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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	Docket No. TO-011472
vs.)	Volume VIII
)	Pages 549 to 765
OLYMPIC PIPELINE COMPANY, INC.,)	
)	
Respondent.)	

A hearing in the above matter was held on January 14, 2002 at 9:30 a.m. at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Chairwoman MARILYN SHOWALTER, Commissioners RICHARD HEMSTAD and PATRICK OSHIE, and Administrative Law Judge ROBERT WALLIS.

The parties were present as follows:
THE COMMISSION, by DONALD T. TROTTER, Senior Assistant Attorney General, 1400 South Evergreen Park Drive Southwest, Olympia, Washington 98504-0128, Telephone (360) 664-1189, Fax (360) 586-5522, E-mail dtrotter@wutc.wa.gov, and LISA WATSON.

OLYMPIC PIPELINE COMPANY, INC., by STEVEN C. MARSHALL, Attorney at Law, Perkins Coie, 411 108th Avenue Northeast, Suite 1800, Bellevue, Washington 98004, Telephone (425) 453-7314, Fax (425) 453-7350, E-mailmarss@perkinscoie.com, and PATRICK W. RYAN.

JUDITH CEDERBLOM, CCR
Court Reporter

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5

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6

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MORNING SESSION

9:45 a.m.

JUDGE WALLIS: The hearing will please
come to order.

This is a hearing before the Washington
Utilities and Transportation Commission. It's being
held at Olympia, Washington on January 14 of the year
2002 before Chairwoman Marilyn Showalter and
Commissioners Richard Hemstad and Patrick Oshie. My
name is Robert Wallis, and I'm the Administrative Law
Judge for today's proceeding.

This hearing is being held pursuant to
due and proper notice in the Commission offices, and
it involves the matter of Commission Docket
No. TO-011472, which is a complaint by the Washington
Utilities and Transportation Commission against
Olympic Pipeline, Inc., the respondent, arising from
a request that Olympic has made for a general
increase in its rates. And the purpose of today's
session is to review a request by the company for
interim rate relief, pending resolution of the
general proceeding.

Let's start with appearances, beginning
with the Company.

MR. MARSHALL: Thank you, Your Honor.

00553

1 I'm Steve Marshall, representing
2 Olympic Pipeline Company, of the law firm Perkins
3 Coie. and with me is Mr. Patrick Ryan.

4 JUDGE WALLIS: For Intervenors?

5 MR. BRENA: Good morning. Robin Brena,
6 on behalf of Tesoro Refining and Marketing Company.
7 And with me is David Wensell and Paula Vrana.

8 MR. FINKLEA: Good morning. Edward
9 Finklea on behalf of Tosco Corporation. My law firm
10 is Energy Advocates, LLP.

11 MR. TROTTER: For Commission staff,
12 Donald T. Trotter and Lisa Watson, assistant
13 attorneys general.

14 JUDGE WALLIS: Very well. By way of
15 preliminary matters, I understand that Mr. Hemstad
16 has a matter he wishes to bring up at this time.
17 Commissioner?

18 COMMISSIONER HEMSTAD: I wish to put on
19 the record that I am the owner of 300 shares of J.P.
20 Morgan-Chase stock, the creditor of the company in
21 this proceeding. I hold it in a retirement account.

22 I do not consider it at a level that
23 would influence in any way my decision in this case,
24 but I offer that information and ask if there is any
25 objection to my proceeding.

00554

1 MR. BRENA: There is not, Your Honor.

2 MR. MARSHALL: No, Your Honor.

3 JUDGE WALLIS: Let the record show that
4 there is no objection.

5 Before beginning this morning, we
6 talked about a couple of administrative matters. We
7 have requested that any material that is designated
8 as confidential be filed on colored paper.

9 We note that there is a pending motion
10 for confidentiality. The company has waived
11 confidentiality as to any of the material in the
12 direct cases of any of the parties, including the
13 testimony and exhibits that have been prefiled, but
14 has not yet reviewed the proposed exhibits on
15 cross-examination to determine whether it will waive
16 confidentiality.

17 Consequently, we are going to begin
18 with the examination of Mr. Trotter to allow the
19 company, while that examination is going on, the
20 opportunity to review those exhibits. And prior to
21 Mr. Brena's beginning his cross-examination, if there
22 is a remaining claim of confidentiality, then that
23 matter may be argued.

24 MR. MARSHALL: You've stated that
25 correctly, Your Honor. I just would add one further

00555

1 comment that I mentioned earlier, that the waiver
2 does not extend to the source documents for that
3 testimony that you mentioned by the parties --

4 JUDGE WALLIS: Yes.

5 MR. MARSHALL: -- or the exhibits that
6 they have. Because of that clarification, we were
7 able to consent to the non-confidentiality of those
8 materials that you just identified. And we are
9 trying to go through this rebuttal exhibit list,
10 which we were just handed earlier this morning.

11 JUDGE WALLIS: Have you reviewed the
12 exhibits on cross-examination of the direct cases?

13 MR. MARSHALL: Yes, we have. And the
14 comment we made earlier applies to the
15 cross-examination exhibits as well, so long as the
16 source documents remain protected, and we can address
17 that at a later time.

18 We will waive that confidentiality with
19 regard to those documents.

20 JUDGE WALLIS: Very well. We had
21 understood that Mr. Batch's supplemental testimony
22 had not been previously filed with the Commission's
23 Records Center but understand that that has been
24 taken care of. Similarly, we understand that the
25 Records Center has received the rebuttal testimony

00556

1 and copies of the exhibits on cross-examination.

2 We discussed the pros and cons very

3 briefly about engaging in a discussion regarding the

4 potential limitation of issues in this proceeding.

5 Based upon revised estimates of cross-examination, it

6 appears that we may be able to complete the

7 proceeding in the time frame available for it without

8 such a limitation, and we will proceed on that basis

9 and take it up again to allow the parties to comment,

10 if there are stated concerns regarding the relevance

11 of documents or the areas to inquire into.

12 Is there any other procedural matter to

13 attend to before we begin?

14 MR. BRENA: Do you mean other than the

15 motion to strike?

16 JUDGE WALLIS: Mr. Brena?

17 MR. BRENA: I'm sorry. Your Honor?

18 JUDGE WALLIS: You have filed a motion

19 to strike portions of your rebuttal case; is that

20 correct?

21 MR. BRENA: Yes. Yes, Your Honor.

22 JUDGE WALLIS: Very well. Let me ask

23 you if the company has had a chance to review that

24 motion.

25 MR. MARSHALL: Not completely. I

00557

1 believe that it applies to Mr. Fox, who won't be
2 testifying until after Mr. Batch.

3 We do have with us one of the people
4 mentioned in the rebuttal testimony, supplemental
5 rebuttal testimony, Mr. Beaver here. We're
6 consulting with him about the recent events.

7 What we simply try to do is to point
8 out some of the recent things that have happened in
9 last few days. We can get to that, but I want to
10 make clear that, understand myself, what all those
11 events are before we address that.

12 JUDGE WALLIS: Very well. We will take
13 that up at a later time, prior to the testimony of
14 Mr. Fox. Mr. Brena, does that serve your needs?

15 MR. BRENA: Yes, Your Honor. Thank
16 you.

17 MR. TROTTER: Your Honor, if I could at
18 this point, I was intending to ask Mr. Batch some
19 questions about default on the Prudential note, and
20 that is an area that is apparently under the motion
21 to strike.

22 I suppose I can defer those to Mr. Fox,
23 but...

24 MR. MARSHALL: It probably would be
25 best to defer those to Mr. Fox because Mr. Batch,

00558

1 although he is generally familiar with the financing,
2 would have to refer to Mr. Fox in any event on those
3 questions.

4 MR. TROTTER: Then, Your Honor, the
5 exhibits I identified -- at least the first exhibit,
6 67, may need to be dealt with, with Mr. Fox.

7 MR. MARSHALL: Yes.

8 JUDGE WALLIS: Very well. Is that true
9 of all three of the exhibits?

10 MR. TROTTER: No.

11 JUDGE WALLIS: I will note that at a
12 prehearing conference on Thursday of last week, we
13 identified exhibits and numbered those exhibits for
14 purposes of identification in this docket. And the
15 exhibits designated for potential use with Mr. Batch
16 begin with his initial testimony as 1-T, his direct
17 through Exhibit 17, potential exhibits on
18 cross-examination numbered 18 through 47. And
19 Mr. Brena has distributed this morning documents
20 which will be numbered consistent with the list
21 attached to those documents, 48 through 66.

22 And we will use an exhibit list for
23 purposes of identifying those for the record and not
24 go through the task of reciting the name and the
25 character of each of those documents.

00559

1 Mr. Marshall, are you ready to bring
2 Mr. Batch to the stand?

3 MR. MARSHALL: Yes, I am, Your Honor.

4 JUDGE WALLIS: Very well. Mr. Batch,
5 would you please stand and raise your right hand?

6 Whereupon,

7 ROBERT BATCH,
8 having been first duly sworn, was called as a witness
9 herein and
10 was examined and testified as follows:

11

12 JUDGE WALLIS: Mr. Marshall?

13

14 DIRECT EXAMINATION

15 BY MR. MARSHALL:

16 Q. Mr. Batch, do you have before you your
17 initial testimony and supplemental testimony in this
18 matter, which have been identified as Exhibits 1-T
19 and 2-T.

20 A. Yes, I do.

21 Q. As well as the rebuttal testimony, 3-T?

22 A. Yes, I do.

23 Q. Do you have any additions or
24 corrections to make to any of those testimonies at
25 this time?

00560

1 A. Yes. I have some minor changes to make
2 to my original testimony, as well as the
3 supplemental.

4 Q. Could you identify what page and line
5 number those changes are?

6 A. In the initial testimony, it would be
7 on Line 10, regarding my business address. Stated as
8 2201 Lind Avenue, that should be followed by a S.W.,
9 capital S dot capital W.

10 JUDGE WALLIS: Mr. Marshall, I wonder
11 if I might interject and ask if there are matters
12 that are not substantive, such as the latest
13 correction, that Mr. Batch prepare an errata sheet
14 and avoid the need to go through those individually?

15 If there are any substantive
16 corrections, please proceed with those. Would that
17 work?

18 MR. MARSHALL: That would be fine.

19 BY MR. MARSHALL:

20 Q. Do you have any substantive
21 corrections?

22 A. Yes, one. On Page 10 of my direct
23 testimony, Line 17, where it states: "We conducted a
24 detailed engineering analysis of Olympic's Bayview
25 products terminal and," that should read "made" as

00561

1 opposed to "are making" design changes.

2 Q. Mr. Batch, with that change and the
3 other errata to correct typographical and other
4 information as the Administrative Law Judge has
5 indicated, are the questions and answers in
6 Exhibits 1-T, 2-T, and 3-T true and accurate to the
7 best of your knowledge?

8 A. Yes, they are.

9 Q. If you were asked the questions
10 contained in those testimonies, would you give the
11 same answers today, with those corrections?

12 A. Yes, I would.

13 MR. MARSHALL: Your Honor, we offer the
14 witness for cross-examination.

15 JUDGE WALLIS: Just for administrative
16 purposes, may we ask whether the witness either
17 prepared or was responsible for the preparation or
18 adopts the documents which have been identified as
19 Exhibits 4 through 17 in this docket, recognizing
20 that there is no exhibit for No. 6?

21 MR. MARSHALL: Right. That was an
22 unused one. The pie chart that Mr. --

23 JUDGE WALLIS: Yes.

24 BY MR. MARSHALL:

25 Q. Mr. Batch, with that question in mind

00562

1 from the Administrative Law Judge, can you affirm
2 that these documents that are marked as Exhibits 4
3 through 17 to your testimony were prepared under your
4 direction, and you offer those as part of your
5 testimony?

6 A. Yes.

7 JUDGE WALLIS: Is there objection to
8 any of these documents?

9 Let the record show that there is no
10 response, and Exhibits 1-T through 17 are received,
11 noting that there is no exhibit for 6.

12 (Exhibits 1-T through 17 admitted.)

13 JUDGE WALLIS: Mr. Trotter?

14 MR. TROTTER: Thank you, Your Honor.

15

16

CROSS-EXAMINATION

17

BY MR. TROTTER:

18

Q. Mr. Batch, turn to Exhibit 2-T, Page 3.

19

JUDGE WALLIS: I want to thank

20

Mr. Trotter for giving us all the opportunity to turn
21 to that page, and we'll ask all Counsel as you
22 proceed, if your questions relate to a specific
23 statement in pretrial testimony or a specific portion
24 of an exhibit, please identify for us the page and
25 the line number so that we can all track along with

00563

1 your questions.

2 Does the witness have that?

3 A. No, Your Honor. I'm still looking for
4 that exhibit.

5 CHAIRWOMAN SHOWALTER: It's your
6 rebuttal, or your supplemental testimony.

7 A. Ah.

8 MR. MARSHALL: We have renumbered the
9 exhibits, and we'll try to be clear in
10 cross-referencing those for you.

11 A. Okay. What page was that again?

12 BY MR. TROTTER:

13 Q. Page 3.

14 A. Okay.

15 Q. And here you show in the chart the
16 notes that Olympic has currently outstanding; is that
17 right?

18 A. That's correct.

19 Q. And the total of those notes is around
20 150 million dollars; is that right?

21 A. With interest, yes, that's correct.

22 Q. So the debt is approximately 141.8
23 million, and then the accrued interest is what brings
24 it to 150 million?

25 A. Correct.

00564

1 Q. Does the 141.8 million reflect all of
2 the positive amounts of capital invested in Olympic
3 Pipeline currently?

4 A. To my knowledge, those are all of the
5 notes that Olympic Pipeline has, relative to Olympic.
6 I'm not exactly sure I understand the context of the
7 question.

8 Q. Is there any other capital that's
9 financing Olympic at this time?

10 A. Not that I'm aware of.

11 Q. So Olympic at this time is 100 percent
12 financed by the capital listed on this page?

13 A. That's correct.

14 Q. These are debt obligations of Olympic;
15 is that correct?

16 A. That is correct, yes.

17 Q. And you compute the cost of the capital
18 shown on this page of your exhibit by multiplying the
19 monthly interest rate times the principal amount
20 currently owing; is that correct?

21 A. Yes.

22 Q. Would you accept, subject to your
23 check, that in Olympic's general case, it computes
24 its weighted cost of capital using an equity ratio of
25 86.89 percent, and a debt ratio of 13.11 percent?

00565

1 A. I would need to defer that answer to
2 Howard Fox, who is our assistant treasurer.

3 Q. You are unable to check that?

4 A. I can check that, yes.

5 Q. Would you accept it, subject to your
6 check?

7 A. Sure.

8 Q. Referring to the 141.8 million in debt
9 capital, Olympic has never had as much as 141.8
10 million dollars in net facilities, has it?

11 A. Could you clarify your distinction
12 between capital and net facilities?

13 Q. Carrier property less depreciation on
14 your balance sheet.

15 A. Again, I would like to defer to Mr. Fox
16 on that issue.

17 Q. Would you accept, subject to your
18 check, that Olympic in the general case is advocating
19 a FERC rate base of around 107.2 million dollars?

20 A. Yes.

21 Q. Are you aware of any order of this
22 Commission involving interim rate relief, or general
23 rate relief, where the Commission has set rates based
24 on total capital that substantially exceeds the net
25 assets of the company?

00566

1 MR. MARSHALL: Your Honor, I object to
2 that question. That's calling for a legal conclusion
3 and legal analysis. The witness hasn't been offered
4 on his legal issues.

5 JUDGE WALLIS: I don't think it calls
6 for a legal conclusion, I think it merely asks
7 whether the witness is aware of any such document.

8 The question is allowed, and the
9 witness may respond.

10 A. I am personally unaware of any
11 document, although that's not to say that a document
12 doesn't exist. I'm just not aware of that.

13 BY MR. TROTTER:

14 Q. You do refer to certain interim rate
15 relief precedent in your testimony on Page 5; is that
16 correct? Exhibit 2-T?

17 A. Yes, that is correct.

18 Q. Did you read that order in total?

19 A. When I prepared the testimony I read it
20 in total, yes. I needed to refresh my memory.

21 Q. Did you read any other orders of the
22 Commission on interim rate relief prior to
23 testifying?

24 A. If it is not in my direct testimony,
25 then I did not.

00567

1 Q. Mr. Batch, I'd like to refer you to the
2 Prudential note, and that has been marked Exhibit 47.
3 And the document I'm interested in, I believe, is
4 just the last two or three pages of that exhibit.

5 MR. TROTTER: Actually, Your Honor,
6 it's the last five pages, and it starts -- at the
7 top, it's Page 91 of 95.

8 JUDGE WALLIS: And which exhibits?

9 MR. TROTTER: 47.

10 JUDGE WALLIS: 47, thank you.

11 BY MR. TROTTER:

12 Q. Okay. Mr. Batch, is this the May 31st,
13 2001 amendment to your Prudential financing
14 agreement.

15 A. Yes, it is.

16 Q. Turn to the third page of this
17 particular amendment, which is Page 93 of the
18 exhibit, and do you see the amendment to
19 Section 6(a)3 there at the top?

20 A. Yes, I see that.

21 Q. And this indicates, does it not, that
22 Olympic may not issue any notes additional to those
23 listed, plus the 30 million dollars of
24 shareholder-secured debt, which is described a few
25 lines down under 2.3?

00568

1 A. Could you ask the question again?

2 Q. Yes. Am I correct in interpreting that
3 6(A)3 as meaning that Olympic, as a condition of the
4 Prudential note, may not issue any notes additional
5 to those listed; and that includes the
6 shareholder-secured debt, which is defined as stated
7 in Paragraph 2.3?

8 A. My understanding of this section was
9 that Olympic could not go out and get any external
10 debt, according to this section of the Prudential
11 note. I am not aware of any limitations to
12 shareholders.

13 Q. So it's your understanding, then, that
14 Olympic could obtain, let's just say 50 million
15 dollars in financing from Equilon or BP-Arco today,
16 and that would not violate this -- as you understand
17 it, this term of the Prudential note?

18 A. My understanding is that if the
19 shareholders had an interest in providing loans to
20 Olympic, that they could do so under this provision.

21 Q. But this provision does preclude
22 Olympic from issuing any notes to any external
23 lender; is that correct?

24 A. Yes, that's correct.

25 Q. And is that condition applicable today,

00569

1 as you understand it?

2 A. Yes, it is.

3 Q. So Olympic has not received a waiver of
4 that condition; is that correct?

5 A. That's correct.

6 Q. Has Olympic asked to have that
7 condition waived?

8 A. I don't know the answer to that. I
9 would have to defer that question to Howard Fox.

10 Q. The shareholder-secured debt is defined
11 on this page as the aggregate up to 30 million
12 dollars of debt secured by the shareholder lien and
13 owing by the company to either BP Pipelines and/or
14 Equilon from time to time.

15 Do you see that?

16 A. Yes, I do.

17 Q. Is that reference to the existing
18 30-million-dollar line of credit that Olympic
19 currently has?

20 A. I'm not exactly sure. Again, I would
21 have to defer that specific question to Mr. Fox.

22 Q. I'd like to refer you to Exhibit 68.

23 A. What is Exhibit 68? I'm sorry.

24 Q. Staff data request No. 1, question

25 No. 4.

00570

1 (Telephone interruption.)
2 CHAIRWOMAN SHOWALTER: Hold on.
3 (Off-record pause in proceedings.)
4 MR. MARSHALL: That reminds me, is
5 there a call-in number for this hearing?

6 JUDGE WALLIS: Yes. The Commission
7 bridge line has been reserved for this hearing, and
8 the bridge line number is available for call-ins.

9 MR. MARSHALL: Thank you.

10 JUDGE WALLIS: Are we ready to
11 continue? Let's be back on the record, please.

12 BY MR. TROTTER:

13 Q. Mr. Batch, referring you to Exhibit 68,
14 do you recognize this as the company's response to
15 staff data request No. 1, question 4?

16 A. You're referring to Exhibit 68?

17 Q. Yes.

18 A. Yes, it is.

19 Q. And part of that question was whether
20 any of the notes listed on your -- in your
21 supplemental testimony Exhibit 2-T paid costs
22 associated with the Whatcom Creek incident. And the
23 response is as stated, but basically you indicate
24 that the promissory notes are not specifically
25 earmarked by their terms to specific purposes.

00571

1 Is that your understanding?

2 A. That's correct.

3 Q. So when you get money from a lender it
4 goes into a general revenue account, and it's not
5 tracked specifically to its source, is it?

6 A. I don't believe it has been, in
7 general.

8 Q. And is that --

9 A. Although costs for Whatcom Creek have
10 been cordoned off and separated for that purpose.

11 Q. For purpose of tracing to the debt that
12 supported it?

13 A. No. For relating --

14 Q. That's what I'm --

15 A. -- to expenses.

16 Q. -- focusing on. I'm focusing on the
17 debt side at this point. And is that true of other
18 revenue sources, once it comes into your and is
19 booked as revenue, you can't trace it back to where
20 it came from?

21 A. Not very easily, no.

22 Q. Turn to your rebuttal testimony, 3-T,
23 Page 23. And on Line 13, beginning there, you
24 indicate that Olympic received a one-time payment of
25 5.6 million from the IRS for prior year tax

00572

1 overpayments. Do you see that?

2 A. Yes, I do.

3 Q. And when was that received?

4 A. I believe, subject to check, I believe
5 it was late summer or fourth quarter of this year --
6 of 2001.

7 Q. So September or October of 2001?

8 A. I'm not exactly sure of the date when
9 it came in, but it was within the second part of
10 2001.

11 Q. Okay. And you're able to say here that
12 Olympic spent that money on capital projects. Do you
13 see that?

14 A. I do.

15 Q. So you were able to trace those dollars
16 to its source?

17 A. We used those funds, put it in a
18 general account, and had a very large capital
19 spending project in that period. And we are
20 confident that the bulk of it went to capital
21 project, yes.

22 Q. Now, you have large projects from time
23 to time, don't you?

24 A. Depends how you define "large."

25 Q. I guess I'm curious why you can't

00573

1 trace -- that we asked you to indicate whether your
2 debt had paid for the Whatcom accident and you say
3 you're unable to tell us, but you are able to tell us
4 when you get an IRS refund.

5 A. Well, with the IRS refund we used it to
6 fund ongoing operations as well as capital projects.
7 It went into a fund, and we use that money. We are
8 desperately short money, and it was just a welcome
9 relief to have that money come so that we could
10 continue the kind of capital improvements that we
11 feel we need to make on this line.

12 Q. Were any of the IRS monies used to pay
13 debt obligations?

14 A. Not that I'm aware of.

15 Q. Is there a reason for that, that you
16 didn't use that money to get more current on your
17 debt?

18 A. I would need to defer that question to
19 Howard Fox.

20 Q. Turn to Exhibit 46, which is the --
21 I'll get it in a minute -- June 22nd, 2001 Arco note.

22 A. Yes.

23 Q. And this note was issued June 22nd,
24 2001 to Arco, and it set up a revolving credit line
25 of 30 million dollars. Is that correct?

00574

1 A. That's correct.
2 Q. Olympic is in default on this note, is
3 it not?
4 A. Yes, it is.
5 Q. Olympic was in default of this note
6 when it was issued, wasn't it?
7 A. I believe that is correct, yes.
8 Q. Olympic got 10 million from Arco
9 nonetheless, did it not?
10 A. We were able to get 10 million from
11 Arco, yes.
12 Q. Referring you back to your Exhibit 2-T,
13 supplemental testimony, Page 3, I'd like you to look
14 at the June 13, 2000 note to Equilon for 43.16
15 million. Do you see that?
16 A. On Page 3?
17 Q. Yes.
18 A. And what was the number?
19 Q. 43.16 million?
20 A. Yes.
21 Q. And that was issued June 13th of 2000
22 and was due August 17th of 2000; correct?
23 A. I believe that is correct, yes.
24 Q. Isn't it also correct that at no time
25 in June, July, or August of 2000 Olympic had an

00575

1 ability to pay that note off?

2 A. I don't know that I can respond to
3 that. I didn't come into this position, effectively,
4 until September of 2000.

5 Q. Olympic filed tariffs on May 31st of
6 2001, seeking a rate increase of 76 percent. Is that
7 correct?

8 A. That's correct.

9 Q. It did not seek interim rate relief
10 during that filing, did it?

11 A. I believe that filing was made,
12 considering that we would try to have a proceeding
13 similar to a FERC proceeding that generally deals
14 with interim relief as part of the general case.

15 Q. Let me ask it this way. That tariff
16 filing was not accompanied by a request for interim
17 relief, was it?

18 A. No. I don't believe so.

19 Q. Would you accept that that filing was
20 suspended on June 27th of 2001?

21 A. Subject to check, yes.

22 Q. And on June 22nd, Olympic issued the
23 note to Arco that we talked about previously, that
24 30-million-dollar revolving; correct?

25 A. Correct, yes.

00576

1 Q. In your rebuttal testimony,
2 Exhibit 3-T, you discuss the issue of what projects
3 could be -- are essential and which projects could be
4 deferred, in terms of your 2002 capital budget.

5 Do you recall that testimony? I
6 believe it begins on Page 3.

7 A. Yes, I do.

8 Q. And your Exhibit 9 -- in that testimony
9 you refer to your Exhibit 9, a November 29th, 2001
10 letter from Mr. Kilpatrick of the Commission's
11 pipeline safety division. Would you refer to that
12 letter, please?

13 A. (Looking at document.)

14 Q. Did you now have a chance to review
15 that letter?

16 A. Mm-hmm.

17 Q. My question is, this letter does not
18 address the timing of any specific Olympic
19 construction project, does it?

20 A. In the context of a change in standard,
21 potentially that could result in a change in schedule
22 as well, depending upon the number of repairs
23 necessary and length of time it would take to do
24 that.

