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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)Docket No. TO-011472
TRANSPORTATION COMMISSION,)Volume XI
Complainant,)Pages 1207-1308
)
v.)
)
OLYMPIC PIPE LINE COMPANY,)
INC.,)
Respondent.)
_____)

Oral argument in the above matter was held on January 24, 2002, at 1:13 p.m., at 1300 Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge ROBERT WALLIS, Chairwoman MARILYN SHOWALTER, Commissioner RICHARD HEMSTAD, and Commissioner PATRICK OSHIE.

The parties were present as follows:

OLYMPIC PIPE LINE COMPANY, INC., by Steve Marshall, Attorney at Law, One Bellevue Center, Suite 1800, 411 108th Avenue, N.E., Bellevue, Washington 98004.

TESORO REFINING AND MARKETING COMPANY, by Robin Brena, Attorney at Law, 310 K Street, Suite 601, Anchorage, Alaska 99501.

TOSCO CORPORATION, by Edward A. Finklea, Attorney at Law, 526 N.W. 18th Avenue, Portland, Oregon 97209.

Barbara L. Nelson, CCR
Court Reporter

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THE COMMISSION, by Donald Trotter and Lisa Watson, Assistant Attorneys General, 1400 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington 98504-0128.

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1 JUDGE WALLIS: Let's be on the record,
2 please. We're convened this afternoon in the hearing
3 room of the Washington Utilities and Transportation
4 Commission to hear oral argument on the matter of the
5 interim request for rate relief of the Olympic Pipe
6 Line Company in Docket Number TO-011472. We
7 appreciate the parties' flexibility. This argument
8 had originally been scheduled yesterday, but a matter
9 came up that Commissioners could not avoid, and we
10 have rescheduled it for today.

11 A couple of preliminary matters. The
12 transcripts initially delivered to the parties have
13 been replaced. The initial transcripts I believe
14 were misdesignated as to the volume number. I don't
15 know whether there was any change in the pagination,
16 but to the extent that there is any confusion and to
17 the extent that parties wish to make any citations in
18 argument, because those revisions were received only
19 a matter of minutes or hours ago, if you would state

20 the citation with the date and the page number that
21 you're aware of, then we can make any changes. If
22 it's more than the volume number, please submit a
23 corrected citation tomorrow. That would be very
24 helpful for us.

25 One other administrative matter is that Mr.

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1 Brena has submitted a revised Exhibit Number 49, a
2 single-page document entitled Chapter 81.08 RCW
3 Securities, which is substituted for the initial
4 exhibit. Number 49-R is received in evidence.

5 The parties will have the following
6 allocation of time, and we will do our best to let
7 you know five minutes before the expiration of your
8 time. The company, 55 minutes, of which it reserves
9 20 minutes for rebuttal; the intervenors, 35 minutes,
10 which they've allocated 20 minutes to Mr. Brena and
11 15 to Mr. Finklea; and 25 minutes for the Commission
12 Staff.

13 As our final preliminary matter, let's go
14 around the room and ask for appearances at this time,
15 and then we'll begin argument. The company.

16 MR. MARSHALL: Thank you. I'm Steve
17 Marshall of Perkins Coie, representing Olympic Pipe
18 Line Company.

19 MR. BRENA: Good afternoon, Robin Brena, on
20 behalf of Tesoro Refining and Marketing.

21 MR. FINKLEA: Good afternoon. Ed Finklea,
22 of Energy Advocates, L.L.P., on behalf of Tosco.

23 MR. TROTTER: Donald T. Trotter and Lisa
24 Watson, Assistant Attorneys General, for the
25 Commission Staff.

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1 JUDGE WALLIS: Thank you all very much.
2 Mr. Marshall.

3 MR. MARSHALL: Thank you, Your Honor. I
4 think I'll try to stand up here, so I can use the
5 exhibit. And if I get away from the mike, just let
6 me know, I'll try to speak up a little bit.

7 JUDGE WALLIS: You're away from the mike,
8 Mr. Marshall.

9 MR. MARSHALL: Away from the mike? Well,
10 this may not work. Maybe I'll have to sit down after
11 all.

12 JUDGE WALLIS: I think you can pick it up,
13 and I'm afraid you'll have to lift the base with it.

14 MR. MARSHALL: Well, I'll try to do what I
15 can by sitting down, then.

16 JUDGE WALLIS: Okay.

17 MR. MARSHALL: First of all, I guess I'd
18 like to introduce a couple of people here from
19 Olympic Pipe Line Company, if I may. Mr. Batch,
20 President of Olympic Pipe Line; Mr. Beaver, who acts
21 as chief outside counsel to the company; and I
22 thought that Mr. Cummings would be here. He's been
23 in Washington, D.C., on an oil pipeline safety
24 matter, and I expect him coming here pretty soon.

25 Cindy Hammer is a controller for Olympic Pipe Line,
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1 and Pam Brady, who is an executive assistant from
2 Olympic Pipe Line. Thank you.

3 JUDGE WALLIS: Thank you, Mr. Marshall.

4 MR. MARSHALL: I became involved in this
5 not much before the Commission itself became involved
6 in this, and I've tried to look at this case from the
7 perspective of the Commission and the perspective of
8 the state. What to do. As Staff has said, this is a
9 unique case, and I agree.

10 It's clear that the pipeline is important
11 for the state. It's able to take tanker trucks off
12 the road and barges off of Puget Sound. It costs
13 less than the existing alternatives. It's not
14 essential, as water and power, but it is important,
15 and there's no question about it.

16 It's equally clear that the safety of the
17 public must be the first priority. The pipeline must
18 be maintained and operated in a safe manner. I've
19 lived in the state, except for three years, all my
20 life, lived and grew up in the Olympia area, and the
21 safety of this has to be the primary public interest
22 concern of the Commission, because, in fact, we can
23 do without this pipeline. There are areas of the
24 state where we don't have pipelines carrying oil
25 products.

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1 But to do these things, though, requires us
2 to attract capital and talent. And the first thing I
3 wanted to address was talent, because that was the
4 first thing that I wanted to find out about before I
5 agreed to take on this matter. What was the
6 management of this company, where was it going to
7 take this company.

8 There's new management of Olympic and
9 there's been new management since the summer of 2000,
10 since July of 2000. And I have up here on this one
11 exhibit that you all may recall from the
12 cross-examination when the new management came in, in
13 terms of what was happening with the throughput of
14 the company.

15 New management is a factor that the
16 Commission ought to consider. It was mentioned in
17 the recent Avista case, Docket UE-010395, Sixth
18 Supplemental Order, page ten.

19 It's not easy to run a pipeline right. BP
20 Pipelines of North America is one of the best
21 anywhere. The necessary talent to run a pipeline
22 safely is also not easy to obtain. You've seen the
23 extensive safety background of Mr. Batch in his
24 original testimony, 1-T, his connections with safety
25 prior to working with BP Pipelines at Amoco, his 20

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1 years in the business focusing on safety, health, and
2 other areas, you've read his testimony about the BP
3 safety philosophy. And simply stated, it's no

4 accidents, no harm to people, no damage to the
5 environment. And that's at page six of his
6 testimony, 1-T.

7 So BP came in in the summer of 2000, and
8 replaced the prior Equilon management at the low
9 point in terms of throughput, after the Whatcom Creek
10 accident. And this, just so that -- I think that you
11 can all probably see this fairly well. Things had
12 been going along with high throughput and, because of
13 events that we all know about, the throughput has
14 dropped off.

15 And the new management came in in July of
16 2000. And the first thing they did is they devoted
17 themselves to getting the pipeline up to standards,
18 testing the pipeline with the latest equipment,
19 making sure the communities and the public were well
20 aware of what they were doing, well-informed, and it
21 would not restart segments of that pipeline unless
22 they passed new management standards. That's at page
23 nine of Batch Exhibit 1-T.

24 They didn't come to the Commission asking
25 for help, financial help to get this back up and

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1 running at that time. They wanted to devote all
2 their energy, and they did, to making sure that this
3 pipeline got back up to as safe a condition as
4 quickly as possible.

5 Now, we've provided testimony on the
6 federal, state, and local standards that apply. The
7 new federal standards include high-consequence areas,
8 operator qualifications, integrity, management
9 standards, and federal law specifically requires
10 community outreach and information, and that's all in
11 Mr. Batch's testimony, around page eight of 1-T.

12 These are not insignificant items. The new
13 federal standards, when we talk about operator
14 qualifications, integrity, management standards,
15 high-consequence areas, those are all imposing,
16 particularly the high-consequence areas. A lot of
17 costs. High-consequence areas means urban, built-up
18 areas. When this pipeline was built, much of the
19 area through which it flows was not heavily
20 developed. You can take judicial notice of the
21 development in western Washington over the last
22 couple of decades, and now we have high-consequence
23 areas.

24 New standards are even being proposed as
25 we're meeting here on the interim case. There is an

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1 open docket by this Commission itself on new
2 standards to be imposed. Those new standards will
3 have to be met. These standards, existing ones and
4 new ones and the standards that BP brings to this,
5 cannot be met without new capital.

6 At the request of BP pipelines, BP/ARCO has
7 already loaned new capital. I'd like to turn to the
8 new capital part now. Since the summer of 2000,

9 since this time when BP Pipelines came in as the new
10 management, BP/ARCO has placed \$52 million of new
11 capital at risk in the form of loans, Equilon has 43
12 million in loans, nearly \$97 million of capital at
13 risk.

14 The tens of millions of dollars that
15 BP/ARCO has made since June of 2000 truly is capital
16 at risk. It did not have to make these loans. It
17 simply didn't. It didn't have to do a thing in the
18 summer of 2000, if it chose not to. No one else did.

19 Also, in the summer of 2000, as this next
20 line on the chart shows, BP/ARCO bought an additional
21 25 percent of the shares of stock from GATX for \$7
22 million, putting even more of its own capital at
23 risk. Again, it didn't have to do this, didn't have
24 to put that capital at risk, it didn't have to buy
25 these initial shares, and no one else did at that

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1 time.

2 Now, based on the price of those shares,
3 Olympic's total net worth or total worth was only 28
4 million, if you multiply the 25 percent of the GATX
5 shares by seven, you get to 28. There's been a
6 suggestion that maybe more was paid because it was a
7 control premium, so maybe 28 is too high.

8 So in other words, at a time when Olympic
9 was worth, at most, 28 million, BP/ARCO put in an
10 additional 59 million of its own new capital at risk.
11 It placed twice as much at risk than the entire
12 company was worth.

13 Now, what's a company worth that's
14 regulated? A company's worth, that's regulated,
15 based on its discounted cash flow value. I mean, its
16 only source of income and value is really what
17 somebody will allow in rates, and if you have
18 customers that will buy the product that's being
19 sold.

20 So clearly, there is an issue with not only
21 the throughput and the questions about what the rates
22 are going to be in terms of what the value, what the
23 underlying net worth of the company's going to be.

24 What is Olympic trying to do with this
25 capital. Well, it put a lot of capital to work right

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1 away to get the pipeline to the point where it is
2 right now, stabilized, getting the throughput up as
3 far as it could. It is under an 80 percent
4 restriction right now for pressure. It's working to
5 make sure that it can get up to a hundred percent.

6 But the simple fact of the matter is that
7 when throughput is down because of high fixed costs,
8 the price per barrel, the cost to move a barrel of
9 oil, will have to go up, and the reverse is true. As
10 you get the throughput up, the price per unit goes
11 down. So if all things were equal, operating at
12 lower throughput would require a rate increase just
13 for that fact alone. So it's in everybody's interest

14 to get that throughput back up. And BP focused on
15 safety and it's focusing on increasing throughput.

16 When throughput stabilized, it came in --
17 thought it stabilized and it came in and started to
18 look for rate relief, trying to figure out what's the
19 right price given the situation it confronted. And
20 it still continued to work to increase the throughput
21 through additives and all that reduced the friction
22 of the pipeline so that it's able to get through the
23 pipeline, at 80 percent pressure, about 91 percent of
24 the throughput that it had historically.

25 So it's working that issue as hard as it
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1 can, but in order to complete what it needs to do, we
2 have submitted -- Mr. Batch has submitted the 2002
3 capital budget of about 23.8 million. Last year's
4 budget was almost that much. Coming up, we're
5 looking at approximately 23.8 million, although Mr.
6 Batch has testified that his Exhibit 10, Tab Three to
7 that, and I have an extra copy. You all probably
8 remember -- you probably all remember this, but I do
9 want to refer to that again. I think there are
10 copies for everybody. It has a well thought out plan
11 for what it would like to do this year in terms of
12 added capital expenditures.

13 JUDGE WALLIS: This is Exhibit 10.

14 MR. MARSHALL: This is part of Exhibit 10.
15 It's the last portion of Exhibit 10 to Mr. Batch's
16 exhibits.

17 JUDGE WALLIS: Thank you.

18 MR. MARSHALL: In this interim rate
19 request, what we're seeking here is the ability to
20 attract the necessary capital in the form of
21 additional loans. We're not seeking the interim
22 relief to pay for this entire amount; we're seeking
23 to get enough commitment to be able to go and obtain
24 the necessary additional loans to carry through 2002.
25 And we need to do this without waiting, because you

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1 have a window of opportunity to get permits and to do
2 the things that need to be done. So if we were to
3 wait until August or later on to do this, we would
4 miss the construction window, the other windows for
5 trying to do this. This is why you try to prepare
6 this. We're a bit pushing the envelope right now.

