

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3	WASHINGTON UTILITIES AND)Docket No. TO-011472
	TRANSPORTATION COMMISSION,)Volume XXIV
4	Complainant,)Pages 2588-2765
)
5	v.)
)
6	OLYMPIC PIPE LINE COMPANY,)
	INC.,)
7	Respondent.)
	_____)

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9
10 A hearing in the above matter was
11 held on June 21, 2002, at 9:40 a.m., at 1300 S.
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge ROBERT WALLIS,
14 Chairwoman MARILYN SHOWALTER, Commissioner RICHARD
15 HEMSTAD and Commissioner PATRICK OSHIE.

16 The parties were present as
17 follows:

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

20 TESORO, by Robin Brena, Attorney
21 at Law, 310 K Street, Suite 601, Anchorage, Alaska
99501.

22 TOSCO CORPORATION, by Ed Finklea,
23 Attorney at Law, 526 N.W. 18th Avenue, Portland,
Oregon 97209.

24
25 Barbara L. Nelson, CCR
Court Reporter

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

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1 JUDGE WALLIS: Let's be on the record,
2 please, for our Friday, June 21, 2002 session in the
3 matter of Commission Docket TO-011472. Today's
4 session will start off with the testimony of witness
5 Hanley, who's being presented by Tesoro. Mr. Hanley,
6 please be seated and make yourself comfortable. We
7 do have one or two preliminary matters, and then we
8 will swear you in and identify your exhibits.

9 As a preliminary matter, the Commission, on
10 the record yesterday, asked for a report at this time
11 from Olympic on the status of requests for the work
12 papers of its witnesses. Are you prepared to report
13 at this time?

14 MR. MARSHALL: Yes, Your Honor.

15 JUDGE WALLIS: Would you do so, please?

16 MR. MARSHALL: Yes, we've gone through all
17 the materials and we will have them here by noon, but
18 as a preliminary matter, I'd note just a couple of
19 things.

20 First, in the portions that Mr. Brena
21 referred to that were a part of Mr. Collins' work
22 papers, those identify all the changes that were made
23 from the cost of service case presented in the direct
24 case to the rebuttal case.

25 When you take all the adjustments that were

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1 made, and Mr. Brena ran through four or five of them,
2 the adjustments actually work out to be about over \$4
3 million of a decrease in cost of service. So part of
4 what these work papers do is accept adjustments being
5 proposed by the intervenors. In fact, one of the
6 largest was mentioned by Mr. Brena yesterday.

7 The work papers will include all of that
8 and we're going to have a cover sheet that will
9 detail and provide a road map so that you can see
10 what each of these adjustments were separately and
11 whether they were in intervenors' favor, for example,
12 or Olympic's favor. But the overall net in our
13 rebuttal is a decrease in the cost of service, not an
14 increase in the cost of service, and a decrease in
15 cost of service by over \$4 million.

16 The backup documentation, we're making sure
17 that we gather up as much of that to make sure it's
18 as thorough as we can, and it will be here by noon.
19 But I wanted to give that preliminary report, because
20 I think there may have been a -- either -- not a
21 misunderstanding, but perhaps not a complete enough
22 discussion of what the rebuttal case does on cost of
23 service. Mr. Collins and Ms. Hammer do reduce the
24 amount of cost of service. We also --

25 JUDGE WALLIS: We certainly will welcome a

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1 discussion of that at the appropriate time.

2 MR. MARSHALL: Right.

3 JUDGE WALLIS: The purpose of this inquiry
4 is a status of the production of those documents and
5 not their content.

6 MR. MARSHALL: Correct. But I did want to
7 add that we are going to provide an additional road
8 map that shows which direction these changes are in
9 that aren't part of the work papers, but I think
10 would help the Commission understand that the intent
11 here was not to try to increase cost of service, but,
12 you know, obviously to come up with the numbers that
13 reflect our view of what the Staff and intervenors
14 have done.

15 Second, we also have a couple of other of
16 the preliminary data responses that need to be
17 supplemented. For example, 182, which we made
18 yesterday, has a reference to one witness' testimony
19 on rebuttal on throughput. It should also refer to
20 Mr. Talley's rebuttal testimony on throughput. His
21 Exhibit 17-C doesn't use estimates of throughput,
22 which is what the question was, but it uses actual
23 data on throughput, which has been made available in
24 his exhibit to his testimony that's already there,
25 and the backup documentation on that has been already

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1 provided in several responses to data requests,
2 supplementations to Tesoro Number 20, Number 133,
3 Number 102, and so on.

4 So to the extent that anybody needs backup
5 for the actual throughput numbers that we've gotten
6 from month by month, those documents have been
7 previously provided and we're going to try to make
8 sure we have another set just so that there's no
9 question that the reliance that Olympic makes in its
10 rebuttal case is on actual throughput numbers, not on
11 estimates of throughput based on a July 2000 modified
12 number.

13 I mention that only because we've been
14 handed a Tesoro direct exhibit list for Mr. Hanley
15 and it did have 182 in there as of yesterday, but we
16 are going to be updating that, too, here by noon
17 today. Other than that, then Mr. Beaver, can you add
18 anything further to --

19 MR. BEAVER: No.

20 MR. MARSHALL: Okay.

21 MR. BRENA: Your Honor, if I may just
22 respond briefly?

23 JUDGE WALLIS: Mr. Brena.

24 MR. BRENA: Did I understand opposing
25 counsel to say there are no further work papers for

2596

1 Mr. Collins?

2 MR. MARSHALL: No, no, I'm saying that
3 we're producing all the work papers that we can. I
4 don't -- I don't know specifically if there are
5 additional work papers for Mr. Collins. What I was
6 simply referring to is that the work papers of Mr.
7 Collins that Mr. Brena had yesterday do identify many
8 of the things that he was talking about in the
9 changes.

10 JUDGE WALLIS: Very well.

11 MR. MARSHALL: The other -- yeah.

12 JUDGE WALLIS: I'm going to suggest at this
13 point that Olympic appears to be saying that they
14 will be producing work papers and it may be most
15 productive to wait and see exactly what they produce.
16 And then, if further discussion is needed, we can
17 engage in it.

18 MR. BRENA: May I just respond with two
19 additional points?

20 JUDGE WALLIS: Yes.

21 MR. BRENA: Thank you. First, their cost
22 of service did decrease, but they took some actual
23 numbers, for example, in the decrease, and they took
24 them times, like, a factor of 1.3, and then they
25 jacked up some other numbers so the increase wouldn't

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1 go down so much. So yeah, the net effect was a
2 decrease. The question was is was it anywhere close
3 to what the decrease should have been. So you know,
4 but that really doesn't go, whether it goes up or
5 down. We're just trying to figure out the case. So
6 we asked for their work papers. So I don't see that
7 that has any bearing.

8 Second, with regard to Data Request 182, we
9 were handed that data response yesterday, and I put
10 it in a -- Mr. Hanley's direct, and opposing counsel
11 reviewed the direct documents, which I distributed
12 immediately this morning, and after reviewing them,
13 announced that they were going to supplement the data
14 request that they gave us yesterday to include a
15 bunch of other things. I mean, I'm just trying to --
16 you know, I'm just trying to figure out, you know,
17 what the facts are so that I can rely on them. I
18 bring them in as a hearing exhibit, it's as hot as
19 yesterday, and now they're supplementing yesterday.
20 If they did it right the first time, this wouldn't
21 happen.

22 Finally, I'd like to just point out to this
23 Commission that my understanding of the procedure in
24 this docket and certainly the Commission's orders in
25 this docket were that work papers were to be produced

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1 with the case. So these work papers should not have
2 been subject to discovery and should not have been
3 produced -- I mean, there should have been no
4 question.

5 And I'd refer to, in the Commission's --
6 this is the second time this has happened. In the
7 complaint order suspending the revisions, the
8 Commission ordered, Olympic must file its direct
9 testimony, exhibits and supporting work papers on or
10 before the date specified in the notice of hearing.
11 So the Commission recognizes that and held that, and
12 that is the suspension order, but they didn't do
13 that.

14 And then, later on, after the issue was
15 joined, then the Commission had to say, On or before
16 the close of business on July 12th, Olympic must
17 provide the Commission with its proposed testimony,
18 exhibits and work papers supporting its filing.

19 Throughout this proceeding, in at least two
20 Commission orders, work papers are served with the
21 case. So you know, in going into this thing, I don't
22 want to make it sound like, Well, they did what they
23 were supposed to do with their rebuttal case. They
24 not only put in a massive rebuttal case, but they
25 intentionally disregarded the rule of the case in

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1 this proceeding and didn't provide the work papers at
2 that time. So here we are now getting them -- so I
3 just wanted to point that additional fact out to the
4 Commission. We'll take a look at and see how they
5 respond, and hopefully they respond fully and
6 completely and we can move forward, but I wanted to
7 make the Commission aware of that. This is void
8 over.

9 JUDGE WALLIS: Thank you, Mr. Brena. Are
10 we ready to proceed to Mr. Hanley? It appears that
11 they are. Mr. Hanley, would you please stand and
12 raise your right hand?

13 Whereupon,

14 FRANK J. HANLEY,
15 having been first duly sworn, was called as a witness
16 herein and testified as follows:

17 JUDGE WALLIS: Please be seated.

18

19 D I R E C T E X A M I N A T I O N

20 BY MR. BRENA:

21 Q. Good morning, Mr. Hanley.

22 A. Good morning, sir.

23 JUDGE WALLIS: In conjunction with Mr.
24 Hanley's appearance at the prehearing conference on
25 June 13, we marked for identification documents as

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1 Exhibits 401-T through 419. In addition, today,
2 Tesoro has distributed documents for use in
3 additional direct testimony by this witness, which
4 are identified as follows, Exhibit 420, Olympic's
5 responses to Tesoro Data Requests 181 and 182. 421-C
6 consists of three documents, which are Olympic Pipe
7 Line Company board of directors meeting minutes,
8 April 23, 2001, June 7, 2001, and May 31, 2001.
9 Finally, Exhibit 422-HC, standing for highly
10 confidential, is Tesoro's response to Olympic's Data
11 Request 510, consisting of 27 pages. Mr. Brena.

12 MR. BRENA: Thank you, Your Honor.

13 Q. Mr. Hanley, do you adopt that, the
14 testimony --

15 A. Yes, I do.

16 Q. -- and exhibits? Okay. Mr. Hanley, as you
17 know, we have one hour. And that's -- that was my
18 commitment to this Commission, so we're going to stop
19 at 10:52. And if Judge Wallis is setting his clock,
20 which I see him doing, then --

21 JUDGE WALLIS: We'll do our best.

22 Q. -- if the creeks don't rise, we'll get it
23 done. Mr. Hanley, one of the fundamental tenets of
24 Mr. Schink's rebuttal testimony seems to be that
25 there's a cash flow problem that should be charged --

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1 that should be corrected -- that should be solved
2 through higher rates. Do you agree with that?

3 A. No. I agree that there's a problem. The
4 problem is essentially attributable to the Whatcom
5 Creek accident. The fact of the matter is is that
6 for at least the period 1990 through 1999, Olympic
7 was able, in fact, on its own merits, able to raise
8 the external capital it required. And indeed, it did
9 so with -- during that period of time and while, from
10 my viewpoint, an inordinately low equity ratio, over
11 the period it averaged between 15 and 16 percent,
12 although it did vary lower and somewhat higher at
13 times. Notwithstanding that relatively low equity
14 ratio, it was able to do so. It had sufficient cash
15 flow.

16 And while there was a throughput and
17 deficiency agreement on the Prudential loan, the
18 other loan to the external lender, Chase, was not
19 guaranteed.

20 Then, with the advent of the accident, we
21 have a -- that combined -- the impact of that
22 combined with shall we say two failed substantial
23 projects, and also, I might add that during that same
24 period that I'm referring to, up through -- from 1990
25 up until essentially the time of the accident, there

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1 was a withdrawal of \$51.6 million in dividends. So
2 you had two failed projects of, more or less, about
3 \$50 million coming out and you have nearly \$52
4 million in dividends paid to the parents, and still
5 during that period of time, notwithstanding that,
6 they had been able to do that without guarantees, so
7 -- and on its own merits.

8 So what happened after the accident, lo and
9 behold, we find that, yes, money has been advanced
10 from the owners, the parents, but on a secured basis.
11 The debt that previously had been unsecured to the
12 external lender is now guaranteed. So it's very
13 clear that the dilemma that it finds itself in is
14 attributable to an extraordinary event, one which is
15 not proper for recovery in a base rate kind of a
16 case, and certainly not one to fund in advance cash
17 needs.

18 So I think it's quite clear that the
19 relationship to the parents is remarkably different
20 subsequent to the accident, and I don't think it's
21 proper that they should be trying to solve that kind
22 of a cash flow dilemma, which did not exist prior to
23 that time, through rates.

24 Q. If, instead of maintaining an average
25 capital structure of between 15 and 16 percent

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1 equity, they had maintained the capital structure
2 consistent with your recommendation of 46 percent,
3 would they still be, in your judgment, participating
4 in the debt market on a stand-alone basis?

5 MR. MARSHALL: I'm going to object to the
6 premise of the question, that it builds in an
7 estimate of 15 to 16 percent, the equity ratio.
8 There's no support for that, other than Mr. Brena's
9 statement. It's a fact that -- assumption of a fact
10 not in evidence.

11 MR. BRENA: The witness just testified to
12 that effect and it's in his case.

13 JUDGE WALLIS: The objection's overruled.

14 THE WITNESS: If the witness may clarify
15 the point. Indeed it is in the case and indeed the
16 history of the capital structure ratios of Olympic on
17 a stand-alone basis can be found in Exhibit 404.

18 Q. Mr. Hanley, do you have my question in
19 mind? Let me just rephrase it. If, instead of --
20 if, instead of maintaining the capital structure of
21 this company at 15 to 16 percent equity, if, at the
22 time of the accident, they would have had a capital
23 structure consistent with industry norms and your
24 recommendation, would Olympic be able today to
25 participate in the debt marketplace?

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1 A. Well, I believe the answer is clearly a
2 yes. As also shown in Exhibit 404, that had not the
3 nearly \$52 million in dividends been drawn out, they
4 would have had a substantially greater equity ratio
5 prior to the incident and very likely not
6 withstanding the incident, that equity cushion would
7 have been able to absorb it. They wouldn't be in a
8 hundred percent debt situation.

9 And had they maintained all along a proper
10 capital structure ratio consisting of a level of
11 equity commensurate with Olympic's risk as an
12 operating oil pipeline, they certainly would have
13 been able and very likely, in my opinion, would still
14 be able to, especially since they had been able to do
15 so on a lower equity ratio than industry average,
16 which really -- well, let me stop.

17 Q. You mentioned Olympic's risks. You heard
18 in Mr. Schink's rebuttal testimony and on the stand,
19 for that matter, him characterize Olympic as a
20 high-risk pipeline company. Would you comment on
21 that, please?

22 CHAIRWOMAN SHOWALTER: Mr. Brena, can you
23 pause for a minute? Are we on today? It's very
24 distracting to have other conversations going on. We
25 hear every little whisper. And I know you need to

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1 consult, but the more you do, the less we can hear
2 the witness, so you just have to do your best to
3 maybe write each other notes or things like that.

4 MR. MARSHALL: We'll do that. Again,
5 because of the unusual nature of this redirect, I'm
6 trying to make sure that we are as efficient in
7 getting together questions relating to the new facts.
8 So I'll try to turn the mike off and send notes.

9 CHAIRWOMAN SHOWALTER: Or even if you have
10 to sit further back in the room, it would help.

11 MR. MARSHALL: Okay.

12 CHAIRWOMAN SHOWALTER: You can stand up if
13 you need to object from back there, but --

14 MR. MARSHALL: Okay, thank you.

15 Q. Mr. Hanley, would you please assess the
16 risk of Olympic compared with your proxy group and
17 the industry in general?

18 A. Well, in my view, Olympic is certainly no
19 greater risk than average, and possibly less than
20 average risk. The reason, I think, is pretty clear.
21 There's significant demand on the pipeline. In fact,
22 it's been, at least to my knowledge, since the early
23 1970s, has been pretty much consistently
24 overnominated. Volumes have had to be pro-rated.
25 That's always true up until the time of the accident

2606

1 and indeed is true now, and in fact has been
2 indicated by the company itself that, for the
3 foreseeable future, volumes are still going to have
4 to be pro-rated.

5 With regard to the accident itself, these
6 kinds of things, you know, it's the nature of the
7 beast. It's sad, it's unfortunate, and when they
8 happen, they're catastrophic, and these kinds of
9 events certainly have to be considered as
10 possibilities by investors in the marketplace.

11 The potential for a catastrophic event,
12 whether it's a natural gas pipeline, whether it's a
13 hurricane that rips down the telephone poles and
14 electric lines, these kinds of things, catastrophes,
15 certainly are something that can -- that have to be
16 expected over a long period of time.

17 And the cost of capital, in fact, is for a
18 long run horizon, as we know. So over the long run,
19 something like that is likely to occur, and that's
20 pretty much across the board.

21 The other thing is is that it seems to me
22 that while there can be a lot of fancy talk and
23 obtuse rationalization, is the way I would
24 characterize it, when a company can increase its
25 rates by 62 percent or even propose to increase its

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1 rates by 62 percent and not have any fear whatsoever
2 of substantial loss of business and still be
3 overnominated as far as the eye can see and, in fact,
4 with no reasonable alternatives for moving product
5 for the independent shippers, other than by water,
6 which, frankly, is slower, less efficient, more
7 costly, it doesn't make sense.

8 No matter what, if an only variable is --
9 to the shipper is going to be in the transportation
10 cost, why would a shipper willingly want to reduce
11 their margin by using a more expensive means when a
12 more efficient, less costly means is available. It
13 doesn't make sense.

14 Moreover, the FERC has indicated that if
15 it's more than -- a significantly small price
16 increase can really affect the market, then -- only
17 then is there significant competition. So we're
18 talking about a large increase here, and it doesn't
19 really affect any of the volumes to be expected.
20 Then, clearly, we're not talking about something
21 that's very risky, and certainly not a situation
22 that's highly competitive on any realistic basis.

23 Q. You mentioned overnominations for the
24 foreseeable future. Could I direct your attention to
25 Direct Exhibit Number 420, please, Tesoro Data

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1 Request Number 181. Their response to the demand --

2 CHAIRWOMAN SHOWALTER: Mr. Brena, can you
3 hold up, because mine ends with 419. Oh.

4 MR. BRENA: New package delivered this
5 morning.

6 CHAIRWOMAN SHOWALTER: All right. Thank
7 you. 420

8 MR. BRENA: Number 420, Data Request Number
9 181.

10 CHAIRWOMAN SHOWALTER: Okay.

11 Q. Were you referring specifically to the
12 company's admission in this data request that all
13 rebuttal witnesses assume that Olympic's pipeline
14 system will remain pro-rated for the foreseeable
15 future?

16 A. Yes.

17 Q. Okay. With regard to seaborne competition
18 and barge rates, could I direct your attention to
19 Direct Exhibit 422? Specifically to the chart on
20 page two.

21 MR. BRENA: This is highly confidential
22 information, Your Honor. I don't know what steps
23 need be done for me to cross him on the specifics of
24 this chart, but they are necessary.

25 JUDGE WALLIS: In the past, counsel and

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1 witnesses have been able to engage in
2 cross-examination with reference to confidential
3 exhibits by citing to lines and pages, by --

4 MR. BRENA: Allow me to try.

5 JUDGE WALLIS: Without repeating numbers
6 themselves, so that the record need not be declared
7 confidential and the room need not be cleared, but,
8 in fact, the person with access to the exhibit can
9 follow the testimony.

10 MR. MARSHALL: May I make a suggestion
11 here, too?

12 JUDGE WALLIS: Mr. Marshall.

13 MR. MARSHALL: In the past, when we've had
14 data that has grown stale because of the passage of
15 time, such as throughput data, we have released that
16 data as being confidential as the time has passed.
17 I'd just note here for the record that the data here
18 is all last year, it ends in December '01, and
19 therefore, what we have done, at least, is to release
20 that data on the idea that it's no longer current
21 competitive information.

22 So I would first suggest that Tesoro
23 release that data, because it's old, and second, I
24 would like to voir dire the witness on the basis for
25 his knowledge about any of these materials. I don't

2610

1 believe this witness prepared these materials or has
2 any ability to identify them as being accurate
3 business records or reflecting of any particular
4 item. I don't think there's a witness to sponsor
5 this exhibit.

6 JUDGE WALLIS: Mr. Brena, as to the first
7 question, does Tesoro choose to waive confidentiality
8 of this information?

9 MR. BRENA: No.

10 JUDGE WALLIS: Very well. As to the second
11 part of Mr. Marshall's comments, what is your
12 response?

13 MR. BRENA: He'll have an opportunity to
14 cross this witness. My time is 60 minutes and we're
15 spending it and there's no objection on the floor. I
16 would like to be able to -- I timed my direct, and I
17 would like to be able to complete it in my commitment
18 to the Commission and Mr. Marshall. Opposing counsel
19 can use his time as he chooses.

20 I'm happy to lay a foundation for this
21 witness. It strikes me that the nature of it goes to
22 an objection when I move to introduce this. If he
23 cares to do that, he can. And finally, I'd like to
24 point out that Mr. Schink, no fewer than a hundred
25 times, said on the stand and testified with regard to

2611

1 information he gathered from the company. It's no
2 different than what I'm doing here.

3 JUDGE WALLIS: I will allow the questions,
4 and if Mr. Marshall wishes to raise an objection, we
5 can discuss the objection at that point, which would
6 also carry with it a motion to strike to the extent
7 any objection might be granted.

8 Q. Mr. Hanley, would you please explain your
9 familiarity with this exhibit and the information in
10 some conversations you've had with the company and
11 your knowledge of its preparation?

12 A. Yes. This information was just gathered,
13 and it's a representation of intrastate shipments,
14 spot, if you will, based on availability, not under
15 contract. These are representative shipments, and
16 I'm looking at page two of Exhibit 422-HC as I make
17 these remarks.

18 The information shown represents the
19 varying charges and, as indicated, they are exclusive
20 of fuel surcharges, demurrage tug charges and taxes.
21 So had those elements been included, the rates shown
22 in that second column from the right would be higher
23 than, in fact, what you see.

