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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND ) Docket No. TO-011472  
TRANSPORTATION COMMISSION, ) Volume II

4

) Pages 95 to 239

Complainant, )

5

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vs. )

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OLYMPIC PIPELINE COMPANY, )

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INC., )

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Respondent. )

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A prehearing conference in the above matter

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was held on December 6, 2001, at 1:30 p.m., at 1300

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South Evergreen Park Drive Southwest, Room 108, Olympia,

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Washington, before Administrative Law Judge ROBERT

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WALLIS.

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The parties were present as follows:

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THE COMMISSION, by DONALD T. TROTTER, Senior  
Assistant Attorney General, and by LISA WATSON,  
Assistant Attorney General, 1400 South Evergreen Park  
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OLYMPIC PIPELINE COMPANY, INC., via  
telephone, by PATRICK W. RYAN, Attorney at Law, Perkins  
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Joan E. Kinn, CCR, RPR

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Court Reporter

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1                   TOSCO CORPORATION, via telephone, by EDWARD  
2     A. FINKLEA, Attorney at Law, and by CHAD STOKES,  
3     Attorney at Law, Energy Advocates, LLP, 526 Northwest  
4     18th Avenue, Portland, Oregon 97209, Telephone (503)  
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7                   TESORO WEST COAST COMPANY, by ROBIN O. BRENA,  
8     Attorney at Law, Brena, Bell & Clarkson, 310 K Street,  
9     Suite 601, Anchorage, Alaska 99501, Telephone (907)  
10    258-2000, Fax (907) 258-2001, E-mail  
11    rbrena@brenalaw.com, and by DAVID WENSEL.

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P R O C E E D I N G S

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JUDGE WALLIS: This is a prehearing conference in the matter of the application of Olympic Pipeline, Docket Number TO-011472, for the discussion of discovery issues. This conference is being held via teleconference facilities. The conference is convened in Room 108 of the Commission's headquarters offices in Olympia, Washington pursuant to agreement among the parties.

I would like to start by getting appearances of the parties, and what I would like you to do is state your name and your client's name for the record beginning with the applicant for rate relief for Olympic Pipeline, Mr. Ryan.

MR. RYAN: Yes, this is Patrick Ryan, and I'm here in the capacity of representing Olympic Pipeline.

JUDGE WALLIS: For Tesoro.

MR. BRENA: This is Robin Brena, B-R-E-N-A, here on behalf of Tesoro, and with me is David Wensel, W-E-N-Z-E-L, W-E-N-S-E-L. Did I say Z?

JUDGE WALLIS: Yes, but we have that corrected now, thank you.

MR. BRENA: Okay.

JUDGE WALLIS: On behalf of Tosco.

MR. FINKLEA: Edward Finklea on behalf of

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1 Tosco.

2 JUDGE WALLIS: And Commission Staff.

3 MR. TROTTER: On behalf of Commission Staff,  
4 Donald T. Trotter and Lisa Watson, Assistant Attorneys  
5 General.

6 JUDGE WALLIS: Just a check on our equipment,  
7 were you able to hear Mr. Trotter satisfactorily?

8 MR. BRENA: This is Robin, I was.

9 MR. FINKLEA: This is Ed, I was also.

10 MR. RYAN: This is Patrick, sounded good to  
11 me.

12 JUDGE WALLIS: Very good, we have lift off.

13 All right, the purpose for today's conference  
14 is to go through some discovery disagreements, and our  
15 intention is to resolve those today. We have some  
16 objections to discovery posed both by Tesoro and by  
17 Olympic Pipeline. I would like to begin by asking  
18 Mr. Brena on behalf of Tesoro to state in general terms  
19 the categories of his objections and to speak in support  
20 of those objections.

21 As a matter of clarification, Mr. Brena, we  
22 apparently did not receive, any of us, a listing or  
23 grouping of your objections by item. Did you send such  
24 a list?

25 MR. BRENA: I did.

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1 JUDGE WALLIS: And when did you send that?  
2 MR. BRENA: I sent that at probably between  
3 10:30 and 11:00 your time.  
4 JUDGE WALLIS: Today or yesterday?  
5 MR. BRENA: Today.  
6 JUDGE WALLIS: Okay.  
7 MR. BRENA: Mindy, nobody got my group  
8 according to listing.  
9 What I will have her do is can I have her  
10 just fax it as well as E-mail it?  
11 JUDGE WALLIS: Yes, that would be fine.  
12 MR. BRENA: What fax number should she fax  
13 that to?  
14 JUDGE WALLIS: She should fax that to the  
15 number that's listed for me and for our support person,  
16 Ms. Walker.  
17 MR. BRENA: That's listed? Okay.  
18 JUDGE WALLIS: And we will run a copy for  
19 Mr. Trotter who is here in the hearing room.  
20 MR. BRENA: We had a problem getting E-mail  
21 out last night as well. We sent that actually twice. I  
22 sent it, and Mindy said that she also sent it. It's on  
23 the way.  
24 JUDGE WALLIS: Very good.  
25 MR. BRENA: My apologies for you not having

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1 it.

2 JUDGE WALLIS: Well, there are some things  
3 that are beyond our control.

4 All right, are you prepared to begin at this  
5 time, Mr. Brena?

6 MR. BRENA: I am. Let me clarify though, did  
7 you want me to speak in support of my objections to  
8 their discovery? Are we talking about their requests to  
9 us or our requests to them? Which are we doing first?

10 JUDGE WALLIS: I would like to begin with  
11 your objections to, I'm sorry, with your response to  
12 their objections to your discovery.

13 MR. BRENA: Okay. Well, first I guess let me  
14 say that what I'm sending down there is seven different  
15 categories that I thought generally these fell into.  
16 They don't fall perfectly into categories. Some of them  
17 are stated in different categories. But the first  
18 category is information under financial condition. The  
19 second category is information on existing debt. The  
20 third category is information on the likelihood of  
21 internal or external financing of capital improvements.  
22 The fourth category is information relating to the safe  
23 operation of the line. The fifth category is  
24 information relating to inconsistencies between and  
25 among their filings. The sixth category is information

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1 seeking to clarify their litigation position. And the  
2 seventh category is information relating to throughput,  
3 which also relates to the company's financial condition.

4           And what you're about to get, what I have  
5 done under each of those categories, I have A, B, and C  
6 if there are three. And A would be requests for  
7 admissions and which requests for admissions fall under  
8 that, B is interrogatories and which interrogatories  
9 fall under that category, and C, which requests for  
10 production are related to that category. So that is  
11 what you're about to get by fax, and again I apologize  
12 you don't have it there.

13           I guess in terms of general comment,  
14 discovery is intended to be broader than what is  
15 relevant at a hearing. What may be introduced at a  
16 hearing is one issue, and what may be discovered may be  
17 things that are relevant to the proceeding or may be  
18 things that may lead to relevant information at the  
19 proceeding.

20           I guess in this particular case, what their  
21 case is is a little bit confused. They have attempted  
22 to modify it several times. Their most recent  
23 modification has been to send Staff a redlined strikeout  
24 version, to send only Staff a redlined and strikeout  
25 version of Mr. Batch's original testimony in their

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1 motion for their interim relief. So far as I am aware,  
2 they haven't filed amended testimony with the  
3 Commission. All they have done is indicate what they  
4 may strike out at some point in the future in an E-mail  
5 to Staff.

6           So let me start out by saying that I have had  
7 a little bit of difficulty trying to figure out what  
8 their case is. It's been evolving and changing. But  
9 that being said, it has certain common themes to it. In  
10 Bob Batch's redlined testimony, to give you an example,  
11 they left in, Olympic needs immediate rate relief  
12 because it's rapidly losing money. With regards to  
13 their amended filing, their amended petition, they have  
14 asserted that Olympic is rapidly losing money, they need  
15 interim rate relief to help prevent future deterioration  
16 of its financial condition. Stated in their amended  
17 petition, one reason for it, was that Olympic faces a  
18 deteriorating financial situation and requires immediate  
19 rate relief in order to forestall future deterioration.  
20 They have also stated that Olympic will continue to  
21 experience a downward trend in its financial condition  
22 and will likely not be able to raise sufficient capital  
23 from external sources to finance its future safety  
24 related capital improvements. They have talked about  
25 emergent financial situation to prevent further



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1 deterioration. I don't know as a general matter how  
2 much more clearly you can put your financial position  
3 into issue than what they have done. What they have  
4 tried to do is assert that they're losing money, that  
5 they have a deteriorating situation, when, in fact, we  
6 believe the exact opposite is true, and my discovery is  
7 designed to go to those issues.

8           What we believe is that their normal  
9 operating expenses exceed their normal operating costs  
10 by a considerable sum each month. We believe they have  
11 an improving financial condition and not a deteriorating  
12 financial condition. In July of this year, all four  
13 shippers, all four refineries were able to ship. Their  
14 throughputs went up substantially, their revenue went up  
15 substantially. In September of this year, they got a --  
16 they began to receive an interim 62% rate increase on  
17 their FERC shipments, another dramatic improvement in  
18 their financial situation. And that just happened in  
19 September and is relevant obviously for September to  
20 some degree, but October and November, so it's a very  
21 recent occurrence.

22           So as a general matter, we think the entire  
23 picture that they're painting in their request for  
24 emergency relief is false, and much of our discovery is  
25 designed to show that rather than deteriorating

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1 financial position, they are in a substantially and  
2 rapidly improving financial position and that at this  
3 point that they have considerable income over anything  
4 that can be justified through any rate allowance or  
5 anything more than what they need.

6           The first category, which goes to their  
7 financial condition, asks a series of questions that are  
8 intended to demonstrate that. We asked them for  
9 financial statements. We asked them for monthlies.  
10 They exclude the most recent months when their revenue  
11 has stepped up substantially. We asked them for cash  
12 flow statements. They gave us projections that were  
13 prepared a year ago. We asked them whether or not their  
14 operating costs are greater than their operating  
15 revenue, and they can't figure out the definition of  
16 normal operating costs. And this is a full week after  
17 without any call whatsoever. And as I understood the  
18 Commission's order, if there was a question about  
19 definition, we were to be contacted. And part of the  
20 package that I'm sending is also our instructions, and  
21 it says, if there's any ambiguity in terms of what we're  
22 asking for, please contact Mr. Brena, and I will be  
23 happy to clarify it.

24           The information on existing debt, we intend  
25 to put on a case that demonstrates that this company has

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1 relied on as a matter of plan raising capital through  
2 internal financing, and we want all information with  
3 regard to their existing debt. We asked for all  
4 security instruments. We found out in the technical  
5 conference that they have security instruments with  
6 regard to certain of the debts which have not been  
7 disclosed. And, in fact, Staff has had to file  
8 additional discovery naming those specific security  
9 instruments. We asked for the security instruments  
10 directly.

11           So, you know, what they have done is they  
12 rather than -- they had no investment in this company,  
13 they're loaning it money, it's the way they decided to  
14 finance it. They have a line of credit currently with  
15 Arco that's a \$30 Million line of credit they have drawn  
16 down \$10 Million. They have \$20 Million available to  
17 them today so far as we know. And we are entitled to  
18 explore all the details of how they intended to finance  
19 this operation.

20           In fact, what we learned in the technical  
21 conference and what's in the notes is that they can't go  
22 and borrow money from external sources, because their  
23 documents prohibit it. So this entire company has been  
24 set up to be financed as a policy matter from internal  
25 sources. And now in effect what they're saying is

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1 because of affiliate debt, they can't get financing from  
2 external sources for the capital improvements even  
3 though it's readily available from internal sources. We  
4 are entitled to put on that case. We are entitled to  
5 demonstrate -- to get all the information with regard to  
6 their existing debt, and we have gotten just a part of  
7 it.

8           With regard to the information relating to  
9 the likelihood for internal or external financing of  
10 capital improvements, they have never said they can't  
11 get money for their 2002 capital budget. They have said  
12 there's a risk of that, there's a possibility of that,  
13 that maybe Arco won't advance the money, that maybe the  
14 things are in technical default. So we have asked a  
15 series of questions. We think all of that is just a  
16 bunch of smoke and mirrors. There is no possibility  
17 that a shareholder that has to use this line will not  
18 fund an improvement that's necessary for safety.

19           And so we think their entire case, they have  
20 built their entire case on a scare related to affiliate  
21 financing that they have created by the way they have  
22 chosen to finance it when, in fact, they have the  
23 available credit to them right now to finance all of  
24 those improvements. And we are entitled to put on that  
25 case, and we are entitled to discovery relating to that.

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1 Because so far as I'm aware, deteriorating financial  
2 state and the uncertainty with regard to funding their  
3 2002 capital budgets are the -- the risk of that, not  
4 the reality of that, the risk of that are the only bases  
5 for their request for emergency relief.

6 Information related to the safe operation of  
7 the line. They seem to be saying that they need \$24  
8 Million to safely operate the line, so we have asked  
9 questions. Are you safely operating, is the line safely  
10 operating now? You know, we need clear answers. Are  
11 they running an unsafe line, or are they running a safe  
12 line? And we want to know the answers to that. We're  
13 entitled to do that. They are representing to this  
14 Commission that they are -- they need \$24 Million next  
15 year to operate to make improvements relating to safety.  
16 So we have said, isn't it operating safely now, and what  
17 do you need these improvements for, and what are, you  
18 know, those sorts of questions. They have put safety  
19 directly into issue in this case. We're entitled to get  
20 information relating to it.

21 Information relating to inconsistencies  
22 between their various filings. Their basis for  
23 emergency relief is affiliate debt, that their own  
24 short-term way of funding the Whatcom Creek expenses,  
25 that they're all debt, they're all debt and no equity.

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1 That's the basis for their interim relief. When they're  
2 coming in to the Commission for their general rate case,  
3 they're saying they're all equity and no debt. Now we  
4 think at some point you've got to be one or the other.  
5 You can't be one when it comes to emergency relief, look  
6 at all our debt, we don't have any equity, we've got no  
7 way to go forward, and then when you go to your general  
8 rate case, you say we're all equity, we don't have any  
9 debt.

10 We asked them, how much interest did you put  
11 in your general rate case, and they said it wasn't  
12 relevant. Heck it's not relevant. They're saying that  
13 they have \$700,000 of interest a year when it comes time  
14 to set our rate, and they're recasting everything as  
15 equity, so they want the Commission to pretend that they  
16 have funded this company with equity when they haven't.  
17 And then when it comes time for interim emergency  
18 relief, they're telling you that they have \$19 Million  
19 of unimproved and unpaid interest that they have to --  
20 that they have to figure out a way to pay. Well, at  
21 some point, you have to decide who you are and what  
22 you're entitled to.

23 And to the degree that they're putting  
24 together inconsistent cases, I'm entitled to an  
25 explanation as to you can't be A when it comes to

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1 interim relief and then turn into B when it comes to  
2 general relief. You got to be one or the other the  
3 whole time, and they're playing it both ways. And I'm  
4 entitled to point out inconsistencies in their filings,  
5 and I'm entitled to force them to decide who it is that  
6 they want to be, either equity financed or debt  
7 financed.

8           Information relating to their litigation  
9 position. You know, we asked, for example, isn't it  
10 true that you didn't take a position with regard to  
11 refundability, and we got referred to the prehearing  
12 conference. Well, I read that transcript, and I have  
13 listened to everything that was said, and I don't know  
14 what their position is. And so I asked them for it, and  
15 they just simply haven't answered it. So we're entitled  
16 to ask questions to help us clarify what their position  
17 is in this case. They can't just keep slipping around  
18 here. We're on an expedited schedule, we're entitled to  
19 know what their case is and know what their litigation  
20 position is and do the discovery on it to the degree  
21 it's not clear. And I submit it's not -- the reason  
22 it's vague has very little to do with me. This case has  
23 evolved and changed every time we have spoken, that  
24 we're entitled to clarification on that.

25           And then finally information related to

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1 throughput. Throughput is the heart of any issues in  
2 this case. It's going to be a very important issue in  
3 this case, and they have played a bunch of throughput  
4 games. And so what we have asked for is just what is  
5 your throughput by shipper, by month, by year, because  
6 their throughput has improved dramatically. It looks as  
7 though it continued to improve as a result of their  
8 capital improvements as well as a result of the listing  
9 ultimately of the pressure restriction.

10         And so they have made characterizations. We  
11 want to know who is going to be hurt by what. We want  
12 to know where the impacts of the interim rate will fall,  
13 on what shippers and to what degree. And with regard to  
14 that, what they have chosen to do is quote a portion of  
15 the Interstate Commerce Act, 15(13), which just frankly  
16 surprised me. I have been in more than a few of these  
17 kinds of rate cases. Shipper information is disclosed.  
18 In federal practice, they have what -- they have a  
19 15(13) order where they just order that shipper  
20 information will be disclosed under legal process, and  
21 it's been disclosed in state proceedings in which I have  
22 been involved with as well. It's just a matter of  
23 routine that when you're within a proceeding that  
24 shipper information can be disclosed where there's a  
25 protective order, and we'll address that in more detail



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1 now -- later specifically.

2           But throughput, we need to understand their  
3 throughput. They're saying they are in a declining and  
4 terrible situation. Well, their throughput determines  
5 how much revenue they get, and their throughput, if you  
6 graph it, their throughput in 2002 has dramatic  
7 increases and is continuing to have dramatic increases.  
8 And we're entitled to step up and say, you know, these  
9 guys are trying to get an interim -- trying to get an  
10 interim rate relief for an emergency that happened two  
11 years ago that's already passed and that is a result of  
12 their negligent operation of this line in which there's  
13 even criminal indictments been filed, and these are not  
14 issues for which an interim rate should be allowed.

15           Also one further point on that with regard to  
16 inconsistencies in their positions. You know, they  
17 aren't asking for a rate increase based on the direct  
18 cost associated with Whatcom Creek, and quite wisely  
19 they took that position. Because if you negligently  
20 operate a line and it blows up, this isn't a comment on  
21 BP's operation or anybody else, but whatever it costs  
22 you, that's not a shareholder issue -- that's a  
23 shareholder issue and not a rate payer issue. Rate  
24 payers don't have to pay for -- to clean up the result  
25 of a negligent operation of a products line that's so

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1 negligently operated that it explodes. I'm not even  
2 aware of a products line in the United States that has  
3 exploded except for this one. And it's not like  
4 products lines are unsafely operated generally. It's  
5 not like they don't operate for years and years and  
6 years safely. They do. This one blew up.

7         So in their general rate case, they said,  
8 we're not going to include our direct cost. Well,  
9 here's their request for interim relief, and it is just  
10 filled with the Whatcom Creek expenses. All of their  
11 justifications are just filled, their declining  
12 position, are just filled with Whatcom Creek expenses.  
13 So again we have a situation where even they have  
14 acknowledged that they are not entitled to rate relief  
15 based on the direct cost of their negligent operation of  
16 this line, but here we are looking at finances that have  
17 the Whatcom Creek expenses included in them. And we're  
18 entitled to point out that, hey, you can't get back  
19 those expenses not only not through permanent rates, but  
20 you can't get them back through interim rates either,  
21 you can not get those expenses from shareholders, I mean  
22 excuse me, from rate payers. You know, the law doesn't  
23 change, the law shouldn't change with regard to their  
24 entitlement to charge their shippers rates. I mean if  
25 you're not allowed to get a rate that includes that,

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1 you're not allowed to get it, and it doesn't matter  
2 whether it's interim or long-term.

3           So those are -- those are -- those go to my  
4 -- those go to what we're trying to develop, what the  
5 themes of our case are, how we're trying to respond to  
6 their interim case. These themes are directly related  
7 to their interim case. These themes are in direct  
8 contradiction to what -- to the image that they're  
9 presenting to this Commission as some sort of emergency.  
10 We are entitled in every way to get this information and  
11 to put on this case and to move forward.

12           So, you know, there is a pattern of  
13 gamesmanship. We are in an emergency situation here.  
14 We are in an expedited schedule. I have a case that I  
15 have to file on the 14th of this month with this  
16 Commission, and I am sitting here, I filed after close  
17 of business on Monday, not last Monday, the Monday  
18 before, I filed this, and now I'm sitting here talking  
19 about what do you mean by the word normal operating  
20 expense. That is as evasive and inconsistent with my  
21 understanding of what this discovery process is going to  
22 be as anything that I could imagine, so I need help.