7 Now, the testimony shows that Olympic
8 cannot borrow from third parties because of a
9 restriction in the Prudential note that limits the
10 borrowing to just the existing shareholders. By the
11 way, that restriction enabled ARCO to loan the money
12 that it did, the 52 million that it did. Without
13 having that in the Prudential note, there would have
14 been a problem, as Mr. Fox had testified.

15 It's also in dispute in this case that
16 Equilon will not loan Olympic additional money. So
17 realistically, Olympic is looking at being able to
18 borrow only from BP and ARCO.

19 But the intervenors put witnesses on the
20 stand and said Olympic cannot attract money from Wall
21 Street because of its financial condition. We agree.
22 I think that proves the point. It proves the need
23 for this interim emergency rate relief.

24 These witnesses say that an additional \$4.4
25 million that we're seeking in the six months of

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1 interim rates won't have any effect on Wall Street,
2 but the testimony here is clear. Mr. Howard Fox
3 testified if the Commission approves the full amount,
4 the requested interim rates, he would recommend that
5 BP/ARCO loan Olympic the amounts necessary to fully
6 fund the 2002 capital budget.

7 And I was trying to look down at my notes
8 to be able to get that correctly, but I'm going to
9 hand out to the Commission his actual testimony in
10 question and answer form from the transcripts, so you
11 all may see exactly what Mr. Fox said.

12 The question he was asked was, If this
13 Commission were to give the amount of rate relief
14 requested for this interim case, what would be your
15 recommendation to the people you make recommendations
16 to on loans from ARCO to Olympic? Answer: Without a
17 tariff increase? Question: Assuming the interim
18 rate relief is granted in this proceeding in full.
19 Oh, I'm sorry. Question: In full. What would your
20 recommendation be with respect to the remaining
21 amounts of the ARCO revolving credit? Answer: I
22 would. I would recommend loaning enough to get
23 certainly the capital program complete in 2002.

24 Mr. Fox also testified that the Commission
25 Staff recommendation of 20 percent, if that is

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1 granted and nothing more, the financial impact would
2 be that it would not even be able to cover the
3 outstanding interest, the accruing interest on the
4 debt. And that's at page 909 to -- excuse me, 908 to
5 909 of the testimony of Mr. Fox.

6 He said, and I can pass this out, too, he
7 says, We're looking at a long-term solution, at least
8 from my narrow perspective. I'm concerned, at my
9 position, for what does the long-term look like for
10 Olympic Pipe Line. When I run the numbers and when I
11 even use conservative assumptions, even with a 20
12 percent increase with both the FERC and Washington
13 State, Olympic still needs a hundred million dollars.
14 It needs a hundred million dollars over the next five
15 to seven years. No tariff increase, it needs
16 something like 180 million.

17 The real issue here is how do we attract
18 capital. And I think what you have received in the
19 testimony in this case is a clear statement from Mr.
20 Fox that if the interim rate relief of this
21 approximately \$4.4 million over the next six months
22 is granted, they would be able to get the funding to
23 do the 2002 capital budget, the capital budget that

24 has to be up and running, has to be starting to be
25 put in place early on.

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1 Of this amount, of the \$4.4 million, the
2 Tosco share, as we've had testimony, would be about
3 527,000, the Tesoro share would be 633,000.

4 Mr. Elgin said this case is unique, and
5 indeed it is. It's the first pipeline case before
6 the Commission, it's the first Title 81 interim rate
7 case, it's the first interim case to involve a
8 parallel federal proceeding on common facilities, on
9 shared facilities. This case is unique. Because
10 it's unique, the appropriate standard may also be
11 unique.

12 In the recent Avista case that I just
13 mentioned, the Commission said, quote, Rigid
14 adherence to the usual forums the Commission upholds
15 the same rates simply will not solve the urgent
16 problems faced by Avista and its customers. Were we
17 to consider ourselves unduly with forum, we would
18 hamper our ability and our ability to address the
19 very real substance of the problems before us. This
20 is not to say we should ignore the well-established
21 principles that are a familiar part of the
22 rate-making process.

23 Past Title 80 cases, of course, have
24 applied the PNB standards, and the Avista case also
25 reviewed those standards in the context of that

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1 unique setting. And with that in mind, I'd like to
2 turn to the PNB standards, because I believe Olympic
3 meets those, but even if it didn't, I believe that
4 this case has unique properties that ought to be
5 taken into account.

6 Thank you for bearing with me. I've placed
7 on the floor the actual standards in the PNB case,
8 and then I've placed up on the easel a quick summary
9 of how Olympic has met those standards. And the
10 first standard, of course, is --

11 CHAIRWOMAN SHOWALTER: Counsel, I think you
12 might have reversed those.

13 MR. MARSHALL: Oh, I did. Thank you.
14 Thank you, Mr. Wallis.

15 The first question is an adequate hearing,
16 and we're in the midst of the hearing. This case,
17 stretching over the Thanksgiving and other holidays,
18 has been a challenge for everybody. I can't count
19 how many documents have been produced and how many
20 data requests have been answered. I think Mr. Batch
21 actually refers to it. I've lost track, to be frank,
22 but a lot of effort has gone on and into this to
23 produce a lot of information very quickly.

24 A technical conference was held on December
25 4th, at which Olympic brought in a number of people

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1 to answer questions as quickly as could be. We have
2 volumes of testimony here, so I think the hearing

3 factor has been met.

4 In fact, I want to come back to that,
5 because there's a question about what we might want
6 to consider for the future in terms of what, at least
7 for oil pipeline situations, would be a more
8 streamlined process.

9 Olympic's financial condition, the next
10 item, and its need for safety-related capital
11 improvements for 2002 of 23.8 million does constitute
12 an actual emergency, and relief is necessary to
13 prevent gross hardship and gross inequity.

14 On that 2002 capital budget, I think it's
15 important to note that nobody challenged that budget.
16 Mr. Batch was available for cross-examination. The
17 budget that you see here, he was asked no questions
18 about any item on this list by anybody that I can
19 recollect.

20 There was a statement by Mr. Brown, one of
21 the witnesses for Tosco and Tesoro, that I would be
22 remiss in not mentioning, because he thinks that
23 maybe what we should have done is we should have
24 deferred some of the under-boring through the ground,
25 underneath streams, for earthquakes. And he said, at
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1 pages 1174 and 1175 of his testimony -- this is the
2 only area that was mentioned at all. He said, Some
3 of those capital expenditures, if you look at the
4 list of projects that are included, include boring
5 under a river and put the pipeline there and to avoid
6 the possibility that an earthquake or a landslide
7 will occur.

8 You know, that may be something that ought
9 to be done from a safety standpoint, but certainly I
10 don't believe that it's something that's going to
11 affect the outcome of this case. You're not dealing
12 with 2002 capital expenditures. I think that if we
13 have an earthquake, as we did not more than 12 months
14 ago, of the nature that would disrupt a pipeline and
15 put oil into a creek, we would be facing the
16 permanent shutdown, potentially, of the entire
17 pipeline system.

18 I don't think there's any testimony that's
19 credible that would indicate that doing this
20 safety-related measure as soon as it could be done is
21 in the least bit unnecessary or imprudent or is
22 capable of being deferred. I think if people did not
23 do this, they would be criticized heavily in the
24 event that we have an earthquake in between now and
25 the time that's completed.

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1 So apart from that one question about
2 earthquake-related boring underneath streams, nobody
3 has questioned any of these items on this list.
4 Staff, to its credit, has said they don't question
5 any of these items. They're not taking issue with
6 anything in the capital budget whatsoever. As we
7 said, that has to be done, it has to be done in a

8 timely way. It's also needed to improve the
9 throughput, as Mr. Batch testified in his rebuttal
10 testimony.

11 The third bullet on this relates to the
12 financial indices. There are a number of things that
13 are undisputable. One thing that's undisputed is
14 there have been no dividends paid since 1997. Mr.
15 Fox has testified that he doesn't believe that any
16 dividends will be paid years into the future.

17 There's a negative rate of return, negative
18 book equity. Olympic is unable to pay accrued
19 interest on its existing debt. It's prohibited by
20 its note with Prudential from seeking outside sources
21 of capital, been refused new loans from Equilon, it's
22 in default on its existing loans, except for the loan
23 from Chase, and potentially from Prudential. It may
24 not be in default on the payment part of the
25 Prudential loan, but -- because they've kept up with

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1 the payments, but there are these issues that Mr. Fox
2 has testified, ongoing discussions with Prudential
3 being very unhappy with the loan and trying to do a
4 workout or something to get out of that loan.

5 And Olympic has financed its needed
6 improvements for the last three months of the year
7 2001 from a combination of IRS refund, and partly
8 because of the interim relief granted from the FERC.
9 It was able to continue and complete its capital
10 budget for 2001. But it's here because that money is
11 -- there's an absolute need for additional loans.

12 Denial of the interim relief would cause
13 clear jeopardy to the utility, it would be
14 detrimental to the public, because these projects
15 could not be completed, these uncontested, undisputed
16 projects. The interim relief and the continued
17 safety-related capital investments that would result
18 from the relief is in the public interest. The
19 safety-related investments in the pipeline will stay
20 in Washington State. If Tosco and Tesoro are granted
21 their desires, that money does not stay in the state.
22 The safety investments will be made and they will
23 stay here, they'll be put in the ground, they'll be
24 put into physical assets, they'll be used to improve
25 the throughput and get this pipeline back up to

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1 standards as fast as it can.

2 Now, the final issue in this public
3 interest arena is whether to make the refunds or the
4 interim rate relief refundable. That's an issue that
5 we talked about at the prehearing conference, and I
6 remember Commissioner Oshie asking these questions
7 about, Well, if we made it refundable, how would you
8 pay it back.

9 Mr. Fox, I think, has addressed that by
10 saying if you give the interim rate relief requested,
11 then there will be the loans from BP/ARCO to complete
12 the capital-related projects. There are ways of

13 adjusting rates in the future so that those loans can
14 be -- or the interim rate relief can be repaid. And
15 I think that, with the pendency of the general case,
16 the Commission can monitor whether that commitment
17 has been honored and whether that will create any
18 risk and then modify that if that becomes a concern.

19 We've looked at this issue some more and
20 thought about it some more, and we believe the rates
21 should be made subject to refund for a couple
22 reasons.

23 One, the FERC rates in effect are subject
24 to refund. This is a parallel that we think probably
25 should be maintained. Thinking about this, we don't

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1 want and don't wish the interstate shippers to
2 inadvertently subsidize the intrastate shippers or
3 vice versa. So making the full amount of this
4 request, which, again, is parallel to the request
5 made at the FERC, if we make it parallel completely
6 and have it subject to refund avoids that potential
7 issue. And I think that's significant.

8 There's a U.S. Supreme Court case that
9 we've cited talking about how pipelines are financed
10 and whether there are federal preemption issues.
11 That's all avoided with making these parallel.

12 Second, if the rates are subject to refund,
13 and this is probably most important, they are, by
14 definition, fair, just, and reasonable. And I say
15 that because the Commission has just said that here
16 recently in the Avista case.

17 I jotted this down from the Avista order
18 that I mentioned before in Docket UE-010395, at page
19 33. And the Commission, in its order, one of its
20 final points in its findings stated, quote, The rates
21 that result from this order are subject to refund and
22 are, with that condition, just and reasonable rates.

23 JUDGE WALLIS: Mr. Marshall, you have about
24 five minutes remaining.

25 MR. MARSHALL: Thank you.

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1 COMMISSIONER HEMSTAD: Well, I'd just make
2 the comment that it doesn't follow, I think, from
3 that statement that, ipso facto, that if a rate is
4 made subject to refund, it is automatically fair,
5 just, and reasonable. For example, what if we made
6 -- raised the rates 10,000 percent subject to refund?
7 In the meantime, the shippers have to pay it.

8 MR. MARSHALL: Your point is well taken,
9 and I'm not trying to imply that we can go outside of
10 what's within a zone of reasonableness. I completely
11 agree with you, and I'm not trying to make the point
12 that anybody can come in with any kind of rate and
13 seek that, but if you think about it for a minute,
14 there are only three outcomes when you combine this
15 case with the general case.

16 First would be if the full interim rate
17 relief is granted, and then, at the end of the

18 general case, there's no refund required, because
19 everything has been proven and it's considered to be
20 fine. In that case, the rates are fair, just, and
21 reasonable.

22 Second is that the full amount has been, in
23 the interim, has been granted and that some portion
24 of it or all of it is subject to refund. And if the
25 funds are there to do it, then the rates will be fair

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1 just, and reasonable. They'll be paid back in that
2 event.

3 Then the third outcome -- and that's where
4 it gets into the reasonableness, because if you do
5 too much and it can't be paid back under any
6 reasonable set of circumstances, that might not be
7 appropriate.

8 The third circumstance would be -- and this
9 is where I think we come back to the notion of what
10 are the appropriate standards in an oil pipeline
11 situation -- that if interim rates are not granted at
12 the amount requested or at a lower rate and, at the
13 end of the day, it turns out that those rates should
14 have been granted because of what the general rate
15 case is, during that period of time, Olympic has been
16 denied those rates. So therefore, the rates in that
17 period of time -- and taking into account that I
18 understand there's regulatory lag, and those are
19 built in, but regulatory lag carries with it a cost,
20 and somebody bears that cost, and that cost that can
21 be avoided should be avoided.