24 In the extreme right-hand column are the
25 rates relative to the various points from Anacortes

2612

1 and they were -- they do reflect the 62 percent
2 proposed rate increase, and that the rates were
3 derived from Ms. Hammer's exhibit, the reference here
4 is to CAH-4. I believe there may possibly be another
5 exhibit number, but I'm -- as I speak, I'm not aware
6 of what that might be.

7 And clearly shown -- where the rates are
8 indicated, it's very clear that the shipments through
9 OPL, even under the proposed 62 percent increase, are
10 less than the alternative shipping -- shipments by
11 barge.

12 But, also, if the Commissioners will note
13 that in the four line items that say "none" in the
14 second column from the right, what that flat out
15 means is there is no alternative by water. It's
16 either through Olympic or it doesn't go.

17 So I mean, I think these data indicate that
18 not only is the alternative by water more costly, but
19 also to various points indicated in -- I don't even
20 know if I'm permitted to refer to those points, but
21 certainly on those line items where the word none
22 appears, to those destination points, there is no
23 alternative.

24 CHAIRWOMAN SHOWALTER: Can the witness
25 please provide the units of measure of the last two

2613

1 columns?

2 THE WITNESS: These are per barrel.

3 CHAIRWOMAN SHOWALTER: The second to the
4 right column is dollars per barrel, or what?

5 MR. BRENA: Yes.

6 CHAIRWOMAN SHOWALTER: And what is the far
7 right column?

8 MR. BRENA: Cents per barrel.

9 CHAIRWOMAN SHOWALTER: Okay.

10 MR. BRENA: Yeah.

11 CHAIRWOMAN SHOWALTER: That helps.

12 MR. BRENA: Sorry.

13 Q. And Mr. Hanley, isn't it true that the
14 invoices supporting each one of these movements are
15 attached?

16 A. They are, and they were company provided.
17 And in that regard, it's no different than any other
18 normal assignment that I have when I request data and
19 the company provides it. Clearly, there's always
20 someone who is more intimately familiar, whether it's
21 an accountant or a dispatcher, whoever it may be, but
22 I have been familiarized in a general way with this
23 information and what it represents, and the
24 underlying supporting data is there and I believe
25 speaks for itself.

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1 Q. Was it your understanding of Mr. Schink's
2 analysis in his rebuttal that he represented that
3 there was barge traffic available for each point that
4 Olympic serves?

5 A. That is my recollection, yes.

6 Q. Mr. Schink, throughout his rebuttal case
7 and on the stand, suggested that the high-debt
8 pipelines that exist throughout -- well, in a few
9 isolated locations should somehow be taken into
10 consideration for ratemaking purposes by this
11 Commission. Would you please explain if you agree
12 with that or not, and if you don't, why not?

13 MR. MARSHALL: I object to the form of the
14 question. The question says in a few isolated spots,
15 and it characterizes -- mischaracterizes Dr. Schink's
16 testimony. I just object to the form.

17 MR. BRENA: With that modification --

18 MR. MARSHALL: If it could be stated more
19 neutrally.

20 Q. -- Mr. Hanley, would you please answer?

21 A. Yes, my response is specifically with
22 regard to the four pipelines referred to by Dr.
23 Schink in his testimony wherein he indicates that the
24 Commission should have no cause for concern for a
25 hundred percent debt ratio, because this is quite

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1 typical in parent relationships and so forth.

2 Well, I think there are some significant
3 differences, and I most emphatically disagree with
4 his thoughts to you, Commissioners. You most
5 certainly should be very concerned, because what
6 we're talking about here is cost of service
7 ratemaking.

8 The only entity upon which you have
9 authority is, in fact, Olympic Pipe Line. You have
10 no authority whatsoever over the parent companies.
11 Moreover, and just as importantly, those extremely
12 high debt ratios of those companies have not once
13 ever been used or adjudicated by the FERC, used in
14 setting cost of service based rates, not once, ever,
15 okay. They are what they are.

16 In addition, those companies have either
17 some, in whole or in part, market based rates in
18 effect, which, again, is set off quite differently
19 than from a conventional cost of service finding,
20 which is what your goal is.

21 And in that regard, I would make several
22 other points that I think are significant. There was
23 also discussion by Dr. Schink about comparisons to
24 pay out ratios very high, hundred percent, 90-some
25 odd percent, and I agree, but if you look back at

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1 this company, historically, the question is was it
2 prudent to pay out those dividends at a point in time
3 when capital structure ratios were way below industry
4 standards. The answer, I think, is it was not. It's
5 prudent to retain money in the business when you're
6 operating at well below the norm in terms of equity.

7 And so I don't think there is a basis for
8 any valid comparison between those companies and
9 Olympic, certainly not with regard to debt equity
10 ratios or even any past dividend policy practices.

11 Q. Is it your understanding that the owners of
12 those companies also contribute equity when it's
13 needed?

14 MR. MARSHALL: Object as leading.

15 JUDGE WALLIS: The question is allowed.

16 THE WITNESS: To my knowledge, whenever
17 there has been a needed equity injection, it has been
18 forthcoming and certainly there has not been the type
19 of reservation of we'll put money in, but it won't be
20 equity. We'll put it in as debt and, moreover, the
21 only basis that we'll put it in is that if it's
22 secured. And so there is a vast difference between
23 the intent and the nature of the capital.

24 Q. Is it your understanding that the current
25 owners of Olympic have ever put a penny of equity

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1 into Olympic?

2 A. No, the current owners certainly have not.

3 And moreover, you know, I say this -- I can almost
4 understand why, especially given the circumstances of
5 the Whatcom Creek accident, where you -- where
6 they've had to pay, you know, out \$75 million in a
7 settlement from a lawsuit while there's still other
8 contingencies and legal matters outstanding of great
9 significance. No, I can understand that reluctance.

10 But, on the other hand, from the
11 Commission's viewpoint, again, all you have to
12 regulate is Olympic itself. You've got to be
13 concerned not only with the ultimate shareholders
14 and, you know, the owners and the shareholders in the
15 owner companies, but you've got an obligation to be
16 concerned about the continuation of this pipeline.
17 And it doesn't -- it doesn't help any that if the
18 thought is is that, well, if it goes into bankruptcy,
19 which certainly is a possibility, especially if
20 there's unwilling -- all these things materialize in
21 adverse outcomes, all these contingencies, and the
22 owners have secured interest, so they'd be pretty
23 high up on the pecking order compared to if they had
24 equity investment in it.

25 I don't know where that leaves the

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1 pipeline. Yes, it's not in the long run interest of
2 the owners not to have the pipeline operating. I
3 would agree with that. But, then, on the other hand,
4 if there isn't equity, looking at it of and by
5 itself, which is all you've got to set rates on on a
6 cost-based ratemaking, what are you going to set them
7 on. It's the rate base of Olympic Pipe Line. That's
8 it. There's your jurisdiction. Not the owners. If
9 they won't put it in, where do you look. Where do
10 you, as a Commission, look.

11 Q. Mr. Hanley, Mr. Schink, one of the
12 fundamental cores of his rebuttal testimony was that
13 they should adopt the capital structure of the parent
14 for ratemaking purposes. Would you please offer your
15 view on that?

16 A. My opinion, this Commission should
17 absolutely not even remotely consider such a thing.
18 First of all, as I just said in response to the prior
19 question, what you have to regulate and what your
20 authority is over is the Olympic Pipe Line, and
21 permit an opportunity to earn a fair and reasonable
22 rate of return on that rate base.

23 Consistent with the basic tenets of
24 finance, the risk rate should be related to the asset
25 in which the capital is invested, and so the risk has

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1 to relate to the risk of Olympic operating as a
2 pipeline company.

3 Now, in Exhibit 406, I have set forth
4 information from 10-Ks and -- Forms 10-K and similar
5 documents, and discuss, I believe, about, if my
6 memory is correct -- and I don't want to waste our
7 time. If I may just refer to -- I believe around
8 pages 18, 19 of Exhibit 401-T, my testimony. I
9 clearly explain from that data that the risks, the
10 kinds of business enterprises, much of which is
11 foreign, much of which is in exploration and other
12 kinds of endeavors and is totally unrelated to the
13 operating risks of an oil pipeline company.

14 Now, there was a lot of talk about the
15 FERC, and I don't want to dwell much on the FERC,
16 because I'm fully cognizant that I'm sitting here
17 before the Washington Utilities and Transportation
18 Commission.

19 Now, but be that as it may, with a lot of
20 reference to it, the FERC, in some of its opinions,
21 such as the ARCO case, Opinion 351, they talked about
22 the need to look beyond, to look to the risk of the
23 pipeline, and the SFPP case, Opinion 435, 435-A, they
24 clearly talked about and supported the administrative
25 law judge by looking to the risk of the pipeline

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1 operation. And indeed, even within the
2 administrative law judge's report, which the
3 Commission upheld, with regard to certainly the
4 capital structure.

5 There is reference going way back into the
6 early 1980s for other cases where the Commission says
7 if the capital structure is out of line with the
8 industry, with the risks of the pipeline, they're
9 going to look beyond and then go to a hypothetical
10 capital structure ratio. And so that's exactly what
11 I have done.

12 How do you find out what the right capital
13 structure ratio is that reflects the risk of an
14 operating pipeline. Well, the way you find it out is
15 you look at what is as close to pure play as you can,
16 and that's that proxy group of five oil pipeline
17 companies, at an average of 46.4 percent. So then
18 that's where I tend to lean, but with qualifications.

19 But, in any event, there's absolutely no
20 correlation whatsoever between the business risks of
21 the parent companies and the business risk of a
22 pipeline. There just isn't.

23 Q. You mentioned the SFPP case in your answer.
24 Did the FERC indicate what it considered to be an
25 industry norm for oil pipelines in that case for

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1 capital structure?

2 A. Yes, it did. It referred to a range
3 typical for the oil pipeline industry of debt
4 specifically referred to was from 45 to 55 percent
5 debt. That would imply, with the inverse of those
6 numbers, the need for a range of equity between 45
7 and 55 percent. Well, in fact, looking at the more
8 recent averages, the average for that group was 46.4
9 percent.

10 CHAIRWOMAN SHOWALTER: Which group?

11 THE WITNESS: The group of the five oil
12 proxy pipelines that indeed was also used by Dr.
13 Schink, as well, and myself.

14 Q. Mr. Schink has suggested that the
15 settlement capital structure of 74 percent should be
16 considered within an adjudicatory ratemaking. Would
17 you please explain your view on that suggestion?

18 A. Well, I'm sad to say that I've been at this
19 business now almost 31 years, and I've been told many
20 times, many times, when I thought I've got something
21 really hot that came out of a settlement, that it
22 doesn't mean a thing because it wasn't adjudicated.
23 It was not an order of the Commission; it was an
24 agreement among the parties to settle it. In fact,
25 most settlements are black box, some aren't quite

1 black box, but it doesn't have the connotation or the
2 import, significance, if you will, as a full order of
3 the Commission deciding issue-by-issue.

4 Q. Is there any way to know what trade-offs
5 may have been made within that settlement for which
6 that capital structure was only one part?

7 A. No, that's the point. There is no way to
8 know. In the settlements, that's the thing. There's
9 always a lot of horse trading. I'll give you this if
10 you give me that. And frankly, that's just not the
11 way it's going to work in a fully-adjudicated
12 decision.

13 Q. Mr. Schink has used the concept of at-risk
14 capital. Do you believe that it's proper to
15 distinguish between whether that capital is debt
16 capital or equity capital?

17 A. Well, it's -- yes, it is proper, and it's
18 consistent with the basic tenets of finance. There
19 is something called a risk-return principle, and in
20 fact, you can go across the spectrum of kind of
21 investments, and we can talk about a U.S. Treasury
22 bill would be at the extreme low end and you can just
23 progress to various other kinds, you get into
24 corporate debt, there's unsecured debt, secured debt,
25 different levels of it, first mortgage bonds, second

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1 mortgage bonds, going all the way up to common stock
2 owners with absolutely no claim on assets and
3 earnings, and you're just last in line after all the
4 fallout. If there's any still manna falling from
5 heaven, well, then, you're lucky. If there isn't,
6 oh, well. Okay. So that's the risk-return
7 principle.

8 So the return -- the higher returns go to
9 the greater risk, and the greater risk is, if you are
10 not secured, have no claim on assets and earnings,
11 and for there to be a suggestion that it doesn't
12 matter, well, it's all money from Papa Bear, it
13 doesn't matter, is -- well, it does matter. It
14 matters on the nature of the money, whether the money
15 is freely forthcoming, whether the money is secured
16 or isn't secured, and whether it is in there as an
17 unsecured, last-in-line common equity shareholder or
18 not. And in fact, the money that's in from the
19 owners is, in fact, secured.

20 Q. I'd direct --

21 A. Yes, yes, it's secured to some extent
22 behind the external lenders, but it's still secured.

23 Q. I'd draw your attention to Exhibit 421.

24 And would you please explain, just characterize what
25 that exhibit represents, kind of broad level?

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1 A. Well --

2 Q. It is a confidential document.

3 A. Okay. Well, because it's a confidential,
4 I'll try and speak to it the way I did for 422-C.
5 These documents, when carefully read, will show that
6 the owners have secured an interest in the loans. In
7 other words, it's secured. It's just not unsecured
8 loan from parent to the pipeline, but in fact, it's
9 secured. There's also an indication in here that the
10 principal -- I won't even mention the name, because
11 I'm not sure what I can freely say or not, but the
12 documents will speak when the Commission and the
13 Judge read them -- that a principal external lender
14 gave consent for that secured interest of the
15 shareholders, the owners, for it to occur by waiver,
16 and so --

17 CHAIRWOMAN SHOWALTER: Can you tell us what
18 page you're referring to?

19 THE WITNESS: For the latter comment,
20 Chairwoman, this would be the pages 10 through 14,
21 yes, and I'm going by the lower left-hand corner
22 markings of Exhibit 421-C.

23 Q. And just for the record, if I could
24 clarify, the two -- there's two boards of directors'
25 minutes in which they put the action in place and

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1 authorize the action, which is the modification of
2 the master shelf agreement, which allows them to take
3 a security interest with regard to additional
4 authorizations from under the ARCO line of credit.
5 So you can -- the two board of directors' minutes
6 tell the story, and the modification to the security
7 arrangement to allow BP's continuing advance of funds
8 is in the modification.

9 Q. Now, Mr. Hanley, you know, funding the
10 company with debt versus funding it with equity
11 versus funding it with secured debt, I want to just
12 direct your attention to equity versus unsecured debt
13 versus secured debt.

14 If there were substantial government fines,
15 unsecured creditors as a result of lawsuits,
16 substantial settlements, if this company were
17 substantially at risk from -- as a result of
18 unsecured creditors, then would securing the debt be
19 a substantial enhancement to the owners' position
20 from equity or unsecured debt?

21 MR. MARSHALL: I object to the form of the
22 question. The hypothetical is incomplete. The
23 security is from the very people who are loaning. I
24 object to the form of the question because I think it
25 does not provide enough in the hypothetical for the

1 witness to answer the question.

2 JUDGE WALLIS: Mr. Brena.

3 MR. MARSHALL: And I --

4 MR. BRENA: Opposing counsel may
5 repositulate the hypothetical in a way that they deem
6 is appropriate.

7 MR. MARSHALL: The second part of the
8 objection is there's been no foundation laid that
9 this witness has an understanding of throughput and
10 deficiency agreement and who is securing and how that
11 works. You know, he's being asked to opine on a
12 document that speaks for itself, but there's been no
13 showing that he has any expertise to add anything to
14 it. And based on the questions, I think that there's
15 a misunderstanding that's going to be perpetuated on
16 the record by the nature of the question and lack of
17 foundation of the witness.

18 MR. BRENA: And opposing counsel can
19 explore that in his cross-examination and can object
20 to the introduction of the document, if he prefers,
21 on that basis.

22 MR. MARSHALL: I don't object to the
23 document.

24 JUDGE WALLIS: Given the process that we're
25 engaged in, I'm comfortable that the question is

1 permissible and that counsel may inquire on cross.

2 Q. Mr. Hanley, we have 15 minutes remaining.

3 A. I have the question in mind.

4 Q. Okay. So what I would -- first, would you
5 please respond to that question?

6 A. Well, I believe that there is. And whether
7 one would consider me an expert or not in throughput
8 and deficiency agreements, I'd like to think I'm
9 responding to this question within the complete area
10 of my expertise, which is within the area of finance
11 and as a cost of capital expert.

12 The fact of the matter is is that a secured
13 debt instrument loan is better than an unsecured debt
14 instrument loan. In other words, they could have
15 just said, Here's a promissory note, pay it back when
16 you can at whatever interest. They didn't do it.
17 They want a secured interest. So I don't need to be
18 an expert or know every little nitty-gritty of the
19 mechanics of the throughput and deficiency agreement,
20 other than it's a lot better than a plain old
21 promissory note, okay.

22 So in the event of a financial debacle, if
23 we will, bankruptcy, if you will, choose the word, I
24 would rather be a secured lender than a common
25 shareholder. I don't think that -- to me, that is a

1 no brainer. You don't need to have my expertise of
2 30 years as a rate of return expert to figure that
3 one out.

4 Q. Mr. Hanley, you have addressed the at-risk
5 capital concept and its impact and advantages for the
6 parent. You have also addressed that Olympic would
7 not be in this position if it had equity financing,
8 so you have addressed it with regard to the regulated
9 entity. Would you also address the significance of
10 the characterization between debt and equity for the
11 ratepayer and for the regulator?

12 A. Yes. Clearly, capital structure ratios
13 make a difference. This Commission, many times, has
14 recognized it. Just a few of those examples can be
15 found, I believe, in what are already in the record
16 as Exhibits 229, 230, and 232, just to mention
17 several.

18 In addition, my broad experience, having
19 testified in, I think, 32 or 33 states, the U.S.
20 Virgin Islands, and other places, besides state
21 commissions, that it is a widespread concept to use
22 hypothetical capital structure ratios when it is
23 deemed that the capital structure ratios of either
24 the parent or, in fact, the entity itself, even if it
25 were a stand-alone, is inappropriate. What is

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1 inappropriate. Well, we get back to the risk of the
2 assets. The assets, what are the assets. The
3 risk-return principals, the rate base, the rate of
4 return is allowed to the rate base. What kind of a
5 company is it, and how are companies like those whose
6 stocks are traded in the marketplace, who raise
7 external capital in the marketplace, how are they
8 financed. There's the test. There's the marketplace
9 test.

10 Now, and so management has the right to
11 have any capital structure it chooses. They do.
12 It's a fact. The management, the owners of Olympic
13 have chosen to keep it essentially all debt,
14 especially, as I said right at the outset this
15 morning, I can even understand why. And that's their
16 prerogative. But for ratemaking purposes, it's the
17 prerogative of the Commission to say, No, you can do
18 that if you want, but for ratemaking purposes, it's
19 not appropriate. You can go to one extreme or the
20 other. You can have a situation of all debt or you
21 can have situations where there's too high equity.
22 If you have too little debt -- too little equity, too
23 much debt, now you're talking about significantly
24 enhancing the financial risk and the likely failure
25 of the company and you, Commissioners, have an

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1 obligation and a responsibility to try and keep,
2 within powers that you may have, that from happening.

3 And so how do you do that. Okay. Well,
4 you can do that by saying, Okay, well, if it -- maybe
5 we're going to go to a hypothetical. You may choose
6 hypothetical capital structure ratio if you had the
7 other extreme. If you have a company who comes in
8 and says, Well, we've got an 87 percent or hundred
9 percent equity ratio, and that's the way we've chosen
10 to finance. Forget, even, that you have parents -- a
11 parent situation that have totally different risks.
12 That 87 percent might be right for them, might be
13 right for them, but not right for where you're trying
14 to figure out, you apply the rate of return to, this
15 rate base, which is within your jurisdiction.

16 And so why should you -- why, also, should
17 you be concerned and concerned for ratepayers. Well,
18 because if there's too much equity and it's
19 inconsistent with the industry average, inconsistent
20 with the risks of the entity, in this instance, the
21 oil pipeline, then too much equity has significant
22 ramifications. Not only is equity more costly, if it
23 was really there, but in addition, you've got the
24 income tax implications, okay.

25 You have to have -- in a cost of service

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1 finding, the more equity you have, the more income
2 taxes are going to be built into the development of
3 the revenue requirement and it's going to result in a
4 need for greater revenues and, therefore, higher
5 tariff rates, and it's not fair to ratepayers.
6 That's why you do need to be concerned about the
7 capital structure ratios that are employed and that
8 they need to be consistent with the risks of the
9 actual enterprise that you are regulating.

10 Q. Mr. Hanley, we have four more topics in
11 about seven minutes, so if you would time your
12 answers accordingly.

13 A. Yes, sir.

14 Q. Thank you. You mentioned the income tax
15 allowance. Is it your understanding that Olympic
16 actually pays income tax?

17 A. No, not at this time. I mean, yes, it is
18 my understanding that they don't. I want the record
19 to be clear.

20 Q. With regard to Mr. Schink's approach of
21 using a single model, do you believe or not that if
22 he had informed his approach with other models, that
23 he would have or could have reached a different
24 result?

25 MR. MARSHALL: I would like to have that

1 question clarified. Are you referring to the DCF
2 model?

3 MR. BRENA: I am.

4 MR. MARSHALL: When you say a single model,
5 is that what you're referring to, is the DCF model?

6 MR. BRENA: It is.

7 Q. And if you could respond to that relatively
8 briefly?

9 A. I will try to do so as quickly as possible,
10 Mr. Brena. Yes, he would have reached a different
11 result. In fact, I was criticized because I was out
12 of step with this Commission and sole reliance --
13 essentially sole reliance on DCF. And because,
14 quote, I averaged to arrive at my recommendation of
15 13 percent. But as reference to Exhibit 402, page
16 two, will show, I have shown the results of the
17 application of my other models, as well. And you can
18 see that they range from 11.6 percent, which is on
19 line three, page two, Exhibit 402, to only a high of
20 13 percent on line two of the same page. And if one
21 were to average those other three methods on lines
22 two, three and four of Exhibit 402, page two, one
23 would arrive and say that the checks, if you will,
24 only average 12.4 percent, thereby indicating that
25 the DCF result in this instance is inordinately high

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1 and should not be relied upon exclusively.

2 Q. Mr. Schink has made the point that there's
3 a relationship between capital structure and return.
4 If your capital -- if Mr. Schink's rate of return
5 recommendations were to be adopted by this
6 Commission, but a hypothetical capital structure
7 similar to yours were also to be adopted, what would
8 be the impact on the rate of return?

