

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)

 Complainant,)

 vs.) DOCKET NO. TO-011472

6 OLYMPIC PIPE LINE COMPANY,) Volume XXVIII

7 INC.,) Pages 3167 - 3285

 Respondent.)

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10 A hearing in the above matter was held on
11 June 26, 2002, at 3:15 p.m., at 1300 South Evergreen
12 Park Drive Southwest, Olympia, Washington, before
13 Administrative Law Judge C. ROBERT WALLIS, Chairwoman
14 MARILYN SHOWALTER, Commissioners WILLIAM HEMSTAD and
15 PATRICK OSHIE.

16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION
18 COMMISSION, by DONALD T. TROTTER and LISA WATSON,
19 Assistant Attorneys General, 1400 South Evergreen Park
 Drive Southwest, Post Office Box 40128, Olympia,
 Washington 98504; telephone (360) 664-1189.

20 OLYMPIC PIPE LINE COMPANY, INC., by STEVEN C.
21 MARSHALL, Attorney at Law, Perkins Coie, 411 108th
 Avenue Northeast, Suite 1800, Bellevue, Washington
 98004; telephone (425) 453-7314.

22 TESORO REFINING AND MARKETING COMPANY, by
23 ROBIN O. BRENA, Attorney at Law, Brena, Bell &
 Clarkson, 310 K Street, Suite 601, Anchorage, Alaska
24 99501; telephone (907) 258-2000.

25 Kathryn T. Wilson, CCR
 Court Reporter

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1 TOSCO CORPORATION, by EDWARD A. FINKLEA and
2 CHAD M. STOKES, Attorneys at Law, Energy Advocates,
3 LLP, 526 Northwest 18th Avenue, Portland, Oregon
4 97209; telephone (503) 721-9118.

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2 WITNESS:

PAGE NO.

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BRETT COLLINS

4 Cross-Examination by Mr. Brena

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15 EXHIBIT NO.

OFFERED

16 725

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P R O C E E D I N G S

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JUDGE WALLIS: Let's be back on the record
after an afternoon recess. Mr. Brena?

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CROSS-EXAMINATION

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BY MR. BRENA:

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Q. Good afternoon, Mr. Collins.

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JUDGE WALLIS: I believe when we broke, you
had moved Exhibit 725 and what we are now calling 728
consisting of work papers, exhibits related to the
deposition of Mr. Collins that is Exhibit 725. We've
numbered pages in 728 from 1, which is the title page,
to 22. With those marks, you are, I believe, moving
these documents for admission; is that correct?

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

JUDGE WALLIS: Is there an objection?

MR. MARSHALL: Typically in a deposition, you
object only to the form of the question. I've not been
able to review this document for that purpose. I don't
anticipate there would be any, but I would like to
reserve objections other than to the form to these
questions and answers.

JUDGE WALLIS: We will reserve ruling when

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1 you are prepared to offer your objections.

2 MR. MARSHALL: I will take a look at this
3 tonight and offer any objections I might have except as
4 to form in the morning.

5 MR. BRENA: I don't agree with that. I've
6 sat through these depositions, and there have been all
7 kinds of objections, and they aren't all related to
8 form. Mr. Marshall isn't even the attorney who
9 defended the deposition, so if what he did was got a
10 chance to take this home and review it and come in with
11 a handful of objections that weren't made at the time,
12 that's not the way I think it should work. They had an
13 opportunity at the time of the deposition to make their
14 objections. I had an opportunity to respond on the
15 record, so I would ask that the objections in the
16 record stand.

17 MR. MARSHALL: Our practice in Washington
18 State is not to object except as to the form of the
19 question in depositions. Every other objection is
20 reserved for the time that the testimony might be
21 introduced in the main case. That's all I'm asking
22 for. As I say, I don't know if there would be any, but
23 I would like the opportunity to review it because that
24 is the practice.

25 MR. BRENA: That isn't the practice that I've

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1 sat through in taking these depositions.

2 JUDGE WALLIS: Let me ask other counsel that
3 have been to these depositions. Mr. Trotter or
4 Ms. Watson and Mr. Finklea?

5 MR. TROTTER: Now is the time to object to
6 the transcript going into evidence, and when it's
7 offered, that's when objections would have to be
8 debated, and I think that's how we generally work it.
9 He said he hasn't had a chance to read it. I think you
10 have discretion to allow them time or not, but at the
11 time it's offered is the time to make the standard
12 objection to any portion of it.

13 CHAIRWOMAN SHOWALTER: Mr. Trotter, is it the
14 practice to raise substantive objections at the time of
15 introduction and not during the deposition itself?

16 MR. TROTTER: Yes. I don't think you need to
17 raise an objection other than as to form at the time of
18 the question to preserve it, and then you can raise it
19 when it's offered. You can also object, obviously, in
20 the transcript itself.

21 MR. FINKLEA: I can't disagree with
22 Mr. Trotter, and there are times in the transcript that
23 show that someone raised an objection, and then the
24 attorney defending the witness would raise an objection
25 and then direct the witness to answer the question, so

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1 there are those moments in this transcript, as I
2 recall.

3 JUDGE WALLIS: We will reserve a ruling until
4 tomorrow morning.

5 Q. (By Mr. Brena) Mr. Collins, one of the
6 things Mr. Marshall mentioned was you have a degree in
7 petroleum engineering; is that correct?

8 A. Yes.

9 Q. Are you a CPA?

10 A. No, I'm not.

11 Q. Have you ever taken an accounting course?

12 A. No, I have not taken an accounting course.

13 Q. Is this the first time you've ever been on
14 the stand?

15 A. Yes, this is the first time I've been on the
16 stand.

17 Q. Is this the first time you've sponsored
18 testimony directly?

19 A. Yes. This and in the matter of the FERC are
20 the first times.

21 Q. You have assisted with the preparation of
22 other people's testimony in other proceedings, have you
23 not?

24 A. Yes, I have.

25 Q. And in one of the proceedings that you

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1 assisted in the preparation of the testimony was the
2 Wyoming case in which the issue was whether to adapt
3 the FERC methodology or the DOC methodology, wasn't it?

4 A. I had participated in the Wyoming case. I
5 don't know if I would say that was the issue. I think
6 that may have been an issue in that case.

7 Q. That was an issue that you worked on on
8 behalf of providing staff support for the sponsoring
9 witness; isn't that true?

10 A. That is correct.

11 Q. And the Wyoming Commission ultimately
12 rejected the FERC methodology and adopted the DOC; is
13 that correct?

14 A. I wasn't at the hearings. My understanding
15 is they eventually adopted the DOC cost-of-service
16 methodology.

17 Q. I would like to ask you some questions just
18 so the record is perfectly clear. Are you intending to
19 support the rates through Case 1 of the direct case?

20 A. I think in our direct testimony, we discuss
21 the reasons why we prepared Case 1 and then in the
22 direct case talk about Case 2 and the reasons why we
23 felt that was appropriate and believe we made clear in
24 my testimony that was the case that we were using as
25 the basis for supporting the rate increase when the

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1 direct testimony was filed in December.

2 Q. And that was Case 2 in the direct case.

3 A. Yes, that was referred to as Case 2.

4 Q. Is Case 2 the case that you are currently
5 supporting as the basis for your recommendations?

6 A. No. The terminology "Case 1" and "Case 2"
7 related to the direct case, and in our rebuttal case,
8 we had gone through and made updates. First we made
9 updates to certain corrections to my calculations and
10 then secondly had updated data as described in my
11 testimony and I think in Ms. Hammer's testimony, and as
12 we discussed earlier today, the case that we are
13 putting forward in the rebuttal is 703, or it was, I
14 think, BAC-8C.

15 Q. So from your perspective, at least, what we
16 are here to talk about, the cost-of-service study that
17 you are currently sponsoring to support your rate
18 filing is contained within Exhibit 703.

19 A. Yes.

20 Q. There is Case 1 and Case 2 you are no longer
21 relying upon for the purposes of supporting this
22 particular recommendation.

23 A. Case 1 and Case 2 were filed in December. We
24 replaced that with the Case 703 in rebuttal, and we
25 believe that to be the appropriate case, and that's the

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1 case we've sponsored.

2 Q. So do or die on 703, if we sit here and talk
3 the rest of the day about 703, at least I'm talking
4 about the case you are intending to support your rates
5 with.

6 MR. MARSHALL: Object to the form of the
7 question. I think the witness has made it clear that
8 Case 1 and 2 are background to 703, so I think I don't
9 understand the form of the question "do or die," and I
10 would object to that.

11 MR. BRENA: I'll rephrase the question.

12 Q. (By Mr. Brena) If we talk about Case 703,
13 that's the only case we need to talk about here today
14 with regard to this rate filing?

15 MR. MARSHALL: Again, I would object to that
16 because the other cases provide background information
17 and they provide a basis for which adjustments are
18 being made, so I think the question is improper because
19 it goes too far.

20 MR. BRENA: Your Honor, I'm having a problem
21 with the talking objections and suggesting the answers
22 to the witness. This is a witness. He has a
23 methodology. It's supposed to support the rate filing.
24 I'm trying to find out which one. I didn't hear an
25 objection. I heard an explanation from cocounsel

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1 suggesting what his witness's answer should be. I'm
2 trying to figure out, this is the witness that
3 sponsored these testimonies. Which horse is he riding
4 here?

5 JUDGE WALLIS: I think the question is
6 proper, and the witness may respond, and again, I'll
7 ask Mr. Marshall to please as you do phrase objections,
8 do so in a way that doesn't suggest a potential answer
9 to your witness.

10 THE WITNESS: As I thought I already stated,
11 703 is the case that's based on what's discussed in our
12 rebuttal testimony. That's the case we are putting
13 forward. That's the case that I'm using.

14 Q. (By Mr. Brena) Is that the only case you are
15 using?

16 A. We computed other cases. That's the case we
17 feel is appropriate. I think we've discussed about --
18 we think it's appropriate. I think there are
19 alternative cases that we discuss in my rebuttal
20 testimony, which I assume people have read, we provided
21 alternative cases, but if someone were not to agree
22 with that case, but that is the case, as my answer
23 before, that's the case we feel is appropriate for
24 evaluating Olympic's rate case in 703.

25 Q. I'm asking these questions so I can

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1 understand what I need to ask you questions on. Please
2 understand where I'm coming from.

3 Are you saying that 703 is the case that you
4 relied upon to support the rates that are at issue, or
5 are you saying that 703 is the lead case, but in the
6 event that 703 doesn't fly, then we are going to some
7 other case, and if so, what other case?

8 MR. MARSHALL: Objection, asked and answered.
9 He's explained how he derived this case and he's
10 explained alternatives. I would object as asked and
11 answered.

12 MR. BRENA: I agree it's been asked. I
13 disagree it's been answered.

14 JUDGE WALLIS: The question is, I believe,
15 permissible, and the witness may respond.

16 THE WITNESS: In my rebuttal testimony in
17 703, we provide what we believe to be the appropriate
18 basis for setting rates, which is using the FERC 154,
19 the approach, and it uses a total Company
20 cost-of-service analysis. We think that's the
21 appropriate case. If someone felt it was not
22 appropriate to do a total Company case, we have done a
23 jurisdictional separation if someone felt it would be a
24 more appropriate basis for setting rates and provided
25 that and additionally have performed fully allocated

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1 cost calculations to compare to the proposed rates.

2 We also, if it were determined that the FERC
3 methodology were not appropriate, we also provided a
4 depreciated original cost presentation as an
5 alternative if that was determined not to be
6 appropriate and consistent with the jurisdictional
7 separation fully allocated cost calculations and
8 performed those under DOC as well, and this is
9 basically the same thing that was provided in the
10 direct case.

11 We felt that Case 2 was appropriate, but if
12 someone felt there was some reason that wasn't
13 appropriate, we provided -- one, we had an alternative
14 Case 1, and then secondly, for Case 2, which at that
15 time we felt was the appropriate case, we had done a
16 jurisdictional separation and a fully allocated cost
17 calculation. So I think it's really just updated and
18 provided the same alternative case as if someone felt
19 that the case we put forward wasn't correct.

20 Q. I'm becoming more confused rather than more
21 enlightened, and my confusion is caused by your
22 suggestion that -- let me phrase my question this way.
23 What case are you advocating that this Commission
24 consider to support your rate filing?

25 MR. MARSHALL: Objection, asked and answered,

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1 and I would also object to the preamble about whether
2 Mr. Brena is confused or not. The answer to the
3 previous question was very clear in that he set forth
4 what his recommended approach would be, but there are
5 alternatives if others disagree, and he walked through
6 it. It's very clear.

7 JUDGE WALLIS: Mr. Brena?

8 MR. BRENA: It's not clear to me. I
9 understand he's set two alternative cases. That's
10 obvious from the review of this case. What I don't
11 understand is if he's intending to rely on those to
12 support his case.

13 I can't tell by his answer if 703 is the lead
14 case and then we go to the alternative cases. If they
15 do, I don't understand in what order. If we exhaust
16 all the rebuttal cases, then do we switch over to the
17 direct case, and if we switch over to the direct case,
18 then is it Case 2 or Case 1? I'm trying to figure out
19 how he's supporting his rates, so perhaps I could ask a
20 few more questions and maybe get to that.

21 JUDGE WALLIS: You may.

22 Q. (By Mr. Brena) What case are you
23 recommending this Commission consider to support your
24 rate filing?

25 MR. MARSHALL: Objection, asked and answered.

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1 He did answer that, and he set forth what the
2 alternatives were. It was very clear.

3 JUDGE WALLIS: Let's give lead to Mr. Brena
4 to ask the question and take it in steps and let the
5 witness respond in steps.

6 THE WITNESS: Case 703.

7 Q. (By Mr. Brena) Are you recommending that the
8 Commission consider another case other than 703 as
9 well?

10 MR. MARSHALL: Asked and answered.

11 JUDGE WALLIS: The witness may respond.

12 THE WITNESS: Yes.

13 Q. Which case should the Commission consider
14 next after 703?

15 A. Well, I can't answer as to which case would
16 be considered next. I don't know that there is a
17 sequential order. As I tried to explain, we had
18 proposed valuing the rate based on a total Company
19 cost-of-service presentation. Now, what we had also
20 done is if someone -- if it was determined by the
21 Commission that that was an appropriate way to evaluate
22 rates, we would also do a jurisdictional separation to
23 separate inter and intrastate costs and revenues, and
24 we had also done an evaluation of a fully allocated
25 cost, which takes that cost and assigns those costs to

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1 the individual rates to evaluate individual rates
2 themselves, and this was consistent with what we did in
3 the direct case.

4 We also had, to the extent that the
5 methodology I would characterize as one of the things
6 that is probably something to be determined we put
7 forward and thought that was the appropriate
8 methodology. We had also done a depreciated original
9 cost methodology, and consistent with the same
10 jurisdictional separation and fully allocated costs,
11 had done those calculations as well, and that's
12 consistent with what we had done in December as well by
13 taking the total Company approach and doing
14 jurisdictional separation and a fully allocated costs.
15 So I think that's about all I can say about the cases
16 that we've included.

17 Q. Let me summarize what I heard, and that is
18 the Commission should first consider 703, and then
19 based on this determination may select among the other
20 alternatives, the other cost-of-service calculations
21 set forward in your rebuttal case. Is that what you
22 just said?

23 MR. MARSHALL: Objection, asked and answered.
24 He's asking the witness if that is the question he
25 asked and the answer that he gave, so that objection is

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1 appropriate.

