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MORNING SESSION

9:00 a.m.

JUDGE WALLIS: Let's be on the record, please. This is a continued prehearing conference in the matter of Commission Docket No. TO-011472, which is a matter involving the Washington Utilities and Transportation Commission versus Olympic Pipeline Company relating to the filing for increase in the rates and services that the company charges for providing the transportation of petroleum products via pipeline within the State of Washington.

This conference is a continued conference from a matter previously begun yesterday to review the progress amongst the parties in achieving discovery and resolving disputes relating to discovery.

The parties report this morning that discussions were undertaken in Renton on Wednesday and in Olympia on Thursday, and that many disputes were resolved but some remain yet to be resolved, and that is the primary focus of today's session.

Both Mr. Marshall and Mr. Brena have distributed documents that summarize the status of data requests and/or the status of productions and arguments relating to requests. Each would like to

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1 have his own document form the basis for discussions
2 today. I have suggested that we take Mr. Brena's,
3 which is the more abbreviated, and that Mr. Marshall
4 make reference to or restate for the record matters
5 that are essential to the discussions that appear in
6 his document.

7 Commission staff reports that they
8 believe substantial agreement exists between the
9 company and Commission staff, with the minimal
10 exceptions including the exception relating to the
11 timing of production of material yet to be received,
12 and that that answer may await the rulings as to the
13 nature of required discovery.

14 Mr. Marshall has cited two requests on
15 the FERC side that the company has received from the
16 staff of the federal regulatory Commission and from,
17 I believe, Tosco. Mr. Trotter had previously
18 explained on the record that while there had been
19 discussions and a general agreement as to
20 coordination between FERC staff and Commission staff,
21 that each is independent, and the status of requests
22 and timing in both proceedings may foreclose the
23 actual literal coordination and total avoidance of
24 duplication between the two proceedings.

25 Let's see. Is there anything else that

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1 the parties would like reference to at this juncture?

2 Let us begin our discussions with a
3 statement of appearance for the record. Merely state
4 your name and the name of any associate that is with
5 you. And then we will allow further discussions for
6 the record, if the parties so desire, as to which of
7 the two summary documents we use as we proceed this
8 morning.

9 So let's begin with the company.

10 MR. MARSHALL: Thank you, Your Honor.
11 I'm Steve Marshall of Perkins Coie, representing
12 Olympic Pipeline Company. And with me here today is
13 Cindy Hammer, financial analyst for Olympic Pipeline
14 Company.

15 MR. BRENA: Robin Brena, on behalf of
16 Tesoro Refining and Marketing.

17 MR. FINKLEA: Ed Finklea, on behalf of
18 Tosco Corporation.

19 MR. TROTTER: Donald T. Trotter and Lisa
20 Watson for Commission staff.

21 JUDGE WALLIS: Very well. Mr. Brena and
22 Mr. Marshall, do you wish to make any further
23 arguments relating to the documents that you've
24 presented as road maps for today's discussion?

25 MR. MARSHALL: I would just note that

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1 the first matter on Mr. Brena's summary is
2 regarding --

3 JUDGE WALLIS: Excuse me, just a moment.
4 We're getting some music on our bridge line, and let
5 me ask if there's anyone on the bridge line that we
6 need to get involved so that they may pipe up.

7 Mr. Marshall or Mr. Brena do you have
8 any staff that may need to say something?

9 MR. MARSHALL: No, Your Honor.

10 MR. BRENA: I do. My expert who has
11 been sitting in with me through these technical
12 conferences, Mr. Gary Grasso, is on the line, and it
13 will be necessary for him to have the opportunity to
14 speak.

15 JUDGE WALLIS: Will you be able to
16 identify those opportunities?

17 MR. BRENA: No.

18 JUDGE WALLIS: Then I'm going to have to
19 ask if we want to use the bridge line that people who
20 are on the bridge line mute your telephones while
21 you're connected to the bridge line.

22 If you have Muzak or some recorded
23 music, would you put someone on hold, do not put us
24 on hold but sign off and come back again. If there
25 is a continuation of either music or discussions on

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1 the bridge line, we will just be forced to mute it.

2 Carry on now. I apologize for interrupting.

3 Mr. Marshall?

4 MR. BRENA: May I ask who is on the
5 bridge line?

6 MR. WENSEL: Robin, this is Dave Wensel
7 on the bridge line.

8 MR. GRASSO: This is Gary Grasso.

9 MR. MARSHALL: We don't have anyone on
10 the bridge line.

11 JUDGE WALLIS: Is there anyone else on
12 the bridge line this morning?

13 MS. BROWN: This is Cynthia Brown from
14 Perkins. I'm on the bridge line.

15 JUDGE WALLIS: We continue to get music.

16 MR. MARSHALL: If it's coming from
17 Cynthia Brown, Cynthia, you don't need to be on the
18 bridge line.

19 MS. BROWN: Okay.

20 MR. MARSHALL: I don't believe it is.

21 MS. BROWN: No, it isn't, but...

22 MR. WENSEL: It isn't coming from our
23 office either, Robin.

24 MR. GRASSO: Or here.

25 (Discussion off the record.)

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1 JUDGE WALLIS: We're not hearing any
2 music right now. In order to reactivate our bridge
3 line, it would be necessary to call staff up, and it
4 would take several minutes to do so. So,
5 consequently, I'm reluctant to do that at the present
6 time.

7 Now, Mr. Marshall.

8 MR. MARSHALL: I was noting that
9 Mr. Brena's summary of this dispute does not include
10 our responses made on the 22nd or the 28th, or the
11 supplemental responses that have been made. So it's
12 very difficult to work from his because it doesn't
13 include, not only responses but the cross-references
14 to other responses.

15 On 119, for example, our responses go
16 on for three pages. And he does not have, in any of
17 his summary, the great bulk of what we've said
18 including the cross-references to what we've said.

19 So I would state that what we need to
20 do is, if we use his as a basis, also we turn at the
21 same time to ours which contain not only the question
22 but the responses, beginning last month and as they
23 have been supplemented by our meetings over the last
24 several days.

25 We actually had meetings beginning on

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1 March 1st, on Friday; conference calls on Saturday,
2 the 2nd. We met with Your Honor on the 5th, or we
3 had a conference call. Then we had meetings on the
4 6th and the 7th. And there's not much indication in
5 Mr. Brena's summary of what we think are the details
6 of the progress in the inquiries made throughout
7 those conferences.

8 JUDGE WALLIS: Mr. Marshall, my concern
9 at this juncture is not with the details of progress
10 that's been made but where folks are right now.

11 And to the extent that you have
12 information that relates to where we are right now
13 that includes an update of material that's been
14 supplied, then you're free to provide that.

15 MR. MARSHALL: The other thing that I
16 would just add briefly, if I may, Your Honor, is that
17 there have been a number of representations that I've
18 seen in Mr. Brena's document that I've only been able
19 to glance at that state what Olympic has committed to
20 do that are at odds or inconsistent with what we
21 believe. And we have set forth in our request what we
22 believe the agreements are. So...

23 JUDGE WALLIS: Very well. It appears
24 that you each have reservations regarding the other
25 document. My suggestion is that as we go through

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1 these items, we take them one by one, and whatever
2 information you disagree with, you're free to correct.
3 Whatever you believe is essential, you're free to add.

4 I am going to note that we have had
5 intermittent music concerts, and I am going to mute
6 the people on the line. So, Mr. Brena, if it is
7 important for you to hear what your expert is saying,
8 let us know. We'll open the line to receive those
9 comments whenever you request.

10 MR. BRENA: Thank you, Your Honor.

11 JUDGE WALLIS: Is there anything further
12 of a preliminary nature before we proceed? All right.

13 Mr. Brena, it is your motion. You may
14 proceed at this time.

15 MR. BRENA: The document in front of us
16 is captioned the Current Status of Discovery Disputes
17 between Tesoro and Olympic. And, just for the record,
18 that the structure of it is that the question is asked
19 as represented, as well as the bullet points of
20 additional information that Tesoro has requested, as
21 well as my best understanding of the status of
22 agreement with regard to those items.

23 With regard -- and so I guess I will
24 just proceed with bullet point No. 1.

25 JUDGE WALLIS: Very well.

1 MR. BRENA: We had -- and before going
2 through this, I guess I do have one comment, Your
3 Honor. With regard to cross-references, the responses
4 that we got to our discovery request, we went through
5 and reviewed every document that was cross-referenced
6 in that discovery request. In the course of the
7 technical conferences, and appropriately so perhaps,
8 Olympic has added additional cross-references.

9 We, to the -- bearing in mind that I've
10 been down here for three days and I do not have
11 access to all those cross-references. We brought
12 with us only the cross-references which were
13 initially referred to that we reviewed, that we felt
14 were inadequate.

15 So as I work through this, it may well
16 be that if some other cross-reference was to crop up
17 would be something that would prove that there is no
18 reason for the disagreement, and I hope that that's
19 true more often than not. But I just wanted to make
20 clear to the Court that every single document and
21 every single cross-reference that was made prior to
22 filing our motion, we reviewed the substance of those
23 documents.

24 JUDGE WALLIS: Thank you, Mr. Brena.
25 That is a matter that was addressed in earlier

1 discussions that I omitted to acknowledge.

2 And I would say for the record that the
3 Commission has been understanding of Olympic's
4 situation in terms of the volume of discovery that it
5 has had to deal with, and the Commission is also
6 understanding of the parties' situation receiving a
7 flood of documents and not having the opportunity in
8 the brief time schedule that we have for this
9 proceeding to completely update cross-references,
10 based on the recent flow of documentation.

11 So, Mr. Marshall, you will have every
12 opportunity to provide cross-reference to documents
13 and citations to those cross-references. And thank
14 you both for bringing that to our attention.

15 MR. BRENA: Thank you. And then I would
16 just like to put on the record before we proceed that
17 there are a great many presentations that have been
18 made with regard to what the course of the
19 conversations were within the technical conference
20 that are contained in Olympic's response to our motion
21 to compel.

22 I do not intend to take time here to
23 correct the record in that regard. Many of those
24 representations I do not believe are full or
25 accurate, and that's the reason why I didn't include

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1 many of those comments, and, conversely, many of our
2 perspectives on what happened. I tried to just get
3 to the point, just to the decision point.

4 And I would just like to make very
5 clear for the record that we do not agree with those
6 representations that were made, many of them, and
7 that to the degree they are incorporated in documents
8 in the future, we would just request a court reporter
9 be available for those technical conferences, or what
10 was said in those technical conferences not to be
11 represented and then relied upon by any party.

12 JUDGE WALLIS: Our protocol established
13 at the first technical conference was that there would
14 be no court reporter, but that parties would be free
15 to document any understandings that required
16 documentation.

17 I am concerned today that if we spend
18 time reciting the course of discussions at the
19 conferences that have been held over the past couple
20 of days, it's merely sufficient to note that those
21 conversations did take two days. And if we reprise
22 the nature of those discussions, there just simply
23 will not be time enough today to deal with them.

24 So our preference is to deal with the
25 situation as we find it and to move forward to the

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1 extent that that facilitates resolving the dispute.

2 Any parties have comments?

3 MR. MARSHALL: No, I think that's fine
4 Your Honor. This was not in the nature of a technical
5 conference per se but in the nature of discovery
6 conference with, particularly, our financial analyst.
7 And she is here right now, so that if any questions
8 remain about what we said, she is here to repeat that
9 on the record.

10 JUDGE WALLIS: Would it also be accurate
11 to say that, to the extent that there would be benefit
12 in hearing the current status, that that is the
13 information that she would be providing?

14 MR. MARSHALL: Yes. And also we have,
15 even following yesterday's conference followed up as
16 requested by the parties, and we have further
17 information to add when we get to those parts.

18 JUDGE WALLIS: Thank you very much.

19 MR. BRENA: With that background and
20 understanding, I'll proceed.

21 JUDGE WALLIS: Mr. Brena.

22 MR. BRENA: Bullet point No. 1. They
23 had provided, pursuant to this request, the financial
24 statements for every month except for May 1999,
25 January 2002, and February 2002. It is our

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1 understanding that, because Ms. Hammer has been here
2 instead of somewhere else, that January and
3 February 2002 are not completed, and that those will
4 be provided when they are available.

5 I do not believe we have a disagreement
6 on that.

7 With regard to the financial statement
8 for May of 1999, we could not find it in our
9 discovery, and they had made additional
10 cross-references in the technical conferences. I had
11 just asked for them to confirm that the information
12 produced included a complete copy of, in the same
13 format as was every other month that was provided for
14 May of 1999.

15 We got started on that and then saw the
16 folly of running down documents rather than kind of
17 moving forward. So I just asked if they could just
18 confirm that had been produced and could show it,
19 then I would be fine with that. And that's my
20 understanding of where we are.

21 And let me just add that May of 1999 is
22 a particularly important set of financial books and
23 records because that's the month before Whatcom
24 Creek. So all the ones that were produced, that one
25 we could not confirm it. And so I guess where we're

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1 at is all we're asking is show that you've produced,
2 or produce it.

3 JUDGE WALLIS: Mr. Marshall?

4 MR. MARSHALL: May I make a procedural
5 suggestion, Your Honor. I don't think we'll be
6 finished any time soon if Mr. Brena explains all of
7 why he wants it. I think that we just go to what it
8 is, then I give a response as to whether we think
9 we've produced it or not, and if we haven't, what the
10 follow-up might be.

11 Because the way this is going to go,
12 particularly on this easy one here, would take up an
13 inordinate amount of time. May of 1999, we
14 represented to Mr. Brena that we not only produced
15 those but we gave him, if you look at Page 7 of our
16 response to Tesoro's motion to compel, a number of
17 other cross-references that we didn't have before
18 when we initially answered this, including responses
19 to data requests from Tesoro 8 and 9, WUTC requests
20 18, 20, 27 and 303.

21 Mr. Brena did not want to look through
22 all those cross-references to find May 1999, he
23 wanted us to do that work for them to find out
24 whether we had that in the same format. We believe
25 that he has them, he has all the data that we have.

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1 We're going to go back and reconfirm, but this is the
2 kind of dispute that we really shouldn't even bring
3 before Your Honor. Either he has or he hasn't looked
4 back through the cross-referenced material. And if
5 he hasn't, well do that work for him so we can remove
6 that from an issue.

7 JUDGE WALLIS: Very well. I am going to
8 agree with Mr. Marshall that for our purposes today it
9 may be sufficient to identify the issue, and then
10 Mr. Marshall can state or update the degree of
11 compliance. And then if there remains a lack of
12 compliance, we can make a ruling.

13 Would that be sufficient, Mr. Brena?

14 MR. BRENA: We're going through many of
15 these procedural ones like this one, I think that that
16 would be fine.

17 JUDGE WALLIS: Very well.

18 MR. BRENA: My concern is that this is a
19 motion to compel, and part of what goes into the
20 decision is the need for the information versus the
21 burden of it. And --

22 JUDGE WALLIS: To the extent -- I'm
23 sorry, Mr. Brena -- I was just going to say that, to
24 the extent that there is disagreement or a lack of
25 compliance, then I think it's very appropriate to go

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1 into that.

2 MR. BRENA: Thank you. We'll try it the
3 procedural way, and if there's not agreement, take
4 oral arguments. Is that the right understanding?

5 JUDGE WALLIS: Yes. I'm going to ask
6 you, Mr. Marshall, not to characterize Mr. Brena's
7 desires or his actions. And just indicate whether
8 you've provided it or not, not state your belief as to
9 whether Mr. Brena does or does not want to do
10 something. But let's just keep this on a factual and
11 a nonpersonal basis, please.

12 MR. MARSHALL: Very well.

13 MR. BRENA: Your Honor, in this regard,
14 I'm not sure exactly where we are. I believe that
15 they agreed to confirm that it had been provided to us
16 and to give us and to give us a specific
17 representation.

18 MR. MARSHALL: Yes. We agreed to
19 provide a paper copy to May of '99 material that we
20 think has already been provided.

21 JUDGE WALLIS: Just to cross our t's and
22 dot our i's, what's the schedule for providing that?

23 MR. MARSHALL: Your Honor, I think, as
24 in all things, this will depend on how much we have at
25 the end of this process in connection with every

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1 discovery. If this were the only one, we could say
2 relatively quickly because we could just look at the
3 prior other responses.

4 But, again, it's going to be a question
5 of -- like I described the other day -- 405. You can
6 move down 405, but it depends on the amount of other
7 traffic that you have and the other conditions.
8 We're just inundated. And so to tell you that we
9 could say we'll provide that tomorrow, if this were
10 the only one we could probably do that, if Ms. Hammer
11 what didn't have anything else to do.

12 So I think it really does depend on the
13 totality of the cumulative burdens, both with what we
14 have here and what we are being served with. And
15 we've also agreed to do a number of other things for
16 staff -- that we don't think we're required by the
17 rules to do but we're going to do them anyway -- that
18 take a considerable amount of time.

19 MR. BRENA: We agree with the suggestion
20 that the best time to discuss time would be to reserve
21 a couple of hours at the end of the conference, after
22 we know what the entire universe looks like.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: Would you like for me to
25 proceed, Your Honor?

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1 JUDGE WALLIS: Please proceed.

2 MR. BRENA: Copies of internal and
3 external audit workpapers, it's our understanding that
4 Olympic has agreed to provide.

5 MR. MARSHALL: May I respond to that,
6 Your Honor? Rather than have him indicate what we've
7 agreed to do, this request, as you'll see from the
8 top, refers to Ms. Hammer's testimony. It refers to
9 these internal and external audit workpapers that
10 relate to these financial issues.

11 What we've said in our response is that
12 when we made initial inquiry of Arthur Andersen, they
13 indicated apparently that there were no workpapers.
14 We have since found that there are workpapers. They
15 are being assembled and they will be provided on
16 review for privilege.

17 And we don't know whether there's any
18 privileges, but Mr. -- explained that Mr. Beaver may
19 have made some requests for different services from
20 Arthur Andersen or Ernst & Young regarding Whatcom
21 Creek litigation matters. And we would, of course,
22 not consider that to be a regular financial audit but
23 a special audit. But we are gathering those up now
24 that Arthur Andersen has found those. Those will be
25 reviewed and they will be produced.

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1 MR. BRENA: Before we go --

2 MR. MARSHALL: With regard to -- Mr.

3 Brena also suggests that this referred to safety
4 audits.

5 We disagreed. And we pointed out that
6 it was an entirely new type of data request, that
7 this is in the context, clearly, of financial audit
8 material. Safety audits and management audits or
9 workpapers for that kind of thing are a whole new
10 data request. And we disagreed with the
11 interpretation that that data request, when read in
12 context or any other reasonable way, was requested.

13 We didn't even hear until, I think it
14 was March 6th or at least in the last couple days,
15 that that was the interpretation that Tesoro placed
16 on that. And if the entire context of the question
17 is, you will see, relates to accounting information
18 and not to operation or safety.

19 JUDGE WALLIS: Mr. Brena?

20 MR. BRENA: Your Honor, if I could, I
21 started to explain where I thought we were, and I was
22 cut off. I would like the opportunity to go through
23 each bullet point.

24 JUDGE WALLIS: Mr. Brena, we will give
25 you the opportunity to make a full and complete

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1 statement for the record. But it is my preference to
2 have one party at a time make their statements, so I
3 allowed Mr. Marshall to continue on that basis.

4 MR. BRENA: Okay. My understanding is
5 we agree with regard to external accounting audit
6 workpapers that they will be provided to us, Arthur
7 Andersen and Ernst & Young, they're two outstanding
8 auditors. We disagree, I believe, with regard to
9 whether a privilege log will be provided if some of
10 those documents are reserved.

11 I request that a privilege log with
12 regard to those, the external audits, if any
13 paperwork is withheld that is provided to them from
14 the outside auditor, that the privilege log be
15 provided as is with the information containing what
16 it would typically be provided in a privilege log.
17 I believe we've gone through the privilege log
18 concept before in our interim proceeding, and it's
19 something, if you withhold a document, you have to
20 indicate the privilege you're asserting and the title
21 of the document to give other parties the opportunity
22 it raise the appropriateness of the assertion of
23 privilege with Your Honor.

24 So I would like a ruling to the degree
25 that they assert a privilege, that they will provide

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1 at the time a proper privilege log.

2 And then if you want to take that point
3 first and then go to the next one, I'll pause. Or if
4 you want to take them all together, however you want
5 to do it.

6 JUDGE WALLIS: Very well. A privilege
7 log of the sort that Mr. Brena described must be
8 provided if the company decides to assert a privilege
9 as to any document that would otherwise fall within
10 the ambit of the request.

11 MR. BRENA: With regard to the internal
12 audit papers, let me take this in two ways. I think
13 that Mr. Marshall and I agree that if the internal
14 audit has to do with accounting, that it's within the
15 scope of this question.

16 MR. MARSHALL: And we have already
17 provided a response that there are no internal audit
18 records. Ms. Hammer is the financial analyst, she
19 confirmed that. So I don't know why that's being
20 raised at this point.

21 MR. BRENA: I'm confirming the
22 representation on the record.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: Thank you. Then we have a
25 disagreement with regard to the scope of the request

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1 for internal audit workpapers and whether or not those
2 internal audit workpapers should include other types
3 of internal audits which are not accounting audits.

4 I acknowledge his point is well taken,
5 but the context of the question is Ms. Hammer, and in
6 specific testimony and a specific quote with regard
7 to her overseeing of the development of their books
8 and records.

9 I realize she's their financial person.
10 I would like, though, with regard to whether this is
11 a whole new request for Your Honor to consider within
12 the context of our request 167, I mean it doesn't
13 make any sense to have this argument if we don't also
14 consider an identical request that is even more
15 clear, that these records should have been produced.
16 So I would direct you to Mr. Marshall's 167.

17 MR. MARSHALL: Your Honor, I would
18 suggest that we wait till we get to 167.

19 JUDGE WALLIS: Yes.

20 MR. MARSHALL: If Mr. Brena thinks that
21 this is an entirely new data request, which I think he
22 has conceded, we can move on.

23 MR. BRENA: I have not conceded that.

24 JUDGE WALLIS: I'm prepared to make a
25 ruling on this, and that would be that it does not

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1 appear from the context of the question that
2 management and safety audit workpapers would be
3 included within the terms of this particular request.
4 That does not foreclose discussion at a later time.

5 MR. BRENA: Then I think probably, if I
6 may, if we could just take up 167, it fits right in
7 here. It's the second to the last page of the
8 document that is our master document.

9 And we say: Identify the employees of
10 Olympic who are in charge of Whatcom Creek repairs
11 and accounting. Please produce all engineering
12 studies, internal operations audit, operations report
13 that address the Whatcom --

14 MR. MARSHALL: -- accident comparison.

15 JUDGE WALLIS: Mr. Marshall, please let
16 Mr. Brena finish.

17 MR. BRENA: I was just paraphrasing our
18 request 167. This is really simple, Your Honor. They
19 did a safety -- they represented that they did a
20 safety audit when they came in and took over, and that
21 safety audit was the basis for many of the operational
22 changes that they did. And Mr. Batch testified to
23 that effect in the interim case.

24 All I want out of this is that internal
25 safety audit.

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1 MR. MARSHALL: Your Honor, I'd just
2 point out that these are arranged by Mr. Brena as he
3 said, and he wanted to go through in his order of
4 priority. 167 is one of the least priority documents.

5 I would suggest that we stick with
6 these priorities and not jump around. If we want to
7 go through them from beginning to the end in his
8 request, we can do it, but I would like the
9 opportunity to respond to his highest priority of
10 request first and then we can move on.

11 JUDGE WALLIS: Very well. I'm going to
12 suggest that, because we have devoted some time and
13 space on our record to this matter that we deal with
14 it now. But in the future we'll proceed seriatim as
15 to the requests. Mr. Marshall?

16 MR. MARSHALL: But with regard to data
17 request 167, this is one of the ones that Mr. Brena
18 had said deferred as not a Tesoro priority.

19 JUDGE WALLIS: Is there any disagreement
20 as to the company's responsibility to provide the
21 information and the only disagreement is as to timing?

22 MR. MARSHALL: Well, I'm not really sure
23 because we haven't addressed this because it was
24 pushed off as not a priority. We haven't even
25 coordinated within the company on a response to that.

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1 Our response at Page 23 of our motion to compel was
2 simply that, that it had been deferred as a Tesoro
3 priority, and we are not prepared to address that here
4 today.

5 MR. BRENA: Your Honor, if I may be
6 heard on that point. There isn't anything in the
7 suggestion that we made -- we prioritized our
8 discovery. We're here to go through all those
9 priorities, and at the end of the day, to set timing
10 that's appropriate to put together cases.

11 We have moved to compel on this
12 specific request. The idea that it's a low priority
13 doesn't mean that it hasn't been produced, it doesn't
14 mean it shouldn't be compelled.

15 What that means is, is when we get to
16 the timing, that Tesoro was willing to be flexible.
17 And allow me to point out, though, that we had an
18 honest disagreement with regard to what the scope of
19 119 was. And in light of your ruling, that it does
20 not include that safety audit, I would revise 167
21 with regard to that specific safety management audit
22 that was conducted after BP Pipeline came in as an
23 operator that it used as the basis for the
24 operational changes and all the according costs with
25 all that.

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1 I mean, the reason I want it is to look
2 at why they made all these changes. And if they were
3 required, so be it. But...

4 MR. MARSHALL: If Mr. Brena wants to
5 limit this report to a report made after BP came in
6 for a safety audit, we will provide that, if it's not
7 privileged. But that's the first I've heard of that.

8 It could have been requested in
9 connection with the responses to --

10 JUDGE WALLIS: Mr. Marshall, there are a
11 lot of could-have-been's that I'm sure have already
12 been and we'll encounter in the future, and I'm more
13 concerned right now with what we have and where we're
14 going from here.

15 MR. MARSHALL: Right. And I don't know,
16 Mr. Brena has made a representation about such a
17 report. I don't know what he's quoting from and what
18 testimony he's now referred to.

19 JUDGE WALLIS: Very well. I take it
20 from your response Mr. Marshall, that the company will
21 provide that document, or else if it claims privilege
22 as to document, will state the privilege. Is that
23 correct?

24 MR. MARSHALL: Yes, that's correct. At
25 this moment as we just understood it after it came out

1491

1 of the audit that seemingly was referred to by
2 Mr. Batch.

3 JUDGE WALLIS: Mr. Brena, does that
4 satisfy your concerns at this juncture?

5 MR. BRENA: It does, Your Honor. I'd
6 just like to be clear that, that's as clear as I can
7 identify that document. If what Mr. Batch was
8 representing was that they did two or three safety
9 audits when they came in, then I intended it to be
10 those internal audits that BP did when they came in to
11 determine what changes they should make with regard to
12 the operation of this line.

13 JUDGE WALLIS: Your request is
14 understood in that context.

15 MR. BRENA: Thank you. 119, monthly
16 general ledgers from July 2005 to present. We accept
17 Olympic's representing that the Equilon general
18 ledgers that were provided to them have been provided
19 to us. There is not a dispute with regard to those.

20 We have requested that any codes or
21 field explanations of those documents be provided.
22 It's our understanding that those are not available
23 to them. So that while we have the general ledgers,
24 we do not have the codes or the field descriptions
25 from the prior period. And so I would just like to

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1 confirm that codes and the field explanations for the
2 document produced prior to July 2000 that were
3 produced by Equilon are not available, and that due
4 diligence has been undertaken to get them.

5 I'll just pause because the next one is
6 going to take a little while.

7 JUDGE WALLIS: Mr. Marshall?

8 MR. BRENA: We've done our due
9 diligence. We've called -- Ms. Hammer can give a
10 report -- but in summary -- if people want to have her
11 on the record -- but I'll represent to Your Honor and
12 the parties here that she has called Equilon. Equilon
13 has since changed its accounting system.

14 Those codes, they have told Ms. Hammer
15 within the last 24 hours, do not exist. We've never
16 had them. Equilon apparently doesn't have them
17 further. Is that correct?

18 MS. HAMMER: (Indicated affirmatively.)

19 MR. MARSHALL: But we did follow up, we
20 have confirmed that. That should no longer be an
21 issue.

22 JUDGE WALLIS: Very well. Does anyone
23 desire Ms. Hammer to state that for the record?

24 MR. BRENA: No. Representation of
25 counsel I will accept, Your Honor.

1493

1 JUDGE WALLIS: Very well.

2 MR. BRENA: Now, this is one of the
3 points that there probably is going to be some
4 argument on, I think. So knowing its size and scope,
5 I'll just explain what I'm looking for.

6 JUDGE WALLIS: Please do.

7 MR. BRENA: We have asked for a detailed
8 monthly ledger by line view for the period in which BP
9 has been operating the line. Now it's my
10 understanding that they have had two accounting
11 systems, one from when they took over in June of 2000
12 until May of 2001; and the second one that's an SAP
13 accounting system, from June of 2001 to date. What we
14 have asked for is a detailed general ledger so we can
15 go into that ledger and see what they spent their
16 money for during these test periods.

17 It is the core of the information that
18 we need, or that anybody would need, to construct a
19 cost-of-service with regard to their expense side, be
20 able to review the cost-of-service items that should
21 be included and should not be included.

22 Now what we were provided were, first
23 of all, trial balances for the period. Now, trial
24 balances are helpful, but what they contain is
25 composite information. For example, outside

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1 services. Outside services is -- there's two or
2 three different kinds. To say outside services
3 contract, it's a total number. It doesn't have a
4 project code, it's for all projects, it doesn't break
5 it down. So there's no way that you can go in and
6 take a look at what they actually spent their money
7 on during the period in which they've proposed as a
8 base test period. You cannot construct a
9 cost-of-service without this information.

10 So there isn't anything more central to
11 being able to understand what expenses are included
12 in their cost-of-service or what expenses should be
13 included in their cost-of-service than this detailed
14 general ledger. In addition to trial balances which
15 are not helpful because they have composite
16 information, they have provided something that was
17 captioned a detailed general ledger in Tesoro 105.

18 The fields that were specified in
19 Tesoro 105 do not contain any information that's
20 contained on a general ledger, typically, that it
21 would be useful for the purpose of determining what
22 they spent their money on. It includes, and I can
23 show you the print-out, but it includes the batch
24 number for the checks that were processed. And so,
25 you know, so I know what batch number it's from; not

1495

1 help. It includes a column with regard to the nature
2 of it that it's in accounts payable, and it's just
3 repeated for every single expense. It doesn't
4 indicate the vendor, it doesn't indicate the project,
5 it doesn't indicate the purpose.

6 The reason that I explained that much
7 background, Your Honor, is because it was my
8 understanding, but I did not find it in
9 Mr. Marshall's document, that they had agreed to run
10 a detailed general ledger, by line item, a line-item
11 detailed general ledger, broken down by expense
12 category, consistent with the trial balances that
13 they had proposed. That would allow us to take the
14 trial balances, look at the composite number, go to
15 that category, and take a look at what they spend
16 their money on. And that detailed general ledger
17 would include project codes, it would be run by trial
18 balance expense categories, and would be run by
19 project codes.

20 In addition, with this information that
21 they provided, they did not provide any code or field
22 descriptions. When you get into a general ledger,
23 you see a code that says 8234-7. Now that may be a
24 project code, it may be anything. The fact is, is
25 that it means absolutely nothing unless you have the

1496

1 key.

2 So what we are requesting during
3 2001 -- what I thought we had agreed to, is from --
4 if we don't have an agreement -- I mean, during the
5 period that they have been in operation, a detailed
6 general ledger that is organized by trial balance
7 expense categories and is organized by project codes
8 with a copy of their code keys and their field
9 descriptions.

10 Now this is a point I want my expert to
11 comment on.

12 JUDGE WALLIS: I have unmuted the bridge
13 line.

14 MR. BRENA: Gary, I hope you're there.

15 MR. GRASSO: I'm here, Robin. I thought
16 you articulated it.

17 MR. BRENA: Do you have anything to add
18 to what I've explained?

19 MR. GRASSO: It would be repetitive,
20 Robin.

21 MR. BRENA: Okay, thank you.

22 JUDGE WALLIS: Does staff have any
23 comment on this question before we turn to
24 Mr. Marshall?

25 MR. TROTTER: No specific comment, but

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1 in general we are having problems getting behind the
2 accounting system and getting down to actual levels of
3 detail.

4 JUDGE WALLIS: So this information is
5 information that staff also desires and would find
6 helpful.

7 MR. TROTTER: It would be helpful, yes.

8 JUDGE WALLIS: Mr. Marshall?

9 MR. MARSHALL: This actually was the
10 reason staff went down to Houston here a couple of
11 weeks ago with Ms. Hammer. Mr. Kobo [phonetic] and
12 Mr. Twitchell [phonetic] went down to Houston with
13 Ms. Hammer.