22 Now, if, in an interim case, a rate is
23 subject to refund, I think it does change some the
24 issue about how much do we have to bore in and delve
25 into issues. In other words, how much of a showing

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1 and how detailed do things have to be made and how
2 much time needs to be taken to get to that point,
3 because you have a very fluid and changing financial
4 situation, as you heard from Mr. Fox.

5 Things are changing, even as we progressed
6 in this case, with the Prudential -- while we're
7 thinking about trying to figure out what do we do
8 with Sea-Tac, do we sell it or not sell it. It would
9 be a problem to sell it, perhaps, because it takes
10 away some revenues, but then, again, if you can use
11 that to handle a note issue that you have with
12 Prudential, do you do that. These are realtime
13 things that need to be handled quickly.

14 So I wanted to come back to the issue about
15 how should oil pipeline cases be handled, in
16 particular. Should it be under Title 81. Should
17 Title 81 automatically accept the Title 80 type
18 standards, or should there be more flexibility.

19 And I'm not suggesting anything more here
20 than just that we ought not to impose factors on an
21 industry that may differ from other cases that we've
22 had in the past just because that may be the way --

23 take from the Avista case, at the very beginning of
24 the case, there was a very firm notation from the
25 Commission about how government actions in California

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1 and by the FERC have made a bad situation worse in
2 the energy arena.

3 And I share the Commission's concern about
4 how people in Washington, D.C. may not understand how
5 we're set up out here, how our transmission and
6 energy markets all work. And I guess the same thing
7 applies here, too. There are a lot of issues related
8 to oil pipelines, their financing, their history,
9 their regulatory history, as well as the financial
10 history, that frankly I'm just beginning to
11 understand. And what I do understand is that it is
12 significantly different in many ways from anything
13 that I've been used to before.

14 So I want to not only go through the PNB
15 standards here, but suggest that we, as in the Avista
16 case, apply these standards in a flexible way,
17 realizing that this is a unique case, realizing that
18 we have a unique set of circumstances, a unique
19 problem to be addressed in the public interest. And
20 of course, the Commission, because of its public
21 interest factor, always can use that public interest
22 factor to achieve the necessary flexibility that it
23 needs.

24 I'm going to put on the board one --
25 JUDGE WALLIS: Mr. Marshall, your time has

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1 expired.

2 MR. MARSHALL: Okay. I will then defer.

3 CHAIRWOMAN SHOWALTER: Why don't you leave
4 us with the six points, rather than our own words.

5 MR. MARSHALL: Ah. I do have these in
6 eight and a half by 11 form that I will hand out,
7 too, so that you can refer to those.

8 JUDGE WALLIS: We want to give you our full
9 attention, Mr. Brena.

10 MR. BRENA: Well, I certainly appreciate
11 that intention. I was going to hand out some packet
12 that has everything together, bullets and tracks
13 along the argument.

14 JUDGE WALLIS: Thank you.

15 MR. BRENA: Now if I can find my opening
16 paragraph, I will start.

17 JUDGE WALLIS: The justice for whom I
18 clerked said that lawyers are infinitely resourceful.
19 Mr. Brena, finding a podium, you have indeed proved
20 that.

21 COMMISSIONER HEMSTAD: Is your mike on?

22 MR. BRENA: I hope so. It's up.

23 COMMISSIONER HEMSTAD: It should be up.

24 CHAIRWOMAN SHOWALTER: The little red
25 button.

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1 MR. BRENA: I will try to speak up, as

2 well. I have the curse of being soft-spoken.

3 JUDGE WALLIS: If you're ready, Mr. Brena,
4 you may proceed.

5 MR. BRENA: Thank you. First, good
6 afternoon. It's been kind of a long and arduous
7 interim hearing, so I appreciate the Commission's
8 patience and flexibility in this regard.

9 Emergency relief is an extraordinary remedy
10 that should be used only where an actual emergency
11 exists and the relief requested is necessary to
12 prevent gross hardship and gross inequity. Emergency
13 relief is a useful tool to starve off impending
14 disaster only in cases where the denial of that
15 relief would cause clear jeopardy.

16 Emergency relief should not be used to send
17 signals to anyone, but to solve problems. Emergency
18 relief should not be a solution for cash flow
19 problems caused by owners who have dividended out a
20 hundred percent of their net income for a decade and
21 then burdened the common carrier with unrealistic
22 levels of affiliated short-term debt unrelated to the
23 service being provided to the ratepayers, and then
24 come in and complain about the burden of the debt and
25 request emergency rate relief. That debt has nothing
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1 to do with ratepayers. It is not our problem. It is
2 a self-created problem for them. Emergency relief --

3 CHAIRWOMAN SHOWALTER: Counsel, just a
4 personal request, but I think if you refer to it as
5 interim relief, it's going to be more accurate. We
6 have distinguished emergency relief from interim
7 relief. The standards may be similar, but call it
8 whatever you want, but what we're talking about is
9 interim relief, and that's really the proceeding
10 we're in, as distinguished from a request for relief
11 outside of a general rate case.

12 MR. BRENA: Thank you.

13 CHAIRWOMAN SHOWALTER: Which might be
14 extraordinary, might be emergency, might be urgent,
15 whatever it is, but this is interim relief.

16 MR. BRENA: Okay. I appreciate the
17 distinction. Interim relief should not be a
18 mechanism for owners who wish to avoid or to transfer
19 their risk of ownership onto their ratepayers.
20 Emergency relief should not be a mechanism for
21 shipper funding of future capital improvements equal
22 to 35 percent of total net plant in one year for
23 owners who have unlimited financial resources and a
24 pipeline which today, with decreased throughput, has
25 record levels of revenue, has record levels of

1239
1 accounts receivable, has a current credit facility
2 equal to \$20 million available that the chairman of
3 the board can just approve, and a pending
4 multi-million dollar sale of terminal facilities
5 which have been paid for by ratepayers and they
6 expect to close this month.

7 This is not an appropriate use for interim
8 relief. Interim relief should not be a mechanism to
9 allow a common carrier to participate in the debt
10 marketplace which does not exist for companies with
11 owners unwilling to invest equity, for a company
12 unwilling to audit its books and records, and even
13 present to the debt community reliable financial
14 records.

15 Finally, interim relief should not be a
16 mechanism to effect a rate increase without any
17 demonstration that the current rates are unjust and
18 unreasonable.

19 Mr. Marshall's last point was if it's
20 refundable, it's just and reasonable. That's not the
21 standard. That's not true. The reason that he had
22 to say that is because nowhere in this case had they
23 put on any evidence of what a just and reasonable
24 rate should be. They haven't instructed the
25 Commission about how the public balance should be

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1 struck between the carrier's interest and the
2 shipper's interest. The shipper only has to pay a
3 just and reasonable rate. If that isn't enough,
4 that's an owner problem.

5 Shippers do not have to pay more than a
6 just and reasonable rate, and this Commission and
7 many other commissions have defined just and
8 reasonable rate many, many times, and it is never
9 defined purely within the context of carrier need.
10 It is defined in terms of the cost of providing the
11 actual service to the ratepayer, a reasonable return
12 on their investment and the recovery of their
13 investment. That is what a just and reasonable rate
14 is.

15 This Commission has held that interim
16 relief needs to meet the standard for just and
17 reasonable rates. Their case is completely absent
18 any evidence whatsoever as to what a just and
19 reasonable rate should be.

20 CHAIRWOMAN SHOWALTER: Well, on that point,
21 doesn't that get at -- we obviously aren't going to
22 make a final determination here on just and
23 reasonable rates. That's what the rate case is
24 about. But for interim purposes, where did Tesoro
25 and Tosco challenge the reasonableness of the

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1 expenditures to be made? Doesn't what is a just and
2 reasonable rate get at what are reasonable expenses
3 to pay for?

4 MR. BRENA: We don't challenge the capital
5 expenditures. They haven't demonstrated that they
6 don't have funding now, they haven't demonstrated
7 that the existing rates aren't sufficient, they
8 haven't demonstrated -- they haven't advanced to this
9 Commission a cash flow statement for 2002 that shows
10 that they can't make it with no rate increase
11 whatsoever. They have not provided you with any

12 information whatsoever that demonstrates that there's
13 any linkage whatsoever between the rate requested,
14 the relief requested, and their ability to fund.

15 The basis for their emergency, and that's
16 illustration aid number three in the packet, I have
17 gone through the record and their story has changed
18 as to what they want this money for, how much they
19 need, what they're going to use it for, but in all
20 fairness to them, there seems to be three different
21 arguments. One is they have this huge debt in
22 default; the second is they have an inability to
23 attract capital; the third is what about these 2002
24 capital expenditures.

25 I'd like to address each of those

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1 arguments. Exhibit Number 4, is their claim of debt
2 in default. First of all, their general rate case,
3 that the Chairwoman properly pointed out that this
4 interim rate should be considered within, their
5 general rate case doesn't have any of this debt in
6 it. Their debt expense in their general rate case is
7 a million dollars, but yet they're in here asking for
8 interim relief based on \$9 million, a huge
9 inconsistency between what they're telling you should
10 be the basis for their rates long-term and what
11 they're in here on an expedited basis to do.

12 The \$43 million Equilon note, I'd like
13 everybody in this room to raise their hand that
14 thinks that that's going to get paid in the next five
15 years. It's not. It's tied up in litigation. The
16 debt was unrelated to the service provided. In the
17 exhibits, I've shown that part of that debt was the
18 Cross-Cascades, part of it was Bayview. Neither one
19 are facilities even in service today. The Equilon
20 debt is not a ratepayer problem; it's an owner
21 problem.

22 The ARCO notes -- and by the way, all this
23 debt that they're in here asking for interim relief
24 to cover, they didn't come before you and let you
25 know that they were going to borrow it. They didn't

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1 comply with your regulations and your statutes saying
2 there should be a public interest finding. They went
3 ahead and did it, and now come in later and ask for
4 ratepayers to pay more to cover the debt that should
5 never have been incurred in the first place, because
6 it shouldn't be on this affiliate -- it shouldn't be
7 -- it shouldn't exist at all. It's completely
8 unrelated to service.

9 CHAIRWOMAN SHOWALTER: Counsel, on that
10 particular point, there was some back and forth
11 during the hearing on what the statute says and what
12 it didn't say. It seemed like the appropriate place
13 is oral argument to address that question, but what
14 is your view of what the statute requires Olympic
15 Pipe Line to do with respect to either loans from
16 outside sources or loans from shareholders?

17 MR. BRENA: What they did do with regard to
18 earlier debt, which is come before this Commission
19 and file for approval. That is my interpretation.

20 The \$42 million in ARCO debt, nobody's --
21 you know, you loan \$70 million to a company that's
22 partially shut down and you want it back in three
23 months and you come back later and say that, because
24 of this debt, you need rate relief. I don't think
25 so.

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1 Nobody is treating any of this debt as
2 though it's in default. Nobody is treating any of
3 this affiliated debt as though it's in default.
4 There's an interest step-up right in the note up to
5 12 percent. They're collecting it at seven and
6 accruing it on their books at seven. There's no
7 notice of default. I asked him, has anybody sent you
8 a notice of default. He asked me back, Are you
9 including e-mail. You don't get a notice of default
10 by e-mail.

11 No action to collect, no objective
12 indication by any party that they are treating this
13 debt as though it's in default. They hide behind
14 words, technical default. Well, if you read all the
15 covenants, we're in default. Nobody is treating this
16 debt as though it's in default. What they have done
17 is they loaded it up with affiliated debt unrelated
18 to their ratepayers. They were going to put a
19 long-term program in place and they failed. It's not
20 a basis to come before this Commission for interim
21 relief.

22 There's no indication in the record of all
23 of their -- of their willingness or intention to
24 actually pay any of this debt or interest back if
25 they get the interim relief. The problem that

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1 they've identified to come in here for interim relief
2 for, interim relief is not going to be used to solve.
3 There is an absolute disconnect between what they're
4 asking from you and what they're going to do with the
5 money. We're heavily in affiliated debt, help us out
6 here. What are you going to do with the money. Go
7 spend it on future capital improvements. There is an
8 absolute disconnect between the problem they identify
9 and their intended use of the funds.

10 The \$10 million credit facility, you know,
11 most of this debt was used to pay for one-time
12 expenses associated with Whatcom Creek, and none of
13 this should be a ratepayer problem. You can't go out
14 and incur debt for prior period losses and then
15 burden future ratepayers with it. It's not right.
16 It's not the way rates are set.

17 The \$10 million ARCO credit facility, you
18 know, I'd like to participate -- I'd like to hear the
19 series of conversations that had to occur for them to
20 approve it. It seems to me that Mr. Fox phones up
21 the chairman of the board, he asks for the money, he

22 makes, as assistant treasurer for Olympic, he makes a
23 recommendation as on the finance committee for ARCO,
24 then the chairman of the board says yes or no to a
25 \$20 million loan that comes out of the ARCO

1246

1 miscellaneous account. Nobody believes this money
2 isn't available.

3 And Mr. Elgin, when asked, Is the money
4 available, he says, Yeah, I think it's available and
5 nothing Mr. Fox said convinced me differently. I
6 asked him specifically, quotes, the quote's in the
7 quote section, Did you ask him for a sum certain and
8 was received, no. They haven't applied for a single
9 loan, they haven't asked for a specific sum of money.
10 They have done nothing to help themselves whatsoever.
11 And their owners are sitting back there refusing to
12 contribute equity. But yet they're in here saying
13 let's make all this a ratepayer problem.