25 Q. Did Olympic accept this recommendation?

00577

1 A. This recommendation was not made to
2 Olympic. It was a suggestion made to the Office of
3 Pipeline Safety.

4 Q. Did Olympic accept the proposal that's
5 stated here?

6 A. We've neither denied it nor accepted
7 it, at this point.

8 Q. Do you know of any project specifically
9 that would be delayed if this standard was applied?

10 A. I think potentially all of the repairs
11 that we have scheduled on our 20-inch pipeline and
12 14-inch pipeline.

13 Q. Do you have any plans to defer any of
14 those projects?

15 A. I do not.

16 Q. Has Olympic actually deferred any
17 project from its 23.8 million dollar budget for 2002?

18 A. As I said in my supplemental testimony,
19 we believe that these supplemental -- these capital
20 projects are prudent and necessary and required.

21 Q. So your answer is no, you have not
22 actually deferred any project in your 23.8 million
23 dollar budget for 2002?

24 A. That is correct. We don't believe that
25 that would be a prudent decision at this time.

00578

1 Q. One area in your rebuttal you say could
2 be deferred and then recommend it not be, relates to
3 bringing the pipeline to 100 percent pressure; is
4 that correct?

5 A. Yes, that is correct.

6 Q. Olympic currently plans to have the
7 pipeline at 100 percent pressure by late 2003 at the
8 earliest; is that correct?

9 A. That is correct. If, in fact, we have
10 the cash to be able to continue that program.

11 Q. When BP Pipelines began operating the
12 line, was the line in compliance with BP's own
13 standards at that time?

14 A. I know we did a very thorough analysis
15 of the line when we became operator of Olympic, and a
16 number of projects were identified in that analysis.
17 But I would have to defer to my operations manager
18 and vice president, Bobby Talley [phonetic], for the
19 specific details of evaluation.

20 Q. I'm just asking in general, was the
21 pipeline up to BP Pipelines' internal standards when
22 you obtained the line -- when you began operating it,
23 excuse me.

24 A. We have put in a number of new
25 processes and procedures that were not in existence

00579

1 in Olympic when we got here.

2 Q. So your answer is yes, that it was not
3 in compliance, and you have brought it up to
4 compliance?

5 A. I don't think I'm referring to the
6 state of compliance of the pipeline. What I'm saying
7 is we brought it up to BP's standards. We
8 implemented a number of procedures and processes,
9 repair criteria, inspection criteria, safety and
10 integrity plans, that BP uses throughout its entire
11 system.

12 Q. So is the pipeline consistent with BP
13 standards today, or are you still working towards
14 that?

15 A. We are still working towards that, yes.

16 Q. Turn to Exhibit 69, which is a pie
17 chart that you had originally filed and then
18 determined that it was not part of your direct case.

19 Can you tell me what this chart
20 represents?

21 A. This chart was an early attempt to
22 quantify all of the capital spending that has been
23 done since the Whatcom Creek incident.

24 Q. And so this is historic investment, as
25 of this chart? This is investment that's already

00580

1 been made?

2 A. My understanding is, is part of this
3 includes the 23.8 million that we plan to make in
4 2002; certainly capital expenditures in 2001 and
5 2000. I think it goes back further than that, yes.

6 Q. So this includes 2002 budget?

7 A. Yes.

8 Q. And mandated projects are those
9 projects that are mandated in order to comply with
10 state and federal safety standards; is that right?

11 A. Or corrective action orders, yes.

12 Q. And voluntary projects, what's your
13 definition of that?

14 A. Something that is not mandated but
15 important to do. For example, to avoid landslides
16 and earthquake impact to the line, to rebore certain
17 sections of the line so that it is more stable and
18 safer.

19 Q. And what portion of the 23.8 million
20 budget for 2002 would fall into that category?

21 A. In which category?

22 Q. Voluntary.

23 A. You know, I have not done that specific
24 analysis, but could, as we look at the 2002 budget.
25 But my exhibit is not broken out in those terms.

00581

1 Q. So you don't have an opinion as to the
2 approximate amount of the 23.8?

3 A. I don't have the knowledge right now,
4 but if I had some time to refer to the exhibit, I
5 could come up with that number.

6 Q. Turn to Page 16 of your rebuttal
7 testimony, Exhibit 3-T, beginning on Line 17. And
8 here you begin a comparison between what you consider
9 to be, quote, fundamental differences, unquote,
10 between oil pipelines compared to what you call
11 "essential service companies," such as those
12 providing electricity or water.

13 Do you see that?

14 A. Yes.

15 Q. And is your purpose for providing this
16 testimony to support your belief that pipelines
17 should be regulated differently than other services
18 regulated by this Commission?

19 A. I provide the testimony to point out
20 the differences between oil pipelines and other
21 utilities.

22 Q. And, in your mind, what is the purpose
23 of that testimony?

24 A. Just to educate on the differences
25 between the two.

00582

1 Q. So you're not using this to contend for
2 a different methodology for regulating pipelines
3 versus others?

4 A. I don't know that in this interim case
5 that we have addressed the issue of methodology.

6 Q. Let's talk about your four points very
7 briefly here.

8 Your first point is that, according to
9 you, unlike power or water there are unregulated
10 competitive transportation alternatives available,
11 such as tanker trucks, ships, and barges. Do you
12 see that?

13 A. Yes, I do.

14 Q. Natural gas is an alternative to
15 electricity in many applications, is it not?

16 A. I don't know the answer to that.

17 Q. You didn't consider that in preparing
18 your testimony here?

19 A. I did not.

20 Q. Did you consider competitive
21 alternatives to telephone services that are regulated
22 by the Commission, unregulated alternatives?

23 MR. MARSHALL: I would object. The
24 witness doesn't refer to telecommunication.

25 MR. TROTTER: The question is whether

00583

1 he considered it or not.

2 JUDGE WALLIS: The witness may respond.

3 A. My point here was to highlight the
4 differences between oil pipelines and electric
5 utilities, in particular. I don't recall if the
6 telecommunications was considered or not.

7 BY MR. TROTTER:

8 Q. Do you know whether there are
9 competitive alternatives, unregulated competitive
10 alternatives, to telephone service that's regulated
11 by this Commission?

12 A. I have not considered that.

13 Q. A second point you make, and it's over
14 on Page 17, is that retail prices for petroleum
15 products are not regulated at the retail level, that
16 consumers pay market prices.

17 Do you see that?

18 A. Yes.

19 Q. Would you agree that many firms use
20 electricity to make consumer products, the price of
21 which consumer products are set by the market?

22 A. That is not my area of expertise.

23 Q. So you didn't consider that when you
24 made your testimony here?

25 A. No. Did not.

00584

1 Q. Let's assume that a company does
2 consume electricity to make a consumer product, and
3 it buys the electricity under a tariff regulated by
4 this Commission, but its product -- say, a toaster --
5 the price of that is not regulated.

6 Did you have that assumption in mind,
7 that example?

8 A. When I -- is the question when I put
9 the testimony together, did I have that assumption in
10 mind?

11 Q. My question is did you have that
12 assumption in mind or that example in mind: A
13 company using electricity, a regulated commodity or
14 service, to make an unregulated, priced product, such
15 as a toaster?

16 A. I understand your comparison. I don't
17 fully understand the relationship between the two
18 that you're trying to drive at.

19 Q. Do you understand the example? A
20 company is in the business of making toasters, and it
21 uses electricity to make the toasters. The
22 electricity is regulated, but the price of a toaster
23 is not.

24 Do you have that example in mind?

25 A. Yes. Sure.

00585

1 Q. Isn't that exactly parallel to your
2 second point with respect to the prices of petroleum
3 products not being regulated at the retail level?

4 In other words, we regulate the
5 transportation of the petroleum, but we don't
6 regulate the price of the petroleum or whatever
7 product is made from the petroleum.

8 A. But the point is that you don't
9 regulate all the transportation alternatives for the
10 petroleum.

11 Q. So if one wants to make a toaster with
12 their own generated electricity, that would be
13 perfectly parallel, wouldn't it?

14 A. I can't comment on that.

15 Q. Let's move on to your third point.
16 You say refinery product prices are
17 not regulated by FERC or the WUTC, but Tesoro and
18 Tosco can charge market prices for their refinery
19 output. Do you see that?

20 A. Yes, I do.

21 Q. How does that point differ from your
22 second point, if at all?

23 A. It's similar except for the source of
24 the product.

25 Q. Oh, I see. Because Tesoro and Tosco

00586

1 are shipping their own product down the line, that
2 that's a separate point to consider?

3 A. Well, they -- they are not regulated in
4 what they can charge from a refinery perspective.
5 The rates that they get for products from the
6 refinery are not regulated.

7 Q. Do you understand that shippers on your
8 line are entitled to just and reasonable rates for
9 transportation?

10 A. Sure.

11 Q. Your last point on Line 10 of Page 17
12 is that oil pipelines compete for capital on a global
13 basis, and there is a need to attract capital on
14 reasonable terms.

15 Do you see that?

16 A. Yes, I do.

17 Q. Do you agree that regulated, electric,
18 natural gas, and telephone companies compete for
19 capital on a global basis?

20 A. I'm not familiar with those industries.

21 Q. Was your point here to distinguish oil
22 pipelines from other utilities in the fact that they
23 compete for capital on a global basis?

24 A. My point that I was trying to make here
25 is that we are trying to get capital. We are

00587

1 desperately in need of money and capital to continue
2 our 2002 capital program.

3 The capital market has choices and can
4 loan money globally to anyone that they seem to
5 think is a good candidate for those loans. In our
6 current situation with our current debt, it is
7 nearly impossible for us to compete for capital on a
8 global scale.

9 Q. I was focusing on your testimony about
10 what the fundamental differences were between oil
11 pipelines and electric utilities. You're not saying
12 that electric utilities don't compete for capital on
13 a global basis, are you?

14 A. Not in that testimony, no.

15 Q. Turn to Page 20 of your rebuttal
16 testimony, 3-T.

17 Around Line 9 you're talking about the
18 Bayview Terminal, and you indicate that when that
19 came before the Commission for a rate increase to
20 include the costs, it was described that the
21 facility will increase the capacity of the pipeline,
22 allow greater operational efficiencies by allowing
23 commodities to be handled on a fungible basis rather
24 than specific per-shipment batch accountability.

25 Do you see that?

00588

1 A. Yes.

2 Q. Is the Bayview Terminal currently being
3 used for those purposes?

4 A. It is currently bypassed while we spend
5 our capital and energy in repairing the pipeline
6 itself.

7 Q. When do you expect the bypass situation
8 to end?

9 A. I don't have a current schedule on when
10 the Bayview Terminal will -- or will not -- be put
11 back into operation, but we have done a detailed
12 engineering analysis of it. It is bypassed because
13 that was the safest way to continue to operate the
14 pipeline while we made these repairs and other
15 investments.

16 Q. Is there a plan to incorporate the
17 Bayview Terminal into the operation of the pipeline
18 in the manner in which it was originally intended?

19 A. I think the answer is yes. But we need
20 to make sure that we do that in a very safety-focused
21 and conscious way. But it has not been on the top
22 priority in getting the system back up and running
23 for getting the repairs done to ensure the safety of
24 the line.

25 Q. Turn to Page 22 of your rebuttal

00589

1 testimony, beginning on Line 19.

2 This is in response to a question
3 regarding financing of Olympic by BP Arco. Do you
4 see that?

5 A. Yes, I do.

6 Q. Now BP-Arco has issued -- excuse me,
7 Olympic has issued debt to BP-Arco, has it not,
8 issued promissory notes to Arco?

9 A. Yes, that is correct.

10 Q. And that's not a cross-subsidy, is it?

11 A. With regards to cross-subsidies, I
12 think I would need to defer the specifics of the
13 concept to Howard Schink [sic] and in his testimony
14 regarding cross-subsidies.

15 Q. Let me just focus on your
16 understanding, which is on Line 20.

17 MR. MARSHALL: I would object that the
18 question isn't complete in that the question in the
19 testimony refers to the claim by intervenors that
20 this should happen because it would help BP finance
21 their refinery operations.

22 So it's not tied to a general generic
23 response but tied in response -- so I think your
24 question may not state the premise correctly. So
25 it's assuming -- or it's missing some facts.

00590

1 MR. TROTTER: Your Honor, I will try to
2 refocus the question.

3 BY MR. TROTTER:

4 Q. And the question was related to BP-Arco
5 financing Olympic because it would help their
6 refinery operations. Do you see that? That's the
7 question on Line 16.

8 A. Yes.
9 (Cell phone interruption.)

10 BY MR. TROTTER:

11 Q. And so you're not saying that if
12 BP-Arco made an equity infusion into Olympic Pipeline
13 that that would be a cross-subsidy, are you?

14 MR. MARSHALL: I think the question is
15 incomplete. It would depend on the circumstances.

16 A. Right.

17 MR. MARSHALL: I don't think the
18 question as asked is capable of being responded to
19 without further additional conditions.

20 MR. TROTTER: The witness can place
21 whatever additional conditions on his answer that he
22 wants.

23 JUDGE WALLIS: The witness may respond.

24 A. The way I would respond to that is as I
25 responded in my testimony. From my perspective,

00591

1 Olympic, as a common carrier, must treat all of its
2 shippers without discrimination. As I understood
3 it, cross-subsidies between regulated and unregulated
4 companies are not permitted in Washington State.
5 Olympic could not subsidize BP-Arco, and BP-Arco
6 should not subsidize Olympic.

7 BY MR. TROTTER:

8 Q. And my question is, would an equity
9 infusion by BP-Arco to Olympic constitute a
10 cross-subsidy, in your opinion?

11 A. Again, I would like to defer that
12 question to Howard Schink.

13 Q. You don't have an opinion about that,
14 then; is that correct?

15 A. I have not -- no, I have not considered
16 that.

17 Q. Would a dividend from Olympic to
18 BP-Arco, or Equilon, its owners, be a cross-subsidy,
19 in your opinion?

20 A. Again, I would defer that question to
21 Mr. Schink.

22 Q. You don't have an opinion on that
23 subject?

24 A. I do not.

25 MR. TROTTER: That's all I have at this

00592

1 time. Thank you, Mr. Batch.

2 JUDGE WALLIS: Let's be off the record
3 for a scheduling discussion.

4 (Discussion off the record.)

5 MR. TROTTER: Your Honor, I would move
6 for admission of Exhibits 68 and 69.

7 MR. MARSHALL: We'd object to 69. It
8 was withdrawn and didn't form the basis for any of
9 the witness's testimony. And he, in fact, said that
10 he would have to go back and look further at the
11 details in that.

12 So I don't think there's a foundation
13 for 69 as an exhibit.

14 MR. BRENA: I would support the
15 introduction of the exhibit. He responded to
16 questions on it, he identified it as a preliminary --
17 or as an earlier estimate.

18 And it seemed to me that that line of
19 cross was valid, and with it not in the record, the
20 line of cross would not be clear.

21 MR. TROTTER: Your Honor, the exhibit
22 is offered to show that much of what this company is
23 doing is mandated by federal law and rule and order,
24 and much of it is not. And it goes to the point of
25 projects that can or cannot be deferred.

00593

1 This witness has his view, and this
2 helps, I think, illuminate on that issue.

3 JUDGE WALLIS: The exhibit is certainly
4 consistent with his testimony on cross-examination.
5 I think that it's appropriate to illustrate that
6 testimony, to which objection was not made, and the
7 exhibit is received.

8 68 is also received. 67 is not
9 offered; is that correct?

10 MR. TROTTER: Correct.

11 JUDGE WALLIS: Very well.
12 (Exhibits 68 and 69 received into
13 evidence.)

14 JUDGE WALLIS: Now let's be off the
15 record, please.

16 (Recess was taken.)

17 JUDGE WALLIS: Let's be back on the
18 record, please, following a morning recess.

19 Mr. Trotter has concluded his
20 examination of the witness. We have considered and
21 admitted the exhibits that Mr. Trotter has offered,
22 and now we're prepared to take up with the
23 examination of Mr. Brena.

24 MR. BRENA: Thank you, Your Honor.
25 First I'd like to say that I'm sure that --

00594

1 JUDGE WALLIS: Let me ask you if --
2 let's be off the record.

3 (Brief off-record pause.)

4 MR. BRENA: First, I'd just like to say
5 I'm sure I scared everybody with my initial six- or
6 seven-hour estimate for this witness, and so I'm
7 going to do my very best to do it to three or four
8 hours. And thank you for your patience, even at
9 that.

10

11 CROSS-EXAMINATION

12 BY MR. BRENA:

13 Q. Good morning, Mr. Batch.

14 A. Good morning.

15 Q. I'd like to start out by clarifying why
16 we're here. In your testimony, you indicate that
17 Olympic can't borrow funds it needs to invest the 24
18 million dollars in capital improvements.

19 Is that why we're here?

20 A. We're here because we are seeking
21 interim rate relief, relating to our low cash funds
22 and our inability to attract capital under reasonable
23 terms at the current time.

24 Q. Okay. And when we're talking about why
25 you need the capital -- I mean, the way that I read

00595

1 your testimony and I'm trying to fairly characterize
2 it -- the way that I read it is you're asking for
3 interim relief so that you have sufficient funds to
4 fulfill your capital expenditures in 2002.

5 Is that a fair reading of your
6 testimony, sir?

7 A. We need capital and cash to continue
8 the safety improvements that are necessary, that we
9 feel are prudent on this pipeline. And yes, we need
10 the cash to complete all of those capital
11 improvements.

12 Q. That sounded like a "yes." Are we here
13 because we're trying to figure out how --

14 JUDGE WALLIS: Excuse me, Mr. Brena.
15 I'm going to interject here just for a minute and ask
16 if you want a clarification, it's probably better to
17 ask the witness than to state your understanding,
18 because if the witness disagrees the witness doesn't
19 have a cue to pipe up.

20 So if you could approach it that way
21 for future questions, that would be a help to the
22 record. Thank you.

23 MR. BRENA: Thank you, Your Honor.

24 BY MR. BRENA:

25 Q. Let me try this again, Mr. Batch. Is

00596

1 the problem that this Commission is being asked to
2 solve how to make it possible for Olympic to go
3 forward with its capital expenditures in 2002?

4 A. Olympic is in need of cash. We have
5 150 million in debt; we cannot pay the interest on
6 the debt. We're in default of every loan we have
7 except for one, the Chase note. We need to make sure
8 that we have sufficient ability to attract sufficient
9 capital on reasonable terms in the future to continue
10 to attract investments in safety on this pipeline
11 that are critically necessary.

12 Q. Investments that you're discussing, are
13 those investments the 2002 capital expenditures?

14 A. We need capital to complete the 2002
15 expenditures that we are recommending that are
16 prudent to do.

17 Q. Are you asking for interim relief to
18 pay lawyers to handle Whatcom Creek?

19 A. No. We are not including any of the
20 Whatcom Creek direct costs in this interim rate
21 relief request.

22 Q. Are you asking for interim relief so
23 you can continue your public relations budget?

24 A. I'm not sure what you're referring to,
25 relating to a public relations budget. We are

00597

1 spending money externally to make sure that the
2 public is fully knowledgeable about what is going on
3 with regards to the safety and integrity of the
4 Olympic pipeline.

5 We've spent many hours with -- within
6 communities along the pipeline corridor, teaching
7 them about what we're doing to ensure their safety.
8 We've written letters to all the people who live
9 along the pipeline, we've sent out mailers, we have
10 informed them of what we are doing with regards to
11 the safety and integrity of this pipeline.

12 That, in fact, costs money, and that's
13 where the money is being spent.

14 Q. Are you asking interim relief for that
15 purpose?

16 A. Subject to check, I don't believe those
17 expenditures are part of our request.

18 Q. Okay. Your 2002 capital budget is 23.8
19 million dollars. Is that correct, sir?

20 A. Actually, I have seen two numbers.
21 23.8 million was the original estimate back in
22 November. I have seen an update requiring, in
23 essence, another 2 million dollars after the
24 engineers took a look at the projects and have kind
25 of upgraded their estimates.

00598

1 So the 23.8 is the number that appears
2 in my testimony; however, in the detailed exhibit of
3 the capital projects, perhaps that was attached to
4 my rebuttal testimony, the updated numbers appear.

5 Q. And the amount of the interim relief
6 you're asking for in total from every jurisdiction is
7 equal to roughly the same amount; is that correct?

8 A. I'm not exactly sure I understand the
9 question.

10 Q. How much in interim relief are you
11 getting from the FERC?

12 A. I don't know that I would characterize
13 the proceeding in the FERC necessarily as interim
14 relief, but we were granted the rates that we
15 proposed from the FERC and started charging those
16 added rates in September.

17 Q. Let me quote to you from my discovery
18 response of the Pipeline. If we do need to
19 distribute it, we will:

20 Olympic needs 23.8 million to fund its
21 planned capital expenditures for safety-related
22 projects in 2002. If the company receives the rate
23 request it has requested, 14.2 million from FERC and
24 8.74 million from the WUTC, Olympic believes this
25 would send the regulatory signal that may allow

00599

1 Olympic to obtain the needed financing.

2 JUDGE WALLIS: Mr. Brena, I apologize
3 for interjecting here. For administrative purposes,
4 if you could identify the data request and the party
5 to which that responds, identify whether it was this
6 witness's response, and kind of keep your eye on the
7 court reporter as you're reading because it's really
8 easy to read quickly, and court reporting is still
9 largely a manual occupation. So it's easy to get
10 ahead of the reporter and make it difficult for her.

11 With all of that, does the witness have
12 the question in mind.

13 MR. MARSHALL: You know, if we could
14 get the actual exhibit number. And I noted that only
15 a part of the response was read, the introductory
16 part was not. This wasn't part of the exhibits that
17 we were provided, although we have been provided a
18 lot of other interrogatory answers and requests for
19 admissions as well.

20 JUDGE WALLIS: Technically, as I
21 understand, it is not an exhibit at this point; is
22 that correct? Or is it a document that was --

23 MR. BRENA: It's a cross-examination,
24 Exhibit No. 54.

25 JUDGE WALLIS: No. 54, okay. Again, if

00600

1 parties would please, if you're referring to a
2 document, let us know what that is so that we have
3 the opportunity to catch up and follow along as we
4 go. It would be very helpful for us.

5 MR. BRENA: My intention wasn't so much
6 to get us into the exhibit; just to read to you and
7 ask you if that fairly characterizes Olympic's
8 position in this proceeding.

9 MR. MARSHALL: But, Your Honor, I would
10 object to this particular exhibit because Mr. Batch,
11 attached to his rebuttal testimony, provides an
12 exhibit that has superseded this particular response
13 that he has. It's a much more complete exhibit.

14 I don't know if it contains that part
15 that Mr. Brena has read or not, but this particular
16 exhibit, 54, is out of date. And Mr. Batch's
17 exhibit, response to Interrogatory No. 4, which is
18 exhibit -- oh, I'll hand it to you in a moment -- is
19 rebuttal testimony Exhibit 10 is the complete and
20 updated version with an attached spreadsheet showing
21 what all of the capital budget costs are for, the
22 amounts, and the justification as to what particular
23 order and so on.

24 So this is an incomplete preliminary
25 response, so I would object to use of that.

00601

1 JUDGE WALLIS: The witness is certainly
2 able to respond that it is an incomplete account and
3 to call our attention to the supplementation.

4 BY MR. BRENA:

5 Q. And I'm happy to provide the entire
6 one.

7 A. Yeah.

8 Q. Mr. Batch, my question to you went to
9 how much -- I am looking at Exhibit No. 54, Page 6.

10 A. I'm sorry, I do not have Exhibit 54 in
11 front of me.

12 MR. RYAN: (Handing document.)

13 BY MR. BRENA:

14 Q. Are you there, sir?

15 A. I'm there.

16 Q. Page 6. Would you please read into the
17 record that last full paragraph, and then I'll ask
18 you questions on it.

19 A. The paragraph that starts "Staff
20 requests"?

21 Q. Yes, sir.

22 A. "Staff's request calls for speculation
23 about rates and sources for borrowing next year.
24 Olympic needs 23.8 million to fund its planned
25 capital expenditures for safety-related projects in

00602

1 2002. If the company receives the rate relief it has
2 requested, 14.2 million from FERC and 8.74 million
3 from the WUTC, Olympic believes this would send the
4 regulatory signal that may allow Olympic to obtain
5 the needed financing.

6 "However, while BP-Arco has funded all
7 of Olympic's cash shortfalls since July 2000,
8 continued funding will be assessed against forecast
9 of future cash flow streams. Absent adequate cash
10 to pay back lenders, Olympic could lose any ability
11 to raise cash. Without such relief, it is uncertain
12 whether Olympic will be able to continue to get
13 financing from any source."

14 Q. Now with regard to my earlier question,
15 with regard to why we're here, is it to figure out
16 how to get Olympic sufficient interim funds -- let me
17 withdraw that and ask it a different way.

18 How much toward the 23-million-dollar
19 goal is Olympic going to receive from the FERC rates
20 in effect today?

21 A. I don't know that we have characterized
22 it as FERC funds or WUTC funds. What we have tried
23 to say is that we need for future lenders to feel
24 confident that Olympic will have the ability to repay
25 any further loans that it takes, takes on.

00603

1 And without that ability to repay --
2 and I think a tariff increase would be a signal to
3 any future lender that, in fact, Olympic is getting
4 access to additional cash and perhaps may be a
5 better candidate for loans in the future -- without
6 that, we don't believe that any lender who is
7 cognizant of, you know, paying loans and seeing the
8 financial situation of Olympic, why they would be
9 confident to lend Olympic any more money.

10 MR. BRENA: Your Honor, if I may ask
11 that the witness be instructed to answer the
12 questions that I ask, my cross-examination would be
13 much shorter. My question to the witness was how
14 much towards the amount of interim relief that they
15 have requested will they receive under the FERC rates
16 currently in effect.

17 I would like an answer to that
18 question, if I may.

19 JUDGE WALLIS: I am going to ask this
20 witness and all of the other persons who may be
21 testifying in this proceeding, to please listen to
22 the question that's asked and respond to that
23 question.