2 JUDGE WALLIS: I think that the questioning
3 is proving helpful and that Mr. Brena's question is
4 aimed to clarify the record rather than to repeat it,
5 and the witness may respond.

6 THE WITNESS: Repeat the question.

7 Q. I would be happy to repeat it. If I
8 understand what you just said, the Commission, you
9 believe, should first consider Case 703. If for some
10 reason it rejects 703, then depending on the basis for
11 its rejection, it should then without any preferential
12 order alternatively consider every other cost of
13 service in your rebuttal case. Is that what you said?

14 A. No. I think what I said is we had performed
15 the Case 703 -- maybe to try to keep this simple. I
16 think there are maybe two types of consideration.
17 There is one related to methodology, FERC methodology
18 or DOC methodology. Independent of that, whichever
19 methodology is determined as appropriate, there is an
20 issue independent that should that be based on the
21 total Company presentation? Should it separate
22 Washington jurisdictional cost and revenues, and that's
23 the same issue whether it's the FERC methodology or
24 DOC, and further, whether it would be appropriate to
25 value those rates individually.

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1 So it's not like there is independent
2 combinations. There is just methodology, and then
3 there is more the issue of jurisdictional separation
4 and cost allocation.

5 Q. Let me try to eliminate something. You are
6 not asking the Commission to consider the specific
7 cases, the specific cost and service that you set
8 forward in your direct case?

9 MR. MARSHALL: Objection, asked and answered,
10 and I won't explain why, but I do believe that there is
11 a terminology difference here between "recommend" -- I
12 think Mr. Brena is trying to take the answer of the
13 witness and extend it too far, and I won't say more.
14 So I object to the premise and to the form of the
15 question.

16 MR. BRENA: As I understood this witness's
17 last answer, he identified every alternative in his
18 rebuttal case and didn't refer at all to a case in his
19 direct case. So what I'm trying to do first is figure
20 out if the universe of alternatives that they are
21 trying to propose to support their rate is in the
22 rebuttal case or if that universe also includes the
23 direct case.

24 So then what I intend to explore is in what
25 order does he want these considered by the Commission?

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1 I'm really just trying to figure out what their case
2 is.

3 JUDGE WALLIS: The question is permissible
4 and the witness may respond.

5 THE WITNESS: I'm sorry; would you repeat?

6 Q. (By Mr. Brena) As I understood your last
7 series of answers, 703 was here, and then there is
8 alternatives, methodology, full Company considerations,
9 individual rate; right?

10 A. Correct.

11 Q. Those are all set forward in your rebuttal
12 case; right?

13 A. Those are set forward in the rebuttal case.

14 Q. So we have four alternatives in the rebuttal
15 case of which 703 is the preferred one.

16 A. 703 is the preferred one. I don't know that
17 there are four, but 703 is the preferred one, and we
18 have an alternative methodology.

19 Q. The DOC?

20 A. Right, and we would have jurisdictional,
21 which would be two more, which would be four, and then
22 you could look at fully allocated costs, so the full
23 possible range would be six, I think, not four.

24 Q. And these are six alternatives within the
25 rebuttal case.

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1 A. Yes.

2 Q. Do we also have alternatives within the
3 direct case, or have all the alternatives within the
4 direct case now been subsumed within the rebuttal case?

5 A. Starting with the direct case, the direct
6 case, we had used as Case 1, which used calendar year
7 2004, the 12 months of actual data that this Commission
8 would call a test period in the case itself. They are
9 referred to as the base period, which is 12 months of
10 actual data, and we made forward-looking adjustments to
11 that as Case 1, and then in the direct case, we
12 explained how we thought that using the more current
13 12-month period of actual data as the starting point
14 were more appropriate, go into reasons why that was
15 appropriate, and that was what was recommended in the
16 direct case.

17 From that, we had put two alternatives. One
18 the same we talked about with the rebuttal. We were
19 using a total Company approach to evaluate the rate,
20 and if it were determined that it were inappropriate,
21 we had as an alternative done a jurisdictional
22 separation, and again, as a third alternative, if it
23 was determined to be appropriate to look at individual
24 rates, we had done a fully allocated cost.

25 What we did in the rebuttal is take Case 2,

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1 and we had made updates to that, and there were
2 generally two updates. One, there were some minor
3 corrections that I think resulted in the cost of
4 service decreasing from, I think it was 61 million
5 dollars to 60.1 million dollars or decrease the cost of
6 service by \$800,000 or a little over one percent.

7 The second adjustment that we made is we had
8 in lieu of using test period projections largely based
9 on budgeted amounts, as we discussed earlier today,
10 replaced for expenses using category of data that we
11 talked about with actual data up through April and had
12 revised projections for data. So we had taken Case 2
13 and just made some minor mathematical corrections and
14 then updated the data, and that's really the only
15 difference between Case 2 and the direct case and 703,
16 the rebuttal case, but other than that, they are
17 identical, the same model. The calculations outside of
18 those minor exceptions are identical. The periods are
19 identical.

20 Q. Do you have my question in mind? My question
21 was, are Case 1 and Case 2, and I understand the
22 evolution of Case 2 into your rebuttal case, but is
23 Case 1 and Case 2 still in play in this proceeding, or
24 are we on Case 2 corrected, which is in the rebuttal,
25 Case 2 revised, which is in the rebuttal, DOC, which is

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1 in the rebuttal, Case 2 revised based on the
2 alternative jurisdictional allocations?

3 A. I'm not sure "in play." I've explained what
4 we've done, and I think that I just explained what
5 we've done in the rebuttal case, and I think all those
6 cases are reasonable and explain why we've done what
7 we've done, and we think that Case 703 is the
8 appropriate one.

9 Q. So you intend Case 703 to substitute for Case
10 2 in the direct case?

11 MR. MARSHALL: Objection. The witness has
12 asked and answered. He said that's the appropriate
13 case. If people disagree, then they can go to an
14 alternative, but it depends upon the nature of the
15 disagreement.

16 JUDGE WALLIS: Let's let the witness respond
17 to the question.

18 Q. (By Mr. Brena) Do you consider 703 to be a
19 substitute for Case 2 in the direct case?

20 A. I wouldn't say it's a substitute. I would
21 say it's an update to Case 2 in the direct case.

22 Q. Should the Commission continue to consider
23 Case 1 in the direct case?

24 JUDGE WALLIS: I think Case 1 has been
25 stricken.

1 COMMISSIONER HEMSTAD: I would say as a point
2 of clarification, Case 1 has actually been stricken
3 from the proceeding.

4 Q. I'm go to ask you questions on 703,
5 Mr. Collins, on the assumption that's what we are here
6 about, because I tried.

7 First, Chairwoman Showalter brought up the
8 issue of definitions, and I just want to do the best I
9 can to be sure during this cross-examination that what
10 I'm saying you are hearing and the record is recorded
11 and everybody understands it. Was it your intention in
12 putting together your case to comply in full or in part
13 with the FERC regulations for filing?

14 A. I believe our intention was to comply with
15 the FERC regulations regarding how you develop a
16 cost-of-service presentation to put forward a case, so
17 in full.

18 Q. So to the degree that -- and I'm not
19 suggesting that it does or doesn't, but to the degree
20 that state law or requirement may vary from FERC, it
21 was not your intention to comply with state law.

22 MR. MARSHALL: I would have to object to the
23 form of the question. Again, the witness has explained
24 what he's done with alternatives if the Commission
25 disagrees, so I think the question in the form assumes

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1 a fact contrary to what's already been testified to.

2 MR. BRENA: It's a pretty straightforward
3 question. Did he intend in preparing his case in the
4 event of a divergence to comply with federal or state
5 law.

6 JUDGE WALLIS: Subject to the witness's
7 credentials in the area of the practice of law, I
8 believe the witness may respond.

9 THE WITNESS: It was our intent to file a
10 case that was consistent with the FERC methodology. I
11 was not intending to not comply or comply with state
12 regulations. I was complying with the FERC
13 methodology, and I think we've talked about the
14 terminology differences, but I think the
15 cost-of-service approach with respect to how that's
16 developed, you know, are consistent, but I know I was
17 looking at filing this consistent with how federal
18 regulations say to develop a cost-of-service filing.

19 Q. Did you read the state regulations?

20 A. No, I did not read the state regulations.

21 Q. What's the basis for your saying whether or
22 not the federal and state regulations are consistent?

23 A. I didn't say that they were or were not
24 consistent. I just said that the intent was to file
25 this to comply with federal regulations, and that's all

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1 that I said.

2 Q. So when you say "base period" in 703, you
3 mean what FERC means? You intend what FERC means by
4 "base period."

5 A. Yes. I think this morning when we started,
6 that was probably the first thing I wanted to try to
7 clear up, to not make sure nobody was confused or
8 appeared to be confused about this, so I tried to
9 explain how I think at both the FERC and WUTC, I think
10 it's a general, probably most regulatory agencies.

11 I mean, they rely on a 12-month period of
12 actual data and make adjustments to that to reflect a
13 perspective or forward-looking period when the rates at
14 issue would be in effect, and there was a difference in
15 terms of primarily how test period is defined, but I
16 think this morning, that was the first thing I
17 discussed.

18 Q. My question was just simply, did you intend
19 when you used "base period" to mean what FERC means by
20 "base period," and the answer is yes?

21 A. Yes.

22 Q. What does FERC mean by "base period"
23 precisely?

24 A. I don't have the regulation in front of me.

25 Q. But your understanding of the regulations?

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1 A. My understanding of the regulations is that
2 you are to use a recent 12 months of actual experience.

3 CHAIRWOMAN SHOWALTER: May I interpret with a
4 clarification? Is the term "base period" or "base
5 year," or are both used?

6 THE WITNESS: I think the regulations use the
7 term "base period," but because it relates to an annual
8 period, people sometimes interchange "base year" and
9 "base period" or "test period" and "test year." I
10 think if you go to Part 346 in the Code of Federal
11 Regulations, they talk about "base period" and "test
12 period."

13 MR. BRENA: 346.2 (a)(i) is the definition of
14 "base period," and (2) is the definition of "test
15 period."

16 Q. (By Mr. Brena) So your understanding of base
17 period is just 12 months of actual?

18 A. That's not what I said.

19 Q. What did you add that I didn't capture?

20 A. I think the regulations state something to
21 the effect it should be a recent 12 months of actual
22 experience.

23 Q. Recent in 12 months of actual experience, and
24 that's your entire understanding of "base period"; is
25 that correct? I'm just trying to summarize what you

3193

1 are saying so we can move on. Is there anything else?

2 A. Which question would you like me to answer
3 first?

4 Q. Doesn't matter. No. I'll rephrase it. I'll
5 just move on. For the purposes of my questions, I
6 would prefer if you did not have the regulation in
7 front of you, if that's what you are looking for.

8 A. I do not have a copy of the regulation.

9 Q. What's the definition that FERC means by
10 "test period"?

11 A. The FERC definition of "test period" is you
12 are making adjustments to the base period data for
13 items that will be known, measurable, and effective
14 within nine months of the end of the base period.
15 That's my understanding of it. I don't have it
16 memorized not having it in front of me.

17 Q. Do you have an understanding of when those
18 items need to be known and measurable, the time frame
19 for when that knowledge needs to be there?

20 A. I think the FERC talks about within nine
21 months the end of the base period. I won't be using
22 the proper terminology, but I think there are
23 exceptions in certain situations where there may be
24 something outside of that.

25 It's not a rigid rule that it has to, and

3194

1 there could be exceptions to that, but as a general
2 standard, they should be within nine months of the end
3 of the base period.

4 Q. Schedule 21 of 703, Page 49 of 71, and we
5 will probably spend a little time on that. This
6 schedule reflects your recommendations with regard to
7 what the appropriate cost of service should be in this
8 proceeding; is that correct?

9 A. No, it's not.

10 Q. How is that not correct?

11 A. Well, Schedule 21 contains operating
12 expenses. I would say that Schedule 21 would reflect
13 the appropriate operating expenses to be used in the
14 cost-of-service calculations, which it's a component of
15 the cost-of-service calculation.

16 Q. So with regard to operating expenses, it's
17 your intention that this is the recommended level of
18 operating expenses that should be used to set rates.
19 I'm on the right schedule, aren't it?

20 A. Yes. Schedule 21 is a summary of the
21 operating expenses.

22 Q. These base period expenses in the column,
23 these base period expenses are from October 2000
24 through September 2001; is that correct?

25 A. Yes, I believe that's correct, and it's

3195

1 footnoted. The base period has an asterisk, and it
2 notes that's what the base period represents at the
3 bottom.

4 Q. By the "test period," and I don't want to
5 repeat the Q's and A's already asked, so I will
6 summarize, and if I have it wrong, if you would correct
7 me, I would appreciate it, but by the "test period,"
8 you mean actual from October '01 through April '02 plus
9 the budgeted for May and June and those nine months,
10 the total of those nine months divided by nine and
11 multiplied by 12.

12 A. I think that mathematically that would work.
13 I would say that you take those nine months, and that
14 would be nine months, and then to convert that to an
15 annual level of test period expense, you would divide
16 those nine months amount by nine and get an average
17 monthly amount and add three, so that the individual
18 months wouldn't line up necessarily, but the total
19 level of cost would be the same.

20 Q. We get to the same point, don't we, no matter
21 how we do the math?

22 A. I believe we do.

23 Q. Now, I had tried to clarify the record with
24 regard to what the adjustments were to the base period,
25 and I failed miserably in hindsight, so I would like to

3196

1 go through these. You offer 17 total adjustments, do
2 you not, to operating expenses?

3 A. Yes. I believe there are 17 adjustments made
4 to the expenses on this schedule.

5 Q. If I just look, they are all footnoted, so
6 under "test period adjustment" in the salary and wages
7 column, there is a Footnote 1, and then if I go to the
8 bottom of the schedule, it says "Schedule 21.3, Line
9 7," correct, so that would be my way of tracking
10 through each one of these adjustments.

11 A. Yes, that's correct.

12 Q. Then 14 of these adjustments are to
13 test period adjustments and then three of them are base
14 period adjustments; correct? I mean, 3, 10, and 15 are
15 base period adjustments, and the remainder of 1 through
16 17 are test period adjustments; is that correct?

17 A. That's correct.

18 Q. I would ask you to go to Test Period
19 Adjustment No. 1, which looking down here is on
20 Schedule the 21.3, so if you could just turn to 21.3.

21 CHAIRWOMAN SHOWALTER: Which page?

22 MR. BRENA: Page 52, and Schedule 21 is just
23 set up so it goes 21, and then 21.1 and 21.2 and so on.

24 Q. (By Mr. Brena) So Schedule 21.3 on Page 52
25 is Test Period Adjustment No. 1 in the amount of

3197

1 \$783,482; correct?

2 A. Sorry, I was back on 21.3. Yes, the Test
3 Period Adjustment 1 is \$783,482.

4 MR. MARSHALL: For the record, that's a
5 decrease.

6 MR. BRENA: I would like to be able to ask my
7 questions uninterrupted. Counsel for Olympic has an
8 opportunity for redirect.

9 MR. MARSHALL: Just so we didn't have to go
10 back to this one, I think this is an important point.
11 If it's going to be termed as an adjustment, it would
12 be good to define which direction while we are on that.