14 CHAIRWOMAN SHOWALTER: This might be an
15 appropriate place to stop and ask the question that
16 we got into in the hearings, but if there are
17 shareholder owners, also the shippers, who have debt,
18 but no equity, but nobody else has equity -- in other
19 words, their debt is lower on the totem pole than
20 anybody else, because there's no equity to be above,
21 what is the implication of that? In other words, why
22 should we be worried, if we should, that this company
23 has no equity if those who would have it have the
24 lowest status of credit?

25 MR. BRENA: The biggest single safety issue

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1 that this company faces today is the lack of equity
2 investment. Why you should be worried is what
3 happens today if tomorrow Whatcom Creek happens
4 again. This company can't respond. And its owners
5 are going to sit out there and say, Make it a
6 ratepayer problem, we're not going to put money in.
7 What if there's petroleum rushing into these rivers
8 that they're boring under. How are they going to
9 come up with the money.

10 This is not a ratepayer problem; it's an
11 owner prudence and responsibility issue. And the
12 biggest single risk to safety that Olympic Pipe Line
13 presents to this Commission in this state is the
14 failure of their owners to be responsible owners and
15 stand behind this pipeline and give it the resources
16 necessary to fully participate as a common carrier
17 pipeline.

18 JUDGE WALLIS: Mr. Brena, you have five
19 minutes.

20 MR. BRENA: Oh, ouch. My learned colleague
21 just yielded me five. Thank you. Thank you very
22 much. Their nonaffiliated debt. They come in and
23 file, Sunday night before hearing, a big emergency
24 with Prudential that they want to draw this
25 Commission into doing. What was the emergency?

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1 They're in default under the Prudential. Have they
2 got a notice of default? No. I didn't ask about
3 e-mail. They didn't audit their books and records in
4 three years and Prudential is sick of them. Well,
5 who blames them? I would be sick of them, too, if I
6 loaned them money and a condition of the loan was
7 that they had to audit their books and records. I
8 had to know if they were making or losing money, and
9 they won't go do it. That is the only default under
10 Prudential that they can cure in a heartbeat. Go do
11 their job.

12 I mean, BP Pipelines, one of the most
13 sophisticated pipelines in the world, they've owned
14 this thing for two years and they can't get an audit
15 and they force nonaffiliated debt into default. And
16 then they're looking at \$1,200 a day in payments?
17 You know, at some point, you just got to call
18 something for what it is. They need to do their job
19 better with regard to their financial management of
20 this company.

21 They may be doing wonderful things on
22 safety, and Tesoro is not here to oppose safety, but
23 their financial management of this company is
24 terrible. No notice of default to Prudential.

25 They come in with a plan. Well, we're

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1 going to close on Sea-Tac and we're going to pay off
2 \$15 million of the debt. And they asked you to
3 approve it and we can do it in a month. Look at the
4 last page of Mr. Fox's supplemental testimony to this
5 Commission. We can do this all in a month, close
6 Sea-Tac and pay off Prudential note, at the same time
7 as they're in here asking you for interim relief
8 because they can't fund four or \$5 million that they
9 would raise in interim relief from all their
10 shippers, including affiliated shippers.

11 At the same time as they're doing that, the
12 day before hearing, they come forward and say we're
13 going to pay off a \$15 million note when the only
14 default is they won't audit their books and records,
15 and we're supposed to believe they have a real
16 emergency that requires them to get that \$4 million.
17 They just showed you how to pay off 15 in a month.
18 They don't have an emergency.

19 The Chase Manhattan debt. They went into
20 an executive session for an hour, when you look at
21 the minutes, and came back, rolled it over, unaudited
22 books, no equity, with a parent guarantee. They
23 could go out and get a billion dollars tomorrow with
24 a parent guarantee.

25 Their inability -- the second of the three

1250

1 bases are inability to attract capital. Well, of
2 course they can't attract capital. First, they
3 haven't made any efforts to do it, they haven't made
4 any efforts to waive the Prudential requirement, they
5 won't audit their books and records, they won't put

6 in a penny of equity. They want to just play this
7 affiliated short-term debt game and then try and use
8 it as a leverage point to force their ratepayers into
9 higher rates. They won't offer a parent guarantee,
10 and there's no credible evidence that their current
11 rates are inadequate.

12 Well, what a surprise that they can't go
13 out and borrow money. It's impossible to borrow
14 money if you run a company like that. I couldn't get
15 a house loan like that. And the same with internal
16 capital. What efforts have they made? They haven't
17 even phoned up and asked for a specific sum to draw
18 down the ARCO line of credit, from their assistant
19 treasurer to the chairman of the board. No efforts
20 to speak of at all. It's available and it's there.

21 And what about equity investment? The
22 problem with this company is there isn't any and
23 there should be. Then they say they can't fund their
24 improvements without the interim relief. That's just
25 not true. They haven't put -- they haven't shown you

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1 what their net income will be next year.

2 They're making money now. They are making
3 \$4 million a month. That is 36 percent above their
4 revenue level for the last decade at lower
5 throughput. That is 16 percent above the maximum
6 revenue they have ever collected. They are realizing
7 the highest revenue stream that this pipeline has
8 ever realized, and they have more ways to realize
9 more. If they put Bayview online, it would be nice
10 to do, they can have 35 to 40,000 barrels a month.
11 That's a half a million dollars.

12 JUDGE WALLIS: Mr. Brena, five minutes.

13 MR. BRENA: Five minutes, okay. Look at
14 that chart. He took it down, but did you notice
15 July? In the month of July, they ran 9.6 million
16 barrels through this facility. They had the pressure
17 restriction on. They ran 9.6 million barrels.
18 They're running a million barrels less right now.
19 Why? Have they explained it? No. Why, if you run
20 it through in one month, can't you run it through in
21 the next month? I don't know. I tried to explore
22 that. I don't know.

23 A million barrels a month. There is a
24 million and a half -- there's 2.2 million barrels
25 between Bayview and their running in July that

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1 they're leaving on the table and they still have
2 record revenues. Record revenues.

3 Their accounts receivable, \$39.7 million.
4 For the last ten years, they've averaged about three.
5 They are 800 percent above their accounts receivable
6 compared with the highest level of their accounts
7 receivable in the history of the pipeline. They are
8 900 percent above the average, and they can't figure
9 out how to fund the sale of the Sea-Tac terminal.
10 Fifteen million dollars of ratepayer money that

11 they're going to realize within the next month, under
12 their own testimony, and they can't figure out how to
13 fund \$4 million?

14 The ARCO line of credit, \$20 million with a
15 phone call. And they can't figure out how to raise
16 the money? External financing with a corporate
17 guarantee. Unlimited amounts of resources available
18 to them. When it was to their advantage, they rolled
19 over Chase in a heartbeat in a two-hour -- after
20 going into executive session for an hour, they rolled
21 over \$30 million debt with a parent guarantee. They
22 can't do that now? Of course they can.

23 Equity investment. The biggest single
24 problem facing this Commission is their unwillingness
25 to step up. Of course they can and of course they

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1 should and of course this Commission should not give
2 them a penny until they do.

3 The idea of ratepayer financing is a false
4 concept. Ratepayers shouldn't pay for things up
5 front. We did that for Bayview. It hasn't been in
6 service for three years. They've been depreciating
7 it and charging us a rate and it's not even online
8 yet. You don't pay for things ahead of time, you
9 don't have the ratepayers pay for them once up front
10 and then include them in their rates in the future by
11 an addition to rate base. That's what they're here
12 to do. Force our shippers to give us a loan that we
13 don't intend to pay back so we can make capital
14 improvements that then we're going to add in their
15 rate base and make them pay again for.

16 Well, we shouldn't have to pay for these
17 improvements once in interim relief and once in the
18 permanent relief. The way that things ought to be
19 financed is they ought to put their money up. And
20 when they put their money up and they put the
21 investment in, we have to pay it back to them. We
22 don't have to pay them the investment and then pay it
23 back to them. That's not right. How much time do I
24 have?

25 JUDGE WALLIS: A minute and a half.

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1 MR. BRENA: Thank you. Ratepayers aren't
2 here and shouldn't be required to pay forced loans
3 into this company. I have listed in my illustrative
4 aid nine that allowing emergency relief in this case
5 would be bad precedent for this Commission to do,
6 because there's no emergency, there's no claimed
7 impact or existing service, there's no claimed impact
8 to safety, there's no real cost-cutting efforts on
9 their part, and the emergency's self-created with
10 affiliated debt. Affiliated debt. When I hear the
11 word affiliated, I hold it to a higher standard, and
12 so should the Commission, because you have in the
13 past.

14 The emergency relief is unrelated to their
15 claimed emergency. It's not going to solve their

16 affiliated debt problem. Their claimed emergency is
17 the owners' and common carriers' responsibility and
18 not the ratepayers.

19 And finally, you just cannot ignore their
20 improving financial condition. Their record
21 revenues, their record accounts receivables, their
22 pending sale of Sea-Tac, \$20 million in ARCO line of
23 credit. And when I asked Staff, I said, If I could
24 show you how they could come up with this money to
25 make this, would you change your recommendations?

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1 Mr. Elgin said, Yes, we would. I think that I have.

2 JUDGE WALLIS: Mr. Brena, that ends your
3 time.

4 CHAIRWOMAN SHOWALTER: Before you sit down,
5 I just want one more answer to my question. You
6 sprinkled throughout your arguments here the need for
7 notice and approval by the Commission of debt, and
8 I'm staring at RCW 81.08.040, and I see that certain
9 kinds of indebtedness must be filed with the
10 Commission. I just don't see the words approval, and
11 if I can't see it, just tell me where it is.

12 MR. BRENA: Well, no, I don't. It requires
13 them to file it and state why it's in in the public
14 interest. When I reviewed how the Commission had
15 handled their prior debt, there was an affirmative
16 finding by the Commission with the prior debt that
17 they requested approval of was in the public
18 interest. And so that's where I got it from, the
19 practice, rather than the statute.

20 MR. MARSHALL: In 1994, the statute was
21 expressly amended and the requirement to seek
22 approval from the Commission was ended. There was
23 also questions about the transition. Calls were made
24 on these notes in terms of what notice had to be
25 required. But the prior note that Mr. Brena's

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1 referring to that did obtain Commission approval was
2 done prior to 1994.

3 MR. BRENA: And allow me to --

4 MR. MARSHALL: Prior to changing the
5 statute, Your Honor.

6 CHAIRWOMAN SHOWALTER: And my question did
7 go to what does the law require today?

8 MR. BRENA: Well, it requires them to file
9 it.

10 CHAIRWOMAN SHOWALTER: Okay.

11 MR. BRENA: And to have an affirmative
12 statement that it's in the public interest. And what
13 that allows you to do in your oversight capacity is
14 if you see something getting out of line like this,
15 to use your investigatory or other regulatory powers
16 to be sure that what's going on underneath it is
17 truly in the public interest.

18 Without that notice filing, without an
19 opportunity to be aware of the amount of affiliated
20 transactions going on out there, you'll find yourself

21 in a situation like we're in today, which is that
22 there's no equity in a company that's transporting
23 petroleum products through the center of your state,
24 and you weren't made aware of the debt that did it.

25 CHAIRWOMAN SHOWALTER: Thank you.

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1 JUDGE WALLIS: Mr. Finklea, you have ten
2 minutes.

3 MR. FINKLEA: Thank you, Your Honor.
4 Commissioners, Good afternoon. I am Ed Finklea,
5 representing Tosco. I'm going to address just a
6 couple of the issues that were not addressed by Mr.
7 Brena. Tosco does concur with Tesoro and with Staff
8 that Olympic has not met the burden of proving the
9 need for an interim rate increase under the
10 Commission's traditional standards.

11 We believe that the precedent in this
12 proceeding is important, because the
13 undercapitalization by this company is a situation
14 that, as Mr. Brena has just explained, is serious and
15 is one that the Commission should not assume could
16 never happen again, and therefore, we believe that
17 the traditional analysis is the way to start in
18 addressing the request for interim relief, and that
19 your own Staff, as well as the shippers, have made a
20 very compelling case that the standards for an
21 interim rate increase have not been met.

22 The Staff, however, has put forward, other
23 than the traditional analysis, Tosco commends Staff
24 for going beyond the traditional analysis in this
25 situation, and we want to reserve most of my time to

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1 address the Staff analysis, because we believe the
2 Staff has put forward something that needs to be
3 considered, as well as adjusted.

4 Basically, we have two issues with the
5 Staff analysis. One is the treatment of the FERC
6 revenue and the other is the treatment of Bayview.

7 First of all, let me just say that we view
8 the Staff analysis essentially as an attempt to come
9 to some middle ground. I think the Staff would
10 concur that it is a novel financial ratio analysis
11 that they have put forward, it's one that, in
12 traditional rate-making, wouldn't apply here, because
13 the company doesn't have any equity, and because we
14 don't have audited books.

15 Normally, to do a financial ratio analysis,
16 you would expect that the utility you're analyzing
17 has equity and has audited books. Both of those
18 things are missing here. It also ignores the actual
19 ability to fund improvements, as Mr. Brena has just
20 outlined.

