7]

5. After initial settlement judge procedures proved unsuccessful, prehearing conferences were held before the ALJ on October 18, 2001, and January 3, 2002. Pursuant to the procedural schedule set by the ALJ, a motion for summary disposition and striking testimony was filed on June 14, 2002 by Tesoro.

Initial Decision

6. The ALJ reviewed the Commission's oil pipeline rate change regulations and concluded that Olympic's proposed rate increases were not supported, granted summary disposition and ordered refunds.

Exceptions

7. On August 19, 2002, Olympic filed a brief on exceptions to the initial decision. Olympic argues that the ALJ erred by: (1) violating standards for motions to strike and summary disposition; (2) denying Olympic its rights to due process; and (3) striking Olympic's Case 1[8] as unreliable, relying on the change in ownership and operation of Olympic as a basis for ruling against Olympic, and relying on the absence of audited financial records and finding that costs of the Whatcom Creek accident may not have been excluded from Olympic's proposed cost-of-service.

Exceptions Opposed

8. Briefs opposing exceptions were filed by Tesoro and Tosco on September 9, 2002. Tosco opposed exceptions filed by Olympic on the basis that: (1) the ALJ properly rejected Olympic's rate increases; (2) Olympic failed to support is rate increase filing, as

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[7]Based upon a review of the filing, the Commission found that Supplement No. 4 to FERC Tariff No. 24 had not been shown to be just and reasonable and might be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepted the tariff sheets for filing and suspended them, to be effective September 1, 2001, subject to refund.

[8]These cases are defined in paragraph 11, infra.

required by the regulations; and (3) Olympic was given and exercised its due process rights in answering the objections to its evidence.

9. Tesoro argues that exceptions should be denied because Olympic's evidence did not comply with the regulations, and did not meet its prima facie burden, and because its base periods were projected budgets, not actual expenses, and its witnesses were not familiar with Olympic's operations or books of account.

10. On October 7, 2002, Olympic filed a motion to strike parts of Tesoro's brief opposing exceptions. Tesoro filed an answer on October 22, 2002.

II. DISCUSSION

1. Standards for Summary Disposition

Initial Decision

11. The ALJ found that Olympic's case-in-chief evidence consisted of two separate rate cases: the first, Case 1, followed the rate increase filing of July 30, 2001, adopting a year 2000 as the base year and the nine-month test period subsequent to the base year. The second, Case 2, assumed a base year of October 1, 2000 to September 30, 2001 and a test period of nine months from October 1, 2001 to June 30, 2002, for adjustment of that base year costs, throughput and rates.[9] Olympic indicated it intended to follow Case 2.

12. On June 26, 2002, the ALJ ruled that the Case 2 case-in-chief was inconsistent with the oil pipeline rate regulations, as Olympic's evidence addressed a base and test period inconsistent with those contained in the rate increase filing, and the ALJ struck that evidence.[10] The ALJ also held that Olympic's Case 1 evidence could not be the basis for going forward to a hearing because Olympic itself did not believe it was correct and reliable and therefore, granted summary disposition of Olympic's filing.[11] Specifically, the ALJ found upon review of the proposed evidence, that Olympic's Case 1 did not present costs "known and measurable with reasonable accuracy," and it would therefore be futile to proceed to a hearing. In reviewing Olympic's filings, the ALJ found that no

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[9] 100 FERC ¶ 65,005 at 65,007; Exhibits OLY-30, 31 and 32.

[10] 100 FERC ¶ 65,005 at 65,008-09.

[11] 100 FERC ¶ 65,005 at 65,010.

explanation had been given for Olympic's abandonment of its initial filing, other than an allusion to the fact that Olympic still did not have "litigation-firm" numbers, and that such was not sufficient justification for further accommodations to Olympic.[12] The ALJ concluded that the appropriate remedy was to reject Olympic's July 30, 2001 filing and to encourage Olympic to re-file when it can put together justifiable numbers in support of the rate increases.

Exceptions

13. Olympic argues it had no notice of the ALJ's intention to strike Olympic's evidence. Further, Olympic argues that the motion to strike goes to the admissibility of evidence. Here the ALJ decided the merits and sufficiency of Olympic's case-in-chief and disputed issues of fact when the ALJ should have interpreted the evidence in the most favorable light to Olympic. Thus, continues Olympic, it was improperly denied a hearing on the merits.[13]

Commission Decision

14. Olympic's exception goes to the issue of whether summary disposition of a rate filing is permitted where the record on its face shows that the proponent of the rate increases cannot prevail, based on a comparison of it rate increase tariff filing and the subsequent case-in-chief evidence proffered in support of the increase.

