

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION
3

4 WASHINGTON UTILITIES AND) Docket No. TO-011472
5 TRANSPORTATION COMMISSION,)
6 Complainant,)
7 v)
8 OLYMPIC PIPE LINE COMPANY,)
9 INC.,)
10 Respondent.)

11
12 DEPOSITION UPON ORAL EXAMINATION
13 OF
14 MAURICE L. TWITCHELL
15

16 2:17 p.m.

17 June 5, 2002

18 1400 Evergreen Park Drive, S.W.

19 Olympia, Washington
20
21
22

23
24 Barbara L. Nelson, CCR
25 Court Reporter

WUTC DOCKET NO. TO-011472
FILE NO. 1917
ADMIT W/D REJECT

1 APPEARANCES

2
3 FOR THE WUTC: DONALD T. TROTTER
4 LISA WATSON
5 Assistant Attorneys General
6 1400 Evergreen Park Dr., S.W.
7 P.O. Box 40128
8 Olympia, Washington 98504-0128
9

10 FOR OLYMPIC PIPE LINE: STEVE MARSHALL
11 Attorney at Law
12 Perkins Coie
13 One Bellevue Center
14 411 108th Avenue, N.E.
15 Suite 1800
16 Bellevue, Washington 98004
17

18 FOR TESORO REFINING & ROBIN BRENA
19 MARKETING COMPANY: Attorney at Law
20 310 K Street, Suite 601
21 Anchorage, Alaska 99501
22
23
24
25

1 FOR TOSCO CORP.: CHAD M. STOKES
2 Attorney at Law
3 526 N.W. 18th Avenue
4 Portland, Oregon 97209
5

6 ALSO PRESENT: KENNETH ELGIN
7 BOB COLBO
8 GENE ECKHARDT
9
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11
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9 EXHIBITS

10 EXHIBIT	DESCRIPTION:	PAGE:
11 Number 1	Index to Work Papers	15
12 Number 2	Various Colbo Work Papers from 1983	17
13	Olympic Case	

1 Whereupon,
2 MAURICE L. TWITCHELL,
3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:
5

6 EXAMINATION

7 BY MR. MARSHALL:
8 Q. Would you state your name and address for
9 the record?
10 A. My name is Maurice L. Twitchell. My
11 business address is 1300 South Evergreen Park Drive,
12 Southwest, P.O. Box 4725, Olympia, Washington 98504.
13 Q. Okay. And have you been specially hired in
14 this case by Commission Staff to present testimony in
15 this docket?
16 A. Yes, I have.
17 Q. Okay. When were you first hired?
18 A. I was hired on November the 14th, 2001.
19 Q. Were you given any special directions on
20 what you were to do?
21 A. Yes, I believe in my testimony I've said
22 that I was asked to discuss federal income taxes,
23 appropriate rate base, address the FERC methodology
24 used by Olympic, and discuss allocations of Olympic's
25 total company results of operations between the

1 interstate and Washington intrastate operations.
2 Q. Who specifically was the person who hired
3 you? Who approached you and gave you those
4 instructions?

5 MR. TROTTER: Excuse me, Counsel. Which
6 question are you asking, the second one or the first
7 one? Obviously --

8 Q. If they're different people, just let me
9 know.

10 MR. TROTTER: It's the Commission that
11 hires employees, not Commission Staff, just to
12 clarify, but if you can focus your question, that
13 might help us along.

14 Q. Let me make it clear. What individual
15 approached you and gave you the assignment?

16 A. Well, the answer's twofold. Bob Colbo
17 approached me in June of 2001 and asked me if I'd be
18 interested, and I said yes. Dixie Linnenbrink also
19 approached me and Gene Eckhardt. Gene Eckhardt was
20 the one that I believe negotiated the contract to
21 hire me, but several people were involved in it.

22 Q. And then which individual gave you the
23 particular assignment -- work assignment?

24 A. Working with Bob Colbo was basically where
25 I received the assignment, what he wanted me to

1 fulfill our obligation to consider the salient
2 factors by providing an objective and rational
3 methodology to measure the company's interim needs.

4 And by reading the order through, I felt
5 that the Commission wanted a presentation by the
6 Staff that was objective and rational for ratemaking
7 purposes.

8 Q. That quote you just read relates to the
9 interim rates; is that correct?

10 A. That quote does, but throughout the interim
11 order, it states how they want us to present this
12 case.

13 Q. Okay. Now, after you were hired on
14 November 14th, did you begin to do any particular
15 work?

16 A. Actually, before I was hired on the 14th,
17 Mr. Colbo faxed me testimony and exhibits of the
18 case, and asked me to read them with the
19 understanding that they were interested in hiring me.
20 I read the testimony of Mr. Collins, Ms. Hammer's --
21 Hammer, and looked at the exhibits, had a preliminary
22 feeling of what was going on, and then, when they
23 hired me on the 14th, I had a pretty good
24 understanding what the case looked like.

25 Q. Okay. In addition to reading the testimony

1 cover.

2 Q. In addition to telling you what he wanted
3 you to cover, did he or any other Staff member tell
4 you what you were to focus on in particular, what
5 conclusions they wanted you to come up with?

6 A. No, nobody gave me any instructions like
7 that whatsoever.

8 Q. Did anybody tell you that you were to find
9 reasons not to adopt the FERC methodology, for
10 example?

11 A. No, they provided me with FERC orders,
12 which I supplied to the company, and asked me to read
13 them, asked me to discuss the FERC methodology.

14 Q. But you weren't told that the Commission or
15 the Staff didn't want to follow the FERC methodology;
16 you were to find reasons to support use of the UTC
17 methodology?

18 A. No, basically I -- when I got my
19 assignment, I did quite a bit of preliminary reviews,
20 but the order in the interim rate is what really gave
21 me the responsibility where the Commission said in
22 that order -- give me just a second.

23 The Commission -- this is on page 14 of the
24 interim order. The Commission accepts the Commission
25 Staff approach. Staff's approach enables us to

1 of Ms. Hammer and Mr. Collins, what else did you read
2 in that first initial period?

3 A. Before the 14th, that's all I was given to
4 read. That's all I was able to review.

5 Q. Now, do you have with you a notebook of
6 materials that you've considered --

7 A. Yes.

8 Q. -- in doing your work assignment?

9 A. Yes, I do.

10 Q. Is there an index to that notebook?

11 A. Yes, there is.

12 MR. MARSHALL: Could we make a copy of
13 that, make that as an exhibit?

14 MR. TROTTER: Yes, Mr. Marshall. This
15 notebook, the contents of this notebook were provided
16 to you.

17 MR. MARSHALL: Okay.

18 MR. TROTTER: But I was searching to
19 determine whether we provided you the index, because
20 that came as a separate item from the notebook. And
21 I'm not sure we did. So I'd be happy to copy that
22 and give everybody a copy of it.

23 MR. MARSHALL: That would be a good idea.

24 MR. TROTTER: But you have the documents.

25 MR. MARSHALL: Yeah, I haven't looked at

1 his notebook, so I have no idea whether it's the same
2 as other materials that we have.

3 MR. TROTTER: It is.

4 MR. MARSHALL: Okay.

5 MR. TROTTER: There is other information
6 than what I have in this notebook. I also have
7 another notebook, which is a hard copy of the
8 electronic data that we provided to you with my
9 exhibits.

10 Q. Okay.

11 A. That's not included here.

12 Q. On this index that we'll make an exhibit
13 later on, does that include everything that you
14 considered in this matter or are there other things
15 that you considered in this matter?

16 A. It doesn't consider everything. I've been
17 in regulation for over 30 years and I brought my
18 experience with me. So it was pretty hard to make
19 copies of that.

20 Q. Sure, but in terms of written materials,
21 this index includes every written material you have
22 looked at considering this matter; true?

23 A. I don't know that I can say that or not. I
24 went through everything I had and tried to be as
25 thorough as I possibly could be.

1 asking for information that I didn't get a response
2 to.

3 Q. Okay. Do you recall who you sent the
4 e-mail to?

5 A. When I went in on the Internet, I got the
6 FERC home page, and they had an address that you can
7 send questions into, and I just sent it in
8 generically.

9 Q. So you've not talked to any person live at
10 the FERC about the FERC methodology?

11 A. That's correct.

12 Q. Have you talked to anybody who's been
13 retired from the FERC about that methodology?

14 A. No, I have not.

15 Q. Is this the first oil pipeline rate matter
16 that you've worked on in your career?

17 A. Yes, it is.

18 Q. Are you -- have you talked to anybody that
19 operates an oil pipeline company before this docket?

20 A. No, I have not.

21 Q. Are you familiar with how major oil
22 pipeline companies in the United States are operated?
23 Is that part of your background or expertise?

24 A. No, it is not.

25 Q. And are you familiar with statistics, as I

1 Q. Now, in addition to the review of materials
2 that you've made, did you talk to people about the
3 FERC methodology in particular?

4 A. What people are you referring to?

5 Q. Any people?

6 A. Yes, I had discussions with Bob Colbo, who
7 had a preliminary understanding of it, discussions
8 with my counsel, and I've discussed it extensively
9 with company witnesses at the time we were in Renton
10 reviewing the case.

11 Q. With Mr. Collins and Ms. Hammer?

12 A. And others that were there, yes.

13 Q. Apart from that, have you had any
14 discussions on the FERC methodology with any other
15 person? Again, apart from Mr. Colbo, counsel, and
16 certain company witnesses in Renton?