9 A. Well, in Exhibit Number 228, which I
10 believe is in the record --

11 Q. If you'd just summarize it.

12 A. It is shown there that the results of Dr.
13 Schink's recommendations for the component costs of
14 capital using the parent's weighted capital
15 structures, on page 96 of his testimony, he doesn't
16 show the after-income tax overall rate of return,
17 but, believe me, it's 14.28 percent. And if one were
18 to apply that 14.28 percent, put that in as an
19 overall rate of return, and then substitute the
20 equity -- debt and equity ratios that I recommend,
21 you would see that that translates to 24.7 percent
22 return on a 46.4 percent common equity ratio, which
23 is pretty darn good, even if you really had equity
24 invested.

25 Q. Would you just summarize your

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1 recommendations to this Commission?

2 A. Yes, my belief is -- I know this is -- I
3 believe, at least, if I were sitting in the
4 Commission's seats up there, it would be a most
5 serious dilemma as to what to do, given the
6 conditions of this company.

7 But I genuinely believe that the company's
8 position is just -- it's just not even in keeping
9 with any precedence, any sense of balance or reason
10 relative to the risks of a pipeline.

11 Now, one thought that I have is -- because
12 clearly you need something and something needs to be
13 done. I could have -- you know, on a scale, a range,
14 if you will, I recommended the average of the oil
15 pipeline proxy group, 46.4 percent equity. On the
16 other hand, I could have said -- and in fact, it is a
17 possibility, how realistic, from your point of view,
18 I don't know, but since there isn't any real equity
19 invested in the company, and obviously no desire or
20 intent to do so, you could say there's zero equity
21 and just give them a debt cost rate and pick a
22 number.

23 Well, if you did that, what kind of numbers
24 do you have. I think, in fairness, I wouldn't use
25 the weighted debt perhaps of the -- of the parent

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1 companies, but, you know, you could look to maybe
2 something like Staff's recommended overall rate of
3 return, which I believe is like 7.4 percent, and it
4 was pretty close to the hypothetical debt cost rate
5 of 7.54 percent that I've used in my calculations.
6 That's a possibility.

7 Another one would be to still go with a
8 recommendation of an overall cost of capital of
9 something in the range of 7.4 to maybe 7.8 percent
10 with 20 percent equity built in, and that would be
11 consistent with what this Commission did in the
12 American Water Resources case that I've cited an
13 excerpt from at pages 19 and 20 of Exhibit 401-T.
14 That would be a possibility.

15 I also could have chosen to use the low end
16 of the range of the capital structure ratios for the
17 proxy pipeline group, rather than the average, and on
18 Exhibit 404, page three, that's shown to be 33.7
19 percent.

20 Now, those are all possibilities. I
21 recommended the use of 46.4 percent, which is the
22 average. I think it's -- it's a good number. It's
23 an appropriate number for equity, but I have serious
24 reservations about just saying, Well, give them even
25 my recommended 13 percent equity rate, cost rate on

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1 46.4 percent, if you will, of a rate base that you
2 find appropriate when they don't have any equity
3 invested. They've got secured debt invested.

4 And so it's a real dilemma. But I think
5 you've got to hold out some kind of a carrot. I
6 don't know. I wouldn't even begin to speculate what
7 authorities, what you could order them to do or not
8 order them to do, but I know one thing. Commissions
9 can and do often use carrots. You've got to induce,
10 got to have something to motivate them to put equity
11 into this company. It's a dilemma.

12 Q. And so your final recommendation of this
13 Commission would be?

14 A. Well, my final -- my recommendation is to
15 go essentially with, if you will, with something
16 that's consistent with the American Water Resources
17 kind of thing, like an eighty-twenty, and perhaps
18 with the Staff recommendation, and then if they're
19 willing to pony up, was the expression I think I
20 heard yesterday by Dr. Wilson, that when they get
21 ready to pony up, then maybe move up towards -- move
22 to my recommendation.

23 MR. BRENA: Thank you, Mr. Hanley. He's
24 available for cross.

25 JUDGE WALLIS: Mr. Marshall.

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1 MR. MARSHALL: Thank you. Do you want a
2 break?

3 JUDGE WALLIS: Yes, let's take a ten-minute
4 break at this time. Mr. Brena, when we go back on
5 the record, I don't recall whether you moved your
6 exhibits or not, and we can handle that at that time.

7 (Recess taken.)

8 JUDGE WALLIS: All right. Let's be back on
9 the record, please. Mr. Brena, are you going to move
10 the exhibits sponsored by this witness?

11 MR. BRENA: I do, Your Honor.

12 JUDGE WALLIS: Is there any objection? I
13 will note that the opportunity for objection to the
14 prefiled exhibits was at the prehearing conference.
15 Is there any objection not available for offering at
16 that time?

17 MR. MARSHALL: Just on the new exhibits
18 that have been --

19 JUDGE WALLIS: Mr. Marshall, what are those
20 -- what is that objection?

21 MR. MARSHALL: The same that I made before
22 with regard to the shipping documents, this witness
23 not being able to authenticate those or explain the
24 origin of those. And then, on the one document
25 related to a data request response, we'd indicated

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1 before, both off the record early and on the record,
2 that that which came in yesterday is being
3 supplemented here at noon with the other material.
4 In particular, Mr. Talley's testimony with regard to
5 his Exhibit 17-C sets forth actual throughput
6 numbers. We're not relying on throughput estimates,
7 but on actuals. Mr. Talley's testimony describes how
8 that occurs and his Exhibit 17-C goes into the
9 detail, also using material that has been previously
10 provided in prior data request responses.

11 So those are the only two notations we have
12 on those new exhibits.

13 JUDGE WALLIS: Very well. I understand
14 that you are not posing an objection to Exhibit 420,
15 but noting the existence of a supplement that you had
16 not disclosed at the time you provided the responses
17 to requests 181 and 182.

18 As to your objection to Exhibit 422-HC, I
19 perceive that as fundamentally a hearsay objection in
20 that these documents, like the report of what
21 somebody else said, purport to identify facts, and
22 the declarant of those facts is not present. And I
23 think that not only is it consistent with Commission
24 practice, with the practice that's been adopted by
25 your expert witnesses in using information supplied

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1 by the company, but it is applying the hearsay test
2 used in the administrative practice in Washington
3 that it is reasonable and is in the regular course of
4 Commission proceedings accomplished that the experts
5 which -- who testify on behalf of parties in the
6 docket use information that's supplied from the
7 ordinary course of business records of their clients
8 and other parties in the docket.

9 And consequently, I will overrule the
10 objection and will receive Exhibits 401-T through
11 422-HC. The witness is available for
12 cross-examination.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. MARSHALL:

16 Q. Mr. Hanley, since 1999, how much, by way of
17 loans, had Olympic parents given to Olympic in total?

18 A. Well, I don't recall the exact -- the exact
19 amount. It's a fairly substantial amount.

20 Q. Does around \$90 million sound about right
21 to you?

22 A. Yeah, it could be that, yeah. I mean, I'll
23 accept it subject to check, if that's your
24 representation.

25 Q. Fifty-three million dollars from ARCO, 42

2640

1 from Equilon, something in that range, does that ring
2 a bell?

3 A. Yes, and you mean the Equilon that's in
4 litigation of that amount? Is that what you're
5 referring to?

6 Q. That's just since 1999; is that correct?

7 A. I believe that's correct, yes, sir.

8 Q. Olympic's parents have loaned Olympic over
9 \$90 million since 1999; true?

10 A. I said that if you are representing that
11 number subject to check, I would accept it subject to
12 check, yes.

13 Q. I'm just trying to find out what your
14 knowledge is right now.

15 A. That sounds approximately correct,
16 especially with regard to the Equilon, yes.

17 Q. Now, you mentioned your view about what
18 parts of those loans were secured and which were not.
19 Isn't it true that, of that \$90 million, only about
20 ten percent have any kind of throughput and
21 deficiency agreement, security agreement connected to
22 those loans from the parents, direct loans from the
23 parents?

24 A. I don't know that to be true. I know the
25 secured interest relates to the revolving loan,

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1 that's 30 million. I understand something like
2 two-thirds of that's been drawn already, so I don't
3 know that I can agree with your ten percent.

4 Q. In fact, only \$10 million of that has been
5 drawn, correct, or do you know?

6 A. I thought it was more than that. If you're
7 representing ten, I will accept that.

8 Q. And how do you believe that T&D agreement
9 works that applies to that one loan that you
10 referenced in your testimony here? What's your
11 understanding of how that works?

12 A. Well -- well, which one loan are you
13 talking about?

14 Q. Well, do you think that more than one loan
15 is subject to a T&D agreement here?

16 A. Yes.

17 Q. And which of the other loans do you think
18 are subject -- what's the total amount, do you think,
19 of the loans --

20 A. The Prudential loan is subject to a T&D
21 agreement and those loans subject to the revolving
22 line is subject to it, but after Prudential.

23 Q. So what's the total amount of loans do you
24 think, as you sit here today, that are secured by a
25 T&D agreement, or do you know?

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1 A. Well, if you're representing ten million --
2 is that your representation as far as --

3 Q. I'm not making any representations here at
4 the moment. I'm just asking for your knowledge.

5 A. Well, my knowledge is it can't possibly be
6 up to the moment, because we're not even up to the
7 moment with regard to information in this filing, let
8 alone what borrowings may have occurred recently, so
9 --

10 Q. I'm just asking for your understanding.

11 MR. BRENA: Please allow my witness to
12 respond fully to the answer.

13 JUDGE WALLIS: I am going to ask Mr. Hanley
14 to pay attention to the question and respond to the
15 question. If you don't know the answer, it's
16 perfectly all right to say that you don't know, and
17 direct responses to the question will help us. We
18 are challenged for time, and it will let us get
19 through the examination fully. Counsel -- your
20 counsel will be able to respond with redirect if
21 matters need to be expanded upon. Mr. Marshall.

22 Q. What's the total amount of loans that you
23 believe, as you are here today, that are secured for
24 Olympic?

25 A. Anything that's issued under the ARCO

2643

1 revolving line of credit, and as I sit here today, I
2 don't know what it is as I sit here today. And of
3 course, there's -- the Prudential is secured under
4 T&D.

5 Q. Do you know how the T&D -- do you know how
6 the T&D agreement works?

7 A. In terms of all the fine mechanics of it,
8 no, but, essentially, one could equate it to pretty
9 much a take-or-pay kind of a situation. You're
10 guaranteeing a throughput and then there's some sort
11 of a trueup mechanism.

12 Q. So the shippers who have signed a T&D
13 agreement are the ones that are on the hook to pay
14 that loan; correct?

15 A. Yes.

16 Q. They're the ones that are securing a T&D
17 agreement, certain shippers; correct?

18 A. That's correct.

19 Q. And the shippers in the case of this loan
20 that you've referred to on the stand just a moment
21 ago are only secured by two of the shippers; isn't
22 that correct?

23 A. Yes, as it should be, because the others
24 are just customers and not owners.

25 Q. And the two that are securing this debt are

2644

1 BP and Equilon; correct?

2 A. Yes, that's correct.

3 Q. So all the loans that we're now talking
4 about that you've had any reference to are either
5 loans made directly by the parents or are secured by
6 the parents, either directly or indirectly; correct?

7 A. That's right.

8 Q. There's no third party out there that's
9 securing these debts; correct?

10 A. That's right.

11 Q. It all rests on the parents of Olympic;
12 right?

13 A. Yes, for volumes that they would have to
14 push through anyway, yes.

15 Q. Now, let's go back to 1998. What was the
16 plant in service in 1998? What was the rate base,
17 approximately?

18 A. I don't know.

19 Q. Was it around \$90 million?

20 A. I don't know, because rate base is sort of
21 in the eye of the beholder. You're arguing one kind
22 of rate base, somebody else is arguing another rate
23 base. What's included or should not be included, I
24 don't know.

25 Q. I'm just trying to test your knowledge

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1 about how things would have been different if a
2 different capital structure had been applied in 1998.
3 And the first thing I wanted to sort out was how much
4 is going to be financed by this capital structure.
5 Do you know, in 1998, how much capital structure
6 would have been applied to?

7 A. I really don't understand your question.
8 The only way I can respond is this way. Whatever the
9 rate base would be determined to be at any given
10 point in time, one can only assume the manner in
11 which the rate base is financed. If it's all debt,
12 that's how it's financed. It doesn't matter in
13 absolute terms of the dollars of actual capital,
14 because what matters is the pro rata relationship of
15 the kinds of capital that you assume the rate base is
16 financed with.

17 Q. But let's start with how much we're trying
18 to finance with the capital structure. Do you know
19 how much that was in 1998? Was it under a hundred
20 million dollars?

21 A. I don't understand your question. I really
22 don't understand it.

23 Q. Well, let -- I apologize if I'm not
24 communicating clearly. Let's say that you have a
25 50/50 capital structure, 50 percent equity and 50

2646

1 percent debt in 1998. How many dollars are in equity
2 for Olympic at that time, using that recommended
3 capital structure?

4 A. How many dollars are in Olympic? I still
5 don't understand it. Can you give me some other
6 numbers? I don't know really what you're alluding
7 to.

8 CHAIRWOMAN SHOWALTER: Mr. Marshall, could
9 you possibly mean that if actual equity were the same
10 as a hypothetical equity structure and that
11 hypothetical were 50 percent, then what would the
12 result be? Is that where you're trying to go?

13 MR. MARSHALL: I think I'm trying to get
14 there, but maybe I can skip forward.

15 Q. What is the rate base that you think is
16 appropriate in this case to apply?

17 A. I'm not offering an opinion as to rate
18 base. That's not within the area of my expertise.

19 Q. Okay. Then let's just assume that, in
20 1998, that the rate base was a hundred million
21 dollars, just to give a round figure, and half is
22 equity and half is debt. Are you there?

23 A. Yes.

24 Q. So in that case, there would be \$50 million
25 in equity and \$50 million in debt; correct?

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1 A. If that's how it were financed, yes.

2 Q. And then, let's move forward to 1999 and
3 the matters that occurred in 1999. Olympic's parents
4 have had to put in over \$90 million since 1999,
5 according to what you've just said here. Doesn't
6 that completely overwhelm the amount of equity that
7 you've assumed would be sufficient prior to 1999?

8 A. No, I don't think so, because what I'm
9 talking about was the ability to withstand the
10 initial operating losses, and I forget the exact
11 number for that year, but it was 20-some-odd million
12 dollars. That could have -- had there not been the
13 two failed projects, which are about 50 million, and
14 had there not been nearly \$52 million taken out of
15 the company in dividends to the parents, that there
16 would have been a hundred million dollars that would
17 have been available right there, so -- but even aside
18 from that, if it had a reasonable capital structure,
19 they could have absorbed the initial shock and still
20 had the wherewithal, as they did prior to the Whatcom
21 Creek accident, to be able to finance and raise money
22 on its own with a lesser degree of equity than 50
23 percent in the capital structure.

24 Q. But you're assuming that if you had 50
25 percent capital structure in 1998, meaning about \$50

2648

1 million in this hypothetical, initially you would
2 lose \$28 million out of that 50 million right off the
3 bat in 1999; correct?

4 A. Yes, but I just want my response to say
5 that was your hypothetical, not mine.

6 Q. That's right. And so how much would you
7 have left under that hypothetical of equity once you
8 took that initial hit?

9 A. Well, what was the number you said, because
10 I said 20-some odd million. I didn't represent an
11 exact number.

12 Q. Whatever number you want to make that
13 20-odd million to be?

14 A. Well, let's just make it 20 million. Then
15 I'd have 30 million.

16 Q. Do you think, with \$30 million, the
17 situation facing it, Olympic could have borrowed any
18 additional money from anybody other than their
19 parents?

20 A. Sure. Because at that point they would
21 have had a third, roughly a 37 percent equity ratio,
22 and not too far -- as a matter of fact, the low end
23 of the range of the five companies in my proxy group
24 in the year 2000 had a 33.7 percent equity ratio. So
25 yeah, I mean, I think so, because during -- between

2649

1 1990 and 1999, they actually raised external money
2 with, on average, a ratio that averaged about 15
3 percent and ranged between 11 percent and 20-some odd
4 percent.

5 Q. This is a company that has, in 1999, an ERW
6 pipe issue that's going to cost it millions of
7 dollars to fix. Do you agree with that?

8 A. Well, I agree that there's a lot of money
9 that needs to be spent, yes, and --

10 Q. So that --

11 A. And when it's spent and when the money is
12 proper to be earned upon, that's when the company
13 should be afforded an opportunity to earn and that's
14 when ratepayers should pay for it, not ahead of time.

15 Q. With all of the issues facing Olympic and
16 with only \$30 million of equity that you have
17 remaining, do you believe that Olympic had any
18 opportunity to go to any external market to get any
19 additional capital?

20 A. I've answered that.

21 Q. Now, at-risk capital can be debt, as well
22 as equity; right?

23 A. Sure, it's the degree to which it's at
24 risk.

25 Q. Right. And what's the yield on junk bonds?

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1 A. I don't know the -- I mean, I haven't
2 really been following it. There aren't many
3 utilities that I get involved with that are in junk
4 bond status.

5 Q. Well, how high --

6 A. But it would be substantially greater than
7 a BBB, you know. If -- a BBB probably today is eight
8 point something, probably between eight and nine for
9 a BBB, so I mean, I don't know exactly what the
10 spread is. It would be something greater than that
11 if it was a BB.

12 Q. So how high does a junk bond range go? It
13 goes up to 20 percent or more, doesn't it?

14 A. I don't know. I haven't made the study. I
15 don't know.

16 Q. But can a junk bond interest yield exceed
17 the average expected market return on equity of
18 around 14 percent?

19 A. I don't think so, not in the same
20 enterprise. You cannot make an across-the-board kind
21 of statement. If you had a bond and you owned a
22 stock in the same enterprise and the integrity of the
23 organization was so degraded that the bond then
24 became a junk bond and it drove the yield to some X
25 percent, I can assure you, on the risk-return

2651

1 principal, the cost of equity is greater.

2 Q. Junk bond ratings, ratings on debt is just
3 a way of measuring the risk of being repaid; correct?

4 A. All bond ratings are a measure of degree
5 and provide either comfort or discomfort to
6 investors. They can be a measure of comfort when
7 they buy a certain bond that has a rating, let's say,
8 is well within investment grade quality. If it were
9 to be degraded to below investment grade quality,
10 they would probably feel uncomfortable, and if they
11 had to sell prior to maturity, could stand the risk
12 of the loss of principal.

13 Q. Please turn to page 62 of your testimony,
14 which is 401-T, and look to line two and three.

15 A. Okay. I'm there.

16 Q. Okay. Is it your testimony that you
17 believe Olympic is of average risk and does not
18 experience any extraordinary operational or
19 competitive risks?

20 A. Yes.

21 Q. And then you refer to a previous part of
22 your testimony, do you not?

23 A. Yes, I do.

24 Q. If you'd turn to page six for that, and
25 look at line 12 through 14. Do you have that in

2652

1 front of you?

2 A. Yes.

3 Q. And you state there that, quote, I conclude
4 that OPL is of about equal business risk to the proxy
5 group. That is, I do not believe that OPL is any
6 more risky, business risky than the proxy group from
7 either an operational or competitive viewpoint. Do
8 you see that?

9 A. Yes.

10 Q. Now, the proxy group companies are the FERC
11 proxy groups companies; is that right? That's what
12 you're referring to?

13 A. The five -- proxy group of five, yes, the
14 oil companies.

15 Q. Which are the oil pipeline companies?

16 A. Yes.

17 Q. Which -- do you know who they are?

18 A. Well, sure. I mean, they're right in my --
19 they're right in my exhibit. I mean, they're spelled
20 out who they are.

21 Q. Do you know the size, the average size of
22 the five companies in the proxy group in terms of
23 their capitalization?

24 A. Not without looking at something. I don't

25 --

2653

1 Q. Subject to check, would you agree that the
2 average amount for those proxy group companies is
3 \$1.5 billion?

4 A. Yes.

5 Q. And Olympic is, what, around a hundred
6 million dollars?

7 A. More or less.

8 Q. So considerably smaller than the proxy
9 group average; correct?

10 A. Mm-hmm, yes.

11 Q. And haven't you provided testimony at the
12 FERC in this matter that there ought to be a small
13 company risk adder of 50 basis points?

14 A. No. For this company? No.

15 Q. Have you ever used a small company business
16 risk adder, whether it's 50 basis points or any other
17 amount?

18 A. I have, yes.

19 Q. And why are smaller companies more risky
20 than larger companies?

21 A. Well, within certain parameters, the theory
22 is is that a normal company would be subject to
23 greater potential for competitive risks due to its
24 small size, but the difference here is, as I've
25 alluded to in the direct earlier this morning, is

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1 that I believe that due to -- and I use this word and
2 I don't mean to be facetious about it -- a captive
3 audience for the owners to move their product
4 through. I mean, that's the essential purpose of the
5 pipeline, and that to the extent volume is available
6 for others on a pro-rated basis, it's moved through.

7 And so that's really a vastly different
8 situation than struggling for customers. There
9 really is no risk attributable to the small size here
10 as there would be under normal circumstances for any
11 other sort of company that I'm accustomed to.

12 Q. Do you know whether any of these pipeline
13 companies in the proxy group are being pro-rated or
14 not, or do you have any idea?

15 A. No, I really don't. I was not privy to
16 that information.

17 Q. Do you know whether any of these companies
18 in the proxy group have any competition, from barges
19 or any other means?

20 A. To my knowledge, none has real meaningful
21 competition, including Olympic.

22 Q. Okay. Do you know whether Buckeye is
23 entirely landlocked, so it wouldn't even have the
24 capability of marine competition?

25 A. Buckeye's not in my proxy group, and I'm

2655

1 not concerned about Buckeye in this proceeding.

2 Q. Would you please look at your proxy group
3 and see if Buckeye is the very first one in the proxy
4 group that you've used?

5 A. I'm sorry, I did misspeak. I was thinking
6 of something else. You just said Buckeye. I'm
7 sorry, you said Buckeye, I heard Buckeye, but I was
8 thinking something else.

9 Q. So could you clarify, Buckeye is indeed in
10 your five oil pipeline proxy group?

11 A. Yes, it is.

12 Q. Okay. Is Buckeye completely landlocked, or
13 do you know?

14 A. I believe that there is some water, some
15 barge possibilities for Buckeye, yeah.

16 Q. Do you know where Buckeye is located, in
17 what part of the United States?

18 A. Buckeye, I believe, is located in the
19 Midwest.

20 Q. The Midwest?

21 A. Yes.

22 Q. Are you sure?

23 A. Well, I think so, offhand, without looking
24 up, which I don't have the information right in front
25 of me at the moment.