14 Ms. Hammer spent that week explaining
15 how the system worked and what information could be
16 derived from the accounting system that Olympic has
17 in place. It has had a couple different systems in
18 place since BP came in, BP Pipelines came in in the
19 summer of 2000.

20 It has since switched to a system
21 developed by a German company, SAP, that has
22 customizable types of accounting formats. There is
23 no version, each one is like a custom home,
24 customized to what particular company or accounting
25 needs there are.

1 You may think that a report could be
2 produced by calling up a certain type of data. Some
3 accounting systems will do that, others cannot. This
4 is a so-called paperless accounting system, where,
5 for example, if you want a copy of an invoice you
6 double click on a particular line item and the
7 invoice actually appears on the screen. There's no
8 paper copy of an invoice.

9 So if you want to drill down into data,
10 you have to have specific inquiries that you make.
11 And when auditors audit a system like that they make,
12 is they always do spot audits to make sure that the
13 systems in general are working as they should. The
14 apparent interest of staff in coming down was that,
15 because there's no way to produce reports as they may
16 have anticipated they could be, they wanted to see
17 how the system worked. And they did.

18 Ms. Hammer has tried very patiently and
19 with admirable skill in trying to explain not once,
20 not ten times, but probably twenty times how this
21 works, and what the kind of data that can be produced
22 from the system and what cannot. We in our responses
23 to Tesoro's motion to compel at Page 9 have set forth
24 our response to what Mr. Brena is trying to say about
25 trying to get further information by all expense

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1 categories and the trial summary balances from July
2 2000 to date. And I'd like Ms. Hammer to expound on
3 some of this again, if Your Honor wishes, but the
4 issue here is that the trial balances really are the
5 best and most comprehensible format for the
6 information.

7 The document number or the project
8 number Mr. Brena referred to is truly a random number
9 assigned by the computer, and the print-outs also do
10 not contain the payee. I'm not sure what Mr. Brena
11 wants beyond the trial balances and the composite
12 information that provides him with plenty of
13 information in the categories that we normally would
14 take on this these matters. But we suggested that if
15 Tesoro wanted detail for a specific month or by a
16 specific expense, we might be able to do some spot
17 audits. But to try to do what staff and Ms. Hammer
18 did down in Houston and go through this massive
19 effort would require literally weeks, if not months,
20 of effort to do.

21 I'm going to turn to Ms. Hammer right
22 now because I'm not an accounting expert nor an
23 expert in the system. She is the financial analyst
24 for Olympic. She is the sole person responsible for
25 keeping these books and knowing how the system works,

1500

1 what reports that she prints out in the ordinary
2 course of their business, and she's also made
3 inquiries as to what could be printed out to try to
4 get information more in the format that intervenors
5 would like. She has been working with Accenture and
6 the staff to get information.

7 JUDGE WALLIS: I'm going to suggest that
8 we hold Ms. Hammer in reserve and ask whether the
9 explanations that the parties have made resolve the
10 issue in your minds. Mr. Brena?

11 MR. BRENA: Not at all. And I'd like
12 to -- there's a couple of things that have been said.
13 First, with regard to staff going to Houston and
14 having access to this accounting system, as Your Honor
15 is aware because it's come up in prior prehearing
16 conferences, Tesoro was not apprised of that trip, had
17 no opportunity to participate in that trip. And, in
18 fact, Mrs. Hammer was taken out of the loop during the
19 period in which our discovery responses were supposed
20 to be provided, and it put back our discovery
21 responses.

22 So to the degree they have worked with
23 staff in a side capacity, that does not satisfy or
24 speak to our need for this information.

25 MR. MARSHALL: I mention that --

1501

1 JUDGE WALLIS: Wait.

2 MR. MARSHALL: Okay.

3 MR. BRENA: The answers that are given
4 depend on the time period. I have a general ledger in
5 here for the accounting system.

6 JUDGE WALLIS: By "in here," what do you
7 mean?

8 MR. BRENA: I have a general ledger.

9 JUDGE WALLIS: That's been provided as
10 part of the discovery responses?

11 MR. BRENA: Yes.

12 JUDGE WALLIS: Yes.

13 MR. BRENA: There is the period from
14 when they took over till May of 2001. It's my
15 understanding that they can produce all this kind of
16 information, that they have produced it.

17 I have copies of some of it, not with
18 regard to what I'm asking for now but only with
19 regard to one category. But it is available and it
20 can be done, and here it is. So. But this is
21 extremely limited in view of response to just one of
22 the things, so the capacity issue to do that is
23 clear.

24 JUDGE WALLIS: Very well. Let's just
25 pause at this juncture and be off the record for a

1502

1 moment.

2 (Discussion off the record.)

3 JUDGE WALLIS: Let's be back on the
4 record to continue our discussions.

5 Mr. Marshall, you and Ms. Hammer are
6 aware of the documents that Mr. Brena was referring
7 to, and you have a question, seeing as how he has
8 this information, as to what more it is that he's
9 requesting. Is that a fair statement?

10 MR. MARSHALL: Right. In that period of
11 time before this changeover in accounting systems,
12 that's correct. We want to know what further -- I
13 mean, we think that we've produced what he is looking
14 for.

15 JUDGE WALLIS: Mr. Brena?

16 MR. BRENA: There's about three
17 different issues being merged here. The first
18 thing -- so I want to direct us back to the issue is:
19 Do they have the capacity to produce a detailed
20 general ledger from the period from when they took
21 over the pipeline until May of 2000?

22 My understanding of the answer to that
23 question is yes, they do have the capacity, and we're
24 asking that they be compelled to produce a detailed
25 general ledger for that period, by line item, by

1503

1 expense category, and by project code, and include
2 all codes and references.

3 With regard to outside --

4 JUDGE WALLIS: Does that state one of
5 the issues?

6 MR. BRENA: Yes.

7 JUDGE WALLIS: Let's ask Mr. Marshall
8 for a response to that. If it's more functional for
9 Ms. Hammer to make the statement, that would be
10 acceptable, and there's a microphone on the table
11 adjacent to her that she can use.

12 MR. MARSHALL: Ms. Hammer has indicated
13 that that is the old system, and whether those kinds
14 of materials can be produced, she would have to ask to
15 find out from the old system whether that could be
16 done. If there are some documents that are historical
17 in nature, and they would be, then those have been
18 provided. What we have in existing files, I think
19 have been provided.

20 Whether new documents -- and that's
21 what he's asking for -- can be created off the old
22 computer system is something that we'd have to look
23 into further. We must not have been communicating
24 because we didn't understand about the old -- we've
25 been talking about the new computer system, this SAP

1504

1 system, in our references to what staff is doing in
2 the ability of that system. This is the old system.

3 MR. BRENA: I'm trying to do this
4 accounting system at a time.

5 JUDGE WALLIS: Yes.

6 MR. BRENA: They have produced reports
7 off that old system that they have produced in
8 discovery to us with regard to expense categories, by
9 line, on the general ledger, broken down by vendor.

10 Now what we are asking for is a
11 detailed general ledger for all expense categories
12 broken down by line for that period that includes
13 project code, and that's sorted by project code and
14 expense category.

15 JUDGE WALLIS: Very well. Is that
16 something, Mr. Marshall, that it appears the company
17 does have the ability to provide and that it will
18 provide?

19 MR. MARSHALL: We don't know. That's
20 what I just indicated. We would have to ask because
21 it's an old accounting system that's not used.

22 Whether it could produce new reports
23 based on his -- he wants it -- I think he said he
24 wanted it sorted by expense category, and I'm not
25 exactly sure what that means, and by project code.

1505

1 We're not sure that that old system can do that, but
2 we'll ask, if we get a fairly clear definition of
3 what it means to sort by expense category. Also I
4 think he said by line item and by project code.

5 JUDGE WALLIS: Mr. Brena, were you
6 asking for sorting, or were you asking for a display
7 of that information?

8 MR. BRENA: I was asking for a detailed
9 general ledger, which is a line item document,
10 presented by project code and expense category,
11 general ledger expense category.

12 MR. MARSHALL: But that means two
13 different sorts of two different reports, calling up
14 new reports. I don't think we're communicating here.

15 MR. BRENA: I would accept it by expense
16 category with the project code indicated.

17 MR. MARSHALL: So to make sure I
18 understand what it is that we'll be asking to find
19 out, he wants the general ledgers by a -- a general
20 ledger report. And he has the general ledger from
21 that period of time, but he wants a report based on
22 expense categories. What does that mean?

23 MR. BRENA: Is there a confusion about
24 the expense categories used in the general ledger,
25 Mrs. Hammer?

1506

1 JUDGE WALLIS: Ms. Hammer, would you
2 grab the microphone on that table over there?

3 MS. HAMMER: I understand what you mean
4 by the expense categories. I don't understand what
5 you mean by the project codes.

6 MR. BRENA: AFE, you used a different
7 term yesterday, if you'd remind me of that term.

8 MS. HAMMER: DSP?

9 MR. BRENA: DSP or AFE number.
10 Essentially what that is, is they have
11 an authorization for expenditure, that's an AFE, that
12 sets up a budget item. And then as things are
13 expensed in the general ledger, it indicates where
14 the money goes.

15 MS. HAMMER: Can I respond to that?

16 JUDGE WALLIS: Please do.

17 MS. HAMMER: In the old system, I am not
18 sure that the AFE codes or the AFE numbers are
19 actually included in the general ledger. The project
20 system was actually a separate system outside of the
21 financial system in the old way that it was done.

22 So I'm not sure that that information
23 is contained in the general ledger.

24 JUDGE WALLIS: To the extent that it is
25 contained in the ledger information, is that something

1507

1 the company can provide?

2 MS. HAMMER: If it is contained, yes.

3 MR. BRENA: What we're talking about is

4 whether or not it's possible to document what they

5 spent their money on. If they can't tie an expense

6 item to a project, they can't -- they can't support

7 what they spent their money on. There is no

8 accounting system -- I have QuickBooks -- there is no

9 accounting system that can't tie those two things.

10 JUDGE WALLIS: Does the company want to

11 respond to that? I'll take it as a question.

12 MR. MARSHALL: We've gone around and

13 around on this, and Mr. Brena acknowledges he's not an

14 accounting expert and doesn't know these books.

15 We will commit -- I think that we

16 understand what Mr. Brena has asked us to do from the

17 old reports. We have produced the general ledgers,

18 he wants another level of detail about the expense

19 categories that we can provide. Whether they will

20 have a project code is something that we doubt, but

21 we'll check into that too.

22 JUDGE WALLIS: Very well. I would like

23 to address a concern that I believe I heard stated

24 relating to the production of documents that may not

25 exist. We are talking here about electronic records,

1508

1 and if the system is designed to produce documents,
2 the fact that a paper copy doesn't exist but it can be
3 produced with relative ease without reprogramming the
4 system, we do not consider that to be the creation of
5 documents.

6 MR. MARSHALL: Correct. But in
7 accounting systems in particular, it may be capable of
8 producing different kinds of reports or not capable of
9 producing different kinds of reports. It's important
10 to know what it is that's being asked when you drill
11 down to different levels.

12 JUDGE WALLIS: Yes, that's correct.

13 MR. MARSHALL: So that you can respond.

14 JUDGE WALLIS: Yes, that's correct.

15 MR. MARSHALL: And we've tried to
16 respond to everything on levels that we believe
17 responded to the requests, and now drilling down into
18 different ways of sorting the data.

19 JUDGE WALLIS: Yes. Very well. I
20 earlier indicated the need to take a recess at this
21 time for me to participate in a discussion with the
22 Commissioners. I apologize for the unavoidability of
23 this recess. I will return as soon as possible.

24 In the meantime, I would ask the
25 parties to consider whether we want to work through

1509

1 the lunch hour and, if we do, whether we want to put
2 in an order for food to guard off our blood sugar
3 levels getting so low that we become testy. So I
4 will ask people to engage in that discussion during
5 this recess.

6 And I also would ask people, to the
7 extent that you're able to engage in the kind of
8 discussion that we just have engaged in regarding the
9 meaning of certain requests, I would also encourage
10 that. We will return as soon as we are able.

11 (Recess was taken at 10:30 a.m.)

12 JUDGE WALLIS: Let's be back on the
13 record, please. The result of the prior discussion is
14 that, to the extent that the information that
15 Mr. Brena requests can be produced under the
16 accounting system that was in place up until April of
17 the year 2001, that information will be compiled and
18 presented.

19 Mr. Brena has produced a document with
20 a report ID of USGLST B-2, run date of February 4,
21 '02, a summary balance, which he states is an example
22 of the information he requests. Is that right,
23 Mr. Brena?

24 MR. BRENA: No. This is a --

25 JUDGE WALLIS: Please correct that.

1510

1 MR. BRENA: Okay. What I have handed
2 out is a four-page exhibit for April of '01 which is
3 an example of the runs that have been produced under
4 the old system. The first two pages -- excuse me --
5 it's a five-page document.

6 The first three pages are the summary
7 trial balance that was produced when we had our
8 conversation about trial balance. And with regard to
9 that report, Your Honor, there's a few things I just
10 want to draw your attention so we take some of the
11 argument that you've heard into the specific rather
12 than the general.

13 And then the last two pages are the
14 detailed general ledger which they have provided, and
15 I would like to make a few comments with regard to
16 that.

17 JUDGE WALLIS: Mr. Brena.

18 MR. MARSHALL: First, Your Honor, if I
19 may, I'd just make a comment here. I thought what we
20 were trying to do was just to memorialize what we'd
21 agreed to, and now Mr. Brena is going into some other
22 argument. Just the press of time, it would be nice to
23 identify a specific item that he wants and then I can
24 say either we'll provide it or we won't. I think what
25 we're being asked to do is to provide detailed

1511

1 information by expense account.

2 The various expense accounts are
3 described here. We've agreed to do that. To the
4 extent that they can be linked up with some project
5 code, we will inquire into that and do that. But I
6 think the rest of this is just going to take up a lot
7 of time that the parties don't have. We'd like to
8 get Ms. Hammer back to work.

9 MR. BRENA: Your Honor, if I may.

10 JUDGE WALLIS: Mr. Brena.

11 MR. BRENA: There has been no more
12 frustrating part of our discovery than trying to get,
13 trying to figure out what they spent their money on
14 during 2000 and 2001.

15 JUDGE WALLIS: With this document as a
16 reference, can you briefly describe the information
17 that you want to receive?

18 MR. BRENA: Well, I have less than a
19 minute's worth of comments, and they are principally
20 designed to show what's been produced to show what the
21 problem with it is so that what is produced will solve
22 that problem.

23 JUDGE WALLIS: Mr. Brena.

24 MR. BRENA: Thank you. First, on the
25 summary trial balance, I had made the point that it

1512

1 doesn't give a sufficient level of detail. And you
2 can go through it, for example, a line at a time.
3 They have, if you go down to line 401, 1002, accounts
4 payable, general disbursements, you can see that in
5 April they spent \$532,000, accounts payable, nontrade,
6 other.

7 There is no information that indicates
8 what that's for, or what project that's for. This is
9 when I was illustrating that this is composite
10 numbers, this is what I was referring to.

11 If you turn to the second page of the
12 document, O-0252, other services, consultants, you
13 see they spent \$118,000 in this period on
14 consultants. There is no detail whatsoever as to
15 what project those consultants -- what they did, who
16 it went to, nothing. It's just a number.

17 And then with regard to the third page,
18 you can see in the middle of the page, outside
19 services, contract, they spent \$536,000 in this
20 period. That's the middle column, the transaction
21 column, and absolutely no detail about what that went
22 to or for. Trial balances are not sufficient for
23 rate-setting purposes. That's the point of that.

24 And finally with regard to this
25 document, I'd like to point out that this document

1513

1 was run April 4th -- or, excuse me, February 4th,
2 three days after our data requests were received.
3 We got it March 1st. And so with regard to the
4 capacity, the old system is up and running is
5 producing reports that has produced this report
6 three and a half weeks before we got it.

7 With regard to the last two pages,
8 this is the general ledger information that they
9 provided. This is what should have given life to
10 what was in those composite numbers.

11 And you can see that the fields that
12 were selected don't vary. Take the first column,
13 APO 10418. We don't know what that number stands
14 for, doesn't seem to tie back to anything. The
15 payables 88 and 89 appear to be location. I mean,
16 none of this information would indicate what's in
17 those trial balances or penetrate any detail.

18 So what I'm asking for a run of
19 general ledger, I'm asking for it by expense
20 category which would give the information on the
21 expense side, the detail that this summary trial
22 balance sets forward. It would have the detail of
23 each transaction by line, and would indicate, if
24 it's possible, what project code it is for, and
25 there's a job description number here. I don't know

1514

1 if that is a project code or not a project code.

2 But you can see that there is nothing
3 descriptive about this general ledger that can be
4 used for any rate purpose whatsoever. So I want to
5 be clear what we're looking for. We're looking for
6 the detailed by line, By expense category, that can
7 be tied back to the categories that they have set
8 forward on their trial balance summary, and that
9 also contain project codes so we know what they
10 spent their money for in that month.

11 JUDGE WALLIS: Very well.

12 MR. BRENA: And I would point out this
13 document was run on February 19th, and so they system
14 is still producing general ledgers by specification.
15 And, again, without the codes, these documents are
16 completely useless. So this is what we got.

17 JUDGE WALLIS: Yes, we understand that.
18 Mr. Marshall, do you need to make response, or may we
19 proceed?

20 MR. MARSHALL: I think what would help
21 in running the various expense categories that he
22 wants by account, which we've indicated we would do,
23 is to have him indicate which ones that he's truly
24 interested in. I mean, there are a lot of expense
25 items here that I don't think that he really wants.

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1 The ones that he listed maybe he wants, but it would
2 sure help us in running additional reports.

3 What staff did is they made inquiry
4 after having received this information of what, in
5 particular areas, that they wanted further
6 information on. But this is the kind of general
7 ledger trial balance that Ms. Hammer uses at a top
8 level. If there's a need to inquire into a
9 particular area, then it does.

10 I don't think there's any dispute, I
11 don't know why we're having this argument. Mr. Brena
12 has asked to have this sorted by expense account
13 category, and if those reports can be run, we're
14 going to run them. And if we can tie to the AFEs,
15 then we'll tie to the AFEs.

16 Cindy, do you have anything further to
17 add on that?

18 MS. HAMMER: No.

19 MR. BRENA: He's made two points. I
20 advanced this exhibit to show what it is that I want
21 to come back and what it is that I don't want to come
22 back, and why. So I wanted the record to be
23 absolutely clear what we're looking for.

24 With regard to his second point, we are
25 happy to specify the specific expense categories that

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1 we're interested in and to narrow it down.

2 MR. MARSHALL: That would be great.

3 MR. BRENA: During a portion of the
4 technical conference we started to do that and we got
5 six or seven or eight listed, but they appeared to be
6 left out -- if I could speak with my expert for a
7 moment.

8 MR. MARSHALL: We could do this offline
9 and just have Mr. Brena indicate --

10 MR. BRENA: This will just take one
11 comment, Steve.

12 MR. MARSHALL: Okay.

13 JUDGE WALLIS: I have released the mute
14 on the bridge line.

15 MR. BRENA: Gary?

16 MR. GRASSO: Yes.

17 MR. BRENA: I would like you to indicate
18 in an e-mail to Mr. Marshall today what categories you
19 want this run for: what trial balance categories, what
20 expense categories you want this run for.

21 Please acknowledge.

22 MR. GRASSO: Yeah, I got it.

23 MR. BRENA: Okay. Let's move on.

24 JUDGE WALLIS: Mr. Marshall?

25 MR. MARSHALL: That was very helpful.

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1 JUDGE WALLIS: I'm going to leave the
2 mute button off until we get any disturbance, and then
3 we'll put it back on. It seems quieter now than it
4 was earlier.

5 MR. BRENA: It's my understanding that
6 in the old period, that vendor -- that the vendor code
7 or vendor information is available.

8 And I have a report that has it, and so
9 I want to be clear, I left the vendor issue for
10 something different. I'm about to go from BP's old
11 accounting system to their new accounting system.
12 The vendor code interacts because it is available to
13 the old code. It's my understanding that under SAP
14 on general ledger accounts you cannot indicate
15 individual vendors.

16 JUDGE WALLIS: Ms. Hammer, is that
17 correct?

18 MS. HAMMER: That is correct.

19 MR. BRENA: They have represented that,
20 and I have confirmed that with our SAP person, so I
21 accept that representation. But I wanted to be clear
22 so I wanted to talk about vendors separately.

23 The run that I want would include some
24 indication of vendors for the old period, and I do
25 not expect it with regard to the general ledger run

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1 for the new period. And we'll talk about it more in
2 a minute.

3 JUDGE WALLIS: Is that understood?

4 MR. MARSHALL: Do you understand that,
5 Cindy?

6 MS. HAMMER: Yeah.

7 MR. BRENA: Now I'm into the new period,
8 the new accounting system, the SAP accounting system.
9 First of all, we do not have any general ledgers under
10 the SAP system. None have been produced. All that's
11 been produced is trial balance information.

12 MR. MARSHALL: That's what we call
13 general ledgers, and we've explained that, this is
14 going -- well...

15 JUDGE WALLIS: We're in the process of
16 making a record, Mr. Marshall.

17 It would help a great deal to identify
18 what the issue is so that I can respond very quickly
19 to it and then we move on. Again, I appreciate all
20 this explanation but if we're going to repeat what
21 we've talked about for the past three days, we're
22 going to be here a long, long time.

23 MR. BRENA: What I'm asking for is
24 based, in part, on the representations, so I'm trying
25 to confirm on the record. To the degree that argument

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1 is necessary, I think it's necessary because we're
2 asking to compel, but I'm trying to be brief.

3 What we want out of the SAP system is a
4 general ledger. And we understand that it can't
5 include vendor codes, but we also understand that it
6 can include project codes.

7 So we would like -- and if my
8 representations are wrong, I'm happy to correct it --
9 I would like a general ledger run for, under the new
10 accounting system, under SAP, consistent with what
11 the information that we've asked for for the old
12 system, with the exception that we understand that a
13 vendor code is not possible, but with the further
14 understanding that we understand that a project code
15 is.

16 MR. MARSHALL: We've spent literally
17 hours trying to describe to Mr. Brena what the SAP
18 system can do and not do. I don't know which bullet
19 Mr. Brena is on. I've lost track of the actual area
20 that he says is in dispute. We've made our
21 commitments, they're memorialized in our response.

22 But can you point to me the bullet that
23 you're now talking about, Mr. Brena? And I lost you
24 there.

25 MR. BRENA: The last comment on the

1520

1 first page.

2 MR. MARSHALL: Last comment on the first
3 page.

4 MR. BRENA: And I overlapped a little
5 bit to the first comment on the second page.

6 MR. MARSHALL: Do you see that on the
7 first page?

8 MS. HAMMER: It's right here.

9 MR. MARSHALL: Cindy, do you want to
10 just go on the record and say what we've said maybe
11 twenty different times already?

12 JUDGE WALLIS: Mr. Marshall, please
13 recognize that this is an opportunity for the first
14 time to make a record on this.

15 MR. MARSHALL: Go ahead.

16 MS. HAMMER: The detailed general ledger
17 in the SAP system basically is when we run that
18 document, it gives you document numbers. The document
19 number is a randomly selected number within the system
20 that identifies a transaction.

21 For each transaction, in order to
22 actually get the detail behind that, you have to
23 actually go into that line item and double click to
24 drill down on it to get the payee information.

25 JUDGE WALLIS: So within the parameters

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1 of Mr. Brena's request, what is the company's ability
2 to respond?

3 MS. HAMMER: Well, as we said yesterday
4 and the day before, if there are specific line items
5 that he would like to look at, we'd be more than happy
6 to produce those. But to go in and to do this for
7 every line item within the general ledger for every
8 month would be -- I can't even estimate how long that
9 would take.

10 JUDGE WALLIS: Have you produced general
11 ledger items, portrayals without that information?

12 MR. MARSHALL: We've produced the trial
13 balances and what we call the general ledgers from
14 May 2001 to the present. What Mr. Brena calls trial
15 balances we call general ledgers. That information,
16 with all of the composite detail, has been provided.

17 If there is a specific line item, what
18 we're saying is that in order to pull that up, you'd
19 have to do the same kind of thing that staff did with
20 Ms. Hammer.

21 JUDGE WALLIS: Mr. Brena, are you able
22 to identify the lines on which you need further
23 information?

24 MR. BRENA: Yes, and I'm happy to do it.
25 And in my earlier comments, I tried to make the point

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1 that my request was consistent with my last request in
2 which I have agreed to do that.

3 So we are happy -- and if I can just
4 direct Mr. Grasso to do that all the way through to
5 the present to indicate which trial items, which
6 summary balance items, he would like further detail
7 on, I would be happy to do that.

8 JUDGE WALLIS: Mr. Grasso, did you hear
9 that request?

10 MR. GRASSO: Yes, I did, Your Honor.

11 JUDGE WALLIS: And are you able to
12 respond by electronic mail --

13 MR. GRASSO: I certainly am.

14 JUDGE WALLIS: -- consistent with the
15 earlier request.

16 MR. GRASSO: Yes, I am.

17 MR. BRENA: And just one point of
18 clarification, I do not think that we are having a
19 terminology problem under the SAP, the new system.

20 What I call a trial balance is what the
21 report is labeled, it's a trial balance. Under the
22 new system they have not produced any general ledgers
23 at all, they have produced a trial balance report,
24 which it's, my understanding Mrs. Hammer uses it in
25 her capacities, that a trial balance is a trial

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1 balance as I showed with regard to the trial balance
2 in the old system. It has composite information and
3 no detail.

4 We're happy to indicate what categories
5 we want more detail on, but I don't want the record
6 confused. The caption of the report that was
7 produced was a trial balance report.

8 JUDGE WALLIS: I believe the record is
9 clear that there is a disagreement as to terminology.

10 MR. MARSHALL: The only further question
11 is, when they want a line view of specific expense
12 information, they ought to specify by month what it is
13 they want. If they want it by year, by month, there's
14 different levels of detail. And it would be very
15 helpful to make sure that we understood what that is
16 that they are asking for.

17 MR. BRENA: We will request a line view
18 by month, but we will indicate what categories and
19 what months we would like that for.

20 JUDGE WALLIS: Thank you.

21 MR. BRENA: We've had the conversation
22 of codes with regard to the old system. It is my
23 understanding that with regard to anything that's
24 produced, that all information necessary to understand
25 the codes or the code keys as well as field

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1 descriptions will be provided so that the information
2 is transparent.

3 MR. MARSHALL: We've already explained,
4 and I thought I did it earlier this morning, that with
5 regard to the Equilon matters that we talked about,
6 those are not --

7 JUDGE WALLIS: Yes, we understand.

8 MR. MARSHALL: With regard to the new
9 information on project codes --

10 JUDGE WALLIS: Yes, we understand.

11 MR. MARSHALL: -- Ms. Hammer has
12 explained what the status of the new system is. I
13 don't think we need to repeat that. I think everybody
14 knows what the status of that is.

15 MR. BRENA: I believe they said they
16 would provide all codes and field descriptions that
17 they have available to them.

18 MR. MARSHALL: If we have them
19 available.

20 JUDGE WALLIS: Yes.

21 MR. BRENA: Which is every report, other
22 than the Equilon reports.

23 MR. MARSHALL: We'll provide a list of
24 the project codes for the new system; is that correct?
25 There are certain fields that we can identify, and to

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1 those fields that we can identify, we will.

2 JUDGE WALLIS: Yes. Very good.

3 MR. BRENA: I'm on the second bullet
4 point on the second page, scheduling and detailing the
5 differences. It's my understanding they just don't
6 keep their books on that basis, and therefore that
7 kind of reconciliation between cash and accrual is not
8 a possible report. If they will affirm that, we will
9 move on.

10 MR. MARSHALL: We already have in our
11 response, several weeks ago and then recently.

12 JUDGE WALLIS: Mr. Marshall, to the
13 extent that you add information that is not really
14 relevant to the discussions, it does extend the time
15 and it invites responses which also may not be
16 necessary. So we understand the company's position is
17 that the company has previously responded.

18 That's not the purpose of today's
19 session. It's to make a record and to resolve
20 unresolved matters.

21 MR. MARSHALL: Right. And I'm concerned
22 only as a matter of time. We're already on the record
23 as having responded several different times to a
24 request that -- we just need to move on, and just
25 identify the ones where there is a disagreement.

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1 JUDGE WALLIS: Yes. We are all anxious
2 to move on.

3 MR. BRENA: This is data request
4 No. 125. I'm going to try something new here. I've
5 listed out my understanding, and I would just ask
6 Mr. Marshall to either accept these representations or
7 indicate where they are wrong and so we can focus the
8 argument.

9 MR. MARSHALL: And our response to
10 Tesoro's motion to compel on Page 14, we indicated
11 what our understanding was for 125(a) and (b).
12 Mr. Brena says Olympic has represented they cannot
13 produce these accounts under the FERC system of
14 accounts.

15 I don't know what that means in
16 particular, but I think we've indicated that with
17 Bayview. We've noted here that we gave an
18 explanation on March 6th that we produced our records
19 on Bayview to Tosco's data request No. 62 and 64.
20 That provides data on the original investment amount,
21 construction balances, and the composite
22 depreciation. We affirm that there are no separate
23 records for Bayview on CWIP account balances by fund
24 or AFUDC, and we confirmed that deferred taxes are
25 not kept by asset for -- if you consider Bayview a

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1 separate asset category.

2 We've agreed to look for a way to sort
3 our records, Olympic's records, to determine a total
4 accumulated depreciation for Bayview, and it was
5 discussed that a calculation of removal of Bayview
6 would, in any event, require assumptions and
7 calculations by intervenor's experts. And we've
8 resisted the effort by the parties to have an Olympic
9 expert create new data and do a new calculation that
10 would assume a hypothetical removal of Bayview.

11 So those are our understandings of what
12 we have here. And I think they have drawn from that
13 a conclusion that we can't produce accounts under the
14 FERC system of accounts. I can't make that
15 representation but you've made a representation that
16 we have.

17 The second bullet there where he asked
18 that we don't have monthly CWIP balances for Bayview,
19 that is what we've indicated, that we don't keep
20 separate records on Bayview for CWIP account balances
21 by month, or AFUDC.

22 On the next bullet where we produced a
23 total regional investment he's accurate about that,
24 that's what we reported. And that we've agreed to
25 provide any additions to the plant total accumulated

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1 appreciation of any plant which may be associated
2 with Bayview. We've agreed to look for that in
3 additional data.

4 And then the final bullet that we don't
5 have agreement on whether Olympic's expert should do
6 hypothetical removal, create a new study on what
7 would happen if we remove Bayview from database -- or
8 rate base, rather. We don't believe Bayview should.
9 That's not our position. It would be entirely
10 hypothetical. If their experts would like to do it,
11 then I think they should do it and be subject to
12 cross-examination, and we can have that at that time.

13 MR. BRENA: I thought that they had
14 agreed to do that for staff.

15 MR. MARSHALL: No. Your own bullet says
16 we have not reached agreement.

17 MR. BRENA: You and I. It says Tesoro
18 and Olympic hasn't.

19 JUDGE WALLIS: Let's have Mr. Trotter
20 respond, please.

21 MR. TROTTER: It is very typical for
22 parties to ask the company what would be the impact of
23 a certain assumption like removal of Bayview. And
24 that is a live issue in the case.

25 I don't think the parties have fully

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1 staked out where they are going to be exactly. And
2 so I think this request asks for -- we have the
3 investment and accrued appreciation, but what about
4 some of these other dollars that might be involved?
5 And the company's response, as I understand it at
6 least, is that they haven't calculated those.

7 JUDGE WALLIS: Is that they have what?

8 MR. TROTTER: They have not calculated
9 those and they don't book those uniquely. So the
10 numbers have not been provided. In terms of whether
11 it's legitimate to ask for them, I think it is.

12 And then it seems to me now the
13 question is, how do we get to those numbers? Will
14 the company provide their view of what those numbers,
15 are, or leave it to the parties to do that? I think
16 that the company has certain risks involved when it
17 does that. There may be objections later challenging
18 those figures if they don't provide them. The
19 company itself.

20 But that is how we view this, and we
21 think it's legitimate to ask the company what is the
22 effect of an adjustment and what are all the numbers
23 involved. That happens all the time, and this is a
24 live issue in the case, it's not a remote issue.

25 MR. BRENA: Your Honor, if I may be

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1 heard just briefly. Without monthly CWIP balances,
2 you can't calculate AFUDC, and so you can't get to
3 that number. So certain assumptions have to be made
4 with regard to the period of time during which the
5 Bayview expenditures were made.

