

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3	WASHINGTON UTILITIES AND)Docket No. TO-011472
	TRANSPORTATION COMMISSION,)Volume XXXI
4	Complainant,)Pages 3784-4054
)
5	v.)
)
6	OLYMPIC PIPE LINE COMPANY,)
	INC.,)
7	Respondent.)
	_____)

8
9
10 A hearing in the above matter was
11 held on July 1, 2002, at 9:46 a.m., at 1300 S.
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge ROBERT WALLIS,
14 Chairwoman MARILYN SHOWALTER, Commissioner RICHARD
15 HEMSTAD, and Commissioner PATRICK OSHIE.

16 The parties were present as
17 follows:

18 OLYMPIC PIPE LINE COMPANY, INC.,
19 by Steve Marshall, Attorney at Law, One Bellevue
20 Center, Suite 1800, 411 108th Avenue, N.E., Bellevue,
21 Washington 98004, William H. Beaver, Attorney at Law,
22 1201 Third Avenue, Suite 2900, Seattle, Washington
23 98101, and Arthur W. Harrigan, Attorney at Law, 999
24 Third Avenue, Suite 4400, Seattle, Washington 98104.

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

Barbara L. Nelson, CCR
Court Reporter

1 TOSCO CORPORATION, by Edward
2 Finklea, Attorney at Law, and Francie Cushman, Law
3 Clerk, 526 N.W. 18th Avenue, Portland, Oregon 97209.

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

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1 JUDGE WALLIS: Let's be on the record,
2 please, for our July 1, 2002 session in the matter of
3 Commission Docket TO-011472. We did have a brief
4 administrative discussion this morning and have a
5 couple of matters to note.

6 First of all, it's my understanding that
7 Olympic is withdrawing the proposed testimony of
8 witness Beaver; is that correct?

9 MR. BEAVER: That is correct, Your Honor.

10 JUDGE WALLIS: Thank you. And we have had
11 distributed for the examination of Ms. Hammer a
12 document consisting of one page, entitled Olympic
13 Pipe Line Company Various Base and Test Year
14 Concepts. This is presented by Tesoro for possible
15 use on Ms. Hammer's examination, and we are assigning
16 Exhibit Number 867 to this document.

17 Mr. Brena reminds us that during the
18 examination of Mr. Collins, he did distribute a
19 document, which was numbered 729, consisting of the
20 text of 18 CFR Section 336.2, and let me ask if
21 there's objection to receiving that document in
22 evidence? We note that it is not a complete version
23 of Section 336, and parties who believe that it is
24 either not current or not appropriate or incomplete
25 may offer a supplement to this, as well. We've also

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1 -- I think we've previously commented on the record
2 while it may be permissible -- legally permissible to
3 cite to documents, that our experience has been that
4 it is often helpful to have a copy in the record so
5 that there is easier reference. Mr. Marshall.

6 MR. MARSHALL: I think actually the
7 citation that you had in mind was 18 CFR 346.2.

8 JUDGE WALLIS: I'm sorry. Would you repeat
9 that, please?

10 MR. MARSHALL: 346.2.

11 JUDGE WALLIS: 346.2, thank you.

12 MR. MARSHALL: Not 336.2. And that only
13 goes to my observation that we ought to just refer to
14 whatever's current and whatever's complete. We had a
15 similar issue come up earlier. That's all.

16 CHAIRWOMAN SHOWALTER: You really need to
17 get it closer to your mouth. Just raise it up.

18 MR. MARSHALL: I notice that the witnesses,
19 they can speak somewhat further back and it picks up.
20 Are these mikes somehow varied by importance?

21 CHAIRWOMAN SHOWALTER: Well, for whatever
22 reason, all three of you, excluding Mr. Finklea, all
23 four of you have very soft voices that don't project.

24 MR. MARSHALL: We can't blame the poor
25 mikes, then.

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1 CHAIRWOMAN SHOWALTER: No.

2 MR. BRENA: There's not -- people aren't
3 just turning down the attorneys' mikes?

4 MR. MARSHALL: That's been known to happen.

5 JUDGE WALLIS: Maybe we should check the
6 amplifier in the back room.

7 MR. BEAVER: Don't include me in that
8 group. I am loud.

9 JUDGE WALLIS: If you pretend it's an ice
10 cream cone and you're about to take a lick, don't do
11 it, because I'm sure it tastes icky, but I'm
12 relatively soft-spoken and find that if I get very
13 close to the microphone, that I can hear myself, and
14 that's a pretty good clue that others can hear me, as
15 well.

16 All right. Is there any other
17 administrative matter? We have reviewed the schedule
18 and note that it is a challenge. We have not come to
19 a final resolution about how to proceed, except the
20 parties have pledged to minimize their examination to
21 matters that are essential.

22 Ms. Hammer, you have previously been sworn
23 in this matter, and I believe when you last were on
24 the stand, Mr. Brena had just begun his examination.
25 Is that correct?

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1 MR. BRENA: Yes, Your Honor.

2 JUDGE WALLIS: Very well. Would you
3 proceed?

4 MR. BRENA: Yes, certainly.

5 JUDGE WALLIS: Oh, excuse me just a minute.
6 Please excuse the interruption. Mr. Brena, please
7 proceed.

8 MR. BRENA: Good morning, Chairwoman,
9 Commissioners.

10

11 C R O S S - E X A M I N A T I O N (CONTINUING)

12 BY MR. BRENA:

13 Q. Good morning, Ms. Hammer.

14 A. Good morning.

15 Q. I'm going to start out by just asking you
16 some questions about your particular background with
17 different financial and regulatory matters, okay. Do
18 you consider yourself an expert in financial
19 accounting matters?