2656

1 Q. And what waterborne competition would they
2 face in the Midwest?

3 A. I don't know.

4 Q. Are there any of the proxy group companies
5 in Alaska?

6 A. No.

7 Q. Are there any proxy group companies in
8 California?

9 A. No, but I -- you know, what, it wouldn't
10 matter where they are, because this is the universe
11 of companies that are available. And because they're
12 the universe of companies that are available, that
13 means that's all there is to use.

14 Q. Mr. Wilson -- were you here for Mr.
15 Wilson's testimony yesterday?

16 A. I was.

17 Q. Did you hear him say that -- well, at least
18 as to earthquakes, maybe some pipelines were more
19 risky than others?

20 MR. BRENA: Objection. That's beyond the
21 scope of this witness' -- if he wants to ask about
22 earthquake, we're going to go down that road again, I
23 don't mind. I don't want him phrasing a question if
24 he remembers Mr. Wilson or doesn't remember Mr.
25 Wilson. This witness has not given any testimony in

2657

1 this proceeding relating to Mr. Wilson.

2 JUDGE WALLIS: Mr. Marshall.

3 MR. MARSHALL: I think this witness was
4 here to hear about that risk adder and the difference
5 between Olympic and proxy groups, and I think he did
6 hear Mr. Wilson say, you know, maybe we have some in
7 Alaska, maybe we have some in California. They would
8 have seismic problems, too.

9 JUDGE WALLIS: Well, I think in light of
10 our need to focus the hearing, that Mr. Brena's
11 suggestion that we limit the examination to matters
12 that the witness has testified to is probably a
13 pretty good one, and I will sustain that objection.

14 Q. Do you know whether Olympic is in a
15 seismically active area that none of the other proxy
16 group companies are in, in any degree that makes a
17 difference?

18 A. I don't know if it's seismically active. I
19 suspect that there is somewhat of a greater potential
20 in this part of the country than perhaps in other
21 parts, but to determine seismically active, I don't
22 know. I'm not a geologist.

23 Q. When you said that the operational risks of
24 Olympic were no greater than the oil pipeline proxy
25 group companies, did you go back and look at what the

2658

1 different operational risks were for any of these oil
2 pipeline proxy group companies?

3 A. I don't really know what you mean. My
4 statement is in a general sense, that other than the
5 problems associated with the Whatcom Creek accident,
6 there haven't been, that I'm aware of, any
7 extraordinary problems. And in fact, I don't even
8 know that the Whatcom Creek can be characterized as
9 an operational problem. It seems to me that it was
10 one of those unfortunate kinds of things, a tragedy
11 that can happen to any company at some point in time.

12 Q. My question, I'm just trying to explore the
13 statement that you've made in your testimony that
14 Olympic has no greater risk, operationally or
15 otherwise, than any of the other proxy group
16 companies. And I just want to know if you've made
17 any kind of independent evaluation of what kinds of
18 risks these five proxy group companies face?

19 A. Not in that regard. My comment is made in
20 a general sense based on what I know, and I'm not
21 aware of anything uniquely different about Olympic
22 that would make me believe that it's more than
23 average risk, and as I indicated previously today,
24 conceivably, it could be construed to be less than
25 average risk.

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1 Q. Okay. When you say you don't have any
2 evidence to show that Olympic is uniquely riskier,
3 you have to have some comparison in mind. And the
4 comparison you chose were the five proxy group oil
5 companies; correct?

6 A. To arrive at an indication of common equity
7 cost rate, that's -- they are the universe. Now, in
8 order to determine whether Olympic would be any
9 different than those, I would have to have been aware
10 of something really dramatically different about
11 Olympic vis-a-vis these companies, and I'm not, other
12 than the Whatcom Creek accident.

13 Q. But when you say you have to be
14 dramatically aware of the difference between Olympic
15 and these companies, you have to have some knowledge
16 about what these companies have as risks; isn't that
17 true? Doesn't that -- isn't that necessary?

18 A. Well, no, I don't think it's any more
19 necessary than to, for example, than to make a
20 determination about competition based only on
21 waterborne rates. I mean, you can form and -- in
22 fact, an opinion, in a broad, general way, based on a
23 knowledge -- you know, on a general knowledge, yes.

24 Q. But what is your general knowledge of
25 these, even to that degree, of these five oil

2660

1 pipeline proxy groups?

2 A. Well, other than, as I said, these are the
3 only group of oil pipeline companies at this time who
4 have common stocks that are actively traded. And I
5 felt that it's important to look at companies whose
6 common stocks are actively traded, who have a
7 marketplace determined capital structure, and market
8 data from which one could infer a cost of equity.

9 Q. So your evaluation of these proxy group
10 companies was limited to whether they had a market
11 price actively traded so you could determine what the
12 market is saying about those companies? That's it?

13 A. Yes, because the principal focus is to come
14 up with a capital structure and a cost of equity,
15 yes.

16 Q. Have you ever testified in a FERC oil
17 pipeline company case?

18 A. No. Gas pipelines only so far.

19 Q. Have you ever represented an oil pipeline
20 company in any way, shape or form?

21 A. Yes.

22 Q. Up in Alaska?

23 A. Yes.

24 Q. For Tesoro?

25 A. Yes.

2661

1 Q. Is that it?

2 A. And this jurisdiction now, I mean, as we
3 sit here.

4 Q. So Tesoro has been your only client in the
5 oil pipeline realm?

6 A. Yes.

7 Q. And you've testified for them up in Alaska
8 and here; right?

9 A. And of course, there is testimony in at the
10 FERC in this --

11 Q. In this proceeding now?

12 A. In this proceeding, yes.

13 Q. And that's it?

14 A. That's it, yes.

15 Q. Do you hold yourself out to be an expert on
16 oil pipeline company operational risks?

17 A. No, because I try and maintain my expertise
18 within the area of finance and cost of capital.

19 Q. Please turn to page three of your
20 testimony, look at lines three to four. Do you have
21 that in front of you?

22 A. I do.

23 Q. You state here, OPL should be viewed as a
24 stand-alone --

25 A. I'm sorry. I'm not seeing that.

2662

1 Q. Excuse me, I'm sorry. Line seven.

2 A. Okay.

3 Q. OPL should be viewed as a stand-alone
4 utility and its business and financial risks should
5 be evaluated in that context. Do you see that?

6 A. Yes.

7 Q. Now, assume that Olympic's current parents
8 have sold Olympic to a company that is a stand-alone
9 company, and it issued stock and issued third party
10 debt, real debt; not debt owed to joint venture
11 partners in this 50/50 ratio that you suggest, and
12 that this was done in 1998. Is there any doubt in
13 your mind that that company would have been bankrupt
14 by now?

15 A. I'm not sure I follow. You're saying if --
16 I want to follow your proposition here, I'm trying.
17 Let's go through it again. If Olympic is sold --

18 Q. As a stand-alone company in 1998.

19 A. In other words, okay. Forget that.
20 Olympic is sold to whom?

21 Q. To --

22 A. Or what?

23 Q. A company that's publicly traded.

24 A. Okay.

25 Q. And they have a capital structure now of 50

2663

1 percent debt, 50 percent equity, go out and borrow
2 the debt from banks, from third parties, not from
3 some joint venture parents.

4 A. Okay. Now, Olympic is now a subsidiary of
5 this other company?

6 Q. Not a subsidiary, it's just owned. It's a
7 company, it's a stand-alone company. You want this
8 company to be evaluated as a stand-alone company.
9 That's your testimony here; right?

10 A. Yeah, but you said it was sold to someone,
11 so the someone or the acquiring company isn't only
12 going to consist of Olympic. I need to know more.

13 Q. Okay. Assume that it's like Buckeye, it
14 exists like Buckeye. Do you know the structure of
15 Buckeye?

16 CHAIRWOMAN SHOWALTER: Mr. Marshall, for my
17 purposes, that is -- you're going to have to tell me
18 what you mean when you say like Buckeye, because
19 otherwise --

20 MR. MARSHALL: Ah, yeah.

21 CHAIRWOMAN SHOWALTER: -- there is too much
22 else to assume in that question.

23 Q. What is the corporate structure of Buckeye?
24 Is it a master limited partnership, is it a
25 corporation, or do you know?

2664

1 A. It's a limited partnership.

2 Q. It's traded?

3 A. Yeah.

4 Q. Okay.

5 A. Yes, yes.

6 Q. So let's assume that we make Olympic as a
7 master limited partnership, such as Buckeye, okay.
8 It has stock that's publicly traded and issues debt
9 not guaranteed by any kind of parent, because we're
10 assuming here it doesn't have parents now; right?

11 A. Don't ask me right. It's your proposition.
12 I'm just listening.

13 Q. So now we're making Olympic look like
14 Buckeye in terms of this hypothetical. A stand-alone
15 company, 50 percent debt, 50 percent equity, end of
16 1998. Is there any doubt in your mind, following the
17 events of 1999, that that master limited partnership
18 would now be bankrupt?

19 A. There's a lot of doubt that it would be
20 bankrupt. In fact, I suspect it wouldn't be, because
21 Buckeye has been running around a 55 -- about on 55
22 percent equity, and they clearly would have the
23 wherewithal if that became part and was absorbed into
24 this other entity, they would have substantial
25 borrowing capacity.

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1 And as I've indicated, you're questioning
2 whether they'd have the ability with a 50 percent
3 equity ratio when, in fact, Olympic managed to borrow
4 money with 15 percent equity prior to the accident,
5 which gets us all back to the fact that tragedies can
6 happen. That's what insurance is for and that's what
7 equity risk is for. If there had been equity and
8 substantial equity in the company, it probably
9 wouldn't be in the dilemma it is now and it would not
10 be, in essence, asking for ratepayers to fund capital
11 improvements and -- in advance.

12 Q. I wasn't asking you to assume that Olympic,
13 as a stand-alone, got absorbed into Buckeye. Did you
14 assume that that's what my question meant?

15 A. You said it was acquired by a company that
16 had 50 percent debt and 50 percent equity. Well, how
17 can that be? I mean, what -- I mean, how does it
18 exist. And you further said a company like Buckeye.

19 Q. Well, let me clarify that, then, because I
20 think we may have miscommunicated. I'm asking you to
21 assume that Olympic becomes a stand-alone company,
22 not part of any other larger entity, and that all it
23 has is its regulated assets of around a hundred
24 million dollars, because we're just using an estimate
25 here, and it has a capital structure, 50 percent

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1 debt, 50 percent equity.

2 In that situation, where that company can't
3 look to anybody else -- can't look to Buckeye, can't
4 look to parents -- is there any doubt in your mind
5 that, with only \$50 million in equity, that company
6 would be bankrupt now, following the events of 1999?

7 A. Well, sir, I -- I -- there is considerable
8 doubt in my mind. That's all I can say. Yes.

9 Q. Now, going back to the amounts that
10 Olympic's parents have put into Olympic by way of
11 loans since 1999, is it your testimony here that that
12 type of loan should be treated no differently than
13 the type of loan that, say, Avista gets from third
14 parties or from banks?

15 A. I really don't understand the import of
16 your question, about how it should be treated. If
17 it's a loan, it should be treated as a loan. If it's
18 equity, it should be treated as equity, but a loan
19 isn't equity.

20 Q. Is it true that Olympic has leaned on the
21 credit of its joint venture partners to a degree that
22 exceeds even what it had in its rate base in 1998?

23 A. I told you before, I don't know what the
24 rate base was in 1998.

25 Q. Let me ask --

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1 A. And frankly, from my viewpoint, I don't
2 really see where that's relevant, because the only
3 thing you have an opportunity to earn on is the rate
4 base.

5 Q. Olympic received \$52 million in loans from
6 ARCO. You said that earlier. Is that about correct?

7 A. I believe so, yes.

8 Q. And of the \$52 million, has any interest
9 been paid on that?

10 A. The last I knew, no. I have not more
11 current information.

12 Q. Okay. Is the prospect for paying any
13 interest on that at any time in the future a
14 possibility?

15 MR. BRENA: Your Honor, I would object. If
16 they wanted to use the affiliated debt within their
17 cost of service for the purposes of this rate
18 proceeding, we certainly would have welcomed that
19 opportunity. Their cost of service is not based on
20 that debt. Their -- so I mean, this is not possibly
21 relevant to this proceeding, this line of
22 questioning.

23 JUDGE WALLIS: Mr. Marshall, do you
24 withdraw the question?

25 MR. MARSHALL: Actually, I would like an

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1 answer to that question, but I also agree, and I'm
2 going to get into that line of questioning, that the
3 amount of debt owed to the parents doesn't figure
4 into the cost of service, because that isn't
5 something that Olympic is asking for. But it's the
6 character of the ability of Olympic to rely and lean
7 on the credit of its parents that's at issue, the
8 capital structure. And where -- why is it that FERC
9 and our testimony in this case find that, in these
10 circumstances, it's appropriate for an oil pipeline
11 company to rely on the credit of its parents and
12 ultimately depend on the capital structure of its
13 parents.

14 MR. BRENA: If that is his question, I
15 withdraw my objection. I understood his question to
16 be -- to go to an inquiry with regard to the
17 repayment of that debt and how that would occur. If
18 I misunderstood it, then I withdraw my objection. If
19 I haven't, I maintain my objection.

20 JUDGE WALLIS: Is your question modified,
21 Mr. Marshall?

22 MR. MARSHALL: Yes, I tried to explain what
23 I was trying to get at.

24 THE WITNESS: I'm not sure what the
25 question before me now is.

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1 Q. Has any interest been paid on that debt at
2 all?

3 MR. BRENA: That was the question that my
4 objection went to. Whether or not there's interest
5 on that payment, there is no way to plug that in to
6 what we're here for, because they haven't plugged it
7 in. They're not even asking that those amounts be
8 repaid. And frankly, they wouldn't be permitted to
9 be repaid, you know, because they funded prior losses
10 with debt. That's not a ratemaking issue and
11 shouldn't be, and it's not in this case.

12 MR. MARSHALL: But it's an issue on how
13 this company is being financed. Whether we're asking
14 for it or not, the ability of this company to obtain
15 capital that's needed and its ability, therefore, to
16 have to rely on the capital structure of its parents
17 is an important issue. I'll withdraw the question,
18 because the answer is available elsewhere, and I
19 don't want to -- I don't need this witness to confirm
20 that. I'll ask another question --

21 JUDGE WALLIS: Very well.

22 MR. MARSHALL: -- related to that.

23 Q. Mr. Brena has just said, of course, that
24 the debt owed to the parents is not in the cost of
25 service requirements request that Olympic is making.

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1 Did you hear Mr. Brena state that?

2 A. Yes.

3 MR. BRENA: Your Honor, this is certainly
4 beyond the scope of this witness' testimony. I can't
5 think of a purer example of that. If he cares to
6 rephrase it. My goodness, if everyone gets to ask on
7 what Mr. Brena had to say, then we'll be here till
8 the cows come home.

9 JUDGE WALLIS: I'm not sure that we should
10 consider that evidence in the proceeding, Mr.
11 Marshall.

12 MR. MARSHALL: It was an effort to try to
13 short-circuit that because we'd already had that
14 discussion. But the witness has --

15 Q. You've indicated that debt owed to the
16 parents, the interest on that is not in the cost of
17 service calculation by Olympic; right?

18 A. Yes, and I'd like to explain why I say yes.
19 Because, based upon the company's claimed capital
20 structure, which consists of -- includes only 13.15
21 percent debt, it's automatically assuming that its
22 claimed rate base of, I think, about \$92.7 million is
23 therefore financed with 13.15 percent debt, which
24 would imply the company is assuming in its cost of
25 service that there's only about \$12.2 million worth

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1 of debt financing the rate base.

2 That's why in -- I forget the exhibit, I
3 think it might be 234 or something, that was made a
4 request of Dr. Schink yesterday. Well, whatever the
5 exhibit is, and I mean, Counsel can point to the
6 right exhibit number for the Commission, but that
7 calculation represents a showing that of the total
8 revenue requested increase, \$13.9 million of it, or
9 roughly two-thirds is attributable to a return on
10 equity, and that's due to 86.85 percent equity
11 claimed, and there isn't any equity.

12 Q. This, sir, gets to the point of the
13 questions. If it hadn't been for Olympic's parents,
14 is there any way that Olympic could have gotten \$90
15 million of loans that it did get from its parents,
16 not have to pay any interest on those loans for all
17 this time from any other third party source?

18 A. I believe, and I've said a number of times,
19 that if the company had maintained over the years the
20 capital structure ratio that had a degree of equity
21 in it consistent with what the marketplace required
22 for oil pipeline companies, the answer is yes, it
23 would have been okay, I believe.

24 Q. And we've just gone through hypotheticals
25 where you've agreed that the maximum amount of equity

1 that Olympic would have had as a stand-alone company
2 would have been only \$50 million; right?

3 A. No, that was your hypothetical.

4 Q. Do you have any evidence to suggest it
5 would be higher than \$50 million, assuming a 50/50
6 capital structure?

7 A. See, the problem I have with your question,
8 Mr. Marshall, and I'm going to respond to the
9 question, but it contains, to me, what is a
10 fundamental problem, which is is you're assuming that
11 whatever the equity pot was, everything that had to
12 come out just comes out of that equity. That's like
13 assuming that I'm going to pay for all my household
14 expenses for the year out of one -- my one paycheck
15 or what's in my bank at one point in time, and that's
16 not true. That equity provides the bridge, if you
17 will, the stepping stone that permits the wherewithal
18 to go out and raise other external capital.

19 Moreover, if they had responsible
20 shareholders, they would raise additional equity as
21 needed or additional equity would be injected into
22 it, but there hasn't been any equity injected into it
23 and -- as far as we know for years, and certainly
24 none by these shareholders or even the predecessor's
25 shareholders going back at least to 1990.

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1 Q. My question was do you have any evidence to
2 show that Olympic would have had any more than \$50
3 million in equity prior to 1999 on a 50/50 capital
4 structure basis?

5 A. We've been there, done that, Mr. Marshall.
6 The answer was no, I think that that -- if you assume
7 that about a hundred million dollar rate base was
8 financed with about 50 percent equity, they would
9 have had about \$50 million in equity.

10 Q. And --

11 A. And I think -- my opinion is that that
12 would have gotten them through and they would have
13 had the ability to raise additional monies and it
14 wouldn't have all just come out of equity, it
15 wouldn't have just said, Okay, here's my bank
16 account, let's drain it.

17 Q. So let's look at September 1999, and
18 Olympic has an ERW weld seam failure, just to
19 separate that out from Whatcom Creek, so that we
20 don't get that into the mix. And you now determine
21 that Olympic needs to go out as a stand-alone company
22 and, based on this equity ratio, raise additional
23 capital. What rate would it have to pay to raise
24 that additional capital, given the risks that we --
25 that you know that Olympic faced at that time?

1 A. Well, what rate, I don't know. You're
2 asking me to be purely speculative. The rates would
3 depend on the market conditions at the time. All I'm
4 representing is is I believe they'd have been able to
5 raise it. Whatever it is, it would have been a whole
6 lot less than assuming that there's almost 87 percent
7 of the rate base is financed with nonexistent equity.
8 Whatever the cost would have been would have been
9 less for ratepayers than what's built into your cost
10 of service.

11 Q. Do you agree with Dr. Schink that Olympic's
12 parents kept it alive?

13 MR. BRENA: Your Honor, asked and answered.
14 And I withheld that objection till I hit ten times.

15 JUDGE WALLIS: Mr. Marshall, I believe that
16 Mr. Brena's correct on that. Let's take a moment for
17 a scheduling discussion. Yesterday the Commission
18 directed the company and the company agreed to
19 provide work papers by noon today. Can you tell me,
20 Mr. Marshall, whether those have been provided to Mr.
21 Brena and the other parties?

22 MR. MARSHALL: I'm looking toward Mr.
23 Beaver, because I've been up here asking questions.

24 MR. BEAVER: I will go try to find Mr.
25 Marshall's associate who's responsible for this.

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1 MR. MARSHALL: My understanding, before I
2 --

3 JUDGE WALLIS: Very well. While that
4 inquiry is being made, we have the remainder of
5 cross-examination, we have redirect examination, and
6 we have examination by the Commissioners to conclude
7 with regard to this witness. And the Commissioners,
8 as we indicated earlier, have commitments beginning
9 at 3:00 p.m. So fundamentally, if we convene at 1:30
10 and if we get directly into the examination, that
11 leaves about an hour and a half.

12 Now, the Commissioners have indicated that
13 they're willing to go a little bit into the noon hour
14 for the convenience of parties, but I wanted to call
15 that timing to your attention, ask you, Mr. Marshall,
16 how you're doing with your examination, and your
17 estimate of the remaining time, and ask others to
18 comment on their views on the best use of our time.
19 And in light of the time, I would ask that the
20 comments be brief.

21 MR. MARSHALL: I think I'm right on track
22 with my estimate, Your Honor.

23 JUDGE WALLIS: So you have, you believe,
24 slightly less than a half hour of --

25 MR. MARSHALL: Correct.

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1 JUDGE WALLIS: -- examination remaining?

2 MR. BRENA: Ten minutes.

3 MR. FINKLEA: We have no examination of
4 this witness.

5 JUDGE WALLIS: Very well.

6 MR. TROTTER: I would just have a couple
7 questions, if any.

8 JUDGE WALLIS: Very well. So are we
9 prepared to report on the status of the work papers?

10 MR. MARSHALL: They're literally in the car
11 on the road right now from being copied and made, and
12 so they'll be here some -- are some here now?

13 MR. MAURER: Some are here now.

14 MR. MARSHALL: And the rest are on the
15 road.

16 CHAIRWOMAN SHOWALTER: Where on the road?

17 MR. MAURER: between our office and downtown
18 Olympia and this Commission, so probably five, ten
19 minutes, at the most.

20 CHAIRWOMAN SHOWALTER: Five or ten minutes?

21 MR. MAURER: Yeah, at most, if not less.

22 JUDGE WALLIS: Could the documents now
23 available be made available to parties and could you
24 advise the Commissioners when the rest are produced
25 and make them available at that time?

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1 MR. BRENA: Could I ask if the documents
2 that are available now have been available the entire
3 morning?