6 Now, that information is not available
7 to them, they have represented; we have accepted that
8 representation. It is not available to us. So our
9 request to have them do this, if they don't choose to
10 do it, that's fine. But then what we have to do is
11 make certain assumptions about the expenditures of
12 funds when Bayview was constructed, over what period,
13 so that we can come up with an AFUDC calculation and
14 that can be backed out of revenue requirement. So an
15 easier way to do this is to ask them to do it. Now,
16 if they can't or if they're not willing to, or if
17 they think we should do this, we're willing to do
18 this. We want the refusal to be on the record.

19 JUDGE WALLIS: Mr. Marshall?

20 MR. MARSHALL: Well, we set out what we
21 can do on Bayview, and we suggested that the parties
22 do their own hypothetical analysis on this. We can
23 check again, but it's just another one of those issues
24 about time and about priorities, and all the other
25 things that we have to do.

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1 If we are to create a new set of
2 information, if that were the only thing we had to
3 do, I would readily agree, but that's not the only
4 thing. At the end of the day, we can revisit that
5 and find out whether, in light of all the other
6 responsibilities and requirements on discovery, we
7 can do that in any kind of a time frame. But I'm,
8 again, just worried about the amount of time
9 available for the limited number of people that we
10 have that can begin to do these kinds of requests.
11 We don't think Bayview should be removed, obviously,
12 and I know that's an issue of dispute. But we hope
13 to be persuasive that it shouldn't be removed.

14 JUDGE WALLIS: We recognize that whether
15 or not Bayview would be removed is an issue in the
16 proceeding. But if I can state the Commission's
17 general view, it is that the Commission, whatever
18 decision it makes, it wants it to be reflected
19 accurately in the rates and charges of the company.

20 So I believe that the Commission wants
21 the best information available to support whatever
22 view it may decide, and would ask the company to
23 provide its best calculation consistent with this
24 request.

25 MR. BRENA: Your Honor, it's my

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1 understanding that with regard to the five points that
2 I've made that they do not agree with the
3 representation of the -- the first representation, and
4 that's fine. I withdraw the representation. I don't
5 want to bog us down.

6 With regard to the next three --

7 MR. MARSHALL: I believe Your Honor has
8 ruled on this, and we can move on to the next one.

9 JUDGE WALLIS: Let me ask what the beef
10 is regarding the first bold item. If the company can
11 produce these accounts under the FERC system, would
12 the production of those accounts satisfy Mr. Brena's
13 request?

14 MR. BRENA: It would. And it was my
15 understanding that their accounting system was not
16 maintained on that basis, and therefore we agreed to
17 take what was available.

18 JUDGE WALLIS: So my question is whether
19 the company can to it, and if it can, whether it will.

20 MR. MARSHALL: There's a disagreement
21 about what he means by "the FERC system of accounts."
22 And the other statements that we made in our report in
23 response to the motion to compel we believe are
24 accurate. I just don't want to put a label or a
25 category on it. But in any event, Your Honor has

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1 ruled that we need to make a run with these
2 adjustments, and I think that should be the end of it.

3 JUDGE WALLIS: Very well. Let's move
4 on.

5 MR. BRENA: And there's no dispute. At
6 127, if I can just kind of cut to the chase on the
7 first one, it's my understanding that we don't agree
8 with regard to the scope of the data request, but
9 notwithstanding that disagreement, that they have
10 agreed to provide a revised chart in response to
11 Tesoro data request 111, which is their project
12 management system.

13 It has been represented to me that all
14 one-time expenses, which is major maintenance and
15 capital expenses, are included within that system.
16 And that they have agreed to rerun that report with
17 the project code and comments fields and any other
18 fields that may be contained in it.

19 If that is true, if that is where we're
20 at, then the scope issue goes away.

21 JUDGE WALLIS: Mr. Marshall, is that
22 correct?

23 MR. MARSHALL: No. He is -- I would
24 refer Your Honor to our response on Page 16 as to what
25 we thought would be agreed. But I'll have Miss Hammer

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1 speak to that. I think she can clarify it, and we'll
2 put it in her accounting words rather than that brief
3 description that was just made.

4 JUDGE WALLIS: Ms. Hammer?

5 MS. HAMMER: He was referring to an
6 exhibit which he had received off of a board of
7 directors data request. The exhibit is an Excel
8 spreadsheet. It had additional columns that we no
9 longer maintain in this spreadsheet.

10 And what we said yesterday is that the
11 project numbers were not on the spreadsheet that were
12 provided to him in that original data request, and
13 that I would include the project numbers as well as
14 the comment section if that's what he was looking
15 for.

16 JUDGE WALLIS: So does that satisfy your
17 concern, Mr. Brena?

18 MR. BRENA: I believe so, with one
19 clarification, Your Honor, that I agreed to those
20 particular fields. What I asked for was a project
21 report with all fields. And I agreed to those
22 particular fields, based on the representation that
23 those were the other fields that were available.

24 To the degree that there are additional
25 fields that we have not discussed, I want a complete,

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1 detailed print-out of their project listing form. If
2 the representation is right, that it's only the
3 project code in the comment that are the fields not
4 set forth on that exhibit, then we are in agreement.

5 JUDGE WALLIS: Ms. Hammer?

6 MS. HAMMER: That's correct. It's my
7 Excel spread sheet.

8 JUDGE WALLIS: Thank you.

9 MR. BRENA: The rest of these go to a
10 very large issue, and there's no way to take it at a
11 specific level first. And that issue is, is the
12 Whatcom Creek expenses, whether they are in their
13 cost-of-service, or whether they have been properly
14 returned.

15 MR. MARSHALL: May I ask what they are?

16 JUDGE WALLIS: Let's be off the record
17 for just a moment, please.

18 (Recess was taken from 11:45 a.m. until
19 12:00 p.m.)

20 JUDGE WALLIS: All right. Let's be back
21 on the record, please, following a brief bite break.

22 Mr. Brena, you indicated during the
23 break that you wanted to add a comment relating to
24 the general ledger issue that you believe would
25 clarify and simplify matters. Is that correct?

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1 MR. BRENA: I hope so. You just never
2 know, but I hope so. What Gary had -- well, I need
3 Cindy to hear this. I'm sorry, Cindy.

4 (Discussion off the record.)

5 JUDGE WALLIS: Several things are going
6 on here.

7 MR. BRENA: And, Gary, correct me if I
8 misstate this, but what Gary said is, in terms of the
9 general ledger accounts that he would like you to
10 drill down and provide detail into, he said maybe the
11 simplest way to do this is just for you to provide
12 those accounts that were would go into the composite
13 numbers for OPO 31, case 2 of your cost-of-service for
14 salary and wages, outside services, operating fuel and
15 power, and other expenses.

16 MR. MARSHALL: So that we don't have to
17 wait for the transcript, if you can confirm that in an
18 e-mail, that would be good.

19 MR. BRENA: What has to happen is that
20 Cindy would have to pull those accounts.

21 MR. MARSHALL: We appreciate it. I just
22 wanted to make sure that --

23 JUDGE WALLIS: Yes. It will be
24 confirmed; is that correct?

25 MR. BRENA: Absolutely.

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1 MS. HAMMER: There's several accounts
2 within each of the categories, and I would need to
3 know specific months that you want to look at.
4 Otherwise, we're kind of back in the same situation
5 with the amount of effort that would go into this
6 request.

7 JUDGE WALLIS: Very well. I would
8 suggest that, on our next break, Ms. Hammer,
9 Mr. Grasso, and Mr. Brena can talk about that and see
10 if you can come to a resolution.

11 MR. GRASSO: That's fine, from my point.

12 JUDGE WALLIS: Now, let's go back to
13 request No. 127, bullet 2.

14 MR. BRENA: It would be my suggestion
15 that we just engage in general argument because the
16 parties are simply not in agreement with regard to
17 this issue at all, and the nature of the argument
18 flows through, probably, a great many of the requests.
19 And the issue is the Whatcom Creek expenses. That's
20 the issue.

21 We have asked for a detailed
22 description with regard to how they are handled. We
23 did that in data request 164. We have not received
24 any answer to that data request, although we did
25 receive at the technical conference a good deal of

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1 the description of how it is handled.

2 We have in this case one of the most
3 important issues in this case. I mean, this was a
4 pipeline company that was operating at a normalized
5 level of costs for a number of years who had had a
6 rate increase three years ago.

7 And then Whatcom Creek happened, and
8 now that normalized level of cost has stepped up
9 significantly at the same time as the company is
10 representing that there are no new Whatcom Creek
11 expenses included in the revenue requirement that
12 they're requesting for rates. We cannot reconcile
13 those two. We are aware of their representation that
14 Whatcom Creek expenses are not included in the
15 revenue requirement. We want to prove it to
16 ourselves because we have had a huge step-up in
17 expenses, and so we want to go through those expenses
18 and confirm that.

19 So what we have asked for is an
20 accounting for those expenses. And it is my
21 understanding -- well, that's the simple statement.

22 The more specific statement is that the
23 system that they have in place, they get a third
24 party invoice. Somebody in the company looks at that
25 invoice and determines whether or not it is related

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1 to Whatcom Creek. If he determines, or he or she
2 determines, it is related to Whatcom Creek, it goes
3 to an insurance coordinator that they have hired as
4 an agent for them to collect those sums. And
5 depending on the amount involved, what happens then
6 is, is that third party insurance coordinator pays
7 the third party contractor and then invoices back the
8 company for the amount of the expense.

9 Now, first, let me take the first level
10 of that. And we have been refused any specific
11 information with regard to that on the representation
12 that it's not in the case; that it's ultimately coded
13 back, 60 percent to a claims receivable and 40
14 percent to a casualty loss; and that we should accept
15 that and not have any accounting of the Whatcom Creek
16 expenses whatsoever.

17 Now, let me just point out -- and all
18 we've said is, we want to prove for ourselves that
19 you don't have Whatcom Creek-related expenses in your
20 revenue requirement. Major issue in this case.

21 So let me point out the flaws in this.
22 The first thing, the person that gets the invoice
23 that determines whether it's Whatcom Creek, what if
24 that person makes a mistake, either advertently or
25 inadvertently.

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1 Let me give an illustration of the
2 impact of such a mistake. If I get an invoice and
3 I'm that person, and it's during the period in
4 which -- in the test period, I get an invoice for
5 \$1,000,000. And I decide, they've got a rate case
6 going on, or however I decide it, I miscategorize
7 that. So I put it in the company, I don't send it
8 off to the insurance provider. Then what happens?

9 If I send it to the insurance provider
10 then -- and they have a separate accounting system I
11 understand -- if I send it to the insurance provider
12 then my best guess of what happens in Olympic is,
13 I'll get back \$600,000 and I'll have a \$400,000 loss.
14 And I'll remove the loss from casualty, and the
15 claims receivable will be \$600,000. And that's the
16 financial impact of that decision to send that
17 million-dollar invoice to this insurance coordinator.

18 If I instead keep it within Olympic and
19 pay it, and it's included within the cost-of-service,
20 it is included as a recurring expense, a normalized
21 recurring expense. And they will, in effect, be
22 allowed to collect that million dollars every year
23 forever.

24 So looking at it five years from now,
25 the invoice comes in, it's a test period Whatcom

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1 Creek-related expense, it goes to the company, they
2 pay it instead of putting it through this system,
3 then five years from now they will have collected
4 \$5,000,000 for that, and that will have been a
5 Whatcom Creek expense. And if it goes through the
6 insurance system, they would have only collected
7 \$600,000. \$600,000 from your insurance company,
8 \$5,000,000 from your ratepayers.

9 You know, we need to confirm that those
10 choices that they are making are correct.

11 Step 2. What they've represented is
12 this insurance coordinator is a third party. Well,
13 we don't care what agent for them keeps those
14 records, we want to look at them. And by
15 "records" --

16 JUDGE WALLIS: Let's be off the record
17 for just a minute.

18 (Discussion off the record.)

19 JUDGE WALLIS: Let's go back on the
20 record, please.

21 MR. BRENA: I was at the second step and
22 the need for the information, and that is, their
23 response is because this is a third party provider.

24 It is not true that the documents are
25 outside of their possession and control because they

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1 process their invoices through an insurance
2 coordinator instead of directly. Those are -- they
3 are operating as their agent, and we're entitled to
4 those records. So there is no third party, distant
5 third party here. We're talking about a direct agent
6 operating on behalf of the company.

7 What we want is, first of all, we want
8 a listing, an accounting, for all invoices their
9 third party coordinator processes.

10 And what happens after they process
11 them is they invoice them back to the company, and
12 the company pays them. We want copies of those
13 invoices back. And then the company has represented
14 that it codes those expenses to those two accounts.
15 We would like some reconciliation to show that the
16 amounts that have been invoiced have been properly
17 coded into those two accounts. With regard to the
18 third party invoices, those are the three things that
19 we're requesting.

20 Now the next thing, that only relates
21 to third party services. Now they have a huge
22 company effort associated with monitoring and
23 supervising the capital projects that have arisen out
24 of this, the litigation that has arisen out of this.
25 They have to have personnel dedicated to it. It's my

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1 understanding that they have not excluded from the
2 revenue requirement any portion of the employees,
3 have not allocated any company personnel.

4 MR. MARSHALL: We haven't hired any
5 company personnel.

6 MR. BRENA: Well, they have not
7 allocated any portion within the company with regard
8 to this expense. We believe, going back to the
9 general ledger, that what we're after in that regard,
10 and we asked for a list of anybody that may be in a
11 supervisory role with regard to this Whatcom Creek
12 system that they have running. Somebody within the
13 company processes those invoices back, somebody makes
14 decisions about what -- first, someone within the
15 company makes a decision about whether they go there;
16 secondly, someone within the company makes a decision
17 about whether to pay it.

18 And we're just trying to understand
19 what company personnel are actually involved in the
20 supervision of this, to the degree they're not third
21 parties and their costs are not processed through
22 this. If I could have just a moment.

23 JUDGE WALLIS: Yes. When Mr. Brena
24 concludes, I'm going to ask Commission staff for its
25 comments, and then I'll call on Mr. Marshall.

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1 MR. BRENA: First, before I proceed, let
2 me ask Gary and Dave if there's anything further in
3 terms of specifics that we would like to see relating
4 to the Whatcom Creek -- oh -- expenses. But before I
5 do that, a point had escaped me that has returned to
6 me. We probably spent more time in heated
7 conversation over one topic, and that was we asked to
8 see the AFEs related to Whatcom Creek.

9 JUDGE WALLIS: By "AFE," what do you
10 mean?

11 MR. BRENA: "Authorization for
12 expenditure." It is the way the company determines to
13 authorize expenses to that account.

14 It's my understanding that that AFE was
15 in the possession and control of Equilon, so we have
16 the Equilon issue here. Those AFEs, they set -- and
17 now, whatever it is that the BP refers to them as --
18 set the spending levels for this expense and are part
19 of what would be helpful in the reconciliation of
20 these amounts. It's my understanding that they asked
21 for these, but every AFE for 1999 has been produced
22 to us other than the ones that begin with the code 4.
23 The code 4 are the Whatcom Creek expenses.

24 I have asked for Ms. Hammer to make a
25 follow-up call --

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1 MR. MARSHALL: She has, Your Honor.

2 MR. BRENA: -- in order to confirm Your
3 Honor whether or not this information may be available
4 specifically --

5 MR. MARSHALL: She has, and it isn't.

6 MR. BRENA: -- by AFE number. Because
7 this is the biggest single expense that this company
8 has incurred in the last 50 years. And we do not have
9 a piece of paper that authorizes the expenditures that
10 they are making, and we want it compelled. And we
11 don't care what level of Dante's underworld is
12 necessary to get to it.

13 JUDGE WALLIS: Commission staff?

14 MR. TROTTER: Your Honor, as we
15 understand the company's case, they have indicated
16 that they have removed all direct costs associated
17 with Whatcom Creek for purposes of their revenue
18 requirement.

19 What we understand the intervenor is
20 asking for is two things: One, confirmation that the
21 direct costs were in fact removed; and, secondly, to
22 get into what may be some indirect costs. That may
23 be oversimplification of what you just heard, but
24 that's my 15-second summary of it.

25 The staff has examined this issue.

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1 Mr. Kobo [phonetic] is not here at this moment, but
2 we have looked at it. The issue of the indirect
3 costs is very complex. This information would be
4 useful to that. I think there is a burden question
5 and availability question, but staff is looking at
6 this same issue. I'm not sure that staff was
7 intending to get into this level of detail, but it
8 does appear to be an audit-type function focus in
9 terms of confirming the figures. But that's the
10 context. I don't believe staff was going in too much
11 detail beyond the reported direct costs.

12 And on the indirect side, frankly, I'm
13 not sure -- you know, we're taking a look at that
14 issue, but it's extremely complicated, and whether we
15 can produce analysis on that, I don't know. But I do
16 see this request as fitting into those two
17 categories.

18 JUDGE WALLIS: Now, Mr. Marshall.

19 MR. MARSHALL: Thank you, Your Honor.

20 The Whatcom Creek matter that Mr. Brena began by
21 saying he couldn't reconcile pre-Whatcom Creek with
22 after-Whatcom Creek need for additional revenue.

23 Additional revenue is required in large
24 part because throughput has declined. That reason
25 alone would require each per-barrel cost to go up.

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1 If you have lower throughput for one period compared
2 with the period before, it means that each barrel
3 will have to bear a higher percentage of the total
4 fixed costs.

5 Similarly, and it's true for every oil
6 pipeline company, there have been a number of laws
7 that have been passed at the federal, state, and, out
8 here, at the local level that have increased the
9 amount of inspections, safety standards; particularly
10 in high urban, high concentration of people urban
11 areas. In addition, as the parties are all aware, BP
12 has brought with it its own increased safety
13 standards. They have increased their inspections,
14 they have increased a number of their computer
15 systems, their security. All these things are well
16 known that it's done and brought.

17 So in terms of addressing the quotation
18 at the very beginning of the argument by counsel for
19 Tesoro, the "I can't reconcile what you had charged
20 before with what you're asking for now," they indeed
21 can be reconciled, and they have in our direct case.

22 In our direct case, in large part for
23 ease of making this rate case go forward in a timely
24 way, Olympic voluntarily removed direct costs from
25 the Whatcom Creek accident. We don't believe that we

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1 were required to. We believe that, just like with
2 the State highway system, you know, Highway 2. There
3 are accidents that occur all the time, there's
4 liabilities that occur all the time. And that's a
5 part of business, it's an unavoidable, regrettable,
6 sometimes tragic part of doing business. But it,
7 nevertheless, is a cost of providing service, whether
8 be highway transportation, oil transportation,
9 shipping, whatever it may be.

10 But because those costs were still,
11 number one, in litigation; number two, the subject of
12 insurance claims where certainly those costs could
13 possibly be reimbursed in the future, where there
14 were unknown litigation costs, costs that may or may
15 not be incurred, insurance costs that may cover or
16 not cover depending on whether there's any kind of a
17 reservation of rights under insurance policies -- all
18 those are things that are still being sorted out and
19 won't be sorted out for some time.

20 If Olympic were to have waited until
21 all of that settled down so it could make direct
22 Whatcom Creek expenses part of a rate case, we would
23 have to wait for another several years, during which
24 time the decline in revenue due to the decline in
25 throughput would even further jeopardize the system

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1 which the Commission has already, in its interim rate
2 case order, ruled is very much at financial risk, at
3 dire emergency shape.

4 Olympic perhaps should have probably
5 filed a rate case even earlier than it did. But many
6 of the issues that we're now encountering about the
7 level of throughput and how that's going to be
8 stabilized are even at issue now; they would have
9 been more of an issue earlier. The statement at the
10 beginning of this data request by Tesoro quotes from
11 Ms. Hammer's testimony at Page 5, Line 17 through
12 Page 6, Line 6.

13 And she states -- and this is quite
14 clear, and we have had a number of discussions with
15 Ms. Hammer explaining exactly how these direct costs
16 are handled on Olympic's books. And we're hoping
17 that Your Honor will agree that this is plenty of
18 information, adequate information, for the purpose of
19 this rate case.

20 She states: Costs directly relating to
21 the Whatcom Creek accident were removed. A portion
22 of the costs directly related to the Whatcom Creek
23 incident are reflected as an expense under the
24 casualty and losses, that account, with the remaining
25 portion as an estimate to be recovered through

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1 insurance reimbursement, and is recorded as a claims
2 receivable balance sheet account.

3 Those two accounts, account for the
4 direct Whatcom Creek costs. They are not included in
5 this rate case, any more than a lot of other costs
6 that are spent in this world today are included in
7 the rate case.

8 If counsel want to be assured that
9 costs that are included in the rate case are
10 appropriate costs, they have all the tools at their
11 disposal to look at the costs that are included. To
12 look at costs that are not included, since we're not
13 asking for them, is not only an oppressive burden but
14 it is entirely irrelevant. We should not have to go
15 through all of the ideas about what invoice that has
16 been claimed for an insurance receivable is there or
17 not there. It truly does not matter since that's not
18 being requested.

19 A lot of things are being paid by
20 insurance. The costs of the litigation, as we
21 mentioned in the interim case, the costs of attorneys
22 dealing with these matters; the costs of repairs; the
23 cost of remediation; the cost of fines; and so on.
24 All of that data, all of that information, is not in
25 this case. The parties have the clear ability to

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1 look at costs that are in this case, and if they have
2 a question about, well, is this something that was
3 for repair of a Whatcom Creek pipe, then they can
4 raise that issue.

5 But it wouldn't make sense for Olympic
6 not to process that through insurance, not to make
7 that claim. It does have insurance. And that's why,
8 one of the reasons why we're not making a claim for
9 Whatcom Creek costs, because otherwise we wouldn't
10 know at the end of the day whether we were asking for
11 too much if we get insurance reimbursement. This way
12 it's guaranteed that we aren't going to be asking for
13 Whatcom Creek expenses.

14 So they're looking at the wrong end of
15 the telescope on this. The way to look at costs that
16 they think are related to Whatcom Creek is to look at
17 the costs that are in the rate case itself, not to
18 some accounts that are clearly not being asked.

19 We have not asked for -- and that's the
20 purpose of Ms. Hammer's testimony -- anything in the
21 claims receivable account or the casualty loss
22 account. And she has gone to great effort to explain
23 in detail all the charges that go there and how those
24 charges are handled. We don't create a project list
25 for Whatcom Creek. Mr. Brena is incorrect in his

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1 understanding about that. We don't bill and receive
2 invoices on Whatcom Creek. They are automatically
3 sent to a third party, so we don't track that.

4 If we've made a mistake and we've asked
5 for something that isn't covered by insurance, then
6 that gets bounced back. Mr. Brena is going to try to
7 point to an exhibit here that has some AFE listings
8 on this, and he thinks that that proves somehow his
9 point about whether projects were approved for
10 Whatcom Creek as part of project accounting.

11 We've been through that too, and
12 Ms. Hammer confirmed today with Equilon that they do
13 not have AFEs in that period of time when Equilon was
14 handling this, and Olympic does not have that here
15 today.

16 We have repeated that, and it's true we
17 have gone around about this. And it's come down to
18 an issue of credibility with Ms. Hammer. Is she
19 correct? Will they accept her statement, or not?
20 And we're willing to put that on the record here
21 again today. But it's been one of those "is the
22 world round or flat" discussions. There's an
23 unwillingness to accept the statement that is quite
24 clear, that that AFE information does not exist. It
25 does not exist now, it does not exist in records that

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1 we have any ability to access if it ever existed
2 under Equilon.

3 Now, again, this would, if we wanted to
4 go into looking at costs that are not included in the
5 case, terrifically expands the scope of these
6 proceedings. Mr. Brena is right about this being a
7 major issue, but it's a major issue that will cause
8 this case to crash and burn in terms of the time that
9 we have to go through it, because it won't end with
10 the data requests. A data request will prompt
11 further data requests; they all have.

12 We can look at the books that we have
13 here, showing all of the materials that we have
14 produced so far. It is an enormous volume of
15 material, and it's such an enormous volume of
16 material that people haven't even been able to look
17 at the cross-references and to drill down into the
18 data that currently exists.

19 Now we're talking about including a
20 whole category of costs that aren't even in this
21 case. There will be questions about, was this really
22 necessary to replace this entire section of pipe? was
23 it really necessary to do this? how did that happen
24 or this happen? with costs that are not, by
25 definition, included in the case.

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1 If Mr. Brena sees something in a
2 non-Whatcom Creek project, all of which are tracked
3 by the costs that have been produced here, then let
4 him do that. Let him go after the material that is
5 produced that is in the case, the costs that are in
6 the case. And if he can find something in there, and
7 I don't believe that he can because it's not there,
8 that is associated directly with Whatcom Creek, let
9 him do that.

10 Now, costs that are indirectly
11 associated with Whatcom Creek are something that the
12 Commissioners already have puzzled over. The
13 Chairwoman Showalter has said, well there may be
14 indirect focus because of Whatcom Creek, that it
15 caused safety standards to be passed that might be
16 more rigorous. But those safety standards apply to
17 all pipelines, not just to Olympic. And those kinds
18 of costs we may well have a discussion about in this
19 case. But those costs are whatever they may be in
20 complying with different safety standards. They are
21 fully in the open and ready for cross-examination and
22 for review.

23 So we would again urge for sake of
24 being able to complete this case within the time
25 frame, given everything else that we have, that we

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1 not go into costs that are to accounts where we're
2 not asking for those in rates. Again, even though we
3 could, and even though if we waited four or five
4 years to see how the insurance came out, we might be
5 entitled to. But the determination has been made
6 that we can't wait.

7 So -- and I can clarify exactly what
8 Ms. Hammer has asked in terms of AFEs. Ms. Hammer
9 can explain, and is more than willing to do that here
10 on the record, how these accounts are kept consistent
11 with what she's testified. But there's a lot of
12 testimony already in the record from Ms. Hammer, from
13 Bobby Talley, from Bob Batch on exactly how these
14 matters have been handled, and there's no need to
15 open up a whole huge new front by going into these
16 costs that have not been requested.

17 JUDGE WALLIS: Mr. Brena, could we just,
18 to close this part of the loop, see if you'd like to
19 hear Ms. Hammer's statement? Perhaps you would like
20 to ask her a specific question or questions that you
21 would like to have the answer on the record.

22 If so, now is a time to do that.

23 MR. BRENA: Your Honor, I think I
24 probably asked Mrs. Hammer about every question known
25 to man yesterday with regard to this incident, in my

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1 trying to get an answer. I want to make -- with
2 regard to these AFEs, I would like --

3 MR. MARSHALL: But, Your Honor --

4 MR. BRENA: I would like to finish. All
5 that I'm asking with regard to the AFEs is for her to
6 make a call to Equilon to specifically ask for the
7 Whatcom Creek AFEs. That's it.

8 JUDGE WALLIS: Now, we'll ask if that
9 has been done.

10 MS. HAMMER: Yes, it has.

11 JUDGE WALLIS: And what was the result
12 of that?

13 MS. HAMMER: They do not have copies of
14 those AFEs in their possession, as far as they know.

15 MR. MARSHALL: We also -- I'm sorry, I
16 didn't want to interrupt -- but we did indicate that
17 like yesterday, the other request paid over time
18 for --

19 JUDGE WALLIS: Very well. Mr. Brena.

20 MR. MARSHALL: -- the AFEs. This wasn't
21 just --

22 JUDGE WALLIS: Okay. Mr. Brena.

23 MR. MARSHALL: -- this was a
24 reconfirmation of what we had said before.

25 JUDGE WALLIS: Mr. Brena.

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1 MR. BRENA: It appears that the most
2 difficult way for them to get information is through
3 Equilon. They have owner companies, Arco, who may
4 have a copy of the AFE, and I don't believe there's --
5 I mean -- well, Your Honor, I'd like to respond to
6 several points.

7 MR. MARSHALL: Before I move off the
8 AFEs --

9 MR. BRENA: Let me --

10 MR. MARSHALL: -- Ms. Hammer can clarify
11 any further, there's been a serious allegation here;
12 basically, that Olympic has not tried to obtain these
13 AFEs. And Ms. Hammer can explain the great lengths
14 that we have gone to, to obtain that. There's now a
15 new statement about maybe some shareholder could go
16 after the AFEs.

17 But I don't want to leave any
18 misimpression by Your Honor that Olympic has been
19 anything other than extraordinarily diligent in
20 looking for that information.

21 JUDGE WALLIS: I'm sure you have,
22 Mr. Marshall, but let's let Ms. Hammer respond to the
23 question of whether other owners or former owners have
24 been asked if they have such documents in their
25 possession, or under their control.

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1 MS. HAMMER: It is my understanding that
2 we have asked Equilon, we have inquired -- and not
3 just me, there has been several people who have
4 inquired for information regarding Olympic as far as
5 historical records. And we have searched drawers, we
6 have gone out to storage sites within Olympic and
7 searched through boxes, and we have gathered all of
8 the AFE information that we can possibly get together.

9 What we have in our possession is what
10 we have, and, unfortunately, the Whatcom Creek AFEs
11 were not part of them.

12 MR. BRENA: Your Honor, if I may?

13 JUDGE WALLIS: (Indicated
14 affirmatively.)

15 MR. BRENA: She did not -- well, first
16 let me start out, there is absolutely no issue of
17 Ms. Hammer's credibility. And I've asked her more
18 questions than Carter has pills, and I've never had a
19 reason to put her veracity at issue. So I want to
20 take that issue -- as I did yesterday, I want to take
21 it completely off the table.

22 With regard to the AFEs, I mean, I have
23 a board of directors minutes where Arco approved the
24 AFEs. Now you don't approve an AFE for the largest
25 expenditures in the history of the pipeline for a

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1 project without having a copy of them. Every member
2 of that board of directors for Arco -- who was the
3 owner then, is the owner now, and continues to have
4 records -- their former board members had to have and
5 had to review a copy of that AFE to approve it.

6 Now the idea that those cannot be
7 found, I do not accept. They may have gone through
8 some boxes, they may have phoned Equilon, they may be
9 sandbagged by Equilon as appears to have been the
10 case with regard to a great deal of information. But
11 I heard her respond we have not asked Arco to
12 identify these or any of the former board members
13 who -- and they have not gone through their board --
14 as far as I know, their board of directors' packages.

15 And you have to. I mean, this has to
16 exist.

17 MR. MARSHALL: We have, Your Honor.

18 JUDGE WALLIS: Mr. Marshall, please.

19 Ms. Hammer could you respond to the implicit questions
20 regarding board of directors, the board of directors'
21 packets, and other owners.

22 MS. HAMMER: The board minutes that
23 Mr. Brena is referring to is a document that is dated
24 back into 1999 when those AFEs were approved. I have
25 no way of knowing what was provided to the board

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1 members. It is my understanding that the general
2 practice is to provide those projects, or specific
3 projects are presented to the board members in lists,
4 not specifically by the AFE.

5 And it's also my understanding that
6 Arco has been asked for documents relating to Olympic
7 as well, if they have received any or had any in
8 their possession.

9 MR. MARSHALL: Your Honor, if I may add,
10 in all of the discussions over the last three days,
11 the word "Arco" has never been mentioned by Tesoro's
12 counsel. We have never been asked to go to
13 shareholders. We were asked to go to Equilon, the
14 prior project manager. But this is a new twist
15 because it didn't come up, even though this has been a
16 central part of this.

17 But we have made it very clear that
18 everybody involved that could be involved in this
19 that had the knowledge to -- of places to look, has
20 looked for all these. And we have turned over
21 everything that we can find, we've turned over every
22 stone to look for these materials. These are
23 materials that date back to 1999. And Mr. Brena
24 cannot accept, does not want to accept, the
25 representations that have been made.

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1 JUDGE WALLIS: Mr. Marshall, I don't
2 hear that at all from Mr. Brena. What I hear at this
3 point is a question as to whether Ms. Hammer or other
4 Olympic staff members have asked the board of
5 directors or persons who may have custody of board of
6 directors' packets or other owners of the company
7 whether they have copies of that information.

8 And that is a question to which I would
9 like the answer.

10 MR. MARSHALL: We have.

11 JUDGE WALLIS: Mr. Marshall, please.
12 May Ms. Hammer respond to that?

13 MS. HAMMER: I don't know if specific
14 board of directors have been asked.

15 JUDGE WALLIS: So, in other words, you
16 don't -- you have not done so, and you don't know
17 whether others have done so.

18 MS. HAMMER: No.

19 JUDGE WALLIS: Is the same true as to
20 other owners?

21 MS. HAMMER: Other owners, as in?

22 JUDGE WALLIS: Arco.

23 MS. HAMMER: I believe Arco and Equilon
24 were asked, yes.

25 MR. MARSHALL: Arco and Equilon have --

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1 I may point out, I was about to -- that we have been
2 asked to produce all of the board packets that exist.
3 And during the interim case, which we thought was not
4 really pertinent to the interim case, we did. None of
5 that material was used in the resulting order from the
6 Commission. And all of the materials that can exist
7 that were board packets have been asked of board
8 members. And so if there was anything that a board
9 member had in a board packet would have also been
10 prior produced.