13 MR. BRENA: I don't choose to do that.

14 JUDGE WALLIS: The nature of the adjustment,
15 I believe, is apparent from the face of the document,
16 is it not?

17 MR. MARSHALL: I would hope so, but just so
18 there is no misunderstanding in the record later on.
19 It does appear on the face of this, but it won't appear
20 on the face of the record unless it's indicated.

21 JUDGE WALLIS: The record will consist of the
22 transcript plus the exhibits, so we appreciate your
23 concern, Mr. Marshall, but I think we may, unless there
24 is a reason for an objection, proceed most efficiently
25 and most properly by letting Mr. Brena ask his

3198

1 questions.

2 MR. BRENA: Can I clarify whether or not this
3 document has been waived, the confidentiality has been
4 waived? I'm about to get into a bunch of specific
5 numbers. Case 2 was not designated as confidential.
6 This is just an evolution of Case 2. I don't see why
7 it should be, so I ask that it be waived, or let's just
8 argue it.

9 MR. MARSHALL: The earlier presentations that
10 were made did involve numbers that were considerably
11 more in history. These numbers, of course, are
12 considerably more recent. The farther back the numbers
13 go, the less concern we have for confidentiality.

14 This also has general salary and wages. It
15 has base period salaries, those kind of things. I
16 don't believe we are prepared to waive at this time.
17 They are current data and confidential data.

18 MR. BRENA: If I may, Case 2 had the same
19 base period. The information wasn't dated when Case 2
20 was filed.

21 JUDGE WALLIS: I think the Commission is
22 prepared to hear argument now on your motion,
23 Mr. Brena, directed to the confidentiality of this
24 exhibit. Mr. Marshall, in your absence, I'm sure other
25 counsel have apprised you of the fact that there was a

3199

1 request to waive confidentiality and an objection
2 voiced towards confidentiality of another exhibit, and
3 we have reserved ruling on that pending the opportunity
4 to argue the specifics, so as to this document, we are
5 prepared to hear argument at this time. Mr. Brena, you
6 are voicing the objection, so let's hear your support
7 for the position that you are advocating.

8 MR. BRENA: First I would just like to say
9 that this is the cost-of-service study that is the
10 basis for the recommended rates that a public service
11 company within the state of Washington will be
12 charging. Absent the full and public disclosure of
13 this information, there is no way for a shipper to
14 understand what the basis for his rates may be.

15 Olympic has filed in support of their rates
16 similar schedules. They filed it in their rate filing
17 initially, and they didn't designate it confidential.
18 They filed it in the past with different schedules.
19 They haven't designated them confidential. This is the
20 first time that the primary cost-of-service case for
21 Olympic that I know of in its history has been
22 designated confidential.

23 I believe there is a strong public interest
24 in having the public know what the basis for the rates
25 are that they are being asked to pay, and there is no

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1 other way to do it, and I also have a strong bias that
2 these proceedings, the specifics of these proceedings,
3 rate-making should not be done in private. It should
4 be done in public, and I believe that that's what the
5 legislature preferred in passing the law, and there is
6 a strong bias in the state of Washington, as there is
7 throughout our democracy, that these types of routine
8 regulatory public matters will be public. The
9 government's business should be conducted in public.

10 Now, there isn't anything in this document
11 that could possibly impact a business interest or
12 competitive interest of Olympic. You mentioned
13 specifically salaries and wages. If they are going to
14 ask my client to pay it, my client has a right to know
15 that he's paying it, and that right outweighs their
16 right to conduct rate hearings in private. So all I
17 can say is that this is a dramatic turnabout in
18 Olympic's position, both within this case and within
19 its history of filing, that it flies directly in the
20 face of what I think the democratic institutions that
21 we practice within stand for, and I just haven't heard
22 a simple reason in the world why it should be.

23 Let me add the burden is not on me to
24 demonstrate that it should be kept confidential. The
25 burden is on opposing counsel to demonstrate that it

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1 should be maintained as confidential. So those would
2 be my opening comments, and then I would just like to
3 hear what the best reason is, because none of them seem
4 apparent to me, and I would just add, this Commission
5 sets rates routinely for public service companies in
6 this state. I don't know what your experience is
7 because I have a limited practice before you, but I
8 just can't imagine that you let the primary documents
9 which establish rates in the state of Washington not be
10 known to the public. That would be my comments.

11 JUDGE WALLIS: Mr. Marshall?

12 MR. MARSHALL: Thank you, Your Honor. This
13 current data, again, is more competitively sensitive
14 than past data. We have waived that. Just a couple of
15 days ago, Mr. Brena had the shoe on the other foot when
16 I asked him to waive the confidentiality with regard
17 barge rates that ended in December of 2001. Mr. Brena
18 refused --

19 MR. BRENA: Excuse me. If you wanted to
20 object to that designation, you could have done it.

21 MR. MARSHALL: Mr. Brena made some cogent
22 arguments at that time about why there should be
23 competitive information available, even though it was
24 old information. What we have here is we have two
25 refineries that frankly are in competition with two

3202

1 other refineries. There is nobody else here that has
2 expressed an interest in this case, no other shippers.

3 Competitive information really is important.
4 The amount of throughput that's available does relate
5 to alternatives, such as the barging information that
6 Tesoro did not want to have available, market is highly
7 confidential, didn't want anybody to look at it from
8 the point of view --

9 COMMISSIONER HEMSTAD: Mr. Marshall, I'm
10 having trouble. We are talking about the pipeline, not
11 the refineries. These are the cost of the pipeline.
12 How is that competitively sensitive information?

13 MR. MARSHALL: Again, the salaries and the
14 alternatives and what we have here do affect what the
15 rates are for Olympic pipeline.

16 COMMISSIONER HEMSTAD: Precisely.

17 MR. MARSHALL: And the barge rates are also
18 relevant.

19 JUDGE WALLIS: Mr. Marshall, the
20 confidentiality of the barge rates is not really at
21 issue right now.

22 MR. MARSHALL: Right, but the same basic
23 arguments that were made by Tesoro on preserving the
24 confidentiality of barge rates do apply here.

25 CHAIRWOMAN SHOWALTER: The barge rates are

3203

1 not subject to the jurisdiction of this Commission and
2 are not set by this Commission. It's in the bargers,
3 if that's the right term or not, a public service
4 utility.

5 MR. MARSHALL: You are right; they are not.
6 They are not regulated, and nothing else in the
7 delivery of petroleum from the well to the pump is
8 regulated expect for this.

9 Earlier in this case, we had arguments about
10 the confidentiality of the throughput data, and there
11 is throughput data that we talked about earlier that
12 was sensitive throughput data because it disclosed who
13 was shipping what, in what quantities, what was
14 available, what was not available.

15 CHAIRWOMAN SHOWALTER: Is that information in
16 this document right here? All we are focused on right
17 now is Exhibit 703, so what in 703 needs to be
18 protected and for what reason, because the burden is on
19 you to demonstrate the reason.

20 MR. MARSHALL: Page 69 of 703, 22.6, contains
21 throughput data month by month, and then its backed up,
22 and once we waive this document, we are concerned about
23 waiving underlying documents as well. -- the actual
24 throughput data month by month through April 2002 and
25 then the forecast for May and June.

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1 CHAIRWOMAN SHOWALTER: Is this throughput
2 data broken down by shipper on Page 69? Isn't this
3 just the throughput data for Olympic Pipe Line?

4 MR. MARSHALL: That's also competitive
5 information so it's available to others --

6 CHAIRWOMAN SHOWALTER: Why is the throughput
7 of Olympic Pipe Line competitively sensitive
8 information? Just that, just what's on here on Page
9 69?

10 MR. MARSHALL: All the parties in the room
11 deserve to know this. There is no argument about that.
12 Others outside of this room, for instance, barge
13 companies and others, don't need to have that. It's
14 not data that needs to be out for people that might
15 want to disrupt the system. It's data that's not
16 really data that should be out in the public domain.

17 I agree completely that the Commissioners,
18 the two shippers that have protested ought to have that
19 data. Their attorneys ought to have that data, but
20 despite the arguments about how much competition there
21 is or how little competition there is with barge rates,
22 this kind of information is competitive information.

23 CHAIRWOMAN SHOWALTER: Sticking with Page 69,
24 the rates that we ultimately establish are going to be
25 public. The law requires that.

3205

1 MR. MARSHALL: Yes.

2 CHAIRWOMAN SHOWALTER: So then the question
3 is, is the additional information of throughput
4 multiplied by those rates or associated with those
5 rates competitively sensitive information and why?

6 MR. MARSHALL: Current throughput information
7 would. I submit that if we had knowledge here today
8 that throughput were going to be cut in half, for
9 example, that would influence the price that the barges
10 would charge.

11 CHAIRWOMAN SHOWALTER: We haven't closed the
12 hearing yet, and we've heard several times that
13 capacity is at 80 percent, and there was an associated
14 figure of, I think, 89 percent revenue associated with
15 that, something like that, so the only thing possibly
16 -- well, actually, I believe the number of gallons
17 associated with 80 percent has also been publicly
18 stated sometimes, so the question is, what else is in
19 here?

20 MR. BRENA: Could I address the narrow issue
21 of throughput?

22 MR. MARSHALL: May I respond to the
23 Commission? The total number of throughput for a year
24 annualized is a figure we've talked about, and I have
25 no trouble with that number being public. Where you

3206

1 get to data that's current for the last few months, I
2 think that kind of data, as we talked about last
3 November and December, is the kind of competitive data
4 that we wouldn't want to have disclosed.

5 COMMISSIONER HEMSTAD: I feel I must break in
6 here. I thought we were focusing on Schedule 21, Page
7 49, categories there. I don't think we need to address
8 the question of throughput until that page and that
9 issue is in front of us. The protective order, which I
10 would acknowledge I think in the terms of the
11 efficiency and expediency of getting out of these
12 hearings, is what I would call carefully followed.

13 The party claiming confidentiality has
14 responsibility to state each page and whether that page
15 contains confidential information, so I think what we
16 need to do right now is focus on Schedule 21 and what
17 information on Schedule 21 meets the requirements of
18 the protective order, which it seems to me is limited
19 to the issue of whether it compromises the ability of
20 the pipeline, not the refinery, the pipeline to compete
21 fairly, or that otherwise impose a business risk if
22 disseminated.

23 I will make the general statement that we do
24 a lot of rate cases here, and I don't recall any rate
25 case at which I've been a participate for this kind of

3207

1 schedule setting out salaries and wages, materials and
2 supplies, rentals, etcetera, has ever been claimed to
3 be of a confidential nature. So what on this page,
4 rises to the level of competitive information or would
5 provide a business risk to the pipeline?

6 MR. MARSHALL: I may have misunderstood
7 Mr. Brena's motion. I thought he was moving to take
8 the confidentiality designation off the entire document
9 rather than just one page, and I stand corrected on
10 this one page and I'll focus on that. The only part of
11 this page that we are concerned about would be wages
12 and salaries because we don't want to waive the
13 drilling down. Just like at the state level, wages and
14 salaries of individuals are protected by state law --

15 COMMISSIONER HEMSTAD: Wages and salaries of
16 every state employee is a matter of public record.

17 CHAIRWOMAN SHOWALTER: That's true, but why
18 anyway, if we are talking about this page, why does it
19 presume any drilling down? We are just talking about
20 the figures on this page at this moment.

21 MR. MARSHALL: If that's the case on this
22 particular case, preserving any drilling down into
23 individual salaries for individual people, then I would
24 not have any trouble with this page being open.

25 CHAIRWOMAN SHOWALTER: I too thought

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1 Mr. Brena was asking the whole exhibit to be made
2 public.

3 JUDGE WALLIS: Mr. Brena, could you clarify?

4 MR. BRENA: I was. I was asking that the
5 confidentiality with regard to the whole exhibit be
6 waived now because there is nothing in that exhibit
7 that should be confidential, and I wanted to argue it
8 once rather than argue it ten times a page at a time,
9 and I would like an opportunity to address throughput.

10 They post throughput on their Web Site. They
11 report throughput in FERC Form 6. They report all
12 these operating expenses in these categories under FERC
13 Form 6 each year to the FERC and to this Commission and
14 that are available in public records requests. There
15 is absolutely no basis for the confidentiality of this
16 information.

17 CHAIRWOMAN SHOWALTER: Posting of the Web
18 Site, how recent is the information? Is it just once a
19 year, or is it kept somewhat current?

20 MR. BRENA: I just asked that question to my
21 expert, and he didn't remember the updating sequencing
22 of it, but it is filed annually.

23 MR. MARSHALL: It's once a year.

24 MR. BRENA: They file their FERC Form 6 in
25 September, and they file their FERC Form 6 with this

3209

1 Commission every February, and it includes information
2 through December, and so all of the information that we
3 are dealing with here is older than that.

4 MR. MARSHALL: On throughput, we have the
5 very recent months, and that's all I was trying to say.
6 We are willing to do and have waived historical data
7 when you go back and have an annualized number that's
8 different than the most recent month.

9 I do think that that's highly competitive
10 information if there are problems with throughput
11 that's going to have an effect on people outside of
12 this hearing room, and that's the only part that I
13 would want to mention, because frankly, a regulated
14 company, we are not going to be able to raise our rates
15 in response to something. It's going to be the
16 competitors that will raise rates and do other things
17 in response to if there is a decline in throughput, for
18 example.

19 JUDGE WALLIS: How would that hurt Olympic?

20 MR. MARSHALL: It may not hurt Olympic
21 directly, but because what their charges are, their
22 charges are going to be. I don't think it helps the
23 public interest, and I also think it raises concerns
24 about why this information, which would affect
25 competitors, people who could take advantage of the

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1 situation, why that should be made public.

2 JUDGE WALLIS: I didn't hear you say that it
3 would put Olympic at any competitive disadvantage by
4 the release of the information.

5 MR. MARSHALL: I have been informed that most
6 recent throughput data is the kind of data that Olympic
7 does not want to have released from being confidential,
8 and it relates to the idea that this information out
9 there can be misused by people who could take advantage
10 of that situation, whether it be competitors, people
11 who have other interest in knowing exactly how this
12 product is being moved, what kinds of product, who is
13 shipping, who isn't shipping.

14 CHAIRWOMAN SHOWALTER: Who is shipping and
15 who isn't shipping, I don't see it in here. You've
16 mentioned salaries and you've mentioned the gross
17 throughput data. Is there anything else in Exhibit 703
18 that you consider to be competitively sensitive or you
19 want to assert confidentiality?

20 MR. MARSHALL: Those are the only two things
21 we were focusing on at the moment, and what I thought
22 we had done early on is raise the issue -- if you had a
23 particular schedule or a particular item in mind, raise
24 it, and we would be more than happy to take a look at
25 that then in that context rather than have to go

3211

1 through all of it.

2 Again, on this issue of throughput, we still
3 believe that that's confidential, and because of the
4 most recent data, we are willing to waive older data.
5 On the wages and salaries, if that doesn't waive our
6 right to prevent the drilling down, then that
7 particular schedule is fine.

8 CHAIRWOMAN SHOWALTER: You may have a right
9 to argue the drilling down, not to prevent the drilling
10 down and the making it public.

11 MR. BRENA: If I could just comment on
12 throughput. If there was specific shippers named in
13 volumes, then I would agree that that may raise
14 competitive interest as among those shippers. There
15 isn't in this schedule. There has been discovery like
16 that.

17 When I first raised this issue with Judge
18 Wallis, I said that we intended to challenge the
19 confidentiality of all information other than
20 throughput that is specific by shipper. I think what's
21 being made ambiguous is throughput information for
22 Olympic versus its individual shippers. There is no
23 individual shipper information in this. It is gross
24 throughput information. It's information that's
25 publicly available. A couple of months, it's filed

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1 every year.

