

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3	WASHINGTON UTILITIES AND)Docket No. TO-011472
	TRANSPORTATION COMMISSION,)Volume XXVI
4	Complainant,)Pages 2953-3092
)
5	v.)
)
6	OLYMPIC PIPE LINE COMPANY,)
	INC.,)
7	Respondent.)
	_____)

8
9
10 A hearing in the above matter was
11 held on June 25, 2002, at 3:55 p.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 Timothy Leyh, Attorney at Law, 999 3rd Avenue, 44th
20 Floor, Seattle, Washington 98104, William H. Beaver,
Attorney at Law, 1201 3rd Avenue, Suite 2900, Seattle,
Washington 98101.

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

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

25 Diana Austin, CCR
Court Reporter

2954

1 THE COMMISSION, by Donald Trotter
2 and Lisa Watson, Assistant Attorneys General, 1400
3 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
4 Washington 98504-0128.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2955

1

2

INDEX OF WITNESSES

3

4

WITNESS:

PAGE

5

6

ROBERT C. BATCH

7

Cross-Examination by Mr. Finklea

2957

8

Cross-Examination by Mr. Brena

2969

9

Cross-Examination by Chairwoman Showalter

3048

10

Cross-Examination by Commissioner Oshie

3063

11

Cross-Examination by Mr. Trotter

3067

12

Cross-Examination by Mr. Brena

3068

13

Redirect Examination by Mr. Leyh

3075

14

15

16

17

18

19

20

21

22

23

24

25

2956

1

2

INDEX OF EXHIBITS

3

4 EXHIBIT: MARKED: ADMITTED:

5 601-T 2969

6 602 2969

7 610 through 623 2969

8 624 and 625 3092

9 626 3092

10 626-H 2969

11 629 3092

12 630 2969

13 638 and 639 3092

14 641 3092

15 643 3092

16 649 and 650 3092

17 654 3092

18 664 3092

19 667 3092

20

21

22

23

24

25

2957

1 JUDGE WALLIS: Very well, let's go back on
2 the record, please, following an afternoon recess.

3 .he (BATCH - CROSS BY FINKLEA)

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

5 (continued)

6 BY MR. FINKLEA:

7 Q. Mr. Batch, prior to the recess, we were
8 starting to talk about visual inspections, and I think,
9 trying to sum this up a little bit, once visual
10 inspections of the pipeline system had been completed,
11 how often are visual inspections needed to be
12 conducted?

13 A. It's an ongoing process as long as you have
14 an ongoing repair process, which is what we have. I
15 mean, every year, we're running inspection tools, we're
16 identifying anomalies, we're doing digs, we're visually
17 inspecting the pipeline, and we are making repairs.
18 And, to my knowledge, that started when we became the
19 operator in July of 2000, and it will continue for the
20 foreseeable future.

21 Q. Is it correct, though, to conclude that the
22 level of visual inspections during the test period
23 means that the test period comes off of the time the
24 first accident occurred and the seam failure occurred
25 is -- has been more aggressive than would be the case

2958

1 once you get past the period that you've been in
2 following the accident and the seam failures?

3 A. Again, that was a fairly long question. I'm
4 not exactly sure what the question entailed. If you're
5 asking me if I know how the rate treatment for these
6 inspections are being handled, again, I would have to
7 defer that to either Cindy Hammer or Brett Collins.

8 Q. I understood that you were deferring rate
9 treatment to the others.

10 What I'm asking is in the test period, what
11 is your test period in this case?

12 A. Again, I would have to defer those issues to
13 Mr. Collins or Ms. Hammer.

14 Q. Well, I'm just starting with a very basic
15 premise, here. What is the test period that Olympic is
16 using in this proceeding?

17 A. Again, the concept test period and base
18 period, I've had some conversations with folks who are
19 working those aspects of the case. But I have not been
20 personally involved in those decisions or calculations
21 and would defer to them.

22 Q. So is it your testimony that you don't know
23 if the level of visual inspections that occurred during
24 the test period are usual or unusually active compared
25 to how one would maintain a pipeline that had not gone

2959

1 through the two incidents, the Whatcom Creek incident
2 and then the seam failure?

3 MR. LEYH: Your Honor, I'm going to object.
4 He's indicated that he doesn't know specifically what
5 the test period is. Counsel is using it in this
6 proceeding. I think that if counsel were to ask about
7 a specific period of time, the witness might be able to
8 answer that question.

9 JUDGE WALLIS: Mr. Finklea, I agree that the
10 witness, I think, twice has indicated he doesn't know
11 what the test period is.

12 Q. Well, let's use the calendar year 2001 for
13 the question that I just posed, and the question,
14 again, is would the level of visual inspections of your
15 system in the year 2001 be greater than would normally
16 occur if your pipeline system had not just recently
17 experienced the Whatcom Creek incident and the seam
18 failure?

19 A. I think the level of inspection -- the level
20 of visual inspections and the level of mechanical
21 inspections are appropriate for this pipeline,
22 considering the history of this pipeline. So if you're
23 asking me did the fact that Whatcom Creek happened and
24 the seam failure happened require us to take a closer
25 look at this pipeline, I think the answer is yes,

2960

1 primarily the seam failure, which put into question all
2 of the pre-1970 ERW pipe that was in our system.

3 Q. Could you turn to lines 10 through 12 of
4 page 12. Again, I'm on -- what's been marked for
5 identification as Exhibit 611, and there you reference
6 the hydrostatic test of 16-inch line from Ferndale to
7 Renton.

8 A. Yes.

9 Q. Is that test scheduled to be repeated any
10 time soon?

11 A. On the 16-inch pipeline?

12 Q. Yes.

13 A. Not to my knowledge. It's not currently on
14 the schedule, but it's just completed an intensive
15 hydro test. I passed the hydro test, which is
16 indicative to us that that line segment is in good
17 shape from an integrity standpoint, and I don't have
18 any plans to hydro test that any time soon. But
19 conditions could change. Regulatory agencies might
20 have different opinions about that.

21 Q. And then on lines 13 through 16 of page 12,
22 there's also discussion of the valve effectiveness
23 study. And the same question: Is that schedule to be
24 repeated any time soon?

25 A. Again, that's an ongoing process to identify

2961

1 the low points in the system where drain down could
2 occur, you know, in the effect of another release of
3 Olympic, and we're deciding what kind of valves are
4 needed along the entire pipeline system in order to
5 prevent and minimize the outage of hydrocarbon in the
6 future. And, again, that's an ongoing process to put
7 probably 16 to 20 new valves into the system over a
8 long period of time, several years.

9 Q. If we could turn next to your rebuttal
10 testimony, which has been marked for identification as
11 601-T, and that is the testimony -- essentially it's
12 the testimony that doesn't have the line number, but it
13 does have pages.

14 My first question -- go to the bottom of
15 page 2 of your rebuttal.

16 A. Yes.

17 Q. Is it your belief that the prior operator
18 failed to make adequate safety-related and
19 maintenance-related investments in the existing system
20 throughout the mid and late 1990s?

21 A. I really don't have an opinion about what
22 the prior operator did or didn't do. My focus has
23 always been looking point forward since BP became the
24 operator in July of 2000 and looking at the safety
25 requirements necessary to get the line restarted and

2962

1 then to get it up to 100 percent. It's been my
2 objective to implement BP Pipe Line's processes within
3 Olympic. It's my objective to make sure we bring the
4 system up to the standards that we feel comfortable in
5 operating it. But I'm really not in a position to
6 compare our operation with the prior operator.

7 Q. I guess I'm asking in a little different
8 way, if I could use the analogy of buying a used car.
9 When you buy a used car, after you own it for a while,
10 you generally have an opinion of whether the prior
11 owner did a good job or a bad job of maintaining the
12 car.

13 Having now owned and operated this pipeline,
14 do you have an opinion on what the maintenance status
15 of the pipeline was at the time that you took it over?

16 A. Well, speaking from personal experience, I
17 have never purchased a used car. But to the extent
18 that you're asking me was this pipeline in good shape
19 or not, this pipeline, as a result of a hydro test that
20 we did on the northern segment, demonstrated that there
21 was a seam problem with the pipeline. The regulatory
22 agencies, you know, scrutinized that pretty heavily and
23 required Olympic to take a much harder look at the
24 system than it had in the past.

25 So to the extent that we are making all of

2963

1 these repairs and capital improvements now is just a
2 reflection of having put a lot closer scrutiny on the
3 system.

4 Q. If we could next turn to page 5 of Exhibit
5 601-T in approximately the middle of the page.

6 A. What page was that?

7 Q. Page 5.

8 A. Again, is this the rebuttal testimony?

9 Q. Yes, this is rebuttal 601-T, and also
10 originally marked for identification as BCB32-T.

11 A. Yes. Okay.

12 Q. You make reference there to -- posing a
13 question to Mr. Talley about additional investment.
14 What did you mean by "additional" when you posed the
15 question to Mr. Talley of how much would have to be cut
16 if, quote, "we could not obtain additional tariff
17 revenues"?

18 A. My premise was if we do not -- are not
19 granted a tariff increase and BP chooses not to loan
20 Olympic any more money, what would Olympic have to do
21 financially. And that was the question I posed to
22 Mr. Talley.

23 Q. Again, focusing on the word "additional,"
24 did you mean additional relative to the level that the
25 rates were prior to the interim rate increase?

2964

1 A. I think additional referred to having
2 tariffs higher than we have them today.

3 Q. So you're referring to additional -- to over
4 and above the interim increase level of 24 percent
5 approximately?

6 A. Yes, I believe that's true.

7 Q. Have you asked anyone at Olympic to
8 calculate the additional tariff revenues that would
9 result from the additional volumes that your company
10 would expect to experience once the pipeline is
11 operating at 100 percent pressure?

12 A. I'm sorry, I was just thinking of the answer
13 to that last question, and I wanted to add something to
14 that answer. Would that be okay?

15 Q. Yes.

16 A. Again, to the extent that the 24 percent
17 tariff increase was refundable, I kind of put that also
18 in the context of the fact that we would have to refund
19 that amount as well as the amount we would receive from
20 the FERC.

21 Q. So does that change your answer to the
22 question of by "additional," did you mean above the
23 interim increase allowed by this commission or above
24 your current tariff rate?

25 A. Current tariff rate.

2965

1 Q. Okay. Then, switching gears to the question
2 that I posed just a second ago --

3 CHAIRWOMAN SHOWALTER: What does the witness
4 mean by "current tariff rate"? Do you mean the tariff
5 rate in effect a year ago or do you mean the tariff
6 rate with the interim?

7 THE WITNESS: The tariff rate prior to the
8 interim increase.

9 MR. FINKLEA: That's how I took the answer.

10 Q. Still sticking with the middle of page 5 of
11 your rebuttal. Have you asked anyone at Olympic to
12 calculate what additional tariff revenues would result
13 from the additional volume that your company would
14 experience once the pipeline resumes 100 percent
15 operating pressure?

16 A. Not to my recollection have I asked anyone
17 to do that calculation. That is not to say, however,
18 the calculation hasn't been done by someone.

19 Q. How much additional volume would you expect?
20 Do you know that?

21 A. How much additional volume?

22 Q. You would expect to experience, assuming two
23 things, that your pipeline goes back to 100 percent
24 operating pressure and that your pipeline has
25 effectively 100 percent load factor as we would put it

2966

1 in other industry terms?

2 A. I think based on historical operation, we're
3 currently at 280,000 barrels a day or 290-, somewhere
4 in there. The number that I've seen is, like, 318-,
5 320-, thereabouts, once the system returned to
6 100 percent.

7 Q. But you don't know if the additional revenue
8 is from that incremental calculation?

9 A. Not off the top of my head, no.

10 Q. Has Olympic done some type of analysis to
11 determine if the incremental revenues exceed the
12 incremental costs of bringing the line up to 100
13 percent from 80 percent?

14 A. Again, I've not requested that to be made.
15 That's not to say that the calculation hasn't been
16 done. I think I would defer that probably to either
17 Cindy Hammer or Howard Fox.

18 Q. Is it your opinion that the benefits of the
19 incremental investments outweigh the costs of the -- of
20 making that improvement to the system --

21 A. I think --

22 Q. -- from a revenue standpoint?

23 A. To get to 100 percent pressure?

24 Q. Yes.

25 A. I think we have every intent -- with proper

2967

1 rates and with the ability to get additional loans, I
2 think we have every intent to fulfill and complete our
3 capital program to get the system to 100 percent. It's
4 just a matter of -- it's kind of a cash flow issue. If
5 you don't have the money to invest on capital projects,
6 it's hard to do that.

7 Q. This is one area where the investment also
8 brings incremental revenue, correct?

9 A. Eventually, but you need money to be able to
10 get there. You need to have the loans to be able to
11 complete the capital project in order to get the rates
12 up.

13 Q. Could we turn to the top of page 7. In
14 there you discuss the decision by BP to purchase the
15 GATX shares. That purchase occurred in July of 2000?

16 A. No. In July of 2000, BP Pipe Lines began
17 operating Olympic. In September of 2000, BP purchased
18 the GATX shares.

19 Q. So the purchase of the GATX shares occurred
20 both after the Whatcom Creek incident and after the
21 seam test failure, is that correct, chronologically?

22 A. Yeah, I guess over a year after.

23 Q. When BP purchased the GATX shares of
24 Olympic, did BP make allowances or adjustments for the
25 financial and operating health of Olympic at that time?

2968

1 A. I don't know.

2 MR. LEYH: I object, your Honor. I don't
3 believe the foundation has been laid for any of these
4 questions about BP's investment decision.

5 MR. FINKLEA: Your Honor, the witness has
6 discussed specifically the decision by BP to purchase
7 GATX in discussions in his testimony, what was
8 purchased and was, I believe, the president of Olympic
9 at the time. I'm just inquiring into the witness'
10 knowledge of what went into that decision.

11 JUDGE WALLIS: It appears to be within the
12 scope. The witness -- if the witness does not know,
13 he's certainly authorized to so state it.

14 THE WITNESS: I do not know the answer to
15 your question.

16 Q. Do you recall seeing any analysis of what
17 the financial health of the company was at the time you
18 were making those purchases of the GATX shares?

19 A. No. I was actually just coming on board
20 after Labor Day, September of 2000.

21 MR. FINKLEA: I have no further questions.

22 JUDGE WALLIS: Mr. Brena.

23 MR. LEYH: Your Honor, I wonder if at this
24 point I could offer the exhibits attached to
25 Mr. Batch's testimony into the record.

2969

1 JUDGE WALLIS: Certainly.

2 Is there objection?

3 MR. BRENA: Without objection.

4 And I could also offer 626 and 630, the

5 exhibits that I used in the cross-examination of

6 Mr. Peck.

7 JUDGE WALLIS: Is there objection?

8 MR. LEYH: No objection, your Honor.

9 MR. FINKLEA: I have no objection to either
10 of those.

11 JUDGE WALLIS: Very well, those documents
12 are received in evidence, that is specifically 601-T,
13 602, 610 through 623.

14 MR. LEYH: Correct.

15 JUDGE WALLIS: And then 626-HC and 630 are
16 all received in evidence.

17 MR. BRENA: May I proceed, your Honor?

18 JUDGE WALLIS: Please do.

19 .HE (BATCH - CROSS BY BRENA)

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

21 BY MR. BRENA:

22 Q. Good afternoon, Mr. Batch.

23 A. Good afternoon.

24 Q. When you were hired on as president of
25 Olympic, had you ever been president of a pipeline

2970

1 before?

2 A. No. This was my first opportunity to be
3 president of a pipeline, although I was president of an
4 AMOCO remediation company prior to coming to Olympic.

5 Q. Have you ever been involved in the
6 operational aspect of a pipeline before?

7 A. Not to any great extent, no. But I have
8 people that are working for me that certainly are
9 capable in that area.

10 Q. Have you ever been involved in implementing
11 any sort of financial or accounting control system for
12 a pipeline before?

13 A. No.

14 Q. Have you ever been in a rate case before?

15 A. The interim case, yes.

16 Q. Other than the existing proceeding.

17 A. No, this is --

18 CHAIRWOMAN SHOWALTER: Mr. Brena, can you
19 get the mike a little closer to you?

20 MR. BRENA: Is that better?

21 CHAIRWOMAN SHOWALTER: If you can get it
22 closer to your mouth or speak up.

23 MR. BRENA: Okay. I will do all of the
24 above.

25 Q. Have you ever been involved in any sort of

2971

1 capital budgeting process based on the capital value
2 model or otherwise?

3 A. Prior to this position?

4 Q. Correct.

5 A. On occasion, but not routinely.

6 Q. Do you consider yourself an expert in
7 financial accounting matters?

8 A. Absolutely not.

9 Q. In regulatory reporting matters?

10 A. Depends on how you define "regulatory."

11 Q. Reports that would be filed with this
12 commission or with the FERC.

13 A. No, I am not an expert at that.

14 Q. Regulatory rate-making accounting principles
15 or matters?

16 A. No, I'm not an expert at that.

17 Q. If I were to ask you to define what a
18 capital expenditure was in the chart of accounts for
19 FERC, could you do that for me?

20 A. I can tell you what a capital expenditure is
21 but not as you relate it to FERC, no.

22 Q. So your response to the term "capital
23 expenditure" would be within the meaning of financial
24 reporting?

25 A. It would be in the meaning of hardware

2972

1 that's purchased and invested, yes.

2 Q. It would not be within the context of rate
3 making?

4 A. No.

5 Q. Would the same be true if I asked you to
6 define a nonrecurring or recurring expense?

7 A. I might have a better shot at that.

8 Q. Do you know how a nonrecurring expense is
9 defined in the FERC chart of accounts?

10 A. No, I do not.

11 Q. How many shippers does Olympic have?

12 A. Right now I think it's somewhere between 19
13 and 21 active shippers, and I think, at least in recent
14 times, as many as 29 shippers. And I believe someone
15 told me that we've had as many as 70 shippers on the
16 line since its inception.