24 Customarily, at that juncture, one
25 option, if you feel that a further explanation is

00604

1 warranted, is to continue and make that explanation.
2 But our first job here is to try to perfect the
3 record by beginning with responses to the questions
4 that are asked.

5 Do you have the question in mind,
6 Mr. Batch?

7 THE WITNESS: I would appreciate it to
8 be rephrased or restated.

9 JUDGE WALLIS: Mr. Brena, would you do
10 that, please?

11 BY MR. BRENA:

12 Q. Certainly. How much of the 23 million
13 dollars in interim relief that you're after are you
14 going to receive under the current FERC rates in
15 effect now?

16 MR. MARSHALL: Your Honor, I object.
17 We're not asking for 23 million dollars in interim
18 relief. He has taken this question out of context.
19 The capital budget is certainly one thing, but paying
20 back the existing loans is certainly required as well
21 to fund these capital improvement projects.

22 I think he's trying to say, and he's
23 trying to do some math to say, well, look, if you're
24 going to get 14 million from FERC and you have a need
25 for capital budgets of X amount, isn't that taking

00605

1 care of a large part of it.

2 But that's only part. We have ongoing
3 operations in paying back these loans to which this
4 answer went into. So Mr. Brena, I think, is being
5 argumentative, assuming facts not in evidence, and I
6 think is trying to lead us all down the wrong path as
7 to characterizing what this case is about.

8 The case is about what it is; we've
9 stated it in the petition. And his effort to try to
10 narrow it to just funding capital projects alone
11 without taking into account operations or anything
12 else is incorrect.

13 MR. BRENA: Your Honor, if I may
14 briefly respond.

15 JUDGE WALLIS: Mr. Brena?

16 MR. BRENA: First, it was my
17 understanding that it's the policy of the Commission
18 not to take talking objections. And so I haven't
19 made them, and I believe that one was just made.

20 Secondly, the data request says that
21 they need 23 million dollars to send the correct
22 regulatory signal, and I am exploring how much of
23 that 23-million-dollar goal they are going to get on
24 the FERC side now, and that was my question.

25 How much -- they said they need 23

00606

1 million dollars for a signal. How much are you going
2 to get under FERC? And it just says what it says,
3 this is a pretty simple answer.

4 MR. MARSHALL: It doesn't say for the
5 capital budget. It says: If the company receives
6 the rate relief that it has requested, including the
7 8.74 million from the WUTC, Olympic believes that
8 would send the regulatory signal.

9 MR. BRENA: I did not mention the
10 capital budget in my question at all. I asked:
11 Towards the 23-million-dollar goal in interim relief
12 that you are after, how much are you going to get
13 from the FERC rates currently in effect?

14 There was no linkage whatsoever to any
15 purpose.

16 MR. MARSHALL: Well, I'm puzzled.

17 JUDGE WALLIS: The question as it is
18 phrased in context seems to be confusing.

19 If Mr. Brena is asking how much revenue
20 does the company anticipate receiving from the
21 interim relief that FERC has granted, that is a
22 perfectly appropriate question.

23 If the question is, how are you going
24 to apply the revenue that you receive from the
25 interim request, that's another question entirely.

00607

1 Perhaps we could take this step by step and try to
2 keep the questions both neutral, and, I guess the
3 best word is as simple as possible.

4 BY MR. BRENA:

5 Q. How much money in total do you need to
6 send the correct regulatory signal that may help
7 Olympic to obtain the needed financing?

8 A. I don't believe we referred to any
9 particular amount of money necessary to send the
10 signal. I think what we're referring to is that, in
11 order for Olympic to be able to obtain sufficient
12 capital under reasonable rates and borrow additional
13 money, that it would be important for those lenders
14 to see that Olympic can increase its rate base for
15 the improvements that it's trying to make, to make it
16 more of a -- a better candidate, if you will -- for
17 loans in the future.

18 MR. BRENA: Your Honor, if I can have
19 an instruction. I don't mind if he explains his
20 answer. My question was "how much."

21 JUDGE WALLIS: Mr. Marshall?

22 MR. MARSHALL: Well, I guess I would
23 ask the witness just to take a look at the testimony
24 and see that the request is in order to send the
25 right regulatory signal, that's the requested amount.

00608

1 And ask the witness to respond to how much, what
2 percentage of the UTC request is needed to send the
3 correct signal.

4 I think that's the straightforward
5 question that's being asked.

6 MR. BRENA: We agree.

7 MR. TROTTER: Excuse me, Your Honor, if
8 I might interject. I think that the witness said
9 there was no particular amount of money to send the
10 signal, that's what he said.

11 Now if we're going to be suggesting
12 answers, I think we either get those ground rules in
13 effect right now, but I think the answer speaks for
14 itself, as does the document.

15 JUDGE WALLIS: My sense is at this
16 point that we're beginning to get the whip out on a
17 horse that may be terminal if not yet dead. And I do
18 agree with Mr. Trotter's observation that the
19 witness, in fact, did respond with an answer; and
20 that that answer and the exhibit document both appear
21 to speak for themselves. And perhaps it's time to
22 move on.

23 BY MR. BRENA:

24 Q. I'm trying to figure out how much you
25 need from this Commission. How much are you

00609

1 requesting in interim relief from this Commission?

2 A. We are asking for 8.74 million.

3 Q. And how much of that 8.74 million would
4 be paid by your affiliated shippers, roughly?

5 A. When you refer to "affiliated
6 shippers," what are you referring to?

7 Q. Affiliates of Olympic Pipeline.

8 A. Olympic has no affiliates.

9 Q. How much would be -- you don't consider
10 your owners to be affiliated to Olympic, sir?

11 A. I don't consider them affiliated
12 companies to Olympic, no. I consider them
13 shareholders of Olympic.

14 Q. Okay. How much would the owners pay of
15 this 8.74 million dollars of interim relief, roughly?

16 A. I don't know the answer to that off the
17 top of my head.

18 Q. Roughly, what is their percentage of
19 total throughput on your system?

20 A. I would have to look that number up. I
21 don't have that number on -- off the top of my head
22 either.

23 Q. You don't know what percentage of
24 throughput is attributable to the two refiners owned
25 by your owners? Is that your testimony?

00610

1 A. What I'm saying is, the staff of
2 Olympic, we have a group with regards to shippers
3 that maintain those numbers. And if I had a need to
4 know what those numbers were at any particular time,
5 I could ask them and that department what those
6 numbers are, or I could look it up somewhere.

7 Q. Do you know, just for my purposes, any
8 rough: a third? a half? two-thirds?

9 A. I would just be speculating right now.

10 Q. Would you have an opportunity over
11 lunch to find out that answer?

12 A. I believe that is certainly possible.
13 Yeah, we can certainly look it up.

14 Q. Are you requesting the increase in
15 rates to be effective December 1 or February 1?

16 A. I believe we made a request that it be
17 effective December 1. But, again, I would leave that
18 up to the discretion of the Commission.

19 Q. With regard to your calculation of how
20 much Tesoro and Tosco would contribute, isn't it true
21 that you calculated that number based from February 1
22 forward?

23 A. Could you repeat the question, please?

24 Q. With regard to your calculation of how
25 much in interim relief Tesoro and Tosco would

00611

1 contribute, isn't it true that you did the
2 calculation from February 1 forward, pointing out
3 there was a limited time for the collection of the
4 total amount?

5 A. What we looked at were volume numbers
6 from June through November of 2001.

7 Q. Did your calculation -- when you
8 calculated the contribution towards your interim
9 relief that Tesoro and Tosco would make, did you do
10 it as a percentage of the 8.74 assuming it was in
11 effect December 1st? Or did you calculate it
12 assuming that Tesoro and Tosco would only pay rates
13 beginning on February 1, from February to August.

14 A. This was calculated on a six-month
15 basis, based on throughput from June through
16 November, assuming that throughputs were consistent.
17 They are estimates.

18 Q. So your calculation of their
19 contribution is based on six months, but the 8.74
20 million is a calculation of the rate impact over
21 eight months.

22 Is that true or false?

23 A. I believe that to be false. The 8.7
24 million was an annualized number, based on getting
25 increased rate relief.

00612

1 Q. If the Commission put in interim
2 relief, effective February 1, and it was in effect
3 till December -- till August 1, that would only be
4 six months; correct?

5 A. Correct.

6 Q. How much interim relief would Olympic
7 collect?

8 MR. MARSHALL: In that period of time?

9 BY MR. BRENA:

10 Q. In that period of time.

11 A. From Tesoro and Tosco?

12 Q. From all sources.

13 A. It would be -- if we were granted the
14 interim relief we were requesting, it would be half
15 of that number.

16 Q. Okay. So from the 8.74 we're down to
17 4.37, and of that 4.37, the affiliated shippers would
18 pay some portion that will be determined after lunch.

19 So the total amount of interim relief
20 that you're here before this Commission seeking is a
21 couple million bucks? That's why we're here?

22 A. Well, a couple of million bucks to
23 Tesoro may not be a big deal, but a couple of million
24 bucks to Olympic is pretty significant. I don't
25 contend that we're here for a couple of million

00613

1 bucks, and I don't contend that only four refiners
2 are shipping on Olympic's line.

3 We have about 30 shippers, active
4 shippers, that ship on our line every single month.
5 Only two of the 30 shippers have protested this
6 increase.

7 MR. BRENA: I would ask that that
8 response be stricken. It's not responsive to my
9 question.

10 JUDGE WALLIS: The instructions that we
11 gave earlier to this witness and to other witnesses
12 are to please listen to the question and respond to
13 the questions.

14 In our traditional system of
15 jurisprudence, it's kind of a question-and-answer
16 thing, and we do ask that the witnesses respond to
17 the questions.

18 THE WITNESS: I am trying to, Your
19 Honor.

20 JUDGE WALLIS: At this juncture, I do
21 believe that the response that you gave, Mr. Batch,
22 did go beyond the question that was asked. It's not
23 information that is foreign to the record at this
24 point or to observations, so we will not go through
25 the formality of striking it. But I will ask you

00614

1 please attend to the questions that are asked and
2 respond to them.

3 THE WITNESS: Yes, Your Honor.

4 MR. MARSHALL: Your Honor, I would just
5 make one observation. Mr. Brena's question was, at
6 the very end, "Is that why we're here?"

7 And I think when you ask an open-ended
8 question as to why we are here, just about any answer
9 is appropriate.

10 JUDGE WALLIS: Thank you, Mr. Marshall.

11 BY MR. BRENA:

12 Q. Well, I want to ask you some easy
13 questions. You're here on whose behalf?

14 A. Olympic Pipeline Company.

15 Q. Are you here on behalf of Arco?

16 A. No.

17 Q. BP Pipelines?

18 A. No?

19 Q. Equilon?

20 A. No.

21 Q. You're here solely in your
22 representative capacity as the president of Olympic
23 Pipeline?

24 A. That's correct.

25 Q. Who is your employer?

00615

1 A. My employer is BP Pipelines-North
2 America.

3 Q. And the operating agreement in fact
4 provides that all personnel remain employees of the
5 operator or its affiliates; is that correct?

6 A. That's correct.

7 Q. And the purpose for that is so you can
8 participate in the benefit plans, the BP benefit
9 plans; correct?

10 A. BP Pipelines is the operator of
11 Olympic. BP Pipelines is one of the affiliates to
12 the shareholder, Arco, and it's been traditional that
13 one of the shareholders supply the operator of the
14 system.

15 When BP Pipelines -- when BP acquired
16 Arco in April of 2000, it also acquired a
17 37-and-a-half percent share of Olympic Pipeline. BP
18 decided that it would bid for operatorship of
19 Olympic Pipeline and won that bid in June of 2000.

20 Q. Is one of your responsibilities as the
21 president of Olympic Pipeline is to be sure that the
22 operator does his job?

23 A. It is my role -- I have many roles --
24 but my perhaps most important role is that the
25 operator make sure that the Olympic Pipeline can be

00616

1 operated safely, and invest the kind of money and
2 capital necessary to make sure it can be operated as
3 a safe pipeline.

4 Q. And do you have a copy of
5 Exhibit No. 48, the operating agreement? I will ask
6 you some questions with regard to that.

7 Let me just ask you a general
8 question, though. Does it seem to you like a good
9 idea to have an employee of the operator responsible
10 to oversee the operator's performance under the
11 operating contract?

12 A. I'm not sure I understand the context
13 of your question.

14 Q. Well, part of your job with regard to
15 Olympic is to be sure that the operator operates the
16 line safely; correct?

17 A. As an employee of BP Pipelines-North
18 America, I am a part of the operator of Olympic
19 Pipeline, and I have a role as president of Olympic
20 Pipeline.

21 Q. And does that role include being sure
22 that the operator operates the line safely and
23 prudently?

24 A. No. I believe that is a board of
25 directors responsibility. It is certainly my

00617

1 interest that we operate the line safely and we get
2 the necessary investments and projects in order to do
3 that. But certainly the board of directors would be
4 involved in any of those decisions as well.

5 Q. So it's your testimony that it's not
6 one of your roles to oversee the safe operation of
7 this line?

8 A. I am not saying that.

9 Q. Is one of your roles to oversee the
10 safe operation of this line or not?

11 A. It is.

12 Q. Whose performance are you overseeing?

13 A. I am overseeing -- I am ensuring that
14 Olympic's performance will be in operating, or --
15 will be in a safe pipeline.

16 Q. Who is the operator?

17 A. BP Pipelines-North America is the
18 operator of Olympic.

19 Q. Is that what the operating agreement
20 says? It's the first paragraph.

21 CHAIRWOMAN SHOWALTER: Of what?

22 BY MR. BRENA:

23 Q. The operating agreement,
24 Exhibit No. 48. It says: This agreement made into
25 as of June 30th, 2000, herein called the effective

00618

1 date, by and between Olympic Pipeline Company, a
2 Delaware corporation company and Amoco Pipeline
3 Company, a marine -- a Maine corporation, operator.

4 Who is the operator of this line?

5 A. BP Pipelines-North America. When BP
6 merged with Amoco in 1998, it also merged its assets
7 at that same time. There may be a legal distinction
8 with regards to what is here in the operating
9 agreement. And, subject to check, I don't -- I would
10 need to double-check on just the time frame of when
11 the agreement was entered into and what the legal
12 names of corporation were at that time.

13 Q. Well, the agreement was entered into on
14 June 30th, 2000; the merger occurred in 1998.

15 Is it your testimony that the operator
16 of the line, Amoco, the legal operator of the line,
17 has no assets because they've been transferred to BP
18 Pipelines?

19 A. I think the clear answer is I began as
20 president of Olympic Pipeline in September of 2000,
21 was not privy to the operating agreement when it was
22 signed. And, therefore, I don't have direct
23 knowledge or context of the questions that you're
24 currently asking.

25 Q. In response to my question, you said

00619

1 that in the merger that Amoco Pipeline Corporation's
2 assets were transferred to BP Pipelines, did you not?

3 A. I said --

4 Q. In 1998?

5 A. In 1998, BP and Amoco merged, yes.

6 Q. And the assets from Amoco were

7 transferred to BP Pipelines; is that correct?

8 A. I don't believe I said that, and I'm
9 not exactly sure of that statement.

10 Q. Do you know whether or not the legal
11 operator of this line has any assets?

12 A. Does the legal operator of the line
13 have any assets?

14 Q. Yes.

15 A. I believe the answer is yes.

16 Q. I'm confused, and I don't mean to dwell
17 on the point. But if in 1998 there was a merger, and
18 Amoco's assets were transferred to BP Pipelines, then
19 how in June of 2000 could Amoco continue to have
20 assets?

21 MR. MARSHALL: Your Honor, I have to
22 object because the witness didn't agree that the
23 assets have been transferred, and he says he doesn't
24 know. And I think this is argumentative, assuming
25 facts not in evidence, and I'm not even sure where

00620

1 this line of testimony goes.

2 If there'd been a data request to try
3 to clarify what changes in assignments and so forth
4 have been made, we could have answered that. We
5 could make answer subject to check.

6 But I think this witness has already
7 said that he does not agree with the statement that
8 assets have been transferred and therefore there are
9 no assets. So this has now become argumentative.

10 MR. BRENA: No, I'm asking him to
11 explain an apparent contradiction in what I
12 understand his testimony to have been. I understand
13 his earlier testimony to have been, when I asked him
14 to explain why Amoco Pipeline Company was on this
15 document, he explained -- he volunteered -- that in
16 1998 there was a merger, and the assets from Amoco
17 went over to BP Pipelines. And he continued to
18 insist that BP Pipelines was the operator.

19 So now I'm just asking him to explain
20 the apparent contradiction between that statement and
21 the statement that Amoco Pipeline continues to have
22 some assets.

23 JUDGE WALLIS: And the intervening
24 question and answer, as Mr. Marshall points out,
25 contained testimony by this witness that states that

00621

1 he does not believe that he did make that earlier
2 statement, and he disagrees with it.

3 MR. BRENA: Then I will rephrase the
4 question.

5 JUDGE WALLIS: Please.

6 BY MR. BRENA:

7 Q. Was there a merger in 1998 between
8 Amoco Pipeline Company and BP Pipelines-North
9 America?

10 A. No. There was a merger in 1998 between
11 Amoco Corporation and BP.

12 Q. And what happened in that merger?

13 A. I was not involved with the merger, so
14 I am not the best person to fully explain that at
15 this hearing.

16 Q. Do you know who the legal operator of
17 Olympic Pipeline is?

18 A. I know that BP Pipelines-North America
19 is the operator of Olympic. BP Pipelines-North
20 America employees are operating the Olympic Pipeline.

21 Whether it is the legal entity or not,
22 I am not certain of.

23 Q. I'd like to direct your attention to
24 the operating agreement at Page 4, and that would be
25 Bates stamp OPL 1113939. Do you have that page?

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1 A. Yes.

2 Q. I would like to read to you a paragraph
3 and ask you questions from it.

4 JUDGE WALLIS: Mr. Brena, if you and
5 the witness and the rest of us all have that document
6 before us, it may not be necessary to read it.

7 Perhaps if you could just refer to it?

8 MR. BRENA: All right. And perhaps if
9 I could paraphrase it, then.

10 BY MR. BRENA:

11 Q. In the first full paragraph on that
12 page, it sets the standard to which the operator has
13 to perform his responsibilities, and the legal
14 standard that the operator has undertaken is in a
15 manner consistent with the usual and customary
16 practices, codes, and standards in the pipeline
17 industry.

18 Do you see that language, sir?

19 A. Is this the top of Page 4?

20 Q. Yes, it's the top of Page 4, it's the
21 first full paragraph beginning "Operator agrees to
22 perform all services"?

23 A. Yes, I see the paragraph.

24 Q. The standard that this operator
25 undertook to perform is not some higher standard than

00623

1 the industry standard, is it? It's the usual and
2 customary practices, codes, and standards in the
3 pipeline industry.

4 A. BP Pipelines has a set of standards
5 that it believes are necessary to run a safe
6 pipeline. And we are incorporating all of
7 BP Pipelines' standards into doing just that.

8 Q. My question went to, the legal
9 obligation of the operator is not to perform his
10 duties to any higher standard than anybody else in
11 the industry.

12 Isn't that what this provides?

13 A. No. I believe that this provides
14 minimum requirements under an operating agreement,
15 not absolute.

16 Q. Is there any reference in this
17 paragraph that sets the standard for the operator's
18 performance that has any reference whatsoever to BP's
19 internal standards, or any higher standard other than
20 what's customary for the industry?

21 A. It is not directly stated in that
22 paragraph, although it could be assumed to be
23 implicit by the fact that it's an operating agreement
24 between BP Pipelines-North America and Olympic
25 Pipeline Company.

00624

1 Q. Is it your understanding that the
2 operator is legally bound to a higher standard,
3 notwithstanding this language that sets the lower
4 standard in the contract?

5 A. Legally bound or not, it's important to
6 achieve the necessary safety standards that are
7 needed to ensure that this pipeline can be operated
8 safely here in the State of Washington. That's what
9 the people of the State of Washington expect, and
10 that's what I expect.

11 Q. I'm just wondering what the operator
12 legally committed to, not the expectations. Can you
13 speak to that; your understanding of what the
14 operator legally committed to?

15 A. Again, I did not -- was not involved in
16 the drafting of this document, so I cannot make any
17 statements along those lines.

18 Q. Who owns this pipeline?

19 A. Olympic Pipeline Company has two
20 shareholders: Arco and Equilon.

21 Q. In the brief that Olympic filed, they
22 said BP Pipelines-North America owns 62.55 percent of
23 Olympic. Is that statement false?

24 A. Subject to check, I believe that's
25 correct.

00625

1 Q. Does Atlantic Richfield own Olympic, or
2 does BP Pipelines own Olympic? Or are you just using
3 them interchangeably?

4 A. I believe Arco owns 62.55 percent of
5 Olympic shares.

6 Q. Does BP Pipelines-North America own
7 Atlantic Richfield?

8 A. Again, I don't know the legal context
9 of the structure of BP and Arco.

10 Q. But it's true that BP Pipelines doesn't
11 own this company, and doesn't have an operator
12 agreement with this company. Do you agree or
13 disagree with that?

14 A. I do not agree with that.

15 Q. You think that the contract with Amoco
16 Pipeline Company binds BP Pipelines? Is that why you
17 disagree with that?

18 A. Subject to legal interpretation, my
19 understanding upon coming to this job was that
20 BP Pipelines would be the operator of Olympic, and
21 would be responsible for ensuring the safe operation
22 of Olympic.

23 MR. MARSHALL: If it would help at this
24 point, Mr. Fox has sent me a note indicating that he
25 can respond to these operator agreement issues.

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1 JUDGE WALLIS: Mr. Fox, you said?
2 MR. MARSHALL: Mr. Fox. So, I mean,
3 I've let this go on, but it seems to me --
4 MR. BRENA: I've completed my line of
5 questions, and no reason for -- this witness has done
6 everything he can.
7 JUDGE WALLIS: Very well. Are you at a
8 natural breaking point, or do you have questions
9 that --
10 MR. BRENA: I have one series of very
11 short questions that I could get to between now and
12 noon, I suspect.
13 BY MR. BRENA:
14 Q. Your education is in chemistry, and
15 your background is in safety and environmental
16 issues; is that fairly stated?
17 A. That's correct. And chemical
18 engineering.
19 Q. And chemical engineering. Do you
20 consider yourself a regulatory expert?
21 A. No.
22 Q. Do you consider yourself a financial
23 expert?
24 A. No.
25 Q. Do you consider yourself an expert with

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1 regard to what is necessary to attract capital in
2 commercial markets?

3 A. No. But Mr. Howard Fox, I would
4 consider much more of an expert than I am in that
5 particular area.

6 Q. Did Mr. Fox advance any direct
7 testimony in this proceeding?

8 A. I'm not sure I understand the question.

9 Q. Well, you understand that it's
10 Olympic's burden to show the need for interim relief,
11 do you not?

12 A. Yes, I understand that.

13 Q. You understand that burden must be met
14 in its direct case, do you not?

15 A. And in which direct case are you
16 referring to?

17 Q. The direct interim case.

18 MR. MARSHALL: Your Honor, I would
19 object that this is argumentative at this time,
20 asking for a conclusion. And I think in interim
21 cases the Commission has made it perfectly clear
22 that, as circumstances change for interim cases,
23 things can be and they are fluid, almost by
24 definition when you're in an emergency situation.
25 Updated information is necessary; in fact, it's

00628

1 unavavoidable.

2 So I think that, not only is he trying
3 to get this witness to speculate as to legal
4 conclusions, but I think the foundation is assuming a
5 legal set of circumstances not appropriate.

6 MR. BRENA: I just intended to ask him
7 his understanding, Your Honor.

8 I would just say that I was just making
9 the point that Olympic Pipelines has not advanced an
10 expert in financial matters with regard to capital,
11 with regard to the ability of the company to attract
12 capital; and that the only witness that's gone
13 forward in the direct case doesn't claim or profess
14 any expertise in any of those fields at all.

15 JUDGE WALLIS: Mr. Brena, as you have
16 pointed out earlier in the day, the purpose for our
17 inquiry is to get the facts, and you will have the
18 opportunity to make your arguments at a later time.

19 This witness has indicated that he is
20 not a lawyer, that he's not a legal or regulatory
21 expert. So perhaps, if it is a matter of argument
22 based upon the factual answers that he gives, you
23 could present those in your closing argument.

24 MR. BRENA: Certainly. Thank you, Your
25 Honor.

00629

1 BY MR. BRENA:

2 Q. Have you ever given expert testimony in
3 any other proceeding, other than this one, relating
4 to the financial condition of a company?

5 A. No.

6 Q. Have you ever, before this one, given
7 any testimony with regard to regulatory policy or
8 matters?

9 A. No.

10 Q. With regard -- okay. Have you ever
11 before given testimony in any regards with regard to
12 what is necessary to attract capital from external or
13 internal sources?

14 A. As I mentioned, I don't claim to be a
15 financial expert. But it doesn't take a financial
16 expert to know that if people are not getting paid
17 back on the money that they are loaning, it would be
18 kind of ludicrous to expect that they would continue
19 to loan money on that basis, if there's no
20 opportunity or no hope for its return.

21 Q. I asked if you had ever given testimony
22 before. Could you please answer that question, with
23 that clarification?

24 A. No.

25 Q. Isn't it also ludicrous to assume that

00630

1 nobody will loan somebody money when the owner
2 doesn't have any equity in the company, Mr. Batch?

3 A. I would defer that question to Howard
4 Fox.

5 Q. Have you ever got a house loan in which
6 you didn't put a down payment down?

7 A. The two house loans that I've had, I
8 have put down down payments.

9 Q. In your experience, do you know anybody
10 that has ever borrowed money with regard to assets in
11 which they haven't invested some of their own?

12 A. I would just be speculating, but I
13 would tell you, if my financial situation were
14 similar to Olympic's, I don't think I would have been
15 able to get a home loan either.