2 I have not yet heard a single reason.
3 Olympic has been overnominated for over a decade
4 despite publicly filing its throughput information
5 every year for the last decade. There is no
6 competitive harm to Olympic arising through its gross
7 throughput information being made available.

8 It is a different argument if it had named
9 shippers and had specific volumes, because recent
10 information with regard to who is shipping what, when,
11 where, that is something different. That is not
12 contained in their case, and I would be arguing
13 differently if it were.

14 MR. MARSHALL: There actually is data on
15 what's being shipped and how much from point to point
16 in these schedules. I would just make one last
17 observation and I will close on this. It used to be
18 that posting on the Web routes where the pipelines go
19 and other public service, essential service lines and
20 information go was considered to be appropriate for
21 anybody in the public to know.

22 After September 11th, that's no longer the
23 case, and I think the kinds of concerns about how much
24 is being shipped from a particular point to another
25 point, what kind of routes and all, is something that

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1 we've become a lot more sensitive to in the last few
2 months. There is really no need to have this kind of
3 information beyond this particular group here, the
4 Commissioners and the two shippers that are protesting
5 and the Staff. It didn't make any sense to have that
6 out there in the public domain.

7 Olympic did and has consistently raised the
8 problem with recent data on throughput from point to
9 point by shipper. It doesn't care about old data or
10 aggregate data, but on this issue about throughput, and
11 you can look at some of the point-to-point information
12 surrounding -- beginning at 64, 65, 66, 67 and so on,
13 there is actual volumes from Anacortes to Bayview, from
14 Cherry Point to Bayview, from Ferndale to Olympic, from
15 Cherry Point to Portland. All of that type of
16 information on how much is flowing at what time and
17 from what point to point, I don't think it belongs in
18 the public domain.

19 MR. BRENA: With regard to that specific
20 Schedule 22, Schedule 22.1 and 22.2, 4 and 5, and I
21 think in 6, we are in power cost and are out of
22 throughput information all together.

23 MR. MARSHALL: But the power cost goes by
24 station, by Cherry Point, Anacortes, Bayview, Allen.

25 CHAIRWOMAN SHOWALTER: Mr. Brena, I didn't

3214

1 hear. You said with regard to 22., etcetera, and then
2 you had another clause, and I didn't hear what it was.

3 MR. BRENA: I was going to try to suggest a
4 compromise that took out the point-by-point specific
5 information, but then we got into power information and
6 saying that power is by station, so I think I just want
7 it decided. There is no reason for any of this
8 information. It doesn't identify shipper. It's not
9 particularly current.

10 The information that they relied on for this
11 was 10 months through April, July through April, so
12 it's already a couple of months dated, the most recent
13 information. Everything else is just estimates and
14 projections. So I guess under the circumstances, I
15 would just ask the Commission to just waive it all and
16 let's move on.

17 CHAIRWOMAN SHOWALTER: Is there anything in
18 here that's projected into the future from today?

19 MR. MARSHALL: No, there would not be, except
20 on an annualized basis. That I wouldn't consider to be
21 a projection but just kind of a way to get an
22 annualized number.

23 JUDGE WALLIS: Mr. Marshall, you've asked for
24 an exemption from disclosure of most recent throughput.
25 Can you quantify that, this weeks, this months, last

3215

1 months?

2 MR. MARSHALL: I would say the last three
3 months of that data, which would be consistent with
4 what we've said here in the past.

5 CHAIRWOMAN SHOWALTER: For example on Page
6 69, you mean April, May, and June of 2002?

7 MR. MARSHALL: I was thinking back to March
8 and April, and then May and June are just forecast.
9 Those are based on -- we are looking at power on Page
10 69? I see down below -- I would include March and
11 April on the same theory that a lot of lag time and a
12 lot of reporting of data is allowed by state and not
13 federal regulators because, again, most current data is
14 capable of being misused.

15 MR. BRENA: In order to be competitively
16 sensitive information, you would have to identify it by
17 individual shipper and by product, and these are gross
18 movements. Imagine you are a competitor and you are
19 going to be looking at this chart. You can't get
20 anything in the world out of this. You don't know if
21 the volume is jet or gas or diesel. There isn't any
22 useful information on here for competitors.

23 If it were broken out by individual shipper,
24 by product, by movement, point to point, and it was
25 very, very current, that may be competitively sensitive

3216

1 information for a marketer type, but that's not what's
2 here.

3 JUDGE WALLIS: Do the other parties wish to
4 comment?

5 MR. FINKLEA: Your Honor, I do have a couple
6 of comments, because in my appearances before this
7 Commission for many years upon behalf of Industrial Gas
8 Users, I do think I have some observations that would
9 be helpful.

10 In my experience in the many cases I have
11 done involving natural gas companies, sales to
12 individual customers have been treated confidentially,
13 but we have never in my experience treated sales
14 figures, throughput figures, confidentially. I have
15 even seen that I can recall situations where individual
16 projections or individual actual figures to industrial
17 customers of gas utilities have been put in the record,
18 and what has been excised from the record is the name
19 of the individual customer, and the concern has always
20 been, as Mr. Brena is pointing out, the focus on the
21 competitive sensitivity to the individual customer.

22 If I'm paper company "A" and I know what
23 paper company "B" used in natural gas last month, I can
24 back into their production figure, and it's for those
25 reasons that those kinds of figures have been kept out

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1 of the public domain, not because the gas company would
2 be concerned, but if the oil company that it could
3 potentially compete with would know what its throughput
4 was.

5 So in any experience before this Commission,
6 what Mr. Brena is suggesting is consistent in that we
7 protect the competitive information because of the
8 individual customer's concern, not because of the
9 competitive situation of a public utility. The most
10 sensitive thing the public utility has is its rates,
11 and because those rates are publicly available, if I'm
12 a competitor of a public utility, whether the public
13 utility likes it or not, I always know that utility's
14 prices.

15 JUDGE WALLIS: Mr. Finklea, because of the
16 shipping patterns, would point-to-point shipment
17 information, throughput information, be sensitive in
18 this particular situation?

19 MR. FINKLEA: Not from a competitive
20 standpoint. I do have to agree with Mr. Marshall that
21 in the Post 9/11 world, we all have different concerns
22 from a security standpoint, but I don't feel qualified
23 to say whether there are any security concerns with
24 whether there is 100 barrels or a thousand barrels
25 flowing through a particular piece of pipe.

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1 JUDGE WALLIS: Commission staff?

2 MS. WATSON: Case 2 was relatively recent
3 when it was filed, that's true, and most of Case 2 was
4 not designated as confidential. However, the
5 throughput information in that exhibit, and I believe
6 that was Exhibit 819, the throughput information was
7 designated as confidential, and I guess I also just
8 want to note that the throughput numbers were discussed
9 earlier today without objection. I guess it's in your
10 hands.

11 MR. MARSHALL: Mr. Batch just handed me a
12 note to say on point-to-point in your inquiry of
13 Mr. Finklea, from Cherry Point to Allen, for example,
14 there can only be one shipper. From Ferndale to Allen,
15 for example, there can only be one shipper.

16 JUDGE WALLIS: Or at least one source of
17 product.

18 MR. MARSHALL: Correct, so this data does
19 lend itself to shipper-specific information in addition
20 to the other concerns we've discussed.

21 MR. BRENA: Therein lies in your observation
22 why it's not competitively sensitive. There is 70
23 shippers. There isn't just one shipper. There may be
24 one refinery source in certain situations, and again,
25 these are gross volumes. They don't even identify the

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1 product. It just doesn't do you any good to know this
2 information.

3 And I would like to observe that the two
4 refiners whose interests are impacted by this are
5 arguing for its disclosure. The pipeline company, who
6 has no interest in the world, is arguing that it's
7 competitively sensitive. I'm sitting next to my
8 competitor. We are looking at the information. We are
9 telling you it's not competitively sensitive to us.
10 Please disclose it.

11 Now, if we are telling you that, then what is
12 Olympic Pipe Line trying to assert a confidentiality of
13 the information as among its shippers? Mr. Marshall is
14 trying to protect me, and I'm telling you it's not
15 competitively sensitive. Olympic is not a stakeholder
16 in the argument that it's advancing to maintain
17 confidentiality with regard to throughput. Tesoro is a
18 stakeholder. Tosco is a stakeholder. Staff is not.
19 We've got two stakeholders, and they are both saying
20 it's not competitively sensitive. That ought to weigh
21 significantly here.

22 CHAIRWOMAN SHOWALTER: It would seem like the
23 only thing you can tell from this information is that
24 the pipeline is as full as it can be. That is, it's
25 operating at 80 percent capacity, or each pipeline is

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1 carrying about as much as it can of something. Why is
2 that even security information? The fundamental
3 security issue would be where is this pipeline, but we
4 already know it's public from this proceeding that it's
5 as nominated or as occupied as it can be.

6 MR. MARSHALL: Actually, I wish it were that
7 simple. Because of the different configuration of
8 pipes, it's like if you have a number of pipes feeding
9 into one, some of them cannot be at 80 percent, and
10 there can still be a restriction. It depends on the
11 sequencing. It depends on which of the pipes are being
12 used. So while I would agree if you had a single pipe
13 and you knew it was 80 percent, if you have multiple
14 laterals leading into multiple pipes, and the
15 restriction always comes from the one point at 80
16 percent where everything has to come together, so it's
17 not quite correct.

18 CHAIRWOMAN SHOWALTER: On the security issue,
19 how can it be a security issue to find out what was?

20 MR. MARSHALL: I would agree if it's in the
21 past.

22 CHAIRWOMAN SHOWALTER: Everything here is in
23 the past.

24 MR. MARSHALL: In the more distant past.
25 Here you do have point-to-point information, and you do

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1 have because of that identification with shippers, and
2 we did talk about this last November, December, and I
3 don't have it with me, but there is a federal law
4 restricting pipeline companies from disclosing
5 information about shipper patterns.

6 This is the very reason why we had the
7 highly confidential restrictions with regard to
8 individual shippers and point-to-point and why we had
9 to make that very clear, because we had an overall
10 duty. This may be why Olympic is more sensitive to
11 this than it makes sense from its own competitive
12 position would be.

13 CHAIRWOMAN SHOWALTER: We reserve this
14 argument. We didn't have to but we did because we felt
15 that the counsel present at the time were not prepared
16 to argue it. We alerted the counsel that this would be
17 taken up, and we asked specifically at that time what
18 is your authority for arguing that this is
19 confidential?

20 I acknowledged at that time that we not only
21 have our own state framework, but there may be other
22 issues, but we can't and will not find something
23 confidential based on an oral reference to something
24 federal. If there is a reason, we've got to have it in
25 front of us.

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1 MR. MARSHALL: We did, and we did cross that
2 bridge back in December when we added the designation
3 of that shipper-related destination related information
4 to be confidential. We had a ruling back then, but
5 that should not be --

6 CHAIRWOMAN SHOWALTER: Now we are talking
7 about this information in Exhibit 703. Again, what is
8 the authority we should look to in order to determine,
9 in your view, that that is confidential?

10 MR. BRENA: I would like to acknowledge there
11 is a federal law, that we have cited it to the
12 Commission, but it goes to the specific shipper
13 information, and the context of the conversation that
14 Mr. Marshall was raising this was in the context where
15 we asked to see Olympic's affiliated throughput
16 information specifically by shipper, and if the
17 Commission recalls, the participants, what we
18 ultimately got through discovery as a result of that
19 exercise was the affiliated shippers to Olympic and
20 Tosco and Tesoro, specific information by individual
21 shipper, specific products. It was very, very specific
22 information.

23 That isn't what's here, so that federal law
24 doesn't apply to this type of information. He pointed
25 out Anacortes to Bayview. That could be any one of 70

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1 shippers. There is not shipper-specific information in
2 this document or I wouldn't have requested its release,
3 and it's not competitively sensitive because you can't
4 tell which product they are shipping. So the federal
5 law doesn't apply to the situation.

6 People have mentioned their experience. I've
7 done a few pipeline cases. Never had gross throughput
8 information held as confidential, never made it. They
9 never made it there in the outcome of things. Shipper
10 specific information yes, gross throughput information
11 on the line, no, and that's where the commissions have
12 drawn the line in my experience.

13 MR. MARSHALL: The citation that we stated
14 last time was Section 15, Subpart 13 of the Interstate
15 Commerce Act, and it doesn't matter whether you have it
16 designated by product or not. If you can figure out
17 what the shippers are, that's the concern.

18 JUDGE WALLIS: Very well.

19 COMMISSIONER HEMSTAD: I have one question.
20 With the evolution of this argument, do I take it from
21 Olympic that you no longer are asserting
22 confidentiality for anything in this exhibit other than
23 the throughput?

24 MR. MARSHALL: The throughput is what we
25 focused on, and I've been trying to look through this

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1 as we've gone along just to speed things up, and I
2 think you are correct. I have not located other parts
3 of this that we would consider to be recent data that
4 we would have objection to. That's not to say that I
5 would waive any of the underlying material behind this,
6 but you are correct about that.

7 COMMISSIONER HEMSTAD: We are only talking
8 about 703.

9 MR. MARSHALL: Right. So apart from this
10 shipper information and the throughput information that
11 is of a recent vintage, we would not assert
12 confidentiality as the rest of 706.

13 CHAIRWOMAN SHOWALTER: One question for
14 Mr. Brena depending on what we decide. Of that
15 point-to-point information, do you need to use that
16 today, for example?

17 MR. BRENA: I don't need to use that for any
18 reason in this proceeding whatsoever that I can think
19 of. I've requested waiver for the reasons that I
20 stated.

21 CHAIRWOMAN SHOWALTER: But if we didn't make
22 a ruling on that particular section immediately, it
23 would not hold you up?

24 MR. BRENA: That's correct.

25 JUDGE WALLIS: Mr. Marshall, when the

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1 question first came up at the administrative
2 conference, Mr. Brena moved for a ruling on all items,
3 and we've heard that on the basis of the past practice
4 of the Company to waive confidentiality and on the
5 economy in having specific items in mind rather than
6 just a broad general ruling, but I think Mr. Brena has
7 put us on notice that he may well be making these
8 requests, and I would ask that you either be prepared
9 at the time you offer your exhibits to argue
10 confidentiality or be prepared to waive
11 confidentiality.

12 MR. MARSHALL: As I say, I may have
13 misunderstood the direction here in this exhibit when
14 we started down the one schedule, but I agree.

15 JUDGE WALLIS: We will be in recess briefly
16 while the Commissioners deliberate.

17 (Recess.)

18 JUDGE WALLIS: Let's be back on the record
19 after a deliberative recess. The Commission has
20 determined that the throughput information that the
21 Company seeks to protect, that is, the total throughput
22 information, is not properly classified as
23 confidential. The Commission is reserving ruling on
24 the schedules that display point-to-point information
25 subject to Mr. Marshall's providing at the beginning of

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1 the session tomorrow specific information as to why
2 that throughout point-to-point information is protected
3 by federal law and is not lawfully made public.

4 We understand that Page 52, I believe, the
5 confidentiality assertion, has been waived and that
6 Mr. Marshall was going to review the balance of the
7 document to determine whether there is any other
8 information within it as to which the Company would
9 continue the assertion of confidentiality. Is that
10 correct, Mr. Marshall?