17 A. We have had discussions as Staff members,
18 where counsel was present when we've discussed it,
19 yes.

20 Q. Have you had any discussions with anybody
21 back in Washington, D.C. at the FERC about the FERC
22 methodology?

23 A. I have been on the Internet and trying to
24 review some of the issues, but I haven't spoken with
25 anyone specifically. I did send an e-mail to them

1 was asking Mr. Elgin about, that look at how other
2 major oil pipeline companies in the United States are
3 financed and operated and organized?

4 A. Only as I have presented in these work
5 papers and as I've seen in testimony and exhibits in
6 the case.

7 Q. Okay. You've made no special study or
8 systematic study of how oil pipelines in the United
9 States are typically financed or historically
10 financed; is that correct?

11 A. No, no, I have not.

12 Q. Okay.

13 A. I don't understand -- is that correct? I
14 have not -- I think that answers it.

15 Q. You have not done any special study?

16 A. Right, yes.

17 Q. And if I were to ask you how most oil
18 pipelines in this country are owned and financed, you
19 wouldn't be able to tell me that answer, because you
20 haven't made a study of that; is that right?

21 A. I haven't made a study, but all I know is
22 what I've heard in the case.

23 Q. Okay. Now, with regard to dividend
24 policies as a specific, do you know what the dividend
25 policies are of major oil companies in the United

1 States that are owned by oil company refineries?
 2 MR. TROTTER: I'll object to the question.
 3 It's beyond the scope of his testimony. You may --
 4 you can answer.
 5 THE WITNESS: All I know is what I've heard
 6 testified to in the case.
 7 Q. Okay. And do you know anything
 8 specifically about oil pipeline company dividend
 9 policies in the United States in general?
 10 MR. TROTTER: I'll take a continuing
 11 objection to this line.
 12 THE WITNESS: All I know is what I've heard
 13 testified to in this case. I know nothing else about
 14 it.
 15 Q. Do you know what that is in this case?
 16 A. In this case --
 17 Q. I mean, what are the policies, dividend
 18 policies of major oil pipeline companies in the
 19 United States?
 20 A. I don't know that I know what it is. It's
 21 my understanding that Olympic Pipe Line has passed
 22 dividends up to the parent.
 23 Q. Do you know whether that's typical in the
 24 oil pipeline industry or not?
 25 A. I believe it was testified to that it was,

1 Q. Is that correct?
 2 A. Yes, it is.
 3 Q. Okay.
 4 MR. TROTTER: Excuse me, just for
 5 clarification, it's an index to this notebook. I
 6 believe there were other work papers supplied.
 7 MR. MARSHALL: Oh, okay. It just says
 8 index to work papers at the top. That's why --
 9 MR. TROTTER: Correct. But it's not the
 10 complete set of work papers that were provided to
 11 you.
 12 Q. I see, okay. So Exhibit Number 1 is an
 13 index to some work papers of yours that are in this
 14 notebook before you; correct?
 15 A. That's correct.
 16 Q. And there are some others. Down in number
 17 20 --
 18 A. Now, there's two 20s. When I was putting
 19 this together, I didn't have enough indexes, so it
 20 gets a little confusing. If you'll notice, it goes
 21 through 20, and then it goes 16, 18, 19, 20, and then
 22 one through nine.
 23 THE REPORTER: I'm sorry, say that again?
 24 THE WITNESS: I'm sorry. It goes One
 25 through 20, then it starts with 16, misses 17, goes

1 but that's all I remember.
 2 Q. That it was typical?
 3 A. Yes.
 4 Q. Is there anything at all about Olympic Pipe
 5 Line that is not typical for other major oil pipeline
 6 companies in the United States that you're aware of?
 7 A. I don't know if it's typical or if it's
 8 untypical. I don't know either way.
 9 Q. So you couldn't give an opinion on that
 10 kind of comparison?
 11 A. No, I could not.
 12 Q. And if somebody were to say Olympic's
 13 policies are not prudent compared to other oil
 14 pipeline companies in the United States, you wouldn't
 15 be able to offer an opinion on that one way or the
 16 other; is that right?
 17 A. I would not.
 18 MR. MARSHALL: Let's make a copy of this
 19 index, just because we referred to this, or I mean
 20 mark a copy of that.
 21 (Marked Deposition Exhibit Number 1.)
 22 Q. We've marked as Exhibit Number 1 to your
 23 testimony the index to your work papers. Do you see
 24 that?
 25 A. Yes, it is.

1 18, 19, 20, and then goes one through nine. Simply
 2 in putting together the notebook, I didn't have
 3 enough indexes to --
 4 MR. MARSHALL: Okay. Let's mark this the
 5 next exhibit. I only have one other set here.
 6 (Marked Deposition Exhibit Number 2.)
 7 MR. TROTTER: All one exhibit?
 8 MR. MARSHALL: Right.
 9 MR. TROTTER: Can we be off the record just
 10 for one second?
 11 MR. MARSHALL: Sure.
 12 (Discussion off the record.)
 13 Q. I'm going to hand you Exhibit Number 2 and
 14 ask you to take a look at the third page of this, or
 15 the second -- I guess it's the third page. Do you
 16 see where it says table of contents, and then it says
 17 Olympic Oil Pipe Line Company?
 18 A. Yes, I do.
 19 Q. And have you seen this before I handed it
 20 to you?
 21 A. No, I have not.
 22 Q. Okay. I will represent to you that these
 23 are materials that have been provided to us and
 24 represented to be the work papers of Mr. Colbo on
 25 Olympic Oil Pipe Line Company from a matter that was

1 in a docket in June of 1983, entitled Working Papers
2 2353.

3 MR. BRENA: Have these been provided to
4 Tesoro?

5 MR. TROTTER: Counsel, these appear to be
6 not work papers from the current case, but rather an
7 excerpt from a Commission file in a prior rate case
8 that happened to be prepared by Mr. Colbo in that
9 rate case.

10 MR. MARSHALL: That's what I said, it was
11 from June 1983.

12 MR. TROTTER: Okay.

13 MR. MARSHALL: And I gave the -- I think I
14 gave the Working Paper 2353 name that was given to
15 that.

16 Q. In any event, this is the first time you've
17 seen this Exhibit Number 2; is that correct?

18 MR. BRENA: Well, I would like my objection
19 dealt with. I don't have a copy of these. Have
20 these been produced to Tesoro?

21 MR. MARSHALL: Beats me. It's not mine to
22 produce.

23 MR. BRENA: Okay. Well, you're using it as
24 a cross-examination exhibit. Do you have a copy that
25 I can review, please?

1 MR. TROTTER: Okay.

2 MR. MARSHALL: And we will ask Mr. Colbo
3 that when his testimony is up. All I wanted to find
4 out from Mr. Twitchell was whether he, in his work,
5 had seen these materials.

6 MR. TROTTER: Fine.

7 MR. MARSHALL: So my question is very
8 limited at the moment to just asking that basic
9 question, and so --

10 MR. TROTTER: You can answer the question.

11 Q. So I will ask the question again. Exhibit
12 Number 2 that we've marked here, have you seen this
13 before today?

14 A. I have not -- I have not seen this as such.
15 Some of the items in here are included as exhibits in
16 this case.

17 Q. Okay.

18 MR. TROTTER: Excuse me. If the witness
19 could clarify, exhibits in the case or produced in
20 discovery in the case?

21 THE WITNESS: I believe -- I believe the
22 memo, the Wednesday morning memo this company
23 included as an exhibit in their direct case.

24 MR. TROTTER: Okay.

25 THE WITNESS: So yes, I've seen some of it,

1 MR. MARSHALL: Sure. Go ahead.

2 MR. BRENA: Okay. Can I get a copy made of
3 it?

4 MR. MARSHALL: I don't know. Go ahead.

5 MR. BRENA: Well, I mean, you show up with
6 -- could we go off the record for a minute, please?

7 MR. TROTTER: Well, let's stay on the
8 record just for a moment to confirm. I believe, if
9 my understanding is correct, the company made a
10 public records request of the Commission and -- in
11 the context either last summer or currently, and the
12 Commission produced some records, which included the
13 -- among other things -- rate files from prior
14 Olympic rate dockets. I recognize this as --
15 apparently as a portion of what was produced in that
16 context. I don't believe this was produced in
17 response to a company data request in this docket.

18 MR. MARSHALL: It was not a company data
19 request in this docket. Beyond that, I can't make
20 any representations to anybody here in the room.

21 MR. TROTTER: As to where they came from?

22 MR. MARSHALL: I mean, I believe they are
23 what I have said, that they are the work papers of
24 Mr. Colbo made in June of 1983 in a prior rate
25 filing.

1 but not all of it.

2 Q. Let's make a quick check here. You see on
3 the table of contents, on the right-hand side, there
4 are a series of numbers?