16 Q. You'd need your owners to put some
17 equity in, wouldn't you?

18 A. Again, I would defer that to Mr. Fox.

19 MR. BRENA: This would be a good time
20 to take a noon break.

21 JUDGE WALLIS: Very well. We will
22 resume at 1:30. I am going to ask that Mr. Marshall
23 and Mr. Brena, the two of you get together, so that
24 you can, before 1:30, have the questions resolved.

25 (Luncheon recess at 12:05 p.m.)

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1

AFTERNOON SESSION

2

1:30 p.m.

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JUDGE WALLIS: All right. Let's be
back on the record, please. Let's begin with an
update from Mr. Brena and Mr. Marshall regarding the
need for ruling on confidentiality.

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BY MR. BRENA:

Q. Good afternoon, Mr. Batch.

A. Good afternoon.

JUDGE WALLIS: Mr. Brena, I'm going to
interject here. I apologize for the interruption but
I'm having trouble hearing you, and if you make sure
that --

MR. BRENA: My microphone was off.

00632

1 JUDGE WALLIS: -- your microphone is
2 on, and if you pull it right up to your mouth and
3 speak up just a little bit, it would make it easier
4 for me and I'm sure for others in the room.

5 MR. BRENA: Thank you, Your Honor. I
6 will.

7 JUDGE WALLIS: Thank you.

8 BY MR. BRENA:

9 Q. Mr. Batch, I had asked you if you could
10 tell me what percentage of the throughput was
11 attributable to the affiliates. Have you had an
12 opportunity to do that?

13 A. During lunch I was able to get volume
14 and percentage estimates of shipments from the four
15 shippers on Olympic's system: Arco, Equilon, Tesoro,
16 and Tosco, as well as the percentages for three
17 representative months: June, July, and October of
18 2001.

19 Q. And just as a percentage, what did you
20 find?

21 A. What I will read is the percentages for
22 each of those months. June of 2001 -- yes?

23 Q. Excuse me, I'm sorry. And I don't mean
24 to cut off your answer, and I'm happy to let you
25 finish it.

00633

1 But didn't all four refineries start
2 transporting again in July?

3 A. I think they were all shipping since
4 February of 2001.

5 Q. Didn't the system -- there's a huge
6 step-up in throughput in July of 2000. I'm just --

7 A. Yes. In 2001, in June actually, we
8 were able to bring up the Allen to Renton section of
9 the 16-inch, which represented an increase in
10 throughput at that time.

11 Q. Could we just have September?

12 A. As I mentioned, I've got numbers for
13 June, July, and October.

14 Q. Oh, I'm sorry, October. I didn't mean
15 to ask you a month you didn't have, I apologize.

16 Could we have October?

17 A. Yes. Arco shipped at -- the volume was
18 146 -- 1,469,573 barrels, and that represented 31
19 percent of the shipments. This is just intrastate
20 shipments now I'm speaking about, within the State of
21 Washington.

22 Equilon was at 24 percent, or
23 1,119,113. Tesoro was at 15 percent, 699,746.
24 Tosco was at 12 percent, 548,299. And all the other
25 shippers represented 18 percent at 841,876.

00634

1 Q. Now those others, are you aware of how
2 their contracts are structured at all?

3 A. I am not personally aware of their
4 contracts, no.

5 Q. For example, are you aware that the
6 Tesoro would sell to somebody its oil who would be
7 the shipper of record, but the price that they paid
8 reflected that Tesoro would pay the tariff rate?

9 A. I am aware that there are shippers that
10 will buy product from Tesoro and ship on the line,
11 but I'm not familiar with the specifics of that.

12 Q. These 18 percent who are shipper of
13 record, all of those 18 percent bought their
14 petroleum products from one of these four. Is that
15 fair to say?

16 A. Yes. I believe that's correct.

17 Q. So with regard to where the economic
18 impact lies for that final 18 percent, we'd need to
19 look at the individual contracts between the
20 refineries and those shippers of record to determine
21 that.

22 Is that fairly stated?

23 A. I'm not exactly sure what you're
24 referring to with regards to "economic impact."

25 Q. That with regard to the 18 percent,

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1 that to determine who ultimately bears the economic
2 cost of the tariff rate assessed, you'd have to look
3 at the underlying contract between the refiner and
4 the shipper.

5 A. Well, that may very well be the case.
6 But as far as Olympic is concerned, every barrel is a
7 barrel of throughput through the line and a tariff
8 that we collect, regardless of who the shippers are,
9 what the contracts state.

10 Q. No, I appreciate that. Thank you.

11 Does the operator or the board
12 authorize capital expenditures on this line?

13 A. The operator recommends and the board
14 approves.

15 Q. I'm looking at the operator agreement,
16 which is Exhibit 48. I'm looking at Paragraph 4.2 of
17 that, which begins on Page 6 of the agreement.

18 And tell me when you have had an
19 opportunity to review that paragraph.

20 A. Which paragraph again?

21 Q. 4.2.

22 A. Okay.

23 Q. There is a requirement there that such
24 capital expenditures shall be documented by economic
25 studies.

00636

1 Were economic studies prepared with
2 regard to the 2002 capital budget items?

3 A. Every capital project goes through BP's
4 capital value process, "C-BP" we call it, which is a
5 detailed project and economic analysis of that
6 project. So I would say yes.

7 Q. So far as you're aware, have those been
8 produced in discovery? Are those available in the
9 record of this proceeding?

10 A. Subject to check, I am not aware that
11 those are available within the discovery process, nor
12 were they asked for.

13 Q. With regard to detailed authority for
14 expenditure, is an "Authority For Expenditure"
15 frequently referred to in the industry as an "AFE"?

16 A. I have heard that term, yes.

17 Q. And a detailed authority for
18 expenditure which shall contain a full and complete
19 description of the equipment to be purchased and the
20 improvements to be made.

21 As far as you're aware, were those
22 prepared?

23 A. As far as I know, detailed descriptions
24 of the projects were presented to the board.

25 Q. And through the form of an AFE for

00637

1 their authorization?

2 A. I don't know if an AFE per se was
3 generated for that. But certainly there is a capital
4 project listing that goes through every single
5 project for the board's approval.

6 Q. And as far as you're aware, are the
7 AFEs which were presented to the board for the 2002
8 capital improvements, were those produced in
9 discovery? Are they available to this Commission?

10 A. I am not aware of whether or not they
11 have been produced. Subject to check, I have not
12 seen any through the discovery process, and again, I
13 didn't recall any requests along those lines.

14 MR. BRENA: If I could just have a
15 moment.

16 BY MR. BRENA:

17 Q. I'll come back to this question in a
18 minute.

19 If I were to represent to you that
20 your AFEs were specifically requested for the 2002
21 expenditures, would you have any reason to disagree
22 with that?

23 A. I would have no reason to agree or
24 disagree at this point.

25 Q. And just to clarify, those numbers that

00638

1 you gave on throughput, those were intrastate volumes
2 and throughput only; correct?

3 A. That's correct.

4 Q. Thank you. The staff asked you a
5 question briefly about, is this line operating safely
6 today?

7 A. The answer is yes. And if I thought
8 that this line was operating unsafely, we would not
9 operate it.

10 Q. In your testimony, you point out that
11 there is nothing obligating Olympic to continue to
12 operate this line. Should a ratepayer be able to
13 pay -- be required to pay a higher rate than is just
14 and reasonable because a common carrier threatens
15 shutdown?

16 A. Well, I don't recall ever threatening
17 shutdown. And seems to me that my testimony
18 reflected more of a question about being obligated to
19 expand the line, not necessarily being obligated to
20 run the line when it's unsafe.

21 Q. So you are not intending through your
22 testimony, which pointed out you have no legal
23 obligation to continue to operate, you did not intend
24 through that testimony to suggest or imply
25 possibility of a shutdown?

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1 A. Can you refer to the point in the
2 testimony that you're referring to?

3 Q. Do you recall your testimony?

4 A. I've got three sets of testimony. Is
5 this in the rebuttal testimony?

6 Q. Yes. Do you recall pointing out the
7 legal obligations?

8 CHAIRWOMAN SHOWALTER: Mr. Brena, if
9 you know where the testimony is, it will save us all
10 time to refer him and us to it.

11 MR. BRENA: I'll just move to another
12 question. I realized after I said that it was in the
13 brief, so -- my apology for misdirecting you to your
14 testimony.

15 JUDGE WALLIS: May we break for just a
16 minute here? We have a technical difficulty in that
17 people want to call in and aren't reaching us, and we
18 don't know right now whether that's because too many
19 have called in and there aren't any ports left or
20 there is a glitch.

21 And we want to reset the system just to
22 make sure people have the opportunity to call.

23 (Discussion off the record.)

24 JUDGE WALLIS: All right. Are we
25 prepared to proceed? I apologize. This technical

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1 stuff, the more advanced we get, the more opportunity
2 there is for momentary challenge.

3 Mr. Brena, when you're ready.

4 BY MR. BRENA:

5 Q. You quantified in your testimony the
6 impact to Tesoro and Tosco; is that correct?

7 A. For this, the cost that they would
8 incur during -- I'm sorry.

9 Q. Yes.

10 A. The cost that they would incur during
11 this six-month interim period?

12 Q. Yes, that's correct.

13 A. Yes.

14 Q. Do you believe that a ratepayer should
15 be required to pay a higher or lower rate based on
16 the financial impact to the ratepayer?

17 A. A shipper should pay just and
18 reasonable rates.

19 Q. Regardless of the financial impact to
20 the shipper. Is that implied in what you said?

21 A. My comment is that every shipper should
22 be treated equally and fairly, and should be charged
23 just and reasonable rates.

24 Q. You pointed out the impact to the
25 shipper's customers, a quarter cent a gallon. Do you

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1 think that the impact to the shipper's customers
2 should impact how this Commission sets a just and
3 reasonable rate?

4 A. I think that was used for illustrative
5 purposes, not for setting of any rate base. It was
6 to demonstrate that there was absolutely no impact to
7 the public associated with the rate increase that
8 we're requesting.

9 Q. And so, based on that, if there's a
10 lesser impact or a greater impact, should the
11 Commission be more or less predisposed to granting
12 your request for interim relief?

13 MR. MARSHALL: I would just object that
14 this is a legal conclusion for the Commission. The
15 public interest standard is what it is, and I think
16 debating what this witness's view of what that
17 standard might be is not going to lead us anywhere
18 useful.

19 MR. BRENA: I'm just exploring the
20 reason for this testimony, including the impact to
21 the ratepayer and the customers, and I'm wondering
22 how he intends that testimony to impact this
23 Commission's decision with regard to interim rates.

24 JUDGE WALLIS: To my recollection, the
25 witness has responded on that, and I'm not sure that

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1 asking the question again will get a different
2 response.

3 MR. BRENA: Okay.

4 BY MR. BRENA:

5 Q. You responded to me pointing out just
6 and reasonable rates. Does a just and reasonable
7 rate include a rate element for prior losses?

8 A. My understanding of this interim case
9 is to ask for rates necessary in an emergency
10 situation that continue to be financially sound, or
11 to help get our way towards a more positive place
12 than Olympic is currently in.

13 Q. Let me give you a hypothetical and just
14 ask you to respond.

15 If a common carrier has 50 million
16 dollars of equity investment and everything is fine,
17 and it dividends out that whole 50 million dollars
18 and so its financial position is depleted, should it
19 be able to come before this Commission and ask for
20 an interim rate on an emergency basis?

21 A. Well, since I've been here we have
22 issued no dividends, and my understanding is Olympic
23 has issued no dividends since 1997.

24 What happened prior to 1997 could have
25 been addressed in previous rate cases or hearings in

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1 front of the Commission, and the shippers could have
2 objected at that time and did not.

3 Q. Do you have my hypothetical in mind?
4 It's a hypothetical. If a common carrier has 50
5 million dollars in equity, takes it out and does
6 something imprudent with it, whatever it is, or just
7 takes it out, should -- because of the impact of that
8 decision, should that common carrier be able to
9 request interim relief?

10 A. I believe that's a question that is
11 covered in Howard Fox's supplemental testimony, and I
12 would ask that he address that when its his time.

13 Q. Do you believe that a shipper should be
14 required to pay for debt that was incurred but is
15 unrelated to the service that he received?

16 A. Could you repeat the question, please?
17 I'm sorry.

18 Q. Do you believe a shipper should be
19 required to pay a rate that includes debt that was
20 unrelated to the service that he received?

21 A. As I have said in my testimony, Olympic
22 is requesting interim rate relief because of its
23 financial condition. It can't borrow any additional
24 money. It needs to raise rates in order to attract
25 capital at reasonable rates so that we can continue

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1 the capital program that we're trying to accomplish.

2 Q. Do you have my question in mind, sir?

3 A. Yes.

4 Q. My question wasn't directed
5 specifically to Olympic.

6 Do you believe that a shipper, paying
7 a rate, should pay for debt that wasn't incurred
8 with the service that was provided to the shipper?

9 A. I think that that's kind of a
10 retroactive look, and I would just be speculating on
11 that particular issue.

12 Q. If Olympic had incurred its entire 144
13 million dollars' of debt in order to fund the
14 Cross-Cascades project, should Tesoro have to pay for
15 that debt?

16 A. Well, Tosco and Tesoro's predecessors,
17 as well as all of the other shippers on the line,
18 were very excited about the Cross-Cascades pipeline.

19 In fact, there were a number of
20 throughput and deficiency agreements solicited and
21 signed. And there's no reason to believe that
22 Olympic did this on their own, they did it in full
23 support of the shippers.

24 Q. So if a shipper supports it, they
25 should have to pay for it whether it's related to

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1 service or not? Conversely, if a shipper doesn't
2 support it, should he not have to pay for it?

3 A. The Cross-Cascades pipeline is a
4 project that Olympic took on, and it's not a dead
5 project. It's just a project on hold and was put on
6 hold because of circumstances in 1999.

7 But as I said before, there were
8 hearings and there were letters in front of this
9 Commission with regards to the Cross-Cascades
10 pipeline, and it was a very supportive -- supported
11 project by the shippers themselves.

12 Q. Does Olympic's expenditures relating to
13 the Cross-Cascades project, are they related to the
14 service that's been provided to Tesoro?

15 A. I'm sorry. Is the question, "Is it
16 included in the rate base"?

17 Q. No. Are they related to the services
18 that Tesoro has purchased for its rate?

19 A. Cross-Cascades is not an operating
20 asset at this time.

21 Q. Would you refer to Exhibit No. 23,
22 please.

23 A. Okay.

24 Q. Isn't it true that Olympic spent 21.5
25 million dollars on the Cross-Cascades project?

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1 A. That is my understanding.

2 Q. Isn't it true that in Exhibit 23 in
3 Paragraph 1, the other owners, other than Equilon,
4 refused to put any more capital into it?

5 A. I believe I saw some board minutes,
6 certainly prior to my arrival at Olympic, that
7 indicate that.

8 Q. Isn't it true that one of the reasons
9 why the debt increased was as a result of Equilon's
10 funding of the Cross-Cascades project?

11 A. Additional debt was taken on for
12 Cross-Cascades, so I think the answer is yes.

13 Q. Equilon's contributions into Olympic to
14 fund the Cross-Cascades were characterized as debt
15 and are included in its 43-million-dollar debt on
16 your chart.

17 Isn't that true?

18 A. Subject to check, I think
19 Cross-Cascades -- well, let me -- subject to check, I
20 need to check on that.

21 I'm not exactly sure if it was the
22 Equilon note or if it was the Prudential note that
23 was initially tendered for the Cross-Cascades work.

24 Q. So at least part of the debt that
25 you're asking this Commission to consider in granting

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1 interim relief is related to Olympic's efforts with
2 regard to Cross-Cascade?

3 A. Yes, I believe that's true. But the
4 debt is the debt, and it's 150 million dollars with
5 interest payments that we have no hope of repaying at
6 this point.

7 Q. The Bayview Terminal, isn't it true
8 that Olympic paid 24 million dollars on the Bayview
9 Terminal?

10 A. I don't recall the exact amount on the
11 Bayview Terminal.

12 Q. Subject to check, does that sound
13 approximately correct?

14 A. Yes, subject to check.

15 Q. Now, if I can direct you to Exhibit 22.
16 Isn't it true that some of the debt that Olympic
17 currently carries is attributed to its funding of the
18 Bayview Terminal?

19 A. I believe that's true.

20 Q. Is the Bayview Terminal in service
21 today?

22 A. It is currently bypassed, although we
23 have used it periodically, primarily during the
24 safety tests that we've accomplished on the pipeline,
25 primarily for hydrotest, water and storage.

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1 So in effect we have used it, but for
2 shipping petroleum products it's been bypassed. And
3 it's on a schedule to recommission once we get back
4 up to 100 percent, because that terminal was
5 designed to be operated at 100 percent operation.

6 COMMISSIONER HEMSTAD: May I ask a
7 clarifying question here?

8 JUDGE WALLIS: Yes.

9 COMMISSIONER HEMSTAD: When you used
10 the term "bypassed," what does that mean? Does that
11 mean "mothballed"?

12 A. Yes. It means that the flow used to
13 flow through the Bayview Terminal and then to Allen
14 Station, and then down south to Renton. What we've
15 done is we've put a straight piece of pipe to
16 segregate out the terminal so that it's currently not
17 receiving petroleum products by shipment.

18 BY MR. BRENA:

19 Q. Has the terminal been used for the
20 storage of petroleum products in the past?

21 A. Subject to check, I think there has
22 been petroleum products that have been stored there.

23 Q. And by "petroleum products," do you
24 mean all the petroleum products out of the two
25 refineries that would use that? They've been stored

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1 in the past in that facility for delivery into the
2 line? Or do you mean that, on occasion, that it's
3 been used?

4 A. I know for a fact that there has been
5 petroleum products in those tanks from time to time
6 through internal inspection runs with diesel.

7 And exactly whose product it was and
8 when it was put in the tanks, I can't be specific
9 because I don't know. But our operations folks
10 could probably get that information, if necessary.

11 Q. I'm just -- was the purpose for the
12 diesel there just to run it through the facility so
13 that you could inspect to see how it functioned?

14 A. No. The diesel is necessary to run a
15 smart PIG through the line. The line was shut down,
16 and in order to run a smart PIG through it, we used
17 diesel fuel to help move the PIG through the line.

18 Q. So that was the reason that the diesel
19 was stored in the Bayview Terminal?

20 A. I think that is one certain probability
21 of why diesel was there, but there could be other
22 reasons. I just don't know.

23 MR. MARSHALL: Could I ask the witness
24 to give the name for the acronym "PIG," just so we
25 have a clear record?

00650

1 JUDGE WALLIS: Mr. Batch?

2 A. I wish you wouldn't ask me those
3 questions.

4 JUDGE WALLIS: Perhaps if the witness
5 merely describes what it is and what it does, that
6 will suffice for the record.

7 A. It's a mechanical device with
8 electronic sensors on it that monitor the pipe as it
9 goes down the pipe to identify any anomalies or areas
10 of metal loss or dents within the line.

11 BY MR. BRENA:

12 Q. And just so that I'm clear, has the
13 Bayview Terminal ever been in full operation?

14 A. I believe it was commissioned and was
15 in operation at one time, yes.

16 Q. Olympic has been collecting three cents
17 a barrel since its last tariff increase, associated
18 with the Bayview Terminal; is that correct?

19 A. Yes, that's correct.

20 Q. I would like to direct your attention
21 to Exhibit 21. And to Page 2 of the exhibit in the
22 last full paragraph before Throughput and Deficiency
23 where they attribute an increase of 23 million
24 dollars in debt, an increase in the debt to the
25 Cross-Cascades project.

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1 Is what's stated here consistent with
2 your understanding that in your existing debt, at
3 least at this time, is 23 million dollars associated
4 with the Cross-Cascades project?

5 A. I don't recall the exact number. I
6 recall 21.5 million associated with Cross-Cascades,
7 but, subject to check, I'd like to double check that
8 number.

9 Q. Certainly. Now, with regard to the
10 rest of the paragraph, it points out that there's a
11 high debt equity, even at 48 million, as a result of
12 the dividend pay-out policy which has paid out nearly
13 100 percent of net income in recent years.

14 Do you see that language?

15 A. I do, but I would ask that this
16 question be directed to Howard Fox.

17 Q. I will revisit it with him, then.

18 I would direct your attention to
19 Page 3, the capital budget for 1998 set forward in
20 the middle of the page, and it has 18 million
21 dollars associated with Bayview. And is that
22 consistent with your understanding?

23 A. I have no personal knowledge of that
24 number.

25 Q. I'd like to direct your attention --

00652

1 and if this is better directed to Mr. Fox, that would
2 be fine -- to Page 4, the dividend policy paragraph.

3 The language: Now that Olympic is
4 investing significant dollars in Bayview, it must be
5 investing more in Cross-Cascade, 100 percent
6 dividend pay-out may no longer be prudent. Do you
7 see that language?

8 A. Yes.

9 Q. Is that better directed to Mr. Fox --

10 A. That's better directed to Mr. Fox.

11 Q. -- too? I would like to direct your
12 attention to Exhibit 24. On Page 2 under Arco
13 Products Company, the statement: Primary value comes
14 from having a continuing influence in the product
15 specifications for pipeline movements as Arco's specs
16 are and may continue to be different than other
17 shippers'.

18 Does Arco have a particular influence
19 on Olympic in the way it qualifies its product
20 specifications?

21 A. None that I'm aware of.

22 Q. You mention that the line is currently
23 operating safely. Has it been operating safely in
24 the past, in your judgment?

25 A. Since we came here -- since I came here

00653

1 in the summer of 2000, I made sure that we did an
2 extensive review of the entire pipeline system, its
3 management systems, its pressure-worthiness. And I
4 will just state categorically that we will not
5 operate an unsafe pipeline. And so the 16-inch
6 pipeline required huge investments in order to get it
7 worthy for restart.

8 And it was not until I was assured
9 that it was worthy and would operate safely before I
10 would restart that pipeline.

11 Q. Did your safety audit reveal that the
12 line had been previously operated unsafely?

13 A. Not to my knowledge.

14 Q. So it's your testimony that the line --
15 based on your review of the safety audit, in your
16 judgment was the line operated safely in the past?

17 A. I really don't have a judgment on that
18 particular issue. I mean, my focus was to make sure
19 that BP Pipelines could operate it safely and to
20 institute the procedures and protocols necessary to
21 do that. I was not looking back at all in that
22 process.

23 Q. Usually if you make a lot of changes,
24 it suggests that you felt that something was wrong.
25 My question to you is, were the changes necessary for

00654

1 safety that you made?

2 A. The changes that we made helped to
3 assure me that, in fact, we could operate this line
4 safely. And so we used BP's standards in order to do
5 that.

6 Q. And do you have any judgment whatsoever
7 with regard to whether the prior operator operated
8 within industry standards?

9 A. I have no opinion on that. I have not
10 looked at that.

11 Q. Do you believe that Olympic or its
12 operator was responsible for Whatcom Creek?

13 A. Of course, this issue is under
14 extensive litigation, but there has been no proof of
15 fault or negligence that I'm aware of.

16 From my standpoint, Whatcom Creek
17 occurred because of a piece of pipe that was dented
18 27 times by a backhoe that did not make a one-call.

19 Q. So in your judgment, neither -- so far
20 as you're aware, neither Olympic nor its operator was
21 responsible for the tragedy of Whatcom Creek?

22 A. That's a matter of litigation, and that
23 will be addressed in the normal course of that.

24 Q. I'm asking for your judgment, if you
25 have one.

00655

1 A. I have no judgment.

2 Q. I would direct your attention to
3 Exhibit 41, Page 7. It has a currently incurred cost
4 of 32 million.

5 That was the presentation to the board
6 on January 11th, on Page 7, under Whatcom Creek
7 Liability: Currently, incurred costs, 32 million;
8 claims recovered, 10 million.

9 Do you see that?

10 A. I do, yes.

11 Q. So at least as of that date, Whatcom
12 Creek had a 20-million-dollar impact on the cash flow
13 of the company; is that correct?

14 A. I think in discussing cash flow
15 impacts, it would be best for Howard Fox to address
16 those issues.

17 Q. Was that your understanding of the
18 board presentation at the time?

19 A. My understanding of this board
20 presentation was a presentation on insurance. And
21 the coverages associated with insurance.

22 Q. And what's your understanding of how
23 many of the Whatcom Creek expenses as a percentage
24 will be recovered through insurance, eventually?

25 A. My understanding is originally there

00656

1 was a very optimistic hope of 60 percent recoverable.
2 I have not seen that, even close to that,
3 materializing.

4 Q. I would direct your attention to
5 Exhibit 43, the criminal indictment of Olympic.

6 MR. MARSHALL: At this time, I would
7 just like to register an objection so I don't waive
8 it as to including this. I think it goes beyond the
9 interim case. I think it gets into legal issues in
10 other proceedings that are not the purpose of this
11 interim matter. We're not asking for Whatcom Creek
12 expenses, we're not asking for the associated
13 insurance recovery amounts.

14 Just so that we can avoid having to go
15 down a path that isn't relevant, if we start down
16 this path we could be here a whole week.

17 JUDGE WALLIS: Mr. Brena?

18 MR. BRENA: Well, not on my account, we
19 won't be here all week. But they are including these
20 expenses.

21 They have indicated that they are in a
22 deteriorating financial position, and we're just
23 exploring why. They've indicated that they're after
24 a signal from this Commission for a couple million
25 dollars, and I am just going through one at a time

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1 and showing that they have wasted or dividended out
2 144 million dollars.

3 JUDGE WALLIS: Does staff wish to be
4 heard on this?

5 MR. TROTTER: Well, Your Honor, there
6 has been quite a bit of discussion about the Whatcom
7 Creek incident, and I think this is part of that
8 package. But if it's going to be extensive
9 discussion of legal theories, I'm not sure that's
10 going to get us anywhere.

11 Certainly this exhibit pertains to that
12 issue.

13 MR. BRENA: I have less than two
14 minutes of questions for this witness on this
15 exhibit.

16 MR. MARSHALL: I just don't want to
17 waive an objection to the indictment. I haven't even
18 reviewed this to find out whether it's complete,
19 whether it's -- other issues are out there.