11 MR. MARSHALL: Yes. Except for the point, as
12 I indicated, where we had not found other areas where
13 we would assert confidentiality.

14 JUDGE WALLIS: Are you prepared to waive
15 confidentiality on the entire document other than the
16 Schedule 22 information?

17 MR. MARSHALL: I'm not sure if all the
18 throughout is in Schedule 22, but if that's correct and
19 with the associated pumping information --

20 JUDGE WALLIS: The point-to-point
21 information.

22 MR. MARSHALL: The information about points,
23 correct.

24 JUDGE WALLIS: Now, under terms of our
25 protective order, the Company has the right to seek a

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1 ruling from Superior Court, and pending the exercise of
2 that right, the information remains protected for a
3 period of 10 days. Perhaps we could shorten the period
4 by asking whether the Company would waive its right to
5 seek Superior Court review.

6 MR. MARSHALL: On the total throughput
7 information?

8 JUDGE WALLIS: Yes.

9 MR. MARSHALL: Where was that particular one?
10 Is that just on the annual total or the month by month?

11 JUDGE WALLIS: Including the recent months.
12 Mr. Brena, could you take us back to that page? Was it
13 69?

14 MR. BRENA: Yes, I believe it was, Your
15 Honor.

16 JUDGE WALLIS: I think, Mr. Marshall, you
17 indicated that the Company would not assert
18 confidentiality except for the figures for March, April
19 and May?

20 MR. MARSHALL: Correct.

21 JUDGE WALLIS: So it is specifically the
22 information as to those months as to which the
23 Commission is ruling?

24 MR. MARSHALL: On Page 69?

25 JUDGE WALLIS: Yes.

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1 MR. MARSHALL: Correct.

2 JUDGE WALLIS: March and April are the only
3 actual numbers; is that correct?

4 MR. MARSHALL: That is correct. We may,
5 depending upon whether the Commission wants the
6 information, have made numbers available for the
7 conclusion of the hearings, and if so, we would give
8 you the discretion to use that rather than a forecast.

9 JUDGE WALLIS: But as to this, I guess my
10 question to you is are you willing to waive your right
11 to seek judicial review of the Commission's decision
12 pursuant to the protective order, or do you wish that
13 the information as to those two months, March and
14 April, remain confidential pending the running of the
15 10-day period?

16 MR. MARSHALL: We would like them to remain
17 confidential, but only until tomorrow when I have a
18 chance to contact the people at Olympic to find out
19 their preference. This is something that I think I can
20 get relatively quick information on.

21 JUDGE WALLIS: Thank you very much.

22 MR. BRENA: Your Honor, in answer to your
23 question, there is gross throughput information
24 throughout the document. I found at least two
25 different places where it's at. So it's not

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1 point-to-point information but just gross throughput
2 information.

3 MR. MARSHALL: Again, with the annualized,
4 the gross numbers, we don't have a concern. It's with
5 specific months that are recent and specific
6 designations on point-to-point and shipper information
7 that we do.

8 JUDGE WALLIS: That was our understanding.

9 MR. BRENA: May I resume my
10 cross-examination?

11 JUDGE WALLIS: Please do.

12 Q. (By Mr. Brena) Mr. Collins, I think where we
13 were was on Schedule 21.

14 CHAIRWOMAN SHOWALTER: What exhibit?

15 MR. BRENA: 703, Schedule 21, Page 49.

16 Q. I think we established you made 17 total
17 adjustments; is that correct?

18 A. That's correct.

19 Q. And 14 of those adjustments were test period
20 adjustments and three of those adjustments were base
21 period adjustments; is that correct?

22 A. Yes. Those 17 adjustments are reflected on
23 Schedule 21.

24 Q. So where I had directed you to last was
25 starting on No. 1, Adjustment No. 1, which is on the

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1 first line of Schedule 21 on Page 49 and if you look at
2 the adjustment, there is a footnote number next to each
3 adjustment, and then the proper schedule and line is
4 indicated at the bottom of the schedule; correct?

5 A. That's correct.

6 Q. So I'm going to start with No. 1. It's
7 salary and wages. It's Footnote No. 1, so if I look
8 down at Footnote 1, I know to go to Schedule 21.3, Line
9 7; correct?

10 A. Yes.

11 Q. So if you would go to Schedule 21.3, Line 7,
12 and this is the schedule that the confidentiality issue
13 arose; correct?

14 A. I believe so.

15 Q. This is Correction 1 in total amount, and I
16 am repeating just to refresh us, but the total amount
17 of the adjustment to the test period that you've
18 proposed on Schedule 21.3 on Page 52 is \$783,482, and
19 it's a decrease; is that correct?

20 A. That is the decrease to the O&M component of
21 salaries and wages. There is a total component that is
22 on Line 3, which is 998, and it's split into two
23 amounts on Lines 7 and 8. 783 relates to Footnote 1
24 that we started with. That's a subtotal of the total
25 salaries and wage adjustment.

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1 Q. The 215109 that you are referring to, you
2 skipped down on me to Footnote 8, Adjustment 8, didn't
3 you, on Schedule 21?

4 A. Correct.

5 Q. So with regard to Adjustment No. 1,
6 Adjustment No. 1 is in the amount of \$683,422; correct?
7 \$783,482; is that correct?

8 A. That's correct. That is an adjustment of
9 reducing by \$783,482.

10 Q. I just want to stay with the concept and the
11 math on this chart for a minute, and for my purposes,
12 I've tried to summarize it. So I've put in a little
13 chart here, so if the test year is 6.5 and the base
14 year is 7.5 million in rough terms, then the result is
15 a decline of a million, and then you take that
16 difference between starting with the test period less
17 the base period, you take that difference and then add
18 it to the base period; correct?

19 A. The test period level of cost, the difference
20 between the level of costs projected for the
21 forward-looking period, referred to here as the test
22 period, and what was in the base period, in order to
23 get a representative level of cost, that difference is
24 added to the base period amount to get to the
25 forward-looking level of cost for the test period.

1 Q. We had previously discussed the source of the
2 test period numbers. What happens to the adjustment if
3 the base period instead of being 7.5 million becomes
4 5.5 million?

5 A. I think the math, if the amount on Line 2,
6 which is 7.5, were changed to 5.5, the adjustment would
7 be the reverse. It would reflect an increase of
8 roughly one million dollars.

9 Q. Then that one million would be added to the
10 new base, which is 5.5, bringing it up to the test
11 period amount of 6.5; correct?

12 A. Yes, that's correct. It would bring the
13 amount up to 6.5, which is the test period adjustment,
14 to reflect the forward-looking level of costs for
15 salaries and wages.

16 Q. What would happen if instead of 7.5 or 5.5
17 the base period were 10.5? How would the math work out
18 in that case?

19 A. The math would work out the same. You take
20 the difference between those two. If the amount on
21 Line 2 was 10.5, the difference would be four million,
22 and then that adjustment would be added to the base
23 period to get to a test period level of cost.

24 Q. In all of those examples, whether the base
25 period were 7.5 million, 5.5 million, or 10.5 million,

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1 in all cases it comes back to 6.5 million, doesn't it?

2 A. Yes. The idea is to looking to represent a
3 forward-looking level of cost, so that's the whole
4 concept is you take a 12-month period of actual
5 expense, and to the extent there is no difference in
6 forward-looking, there would be no adjustment.

7 If the forward-looking amount of expense were
8 thought to be greater than the 12-month period of
9 actuals that you make an adjustment to increase the
10 amount because the forward-looking level of expense for
11 the rate period or for test year would be higher, and
12 conversely, if the expected level of expenditure were
13 lower, you would adjust the expense level downward.

14 Q. Let me say this a different way. It is
15 absolutely irrelevant to your calculation of salaries
16 and wages what the base period salary level is because
17 in every calculation possible, it calculates back up to
18 the test period as a matter of mathematics. Is that
19 true or false?

20 A. I wouldn't say it's irrelevant. I would say
21 it's true that the adjustments going to result in the
22 test period amount. The test period adjustment is
23 going to result in a level of expense that's going to
24 represent what the expense would be for the test
25 period.

1 Q. But let me pose it this way. Why don't we
2 just get rid of the base period numbers and use the
3 test period numbers? Why do we start with the base
4 period numbers under the guise of an adjustment to it
5 just to adjust it back to the test period number
6 anyway?

7 And let me phrase the question this way. How
8 is it mathematically relevant, this calculation, No. 1,
9 test period salaries, No. 2, less base period, No. 3,
10 test period adjustment? Why do you have any line in
11 there calculationally except No. 1, which is test
12 period salaries, because that's mathematically what you
13 come back to no matter how you do it?

14 A. The information is presented that way because
15 that's the way the regulations talk about starting with
16 a base level and then making adjustments to that for
17 changes known and measurable.

18 Let's just say there was a new facility or
19 new extension that was going to be added in two months
20 after the base period ended, so in the base period,
21 there would be a level cost of zero, and we knew that
22 that extension was going to result in expenses of a
23 million dollars on an annual basis. In the test
24 period, that's what you are trying to adjust to, the
25 forward-looking level of costs.

1 The fact that there were no costs because
2 that wasn't part of the system in the base period
3 doesn't -- if you are trying to reflect the
4 forward-looking amount, and the reason I did it the way
5 I did it was that was the way the regulations talk
6 about starting with base period data and making
7 adjustments perspectivevely for changes known and
8 measurable.

9 Q. Do you know do you agree that mathematically
10 that the base period numbers are irrelevant to this
11 calculation?

12 MR. MARSHALL: I object as vague. It depends
13 on the circumstances, and the circumstances meaning
14 whether there is a known and measurable change. I
15 think the question is, does it have enough details in
16 this hypothetical.

17 JUDGE WALLIS: I think in context it does;
18 although perhaps, Mr. Brena, you could specify exactly
19 what test year figures you are talking about so the
20 question is on its face complete.

21 Q. (By Mr. Brena) In terms of the calculations
22 set forward on Schedule 21.3 that begins test period
23 salary less base salary to a test period adjustment,
24 which is then added right back into base period salary
25 to total up to the test period salary, in this

1 exercise, it is a mathematically circular exercise that
2 necessarily has to begin and end with the test period
3 number, regardless of what the base period number is.
4 Is that mathematically true or is that mathematically
5 false?

6 A. Mathematically it is true. You are going to
7 end with a test period level of cost. With regard to
8 your prior question about it being irrelevant, I
9 wouldn't say that. I think as part of the underlying
10 exercise to determine if a forward-looking adjustment
11 is known, measurable, and effective, you are looking at
12 cost levels for an actual period of experience, and
13 then to the extent there are any changes, you are going
14 to look at those two things.

15 Using my hypothetical example, if there is
16 something that didn't exist, I think you take into
17 consideration what levels of cost were, and to the
18 extent they are different, you will want to understand
19 why the forward-looking expense level would be
20 different than what you have in the past.

21 Another example would be like the removal of
22 the SeaTac facilities where you have something that you
23 are going to make an adjustment perspective. If it's
24 gone, it doesn't really matter. If it's gone it's
25 gone. It doesn't matter what's in the base period

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1 amount.

2 Q. Did you start with that mathematically that
3 my statement was true?

4 A. Mathematically, you are going to end up at --
5 the test period level of cost that's being projected is
6 going to represent what's going to be included in the
7 test period or forward-looking period expenses. So
8 mathematically, to the extent that you accept a test
9 period forward-looking level of costs, the changes in
10 the base period level of costs will not change the
11 forward-looking test period level of cost.

12 Q. We'll get into the known and measurable
13 standard in just a minute, but in practical import,
14 what this does is take the base period 12 months
15 actuals and mathematically ignores them and substitutes
16 in their place a new period of seven months of actuals,
17 two months of budgeted annualized over 12 months and
18 then factored back in under a test period and then
19 calculates to that number. Is that correct? That's
20 the practical impact, a substitution of that
21 calculation for the 12-month actual.

22 A. Let me put it in my own words, because I'm
23 not sure exactly if I remember how you said that. As a
24 general matter for expenses, and again, there are some
25 exceptions to this that are noted I think in either my

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1 or Ms. Hammer's testimony where we've made adjustments
2 is we've taken costs levels for the period October 2001
3 through April 2002, taken those actual costs, made
4 adjustments or made estimates for May and June based on
5 revised projections, as we talked about earlier,
6 normalized those or annualized those by taking the
7 average monthly cost and assuming that cost level for
8 the remaining three months to get to an annual level of
9 cost. So I'm just putting in my own words because I
10 wasn't able to follow exactly so that's more
11 comfortable answering it that way.

12 Q. That's fine. When everything is said and
13 done, we went from 12 months of actual out to seven
14 months of actual plus some calculations in?

15 A. That's true with expenses. It's also true
16 with volumes. We've not used our actual volumes.
17 We've adjusted the volumes. We're done this to
18 expenses, volumes, property.

19 Q. If we could just stay on the exact topic we
20 are on, I would appreciate it, because we will get to
21 those other adjustments, and I will give you a full
22 opportunity to do that. I don't mean to cut off your
23 answer if you would like to complete it.

24 A. I'm finished.

25 Q. I found interesting, the test period

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1 salaries, the six-and-a-half million dollars on this
2 thing, do you personally know whether that got paid?

3 A. In the course of my review, I do not go
4 through and verify individual invoices. I can't say
5 whether that was paid or not. That's not something I
6 would do. I would suspect that the control process
7 that's used to provide the accounting function somebody
8 would have done that review, but I've not represented
9 in my testimony to say that I've checked to make sure
10 that each and every invoice for each and every category
11 of expense has been paid or not paid.

12 Q. Do you know whether or not this is an accrual
13 number or cost number or some combination of the above?

14 A. No. I believe this to be amounts that have
15 been paid. It's not accrual.

16 Q. How do you know that?

17 A. Based on discussions I've had with
18 Ms. Hammer.

19 Q. So through Ms. Hammer's knowledge.

20 A. I would ask Ms. Hammer questions about
21 whether there were accruals and to the extent -- yes,
22 through discussions with Ms. Hammer.

23 Q. Do you know whether or not this
24 six-and-a-half-million dollars is reasonable in amount?

25 A. Based on my review, I would believe it is a

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1 reasonable amount.

2 Q. Based on your review of what?

3 A. Of the data provided to me by Ms. Hammer, and
4 I think some of that is included in the work papers
5 that would be included as Exhibit 728, but a lot of the
6 other data is included with respect to this case in 703
7 as well.

8 Q. Do you know whether or not Olympic could have
9 gotten those same services? Do you know what services
10 were provided for six-and-a-half-million dollars?

11 A. I don't know particulars about the individual
12 number of people or what people have done. I know
13 generally, they relate to salaries, but I don't know
14 about individual invoices or individual amounts that
15 make up those salaries and wages.

16 Again, I think that is something, the control
17 process that provides the accounting information to
18 Ms. Hammer, that's kind of their function.

19 Q. And I will ask Ms. Hammer. I'm just
20 exploring your understanding. Do you know whether or
21 not this six-and-a-half-million dollars includes a
22 million or two million dollars for engineers working on
23 capitalized projects?

24 A. I wouldn't know that.

25 Q. So as far as you are aware, this number could

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1 be part or half engineering labor costs that should be
2 capitalized with a capitalized project?

3 A. I would assume that if they had amounts they
4 were capitalized, they would be booked as capital items
5 and not expense items.