23           I'm trying to stay with this schedule. I  
24 served discovery directly related to the themes of our  
25 case that we intend to contradict -- we intend to show

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1 there's no emergency, they're in an improving financial  
2 position, their operating expenses exceed their  
3 operating cost, that to the degree that there's excess  
4 extraordinary expenses, they're not entitled to recover  
5 them through interim or permanent rates, that their  
6 existing financing plan is internally financed, and, in  
7 fact, the financing documents require it, and they have  
8 available line of credit to do this now.

9         And that, you know, talking about the risk  
10 that someone may not finance it, I mean we're going to  
11 put on a case that shows that why in the world would a  
12 shareholder not finance the only pipeline for safety  
13 improvements that's necessary to get their product to  
14 the marketplace. There is zero risk of anybody on the  
15 opposite side of this case stepping forward and ever  
16 saying, we are not going to improve this line as we need  
17 to to make safety improvements, we're going to operate  
18 an unsafe line, we're going to operate an unsafe line  
19 because we're going to refuse to fund it, and then all  
20 of Arco, the majority owner, the two thirds owner, their  
21 product is all going to flow through an unsafely  
22 operated line because they're sitting out there refusing  
23 to expend some money on a line of credit that's been  
24 established because of a technical default. You know,  
25 at some point we need to get to reality here, and their

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1 case doesn't even approach it. And at some point they  
2 need to say that they -- so we're entitled to put on  
3 that case. We're entitled to this.

4           And I have explained trying to understand  
5 their litigation position, the inconsistencies in their  
6 litigation position, and then the gamesmanship on  
7 throughput where they have the audacity just to not  
8 respond with anything other than a 15(13), that section  
9 of the ICA which there is unanimous authority out there  
10 that allows shipper information to be disclosed within  
11 the context of a rate proceeding when there is a  
12 protective order in place. So I need some help. I  
13 agreed to a schedule, and it is less than fair to stick  
14 me with the schedule and then not to allow me the  
15 discovery I need to advance the case that I have just  
16 represented that I'm going to advance.

17           MR. FINKLEA: And, Your Honor --

18           JUDGE WALLIS: Thank you, Mr. Brena. I would  
19 like to interject at this point, and I would like to  
20 establish some ground rules for the balance of this  
21 hearing, and that is that I do not want to hear parties  
22 characterizing the motives or characterizing in  
23 pejorative terms the activities of other parties or  
24 counsel. Whether or not something is gamesmanship or  
25 audacious or evasive I think is something that the

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1 Commission is quite able to determine for itself without  
2 those labels being applied if the Commission knows the  
3 underlying facts.

4 I'm certainly pleased that counsel are  
5 stating what they believe the facts to be and the  
6 circumstances, but my experience in the past is that  
7 once we start using characterizations of a subjective  
8 nature of that sort, then the focus of the hearing tends  
9 to shift, and the tenor of the hearing can shift away  
10 from what the Commission's goal is, that is to find the  
11 truth and to resolve the issues. So I'm not meaning to  
12 pick on Mr. Brena by any means, but I just want to  
13 announce that this is the standard that I intend to  
14 apply for the balance of the proceeding.

15 Now, Mr. Finklea.

16 MR. FINKLEA: Yes.

17 MR. BRENA: Your Honor, this is Robin Brena,  
18 if I can just say to the degree that I did that, I agree  
19 with your ruling, and I apologize.

20 JUDGE WALLIS: Thank you, Mr. Brena.

21 MR. FINKLEA: Your Honor, I just wanted to  
22 make it clear that Tosco is working with Tesoro on the  
23 interim requests, and in the interests of time, we are  
24 sharing the expert so that we can put on a very  
25 efficient case. So while I don't have anything really

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1 to add to what Mr. Brena has said, I do want the record  
2 to be clear that it is Tosco as well as Tesoro that  
3 needs this information and that we will be putting  
4 forward joint testimony whenever it is due.

5 JUDGE WALLIS: Thank you, Mr. Finklea.  
6 Mr. Ryan.

7 MR. RYAN: Yes, thank you, Your Honor, and  
8 thank you for your ruling. I felt like we were being  
9 accused of everything from negligent operation to  
10 misrepresentation there, so I appreciate your ruling,  
11 and let's stick to the facts.

12 The facts are that Olympic has filed an  
13 interim rate case, has amended its original petition to  
14 focus on unpaid interest, accruing debts, and its  
15 inability to secure external financing. In the spirit  
16 of the first supplemental order that was issued, we  
17 limited our discovery to those requests we felt were  
18 necessary and appropriate for the interim rate case and  
19 to respond to issues that Mr. Brena has raised at prior  
20 prehearing conferences, those being a substantial  
21 adverse impact that the interim rate increase result to  
22 his company and the more than minimal impact that would  
23 occur to consumers.

24 And we have a hard time handling a subsequent  
25 17 requests for admissions, 42 interrogatories, and 16

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1 requests for production. Without deviating from your  
2 ruling, it seems to us that Mr. Brena has a legal  
3 strategy here to derail our larger general rate filing,  
4 which is due as we all know next Thursday.

5           JUDGE WALLIS: Mr. Ryan, I am going to  
6 interject here and say that my preference would be that  
7 we focus on what's happening and the consequences of it  
8 rather than identifying it as the strategy of another  
9 party and something that another party is designing to  
10 cause problems to the litigation. Whether or not that's  
11 true, it's my belief that by an exposition of the  
12 circumstances, the Commission then has the knowledge to  
13 deal with the situation, and that again the  
14 characterizations, the subjective evaluation, and the  
15 what might be called accusations tend to get in the way  
16 of solving the problem.

17           Please continue.

18           MR. RYAN: Thank you, Your Honor. Well, then  
19 let's just keep this simple. I won't take the time to  
20 respond to the many assertions and allegations Mr. Brena  
21 put forward. Rather I would focus on what we would like  
22 to accomplish here today, and that is to compel the  
23 production of documents and admissions that we have  
24 requested, our 12 discovery requests to Tesoro.  
25 Mr. Brena --



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1                   JUDGE WALLIS: Excuse me, Mr. Ryan, it would  
2 help me if you are prepared to do so if you could  
3 respond to the seven generalized areas that Mr. Brena  
4 has identified.

5                   MR. RYAN: Well, it would have helped  
6 considerably, Your Honor, had I received those  
7 categories as requested.

8                   JUDGE WALLIS: Yes, and I will note that the  
9 fax of that information has just been delivered to us in  
10 the hearing room.

11                  MR. RYAN: I have still not received it.

12                  JUDGE WALLIS: Very well, if you do not feel  
13 able to respond at this time, I would like to move on  
14 and ask Mr. Trotter for his observations. And following  
15 that, we can return to your concerns regarding the  
16 discovery that you have posed of Tesoro.

17                  MR. RYAN: Thank you, Your Honor.

18                  MR. TROTTER: Your Honor, I don't have any  
19 specific response at this time. I would like to hear  
20 from Mr. Ryan on those points before I can contribute  
21 anything meaningful at this point.

22                  JUDGE WALLIS: Very well. Mr. Ryan, again,  
23 you are not prepared to respond to the seven areas that  
24 have been identified?

25                  MR. RYAN: Not at this time, Your Honor.

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1                   JUDGE WALLIS: Very well. Please proceed  
2 then.

3                   MR. BRENA: This is Robin Brena, Your Honor.  
4 Where are we proceeding to?

5                   JUDGE WALLIS: Mr. Ryan wishes to state his  
6 generalized concerns.

7                   MR. BRENA: Okay, thank you, Your Honor.

8                   MR. RYAN: Thank you, Your Honor. Our  
9 generalized concerns are simple. Mr. Brena has  
10 previously asserted that the interim rate increase will  
11 result in substantial and adverse impact to the  
12 profitability of his client, to their revenues, and to  
13 their operations. He certainly so stated at the  
14 prehearing conference on the 21st, that other time. We  
15 have requested financial information to substantiate our  
16 belief that those assertions are grossly overstated.

17                   The \$5 Billion company that he represents,  
18 our expectation is that the interim rate increase, which  
19 is what we're here to discuss, and the discovery that is  
20 appropriately limited to the interim rate case will have  
21 no more than a \$4 Million impact over the next six month  
22 period, the portion of which allocated to Tesoro is  
23 minimal, both in actual dollars and certainly compared  
24 to the revenue of that company.

25                   So we have requested various financial

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1 statements and information and admissions dealing with  
2 the company's financial capabilities. Mr. Brena has  
3 chosen to object to our request on the basis that the  
4 interim rate case entirely revolves around Olympic's  
5 financial performance and not upon the requested  
6 information. He has brought these matters into this  
7 proceeding, and we believe that this is a proper subject  
8 for discovery.

9 JUDGE WALLIS: Thank you.

10 Mr. Brena.

11 MR. BRENA: Several comments. First, I will  
12 read to Your Honor from the transcript of the prehearing  
13 conference what I said:

14 This is a substantial impact to our  
15 company and our operations, and we think  
16 that the way the Commission has treated  
17 these issues in the past, it should  
18 continue to do so in the future.

19 There is nowhere in the record of the  
20 prehearing conference where I used the word adverse.  
21 There is nowhere that I said it would result in a  
22 financial hardship to the company. I said that it's a  
23 big rate impact.

24 Now off the record in the prehearing  
25 conference I also added, and my memory is imprecise,

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1 that the rate impact, speaking about the general 62%  
2 rate impact on Tesoro, was in the millions of dollars,  
3 the impact of that to Tesoro would be in the millions of  
4 dollars, that their characterization of their general  
5 rate case in a quarter cent or an eighth of a cent or  
6 characterizing it in terms of our customers' gallonage  
7 on a retail level was an improper way to view the rate  
8 impact to us. So I want to start out with to the degree  
9 that I have said something, I don't mind backing it up.  
10 I would point out that comments of counsel are not  
11 evidence and that serving discovery in off the record  
12 comments is rather unusual.

13           And then I would like to also say that I did  
14 respond, and I did respond substantially. I produced a  
15 calculation that showed what the impact to Tesoro would  
16 be for each 5% increase in their rates based on  
17 interstate movements or intra and interstate movements  
18 and based on our throughput plus the likely increase to  
19 throughput in the future. And if Your Honor takes a  
20 look at our response to Data Request Number 1, you will  
21 see that -- and these are the rate impacts to Tesoro as  
22 a shipper, and I will get to the significance of that  
23 statement in just a minute. But what we figured out,  
24 and this was -- this was attorney work product that was  
25 produced by my expert to evaluate the rate impact. And

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1 when they step forward and start characterizing the  
2 impact as minimal and asked me to produce this, I waived  
3 that privilege and produced it.

4           What it shows is that it will cost Tesoro  
5 under likely future throughput assumptions \$2.8 Million  
6 a year, and we projected that this rate would be in  
7 effect for ten years, so the total real dollar impact to  
8 Tesoro as a shipper is in the \$28 Million to \$30 Million  
9 range in this proceeding, and that was the point that I  
10 was making in the prehearing conference, and that is I  
11 showed them the exact calculation of that.

12           Having said that, I also pointed out that was  
13 the only calculation we made. We're working on another  
14 calculation that includes the rates that we are offset  
15 against our netback sale contracts, because there is  
16 substantial volume for which Tesoro is not the main  
17 shipper but for who Tesoro ultimately pays the tariff  
18 rate. And effectively -- and we're still looking at  
19 this. I took a look at it for July of this year, it  
20 doubled our throughput.

21           So the impact to Tesoro is about \$3 Million a  
22 year. And its impact to Tesoro has a direct impact as a  
23 shipper, and its indirect impact to Tesoro is about  
24 double that. So this rate case if this rate goes into  
25 effect will cost Tesoro between \$50 Million and \$70

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1 Million. Now that's the calculation and explanation  
2 that I advanced, so to say that I ducked on that, I  
3 didn't.

4           Now with regard to the questions, they ask --  
5 they didn't ask questions about the rate impact to their  
6 shippers, who is Tesoro, they asked it about the impact  
7 to our customers. Now that's -- I haven't made any  
8 representation with regard to rate impacts to our  
9 customers at all. The only representations that have  
10 been made with regard to that have been Olympic. And  
11 think about this. Imagine we're in an electric case,  
12 and the rate -- the electric company wants to raise a  
13 furniture company's rates 50%, and the furniture company  
14 says that's \$1 Million, that's a big impact on our  
15 rates. And they come in and they ask the furniture  
16 company, well, how much does that rate impact cost you  
17 per ottoman you produce, and how are you going to change  
18 your pricing to your customers, and that just has  
19 nothing to do with anything. You don't ask for  
20 financial information from the customer about their  
21 customers when you're talking -- because that -- we are  
22 the customer, we are the shipper, we are the their  
23 shipper.

24           So to the degree that they wanted us to back  
25 up what we said that this would cost us millions, we

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1 have. To the degree that what they want us to do is go  
2 down and speculate, well, to go back to the furniture  
3 store analogy, well, what are your total costs of making  
4 furniture, and what percentage of your total costs are  
5 this cost, well, see, it's only 1% of your total cost  
6 because you have wood and other costs in there, and so  
7 it's really not that big of an impact on you, is it, or  
8 you're a big company, you know, what does that have to  
9 do with anything? They are requesting interim relief  
10 because of their financial condition because they say  
11 it's a declining financial position and they can not  
12 attract internal or external capital necessary to meet  
13 their capital budget for 2002. Let's say Tesoro has one  
14 pump and this is 100% of its costs, should the  
15 Commission allow them more or less of an interim rate  
16 increase? No. Let's say on a per gallon basis to our  
17 customers it's a \$10 rate impact. So what?

18 We haven't made -- we haven't brought any of  
19 those issues into this case. We haven't brought our  
20 cost structure into this case. We haven't brought our  
21 retail price structures into this case. We haven't  
22 brought anything related to our business into this case  
23 other than to say this is a substantial increase and has  
24 a substantial impact on Tesoro because -- as a rate  
25 increase. So all I can say is, you know, here we are in

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1 discovery where the discovery is focused on the shipper.  
2 There is nothing -- it doesn't matter if Tesoro is big,  
3 it doesn't matter if it's small, it doesn't matter what  
4 the per barrel cost is to our customer, it doesn't  
5 matter if there's no per barrel cost to our customers,  
6 it doesn't matter how you express it. I mean frankly  
7 most of Tesoro's petroleum that is sold in the state of  
8 Washington is sold at wholesale, not at retail. So then  
9 do we go to our branded outlets who set their own price  
10 and take into consideration their cost structure too? I  
11 mean it just doesn't make any sense. This is about  
12 their costs, it's about their financial position, and  
13 it's about their rates to us. It is not about our rates  
14 to our customers.

15 MR. FINKLEA: Your Honor.

16 JUDGE WALLIS: Does that conclude your  
17 remarks, Mr. Brena?

18 MR. BRENA: I'm just reviewing my notes.

19 Yeah, I think general ones, yes. I think  
20 then we have to get into specifics.

21 JUDGE WALLIS: All right.

22 MR. FINKLEA: Your Honor, Ed Finklea for  
23 Tosco.

24 JUDGE WALLIS: Mr. Finklea.

25 MR. FINKLEA: If it's appropriate at this



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1 time.

2 JUDGE WALLIS: Please.

3 MR. FINKLEA: I want to specially support  
4 Tesoro's objection to the discovery by Olympic. Your  
5 Honor, I have represented consumers in proceedings  
6 before this Commission for 15 years, and the idea that a  
7 utility when it has the burden of proof in a rate case  
8 would put its customers' financial situations at issue  
9 is unprecedented. I know of no case in 15 years in  
10 which in a general rate proceeding a utility seeking a  
11 rate increase has been allowed to seek discovery on any  
12 customer's ability to pay the rate increase, and that's  
13 essentially what Olympic is seeking through this  
14 discovery of Tesoro, and it would be a very bad  
15 precedent. It could have chilling effects on consumers'  
16 willingness to participate in Commission proceedings  
17 should the precedent be established that the utilities  
18 are going to be allowed in the future to seek discovery  
19 of their customers' financial ability to pay rate  
20 increases.

21 The issue in this proceeding is whether  
22 Olympic is going to meet the burden of proof necessary  
23 to get an interim rate increase, and that is the only  
24 issue that is in the proceeding, and we should stay  
25 focused on that. We have very limited time in this

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1 proceeding as it is, and to go off on a discovery effort  
2 that can only have chilling effects on a customer's  
3 willingness to participate in a proceeding is just the  
4 wrong way to go.

5 JUDGE WALLIS: Does that conclude your  
6 remarks?

7 MR. FINKLEA: Yes, it does.

8 JUDGE WALLIS: Thank you.  
9 For Commission Staff.

10 MR. TROTTER: Just briefly, Your Honor. This  
11 case does involve the issue of the fairness, justness,  
12 reasonableness, and sufficiency of the pipeline's rates.  
13 If customers are making a claim that these rates  
14 constitute rate shock to them or similar claims of that  
15 sort, then I think under those circumstances it might be  
16 relevant to get into their ability to pay and so on. I  
17 don't perceive that claim being made. I did not  
18 understand Tesoro or Tosco to be alleging that they can  
19 not pay the 62% increase. I understood them to be  
20 saying that this is a serious matter, and they're going  
21 to oppose it, but I never heard them say that they're  
22 unable to pay it if it was granted. So I did not  
23 perceive them to open the door to this. But if they  
24 did, I think it could be fair game. I just don't think  
25 it has been raised, at least in anything I have heard so

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1 far.

2 That completes my statement.

3 JUDGE WALLIS: Thank you, Mr. Trotter.

4 Mr. Ryan, do you have anything to conclude

5 with?

6 MR. RYAN: Yes, a couple points, Your Honor.

7 This issue arose actually by Olympic in its filings. We  
8 have asserted rightly that this will have a minimal  
9 impact on consumers and result in less than a quarter of  
10 a cent increase per gallon of gasoline. This is the way  
11 the issue arose, and if interveners are not objecting to  
12 that at least at this point, then the matter can perhaps  
13 rest.

14 I do object to or at least I am curious about  
15 the dollar projections that Mr. Brena has come up with  
16 in terms of the impacts and once again leads back to  
17 compelling production of information and admissions.  
18 We're all aware that an interim rate case, especially of  
19 this nature, is very short term, does not look to long  
20 forecasts or projections. And once again, I would  
21 remind Your Honor that the interim rate increase that we  
22 have requested is subject, within the discretion of the  
23 Commission, subject to refund. We put together based on  
24 our filings, testimony, and exhibits, and responses an  
25 emergency situation does, in fact, exist. That's why we

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1 have asked for this interim rate increase, again within  
2 the discretion of the Commission to be subject to  
3 refund. And we believe many of the requests that have  
4 been submitted to us was far beyond the scope of the  
5 interim rate case. There were any number of points  
6 raised by Mr. Brena earlier, such as the Whatcom Creek  
7 incident and costs associated with it. We have answered  
8 these requests to the best of our knowledge, and we have  
9 outlined our case, and we have done the best that we  
10 could under very trying and limited circumstances. And  
11 so I would reserve any more time objecting to those  
12 assertions, and in the interest of moving on suggest  
13 that we delve into the specifics there.

14 JUDGE WALLIS: Very well. Let me --

15 MR. BRENA: Your Honor, this is Robin Brena,  
16 can I ask Mr. Ryan if he has received the fax from our  
17 office yet?

18 MR. RYAN: Yes, I have.

19 MR. BRENA: Thank you.

20 JUDGE WALLIS: Very well, I have that  
21 document in front of me, and by way of explanation, it  
22 does not appear to contain any argument relating to the  
23 categories, but it merely identifies the seven  
24 categories and lists the requests for admission, the  
25 interrogatories, and the requests for production, if

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1 any, that are identified under each of those categories.

2           Very well, let's begin then by going to the  
3 specific items that are listed under information on  
4 financial condition, and begin again with Mr. Brena.

5           MR. BRENA: Is it your intention that we  
6 would discuss these just one at a time?

7           JUDGE WALLIS: To the extent that the issues  
8 are identical, you may group them. You have stated your  
9 general objections. If you wish to add anything  
10 regarding each of the specific items, you may do so, and  
11 we will look at the items one by one.