5 A. Yes.

6 Q. And you'll look down and you'll see Number
7 Eight?

8 A. Yes.

9 Q. Do you see that? Can you turn to Number
10 eight in Exhibit Number 2? Do you have it?

11 A. Yes, I have it.

12 Q. Okay. Have you seen that before today?

13 A. No, I have not.

14 Q. Can you turn to Number Nine?

15 MR. BRENA: Steve, the ones that you refer
16 to, can you hand them to me so I could review them?

17 MR. MARSHALL: Sure. I'm not going to be
18 asking questions at this moment; just whether he's
19 seen them or not.

20 MR. BRENA: I understand. You're asking
21 cross-examination questions on documents that I've
22 never seen.

23 THE WITNESS: I have Number Nine.

24 Q. Okay. Have you seen that before today?

25 A. No, I have not. Not to my knowledge, not

1 to my memory.
 2 Q. Can you turn to Number Ten?
 3 MR. BRENA: Are you done with them? Can I
 4 review them?
 5 MR. MARSHALL: Just one moment. Eight,
 6 Nine, Ten.
 7 THE WITNESS: I have it.
 8 Q. Have you seen that before today?
 9 A. No, I have not.
 10 Q. There are a number of spreadsheets,
 11 starting with Item 16. Do you see those folded
 12 spreadsheets?
 13 A. Yes, I do.
 14 Q. Have you seen those before today?
 15 A. No, I have not.
 16 Q. And Number 20, can you turn to Number 20
 17 after the spreadsheets?
 18 A. I have it.
 19 Q. Okay. First, between 16 and 20, all the
 20 spreadsheets, have you seen any of those spreadsheets
 21 before today, 16, 17, 18, 19?
 22 A. No, I have not.
 23 Q. Okay. Looking at Number 20, have you seen
 24 that before today?
 25 A. No, I have not.

1 They are relatively bulky materials, but we can take
 2 the time to do that if you want, or I can just let
 3 you know. My questions right at the moment --
 4 MR. TROTTER: I'll share mine with Mr.
 5 Brena, and I'll use the witness'.
 6 MR. MARSHALL: Okay. Thank you.
 7 Q. Would you now turn to the part that's Item
 8 15?
 9 A. How many pages is that document?
 10 Q. It's just one page, I believe.
 11 MR. TROTTER: Let's go off the record.
 12 (Discussion off the record.)
 13 MR. TROTTER: Back on the record.
 14 Q. Okay. Have you seen that before today?
 15 A. No, I have not.
 16 Q. In the five pages after Number 15, you'll
 17 see a tariff that says at the top, Present. Do you
 18 see that?
 19 A. Yes, I do.
 20 Q. And that's to be effective July 1st, 1978.
 21 Do you see that?
 22 A. Yes, I do.
 23 Q. Is that anything you've seen before today?
 24 A. No, it is not.
 25 Q. And up at the top, it says FERC Number 13,

1 Q. Number 20 has several follow-on pages until
 2 you get to 21. Have you seen any of the follow-on
 3 pages before you get to 21? Twenty-one begins
 4 another series of spreadsheets.
 5 A. I'm not sure. I don't think so, but the
 6 letters from Olympic Pipe Line addressed to Mr.
 7 Nikula, I might have seen, but I can't recall for
 8 sure.
 9 MR. BRENA: Steve, before we go any
 10 further, I want some understanding as to --
 11 MR. MARSHALL: Let's --
 12 MR. BRENA: -- as to when or how we're
 13 going to get a copy of what you're sitting here
 14 asking questions on.
 15 MR. MARSHALL: I'll give you a copy from --
 16 MR. BRENA: And if we're not, then let's
 17 just go get the Judge and straighten this out.
 18 Because I'm not going to sit here in a deposition and
 19 have you asking a witness a bunch of questions when
 20 you don't even provide a courtesy copy to me. I
 21 mean, these are outside the scope --
 22 MR. MARSHALL: If you want to take the time
 23 to make the copies, we can. I have three copies
 24 here. I have the witness' copy, I have another one,
 25 and I had the one that I'm asking questions from.

1 and then it says Washington PSC Number 13?
 2 A. I see that.
 3 Q. Okay. Is that a tariff rate, based on your
 4 experience, applicable to Olympic Pipe Line Company
 5 in 1978 for moving petroleum products from points in
 6 Washington to points in Oregon and Washington at both
 7 the FERC and at the Washington Public Service
 8 Commission?
 9 MR. BRENA: Objection, lack of foundation.
 10 THE WITNESS: What I see here is a tariff
 11 of Olympic Pipe Line from points in Washington to
 12 points in Oregon and Washington. I don't know if
 13 this is a tariff in the state of Washington or if
 14 it's a FERC-approved tariff.
 15 Q. Or both?
 16 A. Or both. I don't know.
 17 Q. When you began your review of a comparison
 18 between the FERC methodology and the UTC methodology,
 19 did you ask to see all the files, previous files that
 20 were in existence at the Washington State Utilities
 21 and Transportation Commission that pertained to that
 22 question?
 23 A. I have a problem with the form of your
 24 question.
 25 Q. Okay. Let me restate it. When you --

1 A. Just let me tell you what my problem is, so
2 you can restate it so I can give you an answer. I
3 wasn't asked to understand the FERC methodology; I
4 was asked to understand the case of Olympic. That's
5 what I did.

6 Q. Okay. So when you testified about the
7 difference – look on page two of your testimony, at
8 line ten.

9 A. Okay.

10 Q. Where you say, quote, I explained the
11 differences between Olympic's presentation of the
12 FERC methodology and the WUTC methodology. Do you
13 see that?

14 A. Yes, I do.

15 Q. And were you asked to compare the two
16 methodologies?

17 A. No, I was not directly. I was asked to
18 take a look at the company's case and present a rate
19 case which would use rational ratemaking, as this
20 Commission has traditionally and historically
21 presented.

22 Q. Okay. So you were not asked to compare
23 FERC methodology to the UTC methodology to determine
24 whether it would be a good idea to use the FERC
25 methodology; you determined that you would present a

1 made of the FERC methodology had serious flaws in it,
2 and I presented it based on the historical UTC
3 methodology, which I have used in my 30 years of
4 experience.

5 Q. Have you ever used the FERC methodology in
6 your 30 years of experience?

7 A. No, and if it was presented to me the way
8 Olympic presented it in its case, I couldn't agree
9 with it.

10 Q. Did you make any attempt to understand what
11 the FERC methodology was, apart from reading
12 Olympic's presentation of that methodology?

13 A. Yes, I read several – several cases
14 concerning the FERC methodology where I felt that it
15 became quite evident that the courts had serious
16 problems with the FERC methodology.

17 Q. What cases were those?

18 MR. TROTTER: That does raise a point,
19 Counsel. If you're talking about FERC methodology,
20 are you talking about the FERC methodology that was
21 in existence when Exhibit 2 was prepared or one
22 that's in existence today or one that was in
23 existence in 1998, or what?

24 MR. MARSHALL: At the moment, I'm asking
25 him what cases he read, and I think I can determine

1 case using the UTC methodology; is that right?

2 A. No. As I reviewed the company case, I had
3 real problems with the approach they had taken. And
4 in order to show what those problems were, I compared
5 the company's presentation of the FERC methodology to
6 what I believed would be the regulatory methodology
7 that this Commission would use.

8 Q. Okay. So you made a determination that
9 this Commission would use the WUTC methodology, and
10 so your presentation did not include the potential or
11 the possibility that they would use the FERC
12 methodology; is that correct?

13 A. No, that's not right.

14 Q. Okay. Let me ask it a different way. Did
15 you think of making a presentation to the Commission
16 that would recommend that the FERC methodology be
17 used in this case, in this docket?

18 A. I can't answer that yes or no. What I did,
19 whenever I do a rate case, and I've been doing them
20 for 30 years, my first step is always to understand
21 the case that the company has presented. And after I
22 thoroughly understand it, to the best I can in the
23 time allotted, then I make a judgment on what I think
24 should be presented to the Commission.

25 I felt that the presentation that Olympic

1 from that what he's referring to. I just want to
2 know what cases did he read.

3 MR. TROTTER: Your questioning has been
4 based on the FERC methodology, and there's several of
5 them over time.

6 MR. MARSHALL: I understand. But this
7 particular question, I don't think --

8 MR. TROTTER: So the record's not going to
9 be clear on that point. From now on, I'll object to
10 the form of the question, but if you could identify
11 what specific FERC methodology you're referring to in
12 your question, that will help us advance the ball
13 here.

14 Q. So at the moment, the only question pending
15 is what cases did you read?

16 A. I've read the case, the United States Court
17 of Appeals, District of Columbia Circuit, Farmers
18 Union Central Exchange, Inc., as Petitioner, and then
19 it was versus the Federal Energy Regulatory
20 Commission, the United States of America, and Federal
21 Energy Regulatory Commission.

22 Q. What's the date of that?

23 A. The date of that is argued November the
24 18th, 1983, decided March 9th, 1984, amended June
25 26th, 1984.

1 Q. Okay. What other cases have you read?
 2 A. I also read the FERC opinion in 154-B.
 3 Q. Is that the Williams case?
 4 A. This was issued June 28th, 1985. It's the
 5 First Commission Opinions, Orders and Notices,
 6 Williams Pipeline Company, Dockets Number OR
 7 79-1-000.
 8 Q. Okay. What other cases did you read?
 9 A. I also reviewed the William Pipeline
 10 Company Case, Docket Number OR 79-1-000, et al.,
 11 issued November 30th, 1982.
 12 Q. And --
 13 MR. TROTTER: There's more.
 14 THE WITNESS: Oh.
 15 Q. What other cases did you read? Counsel is
 16 showing you something.
 17 MR. TROTTER: It's in the book, yes.
 18 Q. He's pointing to some other section.
 19 A. I just want to make sure I -- I also
 20 reviewed Petroleum Products, Williams Brothers
 21 Pipeline Company, Number 35533 N1, and the date on
 22 that is October 10th, 1975.
 23 Q. Anything else?
 24 A. Petroleum Products, Williams Brothers
 25 Pipeline, decided December 3rd, 1976.