11 JUDGE WALLIS: Mr. Brena?

12 MR. BRENA: There weren't any AFEs in
13 those board packets.

14 MR. MARSHALL: That's right.

15 MR. BRENA: You do not approve an AFE
16 without looking at it. And to some degree, all of us
17 here are speculating. Nobody was here in 1999.

18 What I'm asking for is I cannot be
19 persuaded that a company whose largest single expense
20 item in 50 years, that the authorization that they're
21 operating under to spend millions of dollars, that
22 that authorization is not available in a rate case.
23 I do not accept that.

24 MR. MARSHALL: Ms. Hammer has also
25 stated that the way AFEs are approved is not to look

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1 at an AFE but to look at a list. She just stated that
2 here on the record just a minute ago, and I'd like her
3 to confirm that.

4 So Mr. Brena's hypothesis about how
5 this works, his premise, initially is not correct.
6 He's assuming facts not in evidence and then going
7 from there to assumptions about what should or not
8 exist. The fact of the matter is that we've produced
9 every board packet, everything that can be produced
10 from the board, we have specifically looked for these
11 AFE's. Not once, not twice, but multiple times, made
12 multiple inquiries. Including again this morning
13 after the conference yesterday when we thought we had
14 it narrowed to asking Ms. Hammer to the confirm with
15 Equilon -- the Equilon people were board members and
16 they were owners -- whether they had it, and they
17 have confirmed that no, they do not have any of those
18 existing AFEs.

19 MR. BRENA: I would like to clarify --

20 JUDGE WALLIS: Does Commission staff or
21 Tesoro wish to comment?

22 MR. TROTTER: I did speak with Mr. Kobo
23 while the debate was going on, and staff does share
24 the concern about validating the numbers that have
25 been removed. If the AFEs exist, that would be very

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1 helpful in pursuing that. But there seems to be quite
2 a difference of opinion as to whether they do or not.

3 MR. FINKLEA: Your Honor, Tosco shares
4 Tesoro's concern in this matter, and, obviously, if
5 the AFEs do exist, they should be produced. It
6 sounded to me during part of the discussions that I
7 attended on Wednesday that this could be resolved, but
8 it is clearly one of the more important issues in the
9 case.

10 JUDGE WALLIS: Mr. Brena?

11 MR. BRENA: I just want to clarify a
12 single fact. And we had general argument and then it
13 turned into specific argument with regard to AFE, and
14 I have a reply to the general argument that I would
15 like the opportunity to make as well. But the
16 specific point that I would like to make is
17 Mr. Marshall just indicated that the board of
18 directors approves AFEs without looking at them --

19 MR. MARSHALL: No, I didn't.

20 MR. BRENA: -- they are in some sort of
21 batch. Now, Mrs. Hammer didn't testify to that. What
22 Ms. Hammer did was say that she didn't know what
23 happened in 1999, that she wasn't here. So, as to how
24 the board did or did not act, I believe her comment
25 went to her understanding of how the board may act

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1 today. It certainly doesn't go to that before.

2 This is simple. They got to be able to
3 find this. If they can't find this piece of paper,
4 you know...

5 JUDGE WALLIS: The representation is
6 that you have copies of all of the board of directors
7 packets. There's no indication that any information
8 has been removed from those packets. What more can
9 the company do? The company has asked Equilon, the
10 company has asked Arco.

11 MR. BRENA: Well, in part, Your Honor,
12 you're asking me how they can find information. The
13 board of directors packets that we received we do not
14 believe were complete. They did not contain any of
15 the financial or other reports.

16 The financial committee that met to
17 make reports to the board, none of that information
18 was included in the board packages. There was no
19 underlying financial information, there was no
20 accounting information provided to the board. We did
21 not receive complete board packages when we did it
22 before. And, in fact, they were noticeably void of
23 information that the board would have had to have
24 considered in their meetings.

25 There was insurance reports and

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1 adjustor reports that were made that were discussed
2 in board minutes in the board that were not produced.
3 As you go through the board minutes and the board
4 package, in fact what you find is virtually every
5 major financial report of significance was not in
6 those packages.

7 So I do not accept the representations
8 that we received a complete board report, and what
9 more they can do is ask specifically -- I mean, I
10 don't know how the best way -- I mean, this is the
11 biggest expense item they have had. I don't know
12 what the best way to have them do it.

13 But I think that they can do more, if
14 they were not able to find the largest series of
15 AFEs. And I want to point out that for 1999, the
16 years that these were authorized, every other AFE has
17 been found. You're talking \$100,000 AFE. We have
18 it. Every code 1, every code 2, every code 3, they
19 have produced them. They have produced every AFE
20 except the one that we were looking for.

21 So the idea that they can go out and
22 find a \$25,000 AFE but they can't find the Whatcom
23 Creek AFEs and they produced them all for 1999, but
24 those same records are void of the biggest AFEs in
25 the company that year, either they are looking in the

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1 wrong place -- and I don't know where to tell them to
2 look, but they have to have it. It has to be
3 producible.

4 JUDGE WALLIS: Mr. Marshall, do you have
5 anything to add to what you've said before? I don't
6 want you to repeat anything.

7 MR. MARSHALL: I do. I think this
8 points out the wisdom of not trying to go into detail
9 on costs that are not requested in a rate case. These
10 AFEs do not exist, despite the efforts of us to locate
11 them and they have been extensive.

12 But even if they did exist, the
13 question would be of what possible relevance would
14 they have because they are not costs that are being
15 requested. The AFEs that he says he has are AFEs for
16 projects that we are asking for in costs. If he
17 believes that any of those AFEs has anything to do
18 directly with Whatcom Creek, or if he wants to argue
19 that they're indirectly with Whatcom Creek, he has
20 just admitted that he has them all.

21 That, I think, is the real issue. We
22 will spend an awful lot of time, as we just now have,
23 on costs that are not included in the rate case. By
24 definition, these are costs that are not relevant.
25 And there's going to be a lot more heat than light on

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1 costs that we don't need to concern ourselves about.
2 He ought to ask about the costs for the AFEs that are
3 in the rate case, which he does have.

4 MR. BRENA: Your Honor, he restated
5 portions of the general argument that I would like an
6 opportunity to respond to, if I may.

7 JUDGE WALLIS: Well, I would like to
8 address the general issues separately. But I would
9 like the company to make a list of conceivable places
10 where these AFEs, or copies, might be in existence and
11 to pursue each of those, whether it is through asking
12 each of the members of the board who were members at
13 that time, the employers of those to the extent that
14 they would be maintaining records of those persons,
15 the shareholders, including Texaco or GATX, so that a
16 diligent attempt is made to secure those in addition
17 to the already diligent and perhaps exhaustive attempt
18 that's been made to find those within the records of
19 which the company presently has possession.

20 MR. MARSHALL: We will also detail all
21 that we have done to date in the amount of time. But
22 at some point, the burden of taking the time to do all
23 these things on these issues exceeds any potential
24 relevance, and it takes away from the ability to
25 prepare for a company that is financially flat on its

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1 back. And I just want to note that at some point, and
2 I think that point's already here, Tesoro should be
3 made to pay for that extra level of going beyond the
4 records that we have in our custody and control. If
5 we are asked to go to shareholders that have nothing
6 to do with this company, Texaco and GATX, if we're
7 asked to look elsewhere, that ought to be billed to
8 the people that are imposing that kind of cost.

9 JUDGE WALLIS: How do you respond?

10 MR. BRENA: They filed the rate case,
11 not Tesoro. They are responsible as a party to the
12 rate case that they filed to provide proper and
13 adequate discovery that supports that case. We're
14 entitled to ask for it; they are legally obligated to
15 provide it.

16 JUDGE WALLIS: Very well. Let's move
17 back to the more general questions that involve the
18 request for the listing or accounting for all of the
19 invoices, the copies of invoices back, and the
20 reconciliation of the coding to accounts.

21 I am concerned that the volume of this
22 inquiry may be substantial, and would I like to ask
23 whether Tesoro has the ability, given access, to
24 perform an audit, rather than getting copies of each
25 and every one of those documents.

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1 MR. BRENA: Two things --

2 JUDGE WALLIS: That is, to look at
3 selected documents.

4 MR. BRENA: First, we have not asked for
5 copies of individual invoices, and what we have asked
6 for is an accounting of them. What we anticipate
7 there is, there is a monthly invoice from their
8 insurance coordinator to Olympic. That's just one
9 piece of paper, once a month.

10 In addition to that, there is their
11 insurance coordinator's internal accounting that must
12 keep track of those expenses, and we have asked for
13 that list. We have not asked for individual
14 invoices. So --

15 JUDGE WALLIS: My notes may be in error,
16 thank you.

17 MR. BRENA: Well, I may have spoken in
18 error. And I would agree that that would impose a
19 substantial burden if we were to, but we did not.

20 With regard to the burden question in
21 general --

22 JUDGE WALLIS: Let's go on and ask about
23 the reconciliation of coding.

24 MR. BRENA: And perhaps Olympic is best
25 able to respond to that. When the invoice comes in,

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1 what information can they provide that would
2 demonstrate that it's been coded to the accounts that
3 they have indicated it's been coded to.

4 There should be able to be a
5 reconciliation if you get an invoice for a million
6 dollars from your insurance coordinator and you put
7 \$600,000 of it in claims receivable and \$400,000 of
8 it there, it should be a relatively easy matter to
9 demonstrate a reconciliation of balances; balance
10 before coding, balance after coding. I'm willing to
11 accept any reconciliation the easiest way that it can
12 be provided. But at some point I need to know that
13 that million-dollar invoice that they paid got into
14 the accounts that they have represented it's been in,
15 and I'm willing to accept anything that would do that
16 within their system.

17 JUDGE WALLIS: Mr. Marshall, does the
18 company maintain a listing or accounting of the
19 invoices that it identifies as Whatcom Creek expenses?

20 MR. MARSHALL: No, it does not.
21 Ms. Hammer explained to Mr. Brena the last several
22 days that invoices are sent directly to the third
23 party insurer for direct payment by them and the
24 insurance companies. We do not record them on
25 Olympic's books at all.

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1 JUDGE WALLIS: Does the third party
2 intermediary maintain a list of those documents?

3 MR. MARSHALL: I don't know if they do
4 or not, Your Honor. I mean, what they will do with
5 those, we haven't gotten into. But that's part of the
6 problem with going into this whole area. Mr. Brena
7 says he doesn't want individual invoices, but now
8 we're in an area where we're looking for individual
9 invoices all of a sudden.

10 MR. BRENA: No, Your Honor, we're
11 talking invoices and invoices here. Let me try to
12 clarify it. I am not interested in contractor A who
13 provides the invoice to Olympic that then goes to
14 their insurance coordinator that then goes to the
15 insurance company.

16 The invoice that I'm talking about is
17 the invoice from the insurance coordinator once a
18 month that accumulates all of those third party
19 invoices where, let's say there is ten invoices that
20 month for \$100,000 for ten contractors. They go to
21 Olympic, they go to their insurance provider, there
22 is an invoice back from their insurance coordinator
23 to them for a million dollars that lists all ten of
24 those. That is the invoice that I'm talking about,
25 the invoice once a month from their insurance

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1 provider to Olympic.

2 In addition, they have to keep track of
3 that information. I mean, that's what they were
4 hired to do. They have to get those contractor third
5 party invoices, those ten, they have to put them on
6 an account, and they have to submit them to an
7 insurance company that's the appropriate insurance
8 company in order to process the claim. These are
9 claims processors, they have to track those.

10 So there is no way that they can
11 fulfill their function if they don't track those.
12 And that should be a relatively simple report.

13 I mean, in my case, ten contractors
14 giving bills for that month, it gets added into
15 whatever claims through a claims reporting system
16 that they maintain internally, but then they submit
17 to the insurance company. These are one document,
18 once a month, for all claims; and one invoice once a
19 month; and a reconciliation to the account. That is
20 as easy as I can make it for them.

21 MR. MARSHALL: If Your Honor looks at
22 the Tesoro data request No. 127, if you look at the
23 different subparts of those and just glance at those
24 for a moment. This isn't what Mr. Brena has been
25 asking for for the last three days. And his

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1 hypothetical assumption about what this claims group
2 does or doesn't do comes from -- I don't know where,
3 but not from any facts in this case.

4 We don't know, I don't know what this
5 third party claims person does, and I don't believe
6 Mr. Brena does either. But it's clear that he has
7 not limited himself to any such hypothetical report
8 by a claims adjustor to Olympic. I don't believe his
9 statement about how that works.

10 The simple fact is that when a claim
11 comes in, an invoice comes in, that's covered by
12 insurance, Ms. Hammer has told him it gets sent to
13 this insurance company, that they then get paid by
14 insurance or not paid by insurance. If it's not paid
15 by insurance, it goes to a casualty and loss account.
16 If it's to be paid by insurance, it goes into a
17 claims receivable account. Neither of those two
18 costs are costs that have been included in this case.
19 The essence of her testimony is that those costs have
20 been removed from this case. So all we're going to
21 find, whether we go through all 127 and look at all
22 the huge detail Mr. Brena has, or whether we try to
23 find out what he's now proposing as some kind of a
24 shortcut -- which I don't believe is anything more
25 bog down in a swamp -- is all we're going to find out

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1 is accounts that are not included in the case.

2 MR. BRENA: Your Honor, I have attempted
3 to reserve judgment and reserve argument and focus
4 just on the issue that you're asking. This general
5 argument question, they keep coming in.

6 JUDGE WALLIS: Let me say in general
7 terms, I think Mr. Trotter identified the nature of
8 the issue in stating that the company has defined its
9 case in a certain way and has represented that it has
10 excluded certain items from the calculation of its
11 revenue requirement.

12 I believe that some means of
13 verification of that contention is appropriate so
14 that the parties can verify that the company's
15 representation is correct, and that the charges that
16 do appear in the case are not within those that are
17 not. And whether it is verified by means of
18 providing a list or accounting from the third party
19 agent, whether it is providing copies of the invoices
20 back, or whether it's making the original information
21 available for some kind of brief audit, I don't
22 believe that it needs to be extensive, I don't
23 believe that to need require days or weeks of
24 someone's time. But I do believe that some
25 reasonable accommodation should be made to the

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1 parties who just want to verify the accuracy of the
2 statement and reassure themselves that none of the
3 items that the company contends are excluded
4 accidentally get into the pile of material that the
5 company says is included.

6 MR. MARSHALL: The best way, if I may,
7 there are two ways of determining that. One would be
8 to look at the costs that are included in the case and
9 to do an audit of that to see if there are any costs
10 that are Whatcom Creek costs.

11 As to that part of being able to make
12 that determination, all of the data is available to
13 all the parties to look at and do whatever spot
14 audits they want to do. If they find something, even
15 \$10.00, that they claim is included in the costs that
16 should have been excluded, they have the data to do
17 that.

18 Going to the other side and saying what
19 have you excluded? Let me look at the pile you've
20 excluded. By definition that's not in the pile
21 that's been included. So all we're going to find is
22 a whole bunch of costs that have been excluded.

23 The only real question is, and I think
24 Your Honor and Mr. Trotter put it correctly is, did
25 some of those costs mistakenly make it in the pile

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1 that have been included. And the only way to find
2 that is to look at the pile that's been included.
3 We're looking in the wrong place, if you're looking
4 for things that have been excluded.

5 MR. BRENA: Your Honor --

6 MR. MARSHALL: That's our whole point,
7 is looking at those accounts tells you nothing about
8 what might have been accidentally included in the
9 cost. You wouldn't find that. I mean, that as a
10 matter of logic would not pop up or appear. It will
11 only appear, a Whatcom Creek cost, direct or indirect,
12 old, new, or indifferent, in the actual materials and
13 the costs that have been requested in this case.

14 MR. TROTTER: Your Honor, that's just
15 not right. If the company, I think it's X million
16 they excluded, if an audit trail is done and finds
17 that some invoices weren't counted over there, they
18 are not on the books but they weren't counted in the
19 excluded category, that excluded category would be
20 higher.

21 MR. BRENA: Well, in addition. It's not
22 as though we have the detail on what's been included
23 either. The whole first part of this concerned the
24 general ledgers. We don't have any idea as we sit
25 here today what they have spent their money on. So

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1 he's suggesting a solution as though the information
2 were available to us, even assuming that. But even
3 assuming that is true, that doesn't solve all the
4 issues that could be here.

5 For example, when it comes back over
6 invoiced, they have a ratio that they apply to which
7 account it goes to -- and this goes to some of the
8 points I was going to make on general argument -- but
9 60 percent goes to claims. They have assumed a
10 60-percent claims receivable level.

11 Well, what if it's 80? If it's 80,
12 they will receive another \$10,000,000 that's off book
13 that comes into this company, that ought to be in
14 this case. So it isn't only in the liability side
15 that these issues can be addressed. They have the
16 level of accounts receivable that is 900 percent over
17 the normalized level of receivables here. And part
18 of the issue in this case is not on the -- is, is
19 what is the proper regulatory treatment for this huge
20 amount of revenue that's going to come in as a result
21 of these insurance claims. And they are saying 40
22 percent of it will not be collected. What if they
23 are wrong, and it comes in at 80 percent? Then the
24 subject of \$10,000,000 ought to be in play on the
25 revenue side.

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1 So what they are saying just doesn't
2 follow. There are several reasons to try to make
3 this system transparent.

4 JUDGE WALLIS: Mr. Brena, do you or your
5 consultants have the ability to audit for this
6 question if the underlying documentation is made
7 available?

8 MR. BRENA: I heard Your Honor's
9 suggestion. One of the things that I'm fearful of,
10 staff just got back from Houston, they spent a week
11 down there. I'm not sure how productive that week was
12 for them.

13 JUDGE WALLIS: What I'm asking is
14 whether you have the ability to take a look at the
15 information and find from that the information that
16 you're seeking.

17 MR. BRENA: Your Honor, if the proper
18 reports and reconciliations to the accounts are simply
19 provided to us, there would be -- there may or may not
20 be any reason for us to do that. The first thing I'd
21 like to do is look at it from the sky level just to
22 see if the gross numbers match out.

23 If the gross numbers don't match out
24 and we feel that it's an issue, then I think it would
25 be appropriate and we would dedicate the resources if

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1 it were a substantial enough discrepancy in those
2 gross numbers to go out and do that. I don't think
3 that it's appropriate, particularly given the limited
4 resources and the limited time in this case, to start
5 out at the microlevel when nothing has been provided
6 at the gross level so we can do it. Just let me take
7 a look at this issue, see if what they are saying on
8 a gross level is right.

9 If I think there's money there and it's
10 worth an audit team, then I'll be the first one back
11 here to ask you for it. But without those gross
12 numbers, to be sent out there it would seem
13 inappropriate resources.

14 One final -- well, I'm not sure if it's
15 a final point -- but one additional point is
16 everything that I've told you about how they've
17 processed these claims, everything that I've told
18 you, none of that has been provided to us in detail
19 in discovery.

20 164, you know, Mr. Marshall was talking
21 earlier about he's not sure how ISIS processes its
22 stuff or not. Well, we asked him that. We asked him
23 that in 164: How does this whole system work? They
24 haven't answered. We wanted -- we asked information
25 in discovery so that we could get this information

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1 back. None of it. They haven't responded to a
2 single item in 164, they've objected to it all. And
3 we show up at a technical conference and now they're
4 describing it to us. Part of what I'd like to do is
5 not just get this stuff in technical conferences
6 behind closed doors, I would like to get it through
7 my discovery requests. I'd like to have them
8 compelled so we know -- for example, we do not know
9 whether or not exactly how this system works.
10 Ms. Hammer wasn't entirely clear on certain aspects
11 of it. So for our purposes here today, and
12 Mr. Marshall's point is well taken, our discovery
13 response is broader than need be for a gross view.

14 But -- and subject to comment by my
15 experts -- what we're asking for is a gross
16 reconciliation of the amounts and how they go to the
17 books. A gross reconciliation of these amounts that
18 would include the invoices back, the supporting
19 invoices from Isis or whoever their insurance
20 coordinator is to the company, as well as their
21 accounting of it -- you know, their processing of the
22 individual claims. I assume it would be similar to a
23 general ledger by the insurance coordinator -- and
24 then some reconciliation of that invoice back into
25 the company books so we can match gross numbers to

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1 see if the numbers that went through this system got
2 taken out.

3 JUDGE WALLIS: I believe that, for the
4 reasons cited by Mr. Brena and Mr. Trotter, the
5 information that's sought is directly relevant to the
6 company's revenue requirement in the proceeding, and I
7 believe that the company should be compelled to
8 respond with the information that's been requested as
9 it's been described here.

10 MR. MARSHALL: The limitations that have
11 just now been described by Mr. Brena on the invoices
12 back to Olympic, and the reconciliation of those
13 invoices back from the insurance coordinator? Is that
14 what?

15 JUDGE WALLIS: Yes.

16 MR. MARSHALL: Okay. Just a couple of
17 other comments. We have, in the direct testimony and
18 at length, described how all of this works. So the
19 fact that we haven't responded in interrogatory data
20 requests on how this works is not entirely accurate.

21 JUDGE WALLIS: Did you cite in a
22 response to that request?

23 MR. MARSHALL: We have, and we've been
24 trying to --

25 JUDGE WALLIS: Is there a place in the

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1 record where it could be found? Maybe not.

2 MR. MARSHALL: We've been trying --

3 JUDGE WALLIS: Not the record, the --

4 MR. MARSHALL: -- to refer back to, for

5 example, Ms. Hammer's testimony, Pages 5, Line 17

6 through Page 6, Line 6, we know that there's testimony

7 by Mr. Batch because we've -- there's direct testimony

8 on how that works.

9 And, again, I just want to point out

10 that if there is something in our case that directly

11 relates to that, all that material has been produced.

12 The spot audits that staff did down in Houston for a

13 week were spot audits of the things that we were

14 actually asking for in this case. If they had found

15 anything, and they were there for a week, that

16 involved Whatcom Creek as a direct cost, that's the

17 kind of auditing we think is appropriate to ensure

18 that those costs are not.

19 JUDGE WALLIS: Yes. We understand your

20 argument, and we are persuaded by Mr. Trotter's

21 response that that, of itself, is not sufficient.

22 MR. BRENA: Your Honor, if I may refer

23 to Mr. Marshall's Page 22 of his document, which is

24 Tesoro data request No. 164, that is the data request

25 in which we requested the details for how this system

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1 works. And you'll notice it just says: See Olympic's
2 objections.

3 JUDGE WALLIS: Yes.

4 MR. BRENA: There is no cross-reference,
5 and to the degree that -- to any testimony -- to the
6 degree that they felt that this was described at some
7 point, they should have responded in that fashion.
8 There's simply no response to any of that.

9 JUDGE WALLIS: Very well. Have we dealt
10 with your concerns at this juncture?

11 MR. BRENA: I believe we have. I wanted
12 to be sure that what you said and what Mr. Marshall
13 answered were the same thing in one regard.

14 We have asked for three things. We
15 have asked for the invoices from their insurance
16 coordinator to Olympic. We have asked for their
17 insurance coordinator's general ledger accounts,
18 showing claims processed. And we have asked for some
19 reconciliation of the invoice that the insurance
20 coordinator gave Olympic into their books.

21 JUDGE WALLIS: Yes. That's what we
22 understood.

23 MR. BRENA: He just referred to two of
24 the three.

25 MR. MARSHALL: We have control over what

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1 invoices we may have gotten back from the insurance
2 coordinator, if any, and I don't know in what format;
3 and some reconciliation to the extent they're on
4 Olympic's books.

5 With regard to what the general -- or
6 the insurance coordinator may or may not have, that
7 may or may not be something that we have control
8 over. It's a third party, and --

9 JUDGE WALLIS: Mr. Marshall, I simply do
10 not accept that explanation because that insurance
11 coordinator is acting as your agent in taking those
12 and further processing.

13 MR. MARSHALL: What I was going to say
14 is, we will ask on how they kept the records.
15 Mr. Brena has said that they keep it in some kind of a
16 general ledger or some other form. I have no idea how
17 they keep it because we have no control over how they
18 keep their records. It wasn't going to lead to a
19 statement that we won't ask them for it and obtain it
20 in order them to turn it over, because we've hired it.

21 But what it is, is something that I
22 think there has been some assumptions about that may
23 or may not be correct.

24 JUDGE WALLIS: Very well. And to the
25 extent that there are uncertainties then Olympic must

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1 ask what information is available. And if that
2 information is not what is requested, then get back
3 with Mr. Brena, explain what information is available,
4 and work out an arrangement for securing information
5 that will respond to Mr. Brena's inquiry.

6 MR. MARSHALL: One of the concerns that
7 I have, and it's a fairly deep concern, Your Honor, is
8 because these Whatcom Creek expenses relate to a
9 litigation that is currently in process. Including
10 Tosco, by the way. Tosco has a claim, as we've
11 mentioned, for \$30- to \$40,000,000 for lost income,
12 lost revenues due to the accident.

13 There is significant potential for
14 other uses, misuses, of information of any sort from
15 this, whether it be the identities of experts that
16 have been hired in litigation, how people consulted,
17 even the amounts of attorneys' fees that have been
18 paid by insurance.

19 So all of this is some concern because
20 the very people who are parties to this case may also
21 be, at least some of them, may be litigants.

22 JUDGE WALLIS: Mr. Finklea, would you
23 object if this information is withheld from you and
24 persons working with you on behalf of Tosco, and from
25 Tosco?

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1 MR. FINKLEA: Well, Your Honor, I
2 certainly wouldn't object from it being withheld from
3 people at Tosco that would be involved in that
4 litigation. I've signed a protective order, and I can
5 sign even a more serious one. I'm not involved in
6 anything for Tosco other than this proceeding.

7 JUDGE WALLIS: Very well. Mr. Marshall,
8 does that respond to your concern? There is a
9 protective order, and if you mark the information as
10 confidential, then that does offer some protections.
11 And the Commission does have provisions and, in the
12 past, has implemented protective orders that are even
13 more restrictive than the standard to very much limit
14 the accessibility to information.

15 I'm sensitive to that concern, I think
16 it's a real concern.

17 MR. MARSHALL: I agree.

18 JUDGE WALLIS: I believe that if you
19 requested that to occur, that we can accommodate that
20 request.

21 MR. MARSHALL: We would have to have
22 that as a minimum, because this really does, depending
23 on what the kinds of invoices and information in
24 general we're talking about --

25 JUDGE WALLIS: We will see that such an

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1 order is prepared. What I would like to do is
2 circulate a draft of that order to counsel to assure
3 that it is phrased in a way that actually does
4 identify and does protect the information that the
5 company seeks to protect.

6 Will that work for parties?

7 MR. BRENA: It will, Your Honor.

8 MR. FINKLEA: Yes.

9 MR. TROTTER: (Indicated affirmatively.)

10 MR. BRENA: And there is no reason for
11 rate purposes that I think that those kinds of issues
12 need be put forward in testimony.

13 JUDGE WALLIS: At this juncture we don't
14 know exactly what you're going to get back. It may or
15 may not provide information that is sensitive. If it
16 does, I just want us to be prepared so that the
17 information, such as it is, will flow freely.

18 MR. BRENA: Absolutely.

19 MR. MARSHALL: Again, we certainly want
20 that as a minimum protection in this area.

21 JUDGE WALLIS: Very well. I will see
22 that that is prepared, and I will circulate that in
23 the next few days to counsel.

24 MR. MARSHALL: Depending on the level of
25 detail produced by this insurance coordinator, we may

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1 also seek to have some of that information blocked out
2 as not appropriate at all.

3 JUDGE WALLIS: I believe that Mr. Brena
4 has indicated that he's not interested in specifics
5 that may be relevant to the insurance claims. To the
6 extent that that occurs, rather than spend your time
7 and the company's scarce resources in proceeding, I
8 would suggest you talk with Mr. Brena to work out a
9 way that minimizes the effort on everybody's part and
10 yet makes essential information available.

11 MR. MARSHALL: One last further comment.
12 To the extent that that contains attorney-client
13 privileged matter, we would not know because we have
14 not asked for that and received it from the insurance
15 coordinator. But to the extent it does, we would like
16 not to have waived that attorney-client privilege.
17 So, for example, if there is something in that
18 material that would talk about a communication from an
19 attorney to a client, and that be whether it relate to
20 a theory of a case or to any kind of comment, mental
21 impressions of attorneys, we would not want to have
22 waived any of our objections with regard to that if,
23 indeed, there are anything like that in those
24 insurance coordination materials.

25 MR. BRENA: That's certainly acceptable

1590

1 to us, Your Honor, and I wouldn't anticipate that in
2 accounting, in information -- I guess what I would
3 suggest is we don't -- we're operating with
4 uncertainty here because we don't know what the system
5 is. They didn't respond to our 164, so we're all just
6 kind of guessing here. But after Mr. Marshall
7 inquires about what kind of information is available,
8 if he could just give me a call and maybe we could get
9 the ISIS person on the phone with me and Mr. Marshall
10 and talk about -- and our expert -- and talk about
11 what kind of information is available, I think that
12 there should be some way that we can get the
13 information we need for rate purposes and also ensure
14 that we get what we're looking for.

15 JUDGE WALLIS: Mr. Marshall, will that
16 work for you?

17 MR. MARSHALL: I am not able to commit
18 to having any one person on the telephone call.

19 JUDGE WALLIS: But do you commit to --

20 MR. MARSHALL: I definitely do.

21 MR. BRENA: Your Honor, before we leave
22 this topic, if I could just ask my expert whether or
23 not -- or how bad I've entirely blown it.

24 JUDGE WALLIS: Let me unmute -- we took
25 the mute off when I heard some conversation earlier.

1591

1 MR. BRENA: Gary?

2 MR. GRASSO: Yes. Your Honor, if I may
3 address Robin?

4 JUDGE WALLIS: Please do.

5 MR. GRASSO: If you remember, our data
6 request was driven under 127, subpart (a) by a direct
7 statement in Ms. Hammer's testimony on Page 6, Lines 2
8 and 3.

9 MR. BRENA: Gary?

10 MR. GRASSO: Yeah.

11 MR. BRENA: I mean in terms of crossing
12 it back, we have the court's ruling. Is there any
13 information that I have not requested that I should
14 have?

15 MR. GRASSO: That's to pick up the
16 project numbering system format that they talked
17 about.

18 MR. BRENA: I am assuming, in
19 Ms. Hammer's testimony she indicated that they keep
20 track of the Whatcom Creek expenses under a project
21 numbering system format. But, Gary, at this point we
22 don't know exactly what that third party provider
23 does, and we've asked for a reconciliation of it back
24 into the accounts.

25 Are you asking Mrs. Hammer to

1592

1 represent, and are you asking for some sort of
2 project print-out with regard to Whatcom Creek under
3 the project numbering system?

4 MR. GRASSO: That's what subpart (a) was
5 to 127. I thought it was that easy.

6 MR. BRENA: I understand the issue.
7 When the company receives the invoices, we have asked
8 for reconciliation of those amounts into the accounts.
9 If we get that type of reconciliation, Ms. Hammer --
10 if I may, Your Honor -- would it include some sort of
11 project code so that we could identify those costs as
12 Whatcom Creek costs?

13 MR. MARSHALL: If we compact for the
14 insurer, by definition they're Whatcom Creek costs.

15 JUDGE WALLIS: Ms. Hammer, do you know
16 the answer to that?

17 MS. HAMMER: I don't know what will come
18 back from the insurer.

19 MR. BRENA: I would ask that the
20 reconciliation affirm that -- I mean what we're
21 talking about here is she has testimony that indicates
22 the company tracks Whatcom Creek expense under the
23 project management system. We've seen the AFE, we
24 know the numbers, so we know what things are being
25 coded to. I'm assuming that the information, the

1593

1 reconciliation within the company of the invoice into
2 the company books would contain sufficient
3 information, Gary, so we could trace that through.

4 MR. GRASSO: Yes.

5 MR. BRENA: Ms. Hammer, would that be
6 your understanding, that that reconciliation would
7 include that?

8 MS. HAMMER: All I can do is request it.

9 MR. BRENA: Okay. Anything further,
10 Gary?

11 MR. GRASSO: No. I'll go back on the
12 mute.

13 JUDGE WALLIS: Let's be off the record,
14 please. When we get rolling we'll be on request
15 No. 128.

16 (Recess was taken from 1:30 to
17 1:45 p.m.)

18 JUDGE WALLIS: Let's be back on the
19 record, please, following that brief recess.

20 Mr. Brena, you asked a question during the recess and
21 asked that the answer be placed on the record when we
22 returned. Here's your chance.

23 MR. BRENA: I had asked, Your Honor, if,
24 after the information with regard to the Whatcom Creek
25 expenses are provided to us, if we feel the need to

1594

1 spot check that information, if that I could be an
2 option that could be made available to us, to go and
3 take a look at the supporting records.