15. Rule 217 of the regulations[14] states that "if the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding . . . the decisional authority may summarily dispose of all or part of the proceeding." The ALJ granted the motion for summary disposition based on the findings contained in the initial decision.

16. Olympic's case-in-chief, dated December 13, 2001, was filed by Brett A. Collins and others in support of the proposed cost-of-service and increased rates. He stated that the results contained in Case 2 represent Olympic's cost-of-service in this litigated

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[12]100 FERC ¶ 65,005 at 65,009.

[13]Olympic Brief on Exceptions (BOE) at 28.

[14]18 C.F.R. § 385.217 (2002).

proceeding.[15] Case 2 represents a base period of October 2000 through September 2001, adjusted for known and measurable changes within nine months thereafter. He explained that this period included a full year with BP as operator and two of its line segments in operation, and that Case 2 was the correct basis for evaluation of Olympic's rate increases.[16] From this testimony, it is uncontroverted that Olympic's Case 1 testimony was irrelevant to any issue in this proceeding from that point on.[17] Accordingly, the ALJ's dismissal of Case 1 evidence proffered by Olympic must be sustained because whatever subordinate considerations[18] may have affected the analysis of Case 1, they fade into insignificance when the proponent of a rate increase unequivocally states that only a certain, specific other rate analysis supports its rate increase. Accordingly, Olympic's exceptions relating to the ALJ's decisions regarding Case 1 are rejected.

17. Olympic also claims that the regulations allow it the discretion to select a different base and test period from that used in its rate increase filing. Olympic argues that there are two factors which justify the shift: the change in the pipeline operator from Equilon to BP, and the return to operation of two damaged pipeline segments. BP took over operation in July 2000,[19] and the two pipeline segments resumed operations in 2001.[20] The Ferndale to Allen segment resumed operations in January 2001 and the Allen to Renton segment resumed operations in June 2001.[21] The record shows that both of these events occurred before the end of the Case 1 test period, and were known and measurable changes in operations to permit Olympic to accordingly adjust actual base period data in

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[15]Exh. OPL-28 at 3.

[16]Exh. OLP-28 at 16-17.

[17]This position was confirmed by Olympic's counsel. 100 FERC ¶ 65,005 at 65,009.

[18]The reliability of Olympic's accounting and records and the experience of the witnesses with Olympic's business and operations were peripheral factors in the ALJ's decision to grant summary disposition of the rate increase tariff filing.

[19]Exh. OPL-1 at 3.

[20]Exh. OPL- 28 at 16.

[21]Exh. OPL-27 at 10.

its tariff filing of July 30, 2001, as required by the regulations.[22] That is the purpose of the test period adjustment procedure. The only conclusion one can reach in these circumstances is that Olympic decided in December 2001 that it could not justify its rate increases based on the tariff filing of July 30, 2001, and it needed to abandon that base and test period when it filed its case-in-chief. To the extent that the regulations allow a carrier discretion to submit a request to change its base and test period, for which good cause is required by the Commission's regulations, the Commission finds that these circumstances stated by Olympic would not justify its deviation from the regulations, as set out above. As we have observed, the two principal changes in operations of Olympic—the change in management and return to service of two pipeline segments were known on July 30, 2001, when Olympic tendered its rate filing. Accordingly, the Commission finds that the ALJ properly granted summary disposition in this proceeding.

2. Due Process Accorded Olympic

Initial Decision

18. The ALJ found that Olympic had announced that the numbers filed with its July 30, 2001 tariff filing were not litigation quality or firm numbers and when it filed its case- in-chief on December 13, 2001, it presented two versions of a cost-of-service; subsequently, on January 3, 2002, Olympic chose to proceed on the basis of Case 2.[23] On July 27, 2002, the ALJ suspended the procedural schedule, in light of the ruling on June 26, 2002, that the ALJ would issue an initial decision as soon as possible. The ALJ found that Olympic abandoned the base and test period in its July 30, 2001 filing. The ALJ recognized that Olympic acknowledged that existing Commission precedent required a carrier to use the same base and test period in its direct case that it used in its tariff filing, citing Gaviota.[24] The ALJ found no reason why Olympic should be allowed to take such liberties with the Commission's procedures. Therefore, the appropriate

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[22]Section 346.2 (a)(ii) states that "A test period must consist of a base period adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the last month of available actual experience utilized in the filing. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period." 18 C.F.R. § 346.2 (a)(ii) (2002).