17 Q. Are you familiar with the process that
18 Olympic goes through in order to support capital
19 projects?

20 A. At a high level, yeah.

21 Q. Do you have Exhibit 606 in front of you, and
22 if I could direct you to page 4, where it says,
23 "Informal economic study for Olympic project." And let
24 me just ask you some general questions first.

25 Isn't it true that your operator agreement

2973

1 requires you to set forward an economic study for the
2 board of director on underlying capital projects?

3 A. I believe the operating agreement requires
4 some form of study to be prepared for the board of
5 directors. How you define "economic project" could be
6 debated.

7 Q. And is Exhibit 606 substantively an example
8 of the type of economic study that Olympic does that
9 supports capital projects?

10 A. I'm not familiar with this particular
11 exhibit or example. It's a level of detail that I
12 generally don't get involved with.

13 Q. So you're not able to testify with regard to
14 what the scope of the economic study supporting a
15 capital project for Olympic is? Did I understand you
16 correctly?

17 A. No, that's not what I said.

18 Q. Okay. Would you please --

19 A. What I said --

20 Q. -- clarify your answer for me, please.

21 A. You directed me to page 5 --

22 Q. Okay.

23 A. -- of this exhibit that is a very detailed
24 exhibit, and I could not speak to that in the context
25 of the detail.

2974

1 Q. Do you understand at a global level that
2 regulators look very closely at affiliated
3 transactions?

4 A. I could appreciate the statement, but do I
5 understand that in its entirety, no.

6 Q. You know that they do, however?

7 A. I would imagine that they would be
8 interested in that.

9 Q. And why would you -- why would you imagine
10 that?

11 A. Just seems like something that regulators
12 would be interested in.

13 Q. The management contract that BP Pipe Line
14 currently has in place, has that management contract
15 ever been submitted to this Commission for approval as
16 an affiliated contract?

17 A. I don't know the answer to that. In fact, I
18 think there's some discussion, and there's been some
19 discovery questions with regards to whether that was
20 submitted for approval or not. Certainly if it wasn't,
21 it was clearly an oversight. And, you know, I think we
22 could submit it tomorrow for the Commission's approval.

23 But I don't know the answer to that
24 question. I was not here when this would have happened
25 or would not have happened.

2975

1 Q. So you simply don't know whether or not that
2 contract has been submitted to this Commission for its
3 review and approval?

4 A. I don't know. Like I said, I thought I saw
5 some discovery information as well as issue in my
6 testimony that kind of questioned whether it was or
7 wasn't. And I'm saying that if it was not, then it was
8 clearly an oversight that we should get correct.

9 Q. Could I direct you to Exhibit 626, please.

10 MR. BRENA: And I'll note, for the record,
11 this is a highly confidential document. I will intend
12 to ask my questions to avoid that and will try not to
13 take hearing time with confidentiality matters. But
14 with regard to all of these exhibits, Tesoro would like
15 confidentiality waived.

16 And can we bring it up as a procedural
17 matter?

18 JUDGE WALLIS: Is the company in a position
19 the waive confidentiality of the entire document having
20 done so on pages 3 and 5?

21 MR. LEYH: No, I don't believe so, your
22 Honor. I'd appreciate it if counsel could avoid the
23 issue in his questioning.

24 JUDGE WALLIS: Very well.

25 MR. BRENA: I will attempt to do that and

2976

1 then perhaps we can take this outside of the
2 Commission's presence.

3 JUDGE WALLIS: Yes.

4 Q. I'm looking at page 8 of the exhibit, 8 of
5 11 in the upper right-hand corner.

6 A. Is this the board meeting minutes dated
7 June the 5th, 2000?

8 Q. June 16th, if you look in the upper
9 right-hand corner, the exhibit is marked Tesoro Exhibit
10 Number and it's page 8 of 11.

11 A. Okay.

12 Q. And, perhaps, is it fair to say that the
13 only operator bids that were considered were owner
14 operators?

15 A. Again, I wasn't here at the time, but my
16 understanding is that the owner operators were given
17 the opportunity to bid. In fact, I'm not sure. It may
18 have, in fact, been an open bid beyond that. But only
19 two of the owner operators chose to bid.

20 Q. Would you take a look at the full first
21 paragraph in page 8 without referring to it
22 specifically and review that language.

23 MR. BRENA: And can I ask for a waiver of
24 confidentiality of that paragraph, please?

25 MR. LEYH: Yes, your Honor, I believe that

2977

1 page has been waived.

2 JUDGE WALLIS: Very well.

3 Q. It says, "Following discussion, the board
4 agreed that bid submittals from either an owner or its
5 parent company or a wholly owned subsidiary of the
6 parent, in the event the owner is a wholly owned
7 subsidiary, were acceptable."

8 Do you see that?

9 A. I see that paragraph, yes.

10 Q. And then it goes on, and all that they
11 considered in the board was Equilon and BP's proposals;
12 is that correct?

13 A. Again, I don't know whether it's correct or
14 not. What I know about this subject is just what
15 you're pointing to me here on this exhibit.

16 MR. BRENA: If I could have just a moment.

17 Q. Could I direct your attention now to
18 Exhibit 627, specifically page 3 of the exhibit,
19 entitled, "Olympic Pipe Line Company Bid Information
20 Management Fee."

21 Are you familiar with the composition of the
22 management fee?

23 A. Not in detail. I think Ms. Cindy Hammer or
24 Mr. Howard Fox are in a much better position to talk
25 about the detail of the management fee.

2978

1 Q. Your suggestion was Mr. Collins may know
2 something about these underlying numbers.

3 A. No, I said Ms. Hammer or Mr. Fox.

4 Q. Okay, thank you.

5 Are you in a position to respond to
6 questions with regard to Olympic's existing management
7 fee or not?

8 A. At a very high level.

9 Q. At a very high level, would you show me in
10 your case where you have demonstrated that these
11 management fees are reasonable in amount?

12 A. Now, you're referring to the case and the
13 justification for the case, and I'm not the right
14 person to make those arguments. But we do have people
15 here that can answer your question, Mr. Brena.

16 Q. Are you aware of anywhere in the case -- can
17 you direct me to anywhere in the case, where Olympic
18 has attempted to demonstrate that the management fee
19 that it pays to BP Pipe Lines is reasonable an amount?

20 A. Again, I think Ms. Hammer or Mr. Fox would
21 be the best people to ask that question of.

22 Q. And I appreciate your answer, but my
23 question is are you able to direct me or not?

24 MR. LEYH: I'm going to object, your Honor.
25 This is the third time through on this same question.

2979

1 JUDGE WALLIS: It is, and I don't believe
2 the witness has yet given a yes-or-no answer.

3 THE WITNESS: No.

4 MR. BRENA: Thank you.

5 JUDGE WALLIS: Again, I will ask Mr. Batch
6 to please listen carefully to the question. If it
7 calls for a yes-or-no answer and if you're able to
8 answer "yes" or "no" to it, then please at least begin
9 your response with that answer.

10 THE WITNESS: Yes, sir.

11 Q. And I'll direct you to Exhibit 624,
12 specifically page 2 of 2. Do you have that --

13 A. Yes.

14 Q. Now, is it your understanding that Olympic
15 Pipe Line has paid to BP roughly \$21 million in the
16 year 2000 and 2001 in affiliated payments?

17 A. It's my understanding that when BP became
18 the operator of Olympic in July of 2000, we did not
19 have a very smooth transition with Equilon, the prior
20 operator. We did not get a lot of cooperation with
21 Equilon, the prior operator. And they removed a lot of
22 their systems, financial systems, computer system, et
23 cetera.

24 And when BP came in, we were -- Olympic was
25 without a financial system and had to use both of BP's

2980

1 financial system for a number of transactions,
2 including paying contractors who hadn't been paid for a
3 long time. And in the context of that, BP was paying
4 Olympic's bills for it, and at some point, Olympic was
5 paying BP back for those services, for those
6 expenditures.

7 Q. And that response really goes only to the
8 first line of this exhibit accounts payable items
9 billed to Olympic from BP, correct?

10 A. Yes.

11 Q. And so that's roughly \$12.3 million,
12 correct?

13 A. Between 2000 and 2001?

14 Q. Yes.

15 A. Yes.

16 Q. Now, can you direct me anywhere in the case
17 that would show me that those amounts that BP paid and
18 were reimbursed by Olympic were reasonable in amount?

19 A. Well, I'm not exactly sure what you mean by
20 "reasonable." If you're referring to contractors'
21 bills for pipeline repairs and inspection that weren't
22 paid and that we paid them, to me that would be a
23 reasonable amount because we owe -- Olympic owed that
24 money to those contractors.

25 Q. Are you in a position to say that \$12.3

2981

1 million was all to third-party vendors?

2 A. I'd say some of it was.

3 Q. Do you know or don't you know how much of
4 this \$13.3 million was to third-party vendors?

5 A. Again, that is a level of detail that
6 Mr. Fox or Ms. Hammer is probably best able to answer.

7 Q. And I appreciate your answer, again. But
8 I'm asking you if you know whether or not the \$13.3
9 million, what portion of it, if any, went to
10 third-party vendors?

11 A. I do not have the detail for that number.

12 Q. Could part of that have been paid to
13 companies who are affiliated with BP?

14 A. Again, I don't know the answer to your
15 question.

16 Q. With regard to the second line, the \$5.1
17 million payroll paid by BP, payable to Olympic, do you
18 know -- can you point me to anywhere in your case where
19 there is a demonstration that those payments were
20 reasonable in amount?

21 A. For payroll?

22 Q. Yes.

23 A. Those are basically our employee costs for
24 operating this pipeline.

25 Q. Exactly.

2982

1 A. I believe they're correct. Again, if you
2 want to get down to the level of detail of that, we
3 have folks that can work at that level of detail.

4 Q. I understand that you believe that they're
5 correct. My question was: Is there anywhere in your
6 case where you demonstrate that the amounts that
7 Olympic is paying to BP in employee costs are
8 reasonable in amount?

9 A. Again, I believe they're reasonable because
10 I think we need the people that we have to operate the
11 pipeline safely. I personally cannot point you to the
12 case or the case details, but we have folks here that
13 can.

14 Q. Thank you, and they will have an opportunity
15 to.

16 The transition cost, management fees, this
17 is the cost of changing operators?

18 A. Yes, I believe so.

19 Q. Okay. Does it seem like it's prudent in the
20 middle of a financially distressful situation to change
21 operators?

22 A. Considering the situation with Olympic at
23 the time -- and again, I wasn't here, so I can't really
24 comment firsthand, but considering the situation around
25 Olympic, I think it was not only prudent but it was

2983

1 absolutely necessary.

2 Q. Why do you say that?

3 A. I say that because of the fire storm that
4 was going on at the time when BP came in.

5 Q. It was my understanding of your answers
6 previously that you had no opinion with regard to how
7 the other operator had performed.

8 A. I don't have any specific detail or
9 knowledge of how the other operator performed.

10 Q. Why change operators unless you have the
11 opinion that the prior operator is not doing the job
12 right?

13 A. It became clear -- and again, I was not
14 involved with the decision, but Equilon was not meeting
15 the public's interest in operating a safe pipeline to
16 the satisfaction of the public, to the satisfaction of
17 the regulators, and I think the decision to change
18 operators was a prudent one.

19 Q. Do you know how much more Olympic has to pay
20 to BP than it was paying to its prior operator?

21 A. Not off the top of my head, no.

22 Q. You know that it was more, though, don't
23 you?

24 A. I don't know that but -- I don't know that.

25 Q. Okay. I'd direct your attention to

2984

1 Exhibit 629, please. Is it your understanding that
2 Exhibit 629 is the prior management agreement?

3 A. Looks like it.

4 Q. I'd direct your attention to the last page.
5 Can you tell me how much the management fee was under
6 that management contract?

7 A. I don't see a category titled "management
8 fee" on the last page.

9 Q. Do you see "TPLI'S monthly charge to operate
10 and annual total" on the chart on the last page of the
11 Exhibit OPL -- it's Bates stamped OPL 1132359.

12 A. Yes.

13 Q. Is that your understanding of the annual
14 amount of the management fee under the prior contract?

15 MR. LEYH: Your Honor, I'm going to object
16 that the document speaks for itself. I think the
17 witness has indicated that he wasn't involved in the
18 prior management or operating agreement, and there
19 hasn't been any foundation laid that he's got any
20 understanding distinct from what's in the document.

21 MR. BRENA: If he doesn't know, he can say
22 so, and I'll move on, your Honor.

23 THE WITNESS: I don't know.

24 MR. BRENA: I'd like to draw your attention
25 to 625-HC, and again, this is a highly confidential

2985

1 document, and if the company is not in a position to
2 waive it at this time, then I would take it up as a
3 procedural matter outside the presence of the
4 Commission.

5 MR. LEYH: I think the company is not in a
6 position to waive confidentiality, and I also think
7 that counsel probably can frame questions to avoid
8 that.

9 Q. I'd like to direct your attention to page 3
10 of 625-HC, and I would like to just pose --

11 A. I'm sorry, I don't have a page 3.

12 Q. Page 3 of 14, upper right-hand corner. I'm
13 referring to exhibit numbers on 625-HC.

14 MR. LEYH: Your Honor, may I approach the
15 witness to help him find the document?

16 THE WITNESS: I've got it, the green pages
17 here?

18 Q. Yes.

19 A. What's the page number?

20 Q. Page 3.

21 MR. BRENA: And, your Honor, perhaps I'm
22 puzzled. I would ask for a waiver of this page. It's
23 hard for me to imagine what would be highly
24 confidential about the salaries by category that's used
25 in developing a rate for a public service company in

2986

1 the State of Washington. So either I would like the
2 reason articulated for maintaining it or I'd like it
3 waived.

4 JUDGE WALLIS: Mr. Leyh.

5 MR. LEYH: Well, the reason that we have
6 designated this as confidential is that it is both
7 potentially harmful as -- from a competitive standpoint
8 if the information is widely disseminated, and it also
9 implicates the privacy of the various employees who are
10 included in these categories, some of which contain a
11 very small number of employees, so it would be possible
12 to determine, you know, approximately what their
13 salaries were.

14 And I frankly don't see any need to get into
15 the specific line detail with the witness who's already
16 testified numerous times that he doesn't have that kind
17 of information.

18 MR. BRENA: It's very hard for me to
19 continue to frame cross at some point without getting
20 into the specifics. I don't know what this
21 Commission's policy is with regard to public service
22 company salaries. Is that -- I mean, I don't see any
23 reason in the world why that would be competitively
24 sensitive.

25 I will try and frame my questions that way

2987

1 if that's the Commission's request, but this is just
2 stuff that ought to be the fodder of any rate case.

3 JUDGE WALLIS: Mr. Leyh, can you cite the
4 authority under which you're claiming that this
5 document and the contents thereof are confidential?

6 MR. LEYH: No, I cannot, your Honor.
7 However, I would note that there is a protective order
8 in place, apparently, according to the face of the
9 document with the FERC at this time.

10 MR. BEAVER: Your Honor, these documents all are
11 stamped with the FERC notification on the bottom. I
12 don't frankly know if these were produced pursuant to
13 UTC discovery request or FERC discovery request.

14 JUDGE WALLIS: Well, there are actually two
15 protective orders in place for confidential and highly
16 confidential materials before the Commission.

17 Do either counsel wish to comment?

18 MR. FINKLEA: Well, your Honor, I will note
19 that this was produced in response to one of Tosco's
20 early data questions. I believe it actually was in the
21 FERC proceeding. But the question for the Commission
22 isn't where it was produced but whether it -- they have
23 grounds for treating it as confidential before this
24 Commission.

25 In my experience with the Commission in rate

2988

1 proceedings, the salaries of employees are public
2 information, as I recall. So I don't see the grounds
3 for treating - in this case, where we don't even have
4 names of individuals but just categories of employees
5 by general management, district management, three
6 employees and a number that have of what they, in
7 total, made.

8 In my experience that is far less detail
9 than we have for other public service companies in the
10 state where I believe you could go to the public
11 documents downstairs and know precisely what the senior
12 vice president of finance for any of the utilities in
13 the state made last year.

14 MR. BRENA: Your Honor, if I may too, by
15 agreement among the parties that your Honor is aware
16 of, documents produced in one proceeding may be
17 introduced to be used in the other. So I agree with
18 co-counsel from Tosco that the issue is under this
19 Commission's confidentiality or its protective order,
20 whether or not this should be protected.

21 As you know, I raised this generically prior
22 to the hearing, and I just sought to challenge all
23 confidentiality designation generically because the
24 protective order that's in place allows any party to
25 challenge a confidentiality designation, and the burden

2989

1 then becomes on the company to demonstrate that under
2 this Commission's rules and legislation that that
3 confidentiality designation should be maintained.

4 Now, as we move in the hearing and into more
5 specific information, I resist always having to frame
6 my questions generically out of specific documents.
7 And so this is -- well, this may not be the particular
8 document that -- but it's an issue growing in this
9 case. And so I guess I'm happy to take this up outside
10 of the Commission's presence. But I would like for the
11 company to have to do what the protective order in this
12 case requires them to do, which is explain why it's
13 confidential or that it's not.

14 In the State of Washington, as in almost
15 every state and on the federal level, rate proceedings
16 are supposed to be open to public scrutiny, and I
17 believe that the process is made better by that. So
18 that's the reason for our position and stand, and
19 that's reason that I resist having to continually
20 reframe my cross-examination questions for documents
21 that there's no apparent reason whatsoever in the world
22 why they would be confidential.

23 COMMISSIONER HEMSTAD: I have a question for
24 counsel of the company. Can you cite anything in the
25 state law that would provide you a basis for claiming

2990

1 this is confidential material?