20 A. My experience has been in the financial
21 accounting --

22 Q. Are you a CPA?

23 A. -- area. No, I'm not.

24 Q. I'm sorry. You're not a CPA?

25 A. No.

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1 Q. Have you sat for the CPA exam?

2 A. No.

3 Q. Okay. Do you consider yourself an expert
4 in regulatory accounting matters?

5 A. No.

6 Q. Do you consider yourself an expert with
7 regard to ratemaking matters?

8 A. No.

9 Q. Okay. Have you ever been involved in a
10 rate case before this one?

11 A. No.

12 Q. Have you ever been put in a position of
13 having to judge what costs are recurring and what
14 costs are not recurring for the purposes of
15 ratemaking before?

16 A. I believe I said that I was not involved in
17 ratemaking previously.

18 Q. Oh, at all?

19 A. Right.

20 Q. So you've never been involved at all in
21 applying the regulatory filter or standards to a
22 particular set of financial or regulatorily stated
23 costs?

24 A. No, I don't have experience in that.

25 Q. Okay, okay. With regard to your experience

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1 in financial accounting, is it on the financial
2 reporting side of financial accounting?

3 A. Yes.

4 Q. Is it also on the accounts payable side?

5 A. Yes.

6 Q. With regard to Olympic and your position
7 with Olympic, do you review the financial reporting
8 and the accounts payable? Do you oversee those, both
9 those sections?

10 A. My function at Olympic is the financial
11 reporting side. I also work with Accenture on their
12 gathering of the data and recording of the data.

13 Q. Okay. Well, we'll return to that in a
14 little while in more specificity, but I want to just
15 talk a little bit about Olympic's accounting systems.
16 Are you familiar with the Equilon accounting system
17 that had previously been operated?

18 A. No, I'm not.

19 Q. Have you ever had an opportunity to review
20 the cost or balances with regard to the Equilon
21 accounting system?

22 A. I reviewed the balances that were brought
23 forward from Equilon.

24 Q. Do you -- have you ever had access to the
25 details behind the numbers?

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1 A. Not personally. Accenture was involved in
2 the transition period of bringing those balances
3 forward, as well as a team that was established
4 within BP group.

5 Q. Do you have any personal knowledge of
6 whether or not the balances that were brought forward
7 from Equilon's books to BP's books were accurate?

8 A. I was not responsible for Olympic at the
9 time the balances were brought forward into BP's
10 financial system.

11 Q. So the answer to my question is no, you
12 have no personal knowledge of those balances or
13 whether they're accurate?

14 MR. BEAVER: I'm going to object. The
15 question, as worded, is compound, because I think it
16 said whether she has personal knowledge of the
17 balances. I mean --

18 MR. BRENA: The accuracy of the balances
19 brought forward.

20 MR. BEAVER: Then I'll withdraw the
21 objection.

22 THE WITNESS: Again, I was not involved
23 with Olympic at that time. I came to Olympic in
24 November of 2000. There was a team from BP that
25 brought those balances forward.

3796

1 Q. Ms. Hammer, it would be very, very fast if
2 -- if you'd answer yes and no, and then with the
3 explanation. Is the answer -- is the beginning part
4 of the answer to the question, is it no?

5 A. No, I was not personally involved.

6 Q. Okay. When the balances were carried
7 forward by the BP team, are you aware of whether or
8 not any of those existing balances were audited at
9 all?

10 A. It is my understanding that there was an
11 audit being performed when I came on board with
12 Olympic.

13 Q. Was it the audit having to do with those
14 account balances being brought forward?

15 A. That is my understanding, yes.

16 Q. And has that audit been completed?

17 A. No, it has not.

18 Q. And how long has that audit been ongoing?

19 A. It's, from my understanding, it still has
20 not been finalized. So since I've been with Olympic.

21 Q. And how long is that, please?

22 A. Since November of 2000.

23 Q. Who is doing the audit?

24 A. I believe at the time it was Arthur
25 Andersen.

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1 Q. At the time you came on board, it was
2 Arthur Andersen?

3 A. I believe so, yes.

4 Q. Is that who's doing it now?

5 A. No.

6 Q. Who's doing it now?

7 A. E&Y.

8 Q. Are you aware that at the time when BP
9 Pipelines took over the operation, that Equilon
10 removed their computers and their bookkeeping systems
11 from Olympic?

12 A. Yes, that is my understanding.

13 Q. So they actually physically took the
14 company's books and records when they left; is that
15 fair to say?

16 A. I don't believe I would state it as books
17 and records. They removed their computer system.

18 Q. And in their computer system were -- was
19 the support for all the financial information
20 underlying the balances that were brought forward?

21 A. Yes, I would have to say that the support
22 was in their computer system. I'm -- I can't say for
23 sure that that information wasn't somewhere else, as
24 well.

25 Q. Well, you're aware of the difficulty that

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1 the parties have had trying to get discovery of the
2 information from the Equilon system, are you not?

3 A. Yes.

4 Q. And it's been repeatedly represented to the
5 parties that Olympic doesn't have access to those
6 books and records readily and has to ask Equilon for
7 those records; is that correct?

8 MR. BEAVER: I'm going to object. There's
9 no foundation. I think it mischaracterizes the
10 testimony.

11 JUDGE WALLIS: If -- I think this is all
12 right as a preliminary question, and if the
13 characterization is not correct, the witness may
14 identify that.