[23]100 FERC ¶ 65,005 at 65,007.

[24]100 FERC ¶ 65,005 at 65,009. Gaviota Terminal Company (Gaviota), 76 FERC ¶ 63,004 (1996).

remedy was to place Olympic in the same position as all other carriers are in when a cost-of- service filing is made by striking all of the Case 2 case-in-chief testimony.

Exceptions

19. Olympic argues that the ALJ's decision to strike Olympic's entire case-in-chief violated due process requirements and standards for motions to dismiss and summary disposition. Olympic also argues that the Interstate Commerce Act (ICA) sections 13(1), 15(7) and 15(13) prohibit the Commission from rejecting its rate filing in this proceeding. Olympic also argues the Commission's regulation in Section 341.11[25] prohibits rejection of its rate filing at this stage of the proceeding.

Commission Decision

20. On June 14, 2002, Tesoro filed a First Motion for Summary Disposition and to Strike Testimony. By order issued June 18, 2002, the ALJ set June 25, 2002 as a date for Olympic's response and scheduled oral argument on the motion.[26] Olympic filed its answer and the ALJ considered the motion and the answer in an oral argument held on June 26, 2002, at which time Olympic had a full opportunity to respond to the motion. The authorities[27] cited by Olympic, as a basis for its claim of denial of its due process, are therefore irrelevant, as the record shows that Olympic had adequate notice of the pendency of the motion for summary disposition and striking its evidence, and had the opportunity to respond, but chose not to. The ALJ ordered that Olympic could file an answer after being allowed a full 15 days to prepare a response to the motion to strike. Olympic did not take advantage of that opportunity. Furthermore, at the oral argument, the ALJ asked Olympic to advise her if it decided to abandon its July 30, 2001 filing rather than waiting to take exceptions to an initial decision in order to promote judicial economy and avoid the waste of valuable administrative resources.[28] Olympic then did not respond, and ignored that opportunity. After waiting almost three weeks, the ALJ issued the initial decision and order granting the motion on July 19, 2002. Accordingly,

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[25]18 C.F.R. § 341.11 (2002).

[26]Order Scheduling Oral Argument on Motion for Summary Disposition and Setting Date for Answer, June 18, 2002.

[27]Olympic BOE at 59.

[28]Tr. 136-37.

the Commission rejects Olympic's assertion it had no notice or opportunity to respond to the motion for summary disposition and to strike its case-in-chief.

21. Olympic argues that a rate increase which has gone into effect cannot be rejected, citing Municipal Light Boards v. FPC.[29] That case, however, stands for the proposition that the Commission may adopt a procedure which may be likened to the motion for summary judgment contemplated by the Federal Rules of Civil Procedure, which in this instance is the result of the initial decision.[30] Furthermore, the Court of Appeals stated that the Commission may reject a filing that is a nullity. There is no dispute that Olympic's filing became a nullity when it abandoned Case 1 and sought to proceed on a different basis. The Commission here found that Olympic's rate increases had not been shown to be just and reasonable, and suspended them. The ALJ made no finding as to the justness and reasonableness of Olympic's proposed rates, and the result did not address the merits of Olympic's rate evidence. These circumstances are clearly distinguishable from authorities cited by Olympic.[31] The rejection here was a threshold determination that Olympic could not meet its burden of proof because it had abandoned its Case 1 and relied upon a Case 2, which was inconsistent with the July 30, 2001 rate increase tariff filing. Thus, there was no value to a hearing on the merits. The ALJ's actions in this proceeding, in granting summary disposition under Rule 217,[32] did not make a decision on the merits of Olympic's case-in-chief.

22. Consistent with Municipal Light Boards,[33] there was a defect in Olympic's rate increase tariff filing in that it could not be supported with reliable evidence and the proponent of the rate increase did not support the filing; however, that defect was not revealed until after December 2001, when it filed its case-in-chief. The ALJ's rejection of the Case 2 evidence is not based on substantive determinations, but purely procedural considerations. Finally, Olympic argues that there is no procedural recourse to correcting

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[29] Municipal Light Boards v. FPC, 450 F.2d 1341(D.C. Cir. 1971).

[30] Id. at 1346.

[31] The ALJ's finding that a carrier's tariff filing may be rejected, pursuant to 18 C.F.R. § 341.11 (2002), because it does not comply with the regulations or violates any statue, regulation, policy or order of the Commission, is consistent with our decision on summary disposition.