12           MR. BRENA: Well, Request for Admission  
13 Number 1 and 2 -- I'm sorry, I just got handed a note, I  
14 apologize for the distraction. Request for Admission  
15 Number 1 and 2 ask for monthly operating revenues. It  
16 says:

17                     Please admit that Olympic's monthly  
18 operating revenues during 2001 exceeded  
19 its normal operating expenses including  
20 depreciation.

21                     And Request for Admission Number 2 says:

22                     Please admit that Olympic's monthly  
23 operating revenue beginning in August  
24 2001 and continuing through the end of  
25 October 2001 have exceeded its normal

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1 operating expenses for the same period.

2 And again, what we're trying to get here to  
3 is, you know, what are their normal operating costs and  
4 expenses. We're just trying to get information that --  
5 I don't know that I really have anything to add. I  
6 think it's obvious what we're trying to get.

7 JUDGE WALLIS: Very well.

8 Mr. Ryan, are you prepared to respond to the  
9 individual objections?

10 MR. BRENA: Oh, Your Honor, I should add, I'm  
11 sorry, but I should add --

12 JUDGE WALLIS: Is this Mr. Brena?

13 MR. BRENA: Yes, it is, I'm sorry, this is  
14 Robin Brena.

15 I should just add that this is the  
16 impermissibly vague and as normal operating expenses is  
17 not defined. And all I can say is that, you know,  
18 that's a term of art that is commonly used within the  
19 industry. As a pipeline company, Olympic has both  
20 federal and state obligations to maintain their books  
21 according to certain charts of accounts. That within  
22 those charts of accounts, that there is a definition of  
23 ordinary, there is a definition of extraordinary items,  
24 and as a matter of routine these definitions are applied  
25 and used. And, in fact, they're required to be used in

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1 their FERC filings. I haven't had the time in this  
2 accelerated schedule to become familiar with the chart  
3 of accounts that applies to utilities and pipelines in  
4 the state of Washington, but I can only assume that they  
5 also require and contain definitions that provide for  
6 accounting for ordinary operations different than  
7 extraordinary operations.

8         And I would just point out that under the  
9 federal regulations 18 CFR Part 352, it just goes  
10 through and says this. It says extraordinary items, and  
11 it goes through and just says what they are:

12             Unusual means an event or transaction  
13             must possess a high degree of  
14             abnormality in a type clearly unrelated  
15             to, or it's generally related to the  
16             ordinary, typical activities of the  
17             entity. A frequent occurrence means the  
18             events or transactions shall be the type  
19             not reasonably expected to reoccur in  
20             the foreseeable future.

21             We're just asking them a simple question.  
22 Are your ordinary -- are your operating expenses income  
23 higher than your normal operating costs. And let me say  
24 again that it's unfortunate that if they didn't  
25 understand what was intended by that that they didn't

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1 comply with the Commission's order to phone me and ask  
2 me for a definition or comply with what is in our data  
3 requests, which should have been handed to you with the  
4 other information, where we say, if something is  
5 ambiguous in something we're asking you, give us a call  
6 and we'll talk about it.

7           So, you know, I'm in a situation where I have  
8 nine days to file a case with the Commission.

9           JUDGE WALLIS: We're aware of the time frame  
10 and the expedited nature of the concerns.

11          MR. BRENA: That's all that I have.

12          JUDGE WALLIS: You have mentioned that a  
13 couple of times. You need not mention it again. I will  
14 repeat that we are aware of those concerns.

15          Mr. Trotter, do you have any observations on  
16 this?

17          MR. TROTTER: I have nothing to add that  
18 would be helpful at this point.

19          JUDGE WALLIS: Very well.

20          Mr. Brena, are you asking for results of  
21 operations effectively?

22          MR. BRENA: Yes, on a monthly basis.

23          JUDGE WALLIS: Okay. Are you asking per  
24 books, per FERC, or per UTC?

25          MR. BRENA: I asked in later parts, we're in



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1 the requests for admission at this point, but I asked  
2 for -- in later parts, I asked for it by FERC account,  
3 and the federal requirement, the federal regulations  
4 require them to keep it monthly.

5 JUDGE WALLIS: Mr. Ryan, do you know whether  
6 Olympic maintains these accounts on a monthly basis or  
7 maintains the information per books and then on some  
8 other basis than monthly translates it into a per FERC  
9 analysis or presentation?

10 MR. RYAN: I don't, Your Honor, I apologize.

11 If I can just add a couple things. One is I  
12 appreciate Mr. Brena's frustration here, but we also  
13 scrambled, as you are well aware, to get this out, and  
14 we found normal operating expenses to be very vague.  
15 What constitutes normal operating expenses? What may be  
16 a term of art to Mr. Brena, we didn't find to be any  
17 such term of art. And it would be most helpful if he  
18 could, in fact, cite to a Washington authority as we're  
19 finding there are many discrepancies between the  
20 Commission and what happens on a state level here and  
21 what happens on a FERC level. So he may cite Part 352,  
22 Volume 18 of the CFRs, but how are we to know when to go  
23 to a federal authority, what authority? These, I think  
24 -- I think it's understandable that we found this to be  
25 vague.

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1 JUDGE WALLIS: Mr. Ryan, is there any reason  
2 why the company was not able to request clarification?

3 MR. RYAN: Only time, Your Honor. We  
4 certainly would have done so had we not been so pressed  
5 to answer all of these many discovery requests.

6 JUDGE WALLIS: Mr. Brena, is it true that you  
7 have asked for the underlying information in other areas  
8 of your discovery requests?

9 MR. BRENA: It is, Your Honor.

10 JUDGE WALLIS: My ruling on these two items  
11 is that insofar as the underlying information is the  
12 subject of a request that these requests for admission  
13 would be denied. I will note that the admonition to  
14 parties that exists in the Commission's rules and that  
15 we repeated really do put some burdon on parties to ask  
16 questions if they believe that an item is vague and to  
17 secure that clarification if at all possible.

18 Let's move on to Request Number 3.

19 MR. BRENA: Do you want to address the ones  
20 under --

21 JUDGE WALLIS: I'm sorry, to the next item,  
22 which would be Interrogatories Number 20, et cetera.

23 MR. BRENA: Interrogatory Number 20 appears  
24 in a couple places. It's the throughput question, and  
25 what they have -- and we have asked for monthly

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1 throughput barrels through Olympic Pipeline's system by  
2 shipper product, point of origin, point of the  
3 destination, tariff rates, intrastate or interstate  
4 nature of the shipment from January 2000 to date. And  
5 this is very important information, because throughput  
6 determines revenue, and there is a story to be told in  
7 throughput that can't be told any other way. They have,  
8 for example, characterized specifically in their case  
9 what the rate impacts will be based on this interim  
10 rate. This information would allow us to confirm that  
11 by individual shipper, so this Commission would have  
12 before it each shipper and what the rate impact of this  
13 interim rate would be.

14           This allows us to demonstrate that the  
15 emergency to the degree that it existed two years ago  
16 has now abated and that this line is up to operating at  
17 high enough throughput levels so that they have revenue  
18 so that it's not a problem. This is very important  
19 information and allows us to test the information that  
20 they're providing to us in their case and to the  
21 Commission with regard to specific rate impacts. They  
22 have represented the exact numbers. And without this  
23 information, we can not go in and confirm the accuracy  
24 of their number. So I don't know how it could be more  
25 central.

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1 JUDGE WALLIS: Mr. Ryan.

2 MR. BRENA: Your Honor, I'm sorry, I paused,  
3 I didn't mean to stop.

4 JUDGE WALLIS: Oh. Mr. Brena.

5 MR. BRENA: I have a Buckeye Pipe Line case,  
6 a case, let's see, 1989 Westlaw 261970 (FERC), where  
7 they allow the release of this information. Williams  
8 Pipe Line Company, 51 FERC P 63024 or 1990 Westlaw  
9 318573 (FERC) where they have allowed the release of  
10 this information. Southern Pacific Pipe Lines, 35 FERC,  
11 Page 63044, or 1986 Westlaw 77584. All of these  
12 situations, and it's not just federal authorities to  
13 release it, it's also state. Tesoro Alaska Petroleum  
14 Company versus Amerada Hess Pipeline Corporation, 9 APUC  
15 515, June 30, 1989.

16 And let me point out that the basis for this,  
17 and if you can -- if you just turn, they have included  
18 Paragraph 13 in their response to interrogatory, and  
19 they have underlined the part that says that you can't  
20 release it. But they have not underlined the part that  
21 says the circumstances under which it can be released.  
22 And if you go to the middle of the page after the  
23 provided, it says:

24 Provided that nothing in this chapter  
25 shall be construed to prevent the giving

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1           of such information in response to legal  
2           process.

3           And it goes through and defines that under  
4 different circumstances, and that is the language under  
5 which actual throughput information by shipper and by  
6 location is distributed.

7           Let me also add that they ask for that  
8 information from us. They asked us for all of our  
9 volumes and matters that they have records of. And our  
10 information would have been to take their sheet that  
11 they give us and to give it back to them. So to the  
12 degree that they believe that 15(13) prohibits the  
13 disclosure of that for any party, they have asked for  
14 the identical information with regard to Tesoro from us.

15           So it just -- it, you know, this is one of  
16 those situations where I understand -- where this is  
17 just a matter of routine in these rate cases, and the  
18 law, the law of the land is clear, when you have a  
19 protective order in place, you can get into the  
20 specifics, and that is -- and the case authority is  
21 uniform with regard to that.

22           And I point out that this is BP Pipelines,  
23 Inc. They were one of the participants in that Tesoro  
24 case where we had it disclosed. BP Pipelines, Inc., has  
25 disclosed this information in cases in which -- in which

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1 I am an attorney in in the past. And this is Perkins  
2 Coie, one of the largest law firms in the United States.  
3 So for them to answer this with just a copy with the  
4 wrong section underlined --

5 JUDGE WALLIS: Mr. Brena, we're treading on  
6 thin ice here. I am interested in the basics of your  
7 concerns and would like to hear Mr. Ryan's response if  
8 you have basically concluded your comments.

9 MR. BRENA: Yes, I have.

10 JUDGE WALLIS: Thank you.

11 MR. RYAN: Thank you, Your Honor. I won't  
12 necessarily disagree except to the extent that I would  
13 ask Mr. Brena under what circumstances that information  
14 was released. I believe that it would be appropriate to  
15 object to this until at such time it was under order to  
16 be released, and so that's, I think, our position on it.  
17 I think he's correct in the proviso, but we -- I think  
18 what our position would be that we would want to be  
19 compelled under order to release that information.

20 MR. BRENA: And I agree that that would be  
21 appropriate and should be done here and now.

22 JUDGE WALLIS: Mr. Trotter, do you have any  
23 comments?

24 MR. TROTTER: No.

25 MR. RYAN: Your Honor, just one other thing,

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1 sorry to interrupt, but Mr. Brena has thrown in the  
2 kitchen sink here on his B under the information, and  
3 I'm assuming that we are just talking about 20 at this  
4 point, Interrogatory 20.

5 JUDGE WALLIS: I believe that's correct.

6 MR. BRENA: Yes.

7 JUDGE WALLIS: Very well, I do not have the  
8 cited provision in front of me in its entirety. The  
9 parties appear to agree that the information will be  
10 provided subject to the protective order upon direction  
11 from the Commission, and I hereby direct the company to  
12 provide this information.

13 To the extent that other information subject  
14 to the same federal provision is an issue in any other  
15 context, please consider that this direction applies to  
16 that information as well.

17 Does that resolve the issue?

18 MR. BRENA: It does, Your Honor.

19 MR. RYAN: It does, Your Honor.

20 JUDGE WALLIS: Very well, let's move on.

21 MR. BRENA: Interrogatory Number 29.

22 JUDGE WALLIS: Please proceed.

23 MR. BRENA: We asked for the total amount  
24 Olympic has paid its shareholder affiliates beginning  
25 January 2001. The answer responded that there were no

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1 dividends paid. Dividends are just one form of funds  
2 that may be paid. I would note that in response to  
3 Interrogatory Number 28, compensation paid to BP since  
4 January 1, 2000, they have paid \$21 Million to BP, and  
5 so they have disclosed that. But if there is anything  
6 else, a management fee or other than is disclosed in 28,  
7 it can be dividends. We didn't narrow this question to  
8 dividends. We want to know about all affiliate payments  
9 made from Olympic to its affiliates and/or its  
10 shareholders.

11 And so to the degree they're representing  
12 there's no dividends and if 28 reflects everything else  
13 that was paid to the shareholders or affiliates, then  
14 we're satisfied. To the degree that that's not the  
15 case, then we want to know about the additional sums.

16 JUDGE WALLIS: Mr. Ryan.

17 MR. RYAN: Yeah, I will have to confirm that  
18 with the client one way or the other. I don't have the  
19 answer to that off hand, but I would be happy to check  
20 into that.

21 MR. BRENA: So then may I ask for a ruling  
22 that if there are payments made other than as disclosed  
23 in Interrogatory Number 28 to shareholders or affiliates  
24 that it would be provided to us?

25 JUDGE WALLIS: Mr. Ryan, is the company



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1 willing to do that?

2 MR. RYAN: I believe so, yes.

3 JUDGE WALLIS: I will take that as general  
4 assent, which would foreclose the need for me to order  
5 the company formally to do that. But should a question  
6 arise, I need to let you know that based on what I know  
7 now, I would so rule.

8 MR. RYAN: Thank you.

9 MR. BRENA: Okay, Interrogatory 33, 34, and  
10 35, I see Interrogatory 35 is listed in another place,  
11 but I think it's probably better to take the three of  
12 these together. And in denying 1 and 2, you had asked  
13 whether we had asked for this type of information in  
14 other places. We asked for the total operating expenses  
15 by FERC account January 1, 2000, to date, and asked what  
16 expenses represented actual cash expenses versus amounts  
17 accrued. On 33 and 34, we asked for the capital  
18 expenditures under the same type of question. And then  
19 in 35, we asked that they identify the Whatcom Creek and  
20 the Office of Pipeline Safety capital improvements and  
21 expenses.

22 And when you put all that together, what that  
23 allows us to do is at least control for one  
24 extraordinary event that's occurred and to see what  
25 their position is to get the actual information and then

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1 to see what their position is less than one  
2 extraordinary event.

3           Their response is that they, in part, that  
4 they don't keep it on a monthly basis. I would point  
5 out that the federal regulations require them to keep  
6 the FERC books on a monthly basis. 18 CFR Part 352 1-2

7 Accounting Periods says:

8           Each carrier shall keep its books on a  
9 monthly basis so that all transactions  
10 as nearly as may be ascertained shall be  
11 entered in the accounts not later than  
12 60 days after the last day of the period  
13 for which the accounts are stated.

14           So I -- what I'm -- I'm not stuck on their  
15 statement in any particular way, but it's easiest if  
16 we're using a uniform accounting system that all the  
17 experts are used to, and that's the reason that we  
18 requested it in that fashion.

19           JUDGE WALLIS: Mr. Ryan.

20           MR. RYAN: Well, going to 35, our position  
21 was, associated with the Whatcom Creek accident is  
22 incredibly broad. There have been a number of  
23 regulations, for instance, which have come about, I  
24 think are fairly traceable to that tragedy. Some money  
25 goes to compliance, others to safety related capital

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1 expenditures and projects. It's very hard for the  
2 company to understand what it is that would be  
3 considered to be associated with the Whatcom Creek  
4 accident.

5           We have been quite clear, contrary to earlier  
6 assertions, that there is no penalties or fines or any  
7 direct cost associated with the Whatcom Creek tragedy  
8 that is involved in either this interim rate case or the  
9 general rate case. And we -- it's asked and answered,  
10 and I don't -- again, we're having a hard time  
11 understanding what could be considered to be associated  
12 with the Whatcom Creek accident.

13           MR. BRENA: If I may, Your Honor.

14           JUDGE WALLIS: Mr. Brena.

15           MR. BRENA: Well, first, I would note that he  
16 raised no objection in those comments to 33 or 34, only  
17 to 35. And let me say that those are, the to date part  
18 of that is very important, because it's only since  
19 September, October, and November are the only actual  
20 months that we have where we have reliable information  
21 as to their financial position after all the four  
22 refineries are on line and after the impact of the  
23 interim rate on the FERC side is taken into  
24 consideration. So this issue will come up again, so all  
25 I would ask for is I mean absent an objection, they

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1 ought to show us their books. Because they're saying  
2 generally they are in a declining, deteriorating  
3 financial position, and so 33 and 34 say, show us.

4           And with regard to his comments on 35, we  
5 know that their casualty and loss, from the technical  
6 conference, we know that like \$21 Million or \$23  
7 Million, we had the technical people in there, they said  
8 that the casualty loss sections were related to Whatcom  
9 Creek. With regard to the Office of Pipeline Safety,  
10 they have a corrective action order that requires them  
11 to do certain things in their complying with that order,  
12 and we have asked them to separate out those things. I  
13 don't think that that's unreasonable to ask, what  
14 expenses are associated with those events. And I would  
15 be stunned and surprised if they weren't tracking them  
16 in some fashion, and I'm assuming that they're even  
17 probably pending insurance claims related to wanting  
18 reimbursement for those expenses.

19           MR. TROTTER: Your Honor, this is Don Trotter  
20 for Commission Staff. I will note that the company has  
21 taken out Whatcom Creek, certain Whatcom Creek accident  
22 costs, from their general rate case. But in their early  
23 portrayals of loss position in the interim case, they  
24 did include those costs. So I guess I take exception to  
25 part of what Mr. Ryan said, because I think he said it

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1 wasn't part of the interim matter, but it was in the  
2 documents that they filed earlier.

3 MR. BRENA: This is Robin Brena, if I could  
4 just point out that even in their general rate case,  
5 they only took out the direct expenses. They didn't  
6 take out or attempt to take out any indirect expense.

7 MR. RYAN: I thought that -- I'm sorry. Your  
8 Honor, I think that's why I did refer --

9 JUDGE WALLIS: Is this Mr. Ryan?

10 MR. RYAN: Sorry. That's what I did refer to  
11 was the direct cost. That was my understanding, that  
12 that's what had been removed.

13 MR. BRENA: They had been removed from their  
14 direct rate case, the direct cost, but not from their  
15 interim filing.

16 JUDGE WALLIS: Very well.

17 Mr. Trotter, do you have any other comments  
18 related to this?

19 MR. TROTTER: No.

20 JUDGE WALLIS: On Interrogatory Number 33, I  
21 believe in light of the discussion of the parties that  
22 it is not possible to say that this is not relevant nor  
23 reasonably calculated to lead to the discovery of  
24 admissible evidence, because I believe that the  
25 potential relevance has been established.

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1           The response identifies the response to  
2 Request for Production Number 8 and FERC Form 6. I'm  
3 wondering if the parties could explain what information  
4 was provided in response to that request and whether  
5 that answers the question under this interrogatory  
6 number.

7           MR. BRENA: The notice that that request for  
8 production is under the -- is the first request for  
9 production under that same category. I'm happy to take  
10 it up now or take it up then.

11          JUDGE WALLIS: Can you characterize in a  
12 sentence or two what the response is?

13          MR. BRENA: Not complete information stated  
14 under the FERC accounts.

15          JUDGE WALLIS: Very well. On the basis that  
16 this is not information that the company has in its  
17 possession and that it has represented that these  
18 accounts are not maintained on a monthly basis and that  
19 it has represented that the information is not produced  
20 and is not available for any month beginning January 1,  
21 2000, to date, I will deny this request. While the  
22 Commission in some instances in approaching general rate  
23 increases has required the production of documents that  
24 are not existing, I believe in this instance given the  
25 tight time frame and the need for immediate response

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1 that it is not appropriate to order the production of  
2 information at this time. I would direct the company to  
3 provide whatever information listing operating expenses  
4 by FERC account exists for the period January 1, 2000,  
5 to date.

6 MR. BRENA: And specifically their general  
7 ledger accounts. That would be what we -- one of the  
8 main things that we would want to look at.

9 JUDGE WALLIS: Again, I don't know and  
10 Mr. Ryan is not able to respond whether their general  
11 ledger accounts are maintained on a FERC basis.

12 MR. BRENA: Your Honor, just so Tesoro's  
13 position is clear, on whatever basis they're available,  
14 we would like to have them.

15 JUDGE WALLIS: So you're amending your  
16 request so that it includes total operating expenses in  
17 whatever form maintained?