1 Q. Now, all of these cases that you've just
 2 identified, starting with the Farmers Union case and
 3 going through this 1990 case, were all of those
 4 provided to you by other people?
 5 A. Yes. No, not -- yes, all of them were
 6 provided to me by other people.
 7 Q. And apart from the one provided to you by
 8 Mr. Batch, who were those other people who provided
 9 you with those cases?
 10 A. These cases were provided to me by counsel.
 11 Q. Okay. Did you do any independent research
 12 on cases yourself?
 13 A. No, after reading these, I felt it was
 14 important for me to review the company's case and
 15 determine what they were doing in light of what I had
 16 read. And so I basically based my testimony on the
 17 approach that the company portrayed as being the FERC
 18 methodology, because it didn't seem like the
 19 company's approach was according to the FERC
 20 methodology.
 21 Q. Now, these cases also refer to other cases.
 22 When you read them, you would come across the name of
 23 another oil pipeline company case from time to time;
 24 is that fair to say?
 25 A. Yes, I did.

1 Q. Anything else?
 2 A. I believe that's it.
 3 Q. Counsel's pointing at another case for you.
 4 A. I was given the work papers explaining the
 5 approach as used by Olympic Pipe Line, which is the
 6 FERC Commission Opinions and Orders, Summary Opinion
 7 Number 154-B, which the company presented to me was
 8 the approach they were using to present this case.
 9 Q. Okay. And who gave you that material?
 10 A. I believe Mr. Batch did.
 11 Q. The case that you're reading, who gave you
 12 that particular piece of paper?
 13 A. The Opinion Number 154-B of the FERC
 14 methodology was given to me by Mr. Batch.
 15 MR. TROTTER: Just for your information,
 16 Counsel, behind the second Tab Number 20 are the two
 17 pages that Mr. Twitchell was referring to that were
 18 provided to him by Mr. Batch.
 19 THE WITNESS: Yes.
 20 MR. TROTTER: Those have been provided to
 21 you in response to your discovery requests.
 22 THE WITNESS: And then I also reviewed the
 23 United States of America, 52 FERC, Federal Energy
 24 Regulatory Commission Opinion Number 351, issued July
 25 18th, 1990.

1 Q. Do you remember the name -- the Buckeye
 2 case, for example?
 3 A. No, I read this six, seven, eight months
 4 ago, and it was quite extensive, and I don't remember
 5 a lot about it.
 6 Q. So if I were to ask you anything about the
 7 Buckeye case, which is not in this book, you wouldn't
 8 be able to tell me anything about it?
 9 A. That's correct.
 10 Q. Including whether you've even read the
 11 Buckeye case; is that fair to say?
 12 A. To my knowledge, I haven't read it.
 13 Q. If I asked you some details about the
 14 Williams Pipeline Company case now, would you be able
 15 to tell me what that case said versus some other
 16 case?
 17 MR. TROTTER: Counsel, I'll object to the
 18 question. Are you asking him whether he can do it
 19 off the top of his head or after review of the
 20 documents that he's already reviewed?
 21 Q. Yeah, I'm asking him whether, if I asked
 22 you questions right now, without you having to go
 23 through and try to reread that, would you have them
 24 firmly enough in mind to say, Oh, yes, the Williams
 25 case, that was about these issues?

1 MR. TROTTER: Well, Counsel, I suggest,
2 without knowing what the question is, it's difficult
3 for any witness to answer, but --

4 Q. Well, let me ask you about the Williams
5 case in terms of how it suggests debt owed to the
6 parents of an oil pipeline company be treated. Do
7 you know how the Williams case treats that for
8 capital structure purposes?

9 MR. TROTTER: I object to the question.
10 It's beyond the scope of his testimony.

11 Q. You can go ahead and answer.

12 A. I can answer it?

13 MR. TROTTER: Yes.

14 THE WITNESS: I don't remember the details
15 of what I read here. I read it so that I would be
16 familiar with what was going on. I then had to get
17 on with the duty of understanding the company's case.

18 MR. TROTTER: Counsel, if you want to take
19 a break and have him read the decision and respond to
20 that question, we'd be happy to do that.

21 Q. Do you know how the FERC methodology today
22 treats debt in an oil pipeline company owed to the
23 parents?

24 A. I know that there's an Opinion 153-C that
25 has been put out concerning how debt and interest is

1 weighted cost of debt times its net depreciated
2 original cost rate base.

3 Q. This is for income tax purposes. For
4 purpose of capital structure in setting a rate of
5 return on equity, are you familiar with how the FERC
6 treats debt owed to a parent of an oil pipeline
7 company?

8 MR. TROTTER: Same objection. Go ahead and
9 answer, if you know.

10 THE WITNESS: My work paper Tab 20, second
11 20, on the summary of Opinion Number 154-B, Item Two
12 says, The rate of return should be determined on a
13 case-by-case basis by the usual approach of using
14 embedded debt cost and setting the risk related
15 equity rate of return. And then Number Three, Item
16 Number Three said, Stated as a general policy, the
17 proper capital structure to use was the pipeline's or
18 its parent's actual capital structure, depending on
19 how capital was raised.

20 Q. Do you understand how that would be applied
21 to Olympic?

22 A. I am not an expert on rate of return and
23 capital structure. I do know how the capital
24 structure and cost of debt and equity are applied for
25 calculating AFUDC pro forma interest and determine

1 determined, and it's one of the work papers in this
2 book. I don't know if that's the most current way
3 that the FERC applies it.

4 Q. And what is your understanding of the way
5 FERC applies and treats debt owed to a parent today?

6 MR. TROTTER: I'll take a standing
7 objection to this line of questioning as being beyond
8 the scope of Mr. Twitchell's testimony. It is within
9 the scope of his testimony of how he treated interest
10 expense, but to the extent you were talking about
11 capital structure issues, I believe that's beyond the
12 scope of his testimony.

13 THE WITNESS: The summary opinion of 154-B,
14 which was handed to me by the company, says that --
15 ruled that oil pipelines should use their actual
16 interest expense in computing their income tax
17 allowance and their cost of service.

18 In 154-C, they changed that, and it says,
19 The Commission is now persuaded that the better
20 solution is to use the same actual capital structure
21 for both the interest expense deduction and the
22 allowed interest return. At the time, therefore,
23 subject to reexamination on a case-by-case basis, it
24 appears appropriate for an oil company to determine
25 its interest expense deduction by multiplying its

1 the revenue requirement, but how it is applied to
2 determine what is the appropriate authorized rate of
3 return, weighted cost of debt and equity, I don't
4 know.

5 Q. Do you know when Olympic Pipe Line first
6 started operating in Washington state?

7 A. I know I've read that number somewhere, but
8 I don't -- '63 comes to my mind, but I don't know if
9 that's right.

10 Q. Subject to check, it was 1965 that they
11 first began operational, I should state. From 1965
12 to 1983, do you know how the Commission regulated
13 Olympic Pipe Line Company rates? Was it on the basis
14 of the federal methodologies then in existence or on
15 some other basis or do you know?

16 A. It's my understanding the Commission has
17 never made a determination and finding of how this
18 company should be regulated.

19 Q. Okay. Has that been told to you or have
20 you looked that up in prior -- see, I'm asking before
21 1983. From 1965 to 1983, do you know what the
22 Commission did in terms of regulating the rates of
23 Olympic Pipe Line Company?

24 A. All I know is that the company presented
25 memos by Mr. Colbo where rates were approved without

1 any findings. Therefore, the Commission didn't
2 determine what was the appropriate way for regulating
3 the pipeline, but they did allow rates to go into
4 effect.

5 Q. Will you accept, subject to check, that's
6 from 1983 to the present? My question is, from 1965
7 to 1983, do you know how rates were regulated for
8 Olympic Pipe Line Company?

9 A. I have not read anything concerning what
10 has happened from '63 to '85.

11 Q. Have you looked at any of the rate filings
12 from 1965 to 1983 to determine the basis on which the
13 request for tariffs were made on behalf of Olympic
14 Pipe Line?

15 A. I haven't seen any, no.

16 Q. Do you know whether rates for Olympic Pipe
17 Line have ever been set on any basis other than the
18 FERC methodologies then in existence, from 1965 to
19 the present?

20 A. I don't know that they've been established
21 on the FERC methodologies, so the answer is no to
22 your question, plus I don't believe they've been set
23 on the FERC methodology, either.

24 Q. But -- okay. Let's ask the question
25 directly. Have any of Olympic Pipe Line's rates been

1 say you've read about alleged differences between oil
2 pipelines and other industries. Are there any
3 differences that you have determined actually exist
4 between oil pipelines and other industries?

5 A. Well, I have to agree that there's a
6 difference between oil pipelines and electric and gas
7 utilities, because they come under a different
8 statute, but that's a legal determination, which I
9 can't make.

10 Q. But in your mind, there's no difference
11 between oil pipelines and other utilities insofar as
12 their businesses are organized and their histories
13 are determined?

14 MR. TROTTER: Well, excuse me, Counsel.
15 Your question was whether he, as I understood it,
16 your question was whether he noticed any differences
17 that would justify a different rate methodology.