[32] 18 C.F.R. § 385.217 (2002).

[33] Municipal Light Boards v. FPC, 450 F.2d 1341, 1346 (D.C. Cir. 1971).

a defective filing. That is incorrect, for as determined by Judge Brenner in Gaviota, [34] the proper procedure is for Olympic to file a new rate increase tariff at such time as it is prepared to support it with consistent and substantial case-in-chief evidence. Accordingly, we find that due process was accorded Olympic by the ALJ's decisions.

3. Reliability of Olympic's Evidence

Initial Decision

23. The ALJ reviewed the record on six areas of concern with the Case 1 proposed evidence: (1) the atmosphere of alteration of data, resulting from the change in corporate ownership and pipeline management in 2000; (2) the multiple changes in accounting systems during crucial periods; (3) the lack of knowledgeable employees with historically complete experience and knowledge; (4) the lack of objectively reliable audited numbers; (5) the uncertainty surrounding the calculation of throughput volumes; and (6) the existence of unusual and substantial costs without complete and reliable information, apparently stemming from the Whatcom Creek accident.[35]

24. The ALJ further found that because of the new ownership of the pipeline, a new operator, and new personnel offering testimony who had no prior experience with Olympic or its books, the Whatcomb Creek accident and the subsequent line rupture, combined to result in a lack of confidence in the data and evidence presented. Further, the ALJ had substantial questions with Olympic's use of 1998 throughput data, the assignment of costs from the accident, and the subsequent investigation and rerouting of the pipeline. The ALJ concluded that after offering Olympic a reasonable opportunity to support its filing, it had failed to meet its prima facie burden to go forward to a hearing. The ALJ ordered the filing rejected and the refund of rate increases to shippers.[36]

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[34]Order Granting Motion to Strike Testimony, issued July 25, 1996, by Administrative Law Judge Brenner, 76 FERC ¶ 63,004 (1996). That docket was subsequently settled. Order issued August 5, 1997, approving settlement of several Gaviota dockets. (Unpublished order).

[35]100 FERC ¶ 65,005 at 65,010.

[36]100 FERC ¶ 65,005 at 65,013.

Exceptions

25. Olympic excepts to the ALJ's statements regarding the unreliability of Case 1 and Olympic's asserted abandonment of its Case 1 evidence.[37]

Commission Decision

26. The conclusion that Olympic had abandoned Case 1 as its case-in-chief is based on the testimony of Olympic's principal witness and the fact that it proposed to proceed solely on the basis of its Case 2 presentation. Secondly, the observations of the ALJ regarding the questions concerning the Case 1 data and presentations of the accounts, custodians of the books, and related issues, are entirely collateral to the principal decision by Olympic to abandon the prosecution of the Case 1 evidence presentation. The ALJ offered these observations to assist Olympic in the event it would proceed to file a new tariff filing which it could support. Thus, the ALJ was justified in finding that Case 1 was abandoned by Olympic. Accordingly, Olympic's exceptions regarding the findings of unreliability of the evidence are rejected.

4. Impact of Gaviota

Initial Decision

27. The ALJ found that the decision in Gaviota[38] clearly set the standard for deciding the motion for summary disposition. In Gaviota, Judge Brenner, after striking Gaviota's evidence, allowed Gaviota to file a case-in-chief which followed its initial tariff filing with regard to base and test periods. That situation is not applicable to Olympic, since it already filed its Case 1 case-in-chief, which had the base and test periods the same as its tariff filing. There are two reasons why that could not succeed here. Judge Brenner allowed the refiling by Gaviota because of the lack of a definitive interpretation of the new regulations in 1996. That consideration would not apply to Olympic in this proceeding as Judge Brenner found that Gaviota was the first carrier to encounter the issue arising under the new regulations, that circumstance is not applicable to Olympic. Olympic was fully aware of the Gaviota precedent and had no reason to expect a

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[37]Olympic BOE at 47.

[38]Order Granting Motion to Strike Testimony, issued July 25, 1996, by Administrative Law Judge Brenner, 76 FERC ¶ 63,004 (1996). That docket was subsequently settled. Order issued August 5, 1997, approving settlement of several Gaviota dockets. (Unpublished order).

different outcome. Second, Olympic abandoned its Case 1 such that nothing was salvageable at that point and good cause could not be shown. Accordingly, the possibility of applying the exception from the prescribed test period in Section 346.2(a)(ii)[39] could not be granted.