6 Q. That's what I'm exploring. Isn't it true
7 that, or do you know that Olympic capitalizes labor
8 annually?

9 A. I think I'm generally aware that some of the
10 adjustments that were made may relate to that, but I
11 don't know particulars about capitalization policies.
12 I think what I've intended to do is just take expense
13 levels as provided from Ms. Hammer that just represent
14 the amounts that were expensed.

15 Q. And I'm trying to explore whether or not you
16 know this is a good input in your model or whether or
17 not you are relying on Ms. Hammer that it's a good
18 input.

19 A. No. I believe that each of the expense
20 elements, given the review. We spent several months
21 going through and reviewing this data. I spent several
22 trips in Renton at their office, numerous hours on the
23 phone based on that, and I believe the costs here
24 represent a reasonable level of costs for setting
25 Olympic's rates.

3242

1 Q. I'm trying to explore the basis for that
2 knowledge. If you don't know whether two million of
3 this six-and-a-half million should be capitalized labor
4 and should be capitalized instead of expensed, how can
5 you reach the conclusion that you know that this is a
6 good input?

7 A. Well, I think if it was capitalized labor, it
8 wouldn't be an expense. Something capitalized
9 indicates that it's capitalized. If it's expensed, to
10 the extent it's booked as an expense, I think it's an
11 expense.

12 Q. Isn't that the assumption that you've made in
13 your model that if it's booked as an expense, it's an
14 expense?

15 A. The assumption I've made is the expense
16 information provided by Ms. Hammer has been reflected
17 as expense. We've made adjustments to the data,
18 normalizing adjustments and other rate-making
19 adjustments, but I'm not aware of any adjustments
20 relating to capitalized labor.

21 Q. Really, I'm just trying to explore whether
22 the quality of the inputs are something I should
23 properly explore with you or Mrs. Hammer. Would you
24 give me guidance? Is the quality of the inputs to this
25 model a subject that I should explore with Ms. Hammer

3243

1 because you've relied on the inputs she provided you in
2 your model?

3 A. Given the time we've looked at things, I'm
4 comfortable. I think they are reasonable and represent
5 what's an appropriate level of cost going forward. I
6 can't tell you what you should do or what questions you
7 should ask, but I feel they are reasonable and
8 appropriate for purposes about evaluating Olympic's
9 rate increase.

10 Q. Then I will look to you for that line of
11 questions. Do you consider yourself an expert on the
12 salary costs of operating a common carrier pipeline?

13 A. No, I do not.

14 Q. Then so far as you are aware, this could be
15 three million dollars high or three million dollars low
16 of what could be an industry cost for providing the
17 same services to Olympic.

18 A. Yeah. I've not indicated in my testimony
19 that I'm an expert in industry-wide level of cost or
20 how Olympic's cost may vary from that or how that may
21 or may not be relevant for these purposes. I've taken
22 data provided by Ms. Hammer.

23 JUDGE WALLIS: Mr. Brena, I want to glance up
24 at the clock and ask if this is an appropriate breaking
25 point for our recess.

3244

1 MR. BRENA: I'm done with the line of
2 questions with regard to Schedule 21.3, and that might
3 be an appropriate breaking point.

4 JUDGE WALLIS: Let's be in recess
5 until 7 p.m.

6 (Dinner recess taken at 5:30 p.m.)

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EVENING SESSION

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(7:00 p.m.)

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JUDGE WALLIS: Back on the record, please,

6

following our evening recess. Mr. Brena?

7

Q. (By Mr. Brena) Good evening, Mr. Collins.

8

We were on Schedule 21, and we had just worked through

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the Schedule 21.3 on Page 52 in discussing the circular

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logic of the mathematical calculation that was

11

contained on that?

12

MR. MARSHALL: I would object to his summary

13

of that circular logic. It's objectionable as to form

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and argumentative.

15

JUDGE WALLIS: I think in context, it's

16

clear. The term was used earlier, and the witness has

17

described the practical application of the accounting

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that was done and his own view as to whether or not it

19

was circular.

20

MR. BRENA: Thank you, Your Honor, and if you

21

end at the same point you begin, that's circular to me.

22

Q. At any rate, do you recall where we were?

23

A. Yeah. I believe you said you finished with

24

Schedule 21.3.

25

Q. Yes, thank you. Of these 17 adjustments that

3246

1 you've made, would you go through and identify which of
2 these adjustments have the identical logic to them as
3 the one we just went through?

4 A. If you could give me a minute to go through
5 and I could identify the ones that were made
6 consistently.

7 Q. When you find them, if you will just let me
8 know, I'll mark it, and we will just go from there.
9 Just for clarification, when I mean "identical," there
10 is no computation other than truing it back up to the
11 next number.

12 A. I think I've gone through them all, and I'll
13 go through them fully sequentially in the order they
14 are here.

15 Q. If it helps at all, I'm looking at the
16 Footnote Nos. 1 through 17. Maybe that would be a
17 point of reference for us.

18 A. I was going through individual line items.
19 The ones that I would characterize as being similar in
20 their form would be 21.4.

21 Q. And that's Adjustment 2; correct?

22 A. I think it actually applies to Adjustment 2
23 and Adjustment 9. Some of these flow through to both
24 O&M as well as general. 21.7, I believe it's a
25 judgemental as whether that may or may not be exactly

3247

1 identical. In terms of development of the test period
2 amount, it's done in a different manner, but the
3 adjustment between the test period and the base period
4 amount is in that sense consistent.

5 Q. 21.7, you are talking about the loss
6 allowance?

7 A. Yes, which I believe shows up as a footnote
8 to No. 6. 21.9, which I believe is Footnote 12.
9 21.10; although, this is a bit of a different in the
10 depreciation expense is somewhat different than other
11 operating expenses, but mathematically, it's taking the
12 difference between two values to get to the adjustment,
13 but I would say it's a bit different. That is Footnote
14 13. 21.11, which is Footnote 14. 21.12, and I think
15 that's it that are similar in nature to 21.3.

16 Q. And 21.3 affects not only Footnote 1 but it
17 also affects Footnote 8; correct?

18 A. That is correct.

19 Q. So I have of the footnotes, I have 1, 2, 6,
20 8, 9, 12, 13, 14, 16, and 17?

21 A. That sounds correct.

22 Q. In each of those examples in those footnotes,
23 you begin and end with the same number, and
24 mathematically, it loops back around like we went
25 through; correct?

3248

1 A. I would say that each of those, they are done
2 in the same manner as 21.3. Although, several of them,
3 there is a single amount and it's split in two places,
4 so maybe it seems like it's twice as many as there are.
5 For example, salaries and wages, there was a total that
6 gets adjusted two places.

7 Q. Seven adjustments to go then. With regard to
8 the outside services adjustments, which is 3 and 4,
9 which is Schedule 21.5, would you just take me through
10 21.5? Does this have the same circular logic but there
11 are adjustments in the middle of it?

12 JUDGE WALLIS: Could you point us to a page,
13 please?

14 MR. BRENA: Schedule 21.5, outside services
15 adjustment begins on Page 54 of 71.

16 Q. (By Mr. Brena) And on Schedule 21 for
17 outside services is base period of 11 million, a base
18 period adjustment of 7.7 million, and a test period
19 adjustment of 1.67 million. Now, first addressing, I
20 guess, would you explain the test period adjustment of
21 roughly 1.7 million?

22 A. I'm sorry. Which line number are you
23 referring to?

24 Q. Schedule 21.5, Line 18.

25 A. That would be the O&M component of the test

3249

1 period adjustment, and I think it would be more
2 helpful, because what is done here is I'm making an
3 adjustment for outside services. That adjusted amount
4 is broken into an O&M component and an administrative
5 and general component, so you're on Line 18 referring
6 to the O&M component, and Line 20 is the general
7 component.

8 Q. So just to tie it back to Schedule 21 -- I
9 just want to be sure I don't lose anyone and least of
10 all myself -- there are in Footnote 4, 1.7 million
11 dollars adjustment is outside services and operations
12 and maintenance; correct, on Schedule 21 on Page 49?

13 A. That's correct.

14 Q. And then Footnote 3 is 7.4 million, and
15 that's a base period adjustment, correct, and that's
16 also on Schedule 21.5; correct?

17 A. Footnote 3 is a base period adjustment.

18 Q. To outside services set forth in Schedule
19 21.5; correct? Perhaps I can make this shorter.
20 Footnotes 3, 4, 10, and 11, so four additional
21 adjustments, two to base period and two to test period,
22 are all adjustments to outside services and are set
23 forth in the Schedule 21.5; correct?

24 A. You are saying Adjustments 3 and 4 referring
25 to the footnotes?

3250

1 Q. Correct. 3, 4, 10, and 11.

2 A. Those are all adjustments to outside
3 services. Two of them are adjustments to base period
4 amounts and two are adjustments to test period amounts,
5 and would you like me to explain them?

6 Q. I would, and those are set forth in Schedule
7 21.5; correct?

8 A. Yes, I believe they are.

9 Q. Would you go through and explain each of
10 those four adjustments, and we can just start from the
11 top of the schedule on 21.5 on Page 54 of 71.

12 A. Sure. We start on Line 1 what about labeled
13 here the base period for the 12 months of actual O&M
14 outside services. On Line 2, we are backing out an
15 accrual for remediation, future remediation that was
16 booked as an accrual in the base period.

17 Q. Perhaps if I could break in a line at a time
18 and ask questions, maybe that's the fastest way to get
19 through this. With regard to the base period expense,
20 the 11 million 016, do you know what they spent their
21 money on?

22 A. As I said before, I haven't gone into the
23 details of what is contained within this account,
24 similar to salaries and wages. I'm taking data that
25 was provided by BP and I'm making adjustments to it

3251

1 where I feel appropriate, for example, like this
2 accrual I'm backing out, but I couldn't tell you
3 individually about individual amounts that would make
4 up the amount on Line 1.

5 Q. The accrual you are backing out, the 6.4
6 million, that was the amount that was budgeted to be
7 spent in Case 2?

8 A. It's not budgeted. They accrue an amount for
9 future liability. The accrual was probably based on
10 some type of budget or estimate, but that's an accrual
11 for future costs that have not yet been spent, and that
12 was, in fact, the actual accrual that was used in Case
13 2, and that accrual has not changed. It's the same
14 figure.

15 Q. So that was accrued but unspent amount that
16 you backed out, and then you put back in some
17 remediation numbers based on actual spending?

18 A. Are you talking about this case or Case 2?

19 Q. This case.

20 A. Yeah. If I go try to explain to you --

21 Q. Go ahead on remediation adjustments.

22 A. The remediation spending that was a portion
23 of the amount that was accrued is shown on Line 14,
24 \$735,000.

25 Q. In work paper No. 10 in Exhibit 728 sets

3252

1 forth your calculation of the remediation expenses; is
2 that correct?

3 A. It's correct in part. Work Paper 10 provides
4 monthly estimates for May and June. I think the
5 \$735,000 I refer to is summarized in total on Work
6 Paper 2 of Exhibit 728, and at Work Paper 2, if you go
7 to Line 24, that sets forth amounts, and I can walk
8 through what the amounts are.

9 Q. Let me just ask you -- and you are on line
10 24; correct, of Work Paper 2 of Exhibit 728?

11 A. Yes.

12 Q. Now, which of those numbers are actual
13 spending numbers?

14 A. The amounts for each of the months with the
15 exception would be the months that show in the October
16 column through the April column and then the amounts
17 for July, August, and September, and I would note, as
18 you can see above Line 24, those amounts represent
19 spending for the months of July 2001, August 2001, and
20 September 2001.

21 Q. Just so I understand, you took seven months
22 of actual, October '01 through April '02. Then you
23 took budgeted amounts for May and June, and then you
24 took that nine-month total and annualized it and
25 applied that forward in July '02, August '02, and

3253

1 September '02.

2 A. I thought I just said -- maybe if I could
3 explain what I did in total, maybe it will make it
4 clearer.

5 Q. That's fine.

6 A. This accrual for 6.4 million dollars was to
7 address several remediation projects. I couldn't give
8 you the individual activities for each of the projects,
9 but it was an accrual that was made and booked in the
10 base period. The accrual was projected, and this was
11 contained in Case 2, they had reflected a projected
12 spending pattern that went from, I think, over six-plus
13 years, and that amount for reference, just so people --
14 I would like to go through this in total.

15 Q. That's fine, and I will let you return to
16 that, and I don't mean to interrupt you, and perhaps I
17 already have, but it's not my intention. What I would
18 like you to explain is how you got to the 735.

19 A. That's what I'm trying to do.

20 Q. I just want to be clear we are on the same
21 task.

22 CHAIRWOMAN SHOWALTER: As long as you were
23 interpreted, I'm not sure I'm on the right page, so
24 what page are you talking about in page numbers?

25 THE WITNESS: What I was turning to was the

3254

1 same exhibit, 703. It's page 50 of 71.

2 CHAIRWOMAN SHOWALTER: Thank you.

3 THE WITNESS: This amount was showing
4 initially what was used to develop the 6.452 amount,
5 which is shown on Line 5 of this. It was showing
6 initially they budgeted in 2001 to spend 1.94 million,
7 1.085 in 2002 and so forth, and the total of these
8 amounts through 2006, and they have the last column
9 through 2005 as the last column being two thousand
10 six-plus, which I'm taking to mean two thousand six and
11 time after that was the pattern of spending that they
12 had projected.

13 So what happened, based on my discussions
14 with Ms. Hammer, is this remediation spending did not
15 start at the beginning of 2001. It started, I think,
16 in July of 2001. So that's kind of when this spending
17 associated with this 6.4 remediation started, so what
18 we've done knowing we've got this six or seven year
19 pattern of spending is I've taken the data beginning in
20 July of 2001 through April using actual spending for a
21 10-month period.

22 This was one of the cases with the expense
23 deviated from the, what was characterized in Staff's
24 exhibit this morning that talked about the seven months
25 actual, two months budgeted being normalized. This is

3255

1 a project that started last July, and it's going to go
2 on for several years, so in this case to get a
3 representative level of costs, what I've done was look
4 at the expending from July 2001 through April, actual
5 spending.

6 So on the schedule, the amounts for all of
7 the monthly amounts with the exception of May and June
8 were based on actual spending. Now, with regard to the
9 other two months, and I'm jumping around because I have
10 both these documents open, but going back to Work Paper
11 2, which is where I was starting to explain this --

12 CHAIRWOMAN SHOWALTER: What one is that?

13 THE WITNESS: This is Work Paper 2 within
14 Exhibit 728, which was the hand numbered.

15 MS. WATSON: It's Page 5 of that exhibit.

16 MR. BRENA: Work Paper 2, Page 5 of Exhibit
17 728, Line 24.

18 THE WITNESS: Anyway, the amounts here, if
19 you go to Line 24, for July where it's labeled July
20 '01, August '01, September '01, and then going back to
21 the left, October, November through April, that
22 represents 10 months of actual spending, and to reflect
23 a full year of remediation spending on this accrual is
24 something that's going to be occurring for a
25 six-plus-year period of time, on Work Paper 10, there

3256

1 were estimates that were provided to me by Ms. Hammer
2 that had shown the amounts that were the 82,890 per
3 month, and that would be in Work Paper 10 of the same
4 Exhibit 728.

5 So to kind of summarize, there were 10 months
6 of actual spending that began -- when remediation
7 activities were booked as an accrual, in fact, the
8 moneys were being spent. We began in July, so we used
9 data from July through April, and we did not have
10 actual spending for May and June as of yet, so Work
11 Paper 10 was providing an estimate of what they
12 anticipated the spending to be for this.