2 MR. LEYH: Commissioner, I'm sorry that I
3 cannot. The determination to label these documents
4 confidential was made by Mr. Marshall and his firm, and
5 I -- I'm sorry, but I am not able at this moment to
6 tell you the specific statutory citation on which they
7 relied. However, because I believe that they made a
8 considerate decision to designate the documents as
9 confidential in both this proceeding and FERC
10 proceeding, I believe that there is such a basis and,
11 therefore, am not prepared to waive confidentiality.

12 COMMISSIONER HEMSTAD: One of the patterns
13 that we find ourselves rather continually confronted
14 with is that companies tend to over-stamp exhibits as
15 confidential when, in fact, they are not, and, hence,
16 my question.

17 MR. LEYH: And again, I apologize for not
18 being able to respond to it directly. What I can
19 suggest is that if counsel, in dealing with this
20 subject matter in a way that does not require us to
21 resolve this issue, generally by framing his questions
22 in a way that avoids the confidentiality, we can move
23 forward, and then after a break, I can speak to
24 Mr. Marshall and his colleagues and --

25 COMMISSIONER HEMSTAD: Well, frankly I'm not

2991

1 concerned with the issues that Mr. Brena has raised.
2 You have cited two reasons, one is competitive
3 disadvantage. I don't see what is competitive
4 disadvantage for a regulated company for information
5 and then invasion of privacy. And I don't see how
6 it -- with a regulated company, that the salaries of
7 individuals, let alone the categories of employees, is
8 a privacy invasion.

9 MR. LEYH: Well, the other point that I
10 would make, Commissioner, is that these employees are
11 BP employees whose, you know, privacy is being
12 implicated here, not the regulated company itself.

13 MR. BRENA: If I may just add, these are all
14 affiliated transactions. He's exactly right, a
15 regulated company is paying an affiliate all of these
16 salaries, and I'm trying to inquire of specifically. I
17 don't wish to sidetrack my whole line of cross on this
18 issue over this particular document. And if there's
19 some mechanism to make this up more generically, I'm
20 happy to do that.

21 But please understand that we would like --
22 we think -- and my motion was denied, but I had moved
23 that all documents that were marked as exhibits in this
24 proceeding be designated nonconfidential unless there
25 was a showing by the company that they should continue

2992

1 to be confidential. We moved forward with the
2 understanding that when we got to this point in the
3 hearing, that -- as in the interim hearing, that the
4 company would waive confidentiality.

5 And if you recall in the interim hearing,
6 there isn't a single document that is confidential.
7 Well, here we're at these points. But it's not being
8 waived. And I'm being -- I am in a position of having
9 to repose my cross. So I would just ask that that was
10 a fine deal if everybody stuck to it. But people
11 aren't sticking to it, so I guess I'll just renew my
12 motion and say I would like to move that all the
13 documents in this proceeding be designated public, and
14 perhaps Judge Wallis could take argument on the reasons
15 why the company believes certain documents should
16 continue to be confidential. And we could just resolve
17 this generically so that it doesn't take up time as we
18 move through this whole hearing. When the company
19 isn't waiving their requirement, I'm having to struggle
20 a page at a time and a paragraph at a time.

21 COMMISSIONER HEMSTAD: I'd like to hear if
22 staff counsel has any views on this.

23 MR. TROTTER: This is where the rubber hits
24 the road. When a company designates something
25 confidential pursuant to a protective order, it has an

2993

1 interest -- at least a facial interest to keeping it
2 protected, and then the Commission is required, on some
3 basis, to decide that it's not entitled to protection.

4 I agree with you that the competitively
5 sensitive in your questioning -- the competitively
6 sensitive argument or even the internally sensitive
7 argument, aren't that convincing to me. Perhaps at
8 this point the better course would be to wait for
9 company counsel and if they can illuminate us further
10 on why this was declared confidential.

11 But the system is based on the good faith of
12 the designating company. And they should be required
13 to put forth specific detailed reasons for doing it
14 because we do have a public records log in our state
15 and these are -- on the other hand, these are companies
16 that are coming to the Commission. These are not
17 documents generated, typically, by the Commission.

18 So it's a sizable balancing act here, but I
19 think you're correct in focusing the inquiry on the
20 specific reasons. And they do not appear to be too
21 weighty, from my view point, at least at this
22 particular point in time.

23 CHAIRWOMAN SHOWALTER: Mr. Trotter, in your
24 view, is it up to this Commission to make that judgment
25 under the protective order, that is, if in our view

2994

1 this is not competitive and not highly personal, then
2 it's our authority to find that these are not
3 confidential or does that -- is there an interplay in
4 anyway with the Public Records Act which requires -- or
5 put it this way, permits an assertion of
6 confidentiality until overturned by a court?

7 MR. TROTTER: I would have to take a look at
8 the exception in the Public Records Law. It is -- my
9 recollection is that it does protect, from public
10 disclosure, documents that have been designated
11 confidential pursuant to a protective order, at least
12 it says nothing in the act shall prevent the Commission
13 from using protective orders.

14 But I suggest to you that only -- it doesn't
15 finesse the issue too far because then you have to
16 decide is it properly designated pursuant to the
17 protective order. And if it isn't, then it doesn't --
18 should not have the protection of the public for the
19 exception.

20 CHAIRWOMAN SHOWALTER: I guess that is my
21 question. If we decide that pursuant to the protective
22 order and its terms it should not be confidential, is
23 that the end of the matter? And we were having a
24 discussion up here as to whether that exception under
25 the Public Records Act even applies to the title that

2995

1 we're operating under here. And if it doesn't, if that
2 exception doesn't apply, then what? Does that leave it
3 over into the Public Records Act simply?

4 MR. TROTTER: We've gone around in circles
5 on that issue, and I think our consensus view is that
6 the law's unclear because it certainly -- well, I think
7 what is clear is that the Public Records Law exemption
8 that I spoke of does only apply to Title 80 type
9 proceedings. I'll stand corrected on that.

10 I'm not sure that answers the question,
11 because the APA does give to the presiding officer the
12 right to regulate the course of the proceedings and to
13 issue appropriate orders and so on and so forth. So
14 there's this interplay between the adjudicated process
15 and what can be done there and the Open Public Records
16 Law.

17 And as you know, there is a very strong
18 public policy in favor of disclosure, and this issue
19 has not be tested in any court that I'm aware of. So
20 the best course I can chart for you, I guess, is to
21 assume that your order is valid in the protective
22 order; that you can regulate that sort of document
23 production and just to determine whether the order has
24 been satisfied or not and go with that.

25 At some point we may test the legal

2996

1 parameters where the Public Records Law and APA
2 collide. Maybe this is that case. But the best advice
3 I think I could give you at this time is to look at
4 your protective order, follow its terms. No one
5 objected to it. And if a member of the public wants to
6 challenge that protective order, then we'll deal with
7 that at that time.

8 But these parties have not objected to the
9 protective order. We are working within it, so I would
10 recommend that you follow it and let the ramifications
11 of that play on it. And if it's in another forum,
12 we'll have to deal with it in another forum.

13 MR. BEAVER: I would like to clarify one
14 thing from the company. These were actually designated
15 subject to protective order by Olympic's FERC counsel
16 in Washington, DC. And I actually just tried to
17 contact them about an hour ago. Of course, that's
18 three hours ahead their time, and I was unsuccessful.
19 So frankly, I think, to find out the basis for the
20 designation, we'd actually have to talk to FERC
21 counsel.

22 JUDGE WALLIS: To what extent would that
23 bind this Commission inasmuch as the Commission has its
24 own protective order, and we are dealing in the context
25 of this proceeding and Washington State law which

2997

1 governs the process?

2 MR. BEAVER: It seems to me these are
3 documents that are produced in another proceeding
4 pursuant to -- at least the belief that they're
5 protected. That might have some bearing. But in any
6 case, I think it's incumbent upon us to at least be
7 able to contact our FERC counsel and find out what the
8 basis for the designation was.

9 MR. BRENA: Your Honor, if I could
10 suggest -- again, I'm not trying to waste our time
11 here. If I could just suggest that, you know, that
12 they be -- I have an absolute right to challenge the
13 confidentiality designation of any document in the
14 proceeding under the terms of the protective order. I
15 have.

16 Now, the burden is on them to convince your
17 Honor that that confidentiality should be maintained.
18 Rather than take up the Commission's time on this
19 hearing and it says -- and I'm reading -- "The
20 presiding officer will conduct an in camera hearing to
21 determine the confidentiality of the information." So
22 I read that to mean that we are supposed to sit down
23 and hash this outside of the Commission's presence
24 and --

25 CHAIRWOMAN SHOWALTER: I don't know why you

2998

1 keep saying that. This is going to be our decision of
2 something like this. The commissioners are quite
3 interested in what is and isn't public.

4 MR. BRENA: Okay.

5 COMMISSIONER HEMSTAD: I think the in camera
6 reference would be to the interest of third parties in
7 the hearing room who would have to be excluded.

8 MR. BRENA: Okay. I was trying to save you
9 having to sit through it. But the beginning point
10 ought to be to ask the company to review their
11 confidentiality designations and do the groundwork that
12 is necessary to waive what they're going to waive and
13 maintain what they're going to maintain. And then at
14 least we have a defined scope that we can then bring to
15 the Commission to discuss, rather than do this -- I
16 mean, here we're in a situation where -- I don't mean
17 to, like, surprise them. Some other counsel designated
18 it. They, maybe, having an argument or a reason that's
19 not apparent to counsel that's here. I'm not trying to
20 ambush anybody. Let the best argument win the day.

21 But I can't see how we're going to get to a
22 smooth, running proceeding until the company is put
23 under the quest of waiving what it can waive and
24 explaining what it can't.

25 CHAIRWOMAN SHOWALTER: I have a practical

2999

1 suggestion, one would be to proceed and if we can't
2 decide the matter at this minute, for you to avoid
3 using specific information. Another way to proceed
4 would be to clear the room of anyone who hasn't signed
5 the waiver and then the whole transcript may become
6 public, if it turns out that there's no basis for
7 confidentiality.

8 How many people in the room have not signed
9 the confidentiality --

10 MR. BRENA: I'm happy to proceed either way.
11 My concern with closing the hearing, of course, is then
12 if it stays closed, then those pages of the hearing are
13 out and then you get a very disruptive record. But --

14 COMMISSIONER HEMSTAD: Our policy has been
15 to make every effort to avoid closing the hearing room.

16 MR. BRENA: Let me just frame my questions
17 then. I'll do it.

18 CHAIRWOMAN SHOWALTER: We did -- the issue
19 did come up when the counsel might be most able to
20 answer the question isn't here. But counsel for the
21 company should proceed on the assumption that if it's
22 up to this Commission under the terms of the protective
23 order, we don't find it persuasive. So we're sensitive
24 that there's some other dynamics that play here and
25 that's really why we're not prepared at this point to

3000

1 say this is not confidential.

2 MR. LEYH: I understand what you're saying,
3 and I appreciate your consideration.

4 MR. BEAVER: Thank you. One of our concerns
5 is the fact that is BP material, and we really want to
6 talk to somebody else to find out if there's some
7 reason that it's protected, other than what comes to
8 our mind.

9 CHAIRWOMAN SHOWALTER: But, Mr. Brena, just
10 to make things easy, I take it that there's no
11 objection to identifying a row by the title of the row
12 such as district management or south field area and no
13 objection to identifying columns by the title of the
14 columns such as annual salaries or overtime or
15 benefits?

16 MR. LEYH: None whatsoever.

17 CHAIRWOMAN SHOWALTER: It's the number that
18 you don't want mentioned.

19 MR. LEYH: Exactly.

20 MR. BRENA: Can I address specifically
21 numbers of employees in the column?

22 MR. BEAVER: Sure.

23 MR. LEYH: Yes.

24 MR. BRENA: I will do my best. I would like
25 to ask this Commission to put in place some process so

3001

1 that this can be globally dealt with as soon as
2 possible.

3 Q. Okay. Good afternoon, again, Mr. Batch.

4 MR. BRENA: And I'm assuming since the total
5 numbers are in your case, that that's not confidential
6 as well?

7 MR. BEAVER: Which total?

8 MR. BRENA: The total salaries line.

9 MR. LEYH: That's fine.

10 MR. BEAVER: Sure.

11 Q. Mr. Batch, do you have this exhibit in front
12 of you?

13 A. Yes.

14 Q. Okay. Essentially it says that in -- that
15 BP has -- that there are 81 employees at a cost of
16 \$7.38 million per year. Is that what this represents?

17 A. Yes.

18 Q. Okay. Is it your understanding of your rate
19 filing, your initial rate filing, that you were
20 requesting the 7.83 million or do you know?

21 A. Again, I would need to check with someone on
22 the rate filing itself.

23 Q. So you're not sure?

24 A. I'm not sure personally.

25 Q. Okay. I would direct that to Mr. Collins?

3002

1 A. To Ms. Hammer or Mr. Fox.

2 Q. Okay. How many employees do you have?

3 A. We have -- it seems to change, but right now
4 we have about 75 employees, I believe.

5 Q. Okay.

6 A. We have a total of 81, but we've lost some
7 people.

8 Q. Now, we have ten engineering spots in this.
9 Do you have ten engineers on staff?

10 A. We have ten people that are designated a
11 part of the engineering function.

12 Q. And what do they do?

13 A. They do engineering.

14 Q. With regard to capital expenditures?

15 A. Yes.

16 Q. Is most of their time spent with engineering
17 matters that are associated with capital expenditures?

18 A. I think a good portion has to do with
19 capital expenditures. Again, my level of understanding
20 of their day-to-day activities is not great, and I
21 would suggest that Bobby Talley as our vice president
22 and district manager is the best guy to talk to about
23 that in detail.

24 Q. And I will.

25 But it's your understanding that a majority

3003

1 of what they do has to do with engineering with regard
2 to capital expenditures; is that correct?

3 A. Considering the effort of capital
4 expenditures that we've had over the last several
5 years, I can certainly believe that a lot of their time
6 is spent on capital expenditures, yes.

7 Q. Do you have an opinion at all about whether
8 or not the labor associated with -- let me call it
9 capitalized labor, should be included in the rate base
10 or should be recovered as an expense each year? Do you
11 have an opinion on that?

12 A. I don't have any opinion on that.

13 Q. I'd like to draw your attention to
14 Exhibit 643-C. It's with great fear and trepidation
15 that I added that C.

16 MR. BRENA: Could I ask the company to waive
17 the confidentiality with regard to the organizational
18 charts?

19 MR. LEYH: Yes, we'll waive that as we have
20 waived it as for all the other exhibits except the one
21 we discussed.

22 MR. BRENA: Okay.

23 Q. Do you have page 2 of 4 of Exhibit 643C? Is
24 this the current organizational chart for Olympic Pipe
25 Line?

3004

1 A. I believe there's probably one since this
2 one. This is dated 3-1-02.

3 Q. Okay. And are there more people on the new
4 one or less people?

5 A. I would need to check that for sure. Again,
6 Mr. Talley would be able to answer that in great
7 detail.

8 Q. If you flip two pages over, page 4, is this
9 your understanding of the organizational chart for the
10 old operator?

11 A. This is the first time I have seen the old
12 operating chart. The old org chart for the previous
13 operator?

14 Q. So you have never --

15 A. I have never seen this.

16 Q. Okay. Just in comparing these, I'm struck
17 with how many more employees are on the BP
18 organizational chart than are on the old operator's
19 organizational chart.

20 Is it fair to say that one reason there are
21 more employees are because of all the capital projects
22 that are ongoing currently?

23 A. I think it's fair to say that there are more
24 employees because BP Pipe Lines has a specific standard
25 on operations and specific expectation about people,

3005

1 not only in engineering but also in the control center
2 and how many people are necessary for that.

3 Q. And what is that standard?

4 A. It's to make sure that we've got the proper
5 staffing to operate the pipeline safely.

6 Q. Okay. You just quoted me the standard?

7 A. That is the standard.

8 Q. Okay. Is that probably the standard the old
9 operator may have applied too?

10 A. I have no idea.

11 Q. Do you think that they would have applied a
12 standard that said, "I'm going to employ less people
13 that is necessary to safely operate the line"?

14 A. I have no idea what their philosophy was.

15 Q. Okay. Can you direct me to anywhere that
16 would tell me that all these people are necessary and
17 that the amount that the rate payers are paying are
18 reasonable an amount? Is that in your direct case?

19 A. I would tell you that it's management's
20 feeling and belief that the people that we have
21 employed at BP Pipe Lines, North America, to operate
22 Olympic Pipe Line are necessary and required to run the
23 system the way BP Pipe Lines wants to have the system
24 run.

25 Q. Well, therein lies my question, is it the

3006

1 staffing that is necessary to operate the line in the
2 steady state or is this the escalated staffing that is
3 necessary to get through the capital projects that
4 you're currently -- that are currently on the books?

5 A. I think there's a small effect with regards
6 to the capital projects inasmuch as we expect and hope
7 to do the kind of capital investment that we've been
8 doing for the last few years. I think this level of
9 staffing is indicative of what we think operations,
10 engineering, maintenance, HSE and others are required
11 to operate this pipeline safely and what we deem
12 necessary.

13 Q. I'd like to direct your attention to
14 Exhibit 630-C page 4 of 9. Do you have that page in --

15 A. Yes.

16 Q. Now, is it fair to say that when BP took
17 over as operator, that it anticipated the last half of
18 2000 to have 96 employees but those would drop down to
19 75 by the first half of 2004, or stated differently,
20 that there would be a 21 head count drop over three
21 years starting from the last half of 2000? Is that
22 what they figured would happen?