21 That -- recognizing all that, I want to
22 spend the balance of my time on the two issues of
23 FERC revenue and Bayview, and then discuss
24 conditions.

25 The FERC revenue issue is essentially this.

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1 The Staff is trying to calculate what cash flow the
2 company needs, and we believe that the Staff
3 understates Olympic's actual current cash flow and
4 thus overstates its immediate need for funds to meet
5 the interest coverage in its analysis. And the
6 reason for that is it ignores the FERC revenue. The
7 FERC revenue is real cash today. There is no way
8 that the company will incur any refund obligation to
9 customers within the next six months.

10 I unfortunately have done FERC gas pipeline
11 cases for years, and there were refund checks cut
12 last year for a case that was filed in 1993. When
13 the checks would ever be cut, when you have a final,
14 final decision out of FERC, their process is a long
15 and involved one and -- when something is finally
16 final. I think we can safely assume it's well beyond
17 2003 before any refund checks would be cut. So in
18 our view, this FERC revenue should be recognized and
19 is certain cash for Olympic for the foreseeable
20 future.

21 CHAIRWOMAN SHOWALTER: But I'd like to stop
22 on that. I just find very problematic if one
23 jurisdiction can look to another, then it begins to
24 make a lot of difference who goes first, whether you
25 think of this as interstate jurisdictions -- say a

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1 given utility is in three states, or federal/state
2 jurisdiction. In general, we're each trying to stand
3 on our own --

4 MR. FINKLEA: Correct.

5 CHAIRWOMAN SHOWALTER: -- feet. And
6 doesn't that go for interim, as well. Clearly, when
7 you look at an emergency, you have to say, Well, how
8 do you divide an emergency in three pieces, say, or
9 two pieces, two jurisdictional pieces. And if it's
10 been solved in one jurisdiction, does that mean it
11 went away in the other. What kind of public policy
12 would that be if we kind of hang back and let
13 somebody go first and then our ratepayers don't have
14 to deal with that emergency.

15 MR. FINKLEA: Well, we're only to this
16 level of analysis, because first Staff has concluded
17 that they haven't met the standard for an interim,
18 and then has forwarded a different approach than what
19 the Commission has ever used in order to assess
20 whether an interim is necessary, and if so, how much.

21 So we're only here because we've already
22 decided, at least the Staff has decided and we concur
23 with Staff, that the standard for interim relief has
24 not been met by the applicant. That recognized, what
25 the Staff is doing with a coverage approach, with its

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1 -- again, we commend them for having done this, but
2 what they're doing is trying to forecast cash flow,
3 so we have to take the whole company as it is.

4 We don't have a jurisdictional split

5 filing, unlike -- there are utilities that do
6 jurisdictional split filings, but we don't have that
7 here. What we have is this filing, it's a whole
8 company filing, for purposes of its requested interim
9 relief.

10 JUDGE WALLIS: Mr. Finklea, four minutes.

11 MR. FINKLEA: Thank you. But I think that
12 answers your question. The other aspect of it is the
13 Bayview terminal. And that is where I want to spend
14 a couple minutes, as well. Bayview terminal is a \$22
15 and a half million investment. It was included in
16 the Staff's analysis as investment that should be
17 covered by the calculation, but Staff recognized that
18 Cross-Cascades should be excluded. We think Bayview
19 falls into the same category as Cross-Cascades in
20 that it is not serving the public at this time.

21 The terminal has -- the record shows that
22 the terminal has been bypassed, it's not serving its
23 intended function on the oil pipeline system, and Mr.
24 Elgin recognized and the record cites here, pages
25 1123, lines two through 15, as well as page 943,

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1 lines nine through 25, that Bayview has had some
2 depreciation taken, but, again, there will be a
3 debate in the general rate case as to whether Bayview
4 should be excluded or included in rate base, but that
5 it is, by the record that we have before us today,
6 it's not a facility that's serving the public. It
7 falls into the same category as Cross-Cascades.

8 CHAIRWOMAN SHOWALTER: I just want to stop
9 you there. Are you arguing that an asset that is put
10 into rate base legitimately and is ongoing and then
11 shuts down for some reason should no longer be
12 considered in rate base? Isn't that stranded cost?
13 Or are you arguing this is something that never
14 should have been there to begin with and so it's not
15 there now?

16 MR. FINKLEA: I'm just finding that, for
17 purposes of this unique calculation that Staff has
18 put forward, where it's coming up with an interest
19 coverage figure on investment that's, quote, serving
20 the public, that it did the right thing when it
21 recognized the Cross-Cascades is not serving the
22 public, even though there is debt to support
23 Cross-Cascades, it's on Olympic's books. But both
24 Cross-Cascades and Bayview fall into this category of
25 facilities that aren't serving the public and,

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1 therefore, for this unique calculation, that, as well
2 as Cross-Cascades, should be excluded.

3 CHAIRWOMAN SHOWALTER: But the question,
4 what distinguishes those two things, is that one
5 arguably is already in rate base, the other never
6 was. So then the question to you is should that
7 distinction make a difference when calculating, you
8 know, an alternate formula? Isn't it -- if something
9 originally went into rate base in a legitimate

10 fashion and shuts down and essentially becomes
11 stranded cost, why -- the question is why should that
12 be excluded? Is it just because it's not operating,
13 in which case how do you distinguish it from general
14 stranded cost?

15 MR. FINKLEA: Well, if it's serving the
16 public, if it's stranded cost because it's
17 uneconomic, I think that's different than if it's
18 stranded because it's physically not being used to
19 serve the public. Many utilities in our region have
20 stranded costs at any given time, given what happens
21 with the market. But we're talking about a physical
22 asset that has been bypassed.

23 CHAIRWOMAN SHOWALTER: In other words,
24 because there was a decision not to use it, that's
25 what makes it different?

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1 MR. FINKLEA: I believe that that's a very
2 real distinction. Our Exhibit 138 recalculated
3 Staff's analysis and comes to a figure of 11.97
4 percent. Tosco believes that if the Commission were
5 to decide to adopt Staff's compromised method of
6 calculating a need for an increase, that the maximum
7 increase that can be supported by the record is 11.97
8 percent.

9 JUDGE WALLIS: Mr. Finklea, that pretty
10 much wraps up your time.

11 MR. FINKLEA: Could I have one minute to
12 just mention that we do believe that -- and we've had
13 discussion during the case about conditions being
14 placed on emergency relief, and we feel very strongly
15 that if any interim relief is to be granted, that
16 there should be conditions, including the submittal
17 of a plan, the company coming forward with making
18 real equity investment, having an unqualified
19 auditor's letter, having assurances that the 2002
20 capital improvements will actually be made, and
21 having the refundability of any interim backed up by
22 unqualified owner guarantees of the amounts to be
23 refunded.

24 COMMISSIONER HEMSTAD: What was the last
25 point?

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1 MR. FINKLEA: That any interim relief be
2 backed up by unqualified owner guarantees. There's
3 been some concern.

4 CHAIRWOMAN SHOWALTER: That the refund
5 provision be backed up.

6 COMMISSIONER HEMSTAD: Guaranteed refund.

7 MR. FINKLEA: Guaranteed by the owners,
8 rather than simply being out there, finding ourselves
9 in six months taking a number in the oil pipeline
10 version of Enron.

11 JUDGE WALLIS: Thank you, Mr. Finklea.

12 COMMISSIONER OSHIE: Just one question,
13 Your Honor. Mr. Finklea, on an audit, there hasn't
14 been an audit completed, I think, since 1998. Is

15 that the last audit that was completed?

16 MR. FINKLEA: I believe that's correct.

17 COMMISSIONER OSHIE: So they've got the
18 other financial records of '99, 2000, 2001. Now,
19 your recommendation for conditions that there be
20 audits completed for those three years before the
21 relief is granted or that those audits be initiated
22 and that somehow it would be -- the relief requested
23 would be subject to the completion of the audit
24 within a certain time period?

25 MR. FINKLEA: My sense is that the timing,
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1 if you're going to grant any interim relief, it's to
2 be granted before the general rate case is completed.
3 I believe, through the course of the general rate
4 case, the Commission could require these other things
5 to be addressed, and have, so that by the time you're
6 making a final decision in July or August, that all
7 of this is in, but you make it clear to the company,
8 in granting anything, that those conditions will be
9 met, so that they have obligations that come after
10 they actually get the money.

11 COMMISSIONER OSHIE: Okay, thank you.

12 MR. FINKLEA: I think that's the only
13 practical solution.

14 COMMISSIONER HEMSTAD: I have one further
15 question, and this is just a memory refresher. How
16 much money will flow to the company from the FERC
17 order?

18 MR. FINKLEA: Eight million dollars,
19 roughly.

20 MR. BRENA: Do you mean as a result of the
21 increase?

22 COMMISSIONER HEMSTAD: Interim, yes.

23 MR. BRENA: Four point four million is the
24 amount that Staff factored out for the last six
25 months period, and that increase went into effect in

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1 September, so it really represents revenue from
2 September, October, November and December now.

3 COMMISSIONER HEMSTAD: It's 4.4 million
4 through December? I don't understand.

5 MR. BRENA: Through November.

6 COMMISSIONER HEMSTAD: All right. How much
7 would it be, then, for the period to the conclusion
8 of our case in chief?

9 MR. BRENA: Annualized, it's 14.8 million.

10 JUDGE WALLIS: Mr. Trotter.

11 MR. TROTTER: I just have one sheet. Thank
12 you, Your Honor. My name is Donald T. Trotter. I'm
13 the Assistant Attorney General assigned to represent
14 the Commission Staff in this docket as to this oral
15 argument.

16 The Staff recommendation is that the
17 Commission grant interim rate relief in an amount no
18 more than 19.48 percent to intrastate rates subject
19 to refund.

20 I think it's important at the outset to
21 step back for a moment and recognize a couple things
22 about interim rate relief. It is short-term, and in
23 this case, particularly short because of the shorter
24 suspension period.

25 CHAIRWOMAN SHOWALTER: Mr. Trotter, can you
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1 slow down just a little bit?

2 MR. TROTTER: Yes. Second, it is intended
3 to address an actual emergency. The focus is on the
4 protection of the company's ability to finance, and
5 as this Commission stated recently in its PSE
6 decision this fall, last fall, interim relief is
7 related to and consistent with the company's filing
8 for general rate relief. The standards are
9 well-known, they're on the chart, but they -- a fair
10 reading is that they assume that there are specific
11 objective financing criteria, that there's a
12 connection between the interim rate relief sought and
13 the ability to meet those criteria.

14 That's, when you go back and look at the
15 orders in which the Commission has granted interim
16 rate relief, the companies have made that
17 demonstration.

18 All parties in this case advocate that
19 these standards apply. Mr. Marshall alluded to the
20 fact a different standard might apply, perhaps, but
21 they haven't proposed that. So at this point, all
22 parties are going under the assumption that the
23 standards that the Commission has applied should
24 apply in this case.

25 Now, it is true that the Commission

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1 recently stated that those standards should not be
2 applied formalistically, and Staff noted that and did
3 not apply them formalistically, nor can they be
4 applied formalistically here, but the debt issue,
5 none of it is publicly traded.

6 There are restrictions in the Prudential
7 note that prohibit any additional external or
8 internal financings, so the only available capital to
9 Olympic as of this time is the \$20 million left on
10 the Prudential revolving credit line. There are no
11 objective criteria or factors that must be met for
12 ARCO to loan on that credit facility.

13 Also, in this connection, you need to
14 recognize the context in which this company has been
15 operating for the last couple of years in terms of
16 its financings. It received money under that ARCO
17 credit line, \$10 million, while it was in default on
18 other ARCO loans, or at least it wasn't paying other
19 ARCO loans, which would have violated the very note
20 under which they got the \$10 million. There's a
21 condition there that says they must be current on
22 their other payments. They weren't, and they still
23 got \$10 million.

24 They issued the Equilon note, I believe

25 that was less than a 90-day note, in the amount of
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1 \$43 million. They had no ability to pay that note
2 when it was issued, they had no ability to pay that
3 note when it came due. This is not rational
4 behavior, it's not defensible financial behavior,
5 they haven't explained why they issued that money
6 when they did and why they did it.

7 So what we are left with is truly an
8 irrational situation, and what do you do in the face
9 of these facts, the uncontested facts of their
10 ability to finance while in violation of covenants
11 and their financing short-term notes when they have
12 no ability to pay them in the amounts in the tens of
13 millions of dollars.

14 Added to this is the interesting testimony
15 of Mr. Fox, where he indicated that when he discussed
16 financing with someone at ARCO or BP Pipelines or
17 someone, the issue was whether we will get them the
18 money. Mr. Fox is, I believe, the treasurer or
19 assistant treasurer for Olympic Pipe Line, but he
20 also has a capacity in BP Pipelines, and he's
21 speaking to the chairman of the board of Olympic Pipe
22 Line, who has the signatory authority over that \$20
23 million credit line.

24 So this case comes down to subjectivity.
25 What will it take for us to convince Mr. Fox to

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1 favorably recommend a loan. He said in his testimony
2 that currently he was inclined not to recommend the
3 loan. So in the face of that type of -- that's at
4 transcript 914. So in the face of this situation,
5 Staff decided it was necessary to apply some
6 objectivity.