4 MR. MAURER: No.

5 MR. BRENA: Thank you.

6 MR. MAURER: We were just getting some
7 final information even as we were leaving.

8 JUDGE WALLIS: Mr. Marshall, why don't we
9 use this time for continuing the examination.

10 MR. MARSHALL: Thank you, Your Honor.

11 Q. Switching to the discounted cash flow
12 approach that is among the approaches you've used,
13 will you turn to your Exhibit 402, page two of two?

14 A. Okay.

15 Q. Do you have that in front of you?

16 A. I do.

17 Q. And using -- you mentioned, too, on direct
18 examination that you listed your different approaches
19 in determining equity cost rate, and that among those
20 was the discounted cash flow model. Do you remember
21 that testimony?

22 A. Yes.

23 Q. And your testimony here is that if you use
24 that approach, that flow model, for the proxy group
25 of five oil pipeline companies, that would produce a

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1 14.7 percent rate of return on equity?

2 A. If that's all I were to rely upon, yes.

3 Q. And did you testify for GTE before this
4 Commission on use of discounted cash flow models and
5 other models?

6 A. Yes.

7 Q. The Commission order that refers
8 specifically to GTE in its discussion of what
9 approach would be best to be used by the Commission,
10 when they referred to the company, GTE, were they
11 referring to your testimony on DCF and other models?

12 A. Well, I don't know. They talked about DCF,
13 and honestly, it's so long ago, I don't remember all
14 the witnesses in the case, but --

15 Q. Let me --

16 A. Well, but I do recall the order. And in
17 fact, Dr. Schink refers to it in his rebuttal
18 testimony, and he says that one thing I was
19 criticized for was averaging DCF with other methods.
20 And it goes on to say that the Commission stated that
21 it uses other methods as a check. And if -- and so
22 it is true, I averaged, in this instance, to get to
23 13 percent which is shown on line five, page two of
24 Exhibit 402, but all the results of the applications
25 of the individual models, the other models, as well,

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1 are also shown on lines two, three and four of that
2 page. Now, they range from 11.6 percent to 13
3 percent. And using them as a check, if one were to
4 average the three, not take the low point, which is
5 11.6, but to average all three other results, that
6 would show 12.4 percent.

7 So looking at those as a check, the range
8 and the average indicates to me that in this
9 instance, the check indicates that the DCF result, in
10 this instance, is too high.

11 Q. What I was trying to do is find out if you
12 were the only witness for GTE to give testimony in
13 that case where the Commission responded to what
14 model is appropriate to be used. Were you the only
15 witness for GTE on cost of capital?

16 A. For GTE, yes. I don't recall if there were
17 other parties' witnesses or not, besides the Staff.

18 Q. So when the Commission's decision refers to
19 the GTE cost of capital in this, it refers to you;
20 right?

21 A. Yes, I believe that would be correct.

22 Q. Now please turn to Exhibit 408, which is
23 FJH-8, page -- I guess there's just one page, one of
24 one. Do you have that in front of you?

25 A. I do, yes.

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1 Q. Now, in that particular exhibit, you look
2 at the discounted cash flow model and different
3 iterations of it; correct?

4 A. Well, I wouldn't call them iterations.
5 Different -- different applications, rather than
6 iterations, but different applications of the model.

7 Q. Then, if you were to use a single-stage
8 growth version of the DCF model, it would produce a
9 mean of 15.8, a median of 14.4, a five-year average
10 growth in EPS, and then, using the IBES consensus, it
11 would produce a mean of 15.8 and a median of 15.5; is
12 that correct?

13 A. Yes.

14 Q. That's what your study showed?

15 A. Yes, for that application only, yes.

16 Q. Turning to these barge rates that we looked
17 at here earlier today, do you understand that these
18 barge rates are not with Tesoro, but with something
19 called Gold Star Maritime Company?

20 A. Yes.

21 Q. Did you speak to somebody down there about
22 what these rates were about?

23 A. These were provided to me through Mr.
24 McGhee, who I believe is the general counsel for
25 Tesoro, and they were provided and explained to me as

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1 I portrayed them previously.

2 Q. Now, at page two of that exhibit, it
3 indicated that these were representative samples of
4 invoices. Do you know who made the determination of
5 which samples to use for the invoices?

6 A. I do not, not by name. No, sir.

7 Q. And do you see where they stop in December
8 '01, at the end of last year, invoices --

9 A. Yes, yes, yes.

10 Q. Are there any invoices you saw that go
11 beyond December of last year?

12 A. The only ones I have seen are those
13 represented here as the sample.

14 Q. Are these rates for spot prices, for
15 fill-in barges, or are they rates relating to
16 long-term contracts for barges, or do you know?

17 A. Well, I explained that when Mr. Brena and I
18 were discussing this exhibit, and I indicated then
19 that these were spot rates, fill-in prices, and they
20 were not contract rates.

21 Q. Okay. Now, contract rates, long-term, for
22 large amounts of product to be moved, you would
23 expect those to be substantially less than spot
24 prices; isn't that fair to say?

25 A. Well, you might expect that if that could

1 be done in an economical manner without overpaying on
2 the contract. In other words, you need to balance
3 the contract without overpaying by using the spot
4 market, if you will, spot prices.

5 Q. Now, you reviewed Dr. Schink's testimony
6 that he provided in December of 2001, when you were
7 here in the interim case?

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes, I do.

11 Q. And at that time, in December, December
12 13th, he had already put in testimony about
13 waterborne competition and barge rates. Do you
14 remember that?

15 A. Yes.

16 Q. It was in his direct testimony, in other
17 words; right?

18 A. I remember.

19 Q. And so when you responded to that direct
20 testimony, you could have responded with this
21 information on barge rates then, couldn't you?

22 A. I could have, but I remember a reaction
23 that I had at the time was, Gee, why doesn't the
24 company, who has the burden of proof, provide prices
25 like this for barge rates, particularly in view of

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1 its parents. The information must clearly be readily
2 available. And I remember thinking, Why are they
3 trying to transfer the burden of proof to the
4 independent shippers.

5 Q. Are you --

6 A. That's what I remember.

7 JUDGE WALLIS: Mr. Marshall, I'd like to
8 interject now and let the company announce the
9 production of documents, if indeed that's what I saw
10 coming in and being distributed.

11 MR. MARSHALL: Apparently behind my back
12 they were being distributed. I think that's -- from
13 what Mr. Maurer says, that's been distributed.

14 JUDGE WALLIS: Is that the company's
15 representation?

16 MR. MAURER: It's been given to the two
17 intervenors and the Commission Staff.

18 JUDGE WALLIS: And is this a complete
19 production of all the documents that were requested?

20 MR. MARSHALL: I have not had a chance to
21 double check that, but I will. It's my understanding
22 that that's what we were intending to do, and I can
23 make that representation. And if there's something
24 further to be produced, I will find that out, but
25 having been here on task, I don't know for sure, but

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1 I will -- I don't want to say on the record without
2 making absolutely sure, and I will do that.

3 But I'm aware of what the Commission has
4 ordered, and if there's something we haven't produced
5 that needs to be produced, you know, I will leave it
6 to the Commission as to deciding whether that should
7 be not admitted or not permitted or not. It was
8 certainly our intent to produce everything.

9 CHAIRWOMAN SHOWALTER: Our purpose to have
10 it here by noon was that we wanted everything the
11 company was saying --

12 MR. MARSHALL: Yes.

13 CHAIRWOMAN SHOWALTER: -- it was required
14 to be here, so that Mr. Brena and others have the
15 lunch hour, before 1:30 to go through and see if they
16 agree, so that at 1:30, we can resolve any disputes
17 that there might be, so we don't want to hear at 1:30
18 that there's something -- from you, anyway, that
19 there's something left to be done. That's why we
20 want to know before we break for lunch.

21 MR. MARSHALL: Everything our witnesses
22 relied upon is here, according to Mr. Maurer. And
23 the only reason I couldn't say that is because I
24 hadn't done the checking myself. That's what he just
25 now has informed me, and I pass that on to the

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1 Commission.

2 JUDGE WALLIS: Very well. By my watch, you
3 do have about 15 minutes of examination remaining.

4 And if you want, if you have just a question or two
5 to finish up this line, if you have finished up this
6 line of questioning, we can break now. Otherwise --

7 MR. MARSHALL: Why don't we go ahead and
8 break now.

9 JUDGE WALLIS: Okay.

10 MR. BRENA: If I could just --

11 JUDGE WALLIS: Mr. Brena.

12 MR. BRENA: With regard to their obligation
13 to produce work papers that should have been produced
14 with their filing of their rebuttal case, that's what
15 they produced and that's what they just gave us.
16 Now --

17 JUDGE WALLIS: Could you quantify that for
18 purposes of the record, Mr. Brena?

19 MR. BRENA: Well, in my left hand is what
20 they just gave us, straining the bicep of my left
21 arm. It's probably a six or seven-inch stack of
22 material. And in my right hand, what they had
23 provided as work papers a week late, is a
24 quarter-inch stack.

25 And I'd just like to say we're going to do

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1 our very best to get through this and identify these
2 issues as best we can. Please understand that we've
3 got a lot of work to do in an hour, but we'll do our
4 very best.

5 CHAIRWOMAN SHOWALTER: Mr. Brena, we don't
6 expect you to have read every word of what you just
7 received, but we wanted to give you the lunch hour to
8 flag anything that might not be there that could be
9 resolved at 1:30 with the witnesses on the conference
10 call.

11 MR. BRENA: I understand.

12 CHAIRWOMAN SHOWALTER: Just so that we
13 don't delay any dispute. There may be others later
14 on.

15 MR. BRENA: And I appreciate the Commission
16 providing that opportunity. And that's what our
17 expert's doing right now.

18 JUDGE WALLIS: And we will note for the
19 record that the packet to which Mr. Brena refers was
20 delivered at approximately 11 minutes after 12:00,
21 again, by my watch.

22 MR. MARSHALL: There were some other
23 materials that were supplied before that --

24 JUDGE WALLIS: Yes.

25 MR. MARSHALL: So that may be part of that

1 packet. I would, just along that line, note that the
2 material provided yesterday before noon was very
3 thick. He only -- about six or seven inches. He is
4 now just taking out one part of Mr. Collins' work
5 papers. We're trying to provide work papers for all
6 the rebuttal witnesses, so the comparison is an
7 apples to oranges comparison.

8 And I would further note that what we tried
9 to do yesterday and what we agreed to do was to
10 provide all that we could by that time, knowing that
11 we would be providing the remainder today. There was
12 no -- I mean, despite all of the work that other
13 people have done, there was nothing other than the
14 intent to try to get material ahead of time
15 yesterday, and it seems like we are being blamed for
16 not producing everything yesterday. And what we
17 tried to do is produce as much as we could.

18 MR. BRENA: I acknowledge the point that
19 the stack yesterday was thicker than I just
20 represented. The work papers that we were after was
21 specifically the work papers relating to the changes
22 in their cost of service studies, and I compared
23 Collins and Hammer yesterday with Collins and Hammer
24 today, because that's what's relevant.

25 MR. MARSHALL: But the people asked for --

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1 JUDGE WALLIS: We understand. We think
2 that the record is clear. The conversations of
3 yesterday are clear upon the record, the
4 conversations of today, likewise. Let's be in
5 recess, and in light of the constraints on our time,
6 let's be here prepared to proceed promptly at 1:30,
7 please.

8 (Lunch recess taken.)

9 JUDGE WALLIS: Let's be back on the record
10 following our noon recess. Mr. Brena, I think we're
11 looking to you at this juncture for a response to the
12 work papers that were supplied and the completeness
13 of the presentation.

14 MR. BRENA: The answer to that is -- I have
15 to take it in parts. First, I've asked my expert to
16 go through these documents three times in an hour to
17 be sure that whatever representations I've made were
18 correct, so that's where we're at. He's done that.
19 I don't know how, but he did that.

20 We are comfortable that we understand their
21 work paper and calculation for throughput and fuel
22 and power. With regard to the other information,
23 what we've been provided is raw data. We do not have
24 the beginning point within the raw data, and of
25 greatest importance, we do not have the calculation

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1 that went from the raw data to the test period
2 amount.

3 And I believe I was as clear as I could
4 possibly be that we needed to look at everything that
5 she looked at, what her beginning point was, what the
6 calculation was, in order to get to the number used
7 in the case in the test period adjustment.

8 Now, they have constructed a Collins Data
9 Change Map that identifies the ending points of Mrs.
10 Hammer's calculations and how those ending points in
11 the calculations have been incorporated into Mr.
12 Collins' case. While that is certainly helpful, it
13 doesn't show us how she got the numbers that got put
14 in the case.

15 So by and large, where we're at is we have
16 a huge stack of raw data that, in order to get to the
17 test period numbers, I have to have my expert spend
18 the weekend to reconstruct her calculations.

19 CHAIRWOMAN SHOWALTER: Mr. Brena, you say
20 her, and you didn't begin your comments by saying you
21 were referring to the work papers of Ms. Hammer, but
22 I take it you are?

23 MR. BRENA: I am.

24 CHAIRWOMAN SHOWALTER: And then, also, you
25 said as to the other information that was other than

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1 throughput fuel and power. I'm just unclear what you
2 mean. Do you mean everything else or --

3 MR. BRENA: I do mean everything else, and
4 if I could just have my expert just list it for you
5 for the record.

6 JUDGE WALLIS: Would you introduce the
7 gentleman, please?

8 MR. BRENA: Well, gentleman may be
9 overstated, but this is Mr. Grasso, Gary Grasso. He
10 is our cost of service expert.

11 JUDGE WALLIS: And Mr. Grasso was a witness
12 in the interim portion of this docket and has been
13 sworn as a witness; is that correct?

14 MR. BRENA: That is correct.

15

16 E X A M I N A T I O N

17 BY MR. BRENA:

18 Q. If you'd just summarize those areas with
19 which we do not know what the beginning point of the
20 data was or what their calculation was to get to
21 their test period adjustment.

22 A. Good afternoon. Olympic has provided a
23 change map for the Hammer data, and it does show the
24 updated amounts that would appear in the cost of
25 service in the test period. And there is a column

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1 that cites the work paper, and we do have the work
2 papers here.

3 In most instances, except for the fuel and
4 power and the throughput, what we really have are
5 nice monthly financial statements, nice monthly
6 financial statements or raw data that may or may not
7 coincide with the actual ending of the test period.
8 We would have to go through that data, reconstruct
9 the actual costs, see how she did her -- Ms. Hammer
10 did the estimates for the two months, and then make
11 her annualizing adjustments that she talks about in
12 her testimony to get to the final test period number.

13 Q. Would you please explain for what
14 categories --

15 CHAIRWOMAN SHOWALTER: Use the mike.

16 Q. And would you please explain in what
17 categories, other than throughput and fuel and power,
18 would you please define other for the Chairwoman?

19 A. Additions to property in service, operating
20 expenses, oil losses. And may I state here that the
21 Form 6 for 1995 through 1998 is given as the work
22 paper, but those sheets weren't provided in these
23 work papers. Remediation expense, working capital,
24 carrier property additions test period, CWIP balance,
25 and I would include Sea-Tac sales only because

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1 there's a lot of information on the Sea-Tac that
2 they've provided, and I haven't really been able to
3 go through it in this time period to add up -- see if
4 I could add up the numbers to come back to their
5 updated numbers. And that's it. I mean, it's
6 basically their case.

7 MR. BRENA: And allow me to make the point.
8 I mean, from raw data and an end, you know, we can
9 spend our weekend trying to reconstruct their
10 individual calculations and may or may not be able to
11 reach that end. But that isn't what we asked for, a
12 project. What we asked for were the work papers so
13 we could see their calculations.

14 I don't want to divine their calculations
15 out of their case, I don't want my expert put in that
16 position. I want to see where they got their numbers
17 from and what their calculation was so that, over the
18 weekend, my expert is in a position of looking at
19 what they did, the calculation that they did, rather
20 than reconstructing it. And that's what a work paper
21 is, and that's what we asked for.

22 We got the beginning point, we got the
23 ending point, we got two calculations out of I don't
24 know how many he listed, out of 12, and that takes
25 time. And no matter how it's stated in the

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1 testimony, when you can't see the calculation, you
2 can't see the calculation and you can't re -- and you
3 can't test it. You've got to go recreate it first
4 and then compare it with the language, and it's just
5 a world of difference. That's why you produce work
6 papers.

7 So by and large, I guess I would say we got
8 the raw data, and that's a helpful beginning point;
9 we got the end numbers, which are in their case
10 anyway; and the calculation, we don't have.

11 JUDGE WALLIS: What do you want now, Mr.
12 Brena?

13 MR. BRENA: The calculation or the
14 dismissal of this case.

15 JUDGE WALLIS: I'm going to ask Tosco and
16 Commission Staff for brief comment and then turn to
17 the company for a response.

18 MR. FINKLEA: Your Honor, Ed Finklea, for
19 Tosco. We are going to have to rely on the work of
20 Mr. Grasso over the noon hour. Our experts -- this
21 is our own choice -- we don't have our experts here
22 this week, so what we did over the noon hour is get
23 the material copied so that it can be Fed Exed to our
24 experts in Boston and delivered to their home at
25 10:00 tomorrow morning Eastern time. So it will be,

1 you know, sometime into the afternoon before I will
2 -- tomorrow before I'd have as much information as
3 Mr. Grasso has, but I trust Mr. Grasso on this and
4 would join in Tesoro's request.

5 JUDGE WALLIS: Mr. Trotter.

6 MR. TROTTER: Your Honor, we did
7 immediately get the work papers to Mr. Colbo and Mr.
8 Twitchell, and I know they were looking at it. I
9 went to check with them shortly before the hearing
10 resumed and could locate neither one of them. So I
11 know they're still working at it and seeing what's in
12 there, but I can't confirm or deny Mr. Grasso's
13 observations, but I do know there was a lot of
14 information provided in volume, and we were
15 attempting to get to the bottom of it, but haven't
16 reached a conclusion as of this moment.

17 MR. BRENA: And if I could just add
18 briefly, it's not even clear to us what their test
19 period is at this point. Apparently, Ms. Hammer has
20 taken some numbers and annualized them, and it
21 appears that her calculational method would go beyond
22 the scope of the test period that they've proposed in
23 their case. So it's not even clear to us what period
24 that they're proposing, much less their calculation.

25 And I'd just like to add that I mentioned

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1 to the Commission earlier that this is not the first
2 time we haven't gotten work papers with the case;
3 it's the second time. This Commission had to compel
4 their production the first time, and they put on a
5 substantial and huge case seven days before hearing,
6 and didn't provide us work papers, and we still don't
7 have work papers. And they had a good long time to
8 put together that case. And when you're considering
9 that, please consider that we filed our answering
10 case before the FERC, which was in large part similar
11 with regard to many issues, so they had a chance to
12 see our case and get started on their rebuttal, I
13 mean, well before the procedural schedule that this
14 Commission allowed, which is one reason that it was
15 so substantial.

16 So you know, I am trying to do the very
17 best job I can to participate in this proceeding and
18 get the evidence and clarify the record, and I guess
19 I just don't know at what point all this stops. With
20 regard to throughput, there is a pending motion for
21 sanction before the committee -- before the
22 Commission, and I'd like to point out that none of
23 the information that we need to test the
24 representativeness of their throughput was made
25 available to us, notwithstanding -- and still hasn't

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1 been, notwithstanding Judge Wallis' recommendation
2 for sanctions.

3 I mean, so I'm in a position where I don't
4 know what their test period is, I don't know how they
5 calculated their numbers. I know how they calculated
6 their throughput, but I don't know whether it's
7 representative throughput. For example, I don't have
8 any idea whether or not the down time for the period
9 -- the actual throughput period that they've changed
10 their case to, whether or not it's representative or
11 not. I believe that it's not because of the large
12 number of projects that are going on.

13 And with regard to the throughput issue,
14 this is not an update. This is a change in their
15 approach to the methodological calculation of
16 throughput. It was calculated on two cycles in July.
17 They had five months of actual data available, and
18 now they've changed it to actual data, while at the
19 same time withholding, notwithstanding a
20 recommendation for sanctions, the throughput data
21 that would test the representativeness of that
22 information.

23 Well, if you can't test their costs, if you
24 can't cross their calculational method, if you can't
25 challenge the representativeness of their throughput,

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1 I suppose there's some way to set rates, but it's not
2 immediately apparent to me how you can do it based on
3 the costs of this company.

4 And the final point I'd like to make is
5 that a lot of the costs that they've updated, we're
6 just relying on their raw data. There has been no
7 discovery on these underlying costs, there's been no
8 opportunity for discovery of these underlying costs.
9 What they've called updated has been information that
10 we are forced to take at face value that the -- that
11 the numbers that are within there are properly within
12 their categories.

13 And given the audit status of this company,
14 its inability to get a clean audit, notwithstanding
15 their multiple representations to this Commission
16 that they would come forward with one prior to this
17 hearing, and given the inability for us to confirm
18 that information in a very difficult and trying
19 process, I think that I've had Judge Wallis probably
20 issue seven or eight motions to compel at this point
21 in this hearing, here we are.

22 We can't challenge their underlying
23 numbers, because they're all new. We can't challenge
24 the representativeness of their throughput, we can't
25 even see how they calculated their new numbers from

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1 the raw data that we can't even confirm.

2 I guess at some point, I mean, just at some
3 point, the Commission should take a look at whether
4 this company's case is ready to move forward, and I
5 think that this Commission has given them every
6 opportunity and then some, and some of which I
7 disagree with, as you know, to step forward and to
8 meet their burden.

9 And if there's a way to proceed for me, I'd
10 like to know what it is at this point, because it's
11 not apparent to me that it's possible to participate
12 in an adjudicatory process given the status of this
13 case. And I'd like to point out again, delay is not
14 a solution. You know, delay is not a solution to
15 this problem. There is no reason to believe that
16 this won't happen again and again and again.

17 And I represent a client. We're not
18 interested in never-ending litigation. We're just
19 trying to participate and get a fair rate set. And
20 this Commission has done its very best to ensure the
21 integrity of its record and still allow this case to
22 move forward. I mean, if you choose to continue with
23 the case under these circumstances, I mean, it's -- I
24 mean, we will, and I'll do my very best to give you
25 the best record I can, but I'm just telling you that

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1 these are the kinds of things -- and it's not an
2 individual thing, it's not this work paper this day,
3 you've got to cumulatively take a look at this.

4 This is the second largest pipeline company
5 in the United States that's put this case forward.

6 And as I quoted Mr. Twitchell, in his 30 years of
7 practice, he has never seen a weaker case on direct.

8 All I can say is I understand your desire
9 to want to set a rate, and those are arguments that I
10 made, but, my goodness gracious, what have we got to
11 do here?