20 I think, again, we're starting to go
21 down a path on prudency issues which the Evista case
22 said are better handled in a general rate case
23 context.

24 MR. BRENA: I would like to be heard on
25 that last argument.

00658

1 JUDGE WALLIS: In terms of this
2 particular document, I think we've already opened the
3 door to the extent that the existence of the Whatcom
4 Creek incident is a matter of record. And I think it
5 is important to recognize that it may not be one of
6 the principal issues in the proceeding, but on the
7 representation that the use of this document will be
8 relatively constrained and that this line of
9 questioning will be constrained, in order to allow
10 closure, we'll allow it to proceed.

11 Now, I do want to note that oral
12 objections to exhibits may be made; we specifically
13 indicated that, as to the exhibits that were received
14 on Thursday, that objections could be made this
15 morning as well as -- well, actually, I think we
16 provided a specific time for objections for documents
17 that were received today for cross-examination on the
18 rebuttal.

19 So I'm not sure, Mr. Marshall, the
20 nature of your understanding.

21 MR. MARSHALL: The nature of my
22 understanding is that we specifically said before
23 lunch that the newspaper article and this particular
24 exhibit, which is an indictment, shouldn't be
25 admissible -- certainly it shouldn't be admissible to

00659

1 prove any of the -- the truth of the matters
2 asserted.

3 It might be admissible to show notice
4 that there is a lawsuit out there, and I guess for
5 that very limited purpose, that's fine. But that
6 could be done without including this as an exhibit.

7 I think the only effort here is to try
8 to say, well, there's a lot of charges out here. But
9 charges that are unanswered present problems, and we
10 believe that they shouldn't be introduced as an
11 exhibit, it shouldn't be discussed. I think the
12 witness can be asked are there proceedings going on
13 and what are the general nature of the proceedings,
14 but just to have a bunch of allegations, unproven,
15 even in our system of criminal law the people here
16 are accorded the presumption of innocence.

17 So I don't know where this is going,
18 but I do have to object before we get into any kind
19 of waiver on this, and also on newspaper articles and
20 some other things they have, on the basis that those
21 aren't admissible; no foundation for those as well.

22 JUDGE WALLIS: Very well. I would
23 encourage you, if you have an objection and if it's
24 timely, state it.

25 Mr. Brena?

00660

1 MR. BRENA: Are you asking for
2 argument?

3 JUDGE WALLIS: Do you have a response
4 to the additional comments that Mr. Marshall made?

5 MR. BRENA: Well, I do. My
6 understanding was the same as Your Honor's and I have
7 very limited questions. And the time for objections
8 to the admissibility of a document were this morning
9 and/or when it's offered into evidence.

10 And I would like to be able to have a
11 certain continuity of flow with my cross-examination
12 and not take up objections a document at a time in
13 the middle of my cross.

14 JUDGE WALLIS: We will reiterate our
15 response to the objection and will allow the exhibit
16 to be -- allow the questioning to continue.

17 BY MR. BRENA:

18 Q. Have you had an opportunity to review
19 this document?

20 A. No, I have not. I have not been
21 involved in any of the legal proceedings associated
22 with Whatcom Creek.

23 Q. You have never looked at this document
24 before?

25 A. I have seen the cover page, but I have

00661

1 never read through the document.

2 Q. Okay. I'd like to direct you to
3 Exhibit 44. Do you know how many -- well, allow me
4 an opportunity to let you get to it, sorry.

5 A. Okay.

6 Q. How many civil lawsuits is Olympic
7 participating in as a result of Whatcom Creek?

8 A. I don't personally know the answer to
9 that specific question regarding civil lawsuits. The
10 response on the interrogatory was Olympic is
11 currently involved in approximately 20 lawsuits.

12 Q. How much do they cost you? How much
13 have they cost you so far?

14 A. To be honest, I'm not familiar with
15 that particular number. And I'm not sure it's
16 germane to this hearing because we are not asking for
17 anything regarding legal expenses associated with
18 Whatcom Creek.

19 Q. Mr. Batch, we'll all get out of here
20 earlier if -- can I direct your attention to
21 Exhibit 40, Page 17. And I apologize --

22 COMMISSIONER HEMSTAD: What page?

23 MR. BRENA: Page 17 this is the last
24 page. This is the way it came to us, so if you can't
25 read it, I understand.

00662

1 THE WITNESS: I'm afraid my glasses
2 don't quite work on this size print.

3 BY MR. BRENA:

4 Q. Well, you can just accept the numbers I
5 suggest, subject to check, I suppose.

6 Well, first, I'd like to start in the
7 left-hand column. It has a line number, and then
8 next to it it has the caption Project Driver, and
9 the project driver on everything on this page is WC.
10 WC is a project driver meaning Whatcom Creek;
11 correct?

12 And if you need to check that code you
13 can look at the first page in the upper left-hand
14 corner on Page 17, "WC equals Whatcom Creek."

15 A. Subject to check, I'll accept that.

16 Q. Okay. Now looking at the line 2000
17 Spending. What is the total amount that Olympic
18 spent in the year 2000 associated with Whatcom Creek?

19 CHAIRWOMAN SHOWALTER: Mr. Brena, can
20 you tell us on the left-hand column what line number
21 it is? Is it 249, 250? Am I on the right page?

22 MR. BRENA: I'm sorry. In the upper
23 left-hand corner it says Page 17/17, and --

24 CHAIRWOMAN SHOWALTER: The first column
25 has row numbers.

00663

1 MR. BRENA: Okay. Row number, and then
2 project driver? And then project driver is WC, and
3 then if you follow that across to column Q, 2000
4 Spending --

5 CHAIRWOMAN SHOWALTER: Thank you.

6 BY MR. BRENA:

7 Q. -- about the middle of the page. And
8 if you go down to the subtotal, WC line, how much did
9 Olympic pay for Whatcom Creek in 2000, according to
10 this exhibit?

11 A. According to the exhibit, it says --
12 and I can't make it totally -- 15, and I'm not sure
13 what those last three digits are, 880 or? I can't
14 tell.

15 Q. Subject to check, 15.88 or
16 approximately 16 million dollars?

17 A. Yes. Subject to check, that's what it
18 says.

19 Q. Now of that 16 million dollars, how
20 much was the public affairs? Excuse me, I withdraw
21 the question.

22 What was the biggest cost item
23 relating to the Whatcom Creek expenses, and what was
24 the amount of that item? It's the second line from
25 the top, 249.

00664

1 A. Legal? Legal.

2 Q. And how much did you pay in legal fees
3 for Whatcom Creek related litigation in that year?

4 A. It says 10, and I can't make out the
5 three digits. 10.67, subject to check.

6 Q. What's the second biggest cost item in
7 the year 2000 associated with Whatcom Creek?

8 A. Public affairs.

9 Q. And how much did you spend in public
10 affairs?

11 A. Olympic spent 1.9, or about 2 million
12 dollars. Now I might also point out that these are
13 budgeted numbers. These are not actual numbers, to
14 my knowledge or understanding.

15 Q. Now for 2000, it says "spending"; for
16 2001, it says "potential spending." Does that
17 suggest that the 2000 are actual but the 2001 are
18 projected?

19 A. Subject to check. I'd like to confirm
20 that, in fact, these numbers were actually spent and
21 not just budgeted.

22 Q. And I direct you to -- this is a
23 February 13th report on Page 12, up at the top. So
24 it would be a month and a half after the end of the
25 year 2000. Does that assist?

00665

1 A. Again, I'd like to just check that
2 number.

3 Q. Sure, that's fine. How much did you
4 expect to spend on Whatcom Creek according to this
5 report in the year 2001, total amount? That is
6 indicated in Column V.

7 A. 1.5 million.

8 Q. The total amount?

9 A. Oh, I'm sorry. 18 million.

10 Q. And in that 18 million, 7.25 was legal;
11 1.5 million was public affairs, and 8 million was
12 NRDA damage settlement. Correct?

13 A. Again, those are projections and
14 estimates. That's what the numbers say on the sheet.

15 Q. How much did you pay in 2001 for legal
16 and associated with Whatcom Creek?

17 A. I don't have direct knowledge of it.

18 Q. How much has Olympic paid in fines
19 associated with the Whatcom Creek, in total?

20 A. I don't have that number off the top of
21 my head either.

22 Q. Do you --

23 A. Again, I have not been involved in kind
24 of the legal proceedings or the issues around what
25 happened at Whatcom Creek. My focus has been

00666

1 forward-looking, to make sure that we could operate a
2 safe pipeline for the citizens of Washington, and
3 that's where my focus has stayed.

4 Q. Mr. Batch, do you have my question in
5 mind?

6 A. No. Please restate it.

7 Q. I was just asking how much you've paid
8 in fines.

9 A. I don't know.

10 MR. MARSHALL: That's asked and
11 answered. He said he didn't know.

12 BY MR. BRENA:

13 Q. I would like to save the time of oral
14 motions to strike, if you could answer my question
15 please. Only the NRDA damage settlement, what is
16 that.

17 A. Those are projects associated with the
18 restoration of Whatcom Creek and other projects
19 associated with repairing the environment following
20 the incident.

21 Q. May I ask Mr. Fox how many total fines
22 the company has paid? Would he be the appropriate
23 person to direct that to?

24 A. I'm not exactly sure. It might be
25 better directed to one of our legal people. Howard

00667

1 might have a knowledge of that, but I'm not totally
2 sure.

3 Q. Do you know if it's over 10 million
4 dollars?

5 A. I wouldn't speculate.

6 Q. So you have no sense of it?

7 A. No.

8 MR. MARSHALL: Mr. Batch can check with
9 Mr. Beaver right now if you would like an answer to
10 that question at this point, or we can wait until
11 later.

12 JUDGE WALLIS: Very well.

13 MR. MARSHALL: Go ahead. This is on
14 the issue of the amount of fines; correct?

15 JUDGE WALLIS: Yes.

16 MR. MARSHALL: Limit it to that.

17 JUDGE WALLIS: My preference was -- I'm
18 sorry, I thought this would be more abbreviated or,
19 perhaps it's concluded now.

20 MR. MARSHALL: It is, it's concluded.

21 JUDGE WALLIS: It is abbreviated. Is
22 the witness able to respond?

23 THE WITNESS: Yes, Your Honor.

24 JUDGE WALLIS: Please do.

25 A. We have not paid anything in fines to

00668

1 date.

2 BY MR. BRENA:

3 Q. Do you know how many fines have been
4 assessed?

5 A. I would need to confer with an
6 attorney.

7 JUDGE WALLIS: This might be a good
8 opportunity to address the question of "subject to
9 check" and how we relate to that. I trust that the
10 witness and/or Counsel are keeping a record of those
11 so that any corrections that need to be made may be
12 made in a timely way.

13 The Commission had no request for a
14 daily or other expedited transcript and has not made
15 provision for one. On Wednesday, we will be ordering
16 an expedite but not a daily in order to make sure
17 that Commissioner Hemstad is able to get up to date.
18 That is, in the event that we need to go on
19 Wednesday, which is uncertain at this point.

20 So I would like to be assured that
21 there is a record being made and that the response
22 may be made prior to the finalization of preparations
23 for oral argument so that everyone has the benefit of
24 the knowledge in a case that there may be corrections
25 or information may later be provided.

00669

1 MR. MARSHALL: I think, collectively,
2 we may have kept track of all of those, but I'm not
3 positive. We'll attempt to make a complete record of
4 everything going forward and reconstruct what we
5 understand to date.

6 BY MR. BRENA:

7 Q. Can I direct your attention to
8 Exhibit 45, please. Just tell me when you're
9 prepared, Mr. Batch.

10 A. Yes. I'm sorry.

11 Q. How much in total has Olympic paid
12 BP Pipeline in 2000 and 2001 through October?

13 A. I've been informed that this
14 interrogatory is in error and these are not the exact
15 numbers.

16 Q. Do you have a corrected one?

17 A. Yes. Yes, I do.

18 Q. I would like to review it, please.

19 MR. RYAN: (Handing document.)

20 BY MR. BRENA:

21 Q. Is this corrected one, is this through
22 2001?

23 A. Yes, I believe so.

24 MR. BRENA: I'm happy to introduce them
25 both for the Commission's consideration. There is an

00670

1 ongoing obligation to provide discovery, and being
2 handed it when I use it in the hearing room wasn't my
3 idea of fulfilling the duty to continue to update
4 discovery.

5 But I'm -- do you have copies of it for
6 everyone?

7 JUDGE WALLIS: The document is
8 relatively short --

9 MR. BRENA: It's short.

10 JUDGE WALLIS: -- and it may be that
11 the witness could read updated numbers. Let me
12 clarify whether this is a correction of erroneous
13 information or whether it's the update of prior
14 information.

15 MR. MARSHALL: I'm not sure. It's
16 certainly an update; it's a correction as well.

17 BY MR. BRENA:

18 Q. For 2000, the management fee went from
19 722,000 down to 467,000 --

20 CHAIRWOMAN SHOWALTER: Why don't we get
21 the witness to...

22 JUDGE WALLIS: Yes. Let's have the
23 witness read in the appropriate numbers, and I take
24 it that -- well, why don't we let the witness explain
25 which columns are changed, and then read in the

00671

1 correct numbers.

2 A. Yes. Going down the left-hand side,
3 the items or the categories are the same, with the
4 exception of the third category down where it says
5 Transition Cost Management Fees. This is just
6 transition costs.

7 CHAIRWOMAN SHOWALTER: Also can you
8 tell me what "AP" stands for?

9 A. I will need to check with our counsel.

10 MR. BRENA: Accounts payable?

11 MR. MARSHALL: Yes.

12 BY MR. BRENA:

13 Q. I'm sorry, Mr. Batch. Under your year
14 2000 column as corrected, what is the management fee,
15 the total?

16 A. The management fee for 2000 is
17 \$467,999.98.

18 Q. And the total?

19 A. Total for 2000 is 10,139,788.19.

20 Q. And what's the new total for 2001?

21 A. 2001 is \$10,316,656.39.

22 Q. Okay.

23 COMMISSIONER HEMSTAD: I'm sorry, I
24 don't understand those numbers. I take it, then,
25 that the 2001 column, some of the -- one or more of

00672

1 the dollar amounts before the total changed?

2 A. Yes, that's correct.

3 COMMISSIONER HEMSTAD: And what
4 changed?

5 JUDGE WALLIS: Perhaps if the witness
6 could just start with the 2000 column and identify
7 whether there are any changes other than the one he's
8 identified. And then in the 2001 column, read
9 numbers for the year-ending, or for the year.

10 A. Yes.

11 JUDGE WALLIS: Mr. Batch?

12 A. Under accounts payable items, 2000 is
13 \$7,603,388.75. Under payroll paid by BP for Olympic,
14 \$2,068,399.46.

15 There is no transition cost line item
16 for 2000 because those are included in the accounts
17 payable line at the top. So that's blank or zero.
18 For management fees, it's \$467,999.98.

19 For 2001, again, from the top,
20 \$1,797,566.93. Payroll, \$5,392,411.22. Transition
21 cost, \$2,204,349.12. And management fees,
22 \$922.329.12.

23 MR. BRENA: And could I ask to be
24 provided a copy of that as well? Not necessarily
25 this moment, but just in general.

00673

1 JUDGE WALLIS: And could copies be
2 provided to the Commission as well, please.
3 Let's call that Exhibit 45, revised.
4 (Exhibit 45-Revised was marked.)
5 MR. BRENA: Are we ready to proceed,
6 Your Honor.
7 JUDGE WALLIS: Yes.
8 BY MR. BRENA:
9 Q. Now this is amounts paid to BP only;
10 correct?
11 A. These are amounts paid to BP Pipelines,
12 the operator of Olympic, correct.
13 Q. In the year 2000, how many months of
14 the year did BP Pipelines operate this line?
15 A. Since July the 1st, 2000. So that's
16 six months.
17 Q. I'd like to direct you to
18 Exhibit No. 28. Do you have it?
19 A. I do now, yes.
20 Q. Did the company in fact fund this 1.3
21 million dollars in changing over the employees to the
22 BP plan?
23 A. What section are you referring to?
24 Q. The resolution by the board on Page 1.
25 A. That was the authorized level of

00674

1 spending. I would defer to Mr. Howard Fox on the
2 actual number.

3 Q. I'd like to direct your attention to
4 Exhibit 29, Page 1. This is --

5 A. Yes.

6 Q. This is a goal of the public affairs
7 strategy, and what is the number one goal that's
8 listed?

9 A. "Protect and enhance the reputation of
10 BP, OPL's new operator."

11 Q. I'd like to direct your attention to
12 Page 2 on the TFI hydrotest issue.

13 A. Can I comment on that last question?

14 Q. I'm sure you'll have every opportunity
15 to on redirect.

16 MR. MARSHALL: Usually when a portion
17 of a document is read into evidence, all related
18 portions are also to be read in at that time.

19 We could do it now, or we could do it
20 on redirect.

21 JUDGE WALLIS: My suggestion would be,
22 Mr. Marshall, that it might be better to take it on
23 redirect, not knowing what area this might open or
24 how extensive the comments might be.

25 You'll have an opportunity to consult

00675

1 with your witness and do the clarifications that you
2 believe would be necessary.

3 MR. MARSHALL: That would be fine, Your
4 Honor.

5 BY MR. BRENA:

6 Q. I'd like to direct you to Page 3, the
7 second bullet, the third dash: containing the call
8 for hydrotesting to primarily Congressman Inslee and
9 mayors of a few east side King County cities and thus
10 lending support to OPS to deny the request for the
11 hydrostatic -- hydrotesting.

12 Would you explain, please, why, or if,
13 Olympic was intending to minimize hydrotesting
14 through its public relations effort?

15 A. No, not at all. It was our intent to
16 listen to public officials. Public officials and the
17 community were very important to us to understand
18 what kind of criteria and what kind of safety they
19 were demanding and they needed to ensure them that
20 this pipeline could operate safely.

21 Congressman Inslee made a request of
22 Olympic Pipeline that we voluntarily test the Allen
23 to Renton 6-inch pipeline, and we fully agreed with
24 Mr. Inslee that it was necessary to do that
25 hydrotest to ensure that this pipeline could be

00676

1 operated safely and did so.

2 In fact, in the process of doing so,
3 we found a seam failure that burst upon
4 hydrotesting. So, in retrospect, it was an
5 excellent decision that we made to go ahead and
6 voluntarily doing that.

7 Q. So when this memo says "containing the
8 call for hydrotesting," what it means is listening to
9 key decision-makers and implementing hydrotesting?

10 A. I am not sure of the context in these
11 minutes of that word.

12 Q. How much have you spent in the last two
13 years on your public relations budget?

14 A. Subject to check, I know we budgeted
15 about a million and a half dollars.

16 Q. For this year? For next year?

17 A. No. Between 2000 and 2001. So I don't
18 have the latest numbers on our spending.

19 Q. We can go back and do it, but on
20 Exhibit 40 it identified -- you identified roughly 2
21 million dollars in spending for 2000, and there was
22 1.5 million budgeted for 2001?

23 A. Yeah. But I believe those were Whatcom
24 Creek public affairs expenses, which we're not
25 considering in this proceeding.

00677

1 Q. No, I'm just wondering how much you
2 spent in total on public relations in the last two
3 years? Four and a half million dollars?

4 A. I don't know the exact number, but --
5 and I wouldn't characterize it as public relations.
6 I would characterize it as being open with the public
7 and the community on what our repair program looked
8 like.

9 Q. Exhibit 30, Page 3, 2001 budget for BP,
10 OPL, GPA. And then Page 4, the 2000 expenditures.
11 When it says "GPA," what does that
12 mean?

13 A. Government and Public Affairs.

14 Q. How much does this indicate that you
15 spent in the year 2000 on government and public
16 affairs?

17 A. Well, let me just clarify. Government
18 and public affairs in the context of the spending
19 relates to Olympic's need to make sure that we
20 communicate with the public, that we communicate the
21 safety improvements that we're making on the line.
22 And it includes correspondences, communications,
23 community meetings, etc.

24 So I wanted to just preface, you know,
25 what the context of that effort is. And then,

00678

1 please ask your question again.

2 Q. How much did you spend on government
3 and public affairs in the year 2000?

4 A. A little under 2 million dollars.

5 Q. How much did you budget for 2001?

6 A. About a million and a half dollars.

7 Q. Did you spend it?

8 A. I don't think we spent anywhere near
9 1.5 million, but I have not seen the final year
10 numbers yet.

11 Q. Exhibit 31. Page 4, the bullet item
12 Reduction in Pipeline Inspection Fees from Original
13 Proposal. Would you explain why this is a government
14 public relations success?

15 A. This was an opportunity -- the State of
16 Washington was implementing a new program regarding
17 inspection of interstate pipeline companies. And we
18 had a very good dialogue with the WUTC on the
19 appropriateness of those fees and the fairness of
20 those fees relating to interstate and intrastate
21 pipelines.

22 And I believe, through that dialogue
23 and discussion and negotiation, we were able to make
24 a few points to recognize that there needed to be a
25 little bit of equity in the pipeline industry. And

00679

1 so numbers that were not fully fleshed out initially
2 were come to by consensus, and we were very
3 comfortable with the process that we went through
4 there.

5 Q. I direct you to Exhibit 38, please.
6 Page 3 under the column WUTC and FERC Tariff
7 Requests.

8 Do you see the column?

9 A. No, not immediately.

10 Q. Exhibit 38, Page 3 of 6?

11 A. Yes.

12 Q. The middle column?

13 CHAIRWOMAN SHOWALTER: I think it's a
14 row.

15 MR. BRENA: Row, sorry. That explains
16 it.

17 BY MR. BRENA:

18 Q. The row says WUTC and FERC Tariff
19 Requests, and the column says Cost of Not Doing Item.

20 Are you with me?

21 A. I don't see that column on my Page 3 of
22 this exhibit.

23 Q. Are you on Exhibit 38?

24 A. My exhibit is not labeled. Is it this
25 one (indicating)?

00680

1 MR. BRENA: Steve is it holding it.
2 CHAIRWOMAN SHOWALTER: You can identify
3 at the top, it says Olympic Pipeline Company,
4 Government and Public Affairs 2002 Matrix.
5 THE WITNESS: Hmm, okay. And the first
6 line, I have Quick Response Time to Information
7 Requests.
8 MR. BRENA: You have the wrong exhibit.
9 JUDGE WALLIS: Let's be off the record,
10 please.
11 (Discussion off the record.)
12 JUDGE WALLIS: Let's be back on the
13 record.
14 BY MR. BRENA:
15 Q. On Page 3, the row WUTC and FERC Tariff
16 Request re government and public affairs matrix for
17 2002?
18 A. Page labeled 3 of 6?
19 Q. Yes.
20 A. Mine is labeled 1, Page 1.
21 JUDGE WALLIS: Let's be off the record.
22 (Brief pause in the proceedings.)
23 JUDGE WALLIS: All right. Let's be
24 back on the record. I believe that everyone is
25 looking at the same document now.

00681

1 Mr. Brena, what is your question?

2 BY MR. BRENA:

3 Q. Under the WUTC and FERC Tariff
4 Requests, there is currently budgeted \$100,000 of
5 staff time and expenses; is that correct?

6 A. Subject to check, I'll say yes.

7 Q. And one of the benefits of the
8 measurement is: Ability to gain a leg up for future
9 adjustments or filings.

10 Would you please explain to this
11 Commission why you think you'll have a leg up if you
12 spend this \$100,000?

13 A. Frankly, I did not generate this chart,
14 and I'm not sure that I fully agree with that
15 statement on the chart.

16 Q. The cost of not doing the item:
17 Greater scrutiny about what OPL is spending resources
18 on. Do you see that bullet item?

19 A. Again, I did not produce this document,
20 and I won't speculate on what it was intended to
21 mean.

22 Q. I'd like to direct your attention to
23 Exhibit 35. Page 3.

24 Is this a chart of what you expect
25 2000 and projected 2001, one-time expenses to be for

00682

1 Olympic?

2 A. I would need -- I believe these are --
3 this page, Page 3, is it?

4 Q. Yes.

5 A. Detailed Olympic 2000 Capital Carryover
6 Projects for One-Time Projects?

7 Q. Olympic 2001 one-time expense projects.

8 A. I'm sorry. Okay. One-time expense.

9 This is an estimate for the board on
10 those projects, and a projection, early projection
11 of what 2002 might look like. For those -- again,
12 for those one-time expense projects.

13 Q. And this was a presentation prepared
14 for the board November 12th, 2001?

15 A. Yes. Subject to check.

16 Q. And under 2001 Original Budget For
17 One-time Expenses, under Whatcom Creek would you tell
18 me how much in one-time expenses relating to Whatcom
19 Creek Olympic incurred, according to this chart?

20 A. According to this chart, Whatcom Creek
21 is 18,040,000, and the sub number there is Whatcom
22 Creek recognized 7,216,000.

23 Q. I'd like to direct you to Page 4 of 6.
24 This is a capital projects spending for the first two
25 quarters and expected spending for the second two

00683

1 quarters.
2 How much --
3 A. Yes.
4 Q. How much did you spend on capital
5 projects? How much did Olympic spend on capital
6 projects in 2001?
7 A. According to the sheet, which was an
8 estimate, \$24,384,000 total expected spending.
9 Q. Do you know what your total net plant
10 and service is for Olympic?
11 A. I would defer that question to George
12 Schink.
13 Q. If I were to say between 60 and 70
14 million dollars, exclusive of CWIP, would you have
15 any reason to agree or --
16 A. I would not speculate.
17 Q. -- disagree?
18 A. I don't know the answer to that.
19 Q. I'd like to direct your attention to
20 Exhibit 18. Page 5 of 15. Are you prepared?
21 A. I have it.
22 Q. This is a set of audited financials for
23 1997 and 1998, performed by Arthur Andersen; is that
24 correct?
25 A. That is what it says on the sheet, yes.