7 Now, I'd like to turn your attention to our
8 oral argument exhibit, and no one on the record
9 contested any of these figures. The currently
10 outstanding debt, which includes accrued interest, is
11 around 150 million. The debt, less the accrued
12 interest, so just the principal outstanding, is
13 141.8. The net investment, by contrast, is only 98
14 million, and that includes -- let's be clear here.
15 That includes their actual net carrier plant property
16 through the year 2000, which was the last FERC Form
17 Six. It added in their entire budget for 2001 to get
18 to year end 2001. And that's all explained on
19 Exhibit 134 and in Mr. Elgin's testimony in the area
20 noted.

21 So in addition to there being no connection
22 between the company's ability to finance and its
23 ability to meet conditions in those existing notes,
24 there's also no connection between the capital that
25 they have outstanding and the assets that is being

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1 funded by that capital.

2 So Staff tried to apply objective criteria.
3 It made a connection between the assets that Olympic

4 has that are serving the public and matched that to
5 the same level of debt financing those assets, and
6 then, beyond that, applied a one and a half times
7 interest coverage test to give them the full amount
8 of the interest associated with the debts associated
9 with the assets, plus 50 percent more.

10 In doing so, and if you look at Exhibit
11 137, Mr. Colbo's analysis, he looked at the company's
12 current operating result. And as is well
13 demonstrated by the throughput chart, this company
14 was moving very little product until last summer. So
15 obviously, the test period, if you're looking at the
16 first six months of 2001, is not representative. So
17 Mr. Colbo doubled the results for 2001, the last six
18 months, and made two or three adjustments that we
19 think were very reasonable. And so we are giving,
20 number one, full effect to all of the investment that
21 the company has projected through 2001. And all the
22 operating expenses, with two or three exceptions,
23 that they were forecasting on an ongoing basis based
24 on a more representative time frame. That's a very
25 reasonable, objectively reasonable approach.

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1 The end product is a recommendation that
2 makes a connection between interim rate relief, the
3 operating assets on the company's books, and its
4 ongoing operating expenses.

5 The company, by contrast, criticized Staff
6 by saying that we're not allowing them to recover
7 interest on the debt above the ninety-eight bar on
8 our exhibit here. They said the debt is what it is.
9 Well, in the general rate case, they're going to try
10 to convince you that the debt is what it isn't,
11 because they're calling 86 percent of it equity in
12 the general rate case. That's a fundamental
13 disconnection between their interim case, that it is
14 what it is, and the general rate case, that it is
15 what it isn't.

16 If the policy that you enunciated in the
17 recent PSE decision, which is solid and correct, that
18 there needs to be this connection and consistency,
19 their case doesn't have it.

20 Now, there were three items that the Staff
21 looked at, and Mr. Colbo's analysis removed some
22 image building expenses. We didn't have time to take
23 out all the lobbying and the other expenses that are
24 normally removed. The Staff also reflected a
25 somewhat lower wage and salary level, already higher

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1 than what is typical. We haven't had a chance to
2 audit their entire adjustment. And also, their power
3 supply budget was reduced. They're asking for the
4 actual request that Puget Sound Energy is asking for
5 that hasn't been approved yet.

6 So we looked through the other adjustments,
7 to the extent we could, in the very short time period
8 allowed, and made some practical adjustments, but

9 albeit preliminary. But it certainly should stand
10 the test of reasonableness, given the context of this
11 case.

12 The cases that we've cited in our statement
13 of authorities here, particularly Items Five, Six,
14 Seven and Eight, regarding the relationship between
15 invested capital and assets serving the public, this
16 is a very important concept. Mr. Marshall indicated
17 that the value in which rates will be set is
18 determined by the Commission. Well, it is, and this
19 Commission has never set rates based on total
20 invested capital. The company, on the other hand, is
21 basing their case on that very condition.

22 We noted that the company's case for
23 interim relief is inconsistent with its general case
24 in its equity ratio request. Mr. Batch called this,
25 quote, a remarkable disparity, unquote, transcript

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1 731 to 732, and he's absolutely correct. There's
2 also, as our chart shows, no connection between
3 invested capital and the assets on which this company
4 is currently being operated.

5 Even the company's general rate case,
6 they're asking for a rate base of around 107 million.
7 So again, their interim case, which is based on the
8 need to recover interest associated with 150 or
9 \$141.8 million, is completely inconsistent with their
10 rate base, the base upon which they want to earn a
11 return in the general rate case.

12 We don't know what the company spent the
13 money on that is in excess of ninety-eight on our
14 chart. There were no financing notices filed. And
15 we agree with whoever said that Title 81 only
16 requires a notice filing. But those notice filings
17 are very important, because it does give a heads up
18 to the Commission about what this company is doing.
19 They didn't comply.

20 Mr. Schink, on behalf of Olympic,
21 testified, at transcript 988, that you invest for a
22 return and assets providing service. This chart
23 shows unequivocally and in an uncontested way that
24 Olympic invested for something else above that
25 ninety-eight bar. Under the law, traditional law of

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1 utility regulation, they're simply not entitled to a
2 return on that.

3 But we also agree with others who have
4 stated that a central problem in this case is that
5 there's no connection made between the rate relief
6 sought and the ability to access that \$20 million
7 credit facility. Mr. Fox said, Well, if Olympic gets
8 62 percent, he'll make a recommendation, but Mr.
9 Batch said he didn't know how much money it would
10 need to, quote, send a signal. That's transcript
11 607. He also talked about a signal to the investment
12 community, at transcript 717, but we are focused here
13 really on what is Mr. Fox going to do and how will

14 Mr. Peck respond. That's a very uncomfortable and
15 subjective situation. And they haven't given
16 defensible objective criteria necessary to make that
17 happen.

18 What the Commission should not do is send a
19 signal that the company will be entitled to a return
20 on investments and assets to serve the public that it
21 didn't actually make, and that is the problem that's
22 addressed in our exhibit here.

23 There was some controversy over the 1.5
24 coverage factor that Mr. Elgin defended. Mr. Fox
25 said that that should be an after-tax number and it

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1 really ought to be 2.5. Well, I think it's very
2 clear, if you look at Exhibits 66 and 64, that EBIT,
3 earnings before interest and taxes, is exactly that,
4 it's a pre-tax calculation. That's a fundamental
5 principle of financial analysis.

6 Mr. Schink says the factor ought to be 2.6,
7 based on a BBB rating. That's wrong, also. Exhibit
8 66 shows that as equity increases, coverage
9 requirements increase, and those ratings assume
10 equity. Olympic has none.

11 Mr. Elgin summed it up best at transcript
12 1083, where he says, calculating based on his 1.5
13 recommendation, if you assume there was 50/50 capital
14 structure, 50 percent equity, for all intents and
15 purposes, given the same earnings before income tax,
16 that's a coverage of 3.0. So you can't look at the
17 factor in isolation. It's related to the equity
18 capitalization. They have none. The 1.5 is
19 eminently reasonable.

20 On the issue of debt equaling equity, there
21 may be one and only one context in which that's true,
22 and that's the lineup in the bankruptcy court to the
23 extent the equity owner and the debt owner are the
24 same individual. But certainly, as this Commission
25 is well aware, from a financial market point of view,

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1 equity is different than debt. That's why equity
2 costs more, because it's a more risky form of
3 capital.

4 And from both a regulator and customer
5 perspective, when the Commission sets rates, it's
6 looking to a balance of safety and economy in the
7 capital structure. And it balances safety with
8 economy, so there is a balance between equity ratio
9 and a debt ratio. They are very distinct forms of
10 capital from a financial market point of view, a
11 regulator point of view, and a customer point of
12 view.

13 One piece of testimony that I thought was
14 interesting was Mr. Schink's statement at transcript
15 965. He said the problem is not capitalization; it's
16 revenue. But that just causes us to ask many more
17 questions. Revenue to pay for what? To pay for past
18 losses that this company financed? Is it to pay for

19 assets in the ground? Just what is it to pay for.
20 Is it for legitimate capital purposes or not. That's
21 the critical question. I think that is intimately
22 related to capitalization, as our exhibit here shows.

23 The Staff's analysis, again, is based on
24 the company's most recent budget, it gives them
25 virtually all of their budgeted expenses, with a

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1 couple of well-reasoned exceptions. It assumes that
2 all of the projects that they've added through 2001
3 are reflected and financed by the instruments that
4 are existing. So it is our belief that a prima facie
5 showing that it's objective, it's reasonable, and it
6 makes sense from a regulatory perspective, and it's
7 defensible.

8 Now, there was some discussion about a
9 couple of issues that I'd like to weigh in on here,
10 and one has to do with the FERC revenue issue. We
11 cite in our statement of authorities the Louisiana
12 Public Service case, the case is under Items 11 and
13 12. And we strongly recommend that the Commission
14 indeed treats this company as a -- conceptually, as a
15 completely intrastate company, and then FERC can
16 treat it as a completely interstate company and set
17 their rates accordingly. That's the construct that
18 the company has relied on in their general rate case,
19 that's the construct Mr. Colbo used.

20 Now, in reality, it's true they have that
21 revenue coming in from FERC. We think that the
22 Commission, and I think, Chairwoman Showalter, you
23 focused on it. I think if you say, Well, FERC gave
24 the money, so we don't, now you're starting -- and
25 the converse could be true -- you start treading on

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1 some jurisdictional issues, and I become very
2 uncomfortable with that.

3 FERC has no business setting intrastate
4 rates, we have no business setting interstate rates,
5 and what we've done is separated those for purposes
6 of our analysis.

7 COMMISSIONER HEMSTAD: What about the issue
8 of, in an interim environment, really what you have
9 is cash flow, how much cash they need. What is your
10 response to that in this context?

11 MR. TROTTER: Well, I agree one hundred
12 percent that, in fact, their cash flow is better than
13 Staff has portrayed it because of the existence of
14 the FERC revenue stream. And certainly, in an
15 interim emergency situation, one school of thought
16 could be, Well, let's recognize that, because it's
17 real. But I come right up against the jurisdictional
18 split, and I think if you go -- start down that path,
19 it causes more problems than it solves.

20 So for this Commission, we cited a
21 Commission order, Item 12, the water power case from
22 1977. That wasn't an interim rate relief case, but
23 it was an emergency surcharge case, and there the

24 Commission said, not with federal jurisdiction so
25 much, but with other states, we're going to let them

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1 do what they want to do with their piece, but we need
2 to look out for our piece and treat it on its own.

3 JUDGE WALLIS: Five minutes.

4 COMMISSIONER HEMSTAD: One of the dilemmas
5 here is, however, in practical matter, there are only
6 four shippers. You're not talking about a different
7 set of shippers for intrastate and interstate;
8 they're the same four, or they're acting as servants
9 for the others.

10 MR. TROTTER: I agree. I think that's the
11 evidence. I just think that intrastate rates need to
12 stand on their own and interstate rates need to stand
13 on their own, and when you start to blur that line,
14 it gets into some thorny legal issues.

15 Counsel for Olympic, in their case
16 authority, has cited a couple of cases, Hunt Wesson
17 and Westinghouse, I think are the two. These are tax
18 cases. I'm not really convinced they're applicable,
19 but there is a problem when states attempt to go
20 beyond their border, and that's my concern. But I
21 don't disagree with the facts, but it's a combined
22 legal and policy question. I think, on the policy
23 side, the Commission has gone with what I perceive as
24 being the legal side of it.

25 One other thing that was interesting from

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1 the testimony, I believe it was Mr. Fox that said
2 that he was looking for a long-term solution. That's
3 transcript 909, but they're not offering one.

4 As you recall in the Avista case recently,
5 the emergency rate relief case, the company had a
6 plan. They came in with analysis of every project
7 they were undertaking going forward and how they were
8 prioritizing those and doing hard evaluation of every
9 single one of them, they were slashing their
10 operating budgets, executive salary reductions, and
11 so on. They had financial criteria they had to meet,
12 they had a financial plan going forward. Those are
13 always -- they're in a changing environment, too, on
14 a daily basis, but that's the type of analysis that
15 you're entitled to. That's the type of analysis that
16 we expect.

17 We didn't get that in the direct case. The
18 focus was on external financing. We found out later
19 that that's not the issue at all. That's this ARCO
20 note. But Staff did the best it could with what it
21 had and applied objectivity where subjectivity
22 reigns. And we think that the Staff recommendation
23 is sound, it's defensible, and it should be adopted.

24 CHAIRWOMAN SHOWALTER: Can I ask the
25 question, I might have asked this at hearing, but

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1 it's the Staff's -- is it the Staff's position that a
2 20 percent interim increase alone itself is enough to

3 carry the company in decent condition pending the
4 outcome of the rate case, or are you assuming that
5 with that 20 percent, ARCO or Prudential or somebody
6 will kick in some more money, and so that is, there's
7 another piece of the equation?

8 MR. TROTTER: It's 19.48 percent.

9 CHAIRWOMAN SHOWALTER: I know, I'm
10 rounding, but --

11 MR. TROTTER: I couldn't resist.

12 CHAIRWOMAN SHOWALTER: I forgot to mention
13 that I was going to round.

14 MR. TROTTER: I understand the question.
15 Because there is no objective criteria, it's not
16 possible for anyone to say, and even the company
17 didn't say it, that at least Mr. Batch didn't -- he
18 didn't know how much money it would take. Mr. Hanley
19 said 62 percent wouldn't do it.