18 MR. MARSHALL: My question now is broader.
19 My question's broader.

20 MR. TROTTER: So the fact that they
21 transmit oil instead of natural gas, that's an
22 obvious differences, but so what? I guess I'll
23 object to the question because it's meaningless. And
24 I'll direct you not to answer until it can be
25 clarified.

1 set on the WUTC method in the past, from 1965 up to
2 the present?

3 A. Not to my knowledge.

4 Q. Are there unique characteristics in oil
5 pipeline companies, oil pipeline company regulations
6 that have occurred to you from reading the different
7 opinions in other materials that you have looked at
8 since last year?

9 A. I'm sorry, I don't understand the question.

10 Q. Have you formed any opinions on whether oil
11 pipelines have been historically regulated on a basis
12 different than, say, electric utilities or telecoms
13 in the United States?

14 A. If your question is does FERC regulate
15 different than the state, the answer is yes.

16 Q. And have you seen any basis for why the oil
17 pipeline industry is different than other industries
18 for rate regulation purposes? Have you seen any
19 differences at all in your review of any of the
20 materials since you began working on this matter?

21 A. I have read some of the alleged differences
22 of competition, of new pipelines and old pipelines.
23 I don't think any of those differences apply in this
24 state.

25 Q. Are those the only different -- I mean, you

1 Q. Were you here for Mr. Elgin's testimony
2 about some of the striking issues with oil pipelines
3 versus other types of companies?

4 A. You mean today?

5 Q. Yeah.

6 A. I was here, yes.

7 Q. And high fixed cost costs, capital
8 intensive were a couple of things he mentioned.
9 Remember that?

10 A. I remember him discussing the issues that
11 are beyond the scope of my testimony, so I rely upon
12 him for that knowledge.

13 Q. Do you understand that there's a different
14 regulatory history for oil pipelines than there are
15 for other types of regulated companies in the United
16 States?

17 A. I know that the oil pipelines were
18 regulated by the ICC and then, because of problems
19 with the way the ICC was regulating them, the courts
20 took it out of their hands and put it into the FERC.
21 I believe it was the courts, maybe it wasn't, but it
22 changed from the ICC to the FERC, I think in '76, and
23 there's problems with the way that FERC has regulated
24 pipelines that are discussed in these articles that
25 I've read.

1 Q. Turn to page 26 of your testimony for a
 2 moment.
 3 A. I have it.
 4 Q. Okay. Do you see at Line 16 where you have
 5 the cost of reproduction new, the CRN?
 6 A. I see that.
 7 Q. Do you see that? And then at page 27 at
 8 the top, you say CRN is the estimated cost of
 9 replacing an asset at current market prices. Do you
 10 see that?
 11 A. Yes, I do.
 12 Q. Is that part of the history of rate
 13 regulation, using the federal approach, or do you
 14 know?
 15 A. It's the approach that Olympia -- is what
 16 I'm explaining here is Olympic's interpretation of
 17 how the case should be presented based on Opinion
 18 154-B.
 19 Q. Are you familiar with this cost of
 20 reproduction new idea? Have you ever heard of CRN
 21 before this case?
 22 A. Yes, CRN is a common term used. I do not
 23 put myself up as an expert on all of the ins and outs
 24 of regulating on cost reproduction new.
 25 Q. Have you heard of CRN being used to set

1 they've used. They supplied me with this worksheet,
 2 which they said was the approach that they used. I
 3 reviewed that and found that I didn't feel it was
 4 appropriate for ratemaking purposes.
 5 Q. So just to make sure I understand your
 6 question, if Olympic is using a federal ratemaking
 7 approach for oil pipeline companies, you didn't try
 8 to determine whether that was correct under federal
 9 regulations; you just tried to determine whether you
 10 thought that was a good approach based on your
 11 familiarity with Washington state ratemaking
 12 methodology; is that correct?
 13 MR. TROTTER: I'll object to the question.
 14 He very clearly stated that he evaluated the
 15 company's presentation and the FERC methodology.
 16 You've asked this question five or six times, so I'm
 17 going to object on the basis that it's asked and
 18 answered and you've mischaracterized his testimony
 19 again.
 20 Q. But I'm not trying to. That's why I'm
 21 trying to ask you the question. I want to
 22 understand. When Olympic tried to state something
 23 like its application of the cost of reproduction new
 24 using FERC approaches to ratemaking, you didn't go
 25 back to look to see whether that was the way FERC, in

1 rates using any federal methodology in the past?
 2 MR. TROTTER: Could I have the question
 3 read back or can you rephrase it?
 4 MR. MARSHALL: I'll rephrase it.
 5 MR. TROTTER: Thank you.
 6 Q. Have you ever heard of cost of reproduction
 7 new being used as part of the federal ratemaking
 8 process for oil pipelines?
 9 A. For oil pipelines, no. I do know that
 10 they've used CRN. And when they do replacement costs
 11 new rate base, they then have to make adjustment to
 12 projected revenues, expenses, so you match the
 13 revenues and expenses with the rate base.
 14 Q. I'm not sure I understood your answer. Is
 15 your answer that you do not know how the federal
 16 methodology uses the cost of reproduction new or you
 17 do know how they do it?
 18 A. I know how the company has presented it in
 19 this case.
 20 Q. But you don't know how the federal
 21 regulators do it, is that what you're saying?
 22 A. I have not tried to become an expert on the
 23 FERC method of ratemaking. I've tried to understand
 24 the company's case as they've presented it. They
 25 have not provided witnesses to support the method

1 fact, does it; you just determined whether you
 2 thought that was a good thing to do or not; is that
 3 right?
 4 A. From my understanding of what has been
 5 given me as a summary of Opinion 154-B, the company
 6 has tried to present this cost of reproduction new
 7 according to the FERC methodology Opinion 154-B.
 8 When I reviewed that, I determined that is an
 9 inappropriate way to set rates for a pipeline company
 10 in the state of Washington, and the case was not
 11 supported, rates should not be based on that basis.
 12 Q. And what I'm trying to find out is you
 13 didn't then take the next step to say that would be
 14 not appropriate at the FERC?
 15 A. I didn't take the step to see if that's
 16 what actually FERC does; therefore, I can't determine
 17 if the FERC method is appropriate. But if the
 18 company presents this method to the FERC, I think it
 19 would be inappropriate there.
 20 Q. You think it would be inappropriate based
 21 on how they do it or based on just your general
 22 principles of how you think things should be done?
 23 A. Based on the general principles as a
 24 company's entitled to a return on and of its rate
 25 base, which is providing service, which is provided

1 by investors.

2 Q. So I don't mean to be unfair to you, but I
3 guess what you're saying is that you really haven't
4 studied the FERC methodology to find out how it
5 actually gets applied; you just didn't want to apply
6 it because you didn't think it was appropriate; is
7 that right?

8 MR. BRENA: Objection, mischaracterization.

9 MR. TROTTER: I'll object to the testimony.
10 He said almost innumerable times the company provided
11 him what the company said was their presentation, he
12 told you he read the FERC orders, he applied what the
13 company told him it did and analyzed what the company
14 proposed in this case and made his conclusions. Can
15 it be any more clear than that, Mr. Marshall? I'm
16 just going to object. If I need to go and have Mr.
17 Wallis order this line of inquiry to stop, because
18 it's been asked and answered five times, let's do
19 that.

20 Q. You're not an expert on FERC methodology;
21 true?

22 A. That's true. I do not set myself up as an
23 expert.

24 Q. And if I were to ask you to determine rates
25 for an oil company based on FERC methodology, you

1 wouldn't be able to do it; right?

2 A. I can't agree with that. I might not be
3 able to do it with the knowledge I have right now,
4 but I feel that I could probably study the approach
5 that they use and be able to present a case based on
6 their use. I don't know that I'd agree with it.

7 Q. By the time of the hearings in June, if I
8 were to ask you to set rates as FERC would set them
9 for an oil pipeline company, you would have time to
10 become an expert enough to do it; true?

11 MR. TROTTER: I'll object to the question,
12 because no one knows how FERC will do it, because a
13 lot of their concepts depend on a case-by-case basis.
14 So the question is impossible to answer without
15 knowledge of the future that no one has. Again, this
16 witness has testified very clearly, he asked the
17 company what method they applied, they told him, they
18 gave him two sheets of paper explaining in detail
19 what they did, and Mr. Twitchell has responded.
20 That's a perfectly rational approach.

21 Q. When you asked the company for the papers,
22 you asked Mr. Batch for this?

23 A. No, I didn't. Mr. Colbo and I went to the
24 company to understand the company's rate case. We
25 went through Exhibit CAH-4 thoroughly with Ms. Hammer

1 and Mr. Collins, asking several questions about the
2 methodology which was followed. I asked them
3 specifically to explain to me the FERC methodology,
4 which they were presenting in the case. Later on,
5 over lunch, Mr. Batch came in and talked to us, and
6 at that time he gave me these two sheets of paper
7 saying this was the approach that they had used.

8 Q. This wasn't part of a data request; is that
9 right?

10 A. This was not a data request, it's nothing I
11 asked for. I had asked if they would explain the
12 approach that they had used. He handed this to me to
13 assist me in my analysis.

14 Q. After you got that, did you then call up
15 Mr. Collins or Mr. Schink or any of the experts for
16 Olympic on FERC methodology to ask them how to apply
17 this?