23 A. I don't know the specific numbers of
24 employees. I think we had authority from the board of
25 directors to hire a certain number of employees to

3007

1 operate the pipeline. It's been extremely difficult,
2 actually, to bring people to Olympic primarily because
3 our operations are all over the country and trying to
4 bringing people in from Tulsa or Houston or places like
5 that to Washington State where cost of living is so
6 much higher, it's been difficult, and it's been hard to
7 fill openings. And, in fact, I think, as Bobby Talley
8 will tell you, we still have positions that we've been
9 unable to fill because of those requirements and
10 issues. We're trying really hard to make sure we have
11 the complement that we need, and I think right now
12 we're operating at minimum level.

13 Q. Okay. I've asked you two or three questions
14 with regard to your opinions of the former operator,
15 and you haven't expressed one.

16 But isn't it true that when BP, the
17 operator, came in, they did a health and safety report
18 on Olympic where they assessed the current status of
19 things?

20 A. Again, I can't speak to that directly, but I
21 believe that one of the procedures would have been to
22 do a system audit from a health, safety and environment
23 standpoint to know kind of the status of Olympic Pipe
24 Line as BP was coming in.

25 Q. And if I direct your attention to 638-HC, is

3008

1 that the study that was done?

2 A. Yes, it looks like the one that was done.

3 Q. And is this the only study with regard to
4 the status of Olympic that you're aware of that was
5 done when BP came in?

6 A. It's the only study that I'm aware of.
7 Mr. Talley, who came in in June of 2000, might be aware
8 of other studies, but to my knowledge, this is the only
9 HSE study or safety-related study that was done.

10 Q. Okay. I'd like to direct your attention now
11 to Exhibit 639, specifically page 3 of 3, line 1.

12 A. Yes.

13 Q. Is this the latest, greatest estimate of
14 when the line is supposed to be returned to 100 percent
15 pressure?

16 A. Again, that's a moving target. I don't know
17 if this is the last version of that, but it's the
18 correct time frame, 2004.

19 Q. So first quarter of 2004?

20 A. Sometime in 2004 is currently my
21 understanding.

22 Q. Okay.

23 A. Again, assuming that we get the rates
24 necessary and sufficient, we can apply the capital
25 that's necessary to get to 100 percent.

3009

1 Q. When was a pressure restriction first put on
2 this line?

3 A. I believe it was -- it was August or
4 September of 1999.

5 Q. Do you know?

6 A. It would have been associated with one of
7 the Offices of Pipeline Safety corrective action
8 orders. I believe the 16-inch was rated at 80 percent
9 in August, and then the rest of the system as a result
10 of the hydro test failure of the pre-1970 ERW seam, I
11 think the rest of the system was put on 80 percent
12 restriction.

13 Q. So it's fair to say the first pressure
14 restriction placed on this line was -- had nothing to
15 do with the ERW seam failure?

16 A. No, I don't believe that's true.

17 Q. You don't believe the pressure
18 restrictions -- the initial pressure restriction put on
19 Olympic was prior to the failure of the lateral seam?

20 A. Again, I believe in September when the
21 lateral seam or the longitudinal seam split, the Office
22 of Pipeline Safety put a pressure restriction on the
23 entire system. And I am not -- I'm trying to recall
24 the two previous corrective action orders, one shortly
25 after the incident in June and one, I believe, in

3010

1 August.

2 But I -- I don't have full recollection of
3 that. And, again, I would probably defer the details
4 of that to Mr. Talley.

5 Q. When did Whatcom Creek happen?

6 A. June the 10th, 1999.

7 Q. When was the lateral seam failure as a
8 result of the testing?

9 A. I believe that was in September of 1999.

10 Q. I'd like to draw your attention to
11 Exhibit 664, starting on page 2 of 3.

12 A. Yes.

13 Q. Doesn't this indicate that the first
14 pressure restriction was put on the line on June 18th,
15 just -- well, it was acknowledged on June 18th by
16 Olympic Pipe Line?

17 A. This is an Olympic memo, and for me to be
18 exactly sure, I would need to review the corrective
19 action orders to be sure.

20 Q. This is before the corrective action order,
21 isn't it?

22 A. Again, I have an exhibit. I believe it's
23 Exhibit BCB-13. I'm not exactly sure of the
24 corresponding number.

25 Q. I have the corrective action order, and its

3011

1 amendments as 649-C, but let me ask a few questions
2 before we get there.

3 Isn't it true that immediately after the
4 Whatcom Creek incident, that the Office of Pipeline
5 Safety put a pressure restriction on Olympic's 16-inch
6 lines?

7 A. Again, I would need to review the corrective
8 action order. I know it certainly shut down the
9 northern section of the 16-inch line after the accident
10 occurred. But I don't believe I recall them putting a
11 pressure restriction at the same time if it was already
12 shut down.

13 Q. Would you take a look at page 1 and page 3,
14 they are faxes from Olympic to officers within the
15 Office of Pipeline Safety indicating that the settings
16 have been reduced to 80 percent, are they not?

17 JUDGE WALLIS: What document are you
18 referring to?

19 MR. BRENA: 664.

20 THE WITNESS: I see the documents. I really
21 can't comment intelligently on those documents. I've
22 got the corrective action order in front of me. I
23 don't see any pressure reduction on June 18th or
24 whenever that first corrective action was issued.

25 Q. Looking at page 1 of 3 of 664, do you know

3012

1 who Ron Brenson is?

2 A. Yes.

3 Q. Who is he?

4 A. He's our oil movement supervisor.

5 Q. And who is Jim, and for fear of ruining his
6 last name, Traficer (ph.)?

7 A. I'm not exactly sure.

8 Q. It says, "As per your direction, the device
9 settings have been changed as follows." So apparently
10 the head of oil movement group indicated that they had
11 to go to 80 percent pressure almost immediately after
12 Whatcom Creek. That is my reading of this.

13 Do you read it differently?

14 A. I'm not exactly sure I read it exactly like
15 that. I don't know that there was a requirement to do
16 that and perhaps a recommendation to do that once it
17 got restarted. But after the accident, the line was
18 shut down.

19 Q. Okay. I'd like to draw your attention to
20 649-C, which is the corrective action order with its
21 two amendments, page 4 of 21 and those are the exhibit
22 numbers within the -- under pressure testing, Item
23 Number 7.

24 Isn't it true that the Office of Pipeline
25 Safety put a pressure restriction on the Olympic line

3013

1 in its first corrective action orders which was well
2 before the seam failure?

3 MR. TROTTER: Your Honor, just for my
4 benefit, the document does not seem to be dated
5 anywhere. Can I see if there would be -- could be some
6 help there. Obviously, there is a fax date on the
7 upper part, if counsel could help us.

8 CHAIRWOMAN SHOWALTER: If you look at page
9 12 of 21 --

10 MR. TROTTER: The problem is, I think, there
11 is a series of documents here. That's the problem?

12 MR. BRENA: There's the corrective action
13 order with each of the amendments.

14 MR. LEYH: I would also object to the
15 characterization of the document as the first
16 corrective action order because on page 12 of 21 there
17 is a reference to a June 18th, 1999 corrective action
18 order, and the document at issue is dated August 10th,
19 1999.

20 MR. BEAVER: Your Honor, I happen to know
21 just from personal knowledge that there is a version of
22 this corrective action order that came from the Office
23 Of Pipeline Safety that is actually dated. This one
24 seems to say -- I'm talking about the first one, it
25 seems to say "copy" on it. And I know the way the

3014

1 federal government works is they actually will send out
2 sometimes electronic versions. They don't have dates
3 on them until they actually mail them.

4 And if it's important, I can obtain that
5 which actually has the date on it. If you want, I
6 could tell you what the date is, if it matters.

7 JUDGE WALLIS: Mr. Brena, what is your
8 preference?

9 MR. BRENA: I note that the fax is from
10 Mr. Beaver's law firm to the company and dated
11 July 2nd, 1999. So he's the one that communicated this
12 preliminary corrective action order to the company.
13 I'm happy to have Mr. Beaver provide to us for our
14 review the one that came to him that was dated as well
15 as the two amendments that may help clarify the record.

16 JUDGE WALLIS: Mr. Beaver, thank you for
17 your offer.

18 MR. BEAVER: Sure.

19 JUDGE WALLIS: It's accepted.

20 Q. Mr. Batch, the point that I was --

21 CHAIRWOMAN SHOWALTER: Do we want to have a
22 date subject to check or not or are you interested in
23 this faxed version?

24 MR. BRENA: Well, I believe that the record
25 is clear that that was faxed from Karr, Tuttle on

3015

1 July 2nd. I believe the record is clear the seam
2 failure was in September. So it was months before the
3 seam failure.

4 MR. BEAVER: I just want to clarify, if
5 there is a perception that it was July 2nd, that is off
6 by quite a bit. It was much earlier than July 2nd,
7 which is when it was issued, but I don't know if that
8 matters.

9 MR. BRENA: Well --

10 JUDGE WALLIS: We do note that Exhibit 664
11 appears to have a fax date of June 18, '99.

12 MR. BEAVER: Right, that's the date.

13 MR. BRENA: That is my understanding of the
14 date when the first corrective action -- when the
15 original corrective action order was issued, is that --

16 MR. BEAVER: That's correct.

17 MR. BRENA: Then I'm happy to stipulate for
18 the record that June 18th was the date of this document
19 when it was ultimately -- when it was first issued.

20 Q. Mr. Batch, turning to page 4 of 21, the
21 original corrective action order, Item 7 imposes a
22 pressure restriction which Mr. Beaver has just
23 acknowledge was imposed on June 18th, 1999; is that
24 correct?

25 A. As I read the corrective action order, Item

3016

1 Number 7, orders to restrict the MOP of the Ferndale,
2 Washington to Allyn, Washington to 1056 PSIG, which is
3 80 percent of normal operating pressure.

4 However, the line was shut down, and I can
5 only assume that that was a stipulation for when the
6 line would come back up, it would be running at 80
7 percent operating pressure. And I don't really know
8 the rationale or the reasoning at the time that that
9 might have been put in place.

10 Q. The thrust of my point, though, is, isn't it
11 true that the pressure restrictions were imposed on the
12 Olympic system months before the seam failure?

13 A. No. It was only imposed on this section of
14 the Olympic system.

15 Q. I'd like to turn your attention to page 5,
16 Item 9. Did you mean that section and this section?

17 A. Yes. Obviously.

18 Q. Okay. Now, I'd like to direct your
19 attention to paragraph 5 of the original -- on page 2
20 of the original corrective action order. Do you have
21 that paragraph?

22 A. Yes.

23 Q. It says, just to paraphrase, it acknowledges
24 that the pipeline, in the first one before the seam
25 failure, that the first one -- that the pipeline's

3017

1 constructed of ERW pipe manufactured prior to 1970, and
2 it notes that OPS has issued two alert notices, one in
3 1988 and one in 1989, based on 12 seam failures of such
4 pipe during '88 and '89.

5 Do you see that language?

6 A. Yes, I do.

7 Q. It wasn't new information to anybody that
8 ERW pipe -- pre-1970 Lonestar ERW pipe had a risk of
9 seam failure when it actually failed in the Olympic
10 system, was it?

11 A. Obviously the OPS knew it was a concern well
12 prior to Olympic.

13 Q. 12 years prior to the seam failure, Olympic
14 had received a specific notice putting it on notice
15 that the pre-1970 ERW pipe was a high risk of failure,
16 correct?

17 A. I don't know that.

18 Q. Did Olympic do anything about it?

19 A. Again, I wasn't here back then, so I can't
20 really speak to any of that.

21 Q. Do you know whether -- do you know whether
22 they did or didn't?

23 A. Well, I presume every pipeline in the nation
24 would have received that same alert, and I have no idea
25 what the industry would have done with that alert, let

3018

1 alone what Olympic did with that alert.

2 Q. Now, it's my understanding of Olympic's
3 subsequent response to the OPS, that they asserted that
4 it was hydro tested when it was put in place, and it
5 was not hydro tested from the time it was put in place
6 until it failed. Is that your understanding?

7 A. My understanding is that it was hydro tested
8 before it was put in place.

9 Q. So it was not hydro tested, as the alert
10 notice is suggesting in 1988 and 1989, 20 years after
11 it was put in place even though the OPS specifically
12 asked that that may be a prudent step to take?

13 MR. LEYH: Object to the form, no
14 foundation. He's already testified that he wasn't
15 there and he doesn't know.

16 MR. BRENA: Okay. I'd like to draw your
17 attention to exhibit -- I withdraw the question.

18 Q. I'd like to draw you to Exhibit 667.

19 JUDGE WALLIS: That's the document that was
20 distributed today?

21 MR. BRENA: It is, your Honor.

22 Q. This is the March 8th, 1989 specific alert
23 from OPS to Olympic with regard to pre-1970 ERW pipe,
24 is it not?

25 A. That's what it looks like.

3019

1 Q. Okay. Going to page 2 of the exhibit, now,
2 in the -- first, when did you personally become aware
3 that pre-1970 ERW pipe was a problem?

4 A. Probably when I joined the pipeline company
5 back in 1993.

6 Q. Were you aware of these alerts?

7 A. No, I was not.

8 Q. How were you made aware that it was a
9 problem in '93?

10 A. Our -- that was with an AMOCO corporation.
11 At the time our safety integrity folks spent a lot of
12 times on the issue of pre-1970 ERW pipe.

13 Q. Is it fair to say that this was common
14 knowledge within the industry that pre-1970 Lonestar
15 ERW pipe was prone to seam failure?

16 MR. LEYH: I object to the form, your Honor.
17 There is no foundation that this witness would know
18 what was common knowledge within the industry with
19 respect to that issue.

20 JUDGE WALLIS: I think the witness did
21 testify as to his participation in the industry and has
22 just reiterated a portion of his experience, and he may
23 respond. The response may be that he just doesn't
24 know. We'll see.

25 THE WITNESS: I know there were concerns

3020

1 with certain types of pre-1970 ERW pipes, but that is
2 the extent of my knowledge.

3 Q. Now, in the alert notice, it references that
4 original alert was on January 28th, 1988, and there
5 were 12 hazardous pipeline failures as a result of this
6 pipe.

7 Were you aware of some of those failures?

8 A. No, I was not.

9 Q. Since the time of that alert until this
10 alert, there was eight additional failures. Were you
11 aware of those failures?

12 A. No, I'm not, but I'm sure our safety and
13 integrity folks are well aware of them in BP Pipe Line.

14 Q. Do you notice that two of the failures --
15 and I'm looking at the last paragraph on page 2, two of
16 the failures involved pipelines which had not be
17 hydrostatically tested in accordance with current
18 standards.

19 Do you see that language?

20 A. I do.

21 Q. And following, one of the failures occurred
22 after long standing operating pressure had been
23 increased in a relatively short period of time before
24 the failure.

25 A. I see that.

3021

1 Q. Is that what happened when the seam failed
2 in Olympic, that it increased the long standing
3 operating pressure for a relatively short period of
4 time during hydro testing?

5 A. I think when the hydro test was done, it's
6 done at an elevated pressure in order to test the pipe
7 so -- but that is why we do hydro test with water to
8 test the pipe that way.

9 Q. I will direct you page 3 of 4 where -- it's
10 their recommendation, "In view of the continuing ERW
11 seam failures, OPS recommends that all pipeline
12 operators having ERW pipelines installed prior to 1970,
13 Number 1, consider hydrostatic testing."

14 Do you see that recommendation?

15 A. I do.

16 Q. And it's your best understanding that
17 Olympic did not do that hydrostatic testing after it
18 received these notices, correct?

19 A. I can't really speak --

20 MR. LEYH: Object to the form. There is no
21 foundation that he knows what Olympic did, and there's
22 no foundation that he knows or anyone knows whether
23 Olympic received a copy of this exhibit.

24 JUDGE WALLIS: I think the witness has
25 previously testified that he did have no knowledge and

3022

1 he so testified, again, in response to this question.

2 MR. BRENA: If I may, as part of their
3 current response to the corrective action order, they
4 have put together representations to the Office of
5 Pipeline Safety that specifically address the hydro
6 testing and when it occurred in this line. He has a
7 background in pipeline safety, and he's president of
8 the company. The reason that I know it wasn't
9 hydrostatically tested because of their representation
10 to the Office of Pipeline Safety that it was hydro
11 tested at the time it was put in but not since.

12 So I'm just probing his memory if he
13 understands what they're representing today to the
14 Office of Pipeline Safety.

15 JUDGE WALLIS: I think he's been clear of
16 the extent of his knowledge as well as his memory in
17 that area.

18 Q. Do you see recommendation Number 2,
19 "Avoiding increasing the pipeline's long standing
20 operating pressure"?

21 A. Yes, I see that.

22 Q. I'd like to direct you to the first
23 amendment to the corrective action order, which is part
24 of Exhibit 649-C, and is it your understanding that
25 this first amendment that was put in place was prior to

3023

1 the seam failure as well?

2 A. My understanding was the first amendment was
3 in August; that would have been prior to the
4 hydrostatic test of the northern segment that caused
5 the seam failure.

6 Q. And didn't, in the first amendment, they
7 further reduce the operating pressure for Olympic Pipe
8 Line by redefining it to lower levels?

9 A. Again, I don't fully appreciate the content
10 of that order, recognizing that the pipeline was shut
11 down after the accident, and perhaps that was a
12 stipulation of when it returned back to operating
13 pressure, that it would start at 80 percent. But
14 again, I think I'm just speculating because I wasn't
15 there.

16 Q. Is it your testimony that both of the
17 segments that were pressure restricted were shut down
18 or just one?

19 A. Both segments of the 16-inch pipeline were
20 shut down. The 16-inch pipeline from Ferndale to Allyn
21 was shut down by the Office of Pipeline Safety. My
22 understanding was that Equilon chose to shut down the
23 Allyn to Renton section on their own.