20 What Staff's analysis does, if you look at
21 the chart, what assets does the company have in
22 service, what's financing that, and how much is
23 needed to get them one and a half times EBIT. The
24 company's going to have to do some work. They have a
25 lot of debt that's not funding assets in the ground.

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1 That's their problem. Regulation is not designed to
2 address that, so they're going to have to be
3 decisive. They're going to have to make the hard
4 decisions, whatever they are, to deal with that, and
5 that really is not something that regulation ought to
6 take care of.

7 So I can't tell you if this will convince
8 Mr. Fox to tell Mr. Peck to give the money, and that
9 Mr. Peck will say okay. I don't know, because that's
10 too subjectivity-based. But I think it's the best
11 that you can do, given the facts and total context of
12 this case so far.

13 CHAIRWOMAN SHOWALTER: So is a way to put
14 it that you are saying that the 20 percent is
15 justified, not more than that, and that given that
16 the shareholders can look at that and then they can
17 decide, Okay, we've got 20 percent for the time
18 being, are we going to release some more of our
19 loans, in which case it adds to the 20 percent for
20 the time being, or they say not worth it and they
21 shut down.

22 Now, in that latter choice, we don't know
23 what the company would do. Do we need to consider at
24 all that possibility? That is, is it in the public
25 interest that Olympic Pipe Line be shut down because

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1 the owners don't perceive the amount to be enough,
2 even though we would have decided that's all that's
3 justified?

4 MR. TROTTER: We have not addressed the
5 bankruptcy issue or the shutdown issue, but let me
6 point out a couple of things. Mr. Marshall said that
7 Olympic paid seven million for a 25 percent -- excuse

8 me, ARCO paid seven million for a 25 percent share,
9 and he stated that the pipeline was worth 28 million.
10 Well, we've given a return on 98 million. Someone
11 should be able to operate this line earning a fair
12 return on 98 million. If Olympic can't do that,
13 someone else will, and someone else should.

14 Remember, this is a monopoly. Price
15 competition is virtually nonexistent. There's
16 over-nominations on the line, the customers have more
17 product to put on it than it could possibly ship. It
18 should be a money-making venture. This -- I do
19 agree, BP Pipelines has a good reputation, they're
20 putting procedures in place that ought to be in
21 place. We haven't examined the details of it all,
22 but they're a good company, and we hope it's them.
23 But if it's not, everyone must comply with federal
24 and state law. Someone will.

25 Given the risk profile, the investment,

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1 there should be someone that's willing and able to
2 operate the pipeline with a rate base or an
3 investment base in this range.

4 JUDGE WALLIS: Thank you, Mr. Trotter.

5 MR. TROTTER: Thank you.

6 JUDGE WALLIS: Mr. Marshall, back to you.

7 MR. MARSHALL: Thank you. This does come
8 down to who will step up to the plate and provide
9 money to take care of keeping this pipeline up and
10 operating in accordance with the highest safety needs
11 of the state.

12 ARCO/BP did step up to the plate after the
13 Whatcom County accident. They have loaned \$52
14 million following that explosion, and no one forced
15 them to do that. That's capital at risk. People are
16 saying they're not willing to step up to the plate.
17 That's stepping up to the plate. They've also put in
18 more of their capital at risk by taking out GATX, and
19 that's making Olympic worth, at most, 28 million. I
20 didn't say that's what they were worth. That's at
21 most.

22 Mr. Trotter was interesting in saying,
23 Well, it's somewhat irrational what ARCO/BP have
24 done. They've loaned money when notes have been in
25 default, they've loaned money when people aren't

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1 paying back the accrued interest, they're loaning
2 money when there's everything at risk, when there's
3 all these lawsuits out there, and they are, they have
4 been.

5 And as Mr. Fox testified in -- I think it's
6 902 of his testimony, at the very beginning, that was
7 easy to get ARCO to start putting in some money, step
8 up to the plate to do that. But then there became
9 questions. How will this existing debt be treated
10 going forward. Will that ever be repaid under
11 regulation. Will the intervenors here allow this to
12 be recovered.

13 And it raises the question about
14 irrationality even more. Why would a rational
15 economic actor invest another penny in this if the
16 existing debt will not be repaid, if accrued interest
17 will not be repaid. If the signal is instead of
18 attracting capital, we're going to impose conditions,
19 we're going to seek refunds of things that you've
20 already gotten from the FERC, we're going to make
21 your life -- we're going to pull you through several
22 knotholes to try and get you there, why would
23 anybody, looking at this with other investment
24 opportunities, think that it's a rational thing to do
25 to loan additional funds?

1288

1 That's all Mr. Fox was saying. He wasn't
2 saying that he could make the decision, because the
3 decision-maker on loaning additional funds isn't in
4 the room. Mr. Fox can't make that decision, Olympic
5 can't make that decision. It can ask and it has been
6 asking, but, as Mr. Fox identified, the nature of
7 those discussions have been increasingly negative,
8 and they have been increasingly negative because
9 there have been increasingly negative signals from
10 the intervenors here. The intervenors are going to
11 oppose the FERC case, they're going to seek refunds.

12 This money that the intervenors have relied
13 upon for cash flow, the \$4 million a month that
14 they're now saying are coming in, record amounts,
15 those are dependent on the FERC order in September
16 that increased those tariff rates, but they're all
17 subject to refund, and it's clear as can be that the
18 intervenors are going to seek the refund, because
19 they sought to prevent that interim amount from going
20 into effect.

21 We've attached to Mr. Batch's testimony,
22 supplemental testimony, as Exhibit 8 the FERC order
23 on rehearing. Why was there a rehearing? There was
24 a rehearing because Tosco and Tesoro sought a
25 rehearing, sought to prevent those interim rates from

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1 going into effect, sought the rates from going into
2 effect at FERC at all.

3 And I would just like to sum up, because I
4 think this is -- there is an issue here of what to do
5 when you have a situation as we do between different
6 jurisdictions that are proceeding in a parallel
7 course over common facilities.

8 We cited the Schniedewind case as the --

9 THE REPORTER: I'm sorry, the what?

10 MR. MARSHALL: Schniedewind case. I'll
11 get you the exact spelling. I couldn't do it out of
12 memory. It's a 1998 U.S. Supreme Court case that
13 talks about how financings in this oil pipeline
14 situation are to be handled, and that may frankly
15 have been the reason why the law was changed in 1994
16 dealing with approval of financings.

17 But the simple fact of the matter is that

18 some of these issues about whether there's an
19 emergency and what to do about the emergency have
20 been addressed earlier, and there is an order out
21 specifically -- I'm reading from the FERC order --
22 denying Tesoro's request for rehearing issued on
23 November 20th, 2001, just a day before we had the
24 prehearing conference in this matter.

25 Specifically, in this proceeding, Olympic's
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1 circumstance of a major interruption in operations
2 due to an explosion, the requirement for increased
3 inspection and repairs, the other increases in
4 operating costs, together with a decrease in the
5 throughput subsequent to the explosion of the
6 pipeline produced a sharp increase in cost and
7 reduction in revenues. Revenue lost during a
8 suspension period is lost forever. To have suspended
9 the rate increase for seven months would have
10 produced a harsh and inequitable result in these
11 circumstances. Further, Tesoro has asserted no
12 anticompetitive circumstances and the Commission has
13 no good reason to believe the rate increase imposes
14 an undue burden and hardship on the shippers.
15 Tesoro's economic interests are fully protected
16 because the entire rate increase is subject to
17 revision at the conclusion of the hearing and it
18 will, to the extent part or all of the rate increase
19 is found to be unjust and unreasonable, receive
20 refunds with interest, as prescribed in the
21 Commission's regulations.

22 It is odd that Tosco and Tesoro are
23 opposing a rate increase subject to refund in
24 interim. They call it a forced loan. You would
25 think that they would want to step up to the plate,

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1 too, because it's in their economic interest to keep
2 this pipeline going.

3 There was only one company that wanted to
4 keep the pipeline going and was willing to put in
5 equity in the form of loans. Let's say you have a
6 house in which you have equity and a landslide
7 disrupts that house. Whether you call it additional
8 equity or a loan to yourself, you're putting in
9 capital to keep that place open and operating. And
10 that's what ARCO/BP have done. They have kept this
11 operating.

12 And people can say, well, it's debt and
13 equity. When we talk about debt and equity in the
14 Avista situation, we're talking about debt that is
15 not shareholder debt. We're talking about equity
16 that's shareholder and debt that goes out to other
17 people. Here you have \$97 million put in, 52 million
18 from BP/ARCO, 45, 43 from Equilon of debt, but it is
19 new capital at risk. It is not owed to third
20 parties. It is at risk.

21 And I think to say here, as intervenors
22 have done, that these folks are not willing to step

23 up to the plate and do what's right, you have to take
24 that into consideration, because that's not credible.
25 And it shows what's going to happen and it shows why

1292

1 the signal must be made very clear from the
2 Commission, in my view, that those kinds of arguments
3 are detrimental to the public interest.

4 If there hadn't been that infusion of new
5 capital at risk following this explosion, I doubt
6 that this pipeline would be up and running today.
7 Where would the money come from? It wasn't going to
8 come from Tosco or Tesoro. They still don't want to
9 put money in, even subject to refund. They've made
10 that perfectly clear. They don't want to step up to
11 the plate. They want somebody else to do that.

12 Now, when you have an accident, I think
13 there's an underlying assumption here that it's your
14 fault. You fall off a ladder, you break your
15 collarbone, you go into the hospital, and they say,
16 You know, you've got some other problems here. Now
17 that we've got you in here and looking at you, you've
18 got some kidney problems, you've got some circulatory
19 problems, it's going to cost you a lot of money to
20 get back up and running safely. You can't go back to
21 your job, you can't go back to full production here
22 till we fix these other things. That's one of the
23 circumstances we find this company in right now.

24 Much of what's being done, and it's shown
25 in this exhibit that we have here, is totally

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1 unrelated to the Whatcom County explosion, but it's
2 the process of additional focus, additional doctor's
3 orders, so to speak, additional restrictions on your
4 activity. You're not going to be up to a hundred
5 percent until you do the following physical therapy.

6 Now, there's only one place and one company
7 that's been willing to step up to the plate, again,
8 and do this. The signal that should be provided is
9 not a signal that is going to work against the public
10 interest; it's one that will work for the public
11 interest.

12 Interim rates should be approved to the
13 full amount, which is \$4.4 million, and I had to
14 round that up to get to that. This is not, as FERC
15 pointed out, an undue hardship or a rate shock to
16 Tosco and Tesoro. It is a minimum amount, it is a
17 minimum signal. And you have a commitment from Mr.
18 Fox that if that minimum signal is sent, then they
19 will do something that may appear to other people to
20 be irrational. That is, they will actually loan some
21 additional money without any guarantee that that
22 money will be repaid in the future or that the money
23 they've already loaned will be repaid.

24 We are at the end and in the end result
25 test about trying to attract capital, and I would add

1294

1 trying to attract talent, as well. I think

2 intervenors here in this case have taken the step of
3 trying to drive out capital and drive out talent, and
4 that is not in the public interest.

5 There's a question about unqualified audits
6 from 1999. 1999 was the year of the explosion at
7 Whatcom Creek. There are a few issues that need to
8 be resolved. As you might expect, there were a lot
9 of things that occurred at that time, but Mr. Fox has
10 addressed it and said there are some issues here
11 about how money was spent when the changeover
12 occurred between Equilon and BP Pipelines. That is
13 trying to be done, but there's no effort not to have
14 an unaudited financial statement.

15 The fact of the matter is that there are
16 lawsuits between Equilon and others about what they
17 did when they operated that pipeline. Did they
18 operate it safely and cause a problem or did third
19 parties cause a problem? But, as you know, if you're
20 in litigation, whether that litigation is meritorious
21 or not, it's going to cause you a lot of problems,
22 including the possibility that you won't get a clean,
23 unaudited financial statement.

24 Similarly, with the Equilon note, there is
25 an issue about that note being in litigation. But as

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1 Mr. Fox also indicated, at page 900 of his testimony,
2 the dispute over the 45 million will only vary -- he
3 said, I would be very surprised if it varied more
4 than \$3 million, frankly.

5 So hints that that money isn't really owed
6 to anybody, isn't really real debt out there are also
7 incorrect. Those are the kinds of things that happen
8 when you have an accident, when you have disputes
9 over what happened and who is going to be
10 responsible. You have issues about audited
11 statements and so on.

12 But there's been every effort by Mr. Batch,
13 in particular, to say I'm going to stay focused on
14 the job of getting this pipeline in operation safely.
15 I think BP isn't just any pipeline operator; it is
16 the premier pipeline operator. We could go and look
17 around and try to find other operators, but I think
18 the public interest has also highly suggested that BP
19 Pipelines, with its high standards, is the pipeline
20 operator that you need to have here for the public
21 interest.

22 There were a lot of other issues, like the
23 Sea-Tac sale, which is -- Mr. Brena said is going to
24 close at the end of the month. That wasn't the
25 testimony. It's doubtful whether that may be closed

1296

1 at all. There's not even a purchase and sale
2 agreement that's been negotiated, and particularly
3 when he indicated his surprise at a statement made
4 that when you sell it, you don't get to keep the
5 money anyway to do things like paying off the note.
6 They go to the ratepayers, the shippers.