4 JUDGE WALLIS: My response was that, in
5 general terms, I support an approach to discovering
6 information that is the most efficient and effective
7 way. And that that could make some sense if it were
8 to eliminate the need for an exchange of requests and
9 responses and so on.

10 But noted that if there were an
11 objection to that request, that that could be brought
12 to us, and we would then consider the request and the
13 objection.

14 MR. MARSHALL: With regard to 128, let
15 me just go ahead and put that on the record.

16 JUDGE WALLIS: Mr. Marshall?

17 MR. MARSHALL: I think that this has
18 been taken care of. It wasn't initially a Tesoro
19 stated priority, but we had information last week that
20 Tesoro had made a mistake, needed to include it as a
21 priority, and the next day we provided information to
22 Tesoro on 128 where we informed Tesoro's counsel where
23 he could find what particular schedules, 21.3 to 21.12
24 and certain other schedules, that would provide the
25 requested information.

1595

1 And I thought that on March 6, Tesoro
2 had agreed that those referenced schedules and
3 information were acceptable.

4 MR. BRENA: They are, as they have
5 agreed to revise 111, which would include a project
6 code in the comment field, the conversation we had
7 earlier. As revised, their answer is acceptable.

8 MR. MARSHALL: That wasn't part of this
9 question. Those are just schedules that he could find
10 the requested information in, and it's already in the
11 testimony, attached to Ms. Hammer's testimony.

12 MR. BRENA: Well, excuse me --

13 MR. MARSHALL: I think he's mistaken on
14 this.

15 MR. BRENA: Your Honor, they are
16 correct, I am mistaken.

17 JUDGE WALLIS: Very good.

18 MR. BRENA: If you will excuse me for
19 just a minute while I -- we withdrew this request, and
20 would you please have my expert confirm that. Gary,
21 on 128, with regard to identifying the -- do you have
22 128 in front of you, Gary?

23 MR. GRASSO: I absolutely do. Yes, I
24 do.

25 MR. BRENA: Is my memory correct, that

1596

1 we withdrew that?

2 MR. MARSHALL: Not that you withdrew it,
3 but that you considered it to be responded to.

4 MR. BRENA: Yes. We withdrew it from
5 our motion to compel it.

6 MR. GRASSO: I believe that is correct.
7 And I think when we had discussed this in the
8 technical conference, that I had asked about if the
9 term "one time expenses" was akin to an ongoing major
10 maintenance program. And I just -- to get that as an
11 answer again, if I may?

12 MR. BRENA: Yes. And just to clarify,
13 we agreed to the representation was, is that one time
14 expenses and extraordinary expenses, they would be
15 memorialized under the project management system as
16 major maintenance or capital. And that all one time
17 expenses would be in one of those two categories.

18 Is that correct?

19 MR. GRASSO: That it would be part of a
20 program, of sorts.

21 MR. BRENA: I'm sorry. Please state the
22 representation that you would like reaffirmed.

23 MR. GRASSO: That to affirm one time
24 expense is the same as a major maintenance project,
25 which may or may not occur each and every year.

1597

1 JUDGE WALLIS: Ms. Hammer, is that a
2 correct representation?

3 MR. MARSHALL: I don't know. That's not
4 really part of -- what we did is we provided schedules
5 so that they could respond to this. This is a kind of
6 a clarification, more for cross-examination. But
7 Ms. Hammer said that she can give her view of what a
8 one time expense is, but I'm not sure it's hooked up
9 to these schedules at all.

10 JUDGE WALLIS: Why don't we do that, and
11 then let's move on after that.

12 MS. HAMMER: One time expense is
13 considered -- those are those projects that are
14 considered in a major maintenance program that's an
15 ongoing program.

16 JUDGE WALLIS: All right. Let's move on
17 now. Thank you.

18 MR. GRASSO: That's what I asked.

19 MR. BRENA: 166, I believe that the
20 representation that I would like reaffirmed and I
21 started pulling out that big sheet of paper. It was
22 in Exhibit 40 that was a project management system
23 that was used, Exhibit 40, in the interim case. It's
24 our understanding that that was an individual company
25 employee that ran that report, and that the company

1598

1 doesn't maintain the project management system in
2 accordance with that any longer. And Ms. Hammer
3 maintains it in her Excel spreadsheet. And that the
4 chart that was prepared in response to our Tesoro data
5 request No. 111 would be provided to us with all
6 fields, as we discussed earlier. And I believe that
7 that resolves this issue as well.

8 MR. MARSHALL: In our motion to compel,
9 we stated that that's what we believed the agreement
10 that -- it took care of that -- would be, that we
11 would modify 111 to include the project numbers and
12 comments, to the extent we could add those fields.

13 JUDGE WALLIS: Very well.

14 MR. BRENA: 108, is that where we're at?

15 JUDGE WALLIS: Yes, I believe so.

16 MR. BRENA: I don't have anything to add
17 to what's here, except the Excel spreadsheet. They
18 have agreed to produce a legible one because we
19 couldn't read it.

20 MR. MARSHALL: We've agreed to do that.

21 JUDGE WALLIS: Yes.

22 MR. BRENA: And with regard to the
23 second bullet point, revise a chart to include project
24 codes. I believe that's where we're at?

25 MR. MARSHALL: That's the same modified

1599

1 No. 111 that we've just talked about.

2 JUDGE WALLIS: Very well.

3 MR. BRENA: Tesoro data request No. 110,
4 the OPS documents sent and received. It's my
5 understanding they have agreed to provide those now.
6 They made some representation to me there may be eight
7 boxes, and so if it's affirmed that there are whole
8 bunches of boxes, I believe that Mr. Marshall was
9 going to check to see if they could be made available
10 on this trip for me so that I could go through them
11 and ask which ones I would like copied. I believe
12 that's where we were.

13 MR. MARSHALL: We had initially
14 responded to this some time ago. I believe the FERC
15 counsel, OPS FERC counsel, suggested that Mr. Brena
16 arrange with Mr. Beaver at Karr Tuttle to look at
17 those at a mutually agreeable time. We said yesterday
18 that we would do that.

19 Mr. Brena wanted to have them just all
20 copied unless they involved more than three banker
21 boxes, and then we determined that there were as many
22 as eight and maybe more banker boxes, at which time
23 Mr. Brena rethought the copying aspect.

24 What we would really like to do,
25 particularly with my schedule, is just to have

1600

1 Mr. Brena call Mr. Beaver directly and make those
2 arrangements with him. I can't do all this and be
3 here and arrange my schedules. So at mutually
4 agreeable time is what we had initially asked them to
5 do, and we make that freely. And he's free to look
6 at them and then have whatever copied that he wants
7 to have copied.

8 MR. BRENA: Your Honor, it's a
9 considerable trip for me to come down here, not that I
10 haven't been doing it plenty of times, but I would
11 like to get it done in this trip. And it's my
12 understanding that some kind of accommodation to make
13 that possible was going to occur.

14 JUDGE WALLIS: Is there a way that on
15 the next break we can see if arrangements can be made
16 to that effect?

17 MR. MARSHALL: Yes. I think Mr. Brena
18 has Mr. Beaver's telephone number, and if he doesn't,
19 we will provide it for him. I think that's the most
20 efficient way to arrange it. I will not be available
21 at all tomorrow. I have a -- well, a number of
22 things.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: I'll be happy to do that,
25 see what the availability is. And if there remains an

1601

1 issue, I'll bring it back to Your Honor.

2 JUDGE WALLIS: Thank you.

3 MR. BRENA: The next bullet point went
4 to the computer models identified in the response.

5 Apparently, there had been electronic
6 disks distributed to the other parties that we could
7 not find had been distributed to us, and we had asked
8 for them to be provided. And, Gary, is it my
9 understanding that you have received those now?

10 MR. GRASSO: '99 for the?

11 MR. BRENA: The zip files for 112.

12 MR. MARSHALL: We have sent those out,
13 Your Honor, so that should take care of that.

14 MR. GRASSO: I'm sorry. Robin?

15 MR. BRENA: Yes.

16 MR. GRASSO: I got zip files today for
17 OPL 30 and 31.

18 MR. MARSHALL: That's the ones, those
19 are the ones.

20 MR. BRENA: They have represented those
21 are the ones. Does that work for you, Gary?

22 MR. GRASSO: Are we looking at 112?

23 MR. BRENA: We are.

24 MR. GRASSO: We're requesting
25 cost-of-service numbers for 1999 and 2000 that

1602

1 Mr. Batch referenced in his testimony. That would not
2 be OPL 30 and 31.

3 MR. MARSHALL: They are included in OPL
4 30 and 31, according to Cindy Hammer.

5 MR. BRENA: Are you talking about the
6 backup for those, Gary? I'm sorry, I may be confusing
7 issues again. Is this the backup with regard to
8 Mr. Batch's testimony to provide the workpapers with
9 regard to the schedule 700 cost-of-service information
10 on the FERC form?

11 MR. GRASSO: Correct. Yeah, that's
12 correct. It's a separate cost-of-service calculation
13 that is not part of the rate filing but is part of the
14 Page 700 in the annual report.

15 MR. BRENA: Okay. Your Honor with
16 regard to (a), there is an issue that we've discussed
17 in our conference, which is produce supporting
18 documents including workpapers relating to each
19 cost-of-service calculation mentioned in Mr. Batch's
20 testimony for the years.

21 And it's my understanding that where we
22 left this, and it's not reflected in the document,
23 that we talked through this issue. And it was
24 clarified that what he was looking for was the backup
25 support for the Sheet 700s, which is the

1603

1 cost-of-service information before FERC, and that we
2 asked for the supporting information on which those
3 cost-of-service numbers were based.

4 And with that clarification, I believe
5 where we left it was Mr. Marshall indicated that he
6 would check on that.

7 MR. MARSHALL: I thought that we were
8 just talking about the zip files, and the zip files
9 have been mailed out. If there's something else, we
10 need to talk about this offline and get a
11 clarification because we thought we had -- for
12 instance, this issue about Page 700 of FERC is
13 something that may link up to some other request, but
14 I don't recall that in connection with this
15 particular. And in any event for those years, for
16 1999 and 2000, those would be Equilon, and we may or
17 may not -- I don't know about FERC stuff, but the zip
18 files that we focused on and talked about, we have
19 sent out.

20 MR. BRENA: With regard to the zip
21 files, we're fine. And if you'd like to go off the
22 record for the moment and we could have that
23 off-record conversation.

24 JUDGE WALLIS: Very well, let's be off
25 the record.

1604

1 (Discussion off the record.)

2 JUDGE WALLIS: Let's be back on the
3 record, please.

4 MR. BRENA: The next bullet point goes
5 to the Bellingham expenses, and Your Honor has already
6 ruled on.

7 The next point, 114(b), the first
8 bullet point reports, which list one time expenses
9 and capital expenditures based on Mrs. Hammer's
10 representation that all expenses that would fall in
11 that category would be captured on that revised
12 schedule. We have accepted the revised schedule as
13 responsive to that.

14 On the next bullet point, it would be
15 the same, that we have accepted the revised schedule
16 that was provided under 111 is acceptable to that.

17 JUDGE WALLIS: Thank you.

18 MR. BRENA: Let me pause. Do we agree,
19 Steve?

20 MR. MARSHALL: Yes. What we said
21 earlier about what we were going to do to modify our
22 response to request No. 111 is true.

23 MR. BRENA: With regard to data request
24 number -- I'm sorry, were you done?

25 MR. MARSHALL: Yes.

1605

1 MR. BRENA: With regard to data request
2 120, the first bullet point goes to carrier additions
3 associated with Whatcom Creek. It has been
4 represented to us that there are no carrier plant
5 additions as a result of Whatcom Creek. With that
6 representation, we are satisfied with the response.

7 If I could have that confirmed, please?

8 MR. MARSHALL: Go ahead.

9 MS. HAMMER: Yes. There are no
10 additions.

11 JUDGE WALLIS: Thank you, Ms. Hammer.

12 MS. HAMMER: And with regard to
13 insurance --

14 MR. MARSHALL: And by that, just to
15 clarify, it means no carrier plant additions added to
16 the overall net plant. To the extent that costs were
17 spent replacing material there for Whatcom Creek, they
18 were not included as an additional item in the net
19 carrier plant.

20 MR. BRENA: There's no plant impact from
21 Whatcom Creek that things were expensed, if there was;
22 right? Did you just say that?

23 MR. MARSHALL: I didn't say anything
24 about expense. I said there weren't any net carrier
25 additions to the Whatcom Creek.

1606

1 MR. BRENA: Well, if you replace a
2 pipe --

3 MR. MARSHALL: If their pipes were
4 replaced, that goes to the casualty and loss, then
5 there's no expenses in this case either for pipe
6 replacement. And Ms. Hammer confirms that too.

7 MR. BRENA: For our purposes, all we
8 wanted represented, and I think that they have, is
9 that there's no plant impacts from Whatcom Creek.

10 JUDGE WALLIS: And I believe Ms. Hammer
11 stated as much.

12 MR. BRENA: Yes, I do as well. The next
13 bullet point goes to insurance claims. We believe
14 that the third party coordinator accounting with
15 regard to the Whatcom Creek expenses will set forth
16 information sufficient for this issue. And let me
17 confirm that with my expert, please.

18 MR. GRASSO: Which one was that, Robin?
19 I was looking for it.

20 MR. BRENA: The second bullet point on
21 120 said we requested all insurance claims submitted
22 on behalf of Olympic arising from the Whatcom Creek
23 accident. We have asked for an accounting of all
24 claims submitted -- well, this isn't expenses, this is
25 claims.

1607

1 MR. GRASSO: That's right.

2 MR. BRENA: Okay.

3 MR. MARSHALL: But that would be the
4 same thing, be caught up in the same -- you know,
5 those claims go to this third party insurer, and to
6 the extent that they send back an invoice and
7 reconciliation, that's what's going to happen there.

8 MR. BRENA: Arco's \$150,000,000 claim
9 for business interruption against Olympic would flow
10 through this system?

11 MR. MARSHALL: At least, if you wanted
12 separate claims, in litigation we've already responded
13 to that. You want insurance claims, your other
14 resolution will take care of insurance claims.

15 MR. BRENA: So the insurance claims are
16 the same --

17 MR. MARSHALL: So it's either insured or
18 it's --

19 MR. BRENA: -- or it's in litigation.

20 JUDGE WALLIS: I'm sorry. We do need to
21 have just one person talking at a time.

22 MR. MARSHALL: Some of the litigation
23 may not be covered by insurance, I don't know. But if
24 it's not covered by insurance and it's litigation, a
25 claim, it will have already been identified. If it's

1608

1 an insurance claim, which is what this asks for, then
2 the resolution we have made will take care of that.

3 So while I can't speak to the Tosco
4 claim or the Arco claim, not knowing whether they are
5 insured or not, because I'm not involved in those I
6 can't make a representation. I would represent that
7 all insurance claims, which is what he's getting at
8 here, would be taken care of by the prior ruling.

9 JUDGE WALLIS: Very well.

10 MR. BRENA: Your Honor, may I go off the
11 record just a minute just to see whether or not this
12 is acceptable? I need to conference with other people
13 just for a moment, if I may.

14 JUDGE WALLIS: Is that something that
15 could be deferred so we could push on, and you can
16 perhaps engage in that at a break and remind us to
17 come back to that.

18 MR. BRENA: Yes. I will.

19 JUDGE WALLIS: Thank you.

20 MR. MARSHALL: On 121, I think the
21 agreement was to provide a legible copy of this list,
22 and we have so agreed.

23 JUDGE WALLIS: I'm going to need to mute
24 the bridge again.

25 MR. BRENA: 122, bullet point one,

1609

1 legible copy, agreed to produce. Bullet 2, a list
2 identifying the projects associated with the amounts
3 included in CWIP accounts, which is 1995 to date.
4 It's represented it doesn't have -- well.

5 MR. MARSHALL: We don't have multi-CWIP
6 balances prior to July 2000. We could reaffirm that
7 if you would like.

8 JUDGE WALLIS: Thank you.

9 MR. BRENA: With regard to since
10 July 2000?

11 MR. MARSHALL: Cindy, do you want to
12 address that?

13 MS. HAMMER: I'll have to check to see
14 if it's available. I don't know right now.

15 MR. MARSHALL: Following July of 2000.

16 MS. HAMMER: Following July of 2000, he
17 wants the projects associated with -- in the CWIP
18 balances?

19 MR. MARSHALL: But from '95 to July of
20 2000, did we talk that through and that's no longer an
21 issue. The issue is from July on.

22 MR. BRENA: Correct. And what we're
23 requesting is a monthly general ledger of the CWIP
24 account by project.

25 MS. HAMMER: And that's the part I don't

1610

1 know. We can run the general ledger for you. I don't
2 know if it will have the project numbers on it or not.

3 JUDGE WALLIS: Very well. So Olympic
4 will verify the answers and provide the information if
5 it's available. Is that correct?

6 MR. MARSHALL: Correct.

7 MS. HAMMER: That's correct.

8 MR. BRENA: 123, first bullet point.
9 They have provided in the conference -- in fact, staff
10 gave me a letter that they had sent to staff with
11 regard to the SeaTac sale that is outside the scope of
12 this, that had original plant accumulated depreciation
13 and net plant price information. And those
14 representations are fine to us.

15 Let me, with regard to -- we're back in
16 the Bayview loop, Your Honor, if I may, because with
17 regard to CWIP, again, we don't -- and AFUDC, we do
18 not have monthly CWIP balances from which AFUDC could
19 be calculated. And so we have -- I have a note here
20 that Olympic has agreed to provide it, but that it
21 hasn't been. There's no agreement as to when.

22 MR. MARSHALL: Well, on our motion
23 responsive to Tesoro's motion to compel at Page 12, we
24 state what we believe was the agreement of parties,
25 which was as soon as SeaTac sale is finalized and

1611

1 closed, we'll provide a supplemental answer.

2 We further indicated that there is no
3 CWIP applicable to SeaTac because it's been in
4 service for such a long time. And then we also
5 invited the parties to look at the petition for sale
6 of SeaTac assets and the order of approval. And
7 apparently there was also a data request from staff
8 on that in connection with the sale that was going to
9 be made available.

10 And after all that, the parties agreed
11 that that was acceptable. I thought we were beyond
12 123, I thought we moved beyond that.

13 MR. BRENA: There was some discussion
14 with regard to what good it would do us to have that
15 calculation after the sale was closed if it could not
16 be included in our case. Essentially, we're in a
17 position where --

18 MR. MARSHALL: The sale --

19 MR. BRENA: -- we want to go ahead and
20 file our case based on the best information available
21 to us, and they have filed their case. They will have
22 to revise that somewhat because of the changes with
23 regard to the SeaTac sale between anticipated and
24 actual numbers.

25 All we're asking for with regard to the

1612

1 timing -- and I'm happy to put off all the timing
2 issues to the end, and I thought we did -- but we
3 don't have agreement with regard to the timing.
4 Because the timing when they're likely to produce it
5 would be after our case, which would require us to go
6 back in and modify our case. And we would prefer
7 just to get it as good as we can with the best
8 information available now.

9 JUDGE WALLIS: We understand. Let's
10 defer that.

11 MR. BRENA: Thank you. 131. This is
12 131, a list of service providers in outside services,
13 and explain the nature of the service provided. They
14 have agreed to provide the list.

15 MR. MARSHALL: That's not correct. We
16 have our response on Page 18 of Tesoro's motion to
17 compel that we think identified what we had agreed to
18 as stated in the last few days.

19 MR. BRENA: Would you go ahead and read
20 that?

21 MR. MARSHALL: We indicated that --
22 first of all, we asked to see the supplemental answers
23 regarding codes, accruals to cash and payees. And
24 No. 119 response we showed and indicated that no
25 records regarding payees or accruals to cash is as

1613

1 stated.

2 And Tesoro would like a list of outside
3 vendors by month for a specific account. We affirm
4 that we would look into whether such a list by
5 specific month could be easily created, and indicated
6 that no such list is created in Olympic's normal
7 course of business. And we would do that, we would
8 look into whether that kind of list could be created,
9 but it normally isn't created.

10 MR. BRENA: This tracks back somewhat to
11 our earlier conversation with regard to there being no
12 links to vendors with regard to their current
13 accounting system. And so what we asked for -- I
14 think we had agreed in that context that they would
15 provide a list. I'm not sure that this is different
16 than that.

17 Gary, is it acceptable for us to
18 specify the cost category for which we're looking for
19 vendors? And, if so, would it be the same four cost
20 categories that we indicated earlier?

21 MR. GRASSO: Is the bridge open?

22 JUDGE WALLIS: Yes.

23 MR. GRASSO: That's the one we had the
24 discussion on, Robin, that the outside services
25 category is the one that the FERC requires a separate

1614

1 accounting for, which they do not have. But with that
2 said, the answer is yes to your representation.

3 MR. MARSHALL: If that can be further
4 limited to the expenses, we could then try to run a
5 payee list of that more limited subset, and that would
6 be significantly more helpful. And we'll look into
7 that.

8 JUDGE WALLIS: That's acceptable to you,
9 Mr. Brena?

10 MR. BRENA: It is.

11 JUDGE WALLIS: Very well.

12 MR. BRENA: Just to be clear, is the
13 four categories that we specified earlier that we
14 wanted the detailed general ledger information on,
15 that the vendor lists provided for those same
16 categories.

17 JUDGE WALLIS: Very well.

18 MR. BRENA: Field codes and field
19 descriptions and codes, I think that Your Honor has
20 already ruled on that. Or I think they have already
21 agreed to provide, if they provide financial
22 information that has codes and needs field
23 descriptions, that will be provided with it.

24 With regard to the last bullet point,
25 the accrual or cash, they have represented and we

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1 have accepted the representations that none is
2 possible.

3 Tesoro data request No. 132.

4 MR. MARSHALL: Sounds like everything is
5 taken care of there.

6 MR. BRENA: Gary, would you please
7 confirm that, that 132 is correct?

8 MR. GRASSO: Yes.

9 MR. BRENA: Okay, 133. We were at the
10 third major topic, Your Honor. And there should be a
11 general argument it will flow through several things.
12 Would you like for me to...

13 JUDGE WALLIS: Please proceed.

14 MR. BRENA: All right. One of the major
15 issues in this case, Your Honor, is what the
16 throughput is that should be used for setting rates.

17 The reason that it is such a major
18 issue is because, obviously, to the degree that
19 throughput is increased or decreased from the amount
20 used in the calculation, it goes straight to the
21 bottom line.

22 JUDGE WALLIS: We understand.

23 MR. BRENA: They have put on a case that
24 is based on 91 percent of 1988 volumes. That case
25 raises several substantial issues. Essentially, their

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1 case represents that the throughput that should be
2 used for rate purposes is 287,000 barrels a month, or
3 105 million barrels a year.

4 In July of this year for 31 days, for
5 that 31-day month, they ran --

6 MR. MARSHALL: That would have to be
7 July of 2001.

8 MR. BRENA: Yes, July of 2001, thank
9 you -- which is the first month after all the
10 refineries came back up on-line, they ran 310,000
11 barrels a month. In addition to representations that
12 they have more efficient batching and are able to have
13 greater throughput because of that, bearing in mind
14 that from their original filed case that they withdrew
15 to their subsequently filed case, they modified it to
16 increase the throughputs somewhat because their actual
17 throughput didn't reflect it. They represented that
18 it was due to increased batching and use of drag
19 reducing agent, I believe. In addition to greater
20 efficiency of batching and drag reducing agent, there
21 was question of whether or not the capital
22 improvements that have been made to this line since
23 Whatcom Creek have de-bottlenecked it somewhat.

24 So it is unknown to us now what the
25 current capacity of this line is. In addition to

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1 that, there is the pressure restriction by the Office
2 of Pipeline Safety. Their calculation of the impact
3 of that pressure restriction is the difference
4 between 317,000 barrels, which was the average run in
5 1998, and 287,000 barrels, or 30,000 barrels a day.

6 In addition to the pressure
7 restriction, we have Bayview. And at the time
8 Bayview is a plant that's designed to be, to
9 increase -- to enhance throughput by allowing
10 batching. And at the time when they filed for
11 Bayview, they represented that Bayview would increase
12 throughput capacity by 35- or 40,000 barrels a day.

13 So we're sitting at a case in which
14 they have come forward with 287, in July they ran
15 310, and we don't know why. There is Bayview for
16 another 40,000 barrels a month, and there was a
17 pressure restriction which they have represented is
18 another 30,000 barrels a month.

19 So if you look at that as a total
20 picture, when this line is fully operational they may
21 be running between 350- and 380,000 barrels a day by
22 anything, by any calculation, and we are here trying
23 to set rates based on 287.

24 So this is a very, very important
25 issue. Our calculation of this could be that it may

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1 impact the rates by as much as 32 percent, depending
2 on where it is. We can't get anything on capacity.

3 We have asked for, and I mentioned
4 earlier 102(c) as being the sole exception to what's
5 not on this list -- 102(c) is something asking for
6 engineering reports. Because of the importance of
7 this issue, we have asked, first of all, for them to
8 identify what the current capacity of the system is.
9 They have not.

10 We had indicated prior to the technical
11 conferences specifically that I wanted an engineer to
12 be available for those technical conferences so we
13 could see what information on capacity was available.
14 We were not looking for drawings of 400 miles of
15 pipe. We are looking for some sort of qualitative
16 analysis from their engineering firm, or an engineer
17 that models or illustrates what the throughput on
18 this line is likely to be into the foreseeable
19 future.

20 So the big issue, no matter how you
21 look at it, there's a lot of throughput going through
22 that line in July, as much as they put through
23 without a pressure restriction almost in 1988, the
24 difference between 310 and 317. And no explanation
25 and no ability to find out.

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1 Now, not altogether -- I want to say
2 that the engineer was not available but not
3 altogether because of anyone's fault. I don't mean
4 by that to suggest that he was hid in a closet
5 somewhere, he wasn't. But for whatever reason, the
6 engineer was not made available to us at our
7 discovery conference, despite my request three days
8 ahead of time, so that we could explore with him what
9 kind of information they had with regard to capacity.
10 We.

11 Want them to affirmatively state what
12 the capacity of this system is, what the design
13 capacity of the system is, what the operational
14 capacity of the system is. We want their engineering
15 studies that show it. It is not uncommon -- in fact,
16 it is common in the industry, this -- you have four
17 refineries putting through a multitude of products in
18 a common pipe. And it would not be uncommon to model
19 that to determine how to optimize the usage in that
20 system.

21 So the information may or may not be
22 available. What we are requesting is that you compel
23 production of capacity information, that an engineer
24 be made available to us, and that we have an
25 opportunity to discuss with him thoroughly what

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1 information may or may not be available; and to
2 request and to get it so that we can address the
3 capacity issue in our case. And I think that this is
4 a concern of staff too.

5 And I will stop there for now, and I
6 would like the opportunity to reply to whatever is
7 said.

8 JUDGE WALLIS: Mr. Trotter?

9 MR. TROTTER: Yes, Your Honor. As the
10 company itself has indicated, the decline in capacity
11 due to the Whatcom Creek incident is a major factor
12 for them requesting rate base -- requesting rate
13 relief, and all of the outfall from that. And they
14 have testified that they anticipate getting back to
15 100 percent utilization by the end of 2003 at the
16 earliest, and the Bayview issue as Mr. Brena has
17 described it.

18 So looking at this company on a
19 pro forma kind of basis, we're very interested in
20 knowing the implications of utilization changes due
21 to upgrades to the system or Bayview coming back on
22 line.

23 This particular one, 133, the sticking
24 point is the sentence asking them to identify the
25 level of throughput that occurs at 100 percent

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1 operating pressure, and then the same condition with
2 the DRA added. And that is relevant to this inquiry,
3 is determining what is a fair rate if there are going
4 to be utilization level changes.

5 So this is important information
6 that should be produced.

7 JUDGE WALLIS: Mr. Marshall?

8 MR. MARSHALL: I'd like to focus on the
9 request No. 133 just to ground ourselves in something
10 that is specific rather than try to respond to some of
11 the generalities. And if you look at that first two
12 bullets, Tesoro has accepted Olympic's
13 representations. The representation of when the
14 system would be able to return to 100 percent
15 pressure, which is what we talked about, we didn't
16 have capacity, was the subject of the testimony of
17 Bobby Talley, and we refer to that in our response to
18 motion to compel.

19 And then Your Honor probably remembers
20 the supplemental testimony of Bob Batch and his
21 cross-examination in the interim case where it was
22 asked what would happen if full rates were not
23 recovered in the interim case and in this case. And
24 he said well, the one thing that could be deferred
25 would be spending money on the capital projects to

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1 increase the throughput to get us back up. The
2 earliest that it could be done would be the first
3 quarter of 2004. And we produced a spreadsheet
4 showing how that might sequence in, but that it would
5 be indefinitely delayed without the necessary
6 revenues to support the necessary work to get that
7 pressure back up.

8 So that part of the question that asks,
9 when do we think this will return to 100 percent
10 pressure, is, at the earliest, 2004 but it may well
11 be put off not only because of revenue issues, but
12 just regulatory issues. OPS has to certify,
13 following a number of tests, that the system is
14 capable of operating at 100 percent pressure, so that
15 would remain to be done too.

16 They asked us for an explanation of
17 contingencies that could accelerate or delay this
18 date. Well, there aren't any that would accelerate
19 the date, but there are many that we've identified
20 that would delay the date, the major ones being
21 regulatory and revenue.

22 The final bullet, the final issue is,
23 can we identify the level of throughput that occurs
24 at 100 percent operating pressure and the level that
25 occurs at 100 percent operating pressure with a drag

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1 reduction agent added.

2 First of all, that is a hypothetical.

3 And as we've tried to explain, the level of
4 throughput is different than capacity. And that
5 depends on how you batch items, the temperature
6 regulations. You can't, for example, add DRA agent
7 to jet fuel.

8 And while we appreciate the idea that
9 people would like to know what throughput occurs at
10 100 percent operating pressure, the fact of the
11 matter is we know it would be more than what we have
12 now, but we can't be any more precise or specific
13 than that.

14 With regard to what Mr. Brena said
15 about July of 2001, we haven't been asked anything
16 about July 2001 in any specific way, asked to explain
17 it or talk about it or do anything about it.

18 There are a number of explanations
19 about July of 2001, including the fact that that is
20 most likely the time that you would have jet fuel
21 going through the system without a lot of batching,
22 and it could be that they were filling tanks. That
23 makes a system very efficient when you do not have to
24 batch, and it increases the amount of throughput that
25 you might have. It could be that there was an

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1 anomaly in the way that the statistics were kept. It
2 could be a number of other things. But to try to use
3 that to assert that that means something that was
4 attempted at the interim hearing, again, if that
5 question wants to be raised specifically about
6 July 2001, we could respond to that in a better way.

7 I understand with regard to the second
8 part of request 133 that, if you add drag reduction
9 agent, it will reduce pressure. So in other words by
10 adding it, you don't have a situation where you can
11 have 100 percent pressure and DRA added at the same
12 time. So that part of the question to the engineers
13 seemed to be -- didn't make sense, didn't compute in
14 an engineering mind.

15 With regard to the engineer being there
16 two days ago when we met in Renton, we did have an
17 engineer who was available to refer to documents, but
18 the examination of Ms. Hammer went from the moment we
19 started until 5:00 -- actually five minutes to
20 5:00 -- and there wasn't any additional time to talk
21 to an engineer. An engineer would have been made
22 available if we had finished up with the financial
23 part of it earlier.

24 The person who could answer questions
25 about this would, of course, be Mr. Talley, and if

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1 they want depositions, which apparently they do, he
2 will be made available to be questioned about he
3 wanted to do. He was not available because he was in
4 Houston. He tried to return early from Houston, not
5 for anything other than illness. He was ill the
6 other day when we came back, and in fact I still
7 don't know how well he is here today.

8 But the simple fact on 133 is the parts
9 that we could answer we have answered, and Tesoro has
10 accepted it. The part that's speculative about what
11 level of throughput would we get in the future at 100
12 percent operating pressure, it's just that, it's
13 speculative. We know it will be more. Much of that
14 might depend on what other kinds of restrictions
15 occur. In addition when you go up to 100 operating
16 pressure, there's no telling in the year 2003 or -4,
17 or later, what other kinds of things will occur to
18 make that level of throughput something other than
19 what it might be projected.

20 If the parties believe, after having
21 set rates based on average throughput, that somehow
22 we've increased the throughput and then that makes
23 the company overearn or otherwise out of compliance
24 with rates, they are free to point that up then.

25 We have produced voluminous records on

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1 throughput that we now have: throughput by month, by
2 shipper, by location. We have produced it
3 specifically by name for the intervenors and the two
4 owners. There's reams of data on what actual
5 throughput is. So the numbers on throughput, if you
6 want to take averages, if you want to look at how
7 much we have been able to accomplish they're all
8 there. And one thing that that shows is that they
9 vary. Despite the fact that the system is
10 overnominated, its capacity constrained, and has to
11 be prorated, there will be variations in throughput
12 despite that.