18 A. I have a problem with your characterization
19 that they are the experts on the FERC methodology.
20 The FERC methodology had been presented by Ms. Hammer
21 and Brett Collins. We asked them specific questions
22 of what they were doing. If they wanted to use other
23 witnesses to answer those questions, they were more
24 than welcome to receive any information from them
25 they could.

1 Q. After you got this material, you studied it
2 some, is that right, these two pages from Mr. Batch?

3 A. When I got this material, I continued to
4 try to understand the company's case. As I came to
5 understand it more thoroughly and began writing my
6 testimony, I compared this document to what had been
7 presented and felt that that helped me in presenting
8 my testimony.

9 Q. As you were working on your testimony and
10 reading these two pieces of paper, did you then call
11 up Ms. Hammer, Mr. Collins or Mr. Schink and ask them
12 any further questions?

13 A. No, I did not.

14 MR. TROTTER: Counsel, we had a full day of
15 depositions of those witnesses. When you say call
16 up, you mean telephone or ask them questions on the
17 record at deposition? Did you literally mean
18 telephone or did you mean --

19 Q. Well, you've had access to Olympic's
20 experts and witnesses on a free basis, haven't you?
21 Any time you wanted to call them, you'd feel free to
22 give them a call; is that fair to say?

23 A. No, I'd say it's not free. We have had
24 conversations with them, but the calls have been
25 orchestrated by the company.

1 Q. You've gone there to their offices, you've
2 gone down to Houston with people from Olympic, you've
3 called them up from time to time on the telephone; is
4 that right?

5 A. I've had conversations with them on the
6 phone, I've been down to their office in Renton, and
7 I went to Houston, yes.

8 Q. Okay. Now, do you have any specific
9 recollection, as you were working on your testimony,
10 of calling anybody at Olympic to ask them questions
11 about how to apply those two pieces of paper to your
12 testimony?

13 MR. BRENA: Asked and answered.

14 THE WITNESS: I have not -- I have not
15 asked them about these two pieces of paper. I've
16 asked them about Exhibit CAH-4 to understand how they
17 made their calculations. And I became very familiar
18 with all the sheets and schedules in that work paper.
19 I analyzed what was done and made my opinions based
20 on answers to those questions and my evaluation of
21 them.

22 MR. BRENA: Steve, I'm very concerned about
23 getting through these three witnesses today. It's
24 3:15 now and -- can you give me some estimate of how
25 this is going, because we need to be through today.

1 Q. But you thought it would, at one point,
2 before you read that, you thought that would be a
3 fair application of ratemaking principles to have
4 that refund not be made?

5 MR. TROTTER: You mean ratemaking --
6 Counsel, do you mean -- I'd ask for clarification.
7 Do you mean ratemaking principles other than those
8 evidenced in the Commission's Third Supplemental
9 Order?

10 MR. MARSHALL: Yeah. Well, let me --

11 MR. TROTTER: Page 19?

12 Q. -- step back. When you wrote down your
13 initial opinion about whether interim rates should be
14 refunded, what rationale did you have for that?

15 A. My rationale at that time was that the
16 Commission had not -- I mean, that Olympic had not
17 been able to generate revenues through throughput
18 that were sufficient to give them -- there wasn't a
19 rate of return established, so I didn't know what it
20 was, but I felt that Olympic's throughput was low
21 enough that they most likely had not experienced a
22 rate of return which they would be entitled to. And
23 upon further review of the order, I realized the
24 Commission had ordered that any revenues collected
25 under this tariff were to be collected subject to

1 MR. MARSHALL: Okay. I don't know if I'll
2 have a lot more with Mr. Twitchell.

3 Q. Now, in your testimony, you recommend that
4 the interim rates not be refunded. Remember that?

5 MR. TROTTER: Object to the question. An
6 errata was issued to delete that sentence. It's no
7 longer in his testimony. It is not his testimony.

8 Q. At one time, it was your testimony that the
9 --

10 MR. TROTTER: I'll object to the question.
11 It is not testimony until it is put into evidence as
12 testimony, so it never was his testimony. But if it
13 was on a piece of paper at one point in time, you may
14 want to ask him that.

15 Q. Yeah. Did you ever write down your opinion
16 on whether the interim rates should be refunded?

17 A. Yes, I did, but in reviewing the interim
18 order that superseded what I was thinking would be
19 appropriate at the time, the interim order basically
20 states, on page 19, I believe, that any revenues
21 collected under this tariff sheet are collected
22 subject to refund based on the level of permanent
23 rates found to be appropriate. And after reading
24 that, and reviewing my testimony, I realized I was in
25 conflict with what was in the order.

1 refund, and I realized that I was mistaken in even
2 considering this approach.

3 Q. In making rates, there are a number of
4 choices that have to be made along the way; is that a
5 fair general statement about ratemaking?

6 A. I don't understand your first part of the
7 sentence. Could you reread it or restate it?

8 Q. Sure. In making rates, there are a number
9 of determinations --

10 A. Excuse me. Do you mean in setting rates?

11 Q. In setting rates.

12 A. Okay. Thank you.

13 Q. In setting rates, a number of
14 determinations have to be made about, you know,
15 whether something should be capitalized, something
16 should be expensed, something should be included in
17 rate base, something shouldn't be included in rate
18 base. There's just a whole series of choices that
19 have to be made; right?

20 A. That's correct.

21 Q. And it's more of an art than a science; is
22 that fair to say?

23 A. Well, accounting's an art and it uses
24 accounting to do it, so --

25 Q. Right.

1 A. The idea that accounting's an art, I'll say
2 it's an art.

3 Q. And in this case, there are a number of
4 opinions, even between Staff and intervenors, about
5 what's appropriate and what isn't; right?

6 A. I don't know. I know that the intervenors
7 have a different opinion than the Staff does. I know
8 the company has a different opinion than the Staff or
9 the intervenors have, but I -- I don't know how to
10 answer your question, what those differences of
11 opinions are.

12 Q. In your work papers on pipeline safety,
13 Number 15, do you see that in your book?

14 A. Yes.

15 Q. What impact did that have on your opinions
16 in this matter?

17 A. I requested this information to find out
18 how long it would be before the Olympic Pipe Line
19 would be at a hundred percent pressure. I was led to
20 believe that this document would answer that
21 question, which it didn't. So it had -- the only
22 impact it had on me is that this document didn't end
23 up being what it was portrayed that it would be.

24 Q. Did you make any other inquiries on when
25 that pressure restriction would be lifted?

1 presented. Do you or do you not know whether or not
2 the company has properly presented a FERC 154-B
3 approach?

4 A. I feel they have not properly presented
5 154-B or 154-C. It doesn't -- I don't feel the
6 company has presented their case accurately as a
7 154-B. I haven't reviewed the other methodologies of
8 FERC to see if it's in conformity with those
9 methodologies.

10 Q. Why do you say that the company presented a
11 nonconforming 154-B approach?

12 A. The main thing that I found -- Number Five
13 of Opinion 154-B says that the oil pipeline should
14 use their actual interest expense in computing their
15 income tax allowance in their cost of service. The
16 company booked \$8 million worth of interest expense,
17 but for purposes of the rate case, they used, I
18 believe, \$674,000, so that had a tremendous impact in
19 the federal income taxes in the case, therefore
20 increasing the amount of revenue requirement. That
21 was not in conformity with the summary of Opinion
22 154-B.

23 Q. Are there other things that you feel
24 they're out of compliance with with regard to 154-B?

25 A. I think they're out of compliance with 154

1 A. No, I didn't. I made this -- I talked --
2 excuse me, I have. I talked to the company several
3 different times and asked them off the record -- it
4 wasn't a data request, but an informal request, what
5 would be the impact of a hundred percent pressure,
6 how soon they would be able to accomplish a hundred
7 percent pressure, and verbally, as I was told, they
8 weren't sure.

9 MR. MARSHALL: Okay. I don't have any
10 further questions. Go ahead.

12 EXAMINATION

13 BY MR. BRENA:

14 Q. Good afternoon, Mr. Twitchell.

15 A. Good afternoon.

16 Q. In your judgment, are there any differences
17 between the regulation of an oil products line that
18 should result in an application of a methodology
19 different than the traditional depreciable original
20 cost methodology?

21 A. I could determine no difference that should
22 be applied to an oil pipeline than any other
23 regulated utility in this state.

24 Q. You indicated that you had perceived
25 problems with the FERC approach that the company had

1 with their calculation of AFUDC. On the deferred
2 return and the starting rate base, I'm not sure if
3 they're in compliance or not. One of the biggest
4 problems with trying to find out if the company's in
5 compliance with FERC is that their financial records
6 are in such a state, they have not been audited by a
7 CPA, they have not been certified by management or a
8 CPA that they're accurate. We found many errors in
9 the accounting of the company, many things we
10 couldn't trace.

11 The Whatcom County explosion caused many
12 things on the balance sheet and income statement that
13 had to be removed and it made it almost impossible to
14 have any faith in the books of the company as a
15 starting point for determining what was appropriate.

16 The work papers of the company, in
17 presenting the FERC methodology, the company didn't
18 even have -- they told us they received those work
19 papers from Mr. Collins. Mr. Collins portrayed that
20 he received that information from FERC Form 6, which
21 I don't believe the FERC Form 6 has enough detail to
22 give him the information he used. And Mr. Collins
23 admitted he was not an expert on the FERC
24 methodology, so he couldn't even testify that he had
25 presented the work papers in the CAH-4 Exhibit,

1 according to the FERC methodology, Ms. Hammer said
2 she couldn't do it, so the company provided no
3 witness, no testimony to state that the work papers
4 used to present the case were true and accurate, to
5 the best of their knowledge. Therefore, I don't know
6 how I could determine that.