7 There's no desire to try to sell facilities
8 like that, but for the financial issues that are
9 involved here.

10 There's a need for a long-term financial
11 plan. I would agree with Mr. Trotter completely on
12 that. That's absolutely essential to have. But I
13 think it starts here with let's get this interim case
14 behind us. It has taken us more time and money, more
15 focus and effort than anybody could possibly, on the
16 Olympic side, have anticipated. It would have been
17 nice for all that money to have gone to safety and to
18 put it in more equity, but it didn't.

19 I think that after this proceeding is over,
20 that there should be that effort and the company has
21 made a commitment to make that effort to come up with
22 a long-term financing plan to do, after it's done on
23 the safety side, to do the kind of thing on the
24 financial side that it's done there, too.

25 There's every desire by Olympic to do what
1297

1 needs to be done, but it can't -- it's not going to
2 come free. There has to be a question, what would an
3 economically rational actor do confronted with these
4 circumstances if it won't get repaid for existing
5 loans, existing debt, existing interest, if it won't
6 get dividends, and there's been no prospect of
7 dividends indicated. What incentive, what would
8 attract that capital to continue to do what they had
9 been doing.

10 At some point, somebody has to ask, and I'm
11 not suggesting that there's been any testimony here;
12 I'm just suggesting that this is a matter of common
13 sense. Somebody has to ask when will you stop
14 putting in more money without any hint or guarantee
15 that the existing amounts or even the amounts that
16 you put in next will be recovered.

17 CHAIRWOMAN SHOWALTER: I'd like to ask you
18 to respond fairly specifically to the Staff
19 recommendation that is not at the level of --
20 obviously, it wouldn't send the same signal as a rate
21 three times as high, but they have built their case
22 up from, you know, with a different analysis than you
23 started with. But, essentially, what they are saying
24 is this is the amount that should cover your 2001 or
25 2002 expenses, based on the revenue that you have

1298
1 received in the last six months and using this 1.5
2 coverage ratio.

3 Why isn't the Staff recommendation enough
4 to tide you over till we proceed or conclude the
5 general rate case?

6 JUDGE WALLIS: The clock has four minutes
7 time.

8 MR. MARSHALL: Okay. I think the Staff
9 increase amounts to about 30 percent of the \$4.4
10 million, which, if you do the math, it's certainly
11 less than \$2 million. That's what Staff would

12 consider to be a good signal.

13 CHAIRWOMAN SHOWALTER: Well, no, I don't
14 think they're talking about a signal; they're talking
15 about what's justified. And I believe I can get off
16 of the word signal. We're going to be constrained by
17 a lot more than what's a signal. So the question is
18 why isn't that enough to address temporary
19 circumstances pending a conclusion of the rate case?

20 MR. MARSHALL: Because it doesn't cover
21 existing debt. And if what you're trying to do is a
22 attract additional loans, additional capital from the
23 very same people that you say that you're not going
24 to cover their existing debt and you're basically
25 telling them that you won't cover their existing

1299

1 debt, so therefore, you ought to loan more.

2 I mean, the real question, I think it's
3 been put fairly by Mr. Trotter, is what would BP do
4 confronted with the rate increase that they would
5 make. And the answer is they would have to act in an
6 economically rational way. And I think what Staff
7 has done is to say, gee, we've taken out a number of
8 things, we've made a number of assumptions here. And
9 when we make those assumptions, and those assumptions
10 have been contested in terms of what's in and what
11 the coverage ratios ought to be and all that. When
12 you put those back in, as Mr. Fox has done and as
13 George Schink has done, Dr. Schink has done, you get
14 it up to a much higher level. You get it up to a
15 level where the company has come in.

16 So we don't contest the overall general
17 approach, and we appreciate the way that they're
18 going about doing it, but the coverages have to be
19 different and you have to account for, as Mr. Fox and
20 Mr. Schink have, more of the actual expenditures and
21 all that they have.

22 CHAIRWOMAN SHOWALTER: But, you know, and
23 the question -- you both use the words rational and
24 irrational. And in this situation, you have BP in, I
25 think, four or five roles. You're a shipper, you're

1300

1 a shareholder, you're a creditor, you're an operator,
2 and maybe you're an affiliate, I'm not sure. And it
3 may be that, from the point of view of any one of
4 those roles, something is not rational or economic,
5 but when you step back one step, it's only one
6 company that's in all of those roles, and isn't the
7 bottom line that whatever increase you get, either
8 interim or permanent, at that point, you're just BP
9 operating with all your hats and you decide, it seems
10 to me rationally, not irrationally, that probably
11 there's been rational behavior here, but probably
12 rational depending on one of these many roles. And I
13 don't know in the end which role might dominate.

14 MR. MARSHALL: And you know what, and I
15 can't speak for BP/ARCO. I don't represent BP/ARCO;
16 I represent Olympic, which is owned in part by

17 BP/ARCO, I'll grant you that, and one of those owners
18 of Olympic has stepped up and given a number of
19 loans; the other has stopped. And one is in the role
20 of helping to supply the operator of this to help
21 supply good management, people who are talented and
22 have capability of operating the pipeline safely.

23 But the problem here is that the only
24 evidence we have as to what BP/ARCO will do would be
25 from Mr. Fox. Even Mr. Fox can't make that decision.

1301

1 And I don't want to try to guess what would happen.
2 I'm suggesting that we do have to look at it from the
3 standpoint of what do we do to attract capital.
4 Well, we attract capital by trying to find out what
5 would be the conditions under which you can attract
6 capital. A sufficient amount of capital under
7 reasonable terms is something that this Commission
8 has used as the touchstone all along.

9 And I know that we can look at what the
10 investments are and we can look at rate base and we
11 can try to figure out what are these issues worth,
12 and I think, in the end, it's worth a lot to the
13 state to have that pipeline continue in safe
14 operation.

15 It really isn't a monopoly, though, because
16 there have been alternative transportation, out of
17 necessity, following the accident. More than half of
18 the refined product, according to Staff's testimony,
19 is already transported, even today, by tanker truck
20 and barges. It's at a higher cost. We don't know
21 exactly what that cost is because that hasn't come
22 forward.

23 So there are alternatives for others to
24 use, and the real question will come down to will one
25 actor, one of the four refineries bear the cost of

1302

1 providing a service at a regulated rate to the other
2 three refineries when all four refineries have other
3 existing alternative transportation modes available.
4 And I don't know. I mean, it's an interesting
5 question.

6 The one question we don't have to worry
7 about is will giving this rate provide an
8 anticompetitive effect here, because there won't be
9 dividends paid. BP/ARCO is not going to come out of
10 this with more cash because it's taken out some money
11 that it doesn't deserve from these other three
12 refineries. I think that part is clear.

13 When you get back and you look at the 1983
14 memorandum in the file from Mr. Colbo about the
15 history of regulation of oil pipelines, you find
16 that, at the heart, oil pipeline regulation is unique
17 and it was designed to prevent the kind of ability to
18 give rebates and give refunds back, it was an
19 anti-Rockefeller type of situation, the kind of
20 situation where railroads found themselves in where a
21 favored shipper would get rebates.

22 Then what happened here, because the FERC
23 and law requires no discrimination between shippers.
24 It won't happen and there won't be any dividends
25 given, so there's not going to be an economic

1303

1 advantage to BP/ARCO. The only remaining question is
2 what do we do to attract additional capital when no
3 one else is willing to step up to the plate.

4 And I agree. I think this case is so
5 unique and I find it difficult to try to square this
6 with what I understand from electric and water and
7 other cases, because it isn't like a normal
8 debt-equity situation, it isn't normal, these
9 throughput and deficiency agreements. It isn't
10 normal because you don't have retail rates regulated.
11 There are a lot of anomalies and differences. But at
12 the end of the day, the real question still has to
13 come down to the basic touchstone of attracting
14 capital, sufficient capital and reasonable terms.

15 JUDGE WALLIS: Mr. Marshall, your time has
16 expired.

17 MR. MARSHALL: Thank you.

18 JUDGE WALLIS: Our reporter, I think, needs
19 a brief recess.

20 (Recess taken.)

21 JUDGE WALLIS: Let's be back on the record,
22 please. The time for argument has concluded, but
23 let's see if the Commissioners have additional
24 questions.

25 COMMISSIONER HEMSTAD: I have one question

1304

1 for Mr. Marshall. Would the company be able to have
2 available for the general rate case, in an
3 appropriate time frame, an audit of the books?

4 MR. MARSHALL: I spoke to Mr. Fox yesterday
5 about this very issue. I said, Well, help me
6 understand what this real issue is. He said it's
7 actually a fairly minor issue about amounts on books,
8 and he thinks that that can be resolved here in a
9 relatively short time. But he's gone back to the
10 auditors and said, Look, this has created an issue.
11 So I believe I can represent to you, Commissioner
12 Hemstad, that that will be resolved and we will have
13 audited financial statements.

14 And it's only because '99 is hung up that
15 the others get hung up. You know, you hang up one
16 and then it stacks up, like the freeway. So not only
17 can we get you audited statements here, I believe in
18 the next couple weeks, certainly before -- much
19 before the end of the general rate case, before, I
20 think, Commission Staff has to put on their rate
21 case, but we can get you the closing numbers for the
22 2001 year, which unfortunately are nowhere near as
23 rosy as the predictions were when we made them in
24 November, unfortunately. But we will be amending and
25 providing additional data.

1305

1 The data requests are already out there.
2 We're under an obligation to update the financial
3 data as we get new data. As month by month are
4 closed, we will get that to the Commission Staff and
5 to the intervenors as that goes along.

6 And Cindy Hammer, the controller here, is
7 working to make sure that we -- as soon as we get new
8 financial information, that goes to all the parties
9 quickly. In fact, I think last week we had Mr. Colbo
10 and Mr. Twitchell up visiting with Cindy Hammer and
11 looking at those updated financials.

12 COMMISSIONER HEMSTAD: I'll accept your
13 representation. I have one question for Mr. Trotter,
14 and I don't know if anyone has other questions for
15 Mr. Marshall. All right.

16 Mr. Trotter, the Bayview investment is
17 included in the \$98 million net investment figure,
18 and I guess, could you give me a brief description as
19 to why?

20 MR. TROTTER: Mr. Elgin testified that the
21 reason the Staff concluded it was, it was placed into
22 service, it was depreciated -- and it was a
23 depreciable asset and it was being depreciated.

24 COMMISSIONER HEMSTAD: What did placed in
25 service mean?

1306

1 MR. TROTTER: It's Staff's understanding
2 that it was operational. It was being used to serve
3 shippers. There was a document, I don't have the
4 cite, but it said it was ready to serve, and then
5 someone made the assumption, well, maybe it was
6 ready, but it didn't actually serve. But it's our
7 understanding that it actually was in service and
8 providing service to shippers.

9 The Staff could not reach a definitive
10 conclusion on its proper status in the short period
11 of time that we've had. So Mr. Elgin said, because
12 it was in service and is on their depreciation
13 schedules and so on and is being depreciated, that he
14 would include it.

15 The testimony was that, from Mr. Batch,
16 that there is a plan to incorporate it into their
17 operations. That's transcript 588. He didn't have a
18 current schedule for that, but that it was going to
19 be incorporated into operations. How it's going to
20 be treated for rate-making purposes under Staff's
21 case, we don't know. Property held for future use.
22 If it turns out it is stranded plant, there might be
23 appropriate recovery, like an abandoned project.
24 That doesn't mean it's not going to be recovered. It
25 might be amortized over a period of time or it might

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1 be excluded from the rate base.

2 But we're just not there yet and we make no
3 judgment, so we assume the status quo ante, which is
4 that it was carrier property.

5 MR. MARSHALL: May I address that very

6 briefly?

7 COMMISSIONER HEMSTAD: Well, I think I have
8 the answer I wanted as to why Staff was doing what it
9 did.

10 MR. MARSHALL: I was just going to add that
11 it was definitely in service, moving millions of
12 barrels of product. The explosion of Whatcom County,
13 as Mr. Batch indicated, put that temporarily offline.
14 It has been used to store diesel fuel and to store
15 water for the testing and for other adjunct purposes,
16 as Mr. Batch testified on cross-examination, and they
17 do, like everything else with this pipeline, as soon
18 as they get other things up and running, that will
19 also be incorporated back in.

20 The only reason has been all of the issues
21 relating to the various tests and so forth that have
22 been done.

23 MR. BRENA: Commissioner Hemstad, I just
24 want to make one brief comment, and that is is that
25 Mr. Batch was cross-examined on this point

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1 specifically with regard to whether or not it had
2 been in service, and if I could refer you to the memo
3 that was in the second quarter of 1999 that indicated
4 it was not yet in service and remind you that, in
5 1999, in mid-year was when Whatcom Creek happened,
6 and it was clear that it has not been in service yet.
7 So there's a period of perhaps a month, and in my
8 cross-examination of Mr. Batch, I believe that the
9 record indicates they used diesel for testing and
10 that they used it to store some water and it's never
11 been fully in service, and the things that Mr.
12 Marshall has represented about moving millions of
13 barrels and being fully in service is just simply not
14 in this record.

15 MR. TROTTER: Can I just say see transcript
16 650.

17 MR. BRENA: I have the quote section in my
18 handout that includes a section on Bayview, and allow
19 me to add it's unequivocal in the record that it's
20 not in service now.

21 JUDGE WALLIS: Are there other questions?
22 Very well. With that, I want to thank all of the
23 participants, and this session is concluded.

24 (Proceedings adjourned at 3:39 p.m.)

25