13 One of the other reasons why, kind of
14 deviating from the standard we've used before, is that
15 the remediation activities tend to be somewhat seasonal
16 and tend to occur in the dryer months of the year, so
17 to try to look at six months that would be October
18 through March is the winter six months, and it's not
19 going to be a representative level of spending. Just
20 as if you looked at the summer six months, it wouldn't
21 be representative, so I was trying to attempt to get a
22 full year as much as possible reflecting how the
23 seasonality changes and the spending tends to be higher
24 in the dryer months than the wetter months, but that is
25 how the \$735,000 figure that we started back at the

3257

1 beginning of this discussion on the remediation was
2 developed.

3 Q. Let me just summarize a few things. You used
4 the different actual numbers from a different period
5 than you did with salaries that we worked through;
6 correct?

7 A. I used a different approach to develop a test
8 period level of spending. They are all different
9 actual numbers.

10 Q. You used different months, yes or no?

11 A. Yes. I used the months of July through
12 April, and I used budgeted amounts for May and June.

13 Q. Now, looking at Page 5 of Exhibit 728, it's
14 kind of confusing because July, August and September of
15 '01 are on the right-hand side. You've got to lift
16 those up and put them on the left-hand side so it's
17 chronological; correct?

18 A. To the extent you want to look at them
19 chronologically -- I think they were put there because
20 for all the other amounts, they are just shown in this
21 form, so if that would make it less confusing... There
22 is another way we could pull those amounts out and
23 stick them off to the left, but it was an attempt to
24 have the schedule structured in a consistent manner.

25 I think the rationale for doing it this way

3258

1 is kind of like the volume assumption. This is
2 something that this activity started in July, and so I
3 used beginning in July since that's when this multiyear
4 remediation, these expenditures were being incurred, so
5 that's why I used that period.

6 Q. And we can go through this much, much faster
7 if you do your very best to focus on the question.
8 This entire chart is set up from left to right
9 chronologically, except for Line 24 which is set up
10 left to right until you get to July, August, and
11 September; is that true?

12 A. Well, I would say the months are
13 chronologically from left to right for all the data in
14 this chart, except where they are noted on Line 24
15 where it's different.

16 Q. Your May and June estimates, those are
17 calculated in Work Paper 10?

18 A. Yes. They are calculated in Exhibit 728,
19 Work Paper 10.

20 Q. Which is Page 22 of Exhibit 728; correct?

21 A. Yes.

22 Q. Is that work paper only used to calculate
23 those two months?

24 A. Yes.

25 Q. Now, going -- and I'm looking at Work Paper

3259

1 10 on Page 22 of Exhibit 728, the \$82,890, and that is
2 what you ultimately used to plug in for May and June;
3 correct?

4 A. Yes.

5 Q. Now the biggest single item adding up to that
6 is \$47,453 which is Olympic capital KLTBD; is that
7 correct?

8 A. That's correct. That's what the line item is
9 for the \$47,453 amount.

10 Q. Can you tell me what KLTBD is?

11 A. No, I cannot. This exhibit was provided by
12 Ms. Hammer, and I understood she prepared this estimate
13 for me. I can read these, but I don't know what any of
14 these individual amounts represent, as I thought I
15 indicated earlier with respect to the data.

16 Q. If I were to represent that that meant "known
17 liabilities to be determined," it doesn't relate
18 anything? Would that change your calculation?

19 A. I don't know that to be true so I can't say.
20 I didn't do this calculation. You would have to ask
21 Ms. Hammer about that, because as I thought I just
22 said, I did not do this calculation.

23 Q. I believe where we are at is Schedule 21.5,
24 and you've just explained the remediation amount that
25 you've taken out that was accrued but not spent and the

3260

1 amount that you put in based on 10 months of actual and
2 two months of estimates using months differently than
3 you used to determine other costs. Would you go back
4 to Schedule 21.5 and continue with the adjustments that
5 were made to outside services, please?

6 A. Do you want me to go through just the math of
7 the entire schedule or identify the adjustments?

8 Q. Just identify the adjustments. We have four
9 adjustments on the table, and before we do that, would
10 you tie the remediation adjustment that you just
11 explained back to Schedule 21?

12 A. That's where I was headed, sure. The amount
13 on Line 2, the 6.4 million dollars that I've removed
14 from the expenses, that amount, if we go back to
15 Schedule 21, and again on 703, going back to Page 49 of
16 71, if you look to Footnote 3, that indicates it's
17 Schedule 21.5, Lines 2 plus 21. So this is the amount
18 from Line 2 that I was just discussing. So it would
19 show as a component one of two pieces that's shown in
20 Footnote 3.

21 Q. Okay. So 3 is explained.

22 A. The amount on Line 14 is added into the
23 amount on Line 15, which is taking an adjusted test
24 period amount. We haven't gotten to the other pieces,
25 but this is being added into other adjustments that are

3261

1 made to test period amounts, and probably you want to
2 finish all of the other adjustments, but this amount
3 would flow through on Line 15, and the amount on Line
4 15 is allocated into two pieces, one on Line 18.

5 I'm sorry. First, you are taking the amount
6 on Line 15, which is the adjusted test period amount,
7 and you would go to calculate an adjustment, go to Line
8 16, and here, the source column is wrong, as we had
9 noted earlier today. The amount on Line 16, the source
10 should read is the amount on Line 15 less the amount on
11 Line 7, so this would be a 4.1-million-dollar
12 adjustment to the test period. This amount is split
13 into two pieces, the amount on 61 component, the O&M
14 component, is shown on Line 18.

15 Q. Those two amounts --

16 A. I'm not finished yet, and I think that's
17 Footnote 4 going back to Page 49 of 71. Footnote 4
18 refers to Line 18, and the other component of the O&M
19 adjustment is shown on Line 20, which is --

20 Q. Footnote 11; correct?

21 A. Yes, I believe that's it. Thank you.

22 Q. Now, the Footnote 4 and Footnote 11, are
23 those adjustments that ultimately are just tying it
24 back to the test period in the same mathematical
25 fashion as we learned with the other costs?

3262

1 A. No. These are a bit different in that some
2 of these -- we haven't finished the adjustments. I
3 think we need to finish the adjustments before, and
4 maybe if I could -- my preference would be to go
5 through and explain the schedule as opposed to start
6 going through it and then having to stop and you ask
7 questions. If I could just go through the rest of the
8 schedule and then maybe ask that you have follow-up
9 questions.

10 Q. I'm happy to let you do that, but I want you
11 to respond to my questions first, and then I'll give
12 you an opportunity to do that. The base period
13 adjustments indicated on Footnote 3 and Footnote 10,
14 those are adjustments to the underlying numbers, but
15 then adjustments indicated on Footnote 4 and Footnote
16 11 tie them back to the adjusted test period numbers,
17 don't they?

18 A. To the adjusted test period numbers
19 because they take test period numbers and make
20 adjustments to them. That's what I'm trying to get at
21 to explain this, but it's going to be difficult if you
22 would prefer to ask me questions and interrupt me
23 instead of let me try to explain the schedule.

24 CHAIRWOMAN SHOWALTER: Mr. Collins, as long
25 as Mr. Brena is asking an appropriate question, then

3263

1 you need to answer his question, even if you might have
2 wanted him to ask a different question or allow you to
3 give a different type of answer.

4 Q. (By Mr. Brena) What question would you like
5 for me to ask?

6 A. In terms of just trying to get through this,
7 I was going to explain the adjustments in Schedule
8 21.5, and we had gotten partway through that.

9 Q. Which adjustments are remaining based on
10 Footnote 10?

11 A. Well, I was going on Schedule 21.5. The next
12 amount that's adjusted on Line 6 is what's labeled --
13 this is again 5471, are operator transition costs, and
14 what we are doing -- those amounts show up on Line 6,
15 and what we are doing is, I think this was discussed in
16 both the direct testimony, and this is consistent
17 between the direct and the rebuttal testimony is we are
18 normalizing these and taking over a five-year period,
19 so in essence, we are taking out the full amount of
20 that cost from the base period and adding back 20
21 percent of that amount, which would be what's shown on
22 Line 11.

23 Q. Now, let me just pause and ask you a question
24 or two with regard to operator transition costs. Where
25 does that number come from?

1 A. That is from the 12-month period, here
2 referred to as the base period, 12 months of actual.

3 Q. Please go ahead. Continue with your
4 explanation, or are you done?

5 A. I'm done with respect to transition costs.

6 Q. Okay. And transition costs, I would like for
7 you to go ahead and finish explaining your schedule. I
8 think that was the question you wanted me to ask.

9 A. The last adjustment related to what are
10 called here litigation costs, and by that, we are
11 referring to tariff litigation costs, and what are
12 shown here on Line 12 is the cost that's been included
13 in the test period outside services and back that out
14 and added in a normalized test period cost, and this
15 cost has also been normalized based on a five-year
16 schedule. To explain that, I would suggest that people
17 could refer back to Exhibit 728, and within 728, this
18 would be Work Paper 9, which is several pages --

19 Q. If you could just summarize. You backed out
20 --

21 A. I'm sorry. I thought I was trying to
22 continue answering the question. I was just referring
23 people to get there, and I was going to explain how the
24 normalized adjustment was made. Should I continue?

25 Q. Please go ahead.

3265

1 A. On Work Paper 9, I think as a starting point,
2 on Pages 19 and 20, this contains individual invoices
3 from various vendors that have been identified to be
4 providing services related to this tariff litigation,
5 and they are listed by vendor, Perkins Coie, Sidley and
6 Austin, etcetera, maybe just focus on one to just
7 explain how they are generally set up.

8 They have a document date which I'm guessing
9 would be the date of an invoice, the date posted, the
10 second amount, would be the date it would have been
11 recorded in Olympic's books. The next column, it shows
12 the amount of the invoice, and then there is GL and
13 cost center, which those would relate to general ledger
14 account and cost centers. These have been booked, so
15 those five pieces of information are kind of what
16 pertain to an invoice.

17 What kind of confused people in the
18 deposition was to the right, there are some further
19 invoices, but those five pieces are the same five
20 pieces of information, document date, date posted, and
21 then the amount of the invoice, the general ledger and
22 cost center, but what we have on these two pages were
23 amounts that have been identified kind of --

24 These amounts were provided to me by
25 Ms. Hammer, and what I did was taking these amounts --

3266

1 one thing also, and I think this may be a problem on
2 some of these. I was going to mention this after the
3 break but I forgot, but I think there seems to be a
4 formatting problem, and I don't know if these were
5 reprinted, because the ones we had talked about last
6 Friday, they would all show up on a single page, and
7 here there are some that the amounts wrap around
8 several pages --

9 Q. Mr. Collins, perhaps I could ask just a few
10 questions. In Case 2, there was a million dollars in
11 litigation expenses, and it wasn't amortized at all;
12 correct?

13 A. That's not correct.

14 Q. In summary, how did you manage in Case 2 of
15 the cost of this proceeding?

16 A. Say that again, please.

17 Q. What did you do in Case 2 with regard to
18 these?

19 A. Case 2, they had reflected I think \$440,000
20 in litigation costs for the test period. Those
21 amounts, I think, could be found on work paper -- it's
22 one of the work papers in 9. I think on Work Paper
23 9-C, which is Page 21 of 22, there is a million-dollar
24 figure at the bottom, but I think that contains costs
25 outside of the tariff litigation costs.

1 It's my understanding that if you look at the
2 far right column, 2002 expected, the first amount,
3 \$440,000, it's my understanding that those relate to
4 tariff costs. The balance relates to other -- there is
5 security fees and aerial patrol, audit fees, other
6 costs that don't relate to this matter, so I believe
7 initially, \$440,000, which was included as budgeted
8 costs for tariff litigation for the entire year of
9 2002.

10 Q. And that's what you used in Case 2. That's
11 your testimony?

12 A. Yes.

13 Q. In aggregate, how many litigation costs were
14 attributable to this rate case in your 703 filing; 2.6
15 million?

16 A. In aggregate, in terms of what was recorded
17 in cost of service?

18 Q. You took a number and divided it by five;
19 correct?

20 A. Yes.

21 Q. What number did you take and divide by five?

22 A. This would be included on Work Paper 9, Line
23 25. It's 2,623,433.

24 Q. So you took 2.6 million in this case, so for
25 the purposes of this rate proceeding, you have assumed

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1 that 2.6 million dollars is an appropriate reasonable
2 level for a tariff case, but you've amortized it over a
3 five-year period; correct?

4 A. I wouldn't agree with that. This number
5 includes costs for both this and the FERC proceeding.
6 We were looking at a total Company presentation. We
7 are not assigning this cost directly to a Washington
8 State segment, so I think it's a mischaracterization to
9 say that for this tariff proceeding, we had 2.6 million
10 dollars estimate of tariffs.

11 There is costs for Sidley and Austin, and
12 there is work that we've done as well as others that
13 relate to the FERC matter as well. So I would say in
14 aggregate for Olympic's WUTC and FERC tariff cases, 2.6
15 is the number that we've normalized.

16 Q. Isn't it true that when they ran this report
17 by vendor, to use an example, that they ran across your
18 firm by vendor?

19 A. Yes.

20 Q. And they pulled up all the invoices
21 attributable to your firm and assigned them to the rate
22 proceedings; correct?

23 A. That's correct.

24 Q. But you do other things for Olympic other
25 than these rate proceedings, do you not?

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1 A. That's correct.

2 Q. Were there any adjustments made for that?

3 A. I think what we did I would characterize as
4 conservative, because we did not make adjustments to
5 the extent -- what we are doing is we are identifying a
6 cost number to pull out, so to the extent that I'm
7 taking recurring costs that don't relate to this rate
8 proceeding and normalizing them, I would agree that we
9 may have erred on the side of caution and put too large
10 of a figure to be normalized.

11 So the implication may be that our
12 adjustment, we have reduced operating expenses more
13 than we should have.

14 Q. My question is, when they ran the report by
15 vendor, there was no effort to see -- they assumed that
16 100 percent of every bill going to every vendor was
17 assigned to this in the FERC rate proceeding; correct?

18 A. Those costs were included in the outside
19 service, so we are taking outside services and we are
20 normalizing a reducing costs. So I think I would argue
21 it's erring on the side of caution. We are taking all
22 these costs, and it may relate to the FERC and this
23 proceeding or other things, but by including all these
24 costs in this normalizing, we are being conservative.
25 So we are making an adjustment that if anything would

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1 understate costs, because we are normalizing costs that
2 should not be normalized.

3 MR. BRENA: Your Honor, if I could ask for an
4 instruction that he listen carefully to the question
5 and answer it. He's answering the question and then
6 going -- for example, my question right there was,
7 isn't it true that when they ran the report by vendor
8 that they assigned 100 percent of the costs associated
9 with that vendor to this rate case?

10 That's a yes or no question, and the answer
11 is yes, they did, but his answer didn't stop there. He
12 went on and tried to justify it by pointing out that by
13 amortizing an expense, it works out better for the
14 ratepayer. I didn't ask that, and we are going to be
15 here all night if I ask yes or no questions to simple
16 issues, and he goes on to explain the whole logic of
17 self-justification for how the numbers worked to
18 somebody's benefit.

19 JUDGE WALLIS: Our convention has been that
20 the witness is instructed to listen to the question and
21 respond to the question, and if a further explanation
22 is necessary, then there is some latitude to offer that
23 explanation.