18 MR. BRENA: Yes, certainly.

19 MR. RYAN: Hasn't that already been provided?

20 Excuse me, this is Mr. Ryan.

21 JUDGE WALLIS: Mr. Ryan.

22 MR. RYAN: Request for Production Number 8  
23 and FERC Form 6.

24 MR. BRENA: No. Production Number 8 is for  
25 2001 only and is only through September. It does not

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1 include the years since the income stream was stepped up  
2 in October. It doesn't include October or November.  
3 And we want and you guys have to have, I'm sorry,  
4 Olympic has to have some type of monthly statement of  
5 accounts. And so we would ask -- and it's our  
6 understanding that discovery is ongoing so that if they  
7 didn't have November today but they had it tomorrow that  
8 they would provide it tomorrow. So no, I don't think  
9 that Request for Production Number 8 does that.

10 JUDGE WALLIS: Very well. On the basis of  
11 this discussion, Interrogatory Number 33 is denied, but  
12 Request for Production Number 8, the company should  
13 provide information for the year 2000, which according  
14 to the representations it has not, and it should provide  
15 on a monthly basis information on months that were not  
16 available at the time of production but become  
17 available.

18 Is that clear to the parties?

19 MR. RYAN: I'm sorry, Your Honor, this is  
20 Mr. Ryan, that would be become available for what period  
21 of time?

22 JUDGE WALLIS: For the period following the  
23 period for which information has already been provided.  
24 So October, I understand up to September has been  
25 provided, as October becomes available, it would be



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1 provided.

2 MR. BRENA: Your Honor, just to be clear, we  
3 in both 33 and in Production request 8, we asked for  
4 2000 and 2001, and the Request for Production 8 has only  
5 through September of 2001. It does not have 2000, and  
6 it does not have October or November.

7 JUDGE WALLIS: Yes, and I believe we began  
8 this by stating that information should be provided for  
9 the year 2000.

10 MR. BRENA: Okay.

11 MR. RYAN: Your Honor, just to point out, in  
12 our answer to Request for Production Number 8, we point  
13 out that Equilon was the operator prior to July of 2000.  
14 It's my understanding that there are files and financial  
15 statements, the type of which that is requested, that we  
16 do not have access to. We are in serious litigation  
17 with Equilon, and they are hostile to our access at this  
18 time to files which we don't have. So we have supplied  
19 that which to date we have in the files.

20 I understand the request for October and  
21 November, as of the time we prepared these responses,  
22 that was not available. So I will certainly go back to  
23 the company and see if that has been accomplished.

24 But just to point out that there are things  
25 that it's, however much Mr. Brena or anyone else would

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1 like them, we have a physical impossibility. Now I will  
2 certainly double check that, but that is the reason why  
3 we answered.

4 JUDGE WALLIS: Very well, thank you for that  
5 explanation, Mr. Ryan.

6 Mr. Brena.

7 MR. BRENA: This is Robin Brena. Their  
8 response to Request for Production 8 says that Equilon  
9 was the operator of the pipeline prior to July 2000 and  
10 prepared the monthly financial statements, which are not  
11 available in the format requested. Any format that  
12 they're available in would be fine would be my comment.  
13 So this isn't -- they don't say they're not available.  
14 They say they're not available in the format requested.  
15 I don't know what that modifying language is intended to  
16 imply, but we will take it in any format.

17 And the other thing that I would like to  
18 point out is that Arco is and has been an owner and  
19 shareholder, and one question is who the operator was  
20 that prepared the monthly financials, but the idea that  
21 the shareholders would not have monthly financial  
22 statements on Olympic Pipeline and that those monthly  
23 financial statements are not available to Olympic  
24 because their former operator left, I have to believe  
25 that they exist in the corporate records or in the

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1 shareholder records.

2                   And then finally, I would like to point out  
3 that that only relates to information prior to July of  
4 2000, and from July of 2000, the second six months of  
5 that year, BP was the operator, and they didn't provide  
6 those either.

7                   JUDGE WALLIS: Mr. Ryan, were you going to  
8 say something?

9                   MR. RYAN: No.

10                  JUDGE WALLIS: Very well.

11                  MR. RYAN: I think we should move on.

12                  JUDGE WALLIS: Very well. And in  
13 clarification, Olympic should provide the information  
14 that it has following July 2000. It should inquire of  
15 any of its owners or shareholders as to whether they  
16 have that information and whether it's available through  
17 that source and should provide any information, even if  
18 it is not in the format requested, that the company has  
19 for the period prior to July.

20                  Let's move on.

21                  MR. BRENA: That took care of 33 and Request  
22 for Production 8. I think that the argument stood on 34  
23 and 35. I have nothing to add to the argument that I  
24 have advanced on those two, you know, other than to say  
25 that 34 is intended to break out capital expenses, and

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1 so it's focused to the capital budget. And 35 is  
2 designed to try to take out extraordinary events, a few  
3 of which should be readily identifiable.

4 JUDGE WALLIS: Mr. Ryan and Mr. Trotter,  
5 there is a reference to WUTC Data Request Number 1,  
6 Question Number 7, and its response, can you tell me if  
7 any of this information was provided in that response?

8 MR. TROTTER: This is Don Trotter, yes, I  
9 believe our Question 7, we did ask for the capital,  
10 detail of the capital expenditures that Mr. Batch  
11 testifies to, and we got a six page response. I think  
12 the first three pages itemized those.

13 JUDGE WALLIS: Mr. Brena, do you know whether  
14 that information satisfies your request?

15 MR. BRENA: I am looking, because I believe  
16 that that was provided. Okay, 34, there were no details  
17 given, just a list of improvements and maintenance under  
18 general categories.

19 MR. TROTTER: This is Don Trotter, my  
20 recollection, I don't think I have it right in front of  
21 me, but I believe it was listed by the project and -- by  
22 capital project. There was a three page list of --  
23 there were many, many lines, so I think it was more  
24 detail than simply broad general categories.

25 MR. RYAN: Your Honor, this is Mr. Ryan.

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1 JUDGE WALLIS: Mr. Ryan.

2 MR. RYAN: I would be happy to fax this to  
3 you. It's very detailed. It gives the 1999 actual  
4 spending, 2000 actual spending, 2001 actual spending to  
5 date, 2001 year end projected spending, 2002 projected  
6 spending, and total project 1999 to 2002 for corrective  
7 for capital expenditures on a variety of different  
8 projects. There must be -- there must be 50, 75, 14  
9 inch, 20 inch, and laterals repairs from 2000 internal  
10 inspections. I'm just reading from the top.

11 MR. BRENA: Could I ask a question perhaps?  
12 If this has been provided, it's not my intention to  
13 waste our time here with it now, does it include the  
14 year 2000, all capital expenses for the year 2000?

15 MR. RYAN: Yes, 2000 actual spending.

16 MR. BRENA: As well as 2001?

17 MR. RYAN: Yes.

18 MR. BRENA: Based on that representation, I  
19 would withdraw this portion of my motion to compel. And  
20 just subject to check, if after I check it, if I  
21 disagree somehow with the characterization, then --

22 JUDGE WALLIS: You're free to supplement the  
23 request.

24 MR. BRENA: I will reserve my --

25 JUDGE WALLIS: Very well.

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1                   Now Number 35.

2                   MR. BRENA: Yes, and with 35, I'm just trying  
3 to get them to identify, you know, what is a few of the  
4 things that are extraordinary in nature and nonrecurring  
5 in their books, that is Whatcom Creek and the Office of  
6 Pipeline Safety Corrective Action.

7                   JUDGE WALLIS: There is some uncertainty with  
8 regard to the term, associated with the Whatcom Creek  
9 accident. While the company did not seek clarification,  
10 do you have an objective standard, Mr. Brena, which  
11 might apply so that items associated with Whatcom Creek  
12 may be readily identified?

13                  MR. BRENA: They have used the term directly  
14 in the past. For example, in their general rate case,  
15 they have indicated that they have taken out, and they  
16 have quite a list I understand, of expenses that were  
17 directly associated with it. So at a minimum, the  
18 definition would include those direct expenses. I used  
19 the phrase associated with because I had intended it to  
20 be broader than directly. Because to the degree that  
21 there are indirect expenses, I mean they had to go  
22 through the Whatcom Creek expenses, and they had to  
23 identify those that were direct, and they took those  
24 out. And so I'm trying to see if I can reach all of the  
25 Whatcom Creek expenses, the ones that were directly

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1 incurred and indirectly incurred. With regard to the  
2 Office of Pipeline Safety corrective action letter, they  
3 were told to do very specific things, and so I have  
4 asked them to identify those things.

5 JUDGE WALLIS: Mr. Ryan.

6 MR. RYAN: Well, a couple things there. My  
7 recollection of the discussion with the clients on this  
8 matter is that this is bigger than is painted here  
9 before us today, that the Whatcom Creek accident  
10 necessarily flows to a variety of different costs.  
11 Those costs that are directly associated with this, I  
12 think the company has carved out. And if they haven't  
13 made their way to Mr. Brena, we could supply. Indirect  
14 cost is again vague and ambiguous. I would also point  
15 out that the direction we're heading would seem, as our  
16 response indicates, the creation of a new cost study,  
17 which seems beyond the scope of a permissible data  
18 request unless, Your Honor, you feel otherwise.

19 JUDGE WALLIS: Very well. To the extent that  
20 the company has not in its interim case identified the  
21 operating of capital expenses that are directly related  
22 to the Whatcom Creek accident, the company should do so.

23 MR. BRENA: Does Your Honor's ruling apply to  
24 the corrective action letter as well?

25 JUDGE WALLIS: Yes.

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1                   MR. RYAN: Can I ask for a point of  
2 clarification here, because I'm sure that Mr. Brena will  
3 raise this again. He is careful to characterize or call  
4 the action order that we received from the Office of  
5 Pipeline Safety as a letter. We didn't know what that  
6 meant, because we received no letter. It was a  
7 corrective action order. That's pretty clear. So I'm  
8 just saying that now. There is -- we were unaware of  
9 any letter, and we weren't playing games there, we just  
10 wanted to be clear about what was being requested. So a  
11 point of clarification is it's a corrective action  
12 order.

13                   JUDGE WALLIS: And Interrogatory Number 35 as  
14 I read it here does refer to a corrective action order.

15                   MR. RYAN: That's right, Your Honor, thank  
16 you.

17                   JUDGE WALLIS: I'm not asking that the  
18 company identify items that are indirectly associated,  
19 because I believe that there is quite a bit of latitude,  
20 and I believe that in the disclosure of all expenses, it  
21 will be possible to inquire to the extent necessary in  
22 this abbreviated process as to which items are related  
23 and what the relationship is.

24                   MR. BRENA: I guess that takes us to 36.

25                   JUDGE WALLIS: Mr. Brena.



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1           MR. BRENA: I will be brief. They have  
2 alleged a financial crisis of deteriorating nature, and  
3 we have asked for what efforts they have undertaken to  
4 reduce their operating expenses. And so this is a --  
5 where I think the disconnect is is if you're in a  
6 crisis, there should be objective things that you do to  
7 try to manage that crisis. For example, they paid their  
8 manager over \$3 Million in the last two years. Well,  
9 have they made any efforts to negotiate a reduction of  
10 the management fee to BP Pipelines as a result of trying  
11 to curtail this emergency crisis? So this is detailing  
12 what efforts have you taken to undertake them. They go  
13 through, they simply just don't even answer the  
14 question. If the answer is none, then they can say  
15 none. If they have undertaken some sort of effort to  
16 reduce their operating cost, then we just ask them to  
17 list what efforts there have been.

18           JUDGE WALLIS: Mr. Ryan.

19           MR. RYAN: Well, I thought we did answer  
20 them. Apparently he feels, Mr. Brena feels that we  
21 didn't sufficiently. I would ask for a ruling on that.

22           But I do also note, as we included in this  
23 response, that it's curious and interesting to us that  
24 the company would request the closure or the certain  
25 portions of the line stay down, thus reducing our

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1 revenues, in order to increase their capacity. And now  
2 they seem to be arguing just the reverse, so all of  
3 which is -- we believe we answered this.

4 MR. BRENA: Your Honor, this is Robin Brena.  
5 I guess I would ask him to identify in his answer any  
6 single effort that they undertook to reduce their  
7 operating costs. Because as I read this, I just can't  
8 find one.

9 With regard to Tesoro's E-mail asking them to  
10 bring up the lines simultaneously --

11 JUDGE WALLIS: My view is that that's a side  
12 issue and not one that we need to explore at this time.

13 MR. BRENA: That was what I was going to say.

14 JUDGE WALLIS: Mr. Trotter, do you have any  
15 comments on this item?

16 MR. TROTTER: No.

17 JUDGE WALLIS: Mr. Ryan, it's your statement  
18 that this is the company's detail of efforts that have  
19 been undertaken to reduce operating expenses?

20 MR. RYAN: Well, Your Honor, we answered this  
21 the best we could.

22 JUDGE WALLIS: Very well. On the basis that  
23 this does constitute the company's answer, we will not  
24 order further production of information.

25 MR. BRENA: I would just ask for

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1 clarification, is the representation by Olympic that all  
2 efforts that its taken to reduce operating costs are  
3 memorialized in its answer?

4 MR. RYAN: I request a detail on what  
5 efforts. It did not ask for all efforts. Stipulating  
6 to that, I felt that we answered fairly within the scope  
7 and substance of the question.

8 JUDGE WALLIS: Very well, let's move on to  
9 Number 37.

10 (Discussion off the record.)

11 (Brief recess.)

12 JUDGE WALLIS: Let's be back on the record  
13 following a brief recess. Let's take up at this time  
14 with I believe Item Number 7; is that correct,  
15 Mr. Brena?

16 MR. BRENA: Your Honor, Interrogatory Number  
17 37.

18 JUDGE WALLIS: Number 37, thank you.

19 MR. BRENA: Interrogatory Number 37,  
20 Olympic's response is, see the response to Interrogatory  
21 Number 36. 36 goes to an explanation of how they  
22 brought their lines back into service. With regard to  
23 B, we have asked them to identify documents of which  
24 they're aware that concern the deterioration of its  
25 financial condition. So we figured there must be

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1 internal company memorandum discussing it, notes or  
2 correspondence, and so we have asked them to identify  
3 those documents. They are not identified in  
4 Interrogatory Number 36, and so we don't believe that  
5 they have responded to our full interrogatory.

6 JUDGE WALLIS: Mr. Ryan.

7 MR. RYAN: Well, it appears B, I would --  
8 seems 36 does not go to the answer B, okay. Well,  
9 again, I think that if we go back to the capital  
10 expenditures, although not listed by month, certainly  
11 for the three year period from '99 to 2002, covering  
12 2002, there are those capital expenditures that are very  
13 detailed, and I don't know what more they're -- all the  
14 capital expenditures are listed quite in detail in I  
15 believe it was the response to Staff Request for  
16 Production Number 8.

17 MR. BRENA: If Mr. Ryan is willing to  
18 stipulate that all of the documents on the deterioration  
19 of their financial position have been produced, I will  
20 accept that representation. It just seems to me that if  
21 a company is in a downward spiraling financial position  
22 that they would have some sort of memorandum or cash  
23 flow analysis or I mean something where internally they  
24 have identified the problem and tried to formulate  
25 solutions.

00163

1           MR. RYAN: I can stipulate to the extent of  
2 my knowledge, but I would have to -- I would have to go  
3 back to the client and make sure that I'm truly and  
4 honestly representing the current state of affairs  
5 there, so.

6           JUDGE WALLIS: Very well. To the extent of  
7 part A, the response is included within the response to  
8 Interrogatory Number 36. And with respect to part B,  
9 Mr. Ryan will consult with his client to verify his  
10 belief that there are no such documents. Is that where  
11 we stand with this?

12          MR. RYAN: Yes, and if there are documents  
13 which are responsive to Mr. Brena's request, we will  
14 turn them over.

15          JUDGE WALLIS: Very well, thank you.

16          MR. RYAN: Subject to any privilege, and we  
17 can discuss that.

18          JUDGE WALLIS: Yes.

19          MR. RYAN: Thank you.

20          MR. BRENA: Interrogatory Number 38 --

21          JUDGE WALLIS: Mr. Brena, our court reporter  
22 is having trouble hearing you, so to the extent you can  
23 pull the microphone a little bit closer to your mouth  
24 and keep your voice level up, that will help all of us  
25 to follow what you say, I believe.

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1                   MR. BRENA: Thank you, Your Honor.  
2 Interrogatory Number 38, we ask them to explain what  
3 they meant by emergent financial situation and its  
4 causes, and they referred again to 36 as well as  
5 petition, testimony, exhibits, and responses. And  
6 again, if it's his representation that their entire  
7 explanation that they intend to advance on this  
8 financial situation has somehow been disclosed already,  
9 I'm willing to accept that representation and move on.

10                   JUDGE WALLIS: Mr. Ryan.

11                   MR. RYAN: The petition, testimony, exhibits,  
12 responses all speak for themselves, as do our prior  
13 response. I will stipulate to the extent that as you  
14 noted, we did reserve the ability to supplement this  
15 response as new facts, new figures, and new information,  
16 whether it relates to, you know, prior losses of profits  
17 or revenues, increase or decrease, operating expenses or  
18 costs, et cetera, as that information becomes aware to  
19 us, we would want the ability to supplement, of course,  
20 how, you know, the picture that we're painting to  
21 support our interim rate increase.

22                   MR. BRENA: This is Robin, I just have one  
23 comment on that. Their direct case has been filed.  
24 It's been amended. I'm trying to conduct discovery on  
25 that direct case. We're entitled to know at some point

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1 with certainty what their case is, and they're not  
2 allowed to move that case any more to supplement it,  
3 because discovery will no longer be possible. So I  
4 guess to the degree that what he said is we reserve the  
5 right to move the target, I guess that I would raise an  
6 objection to that.

7 JUDGE WALLIS: I would like to again move  
8 back from subjective characterizations and say that  
9 Olympic, as do all parties, has the right to request  
10 leave to supplement their presentation. That does not  
11 mean that the Commission will grant that request. And  
12 at such time as any new facts, figures, or information  
13 are available, Olympic may request it, and the other  
14 parties may voice their views on whether the Commission  
15 should allow that supplementation.

16 Does that satisfy your concerns, Mr. Brena?

17 MR. BRENA: It does, Your Honor, thank you.

18 JUDGE WALLIS: Very well.

19 MR. BRENA: Interrogatory Number -- I'm  
20 sorry, Mr. Ryan.

21 MR. RYAN: Thank you. Just a point of  
22 clarification, Your Honor, are we not -- is this  
23 discovery not about the interim rate case, and if so,  
24 then I'm a little confused about Mr. Brena's assertion  
25 that this discovery is about the direct case. We

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1 haven't filed the direct case yet. We're filing that  
2 next week, and the discovery that's appropriate to the  
3 scope of the direct case will be conducted at that time,  
4 so.

5 JUDGE WALLIS: Mr. Ryan, I took Mr. Brena's  
6 comment to refer to the direct case as to the interim.

7 Is that right, Mr. Brena?

8 MR. BRENA: That's correct, Your Honor.

9 MR. RYAN: Thank you.

10 MR. BRENA: Interrogatory Number 39, we asked  
11 for an explanation for the net casualty amounts and loss  
12 amounts in 2000 and 2001. In the technical conference,  
13 I asked the same question, and the answer I was told is  
14 that 100% of those were associated with Whatcom Creek.  
15 Now I would like, I guess I would like them to say that,  
16 if that's the situation, I would like to say -- for them  
17 to say that, not only in the technical conference, but  
18 in response to my discovery.

19 JUDGE WALLIS: Mr. Ryan.

20 MR. RYAN: Well, unfortunately, I didn't  
21 attend the technical conference. I'm not saying that  
22 that is either here nor there. If a representation  
23 which I would have to substantiate was, in fact, made  
24 there, then I don't see why -- I mean if we made it, we  
25 said it.



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1 MR. TROTTER: Your Honor, this is Don  
2 Trotter. One of your prior orders says that we can not  
3 cite to statements made at the technical conference in  
4 testimony, so we are left to make follow-up DR's if we  
5 want to be able to cite it. My recollection is the same  
6 as Mr. Brena's though with regard to what was said, so  
7 this should be a fairly simple matter to attend to if  
8 the representation was correct.