13 So we believe that we have produced an
14 enormous of information on actual throughput at the
15 levels that we're able to operate now, and that to
16 try to speculate on what throughput might be at some
17 point in the future when we don't even have the
18 revenues to get there to that 100 percent level is
19 just that, it's calling for speculation.

20 MR. TROTTER: Your Honor, I have just
21 one quick point before Mr. Brena responds.

22 JUDGE WALLIS: Yes. Mr. Trotter?

23 MR. TROTTER: This company is investing
24 large sums of money to get that system up to full
25 utilization. If it's doing so on the basis that the

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1 increase in volume is speculative, or they don't know
2 the amount or a very good estimate of the amount of
3 revenue that they expect to get from it, then that's
4 an imprudent thing to be doing.

5 MR. MARSHALL: We said we know it would
6 be more. How much more --

7 MR. TROTTER: Excuse me.

8 MR. MARSHALL: -- and when that would
9 occur --

10 MR. TROTTER: Excuse me, Mr. Marshall.
11 I didn't say anything when you were talking. Please
12 give me the same courtesy, thank you.

13 JUDGE WALLIS: Mr. Marshall, please.

14 MR. TROTTER: So if the company is
15 making an assertion that their planning is not based
16 on good estimates of where they expect their
17 utilization to be, I would find that representation in
18 great need of evaluation and cross-examination.

19 So -- but it does get to the point that
20 it's very clear there has been a substantial
21 reduction in utilization due to events, and that they
22 are taking steps to get it back. And they must have
23 these estimates as a practical matter in order to
24 invest the type of money they are investing.

25 Thank you.

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1 MR. BRENA: Your Honor?

2 JUDGE WALLIS: Mr. Brena.

3 MR. BRENA: First, there is the pressure
4 restriction issue. There is a legitimate regulatory
5 issue in this case as to how to treat that pressure
6 restriction. The pressure restriction was imposed
7 upon Olympic as a result of the Whatcom Creek
8 accident. Is that or is that not a shareholder issue
9 or a ratepayer issue? Is that different than a fine?

10 Their system has been constrained in
11 part due to its prior operation, so right out of the
12 gate, you have whether or not rates should be set
13 based on 100 percent capacity.

14 In addition, you have Bayview.
15 Bayview, they have indicated, they have gone through
16 and done the reengineering. They assert periodically
17 it's in service, or it's not in service. They have
18 included in their case Bayview in their rate base.
19 Well, it's not being utilized as a batching facility
20 currently, but when it is, it will increase their
21 capacity 40,000 barrels a day.

22 So it just cannot be that they can be
23 allowed to charge us a rate based on the facility
24 that they claim is in service, while at the same time
25 ignore the capacity impact when it comes on service.

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1 So I was mentioning different levels
2 that Dante walked through, and I think we just went
3 down another one from where we were. I do not want
4 Mr. Marshall's representations as to how this
5 system's capacity works. I do not accept his
6 representations. You know, July, he mentioned jet
7 fuel, maybe they didn't have batching, maybe they are
8 filling tanks. I mean, he mentioned factors that
9 impact it. No matter how you look at this case,
10 there's a ramp-up of capacity issue that's a major,
11 major issue in this case as a regulatory matter.

12 The fact is that the capacity of this
13 system over the next year and a half, and perhaps
14 sooner -- that I don't see any reason why Bayview
15 can't come on line sooner -- within the next year
16 will be ramped up substantially. There's several
17 regulatory mechanisms available, it's front and
18 center in this case.

19 What we want is, we want to look at --
20 you don't go out and spend 20 or 30 million dollars
21 to increase capacity without knowing what you're
22 doing. Now, I agree with Mr. Trotter, you just don't
23 do that. I mean, that's not the way that this works.

24 What we want and what we're asking for
25 is to sit down with Mr. Talley in that technical

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1 conference. This is an issue that I identified prior
2 to the technical conference, I asked that an engineer
3 made available. The engineer that was made available
4 is not the engineer that needs to be in the room to
5 answer these questions. Mr. Talley is. The engineer
6 that was made available may know where some documents
7 are but can't engage in the type of discussion that I
8 anticipated could narrow this issue in the technical
9 discovery conference.

10 So we need an engineer to talk to, to
11 know what information is available with regard to
12 current -- and we're talking about current capacity
13 here too. I mean, bear in mind that they have
14 advanced a completely hypothetical case on capacity.
15 They're not using their current capacity, they're
16 using a calculated capacity based on 1998, four years
17 ago. So current capacity is an issue.

18 I don't want to make this sound like
19 some future issue to be resolved in some future rate
20 case. I mean, they are trying to use 1998 as a
21 baseline for capacity at the same time as they have
22 enhanced the net plant of this company by 15 percent
23 in the last couple of years.

24 Well, what has been the impact of those
25 on the current capacity of the system? The current

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1 capacity of the system is at issue in this case, as
2 well as how as a regulatory matter to adopt a
3 mechanism that recognizes this tremendous ramp-up in
4 capacity that's going to happen over the next year or
5 two. So there isn't a more important issue in this
6 case.

7 And they have got the engineering
8 studies out there, and we need to sit in a room with
9 the engineer and ask them some questions and find out
10 what's available. And then get the engineering
11 information with regard to current and projected
12 capacities so that we can properly find this issue
13 and the Commission can properly decide it.

14 MR. MARSHALL: I'd like to have the
15 administrative law judge look at request No. 133 that
16 we're looking at right now. Much of what Mr. Brena
17 has been talking about has nothing to do with 133.
18 The two parts to 133 I've indicated had been already
19 answered, and he's accepted the answers.

20 The last one is what level of
21 throughput occurs at 100 percent operating pressure.
22 There's no document that exists on that now. We know
23 it would be more, we know that you can get more
24 throughput if you increase the pressure from the 80
25 percent that it's at now to 100 percent later.

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1 What he's simply asking for because
2 it's in the testimony Bobby Talley in incredible
3 detail in the direct case, is he's asking for a
4 deposition of Mr. Talley. He should wait for that
5 deposition. If he has specific questions about July
6 2001, he should ask for that, but this question
7 doesn't ask for that. It's interesting that he is
8 asking for a lot of new data requests in the guise of
9 trying to point to 133, which we believe we've
10 answered in full, to the extent that we can.

11 It's true that we would like to spend
12 money on increasing the ability to get the pressure
13 back up to 100 percent. That involves spending money
14 on doing the various TFIs and other runs to make sure
15 that the pipe is in good enough order to get back up.

16 But that may or may not be done, as
17 Mr. Batch testified, in the interim case. If that's
18 not done, the money won't be spent because it won't
19 be there.

20 MR. BRENA: Sorry, I don't --

21 MR. MARSHALL: And I don't disagree with
22 Mr. Trotter that this is an important issue about the
23 prudence of expense, but the expense won't be made
24 unless there is the revenue to be able to make the
25 expense to pay the expense. And if the expense isn't

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1 paid, the pressure will not go up.

2 JUDGE WALLIS: Mr. Brena, you identified
3 that this was an issue that had transcended just 133.
4 Is that correct?

5 MR. BRENA: That is correct, Your Honor.

6 JUDGE WALLIS: Can you identify for us
7 briefly the information that you have requested in
8 addition to the opportunity for a technical conference
9 with an engineer?

10 MR. BRENA: I will try. I have
11 mentioned a couple of times data request 102(c) that
12 goes to engineering studies that may impact -- not
13 capacity. You had asked if this is a complete list
14 when we started, and I said absent 102(c).

15 115 goes to these issues, and it is my
16 understanding in general areas we are taking the
17 general argument, and then going back into the
18 specifics. And that's the way that I was arguing,
19 and I wasn't intending to --

20 JUDGE WALLIS: Yes.

21 MR. BRENA: 158, throughout. The
22 specifications in the present capacity of the system
23 stated in terms of barrels per day, full rates,
24 maximum operating pressures of the impact of the
25 pressure limitation.

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1 Let's see. I mean, it's all here.

2 Hold on. Let me just see if there's anything else.

3 MR. MARSHALL: Most of the throughput
4 issues and capacity issues have been respond to.

5 MR. BRENA: 127.

6 MR. MARSHALL: There's nothing in 127
7 about capacity or throughput. We already went through
8 127, Your Honor. It doesn't have anything to do with
9 it.

10 JUDGE WALLIS: The inquiry is phrased in
11 general terms, let's respond in general terms. The
12 parties have agreed that throughput is a significant
13 issue, and Mr. Brena has outlined, almost graphically,
14 the effect of various factors on throughput and the
15 uncertainty that it identifies.

16 I believe that inquiries relating to
17 throughput that are otherwise proper should be the
18 subject of responses. I think it's very simple.

19 MR. MARSHALL: And our position is
20 equally simple. We have, on all throughput issues and
21 definition of capacity, we've provided answers, and
22 133 is the best example I can think of. Everything
23 there has been responded to. With regard to
24 throughput, actual throughput that we've had, we've
25 produced huge amounts of throughput records in the

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1 interim case. To what purpose, I'm not sure, because
2 it wasn't used by the Commission in their order, but
3 we scrambled like mad on three-day turnaround times
4 and Your Honor remembers the various protective orders
5 and the issues we put --

6 JUDGE WALLIS: Right. And we understand
7 that that is something that's history now, and we
8 would really like you to focus on the issues that we
9 have now.

10 MR. MARSHALL: But that, of course, when
11 they want to go and ask about, in 158, what the flow
12 rates are prior to the accident and after the
13 accident, all the throughput, all that data has been
14 provided. And if they want to know what the pressure
15 limitation is by OPS corrective order, we're going to
16 produce all the OPS protective orders. We already
17 have. So if you go through each and every one of
18 their items about what they're asking for, we have
19 provided, either in the direct testimony, the interim
20 case testimony, and the throughput data and the
21 description of the capacity of the system, 315,000
22 barrels per day on average.

23 We have produced an enormous amount of
24 material, and it's interesting because we don't
25 disagree that this is an important issue either, but

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1 we do disagree that we have produced the things that
2 we've been asked to produce.

3 JUDGE WALLIS: Very well. If we all
4 agree in general terms on the principles, maybe it's
5 time to look at the specifics and the implementation.
6 Mr. Brena?

7 MR. BRENA: I'd also throw in 167 to
8 that earlier list, and then --

9 JUDGE WALLIS: Why don't we -- what I
10 was asking for were some illustrations. Why don't we
11 go ahead and identify the specifics, and then we can
12 apply the principles that we all agree to, to those
13 specific situations.

14 MR. MARSHALL: I think if we just go
15 through the order in which we're continuing --

16 JUDGE WALLIS: Yes.

17 MR. MARSHALL: -- 133. And then the
18 next one is 158, which raises some of these issues, we
19 can talk about specifics. The generalities are just
20 that.

21 JUDGE WALLIS: Yes.

22 MR. BRENA: That would be fine.

23 MR. MARSHALL: The only reason --

24 MR. BRENA: The last comment that I have
25 is, we're not talking about -- I'm not talking about

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1 in this conversation -- historic throughput numbers.
2 I'm talking about capacity numbers.

3 JUDGE WALLIS: We understand.

4 MR. BRENA: Okay. If Mr. Marshall could
5 direct me to their response.

6 MR. MARSHALL: I think we haven't
7 finished up with 133 yet.

8 MR. BRENA: No, we haven't.

9 MR. MARSHALL: And 133, again, the first
10 two parts of that have been answered and accepted.

11 The part about the level of throughput
12 that occurs at 100 percent operating pressure, what
13 that would be, there is no document on that. If they
14 want to ask Mr. Talley in a deposition what it would
15 be, they are free to ask that. And, again, we try to
16 point out that the combination of 100 percent
17 operating pressure hypothetically with DRA added is,
18 to an engineering mind, not -- doesn't work. When
19 you add DRA, you reduce operating pressure as an
20 effect.

21 MR. TROTTER: Your Honor, the company
22 did not include that explanation in their response,
23 and perhaps they should have.

24 MR. MARSHALL: But we did.

25 MR. TROTTER: The question, I think,

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1 clearly goes just to the simple point. As I interpret
2 it, it's asking if the pressure level, pressure
3 restriction is lifted, we all know this line has been
4 prorated since at least 1983, what is the level of
5 throughput that will occur? Now, that is going to
6 require assumptions, because some customers may send
7 more jet fuel through, and some may send more regular
8 gasoline through, and so on.

9 But the company projects its revenues,
10 it knows the consistency of products it's shipping
11 and can make reasonable assumptions in that regard,
12 and I suspect it has in making financial forecasts
13 for determining whether it's prudent to expand this
14 line at all.

15 It does require assumptions, but it
16 seems to me it's pretty basic, and it's the heart of
17 their business to make those assumptions. And so
18 that's all I think this is asking about. And if the
19 drag reduction agent aspect of this renders the
20 request non-meaningful, then they should respond
21 accordingly.

22 JUDGE WALLIS: It strikes me that if
23 it's not technically feasible to match 100 percent
24 pressure and 100 percent drag reduction, that the
25 company would have some calculation indicating the

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1 optimum combination of pressure and drag reduction,
2 and that that would be something that's known.

3 Mr. Brena, you had a further statement?

4 MR. BRENA: Well, I was just going to
5 focus on the specifics. There's two parts to this
6 question; they're separated by the word "and." The
7 first is, identify the level of throughput that occurs
8 at 100 percent operating pressure. They haven't.

9 The second is the level of throughput
10 that occurs at 100 percent operating pressure when
11 drag reducing agent is add. That's the second part
12 to it. And I agree with Your Honor's observations,
13 that the idea of discovery is to -- I mean, if it's
14 too narrow, then you have a problem; if it's too
15 broad, then you have a problem. But respond to the
16 guts of the question. And if there's some things
17 that would be responsive, would be exactly what Your
18 Honor indicated. You know, what is the optimal
19 capacity of this system at 100 percent operating
20 pressure and the use of drag reducing agent?

21 Okay. Now they haven't responded,
22 period.

23 MR. MARSHALL: A simple illustration I
24 think will help make the point. Right now we all know
25 and I think all accept that this pipeline system is

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1 constrained at 80 percent pressure. The level of
2 throughput at 80 pressure varies wildly. We have that
3 because we have all the records. It varies by
4 segment, it varies by date, it varies by type of fuel,
5 it varies by the amount of DRA. There is no level now
6 at 80 percent pressure that you could say -- we state
7 that the level of throughput at 80 percent is X. Same
8 thing is true at 100 percent. There is no level of
9 throughput at 100 percent that you can state. It will
10 vary by all those factors.

11 What we can state, because we've gotten
12 the actual throughput up to 91 percent of what we had
13 before, is that adding DRA will increase a
14 constrained system that's operating at a lower
15 pressure. Where it goes from there depends on a
16 whole host of things. We know that it will be more.
17 We also know DRA costs a lot of money. There's
18 trade-offs between having to add too much or too
19 little. We know that DRA can't be added to jet fuel.
20 When it was a while ago, it spoiled a whole batch of
21 jet fuel.

22 So they are looking for a single
23 answer, but what they really need to do if they want
24 to is, (A), to put on their own experts, or (B),
25 cross-examine Mr. Talley who presented direct

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1 testimony here on what might happen in the future,
2 making these various hypothetical assumptions. But
3 right now we do know the level of throughput at 80
4 percent because we've produced all the throughput
5 numbers, and it goes up and down. Remember that
6 chart that they had? So there is no specific level
7 of throughput.

8 That's why -- we're not trying to be
9 anything more than full and complete and not try to
10 come up with a number that somebody is going to say,
11 aha, you've said that you're going to have a level of
12 throughput at 100 percent as this, and therefore you
13 should -- we should pro forma out something. It
14 won't be a number, it will be a whole series of
15 statements from an engineer that's familiar with
16 this, who should -- that should happen on
17 cross-examination or with their own experts.

18 MR. BRENA: Your Honor, if I can just
19 make one observation, the case that they put forward
20 is based on 1998, 317,000 barrels a day.

21 MR. MARSHALL: That's not correct. And
22 Ms. Hammer can confirm that, the 1998 seasonal
23 patterns were incorporated but not the 1998
24 throughput. So Mr. Brena's premise is incorrect.

25 MR. BRENA: Their case is based on a

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1 calculation of 91 percent of a throughput level, and
2 the numbers 287,000 barrels a day that they use for
3 their barrels. Now I agree throughput varies
4 seasonally. So what? All I'm trying to do, I mean
5 for rate purposes, they're going to look at annualized
6 throughput because that's what you do for a rate. You
7 look at an annualized impact. They have assumed an
8 annualized throughput level of 105 million barrels a
9 day, which is 91 percent of the calculated number. So
10 he's sitting here telling you that they can't
11 calculate it, but they have.

12 But that aside, I don't want
13 Mr. Marshall's representations. I would like the
14 opportunity to put on an expert on capacity. I can't
15 do it if I can't get information on this system. I
16 want to know in this one what their opinion is. And
17 then when we get to the next one, the engineering
18 drawing specifications and design information on
19 capacity, when I asked specifically produce all
20 engineering studies and documents that discuss the
21 design capacity of the pipeline system, what I want
22 to do there is get information that I can have an
23 engineer look at. We're in the discovery phase,
24 we're not putting on evidence. That's about them
25 giving us what they have available. And the most

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1 efficient way to do that, they're the ones that
2 indicated it's too voluminous, we have pages and
3 pages and pages and miles and miles of things. I am
4 trying to put a system in place where we can talk to
5 the engineer that knows, Mr. Talley, ask him what
6 information is available to put on a case. I can't
7 do that without the information.

8 So all these comments about how we
9 should proceed I agree with them, that's what we're
10 trying to do. And we need discovery to do it.

11 JUDGE WALLIS: Mr. Trotter, do you have
12 any concluding comments?

13 MR. TROTTER: No, Your Honor.

14 JUDGE WALLIS: Very well. Mr. Marshall
15 is that the question is not phrased correctly?

16 MR. MARSHALL: It's --

17 JUDGE WALLIS: If the question on bullet
18 three of No. 133 were phrased: Using the assumptions
19 that the company used to calculate its 287,000 barrel
20 per day figure if the operating pressure were
21 increased to 100 percent, would the company be able to
22 respond to that? And, Mr. Brena, is that the kind of
23 information that you're seeking?

24 MR. BRENA: If I understood the way
25 you've rephrased it, you've asked for the same --

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1 you've asked what would the level of throughput be at
2 100 percent pressure, with and without drag reducing
3 agent, optimized.

4 JUDGE WALLIS: Using the same
5 assumptions that the company made in presenting its
6 287,000.

7 MR. BRENA: No. Its case is based on a
8 hypothetical.

9 MR. MARSHALL: No, Your Honor.

10 MR. BRENA: I'm looking for the real
11 world.

12 MR. MARSHALL: That's where Mr. Brena is
13 incorrect. Our case is based on actual throughput.
14 When we filed back in May of 2000 at the FERC, and
15 here, and asked for an 82, 83 percent rate increase,
16 it was based on some projections. Then those
17 projections were amended based on actuals. We have
18 based this on actual throughput volume. And so
19 Mr. Brena is incorrect about making the statement that
20 he has about doing some calculation of a percentage of
21 a maximum. We're not doing it on any assumptions,
22 we're basing it on actuals.

23 JUDGE WALLIS: What conditions obtained
24 when the actual figures were generated?

25 MR. MARSHALL: The actual volumes that

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1 were being put through to the throughput --

2 JUDGE WALLIS: Was there a pressure
3 restriction at that time?

4 MR. MARSHALL: Yes. There's 80 percent,
5 still exists, and it will exist indefinitely unless we
6 get the rate relief that we're asking for.

7 JUDGE WALLIS: All right. Could the
8 company, using the same assumptions that led to the
9 figure at 80 percent pressure, if the company were
10 authorized to use 100 percent pressure, could the
11 company calculate the throughput?

12 MR. MARSHALL: We haven't used
13 assumptions on the 80 percent, we've used actual
14 numbers. We have not --

15 JUDGE WALLIS: Didn't you just tell me
16 that you used actual numbers during the period when
17 the flow restriction was in place?

18 MR. MARSHALL: The flow restriction is
19 still in place. We're still using -- our case is
20 based on actuals and not assumptions.

21 JUDGE WALLIS: Yes.

22 MR. MARSHALL: We're not making any
23 assumptions. So to say what would we do at 100
24 percent, assuming that the 80 percent is lifted, and
25 using the same assumptions that we have -- we are not

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1 making assumptions. So we can't --

2 JUDGE WALLIS: You are making
3 assumptions in the sense that the product mix and the
4 shippers reflect actual circumstances. Would it be
5 fallacious to assume that an increase to 100 percent
6 pressure would carry the same product mix, for
7 example, and shipping destinations?

8 MR. MARSHALL: It may well. Because
9 when you have a prorated system, when you're telling
10 the shippers, the refineries, that they can't move all
11 the product that they want, they may move different
12 kinds of products in different alternative ways.

13 I have no way of knowing that, but the
14 fact of the matter is that our case is based on --
15 not on assuming a product mix or any other kind of
16 thing, but on actual throughput data. And that's why
17 the case was revised, to move it out of some
18 assumptions which produced a much higher rate, to
19 move it to actual throughput numbers that we could
20 then look to. And that's why moving to a
21 hypothetical about what would happen if -- to
22 throughput if you went to 100 percent may not produce
23 anything that's useful.

24 For one thing, maybe some of the people
25 who are nominating are overnominating. And that when

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1 you get to 100 percent, it may turn out that they
2 don't have that product to move. Then that
3 throughput level would be down, or maybe they move to
4 a different mix of fuel. When you add the third
5 runway at SeaTac, that may happen about the same time
6 that this, if we were able to get the revenues, that
7 you get throughput, you get the pressure up. That
8 could have an impact.

9 We would be moving from a case right
10 now based on actuals to this hypothetical, based on a
11 whole series of assumptions. And all I'm saying that
12 we can certainly do that in cross-examination.
13 People are free to ask and the Commissioners are free
14 to ask about that. But there's no data out there
15 right now where we can make that statement as to what
16 would occur at 100 percent operating pressure, except
17 that it would probably more. Undoubtedly it would be
18 somewhat more than what we have right now, assuming
19 that the refineries and all are still overnominating
20 and that line is prorated.

21 MR. BRENA: Your Honor, if I could make
22 one observation. I think that, first of all, to
23 clarify something, their case is based on actual
24 throughput, I don't dispute that. It's based on
25 historic throughput.

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1 The difference between their model and
2 this question, in part, is all I want to know is if
3 the vapor pressure restricted currently, if the
4 pressure restriction is lifted currently, how much
5 throughput would you have? What would be the
6 capacity of the system with and without drag reducing
7 agents?

8 There is a series of questions with
9 regard to the historic period that they used, whether
10 it's representative of current or whether it will be
11 representative in the future. But, you know, I don't
12 know how it can get more simple than asking a
13 pipeline company what's the capacity of your system
14 right now.

15 JUDGE WALLIS: If it's true that
16 different product mix affects capacity, is there a way
17 to get answer to your question without either making
18 or identifying how to make assumptions as to the
19 product mix?

20 MR. BRENA: I believe that they would
21 have to make assumptions due to product mix. I think
22 when they ask for current capacity, there's a series
23 of variables that you could identify but all I can say
24 is as currently being operated with the existing
25 product slate what would the pressure restriction do?

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1 There's no reason to believe it's an overnominated
2 system for all products. There's no reason to believe
3 that -- I mean, you have to, I'm not asking them to
4 get in and manipulate variables. I'm saying, assuming
5 things are the way they are, then if you go up to 100
6 percent, where are you?

7 JUDGE WALLIS: Mr. Trotter.

8 MR. TROTTER: Your Honor, their current
9 projected utilization assumes a certain product mix
10 which is probably wrong. I mean, it would probably be
11 entirely coincidental that in reality and actually
12 here would be identical. That's the way this business
13 is run. I don't think it's any way outside the realm
14 of the obvious that the company makes rational
15 predictions based on their experience. We're dealing
16 with data in the current case from 1998.

17 MR. MARSHALL: No, that's not correct.

18 MR. TROTTER: But there are certain
19 factors upon which utilization is based that are based
20 on the company's experience in 1998. And that was an
21 assumption they made that's embedded in the current
22 case. And so I think this is always in the realm of
23 the reasonable to make the types of assessments that
24 they needed to respond to this question, that they
25 want to make them explicit in order to do so.

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1 JUDGE WALLIS: It appears to me to be
2 exceptionally commonsensical that the information that
3 is being requested is known to the company and is
4 readily available. And I think the challenge here is
5 defining that information in a way that either the
6 company now defines it in making its own predictions,
7 or allows the company to respond. Perhaps it's the
8 hour of the day, but I have taken a couple of stabs at
9 that, and I'm not sure that I've reached it. I think
10 the information is information that is available to
11 the company, and that the company should be able to
12 provide.

13 MR. MARSHALL: Again, Your Honor --

14 JUDGE WALLIS: So let's put our heads
15 together and see how we can define it so that the
16 information can be provided.

17 MR. MARSHALL: What we're now embarked
18 on doing is to create a hypothetical question for an
19 expert, based on something that may or may not occur
20 in the future on lifting of pressure. The assumptions
21 that you're going to build into the question would
22 assume different product mixes, seasonalities, and a
23 host of other things. If that were to occur and you
24 could construct a hypothetical question with those
25 assumptions, I would suggest that Tesoro do that, and

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1 then put that question, either in a deposition which
2 then they could alter their assumptions if they want
3 and we could come up with a better response.

4 But the fact of the matter is we are
5 not making assumptions about the throughput at 80
6 percent. The throughput is taking actual throughput
7 numbers at the current restrictions that we have. I
8 guess embedded in that is a certain product mix that
9 actually occurred, but we're not pretending to make
10 assumptions about what that will be in the future.
11 We're just stating this is what happened, and there's
12 no better data that we have to go forward in terms of
13 operating at 80 percent pressure.

14 MR. TROTTER: Your Honor, we're
15 asking -- this is not our request but we're supporting
16 it -- that the best reasonable estimate that the
17 company make, and I think the request is requested in
18 very simple obvious terms. And it just seems very
19 clear and plain to me, and they should rather than
20 have a hypothetical in a deposition two weeks before
21 we distribute our case it's perfectly reasonable to
22 ask it now and to have them provide it.

23 JUDGE WALLIS: Very well. We also
24 believe that it's reasonable, that the company is able
25 to identify a reasonable product mix and that it has

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1 the information to identify the effect of the pressure
2 restriction, and that it has the ability to identify
3 an optimal level of operating pressure per drag
4 reduction.

5 Mr. Marshall indicated that the company
6 has, through experience, developed knowledge about
7 the use of the drag reduction agent. The company has
8 an extended period of product mix information
9 available to it. I think the question is
10 fundamentally reasonable, and I believe the company
11 should respond to the best that it can and state the
12 parameters that it identifies when it makes that
13 response.

14 MR. MARSHALL: We'll have to give a
15 range, obviously, Your Honor. Because right now we
16 have a range at 80 percent, and then the range is
17 quite large because of the differences in season and
18 product and everything else.

19 We'll also have to make certain
20 assumptions about what segments are going to be used.
21 that's the other thing about the throughput data that
22 we've actually based our case on, is that not all
23 segments are the same. And further we have segments
24 that are interstate and interstate only. Some, like
25 the lateral lines, that are not. And what we're

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1 going to have to do is provide an answer that doesn't
2 take any of that into account. And because this is
3 the kind of thing that it would be presumably asked
4 in more detail in a deposition, but we can give a
5 range based on certain assumptions, but it's going to
6 be to state a level of throughput it's different than
7 capacity.

8 Capacity is the size of your pipe, the
9 number of pumps, and, you know, a number of physical
10 attributes. That's capacity. Capacity of an engine
11 is X amount of horsepower. The actual output of
12 horsepower depends on a number of variables. This is
13 not the capacity that we're talking about now, it is
14 an actual physical amount of production that you can
15 get, and it will vary at 100 percent as it varies at
16 80 percent.

17 We can give a range, but it will be
18 bounded by a whole set of assumptions that experts
19 will have to put in. That was not included in this
20 question. Those assumptions and the idea of a range
21 and all that were not part of what they asked for.

22 JUDGE WALLIS: I'm not sure that it is
23 any different from capacity, except to the extent that
24 capacity may be measured at a static rather than a
25 flowing -- on a static rather than a flowing basis.

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1 And it's easy to calculate the capacity of a tube,
2 given the dimensions of the tube. But the question
3 is, when that stuff starts moving, at what rate does
4 it move to allow things through. And that's a
5 function of the pressure, it's a function of the drag,
6 it's function of the product mix, all of which the
7 company has many years of experience with.

8 So, again, it just strikes me that it
9 is fundamentally reasonable that company knows this
10 when it makes decisions relating to the expansion of
11 its capacity, that is in this sense, its ability to
12 generate throughput, and that that information is not
13 improper for a question of this sort.

14 MR. MARSHALL: Again, we're being asked
15 to create new data based on a series of assumptions on
16 something that may or may not happen in the future, we
17 may or may not be able to get to 100 percent capacity.
18 In that regard, with those kinds of parameters, in
19 terms of understanding that this truly is a
20 hypothetical requiring a range and also assumptions,
21 we'll give it a stab.

22 JUDGE WALLIS: We appreciate that. And,
23 again, we ought to make it clear that if the company
24 has prepared these estimates in conjunction with its
25 internal decisions, then that is the information that

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1 parties are asking for. Is that correct?

2 MR. BRENA: Yes, Your Honor.

3 MR. MARSHALL: If we have some
4 engineering studies, and we'll get to that part later,
5 I think the way we've handled it now with a range and
6 a number of assumptions, and we're going to have to
7 have a whole series of assumptions including the fact
8 that the providers don't go out of business, we don't
9 have recessions, we don't have -- I mean, we've had a
10 lot of this lately that hardly anybody would have
11 expected. SeaTac is throttled way back as we came up
12 with initial numbers for this, and we're now working
13 through that.

14 But with that kind of understanding as
15 to this, not -- any time you come up with a number it
16 takes on more importance than perhaps is warranted.
17 if we come up with a set of assumptions and ranges,
18 we will commit to do that, even though it requires
19 the production of new material.

20 MR. TROTTER: Your Honor, just a quick
21 response. We've had a number of recessions since
22 1983, and this line has been consistently prorated.
23 But the request only asks for reasonable assumptions,
24 not wild ones, not extreme ones, but reasonable ones.
25 And hopefully that is the spirit in which the company

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1 is offering to do its analysis.

2 JUDGE WALLIS: Very well. And we also
3 acknowledge that at later stages of the proceeding
4 there will be the opportunity for depositions and for
5 cross-examination. So it's not that this is the only
6 information that will ever be available in this
7 regard.

8 Excuse me one moment, I need to check
9 on something.

10 (Recess was taken.)

11 JUDGE WALLIS: Let's go back on the
12 record. Then we'll take 102, and then we'll decide at
13 that time period where we go.

14 It is with mixed feelings that I state
15 that my commitment at 4:00 has been moved to next
16 week. During the time I was out of the room, I also
17 consulted with Commissioners about the hearing
18 schedule in this matter and pledged to them that I
19 would inquire of you whether you felt it was feasible
20 to begin the hearing during the week of June 10th, as
21 opposed to the week of June 17th.

22 MR. MARSHALL: No, Your Honor, I don't
23 believe it would be.

24 JUDGE WALLIS: My foggy recollection of
25 our scheduling discussions were that schedule would

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1 pose some challenges, and I didn't recall exactly what
2 they were apart from the shortening of the time prior
3 to hearing.

4 MR. BRENA: We would try to make it
5 work. The key thing for us is get information so we
6 can put our case on, and everything is kind of
7 downhill from there.

8 MR. MARSHALL: And I don't believe we
9 could move it up, Your Honor.

10 JUDGE WALLIS: Does that have to do with
11 your rebuttal testimony?

12 MR. MARSHALL: Yes. I think already
13 we're really on that. And I don't see a schedule for
14 depositions of Tesoro or staff witnesses yet, and
15 that's a major question in our mind, as to how we move
16 that phase of discovery. We've now had, starting in
17 November, discovery that's been pretty much one way.
18 I can't remember anything that the intervenors have
19 answered yet. But there may have been some, I don't
20 want to foreclose the fact that they may have actually
21 responded to a question.

22 But we haven't done any discovery, and
23 we're going to need to.

24 MR. FINKLEA: Your Honor, the schedule
25 that staff and Tosco worked on was premised on the

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1 notion that the original schedule had just two days
2 short of two months between the filing of the
3 intervenor testimony and the beginning of the hearing.
4 If we're still working off of a 17th of April date,
5 then the 17th of June puts us in the same basic time
6 frame that we had to begin with.