00684

1 Q. And this letter, are you familiar with
2 different types of audits?

3 A. No, I'm not. In fact, I would ask that
4 this line of questioning go to Howard Fox.

5 Q. So far as you're aware, do you know the
6 difference between a qualified and unqualified
7 opinion?

8 A. I would be speculating on the legal or
9 accounting answer.

10 Q. Exhibit 19. How long have you been
11 president, Mr. Batch?

12 A. Since September -- actually, August of
13 2000.

14 Q. Do you have audited financial books
15 since you have been president?

16 A. I have not focused my attention on the
17 financials from an audit standpoint.

18 My focus has primarily been in setting
19 strategy for the company, providing leadership for
20 the company, and, for the last 16 months, focused on
21 making sure that Olympic can be operated safely.
22 And reinforce and reassure the public that, in fact,
23 we're making the kind of investments necessary
24 for -- in order for that to happen.

25 Q. Do you have my question in mind?

00685

1 A. I do.

2 Q. Since you've been president, do you
3 have an audited set of books?

4 A. My understanding is that the last
5 audited set of books I believe were 1998, subject to
6 check.

7 Q. And that was the audit that I just
8 showed you in Exhibit 18; is that correct?

9 MR. MARSHALL: The witness said he's
10 not familiar with that exhibit. I don't think he has
11 the foundation to say.

12 MR. BRENA: Well, he can say he doesn't
13 know the answer.

14 THE WITNESS: I did.

15 MR. MARSHALL: He already did.

16 MR. BRENA: Oh, okay. May I suggest
17 this is a logical time to break for the afternoon? I
18 don't know what your custom is.

19 JUDGE WALLIS: Very well. Let's take a
20 15-minute break at this time and be off the record,
21 please.

22 (Recess was taken.)

23 JUDGE WALLIS: Let's be back on the
24 record, please, following a brief afternoon recess.

25 Mr. Brena, please continue.

00686

1 MR. BRENA: Thank you, Your Honor.

2 BY MR. BRENA:

3 Q. Mr. Batch, are you familiar with the
4 different ways that a pipeline company has to fund
5 capital expenditures?

6 A. I'm primarily familiar with the
7 approach with regards to notes and debt, because
8 primarily that's what Olympic has pursued.

9 Q. A pipeline company can fund capital
10 expenditures out of its cash flow, can it not?

11 A. I would defer these questions to Howard
12 Fox.

13 Q. Do you know the answer to my question?

14 A. I would -- I am somewhat sure of the
15 answer, but I'm not exactly sure and I don't want to
16 misstate the answer.

17 Q. You don't know whether or not a company
18 can fund a capital expenditure out of its own cash
19 flow?

20 MR. MARSHALL: Is this a hypothetical
21 company, or is this Olympic that you're referring to?

22 MR. BRENA: A hypothetical. This is a
23 general question.

24 MR. MARSHALL: Well, a hypothetical
25 company with enough revenues to be able to do that?

00687

1 I would object that the hypothetical is --

2 JUDGE WALLIS: Mr. Brena, I think the
3 witness has indicated that he's not comfortable
4 responding, and perhaps this would be a question
5 that's deferred.

6 MR. MARSHALL: And he may not have
7 understood what the context was.

8 BY MR. BRENA:

9 Q. Do you know how the Bayview project was
10 funded?

11 A. Not specifically, no. I wasn't here
12 when all of that took place.

13 Q. In our earlier questions and answers, I
14 think you agreed that it was funded with debt in
15 part. Is that correct?

16 A. That's my understanding, yes.

17 Q. The total improvements I think you
18 agreed were 24 million, in that case?

19 A. I believe, subject to check, yes.

20 Q. And there was a three-cent impact on
21 rates as a result of that funding mechanism; is that
22 correct?

23 A. There was a three-cent increase on
24 rates as a result of a rate hearing that set the
25 rates at three cents, that no one objected to at the

00688

1 time the rates were set.

2 And so that's what I recall.

3 Q. Okay. Three cents at the time was less
4 than a ten percent impact to the ratepayer from
5 funding a 24-million-dollar project. Is that
6 accurate?

7 A. I'm sorry, can you say that again?

8 Q. The three-cent increase was less than a
9 ten percent increase in the rates at the time. Is
10 that correct?

11 A. I can't -- I don't know if that's
12 correct or not.

13 Q. Do you know your system-wide average
14 rates today?

15 A. Not off the top of my head, no.

16 Q. Do you know how much you're asking for
17 in cents to fund the 24 million dollars in capital
18 expenditures for 2002 today?

19 A. Do you mean, what the 8.74 million
20 dollars equates to in rates, as a rate increase?

21 Q. Yes.

22 A. I'm somewhat familiar with those, but I
23 would need to reference the tariffs, the current
24 tariffs, as well as the updated tariffs.

25 Q. You built 24 million dollars in capital

00689

1 improvements, and you added three cents on rates?

2 A. Mm-hmm.

3 Q. Today in this interim hearing, you're
4 trying to fund 24 million dollars in capital
5 improvements, and you're after a 62 percent rate
6 increase. Is that accurately stated?

7 A. We're asking for 8.-some odd million
8 dollars to help fund our capital improvements for
9 2002 as well as to help pay interest on debt, as well
10 as other expenditures.

11 In fact, we probably need a lot more
12 than 8.74 million, but that's what we're asking for.

13 Q. What's changed since Bayview? You
14 added three cents to rates, and you put in 24 million
15 dollars in capital improvements. And you're after 24
16 million dollars in capital improvements now, but
17 you're after six times that amount?

18 MR. MARSHALL: I would object at this
19 time. The Bayview tariff was a general rate case
20 tariff; this is an interim rate case, and the
21 standards --

22 MR. BRENA: I withdraw the question.

23 MR. MARSHALL: -- are different. And I
24 think that it's intentionally argumentative.

25 JUDGE WALLIS: Mr. Brena withdraws his

00690

1 question; is that correct?

2 MR. BRENA: Yes.

3 BY MR. BRENA:

4 Q. When the Cross-Cascades project was
5 funded at 21 and a half million dollars, was there
6 any rate impact?

7 A. I'm not aware. I don't know the answer
8 to that question. I don't believe so, but I'd like
9 to just check that fact.

10 Q. Now, in total, you've said that you
11 need 24 million dollars to make the 2002
12 expenditures; is that correct?

13 MR. MARSHALL: Asked and answered.
14 This is in all the testimony. It's been asked
15 several times already today.

16 MR. BRENA: It's just a yes or no
17 question, Your Honor.

18 JUDGE WALLIS: Mr. Brena, I tend to
19 agree with Mr. Marshall that I seem to recall that
20 the question or very close variants being asked
21 several times.

22 MR. BRENA: I agree it was asked; I
23 disagree it was answered. But I will move on.

24 BY MR. BRENA:

25 Q. I'd like to direct you to Exhibit 27,

00691

1 page 2 of 5, the column October. What was Olympic's
2 net income in October?
3 A. Is that before tax or after tax?
4 Q. After.
5 A. It's \$834,497.37, but a good portion of
6 this has to do with the FERC tariff subject to refund
7 that we received in September.
8 Q. And how much interest, according to
9 this financial statement, was paid to derive that net
10 income number?
11 A. I'm sorry, which line are you looking
12 at?
13 Q. Interest expense on operating costs,
14 October, 01.
15 A. \$750,479.83.
16 Q. Does that reflect interest on all debt?
17 A. Yes.
18 Q. So after paying for all your debt, 144
19 million dollars of debt, your net income in October
20 was \$834,000?
21 A. I don't know that this interest was
22 actually paid. It may have been accrued.
23 Q. Yes. With that modification, you
24 accept my statement?
25 A. Yes.

00692

1 Q. Okay. Now here's a November forecast,
2 and you forecasted that income after taxes would be
3 67 and a half thousand dollars approximately; is that
4 correct?

5 A. Yes. That's the number on the sheet.

6 Q. And this was forecasted, I assume, in
7 October, the month before November. Because October
8 is -- you had to have actuals for October, so this
9 was forecasted in November?

10 A. I don't recall when it was actually
11 forecasted. I would have to check with our financial
12 folks.

13 Q. It was forecasted after October because
14 these are actual October numbers; is that correct?

15 A. I would need to check if those are
16 actual numbers.

17 Q. Flip over on the next page, Page 3 of
18 5, under the November '01 column. Now, these are all
19 actual through November; correct?

20 A. You know, just in the interests of
21 correctness, I think it would be more appropriate if
22 Howard Fox were to tackle these questions. I would
23 be much more comfortable with the answers.

24 Q. All right. I appreciate that. Do you
25 know whether or not these are October actuals?

00693

1 A. I do not.
2 Q. Okay. Is it fair to say that you made
3 a half million dollars in November after projecting
4 67 and a half thousand dollars in that same month?
5 A. Are you on Page 3 of 5?
6 Q. Yes, I am.
7 A. Yes, that's what the number says.
8 Q. Okay. Now go back to Page 2. In
9 December you forecasted -- Olympic forecasted an
10 8-and-a-half-million-dollar loss in December; is that
11 correct?
12 A. Again, that's what it says on the
13 chart, but I would prefer Mr. Howard Fox to pursue
14 this line of questioning.
15 Q. I'd like to direct your attention to
16 December '01, casualty and other loss. Did you or do
17 you intend to take a 134-million-dollar expense
18 against Whatcom Creek in December?
19 A. Again, I would defer that question to
20 Howard Fox.
21 Q. Do you know the answer to the question?
22 A. I do not.
23 Q. Okay. And if --
24 A. If I know the answers to the question,
25 I'll deliver them.

00694

1 Q. If this forecast is correct, then you
2 would have made 5 million dollars in December but for
3 Whatcom Creek?

4 A. Again, I would defer this to Mr. Fox.

5 Q. When I asked about whether cash flow
6 was available to fund improvements, there was a half
7 million dollars available in October and the same
8 amount available in November, roughly, to help pay
9 for capital expenditures in 2002, wasn't there?

10 A. I don't recall those numbers. The last
11 number that I recall is about a little under 2
12 million dollars in available cash currently for
13 Olympic.

14 Q. I direct your attention to Page 3 of
15 the financial statement that shows net income after
16 taxes of \$834,000 in October and eight hundred --
17 489,000 in November, roughly 1.3 million dollars in
18 positive cash flow in two months?

19 MR. MARSHALL: Your Honor, I would
20 object. This isn't related to cash flow, and I think
21 this assumes a fact not in evidence.

22 I don't think it's established from an
23 accounting standpoint whether it's accrual
24 accounting, much different than cash flow, having
25 actual cash flow. I guess he can answer it, but I

00695

1 don't think that he's making a correct assumption
2 from this chart.

3 MR. BRENA: I think that's fairly
4 stated, the net income would be the minimum. If they
5 accrue the interest but don't pay it, that would be
6 available on a cash flow basis --

7 MR. MARSHALL: But not just accruing
8 interest but accruing other things and accruing
9 expenses.

10 Again, the only thing that I'm trying
11 to do is prevent the record from getting confused
12 because I don't think that he has established that
13 this is a cash flow basis accounting here.

14 JUDGE WALLIS: My comfort level I think
15 would be much higher. This witness has repeatedly
16 indicated that he would defer responses to questions
17 regarding this exhibit and some others to another
18 witness who has the expertise to respond.

19 And I am concerned that we are both
20 spinning our wheels by going into some of these
21 matters with this witness and running the risk of
22 information that might be incorrect, that then would
23 be up to Mr. Fox to respond to.

24 So my suggestion would be if the
25 witness indicates that he is not the person to

00696

1 respond and does defer it, that we just leave it at
2 that and allow Mr. Fox to respond to these questions.

3 MR. MARSHALL: I just checked with
4 Mr. Fox just now, and he can respond to those
5 questions and he can clarify just the nature of this
6 objection I just made.

7 And I think it would be important to do
8 that.

9 MR. BRENA: With that clarification,
10 that would be fine. I do -- this witness has put on
11 testimony as to their deteriorating financial
12 condition, their need for this interim relief.

13 He is their only witness on direct, and
14 so I'm asking him about what their options are
15 available to him if -- and I believe that I'm
16 entitled to explore his knowledge. If I exhaust it,
17 then I'm happy to defer to Mr. Fox, if that's
18 acceptable to Your Honor.

19 JUDGE WALLIS: Very well. And if the
20 witness indicates that he is not able to respond and
21 does defer it, then my preference would be at that
22 point that we consider him exhausted.

23 THE WITNESS: Literally.

24 BY MR. BRENA:

25 Q. Questions with regard to retained

00697

1 earnings; Mr. Fox?

2 A. Yes, sir.

3 Q. The receivables on your books?

4 A. Yes, sir.

5 Q. As president of your company, you're
6 not aware of your level of receivables on your books?

7 A. Again, those are -- those issues are
8 being handled by very skilled and very capable
9 financial people.

10 Again, my focus was to bring
11 BP Pipelines-North America to Olympic Pipeline and
12 to provide leadership for the organization, an
13 ongoing strategy, and a focus on ensuring that the
14 Olympic Pipeline can be operated safely and
15 restoring the public's confidence, in fact, that the
16 Olympic Pipeline can be operated safely with
17 injecting capital expenditures necessary to ensure
18 that. And therefore that's been my focus for the
19 last, at least over 16 months.

20 Q. Have you given testimony or not that
21 the only way you have of raising these funds is
22 through this interim relief?

23 A. I have, yes.

24 Q. As president of the company, are you
25 familiar with the level of receivables in the company

00698

1 or not?

2 A. I am not. Howard Fox handles that
3 information, and what I need to know is how much
4 money is left in the till to do continued capital
5 improvements on the line.

6 From a month-to-month standpoint or a
7 detailed line item, I do not normally get involved
8 with that.

9 Q. Okay. Is there a sale of the SeaTac
10 Terminal that's been arranged?

11 A. We put the SeaTac Terminal up for sale
12 over a year ago, and there's currently negotiations
13 ongoing, associated with the sale of that terminal.

14 Q. And do you expect those negotiations to
15 realize about 11 million dollars in the next period
16 of time, in the next calendar year?

17 A. Well, we hope so. I mean, we are so
18 cash-strapped that we're looking for any opportunity
19 to generate cash from Olympic.

20 And I think it kind of accentuates the
21 critical nature of Olympic's position, where they
22 are having to divest assets which actually earn a
23 pretty good return for Olympic, but the need to
24 generate cash is so great that we've pretty much
25 been forced to go ahead and divest of the terminal.

00699

1 Q. The decision to divest the terminal was
2 over two years ago, wasn't it, Mr. Batch?

3 A. If it was over two years ago, I don't
4 recall that. I wasn't here.

5 Q. All right. Okay. Do you have my
6 previous question in mind: What do you expect to
7 realize out of this sale?

8 A. I hope to -- oh, out of the sale of
9 SeaTac?

10 Q. Yes.

11 A. I hope to get 10 to 11 million dollars.

12 Q. When?

13 A. I don't know exactly. I mean, these
14 kinds of negotiations kind of tend to go on and on
15 and on. We're hoping to close the sale in January,
16 but anything could happen.

17 Q. Do you have a contract in place?

18 A. Not a signed contract, no.

19 Q. Do you have an unsigned contract that
20 you're operating out of?

21 A. I know there is a purchase and sale
22 agreement that is being negotiated.

23 Q. Now, you're trying to get the interim
24 relief, not so that the interim relief pays for the
25 improvements but so that you can raise funds from an

00700

1 external source for the improvements; is that
2 correct?

3 A. We're looking for interim rate relief
4 so that we can continue to attract capital on
5 reasonable terms.

6 Q. If the shippers pay, in total, interim
7 relief equal to 24 million dollars, why do you need
8 to attract capital to make 24 million dollars of
9 improvements?

10 A. Because we have \$150 million in debt.
11 We are not able to pay our interest on the debt. We
12 are in default on every loan except Chase.

13 Q. And we'll get to that. When you talk
14 about raising external capital, how much external
15 capital are you talking about raising?

16 A. I really haven't had those
17 conversations, but with 1.9 million dollars left to
18 do 24 million dollars' worth of capital improvements
19 plus service the debt, there is significant cash that
20 needs to be attracted to this outfit.

21 Q. You haven't had those conversations
22 with whom?

23 A. Well, again, I would defer that to
24 Mr. Howard Fox, who has had those conversations.

25 Q. In your direct case when you refer to

00701

1 raising capital from external sources, isn't it true
2 that under the existing terms of your existing credit
3 facility with Prudential you can't raise funds from
4 external sources?

5 A. That is true.

6 Q. I'd like to direct your attention to
7 Exhibit 47, Page 91 of 95 -- excuse me, Page 2. I
8 will go to 91 in a moment.

9 Mr. Batch, are you prepared?

10 COMMISSIONER HEMSTAD: Counsel, we have
11 again two different paginations here, at the top and
12 at the bottom. So...

13 MR. BRENA: Exhibit No. Page 2 of 95.
14 I'm sorry, my references will be to the exhibit
15 number.

16 BY MR. BRENA:

17 Q. Was this a 52-million-dollar credit
18 facility?

19 A. I don't know, specifically. But
20 Mr. Howard Fox can answer those questions.

21 Q. Are you aware that Prudential offered a
22 92-million-dollar credit facility to Olympic?

23 A. No.

24 Q. Have you reviewed the prior board
25 minutes?

00702

1 A. I have not.

2 Q. I'd like to go to Page 91. Excuse me,
3 Page 95, the exhibit number 95 of 95.

4 Is that your signature?

5 A. Yes, it is.

6 Q. I'd like to go to Page 91 now, for the
7 third time. I apologize. Under Preliminary
8 Statements, B says: The company has reached an
9 agreement with BP Pipelines-North America and Equilon
10 wherein they will make advances to the company on a
11 revolving basis, shareholder-secured debts to be
12 secured by the second lien position.

13 Did that agreement take place?

14 A. Again, this document was prepared for
15 my signature by our legal and financial departments.
16 They reviewed it, they assured me that it was in
17 accordance with appropriate scrutiny and review. And
18 I signed it.

19 But Mr. Howard Fox would be the best
20 person to answer the particular details.

21 Q. I'd like to go to Exhibit 52. So far
22 as you're aware, has Olympic made any effort to have
23 Prudential waive the restrictions so you can get
24 external credit?

25 A. I believe Mr. Fox in his supplemental

00703

1 testimony addresses that and can address that.

2 Q. Is it true that Olympic has not made
3 any loan applications to any lender?

4 A. I'm not sure I understand the question.

5 Q. Has Olympic filled out a loan
6 application to anybody?

7 A. Again, Mr. Howard Fox can respond to
8 that question. I am not --

9 Q. You don't know? I'm sorry, please
10 complete your answer.

11 A. No. I have not handled that matter.
12 That's been handled by our financial group, and
13 Howard would be the best person to answer it.

14 Q. You don't know whether or not Olympic
15 has even filled out a loan application; is that your
16 testimony?

17 A. Again, I --

18 MR. MARSHALL: Your Honor, I'm going to
19 interject an objection here. There has been
20 testimony several times now that the Prudential note
21 prohibits application to external loan sources.

22 And so the question is argumentative
23 and assumes a fact not in evidence; that is, that
24 such effort would be proper and not futile. I think
25 it's argumentative because the groundwork is already

00704

1 there to show that an application cannot be made.

2 MR. BRENA: Your Honor --

3 MR. MARSHALL: It's an argumentative
4 question, it assumes a fact not in evidence.

5 JUDGE WALLIS: It appears to me that
6 this is also a repetitive question in that I believe
7 the question was previously asked and answered, and I
8 would like for those reasons to suggest that you move
9 on. The line of questions has been deferred to
10 Mr. Fox, and if we get to Mr. Fox with these
11 questions, it appears that that would be the
12 appropriate source for the responses to your
13 questions.

14 MR. BRENA: Thank you, Your Honor.

15 BY MR. BRENA:

16 Q. I'd like to direct you to Exhibit 60,
17 Page 3 of 3. With regard to the Chase promissory
18 note, isn't it true that the shareholders just
19 provided guarantees that allowed that note to be
20 rolled over?

21 A. Again, Mr. Fox would be the best person
22 to answer that question.

23 Q. What is the basis for your direct
24 testimony that there are no sources of funds
25 available to you?

00705

1 A. As I've mentioned a few times, the
2 Prudential note prohibits going external, to external
3 sources. We have not received any additional monies
4 from Arco, and have not -- I personally have not had
5 any conversations along those lines.

6 And BP-Arco seems to be the only
7 potential source of financing; Equilon has denied
8 financing. We're in default on all of our loans
9 except for Chase. And I can only speculate that
10 Olympic is becoming less and less a good risk to be
11 able to pay back the loans that it not only
12 currently has but any additional loans. And,
13 therefore, we're asking for an interim rate relief
14 to help us get out from under that situation.

15 Q. Is it your testimony that the reason
16 you can't get external loans from a commercial source
17 is because of Section 6.A in the loan agreement with
18 Prudential?

19 A. I don't recall the section per se.

20 Q. The restriction preventing you from
21 getting additional external credit?

22 MR. MARSHALL: Asked and answered.

23 This has been gone over several times,
24 including with Mr. Trotter at the very beginning of
25 the day. Mr. Trotter's second or third question was

00706

1 the very same question.

2 MR. BRENA: No, it was not. The
3 question that Mr. Trotter asked and that's been
4 answered is, is that a restriction.

5 I asked him for the basis for his
6 testimony that they could not get external. I had
7 understood from his testimony and can go to it and
8 cite it that their deteriorating financial condition
9 was the basis why they couldn't get a loan.

10 And now I'm asking him to clarify
11 whether or not it's because of the term of the
12 Prudential note, or it's a result of their financial
13 condition that is the basis for his testimony that
14 they cannot get commercial financing.

15 MR. MARSHALL: It's both. I mean, I
16 think this has been asked and answered.

17 JUDGE WALLIS: Well, Mr. Marshall --

18 MR. MARSHALL: But it has been asked
19 and answered several times, including by
20 Mr. Trotter --

21 JUDGE WALLIS: It has --

22 MR. MARSHALL: -- on both.

23 JUDGE WALLIS: It has been asked and
24 answered. To my recollection, the question was asked
25 and the response was given.

00707

1 BY MR. BRENA:

2 Q. Okay. What's the default under the
3 Prudential note?

4 A. Again, Mr. Howard Fox in his
5 supplemental testimony will cover that.

6 Q. You don't know the basis for the
7 default on a note that you're the company president
8 of?

9 A. Again, Howard is my treasury --
10 assistant treasurer for Olympic. I trust him
11 implicitly to advise me on these issues.

12 Q. I asked if you're familiar with what
13 term was in default. Do you know?

14 A. I am not. I do not know.

15 Q. You haven't asked him?

16 A. Not recently, but I'll ask him,
17 certainly soon.

18 Q. Are you one of the people that can
19 phone up under the Arco revolving line of credit and
20 ask for funds?

21 A. I have not been involved with
22 requesting funds.

23 Q. Are you one of the people listed on the
24 revolving credit facility with Arco?

25 A. Yes, I believe so.

00708

1 Q. So it's within your authority to phone
2 up Arco today and ask for up to 20 million dollars;
3 is that correct?

4 A. We can certainly ask.

5 Q. Have you?

6 A. I believe -- I haven't personally
7 asked, but our finance manager probably asks that
8 question every week or every two weeks.

9 Q. With regard to the debt that's in
10 default, do you know why the affiliate debt's in
11 default?

12 A. I presume because we haven't paid any
13 interest on the loans.

14 Q. Do you think, under any possible
15 scenario, that 80 million dollars in affiliate loans
16 can be repaid in three to six months by this pipeline
17 company?

18 MR. MARSHALL: Object as argumentative.
19 That's not been the request, and it's not part of the
20 case.

21 BY MR. BRENA:

22 Q. I'll rephrase the question. Wasn't
23 default inevitable as a result of the terms that
24 Olympic agreed to?

25 A. Again, I have no opinion on that.

00709

1 Q. You don't have an opinion as to whether
2 or not Olympic can repay 70 million dollars in six
3 months?

4 A. Well, certainly Olympic cannot rate
5 repay 70 million dollars in six months, that's not
6 what we're asking for. We're looking for a sign that
7 Olympic's financial health can improve so that others
8 will see that as a positive and be willing, perhaps,
9 to loan future capital to Olympic.

10 Q. Has Arco said that if you don't get the
11 2 or 3 million dollars from the unaffiliated
12 shippers, that we're not going to loan you any money?

13 A. No.

14 Q. Have they said they are not going to
15 loan you any money? Have they set any objective
16 criteria whatsoever for loaning you money?

17 A. I have not personally had those
18 conversations.

19 Q. Have you had this -- any conversation,
20 or do you know any reason why the owners of this
21 company won't invest some equity in it?

22 A. Well, I don't particularly know
23 first-hand why they do what they do, the
24 shareholders. But it would seem to me any person
25 that is thinking about loaning money to Olympic and

00710

1 looking at its debt and its inability to repay its
2 interest would be crazy.

3 Q. How can -- first I want to clarify my
4 question. My question went to equity investment, not
5 more debt.

6 How can anybody expect to be loaned
7 money from any source if the owner doesn't have any
8 equity investment in it?

9 A. I don't know the answer to that
10 question.

11 Q. Neither do I.

12 A. Just to rephrase that, I have no
13 opinion on that question.

14 Q. If the interim relief is denied, do you
15 know whether or not you'll be able to raise the funds
16 for those capital expenditures?

17 A. No, I do not.

18 Q. If the interim relief is denied, will
19 this pipeline continue to operate safely?

20 A. We will operate this pipeline safely,
21 or we will not operate it at all.

22 Q. What efforts have you undertaken to
23 reduce the costs of providing service for this
24 company?

25 A. Just a moment. I'm looking for my

00711

1 testimony which addresses that particular question.

2 Q. Take your time.

3 A. I can't seem to locate it. Would you
4 repeat the question, please?

5 Q. What efforts have you taken to reduce
6 the costs of providing service for this company?

7 A. First off, we have increased both our
8 capital spending as well as our operating expenses to
9 staff it in a way that BP and I personally would be
10 comfortable with to assure that we have the right
11 staffing to run the pipeline safely.