24 Q. They voluntarily reduced pressure or shut
25 down?

1 A. My understanding is they voluntarily shut
2 down that southern 16-inch segment.

3 Q. Okay. I'd like to -- let me ask you a
4 question: Aside from the alert in 1988, the alert in
5 1999 that were sent to Olympic with 20 failures of seam
6 failures for the type of pipe that they had in their
7 line, isn't it also true that there was a rule making
8 with regard to pressure testing relating to all
9 pre-1970 ERW pipe?

10 MR. LEYH: I'm going to object to the form,
11 your Honor, in that there has been no evidence that, in
12 fact, Exhibit 667 was ever sent to Olympic. The
13 document that we've been provided is not signed. It's
14 not authenticated. It's not dated. And it is pure
15 speculation on the part of counsel to say that it was
16 sent to Olympic.

17 JUDGE WALLIS: Was this a response to
18 discovery provided by Olympic?

19 MR. BRENA: It was.

20 JUDGE WALLIS: Very well, our convention, I
21 think, Mr. Leyh, in this circumstance is that further
22 authentication is unnecessary. As long as the company
23 has no doubt that it, in fact, did supply the document
24 to a party in response to discovery.

25 Q. If I could turn your attention to page 16 of

3025

1 21 on Exhibit 649-C. And on that page 16 of 21,
2 specifically to paragraph 22 -- and would you please
3 tell me when you're there. I don't mean to get ahead
4 of you.

5 JUDGE WALLIS: While the witness is looking
6 up that reference for further questioning, let me say
7 that we are casting about for an appropriate time to
8 take an evening recess. And if you would like to let
9 us know sometime in the next few minutes when an
10 appropriate breaking point will be, and then we'll
11 begin our recess and come back about 7:00.

12 MR. BRENA: Thank you, your Honor. I am
13 coming to a logical end of one line of questioning, at
14 least I think it's logical.

15 Q. Do you have paragraph 22 in mind?

16 A. I have it in front of me.

17 Q. Okay. Who is RSPA?

18 A. The Research and Special Projects
19 Administration.

20 Q. Who are they with?

21 A. I believe they're part of the Department of
22 Transportation, and the Office of Pipeline Safety
23 reports into that organization.

24 Q. And do you see this language, and I'll just
25 read it, "In addition to rule making on pressure

3026

1 testing based on risk, RSPA has found that all pre-1970
2 ERW pipe is presumptively subject to longitudinal seam
3 failure, and there is a federal register site of the
4 rule making and finding." Do you see that?

5 A. I see that.

6 Q. Okay. So in addition to a 1988 notice of 12
7 failures, a 1989 notice of eight failures, a
8 recommendation to hydro test, a request not to increase
9 the operating pressure of those lines, there was a rule
10 making that found it was -- that that type of pipe that
11 Olympic had within its system was presumptively subject
12 to longitudinal seam failure in 1998 -- did I get all
13 that right?

14 A. Frankly, I'm not sure if you got that right
15 or not. But reading the paragraph, it's -- well, you
16 might have to go through that argument for me again.

17 But, again, I was not around in 1998. It's
18 hard for me to speak to what Olympic knew or didn't
19 know in 1998 or what they did or didn't do in 1998.

20 Q. And I appreciate your position at being knew
21 to Olympic. But please appreciate mine as representing
22 a rate payer, isn't it true that Olympic ignored this
23 problem in the face of overwhelming evidence until it
24 was forced to address it by the City of Bellingham
25 requiring hydrostatic testing of the pipe within its

3027

1 jurisdiction?

2 A. Again, that is a very strong word, and it's
3 nothing that I can speak to because I wasn't here.

4 Q. You acknowledge, do you not, that the
5 reason that the line was being hydrostatically tested
6 during the longitudinal seam failure was because the
7 City of Bellingham required it as a result of the
8 Whatcom Creek incident?

9 A. Again, my knowledge on this subject is that
10 in the first corrective action order, the Office of
11 Pipeline Safety suggested that pressure testing might
12 be one alternative to putting a safety integrity plan
13 together for the line. I believe the City of
14 Bellingham did and were very interested in having a
15 hydro test done within the city limits just to prove to
16 themselves that it was a safe pipeline. So I believe
17 the City of Bellingham did have an interest in doing
18 that hydro test as well.

19 MR. BRENA: Your Honor, I'm afraid I
20 probably have 10 or 15 minutes. But I could break
21 right here.

22 JUDGE WALLIS: Let's break right here.

23 (Dinner recess at 5:50 p.m.)

24 JUDGE WALLIS: We are going to proceed.
25 Let's go back on the record, please, following the

3028

1 evening recess. I believe, if I recall correctly, we
2 interrupted the examination of Mr. Brena.

3 MR. BRENA: Interrupted is the kindest
4 possible word you could have used.

5 .HE (BATCH - CROSS BY BRENA)

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

7 (Continued)

8 BY MR. BRENA:

9 Q. Good evening, Mr. Batch.

10 A. Good evening.

11 Q. I'd like to draw your attention to
12 Exhibit 654. And what I'd like to explore with you is
13 what happened in Whatcom Creek.

14 Do you have 654 in mind?

15 A. I have turned to page -- to 654.

16 Q. Now, there was damage to the pipe at the
17 site of the Whatcom Creek incident, was there not?

18 A. Third-party damage from what is presumed to
19 be a piece of construction equipment.

20 Q. And in looking at 654, which is the notice
21 of probable violation, it points out that there was
22 construction activities at a water treatment facility
23 during and after the installation of multiple large
24 diameter water lines over the Olympic 16-inch product
25 line in 1994.

1 Is it your understanding that the damage
2 that occurred that resulted in the Whatcom Creek
3 accident -- that the third-party damage occurred in
4 1994?

5 A. I don't specifically know when that might
6 have occurred, but I know for a fact that all of the
7 evidence at the NTSB and, in fact, a letter from Chris
8 Hydell to Jessie Tanner, in essence, stated that the
9 cause of the accident at Whatcom Creek -- I'll just
10 read Mr. Hydell's letter. It's part of my BCB-16, on
11 the second page he goes on to say, "I agree state and
12 local government can take action to prevent another
13 incident such as occurred in Bellingham. The incident
14 was caused by excavation damage to Olympic's pipeline
15 by a third party. Had the pipeline not been damaged
16 during excavation, the incident would not have
17 occurred."

18 JUDGE WALLIS: For the record, I believe
19 that's Exhibit 618.

20 Q. To the best of your understanding, is that
21 third -- did that third-party damage occur in 1994?

22 A. I don't know specifically when that might
23 have occurred.

24 Q. I'd draw your attention to page 7 of your
25 FERC testimony in which you say -- you refer to the

3030

1 NTSB report, and I'll, quote, "Olympic learned that the
2 damage portion of the pipe is at the exact location of
3 excavation work performed five years earlier to bury a
4 large fitting of a rerouted water main located only 21
5 inches above Olympic's pipeline."

6 Now, is that your direct testimony before
7 the FERC?

8 A. What page are you on, sir?

9 Q. I'm on page 7.

10 A. And what line?

11 Q. Lines 15 through 18. The same paragraph
12 that third-party damage is defined.

13 A. Yes, that is my testimony.

14 Q. Okay. Now, I'm confused.

15 Now, I asked you twice whether or not you
16 thought it occurred in 1994. You've testified under
17 oath that it -- your understanding was that it occurred
18 five years earlier. But yet you testify before this
19 Commission that you don't know. Now, what's the truth
20 of the matter? Do you know or don't you know when the
21 third-party damage was done?

22 A. The truth of the matter is I'm quoting from
23 the NTSB report, and to the extent that I'm quoting
24 from the report, that's the knowledge that I have about
25 that particular incident.

3031

1 Q. Okay. So your knowledge based on the report
2 was that the damage that you're referring to -- that
3 you just referred to occurred years ago; is that
4 correct?

5 A. According to the NTSB report, yes.

6 Q. Now, is it true, and I'm back to 645, that
7 during an eight-month construction project, that
8 Olympic is only able to account for three days of
9 inspection while huge water pipes are being put in just
10 inches from its line?

11 A. I don't know.

12 Q. Have you seen any company records that could
13 indicate that any more than three days in this
14 eight-month project that the line was inspected?

15 A. I'm not aware of your -- I'm not aware of
16 the premise of your question. I haven't seen any
17 records of any kind associated with that particular
18 fact.

19 Q. Well, now, this notice of probable
20 violation, this is something that's an ongoing matter
21 for Olympic, is it not?

22 A. It is, but it's primarily handled by our
23 legal staff as well as a special committee to the
24 board.

25 Q. And it says, "Olympic has only accounted

3032

1 for," and they're talking about the Olympic that you're
2 the president of today, "has only accounted for three
3 days of inspection during the eight-month construction
4 project."

5 Now, are you saying that you don't know if
6 that's what your company records reveal?

7 A. I am saying I have no personal knowledge of
8 company records of that sort.

9 Q. Okay. Are you or are you not aware that in
10 1996, that Olympic did an MFL internal inspection
11 device that showed an abnormality in the location of
12 the third-party damage in the occurrence of Whatcom
13 Creek?

14 A. I believe there was an internal inspection
15 tool and something identified, but that's the extent of
16 my knowledge on that.

17 Q. A possible wrinkle bend and a possible mash?

18 A. That is what I've heard, yes.

19 Q. A 23 percent metal loss abnormality?

20 A. I don't know about that specific number. In
21 fact, there are folks who will testify beyond me,
22 perhaps Tom Wickland, who's our safety and integrity
23 expert, that can certainly speak to that level of
24 detail.

25 Q. Okay. Isn't it also true the damage

3033

1 occurred in '94, no one was there to watch it? In '96,
2 you ran a Smart PIG through it and found a problem?
3 Didn't you also run a Smart PIG through it in '97 and
4 find another problem in the same general area as the
5 Whatcom Creek?

6 A. I don't recall that particular fact. But
7 again, I would defer this line of questioning to Tom
8 Wickland, who's our safety and integrity expert.

9 Q. Now, I want to turn your attention to page 3
10 of 16 where OPS is searching through the records.

11 CHAIRWOMAN SHOWALTER: What exhibit is this?

12 MR. BRENA: All my questions for a little
13 while will be on 654, which is the notice of probable
14 violation, and we're just going to go through the facts
15 of it.

16 Q. After they found this, it appears that there
17 was an AFE authorizing an excavation to inspect the
18 Whatcom Creek site of the abnormalities that occurred
19 in 1999, but that they never did it.

20 Is that your understanding of the facts?

21 A. Again, I have not been involved with the
22 notice of proposed violation or the facts surrounding
23 the notice of proposed violation. Again, it's our
24 legal department as well as a special committee of the
25 board. Bill Beaver is a witness in this proceeding,

3034

1 and he would be very apt to answer that as well as Tom
2 Wickland, who's our safety and integrity expert.

3 Q. Mr. Batch, I'm actually trying to explore
4 with -- I mean, you are president of the company.

5 Is there any bigger issue that is facing the
6 company than the potential liabilities associated with
7 the Whatcom Creek incident?

8 A. Again, my role has not been looking back
9 dealing with the Whatcom Creek incident. My role has
10 be looking forward to make sure that BP Pipe Lines can
11 operate as a safe pipeline for the benefit of the
12 public and for the benefit of Washington. And I have
13 always kept my focus September 2000 forward to make
14 sure that this pipeline is absolutely a very, very safe
15 pipeline.

16 Q. But, Mr. Batch, I mean you give testimony
17 describing 27 gouges by a third party disbursing
18 responsibility away from Olympic. Now, all I'm trying
19 to do is explore with you what your understanding of
20 all of the facts are, not just the ones that would
21 exonerate you.

22 A. Well, those -- I mean, the 27 gouges is
23 written in an NTSB report. It's a factual report. And
24 it's not my knowledge of that happening because I
25 wasn't here at the time. But having read the report

3035

1 and having had a conversation about that report, that's
2 my knowledge. I might also point out that the section
3 of pipe that had the 27 gouges in it was not pre-1970
4 ERW pipe.

5 Q. Yes, I was aware of that, thank you.

6 Are you aware that Olympic never dug up and
7 inspected the Whatcom Creek site despite there being
8 tremendous activity and two Smart PIGS indicating
9 abnormalities in that section of pipe?

10 MR. LEYH: At this point, your Honor, I'm
11 going to object for lack of foundation, as well as
12 asked and answered.

13 MR. BRENA: Well, your Honor, this witness
14 posses great knowledge of exonerary facts, and I'm
15 exploring with him his knowledge of the facts -- of all
16 the facts associated with the Whatcom Creek incident,
17 specifically ones that were the basis for the largest
18 fines and liabilities for the company that he is the
19 president of.

20 I don't like to play pass the buck among
21 witnesses, and I want the opportunity to explore this
22 witness' complete knowledge of it. He's given
23 testimony specifically with regard to the cause of the
24 Whatcom Creek incident, and so I'm exploring that.

25 JUDGE WALLIS: I think that he has made it

3036

1 clear, through his answers to several questions, that
2 his knowledge of the pre-2000 events is based upon the
3 documents rather than his personal knowledge, and I'm
4 concerned that we could spend quite a bit of time
5 asking him similar questions only to get the same
6 responses. So I would sustain the objection.

7 MR. BRENA: Okay.

8 Q. May I ask -- with regard to that, I will
9 just explore it this way and see where we're at.

10 Do you know whether or not the controllers
11 in the control room had adequate training at the time
12 of the Whatcom Creek incident?

13 A. I wasn't there.

14 Q. Have you upgraded the controller training
15 subsequent to the Whatcom Creek incident?

16 A. We've put in BP's rigorous training program
17 since we took over as operator, and it's the training
18 program that all BP Pipe Lines employees are put
19 through. And if you wish to delve into that further,
20 Bobby Talley is probably the appropriate person to give
21 you the details on it.

22 Q. Do you know whether or not the SCADA system
23 was working properly at the time of the Whatcom Creek
24 incident?

25 A. My understanding that -- of that is there

3037

1 was a computer glitch or failure which froze the
2 equipment in the control room on that day.

3 Q. Are you aware that there were multiple
4 unscheduled shutdowns and by multiple -- I mean an
5 excess of 30, at the release valves associated with the
6 Bayview terminal that increased the pressure upstream?

7 MR. LEYH: Your Honor, I would object and
8 renew the same objection. What we have here is counsel
9 reading from a letter that the witness has said
10 repeatedly is the source of his knowledge and his only
11 knowledge about the cause of the accident.

12 MR. BRENA: Actually, that's not true. The
13 last question I asked him, he had specific knowledge
14 with regard to the question that I asked relative to
15 the operation of the SCADA system, which is one of the
16 factors in the letter. He indicated that there was a
17 computer problem with it. So he has some knowledge,
18 and some knowledge he doesn't have. And I don't know
19 how else to do this.

20 JUDGE WALLIS: In contrast with the earlier
21 line of questions in which the question did say his
22 knowledge was limited to also reading the report, the
23 witness has indicated that he does have an
24 understanding regarding the facts that counsel is now
25 inquiring into. And we do note that he is president of

3038

1 the company, and he is entitled to have an
2 understanding of information regarding the company, and
3 counsel is entitled to inquire into it.

4 Q. Do you have my question in mind or would you
5 like me to rephrase it?

6 A. Would you rephrase it or repeat it.

7 Q. I'd be happy to. Are you aware that the
8 valves associated with the Bayview terminal resulted in
9 greater than 30 unscheduled shutdowns prior to the
10 Whatcom Creek accident?

11 A. I believe I have heard that there was a
12 control valve that continued to shut, yes.

13 Q. The consequence of that control valve
14 shutting was to increase the pressure in the Whatcom
15 Creek area, was it not?

16 A. I'm not exactly 100 percent sure of the
17 effect of that valve closing. But I would presume that
18 pressure was increased when that valve closed, and we
19 were pumping against the closed valve. I would expect
20 that was the case.

21 Q. They said, "As reported by Olympic, the
22 isolation valve MV 1902 closed uncommanded over 50
23 times since the Bayview terminal was incorporated into
24 Olympic's pipeline system."

25 Is that consistent with your understanding

3039

1 of the facts?

2 A. That's what I've read.

3 Q. It goes on to state that, "Olympic also
4 reported that 41 of these events were due to high
5 pressure at the Bayview terminal."

6 Is that also consistent with your
7 understanding of what happened?

8 A. I'm not familiar with that fact.

9 Q. Okay. Is there any record of Olympic's
10 personnel responding to investigating or correcting the
11 cause of the repeated uncommanded valve closures
12 resulting from the Bayview terminal?

13 A. I don't know. I wasn't here.

14 Q. Have you seen any corporate documents that
15 have been -- at all that indicate that Olympic did
16 undertake such an investigation?

17 A. Not that I recall, no.

18 Q. And the same question with regard to the
19 repeated failures of the relief valve to open
20 appropriately, you have seen no corporate records
21 reflecting that Olympic personnel responded and
22 investigated or attempted to correct those conditions?

23 A. The fact that I haven't seen any doesn't
24 mean that they don't exist. I've just not seen them.
25 I have no personal knowledge of those records.

3040

1 Q. I appreciate that. I notice that the Office
2 of Pipeline Safety makes an affirmative statement that
3 there is no record, so I'm wondering if you saw any
4 records that would contradict that fact?

5 A. No.

6 Q. Has Olympic done an internal investigation
7 as to all the multiple causes that resulted in the
8 Whatcom Creek incident?

9 A. I believe when the BP team came to Olympic
10 in late June, early July, there was a team put together
11 to explore all of the potential issues associated with
12 Whatcom Creek.

13 Q. And what did -- was that memorialized in a
14 report?

15 A. Not that I'm familiar with, no.

16 Q. Have you seen a report analyzing all the
17 factors that resulted in Whatcom Creek, a company
18 report?

19 A. I'm drawing a blank on a company report. I
20 know there was a team that put together the study. I
21 presume there would have been a presentation or some
22 sort of information associated with that, but I don't
23 recall seeing it.