15 Q. Do you have the question in mind?

16 A. No, I don't.

17 MR. BRENA: Could I have the question read
18 back, please?

19 (Record read back.)

20 THE WITNESS: Yes, it is my understanding
21 that we do not have the detailed records from Equilon
22 as far as the ledger detail.

23 Q. Are you aware that it's Olympic that has an
24 affirmative obligation to maintain proper books and
25 records for the regulatory agencies?

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1 MR. BEAVER: Objection, no foundation.

2 Also, apparently calls for a legal conclusion.

3 MR. BRENA: I asked if she was aware of
4 that, that legal obligation. I wasn't asking for --
5 she is or is not.

6 JUDGE WALLIS: The witness may respond as
7 to the extent of her knowledge.

8 THE WITNESS: I'm not a legal expert and I
9 really don't have any knowledge in that field.

10 Q. You don't have any understanding of whether
11 or not a pipeline company is responsible to maintain
12 its own books and records; is that what you're
13 saying?

14 A. No. A company is responsible for
15 maintaining their books and records. Equilon, as the
16 operator, maintained those books and records for
17 Olympic.

18 Q. Has Olympic taken any steps to get the
19 records back from Equilon?

20 A. Yes.

21 Q. What steps has it taken?

22 A. Olympic has contacted Equilon in trying to
23 obtain the information or inquire as to the location
24 of those records.

25 Q. When was this inquiry made?

3800

1 A. I did not personally make that inquiry. It
2 was my understanding that the inquiries had been
3 made. I don't know exactly -- the exact dates of
4 those inquiries.

5 Q. Have they proved fruitful?

6 A. Olympic did receive some information. I
7 don't recall exactly what all the information was
8 that was received. That was primarily headed up out
9 of the BP controller's group.

10 Q. It seems to me that if one of us were to
11 own a business and have someone manage it, and when
12 we fired one manager and hired the other, they took
13 all the company books and records, it seems that it
14 would be reasonable that you would be fairly
15 aggressive in trying to get your books and records
16 back. Has Olympic done -- taken any legal steps
17 whatsoever to try and obtain its own books and
18 records back?

19 A. I don't know that I can answer that. I've
20 not been personally involved in attempting to get
21 those records.

22 Q. But you're not aware of any legal actions
23 that have been taken, then?

24 MR. BEAVER: Objection, asked and answered.

25 JUDGE WALLIS: The question is allowed.

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1 THE WITNESS: Again, I don't -- I don't
2 know. I have not been involved in that end.

3 Q. Okay. Now, the account balances went from
4 Equilon's accounting system, which was what kind of
5 accounting system?

6 A. I don't recall the exact system.

7 Q. Into the accounting system that BP used at
8 the time it took over Olympic, which was what kind of
9 accounting system?

10 A. The system was called ISP.

11 Q. And do you have experience -- would you
12 consider yourself as having extensive experience in
13 BP's ISP accounting system?

14 A. No, not extensive experience.

15 Q. Is it fair to say that, prior to Olympic,
16 that you had very little experience with actually
17 working with ISP?

18 A. I had some experience.

19 Q. How long was the -- were the books and
20 records maintained within BP's ISP system?

21 A. They were maintained in the ISP system from
22 approximately July of 2000, when we took over
23 operatorship, until May of 2001.

24 Q. And so if I understood correctly, when you
25 came to work for Olympic, part of the time that you

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1 were there, the books and records were maintained
2 under the ISP system?

3 A. That's correct.

4 Q. Now, why did BP change from -- I mean, they
5 became the operator, they just attempted to convert
6 all the books over to one whole new accounting
7 system, and they kept that accounting system in place
8 for eight months, and then they converted it over to
9 another accounting system. Would you explain why BP
10 made that choice?

11 A. The ISP system was no longer being
12 supported by the BP Corporation, and it was a
13 corporate incentive to change all of BP's pipelines
14 and companies over to the SAP system.

15 Q. So it was unrelated to anything to do with
16 Olympic itself?

17 A. That's correct.

18 Q. Did Olympic discuss whether or not this
19 accounting change should occur with its operator?

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

21 Q. Well, you're in the middle of what is an
22 unusual period for the operation of the company, you
23 have a -- you hire a new operator, they come in,
24 convert over one entire system to another system, and
25 eight months later, they're talking about converting

3803

1 to a third system. Did Olympic sit down with the
2 operator to discuss the prudence or feasibility of
3 making that change?

4 A. Can you identify who specifically you're
5 talking about when you mention that Olympic
6 discussed?

7 Q. Well, does anybody at Olympic question
8 anything the operator says? Let me rephrase that.
9 Does -- was this a change that was imposed on Olympic
10 by its -- well, first of all, Olympic didn't request
11 this change; correct?

12 A. No.

13 Q. Did Olympic question the prudence of making
14 a change at this time in its accounting system for
15 its operator's change?

16 MR. BEAVER: Excuse me. I'm going to
17 object because I think the testimony has been it's a
18 BP change; it's not an Olympic change. So I think
19 the question is misleading.

20 JUDGE WALLIS: I think Mr. Brena's question
21 is aimed at asking whether anyone associated with
22 Olympic talked with BP about the change and whether
23 it would be appropriate at that time. Is that
24 essentially your question?

25 MR. BRENA: Yes, it is, Your Honor.

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1 JUDGE WALLIS: As thus phrased, does the
2 witness understand it and can the witness respond?

3 THE WITNESS: I think so.

4 JUDGE WALLIS: Please proceed.

5 THE WITNESS: Although I was not involved
6 in those specific discussions, it was my
7 understanding that since all of BP's pipelines and
8 pipeline companies were being transitioned to the SAP
9 system and ISP was no longer being supported, it
10 would be reasonable for Olympic to switch over to the
11 SAP system at that time.