12 But just two examples of things that
13 we're doing to try to optimize our expenses. One is
14 in our capital value process where we go through a
15 rigorous analysis of actual spending, vendor
16 selection, competitive bidding, and such.

17 Another example would be in our
18 contract repair program with contractors,
19 renegotiating rates, trying to get master services
20 agreements with them as opposed to kind of
21 individual contracts, to optimize that.

22 We have a very aggressive program with
23 the smart PIG vendors to minimize expense and costs
24 along those lines. And I would daresay there are a
25 number of more examples that I could probably give

00712

1 if given some time to consult with our operations
2 folks.

3 Q. Have you cut anybody's salary a penny?

4 A. We've actually added staff to Olympic.

5 Q. Has your salary been reduced?

6 A. I'm not exactly sure I understand the
7 purpose of that question.

8 Q. Has anybody's salary been reduced a
9 penny?

10 A. Potentially, our hourly folks stand to
11 have a reduction in pay based on the multi-skilling
12 program that we have implemented at Olympic to come
13 more in line with BP's workforce and work
14 classifications.

15 Q. There's a potential, okay. Have you
16 negotiated with BP to cut their management fee in
17 this time of crisis?

18 A. BP's management fee is worth every
19 penny that we get with regards to the expertise, the
20 people, the engineering, the skills. That would be
21 certainly detrimental to the safety of this pipeline.

22 Q. Did you think about cutting out some of
23 the 4 and a half million dollars you spent on public
24 relations the last two years?

25 A. I don't believe that number is correct.

00713

1 And frankly, some of that public
2 relations expense associated with Whatcom Creek,
3 we're covered by insurance, and so we haven't
4 necessarily seen that as yet.

5 Q. The 15 or 20 million dollars in legal
6 fees, have you negotiated with any of your attorneys
7 for lower rates?

8 A. We do that all the time.

9 Q. Have you been successful?

10 A. On most occasions, yes.

11 Q. Okay.

12 MR. BRENA: Your Honor, if I can just
13 have a minute.

14 JUDGE WALLIS: Mr. Brena. Let's be off
15 the record, please.

16 (Discussion off the record.)

17 MR. BRENA: I have nothing further.

18 JUDGE WALLIS: For Commissioner
19 questions let's be back on the record, please.

20 Mr. Finklea, was I incorrect in hearing
21 that you had deferred questioning to Mr. Brena? Did
22 you wish to ask questions?

23 MR. FINKLEA: You are correct, Your
24 Honor. In the interest of efficiency, we decided to
25 consolidate our cross-examination.

00714

1 JUDGE WALLIS: Do you have any
2 questions at this time?

3 MR. FINKLEA: No, Your Honor. Thank
4 you.

5 JUDGE WALLIS: Commissioner Hemstad?

6

7

EXAMINATION

8

BY COMMISSIONER HEMSTAD:

9 Q. Mr. Batch, I'm interested, who sits on
10 your board of directors?

11 A. We have three members from
12 BP Pipelines-North America, and two members from
13 Equilon.

14 Q. I realize this question has been asked,
15 but it puzzles me. And maybe you can't answer it,
16 but I'll ask it again.

17 Here we have a company with, what, 150
18 million dollars in debt, and zero equity. Why is
19 there no equity in this company?

20 A. I can only assume that the company has
21 decided to fund all of its projects through debt and
22 not equity. I would also mention that dividends
23 haven't been paid out since 1997.

24 Q. I have been scratching my head here to
25 try and think of any circumstance of a regulated

00715

1 company that we regulate, what the situation where
2 there is a hundred percent debt. And I can think of
3 one, a relatively small water company that we have
4 constantly berated for that environment. And --

5 A. Again, I believe that there are other
6 pipeline companies that do this very thing and fund
7 their projects with debt versus equity.

8 Subject to check, I think I've been
9 told that there are other pipeline companies that
10 finance their expenditures that way.

11 Q. Are they all the equivalent of your
12 situation, owned by major petroleum companies?

13 A. I believe so.

14 Q. Well, if a company has zero equity --
15 and, again, this question was asked -- would there be
16 any circumstances, unless there are other kinds of
17 assurances given of the backing of the petroleum
18 company shareholders, why would any Wall Street
19 entity lend any money at all?

20 A. That's a really good question. And I'm
21 not sure that I have the complete answer for you on
22 that.

23 Q. Well, let --

24 A. But I don't believe that oil companies
25 are compelled to put equity into the company. I

00716

1 don't believe that's a requirement.

2 Q. As I understand the burden of the
3 company's case, if you are granted the rate increase
4 on an interim basis that you're asking for from us,
5 plus that which you're obtaining from FERC, that with
6 that, with which you apparently intend to finance
7 capital projects --

8 A. And other -- and potentially other
9 needs, including interest on debt.

10 Q. But with that, then, you what? May be
11 able to go to Wall Street to get other kinds of
12 financing?

13 A. We think there's a much better chance
14 if we can demonstrate that our financial situation is
15 actually truly improving, and we have to do something
16 about debt, we have to do something about the
17 default, we have to do something about the interest
18 that we can't pay. And if we can demonstrate that
19 there's additional capital coming in to Olympic
20 through rates, it will be, as we said, a signal to
21 the investors that, in fact, the potential for
22 Olympic's situation is to, possibly, actually truly
23 improve.

24 Q. Am I correct in my understanding that
25 it is the company's position that this Commission

00717

1 should not, at least in the interim case, examine
2 what generated that debt? We can only look at the
3 fact that you have a debt of 150 million dollars and
4 not ask the question of how was the debt incurred?

5 A. My understanding of that is what we're
6 asking for is interim relief. We've left it to the
7 Commission's discretion on whether that's subject to
8 refund.

9 If, in fact, we're granted the interim
10 relief we're asking for, we feel much more confident
11 that we'll have the cash necessary in order to
12 implement our capital projects for 2002 and would --
13 we're also confident that that will send a signal to
14 the investment community that, in fact, things can
15 improve.

16 If in fact we're wrong, and in the
17 general case we cannot prove our case that, in fact,
18 we deserve a 62 percent increase, then -- and it's
19 subject to refund -- then we would refund through
20 some mechanism those costs.

21 So, in essence, all we're asking for
22 is a loan from the shippers for this period to
23 continue to fund our program.

24 Q. Maybe I can get at the issue with a
25 hypothetical. In asking a hypothetical, I don't mean

00718

1 for you to infer how I'm looking at the company.
2 It's purely hypothetical.

3 Take a pipeline company with, say,
4 reasonably normal kinds of revenues and expenses,
5 but it decides it's not in the go-go economy that we
6 have had, isn't making enough money. And so it
7 proceeds to speculate in the commodities market and
8 it proceeds to lose \$150 million. Now it has a debt
9 of \$150 million.

10 It then comes to a state regulatory
11 commission and says, "We're out of cash. Increase
12 our rates."

13 Would it be your view that it would be
14 appropriate for a commission then to respond on an
15 interim basis in that circumstance to, quote, take
16 care of the company?

17 A. I think if it were as stark as that,
18 where a company was doing something illegal with
19 funds given --

20 Q. I'm not suggesting that it would be
21 illegal for them to do that. And I'm not talking
22 about a criminal environment.

23 A. Yeah. Again, my understanding of this
24 interim case is we're not trying to prove prudence of
25 investments. I mean, some will try to argue that the

00719

1 previous investments were imprudent, or the spending
2 was imprudent, or the reason for spending was
3 imprudent. And none of that has been really proved.

4 I mean, all of the projects that were
5 undertaken with the loans that were obtained were
6 all viable projects, all supported by the shippers
7 at the time they were proposed.

8 Q. Well --

9 A. And so with regards to interim relief,
10 what we're looking for is really some help from the
11 Commission to allow us, you know, the -- or give us
12 the signal that, in fact, we need to help Olympic get
13 out of the situation it finds itself in. And, in
14 fact, in the general case if we cannot prove 62
15 percent is appropriate, it could be subject to
16 refund.

17 Q. All right. Let's pursue that
18 assumption. Assume we were to grant the interim
19 relief of your request, subject to refund, and in the
20 case in chief you're not able to prove need.

21 A. Yes.

22 Q. How will you finance the repayments,
23 then, that would be required?

24 A. Hopefully, we will be able to attract
25 additional capital on reasonable terms. There are

00720

1 other mechanisms --

2 Q. No. Well, let's stop there. I'm
3 describing a situation where we would deny your
4 request for a rate increase.

5 A. Oh.

6 Q. Because you didn't, in the case in
7 chief, prove your case. How would you repay the
8 shippers if the interim rate relief were granted
9 subject to refund?

10 A. There are possible mechanisms for that.
11 One might be of a reduction in tariff over time until
12 we repaid that amount. There are perhaps some other
13 options available to Olympic in that circumstance.

14 But I think, certainly, we would
15 explore all of them with regards -- if in fact we're
16 wrong -- we don't believe that we're wrong on this,
17 we think we have a pretty strong case -- but if
18 we're wrong, we will repay that amount with interest
19 as required.

20 COMMISSIONER HEMSTAD: That's all the
21 questions I have for now.

22

23

EXAMINATION

24

BY CHAIRWOMAN SHOWALTER:

25

Q. Commissioner Hemstad covered some of my

00721

1 interests, but let me just ask a question the other
2 way. We've talked quite a bit about that if you
3 don't get the increase, you won't be able to proceed
4 with your capital plans.

5 But I want to ask the question, if you
6 do get the increase that you are asking for, does
7 that mean you will for sure proceed with your
8 capital expenditures, or does it just mean you're in
9 a better position to try to get it financed?

10 A. It means that we're absolutely in a
11 better position to get it financed. And we would --
12 with that signal, I'm very confident that we would be
13 able to attract the capital to complete the capital
14 program for 2002.

15 Q. So you're confident but not absolutely
16 certain that you could -- would proceed. Is that
17 about the level of your confidence?

18 A. I would do everything in my power to
19 proceed with the 2002 capital program because they
20 are all prudent investments that need to be made.

21 Q. I just have a few follow-up questions
22 to some of the questions that you were asked over the
23 day. Could you just turn to Exhibit 35, Page 3 of 6.

24 You were asked some questions about
25 the Whatcom Creek expenses, and in the lower

00722

1 left-hand corner there's the term "Whatcom Creek
2 recognized." Do you know, what does "recognized"
3 mean?

4 A. I'm not exactly sure. I think this is
5 related to insurance coverage and what might be
6 covered and what might not be covered under that
7 insurance.

8 Q. All right. Well, does Mr. Fox know
9 more about this question?

10 A. Yes, he does. Thank you.

11 Q. And then if you could turn to Exhibit
12 48, Page 4. It's also called OPL 1113939.

13 A. Yes.

14 Q. You were asked some questions about
15 your standards versus what is required in this
16 contract.

17 And the question I want to ask is, are
18 the standards that you are using, which I understand
19 are BP's standards, are they consistent with
20 customary standards? And by that what I mean is
21 "not in conflict with."

22 A. No. They are not in conflict at all.
23 In fact, they -- BP's standards either meet or exceed
24 government and industry standards.

25 Q. Okay. And Mr. Trotter asked you some

00723

1 questions about your testimony regarding some
2 distinctive characteristics -- or maybe not
3 distinctive, depending upon the question or the
4 answer of Olympic Pipeline -- and that had to do with
5 your testimony about there being competitive
6 alternatives and products that aren't regulated, etc.

7 A. Yes.

8 Q. I wanted to ask if you know or if you
9 can characterize, is the service you provide a retail
10 service or a wholesale service? Or is that not an
11 apt characterization?

12 A. I don't believe I would consider it
13 retail or wholesale. It is a transportation service
14 based on the cost to serve.

15 Q. So does the term "retail customer" or
16 "wholesale customer" apply to transportation, in your
17 case?

18 A. Well, the fact that the oil or gasoline
19 or hydrocarbon being sold at a retail level or a
20 refinery wholesale level or being transported through
21 the pipeline, it's the same commodity. And in one
22 case, there are transportation alternatives, as I
23 believe George Schink addresses in his main case
24 testimony -- barges and ships and trucks -- that can
25 compete with the pipeline.

00724

1 Q. Is your service a public service? That
2 may call for a legal conclusion, and I'll just tell
3 you I haven't read the statute recently and you may
4 not have either.

5 Ordinarily we deal with public service
6 companies who deliver essential services, and I'm
7 struggling with what your company is.

8 A. It is a transportation company that
9 ships hydrocarbons for shippers through our system.

10 Q. Then --

11 A. And once it gets to a retail port, then
12 it relates directly to external customers and the
13 public.

14 Q. And then regarding obligation to serve,
15 I take it I am correct that you're a common
16 carrier --

17 A. Yes.

18 Q. -- you are obligated to serve people
19 even-handedly?

20 A. Yes, that's correct.

21 Q. But if there is a greater demand than
22 capacity, do you have an obligation to meet that
23 demand?

24 A. No. I don't believe -- and I'm not a
25 lawyer, but Steve Marshall has mentioned to me --

00725

1 Q. That's okay. Just testify what you
2 understand.

3 A. My understanding is that there's no
4 obligation for an oil pipeline to expand its service.

5 Q. Well, from the shareholders' point of
6 view, it seems that the shareholders here have a dual
7 interest in the company: They are a shareholder in
8 the company but they are also, in effect, a customer
9 of the company.

10 So I'm trying to think from the
11 shareholders' point of view, at what point is it not
12 worth it for the company, for them as shareholders,
13 to continue? And is that a different point that
14 they may perceive as a customer of the company?

15 A. The shareholders of the company aren't
16 necessarily within the same business as the shippers
17 of the company. And we're obligated not to show any
18 special treatment to any shipper as an interstate
19 pipeline.

20 So the shareholders, in essence, are
21 BP Pipeline's personnel and not necessarily refinery
22 personnel or shipper personnel.

23 Q. Okay. Now I'm getting confused, which
24 is fine. You can clarify it.

25 A. Okay.

00726

1 Q. If the shareholders of this company
2 were completely unrelated to pipelines, oil, you
3 know, end product, anything like that, it would seem
4 then the shareholders would be taking an objective
5 look at their company and asking themselves questions
6 like, "How much equity should I put in this company?"

7 Or, "Given the state of affairs today
8 and the state of the company, do I or don't I want
9 to keep this company going?" And that would be a
10 relatively objective test for a completely
11 dispassionate or arm's length shareholder.

12 But in this case, well now tell me, I
13 had assumed that the shareholders have an interest
14 in the company not so much as a shareholder but also
15 as a user. Are you saying that that's not really
16 accurate?

17 A. Saying that the shareholders are not
18 making decisions for the pipeline related to its
19 shipping needs, or habits.

20 The shareholders are looking at
21 Olympic as a stand-alone corporate entity that needs
22 to make a profit on its own standing. And they are
23 also looking at investments in Olympic, and the
24 prudence of continued investments in Olympic.

25 Q. Wouldn't the -- if the shareholders,

00727

1 say, did not get an increase here, an arm's length
2 shareholder might say "Well, okay, this investment is
3 no longer worth it to me, I'm shutting down."

4 But isn't it the case that if the
5 pipeline shuts down, then the competitive
6 alternatives that you mentioned are barging and
7 trucking, which are significantly more expensive?

8 A. Yes.

9 Q. Wouldn't the shareholders take into
10 account with their other hat on, that, "Gee, if I
11 shut this down, I don't get this lower cost
12 transport. And so maybe it would be worth my while
13 to put some money into it in order to keep a lower
14 cost alternative going."

15 A. Yeah. It, it, it --

16 Q. Is that an interest or not an interest
17 that the shareholders are considering?

18 A. It's a great question. I have not
19 spoken to the shareholders about this issue. In
20 fact, we have kept it a fairly separate relationship
21 because we wanted to make sure that we showed no
22 favoritism for one shipper or one company or another.
23 So I can't speak for the shareholders.

24 Howard Fox has more contact and
25 conversations with the shareholders than I do. And

00728

1 I think he might be able to provide some insight
2 into that question.

3 Q. Okay. I'm a little confused by one
4 line of questioning. Is your request for a percent
5 increase pending the outcome of the general rate
6 case, or is it for an absolute amount?

7 A. It's an absolute amount, and it --

8 Q. But if we -- is that assuming that we
9 get an answer to you by February 1st? That is, if we
10 don't, are you still asking for the absolute amount
11 over a shorter period of time, in which case it would
12 be a higher percentage increase?

13 A. No, no. We're asking for that amount.
14 And I think it equates to 62 percent because, as I
15 recall, in November we kind of changed our approach
16 towards this hearing to make it more of a specific
17 interim rate relief hearing as opposed to a general
18 case in a -- for jurisdictional issue.

19 And I think just for convenience we
20 decided on that same 62 percent but in the context
21 of the 8.74 million or a number close to that.

22 Q. Well, maybe --

23 A. And so for the six-month period, it
24 would be probably half that amount.

25 Q. Yes. But are you looking for an

00729

1 absolute amount on a monthly basis? That is, each
2 month you get a certain amount?

3 Or are you looking for a certain
4 amount which, if given in five months, means a
5 greater monthly amount?

6 A. I mean, it could be paid just as normal
7 rates are paid. And then we would -- if, in fact,
8 subject to refund at the end of that period, either
9 refund it or not refund it, depending upon the
10 outcome of our main case.

11 Q. I'm not suggesting we're going to get
12 you an answer later.

13 A. Sure.

14 Q. I just want to understand the nature of
15 your request.

16 A. Yes.

17 Q. My last question might be another one
18 for Mr. Fox, but you made quite a bit of mention of
19 what a reasonable rates, the word, "reasonable
20 rates." This is borrowing on reasonable terms,
21 actually.

22 A. Yes, mm-hmm.

23 Q. I don't mean the -- the ratepayers'
24 rates.

25 A. Right.

00730

1 Q. What are reasonable terms?

2 A. To be able to get a loan at an interest
3 rate that isn't exorbitant. In other words, you
4 know, if you apply for a credit card, there are some
5 credit cards that are at a 3.9 percent interest rate,
6 and there are some that an 18 or 21 percent interest
7 rate. And I'm assuming that that varies depending
8 upon the risk, risky nature of the loan itself and
9 what that might require.

10 So when we talk about attracting
11 sufficient capital under reasonable rates, we're
12 talking about interest rates that we would pay on a
13 future loan.

14 Q. Okay. And are you or Mr. Fox the best
15 person to continue the discussion with about the
16 issue of equity and the responsibility, or not, of
17 shareholders to put in equity?

18 A. I think Mr. Fox is probably better
19 suited to discuss that issue with you.

20 CHAIRWOMAN SHOWALTER: Okay. Thank
21 you.

22

23

EXAMINATION

24

25

COMMISSIONER HEMSTAD: I have a couple
of additional questions. I haven't yet studied the

00731

1 case in chief testimony, but from the questions from
2 Mr. Trotter, if I understood the question correctly,
3 the company is asking for a debt-equity relationship
4 for the setting of rates of, what, 86.9 percent
5 equity and 13.1 percent debt?

6 A. I believe that's in the main case at
7 FERC.

8 Q. Aha.

9 A. And if there are questions about that
10 particular issue, I think Mr. Schink is the best --
11 appropriate person.

12 Q. So that's the FERC relationships which
13 you want applied here?

14 A. Not in this interim case, no.

15 Q. I understand. Do you have any
16 expectation with a 100 percent current debt structure
17 that you will have, in fact, almost 87 percent equity
18 structure going forward, or is that intended to be
19 understood as a completely hypothetical structure?

20 A. Again, I'm not sure I'm the best person
21 to answer the question. I think George Schink is
22 probably the most appropriate person. He's our
23 expert on these issues.

24 Q. All right. There's a remarkable
25 disparity between 100 percent debt and 87 percent

00732

1 equity?

2 A. Absolutely, yes.

3 Q. One other thought I would like to
4 pursue. You provided the percentage usage in
5 response to a question from Mr. Brena for Arco,
6 Equilon, Tesoro and Tosco for October in the percent
7 of the transportation used. And then there is 18
8 percent for others.

9 And I believe the point was made, all
10 of those others are purchasers of one of the four
11 refineries so they either directly or indirectly are
12 you can say, quote, responsible for the transport of
13 that other 18 percent. Wouldn't that follow?

14 A. Yes, that's correct.

15 Q. So we're really, in effect, talking
16 only about four customers as a practical matter here:
17 The two owners and the two other shippers who are not
18 owners?

19 A. Well, I wouldn't characterize it that
20 way. I think there are close to 30 shippers --

21 Q. I understand.

22 A. -- that pay rates on Olympic Pipeline.

23 Q. That's true. But all of them are
24 buying product from the four refineries?

25 A. Yes, that's correct.

00733

1 Q. And either they will pay the transport
2 directly, or they will pay it indirectly?

3 A. I'm not exactly sure how the
4 transaction works and when the shipper, the other
5 shippers, take custody of a product and how exactly
6 the financial payments flow.

7 Q. Well, I guess the point I'm trying to
8 get to is that, in many respects, this becomes a
9 fight among four refineries as to the level of
10 transport fees to be paid.

11 For example, if we decided that the
12 public interest didn't require any rate regulation
13 here at all because there are -- you made the point
14 in your testimony there are alternatives, trucking
15 and barge -- and said let the market set the rate,
16 almost certainly Olympic would then set the rate
17 just below the barge price, wouldn't it, because it
18 would still make it marginally attractive to use the
19 pipeline but at a price that would approach the next
20 lowest method of transportation?

21 A. You know, because we are regulated,
22 we've never really engaged in the thought process
23 around --

24 Q. I understand that --

25 A. -- around --

00734

1 Q. -- but I'm really approaching it as
2 putting it in -- translate that into a hypothetical.
3 That would be the response, wouldn't
4 it, of a company similarly situated?

5 A. Not necessarily, no.

6 Q. Why not?

7 A. Because you -- you don't want to price
8 yourself out of a market.

9 Q. Okay. But my next question was going
10 to be, then it would be, become really a money
11 machine for the pipeline: relatively low cost but
12 charging high rates.

13 Then, in turn, wouldn't the pipeline
14 company, as its history here, would simply dividend
15 up to its owners a very substantial dividend?

16 A. You know, one thought that you
17 triggered with that question was this issue of
18 proration on the pipeline and the fact that the
19 demand is much higher than supply. And, in fact,
20 that could be for several reasons, but perhaps one
21 reason is that this particular pipeline is below what
22 appropriate prices or market prices might be.

23 And, in fact, if you did increase the
24 prices on Olympic -- and it's been prorated, I
25 believe, all the way back to 1985 -- perhaps supply

00735

1 and demand will come more into balance.

2 Q. All right. The point I'm trying to get
3 to is, if my hypothetical were applied and there were
4 no rate regulation; and, at least you suggest that in
5 your testimony -- I'm not suggesting you are
6 advocating it --

7 A. Mm-hmm.

8 Q. -- the prices would surely rise to meet
9 whatever the competitive level would permit it to
10 rise to. In other words, the costs of those
11 alternative methods of transportation.

12 A company in that situation could then
13 dividend to its parents a very healthy dividend.
14 Those parents could then use that dividend to reduce
15 their prices and provide, then, a very substantial
16 competitive advantage against the other shippers who
17 are not owners. Wouldn't that follow?

18 A. I don't see the -- I don't see the
19 connection there. I don't -- because Olympic is an
20 independent company.

21 Q. No, but it's not.

22 A. It is.

23 Q. It's owned by -- it's independent in
24 the sense that it is a separate corporate entity, a
25 hundred percent of its stock owned by two shippers.

00736

1 A. Two shareholders.

2 Q. Who are shippers?

3 A. Yes. Who are shippers in the broad
4 scale, right.

5 Q. Well, I think I've pursued it as far as
6 I care to go.

7

8 EXAMINATION

9 BY CHAIRWOMAN SHOWALTER:

10 Q. I can't resist going further, you know.

11 Isn't the dynamic that this is a --
12 this is a cost-based, regulated company; and so long
13 as it is, and the alternatives, the competitive
14 alternatives, are significantly higher than the cost
15 base regulation wherever it is set, that someone
16 gains the advantage of that difference?

17 And to the extent that the regulated
18 rate is lower, then it's the customers who get that
19 difference. To the extent that the regulated rate
20 is higher than the owner gets that difference. The
21 difference in either case being the difference
22 between the regulated rate and the next lowest
23 competitive alternative.

24 Is that correct?

25 A. I hate to ask, but could you just

00737

1 rephrase that.

2 Q. Well, all right. If you take a
3 regulated service and you compare it to competitive
4 alternatives such as barging and trucking --

5 A. Yes.

6 Q. -- and let's assume that the costs of
7 the alternatives are significantly higher than the
8 regulated rate --

9 A. Yes.

10 Q. -- wherever that regulated rate is set.
11 There's a regulated rate today.

12 A. Yes.

13 Q. Let's say the most that would be
14 granted here is what the company has asked for, 62
15 percent. So --

16 A. Yes. Which would still be below the
17 barge and truck rates.

18 Q. All right. So given that you could say
19 that the comparative value of that service, the
20 market value of that service, is up close to the next
21 closest competitive alternative, someone gets the
22 benefit of that value.

23 Is that correct?

24 A. I think everyone gets the benefit of
25 that value. Everyone who would have access to ship

00738

1 on the pipeline would have access to that value.

2 Q. Right.

3 A. Those who choose not to ship on the
4 pipeline would be looking at those alternatives.

5 Q. Or those who aren't able to get on the
6 pipeline because there is more demand than capacity?

7 A. Again, as an interstate -- as a common
8 carrier pipeline, we're obligated to take all
9 shippers.

10 Q. Right. But you can't take all because
11 you haven't got enough capacity?

12 A. Then we kind of prorate all the other
13 shippers in relative terms to make sure that we meet
14 as much of shipper demand as we can within the
15 capacity of the pipeline.