24 It is also true that the witness is
25 represented by or is appearing on behalf of a firm

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1 that's represented by counsel, and to the extent that
2 explanations can and should be made, counsel would be
3 able to ask pertinent questions on redirect so you can
4 offer explanation at that time. So I am going to ask
5 the witness really to focus on the question that's
6 being asked and respond to that question.

7 Q. (By Mr. Brena) Can you tell me in a sentence
8 what the adjustment was that's Footnote 7 on Schedule
9 21, the adjustment to other expenses?

10 A. I will attempt to do it in one sentence. We
11 had adjusted, we developed an estimate for test period,
12 other expenses and looked at that versus what were the
13 base period other expenses and made an adjustment for
14 that level of expenses as well as pulling out expenses
15 associated with SeaTac to develop a test period
16 adjustment.

17 Q. And that's set forth on Schedule 21.8?

18 A. Yes.

19 Q. So it starts with the test period and ends
20 with the test period less the SeaTac adjustment;
21 correct?

22 A. Well, that's the base period less the SeaTac
23 adjustment to get to a test period adjustment, yes.

24 Q. Can you do the same thing with regard to
25 Footnote 15, the base period adjustment indicated in

1 Footnote 15 of Schedule 21, 2.7 million?

2 A. Yes. The amount referred on Footnote 15,
3 what we had done here was to take -- the summary is to
4 remove the full amount of casualty and loss included in
5 the base period from the test period, so the test
6 period adjustment takes the full amount of the amount
7 recorded in the base period out.

8 Q. I want to return for a minute to litigation
9 expenses. You have normalized 2.6 million dollars over
10 five years, in effect; correct?

11 A. Yes.

12 Q. If this Commission adopts that approach, it
13 assumes there is going to be 2.6 million dollars of
14 rate expense every five years. That's the practical
15 import of adopting that; correct?

16 A. I would not agree with that. Another way to
17 look at that is that would presume there would be five
18 years until there would be another rate proceeding.
19 That would assume that this rate was in place in
20 perpetuity. That's all that would be spent over the
21 next five years, that there would be no rate
22 expenditures in five years, and at that point, it could
23 also assume there is another proceeding, and that would
24 be set from that point forward.

25 Q. So in order for my premise not to be true,

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1 there has to be an additional rate proceeding;
2 correct?

3 A. Yes, I believe so.

4 Q. Do you know how long Olympic's been here?

5 A. I think Olympic was built sometime in the mid
6 '60's, but I couldn't tell you the exact date.

7 Q. So from the mid '60's to 2000, was there a
8 single contested rate proceeding that you are aware of?

9 A. Not that I'm aware of.

10 Q. I would like to revisit for a moment the
11 definition you gave me, now that we are done with all
12 the adjustments, the definitions you gave me for "base
13 period" and "test period" to see whether or not these
14 adjustments that you've described fit in the
15 definitions; okay?

16 A. Okay.

17 Q. The element that you left out of the
18 definition of "base period" before the FERC, and I will
19 read it: A base period must consist of 12 consecutive
20 months of actual experience. The 12 months of
21 experience must be adjusted to eliminate nonrecurring
22 items except minor accounts.

23 That's the definition of a base period. In
24 your base period, would you direct me to a single penny
25 of the nonrecurring costs that you eliminated from

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1 these numbers?

2 A. I would say the one example would be the
3 casualty loss line item that we discussed.

4 Q. And that is Whatcom Creek related; is that
5 correct?

6 A. That's my understanding.

7 Q. So aside from Whatcom Creek, isn't it true to
8 say that your definition of base period is that every
9 penny that they spent is recurring costs? Is that true
10 or not?

11 A. I would say that's not true, because if it
12 were recurring costs, I would do normalization, and
13 that's the whole point of normalization. If an item is
14 not normalized, then it's presumed to be a
15 representative cost going forward. By normalizing,
16 amortizing and disallowing means you are not
17 entitled -- the fact that a cost is nonrecurring
18 doesn't mean it should not be allowed to be recovered
19 at some level, and I don't believe that's appropriate
20 rate-making.

21 Q. So your definition of nonrecurring costs
22 would include your normalization adjustments? So if
23 it's nonrecurring, so if it's never going to occur in
24 the future again, that's nonrecurring; right?

25 MR. MARSHALL: Objection. I think there is a

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1 couple of questions there.

2 MR. BRENA: There is. I will withdraw and
3 rephrase.

4 Q. (By Mr. Brena) "Nonrecurring" means it
5 doesn't recur in the future; correct?

6 A. Nonrecurring, I would say the definition
7 would be it does not reoccur.

8 Q. So if you take a nonrecurring cost -- let's
9 say this year, you have a million dollars in a
10 nonrecurring cost. That million dollars will never be
11 collected again; correct?

12 A. I think nonrecurring --

13 Q. Will never be spent again.

14 A. I think you could look also at nonrecurring
15 costs to be one that are infrequent and occur not every
16 year but occur occasionally, like, for example, we
17 hydro test the oil lines every five years. I think
18 that could be considered a nonrecurring cost because it
19 doesn't occur every year, but you are not going to
20 hydro test the line once and never again, so I think
21 that might be a nonrecurring cost that would reoccur at
22 some point in the future.

23 Q. Wouldn't that be a recurring cost that
24 reoccurs at a frequency greater than one cycle period?

25 A. I think we are getting to semantics, but I

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1 think I would call that a nonrecurring cost.

2 Q. You call that a nonrecurring cost. In my
3 example, we have a million-dollar nonrecurring cost,
4 okay, and by that, I mean just what the word said. It
5 will never reoccur. Now, if it is a nonrecurring cost,
6 is there some justification to normalize that cost so
7 that less of the nonrecurring cost is collected in
8 future rates when it doesn't occur?

9 A. I think if the cost were truly nonrecurring,
10 you should recover some portion of that cost analogous
11 to recovery of capital. You don't recover the cost of
12 building a pipeline in a year, but I don't think it's
13 appropriate, because if you had a hypothetical one-time
14 cost, the fact that it's one time, it doesn't mean that
15 that's not a cost that the pipeline should not be able
16 to recover in some manner.

17 Q. Okay. So it's your testimony that
18 nonrecurring costs -- let me rephrase the question. Do
19 you agree or not agree that the process of setting
20 rates is prospective in nature and that you are setting
21 rates in the future based on what the cost of services
22 are except to be in the future. Do you agree with that
23 or not?

24 A. Yes, I would agree with that.

25 Q. If we have a nonrecurring million-dollar

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1 expense today, that will not occur during that future
2 period; correct?

3 A. If you have a nonrecurring cost, as you've
4 defined it, that will never occur again, it will not
5 occur in the future. I agree with that.

6 Q. If it doesn't occur in the future, then it
7 shouldn't be in the future at all, normalized or not;
8 correct?

9 A. I would agree with your example.

10 Q. Okay. If we have a recurring cost that
11 recurs on a frequency greater than a year --

12 CHAIRWOMAN SHOWALTER: Don't you mean less
13 than a year, the frequency?

14 MR. BRENA: I think I meant greater.

15 Q. (By Mr. Brena) For example, you amortize the
16 litigation costs. Let's assume a reasonable level of
17 litigation costs were a million dollars for a rate
18 proceeding. Then the question is, there is not going
19 to be a rate proceeding every year, so that million is
20 not going to get spent. It has a life beyond one year.

21 So what we do is take a reasonable amount of
22 amortization -- in this case, you chose five years --
23 and take the million dollars and divide it by five and
24 normalize that expense over five years; correct?

25 A. That's correct.

1 Q. But that is an expense that's expected to
2 reoccur in the future. You expect there to be a future
3 rate case in the future, so it's reasonable to allow
4 some normalized level of the expense; right?

5 A. Yes. I think it's reasonable to allow a
6 normalized level of costs when the level of cost is
7 nonrecurring. I think that if you have costs that
8 are -- the particular cost item may not reoccur next
9 year, but there is another cost somewhere else, maybe
10 using hydro testing as an example.

11 You may hydro test a portion of the line this
12 year, and that cost may not reoccur for several years,
13 and next year you hydro test another portion of the
14 line and the level of the cost is the same. If that
15 continues year in and year out, those costs, I think,
16 should not be normalized because it's the level of cost
17 that needs to be looked at to determine whether or not
18 the pipeline is collecting an appropriate cost level.

19 Q. So you are saying regardless of the
20 composition of these costs -- I want to be sure we are
21 not just confusing every rate concept known to man. We
22 have nonrecurring costs. We have recurring costs that
23 will reoccur on a frequency beyond one fiscal year;
24 correct? Those are two types we have.

25 A. Those are two types of costs. I would agree

1 with that.

2 Q. Then we have this concept of the other type
3 of adjustment being known and measurable. Let me take
4 these separately and figure out which rate concept you
5 are applying to what adjustments.

6 First of all, with regard to nonrecurring
7 costs, setting aside Whatcom Creek because that's been
8 taken out of the case by all the parties, in terms of
9 nonrecurring costs, costs that are not expected to
10 reoccur during the period in which these rates are in
11 effect -- that's the way I'm defining it -- do you make
12 any adjustment whatsoever in your case for nonrecurring
13 costs?

14 A. First I was a little confused. I thought
15 previously when you talked about nonrecurring cost, you
16 meant nonrecurring, that they never reoccur, and that's
17 what I thought you said earlier, so now we are talking
18 about nonrecurring...

19 Q. Let me try it this way, Mr. Collins. May be
20 I can make it easier. Would you show me any adjustment
21 to your costs that assumes that any cost that was
22 incurred outside of Whatcom Creek is not going to
23 reoccur in the future?

24 A. I would say the adjustments all reflect
25 normalizing costs over a five-year period, but there

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1 are none that reflect they are going to never reoccur.

2 Q. So going back to FERC's definition of a base
3 period, the 12 months of experience must be adjusted to
4 eliminate nonrecurring items. You didn't do that, did
5 you?

6 MR. MARSHALL: I would object to the form of
7 the question. I would like the cite and like to know
8 whether there are other parts of that, and I would like
9 to know whether that nonrecurring definition is the
10 same as Mr. Brena has hypothesized, because he's
11 created his own hypothesis for what that means.

12 I would object to the question because it is
13 now asking for legal conclusions. He doesn't even want
14 the witness to look at the FERC regulations, and it
15 involves definitions that may or may not match up, one
16 for the regulation and one for Mr. Brena's
17 hypothetical.

18 MR. BRENA: I can take that objection in
19 parts. First, I'm happy to show him the language in
20 the regulation if he would ask to see it or if there is
21 any question in his mind or any ambiguity. I'm happy
22 to show it to him, so I'm not trying to play hide the
23 ball. It's 346.2. Well, I've already given the cite
24 on the record, but it's 346.2(a)(i).

25 JUDGE WALLIS: Let me ask at this point

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1 whether the witness would like to have a copy of that
2 regulation in front of you?

3 THE WITNESS: Yes.

4 Q. (By Mr. Brena) Second, I'll rephrase my
5 question with regard to the rest of it. Don't you have
6 to know something about the cost in order to know
7 whether they are recurring or nonrecurring?

8 A. I believe to determine whether they are
9 recurring on nonrecurring you would have to know
10 something about the costs. We've made adjustments for
11 normalizing costs that reoccur with less frequency than
12 a year, but I do not see any costs that I was aware of
13 that were costs that would be nonrecurring, to use
14 Mr. Brena's definition, that they would never reoccur
15 again. I'm not aware of any costs like that.

16 Q. I understand. But are you aware of the
17 composition of these numbers that you are using at all,
18 who got paid what for what, and whether or not their
19 service will be recurring and nonrecurring? Can you
20 answer those questions with regard to any of these
21 categories?

22 A. Yes. I believe what -- I had gone through
23 some of the adjustments we had made for things like
24 this accrual, the remediation accrual, the adjustments
25 for the litigation costs and outside services, just for

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1 two examples. So there were other adjustments as well,
2 but those are two examples, to keep it brief, where we
3 had made adjustments that I thought were appropriate
4 for rate-making.

5 Q. You use the examples of remediation
6 adjustments. What were the remediation projects that
7 you adjusted for, and are they recurring or not? Let's
8 pick one. I withdraw the question.

9 I direct your attention to Work Paper No. 10.
10 Mr. Collins, if I could direct you to Exhibit 728, the
11 now famous Line 24 for remediation costs, for October
12 of '01, you used a number of \$92,482. Do you see that?

13 A. Exhibit 728, which page are you referring to?

14 Q. Page 5, Work Paper 2, Line 24, the column
15 under October '01. You put in a number there of
16 \$92,482; correct?

17 A. That's correct.

18 Q. What projects was that for?

19 A. I don't know what projects that relates to.
20 As I said, I've relied on -- Ms. Hammer provided me
21 this data. I can't answer about individual projects
22 for any of these.

23 Q. Were they recurring or nonrecurring costs?

24 A. This remediation spending was projected to be
25 spent over a seven-year period, so I would say those

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1 costs are expected to be spent over a seven-year
2 period, so I would say that's occurring for seven
3 years.

4 Q. Please don't misunderstand my question. I
5 didn't ask about a seven-year budget or a projection.
6 I asked about the \$92,482 that you use for October '01
7 and asked that you knew the project that those funds
8 related to or if you knew whether or not those projects
9 would reoccur or not?

10 JUDGE WALLIS: Mr. Brena, I think the witness
11 did respond to much of your question and was attempting
12 to explain the answer. I also, I think, that at this
13 point, the evening is beginning to get late. I know
14 that the Commissioners have at least one other matter
15 that they need to prepare for for tomorrow morning, and
16 I'm wondering if this would not be an appropriate point
17 to take our evening recess and resume again in the
18 morning.

19 MR. BRENA: Yes.

20 JUDGE WALLIS: Could you estimate the length
21 of examination that you have remaining for this
22 witness?

23 MR. BRENA: I estimated between an hour and
24 an hour and a half when you last asked me that, and
25 I've used an hour and 15 minutes. I believe I will be

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1 within my estimate range.

2 JUDGE WALLIS: Very good. Is there anything
3 further before we conclude today's session?

4 MR. BRENA: From the prior point, not from
5 the current point. I'm not changing estimates.

6 JUDGE WALLIS: Mr. Collins, you may step
7 down. I would like to note that we do have a couple of
8 administrative matters to attend to. Tomorrow morning,
9 we are going to talk scheduling when we convene at
10 9:30. We also have asked the Company to discuss the
11 issue of waiver of the protective order provision
12 regarding the 10-day review and the issue of reference
13 for the protection of point-to-point throughput
14 information. Is there anything else that we need to
15 attend to in the morning?

16 MR. FINKLEA: Your Honor, I do think
17 Mr. Beaver will come up tomorrow, but I do think we
18 have a motion by Tesoro regarding Witness Beaver.

19 JUDGE WALLIS: We do have the motion from
20 Tesoro. Mr. Marshall has indicated that the Company
21 has a response and a memorandum in response, and we
22 would ask that anything in writing be provided to
23 parties and the Bench in the morning, and we will
24 schedule a time during the day, perhaps at the
25 conclusion of Ms. Hammer, to allow the parties to argue

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1 that.

2 MR. BRENA: Is it available now, Your Honor?

3 I would just as soon take it home and look at it.

4 MR. MARSHALL: No, it's not available.

5 JUDGE WALLIS: Thank you very much, and we

6 will see you in the morning.

7 (Hearing recessed at 8:20 p.m.)

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