7 Q. It's your testimony that Mr. Collins
8 acknowledged to you that he was not an expert with
9 regard to FERC methodology 154-B?

10 A. He presented that in deposition.

11 Q. Okay. You're speaking about his sworn
12 testimony in the deposition?

13 A. That is correct. I state that in my
14 testimony and give a cross-reference where that can
15 be found.

16 Q. You've stated a couple times that the
17 company hasn't advanced any witness to support the
18 methodology that it's used. Do I correctly
19 characterize what it is that you've testified to
20 today?

21 A. In that statement, yes. I don't feel that
22 the company put a witness on the witness stand or
23 presented testimony or exhibits to explain their case
24 and why it's appropriate for ratemaking purposes.

25 Q. You mentioned that you have been reviewing

1 THE WITNESS: The only way I can answer
2 that question is I feel that it is the responsibility
3 of Staff to provide the Commission with the ability
4 to make a decision from the record they're presented
5 with. In my testimony, I've stated many of the
6 problems I've had with this case, the basis for the
7 analysis that we made, the flaws in it, and hope that
8 the Commission will take into consideration the
9 weakness of the case in making the decision.

10 I have made a recommendation -- Mr. Colbo,
11 Mr. Elgin, Mr. Wilson and I -- on what rates should
12 be in this company with that caveat. So I hope that
13 answers your question.

14 Q. I think it does. I used the phrase prima
15 facie case, which I think is what drew the
16 objections. You used the phrase burden of proof that
17 you've never seen so little support for a company to
18 meet its burden of proof. Do you think that this
19 company, through its direct case, has met its burden
20 of proof?

21 MR. MARSHALL: Same objection. It's a
22 legal conclusion.

23 MR. TROTTER: I'll join that objection.

24 Q. I'll withdraw the question. You also
25 mentioned to Mr. Marshall in your testimony today

1 cases for 30 years?

2 A. That's correct.

3 Q. How would you characterize Olympic's
4 presentation of support for its rate filing in
5 comparison with other cases that you've had the
6 experience of working on over those 30 years?

7 A. I have never experienced a company the size
8 of Olympic to present a case with so little support
9 in meeting their burden of proof. I have, at times,
10 audited water companies where they didn't keep books,
11 but had all the receipts in a shoe box that we had to
12 reformat what should be in the rate base and what
13 should be in the results of operations, so I have to
14 say that I've never seen a company of this size
15 present a case with less support than this one has
16 and with so many problems to have to deal with.

17 Q. Do you believe that their direct case
18 presents a prima facie case in support of a rate
19 increase?

20 MR. TROTTER: I'll object to the extent
21 that asks for a conclusion of law.

22 MR. MARSHALL: I join.

23 THE WITNESS: Can I answer it now?

24 MR. TROTTER: Yes, you can, if you can
25 answer it.

1 that you had problems with the FERC approach. What
2 problems did you have with the FERC approach?

3 A. I have to qualify the answer. The approach
4 that Olympic presented as a FERC approach is what I
5 had problems with. The problem I had with it is that
6 it did not have financial data that it could provide
7 the Staff with to support their calculation from 1984
8 to the year 2000.

9 The calculations that they used in their
10 Exhibit CAH-4 included a return on equity, which they
11 are asking for in this case, which I think is
12 inappropriate. They have presented financial
13 material with no support for it. I've already talked
14 about the interest expense calculation, which I feel
15 is -- I don't even know what their interest expense
16 really is. I don't know if it's the \$8 million they
17 have on their books or if it's the 674 they have in
18 their work papers or if the interest expense
19 associated with the regulated portion of the business
20 is some other number.

21 So I could go on and on. Where do you want
22 me to go? Where do you want me to stop? I've just
23 had tremendous problems with this case.

24 Q. Do you think, in the state of Washington, a
25 public service company should receive a return on

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1 investment or of investment for investment that it
 2 didn't make?
 3 A. I believe my testimony answers that
 4 question very thoroughly. I feel that they should
 5 only make a return on and of investment that
 6 investors have made that is used to provide the
 7 regulated service.
 8 Q. Would your answer vary based on -- based on
 9 the history of oil pipeline regulation on the federal
 10 side? Should that impact your thinking?
 11 A. I don't know how I can answer that, because
 12 I haven't made a study of what the federal regulation
 13 of the oil pipeline is.
 14 Q. Are you aware of any state that has adopted
 15 the federal approach to oil pipeline regulation?
 16 A. I believe, in depositions of the company,
 17 it was brought out that Wyoming has rejected the FERC
 18 methodology, but I don't know of that knowledge
 19 firsthand. I just -- that's what I heard in
 20 testimony.
 21 Q. You mentioned that your -- that the calls
 22 with the experts were orchestrated by the company.
 23 You used the word orchestrated. Would you explain
 24 what you meant by that?
 25 A. The company called me up and let me know

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1 Q. So when you put pen to paper, what you had
 2 in mind was is that the ultimate rate would be
 3 roughly what the interim rate would be, and so you
 4 put the language in indicating if there wasn't an
 5 overcollection, that it shouldn't be refunded. Was
 6 that the process?
 7 A. Yeah, it was. I'm surprised you knew that.
 8 Q. So it proved to be factually incorrect
 9 because there were overcollections?
 10 A. Yes, after we applied Mr. Wilson's overall
 11 rate of return to our work papers, found that the
 12 company needed a rate increase, I believe it was
 13 78,000 Washington intrastate, which was much less
 14 than the interim rates it granted them.
 15 Q. And if this Commission ultimately
 16 determines that there are overcollections over the
 17 interim rate because the permanent rate, and you
 18 think -- would you agree that it's sound public
 19 policy that those overcollections should be refunded?
 20 A. I can't make a determination of that. I do
 21 know that in the order the Commission has stated that
 22 they should be refunded, and I have to base my
 23 decision on what the Commission has directed in this
 24 case. There are a lot of circumstances concerning
 25 that that -- I can't answer that question.

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1 they wanted me to make a call to Brett Collins,
 2 because he had questions concerning my Data Request
 3 376. I made that call. At another time, after he
 4 had answered 376 Data Request -- WUTC Staff Data
 5 Request 376, and I hope that number's right, they
 6 asked Bob and I -- Mr. Colbo and I to have a
 7 conversation with him and see if we could see if that
 8 answer was complete, and we did.
 9 We did not make, to my knowledge, calls to
 10 anybody except Ms. Hammer, who I understood was our
 11 go-between between the company and the Staff, unless
 12 advised otherwise.
 13 Q. In your testimony, Mr. Marshall drew your
 14 attention to a sentence, which was subsequently
 15 deleted as an errata, that suggested that there not
 16 be refunds. Do you have that sentence in mind?
 17 A. Yes, I do.
 18 Q. Part of the sentence indicates that Olympic
 19 has not overearned. Was your original drafting of
 20 that sentence done at a time and place when you were
 21 not fully aware of what Staff's ultimate conclusion
 22 for the rate should be?
 23 A. Yes, but at the time I wrote that down, I
 24 did not know what the -- Mr. Wilson's recommendation
 25 would be on overall rate of return.

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1 Q. Just in regulatory concepts, overearnings
 2 should be returned to the ratepayers, shouldn't they?
 3 A. If you can determine -- no, in regular
 4 concepts, a company is authorized a rate of return by
 5 the Commission. If they overearn, they're allowed to
 6 keep those revenues. If they underearn, it's their
 7 responsibility to come in for a rate increase. The
 8 Commission does not like to get into micromanaging of
 9 a company; therefore, they give them an authorized
 10 rate of return and give them the opportunity to make
 11 that, and if their earnings are in excess, it's up to
 12 the Commission or the Staff to then bring forth a
 13 complaint against the company to reduce those rates.
 14 Q. Let me draw a distinction, because I
 15 believe you just answered a question with regard to a
 16 permanent rate. Your subsequent answer is the
 17 appropriate analysis to draw for a Commission when
 18 there's a final permanent rate in effect; correct?
 19 A. That's correct.
 20 Q. If there's a suspended rate subject to
 21 refund in effect, then the analysis that you've just
 22 set forward is not correct; is that right?
 23 MR. TROTTER: I'll object to the question.
 24 It needs to be very case-specific. Are you asking as
 25 a general matter or in this case?

1 Q. Well, we started down this road when I
 2 said, as a general proposition, shouldn't
 3 overcollections be refunded to the ratepayer. And I
 4 was assuming in my question that we were speaking
 5 about a suspended rate subject to refund, and I
 6 believe he assumed in his answer we were talking
 7 about a final rate not subject to refund. And so I'm
 8 just trying to have the witness go back and clarify
 9 if my understanding of our misunderstanding was
 10 correct.

11 MR. TROTTER: Thank you.

12 THE WITNESS: I'm going to try and answer
 13 that, because there's a lot on the table right now.
 14 The Commission, in its interim order, said that
 15 refunds will be granted. Because they've already
 16 made that determination, I have no right to find a
 17 different finding than they did.

18 If I had reason to believe that in their
 19 order they had erred, I could make a recommendation
 20 differently. I did not mean to do that in this case,
 21 because it is my understanding that the company has
 22 -- may very well have overearned with the interim
 23 rates, based on our analysis.