16 Q. Okay. So everyone gets a fair share of
17 the capacity --

18 A. Yes.

19 Q. -- but for the rest, they have to go
20 elsewhere. For the rest of their own needs they have
21 to go elsewhere?

22 A. That's correct. Unless we're able to
23 expand or perhaps get our pipeline to 100 percent, in
24 which case all of the shippers will benefit by that
25 additional volume and throughput at those lower

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1 rates.

2 Q. If you compare today's rate with a 62
3 percent rate increase, wouldn't it be the case that
4 at today's rate, the customers who are shipping on
5 that pipeline get the benefit of the difference
6 between today's rate and their alternatives?

7 A. Absolutely.

8 Q. And if it's 62 percent, to the extent
9 of that 62 percent, the shareholders are getting that
10 benefit. Is that correct?

11 A. To the extent that Olympic becomes more
12 successful, shareholders should benefit at some point
13 in the future to that situation.

14 Q. I mean the shareholders may be -- the
15 company may be using that benefit for some expenses,
16 but I just mean the difference goes to the company.

17 A. There are no dividends being paid out
18 since 1997.

19 Q. I should have said the company, not the
20 shareholders.

21 A. Okay.

22 Q. Now I've forgotten if I was going to go
23 any further than that.

24 A. It's been a long day.

25 Q. I think where this was all going is

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1 that if -- is that the company and its shareholders
2 at some point have the right, I guess, to simply walk
3 away from the project if it's not providing enough
4 benefit.

5 A. Well, I personally hope not because I
6 just moved here and moved my family here, and I
7 certainly hope that that doesn't happen.

8 Q. But I think that's where you circle
9 back. That the benefit that the company is
10 getting -- that is that the owners and shareholders
11 are looking at -- they get benefit one way if the --
12 if the rate is increased.

13 But that threshold of when they might
14 shut the plant down seems to be higher, a higher
15 threshold for shareholders who also ship. I think
16 that's my point.

17 A. And, unfortunately, I'm not in a
18 position to speak to the, you know, the shareholders'
19 view of Olympic.

20 It just seems to me that it's in
21 everybody's interest to invest in this pipeline so
22 it can get back to 100 percent capacity safely
23 because it means more throughput. It makes sense
24 for Olympic, it makes sense for the shippers,
25 because the next alternative is more costly.

00741

1 Q. But what about the shareholders
2 investing in the company, investing equity in the
3 company?

4 A. Again, the equity question with the
5 shareholders, I have not had that conversation with
6 them. Howard Fox is probably the best person to
7 answer that because I know he has had personal
8 conversations with the shareholders of Olympic.

9 Q. Okay. But for --

10 A. Again -- I'm sorry.

11 Q. Go ahead.

12 A. But, again, it just seems to me that by
13 investing in the pipeline, granting the interim
14 relief subject to refund -- which is purely a loan at
15 this point -- allowing us to get on with the 2002
16 capital program and proceed to 100 percent operation,
17 everybody benefits. The shippers benefit, Olympic
18 benefits, and the public benefits because that's so
19 many tanker trucks and barges that are taken off the
20 roads and taken off of Puget Sound.

21 Q. Okay. I forgot to ask one more
22 follow-up question to my earlier line of questioning.

23 You said that if you do get this
24 increase, you're confident you'll be in a much
25 better position to attract capital to undertake your

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1 capital plans.

2 A. I am.

3 Q. But what about the contract provision,
4 the loan provision that prohibits you from getting
5 capital except for, I think from your shareholders?
6 So how are you going to attract capital if you can't
7 legally get it?

8 A. Well, I think perhaps we'll have
9 another conversation with our shareholder, and then
10 perhaps we will do something. And I think Howard
11 Fox's supplemental testimony addresses doing
12 something with the Prudential note that is currently
13 in default and is so restrictive.

14 Q. So your two alternatives would be to
15 get out from under that restriction and/or ask your
16 shareholders for some --

17 A. Right.

18 Q. -- financial assistance, one way or the
19 other, because they are not subject to that
20 restriction?

21 A. Correct.

22 CHAIRWOMAN SHOWALTER: Thank you.

23 JUDGE WALLIS: Let's be off the record
24 for a brief scheduling discussion.

25 (Off-record discussion at 5:05 p.m.)

00743

1 JUDGE WALLIS: Let's go back on the
2 record, please.

3 During our discussion off the record we
4 decided to continue for 20 or 25 minutes to about
5 5:30, and, if necessary in order to conclude the
6 witness, we will take a dinner recess and then resume
7 to conclude the testimony of Mr. Batch.

8 Mr. Marshall?

9

10 REDIRECT EXAMINATION

11 BY MR. MARSHALL:

12 Q. Mr. Batch, I think that Mr. Fox is more
13 of a financial expert on financing for oil pipelines.
14 And I understand financing of oil pipelines is quite
15 different than other kinds of financing, but can you
16 describe briefly what a "throughput and deficiency
17 agreement" is?

18 MR. BRENA: Your Honor, I object.

19 I asked this witness so many questions
20 relating to how he could finance this line, and every
21 single question he referred to Mr. Fox. So now we're
22 going to get on redirect and all of a sudden he's
23 going to have answers?

24 Entire topics were directed to Mr. Fox;
25 it ought to be the same both ways.

00744

1 MR. MARSHALL: I'm just asking the
2 witness -- if this witness knows generally about a
3 throughput agreement, he can answer that. If he
4 doesn't, I'll ask Mr. Fox.

5 MR. BRENA: That's one objection, and
6 then the beyond the scope of the cross as well.

7 MR. MARSHALL: I think it relates to
8 how these things are financed, and I think we can
9 explain in general what a throughput in deficiency
10 agreement is, just like we can explain what a first
11 mortgage --

12 JUDGE WALLIS: I would suggest that,
13 because so much of that conversation has been
14 deferred, it might be more efficient to take that up
15 with Mr. Fox as well, if that's an area that you can
16 address.

17 BY MR. MARSHALL:

18 Q. Throughput in general is not anything
19 to do with throughput and deficiency. I'm talking
20 about the amount of barrels you can have through the
21 pipeline.

22 A. Yes.

23 Q. Is that what throughput is?

24 A. Yes.

25 Q. I take it your testimony -- your

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1 testimony addresses what the historic level of
2 throughput was prior to 1999?

3 A. Yes, it does. 116 million barrels.

4 Q. What was the throughput in this past
5 year, in 2001, approximately?

6 A. I believe it was about 83, but I need
7 to just double check that number.

8 Q. And what are you projecting and
9 estimating your revenues based on throughput for this
10 coming year, 2002?

11 MR. BRENA: Objection, beyond the
12 scope. None of this did anybody ask on
13 cross-examination.

14 MR. MARSHALL: This goes to budgeting
15 issues and all the other financing issues that this
16 witness was asked about. And what Mr. Batch has said
17 is he's talked about how you have to get the
18 throughput back up in order to get back on your feet.

19 MR. TROTTER: Your Honor, this exact
20 question is in Exhibit 3-T, Page 31. This is asked
21 and answered, the --

22 JUDGE WALLIS: Perhaps, then, questions
23 are unnecessary.

24 BY MR. MARSHALL:

25 Q. You were asked questions about what

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1 could be done to cut back on costs in order to make
2 sure, ensure that whatever shortfalls Olympic had
3 could be met.

4 Has the focus of Olympic been on
5 trying to get throughput levels back up as the best
6 way of restoring financial health to the company, or
7 has the focus been on cutting costs?

8 A. The focus has been to accelerate the
9 expenditures to get to 100 percent, which is a much
10 healthier situation for the pipeline.

11 And until that point, you know, it
12 will probably continue to experience deteriorating
13 financial condition around its debt and debt
14 obligations.

15 Q. Does Olympic have a high amount of
16 fixed costs, I guess which each barrel has to be
17 spread?

18 A. The Olympic system is
19 capital-intensive, and if you don't pay -- if you
20 don't cover the expense on the number of barrels that
21 you are pumping through, you have to cover it on the
22 reduced amount.

23 So I think the answer to your question
24 is, is there are high fixed costs in the pipeline
25 business, and you have to cover that on additional

00747

1 volume or throughput.

2 MR. TROTTER: Your Honor, I just
3 observed this question and answer is on Page 19 of
4 the rebuttal testimony, beginning on Line 78. But
5 I'm sorry I didn't object sooner.

6 BY MR. MARSHALL:

7 Q. Mr. Batch, you were asked questions
8 about expenses relating to Whatcom Creek; in
9 particular, about figures for attorneys' fees,
10 natural resource defense costs, and so on.

11 Are the attorneys' fees for these
12 civil actions that you were discussing being paid
13 for by insurance coverage?

14 A. That's my understanding. A bulk of
15 those Whatcom Creek expenses including legal,
16 including natural resource damage assessments, would
17 be covered by insurance.

18 Q. And when Mr. Brena referred to accrued
19 revenues that you might get and he mentioned a
20 figure, did those include those kinds of insurance
21 costs that are going to offset the costs that Olympic
22 has not asked for in this rate case?

23 A. Sorry. Could you just rephrase the
24 question.

25 Q. Certainly. There are a number of

00748

1 accrued revenues that Mr. Brena referred to?

2 A. Yes.

3 Q. Are some of those accrued revenues
4 anticipated revenues from insurance recoveries that
5 would be going to offset costs like attorneys' fees,
6 natural resource damage, and so on?

7 A. I believe they would be covered by
8 insurance. So, yes.

9 Q. But in your testimony and all you have
10 not put in those costs as something that would be
11 netted against those anticipated recoveries; is that
12 correct?

13 A. Correct.

14 Q. Now there's a lot of discussion about
15 the Bayview Terminal. Could you turn to Exhibit 14,
16 on the 4th page of that document where it's stated --
17 it refers to rate increase.

18 Do you see the third paragraph on that
19 letter?

20 A. (Looking at document.)

21 Q. At the bottom of the page. Third
22 paragraph under the title Rate Increase: The WUTC
23 increased the tariff by three cents per barrel
24 December 28, 1998?

25 A. Okay, I'm with you now. Sorry.

00749

1 Q. Mr. Brena asked a series of questions
2 implying that the entire amount of the Bayview
3 Terminal was going to be financed by a three-cent per
4 barrel rate increase.

5 Is that correct, now that you have had
6 a chance to look at this document?

7 A. The rate increase, WUTC No. 20
8 increases the tariff by three cents per barrel to
9 partially cover the Bayview Terminal to the Olympic
10 Pipeline.

11 Q. And the memorandum from Mr. Kobo
12 [phonetic] of the WUTC that occurs at three pages
13 later, dated January 2, 1998 in Exhibit 14 --

14 A. Yes.

15 Q. -- bottom of the page. Do you see the
16 paragraph where it says the filing? Filing was
17 made --

18 A. Correct.

19 Q. -- guidelines which are more liberal
20 than the traditional Washington regulatory practices
21 which have been accepted by this Commission for
22 Olympic rate applications in the past. On that basis
23 the company could have asked for an additional 2.8
24 million dollars over and above the 3.5 million sought
25 here.

00750

1 A. Yes.

2 Q. Now, to your knowledge, was there any
3 protesting by any shipper on the Bayview Terminal
4 project at any time?

5 A. To my knowledge, there were no protests
6 on Bayview. In fact, my understanding was that the
7 shippers were very excited about Bayview.

8 Q. Now up until this proceeding in this
9 case, have you ever heard of any shipper in
10 Washington state making any intervention on any
11 tariff filed by an oil pipeline company in this
12 state?

13 A. Not till now.

14 Q. Is it your understanding that the
15 Commission was involved, at least in part, on the
16 Cross-Cascade project by having an application on
17 file for approval of a loan in that particular
18 funding?

19 A. While I don't have personal knowledge
20 of that, I believe I did see a memo to that effect.

21 Q. Do you know what the result was of the
22 application for a loan for that Cross-Cascade project
23 to the WUTC?

24 A. I don't recall off the top of my head.

25 Q. There were questions raised by the sale

00751

1 of SeaTac by Mr. Brena. Are you aware or have you
2 heard that Prudential in their note requires that
3 they give consent to the sale of any asset?

4 A. Yes, I do.

5 Q. And has there recently been a series of
6 conversations with Prudential relating to what to do
7 about their -- not what to do about the sale of
8 SeaTac but how to resolve all of that issue?

9 MR. BRENA: Objection, scope. And this
10 also is the subject of the supplemental testimony
11 that we received yesterday afternoon and is subject
12 to a pending motion to strike.

13 MR. MARSHALL: Mr. Brena raised the
14 issue by talking about the SeaTac asset sale and also
15 what to do with the Prudential note.

16 MR. BRENA: I --

17 MR. MARSHALL: It's been opened --

18 MR. BRENA: No, that's not the case.

19 It's true I asked about whether or not
20 they were going to sell the SeaTac Terminal. What
21 the supplemental testimony goes to, a concoction of
22 the Prudential note, the whole plan where they were
23 also going to pay off 20 million dollars and can't
24 make the linkage and those conversations with
25 Prudential that is subject to the supplemental

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1 rebuttal which is subject to the motion to strike.

2 JUDGE WALLIS: Well, Mr. Brena, I'm not
3 sure we can cut the subject quite that finely, and I
4 would tend to agree with Mr. Marshall at this point,
5 that the inquiry into those areas opens up the topic
6 for redirect.

7 MR. MARSHALL: Thank you, Your Honor.

8 BY MR. MARSHALL:

9 Q. So have there been a number of recent
10 discussions what to do with the situation where
11 Prudential has to consent or not consent to the sale
12 of the asset and some activities, what to do about
13 removing that condition as required by the
14 Commission?

15 A. Yes. I believe that Howard Fox has had
16 a number of conversations with Prudential in recent
17 days on that particular issue.

18 Q. Is it fair to say that the situation of
19 Olympic is fluid and it changes from day-to-day with
20 things such as Prudential notes and other financial
21 stresses that you have?

22 A. Absolutely. On -- Olympic not only
23 changes day-to-day but sometimes hour to hour. And
24 it's just recent events are where the Prudential note
25 has been called into default, and we now have to

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1 figure out how to deal with that.

2 Q. Now there were a number of questions by
3 Mr. Brena about government relations and community
4 outreach, what he called public relations.

5 Are you aware from conversations with
6 Mr. Beaver or others that there are actual federal
7 statutes requiring that kind of community
8 involvement in expenditure?

9 A. Yes. The Office of Pipeline Safety has
10 very stringent requirements for public education.

11 Q. Is it your understanding that one of
12 your responsibilities as an operator of Olympic, as
13 was discussed in the operating agreement, is to meet
14 those federal laws and standards?

15 A. Absolutely.

16 Q. And that would also include community
17 outreach?

18 A. Yes.

19 Q. Is it necessary in order to do the kind
20 of increase and throughput to have communities behind
21 reopening the pipeline and getting the pressures up?

22 A. Without the community feeling safe
23 around the pipeline, it would not be prudent to move
24 forward on that until you could convince the public
25 that it was safe to operate. That is clear in

00754

1 Washington State.

2 And we need to certainly make the
3 improvements necessary to get up the throughput to
4 100 percent for Olympic's benefit, but also to make
5 sure that all of the capital improvements are made
6 to the system for the public's benefit.

7 Q. A number of questions were asked of you
8 I believe by Mr. Brena. You went over the lunch hour
9 and got some calculations for him on the actual rate
10 impact or at least the throughput percentages for the
11 two intervenors Tosco and Tesoro -- or, excuse me,
12 Equilon and BP.

13 Does your testimony in the rebuttal
14 case detail the exact amount of impact on Tosco and
15 Tesoro?

16 A. Yes, it does.

17 Q. And where do you find that testimony?
18 On what page of your testimony is that? Is that at
19 Page 16?

20 A. Thank you. Yes, it is.

21 Q. And was that calculated on the same
22 sort of basis that you calculated the BP Equilon
23 amounts; that is, based on historic throughput for
24 the last few months and projecting that into the
25 future?

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1 A. Based on the last six months of
2 throughput and projecting out into the future, yes.

3 Q. Now, Commissioner Showalter asked about
4 how this works if you have four refineries, two of
5 whom are not owners and two of whom are owners. And
6 I think Mr. Hemstad mentioned that there was going to
7 be this inevitable clash between the two in terms of
8 trying to set rates. Projections have been made in
9 your testimony, at least in an attachment to your
10 testimony, on what the alternatives are for barging
11 and trucking.

12 Is it fair to say that the companies
13 that would have the most accurate estimate of what
14 those truck and barge rates are would be Tosco and
15 Tesoro?

16 A. Yes. Or any shipper that happens to
17 use barges or trucks as an alternative or a
18 supplement transportation. They would certainly have
19 the rates of those particular modes of
20 transportation.

21 As Olympic we have, in essence, no
22 need to deal with those alternative modes of
23 transportation, and therefore our numbers that we
24 presented in my testimony were just a spot call to a
25 couple of companies, getting some spot rates. But

00756

1 certainly a long term shipper would have preferred
2 rates with either trucks or barges, and I'm not sure
3 that the numbers that we were able to obtain on
4 short notice has any of that factored in.

5 Q. If barges and trucks are protected from
6 a lower cost competitor because those rates have been
7 kept low, whether by regulation or other means, does
8 that make a barge and truck shipping rate less
9 competitive?

10 A. I'm not sure I fully understand the
11 question.

12 Q. If a barge owner doesn't have any sort
13 of competition because there's no additional capacity
14 in a pipeline so that all additional barrels produced
15 by refinery have to go to that barge owner, is that
16 barge owner under any pressure to reduce rates?

17 A. No.

18 MR. MARSHALL: It's just about 5:30,
19 and I think that I actually may be finished.

20 So I will conclude without asking any
21 more and without asking for permission to think about
22 it over dinner, because I'm sure if we do think about
23 it over dinner we'll think of something to ask.

24 JUDGE WALLIS: Let's be off the record.
25 (Brief off-record discussion.)

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JUDGE WALLIS: Mr. Trotter?

REXCROSS-EXAMINATION

BY MR. TROTTER:

Q. You're not suggesting that there's no competition between barge providers, are you? Aren't there multiple barge providers that compete for business?

A. Because Olympic is not looking at the barge industry in a competitive way nor do we ship on barges, I don't particularly know the answer to that question.

Q. Then how could you answer the question that your counsel asked you about the competitiveness of barge rates?

A. Competitiveness, not amongst barge companies, but competitiveness with the pipeline.

Q. Does competitiveness between barge companies drive prices down?

A. I think any, any -- in a free market environment, any competition helps drive prices down.

Q. Does OPS require you to spend money to enhance or protect Olympic's image?

A. The regulations require us to provide the public with as much information as they need to

00758

1 be assured that the pipeline is safe.

2 Q. Is there anything in those rules that
3 does address Olympic's public image itself, enhancing
4 its public image?

5 A. I don't believe so.

6 Q. Did I understand you to say that the
7 capacity on your pipeline has been prorated since
8 1985?

9 A. That is my understanding.

10 Q. And then my last question. You were
11 asked about obligation to serve, and I'm just wanting
12 to know your understanding and what it's based on.

13 A. Mm-hmm.

14 Q. Did you base your understanding -- I
15 think you said you had no duty to expand capacity, is
16 that correct; that's your understanding?

17 A. That's my understanding, yes.

18 Q. Is that based on a reading of
19 RCW 81.28.240, do you know?

20 A. It's based on a conversation with my
21 attorney.

22 Q. Did you consider the language in the
23 statute I just cited that says, in pertinent part,
24 that whenever the Commission shall find after hearing
25 that the facilities or service of any common carrier

00759

1 in respect to the transportation of persons or
2 property are inadequate or insufficient, the
3 Commission shall determine the sufficient and proper
4 facilities to be -- or service to be observed,
5 furnished, constructed, or enforced.

6 Did you consider that language?

7 A. I did not. But I'm sure my attorney
8 has.

9 Q. And you do agree that -- it's your
10 understanding that Olympic Pipeline is a common
11 carrier in Washington?

12 A. My understanding is Olympic Pipeline is
13 a common carrier, yes.

14 MR. TROTTER: Thank you. Nothing
15 further.

16 MR. BRENA: Just a few questions.

17 JUDGE WALLIS: Let's be off the record
18 please.

19 (Discussion off the record.)

20 JUDGE WALLIS: Mr. Brena?

21

22 RE-CROSS-EXAMINATION

23 BY MR. BRENA:

24 Q. You were asked whether or not Olympic
25 applied to this Commission for approval of the

00760

1 Cross-Cascades loan. Did it apply to this Commission
2 for approval of any of the other loans, any of the
3 affiliate loans at all?

4 A. I don't recall.

5 Q. Are you aware that RCW 81.08.040 says
6 that any public service company requires you to file
7 with this Commission any indebtedness that you incur?

8 A. This is the first I've been informed of
9 that issue.

10 CHAIRWOMAN SHOWALTER: What is your RCW
11 cite?

12 MR. BRENA: Eighty-one oh eight forty.

13 BY MR. BRENA:

14 Q. You were asked a question with regard
15 to attorneys' fees and insurance recovery. Isn't it
16 true that -- and you responded that you're not asking
17 for the recovery of these expenses.

18 Aren't all of these expenses that
19 we've discussed in the last two years a drain on
20 your cash and part of the reason that you're here,
21 needing an interim relief?

22 A. I think the biggest drain on cash is
23 the fact that the pipeline throughput was so reduced
24 over the past several years.

25 Q. But that wasn't my question. My

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1 question was, all the other expenses that we
2 discussed, aren't they drains on cash and also
3 contribute to your inability to finance capital
4 expenditures?

5 A. Every expense is a drain on cash.

6 Q. It all comes out of the same account,
7 doesn't it?

8 A. Some -- if we're talking about Whatcom
9 Creek, there are special issues around Whatcom Creek
10 and special insurance recovery questions. And what
11 insurance pays and what the insurers pay is certainly
12 an important factor there.

13 Q. Commissioner Showalter was exploring
14 with you a shareholder's motivation to continue or
15 discontinue service.

16 Would you agree that a shareholder who
17 has some equity in the company has a greater
18 incentive to continue to operate and find solutions
19 than a shareholder who does not have equity in a
20 company?

21 A. I have no opinion on that.

22 Q. Do you know whether or not your
23 right-of-ways going down the center of the state
24 require you to be a common carrier?

25 A. I know that Olympic Pipeline is a

00762

1 common carrier pipeline.

2 Q. One of the things that Commissioner
3 Showalter referred to was, in an economic
4 hypothetical, was the fair share of capacity. The
5 percentages you gave me: 31 percent to Arco, 24
6 percent to Equilon, 15 percent to Tesoro, and 12
7 percent to Tosco. And it's an over-nominated system.

8 In your opinion, are those fair shares
9 of capacity as between affiliated and nonaffiliated
10 shippers?

11 A. Those are based on historical volumes,
12 and it's been a historical basis that had been used
13 ever since I got here at Olympic Pipeline to allocate
14 the space.

15 Q. Do you know whether or not the
16 Cross-Cascades -- the application to this Commission
17 for approval of the debt referred to the
18 Cross-Cascades line at all?

19 A. I don't know.

20 Q. If I represent to you that it's a
21 matter of public record that it did not, with this
22 Commission, would you have any reason to doubt that?

23 A. No. Subject to check.

24 MR. BRENA: Is that four minutes?

25 JUDGE WALLIS: Were you including the

00763

1 time for answers as well?

2 MR. BRENA: No. No, I think I'm done,
3 let me just double check. Thank you all for your
4 patience today.

5 JUDGE WALLIS: Does that conclude your
6 examination?

7 MR. BRENA: Yes, it does.

8 JUDGE WALLIS: Is there anything
9 further of this witness?

10 It appears that there is not. Thank
11 you very much, Mr. Batch, for appearing before the
12 Commission today. And let's be in recess.

13 MR. BRENA: Can I move for the
14 admission of my exhibits?

15 JUDGE WALLIS: One of the
16 administrative items is that I have a number of these
17 exhibits that you referred to ticked off to me, and
18 if you wish to offer them to raise the questions that
19 I think were deferred to another witness.

20 So I thought it might be expedient for
21 us to compare notes in the morning, or perhaps even
22 after the testimony of that witness, and I'll just
23 ask that you keep track as well as I so that,
24 together, we have, hopefully, a complete list.

25 MR. BRENA: I have, and that would be

00764

1 fine.

2 JUDGE WALLIS: Is there any reason for
3 us to come back tonight? Or in light of the proposed
4 schedule, may we take up tomorrow morning?

5 Very well. Let's take up tomorrow
6 morning at 9:30. I'm going to ask Counsel to convene
7 here at 9:15 so that we can attend to the matter of
8 the exhibits, discuss the status of the motion to
9 strike, and the associated requests for live
10 testimony, and handle those before we begin taking
11 evidence at 9:30.

12 MR. FINKLEA: And, Your Honor, how late
13 will we be going tomorrow?

14 JUDGE WALLIS: Tomorrow we will be
15 going until 3 p.m.

16 MR. FINKLEA: Thank you.

17 JUDGE WALLIS: And on Wednesday, if
18 it's necessary to go into Wednesday, we would take up
19 at 9:30. And if the schedules are as accurate to the
20 extent that they have been today, we will not need to
21 worry about when to quit.

22 MR. TROTTER: Is the next witness
23 Mr. Fox?

24 MR. MARSHALL: It is, and I just wanted
25 to alert everybody that Mr. Fox has a flight that he

00765

1 has to catch at 4:00 tomorrow. But if the estimates
2 are correct, we should be able to finish with Mr. Fox
3 entirely in the morning, which would be fine. But I
4 did want to let everybody know that that was a
5 constraint.

6 MR. BRENA: Just with one proviso, my
7 estimate was given before my cross-examination was
8 deferred.

9 JUDGE WALLIS: Yes. We understand that
10 many of the questions were deferred to Mr. Fox, and
11 that's the only reason that I'm talking about
12 Wednesday here. So let's play it by ear and see how
13 the other witnesses go.

14 Based on the estimates, I'm confident
15 that we will get to Mr. Fox early enough that he will
16 be able to catch his flight.

17 Thank you all.

18

19 (Hearing recessed at 5:40 p.m.)

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