7 MR. TROTTER: I don't have anything
8 particular to add at this point. It's been said.

9 JUDGE WALLIS: Very well. I will take
10 the parties' sentiments back to the Commissioners as
11 we continue to discuss the scheduling.

12 MR. MARSHALL: With regard to 102, I may
13 be missing something, but I don't see that.

14 JUDGE WALLIS: We will let Mr. Brena
15 introduce his issue and then we'll see whether there's
16 disagreement or not. Let's be back on the record,
17 please, following a brief recess.

18 Mr. Brena you had wanted to move on to
19 data request No. 102. Is that correct?

20 MR. BRENA: I do, Your Honor.

21 MR. MARSHALL: But before we start on
22 that, Your Honor, I don't see 102 in his motion. It's
23 not in our response to his motion to compel. I'm not
24 sure whether that was a priority issue or not a
25 priority issue, but apparently it wasn't. So I don't

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1 think -- I just don't see that it is up for
2 consideration at this time.

3 JUDGE WALLIS: Mr. Brena.

4 MR. BRENA: Well, Your Honor --

5 MR. MARSHALL: I'd just like to have
6 that confirmed.

7 MR. BRENA: Everything has been done in
8 a tremendous hurry and in a very shortened time, and
9 it was my understanding that modifications with regard
10 to these documents would be tolerated. I have
11 mentioned 102(c) multiple times.

12 Even in preparing for our technical
13 conference, Mr. Marshall talked at some length with
14 our regard to request to want all the design
15 information, and in all of the thing I indicated that
16 that would be an issue. I asked for an engineer to
17 be there for that. I indicated that there would only
18 be -- we might be able to get away with limiting it
19 after we had an opportunity to speak with an
20 engineer. So it is true that I have not filed an
21 amendment to the motion to compel, but I brought
22 102(c) up three days before. I brought it up
23 consistently, Mr. Marshall has brought it up in terms
24 of the volume of information in engineering design
25 documents we produced. I indicated it wasn't within

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1 Exhibit B when we went through it in the technical
2 conferences, but that I incorporated it and I
3 indicated it again today.

4 I'm not trying to slide something in on
5 him. Capacity is an issue, and this is where we
6 asked for it.

7 JUDGE WALLIS: What is your issue with
8 102, Mr. Brena?

9 MR. BRENA: 102 reads: Produce all
10 engineering studies and documents that discuss the
11 capacity of the pipe lineup system. The response that
12 we got was: The engineering drawing specifications
13 and design information on capacity are so voluminous,
14 bulky, and expensive to reproduce that they will make
15 them available in the Renton office.

16 Now, where I think that Mr. Marshall
17 has agreed to produce engineering studies with regard
18 to capacity, the problem that I have is that I asked
19 the question, and they say that I need to go to
20 Renton because there's so many darn many documents.
21 So what I want to do for the sake of efficiency which
22 is what I presented prior to the technical
23 conferences which was what I understood Your Honor
24 asked them to do, was to have a financial person and
25 an engineering person available at that technical

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1 conference so we could work through 102(c).

2 So I don't want to leave this room with
3 Mr. Marshall just sending me a couple things. I need
4 to get in the room with the engineer and figure out
5 what they've got and then ask for them to be
6 produced. And that's the most efficient way to do
7 this.

8 JUDGE WALLIS: Yes. And I recall, if I
9 recall correctly, that Mr. Marshall committed to have
10 an engineer available but because of the short
11 scheduling couldn't guarantee any particular engineer.
12 I recall him saying earlier today that, in fact, there
13 was an engineer available, but that the financial
14 questioning took such an extended time that there was
15 not time to pursue the question with the engineer who
16 was available.

17 Is that an accurate statement of what
18 transpired?

19 MR. BRENA: Fairly stated. The engineer
20 that was available was not the engineer --

21 JUDGE WALLIS: -- that you wanted.

22 MR. BRENA: Well, Talley. I understood
23 that the engineer that was available could respond
24 generally with regard to documents. But we need to
25 sit in the room with Talley and work through this.

1 There really is no reason for this to
2 be in a motion to compel, they agreed to it. But now
3 I'm down here, I had put that into the conference
4 ahead of time. I'd asked for an engineer, we need an
5 engineer. And I want to talk to him for a while
6 before we just get a box of papers that's not
7 responsive.

8 JUDGE WALLIS: What are you asking for,
9 Mr. Brena? Are you asking for the opportunity to talk
10 with Mr. Talley tomorrow?

11 MR. MARSHALL: Tomorrow is Saturday.

12 MR. BRENA: That would be fine. At the
13 earliest moment tonight. At the earliest period that
14 he's available, I would like the opportunity to sit
15 and talk with him about what documents are available
16 and the capacity kinds of issues and what kinds of
17 engineering studies they may have done with regard to
18 their improvements. And whether or not they have
19 modeled it, whether or not they have design capacity
20 models that they are using for this system.

21 They might have this all -- if they are
22 managing their throughput correctly, they do have
23 this modeled. So I'd like to sit and have that
24 conversation with them to see what's available to
25 respond to this capacity issue, and then I would like

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1 what's identified that's responsive to the capacity
2 issue to be able to specify it and have it produced.

3 JUDGE WALLIS: Mr. Marshall?

4 MR. MARSHALL: Does Your Honor have the
5 actual data request in front of him?

6 JUDGE WALLIS: I do not.

7 MR. MARSHALL: Do you have our
8 responses? If you don't have our responses, may I
9 bring those up and show it to you?

10 JUDGE WALLIS: It's not in the material
11 that you submitted today, I take it.

12 MR. MARSHALL: No, it isn't. Nor is it
13 in Mr. Brena's.

14 JUDGE WALLIS: Thank you.

15 MR. MARSHALL: You're welcome.

16 JUDGE WALLIS: Mr. Marshall?

17 MR. MARSHALL: Mr. Talley, as we
18 indicated, flew up from Houston yesterday because he
19 was ill. I can't make any commitment for any
20 particular person at any time. When we answered that,
21 we thought that the question fairly asked for design
22 documents on the capacity of the system. The fair
23 interpretation of that request, 102(c), is that when
24 you're looking for capacity and design capacity,
25 you're looking for the physical nature of the pipe,

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1 the pumps, the valves, and all of that kind of design
2 information.

3 And engineering documents that would
4 have the design information on them, of course, are
5 extraordinarily voluminous. And while we didn't have
6 any problem with him looking at all drawings for 400
7 miles of pipe, including any segments that they may
8 have had an interest in, we couldn't just load up
9 trucks and provide them. That was our interpretation
10 of this document. That's why we agreed to have an
11 engineer come there so that we could go through
12 drawings. Mr. Brena now wants to have some kind of
13 different inquiry altogether with Mr. Talley about a
14 whole host of other things other than 102(c).

15 We are operating at very low numbers of
16 people with very committed schedules. I don't think
17 that we ought to just go in and create new data
18 requests here and there. If he wants to do a
19 deposition of Mr. Talley the first week of April, we
20 will get to that and do that. But we've been through
21 three days of financial testimony where Ms. Hammer
22 can explain that the questions that we get, they
23 don't stop at what may appear to be a simple layer or
24 level. They go on and on and on.

25 And I'm -- I just want Your Honor to

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1 know that the request there, and our responses, were
2 with regard to design documents. We'll still do
3 that, but apparently that's not what Mr. Brena wants.
4 I mean, if there are some documents that talk about
5 the hypothetical of what could happen if we get the
6 system back up to 100 percent, I committed on the
7 last set of requests that we just went through -- I
8 think it was 133 -- that we would produce those kinds
9 of studies. But just to have somebody on a Saturday
10 go through for that day and the next day and the next
11 day after that the kind of thing that we've just gone
12 through, I think it would be much better to do a
13 deposition and to do it that way.

14 And I don't think this is -- I don't
15 think this 102(c) fairly indicates the kind of thing
16 that's being asked for. That wasn't even on the
17 motion to compel so it couldn't. There's a due
18 process issue of our not being able to talk to our
19 people about what Mr. Brena is now proposing.

20 I can, with Ms. Hammer on financial
21 stuff, but I can't on engineering issues.

22 JUDGE WALLIS: Mr. Brena?

23 MR. BRENA: First with regard to the due
24 process question, I could not have been clearer with
25 regard to the capacity issue prior to coming down with

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1 regard to the scope of the technical conference what I
2 expected with regard to capacity and the need to have
3 an engineer available for that purpose. It was not --
4 the opportunity never was realized.

5 This asks for: Produce all engineering
6 studies and documents that discuss the design
7 capacity of the pipeline system. That's a very broad
8 request. Now, you know, nothing is ever perfect, but
9 that covers almost everything we're talking about.

10 So all I'm trying to do is get to that
11 information. They offered it, they have said that
12 they would make it available in their offices, they
13 represented they would make an engineer available to
14 discuss it. It's what I want, it's the efficient way
15 to get the information under these circumstances. We
16 do not have time for boxes of nonresponsive discovery
17 any longer.

18 JUDGE WALLIS: Mr. Trotter, do you have
19 any views on this?

20 MR. TROTTER: It just seems to me, Your
21 Honor, it is a broad request. If we want to get down
22 to it, there needs to be communication. There
23 apparently was no communication when the request was
24 issued, and the engineer -- the additional information
25 about the engineer's availability was, when we got to

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1 it I believe around 4:30 the subject came up on
2 Wednesday, it was stated that he had left.

3 MR. MARSHALL: It was five to 5:00,
4 actually.

5 MR. TROTTER: Five to 5:00 that he had
6 left. No one checked in and said "I'm leaving now."
7 It was just an unfortunate circumstance which may have
8 alleviated the next couple hours on the record here.
9 I don't know. So I think that's unfortunate, but it
10 did happen.

11 It does seem to me that getting someone
12 of competence with Olympic Pipeline to sit down and
13 go through some of these issue areas and streamline
14 the production is the way to go for everybody. And
15 that just seems to me the logical thing to do, rather
16 than have a roomful of documents be made available
17 and have someone pore over it for hours and then find
18 it's on someone's PC that could be obtained with the
19 push of a button.

20 JUDGE WALLIS: Mr. Finklea, do you have
21 any observations?

22 MR. FINKLEA: Well, two, Your Honor.
23 One, I believe that the capacity of the system and the
24 throughput is going to be one of the critical issues
25 in the case. And I do agree with Mr. Brena that if we

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1 wait until the first week of April to take
2 depositions, it's going to be extremely difficult to
3 look for results of that in testimony that would be
4 due as early as the 17th. So I would urge that we
5 come up with some accommodation so that the parties
6 can get to these issues within the next few days.

7 JUDGE WALLIS: Very well. All things
8 considered and given the commitment of the company to
9 have the documents available for inspection in Renton;
10 their prior agreement to have an engineer, the best
11 one available at the time, available for discussion
12 during the viewing of those documents; I think that is
13 an appropriate way to proceed and would ask Mr. Brena
14 and Mr. Marshall to make arrangements for that kind of
15 consultation and believe that that would expedite the
16 discovery process.

17 If other parties are interested in
18 joining the discussions at the time that Mr. Brena
19 and Mr. Marshall work out, then they may do so. But
20 their schedules, given the need to schedule something
21 to accommodate the parties who are in dispute, would
22 not be a barrier to proceeding.

23 So I believe this is nothing more than
24 the company has already agreed to do; that is, make
25 the documents available and make somebody, the best

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1 person available at that time, available for that
2 purpose. We're not saying that it should be done
3 tomorrow, but whatever works best for the parties.

4 MR. MARSHALL: With regard to design
5 documents which -- the physical aspects of the system,
6 it would be helpful if Mr. Brena provided a list of
7 the questions that he has in mind so that he can
8 narrow his request. You're quite right. Our effort
9 was to try to go into this not to produce rooms full
10 of design engineering documents.

11 But I still don't know when he refers
12 to a design document specification exactly what it
13 is, so that if Your Honor would direct Mr. Brena to
14 let us know what exactly and do this in writing so I
15 can pass it on, not just try to wait for a
16 transcript, but to do it by e-mail on what design
17 documents and specifications on capacity that he's
18 looking for, and by segment. Is he worried about the
19 lateral segment from Renton to SeaTac? What we
20 really need to do is we need to zero in so as to be
21 able to limit these engineering drawings as much as
22 we. I know I hear statements about we want
23 everything on capacity and throughput. Well, design
24 capacity, 102(c), is something dealing with some
25 physical attributes of the system, and we would like

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1 to know what it is exactly about the physical design
2 that he wants to know.

3 Throughput is an entirely different
4 issue, and we've addressed the throughput part.

5 JUDGE WALLIS: Yes. We understand that.
6 Mr. Brena are you able to identify some limiting
7 questions?

8 MR. BRENA: First an observation. I
9 don't want to spend three hours in a room arguing
10 about whether or not the question was within or
11 without the scope of the technical conference. That's
12 not helpful.

13 I want to sit in a room with
14 Mr. Talley, and I want to discuss with him the
15 throughput and what information -- design and
16 throughput issues and what information that Olympic
17 may have on those issues. And then ask for
18 production of that information to be provided. So I
19 am happy to -- although I would -- I mean, I'm here.
20 It looks like I'm going to stay over till tomorrow
21 perhaps to look at the OPS documents.

22 I would hope that they would be
23 available to me tomorrow. I'll stay. I would like
24 him to be made available. But I don't want to be
25 sitting in there talking about whether a document

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1 goes to design capacity or throughput capacity. All
2 I want to do is sit and talk to the guy and learn
3 about the system and learn what information is
4 available and have it produced to me.

5 So I'm happy to provide that kind of
6 list of the questions that I would ask him in that
7 conference as long as it's understood that that
8 conference is not limited to that. I cannot
9 anticipate what I do not have discovery and what I do
10 not know about. The question is how do you manage
11 uncertainty here. Let's not manage it by saying,
12 Robin, list out your questions before you know
13 everything, and then we'll sit around the room and
14 argue about whether we're in the box or out of the
15 box. That's not helpful.

16 JUDGE WALLIS: Could it be understood,
17 then, Mr. Marshall, that Mr. Brena's questions are
18 illustrative but not defining?

19 MR. MARSHALL: Yes. We simply want to
20 know how is he going to limit. Clearly, design
21 drawings, specifications, engineering documents on the
22 design capacity for 400 miles of system would be huge.
23 We want to know how, reasonably, that would be
24 limited. That won't preclude him from following up on
25 asking other questions. But we've produced an awful

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1 lot of material on what the design capacity is.

2 But it would be very helpful and
3 productive to know ahead of time what area he can
4 zero in on, as he did on the financial records, by
5 zeroing in on certain of the expense items rather
6 then just having us at sea trying to figure out what,
7 of all of the things, that he really wanted to know
8 about.

9 JUDGE WALLIS: Very well. To the extent
10 that the identification of questions or areas would
11 help the company to prepare to respond to those areas,
12 that appears to be appropriate. But it should be
13 understood that that is not limiting and would not
14 foreclose other inquiries.

15 And I understand the challenges that
16 the parties face. All of the parties, technically,
17 the kinds of discussions that we are engaged in here
18 would most appropriately have been undertaken between
19 the parties several weeks ago because of the timing
20 of the data requests and the need for responses, we
21 understand the volume, the limited resources of the
22 company. That's why we're here today. And we are
23 asking all of the parties to be as forthcoming with
24 each other and as patient with each other and each
25 other's circumstances as possible, given these

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1 challenging circumstances.

2 So I would ask that the company inquire
3 as to the availability of Mr. Talley tomorrow. That
4 does not mean that you have to fly him in sick
5 overnight from a far distant location, but if he is
6 available and if it is possible to accommodate
7 Mr. Brena's schedule, that would be ideal. If he's
8 not, then that's okay, and see what options you have
9 to provide someone to respond to inquiries that would
10 help define the nature of discovery.

11 And, Mr. Brena, if Mr. Talley is not
12 available, if you could accept someone who is
13 knowledgeable though perhaps not as knowledgeable as
14 he might be, that probably also would help us move
15 beyond this in the most expeditious way.

16 MR. BRENA: Your Honor, if I may, two
17 observations. One is that it's information I'm after,
18 and I think that Mr. Talley is the person with it. So
19 I would just ask to know the first available time that
20 he's available, then I'll accommodate that schedule.

21 If that's tomorrow, then I'll stay over
22 and talk with him tomorrow. But if it's Sunday, I'll
23 talk with him Sunday, if it's Monday, I'll talk with
24 him Monday. But I don't think it's helpful for me to
25 get in a room with someone less experienced than he

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1 is that may not be able to respond to the types of
2 questions and concerns I have. I believe that would
3 be a waste of everybody's time.

4 Secondly, you know, in trying to say I
5 don't want to be limited in a box, Mr. Marshall has
6 gone to this design capacity, question 102 talks
7 about pipeline capacity -- pipeline capacity, design
8 capacity, we've talked about throughput capacity. I
9 do not want to get in the room and have there be a
10 quibble over words.

11 I am after throughput capacity, design
12 capacity. I want to know how much oil can go through
13 this line, and I want information in engineering
14 studies that they have done to respond to that, or
15 modeling that they have done to respond to that. I
16 just want to be clear my questions will reflect that
17 focus, and I hope that with your ruling that my
18 questions would be illustrative but not limited, then
19 we just need to sit in a room for a couple hours.

20 JUDGE WALLIS: Mr. Marshall.

21 MR. MARSHALL: I don't know about
22 Mr. Talley's availability tomorrow. I am not
23 available, Your Honor, and it seems to me that I may
24 be one of the essential ingredients of that. I would
25 suggest that Mr. Brena have -- so he doesn't have to

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1 stay over here -- have that conversation by phone.
2 There's no need to actually look Mr. Talley in the eye
3 and look at his demeanor. There is no reason to keep
4 Mr. Brena down here in this area. That would be much
5 easier to arrange, particularly if he has to be
6 someplace else such as Houston or Chicago.

7 If we're going to limit it, then two
8 hours seems to be an exceptional amount of time to
9 want to, quote, spend talking about these issues. I
10 don't want to characterize anything, but I thought
11 that we would make much faster progress than we have.
12 And one question leads to another to another, and
13 it's repetitive to say the least.

14 JUDGE WALLIS: We find ourselves having
15 spent a couple of hours on it just here.

16 MR. MARSHALL: Exactly.

17 JUDGE WALLIS: Mr. Brena, would a phone
18 link-up be a second best solution for you?

19 MR. BRENA: Given their response, that
20 all the records are in Renton and there's a lot of
21 them that may be responsive, my thinking is that if I
22 sit in the room it's not because I need to look him in
23 the eye, but it's because I may need to look at a
24 document that he is characterizing. And it may be
25 possible for him to say oh, we did an engineering

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1 study on capacity last year before we embarked on our
2 capital improvements, here it is, does this work for
3 you? And I look at it and say, yes, thanks, good-bye.

4 With regard to the time limits, I am
5 after information, and it took me a lot longer to get
6 the information than I thought it should have too.
7 And so there's frustrations on both sides with regard
8 to that. I think that the information comes us out
9 eventually, I think that people are trying to be
10 reasonable. And I don't want to be in the situation
11 of I'm out of the box because it's one minute to go
12 to two hours and I haven't got the types of
13 responsive answers that I need in order to make this
14 issue transparent. So I -- you know, that's -- I'll
15 be as reasonable as I can and ask as pointed a
16 question as I can.

17 JUDGE WALLIS: Very well. If the
18 company continues to be willing to make Mr. Talley
19 available, then let's look to his schedule and what
20 would be an optimal time to do that.

21 MR. MARSHALL: Right. And with regard
22 to making the documents available on the design
23 documents, we thought that just because of the nature
24 of the documents being large drawings that that's why
25 we agreed to have them down in Renton.

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1 Things like Mr. Brena's talking about
2 now that may be related to studies, those don't need
3 to be produced in a particular place. And as I
4 understand now, although he has not yet said so, he
5 doesn't want actual design drawings and he didn't
6 want pipeline cross-sections and number of valves and
7 locations. But if he does, we need to know that it,
8 and that's part of the reason I'm asking him to tell
9 us what it is if he's interested in a particular
10 segment or he wants cross-sections and he wants
11 drawings and specifications and that kind of
12 engineering design, then we need to know that.

13 JUDGE WALLIS: The question -- and thank
14 you, Mr. Marshall, for making the question and
15 response available -- asks to produce all engineering
16 studies and documents that discuss the design capacity
17 of the pipeline system. And your response says that
18 the engineering drawings, specifications, and design
19 information on capacity are available in Renton.

20 So if there are documents that are
21 pertinent, the engineering staff knows what they are.
22 If they are not necessarily available in Renton, then
23 that also is okay, I think.

24 MR. MARSHALL: Right. I think so. It's
25 just a question of, if they want design drawings that

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1 are of a different size and all, it would be helpful
2 to know whether that's going to be part of what Tesoro
3 wants. And I haven't yet heard whether they want
4 design drawings.

5 JUDGE WALLIS: Mr. Brena, are you able
6 to state at this juncture?

7 MR. BRENA: I'm not interested in, and I
8 don't believe I'm interested in, subject to check, I
9 don't believe I'm interested in design drawings. I
10 might be interested in design capacity and general
11 pipeline capacity and throughput capacity. One of the
12 things I need to do, Your Honor, is phone our engineer
13 to ask him the questions that I should ask Mr. Talley.

14 JUDGE WALLIS: Sure.

15 MR. BRENA: So I've gone as far as I can
16 at this point, but I do think that what's most helpful
17 is for Talley to be in the room in Renton with me, and
18 I'll give him advance notice of the to questions that
19 I think we may be there to discuss.

20 JUDGE WALLIS: We do appreciate the
21 company's willingness to accommodate that request, to
22 the extent that it's able to do so.

23 MR. BRENA: Thank you, Your Honor. We
24 are at 158.

25 MR. MARSHALL: Does Your Honor have

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1 available to him the testimony I referred to in
2 request No. 158?

3 JUDGE WALLIS: I do not have that
4 present.

5 MR. MARSHALL: That's Bobby Talley's
6 testimony.

7 JUDGE WALLIS: Mr. Brena.

8 MR. BRENA: Your Honor, just a general
9 comment before a specific. The specific comment is,
10 is produce an explanation as to whether or not the
11 pressure limitation imposed by the corrective action
12 are related to the maximum operating pressure as
13 opposed to the maximum allowable operating pressure.

14 MR. MARSHALL: The testimony is pretty
15 clear in what it states, but the order would speak for
16 itself in any event, and Mr. Brena has the order. We
17 also should point out that -- does Your Honor have a
18 copy of our response to this data request?

19 MR. BRENA: I don't want -- excuse me.

20 MR. MARSHALL: Because the actual
21 response to the data request in addition to the
22 testimony, which is quite clear, it actually quotes
23 from the second amendment to the corrective order.
24 And I don't know if Your Honor has a copy of our
25 responses.

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1 MR. BRENA: Which response is that,
2 Steve?

3 MR. MARSHALL: To 158, 158(a) which is
4 what you're just now talking about. I just want to
5 make certain that we're not trying to go over things
6 that have already been answered in the direct
7 testimony and in our current responses because I don't
8 believe that the document you've provided quotes our
9 answers in any case.

10 MR. BRENA: Can we go off the record?

11 JUDGE WALLIS: Yes. Let's be off the
12 record.

13 (Discussion off the record.)

14 JUDGE WALLIS: Let's be back on the
15 record, please. We have engaged in a discussion about
16 the responses to Tesoro data request No. 158 and have
17 discovered that some responses have been provided.

18 Mr. Brena, are those responses
19 satisfactory for your client's purposes?

20 MR. BRENA: They are, Your Honor.

21 JUDGE WALLIS: Very well. Let's move
22 on.

23 MR. BRENA: 164 is a discovery request
24 that seeks to have identified the handling, you know,
25 many of the things that I represented to Your Honor

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1 with regard to how the Whatcom Creek expenses were
2 handled were described to me in a technical
3 conference. The essence of data request No. 164 is to
4 have it described to us so that we can rely on those
5 representations in our case.

6 I have nothing to add beyond that,
7 other than to ask that the descriptions be provided.

8 JUDGE WALLIS: Mr. Marshall?

9 MR. MARSHALL: Well, a lot of this has
10 already been provided in the direct testimony, Your
11 Honor, as to how this process goes. I could provide
12 the testimony from Bobby Talley that, beginning at
13 Page 14 which is cited in the actual data request,
14 describes how that process works. We have said that
15 we would, on the Whatcom Creek expenses, we went
16 through that before as to the information from this
17 independent insurance group and the data that we had
18 provided on that. I think that's sufficient.

19 MR. BRENA: Your Honor, I was asking for
20 the representations that have been made with regard to
21 how this system works, which have been the basis for
22 the information that we requested and to be
23 memorialized in writing by the company.

24 MR. MARSHALL: It is, in the testimony.

25 MR. BRENA: To the degree that the

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1 information is contained in the testimony, we are
2 happy to accept a specific reference that responds to
3 a specific question. To the degree that it does not,
4 and we do not have a response like that -- to the
5 degree that it is not, we would like it explained.
6 And by that I don't mean now in the hearing room, I
7 mean on paper.

8 JUDGE WALLIS: Mr. Marshall, are you
9 able to provide that information to Mr. Brena?

10 MR. MARSHALL: Well, to the extent that
11 we already provided the information and will provide
12 information in terms of the invoices, I think that
13 would be all that they would need.

14 Now, there's -- we've got 164(a)
15 through (h), and I'm looking at all these now. He
16 wants a statement fully explained with the costs
17 requested in (g) above -- I don't know where (g)
18 above is, that appears to be a (g) -- have been
19 excluded from Olympic's cost of service in the
20 instant proceeding. If such costs have not been
21 excluded, provide a statement to explain the basis
22 for all that's been excluded.

23 But that's the kind of thing that --
24 there's been general testimony on all this. I mean,
25 that's what Ms. Hammer testified to when we started

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1 out this process this morning.

2 I think what we ought to do is just go
3 ahead based on the testimony that's already in the
4 record and the way we've handled this Whatcom County
5 cost documentation earlier, and abide by that.

6 JUDGE WALLIS: Mr. Brena, why don't you
7 take a look at the testimony that's been provided, and
8 to the extent it's supplemented by the discussions
9 that are on the record to date, and then see if
10 there's any additional response that's required in
11 order to flesh out the information that you've
12 requested in 164.

13 MR. BRENA: I'm happy to do that, Your
14 Honor. Let me just ask Ms. Hammer one question, if I
15 may. Are my representations that I made earlier with
16 regard to how the Whatcom Creek expenses, were they
17 accurately and fully stated?

18 MR. MARSHALL: What representations
19 about the Whatcom Creek expenses?

20 MR. BRENA: I described the system,
21 invoices being received by the company. I went
22 through the whole system, she was listening. Did you?

23 JUDGE WALLIS: I recall that.

24 MR. MARSHALL: My recollection is
25 that --

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1 MR. BRENA: I did most of the talking.

2 MR. MARSHALL: -- when a bill came in --

3 Ms. Hammer explained it -- it would go to this group.

4 This group would send it on to actual insurers would

5 pay a part. The part that wasn't paid would be booked

6 as a casualty loss. The part that could be paid in

7 the future would be part of claims receivable for

8 insurance.

9 Mr. Brena represented that on some
10 periodic basis, whether monthly or whatever, this
11 group would send in an invoice to Olympic, or some
12 other such type of document. That document Mr. Brena
13 wants to have reconciled to other records. I think
14 that's what I heard.

15 If that's what I heard, is that what
16 you think occurs, Cindy?

17 MS. HAMMER: Yes, I think that -- to the
18 best of my knowledge, anyway.

19 JUDGE WALLIS: If on review of the
20 transcript you find that there are any inaccuracies,
21 would you let Mr. Brena know?

22 MS. HAMMER: Yes.

23 JUDGE WALLIS: Thank you.

24 MR. BRENA: Okay. I will review it and
25 follow up as need be, Your Honor. 169, which goes --

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1 it's the affiliate payment issue -- they produced a
2 document in the interim proceeding actually, that
3 identified about \$22,000,000 of affiliated payments.
4 It's my understanding of where we are is they are
5 going to -- I just forgot the term you used, "dig
6 down"?

7 MR. MARSHALL: We provided our, what we
8 understood the agreement to be made by the parties at
9 Page 25 in our response to Tesoro's motion to compel.
10 In that, we indicated that, first of all, there is
11 nothing prior to July 2000 in the management fee
12 amounts that are stated in the contracts that have
13 previously been provided to Tesoro. And other outside
14 costs paid and reimbursed for transition costs, such
15 as transaction costs, have been previously supplied.

16 But we then stated that it was agreed
17 on March 6th that Olympic will provide additional
18 detail on the third party invoices paid by BP on
19 Olympic's behalf as indicated in this particular
20 document that we have already provided.

21 MR. BRENA: Can I see the document,
22 please? Do you have it available?

23 MR. MARSHALL: I don't know. Do you
24 know where that document was?

25 MS. HAMMER: I can look for it.

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1 MR. MARSHALL: We had that out when we
2 were talking about it the other day.

3 MR. BRENA: Your Honor, let me
4 characterize it. In the \$22,000,000 of payments, it's
5 very simple lines. Everything that Mr. Marshall said,
6 the representation that I'm looking for affiliated
7 payments since BP Pipeline took over and not before,
8 first of all, I agree with that. The management fee
9 accounts we have not asked for detail on because they
10 are contained in the management agreement, and I agree
11 with that.

12 I agree that they agreed to provide
13 additional detail, and that would be in the form of
14 line item general ledger detail with regard to third
15 party invoices paid by BP on their behalf. But my
16 memory is that there is also a category "transition
17 fees." And we asked specifically for the details
18 with regard to transition fees of 2.2 million dollars
19 be provided, and it's my understanding that they
20 agreed to provide that.

21 These are affiliated payments we're
22 talking about here, so. And I don't have the chart
23 in front of me, but my best recollection of our
24 understanding and what I'm asking you to compel is
25 general ledger line detail with regard to the

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1 affiliated payments on every item on OPO 2447-48,
2 with the exception of management fee, with the
3 understanding that it's time-limited and we're
4 talking about BP Pipeline's affiliated payments.

5 MR. MARSHALL: With the exception of the
6 use of the word "affiliated," that's a legal
7 terminology that's being used in a different sort of a
8 way than what the Commission may use it here, that's
9 what we agreed to do.

10 JUDGE WALLIS: Very well.

11 MR. MARSHALL: And there's no question
12 that we will give him the detail on those transition
13 costs which were paid by BP because the transition,
14 meaning this move from Equilon management to
15 BP Pipeline's management, there were certain things
16 that had to be done in that particular transition.

17 MR. BRENA: Your Honor --

18 MR. MARSHALL: Do you have the top level
19 document on that, and we'll give you the detail. I
20 mean, we'll give you the detail in whatever format
21 that we have it in.

22 MR. BRENA: And by the detail, we're
23 talking general ledger line item detail here, and his
24 response says outside -- the response he read from,
25 that's why I'm making these comments -- says other

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1 outside costs paid and reimbursed for transition costs
2 have been previously supplied. I don't know what
3 that's a reference to. What I'm asking for is general
4 ledger line item detail for everything but the
5 management fee.

6 MR. MARSHALL: Again, we'll give a more
7 detailed breakdown on what those costs are. I don't
8 know if they are on general ledgers because this is
9 not a payment that Olympic paid on the general ledger.
10 But it would be a payment that BP has made on behalf
11 of Olympic and then Olympic reimbursed BP. So the
12 line item on reimbursement, when you go to that on
13 general ledger, won't give you as much information as
14 what we're actually volunteering to give.

15 I don't know if people followed that,
16 but I think what we're promising to do is to give
17 them a more detailed level of what went into those
18 costs rather than just say, here it is, here is a
19 lump sum amount that was paid out of Olympic accounts
20 to BP. The information that people really need to
21 have is what did BP pay for that Olympic reimbursed
22 BP for? And we'll get that information.

23 We're volunteering a level of detail
24 that I don't think his reformulation actually
25 captured.

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1 MR. BRENA: Let me just, so that
2 everybody's clear, there's -- and I wish I had that
3 exhibit. There's about \$15,000,000 of that 22 that BP
4 pipeline, as the operators, paid to third parties and
5 then was reimbursed by Olympic for. We've asked on a
6 general ledger line item detail for what those costs
7 were. I acknowledge and appreciate his observation
8 that that information would not be within Olympic.
9 That was paid on Olympic's behalf by BP Pipelines.

10 But I'm just trying to specify the
11 level of detail I'm looking for with that regard.

12 With regard to the other items on that
13 column, I believe every on other than that one is an
14 Olympic payment itself, and we're asking for Olympic
15 documents on that.