12 Q. Ms. Hammer, my question didn't go so much
13 to -- my question went to did anybody from Olympic --
14 did you or anybody from Olympic discuss this change
15 with BP personnel and whether it was reasonable? Or,
16 for that reason, they didn't discuss it. I mean,
17 were there conversations -- let me phrase it this
18 way. Were there any conversations about whether or
19 not it was in Olympic's interest to make this change
20 in accounting at this time?

21 A. I had discussions about switching over to
22 SAP. I mean, I personally believe it was in
23 Olympic's best interest.

24 Q. And those are the conversations that you
25 had with the operator?

3805

1 A. Those were the conversations I had with the
2 BP's controllers group.

3 Q. Okay. Now, what is -- what current system
4 does Olympic's operator currently use?

5 A. SAP.

6 Q. And then there was a conversion of all the
7 information from BP's ISP system into its SAP system;
8 correct?

9 A. That's correct.

10 Q. Okay. Now, some of that information that
11 was converted from BP's ISP system to BP's SAP system
12 was the same information which was converted from
13 Equilon's prior system; correct?

14 A. Yes, that's correct. Some of the balances
15 would have been those carried forward.

16 Q. Let me just ask a kind of simple question.
17 How do you know that the rate base number, for
18 example, that was carried forward was correct?

19 A. I don't believe I can comment on rate base,
20 since I'm not the expert. I'm not sure what makes
21 that up.

22 Q. How do you know that the investment
23 balances that were carried forward on the books --
24 the capital investment balances that were carried
25 forward on the books from one system to the other,

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1 that they were properly stated in the first instance?

2 A. You mean on Equilon's books?

3 Q. Yes.

4 A. Equilon is a fairly large company. They
5 have processes and controls in place, just as BP
6 does. I would have to rely on their processes and
7 controls to ensure the accuracy of those numbers.

8 Q. Does anybody that's involved in this rate
9 case, has anybody that's involved in this rate case
10 confirmed that the -- that the investment numbers,
11 balances that were carried forward were accurate or
12 correct?

13 MR. BEAVER: I'm going to object. I think
14 the question is vague and ambiguous. I'm not sure
15 what anybody involved in this rate case means.

16 MR. BRENA: Well, a witness.

17 MR. BEAVER: I then withdraw the objection.

18 Q. Is there a witness involved in this rate
19 case that has personal knowledge that the investment
20 numbers that have been carried forward through this
21 series, that they're accurate and correct?

22 A. Yes, it is my understanding that Mr. Fox
23 had been involved in some of that information.

24 Q. So it's your testimony that Mr. Fox has
25 done an independent investigation with regard to the

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1 investment numbers under the Equilon system?

2 MR. BEAVER: Objection. I think that
3 mischaracterizes the question and answer that was
4 just given. I don't know what an independent
5 investigation means.

6 JUDGE WALLIS: Could you rephrase the
7 question, Mr. Brena?

8 MR. BRENA: Certainly.

9 Q. I understood your earlier testimony to mean
10 that people within BP did not look behind the numbers
11 that were carried forward from Equilon because they
12 didn't have access to the information. Did I
13 understand your previous testimony correctly?

14 MR. BEAVER: Objection.

15 THE WITNESS: No. Sorry.

16 JUDGE WALLIS: Let the witness respond.

17 THE WITNESS: No. Could you say that
18 again?

19 Q. Okay. Equilon has a balance, an investment
20 balance, correct, that was carried forward into the
21 BP ISP system, which was then carried forward into
22 the BP SAP system; correct?

23 A. That's correct.

24 Q. Okay. The number that's in the Equilon ISP
25 system, who has been a witness in this rate case has

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1 investigated the information behind that number to
2 determine whether or not the number for investment
3 that's stated is accurate or correct?

4 A. As I stated earlier, I was not involved
5 with Olympic when those balances were brought
6 forward. Mr. Howard Fox was part of that transition
7 team. He possibly could answer more of your
8 questions than I could.

9 Q. Would Mr. Fox have access to Equilon
10 information that you did not have? If you know?

11 A. I don't believe I can answer that without
12 knowing what information Mr. Fox has.

13 Q. Well, I'm trying to put all these pieces
14 together. I mean, so help me, either BP knows what's
15 behind the Equilon numbers or it does not. If it
16 hasn't seen the underlying financial information
17 because it hasn't been provided from Equilon, then BP
18 can't know what's behind the numbers, Has BP had
19 access to Equilon's books and records so that it
20 knows what's behind the balances that were carried
21 forward or not?

22 A. I don't know what information was provided
23 to BP since I wasn't here at that time.

24 Q. Have you personally seen any information
25 that demonstrates what's behind the numbers that were

3809

1 carried forward from Equilon?

2 A. Since I was not involved in that process,
3 no, I have not seen that information. Accenture was
4 involved and BP was involved, and what information
5 they reviewed and what information they looked at, I
6 don't believe I can -- I can testify to that.

7 Q. Okay. Now, how often does BP Pipelines
8 convert its financial records into regulatory
9 reporting records?

10 A. They are reported annually.

11 Q. So they maintain them within their
12 financial reporting system and then, at the end of
13 the year, they convert their financial reporting
14 information into regulatory reporting information.
15 Is that your understanding?

16 A. I don't know if convert is an appropriate
17 word to use. The information is extracted in -- from
18 the financial system into the regulatory format.