12 JUDGE WALLIS: Is Commission Staff ready to
13 respond as to the completeness of the work papers?

14 MR. TROTTER: Yes, I had a brief discussion
15 with Mr. Colbo and Mr. Twitchell, neither of which
16 thought they would be called to testify today, so
17 they didn't dress the part. And I can't -- if I
18 tried to explain it, I'd get it wrong, so I guess I
19 would ask Mr. Colbo to come up to the table and just
20 give his take on what he's been able to discern thus
21 far.

22 JUDGE WALLIS: Does any party wish Mr.
23 Colbo to be sworn? He is listed as a Staff witness
24 and has supplied prefiled testimony.

25 CHAIRWOMAN SHOWALTER: I think he should.

2701

1 we've gone from budgeted 2002 to actual results for
2 ten months ended April, and then two more months of
3 estimated data for May and June 2002, but we're still
4 left -- and I don't argue with the math that's
5 involved, necessarily, although I'm not a hundred
6 percent sure how those estimates were made for May
7 and June, but, essentially, we've got booked results
8 with estimates for two months. Those results have
9 not been reviewed for restating or pro forma
10 adjustments in a traditional sense of a pro forma
11 income statement.

12 So we have not reviewed the numbers for
13 items which may have been expensed that we think
14 should have been capitalized. We have not reviewed
15 them for year end adjustments that may be applied for
16 12 months and perhaps should have only applied for a
17 lesser number of months that were included in this
18 test year. So we have some fundamental problems with
19 even the revised numbers as they were presented in
20 the rebuttal case.

21 Q. Were you able to discern from the work
22 papers, again, just based on the review you've been
23 able to do, of how the estimates for May and June of
24 2002 were made?

25 A. I don't know how those were made.

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1 JUDGE WALLIS: The question was whether you
2 were able to derive from the work papers. Even
3 though you may not know at present, do you believe
4 it's possible to derive that information from the
5 work papers?

6 THE WITNESS: As to the estimates for May
7 and June? All I have is hard copy printouts. I
8 don't have Excel spreadsheets with ratios. It may be
9 possible. I don't know. But I'm left with the
10 fundamental issue that I addressed, and that is
11 actual results ten months, plus two months'
12 estimates. I don't want to go forward and set rates
13 on actual results that haven't been restated and pro
14 formed. That leaves me --

15 CHAIRWOMAN SHOWALTER: Mr. Colbo, actually,
16 you weren't here, but Mr. Ganz (sic) explained that
17 for the work papers having to do with throughput and
18 fuel and power --

19 JUDGE WALLIS: Grasso.

20 CHAIRWOMAN SHOWALTER: Excuse me.

21 JUDGE WALLIS: Grasso.

22 CHAIRWOMAN SHOWALTER: I'm sorry, Mr.
23 Grasso -- for those subjects, he could follow the
24 path, roughly, but that for other information, which
25 was listed as additions to property in service,

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1 operating expenses, oil losses, remediation is what I
2 put down, working capital, carrier property
3 additions, CWIP, and potentially Sea-Tac sales, that
4 for those subject areas, he could not tell from the
5 papers or the work papers presented how the witness
6 got from her beginning point to the endpoint. That
7 is, the path of reasoning was not clear to him.

8 And that's actually what we're talking
9 about here, is are the work papers sufficient for the
10 other parties to review and be able to see the path
11 of calculation?

12 THE WITNESS: As I said, we've been
13 reviewing these for about 30 minutes, and I don't
14 think we've gotten to that point yet to make a
15 determination.

16 MR. BRENA: Could I ask that same question
17 slightly differently, perhaps?

18

19 E X A M I N A T I O N

20 BY MR. BRENA:

21 Q. Mr. Colbo, setting aside whether you can
22 reconstruct the path or not, is the path set forward
23 in the work papers, to your understanding? Can you
24 see the calculation of the test period numbers in the
25 work papers that were presented?

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1 A. I have seen the printouts that list expense
2 data through April, and then two additional columns
3 for May and June that are labeled as forecasted
4 and/or estimates. I haven't even verified at this
5 point whether the totals from that exercise agree
6 with the exhibit.

7 Q. So --

8 A. I'm not sure.

9 Q. -- perhaps it's just early, but the way
10 that we've characterized it is is that raw data
11 exists, but the beginning point is not apparent and
12 the calculation of the raw data from the beginning
13 point to the test year period is not set forward in
14 the work papers, other than with regard to throughput
15 and fuel and power. Do you have any reason to
16 disagree or agree with that?

17 MR. TROTTER: If you're able to, based on
18 the analysis you've done.

19 THE WITNESS: I'm not sure, based on what
20 we've done. I know we've seen -- we've reviewed the
21 ten months data, both with respect to balance sheet
22 and some income statements account, and there are
23 highs and lows and there are things that draw our
24 interest such that if we were doing restating
25 adjustments, as I said earlier, we would want to look

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1 and see what items construed those changes. We
2 aren't at this point able to do that. As I said,
3 it's booked raw numbers, ten months, with two months
4 additional data for some of the others.

5 With respect to oil losses and power and
6 remediation, as far as oil loss goes, in the rebuttal
7 case, the company has used the Staff number, which is
8 an average of the last four or five years' worth of
9 actual experience. Some of the other material -- for
10 remediation, it's been represented that that's actual
11 expenditures. And power adjustment was adjusted to
12 leave out the Puget pro forma increase that was not
13 for sure known, and it was adjusted downward to
14 reflect the now lower throughput.

15 So I think the process is, if it's as it's
16 been represented, I presume the numbers will tie to
17 the exhibits, but I'm left with fundamental
18 questions, if that answers your question.

19 Q. I believe it does. And well, to the -- Mr.
20 Colbo, once you reconstructed the estimates set
21 forward on the Collins data change map, then you have
22 to translate that --

23 MR. GRASSO: No, that is the translated
24 number.

25 MR. BRENA: Once you start -- could I have

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1 Mr. Grasso ask this question, please?

2 MR. TROTTER: Your Honor, at this point,
3 maybe the company ought to be given a chance to
4 respond.

5 JUDGE WALLIS: Yes, I think we should move
6 to the company. Let me ask, is Ms. Hammer present in
7 the room, Mr. Marshall?

8 MR. MARSHALL: Yes, Ms. Hammer and Brett
9 Collins both. And just by way of preliminary
10 background, Ms. Hammer is a collector of data and
11 she's a financial analyst for Olympic. Brett Collins
12 is the one that takes a lot of the data and
13 transforms it to exhibit and runs the model with Ms.
14 Hammer. So they're kind of joint experts, as it
15 were, on doing this collection.

16 So in large part, because Ms. Hammer works
17 at Olympic, she's familiar with the Olympic system
18 and can pull the raw numbers and the raw data, and
19 then Brett Collins will sometimes take that -- those
20 raw numbers and put them into the format and the
21 formulations that you have for the filings, so
22 there's kind of a iterative process here as they work
23 through it.

24 I think Mr. Colbo is essentially correct,
25 that if you start tracking through the data, you will

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1 find that, for example, on oil losses, not only, as
2 Mr. Brena said, do we have FERC Form Sixes, but we
3 were using the oil loss data that Staff did. It may
4 take a little while for them to sift through the
5 amount of material we have, but it does tie.

6 And with throughput, with fuel and power,
7 Mr. Colbo suggested that those could be tracked, too.
8 The fuel and power, the power -- we accepted what the
9 Puget rate suggestion was that I believe Staff had.
10 On throughput, we have, as we've been talking quite a
11 bit, used actual data, the test year period, which
12 Staff wants for the year 2001, at 83 million barrels
13 a year. That obviously is low and needs to be
14 adjusted to something that's known and measurable.
15 And the known and measurable has been, as we've tried
16 to get each month of actual data at -- with the
17 system coming up to being fully in operation,
18 although at 80 percent, the best known -- in fact,
19 it's the only known and measurable activity you have.

20 The so-called green sheets that we have
21 would show when you have actual down time. So all
22 the data has been produced that would give anybody
23 any basis for looking at known and measurable
24 conditions to figure out what the throughput is. And
25 that ties, and as Mr. Grasso said, throughput, fuel

2708

1 and power all tie.

2 The calculations from raw data to end
3 numbers, as they say, is an iterative process. I
4 could have Mr. Collins explain how that was done, but
5 what we have supplied here, it has been represented
6 to me, are all the work papers that they've used to
7 make these adjustments to what the original case was.
8 And we have provided, in addition, the so-called map,
9 and I don't know if you have been provided a copy of
10 that, that identifies where each of the changes were
11 made, what they are, whether they're in favor of
12 intervenors or not. And so you could go down each
13 column and you can sort out where these things are.

14 Now, the rebuttal case was filed a week
15 ago, on the 11th. And so the compressed schedule
16 between then and the start of the hearing was just a
17 function of the schedule itself. I mean, the problem
18 with everybody getting prepared for the testimony and
19 the hearings and all the other motions and everything
20 that were going on made it important for us to get
21 all this done, and of course we've tried to do it and
22 we've responded within the time allowed for the data
23 requests on these.

24 CHAIRWOMAN SHOWALTER: Mr. Marshall, I have
25 a question on that point.

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1 MR. MARSHALL: Sure.

2 CHAIRWOMAN SHOWALTER: Did you understand
3 on June 11th that it was necessary to provide work
4 papers with your submission of your company's
5 rebuttal testimony?

6 MR. MARSHALL: You know, I don't know,
7 because Mr. Collins and Ms. Hammer were doing that.

8 CHAIRWOMAN SHOWALTER: I'm saying -- I'm
9 asking for you, for your understanding. Did you, as
10 a lawyer, understand that work papers had to
11 accompany the filing of rebuttal testimony?

12 MR. MARSHALL: I don't know if we focused
13 on that, to be frank.

14 CHAIRWOMAN SHOWALTER: I'm asking you. It
15 appears to me you didn't understand that, or you
16 would have said yes, because either you do or don't
17 understand that. You may not have understood it, but
18 --

19 MR. MARSHALL: I can't recall beyond the
20 documents that were provided, the exhibits that were
21 provided, whether we knew at that time that there
22 were some other documents, some of the raw data and
23 invoices that we needed to provide, as well.

24 CHAIRWOMAN SHOWALTER: Mr. Marshall, I'm
25 asking you did you understand the principle, not the

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1 particulars here, but did you understand that you had
2 a requirement to provide work papers accompanying the
3 testimony that was submitted on June 11th?

4 MR. MARSHALL: Again, I'm not -- I'm not
5 trying to be evasive. I don't know what we were
6 understanding at the time on June 11th that we were
7 able to provide. I think -- I think that we had in
8 mind that what we provided was in compliance with
9 what we understood the obligations to be at that
10 time. And we thought that we would have additional
11 time to supply, through the data requests that were
12 asked for the work papers that were filed, those work
13 papers.

14 Again, it was a very compressed time
15 schedule, and I'm trying to be as candid as I can.
16 We tried to provide everything we thought we were
17 obligated to provide on June 11th.

18 CHAIRWOMAN SHOWALTER: Well, that's why I'm
19 asking the questions. If you understood you had to
20 provide it, but didn't, it's one thing; if you didn't
21 know you had to provide it and didn't, it's
22 different. In either case, it didn't get delivered,
23 but I'm just trying to understand whether you knew or
24 didn't know that you needed to provide these work
25 papers on June 11th?

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1 MR. MARSHALL: We didn't think we had any
2 obligation to do more than what we did on June 11th.
3 And if we were mistaken and we needed to provide more
4 than what we did on June 11th, then that was not
5 because we thought we had an obligation to do more.

6 MR. TROTTER: Madam Chairwoman, Mr. Brena
7 referred to the suspension order in which the
8 Commission ordered the direct case to be filed with
9 work papers. I'm not specifically aware of another
10 order that required simultaneous filing of work
11 papers with testimony since that time. Now, my
12 recollection could be refreshed on that, but I
13 believe the prehearing order did not specifically
14 require that.

15 CHAIRWOMAN SHOWALTER: Okay.

16 JUDGE WALLIS: Perhaps --

17 MR. BRENA: Your Honor, perhaps --

18 JUDGE WALLIS: I have a question of the
19 accounting experts in the room, and that is whether
20 the term work papers has a meaning as a term of art
21 in the accounting profession. Is it -- does the term
22 work papers refer to whatever scraps of paper a
23 witness or an accountant uses along the lines of
24 preparing a document or does it refer to papers which
25 demonstrate the track by which a document is

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1 constructed?

2 MR. COLBO: I'm going to say both. Work
3 papers is everything that backs up the finished
4 product numbers, and that involves the data you
5 relied on, the process you used, the calculations,
6 the assumptions, and some kind of a process to
7 navigate through all that and accumulate it and to
8 track it through to the end. I think it's
9 all-encompassing.

10 JUDGE WALLIS: So the term includes all of
11 that, rather than just a portion; is that correct?

12 MR. COLBO: I would say so. Work papers in
13 an accounting parlance means the support you have for
14 your work product, and that involves, as I said, all
15 the calculations and assumptions and some kind of a
16 way to track it through from start to finish.

17 JUDGE WALLIS: May Mr. Grasso respond, as
18 well?

19 MR. GRASSO: Well, I will agree with that
20 in its entirety.

21 MR. MARSHALL: The work papers we received
22 from Staff and intervenors included schedules, and
23 nothing more by way of raw calculations, backup
24 information and so forth. From what Mr. Collins has
25 indicated to me, we were trying to do the same kind

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1 of provision in the rebuttal as we got just a few
2 weeks before from the Staff and intervenors' case.

3 In other words, there were not large bulk
4 amounts of documents provided like we've just
5 provided here today. So in the context of what we
6 were trying to provide, we were trying to provide the
7 same kind of schedules and all that have been
8 provided to us in the interim, from the answering
9 response from Staff and intervenors, from what Mr.
10 Collins indicates to me.

11 MR. TROTTER: Your Honor, I'd like to
12 specifically respond to that, because we did provide
13 the company with extensive work papers tracking from
14 start to finish, with a detailed explanation of how
15 we got from point A to point Z, and every number was
16 traced to a source.

17 MR. BRENA: I would like to point out that
18 the source for the numbers was information provided
19 by the company. Mr. Marshall's comments sort of
20 assumes we're on equal informational levels. We're
21 not. They have all the information, they gave it to
22 us, so we could give back the same spreadsheets they
23 gave us, but that has less utility, so I'd just like
24 to point out practically.

25 I'd like to also point out that this issue

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1 wasn't raised, and I'd also like to say that what
2 this Commission meant when it compelled them was
3 very, very clear. When the Commission asked me to
4 define what I meant by work papers at the time that
5 it compelled, and I said we need to understand what
6 the beginning point was that they looked at in
7 updating their case, we needed to see the calculation
8 from the beginning point to the number that they used
9 in their case. That's what I've asked for.

10 We have a lot of raw data that we can
11 reconstruct and perhaps figure the beginning point
12 out of. The calculation from the raw data to the
13 case number is absent. And perhaps the -- and what
14 appears to have been distributed is they went and
15 printed out a lot of raw data sheets. But there's no
16 -- I mean, it doesn't go to the distinction -- Judge
17 Wallis, you mentioned scraps of paper. I'd be happy
18 with a spreadsheet that showed how -- you know, what
19 number they picked out of the raw data, what their
20 calculation was, to what endpoint. And that is
21 what's absent.

22 And perhaps the best way to proceed here --
23 I mean, take Item Five on Collins Data Change Map.
24 It says, Operating expenses excluding the
25 depreciation test period. Okay. I'd like to see the

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1 calculation of that number in these work papers.

2 JUDGE WALLIS: It might be appropriate now
3 to bring Ms. Hammer forward so that she can respond
4 to questions. I will note for the record that Ms.
5 Hammer also was a witness in the earlier phase of
6 this proceeding and has been sworn.

7 MR. MARSHALL: I think it would be helpful
8 to have both Brett Collins and Ms. Hammer.

9 JUDGE WALLIS: Our questions right now
10 relate to Ms. Hammer.

11 MR. MARSHALL: Okay.

12 JUDGE WALLIS: So we would like to have her
13 come forward.

14 MR. MARSHALL: One additional point that I
15 would just like to have the Commission know. When
16 Staff indicated that they've given us the work
17 papers, it was in response to a data request, as Mr.
18 Maurer informs me. So although we do have that data,
19 it was not supplied at the time that the filing was
20 made, as we understand it. We had to request other
21 data requests for backup information.

22 JUDGE WALLIS: Very well. I think, as Mr.
23 Brena pointed out, the narrow question that we have
24 today is whether the company complied with the
25 Commission's order and with its commitment made on

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1 the record yesterday to provide certain documents,
2 and the company did indicate on the record that it
3 understood what those documents were and that it
4 would provide them.

5 MR. MARSHALL: And it requested the work
6 papers that were used to do the calculations. It
7 didn't request us to try to create a new set of
8 documents that would do math that has been done by
9 people in their heads, for example.

10 So then, if you took the raw data, you did
11 the calculations with a calculator, what work papers
12 are, as I understand it, are the things that are in
13 existence when a document is created. You don't go
14 back out and recreate new material.

15 It might be helpful, too, to hand out this
16 change map, and then we'll have Ms. Hammer come up.

17 MR. TROTTER: Just for the record, Your
18 Honor, we distributed our case on a Friday. I got a
19 phone call from I believe Mr. Maurer asking for work
20 papers, and I believe we submitted them either one or
21 two business days later. There was no formal
22 request, as I recall. We just gave it to them.

23 MR. BRENA: Your Honor, if I could speak to
24 that just for a moment. If Olympic felt that some
25 data request that they had made to Tesoro was not an

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1 appropriate response, then, under this Commission's
2 rules, the appropriate thing for them to have done
3 was first to have contacted us and ask for that,
4 which didn't happen, and secondly, to file a motion
5 to compel and to compel Tesoro to produce that
6 information.

7 Part of what we seem to be talking about
8 here is, on the one hand, we're talking about what
9 the Commission just yesterday compelled Olympic to
10 provide in the middle of a very difficult case, and
11 what I find myself talking about is discovery
12 requests that there hasn't been any motion, there
13 hasn't been any indication of impropriety or that we
14 haven't responded inappropriately. We seem to be
15 talking about what Staff and intervenors have done.
16 You know, that has nothing to do with what we're
17 talking about, what Staff and intervenors have done.

18 And if they wanted to bring a motion, they
19 could bring a motion. But if they were satisfied --
20 they obviously were satisfied with what we produced.
21 They didn't bring a motion. We obviously are not
22 satisfied with what they produced, asked the
23 Commission to compel it yesterday. Obviously, there
24 was significantly good reason to make that request,
25 given the volume of material that was provided today.

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1 Now, we've just reached the end of this.
2 So I would like, to the degree that it's possible, to
3 focus on what we're here to talk about, which is
4 whether or not the intervenors and the Staff have the
5 information that they need to participate in an
6 adjudicatory process in a meaningful way.

7 MR. MARSHALL: There's just one narrow
8 point that I wanted to make on the issue that the
9 Chairwoman had asked, and that I think we've gotten
10 confirmed by Staff. When Staff filed its case, it
11 did not file its work papers.

12 CHAIRWOMAN SHOWALTER: Mr. Marshall, Mr.
13 Brena is quite right. The only issue before us right
14 now, which we're trying to address, is not that
15 narrow issue. It's not before us. The only issue is
16 whether -- actually, the only issue is whether you
17 have met the order to compel. And I may have
18 distracted even from that issue going back to June
19 11th. The issue is have you complied, and --

20 MR. MARSHALL: Yes.

21 CHAIRWOMAN SHOWALTER: -- I asked you
22 earlier whether you were familiar with the general
23 practice of providing work papers with testimony, and
24 you answered in the we. You said we. I'm talking to
25 you as an individual. Let me ask you this. Have you

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1 represented Puget Sound Energy in the past before
2 this Commission?

3 MR. MARSHALL: Yes.

4 CHAIRWOMAN SHOWALTER: Have you filed
5 direct and rebuttal testimony on behalf of Puget
6 before this Commission?

7 MR. MARSHALL: We have, and in this case,
8 as well, and direct and --

9 CHAIRWOMAN SHOWALTER: And on those
10 occasions, have you provided contemporaneous with the
11 filing of your direct and rebuttal testimony work
12 papers? Have you ever not done that, is the
13 question?

14 MR. MARSHALL: We have supplied, in some
15 cases, work papers; in other cases, the work papers
16 have followed, like they have here, with data
17 requests, and just like Staff has done in this event.
18 And we had that practice here in this case, as we
19 understand it, both with submission of the cases that
20 we made in direct and with the case that Staff and
21 intervenors have made, where data requests have gone
22 out to inquire further into the work papers that the
23 parties have had. So that's the best response I can
24 give. That's our understanding, based on the
25 practice that we've had here, and all the parties

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1 have done it in the same way. That is, they have
2 waited for additional information, additional
3 requests to come in. We've had -- actually, Mr.
4 Maurer had worked with Staff about asking for the
5 backup work papers that they had. They weren't
6 supplied with filing the case. They came later and
7 they came -- I don't know how much later, but they
8 didn't come at the time that the filing was made.

9 But I understand that the point now is the
10 work papers here that we have turned over in response
11 to the data requests, and again, there was no
12 statement at the time the filing was made that we
13 hadn't done what the parties had been doing. The
14 question now, I agree, is whether these responses to
15 the data requests are responses that produced the
16 work papers that the witnesses that we have in the
17 cost of service area, Mr. Collins and Ms. Hammer,
18 have relied on to come up with their calculations.
19 They're here.

20 JUDGE WALLIS: Thank you, Mr. Marshall. We
21 did ask that Ms. Hammer be brought forward to respond
22 to questions. Could a chair be moved to counsel
23 table so that she may share a microphone with you,
24 Mr. Marshall?

25 MR. MARSHALL: I've also been handed a

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1 Washington Administrative Code section on 480-09 -- I
2 believe it's 1(a), regarding whether work papers
3 would be submitted on rebuttal. I think there is, in
4 fact, a different standard on rebuttal, too. But,
5 again, I'm not trying to argue that point. I'm
6 trying to --

7 JUDGE WALLIS: I think we've agreed that
8 that is not the issue before us today.

9 MR. BRENA: And just so the record is
10 clear, I do not agree that Tesoro did not provide its
11 work papers. In fact, by electronic transfer the
12 same day as filing, we sent Mr. Grasso's electronic
13 files in full with our case in chief. So I just
14 don't want his repeated characterization --

15 MS. HOUCHEN: We didn't. No.

16 MR. BRENA: Excuse me.

17 MR. MARSHALL: They weren't sent.

18 MR. BRENA: I withdraw that comment.

19 JUDGE WALLIS: Very well.

20 MR. BRENA: My boss told me I was wrong,
21 but that the consultant was right.

22 MR. MARSHALL: Well --

23 JUDGE WALLIS: Very well. Now, perhaps we
24 can focus exclusively on the order of yesterday and
25 the extent of compliance. Are there questions for

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1 Ms. Hammer? Ms. Hammer, you are the person who
2 testified earlier in this proceeding; is that
3 correct?