16 MR. MARSHALL: I think we understand the
17 level of detail on these transition costs that were
18 paid by BP. Now, to the extent that Olympic has paid
19 BP for something, we'll provide that too. If Olympic
20 has paid for something else other than to BP, it
21 doesn't seem to be part of that request. I think we
22 understand each other.

23 JUDGE WALLIS: Are both of you agreed
24 that you understand each other?

25 MR. BRENA: I don't think I'll agree to

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1 that for a while. But I agree.

2 JUDGE WALLIS: Is that on a matter of
3 principle?

4 MR. BRENA: It is, Your Honor. But I
5 think at this point we're saying the same thing. And
6 I don't mean to drag this out, but the response says
7 something has been previously supplied, and I'm just
8 saying that as I understand what we're both saying
9 now, I think we're on agreement.

10 JUDGE WALLIS: Very well. If on review
11 of the transcript you discover that you're not in
12 agreement, then please communicate with each other.

13 MR. BRENA: Right. 170 follows the same
14 track.

15 JUDGE WALLIS: Very well.

16 MR. BRENA: 100, it's -- they have
17 agreed to provide it. I've offered to time limit it
18 if that would be helpful to them. I don't know.
19 Sometimes when you get into expert witnesses their
20 testimony is, you know, can go back a very long time.

21 And my understanding of our agreement
22 is, is that it goes to documents that they have
23 within the possession or control of Olympic or their
24 witnesses; that to the degree that it is not within
25 their possession and control, the prior testimony,

1691

1 that this list will be comprehensive enough so that
2 will list all of the proceedings and will include
3 sufficient detail so that if need be, we can go get
4 it if it's not within their possession and control.
5 That's my understanding.

6 MR. MARSHALL: We had an initial
7 understanding that Tosco, Tesoro and staff would also
8 reciprocate. That is, we would get from them all
9 copies of testimony that any of their witnesses have
10 provided in the past with a similar list. And it was
11 also agreed that we could defer this one data request
12 until after the filing of the case.

13 JUDGE WALLIS: Are those statements also
14 correct, Mr. Brena?

15 MR. BRENA: Yes, they are. And the only
16 thing undecided is whether or not some sort of time
17 limit would be, and I proposed ten years as a time
18 limit. There's no reason to produce discovery that's
19 over ten years old, I don't think.

20 MR. MARSHALL: I don't particularly care
21 about time. Let's just do all of it so we don't get
22 in an argument over period of time. If something
23 proves to be exceptionally burdensome, we can talk
24 about that.

25 JUDGE WALLIS: Very well. Thank you.

1692

1 MR. BRENA: 118 was withdrawn. I did
2 let my expert just go home, didn't I?

3 107. I should have asked to take this
4 out of sequence. This was the conversation in which
5 what we're asking for is copies of supporting
6 documents with regard to the cost-of-service amounts
7 identified in these years, '96 through '98. The
8 similar documents have been requested and produced by
9 the FERC staff in '99 forward. And so we're just
10 trying to go '96-'98. And.

11 As clarification, we had a conversation
12 that we're just looking for, in the Form 6, your
13 cost-of-service information is on Form 700. And we
14 just asked for the workpapers that supported their
15 Form 6, Sheet 700 cost-of-service calculations.

16 JUDGE WALLIS: Mr. Marshall?

17 MR. MARSHALL: As indicated in Tesoro's
18 filing here, the agreement that we had was that
19 Olympic would confirm. We would ask about whether
20 these were. My note was that I was to ask about this
21 FERC data request, which apparently is a response to
22 FERC data request No. 23, and see whether there are
23 filings for these cost-of-service for Form 6,
24 Page 700. And, clearly, if they are, we'll provide
25 them because we're going to provide them for the FERC

1693

1 staff too. But I'd have to confirm this because when
2 we got to this, which was, I don't think one of their
3 priority requests, I don't remember. I think that
4 they had -- in any event, we had not had a chance to
5 bone up on that before we -- Cindy, do you want to add
6 something? She's already confirmed that we don't have
7 them.

8 JUDGE WALLIS: Very well.

9 MR. MARSHALL: That was quick. She
10 talked to him this morning.

11 MR. BRENA: Who is "him"?

12 MR. MARSHALL: She talked to them this
13 morning.

14 MS. HAMMER: Bernadette [phonetic].

15 MR. MARSHALL: Bernadette. I'll check
16 further, Your Honor, if you would like.

17 JUDGE WALLIS: Mr. Brena, is that
18 response sufficient?

19 MR. BRENA: First, let me just clarify a
20 technical factual issue. These would not be filings,
21 these are workpapers supporting filings.

22 JUDGE WALLIS: It's understood. It
23 appears that it is understood.

24 MR. MARSHALL: These were prior filings
25 on prior rate cases that would have been done by

1694

1 Equilon because they were the prior operator, and so
2 that's history. And they aren't there.

3 MR. BRENA: They have been produced
4 pursuant to the FERC staff request 23 for 1999, which
5 is the Equilon period. So with regard to that, we're
6 asking for two more years. I'm not exactly sure why
7 the Equilon '99 would be available but the Equilon '98
8 would not be available.

9 The other -- and let me explain I'm not
10 happy with that response because, I mean, you make a
11 FERC Form 6 filing that contains your cost-of-service
12 information. Your workpapers supporting that
13 information show how it is you derived your
14 cost-of-service. To the degree that their case is
15 inconsistent with the way they have been calculating
16 it, that may be very important information. So
17 that's why the FERC staff asked for it, and we're
18 just trying to go back a couple more years for it.

19 JUDGE WALLIS: Very well. Mr. Marshall
20 indicated he would inquire further --

21 MR. MARSHALL: Right.

22 JUDGE WALLIS: -- and I will ask him to
23 do that.

24 MR. MARSHALL: Right. And that's what I
25 was trying to say. We had already responded to the

1695

1 FERC data request No. 23 prior to this. And I didn't
2 mean to imply that we hadn't responded, we've already
3 responded. But anything further, we have looked and
4 there isn't any, but I will we confirm that.

5 JUDGE WALLIS: Yes. Thank you.

6 MR. BRENA: 113 goes into litigation
7 cost expenses, attorneys' fees, and public affairs
8 expenses which are included in their rate filings.

9 MR. MARSHALL: There aren't any, as we
10 discussed.

11 MR. BRENA: There's no attorneys' fees
12 in your rate filings?

13 MR. MARSHALL: Let's turn -- no, no.

14 MR. BRENA: Or a Whatcom Creek expense.

15 JUDGE WALLIS: It is late in the day and
16 I know everyone wants to talk quickly so we can get
17 through the remaining issues and get it resolved.
18 We're home, or as close to home as we can get tonight.

19 But it's also late in the day for our
20 reporter, who has two hands and cannot take one
21 person with each hand. So let's just have one
22 talking at a time, and if we want to engage in
23 colloquy, let's go off the record.

24 MR. MARSHALL: Does Your Honor have a
25 copy of the referenced request and the quoted

1696

1 testimony?

2 JUDGE WALLIS: I have a copy of the
3 request.

4 MR. MARSHALL: The request refers to BCB
5 9, Pages 16, Lines 1 through 7. Do you see that?

6 JUDGE WALLIS: No, I don't. Is this
7 113?

8 MR. MARSHALL: Let me hand it to you
9 with a comment from the actual testimony, and I think
10 my comment will become clear from that.

11 JUDGE WALLIS: Let's be off the record
12 for a moment.

13 (Off the record.)

14 JUDGE WALLIS: Very well. Let's be back
15 on the record, please.

16 MR. BRENA: Your Honor, the portion of
17 Mr. Batch's testimony has his description of direct
18 costs with regard to Whatcom Creek. This leads back
19 into the issue of they've represented that the Whatcom
20 Creek costs associated with addition expenses,
21 attorney's fees, and public affairs expenses are not
22 included in the case. This goes to the issue, prove
23 it. And we have gone through -- I'm trying -- the
24 reason that I paused for a moment was because I'm
25 trying to think whether or not the system that they

1697

1 have in place would be sufficient to capture this. I
2 don't believe that many of these expenses would
3 necessarily be paid by insurance, so I'm not sure they
4 would be processed on a third party invoice basis to
5 an insurance provider. Certainly public affairs
6 expenses, for example, would not. Typically,
7 attorney's fees are not covered, or are covered in a
8 limited respect.

9 So I guess that -- that the question
10 remains, they have represented that these expenses
11 are not in their cost-of-service, and I'm asking for
12 them to prove it.

13 MR. MARSHALL: The actual request
14 states, Your Honor, to provide a schedule setting
15 forth in detail the litigation costs and expenses that
16 were referred to in Mr. Batch's testimony. And he
17 delineated exactly what those were.

18 And the answer is, there is no such
19 schedule because none of those costs related to the
20 repair of Olympic system, of damage by the accident,
21 the costs and judgments, and then it skips down to
22 all litigation costs and expenses including
23 attorneys' fees that arise from the Bellingham
24 accident and all public affairs expenses necessitated
25 by -- and on and on. The schedule is as I've just

1698

1 responded. There are no items that respond to this
2 request that have been included in the rate case. So
3 we went over that the other day.

4 JUDGE WALLIS: When we get to the same
5 issue or certainly closely related issue that we
6 discussed earlier today relating to the need to
7 provide some basis to check the company's
8 representation and to do a little bit of verification
9 there.

10 I sense that Ms. Hammer was anxious to
11 make a statement. If counsel agrees, then that may
12 be able to move us along.

13 MR. MARSHALL: Go ahead.

14 MS. HAMMER: I was just going to say
15 that all those invoices regardless of whether they
16 are -- have the ability to be collected for insurance
17 or not go through the same process. And we do realize
18 that, that some of the invoices that we filter through
19 that process are not recoverable.

20 JUDGE WALLIS: And does that also relate
21 to the company's expense for in-house staff that are
22 engaged in activities relating to the incident?

23 MS. HAMMER: That I can't answer.

24 MR. MARSHALL: To the extent that it
25 asks for something other than attorneys' fees, it's

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1 asking for public affairs expenses. And the public
2 affairs expenses, if they want us to provide a
3 schedule setting forth those that have been included
4 in this interstate and intrastate rate filing arising
5 from this accident, there aren't any that have been
6 included. It's all either casualty loss or insurance
7 claims.

8 JUDGE WALLIS: Even in the accounting
9 for the public affairs staff?

10 MS. HAMMER: From my understanding,
11 those are all contract employees. So, yes, they would
12 go through that process.

13 JUDGE WALLIS: Very well. Mr. Brena,
14 does that explanation give you any greater comfort
15 than you had at the beginning of this discussion?

16 MR. BRENA: Marginally.

17 JUDGE WALLIS: It does appear that the
18 company is representing that all of those costs do
19 indeed go through that process.

20 MR. BRENA: I do understand what they
21 are representing. I would like to be able to verify
22 that.

23 JUDGE WALLIS: And I believe, if I
24 recall correctly, that the information that they
25 earlier agreed that they would provide should contain

1700

1 that. Is that correct, Ms. Hammer?

2 MS. HAMMER: Yes, that's my
3 understanding.

4 MR. BRENA: Does she have -- and could I
5 ask Ms. Hammer a question, please? Do you have an
6 understanding of whether or not all those flow through
7 that system?

8 MR. MARSHALL: All those third party --

9 MR. BRENA: Do you know that?

10 MR. MARSHALL: That's just the costs
11 that we just talked about?

12 MS. HAMMER: Yes, I do know that.

13 JUDGE WALLIS: Very well.

14 MR. BRENA: Your Honor, then just to
15 state for the record, it's my understanding that the
16 information they have already agreed to provide will
17 allow us to verify this information. Now, that goes
18 again to the level of detail that that information is
19 provided to us so that we can take a look at claims
20 for which -- that fall in these categories.

21 So on the representation that the
22 information that will be provided to us will allow us
23 to look at these categories of costs and how they
24 flow through that system, I'm satisfied.

25 MR. MARSHALL: More to the point, that

1701

1 if there are costs that are included in this rate case
2 filing that don't qualify as non-Whatcom Creek direct
3 costs, that will also be subject to the ability of
4 people to check on that too. So I think we've got it
5 covered on both ends.

6 JUDGE WALLIS: Very well.

7 MR. BRENA: Could I ask just one more
8 question, factual question. Mr. Beaver is very
9 involved in the Whatcom Creek matters is my
10 understanding. Do his invoices flow through the
11 system?

12 MS. HAMMER: Yes, they do.

13 MR. BRENA: Thank you. Then I'll wait
14 till we get it.

15 JUDGE WALLIS: Very well.

16 MR. BRENA: 115 takes us back into the
17 capacity issues. We asked them to detail the factors
18 which have constrained it and provide the list of
19 capacity available for years 1990, list of annual
20 demand by shipper.

21 They have produced historic throughput
22 information.

23 MR. MARSHALL: I thought we resolved
24 that because going back any farther than we've already
25 provided throughput seems to be lot of time without

1702

1 any return.

2 MR. BRENA: I may have a question
3 regarding -- I'm sorry, Steve.

4 MR. MARSHALL: I was just going to say
5 that this may have been one of those questions that
6 have been deferred as not being any high priority, and
7 my suggestion would be at this late hour to defer it
8 further so that Mr. Brena can consider whether he
9 needs data going back 12 years or so ago.

10 We've already supplied a lot of the
11 current data.

12 JUDGE WALLIS: What time periods have
13 been provided?

14 MR. MARSHALL: I don't know how far back
15 they go, but for the interim case we went into that in
16 some detail. I would suggest that we really don't
17 need it beyond what we've already produced, and if
18 Mr. Brena wants to review that and give some reasons
19 why we need to go back any further than we've already
20 done, then I'll be happy to listen to that and
21 respond.

22 MR. BRENA: With regard to the second
23 item, list of capacity available in their system for
24 the years 1990 through 1999 and the list of annual
25 demand by capacity by shipper, I will do that, subject

1703

1 to check, and come back if there's a problem. The
2 response we got was deferred and not identified as a
3 Tesoro priority.

4 These we identified as -- in this
5 category what was intended was discovery we need
6 prior to preparing cross-examination to hearing, and
7 that will go to the timing question, not the
8 production question.

9 I would like all the production issues
10 resolved today, and then the timing issues resolved
11 today as well.

12 With regard to the first one, they are
13 indicating that they have a constrained system in
14 their direct testimony, and they have not responded
15 when we've asked them to identify the constraints.
16 So I would ask them for that explanation.

17 JUDGE WALLIS: Mr. Marshall.

18 MR. MARSHALL: Too much demand, not
19 enough supply. That's pretty much it.

20 JUDGE WALLIS: So the constraints are
21 only with the design capacity of the system rather
22 than externalities?

23 MR. MARSHALL: Yes. The system has been
24 constrained, which simply means it doesn't have enough
25 capability to handle all of the demand. So the system

1704

1 has been prorated for a decade.

2 JUDGE WALLIS: Metal pipe as opposed to
3 a balloon?

4 MR. MARSHALL: Yes. It's pretty much
5 just a matter of physics.

6 JUDGE WALLIS: Mr. Brena, does that
7 respond sufficiently?

8 MR. BRENA: I would like this particular
9 one responded to in writing. We asked them to
10 identify all factors that cause persistent capacity to
11 have been constrained.

12 JUDGE WALLIS: Mr. Marshall, would you
13 verify whether there are other factors that constrain
14 capacity, and if there, are provide a written
15 response. Mr. Brena, would that satisfy?

16 MR. BRENA: Yes.

17 MR. MARSHALL: Of course the other one
18 is the OPS order. But I understand --

19 JUDGE WALLIS: That has been asked and
20 answered.

21 MR. MARSHALL: We pretty much understand
22 that.

23 MR. BRENA: Yes. Excluding the OPS
24 order, of course.

25 JUDGE WALLIS: Yes.

1705

1 MR. BRENA: 162 is the OPS stuff. We've
2 already discussed this.

3 JUDGE WALLIS: Very well.

4 MR. BRENA: 167. This goes to, ask for
5 the employees of Olympic -- we're asking them to
6 identify what people within their system that are not
7 outside contractors are involved in a supervisory or
8 participatory role with regard to the Whatcom Creek
9 situations of people processing invoices, in-house
10 counsel reviewing things. We've just asked them for a
11 list of people that do that. That's the first part of
12 that one.

13 The second part goes to engineering
14 studies, internal operations audits and stuff, and
15 the like. And I believe we've already addressed
16 that. We've asked for the audits, the internal
17 management system audits, that when BP Pipelines took
18 over that they used as a basis for implementing the
19 changes that they felt were necessary to operate the
20 line safely.

21 I think that Your Honor's already ruled
22 on that one.

23 JUDGE WALLIS: Yes, I believe we have.

24 MR. BRENA: So there is left the
25 identity of the employees. And that goes to the

1706

1 degree to which there are indirect costs within the
2 system that are included in the revenue requirement.
3 Somebody within the system has to be doing something
4 to supervise this.

5 MR. MARSHALL: We went through that, and
6 Ms. Hammer can explain again, that there aren't --
7 there aren't employees who are in charge of the
8 accounting of this. It's farmed out. The invoices
9 are just merely sent out to this outside agent. The
10 outside agent is not an employee of Olympic. Third
11 party contractors have been used for other parts of
12 this; is that correct?

13 MS. HAMMER: That's my understanding.

14 JUDGE WALLIS: Mr. Brena, does this
15 inquiry go to questions such as, for example, is
16 Ms. Hammer responsible for the accounting in term of
17 oversight, and should a portion of her time be
18 allocated?

19 MR. BRENA: Those are the type of
20 issues. There is a very complex legal and accounting
21 and engineering system in place with regard to
22 managing their largest expenses in capital projects,
23 and this goes to who is in the box, and I've asked for
24 them to identify it. I would like a written response
25 to this one too, even if it is there are none. If

1707

1 they are going to assert there is no oversight, then
2 that would be fine.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: Go ahead, Cindy. Do you
5 want to add anything?

6 JUDGE WALLIS: Ms. Hammer.

7 MR. MARSHALL: Again, I think this is
8 one of those areas because we've taken out Whatcom
9 Creek direct expenses, we're now into the more
10 nebulous ground of indirect expenses.

11 We've taken out Whatcom Creek direct
12 expenses in order not to have to worry about
13 insurance reimbursement and other such things.
14 Again, I don't think that this is going to take us
15 down a productive path, but the accounting people --
16 who would those be other than yours, pushing
17 information through directly?

18 MS. HAMMER: (Indicating negatively.)

19 MR. MARSHALL: That would be it, for the
20 accounting side. On the engineering side, we can
21 identify employees. But Ms. Hammer's time doing what
22 she does is pretty minimal, as everybody has had a
23 chance to understand.

24 JUDGE WALLIS: Very well. We understand
25 that but think that this is, even though it may in the

1708

1 grand scheme of things be a relatively small-scale
2 matter, it is appropriate. And I would ask the
3 company to identify those employees to Mr. Brena.

4 MR. BRENA: And, Your Honor, I don't
5 want to get -- they have kind of a unique structure.
6 I use the term "employees". They have a manager that
7 they -- they have agents. I mean, so they have people
8 that work on this that are under their contract.

9 So I would just say that when I use the
10 word "employees" I'm not even sure how they use the
11 word "employees" or yet who is an employee and who is
12 not.

13 JUDGE WALLIS: Anybody whose activities
14 the company is responsible for who is not billed
15 through the insurance agent.

16 MR. BRENA: Thank you, Your Honor.

17 JUDGE WALLIS: Is that --

18 MR. MARSHALL: Yes. Who is not billed
19 through the insurance agent.

20 JUDGE WALLIS: Yes.

21 MR. MARSHALL: Okay. Now there are a
22 number of employees who aren't on salary who are just
23 included as part of the overall management fee
24 structure. And so even though -- those are
25 nonsalaried people, so it wouldn't matter what part --

1709

1 what -- if they had to work 100 hours or five hours,
2 it's the same. Is that to be included? Doesn't seem
3 like that would make any sense to include those
4 people.

5 MR. BRENA: I would like a list. If
6 they are under the management fee, you could just put
7 management fee.

8 JUDGE WALLIS: Very well.

9 MR. MARSHALL: Okay, again, whatever we
10 spend on time doing those things of lesser value
11 means -- well.

12 JUDGE WALLIS: We understand that there
13 is a question of prioritization, but we also believe
14 that it should not take an extended period of time to
15 identify and write down those names. So we don't
16 believe that the burden is a strenuous one.

17 MR. BRENA: Your Honor, 168, I think
18 that we've covered --

19 JUDGE WALLIS: Very well.

20 MR. BRENA: -- quite a bit. 138, they
21 have agreed to provide the news reports that were
22 referenced. If they just want to tell us where they
23 are, we'll go get them.

24 MR. MARSHALL: I was going back to 167,
25 and Ms. Hammer says if we identify the positions,

1710

1 would that be suitable? That would be easier to do.
2 I mean...

3 MR. BRENA: I am ultimately trying to
4 get to a dollar figure for these people. If you
5 identify it by position, will that allow me to tie in
6 to a dollar figure at some point in your system? And
7 if so, how?

8 MS. HAMMER: The position would be
9 easier than the name.

10 MR. BRENA: For that purpose?

11 MS. HAMMER: Yes.

12 MR. MARSHALL: I'm sorry. I didn't pick
13 up on where we were after that?

14 MR. BRENA: 168, I said we've covered
15 thoroughly. 138, you need to provide the newspaper
16 articles. If you just want to refer to them, we'll go
17 get them.

18 MR. MARSHALL: What we did is we said
19 actually they can be found on the Internet, but
20 Mr. Schink, who is the one who had it in his
21 testimony, that's the GRS-2, he said that they did not
22 want to look it up on the Internet and he would get it
23 for them. And I think that's where we wound up
24 yesterday or the day before.

25 MR. BRENA: I had let my expert go

1711

1 before, and I had had a note on 164 and 120, and then
2 to see if I can coordinate with Mr. Beaver to get
3 access to the OPS records. And as far as I know,
4 those are the outstanding issues. With regard to 120,
5 that's the insurance claims. That's the outstanding
6 issue.

7 This is what happens when you let your
8 expert go. Can I ask Ms. Hammer a question?

9 MR. MARSHALL: It depends. What's this
10 about?

11 MR. BRENA: The Whatcom Creek system
12 with the accounting that I've asked for, do you think
13 that it will capture the insurance claims?

14 MS. HAMMER: (Indicating negatively.)

15 MR. MARSHALL: What insurance claims? I
16 don't follow that at all.

17 MR. BRENA: The insurance claims related
18 to Whatcom Creek.

19 MR. MARSHALL: I'm missing something
20 here. I thought that's all that -- I mean, to the
21 extent something is sent to this agent, it is to be an
22 insurance claim. Maybe it's just late and I'm missing
23 the...

24 MR. BRENA: Perhaps it's me, but I think
25 the example that I used -- and I was going to put it

1712

1 off and talk with it at a break and didn't -- was Arco
2 has cessation of business claim against Olympic for
3 \$150,000,000. Now you've described the litigation and
4 the amount.

5 Have you previously disclosed to us the
6 total insurance claims? And would those insurance
7 claims be captured within the accounting relating to
8 Whatcom Creek?

9 MR. MARSHALL: Whatever claims have been
10 made to the insurance company would be made through
11 that entity, so I'm not sure that that makes -- it's a
12 remark that turns on itself.

13 MR. BRENA: I'm going to go back and do
14 my homework, and if I need to go back, I will.

15 JUDGE WALLIS: Very well.

16 MR. BRENA: 164, we've done.

17 JUDGE WALLIS: Mr. Trotter?

18 MR. TROTTER: Could I just say on the
19 record that I believe I mentioned off the record this
20 morning that we also spent some time with the company
21 going through our issues. We think we're almost all
22 the way there. I don't believe at this moment we need
23 a ruling from you.

24 JUDGE WALLIS: Very well.

25 MR. TROTTER: So we'll continue to

1713

1 discuss these with counsel in areas where we still may
2 have some need for additional information.

3 JUDGE WALLIS: Thank you very much.

4 MR. FINKLEA: And, Your Honor, Tosco is
5 in the same position with regard to the passwords and
6 the password-protected information. We're still
7 working that out and I believe we'll be able to reach
8 agreement. If not, we'll be back.

9 JUDGE WALLIS: Thank you very much.

10 MR. BRENA: And those issues that Tosco
11 and staff have brought forward are also issues to
12 Tesoro, but I will reserve the right to comment until
13 such time as we see what that process produces.

14 JUDGE WALLIS: Very well. Let's be off
15 the record.

16 (Discussion off the record.)

17 JUDGE WALLIS: The company has agreed to
18 share the availability of its witnesses by noon on
19 Monday to the extent that their witnesses are
20 available to discover that information. Is that
21 correct?

22 MR. MARSHALL: Right. Available on --
23 for the depositions? Maybe I didn't...

24 JUDGE WALLIS: By noon Monday, the
25 company would share with the parties those witnesses

1714

1 who will be available during the first week of April.

2 MR. MARSHALL: Yes.

3 JUDGE WALLIS: And share the names of
4 any people who will not be available during that first
5 week and propose alternative dates as soon thereafter
6 as possible, or even before, if that is feasible.
7 With the understanding that if you can't reach a
8 witness by noon on Monday, you will continue your
9 efforts to reach that witness and will respond with
10 that information as soon as it becomes available to
11 you.

12 MR. BRENA: Your Honor, I wanted to
13 respond to just one or two items. One is the
14 drop-dead date for data requests that have previously
15 been asked shouldn't be impacted by additional data
16 requests. I mean, Tesoro asked one set of data
17 requests the first week of February. And we'll
18 identify what we need to put our case on.

19 Secondly, any conversation on the
20 schedule needs to recognize that we need that
21 information to put a case on whether it's before this
22 Commission or before FERC. Let's not ignore that
23 reality in setting these dates, because the reality
24 is we're in the identical situation at FERC. I am
25 trying everything I can to avoid arguing the same

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1 arguments in two different places. If the
2 information comes to me in one place, that's fine.
3 There's no reason for two ALJs to have to go through
4 this sort of process, there's no reason for me to
5 have to go back and talk to Larry Miller, their FERC
6 counsel, for four days and then go before the judge,
7 that's an incredible waste of time. So, practically,
8 because this case was scheduled first, Your Honor
9 needs to recognize that for the sake of coordinating
10 these cases, that information needs to be available
11 to here to meet both of those deadlines.

12 MR. MARSHALL: Just one responsive
13 observation and comment.

14 JUDGE WALLIS: Just a moment,
15 Mr. Marshall.

16 MR. BRENA: I wasn't quite done. And,
17 secondly, I can appreciate that there's an awful lot
18 of work for Ms. Hammer to do, but BP Pipelines is the
19 second largest pipeline operator in the world. And if
20 they is a constraint on their resources, then that
21 goes to resource allocation decisions within their
22 manager and operator, and the fact that we have only
23 Ms. Hammer with regard to financial matters here is
24 not a decision that anybody but them made.

25 So the size of the snake could have

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1 been an anaconda, but they chose to make it a
2 gardener snake rather than an anaconda, and now they
3 just keep pointing out that it's a gardener snake.
4 When you go file a 76 percent rate increase, then you
5 should expect to be in this kind of room doing these
6 kinds of things when you had a full rate increase
7 three years ago, so I am only sympathetic to this to
8 a degree.

9 You file a huge rate increase,
10 massively larger than anything else, right after
11 getting a full rate increase three years ago, and
12 then you dedicate one or two people to the job, then
13 you come in here and try to get mileage out of an
14 inability to produce information.

15 JUDGE WALLIS: Mr. Brena, I have to --

16 MR. BRENA: Okay. I'll stop.

17 JUDGE WALLIS: -- interject by recalling
18 one of the favorite expressions of Chuck Knox -- I
19 believe I have the name correctly -- who said you've
20 got to play the cards you're dealt, and right now we
21 have these cards to deal with, and we will play them
22 the best way we can.

23 Mr. Marshall, did you want to make a
24 brief response?

25 MR. MARSHALL: I want to make an

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1 observation about the FERC proceeding. The FERC
2 proceeding is preceding this one now in terms of
3 filing. We in this room, and I have been trying to be
4 very careful not to make representations with regard
5 to that schedule and those procedures. That is up to
6 those people who are dealing with the FERC proceeding
7 to handle, and I'm not here to make any
8 representations about whether that ought to be
9 postponed.

10 I think this ought to be postponed and
11 we'd have the FERC record. That part's been clear,
12 and we've stated that to the Commission. But I don't
13 want anything to be interpreted as to our acceding to
14 any delay in the FERC proceeding. Our d'ruthers
15 would be to have that, indeed, go first and be able
16 to hand the baton to the people back in
17 Washington, DC to deal with further discovery issues
18 with respect to FERC discovery and with respect to
19 discovery that's filed in both places. I'd much
20 rather have the FERC Washington DC counsel handle
21 these requests because they prepared the testimony in
22 this case, and they have, in large degree, prepared a
23 lot of the responses.

24 And one final record, these notebooks
25 represent an enormous volume of material and answers

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1 to interrogatories and data requests that have been
2 filed. The notion that we are coming up to some
3 deadlines without a lot of information is an
4 assumption that we should not for a moment accept.

5 And we've made tremendous amount of
6 progress in whittling down the remaining amounts of
7 discovery that need to be provided. And, again, we
8 would just encourage all the parties to focus on
9 doing that further. And I do appreciate the efforts,
10 particularly by staff, to remove some of the requests
11 that would have taken us an enormous amount of time
12 to perform.

13 Ms. Hammer asked me to make a final
14 comment, and I don't believe I will. But there have
15 to be some constraints on the amount of time
16 individual employees are put under the gun to be kind
17 of beating around the bush about what I mean. And
18 there are some people who I think are more able to
19 bear that kind of stress and burden, and I would hope
20 that we recognize that.

21 JUDGE WALLIS: I would like to conclude
22 our discussion by acknowledging the degree of patience
23 and cooperation that everyone in the room has
24 displayed. The company in recent times has been very
25 responsive and has exerted a great deal of effort to

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1 provide those. We do ask that that continue.

2 The possibility of securing assistance
3 from BP in some regards has been mentioned. If that
4 avenue is available, we encourage you to pursue it.
5 If it is not that may be just one of the cards that
6 we have to play, having been dealt it.

7 I do acknowledge the parties' albeit
8 reluctant but sincere and good faith acts in reducing
9 the volume of your discovery and ask that, as we go
10 forward, that we all keep in mind that deadlines that
11 we face and the challenges that we all face be
12 considerate of each other and compliant, as you have
13 demonstrated that you can be.

14 We did, I believe, agree that the
15 drop-dead date for all discovery would be March 22,
16 which would indicate that the deadline for submitting
17 that discovery would be --

18 MR. MARSHALL: -- the 12th. Except we
19 can't count weekends.

20 MR. TROTTER: Probably Monday.

21 JUDGE WALLIS: Probably Monday, yes.

22 MR. MARSHALL: For new discovery,
23 probably would be Monday in this matter.

24 JUDGE WALLIS: Is there anything else
25 that we need to attend to? I believe that we have all

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1 of the statements of the parties' agreement and all
2 the rulings that the parties have asked for
3 comfortably within our record at this time.

4 MR. BRENA: Your Honor, I would just
5 like clarification, and it's more for Olympic's
6 benefit than Tesoro, but my suggestion -- and I don't
7 know if it was adopted in your ruling. That's why I
8 just want to ask for clarification -- was that the
9 drop-dead date of March 22nd for the production of
10 discovery concerns information that the parties
11 identify on Monday as being necessary for their case.

12 MR. MARSHALL: That's discovery.

13 MR. BRENA: There is discovery that if
14 we don't get -- I mean, so we need --

15 JUDGE WALLIS: Yes.

16 MR. BRENA: -- kind of two drop-dead
17 dates.

18 JUDGE WALLIS: Yes.

19 MR. BRENA: We need one that's necessary
20 to put together the testimony that the parties have
21 identified.

22 JUDGE WALLIS: Yes, that is correct.

23 MR. BRENA: And then we need a second
24 one for everything else.

25 JUDGE WALLIS: Yes.

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1 MR. BRENA: So I wasn't sure if you
2 were...

3 JUDGE WALLIS: Yes. No, I was not
4 intending to advance any later date.

5 MR. MARSHALL: And that, of course,
6 doesn't apply to discovery that Olympic would want to
7 do of staff and intervenors.

8 JUDGE WALLIS: Yes. That is correct.

9 MR. MARSHALL: That deadline is off in
10 the future.

11 JUDGE WALLIS: Yes. Today it is.

12 MR. MARSHALL: At some point we'll set
13 one, I'm sure.

14 JUDGE WALLIS: All right. I would thank
15 everyone for your extensive patience today, and this
16 conference is adjourned.

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18 (PREHEARING CONFERENCE WAS ADJOURNED AT

19 5:45 P.M.)

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