24 Q. And by "the study," what are you referring
25 to specifically?

3041

1 A. Obviously, there were problems with Olympic.
2 And BP, the operator, to be a prudent operator, we
3 wanted -- I assume -- again, I wasn't here at the
4 time -- we wanted to understand what all those issues
5 were. And I understand a study was commenced and a
6 team was put together to look at that, but again that
7 was before I got here.

8 Q. To look at the Whatcom Creek incident
9 specifically?

10 A. To look at the issues associated with what
11 might have caused Whatcom Creek.

12 Q. Is that document a confidential document or
13 protected by attorney/client privilege?

14 A. I don't know if there is a document or not.
15 I'm just presuming that there might be, but I have not
16 seen one.

17 JUDGE WALLIS: Mr. Batch, just so it's
18 easier for our court reporter, if you could wait until
19 counsel finishes the question before you answer --

20 THE WITNESS: Sure.

21 JUDGE WALLIS: -- we'd appreciate it.

22 THE WITNESS: Sure.

23 Q. I'd like to draw your attention to Exhibit
24 Number 650, the first paragraph on the exhibit summary,
25 specifically the first two sentences of the first

3042

1 paragraph that read, "Numerous factors unfortunately
2 built upon one another that ultimately resulted in the
3 accident on June 10th, 1999, in addition to the SCADA
4 problems, factors related to pipeline, patrolling
5 third-party damage investigation, hydraulic design,
6 equipment calibration and mechanical failures may have
7 all contributed to the situation leading to the
8 accident." Do you see that?

9 A. Yes.

10 Q. Is it your understanding that those are the
11 factors that contributed to Whatcom Creek?

12 A. Not to that level of detail, no. I mean, my
13 understanding is a backhoe hit the line, weakened the
14 pipe. There was a SCADA failure, and there was a valve
15 at Bayview that was closing prematurely. To my
16 knowledge, those are the factors that I'm aware of.

17 Q. Let's take this in parts. I mean, when the
18 backhoe hit the line, there weren't any Olympic people
19 out there supervising construction within 2 feet of
20 their line, were there?

21 A. I don't know if that's true or not. I
22 wasn't there.

23 Q. Since the damage, you have -- Olympic has
24 run two Smart PIGS through, both indicated there was
25 damage, nothing was done; isn't that true?

3043

1 A. Again, this was back in 1994 or '96, you
2 were saying?

3 Q. Yes.

4 A. I don't really know the actions that were
5 taken or not taken by Olympic. I know those tools were
6 run, indications were observed and there was an area, I
7 believe at one of the anomalies, that was deemed to be
8 too wet to dig at the time. It was found, and that's
9 the extent of my knowledge.

10 Q. There was an AFE put in place to actually
11 review that site two years before the Whatcom Creek
12 accident; isn't that true?

13 A. I'm not aware of that.

14 Q. Too wet to dig, they wouldn't dig without an
15 AFE, would they?

16 CHAIRWOMAN SHOWALTER: What is an AFE?

17 MR. BRENA: Authorization For Expenditures,
18 it's a way that a pipeline company authorizes on a
19 project-by-project basis its expenditures.

20 CHAIRWOMAN SHOWALTER: Thank you.

21 THE WITNESS: I don't know what Equilon
22 would have done or not done.

23 Q. Then you had 50 valve closures increasing
24 the pressure at the site of the damage that they had
25 known about for five years; isn't that true?

3044

1 A. I don't know that I would draw that
2 conclusion of who knew what when.

3 Q. The SCADA system, they restarted the system
4 after an indication of failure because of a computer
5 glitch?

6 A. Yes, that happened.

7 Q. Now, do you have an appreciation for the
8 importance of this information to this rate case?

9 A. Not particularly since we've eliminated all
10 of the Whatcom Creek expenses from the rate filing, no.

11 Q. Do you believe that your shippers should
12 have to pay for operator imprudence?

13 A. I don't know that I would call being damaged
14 by a backhoe operator imprudence or having hydro test
15 on an ERW seam fail, I don't think I would call that
16 imprudence. I think I would call that definitely
17 issues that need to be addressed and need to be
18 repaired and remediated, especially from a third-party
19 damage standpoint as well as from a hydro test
20 standpoint, a TFI inspection standpoint. And those are
21 exactly the things that we're doing today.

22 Q. My question didn't go to whether or not the
23 facts that we've been discussing constituted operator
24 imprudence. My question went to do you feel that your
25 rate payers should pay if -- should suffer financial

3045

1 consequences as a result of Olympic's imprudent
2 operation of its line, as a general proposition, should
3 we pay for it or not?

4 A. Again, I think rates should be reflected in
5 what needs to be done on this pipeline to provide it in
6 a first class shape for our shippers to continue their
7 efficient shipping of their products.

8 Q. So whether or not a financial consequence
9 arises out of imprudent operation, you don't think
10 should matter?

11 MR. LEYH: I'm going to object at this
12 point, your Honor, this is the third question that
13 Mr. -- that counsel has made the unsupported allegation
14 that there was operator imprudence. There's been no
15 finding in any judicial hearing that there was
16 negligence or imprudence, whatever that means.

17 MR. BRENA: I haven't asserted that in my
18 questions. I haven't assumed there is or is not. But
19 I'm exploring with this witness, if there is a
20 financial consequence arising from imprudent operation,
21 does he feel that the rate payers should have to bear
22 the consequence of that? Now, he chooses to respond
23 in -- with regard to Whatcom Creek and the ERW seam,
24 and we'll get to those in a minute.

25 But my question doesn't go to that. It's

3046

1 just a general proposition if they imprudently operate
2 the line and there is a financial consequence, who
3 should bear the consequence?

4 JUDGE WALLIS: I think the question is
5 permissible, but I would ask counsel to watch the tone
6 of the questions.

7 MR. BRENA: Okay.

8 Q. Do you have the question in mind?

9 A. Would you repeat it.

10 Q. If it's demonstrated that there is a
11 financial consequence arising from the imprudent
12 operation of the line by the operator, would you agree
13 that its rate payers shouldn't bear that financial
14 consequence?

15 A. You post a hypothetical?

16 Q. I do.

17 A. Which I'm not sure, not being a rate-making
18 expert, as you pointed out, and not being well versed
19 in the rate-making process, that I am the right person
20 to answer that, and I would defer to our folks that are
21 knowledgeable with regards to what you can collect in
22 rates and what you can't.

23 Q. Okay. You said you didn't think that
24 someone having a backhoe would constitute operator
25 imprudence -- someone hitting your line with a backhoe

3047

1 would constitute imprudence earlier in response to one
2 of my questions.

3 Did I hear you correctly?

4 A. I don't believe that the release from the
5 fact that a backhoe hit the pipeline was an imprudent
6 operation.

7 Q. Okay. If the facts are true that the line
8 was hit years before and that Olympic improperly
9 supervised the construction, that Olympic was aware of
10 the damage on two separate occasions, that Olympic
11 began to investigate but didn't follow-up, that a valve
12 misoperated and resulted over 50 times in inappropriate
13 closer and if a relief valve failed to operate
14 correctly and if the SCADA system at the time of the
15 accident was defective, do you think that those are
16 other facts that would go to this issue of whether or
17 not there was operator imprudence?

18 A. Again, all those issues are being looked at
19 very heavily in other courtrooms and court proceedings.
20 And no degree of imprudence or negligence have been
21 identified or proven.

22 Q. Have the other inquiries into this resulted
23 in the highest level of fines ever assessed by the
24 Office of Pipeline Safety?

25 A. I believe there was \$3 million fine assessed

3048

1 by the Office of Pipeline Safety.

2 Q. To your knowledge, is that the highest fine
3 ever levied by the Office of Pipeline Safety for these
4 types of violations?

5 A. I don't know personally, but it's a big one.

6 Q. With regard to -- you said a seam failure
7 also wasn't operator imprudence. If the operator was
8 aware for over a decade that this type of pipe was a
9 problem, that it should be tested, that that was a
10 recommendation over a decade ago, that it was
11 presumptively found that this type of pipe was a
12 problem and the operator continued to do nothing until
13 the City of Bellingham required testing, do you think
14 that those are all facts that should be taken into
15 consideration and considering whether or not the line
16 was operated prudently with regard to this type of
17 pipe?

18 A. I'm sorry, the late hour, I've kind of lost
19 track of your long question.

20 MR. BRENA: That's okay. I withdraw the
21 question, and I have no further questions. Thank you.

22 JUDGE WALLIS: Commissioner questions.

23

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

25 BY CHAIRWOMAN SHOWALTER:

3049

1 Q. I have some follow-up questions.

2 If you could turn to page -- to Exhibit 611,
3 page 12, that's your FERC testimony.

4 A. Yes.

5 Q. Actually, I'm sorry for making everyone turn
6 to that page. It's just the questions that I have
7 arose when you were being questioned on that page.

8 A. Sure.

9 Q. If you look at the level of inspection
10 activity that Olympic Pipe Line undertook in the year
11 2001 -- calendar year 2001, is it your expectation that
12 in calendar year 2003, you will have the same level of
13 inspection activity that you had in 2001?

14 A. I expect that the inspection schedule will
15 be a fairly lengthy one with various phases of the
16 inspection. You might run a tool one year; you might
17 be doing the repairs the next year. You might run
18 another tool that same year you're doing the repairs,
19 and you might be doing repairs the following year.

20 So I think -- it's kind of an ongoing
21 process, and there will be continuous inspection and
22 repair activities going on for Olympic for, I would
23 guess, several years to come.

24 Q. Does the inspection schedule ensure that
25 over some period of years an appropriate degree of

3050

1 inspection is done over that period of years?

2 A. Yeah. Well, I believe the high consequence
3 area rule requires internal inspection or hydro test
4 every five years.

5 Q. If you look at your inspection schedule,
6 maybe it's a five-year schedule, I'm not sure, but if
7 you look at the average level of inspection activity
8 that would occur over that period, is it -- is it at
9 least as high as the level of inspection activity that
10 occurred in the year 2001?

11 A. My guess is it would curtail off once we
12 have a level of sophistication and level of
13 understanding of this particular 400 miles of pipe,
14 but, you know, I think for the foreseeable future, the
15 next two or three years, we've already laid out an
16 inspection and, you know, repair schedule based on what
17 the inspections might find.

18 Q. All right. Well, looking at this year,
19 then, 2002, in terms of what you have done or intend to
20 do in the year 2002, is it as intensive as the year
21 2001?

22 A. It is almost as intensive as 2001. We're
23 running deformation tools. I believe the MFL tool is
24 either scheduled for 2002 or 2003. The TFI tool was
25 run third, fourth quarter 2001. And we just completed

3051

1 our final run on the TFI about a -- I guess a week ago.

2 Q. I think the question that Mr. Brena was
3 trying to get at, maybe, and the question I'm trying to
4 get at: Was the year 2001 an exceptional or unusually
5 intensive year for you, inspectionwise, simply because
6 you were fairly new into a difficult situation?

7 A. Again, it's hard to predict what we'll find
8 as we do these inspections, and the regulatory
9 agencies, based on what we find, could ask us to do a
10 lot more inspections. But my hope would be that at
11 some point down the road, we can bring this pipeline to
12 a more normal level of inspection and repair than in
13 the first couple of years.

14 Q. All right. My next question arose when you
15 were being questioned on Exhibit 627, page 3 of 4, this
16 is the management fee information.

17 A. Okay.

18 Q. I'm looking at Item 6, which is FERC and
19 Washington State PUC Tariff Administration.

20 CHAIRWOMAN SHOWALTER: Is this confidential
21 or not, this document?

22 MR. LEYH: No.

23 CHAIRWOMAN SHOWALTER: All right.

24 Q. For example, it shows figures of \$10,000 for
25 the years 2001 and onwards. Do you have anyone on

3052

1 staff --

2 A. No.

3 Q. -- who signed this project, this function?

4 A. Do you mean do I have a tariff director

5 or --

6 Q. Right.

7 A. No, we kind of share one tariff director

8 with NBP Pipe Line and that's Bernadette Sobranski

9 (ph.) who, I think, you have met once before.

10 Q. Turning now to Exhibit 643-C, page 2 of 4,

11 do you have that in front of you? This is the

12 organization chart.

13 A. Yes.

14 Q. If you look over at the far left in the

15 bottom, it says "vacant regulatory affairs."

16 A. I think that had to do with environmental

17 regulatory affairs.

18 Q. So as far as Olympic Pipe Line or the

19 manager, BP, following or tending to regulatory issues,

20 I take it the management contract of BP itself -- that

21 BP provides itself, doesn't have that function; is that

22 right?

23 A. Well, to the extent that the management fee

24 covers a number of BP Pipe Line's personnel in Chicago

25 that provide us support with human resources and

3053

1 accounting and engineering and various other functions,
2 I guess Bernadette Sobranski is available to us for
3 that support.

4 Q. When she provides those services, does she
5 bill Olympic? Is her time billed to Olympic Pipe Line
6 for them?

7 A. You know, I don't know if she bills her time
8 or not. But it's absorbed within the management fee
9 whether she does or not. I might also add that
10 Olympic, just by the nature of its needs, has used a
11 lot of recourses out of BP Pipe Line in Chicago,
12 probably more than the management fee indicates that
13 it's paying for.

14 Q. Does the management fee generally include
15 fiscal responsibilities on keeping Olympic Pipe Line in
16 good fiscal shape? Is that one of the functions?

17 A. Yes, we have a commercial group that
18 supports Olympic in that way.

19 Q. If you could turn to your rebuttal testimony
20 which is Exhibit 601-T. You have a number of
21 references in this testimony to Olympic's focus and
22 priority on safety.

23 A. Yes.

24 Q. Turning to page 3 of this testimony, the
25 last sentence of the first paragraph reads, "Although

3054

1 we urgently needed the revenues from increased tariffs,
2 our focus and priorities had to be on the safe and
3 reliable operation of the system."

4 Do you see that sentence?

5 A. My page 3 might be different than your page
6 3.

7 Q. All right. I'm looking in my briefing book.
8 It's Exhibit 601-T. It's your rebuttal testimony.

9 A. Okay, that was page 4?

10 Q. Page 3.

11 A. Page 3, okay.

12 Q. And that paragraph that I'm talking about
13 begins with, "As I said at the outset." Do you see
14 that paragraph?

15 A. Yes.

16 Q. At the top of the page, the last sentence of
17 that paragraph is the one that reads, "Although we
18 urgently needed the revenues from increased tariffs,
19 our focus and priorities had to be on the safe and
20 reliable operation of the system."

21 A. Yes.

22 Q. I want to ask you about the logic of that
23 sentence and its implication is that you really could
24 not both tend to safety and tend to your finances, and
25 this implication, as I read your testimony, occurs in

3055

1 several places.

2 And I take it that its safety was your focus
3 and maybe finances was not your focus as a factual
4 matter; is that correct?

5 A. Not exactly. I think, you know, it was a
6 matter of priority. We came in in July. We came into
7 a situation that was unique and unusual. We had a
8 segment of pipeline that was shut down. We had a
9 community and public officials that were outraged at
10 the way Equilon did their business. We went in there
11 with the understanding from BP Pipe Lines, as the
12 operator, that BP would support our effort to bring
13 this pipeline back up to operation, and we felt that
14 the first order of business was assuring the public
15 that this pipeline could be operated safely. Part of
16 it was already operating.

17 There were calls to shut it down entirely,
18 and we felt that our best use of time in those initial
19 weeks and months was to get on the ground and make sure
20 that we had the systems in place and the financial
21 wherewithal in place to make these safety improvements
22 that BP Pipe Lines was committing to.

23 Q. I guess I'm not questioning your commitment
24 to safety or that you made certain expenditures for
25 safety, but isn't it the case that any company, at

3056

1 least of the size of yours, has many types of
2 employees. You have engineers, you have accountants,
3 you have support staff.

4 A. Sure.

5 Q. And why couldn't Olympic Pipe Line or its
6 shareholders have also determined that at the same time
7 it's going to deploy and focus on safety, it would get
8 a regulatory expert to do the right thing and pay
9 attention to the financial side of things? Isn't that
10 part and parcel of a well-managed, safe and physically
11 sound operation?

12 A. I suppose in hindsight someone should have
13 thought about the regulatory implications of -- and
14 approaching the WUTC quickly. But I would also add
15 that it's been incredibly difficult, as we stand today,
16 to respond to data requests, get information from
17 historical records that just didn't exist. And to
18 think if we had done that back in 19- -- in July of
19 2000, it probably would have been much more difficult
20 to make any case.

21 Just now, we're kind of getting the systems
22 back in order so that we can at least present a case,
23 you know, in front of a commission that has appropriate
24 information. Also, I might say, again, just kind of
25 again, I wasn't here at the time when the new operator

3057

1 came in. I really wasn't on board until September of
2 2000, but I think the mind set rightly or wrongly was
3 that FERC methodology would be the methodology that
4 would be used, and historically Olympic had used FERC
5 methodology in their filings specifically, and perhaps
6 that thought was that would happen again. But, again,
7 I would just be speculating.

8 Q. I want to ask you about the next sentence
9 and its logic as well. It reads, "While increased
10 revenue is obviously the primary reason for the current
11 filing, we see this request for a rate increase as a
12 request for a vote of confidence and support by the
13 State of Washington that BP Pipe Lines is acting in the
14 public's interest, which is clearly pipeline safety."

15 The implication there, I think, is that
16 aside from the fiscal justifications for a rate
17 increase, you see another reason for a rate increase,
18 which is to show a vote of confidence?

19 A. Again, I think when we came in, the elected
20 officials of the State of Washington encouraged us,
21 urged us, also demanded in some cases to do a number of
22 things to this pipeline to ensure its safety. And we
23 felt as BP, the operator, we were going to come in and
24 do this job right, and we were going to spend the money
25 that was necessary in order to do it.