19 Q. Okay. How does Olympic maintain its books?
20 Does it keep track of its information on an accrual
21 basis, on a cash basis, or on a mixed basis?

22 A. On an accrual basis.

23 Q. I'd like you to describe for me the
24 accounts payable system. If I do some work for
25 Olympic, where do I send my invoice? Not that that

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1 will ever happen, but --

2 A. The invoice would be sent to Houston, or to
3 Accenture's office.

4 Q. And then it would be coded into outside
5 services legal, assuming I was doing legal work and
6 not digging a ditch?

7 A. Actually, when you perform a service, you
8 are provided with what's called a pay key from the
9 person who has requested your service. That pay key
10 holds the account coding which would code it to
11 outside services.

12 Q. Okay. And if I perform services relative
13 to Whatcom Creek, where would I send my invoice?

14 MR. BEAVER: Excuse me. I need to ask for
15 a clarification. Are we talking about legal services
16 or other?

17 MR. BRENA: Well, I intend to get into that
18 if she makes a distinction.

19 Q. If it were not related to legal and I
20 worked on Whatcom Creek, where would I send my
21 invoice?

22 A. You would send your invoice to the project
23 manager.

24 Q. And that is someone in Renton?

25 A. I believe so, yes.

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1 Q. Would I send my invoice somewhere else if
2 it was for legal work?

3 A. Yes.

4 Q. Where would I send my invoice if it was for
5 legal work?

6 A. To Mr. Beaver.

7 Q. And then -- okay. So we have -- do we only
8 have three places to send invoices within Olympic or
9 are there more?

10 A. As far as I'm aware, there is only three.

11 Q. Why do you qualify it with as far as you're
12 aware? Are you aware of how many places invoices are
13 sent for Olympic?

14 A. I suppose they could send invoices for
15 Olympic to BP, as well.

16 Q. By BP, do you mean BP Pipelines?

17 A. Yes.

18 Q. And where in the United States would that
19 invoice go?

20 A. If it was sent directly to BP Pipelines, it
21 would be sent to Chicago.

22 Q. And what sorts of invoices would get sent
23 directly to BP?

24 MR. BEAVER: Could I ask for clarification?
25 Are we still talking about Whatcom Creek-related

3812

1 invoices? Okay.

2 MR. BRENA: No, we are not. We're just
3 talking about the invoice system in general, the
4 accounts payable system in general.

5 Q. So we have Chicago as a possibility, Mr.
6 Beaver as a possibility, Houston as a possibility,
7 and Renton project managers as a possibility. Those
8 are the four possibilities?

9 A. That's where the invoices could be sent,
10 yes. The only way to get them into the financial
11 system is through Houston.

12 Q. Okay. So let's just -- okay. First, I'm
13 going to try and simplify this a little bit. If I'm
14 providing services to Olympic, who do I actually
15 contract with? Is it a project manager?

16 A. Yes.

17 Q. And I asked if all those project managers
18 were in Renton. Are they all in Renton or are they
19 dispersed in different parts of the country?

20 A. They are either in Renton or in Chicago.

21 Q. Okay. So depending on what needed to be
22 done -- well, does that apply to legal services, as
23 well, that a project manager would authorize those,
24 would be the contracting point for outside services?

25 A. Legal services would be contracted through

3813

1 Olympic's management.

2 Q. Okay. So in terms of a contracting point,
3 we have project managers in Chicago, we have project
4 managers in Renton, and then we have Olympic's
5 management. Are those the only three possibilities
6 for contract points for outside services?

7 A. Could you clarify that?

8 Q. Well, I'm wondering, for outside service
9 providers for Olympic, who is their contact point
10 that reviews and assigns these pay keys, these coded
11 pay keys? It could be a project manager in Chicago,
12 it could be a project manager in Renton, or it could
13 be a member of Olympic's management. Are those the
14 three different sources that could provide the pay
15 keys?

16 A. Yes.

17 Q. Okay. Does Mr. Beaver fall into this
18 equation, too? I mean, if I'm doing legal services,
19 is Mr. Beaver my contact?

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

21 Q. If I provide legal services for Olympic,
22 who is my contact point that assigns me my pay key?

23 A. You know, I'm not the expert on how the
24 legal services -- Mr. Talley might be a better person
25 to ask about how that particular process is

3814

1 structured.

2 Q. Now, Mr. Talley is an engineer; right?

3 A. No.

4 Q. Mr. Talley is not an engineer?

5 A. No, he's the vice president of Olympic.

6 Q. Okay. Okay. The project managers in
7 Chicago, are you familiar with their training or
8 experience or familiarity with regulatory ratemaking?

9 A. I don't believe I can answer that.

10 Q. The project managers in Renton, are you
11 familiar with their familiarity with ratemaking
12 concepts?

13 A. I don't believe I can answer that.

14 Q. How about Olympic management? Is there
15 someone within Olympic's management who is familiar
16 with regulatory ratemaking?

17 A. Since I'm not familiar with regulatory
18 ratemaking, I don't believe I can answer any of those
19 questions.

20 Q. Okay. Now, do you have personal knowledge
21 of whether or not those pay keys that are assigned by
22 project managers in Chicago, by project managers in
23 Renton, by Olympic's management, whether or not those
24 pay keys are consistent with regulatory ratemaking
25 principles?

3815

1 A. I don't know that I understand that
2 question.

3 Q. How do you know the money's getting in the
4 right box?

5 A. I still don't understand what you're --
6 what you're asking.

7 Q. How do you know that the pay keys that are
8 being assigned by the contact points are correct for
9 financial reporting, regulatory reporting, or
10 ratemaking?