Exceptions

28. Olympic argues that Gaviota does not support or compel the ALJ to strike the Case 2 presentation.[40] The ALJ held that the remedy required by the oil pipeline regulations and the 1996 decision in Gaviota was to strike the Case 2 scenario and to put Olympic in the place it should be, as with all other carriers, that when a cost-of-service filing is made, it must use the same base and test periods as those used in its initial rate increase tariff filing.

Commission Decision

29. The Commission disagrees with Olympic's claim. The circumstances of Olympic's attempt to move the base and test period nine months forward from that contained in its tariff filing is precisely the base and test period shifting attempted by Gaviota. After a thorough review of the background of the relevant regulations and associated rulemakings regarding oil pipeline rate filings, Judge Brenner in Gaviota concluded that "Gaviota in its answer, does not logically support the notion that a pipeline simply can choose to use base and test periods in its case-in-chief that differ from those that were used in the initial filing."[41] Judge Brenner also found that "if the basis of that proof, the base and test periods used in the initial filing to indicate the needed rate change, are different from the base and test period that are filed as part of the case-in-chief, then the pipeline is filing an entirely new case for changing its rates. Furthermore, . . . it is clear that the natural gas regulations, the basis for the oil pipeline regulations at issue, do not permit pipelines to use different test periods in their separate filings. . . . The orderly and efficient administration of rate regulation requires some limit on the use of new data. A new rate proceeding can be instituted if necessary to

[39]18 C.F.R. § 346.2(a)(ii) (2002).

[40]Olympic BOE at 37-45.

[41]76 FERC ¶ 63,004 at 65,020.

compensate for changes occurring subsequent to the adjustment cut-off."[42] The Commission concurs in Judge Brenner's findings and the ALJ's reliance on it in the decision here. There is no basis for an exception to the ALJ's findings and conclusions on this issue.

5. Ruling on Motion to Strike Parts of Tesoro's Brief

30. On October 7, 2002, Olympic filed a motion to strike parts of Tesoro's brief opposing exceptions. Olympic argues that Tesoro's brief goes beyond issues raised in the initial decision or Olympic's brief. These portions of the Tesoro's brief involve the (1) issues in Olympic's rebuttal case; (2) details of Olympic's Case 1 evidence; (3) evidence from Olympic's intrastate rate case before the WUTC; (4) fines and damage lawsuits levied against Olympic over the Whatcom accident; and (5) issues such as overhead costs, transition costs and retroactive ratemaking. Olympic claims it has been prejudiced by not having an opportunity to respond to Tesoro's brief on these matters.

31. Tesoro filed an answer arguing that Olympic opened the door to Tesoro's responses by referring to these matters in its brief on exceptions. Tesoro stated that (1) Olympic's rebuttal case demonstrates Olympic's "moving target" tactics; (2) Olympic's Case 1 evidence is unreliable on specific issues; (3) evidence from the WUTC rate case is now moot because the Commission has issued a final order; (4) evidence of fines and lawsuits regarding the Whatcom accident rebuts Olympic's arguments on responsibility for the accidents; and (5) issues relating to specific ratemaking elements are relevant to the exceptions.

32. We grant Olympic's motion for the following reasons. First, evidence on specific issues, such as AFUDC, rate of return, transition costs, etc., was not ruled on by the ALJ and was not the basis of exceptions. Those issues are therefore irrelevant to our decision here. Second, the ALJ granted summary disposition based on the case-in-chief alone. Consequently, whatever the rebuttal evidence shows is not germane to our decision. Third, the WUTC references are irrelevant as they form no basis of our decision. Furthermore, it appears from Tesoro's answer that the WUTC's decision is on the merits of Olympic's rate increases, whereas our decision here does not address the merits of Olympic's claimed rate increases or any of the elements thereof. Should Olympic choose to follow the ALJ's recommendation, it may file to support its positions on these issues in a new proceeding and Tesoro will be free to oppose them without their positions being prejudiced herein.

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[42] Id. at 65,020-21.

The Commission orders:

(A) The initial decision issued on July 19, 2002 in this proceeding is affirmed.

(B) Olympic's motion to strike is granted as discussed in the body of this order.

(C) Olympic's Supplement No. 4 to FERC Tariff No. 24 is rejected and Olympic is directed to refund to its shippers the suspended rate increases with interest, as specified in the regulations. Olympic must notify all of its subscribers of the Commission's decision in this proceeding.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.
Deputy Secretary