9 JUDGE WALLIS: Perhaps the company could  
10 verify that in writing as a response to this  
11 interrogatory. Mr. Ryan, would the company be willing  
12 to do that?

13 MR. RYAN: We would verify to one extent or  
14 the other.

15 JUDGE WALLIS: Yes.

16 MR. RYAN: Yes.

17 MR. BRENA: Interrogatory Number 40.  
18 Mr. Batch's testimony refers to the deteriorating  
19 financial situation. We asked him to explain why he  
20 thinks it is, discuss it in detail, and they basically  
21 refer back to his testimony, and that's fine. I believe  
22 that that's responsive.

23 With regard to C, however, we asked him to  
24 identify all documents he's aware of which support his  
25 response, and again, if it's Mr. Ryan's representation

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1 that all documents that support that have already been  
2 disclosed to us, then we will accept that representation  
3 and move on. But again, it seems as though a company  
4 who is in a financial crisis, that they would have some  
5 sort of internal memorandum concerning that crisis.

6 MR. RYAN: Your Honor, this is Patrick Ryan.  
7 I guess I would have to somehow get our hands around the  
8 request here as far as C is concerned, identify all  
9 documents Mr. Batch or Olympic is/are aware of  
10 supporting this response. It seems very broad and  
11 undefined. I don't know quite what would constitute  
12 either a document, I mean a document Mr. Batch or  
13 Olympic is, whatever he is trying to say there, are  
14 aware of supporting this response. Awareness is a kind  
15 of fuzzy, you know, standard, and so I would just ask  
16 for some clarification of what would constitute a  
17 response to this to somehow tailor this.

18 MR. BRENA: I'm happy to, you know, I don't  
19 know internally how the company identified or  
20 memorialized or discussed this looming financial crisis.  
21 I assume that there was -- I know they have a finance  
22 committee, and I know that the finance committee was  
23 concerned with how to structure its financing, its  
24 operations in light of the Whatcom Creek. I know that  
25 they had meetings. This was all subject to the

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1 technical conference. I'm assuming that any memorandums  
2 or correspondence associated with the finance  
3 committee's work would be responsive to this. I'm  
4 assuming any E-mail in which officers or directors  
5 discussed the financial situation of the company or any  
6 memorandums that were directed to be prepared.

7 I mean you guys had a problem with Whatcom  
8 Creek, and you were trying to figure out how to solve  
9 it, and none of that internal correspondence is apparent  
10 in the discovery. It must exist, so I would request for  
11 the -- anything from the finance committee and any  
12 memorandum that was prepared for the benefit of the  
13 board discussing it or identifying potential solutions  
14 to it, any of those types of things.

15 JUDGE WALLIS: Very well, the company has  
16 responded by reference to Interrogatory Number 38.  
17 Mr. Ryan, will you verify whether that is the company's  
18 complete response or whether Mr. Batch or the company  
19 are aware of documents that support the response?

20 MR. RYAN: Yes, I will be happy to verify,  
21 and just so I understand what Mr. Brena is asking for is  
22 the identification of those documents.

23 MR. BRENA: Yes, and then with regard to the  
24 request for production, I have asked for any documents  
25 that's identified to be produced. So that's exactly

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1 right, and that's specifically -- and you asked me to  
2 identify them, I specifically identified any memorandums  
3 or analysis which has gone to the board as well as all  
4 of the workings of the finance committee that was formed  
5 with regard to how this company should be financed. I  
6 would assume that any shareholder meetings associated  
7 with Olympic would also be responsive. So those are  
8 three specific categories that I think that there are  
9 documents that would be responsive.

10 JUDGE WALLIS: Very well. Again, Mr. Ryan  
11 has indicated that he will verify whether or not such  
12 documents exist and will produce them if they do; is  
13 that correct?

14 MR. RYAN: Yes, Your Honor.

15 JUDGE WALLIS: Thank you.

16 Let's move on to Request for Production  
17 Number 9.

18 MR. BRENA: I think we already discussed 8,  
19 and I think 9 would follow the same sort of analysis.  
20 With regard to 9, their responses, 9.1 and 9.2, the  
21 financial forecast, for example, for 2001, if you will  
22 look at the bottom line, income after taxes, the first  
23 quarters are identical, the second quarters are all  
24 identical, the third quarters are all identical, and the  
25 fourth quarters are identical. So where we're looking

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1 for actual monthly budgets and cash flow statements,  
2 we're looking for real numbers, this was a forecast that  
3 was prepared before 2001. So that's not what we asked  
4 for, and it's not helpful for us to have numbers that  
5 someone calculated in 2000.

6           So what I would like to have is I would like  
7 to have the actual budgets and cash flow statements  
8 showing actual cash coming in and out of the company for  
9 the period in which I have asked, which it would be from  
10 January 1, 2000, forward. Again, the response only  
11 addresses 2000.

12           JUDGE WALLIS: Mr. Ryan.

13           MR. RYAN: Well, okay. Well, you know, once  
14 again, Your Honor, we're back in that area. There are  
15 any number of documents which may exist, regardless of  
16 Mr. Brena's, you know, assertion that Arco has it or  
17 that we may or may not have. I don't know. I'm going  
18 to have to check with the client, but there was a  
19 considerable portion of the requested time line under  
20 which the pipeline was operated by Equilon. So I  
21 thought that we had answered this. I thought that both  
22 8 and 9 we had addressed, and so --

23           MR. BRENA: And again --

24           MR. RYAN: -- I don't know.

25           MR. BRENA: I don't mean to restate it, but

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1 Arco was a major shareholder in this company prior to  
2 July, and with inquiry, they should be able to receive  
3 the financials that were prepared by the prior manager.

4           And, Your Honor, let me say that the reason  
5 that that's important is because they borrowed \$100  
6 Million in 2000, and I'm trying to figure out how much  
7 of it went where. And that's important, because that is  
8 the reason for the finance, they were in a financial  
9 bind two years ago. So I would ask for them for the  
10 same ruling on 8, except for that this information is  
11 all projected. I would ask for the cash flow statements  
12 be provided as soon as possible from July 2000 forward  
13 through the date, actual cash flows, and then for the  
14 prior period that they be required to inquire and obtain  
15 those from, may I point out, their own shareholder.

16           JUDGE WALLIS: Mr. Ryan.

17           MR. RYAN: Well, again, I thought we had  
18 supplied some fairly detailed information in our  
19 response to Production Number 8.

20           JUDGE WALLIS: Very well.

21           Mr. Trotter, do you have any comments?

22           MR. TROTTER: No.

23           JUDGE WALLIS: May we make it clear that any  
24 information that Olympic believes is within the  
25 possession of Equilon that is requested, the company

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1 will make a good faith request of Arco for that  
2 information and if it is available will supply it. Is  
3 that clear?

4 MR. RYAN: Yes, Your Honor.

5 JUDGE WALLIS: And as to the cash flow,  
6 Mr. Brena, are you looking for budgeted or actual cash  
7 flow?

8 MR. BRENA: Both.

9 JUDGE WALLIS: Very well. The company has  
10 provided some information. To the extent that that is  
11 complete, I would ask the company to state that it's  
12 complete. To the extent that it is not complete, then I  
13 would ask the company to provide what information is  
14 available subject to the proviso related to information  
15 that relates to the Equilon period.

16 MR. BRENA: If I may, Your Honor, again, the  
17 actual cash flow that they provided for 2001 only -- it  
18 stops in September again, so it has the same issues. It  
19 doesn't have October, it doesn't have November, and so I  
20 would ask for the same ruling with regard to this one as  
21 the last one, which is that the discovery request would  
22 be ongoing, that it would be brought to date. I'm  
23 assuming that that information is available to them.

24 JUDGE WALLIS: To the extent that the  
25 information becomes available, it should be provided

00174

1 when it becomes available.

2 MR. BRENA: Request for Production Number 11,  
3 we asked for the tax return. We even -- of 2000 and  
4 2001. I believe that in a different response, and I  
5 don't have it in my fingertips and I apologize for that,  
6 that they said they would provide the 2000 return. With  
7 regard to the 2000 return, they're saying they're  
8 willing to provide it on suitable assurances of, excuse  
9 me, suitable guarantees of confidentiality. I don't  
10 know what they mean. There's a protective order in  
11 place. I don't know what other guarantees of  
12 confidentiality they would assume.

13 And with regard to 2001, I didn't just ask  
14 for tax returns, I asked for any calculations or  
15 spreadsheets associated with their federal income tax,  
16 because I'm trying to determine -- I mean if their  
17 federal income tax -- what their federal income tax is  
18 going to look like in 2001 compared to 2000. And I can  
19 assume that in the information that they have provided  
20 on cash flow, for example, they have an \$11 Million  
21 payment being made in September for their federal tax  
22 payable, so I'm assuming that you don't pay that kind of  
23 money unless you have some sort of calculation of what  
24 your intended tax burden is. So I would just point out  
25 with regard to 2001, their answer is restricted to tax



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1 returns, we have also asked for tax calculations and ask  
2 for them as well.

3 JUDGE WALLIS: Mr. Ryan.

4 MR. RYAN: Well, I'm playing catch up here,  
5 and I apologize. I'm trying to determine whether or not  
6 the protective order is, in fact, comprehensive enough  
7 to protect the subsequent disclosure of any or all of  
8 these returns, any portion or part, verbally or  
9 otherwise. I'm not -- I can't speak for certain the  
10 conditions of confidentiality that the company was  
11 seeking. I could easily find out.

12 JUDGE WALLIS: The protective order to my  
13 reading does prevent any disclosure, and the only  
14 question to my mind is the availability of  
15 confidentiality as to documents held by Commission Staff  
16 or by the Commission. Let me ask whether this document  
17 is a public record, or do you know?

18 MR. RYAN: I don't know that, and I'm sorry.

19 JUDGE WALLIS: If it is a document that  
20 anyone could obtain from the Internal Revenue Service or  
21 otherwise, then I think that there is no basis certainly  
22 for confidentiality beyond the terms of the protective  
23 order. Whether or not that degree of confidentiality is  
24 required is not something we need to address right now.  
25 To the extent that the document is, in fact,

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1 confidential and other guarantees of confidentiality may  
2 be sought, then the company is free to seek those. But  
3 I would ask that the information be provided, such  
4 information as the company does not seek to label as  
5 confidential be provided immediately. If the document  
6 is one that is available as a public record, then it  
7 should be provided immediately.

8 MR. RYAN: Okay. And just so I can be clear,  
9 the calculation Mr. Brena has referred to here is what?

10 MR. BRENA: I'm assuming you had some sort of  
11 worksheet or calculation. I mean this is December 5th,  
12 some sort of preliminary look at what your tax picture  
13 will likely be for 2001, so.

14 MR. RYAN: Well, again, I guess with the same  
15 caveat, if those worksheets or calculations are public  
16 documents, then I don't -- if they're public documents  
17 submitted with the tax returns, there should be no  
18 issue, as you say, Judge.

19 MR. BRENA: And I'm assuming you have  
20 estimated tax filings as well, and those would indicate  
21 -- be the type of worksheet that I'm looking at. And  
22 just for my benefit, I'm assuming that BP as the  
23 operator prepared the 2000 tax returns, I don't know how  
24 it is that they determined operating income and expenses  
25 for the first six months for the purposes of filing that

00177

1 tax return, but to the degree that they had information  
2 available to them necessary to file that tax return,  
3 that may be responsive. That information may be  
4 responsive as well to earlier requests.

5 MR. RYAN: We're talking about Olympic's tax  
6 returns?

7 MR. BRENA: Yes.

8 MR. RYAN: Right, okay.

9 JUDGE WALLIS: Do we know whether Olympic is  
10 on a calendar or a fiscal year?

11 MR. RYAN: I believe they're on fiscal, but  
12 again, I will have to comply.

13 JUDGE WALLIS: Very well.

14 MR. BRENA: In Request for Production Number  
15 12, we have just asked for copies of their operating  
16 agreement. We had understood that BP Pipelines was the  
17 operator, but it appears that Amoco Pipeline Company is,  
18 so that's one issue. I had understood in the technical  
19 conference and from discovery responses that BP  
20 Pipelines was the operator of this line. Then I guess,  
21 and, in fact, I think it was in the original Bob Batch's  
22 testimony as well, so I guess I just would ask for, if  
23 this is the only one, then that's fine.

24 And then we asked for them -- we were looking  
25 for any operating agreements. One of the things that we

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1 were interested in was comparing the current operating  
2 agreement with the prior operating agreement to see to  
3 what degree the financial circumstances of the company  
4 could be associated with the increased charges  
5 associated with the new operator. So I would ask for to  
6 compel any management agreement that they have on file,  
7 and I would request clarification that the management  
8 agreement that they provided is the one that they're  
9 actually operating under.

10 MR. RYAN: I would be happy to respond to the  
11 second one. The first, the request states a copy of  
12 Olympic's, please provide a copy of Olympic's operating  
13 agreement with BP, Equilon, and any other. We have  
14 supplied, we have stated that the agreements that we  
15 have supplied are those relating to the operation of the  
16 pipeline since 1990. I don't -- I don't know what more  
17 -- I don't know what he means, what you mean, Mr. Brena,  
18 by management, you know, agreements, but we supplied  
19 what was asked for, and I think fairly so.

20 MR. BRENA: And perhaps just a clarification  
21 is in order here. The prior to -- is the current  
22 operators operating agreement in here?

23 MR. RYAN: I believe it is.

24 MR. BRENA: Okay. Is it the Amoco agreement?

25 MR. RYAN: Amoco agreement?

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1                   MR. BRENA: I'm looking at the June 30th,  
2 2000, agreement between Olympic and Amoco Pipeline; is  
3 that the current agreement?

4                   MR. RYAN: I believe it is. I will be happy  
5 to verify it, and if it's not, then we will --

6                   MR. BRENA: Okay, that would be fine. And  
7 then with regards to the operating agreement that was in  
8 effect from 1990 through June 30th, that is the one  
9 that's attached as well?

10                  MR. RYAN: I believe it is, yes.

11                  MR. BRENA: Okay. With those  
12 representations, then I have nothing to compel.

13                  JUDGE WALLIS: Very well.

14                  MR. RYAN: And I will verify this.

15                  JUDGE WALLIS: Thank you, Mr. Ryan.

16                  MR. BRENA: Okay. Request for Production  
17 Number 13. We asked for copies of the minutes for each  
18 board of directors meeting as well as any memorandum,  
19 report, or document provided to individual board members  
20 beginning from January 1, 1998, to date. What was  
21 supplied to us were just, well, some of these minutes  
22 are stamped draft, some of them are executed, some of  
23 them are not executed. There isn't -- the most recent  
24 one is in March, March of this year. They are not up to  
25 date. There isn't -- well, hold on. As you read

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1 through the board minutes, there are a series of things  
2 in here that goes to the reference to establish  
3 financing. They were going to negotiate with Prudential  
4 to establish a \$70 Million line of credit. They were  
5 discussing a \$100 Million line of credit through  
6 shareholder financing. There's indication that there  
7 was disagreement among the shareholders in terms of a  
8 long-term financing plan. None of the memorandum that  
9 go to those very central critical issues associated with  
10 -- directly related to the issues in this case, none of  
11 those have been provided. There isn't a single  
12 memorandum, there isn't a single report, and there isn't  
13 a single document that went to any individual member of  
14 the board. And all we've got is just board minutes and  
15 not even current ones.

16           So I'm moving to compel, we asked for  
17 memorandums or reports that goes to the individual board  
18 members. Every corporation that I'm aware of puts  
19 together a board packet for each individual member, and  
20 each individual member when they come to a board meeting  
21 is handed a packet, and in that packet is everything.  
22 There's operations reports, there's financial reports,  
23 there's reports from the finance committee. We're  
24 asking for copies of those packages, and I have not -- I  
25 am not familiar with a corporation that operates on this

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1 level that doesn't maintain those board packages.

2 JUDGE WALLIS: Mr. Ryan.

3 MR. RYAN: Counsel and client went through  
4 the documents, counsel for the client, and they took out  
5 those documents that it legitimately felt were  
6 protected. We believe we fairly complied. He has asked  
7 for copies of the minutes. Now he says that we haven't  
8 supplied somehow documents that don't tell him what he  
9 wants to hear. He has asked, and we have answered as  
10 best we can.

11 JUDGE WALLIS: Let me ask a question or two.  
12 Mr. Ryan, do you represent that the documents that have  
13 been produced are the most current and complete  
14 documents that are available?

15 MR. RYAN: I can represent that these are the  
16 documents that were handed to me to respond to this, and  
17 what I can do is verify whether or not there are any  
18 documents responsive and obtainable that would be  
19 subject to production that are any more current. And if  
20 there are and if they're not produceable, we will  
21 identify them and I guess get back on the horn with you  
22 and talk about why, but --

23 MR. BRENA: This is Robin. In the technical  
24 conference, it was represented that the October board  
25 meeting tentatively approved the capital budget for

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1 2002, so there appear to be monthly board meetings.  
2 These minutes stop on March 13th, I believe. And I know  
3 that the board has met since then, and I know that they  
4 have discussed specifically how to finance the 2002 and  
5 that they tentatively approved the 2002 budget. So with  
6 regard to timeliness, they just need to give me all the  
7 board minutes.

8           And secondly, they responded exactly like his  
9 argument was structured, we gave them the minutes.  
10 Well, they didn't give us all the minutes, but that  
11 isn't what my request for production asks for. My  
12 request for production does ask for minutes. It also  
13 says as well as any memorandum, report, or document  
14 provided to individual board members. We want, to the  
15 degree it's not privileged, the individual board members  
16 packets that are prepared prior to the board meetings  
17 that discuss this. We want to see the discussion and  
18 internal memorandums with regard to this financial  
19 emergency, and we know that these reports exist because  
20 they're referred to in the minutes.

21           JUDGE WALLIS: Mr. Ryan.

22           MR. RYAN: Well, once again, I'm  
23 unfortunately at a loss, because I wasn't there at the  
24 technical conference. I understand that discussions  
25 there are not to be used to -- but again, what I can do



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1 is go back to the company and see if there's any more  
2 current memorandum that's not privileged, any reports  
3 that's not privileged, and do our best.

4 JUDGE WALLIS: Very well. As to any report  
5 or other document as to which you claim a privilege,  
6 please identify the nature of the document and the  
7 nature of the privilege that you are asserting.

8 The company has contended in its response  
9 that the request is unduly broad and burdensome.  
10 Mr. Brena, how do you respond to that concern?

11 MR. BRENA: Well, I have tried in my comments  
12 to identify specifically what I'm after, and what I'm  
13 after are the information, memorandum, and reports that  
14 were prepared for the individual board members prior to  
15 their minutes and the presentations at those. Those  
16 board packages are put together and handed out every  
17 month in an organized packet, and that's the information  
18 that I'm after. It's typically maintained in the same  
19 fashion.

20 JUDGE WALLIS: I have no feel for whether  
21 that packet is 12 pages or whether it's 1,200 pages or  
22 whether it's 12,000 pages, and I am sensitive to the  
23 claim of burdon and being unduly broad at this stage of  
24 the litigation, and I am just seeking some information  
25 on whether there is some underlying basis for that

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1 concern.

2 MR. RYAN: I also join in that concern, Your  
3 Honor. This is Patrick. And I don't even know, he's  
4 assuming that such packets exist based on other  
5 corporations and companies. I don't know if Olympic  
6 prepares such packets, if they exist or not.

7 JUDGE WALLIS: Very well.

8 MR. BRENA: Were you asking for comments from  
9 both of us with regard to your concern, Your Honor?

10 JUDGE WALLIS: Mr. Brena.

11 MR. BRENA: I'm sorry, were you directing the  
12 question --

13 JUDGE WALLIS: Yes.

14 MR. BRENA: -- to Mr. Ryan or to me?

15 JUDGE WALLIS: I was directing the question  
16 to Mr. Ryan. If you have any information, you may  
17 respond.

18 MR. BRENA: I have nothing to add other than  
19 saying that there are specific reports in discussion on  
20 the board with regard to the financing and financing  
21 options.

22 JUDGE WALLIS: Very well. May we say that to  
23 the extent that the volume of material is substantial  
24 and that producing it would be unduly burdensome, the  
25 request should be limited to include the items to which

00185

1 you specifically refer. Is that a satisfactory  
2 statement?