11 A. The people that are providing the pay keys
12 are the people that have helped set that pay key up
13 as far as what codes or what accounts it identifies.

14 Q. Is any of the people who are involved in
15 assigning those pay keys, do any of those people,
16 that you know of, are any of them experts in
17 financial -- in financial accounting? I mean, is
18 there an accountant involved in this process
19 anywhere?

20 A. Yes, at Accenture.

21 Q. Does Accenture provide the pay keys?

22 A. Accenture does set up some pay keys, yes.

23 Q. Okay. And I'm not -- I'm just trying to
24 get to clarity here. If I'm an outside service
25 provider and I contract with the project manager in

3816

1 Renton, that person is more likely than not an
2 engineer; correct?

3 A. I'm sorry, could you repeat that?

4 Q. If I contract for outside services with a
5 project manager in Renton, more likely than not,
6 those project managers are engineers; correct?

7 A. It could be an engineer, yes.

8 Q. Is it ever an accountant?

9 A. Accountants don't contract for services.

10 Q. No, I mean -- okay. I mean, the person
11 that assigns the pay key, the person that assigns the
12 pay key, the project manager in Renton that assigns
13 the pay key to an outside service provider, that
14 person is an engineer; correct?

15 A. It could be an engineer, yes.

16 Q. Could it be an accountant? Do you have any
17 accountants who are project managers?

18 A. All of our accountants are Accenture
19 employees.

20 Q. Okay. Do any of the people who assign
21 these pay keys to outside service providers, do any
22 of them have an accounting background?

23 A. I don't know.

24 Q. Are you generally familiar with who the
25 project managers are?

3817

1 A. Yes, in general.

2 Q. Are they engineering types?

3 A. Some of them, yes.

4 Q. What other types are there for project
5 management?

6 A. There are the team leaders within BP -- or
7 within Olympic's management are also -- well, they
8 would also provide pay keys. Did I answer that
9 correctly?

10 Q. Well, it's hard for me to tell, honestly.

11 A. I think I lost track of the question.

12 Q. Well, let me ask it this way. The people
13 who are providing the pay keys, now, it's that pay
14 key that Accenture enters into the financial system;
15 correct?

16 A. That's correct.

17 Q. Okay. So that pay key determines what box
18 this money goes into; correct?

19 A. That's correct.

20 Q. Okay. Does anybody that assigns those pay
21 keys that you know about, the project managers in
22 Chicago, the project managers in Renton, or Olympic's
23 management, do any of those pay key providers, that
24 you know of, have a single course in accounting?

25 A. I don't know. It's not necessary to know

3818

1 the accounting.

2 Q. Okay. I'm just wondering if they do, if
3 you know that one person who assigns a pay key has
4 one course in financial accounting?

5 A. I don't know.

6 Q. Okay. Do you know whether any of them have
7 any familiarity at all with regulatory accounting for
8 reporting purposes?

9 A. Could you repeat that question?

10 Q. Well, let me phrase it this way. The pay
11 key that they assign, that pay key is a financial pay
12 key; right? Financial reporting GAAP pay key; is
13 that correct?

14 A. The pay key identifies financial accounts,
15 yes.

16 Q. Okay. Not regulatory accounts; financial
17 accounts?

18 A. The financial accounts are identified as
19 regulatory accounts, as well.

20 Q. The pay key that they provide, is it a pay
21 key into the uniform system of accounts for
22 regulatory reporting purposes under FERC or is it a
23 financial reporting and accounting pay key? Which
24 world is it from?

25 A. It's all the same financial system. The

3819

1 accounts can be grouped into FERC categories or they
2 can be grouped into financial reporting categories.

3 Q. Okay. So far as you're aware, it's true
4 that none of the project managers or people who
5 assign pay keys have ever been involved in regulatory
6 ratemaking; correct?

7 MR. BEAVER: I'm going to object at this
8 point. This has clearly been asked and answered.

9 MR. BRENA: I don't think it's been
10 answered. I'm trying to -- I've shifted from
11 financial to regulatory accounting reporting to now
12 I'm talking about ratemaking and the key providers.
13 I don't think it has.

14 JUDGE WALLIS: The witness may respond.

15 Q. Do you have the question in mind?

16 A. No.

17 Q. I'm searching for the background and
18 experience of these project managers, the key givers
19 here. Are you aware whether or not any of them have
20 any experience with regard to regulatory ratemaking
21 matters?

22 A. I don't know.

23 Q. Okay. Now -- now, the information -- I'm
24 an outside service provider, I get a pay key, I
25 provide services, my invoices go to one of four

3820

1 places, and then they're ultimately -- they're
2 ultimately all sent to Houston for entry in the
3 financial reporting system?

4 A. Yes, they're scanned into the system.

5 Q. Okay. And so what Accenture does is they
6 take the pay key and they take the code and they
7 input it into the financial reporting system;
8 correct?

9 A. No, they scan the document into the SAP
10 system.

11 Q. And then they put the numbers according to
12 the pay key into the financial reporting system?

13 A. That part, I'm not exactly sure how that
14 gets set up within SAP. It's my understanding that
15 the pay key designates the person who requested the
16 services. The pay key then contains the accounts. I
17 don't know whether -- I don't believe Accenture
18 actually enters the account. It's pulled from the
19 pay key.

20 Q. What do you mean, it's pulled from the pay
21 key? Explain what you mean, please.

22 A. The pay keys are set up in the financial
23 system or in the computer. When that pay key is
24 scanned in, it then extracts the account that's been
25 designated for that pay key.