4 MS. HAMMER: Yes.

5 MR. TROTTER: I'm not sure she has
6 testified yet.

7 MR. MARSHALL: Well --

8 MR. TROTTER: She is identified as a
9 witness.

10 MR. BRENA: She's been deposed.

11 MR. MARSHALL: She gave deposition
12 testimony.

13 JUDGE WALLIS: But she has not been a
14 witness; is that correct?

15 MR. MARSHALL: She was not in the interim
16 case.

17 JUDGE WALLIS: Ah, thank you. I stand
18 corrected, and I stand corrected.

19 Whereupon,

20 CYNTHIA HAMMER,
21 having been first duly sworn, was called as a witness
22 and was examined and testified as follows:

23 JUDGE WALLIS: Please be seated. Mr.
24 Marshall, do you have any questions of Ms. Hammer?

25 MR. MARSHALL: Yes.

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BY MR. MARSHALL:

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Q. Ms. Hammer, have you worked here over the last week to provide all the backup material that you used from the financial systems at Olympic to prepare data for use in this case in the rebuttal to show how the calculations were made and to assist Mr. Collins in his making those calculations for the purpose of the data on this, the data change map, making adjustment to the direct case cost of service filing?

A. Yes.

Q. And how did you and Mr. Collins work together to create the materials that you've worked on for the filing of the rebuttal case cost of service?

A. I provided the data to Mr. Collins based on the Olympic financial statements.

Q. So you would provide the raw data to Mr. Collins in terms of backup information. Can you describe what kind of backup information you gathered up and provided to Mr. Collins, give some examples of the kinds of materials that you would be collecting from the financial records of Olympic?

A. I provided Mr. Collins with the income

1 statements, balance sheets on a monthly basis for the
2 periods that he requested.

3 Q. What kinds of information did you provide,
4 for example, on the carrier property in service, the
5 first one on this list of -- the Collins Data Change
6 Map?

7 A. The information provided for carrier
8 property in service was Olympic's monthly balance
9 sheet.

10 Q. And so on down the line, did you provide,
11 to the best of your ability, the backup information
12 that Mr. Collins would need to do the work for his
13 schedules on doing the update for the cost of service
14 testimony that he filed in rebuttal?

15 A. Yes, I provided him with the information
16 that he requested to those calculations.

17 Q. Now, did you yourself do these calculations
18 or was that for Mr. Collins to work from the data
19 that you had and provided to him from Olympic?

20 A. Mr. Collins did the calculations for the
21 test period in the model.

22 Q. Okay. That's -- have you provided, to the
23 best of your ability, all the backup information that
24 you had provided to Mr. Collins so -- as well as you
25 can reconstruct that, as well as you can recall?

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1 A. I have provided all of my work papers
2 supporting information that I provided to Mr.
3 Collins.

4 MR. MARSHALL: Nothing further, but I would
5 like to point out, because of that testimony, Mr.
6 Collins might be appropriate to ask questions of, as
7 well.

8 JUDGE WALLIS: Thank you.

9 MR. MARSHALL: Since he would do the actual
10 calculations.

11 JUDGE WALLIS: Mr. Brena.

12 MR. BRENA: Well, I feel like I'm in the
13 skit Who's on First.

14

15 E X A M I N A T I O N

16 BY MR. BRENA:

17 Q. Mrs. Hammer, and I'm reading from your
18 testimony, it said, I have replaced projections with
19 actual data through April 2002 in order to align with
20 the known and measurable standards set for test
21 period data. I then annualized the updated
22 nine-month test period expenses with the exception of
23 oil losses and shortages, fuel and power and
24 remediation, which I discuss later in my testimony.
25 Did you do those calculations or not?

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1 CHAIRWOMAN SHOWALTER: You need a
2 microphone.

3 THE WITNESS: I provided that information,
4 as requested by Mr. Collins.

5 Q. And by the information, do you mean the
6 annualized test period, new test period expenses?

7 A. The information that was annualized was for
8 the months of May and June.

9 Q. Did you do that calculation?

10 A. I did that calculation in my work papers,
11 yes.

12 Q. Okay. Could I draw your attention, please,
13 to the Collins Data Change Map, the second page of
14 it? Do you see where it says Cynthia Hammer Work
15 Paper Summary? It's -- there are two page ones and
16 one page two. It's the second page of the three-page
17 document in Item Four.

18 A. Yes.

19 COMMISSIONER HEMSTAD: I'm sorry, I'm still
20 not clear. We're on the second page of the
21 three-page document?

22 MR. BRENA: Yes, it's captioned Hammer Data
23 Change Map, and it's Item Four, and it refers to page
24 five of your -- of line 13 of your testimony. Do you
25 see that?

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1 COMMISSIONER HEMSTAD: Yes.

2 MR. BRENA: Ms. Hammer?

3 MR. MARSHALL: Are you asking her to look
4 at the change map or the testimony?

5 MR. BRENA: The change map.

6 THE WITNESS: I have the change map, yes.

7 Q. Okay. Do you see it says, Updated amount
8 in dollar millions, and it goes negative 2.8 for a
9 total operating expense for the test period?

10 A. Yes.

11 Q. Would you show me that calculation, please,
12 in your work paper?

13 A. I'm not sure I understand your question.

14 Q. Would you show me how you calculated --
15 would you show me your calculation of the negative
16 2.8 million? And if -- I'm not trying to play hide
17 the ball. The work paper you've indicated --

18 CHAIRWOMAN SHOWALTER: I want to interrupt
19 here. This witness is being asked a question under
20 oath and is now consulting with another person in the
21 room. It's not appropriate.

22 MR. MARSHALL: We're trying to figure out
23 what the question means.

24 CHAIRWOMAN SHOWALTER: Well, the point is
25 that the witness is being asked the question, and

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1 she's not permitted to consult about the answer. If
2 she doesn't know the answer, she should answer that.

3 MR. MARSHALL: I would object, because I
4 don't believe we understand what the question is
5 that's being asked.

6 CHAIRWOMAN SHOWALTER: Well, then, you need
7 to raise the objection.

8 MR. MARSHALL: I just am right now. Is the
9 request on what the subtraction was here? You were
10 about to clarify that.

11 MR. BRENA: I'd be happy to.

12 Q. First, we're on the Hammer Data Change Map,
13 Item Four; correct?

14 A. Yes.

15 Q. Okay. And for the testimonial reference,
16 it says, Page five, line 13. Do you see that?

17 MR. MARSHALL: She doesn't have her
18 deposition in front of her.

19 THE WITNESS: Yes.

20 MR. BRENA: This is all information on the
21 change map. I'm just going through the columns one
22 at a time.

23 MR. MARSHALL: Okay.

24 JUDGE WALLIS: Is this information that the
25 company provided in response to yesterday's order?

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1 MR. MARSHALL: Yes, this is something we
2 thought would be helpful to people in order to be
3 able to --

4 JUDGE WALLIS: Very well. Mr. Marshall, we
5 cannot hear you, and I think the question's been
6 answered.

7 MR. MARSHALL: Yes.

8 MR. BRENA: Okay.

9 Q. And do you see that the fourth column,
10 Updated Amount, a dollar symbol and million, where it
11 says negative 2.8 million?

12 A. Yes.

13 Q. Would you please show me your calculation
14 of that number on the work papers that you refer to?

15 A. The work papers that are indicated on the
16 right-hand side, 4.1 and 4.2, contain the amounts
17 that make up the difference of the 2.8.

18 Q. Is it your testimony that the calculation
19 of the 2.8 is not set forward in those work papers,
20 but only that the raw data is in those work papers?
21 Did I understand your answer correctly?

22 A. No.

23 Q. Then would you please show me the
24 calculation that you made in order to derive the 2.8
25 million?

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1 JUDGE WALLIS: Does Ms. Hammer have a copy
2 of the work papers that were provided today?

3 THE WITNESS: Yes.

4 JUDGE WALLIS: Okay. The question is, as I
5 understand it, to please show where in those work
6 papers the calculation of that negative 2.8 million
7 dollar figure appears.

8 Q. And let me clarify my question. It is not
9 at this point a question to show how to calculate it
10 or for the raw data; it's a question to show the
11 calculation of it, not the beginning point.

12 A. I don't have a copy of my rebuttal
13 testimony, but I believe that the pieces that make up
14 this 2.8 are indicated in my rebuttal testimony.

15 Q. Is the calculation set forward in your work
16 papers or not?

17 A. Yes.

18 Q. Would you please show it to me?

19 A. On the income statement.

20 Q. Are you in work paper 4.1 or 4.2?

21 A. 4.1.

22 Q. Please continue.

23 A. The 2.8 is made up of the difference
24 between fuel and power, oil losses, and remediation
25 expenses.

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1 Q. Is that calculation set forward or is the
2 raw data that you would use in that calculation set
3 forward in your work paper?

4 A. It's the raw data.

5 Q. Can you show me the calculation of the 2.8
6 million anywhere?

7 A. The 2.8 million is simply the change
8 between the actual information or the new worksheet
9 that was provided and what was in OPL 31.

10 Q. Please understand my question is not to
11 have you verbally describe what the calculation
12 should be; my question is to ask you to show me if
13 that calculation exists in the work papers that were
14 provided to Tesoro today?

15 MR. MARSHALL: Well, the calculations are
16 referred to in the actual deposition -- or the actual
17 testimony itself on how the calculation was done. If
18 it's done in the testimony itself, the derivation,
19 any additional, again, scrap of paper that may have
20 been needed, you can see how it was derived, it's in
21 the testimony, and the data is there against which to
22 test it.

23 JUDGE WALLIS: Is counsel --

24 MR. MARSHALL: I object to the question,
25 because it assumes -- it assumes something about how

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1 a procedure is done. I mean, it could be -- the
2 calculation could be explained in the testimony, the
3 work papers are --

4 JUDGE WALLIS: Mr. Marshall, I'm not sure
5 that the question assumes anything. The question is
6 merely whether the calculation appears in the work
7 papers, and it strikes me that the answer to that
8 would be either yes, with an illustration, or no.

9 MR. MARSHALL: Correct, but, also, it
10 assumes that there would be work papers if there were
11 some vagueness about how the calculation was to be
12 done. If, from the testimony, you could not
13 determine how it would be done, then it might make
14 some sense to have some additional spreadsheet or
15 Excel program to show how it was done. In this case,
16 I think the question assumes a much bigger
17 calculation than was actually done in the testimony
18 provided.

19 CHAIRWOMAN SHOWALTER: Mr. Marshall, you
20 can argue that such a calculation isn't required in
21 the work papers, but the question is simply is it in
22 the work papers, and then it's a different question
23 as to whether that is deficient or not as far as work
24 papers are concerned.

25 MR. MARSHALL: Right, I just hope the

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1 record doesn't get confused as to what was provided
2 in the actual rebuttal testimony itself.

3 JUDGE WALLIS: I think the record will be
4 clear as to what the rebuttal testimony contains. If
5 there's any question, we could entertain a motion to
6 receive that testimony now.

7 MR. BRENA: If -- I'm not sure where we
8 are. May I continue my questioning?

9 JUDGE WALLIS: Yes, you may. Well, has the
10 witness answered your question?

11 MR. BRENA: I understood her answer to be
12 that the calculation was not set forward in the work
13 papers. Could I have you the witness please confirm
14 my understanding?

15 JUDGE WALLIS: Is that correct, Ms. Hammer?

16 THE WITNESS: The work papers contain the
17 line items that make up the 2.8. The 2.8 is not
18 directly reflected in the work papers.

19 JUDGE WALLIS: Thank you.

20 Q. Now, just to stay with that change in the
21 total operating expenses of 2.8, could I direct you
22 to Mr. Collins' Data Change Map, line five, Item
23 Number Five? Could you please tie for me the \$2.8
24 million calculation to the updated amount, shown as
25 33,446,000?

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1 A. That question would be better directed at
2 Mr. Collins. I'm not familiar with that particular
3 adjustment that was made.

4 Q. Do you see, in the far right-hand column of
5 the Collins Data Change Map, Hammer Data Item Number
6 Four?

7 A. Yes.

8 Q. And that is the data item that we just
9 discussed with regard to the 2.8 million on your
10 chart; is that correct?

11 A. That's correct.

12 Q. Are you suggesting that it was Mr. Collins
13 that provided you with the operating expense numbers?

14 A. No, I provided Mr. Collins with the
15 operating expense numbers.

16 Q. What operating expense number did you
17 provide him with?

18 A. The income statement.

19 Q. Was it the 33 million-446 -- is that the
20 number that you provided Mr. Collins with for the
21 operating expenses?

22 A. I don't know what the exact number was.
23 The operating expenses were taken off of the income
24 statement that was provided on Work Paper 4.1.

25 Q. Did you do that?

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1 CHAIRWOMAN SHOWALTER: What do you mean by
2 do that?

3 Q. Did you calculate the operating expense
4 number that Mr. Collins used in his model?

5 A. I'm not sure I understand the question. I
6 provided Mr. Collins with the spreadsheet.

7 Q. How was the 33,446,000 -- would you please
8 show me the calculation of that number?

9 MR. MARSHALL: It's been asked and
10 answered. The witness said that Mr. Collins would be
11 the proper -- more appropriate one to ask about that
12 updated amount. It's shown in that segment of the
13 Collins Data Change Map.

14 Q. It's -- Ms. Collins, did you provide --
15 excuse me, Ms. Hammer, did you provide Mr. Collins
16 with the operating expense number or did you provide
17 Mr. Collins with raw data?

18 A. I provided Mr. Collins with the income
19 statement.

20 Q. Turning back to your work sheet, where you
21 indicate the change in total operating expenses, I'm
22 trying to understand why you did this calculation at
23 all, if you just provided him with the raw data and
24 let him calculate it. I'm just -- let me rephrase
25 the question.

1 With regard to the Hammer Data Change Map,
2 the updated amounts in millions, for Items One
3 through Five and on the next page, Six through 11,
4 can you show me the calculation of any of those
5 numbers?

6 A. The updated amounts are amounts taken from
7 raw data.

8 Q. Can you show me your calculation? I
9 understand you took them from raw data, but can you
10 show me how you took them to raw data to calculate
11 any of those changed numbers?

12 A. They don't require a calculation.

13 Q. Then why did you calculate it?

14 MR. MARSHALL: I would object to the
15 question as assuming a fact not in evidence. This
16 witness --

17 JUDGE WALLIS: Perhaps the question could
18 be rephrased.

19 MR. MARSHALL: I think the question is
20 argumentative.

21 MR. BRENA: Thank you for your patience. I
22 mean, she testified in her testimony that she did the
23 calculations of these numbers and provided them to
24 Mr. Collins, and the company's provided this change
25 map that shows her calculations in detail with -- and

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1 what the updated amounts were that she provided.

2 Now, Ms. Collins -- excuse me, Ms. Hammer, did --

3 MR. MARSHALL: Well, I would have to object
4 to that characterization. I think that if he wants
5 to ask a specific question about a line item and how
6 that number shows up in the papers provided, that's a
7 fair request, but to do a general statement I think
8 was inaccurate.

9 MR. BRENA: Okay.

10 Q. Did you provide Mr. Collins with any
11 calculations or any numbers that he used in his
12 model?

13 A. Could you repeat that question?

14 Q. Well, in your testimony, where you said, I
15 have replaced projections with actual data through
16 April 2002 in order to align with the known and
17 measurable standard set for test period data, did you
18 do that or not? And that is page five of your
19 testimony, lines six through eight.

20 A. Yes, I did replace the projections with
21 actual data through April of 2002. They were
22 presented to Mr. Collins in the form of Olympic's
23 monthly income statement and monthly balance sheet.

24 Q. Thank you. You go on to state, I then
25 annualized the updated nine-month test period

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1 expenses with certain exceptions. Did you do that?

2 A. After I updated the projections with
3 actuals through April, the remaining months that were
4 annualized were May and June.

5 Q. Is the answer to my question yes, that you
6 did what you represented to do in your testimony?

7 A. Yes.

8 Q. Would you show me that annualization
9 calculation, please?

10 A. It's contained on the income statement in
11 the forecast months of May and June.

12 Q. By it's contained, do you mean the end
13 number of your annualization or do you mean the
14 calculation of it?

15 MR. MARSHALL: Well, I object. The whole
16 --

17 MR. BRENA: I withdraw the question.

18 MR. MARSHALL: -- point of annualization --

19 JUDGE WALLIS: The question's been
20 withdrawn.

21 MR. MARSHALL: -- annualization --

22 Q. Please, please show me your an
23 annualization of May and June. Please direct me to
24 it.

25 MR. MARSHALL: Describe how it's done.

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1 MR. BRENA: I didn't ask that it be
2 described; I asked to see the calculation.

3 CHAIRWOMAN SHOWALTER: Well, also, this is
4 a question and answer, and it is not appropriate for
5 counsel to advise the witness how to answer the
6 question. If she can't answer the question, that's
7 one thing, but this is not a question of you, Mr.
8 Marshall; it's a question of Ms. Hammer.

9 MR. MARSHALL: And I guess the only
10 objection I have is just that annualization is a
11 process that it describes itself, so I'm confused.

12 CHAIRWOMAN SHOWALTER: Could we -- I maybe
13 interrupted Mr. Brena even more, but it seems to me
14 there are two questions here. One, did you do the
15 calculation with a calculator, for example, did you
16 do a calculation, a number crunching that annualized
17 those figures?

18 THE WITNESS: It's actually a formula
19 contained in the spreadsheet.

20 CHAIRWOMAN SHOWALTER: So you punched some
21 kind of button that produced those numbers?

22 THE WITNESS: Correct.

23 CHAIRWOMAN SHOWALTER: So you did the
24 calculation?

25 THE WITNESS: Correct.

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1 CHAIRWOMAN SHOWALTER: So then I think Mr.
2 Brena is back to is it or is it not -- it's a yes or
3 no question -- shown anywhere in the work papers? Is
4 that -- have I interrupted you or have we gotten back
5 to your question?

6 MR. BRENA: You've done better than I.
7 Thank you.

8 Q. Where's the formula?

9 A. The formula is not shown on the
10 spreadsheet.

11 Q. Would you show me the formula in your
12 testimony, please?

13 A. I don't believe the formula is in my
14 testimony.

15 Q. Would you show me the formula anywhere?

16 CHAIRWOMAN SHOWALTER: Mr. Brena, it might
17 be just easier to ask is the formula anywhere,
18 because I think --

19 MR. BRENA: Thank you.

20 CHAIRWOMAN SHOWALTER: -- it's a simpler
21 question. If there is one, is it anywhere? Then you
22 can ask, Where is it?

23 Q. Is it anywhere?

24 CHAIRWOMAN SHOWALTER: In your testimony or
25 the work papers?

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1 Q. Well, anywhere that's been provided to
2 Tesoro?

3 A. No, I don't believe the formula is actually
4 shown in the work papers.

5 MR. BRENA: That's the problem. I could go
6 through every item, but that's the problem. That's
7 the operating expense number.

8 MR. TROTTER: Could I just ask one question
9 of the witness, Your Honor?

10 JUDGE WALLIS: Mr. Trotter.

11

12 E X A M I N A T I O N

13 BY MR. TROTTER:

14 Q. Ms. Hammer, do the work papers show a tying
15 of the number that you end up with to your Exhibit
16 CAH-4, which, for the record, I believe is 819? I
17 think it's the Case Two that you sponsored in your
18 direct testimony. In other words, do the work papers
19 start with your direct exhibit and then trace it
20 through to where you end up in your rebuttal exhibit?

21 A. I believe that that question would be
22 directed to Mr. Collins.

23 MR. BRENA: Well, I --

24 JUDGE WALLIS: Mr. Trotter, do you have a
25 follow-up to that?

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1 MR. TROTTER: No.

2 JUDGE WALLIS: Mr. Brena.

3 MR. MARSHALL: May I -- before we leave
4 this calculation on annualization, may I ask a
5 clarifying question?

6

7 E X A M I N A T I O N

8 BY MR. MARSHALL:

9 Q. When you do an annualization, is that a
10 standard definition for a calculation that you do
11 when you have a certain number of months for a year
12 and you want to complete the full 12 months of the
13 year?

14 A. Yes, it's a standard calculation.

15 Q. And how is that standard calculation
16 performed when you use the word annualization? Is
17 that implied that a calculation will be done
18 according to a standard?

19 A. Yes, it implies 12 months divided by the
20 number of actual data that you have.

21 Q. On this calculation, when you say you
22 annualized something, does that describe how you did
23 it?

24 A. Yes.

25 MR. MARSHALL: Thank you.

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1 MR. BRENA: I'd like to follow up.

2 JUDGE WALLIS: Mr. Brena.

3

4 E X A M I N A T I O N

5 BY MR. BRENA:

6 Q. We have actual data in your annualization;

7 correct?

8 A. Yes.

9 Q. And we have estimated data in your
10 annualization; correct?

11 MR. MARSHALL: I object to the form of the
12 question. That is the way the annualization is done.

13 MR. BRENA: No estimated for May and June;
14 entirely. Entire projections.

15 MR. MARSHALL: That's -- again, I object,
16 because that's what is annualization, that's the
17 definition of annualization, as Ms. Hammer just
18 testified.

19 JUDGE WALLIS: Could the witness respond to
20 the question, please?

21 THE WITNESS: Could you repeat the
22 question?

23 Q. Did you project May and June?

24 A. Yes.

25 Q. So you had ten months of actuals, two

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1 months estimated, and then you -- and that's the way
2 that you annualized?

3 A. Could you repeat that again?

4 Q. You had ten months of actual, two months of
5 projections, and that was the manner in which you
6 annualized?

7 CHAIRWOMAN SHOWALTER: I'm sorry, but I'm a
8 little -- I think -- is a more precise question, did
9 you take ten months of actual --

10 MR. MARSHALL: Yes.

11 CHAIRWOMAN SHOWALTER: -- and add in two
12 months of estimate and divide by 12? Is that what
13 the computer did for you, or not?