3 MR. BRENA: Your Honor, may I suggest that if  
4 they are that I be given an opportunity to just go  
5 through and identify the ones to which they don't claim  
6 privilege. I would be happy to work through it and  
7 narrow the copying down so we don't flood the system.  
8 I'm not the least bit interested in looking at pages and  
9 pages of information that have nothing to do with the  
10 interim case, so.

11 JUDGE WALLIS: Mr. Ryan, would that satisfy  
12 that element of your concern?

13 MR. RYAN: I believe it would.

14 Just on a side note, Your Honor, you may or  
15 may not be aware that we yesterday were given 13  
16 additional requests by Staff, which actually amount to  
17 26 more requests, that although Mr. Trotter and Staff  
18 have graciously said to, they, you know, anticipate us  
19 doing our best, the client is scattered to the winds at  
20 the moment, and this is -- it's all becoming fairly  
21 burdensome, and so I would just bring that to your  
22 attention, Your Honor. And I will certainly try, we  
23 will try our best, but would emphasize the concern on  
24 burdensome production at this time.

25 JUDGE WALLIS: Thank you.

00186

1                   MR. BRENA: I believe that completes category  
2 one.

3                   JUDGE WALLIS: Very well, let's move to  
4 category two. At the outset of this discussion,  
5 Mr. Brena, I believe, noted that this item category  
6 relates to the company's existing debt, related security  
7 interests, a line of credit with Arco, and to the  
8 company's stated allegation that it could not borrow  
9 externally because, Mr. Brena is alleging, because  
10 documents prohibit the external borrowing and that the  
11 company's claim of the failure of ability to obtain  
12 external debt is not relevant.

13                   Mr. Ryan, do you have any, and I apologize if  
14 I have summarized the argument in a very truncated  
15 manner or inaccurately, but I'm trying to cut through to  
16 the very core of the issues so that perhaps we can  
17 decide some principles that would make it easier to go  
18 through the individual items. Do you have a response to  
19 the essence of the argument that Mr. Brena has made?

20                   MR. RYAN: Could you sum that up for me  
21 again, please.

22                   JUDGE WALLIS: Mr. Brena, maybe you can do a  
23 better job of it than I could.

24                   MR. BRENA: I actually thought that your  
25 memory was better than what I said at the time.

00187

1 JUDGE WALLIS: I cheated, I made some notes.

2 MR. BRENA: I see, I did not.

3 But yes, this category is intended to explore  
4 their existing debt structure and documents, although  
5 not perfectly formed. Mr. Ryan mentioned, for example,  
6 there are security interests that we have requested  
7 which were not provided which we found out about in the  
8 technical conference. In fact, several of Staff's  
9 requests, new requests, would have been unnecessary if  
10 many of these requests would have been fully complied  
11 with, so.

12 And, for example, for a given -- they have,  
13 with Prudential, they have a master agreement, a first  
14 amendment, a second amendment. We don't know if they  
15 have a third amendment or subsequent amendments. But  
16 all that was provided was the second amendment to the  
17 master agreement regarding Prudential. With regard to  
18 security interests, they have represented that they, in  
19 the technical conference, that they have security  
20 interests. Prudential has it, and the Arco revolving  
21 note has it, and there's some sort of agreement, and  
22 Staff has asked for that in new discovery requests. We  
23 asked for that in these discovery requests. They  
24 indicate some sort of, in the Prudential loan documents  
25 themselves, there is an indication that the shareholders

00188

1 reached some sort of agreement on shareholder funded  
2 loan program, and we think that that would have been  
3 responsive to this, and so we're compelling it. And so  
4 we found out about all kinds of things about the  
5 existing debt in the technical conference that was not  
6 provided in response to our discovery.

7 JUDGE WALLIS: Mr. Ryan, speaking in  
8 opposition to production of the information.

9 MR. RYAN: Right, interim rate case, we have  
10 tried to limit this on the accrued debt. I again don't  
11 know what it is that was suggested or represented at the  
12 technical conference.

13 To the extent that responses of these  
14 requests overlap with the requests of Staff, I certainly  
15 don't see any problem. In fact, it would help us to  
16 respond to both of them in an equal manner.

17 As far as any general objection to the  
18 general objection, I don't have anything more to say  
19 other than unfortunately wading our way through each and  
20 every one. So I, you know, again, we have responded to  
21 the many requests as best we could under the time frame,  
22 and if we have supplied an agreement and given  
23 amendments to those, I am assuming that that was done in  
24 good faith and there are no other amendments or  
25 agreements that are responsive.

00189

1           But all I can do at this point is listen to  
2 the concerns and issues. Unfortunately, I don't have a  
3 clear operating knowledge of my client's financial  
4 interworkings. A lot of this goes to our consultants,  
5 all of which are unfortunately out of town, so. It  
6 doesn't do us much good, unfortunately, as far as  
7 expediting this.

8           JUDGE WALLIS: Mr. Trotter, do you have any  
9 comments or observations?

10          MR. TROTTER: Just to confirm that the  
11 company did indicate at the technical conference that  
12 there were additional related documents to the notes,  
13 and we issued a data request Wednesday morning, I guess  
14 early afternoon, to get those.

15          JUDGE WALLIS: Having listened to the  
16 arguments of the parties, I believe that the existing  
17 debt of the company and its attempts to secure financing  
18 are central to its case on interim relief, and I believe  
19 that relevant information to that or information that is  
20 likely to lead to admissible documentation should be  
21 provided. To the extent that that blanket statement  
22 resolves the issues, perhaps that will expedite our  
23 discussion of these items.

24          Mr. Brena, would you with that background  
25 please walk us through the remaining items under number

00190

1 two.

2 MR. BRENA: I will try, Your Honor. My  
3 categories are not perfectly stated, so, but I think  
4 that that general guidance will help a great deal.

5 With regard to Interrogatory Number 4, this  
6 goes -- we're trying to figure out, they borrowed \$100  
7 Million in 2000, and we're trying to figure out where it  
8 went. And on their FERC form, they only indicated \$12  
9 Million in capital improvement, and so we're trying to  
10 test their theory that somehow this debt is related to  
11 that. So again, as previously, in Interrogatory Number  
12 4 they have listed out all the 2001 projects. We have  
13 just asked them to break it out with regard to which  
14 ones are required. So I think we have already gone  
15 through this particular one. I have nothing to add to  
16 that. I think that -- I think that you previously ruled  
17 that to the degree that they can identify that that they  
18 should.

19 And with regard to Interrogatory Number 5 --

20 JUDGE WALLIS: Excuse me, is this information  
21 information that duplicates another item?

22 MR. BRENA: I don't know if it does perfectly  
23 or not, Your Honor. It will take me a minute to figure  
24 that out.

25 MR. RYAN: You may be thinking of, I'm sorry,



00191

1 this is Patrick, Your Honor.

2 JUDGE WALLIS: Mr. Ryan.

3 MR. RYAN: You may be thinking of our  
4 response to Staff's Request Number 8.

5 JUDGE WALLIS: Yes.

6 MR. RYAN: And the varied capital  
7 expenditures.

8 JUDGE WALLIS: Yes.

9 MR. RYAN: Right?

10 JUDGE WALLIS: I believe so.

11 MR. RYAN: I would again be quite happy to  
12 fax this to you, because I think you'll find it very  
13 detailed.

14 JUDGE WALLIS: My question at this point is  
15 whether it provides the fundamental information that  
16 Tesoro is seeking in Interrogatory Number 4.

17 MR. BRENA: It provides a good deal of  
18 information with regard to the capital projects, but it  
19 doesn't identify the reason or support to those. To the  
20 degree that they're related to a particular safety  
21 standard or the corrective action order, we have asked  
22 them to identify that. They're under general  
23 categories. To the degree that they need money in that  
24 budget to respond to a specific safety standard or the  
25 corrective order, we have asked them to identify it and

00192

1 not just put it under a general category, safety.

2 JUDGE WALLIS: Mr. Trotter.

3 MR. TROTTER: Well, they're both right. The  
4 information provided does have line by line, project by  
5 project detail, but it does not indicate whether it's  
6 being done to comply with an action order or something  
7 else. You would have to know what the project is to  
8 respond. So it does have a lot of detail, but it does  
9 not have all the detail in Interrogatory Number 4.

10 MR. BRENA: And, of course, Your Honor, the  
11 fundamental issue in this case is they have indicated  
12 that there is a risk to safety improvements that are  
13 necessary for the 2002 budget, and so we have asked them  
14 in that 2002 budget to identify what safety standards  
15 these projects are related to or the corrective action  
16 order.

17 MR. RYAN: Any other safety standard, is that  
18 federal, is that state, is that internal?

19 MR. BRENA: Just identify the safety standard  
20 that's associated with the expenditure, whatever it may  
21 be.

22 JUDGE WALLIS: Let me ask that the items be  
23 identified as to whether they are to comply with the  
24 Office of Pipeline Safety Corrective Action Order, and  
25 if the information is readily available, whether it is

00193

1 required to be done to comply with any other safety  
2 standard.

3 MR. BRENA: Thank you, Your Honor.

4 Interrogatory Number 5 lists the  
5 indebtedness, and we request what the money was used  
6 for, and that's it. And I have already stated some of  
7 the lines of reasoning about how the different uses for  
8 it may or may not be permissible to be included in  
9 rates. I have nothing to add to the argument, general  
10 argument, that I made. Where did the money go?

11 JUDGE WALLIS: Mr. Ryan.

12 MR. RYAN: Sorry, Your Honor, I'm going back  
13 to see how -- what was provided earlier in our response  
14 to Staff's Data Request Number 3, or 4, sorry.

15 JUDGE WALLIS: Mr. Trotter, do you have a  
16 comment?

17 MR. TROTTER: Not at this time.

18 MR. RYAN: Well, again, we answered this the  
19 best we could, Your Honor, and noted that the notes are  
20 -- they're not specifically earmarked for any specific  
21 purposes. It would be difficult to go back and recreate  
22 that even if we could, so it seems to me that we  
23 answered the best we could.

24 JUDGE WALLIS: Very well. On the basis that  
25 this information is the best available to the company,

00194

1 it appears to be a sufficient response.

2 MR. BRENA: Your Honor, this comes up again  
3 with regard to the requests for production where I have  
4 asked for the actual loan documents. You don't go  
5 borrow \$100 Million without an explanation of what it's  
6 for, and so this issue will come up with regard to my  
7 request for what documents supported their request for  
8 those funds.

9 JUDGE WALLIS: Very well.

10 MR. BRENA: Interrogatory Number 7, we're  
11 trying to understand their existing debt, how the  
12 interest -- why the short maturity date. They borrowed  
13 \$100 Million from their shareholders with six months to  
14 pay it back. Apparently according to the corporate  
15 minutes they had intended to have a long-term financing  
16 package and roll over the short-term into the long-term.  
17 There was a dispute among the shareholders apparently,  
18 so we just asked for an explanation. In effect, they  
19 set up a circumstance that forced them into default, so  
20 we asked for the reasons why the short maturity date. I  
21 mean who goes out and borrows \$100 Million in six months  
22 when they have no way to pay it back in six months. So  
23 we asked for an explanation. It seems to me to go to  
24 the heart of it. They're going to point out that  
25 they're in technical default, and they had to be in

00195

1 technical default. So we're looking for reasons, and  
2 they just direct us to somebody else.

3 MR. TROTTER: Your Honor, this is Don  
4 Trotter.

5 JUDGE WALLIS: Mr. Trotter.

6 MR. TROTTER: There was some information  
7 provided in this area at the technical conference, so I  
8 believe there is some information available. Whether  
9 that applies to all notes or not, I don't know.

10 MR. BRENA: And I could probably argue  
11 Interrogatory Number 8 at the same time. We asked for  
12 the individual terms that were in default. At the  
13 technical conference, they identified the terms. I  
14 would like for them to identify the particular terms of  
15 the notes which are in technical default.

16 MR. RYAN: Each of the terms?

17 MR. BRENA: Yes, which is what happened in  
18 the technical conference.

19 JUDGE WALLIS: Mr. Ryan, do you have anything  
20 at this time?

21 MR. RYAN: Other than stating the obvious,  
22 which is that these loans were negotiated instruments,  
23 and the terms offered and accepted. And I'm not sure  
24 that at the end of the day we will be able to provide  
25 the detail which is being requested. I have already

00196

1 stated that the notes -- it's been requested that the  
2 use of the moneys and, you know, the purpose for which  
3 they were secured be identified. And again, those loans  
4 are not earmarked often for specific purposes, and we  
5 will try our best to identify if that's true, but it's  
6 again like the short maturities and the interest rates,  
7 it's hard to ascertain.

8 JUDGE WALLIS: Very well. To the  
9 information, to the extent that the company can provide  
10 an explanation for the brief maturity rate, the brief  
11 maturity date and the determination of the interest  
12 rate, the company should do so. To the extent that it  
13 is able to identify the terms which are in default of  
14 the loans with Arco and Equilon, the company should do  
15 so.

16 MR. BRENA: Interrogatory Number 25, it asks  
17 of the \$9 Million in additional interest obligations  
18 which Mr. Batch identified in his case, please indicate  
19 what amount is due to affiliated companies.

20 JUDGE WALLIS: Mr. Ryan, apart from your  
21 general objection, do you have any response to this  
22 request?

23 MR. RYAN: I'm sorry, Judge, on Interrogatory  
24 Number 9?

25 MR. BRENA: 25.

00197

1 JUDGE WALLIS: Number 25.  
2 MR. RYAN: All right. Oh, where does the \$9  
3 Million reference come from?  
4 JUDGE WALLIS: Of the \$9 Million.  
5 MR. RYAN: Referenced where?  
6 JUDGE WALLIS: Which, in additional interest  
7 obligations, which are -- how much is due to affiliated  
8 companies.  
9 Mr. Brena, can you clarify what \$9 Million  
10 you're talking about?  
11 MR. BRENA: It's referred to in their amended  
12 case and in Mr. Batch's testimony.  
13 MR. TROTTER: Your Honor, I recall, this is  
14 Don Trotter, I recall an \$8 Million figure being used.  
15 MR. BRENA: Their petition, page six, the  
16 first line, their amended petition starting on page five  
17 at the bottom, it says:  
18 Olympic has nearly \$8 Million accrued  
19 with unpaid interest and over \$9 Million  
20 in annual interest payments.  
21 So this is the \$9 Million. Of those \$9  
22 Million in annual interest payments, how much are  
23 affiliates, how much are due to affiliates. That's the  
24 question.  
25 JUDGE WALLIS: Very well. As thus clarified,

00198

1 Mr. Ryan, do you think the company will have any  
2 difficulty responding to that?

3 MR. RYAN: What are we considering to be  
4 affiliated companies?

5 JUDGE WALLIS: Is there any question about  
6 that?

7 MR. RYAN: Is that not a legal conclusion?

8 MR. TROTTER: Your Honor, maybe if Mr. Brena  
9 could just say Equilon and Arco, that might advance us  
10 along here.

11 MR. BRENA: Yes, it's also defined within our  
12 definitions, but yes, that is who I intend. They have  
13 identified their debt. The only non-affiliated debt  
14 that we're aware of is the -- I don't want to prolong  
15 this. What Don said is right.

16 JUDGE WALLIS: Very well.

17 MR. RYAN: Yeah, that comports with our  
18 understanding that we have assumed in the responses, so  
19 okay.

20 JUDGE WALLIS: Very well.

21 MR. BRENA: Interrogatory Number 30, I think  
22 we have already covered this, the capital improvements  
23 by date, so I'm going to just move past it.

24 JUDGE WALLIS: Thank you.

25 MR. BRENA: Number 31, we asked them to



00199

1 explain, they claim to have borrowed \$72 Million from  
2 their shareholders in 2000, but their FERC Form 6 only  
3 shows capital expenditures of \$12 Million. So we asked  
4 them to reconcile those numbers, which means, you know,  
5 this goes again back to trying to identify what the  
6 money was spent on. And I think that Your Honor has  
7 already asked them to do that to the degree that it's  
8 possible. I have nothing to add in argument to this  
9 one.

10 JUDGE WALLIS: Mr. Ryan, do you have a  
11 response?

12 MR. RYAN: Where have we claimed to have  
13 borrowed \$72 Million from shareholders?

14 MR. BRENA: That is Mr. Batch's exhibit on  
15 his supplemental testimony on page three where you list,  
16 if you add up the numbers for the year 2000, they add up  
17 to \$72 Million. And to the degree that our math was  
18 off, it's the numbers indicated that were borrowed on  
19 Mr. Batch's chart in the year 2000.

20 MR. RYAN: Well, I'm not sure that borrowing  
21 \$72 Million from its shareholders is either a correct or  
22 incorrect characterization.

23 JUDGE WALLIS: Mr. Ryan, it does strike me  
24 that the question is a fair one, and that the  
25 reconciliation between the exhibit and the FERC Form 6

00200

1 should be a relatively easy matter for the company to  
2 do, and therefore I will ask the company to provide that  
3 information.

4 MR. BRENA: Interrogatory Number 34, the  
5 capital expenditures, I believe that we have already  
6 covered that. I have nothing more to add. I believe  
7 that Your Honor has asked that to the degree that they  
8 have responded to Staff and then to break out the  
9 Whatcom and the corrective action order to the degree  
10 possible, and I have nothing to add. It's my  
11 understanding that situation is already resolved.

12 JUDGE WALLIS: Very well.

13 MR. BRENA: The same with Interrogatory  
14 Number 35.

15 JUDGE WALLIS: Yes.

16 MR. BRENA: Request for Production Number 3,  
17 this is our request for production where we not only  
18 asked for copies of the notes, but also the related  
19 security instruments. We have already had this  
20 conversation. I believe that Your Honor has ordered  
21 that any related security agreements which were not  
22 previously identified should be provided.

23 JUDGE WALLIS: I believe that this has been  
24 covered elsewhere.

25 MR. BRENA: Request for Production Number 13.

00201

1 JUDGE WALLIS: I believe that we have dealt  
2 with that.

3 MR. BRENA: That is the minutes issue, and we  
4 covered that, and I'm done with number two.

5 JUDGE WALLIS: Very well.

6 MR. BRENA: Would you like for me to continue  
7 or give your reporter a break?

8 JUDGE WALLIS: Let's be off the record for a  
9 moment.

10 (Discussion off the record.)

11 JUDGE WALLIS: Let's take up with number  
12 three, and, Mr. Brena, if you could make a very brief  
13 introductory statement on this item as you did on number  
14 two summarizing your opening arguments, that would be  
15 helpful at this juncture.

16 MR. BRENA: Certainly. As I understand their  
17 case, it's that there is a risk to Arco funding the line  
18 of credit under the revolving line of credit for the  
19 2002 capital expenses necessary for safety. So as I  
20 understand their petition, there is a risk to that  
21 unless this interim relief is granted. These questions  
22 are intended to explore any -- are intended to explore  
23 that risk.

24 JUDGE WALLIS: Mr. Ryan, do you have a  
25 response to that statement as to why information

00202

1 pursuing that goal would be inappropriate for a response  
2 to a data request?

3 MR. RYAN: No, Your Honor.

4 JUDGE WALLIS: Very well, I believe that --

5 MR. RYAN: As a general matter.

6 JUDGE WALLIS: Yes. I believe as a general  
7 matter that the information sought under that  
8 description appears to be relevant and the requests  
9 appropriate. Now whether there are elements of any  
10 individual request which call for an exception, we will  
11 have to address individually.

12 MR. BRENA: Would you like me to continue,  
13 Your Honor?

14 JUDGE WALLIS: Please do.

15 MR. BRENA: Request for Admission Number 11,  
16 we have asked for an admission that BP will advance the  
17 necessary funds for them to make the capital  
18 improvements necessary to safely operate the pipeline.  
19 We believe that in this case, BP being, whoever their  
20 lending source is, which we subsequently found out would  
21 be Arco under the revolving line of credit, and so we  
22 would like to know if the shareholders have indicated  
23 that willingness.

24 And one observation, you know, a 2002 budget,  
25 it's our understanding that it's been tentatively

00203

1 approved in the October board meeting. Any  
2 representation that BP may have made with regard to that  
3 budget that they're willing or unwilling to, you know,  
4 this just goes to that, as do a couple of others.