3821

1 Q. Okay. In the whole process, would you
2 identify the person who has determined that any cost
3 that's been incurred for Olympic is nonrecurring in
4 nature?

5 A. Could you repeat that again?

6 Q. I'm wondering where within this process --
7 it goes from the contract to a key provider into the
8 financial records, converted into regulatory
9 reporting records, and then it's going into a rate
10 case. Who is the person that reviews what's behind
11 the number in every category to determine whether or
12 not it is recurring or nonrecurring for rate
13 purposes?

14 A. I believe Mr. Talley and/or Mr. Wicklund
15 could answer that question better than I could.

16 Q. Mr. Talley is a regulatory ratemaking
17 expert?

18 A. I believe you asked whether it was
19 recurring or nonrecurring, and Mr. Talley could
20 address those questions more appropriately.

21 Q. Can you direct me to what expenses you
22 provided to Mr. Collins that had been adjusted for
23 because they were nonrecurring in nature?

24 A. The litigation costs for this case were
25 provided to Mr. Collins.

3822

1 Q. Any other expense?

2 A. The remediation was also identified to Mr.
3 Collins as an accrual.

4 Q. Now, I'm not asking what expenses have been
5 identified to Mr. Collins. I'm -- for example, the
6 litigation expenses. They weren't reduced at all,
7 were they? They were normalized over a period of
8 time?

9 A. Mr. Collins made that calculation.

10 Q. Now, when Mr. Collins was on the stand, he
11 indicated that he used the numbers which were
12 provided to him in his model, except as indicated
13 otherwise. Do you know of any expense item that
14 anyone has eliminated as a nonrecurring expense in
15 this rate case?

16 A. I believe that the expenses provided to Mr.
17 Collins are what I understand as reasonable
18 expenditures that are expected over the next several
19 years.

20 Q. Do you have my question in mind?

21 A. Evidently not.

22 Q. Okay. My question is can you direct me to
23 one penny of expense that has been eliminated from
24 this rate case because it is a nonrecurring expense?

25 A. I don't believe I'm the right person to ask

1 whether it's nonrecurring or recurring.

2 Q. Who is the right person?

3 A. I believe that would be Mr. Talley.

4 Q. Did Mr. Talley adjust any numbers that were
5 provided from you to Mr. Collins? I mean, the
6 financial information went from -- through the system
7 into the financial reporting system from you to Mr.
8 Collins. Now, was Mr. Talley at all involved in any
9 of the numbers that were provided by you to Mr.
10 Collins?

11 A. Yes, Mr. Talley reviews those numbers on a
12 monthly basis. He receives Olympic's financial
13 statements monthly.

14 Q. Okay. You are not aware of a penny that's
15 been -- that hasn't been transferred into this rate
16 case as nonrecurring, are you?

17 MR. BEAVER: Objection, asked and answered.

18 MR. BRENA: No, she's directed me to Mr.
19 Talley.

20 MR. BEAVER: It's also argumentative.

21 MR. BRENA: She's directed me to Mr.
22 Talley. She hasn't indicated whether or not -- I'm
23 not asking who's the best witness. I'm asking her,
24 she is not aware of a single penny that has been
25 disallowed from their rate request as nonrecurring.

3824

1 MR. BEAVER: I believe --

2 MR. BRENA: It's a yes or no question.

3 MR. BEAVER: -- that's exactly the question
4 that prompted her discussion about Mr. Talley being
5 the right person to respond to that.

6 JUDGE WALLIS: The witness may respond. We
7 encourage the witness to respond either yes or no,
8 from your own knowledge.

9 THE WITNESS: Could you repeat the question
10 again?

11 Q. Isn't it true that you're not aware of a
12 single penny in expense that has not been transferred
13 from the financial records into the rate case that
14 has been disallowed as nonrecurring?

15 A. I don't believe I can define what expenses
16 would be considered nonrecurring.

17 Q. Are you aware of any expense that's been
18 reduced for that purpose, whether or not it fits your
19 definition or you understand the definition, are you
20 aware of any expense at all that has been reduced
21 because somebody, anybody, made a judgment that it
22 was nonrecurring?

23 A. The only one I can recall is the
24 litigation.

25 Q. Okay. And if I were to say that the

3825

1 litigation was normalized, not disallowed as
2 nonrecurring, would that change your answer?

3 A. Are you talking -- so my understanding is
4 you're talking about costs that are being disallowed,
5 not --

6 Q. One penny of cost from Olympic that was not
7 included -- that they're not asking for recovery of
8 because it's nonrecurring in nature?

9 A. Yes, that would be the Whatcom Creek costs.

10 Q. It's your understanding that Whatcom Creek
11 were not requested because they're nonrecurring?

12 A. That is my understanding.

13 Q. Okay. Anything other than Whatcom Creek?

14 A. Not that I can recall.

15 Q. Okay. All right. I'd like to direct your
16 attention to Exhibit 867. That's the handout that I
17 just made. Have you had an opportunity to look at
18 that exhibit at all?

19 A. Yes.

20 Q. Okay. Is it accurate?

21 JUDGE WALLIS: Mr. Brena, could you explain
22 what you mean by that?

23 MR. BRENA: The exhibit sets forth, based
24 on their October filing, the two cases set forth in
25 their direct and their rebuttal case what their

3826

1 stated base in test year were and the source for the
2 information that was provided for the test year
3 information. I'm asking her if she sees that there's
4 anything wrong with it, with the way that it's been
5 stated or if it's accurately stated.