3058

1 And perhaps, there's a hope that the
2 government in seeing BP Pipe Line's response to, you
3 know, the outcry of need for pipeline safety, that we
4 would get some recognition that, in fact, BP has
5 stepped up to the plate, has done the right thing, has
6 spent the money and that it somehow would be rewarded
7 or recognized, at least, for doing that job.

8 Q. But suppose --

9 A. I understand that the regulatory process is
10 a specific process and a fixed process and requires a
11 certain burden of proof and a certain level of
12 information of which we have tried really hard to pull
13 together, and we've had difficulty. And this
14 Commission, I know, has been frustrated as we all have
15 with our ability to get this information in a timely
16 manner.

17 Q. But supposing Olympic had done everything
18 that public officials and agencies asked it to do, had
19 made every necessary safety improvement, but had
20 overpaid -- this is a hypothetical.

21 A. Sure.

22 Q. But had overpaid to get it done and could
23 not document how it got it done, that would be an
24 example where you had done the right thing but maybe
25 you'd either not -- had not done it in an economical

3059

1 way and could not document it.

2 This is a hypothetical. I don't mean to say
3 these are facts, but in that case, would you say we
4 should give the rate increase anyway or we should
5 insist on the normal things that a commission insists
6 on for the company to demonstrate that fiscally the
7 rate is justified?

8 A. Well, Chairwoman Showalter, the commission
9 has discretion to use the appropriate methods and
10 requirements to determine what Olympic should get in a
11 rate increase. And we recognize that. But this case
12 is not normal, and it's abnormal. It's unique as the
13 Commission has recognized, and because of its
14 uniqueness, perhaps, there need to be some unique
15 solutions to help Olympic get back to its feet to get
16 into a state of financial stability, which I believe is
17 in the public's interest, is in the shipper's interest,
18 certainly in Olympic's interest.

19 Q. I want to ask you about another sentence on
20 page 7 of this same exhibit, 601 -- no, I'm sorry. I'm
21 sorry, it is Exhibit 610, page 7 of Exhibit 610, that's
22 your direct testimony in this case.

23 A. Okay.

24 Q. And I'm focusing on lines 17 through 22
25 there.

3060

1 A. What page was that?

2 Q. Page 7.

3 A. Yes.

4 Q. And specifically it's your statement that
5 switching methodologies would create significant
6 regulatory uncertainty. And then the last sentence
7 says, "Without proper price signals and regulatory
8 certainty, these long-term investments are not likely
9 to be made."

10 I want to ask you about regulatory
11 certainty. Why would it create regulatory uncertainty
12 if we finally, formally, in an order, establish
13 whatever methodology we come to? Why is a switch, if
14 it's definitive, if it even is a switch -- I'll leave
15 that one aside.

16 Why would it create uncertainty? I think it
17 would create disappointment, but why uncertainty?

18 A. It would create uncertainty only to the
19 extent that we've kind of managed all of the previous
20 increases under a different methodology with different
21 assumptions, and again, I am not the rate expert, so I
22 don't even begin to explain why the difference in
23 methodologies affect Olympic the way they do.

24 But my understanding is using the
25 traditional WUTC methodology, it's going to hurt

3061

1 Olympic significantly. And because this is a unique
2 case and it's a unique circumstance in Olympic's
3 evolution, I think that would create some uncertainty
4 to the shareholders and all of those who are loaning or
5 proposing to loan Olympic money, which currently is BP,
6 that, in fact, those loans will get paid back at some
7 point.

8 Q. So it's a fiscal uncertainty as a result of
9 a certain regulatory outcome?

10 A. Yes, correct.

11 Q. Last question -- I think it's my last
12 question. In your role as president, do you make
13 recommendations to the board of Olympic as to what
14 recommendations the board should make to its
15 shareholders?

16 A. As president of Olympic -- well, as operator
17 of Olympic, I make recommendations to the board for
18 capital programs, safety programs and those sorts of
19 things. I'm not sure that your question actually was
20 directed towards those programs, per se.

21 Q. My question is: Are you a person who does
22 or doesn't make a recommendation to the board about
23 whether the board should recommend to its parent BP,
24 that BP should either loan Olympic money or put equity
25 into the company? Is that one of your roles?

3062

1 A. Our role is to keep Olympic operating
2 safely, and to the extent that we need cash to do that,
3 I will ask Howard Fox, for example, to see if the
4 shareholders are willing to advance Olympic any
5 additional loans. And then Howard Fox, I think, has,
6 as he described in the interim case -- pretty much has
7 his discussions, and then a suggestion or
8 recommendation is made.

9 But I would make recommendations to the
10 board to the extent as operator but not necessarily as
11 far as trying to convince the shareholders to loan
12 money.

13 Q. Well, who is it in the Olympic Pipe Line
14 structure who might say, "I think this company would be
15 better off if it had some equity in it"?

16 Does anybody ask that kind of question or is
17 it just not one of your functions, as you see it?

18 A. It has not been one of my direct functions.
19 Howard Fox, our assistant treasurer, really has taken
20 on that role to, you know, try to keep cash coming into
21 Olympic.

22 Q. So you perceive a need for money and you
23 ask -- tell Howard Fox that you need money, and then
24 it's more or less up to him to --

25 A. Actually, I will talk with Cindy Hammer who

3063

1 kind of keeps track of the bank account, and either
2 I'll call Howard or Cindy will call Howard and just
3 kind of give him a status of where we are.

4 Q. So you have never requested equity from --

5 A. I have not made that formal recommendation,
6 no.

7 CHAIRWOMAN SHOWALTER: Thank you. I have no
8 further questions.

9 COMMISSIONER HEMSTAD: I don't have any
10 questions.

11

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

13 BY COMMISSIONER OSHIE:

14 Q. Mr. Batch, I'd like to ask you a few
15 questions about the management contract, and as I
16 understand it, the parties to the management contract
17 are the Olympic Pipe Line, which would be the regulated
18 entity and BP Pipe Lines of North America?

19 A. Yes.

20 Q. And how did the -- I guess, who initiated
21 the contact on either side of that agreement? Did
22 Olympic Pipe Line approach BP Pipe Lines of North
23 America or did BP approach Olympic in the initial
24 contacts regarding the management agreement?

25 A. Unfortunately, that was before I joined

3064

1 Olympic, and I'm not exactly sure of the sequence of
2 events where this took place.

3 Q. Is there a contract that's executed annually
4 or is it a multi-year agreement?

5 A. It's a five-year agreement, as I understand
6 it.

7 Q. Do you know who negotiated the management
8 contract?

9 A. I don't personally, but there's probably
10 someone that will testify or who's in this room right
11 now that would know the answer to that.

12 Q. So, I guess, I assume from your answer, that
13 you were not a party to the negotiations?

14 A. I was not.

15 Q. Do you know if the agreement is for a fixed
16 amount for the five-year period or is a fixed amount
17 annually?

18 A. I don't believe it's a fixed amount of -- I
19 think there's re-opener or opportunity to discuss with
20 the board if, in fact, our costs are higher or lower,
21 that we could get into negotiations. But I'm not
22 familiar enough with the contract and the details to
23 know exactly how that works. But I don't think it's
24 fixed for five years.

25 Q. By that, do you know that there's not a

3065

1 total amount for the five-year period or that the
2 annual amount of the agreement would be adjusted?

3 A. I think for the five years, they went out
4 and projected what those costs would be over the five
5 years, but -- so to the extent that I believe those
6 have been spelled out, they're fixed. But I believe
7 there's an opportunity to renegotiate those if we were
8 wrong when BP and Olympic made that agreement.

9 Q. Now, you are an employee of BP Pipe Lines of
10 North America?

11 A. Correct.

12 Q. And you're also -- you're the president but
13 also an employee, then, of Olympic Pipe Line?

14 A. No, I'm an officer of Olympic.

15 Q. Officer, yes?

16 A. Right.

17 Q. Now, is Ms. Hammer also an employee of BP
18 Pipe Lines?

19 A. Yes, she is. And she's also an officer of
20 Olympic.

21 Q. Mr. Collins?

22 A. No.

23 Q. And you don't know -- again, just to be
24 clear, you don't know who within Olympic Pipe Line
25 negotiated the management contract with BP of North

3066

1 America?

2 A. Well, I presume it was the board of
3 directors of Olympic at the time, but I don't exactly
4 know who in BP Pipe Lines North America was negotiating
5 that with the board.

6 MR. OSHIE: Okay. Thank you.

7 CHAIRWOMAN SHOWALTER: Just a question, I
8 guess, for counsel, is the BP management contract in
9 our record here?

10 MR. LEYH: I thought that it was, but maybe
11 I'm mistaken.

12 MR. BRENA: It might be in the interim case.

13 MR. FINKLEA: I know the Texaco agreement is
14 an exhibit in this proceeding.

15 MR. BRENA: I just put it in there.

16 MR. TROTTER: We have it, but I don't recall
17 if it was actually offered.

18 JUDGE WALLIS: Could we ask counsel to
19 verify whether it is in the record, and if it is not in
20 the record, could we ask Olympic to produce it and make
21 it part of the record.

22 MR. BEAVER: Absolutely.

23 JUDGE WALLIS: Now, we are going into
24 redirect. I do note that Mr. Brena has not moved his
25 exhibits, and he has addressed some of them and not

3067

1 others. So I would ask you to have a list of the ones
2 that you wish to offer.

3 MR. BRENA: I do have one question caused by
4 the Commissioner's questions that I'd like to explore.
5 And I'll just -- then I would like to discuss the
6 exhibits.

7 MR. TROTTER: Your Honor, I also have one.
8 Should I go first?

9 JUDGE WALLIS: Yes.

10 MR. TROTTER: Thank you.

11

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

13 BY MR. TROTTER:

14 Q. You were asked a question regarding
15 methodology for rate making, and I believe you said
16 Olympic always filed under the FERC methodology.

17 Do you recall testifying to that before this
18 Commission?

19 A. Yeah, I believe I said something to that
20 effect.

21 Q. Did you personally investigate the filings
22 to determine whether that, in fact, is true?

23 A. There was a -- there was a letter back in
24 1983 that Mr. Colbo had written, and I recall that
25 letter talking about using the FERC methodology within

3068

1 the WUTC.

2 Q. Okay. Since 1983, have you investigated all
3 the filings that Olympic made to ensure yourself that,
4 in fact, they were filed using the FERC methodology?

5 A. I did not personally, but the folks like
6 Brett Collins and Cindy Hammer advised me of that fact.

7 MR. TROTTER: Thank you.

8 JUDGE WALLIS: Mr. Brena.

9 MR. BRENA: I had one question and now I
10 have two. I realize the hour is late.

11 JUDGE WALLIS: We're going in the wrong
12 direction here.

13 MR. BRENA: Yes, I apologize.

14 .HE (BATCH - CROSS BY BRENA)

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

16 BY MR. BRENA:

17 Q. In response to Chairwoman Showalter's
18 questions, you said, I think, three different times
19 that Olympic is unique.

20 What is unique about a public service
21 company that has an accident and gets a little bit
22 behind and an owner that wants to spend shippers'
23 money?

24 A. Well, I don't quite understand your
25 statement.

3069

1 Q. Well, what's unique about Olympic as a
2 public service company in the State of Washington?

3 A. Well, the Commission, on its own, ordered
4 the 24.3 increase recognized that the Olympic situation
5 was unique.

6 Q. Well, I'm asking you, why do you think the
7 Olympic situation is unique?

8 A. Because it's not -- it's not what you would
9 expect to see from a status quo pipeline, oil pipeline.
10 There are many, many other issues associated with this
11 particular pipeline, and its situation that makes it
12 unique.

13 Q. I mean, people don't come in for rate
14 increases when things are status quo; isn't that
15 correct? I mean, they come in after things have
16 happened and they need more money.

17 A. Again, I can't -- I don't subscribe to your
18 statement. I'm not sure why others come in for rate
19 increases.

20 Q. Is there any particular reason that
21 Olympic's in to ask for a rate increase that's unique?
22 Is there any reason for asking for a rate increase that
23 is unique?

24 A. Olympic is asking for a rate increase
25 because it needs to attract capital under reasonable

3070

1 terms to continue the work that we're doing to make the
2 improvements on the system that are necessary to make
3 sure we have a safe pipeline and to bring it up to
4 100 percent operating pressure.

5 Q. Isn't that the same situation every public
6 service company in the State of Washington has in its
7 operations?

8 A. I can't speak to that. I have no knowledge
9 of that.

10 Q. Okay. Now, you went into the FERC
11 methodology a little bit. Do you know what methodology
12 Mr. Colbo's 1983 letter was referring to?

13 A. All I recall was that it was referring to
14 FERC methods.

15 Q. Is the 1983 FERC methodology the same one
16 that is -- it's your understanding that Olympic's
17 proposing for its rate increase?

18 A. I don't know, but we have experts here that
19 will testify that can answer that question for you.

20 Q. No, I'm going to ask you to accept, subject
21 to check, that it was an entirely different methodology
22 than you're here with today, okay? Can you accept that
23 subject to check?

24 A. Again, I think it would be more appropriate
25 to talk to one of the experts, rate experts. I have

3071

1 said that I'm not a rate expert, and I would just have
2 to check with those experts, so I think it would be
3 more appropriate just to hear from them directly.

4 Q. I'm trying to go to the regulatory
5 consistency argument. It's true that in 1983, that
6 Olympic -- assuming that commission has ever done
7 anything, but if it's true that in 1983 Olympic came in
8 with an entirely different methodology that its brought
9 before the Commission today, doesn't that undermine
10 your position of regulatory certainty?

11 A. I have no opinion of that. I don't know
12 what you're -- I don't know what you are getting at.

13 Q. Well, you say switching methodologies, what
14 if in 1983 it was a whole different methodology than
15 you are in here asking for an increase now? Hasn't
16 Olympic switched methodologies?

17 A. Again, I'm -- I'm failing to understand your
18 point. I mean, that's a hypothetical.

19 Q. Yes, it is. And if I demonstrated to this
20 Commission that in 1983 Olympic came in with a whole
21 different methodology, then would you concede the point
22 that Chairwoman Showalter was asking that there is no
23 switch of methodologies; that Olympic proposes a switch
24 of methodologies?

25 A. Again, you're asking the wrong person to

3072

1 talk about rate-making methodology. We have experts
2 that are hired and can answer this question.

3 Q. So you don't know whether or not -- when you
4 say second switching methodologies in this docket, you
5 don't know whether you are switching methodologies?
6 Whether or not Olympic's methodology is the same?

7 A. What I'm saying is if you filed and expected
8 to file using a FERC methodology and now you're being
9 asked to use a different methodology that doesn't help
10 you because it's not the same methodology that you
11 filed many times before, I think that is a problem in
12 today's situation with Olympic, considering the
13 uniqueness and the dire consequence and financial
14 condition that it's in.

15 Q. Okay. Let me --

16 A. Perhaps at some point in the future, at some
17 future point that would be appropriate, but right now
18 as we sit here today, Olympic is in such dire need of
19 cash that I think using any other methodology at this
20 point would be harmful -- extremely harmful to Olympic.

21 Q. That is what I'm trying to explore another
22 methodology. I'm trying to explore what you mean by
23 that. Let me give you a hypothetical.

24 Let's say in 1983, Olympic came in with the
25 ICC evaluation methodology under 154 that has been

3073

1 discarded by every court to consider it since then,
2 okay. Do you have that condition in mind?

3 A. I hear what you're saying, but I really
4 don't understand the concept. And I'm probably not the
5 right person to proceed on this hypothetical.

6 Q. I'm at a loss to understand this. You
7 testified that switching methodologies is wrong. I'm
8 asking you a hypothetical where no matter what the
9 commission does, there's a switch of methodologies.

10 Do you think that that undermines -- I mean
11 if -- let me pose it this way. And I apologize for the
12 inartful phrasing of my questions. I'm tried.

13 If the methodology that Olympic was in here
14 before was the ICC evaluation methodology which was
15 memorialized in FERC 154, and it's gone now, but let's
16 say that's what it was in 1983, are you proposing that
17 that methodology be continued or just because FERC has
18 come up with something new, that this commission now
19 adopted the new FERC methodology that wasn't the basis
20 for that rate filing filing in 1983?

21 A. I guess -- let me ask, are you asking me
22 that if another methodology was used in 1983 and that
23 methodology was switched, whether or not it was FERC or
24 not, would that be a problem? Is that what you're
25 asking?

3074

1 Q. I'm saying -- close, I think. That -- well,
2 for there to be a switch of methodologies, would you
3 concede that Olympic's -- for this argument to hold
4 water, that they should switch methodology, doesn't it
5 follow that Olympic has to advocate the methodology
6 today that it used in '83?

7 A. Again, my knowledge of methodologies, even
8 in the hypothetical, are very basic, and my basic
9 knowledge is that FERC methodology has been used by
10 Olympic. FERC methodology has been helpful for
11 Olympic. And switching to another methodology that is
12 less helpful is not going to be -- it will be probably
13 harmful for Olympic in the long term. That is what I'm
14 trying to say. That's not to say that sometime in the
15 future, that a UTC methodology or some other
16 methodology wouldn't be appropriate.

17 Q. I'm going to try one last time. I don't
18 think this is dependent on your knowledge of
19 methodologies.

20 If Olympic is advocating a different
21 methodology today than its tariffs who were allowed to
22 go into effect were based on in the past, then does it
23 follow that the switching methodology impacts and
24 regulatory certainty follows?

25 A. I don't know that I can subscribe to your

3075

1 hypothetical.

2 MR. BRENA: That's a terrible question. I
3 just give up. Thank you for your patience. I don't
4 know how else to ask it.

5 MR. FINKLEA: Your Honor, this is in answer
6 to your question, just by way of advising, we did a
7 little research here at the table and have determined
8 that Mr. Beaver premarked Exhibit 1002, which is a
9 confidential exhibit, as the Olympic Pipe Line company
10 operating agreement, and I believe that's the agreement
11 that we're talking about.