5 JUDGE WALLIS: How do you respond to the  
6 concern about vagueness?

7 MR. BRENA: Well, if BP has made any  
8 indication whatsoever with regard to whether it will or  
9 will not fund this in fact, I want to know what it is,  
10 so I asked requests for admissions on both sides, that  
11 they have indicated that they will and that they have  
12 indicated that they won't. And when I get into requests  
13 for production, I mean they are saying there is a risk  
14 that BP won't do this. What we asked in the meeting is,  
15 in the technical conference is, have you asked them, and  
16 what they said is no, they haven't even asked them.  
17 Well, they have approved a budget to spend money for  
18 2002 and haven't even asked their internal source of  
19 funding under the revolving line of credit for which \$20  
20 Million is available whether or not it would be funded.  
21 So I'm just trying to -- I mean these go to that. I  
22 asked in the meeting whether or not there is any  
23 indication, any letter from Arco that they will fund it  
24 or that they won't fund it. My understanding is that  
25 Olympic Pipeline has not asked, has not taken any

00204

1 efforts to determine whether or not it will actually be  
2 funded, and those are the kinds of things I'm looking  
3 for.

4 JUDGE WALLIS: May we, because request for  
5 admission is not something that the Commission  
6 customarily deals with under its data requests, could we  
7 treat this item more as a data request and state that it  
8 asks Olympic to provide any documentation relating to  
9 whether BP has indicated willingness?

10 MR. BRENA: And I think it would be Arco the  
11 way that this is playing out, but under their  
12 shareholder internal financing program.

13 JUDGE WALLIS: BP or Arco?

14 MR. BRENA: Yes, Your Honor.

15 JUDGE WALLIS: As thus revised, does the  
16 company have a continuing objection?

17 MR. RYAN: No, other than it's more than  
18 semantics, the difference between BP and Arco. BP is a  
19 global concern, as is Arco, but it's -- what I hear is  
20 that the request is limited to Arco. I'm not hiding  
21 anything, I'm just for purposes of trying to get my arms  
22 around this one.

23 MR. BRENA: Well, let me say --

24 JUDGE WALLIS: Mr. Brena, is that correct?

25 MR. BRENA: Well, they have represented that

00205

1 there is a risk that they may not be able to fund the  
2 2002 budget. What I want to know --

3 MR. RYAN: Who is they?

4 MR. BRENA: -- any documents that indicate  
5 the likelihood or dislikelihood of internal funding of  
6 that capital budget?

7 MR. RYAN: Internal to Olympic, BP, Arco,  
8 shareholders?

9 MR. BRENA: That would be under the -- under  
10 Olympic's financing, internal financing program, the  
11 only funding that is possible is shareholder funding.  
12 That's a term of the Prudential agreement. So I don't  
13 think this is difficult to answer. The question is, are  
14 the shareholders going to put up the money and stand  
15 behind Olympic so they can make whatever safety  
16 improvements they need.

17 JUDGE WALLIS: And whether there are any  
18 documents to support that indication?

19 MR. BRENA: Right, absolutely. And I think  
20 Your Honor's way of approaching this is looking for  
21 documents. I was just looking for an admission which  
22 just said that they have indicated or they haven't  
23 indicated. Then later I asked for the documents. I'm  
24 happy to just focus on the document.

25 JUDGE WALLIS: Very well, let's do that.

00206

1 What request for production contains that request?

2 MR. RYAN: Your Honor, may I ask just a  
3 general housekeeping question?

4 JUDGE WALLIS: Sure.

5 MR. RYAN: Is it your intent to issue an  
6 order which captures what we have discussed here today  
7 so we're all on the same page?

8 JUDGE WALLIS: Because of the time frame  
9 involved, it has not been my intention to enter an  
10 order, but to rely on the oral rulings that have been  
11 made during the course of the afternoon.

12 Let's go off the record for a moment.

13 (Discussion off the record.)

14 MR. BRENA: Would Your Honor like me to  
15 proceed as quickly as possible?

16 JUDGE WALLIS: Yes, please do.

17 MR. BRENA: I believe that 11 has been ruled  
18 on as a request for production.

19 12, I believe Request 12, I think that we  
20 have already addressed that as well. You have indicated  
21 that they are going to try to break out the funds  
22 necessary to comply with the corrective order.

23 Request for Admission Number 16.

24 JUDGE WALLIS: On this one, Mr. Brena, you  
25 have asked for documentation indicating an intention



00207

1 related to this.

2 MR. BRENA: Yes, sir, and that will be  
3 sufficient.

4 JUDGE WALLIS: Very well.

5 MR. BRENA: Number 17, I believe that -- I  
6 believe that Your Honor's rulings are sufficient for 17  
7 as well.

8 MR. RYAN: Excuse me, what was the outcome of  
9 16?

10 MR. BRENA: That we have already addressed it  
11 in other places.

12 MR. RYAN: Okay.

13 MR. BRENA: And that by the other places,  
14 it's my understanding that the Judge has required that  
15 -- you to indicate which of the capital improvements are  
16 associated with --

17 MR. RYAN: Right.

18 MR. BRENA: -- any safety standards as well  
19 as the documents indicating a willingness or  
20 unwillingness to fund safety related improvements by the  
21 shareholders.

22 That takes me through my requests for  
23 admission.

24 The interrogatories starting at Number 10, I  
25 have requested all steps Olympic has taken to acquire

00208

1 funds to make the capital improvements and ask for to  
2 indicate all steps taken to acquire funds from both  
3 affiliated and unaffiliated sources. It's my  
4 understanding generally that they haven't taken any  
5 steps at all. But whatever the answer is, I would like  
6 an answer.

7 JUDGE WALLIS: Mr. Ryan. Do you have a  
8 response to the request?

9 Has it already been covered in the response  
10 to the Staff's Data Request Number 1?

11 MR. BRENA: I'm sorry, Your Honor, I don't  
12 have Staff's new data request in front of me.

13 JUDGE WALLIS: Ms. Watson, do the know the  
14 answer to that?

15 MS. WATSON: I have the -- this is Lisa  
16 Watson for Staff. I have the copy of the --

17 MR. RYAN: Judge, is this the Staff --

18 JUDGE WALLIS: Excuse me, Mr. Ryan.

19 Ms. Watson, could you speak up a bit, please.

20 MS. WATSON: I'm sorry. I have a copy of  
21 Olympic's response to the Staff DR's, and Number 1  
22 simply says that there's an attachment, a copy of  
23 Tesoro's discovery requests, so I'm not sure if that's  
24 responsive.

25 JUDGE WALLIS: Response to Request for

00209

1 Admission Number 13, which merely states an objection.

2 However, it goes on to say:

3           Without waiving this objection, Olympic  
4           has not made a formal loan application  
5           to entities, but from conversations,  
6           experience, and knowledge of the  
7           industry believes that the loan  
8           application would be futile.

9           MR. BRENA: And this goes to all steps,  
10 whether a loan application or something short of that, a  
11 letter, anything, not only from external sources, but  
12 also from internal sources.

13           JUDGE WALLIS: So the question is, describe  
14 any steps Olympic has taken other than those mentioned  
15 in the response to Request for Admission Number 13; is  
16 that correct?

17           MR. BRENA: Yes.

18           JUDGE WALLIS: Very well. To the extent that  
19 the company has taken any steps, the company should  
20 supply that information.

21           MR. BRENA: Interrogatory Number 11, I'm  
22 looking for a description of the authorization and  
23 budgeting process whereby shareholders fund these loans.  
24 The response goes to the way that Olympic approves  
25 funds. What I'm trying to understand, they're saying

00210

1 there's a risk that their shareholders may not put up  
2 the money without this interim relief. I'm trying to  
3 understand what the process is for their shareholders to  
4 do it, and I'm trying to get a description of that so I  
5 can understand where in this process they should be. It  
6 strikes me that this hearing is in January, and we're  
7 talking about a capital budget for 2002, typically these  
8 things are budgeted six months to a year in advance.  
9 I'm just trying to understand the process, how does  
10 Olympic get money from its shareholders.

11 JUDGE WALLIS: Mr. Ryan.

12 MR. RYAN: Well, again, what we answered  
13 there was it's the board of directors, not the  
14 shareholders, that approve these requests. So, I'm  
15 sorry, what is he asking that we have not responded to?

16 MR. BRENA: Okay, Olympic's board of  
17 directors do not approve loans from the shareholders to  
18 Olympic. The shareholders approve those loans. Under  
19 the revolving line of credit, it would be Arco that  
20 would approve that.

21 MR. RYAN: Okay.

22 MR. BRENA: So the response is -- misses the  
23 question.

24 JUDGE WALLIS: Mr. Trotter, do you have any  
25 comments on that?

00211

1 MR. TROTTER: No.

2 MR. RYAN: Well, if I understand what you're  
3 looking for, you want a response to your request to  
4 describe the process by which shareholders approve their  
5 loans, if any, to Olympic.

6 MR. BRENA: Yeah, I mean if I go to the bank,  
7 I make a loan application, and then they process it in a  
8 certain way, and then they give me the money or they  
9 don't. I'm asking for what that process is for Olympic  
10 to get money from its shareholders.

11 JUDGE WALLIS: It strikes me that a  
12 description of the authorization and budgeting process  
13 need not be lengthy or unduly detailed, that it should  
14 be a matter well known to Olympic, and that a response  
15 would be appropriate.

16 MR. RYAN: Very good.

17 MR. BRENA: Interrogatory Number 12, I asked  
18 for Olympic to explain where in the process it is.

19 JUDGE WALLIS: Could you for me, Mr. Brena,  
20 define what process you're referring to.

21 MR. BRENA: The process of acquiring internal  
22 funding from its shareholders. So if the process for  
23 getting a loan from a shareholder is as Olympic makes a  
24 request and it's approved by the shareholder group or  
25 panel, and then the funds are released in a certain

00212

1 fashion, whatever it is, where is Olympic in that  
2 process. And perhaps this goes back, this would also be  
3 answered if they identified all efforts they have taken  
4 for internal financing. This would just put it within  
5 the context of the process.

6 JUDGE WALLIS: Mr. Ryan.

7 MR. RYAN: I'm sorry, again, I don't know,  
8 apparently we missed the boat on this one, so we will  
9 try to respond to what Mr. Brena is asking for there.

10 JUDGE WALLIS: Mr. Trotter?

11 MR. TROTTER: No comment.

12 JUDGE WALLIS: Very well. I will note this,  
13 that the company has agreed to provide an additional  
14 response.

15 MR. BRENA: With regard to 13 and 14, explain  
16 whether the shareholders have refused, I believe that --  
17 and 14, well, the first -- 13 is refused to provide  
18 capital funds necessary for them to safely operate their  
19 line and whether the shareholders have refused to  
20 provide capital necessary for them to comply with the  
21 pipeline safety action letter, I believe that Your  
22 Honor's ruling asking for any objective indication by  
23 the shareholders that their willingness or  
24 non-willingness to fund Olympic would probably encompass  
25 13 and 14.

00213

1                   JUDGE WALLIS: Very well, so we will note  
2 these as covered elsewhere.

3                   MR. BRENA: Interrogatory Number 16 -- just  
4 one point of procedure, if I say something like that and  
5 somebody disagrees that we haven't covered it somewhere  
6 else, please say so, because I'm just trying to speed  
7 this process up, but that's information I really need.

8                   Interrogatory Number 16, I asked for an  
9 explanation as to why the shareholders chose to fund  
10 this company with debt rather than equity.

11                   JUDGE WALLIS: Mr. Ryan, you have responded.

12                   Mr. Brena, do you not feel that the response  
13 is adequate?

14                   MR. BRENA: I do not feel that the response  
15 is adequate. The response indicates that it's -- it was  
16 Equilon's philosophy for external financing, but what  
17 they have done is \$100 Million of internal financing.  
18 So they're explaining that they have a policy or a  
19 philosophy that hasn't changed a policy for external  
20 funding, when, in fact, they have chosen to internally  
21 fund this, both based on the documents and based on  
22 their actions. So I'm asking for -- and then there's  
23 two ways to internally fund, with equity or debt. And  
24 so I'm asking for that decision, what was behind that  
25 decision to fund with debt rather than equity once they

00214

1 chose to internally fund. Their answer only goes to  
2 external financing. It doesn't go to my question.

3 MR. RYAN: Well, Your Honor, I guess what I  
4 could agree to is to get the company -- to ask the  
5 company to describe their decision, but how can they  
6 speak on behalf of the shareholders. I mean I don't --

7 JUDGE WALLIS: I'm a little bit concerned  
8 here that this is not a matter that is necessarily easy  
9 of explanation and that its relevance may be a little  
10 bit more tenuous than other questions, and I will accept  
11 Mr. Ryan's representation that the company will make its  
12 best efforts to inquire and then will supply any  
13 response, and I believe that will deal with this item.

14 MR. BRENA: Fine, Your Honor, and perhaps it  
15 may be helpful, the finance committee raised these  
16 issues according to the minutes of the board meeting,  
17 and apparently Equilon raised some tax questions in  
18 deciding whether to fund with equity or debt, so there  
19 has been discussion on the Olympic board and the finance  
20 committee that, the financial structuring committee,  
21 that went to these issues.

22 MR. RYAN: Within the context of those  
23 discussions, again, we're at litigation with Equilon, so  
24 I appreciate the reasonable tag onto the inquiry there.

25 MR. BRENA: So I suppose I'm back to the



00215

1 minutes where I have specifically requested any reports  
2 or documents associated with the finance committee's  
3 workings.

4 JUDGE WALLIS: Very well, we have noted that  
5 request.

6 MR. BRENA: Interrogatory Number 17, I asked  
7 for future plans for external funding, and they said  
8 that it's speculative to discuss it. Either they have  
9 them or they don't have them. If they have them, I  
10 would like to know what they are. If they don't have  
11 them, I would like them to say so.

12 JUDGE WALLIS: Mr. Ryan, is that  
13 unreasonable?

14 MR. RYAN: Is this not information that's  
15 detailed already in FERC Form 6?

16 MR. BRENA: Future plans for financing are  
17 not detailed in FERC Form 6, no.

18 MR. RYAN: I'm sorry, Your Honor, perhaps I  
19 need a break quicker than your --

20 JUDGE WALLIS: Are we getting close to  
21 resolving this category?

22 MR. RYAN: Your Honor, I just wanted to  
23 clarify, we're on 18?

24 JUDGE WALLIS: I believe there are only two  
25 more items.

00216

1                   MR. BRENA: My comments were on 17, Mr. Ryan,  
2 and there are two more on this, and then there are three  
3 more on the request for production, and I think that  
4 they will all go along similar principles.

5                   MR. RYAN: Well, okay, well, let's talk about  
6 17 then. I don't -- we put some kind of cap on future  
7 plans. Again, this is an interim rate case, the  
8 Commission is not to look to long-term forecasts. This  
9 seems pretty open ended and I'm not sure really goes --  
10 again, this is discovery that's more properly suited I  
11 would argue to the general filing coming up.

12                   MR. BRENA: That's not an objection which was  
13 raised to this request, and they're saying they can't  
14 get external financing, and I'm just trying to explore  
15 what their plans are in that regard.

16                   MR. RYAN: Well, I can't cite the number of  
17 times discussions in the technical conference has been  
18 cited as a basis for your objection, so I think a little  
19 latitude on this would be -- respectfully, I would  
20 request a little latitude on this.

21                   JUDGE WALLIS: Mr. Trotter, do you have a  
22 comment?

23                   MR. TROTTER: Well, I think the capital  
24 structure ratio objectives -- well, first of all, I  
25 think the dividend payout policy has been responded to.

00217

1 They said there is none. The capital structure ratio  
2 objectives does seem to be more of a longer term  
3 request. But the future plans for external financing  
4 does seem to go to the thrust of the interim case, and  
5 there was some discussion about that at the technical  
6 conference. I assume that whatever information is  
7 available can be provided.

8 JUDGE WALLIS: Very well, the future plans  
9 for external financing, if any, should be provided. The  
10 capital structure ratio objectives and related  
11 information can wait until the general case if it is  
12 pertinent then.

13 MR. BRENA: Number 18, and perhaps I could  
14 just ask, Mr. Ryan, when you said obtainable in a form  
15 more convenient, would you please identify?

16 MR. RYAN: I believe I was referring to FERC  
17 Form 6.

18 MR. BRENA: Okay. There is a lag of a year.  
19 Have there been any --

20 MR. RYAN: No, not to my knowledge.

21 MR. BRENA: No equity contributed then, okay.  
22 I have nothing further on 18, Your Honor.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: And 19 goes to dividends, and the  
25 representation is from 1998 no dividends have been paid,

00218

1 and I was asking since 1990. I believe that the  
2 dividends are on the FERC Form 6 too, Mr. Ryan; is that  
3 your recollection?

4 MR. RYAN: As far as I know.

5 JUDGE WALLIS: So --

6 MR. BRENA: Based on that, if I need to redo  
7 this, I will, Your Honor.

8 JUDGE WALLIS: Very well.

9 MR. BRENA: 41, well, I guess just looking  
10 for some definitions here, I believe that and if you're  
11 willing to represent that by external sources you mean  
12 not internal financing with affiliates, then that  
13 answers A. Do you represent that, Mr. Ryan?

14 MR. RYAN: I represent it to the extent that  
15 I will verify it.

16 MR. BRENA: Okay.

17 JUDGE WALLIS: Very well.

18 MR. BRENA: With regard to internal sources,  
19 I would like some sense for what the potential internal  
20 sources of financing are. There is the Arco revolving  
21 line of credit, \$30 Million line of credit with only \$10  
22 Million used. But I guess if there's anything more than  
23 that, I would like, the possibility for anybody else  
24 funding, I guess I would like to know about it.

25 JUDGE WALLIS: Mr. Brena, potential seems

00219

1 potentially tenuous. Can you tie that down any more  
2 than stated in the question?

3 MR. BRENA: Well, I don't mean every  
4 financing source. I'm sorry, by internal source, it's  
5 restricted to affiliates. I'm just wondering what the  
6 different sources for funding a pipeline within the BP  
7 family of companies is. I mean Arco is funding it now.  
8 Are there other usual or typical sources for funding  
9 pipelines that are owned ultimately by BP. I mean  
10 they're using Arco to fund this one. Is BP Pipelines,  
11 do they have a funding program, does BP Production have  
12 a funding program, I don't know that. So I don't mean  
13 to just say every possibility. I mean to restrict it to  
14 affiliate internal funding and just to know what funding  
15 sources are typically available, would typically be  
16 available to Olympic.

17 JUDGE WALLIS: Mr. Ryan, is this limited,  
18 does this request sound like something that the company  
19 would be able to provide?

20 MR. RYAN: Well, I could ask them if there  
21 are pipeline funding sources within the BP family that  
22 are, you know, are reasonably or likely to advance  
23 moneys or are available for that. But again, BP, it's  
24 problematic when we open up the doors beyond what is  
25 current. And we're only again looking to the next what,

00220

1 four to six months here. So I understand, well, I'm  
2 just saying that it's not as cut and dried as a local  
3 corporation here. I mean it's different in that regard  
4 than Tesoro is.

5 JUDGE WALLIS: Mr. Trotter, do you have any  
6 observations?

7 MR. TROTTER: No.

8 JUDGE WALLIS: I'm a little bit concerned  
9 here about the balance between reasonably available and  
10 reasonably relevant or calculated to provide relevant  
11 information resources, but because the company's  
12 contention is that it does not have access or may not  
13 have access to funding, I think that the answer to this  
14 request as described by Mr. Brena does seem to bear on  
15 the interim and would ask the company to comply and  
16 under C provide documents of which Mr. Batch of the  
17 company is aware to support the response.

18 MR. BRENA: Request for Production Number 4.  
19 Request for Production Number 4, what I'm looking for,  
20 what the documents are that supported the loan request.  
21 I would like to look at the documents. I assume that  
22 there's some sort of budget or budget shortfall analysis  
23 or capital projects list, or there's got to be something  
24 in there that explains why the funds are needed and in  
25 what amount the funds are needed. You don't go borrow

00221

1 \$100 Million without a pretty detailed explanation of  
2 what you need it for, not to mention that some of these  
3 are external lenders.