14 THE WITNESS: Actually --

15 CHAIRWOMAN SHOWALTER: Or do you know?

16 THE WITNESS: It was nine months when I
17 made the calculation. We did not have actual data
18 for April at that time. April actuals were provided
19 at a later time.

20 Q. So you took nine months of actual -- please
21 just describe what you did.

22 A. I took nine months of actual and annualized
23 for May -- well, at that time, it would have been
24 April, May and June.

25 CHAIRWOMAN SHOWALTER: Were the three

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1 remaining months based on the first nine months of
2 actual?

3 THE WITNESS: That's correct.

4 CHAIRWOMAN SHOWALTER: But the calculation
5 doesn't actually -- you don't actually use those
6 three months; you just start with nine months and
7 then punch a button that produces a 12-month figure?

8 THE WITNESS: Yes.

9 JUDGE WALLIS: Does it divide the
10 nine-month total by nine and put the result in each
11 of the remaining three months, or does it calculate
12 based on any other formula or means of deriving the
13 missing numbers?

14 THE WITNESS: I'm sorry, could you repeat
15 that?

16 JUDGE WALLIS: What I was asking was how do
17 the numbers for the three absent months get there?
18 Where do they come from? Do you total the existing
19 nine months, divide by nine, multiply by three, and
20 add, or is there some other means, looking at trended
21 figures for that period of time, over time, some
22 other way of deriving those numbers, if you know the
23 answer?

24 THE WITNESS: I'm not sure I know the
25 answer.

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1 Q. Did you use actual data for April?

2 A. Yes.

3 Q. So what three months did you project?

4 A. When this particular spreadsheet was
5 provided to Mr. Collins, April actuals were not
6 available. It was provided to Mr. Collins through
7 March, with three months being estimated. When April
8 closed and actuals were available, I provided an
9 updated spreadsheet to Mr. Collins.

10 JUDGE WALLIS: I'm going to interrupt the
11 questions right now and ask, Mr. Brena, for you to
12 repeat what you want at this point. What would you
13 like the Commission to do, given the situation that
14 we find ourselves in? And then I would like to go
15 off the record and confer with the Commissioners
16 about their desires for proceeding at this point.

17 CHAIRWOMAN SHOWALTER: Before Mr. Brena
18 answers, since his answer might be longer than the
19 three minutes that I have, I have to leave exactly
20 3:00, and so I will listen in, if this is still
21 going, from my cell phone. But the only thing I
22 wanted to add here is that we obviously didn't finish
23 with Mr. Hanley, but since we have had a chance to
24 observe him and talk to him, I hope that if we need
25 to ask more questions, we would find some way to do

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1 it by conference call at some point.

2 MR. MARSHALL: That would be acceptable to
3 us.

4 CHAIRWOMAN SHOWALTER: Only if that is the
5 only way to do it.

6 MR. BRENA: He is not available next week.

7 JUDGE WALLIS: Our more immediate question,
8 Mr. Brena, and I think formally we should excuse Mr.
9 Hanley from the stand at this point, subject to being
10 recalled, either in person or by telecommunications,
11 and get back to my question of you, which is what
12 would you like us to do at this point or what would
13 you like to happen?

14 MR. BRENA: Could I go off the record for a
15 moment, please?

16 JUDGE WALLIS: Yes.

17 (Recess taken.)

18 MR. BRENA: Thank you.

19 JUDGE WALLIS: Mr. Brena.

20 MR. BRENA: This is, I think, what's truly
21 meant by the horns of a dilemma, trying to figure out
22 how to sort your way through this, both for the
23 Commission and, frankly, for me, as well.

24 I'm asking the Commission to dismiss this
25 case outright. In the event the Commission doesn't

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1 do that, then I would like to renew my motion to
2 strike their updated rebuttal case consistent with
3 the motions filed by Staff, Tosco and Tesoro. And I
4 realize that the Commission may or may not decide
5 this matter now.

6 I would also request that if it's not
7 decided immediately, that Mrs. Hammer and Mr. Collins
8 not be allowed to leave this room until they've fully
9 explained their case to our experts. And I would ask
10 for that -- I mean, if the whole case is dismissed,
11 there's no reason to do that. If their updates are
12 struck, there's no reason to do that, but -- and
13 those are what -- I am asking for the case to be
14 dismissed and I have pending a motion for sanctions.

15 And in response to -- for prior violations,
16 we still do not have the throughput information that
17 we need to proceed with this case to demonstrate what
18 throughput is representative. I've asked the
19 Commission to hold that they have not demonstrated
20 that their proposed throughput is representative, and
21 I've asked for that factual finding because they have
22 not produced the discovery to allow me to show that
23 it's not representative. So if this case is not
24 dismissed outright, I would ask on the throughput
25 issue for that finding to be entered and I would ask

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1 for the motions to strike their rebuttal case to be
2 entered, and regardless, I do not -- I would ask that
3 their experts stay in the room until we can at least
4 begin to understand their rebuttal case.

5 COMMISSIONER HEMSTAD: If I can pursue that
6 last point. You mean to stay in the room and on the
7 record, continue the kind of inquiry that you have
8 currently been making?

9 MR. BRENA: I actually had in mind more of
10 an informal conference that -- I mean, you know, now
11 I'm not sure whether to -- whatever representations
12 are made in that conference, we have to rely upon in
13 the hearing, and so heaven forbid there be a dispute,
14 so perhaps with the court reporter present, if that
15 would be possible to do, and --

16 JUDGE WALLIS: Continue in the nature of a
17 deposition?

18 MR. BRENA: A deposition or informal
19 conference, and just let the experts sit and ask the
20 questions till they understand everything, because
21 this is just -- you know. And this -- and I'd like
22 to point out again, this is not the first instance.
23 I mean, we're in the middle of a case.

24 And with regard to -- well, so you just
25 asked me to say what it is I wanted, not why I wanted

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1 it, so that's what I'm asking for. I'm asking, just
2 to summarize, the case to be dismissed outright. If
3 it's not, I'd like to renew the motions to strike,
4 because it's just not fair to ask us to proceed on a
5 rebuttal case under these circumstances.

6 We've been working just tremendous hours.
7 We're in the middle of this case. We will continue
8 to do that if that's the only option that we have.
9 But it is not fair to ask the parties in an
10 adversarial process to continue with a case that's
11 been so updated and so changed with no support for
12 what those changes would be. It's one thing to
13 change a case and update a case and provide the work
14 papers and information so people can follow it a week
15 before, but I'd ask the Commissioners to bear in mind
16 that this rebuttal case is twice as big as that
17 direct case. I mean, this thing is -- and the
18 schedule was set up a week before hearing to do that.
19 This is one of the worst cases of sandbagging I've
20 ever seen.

21 So all I can say is we'll continue to do
22 the best we can, but this record and this
23 adjudication is becoming tainted by the repeated --
24 repeated violations of this Commission's procedures,
25 and how far do you want to reach to reach these

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1 issues. So I'd ask you throw the whole darn thing
2 out or let's simplify it so that it becomes a more
3 manageable proceeding. We've got all this rebuttal
4 testimony sitting out there that we've got to get
5 through. We don't have barely time to do it. It's
6 all updates, and we haven't been provided the
7 information we need to effectively participate in an
8 adversarial process. So please get rid of this case
9 and make it simple and manageable.

10 There should be no commitment on the part
11 of anybody in this room to continue to allow them to
12 do this. And regardless of what's selected, I would
13 like to not let anybody leave this room until we have
14 the answers, at long last, that we find the holy
15 grail.

16 JUDGE WALLIS: I'd like to ask --

17 MR. BRENA: And let me just add, on their
18 eighth change to their cost of service, their eighth
19 change to their cost of service, that's what we're
20 trying to understand here. So throw it out, please.
21 If you don't, get rid of this rebuttal case, narrow
22 the scope of this thing so it's manageable. They
23 haven't supported it, they didn't put on a direct
24 case, they haven't even given us work papers on what
25 they've done in their rebuttal case. You know, let

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1 them live on the direct case they filed. There's
2 nothing wrong with that.

3 JUDGE WALLIS: Mr. Finklea.

4 MR. FINKLEA: Your Honor, there would be a
5 tremendous -- there's been, by my client and everyone
6 else who's in this proceeding, a tremendous
7 investment already in the proceeding, which is part
8 of why Tosco has tried so hard to work with what
9 we've been provided. At this juncture, Tosco joins
10 Tesoro in requesting that the Commission dismiss the
11 case, and if the case is not to be dismissed, that
12 the rebuttal case be struck.

13 We filed motions to strike parts, and even
14 in that motion said then that we hadn't had enough
15 opportunity even to study the case to know what else
16 should be struck, but at this point, we believe the
17 whole rebuttal case should be struck if the case is
18 not to be dismissed.

19 JUDGE WALLIS: And Mr. Trotter.

20 MR. TROTTER: Thank you, Your Honor. I've
21 said it before. I haven't seen anything like this
22 case in my experience, and this is another episode.
23 I think the issue before the Commission is what to do
24 about the specific motion to compel -- or order to
25 compel, excuse me. You ordered the work papers

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1 compelled. I think it was pretty clear yesterday
2 what everyone meant by work papers. It meant the
3 underlying assumptions and calculations. It's also
4 pretty clear that's not what we got.

5 I don't think the term annualization is a
6 term of standard applicability. As Your Honor
7 indicated, is it nine months, with the result
8 multiplied by three, is it some trend, is it average
9 of monthly averages, is it first and last months
10 divided by two? I mean, it just all depends on what
11 you want to do. And is it a balance sheet account or
12 income statement account. And I guess what I come
13 down to is it's a pretty simple matter on the work
14 papers to explain that and just say this is how it
15 was annualized.

16 So I think it's pretty clear that there was
17 no response, no sufficient response to the order.
18 And the second part is the problem that we have now
19 is trying to tie it to their direct case, or is it
20 not even to be tied at all. And frankly, Mr. Collins
21 may be the one to answer that, and he hasn't had a
22 chance to do that.

23 So our Staff continues to be concerned
24 about how to evaluate the numbers that we've been
25 given. So what to do? And the remedies that have

1 been suggested are certainly a decisive -- decisive
2 one. We do have a deposition set for Monday. We've
3 all been working very hard, and so I don't have a --
4 I think your discretion in this case, under this
5 circumstance, where we are today, all things
6 considered, is about as wide as it's going to be in
7 anything that you do because of the nature of this
8 case from day one, and the sanctions that are pending
9 and so on.

10 So I had a chance to speak briefly with Mr.
11 Eckhardt before he left. He didn't give me a strong
12 recommendation, so I'll just leave it to your
13 discretion. But I think any remedy that has been
14 suggested could be defended.

15 JUDGE WALLIS: Mr. Marshall.

16 MR. MARSHALL: Yes, thank you, Your Honor.
17 We've gone through two examples with Ms. Hammer here.
18 The first one, I believe, was answered to the
19 satisfaction of people. The second one was on this
20 annualization question, how was annualization done.
21 And Your Honor asked the right question, did you just
22 take the average of the nine months and then put
23 those numbers in the next three months. The work
24 papers show exactly that that's the way it was done.

25 If you look at the actual papers that Mr.

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1 Collins has, it shows up in the work papers as the
2 average of the past nine months, and the plugged
3 numbers are in there, each number is exactly the
4 same, so there should be no question. If there is
5 any about the definition of annualization,
6 annualization was a simple mathematical calculation
7 with no further explanation required, just like I
8 subtracted A from B. The work paper supplied on this
9 shows that on its face, so that the question here,
10 based on one examination of Ms. Hammer on the
11 annualization, this figure, is what we're working
12 from at the moment.

13 I think that Mr. Collins and Ms. Hammer can
14 answer all the questions that anybody has about how
15 these numbers are derived. They're in the work
16 papers. I think we're rushing ahead based on one
17 calculation here that actually decreases the cost of
18 service by \$2.8 million. And the question is how did
19 that calculation get made. It's an annualized
20 number, The work papers themselves show what is
21 meant in that context by annualization.

22 So we're going from a small particular to a
23 large general conclusion that this company has not
24 provided the work papers necessary to make the
25 calculations to come up with an updated cost of

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1 service study.

2 Now, again, there's a lot of work papers
3 here and the people have said that they had an hour
4 to go through it. There's been representations that
5 all that's out there is raw data not tied to
6 anything, but that's not exactly what Mr. Colbo said.
7 He said they're still working through that. So I'm
8 afraid that the motion here that's being made is
9 being made for a purpose of trying to jump ahead and
10 make a lot of work papers where people have supplied
11 the background information.

12 With regard to the throughput, we've -- the
13 indications are that all that can be tied and that
14 the throughput, the power costs, those are clearly in
15 the work papers, so what we have here is we have an
16 allegation that maybe the work papers aren't
17 complete, without having anybody find a specific
18 example of where they are not complete in any regard
19 to being able to do the calculations.

20 So I would again object at this time to
21 having any kind of motion with regard to -- that Mr.
22 Brena has made. I don't object to the deposition
23 that's already scheduled for Ms. Hammer. It's
24 already scheduled for Monday. I think it would be a
25 good idea to have Mr. Collins here at the same time

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1 and either do it jointly on the record, with both of
2 those folks under oath, and if there's any question
3 after they've had further review of the work papers
4 that were given, those questions can be answered.

5 Mr. Collins did most of the calculations
6 based on the information that Ms. Hammer gave to him.
7 He would have been the appropriate person to ask of
8 these questions on how the exact calculations show up
9 in his work papers. That hasn't been done.

10 We're being taken from one particular and
11 generalized to an overall. You haven't supplied work
12 papers for adjustments to the basic case that was
13 filed, when, in actuality, the work papers are there.

14 Now, I can understand why Mr. Brena would
15 like to have this case removed. He would then -- we
16 would then have to file again and all of this
17 information would be refiled. It would delay Olympic
18 at least another seven months in getting any kind of
19 a rate increase. This company, again, is not only
20 under financial stress, but it's under stress for
21 having it perform its public service obligations.

22 We have had a compressed time schedule.
23 Again, a normal utility case would take 11 months.
24 This has been compressed to seven. It has been
25 rushed, and it's been rushed so that we could get to

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1 an end result here. But I think the right approach
2 would be to take the information that's given and
3 have the deposition go forward that's scheduled on
4 Monday with Ms. Hammer. If there's any question
5 about how these numbers were derived, they could be
6 answered by Ms. Hammer and Mr. Collins at that time.

7 Mr. Collins informs me he's confident that
8 all these can be explained from the work papers that
9 he's presented. Ms. Hammer is confident she can
10 explain where she provided the information from the
11 financial records of Olympic to Mr. Collins.

12 But, again, if we're going on one column of
13 annualization, that, I think we've definitively
14 shown, is apparent on the face of the work papers how
15 that calculation was done. It's no more than an
16 average of nine months and then three plugged numbers
17 in to the remaining months.

18 MR. BRENA: Your Honor, if I may, briefly.
19 First, it isn't about one single number or one single
20 issue. Ms. Collins was -- excuse me, Mrs. Hammer was
21 unable to support or show the calculation for any of
22 the updated amounts that she provided to Mr. Collins.
23 She was unable to show, with the exception that we
24 acknowledge of throughput and fuel and power any of
25 the calculations. All we were provided was raw data.

1 Now, the Commission should not allow this
2 rebuttal case to overrun this entire proceeding, and
3 that's what's happening here. An improperly filed
4 rebuttal case with a whole new case, a whole new cost
5 of service, whole new methodologies for calculation,
6 a huge case, twice the size of the direct case, was
7 put in a week before hearing. Now, with regard to
8 the work papers issue, they were due with the case.
9 That was the rule of the case. With regard to the
10 data request that we got yesterday, they said these
11 work papers didn't exist. Clearly, they said they
12 didn't exist, and that's where they were going to
13 stop. And we were going to go forward with this
14 hearing, and we had no work papers for Ms. Hammer and
15 we had a quarter-inch stack for Mr. Collins. Today
16 we come in with a seven-inch stack. So they not only
17 exist, but they're seven inches thick. And they
18 didn't produce them yesterday and they don't comply
19 with this Commission's clear order that indicated
20 exactly what it was that needed to be provided to the
21 parties today.

22 I said at the time I would request that
23 this proceeding be dismissed if those were not, in
24 fact, produced. They were not. Please do not allow
25 an unsupported rebuttal case that we're trying to

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1 learn in the middle of the proceeding to overrun this
2 proceeding. I mean, if you don't dismiss this
3 outright, and I think that you should, not only for
4 this, you also have pending motions for sanctions
5 that request dismissal. We cannot address in this
6 adjudication the representative nature for the
7 throughput.

8 Let me point out, if this case is dismissed
9 and they have to come back and file, we will be
10 closer to normal operations on this line. They will
11 be likely to put on their case on direct. They will
12 likely to have more normalized expenses, because
13 their expenses are dropping as time's moving forward,
14 as we're moving away from the Whatcom Creek incident.
15 The next rate case would be easier and we might have
16 actual discovery in it.

17 But if it is not dismissed, the appropriate
18 thing to do is to revisit this rebuttal case and to
19 say how many opportunities do you give a company that
20 won't support its case. How many opportunities do
21 you give them. All I asked for yesterday was an
22 opportunity to understand their eighth cost of
23 service study that they advanced in this case. That
24 isn't an unreasonable request for someone appearing
25 before you.

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1 So I would renew my request to you.
2 There's a clear pattern here. And I think it's the
3 appropriate thing to do, or I would not ask for it.

4 JUDGE WALLIS: Mr. Marshall, if the
5 Commission were to deny Mr. Brena's motions on
6 condition that Ms. Hammer and Mr. Collins remain to
7 respond to questions, would the company be willing to
8 support that?

9 MR. MARSHALL: Yes, Your Honor, we would.
10 Most definitely.

11 JUDGE WALLIS: Very well. We will be in
12 recess now and the Commissioners will deliberate on
13 the questions that have been posed.

14 MR. FINKLEA: Your Honor, could I make one
15 remark before we go into recess?

16 JUDGE WALLIS: Mr. Finklea.

17 MR. FINKLEA: As litigious as this
18 proceeding has become and as close as all the
19 participants are, I think, as the Commission
20 deliberates, one of the things you have to think
21 about is the precedent for intervenors and Staff and
22 Public Counsel, who's not here in this proceeding,
23 but normally is, if the utilities of this state get
24 the notion that they can do what this company did in
25 rebuttal. And as Chairwoman Showalter noted, counsel

1 for this utility is also counsel for Puget Sound
2 Energy, and if -- and I represent, as you know, some
3 of the largest end users of energy in this state.

4 If the precedent from this proceeding is
5 that rebuttal cases can be used to move the ball so
6 much that the only way to participate is literally to
7 have people Fed Exing things, working till 2:00 in
8 the morning, you wear down people to the point where
9 I guess the utilities win, because they wear us out.
10 And I think that Mr. Brena is so right that, if
11 nothing else, this rebuttal case must be struck.

12 JUDGE WALLIS: We're in recess.

13 (Recess taken.)

14 JUDGE WALLIS: Let's be back on the record,
15 please. The Commissioners have deliberated on the
16 issue that the parties have presented and have
17 determined to deny the motion to dismiss outright and
18 deny the motion to strike the updated rebuttal case,
19 and as a condition of doing so, will direct the
20 company to make Ms. Hammer and Mr. Collins available
21 today until the Staff and intervenor questions are
22 answered.

23 Ms. Hammer's deposition is established for
24 Monday morning at 9:00 a.m., and the Commission will
25 direct, if the parties so desire, that Mr. Collins be

1 available for deposition on Monday, as well.

2 In addition, the Commission wants to make
3 some observations on the situation. As the parties
4 have indicated, this is not a typical case. Olympic
5 is a different situation from almost any proceeding
6 that the Commission has faced in prior years in terms
7 of its situation. The Commissioners believe that we
8 are so far along and have so much invested in the
9 current process that it would be less burdensome on
10 the parties to take this process to conclusion than
11 it would be to dismiss and to start all over again,
12 even though it may be that the resolution of such a
13 case would not take the full seven months for
14 conclusion.

15 The Commissioners are concerned that they
16 have all of the information that is reasonably
17 available. They are concerned that the public
18 interest demands that they proceed to a timely but
19 final result in the matters that the parties are
20 raising and in settling the policy issues that the
21 parties have raised, as well.

22 The Commissioners found the surrebuttal
23 today to be valuable in its addition to the record
24 and believe that it has demonstrated that the parties
25 are capable of responding to the challenges and that

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1 the Commissioners are justified in their belief that
2 the result, even given the challenges that the
3 Commission faces and that the parties face will
4 provide an adequate record for appeal, will meet the
5 parties' needs, all of the parties' need for the due
6 process of law, and that the result will be
7 consistent with the public interest. So do the
8 Commissioners have any additional comments at this
9 time?

10 COMMISSIONER HEMSTAD: No.

11 COMMISSIONER OSHIE: No.

12 JUDGE WALLIS: Very well. With that, we
13 will close the record for today. I have the Collins
14 Data Change Map, which I think, because it has been
15 referenced, it would be appropriate to enter into the
16 record. And I will ask the parties later in the
17 proceeding for their guidance as to an appropriate
18 sponsor and an appropriate number to assign.

19 And with that, I believe that our next
20 meeting in hearing will be at 9:30 on Tuesday
21 morning. I have asked the parties to be available at
22 9:00 for administrative purposes. Is there anything
23 further before we adjourn?

24 MR. BRENA: Just some clarification of the
25 process that's to happen this evening. I mean, it

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1 would be my preference, and Bob Colbo's here and Gary
2 Grasso is here and everyone's here, just to let the
3 experts sit and talk until they're all comfortable.
4 I don't -- I wouldn't propose to impose a formal
5 question and answer. Whatever answers we get, I can
6 formalize in the deposition of Mrs. Hammer and Mr.
7 Collins on Monday.

8 JUDGE WALLIS: Very well. The court
9 reporter has advised me that she has a commitment
10 this evening, based upon our projection that we would
11 conclude by 3:00 p.m. However, I have also shared
12 with her word that we heard from the Chairwoman that
13 traffic is stopped dead between here and the
14 Seattle-Tacoma International Airport, and it may be
15 as much of a challenge for our court reporter to get
16 to her obligation as it is being for our Chairwoman
17 to get to her airplane to meet her obligation in
18 service to the Commission.

19 So with that, let's conclude today's
20 session. I want to thank you all for the quality of
21 the presentations that were made today, and today's
22 session is adjourned.

23 (Proceedings adjourned at 3:48 p.m.)

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