12 MR. BEAVER: It is. I reviewed it myself.
13 It's the one, the current one.

14 MR. FINKLEA: So the question -- the answer
15 to the question is it has been premarked.

16 MR. BEAVER: It will say AMOCO Pipeline,
17 which subsequently became BP Pipe Line. So it's the
18 same entity.

19 JUDGE WALLIS: Thank you.

20 MR. LEYH: Redirect. Mindful of the hour, I
21 will be very brief, I hope.

22 .HE (BATCH - REDIRECT BY LEYH)

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

24 BY MR. LEYH:

25 Q. Mr. Batch, do you know approximately when

3076

1 the most recent tariff filing Olympic made prior to
2 this one was?

3 A. 1998, I believe.

4 Q. Was that a filing done by Equilon as the
5 operator at that time?

6 A. Yes, I believe that's right.

7 Q. And is it your understanding, based on
8 either your review of facts or your conversation with
9 the experts that you've referred to within the BP
10 Olympic organization, that that was filed according to
11 a different methodology than what the intervenors are
12 proposing to use in this case?

13 A. No, I believe it was filed under the same
14 methodology that they have been filing previously.

15 Q. It was filed according to the same
16 methodology that Olympic is proposing in this case,
17 correct?

18 A. Yes, that's correct.

19 Q. And in your planning as the president of
20 Olympic relating to capital improvements and the
21 various safety programs and other programs that you've
22 been describing for the last several hours, what
23 assumptions have you made about the tariff methodology
24 that would be followed here?

25 MR. TROTTER: I will object to the question.

3077

1 In Mr. Batch's deposition, we asked him specifically,
2 and Mr. Talley as well, we asked him whether all of the
3 considerations that Olympic would apply in making
4 investment decisions were contained in their
5 documentation of those investment decisions, the answer
6 was yes. We then went through the documentation --
7 that documentation that was provided, and there is no
8 reference to rate methodology in the documentation. So
9 counsel is impeaching his own witness. We asked the
10 question very specifically, and it's too late to change
11 the testimony now.

12 MR. LEYH: Actually, I believe that I asked
13 a different question. But if I may have misspoken. I
14 will try it again.

15 Q. Mr. Batch, what assumption, if any, did
16 Olympic make and you -- with you as its president in
17 its planning efforts and its commitments to the public
18 and to the regulators regarding how future rates would
19 be established?

20 MR. TROTTER: This is my objection, because
21 those considerations we asked very specifically are
22 those contained in your budgeting documents for the
23 projects and other capital improvements that you're
24 making your commitment to public safety through those
25 procedures, and the answer was yes. And there's

3078

1 nothing in there about rate methodology.

2 MR. BRENA: I'd like to join in the
3 objection. We have listened for hours of company
4 testimony today that they analyzed Olympic on a
5 financial basis, and I didn't hear anywhere in that
6 testimony from Mr. Peck -- for example, we discussed
7 hurdle rates, we discussed rates of return, we
8 discussed integrated company rates. You know, he's
9 never brought up a rate-making methodology. Not only
10 didn't he bring it up but both Mr. Peck and Mr. Batch
11 have disavowed any detailed knowledge of any regulatory
12 methodology, and I just tried for ten minutes to ask
13 him a single question on regulatory methodology and he
14 couldn't answer. So if he's about to all of a sudden
15 become enlightened on regulatory methodology, an
16 enlightenment forming the basis for capital decision
17 making, then that would be a very radical turn of
18 events in this hearing room tonight.

19 MR. LEYH: I think that if the witness is
20 allowed to answer, he will not provide a great deal of
21 enlightenment about the nuances of regulatory
22 methodology. But he will be able to describe what
23 those underlying assumptions are relating to whether or
24 not there would be a continuation of the prior status
25 quo or not going forward at Olympic, and that's all I'm

3079

1 asking him to respond to.

2 MR. FINKLEA: Tosco joins with staff on the
3 objection based on what occurred in the deposition.

4 MR. TROTTER: Just as an additional point, I
5 realize you may not have had a chance to review the
6 deposition or the exhibits, but we pointed out -- I
7 think, this was also, I believe, in Mr. Elgin's
8 rebuttal to or response to the company's testimony,
9 those exhibits that are in the capital budgeting
10 process do include provisions for rate of return,
11 investors required return and other types of
12 information where you would expect them to be putting
13 in their return expectation. They're left blank for
14 all of the documents that were produced. They just
15 don't fill that out. So any testimony is really beyond
16 the pail at this point. They've already admitted what
17 they considered.

18 CHAIRWOMAN SHOWALTER: Mr. Trotter, I
19 have -- my question is supposing the witness did answer
20 the question a certain way in deposition, but for
21 whatever reason is going to give a different answer
22 here, why does -- why does the fact that different
23 answers were given earlier preclude the witness from
24 answering here? Wouldn't it just go to you're entitled
25 to impeach the witness?

3080

1 MR. TROTTER: Well, I think counsel is
2 impeaching his own witnesses.

3 CHAIRWOMAN SHOWALTER: Right. But why does
4 that form the basis to prevent the testimony?

5 MR. TROTTER: Because it's not showing
6 candor to the tribunal when you impeach your own
7 witness.

8 MR. BRENA: I have another take on this.
9 We've seen redirect unrelated to the cross just because
10 they have some speeches they want him to go through,
11 and this particular speech is that they rely on a
12 particular methodology. Now, you just can't sit up
13 there and say you don't know anything about methodology
14 15 times in a row and then be asked on redirect what
15 did you base capital investment on and say a particular
16 methodology. It just didn't follow from the cross.

17 I mean, if he knew anything about
18 methodology, I'd still be asking him questions. So the
19 problem that I have is beyond the scope of the cross.
20 In fact, it contradicts the scope of cross a fact he
21 disavowed knowledge of that he's now prepared to defend
22 on redirect. That's beyond where I could even get him
23 to go. That's the problem that I have.

24 JUDGE WALLIS: We'll sustain the objection.

25 Q. Mr. Batch, you were asked regarding some

3081

1 testimony that you gave in your direct testimony
2 describing various inspection tools that Olympic's been
3 running.

4 A. Yes.

5 Q. Do you recall that they were the deformation
6 tool, the magnetic flux tool and the transverse flux
7 inspection tool?

8 A. Yes.

9 Q. Were any of those inspections that you've
10 been running with those various tools required because
11 of the Whatcom Creek incident?

12 A. No.

13 Q. Was the Whatcom Creek incident caused in
14 anyway, at least so far as you've been able to
15 understand from reading the NTSB report and other
16 reports, by a failure of a longitudinal seam in the
17 pipe?

18 A. No, it was caused by third-party damage, and
19 there was no seam issue there.

20 Q. So is it your view that there is any
21 connection at all between the Whatcom Creek incident
22 and the company's current efforts to test all of the
23 pre-1970 ERW pipe for potential problems?

24 A. Again, I'd say the majority of effort had to
25 do with the hydro testing failure. But certainly the

3082

1 increased scrutiny as a result of the Whatcom Creek
2 accident required Olympic to look at its system a lot
3 closer than it had in the past. And we found a number
4 of things, which is really a good thing from a public
5 safety standpoint. And so if not for the additional
6 scrutiny as a result of the accident on the entire
7 system, we might not have been doing all of that work,
8 all that inspection work.

9 Q. And the inspection work like what you're
10 doing today required by other pipeline companies that
11 have the same type of pipe?

12 A. Yes.

13 Q. You were asked about the corrective action
14 order and the first amendment to the corrective action
15 order and specifically the requirement there that the
16 pipe be limited to 80 percent of MAOP.

17 Do you recall that?

18 A. Yes, I recall.

19 Q. The corrective action order was issued in
20 June of 1999 and the first amendment was issued in
21 August of 1999.

22 What was the status of the 16-inch line that
23 was limited in pressure as of those dates?

24 A. The 16-inch line was shut down on the date
25 of the incident.

3083

1 Q. And did it remain shut down as of the date
2 of those two orders?

3 A. To my knowledge, it remained shut down until
4 we restarted it in February of 2001.

5 Q. Okay. You were also asked to demonstrate
6 that all the employees that you're currently using are
7 necessary. In your view, is BP currently employing
8 anyone working for Olympic Pipe Line that's not
9 necessary?

10 A. No.

11 Q. When exactly did BP become Olympic's
12 operator?

13 A. BP became the operator of Olympic July the
14 1st of 2000.

15 Q. What was the process by which it was chosen?

16 A. I believe it was a competitive bid.

17 Q. And Equilon was the other bidder?

18 A. That's my understanding.

19 Q. Do you know how the -- I will withdraw that
20 question.

21 As of that time, did BP either directly or
22 indirectly control a majority of the Olympic shares as
23 of the time that it was chosen as the operator?

24 A. No.

25 Q. What was BP's direct or indirect ownership

3084

1 interest as of time that it was selected as the
2 operator?

3 A. BP, through an acquisition of ARCO acquired
4 ARCO and ARCO's 37 and a half percent interest in
5 Olympic.

6 Q. When did BP actually become a majority owner
7 in OPL?

8 A. I believe they purchased the GATX shares in
9 September of 2000.

10 Q. Okay. Now, you started as president in
11 about the beginning of September 2000?

12 A. Yes, actually, appointed in August and first
13 day on the job was right after Labor Day.

14 Q. Would you describe the state of existing
15 financial and operating records of the company that
16 were available to BP ARCO when BP assumed the role as
17 operator?

18 A. The best way to describe them is poor, I
19 mean, in total disarray. They were a mess.

20 Q. And what level of cooperation did BP receive
21 from Equilon in assembling complete records relating to
22 operations prior to BP's taking over?

23 A. We got absolutely no cooperation from
24 Equilon.

25 Q. What is the relationship today between BP

3085

1 and Equilon, which is now known as Shell?

2 A. It's a very adversarial situation.

3 Q. And how has Olympic had to go about
4 obtaining the historical records that have been a part
5 of this proceeding from Equilon or Shell?

6 A. Primarily through the litigation process.

7 Q. Have those records been readily forthcoming
8 from Equilon?

9 A. No, they have been very difficult to obtain.

10 Q. Did BP have any financial interest at all in
11 Olympic, even indirectly, at the time of the Whatcom
12 Creek incident?

13 A. No.

14 Q. What sum has BP infused into Olympic since
15 it acquired ARCO and thus acquired an interest in
16 Olympic?

17 A. I believe about \$53 million.

18 Q. And that -- those advances have all been in
19 the form of loans?

20 A. Yes, that's correct.

21 Q. How much of that sum, the 53 million, has
22 been devoted to capital investments?

23 A. I believe 36 million, and I need to just
24 double-check that with our finance person, but I
25 believe 36 million in capital.

3086

1 Q. What was the balance, the approximately
2 17 million spent on?

3 A. The balance was major maintenance projects,
4 safety projects and regulatory requirements.

5 Q. Now, Olympic has presented testimony that it
6 requires approximately \$66 million in additional
7 capital to be attracted to the company for it to
8 complete various capital projects. How much of that
9 amount, the 66 million, in new money needed is
10 earmarked for growth projection?

11 A. None.

12 Q. What is the sum for?

13 A. Primarily to do the safety improvements
14 necessary as required by the Office of Pipeline Safety,
15 the Department of Ecology and other regulatory agencies
16 and to try to bring the system back up to 100 percent
17 operating pressure.

18 Q. Now, in the event that circumstances are
19 such that Olympic is not able to attract that level of
20 new capital, do you have any contingency plan to deal
21 with that circumstance?

22 A. Well, I think we have to manage cash very
23 carefully. And there are probably a couple of projects
24 that are pretty far along that need to be completed.
25 For example, we have a bore under the Stillaguamish

3087

1 River, a bore replacement.

2 It's taken almost two years to permit that
3 particular repair to get us to the point where we can
4 actually do the bore. It's about a million dollar
5 project. It's something that will -- is required to
6 get to 100 percent, something that I think we need to
7 do so we don't lose all of that valuable time and
8 permitting and have to do this all over again.

9 So we would look at those projects very
10 carefully. In fact, I have asked Bobby Talley to
11 prioritize all of the capital projects with regards to
12 Olympic.

13 Q. And what about the projects that are further
14 on down the priorities list, do you have any plan for
15 determining what to do with those?

16 A. You know, again, depending on cash, we
17 probably have to defer some of them. If they are
18 regulatory in nature, I think we would need to meet
19 with the regulatory agencies and kind of talk about our
20 situation.

21 Q. Is there any particular category of proposed
22 expenditures that you believe could be deferred without
23 significantly affecting current operation of pipeline?

24 A. Well, as I've said before, operating at 80
25 percent operating pressure is pretty good ability in

3088

1 safety. And I think to the extent that we don't have
2 regulatory requirements around repairs on the pipeline,
3 certainly, we could probably just continue to operate
4 at 80 percent with a fairly good safety factor and be
5 comfortable at night that by not doing the repairs,
6 we're not affecting safety.

7 Q. And what, if any, financial consequence
8 would there be to the company of continuing to run at
9 80 percent?

10 MR. BRENA: Your Honor, if I could
11 interrupt. I just don't simply recall this line of
12 cross-examination, to reiterate the point made by
13 Mr. Trotter.

14 MR. FINKLEA: Your Honor, I asked specific
15 questions on what incremental revenues were, and the
16 witness told me he had no idea.

17 MR. BRENA: We're in a situation of just
18 doing redirect exam of pre-prepared forms that all -- I
19 can tell you that this is what -- they did the same
20 thing with Mr. Peck, and we're doing it again. And the
21 scope of their redirect should be limited to the scope
22 of the cross. And perhaps counsel can just remind me
23 of what cross-examination lines went to the racheting
24 down and contingency plans that this company may have.

25 MR. LEYH: There has been considerable

3089

1 cross-examination about the need for the capital and
2 what the company will do without the capital. Tosco
3 specifically asked questions about, you know, marginal
4 projects. Mr. Batch was not able to talk about dollar
5 increments. He is able to describe, you know, in a
6 "yes" or "no" or positive or negative fashion the
7 consequence to the company of continuing to operate at
8 80 percent MAOP. That's all my question went to.

9 MR. BRENA: And I think even the Chairwoman
10 explored the different options, but that was with the
11 prior witness. But 80 percent and whether or not that
12 is an option hasn't been the subject of cross.

13 JUDGE WALLIS: I do believe that this
14 examination is beyond the scope of the
15 cross-examination, and I think the objection should be
16 sustained.

17 Q. Mr. Batch, what is your main concern today
18 as the president of Olympic Pipe Line?

19 A. My primary concern is that we are allowed or
20 permitted to do the job that we came here to do and to
21 kind of finish the job that we came here to do, which
22 was to bring this pipeline back up to a level of safety
23 appropriate for the public interest as well as bring it
24 up to 100 percent. I've had numerous meetings with
25 community leaders, elected officials, the U.S.

3090

1 congressional delegation, other folks, and I've kept
2 them very well informed. Most of my job has been
3 external communication in nature, letting people know
4 what we're doing as BP Pipe Lines, the commitment we've
5 made and to be able to regain the trust that we need
6 from the community to continue to operate this
7 pipeline. And what keeps me up at night is the thought
8 that we might not be able to keep these commitments,
9 and we could lose this trust very quickly. Trust is a
10 very fleeting thing, and we made a commitment. We want
11 to do the right thing. We're here to do the right
12 thing, and I'm just hopeful that we are allowed to
13 continued.

14 MR. LEYH: No further questions.

15 JUDGE WALLIS: Is there anything further of
16 the witness?

17 It appears there's not.

18 Mr. Batch, thank you for appearing. That
19 concludes today's session. I will remind you that
20 there's a commission open meeting. We agreed earlier
21 that the process for beginning this hearing session
22 would be that it would follow by 15 minutes at close of
23 the open meeting, unless the open meeting goes into the
24 11 o'clock hour, in which case we could take up at
25 1:00.

3091

1 So you're welcome to call in to the open
2 meeting on our bridge line to the extent that a court
3 is available and monitor that. You're welcome to stop
4 in. We will not be beginning before 10:30, and the
5 court reporter is going to be standing by from 10:30
6 on.

7 MR. FINKLEA: Your Honor, scheduling
8 inquiry, what is our intention for tomorrow afternoon
9 and evening? Are we ending tomorrow at 5:00 or is
10 there a --

11 JUDGE WALLIS: We have not made up any time
12 today. We got off to a good start, but lost ground
13 later on. And I think that our plan at least for
14 tomorrow and Thursday would be to go evenings, unless
15 we happen to get through four or five witnesses in one
16 of those days.

17 MR. BRENA: Your Honor, if I could move my
18 exhibits in?

19 JUDGE WALLIS: We do have some
20 administrative issues to deal with, specifically
21 Mr. Brena wishes to move some exhibits in conjunction
22 with Mr. Batch's testimony.

23 MR. BRENA: If I could just reserve the
24 right to move additional exhibits after we've had an
25 opportunity to review the transcript, I would

3092

1 appreciate it. We covered a lot of ground.

2 JUDGE WALLIS: Yes.

3 MR. BRENA: I would move 624, 625, 626, 627,
4 629, 630, 638, 639 641, 643, 649, 650, 654.

5 JUDGE WALLIS: That was -49, -50 and what?

6 MR. BRENA: 649, 650, 654, 664, 667, and we
7 would reserve the option of moving additional ones in
8 tomorrow after we have reviewed the transcript, I would
9 appreciate it.

10 JUDGE WALLIS: Very well. Is there any
11 objection to any of those?

12 MR. LEYH: No.

13 JUDGE WALLIS: There are no objections. The
14 exhibits are receive. Is there anything else of an
15 administrative nature? Very well. This session is
16 concluded.

17 (Proceedings adjourned at 8:50 p.m.)