4           So what I'm asking for here, and I realize  
5 this could be -- this could be more burdensome, but what  
6 I'm asking for is, you know, typically a request for  
7 authorization for expenditure and within these families  
8 of companies, and typically an AFE, authorization for  
9 expenditure, details the amounts necessary and the  
10 purposes for it. And I have to believe that before Arco  
11 releases \$100 Million that there is some piece of paper  
12 that is in the form of an AFE, authorization for  
13 expenditure, that formally goes from Olympic to them and  
14 explains their need or purposes for these funds. Those  
15 are the documents, that, you know, those individual  
16 documents, and there may only be nine of them, but  
17 that's what I'm looking for. They're generally not  
18 extensive documents, but they generally contain an  
19 explanation and proposed use for those funds.

20           JUDGE WALLIS: Mr. Ryan.

21           MR. RYAN: Well, again, we're reaching back  
22 into the Equilon days.

23           JUDGE WALLIS: And the general observations  
24 with regard to Equilon would apply as to those elements.

25           MR. RYAN: Okay. And then the provide

00222

1 accounting detail by project, month, and amount.

2 MR. BRENA: I'm afraid we're not on the same  
3 one.

4 MR. RYAN: I'm sorry, are we not on 10?

5 MR. BRENA: We're on Request for Production  
6 Number 4.

7 MR. RYAN: We're still on 4?

8 MR. BRENA: I think so.

9 JUDGE WALLIS: Yes.

10 MR. RYAN: Well, again, any authorization of  
11 expenditure, request for funds, capital --

12 MR. BRENA: I would modify my request as I  
13 indicated verbally. It's the request is stated more  
14 broadly than what I'm looking for, and I tried to state  
15 it as clearly and specifically as I could what I'm  
16 looking for. I'm happy after Mr. Ryan checks with the  
17 client and finds out how those loans were supported, I'm  
18 happy to discuss with him specifically what I need.

19 MR. RYAN: I can agree.

20 JUDGE WALLIS: Very well.

21 MR. BRENA: Number 10, Request for Production  
22 Number 10, these are the -- these are the AFE's. I'm  
23 after the AFE's here. They're specific documents.  
24 They're always used before funds are expended with  
25 regard to capital projects. And I would note that it's



00223

1 just for the last two years.

2 JUDGE WALLIS: Two years or three?

3 MR. BRENA: January 1998, I'm sorry, that  
4 would be three. I may need a break too soon.

5 JUDGE WALLIS: Is the accounting detail  
6 information that's already been provided?

7 MR. BRENA: Yes, the second sentence in it I  
8 believe we have already addressed adequately.

9 JUDGE WALLIS: Very well. So to the extent  
10 that there are any documents called AFE's or  
11 authorizations for expenditure, the company is asked to  
12 supply them.

13 MR. RYAN: To the extent that Olympic has  
14 them in their files obviously.

15 JUDGE WALLIS: Is this likely to be a huge  
16 number of documents?

17 MR. BRENA: There would be one for each  
18 capital project. There's probably 30 of them.

19 JUDGE WALLIS: Is that consistent with the  
20 response to --

21 MR. RYAN: No, sir.

22 JUDGE WALLIS: -- Staff Request Number 8?

23 MR. RYAN: No.

24 MR. BRENA: They don't have an AFE for each  
25 valve. They have an AFE to replace all the valves. So

00224

1 the AFE's are more broadly stated.

2 MR. RYAN: I believe, give me a minute, I  
3 believe that the comprehensive list of projects that  
4 were submitted are not individual valves, they're  
5 projects, so.

6 MR. TROTTER: Your Honor, this is Don  
7 Trotter. I don't know what an AFE is. I do know that  
8 there were many, many line items for capital projects.  
9 Mr. Brena may be correct that there's only 30 of these  
10 AFE's. I just don't know, so it's hard for me to assess  
11 burdon.

12 JUDGE WALLIS: Mr. Brena, could you outline  
13 the purpose for which you're asking for these documents.

14 MR. BRENA: It allows me to trace the funds  
15 and purpose potentially for their capital expenditures  
16 and to identify the ones that are related, based on  
17 internal documents, the ones that are related to  
18 extraordinary events and the ones that are recurring and  
19 the ones that are relating to the order. So rather than  
20 just a description, it allows me to look at the  
21 documents as well as any benefits.

22 For example, an AFE explanation for what the  
23 benefits are for funds, one, I would expect in an AFE if  
24 there are other advantages other than safety. For  
25 example, we anticipate as a result of this project to

00225

1 increase throughput 5%, that would be stated in the AFE.  
2 That's the engineers have looked at it, and it's a  
3 request by the group for funding of a specific capital  
4 project that contains the justification for the project.  
5 And it may just say compliance with the corrective  
6 action order. There's a lot of very useful information  
7 relevant to this case in those AFE's.

8 JUDGE WALLIS: Any other comments?

9 MR. RYAN: Other than just a quick glance  
10 tells me there must be 300 capital projects there.

11 JUDGE WALLIS: I am concerned about the  
12 potential burdon of this and the use in light of the  
13 other information that has been requested. It strikes  
14 me that this does overlap with some other requests, and  
15 on that basis, my reaction would be not to require  
16 compliance.

17 MR. BRENA: Your Honor, if I may, would -- if  
18 I limited the request for AFE's only to the capital  
19 projects for 2002 which are in dispute in this case,  
20 would that be helpful?

21 MR. RYAN: Well, but those -- I don't believe  
22 -- we haven't gotten the funding for those yet, so I  
23 don't know if those even exist.

24 MR. BRENA: If it doesn't exist, it's easy to  
25 comply with. My understanding is the board authorized

00226

1 the capital budget tentatively. The process of  
2 authorizing that budget is to review an AFE and to  
3 approve it or disapprove it.

4 MR. RYAN: Your Honor, again, the response to  
5 the Staff's Request Number 8 details all of these  
6 capital expenditures, capital projects.

7 JUDGE WALLIS: Well, again, based on what I  
8 understand to be the case and the purpose and use and  
9 the nature of the other documentation, I am inclined not  
10 to grant this request.

11 MR. BRENA: Thank you, Your Honor.

12 JUDGE WALLIS: Have we addressed Number 13?

13 MR. BRENA: Yes, we have, and I think we have  
14 already addressed 13, so I think we're to the point of  
15 the break.

16 JUDGE WALLIS: Very well, I noticed that  
17 there's one or two familiar numbers in the remaining  
18 items, so --

19 MR. RYAN: And I will try to take that break  
20 to see if I can speed the process up from here.

21 JUDGE WALLIS: Terrific.

22 Well, let's be in recess until 10 minutes to  
23 6:00.

24 (Brief recess.)

25 JUDGE WALLIS: Let's be back on the record,

00227

1 please, after a brief recess. I want to acknowledge the  
2 substitution for Mr. Finklea of another person in his  
3 law firm. Would you introduce yourself for the record.

4 MR. STOKES: Yes, my name is Chad Stokes with  
5 Energy Advocates on behalf of Tosco.

6 JUDGE WALLIS: Very well, and we acknowledge  
7 your presence in this discussion.

8 MR. STOKES: Thank you.

9 JUDGE WALLIS: Is there anything else of a  
10 preliminary nature before we proceed?

11 Mr. Brena, you were going to reconnoiter the  
12 remaining items, and you might be able to tell us  
13 briefly where we stand with them at this juncture.

14 MR. BRENA: Well, I went from eight to one.

15 JUDGE WALLIS: Excellent, pretty good odds.  
16 Let's see which one you saved for us.

17 MR. BRENA: Request for Admission Number 14.

18 JUDGE WALLIS: Very well.

19 MR. BRENA: And in Request for Admission  
20 Number 14, I asked for an admission that Olympic has not  
21 taken a position with regard to refundability. I'm  
22 entitled to admission or denial. A reference to a  
23 transcript is neither an admission or denial. The  
24 request for admission becomes the position of the party  
25 for purposes, so I'm asking them to admit that they

00228

1 haven't taken a position on it. And I'm doing that  
2 because their position has shifted so much on this issue  
3 that I'm just trying to tie down where we're at.

4 JUDGE WALLIS: Can you explain to me why  
5 their response is not sufficient for your purposes?

6 MR. BRENA: Because the, well, because first  
7 of all, it doesn't admit or deny the request for  
8 admission.

9 JUDGE WALLIS: But it does, does it not,  
10 identify the response to that very question when raised  
11 at the prehearing conference?

12 MR. BRENA: Well, which prehearing  
13 conference? The most recent one? In the most recent  
14 one --

15 JUDGE WALLIS: Excuse me, let's get a  
16 response to that.

17 Mr. Ryan.

18 MR. RYAN: I believe it's the 21st, yes.  
19 Perhaps the way to expedite resolution of this is for me  
20 to go back and pull whatever statements were made  
21 presumably by Mr. Marshall and to respond in that way  
22 with a specific cite. I have just received a citable  
23 copy of that transcript, so perhaps that would be a way  
24 to do this.

25 JUDGE WALLIS: Mr. Brena, would that serve

00229

1 your purposes?

2 MR. BRENA: It would not, Your Honor, and the  
3 reason why I put this in is because I sat -- the most  
4 recent conference I sat through, and I heard  
5 Mr. Marshall state his position. I believe it was that  
6 he was leaving the refundability issue to the  
7 Commission, but his position seemed to vary through the  
8 prehearing conference and certainly varied from the  
9 prehearing conference before then where they came in  
10 with a proposal that was refundable and testimony from  
11 Mr. Batch that indicated that it would be refundable.  
12 And so I, you know, I'm entitled to -- I'm entitled to a  
13 direct, clear answer to whether they have taken a  
14 position on it. They can admit it or deny it. If they  
15 admit it, that's fine. If they deny it, then just a  
16 statement of what their position is.

17 JUDGE WALLIS: Well, let me explore this just  
18 a little bit. Are you asking whether they have ever  
19 taken a position or what their -- whether they currently  
20 have a position?

21 MR. BRENA: I'm asking for their current  
22 position on refundability.

23 JUDGE WALLIS: Okay. And if the company  
24 responds with a statement, whether or not drawn from the  
25 transcript, would that serve your purposes?

00230

1                   MR. BRENA: Yes, if it's a clear statement.  
2 The problem that I have is the ambiguity in the various  
3 statements that were made within the prehearing  
4 conference as well as the inconsistency between that and  
5 the prior prehearing conference. I want to know what  
6 their position is on refundability.

7                   JUDGE WALLIS: Well, I am going to rely on  
8 Mr. Ryan's representation that they will supply a  
9 response to this request.

10                   Is that correct, Mr. Ryan?

11                   MR. RYAN: Yes.

12                   JUDGE WALLIS: Very well.

13                   MR. RYAN: Our position has been consistent  
14 that it's within the discretion of the Commission to  
15 grant that or not.

16                   JUDGE WALLIS: Okay. We will then look  
17 forward to, actually I won't look forward to it, but I'm  
18 sure the other parties will look forward to receiving a  
19 brief statement of that response.

20                   MR. BRENA: Your Honor, if I may just extend  
21 this for one more minute, I understand that the  
22 discretion is within the authority of the Commission.  
23 I'm not asking for their position with regard to the  
24 scope of the Commission's authority. I'm asking for  
25 their position on refundability, if they're taking a



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1 position. Those are quite different things.

2 JUDGE WALLIS: I understood the nature of  
3 your request. Did Mr. Ryan?

4 MR. RYAN: I believe so, but I also cite to  
5 the petition. I believe it's our statements are in  
6 there, our amended petition.

7 JUDGE WALLIS: Very well, if you then will,  
8 as you have indicated you would, provide a response, not  
9 directly to me or to the Commission, that states your  
10 position, I believe that will respond to this request  
11 for admission.

12 MR. RYAN: Thank you, I will look for it  
13 within the prehearing conference transcript, and if it's  
14 not there since I didn't attend it and haven't had the  
15 chance to fully review it, then I will certainly  
16 respond.

17 JUDGE WALLIS: Very well.

18 Mr. Brena, do you have anything further?

19 MR. BRENA: I do not.

20 JUDGE WALLIS: I would like to talk for just  
21 a minute about the schedule for responses. I know that  
22 there is a considerable volume, if not considerable, at  
23 least a recognizable volume here. I have asked for an  
24 expedited transcript on a daily basis, and I will ask  
25 the court reporter to have the firm send the transcript

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1 via electronic mail to the parties when it is available  
2 so that you will have it in the form of a computer file  
3 and that the reporting firm use its usual distribution  
4 process for the paper copies.

5           Would that be sufficient for everyone?

6           MR. BRENA: If I could just ask the court  
7 reporter --

8           JUDGE WALLIS: Let's be off the record for  
9 just a minute.

10           (Discussion off the record.)

11           JUDGE WALLIS: Let's be back on the record  
12 following an administrative discussion about  
13 distribution. The delivery of the transcript via  
14 electronic mail will take place as soon as it is  
15 available. If there is a problem with Mr. Brena's  
16 ability to receive electronic mail, I'm going to ask him  
17 to call the reporter's office with that information. Do  
18 you have their number?

19           MR. BRENA: I do not. May I have it?

20           JUDGE WALLIS: I will provide that to you  
21 immediately following this conference.

22           And I would also ask that, Mr. Ryan, to the  
23 extent that your notes are sufficient that you not wait  
24 for the transcript and that you begin responses,  
25 organizing for responses as soon as you can.

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1 I urge the company to, despite the challenges  
2 that it faces with staffing and resources, to do the  
3 best job that it can in providing the information and  
4 response and maybe even a better job than it expected it  
5 could so that the schedule of this docket is not unduly  
6 delayed. We talked earlier about the scheduling  
7 challenges that the Commission faces, and it is very  
8 important that we carry this to a conclusion within the  
9 time frames that we have identified, because the  
10 Commission is very anxious to respond to the company's  
11 request. The company has stated it has an emergency.  
12 The Commission feels an obligation to take that request  
13 seriously and to respond as soon as it can.

14 MR. RYAN: And, Your Honor, if I may just  
15 say, the company is very appreciative of Staff's time  
16 and Commission's and yourself. We're fully aware of the  
17 case load confronting you these days, certainly some  
18 high profile activity out there, so we will certainly do  
19 our best. I am not complaining, just was bringing it to  
20 Your Honor's attention.

21 JUDGE WALLIS: Yes, we understand.

22 I hate to raise this at this juncture, but  
23 the company has some objections to Tesoro's responses  
24 and talked earlier about requesting direction to compel  
25 responses on those items as well.

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1           Is that something, Mr. Ryan, that you wish to  
2 pursue at this time?

3           MR. RYAN: Yes, Your Honor.

4           JUDGE WALLIS: Very well, would you please  
5 proceed.

6           MR. RYAN: Sure. As I outlined earlier in my  
7 E-mail, we believe that the scope of discovery we have  
8 requested is proper, particularly to what has been  
9 brought to our attention as substantial impacts to the  
10 company, certainly deduced that from a number of  
11 sources, including prior statements and responses. And  
12 believe it -- that those assessments as far as adverse  
13 impacts to the possibility of a \$5 Billion corporation  
14 is overstated, so we're asking limited discovery. We  
15 have submitted very few, and Tesoro has denied those,  
16 which we are asking Your Honor to compel responses and  
17 requests to, particularly data, requests for Data Number  
18 4 through 6 and Admissions 1 through 3 and 5. It  
19 clearly goes towards the financial capabilities of the  
20 company, the possibility and the impact that this  
21 increase would have.

22           JUDGE WALLIS: Thank you, Mr. Ryan.

23           Mr. Brena, do you wish to rephrase briefly  
24 your earlier response?

25           MR. BRENA: The financial impact to Tesoro we

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1 specifically quantified. We have included the sheets.  
2 I have waived the attorney work product privilege to do  
3 it. They are attached.

4           We have not made any representation and there  
5 is no issue of substance whatsoever to the average  
6 retail price of gasoline that goes to our relations with  
7 our customers at all. This proceeding concerns adjusted  
8 reasonable rates from Olympic to Tesoro West Coast and  
9 does not concern our pricing system or cost in any way  
10 at all, and there's been no representation other than  
11 that.

12           And to the degree that they are referring to  
13 comments that I may have made, let me be as clear as I  
14 can, that the impact that I refer to is the impact of  
15 Tesoro West Coast Company in the increased rate. I have  
16 not alleged that Tesoro can't pay the rate. I haven't  
17 alleged hardship. I have just alleged that it's  
18 millions of dollars to us. So to ask discovery that's  
19 completely irrelevant to the issues not only in the  
20 interim rate but even to the general rate case, to ask  
21 for discovery with regard to our relations or our costs  
22 or our pricing systems is completely unnecessary and not  
23 helpful.

24           And to the degree that the company is  
25 concerned with meeting an expedited schedule, my

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1 understanding is that the company stepped forward and  
2 indicated that it wanted to proceed with its interim  
3 relief on a very narrow basis. They resisted all of our  
4 discovery into their finances even, and yet they're  
5 asking for discovery on their shippers' finances.

6           So all I can say is that, you know, they can  
7 put on their case any way they want, but you don't get  
8 to serve -- you don't get to serve discovery on your  
9 shippers' finances any more than that furniture store  
10 that I analogized to in my opening comments. If the  
11 electric rate goes up \$100 a month and he says \$100 a  
12 month is more than I ought to be paying, it's more than  
13 a just and reasonable rate and it's a big rate increase,  
14 you don't get to ask for his monthly financial  
15 statements, you don't get to ask for the way he prices  
16 products to his customers, you don't get to ask  
17 information with regard to his affiliated entities. It  
18 just doesn't take us anywhere. It doesn't advance the  
19 ball.

20           JUDGE WALLIS: Thank you, Mr. Brena.

21           Mr. Trotter, I believe you had a brief  
22 comment as well.

23           MR. TROTTER: Yes, just briefly, and just  
24 looking at the responses, it does appear that Requests  
25 for Admissions 1 through 3 and 5 were admitted after an

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1 objection was registered, so I don't know if those are  
2 still an issue.

3           The other ones do deal with Tesoro's prices  
4 and Tesoro's costs and audited financial statements for  
5 Tesoro for the last three years. And again, it was  
6 unclear to me that Tesoro was claiming that its own --  
7 that it was unable to pay or this was a financial -- a  
8 rate shock situation. I did not understand them to be  
9 saying that or put that into issue, and I think  
10 Mr. Brena has clarified that. And so it was unclear to  
11 me just to what extent it mattered what the impact on  
12 the gallon price at the pump was. It is the -- the  
13 statute requires fair, just, and reasonable rates for  
14 the customers, and the customers are the shippers on the  
15 pipeline, not the people at the pump.

16           JUDGE WALLIS: Thank you, Mr. Trotter.

17           Mr. Ryan, do you have any response in  
18 addition to your prior comments?

19           MR. RYAN: A couple of things. One is  
20 Mr. Brena stated that we had not supplied or responded  
21 to his requests to produce any of our financial  
22 information. That's totally wrong. You have our  
23 responses in front of you, Your Honor.

24           By the information that Mr. Brena is arguing  
25 he should not have to produce, we have stated as part of

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1 our interim rate increase of the minimal impacts to  
2 consumers. We understand that interveners at least have  
3 indicated that there are substantial impacts to the  
4 shippers and their operations, and we're asking to be  
5 able to determine whether or not there's any impacts to  
6 the profitability of those companies and to substantiate  
7 those concerns with the direction that our discovery  
8 requests have gone. So we feel that these are important  
9 matters and proper for discovery.

10 JUDGE WALLIS: Thank you, Mr. Ryan.

11 I believe that the concerns related to the  
12 requests for admission appear to be moot. And as to  
13 Data Requests Number 4 through 6, I will not compel a  
14 response for the reasons stated by Mr. Brena and  
15 Mr. Trotter. I do not believe that that is something  
16 that is relevant or that would lead to admissible or  
17 relevant information.

18 Is there anything further to come before the  
19 Commission at this time?

20 MR. BRENA: No, Your Honor.

21 MR. TROTTER: No.

22 JUDGE WALLIS: It appears that there is not.  
23 I want to thank you all and commend you for your  
24 endurance, and a special word of gratitude to our court  
25 reporter for sticking with us, and this conference is



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1 adjourned.  
2 (Hearing adjourned at 6:15 p.m.)  
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