24 Q. So nothing in your testimony or in your
 25 errata should be interpreted to suggest in any way

1 Q. Okay. Could we go off the record for just
 2 a minute, please? Back on the record. You were
 3 asked a series of questions with regard to whether
 4 you had a standard of comparison as between Olympic
 5 and other oil companies who manage oil pipelines
 6 across the United States. Do you recall that line of
 7 questioning?

8 A. Yes, I do.

9 Q. What was typical and not typical, and I
 10 believe you said that your experience and research
 11 had not really reached those issues; is that fair to
 12 say?

13 A. That's correct.

14 Q. Are you aware of any regulated company, in
 15 your experience, which refuses to invest the
 16 necessary capital to make safety improvements unless
 17 they get a rate increase?

18 A. There are cases with the Commission, mainly
 19 in water cases, where a company has to make
 20 significant investments in plant that will not
 21 generate any more revenues, and the company is unable
 22 to finance, to pay for the company. The Commission
 23 will grant them rates to be able to build that plant.

24 I can't comprehend the Commission using
 25 that approach with this company when the parent

1 that the Commission may have erred in its interim
 2 rate order in which it stated that, to the degree
 3 that the interim rate exceeds the permanent rate set,
 4 those funds shall be refunded; correct?

5 A. That's correct. And if I would have been
 6 aware of that statement in the order before I made
 7 this statement, if I felt this way, I would have
 8 spelled out the reasons why, rather than just making
 9 a blank statement.

10 Q. My clarification with regard to our
 11 misunderstanding on general regulatory principles, if
 12 a rate is refundable, then a company doesn't
 13 necessarily get to keep the overcollection under a
 14 refundable rate; correct?

15 A. I believe that has to be left to the
 16 decision of the Commissioners, and I can't make that
 17 decision.

18 Q. But it's true to say that it doesn't fall
 19 under your prior analysis where a company just gets
 20 to keep it unless there's an investigation initiated
 21 because it's suspended under investigation subject to
 22 refund; correct?

23 A. It's my understanding that if you're going
 24 to divert from what the Commission ordered, you have
 25 to have a reason for diverting.

1 company's as large as BP.

2 Q. Okay. Let me explore, so I understand, the
 3 water cases first. Is that a situation in which the
 4 company doesn't have the opportunity to recover that
 5 investment through future rates?

6 A. I believe that's the way the Commission has
 7 handled it in most cases, that if they provide a
 8 surcharge, then they are not allowed to include that
 9 in rate base. I would recommend that you defer
 10 answers to that question to Bob Colbo. He is in a
 11 responsible position to know exactly what we've done
 12 with water companies. I have not spent a lot of time
 13 in ratemaking in water companies since the first few
 14 years of my experience with the Commission.

15 Q. Okay. Is there any reason to believe that
 16 if Olympic and/or its owners invest the money
 17 necessary for the safety improvements, that they
 18 would not be able to recover that through future rate
 19 increases?

20 A. As long as those expenditures were prudent
 21 and found to be appropriate for the regulated
 22 industry, it's my understanding that the Commission
 23 would include those in the rate base and give them
 24 the opportunity to make a return on and of that
 25 investment, which would allow them to pay back any

1 debt accumulated to build that plant, or the
2 investors would receive a return on that investment
3 sufficient to cover their cost.

4 Q. Do you think, under any set of
5 circumstances, it would be in the public interest to
6 require a rate which had the ratepayer fund up front
7 for the improvements and then also allow Olympic to
8 include those improvements in its rate base and
9 recover those through depreciation and also earn a
10 return?

11 A. I think that would be inappropriate
12 ratemaking.

13 Q. Why?

14 A. Because the -- this is the problem you get
15 into in ratemaking when you increase rates so the
16 company has enough money to build the plant. As soon
17 as you do that, the rates becomes the property of the
18 company. Therefore, it's stockholders' funds. So
19 unless the Commission spells out very clearly that
20 those funds will be used for the building of plant
21 and that plant will not be included in the rate base,
22 a regulator would be hard pressed to argue that those
23 funds were ratepayers' funds, rather than investors.

24 And so, for this reason, because it gets
25 circular, it is important that a company finance any

1 A. That's a legal --

2 MR. MARSHALL: That calls for --

3 MR. TROTTER: Yeah, I'll object on the
4 basis it calls for a legal conclusion.

5 THE WITNESS: It's a legal interpretation.
6 I would rather not.

7 Q. Okay. If we can go off the record for just
8 one more moment. Back on the record. Mr. Twitchell,
9 you mentioned two pages that Mr. Batch had provided
10 to you with regard to what they did. Do you know
11 whether or not those have been provided to Tesoro?

12 A. No, and to be honest with you, when I
13 received them, I didn't know they were going to be
14 very critical. I thought it was nice to have. Or we
15 would have provided it.

16 MR. TROTTER: Just for the record, Counsel,
17 I think this is in the second Tab 20 of certain of
18 Mr. Twitchell's work papers, a copy of which was
19 delivered to you in person today. So it should be in
20 the box in the room.

21 MR. BRENA: Okay. Thank you. I have no
22 further questions.

23

24 EXAMINATION

25 BY MR. TROTTER:

1 construction program they have and then receive a
2 return on and of, rather than receive it in advance,
3 because of the conflict you get into of whose funds
4 are they now that they're in rates.

5 Q. Do you understand any reason why Olympic or
6 its parents would be unwilling to advance the capital
7 necessary to make these capital improvements given
8 your answer that they should be able to recover them
9 in future years if they're prudently expended?

10 A. All I can say to that is that Olympic and
11 BP have the opportunity to operate this pipeline at a
12 level that they'll have the opportunity to make the
13 rate of return which the Commission feels is
14 appropriate. That rate of return should be
15 sufficient for them to get the financing to do any
16 construction project that is necessary.

17 Olympic and BP have the right to manage
18 their own company. They can either choose to build
19 the plant or they can choose to sell the plant. I
20 don't believe that BP or Olympic would be prudent in
21 their decision to shut the pipeline down, because
22 then they would lose the whole investment.

23 Q. Is it your understanding, in the statutory
24 scheme in the state of Washington, that Olympic has
25 an obligation to provide adequate service?

1 Q. Mr. Twitchell, I believe you may have
2 indicated that you do not believe Mr. Collins was an
3 expert on FERC methodology. Do you recall that
4 statement?

5 A. Yes, I do.

6 Q. You also said you dealt with the transcript
7 on that in your testimony. Would you turn to page
8 seven and eight of your testimony?

9 A. Okay.

10 Q. And beginning on line 19, you refer to Mr.
11 Collins, and it goes on to the top of the next page;
12 is that right?

13 A. Yes.

14 Q. Is that the testimony that you had in mind
15 when you made your answer?

16 A. Yes, it is, and I --

17 Q. And does that testimony literally state
18 that he said he was not an expert?

19 A. No, and I misstated by making that comment.

20 Q. Do you know whether he is or is not?

21 A. I don't know if he's an expert on FERC
22 methodology or not.

23 MR. TROTTER: Okay. That's all I have.

24 One moment. Off the record. That's all I have.

25 Thank you, Mr. Twitchell.

1 MR. MARSHALL: Just one follow-up question.

2
3 EXAMINATION

4 BY MR. MARSHALL:

5 Q. Are you an expert on FERC methodology?

6 A. Absolutely not.

7 MR. MARSHALL: Okay.

8 MR. TROTTER: We're off the record.

9 (Signature reserved.)

10 (Deposition concluded at 4:00 p.m.)

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1 CERTIFICATE
2 STATE OF WASHINGTON)
3) ss.
4 COUNTY OF KING)

5 I, the undersigned Notary Public in and for
6 the State of Washington, do hereby certify:

7 That the annexed and foregoing deposition
8 of each witness named herein was taken
9 stenographically before me and reduced to typewriting
10 under my direction;

11 I further certify that the deposition was
12 submitted to each said witness for examination,
13 reading and signature after the same was transcribed,
14 unless indicated in the record that the parties and
15 each witness waive the signing;

16 I further certify that all objections made
17 at the time of said examination by my qualifications
18 or the manner of taking the deposition, or to the
19 conduct of any party, have been noted by me upon said
20 deposition;

21 I further certify that I am not a relative
22 or employee or attorney or counsel of any of the
23 parties to said action, or a relative or employee of
24 any such attorney or counsel;

25 I further testify that I am not in any way

1 _____
2 Maurice L. Twitchell

3
4
5
6
7
8 STATE OF WASHINGTON)
9) ss.
10 COUNTY OF _____)

11
12
13
14 SUBSCRIBED AND SWORN to before me this
15 ____ day of _____, 2002.

16
17
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21 _____
22 Notary Public in and for
23 the State of Washington, residing at _____.

24
25

1 financially interested in the said action or the
2 outcome thereof;

3 I further certify that each witness before
4 examination was by me duly sworn to testify the
5 truth, the whole truth, and nothing but the truth;

6 I further certify that the deposition, as
7 transcribed, is a full, true and correct transcript
8 of the testimony, including questions and answers,
9 and all objections, motions, and exceptions of
10 counsel made and taken at the time of the foregoing
11 examination.

12
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my official seal this ____ day of
15 _____, 2002.

16
17
18
19 _____
20 BARBARA L. NELSON
21 Notary Public in and for
22 the State of Washington,
23 residing at Seattle.

24
25