6 MR. BEAVER: Your Honor, I'm going to
7 object at this point. First of all, there's no
8 foundation. I also think it's beyond her testimony.
9 I mean, this is something that should have been
10 addressed to Mr. Collins.

11 JUDGE WALLIS: The witness may respond to
12 the extent of her knowledge, if any.

13 THE WITNESS: Could you repeat the question
14 again? I'm sorry.

15 Q. Do you see anything misstated in the
16 exhibit?

17 A. After reviewing this document in the test
18 year source for the fourth -- or the June rebuttal,
19 under B, fuel and power.

20 Q. Okay.

21 A. There is a July 2001 through April 2002
22 actuals. There was also a May and June estimate that
23 was provided.

24 Q. Do you know whether or not that May or June
25 estimate was used by Mr. Collins?

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1 A. I believe it was.

2 Q. Okay. You also provided May and June
3 information to Mr. Collins that he did not use in his
4 model; correct?

5 A. That's correct.

6 Q. And the May and June that you provided him
7 was an average of the prior seven months information;
8 correct?

9 A. I don't recall exactly if it was the prior
10 seven months or the prior ten months, but it was an
11 average, yes.

12 Q. And the information he used was based on
13 the budget; correct?

14 A. That's correct.

15 Q. Okay. Now, under number three, direct case
16 two, where it says Test Year Source 2002 Budget, now,
17 is it fair to say that many of these budget items are
18 carried forward under the fixed bid management
19 contract that BP Pipelines has with Olympic?

20 A. Yes, there were some items within that
21 budget that were carried forward from the fixed bid.

22 Q. Okay. And when was the fixed bid entered
23 into?

24 A. The fixed bid was part of the operating
25 agreement between BP and Olympic.

3828

1 Q. What was the date of that?

2 A. I believe it was June 2000.

3 Q. So in effect, you took budgeted numbers
4 from June of 2000 and carried them forward into 2002,
5 and to the degree that the actual information varied,
6 then you used the budgeted numbers whose original
7 source was the management contract of June 2000; is
8 that correct?

9 A. I'm not sure I completely understand your
10 question, but I -- there were numbers that were
11 carried forward from the fixed bid that was prepared
12 back in June of 2000. Those levels for the budget
13 were compared to the current actuals that Olympic had
14 been experiencing and appeared to be reasonable.

15 Q. Okay. Reasonable compared with what?

16 A. Reasonable compared with the actual
17 expenditures Olympic had been incurring.

18 Q. I mean, in effect, you had an actual level
19 of expense and a budgeted level of expense carried
20 forward from two years before, and you stepped up the
21 actual level of expense to the budget, so why is it
22 reasonable that the budget numbers are correct when
23 the actual number's different?

24 A. In comparison, they were about the same.
25 And if I recall correctly, the 2002 budget levels

3829

1 were actually slightly lower than what the actual
2 expenditures had been.

3 Q. So it's your testimony that the test year
4 adjustments in case two of the direct case actually
5 adjusted the cost downward?

6 A. That's correct.

7 Q. Okay.

8 JUDGE WALLIS: Mr. Brena, we're looking at
9 the clock and thinking that it might be helpful for
10 folks to take a quick break. Is this a good time for
11 that?

12 MR. BRENA: It is a good time, Your Honor.

13 JUDGE WALLIS: Let's be in recess for ten
14 minutes, please.

15 (Recess taken.)

16 JUDGE WALLIS: Let's be back on the record,
17 please, following our morning recess.

18 Q. Do you have an opinion if, for ratemaking
19 purposes, containment should be expensed or
20 capitalized?

21 A. I believe I indicated that I'm not an
22 expert in ratemaking procedures, so I would not have
23 an opinion on that.

24 Q. Do you have an opinion for financial
25 accounting purposes whether or not containment should

3830

1 be expensed or capitalized?

2 A. Yes, I have a basic understanding.

3 Q. And what do you think -- for financial
4 reporting purposes, what do you think containment
5 should be categorized as?

6 A. This is a portion of the containment
7 projects that would be capitalized, and then the --
8 from my understanding, the removal of previous
9 containment would be expensed.

10 Q. Okay. Let's see. I'd like to discuss with
11 you the remediation costs that you gave Mr. Collins.
12 Are you familiar with how he calculated remediation?

13 A. I believe so.

14 Q. What is your understanding of how he
15 calculated remediation?

16 A. The remediation was based on actuals
17 through April of 2002, with estimates for May and
18 June.

19 Q. Okay. Do you have Exhibit 728-C, Mr.
20 Collins' work papers available to you?

21 A. No, I do not.

22 MR. BRENA: Could I please have counsel
23 provide a copy?

24 JUDGE WALLIS: Could you repeat the number
25 again, please?

3831

1 MR. BRENA: 728-C.

2 JUDGE WALLIS: Thank you.

3 Q. Do you see his work paper number ten, the
4 last page of the -- of his work papers?

5 A. Yes.

6 Q. Which numbers on that work paper did you
7 provide to him?

8 A. I provided all of these numbers to him.

9 Q. Okay. The \$504,000 in the 2002 budget for
10 Bellingham, do you know what that is for?

11 A. Yes.

12 Q. What is that for?

13 A. Those costs are associated with the
14 remediation efforts for the Whatcom Creek incident.

15 Q. Going down to Olympic KLTBD, would you tell
16 me what KLTBD stands for, please?

17 A. It stands for known liabilities to be
18 determined.

19 Q. What is to be determined?

20 A. At this time -- at the time the accrual was
21 made back in December of 2000, this particular line
22 item consisted of sites that did not have defined
23 scope at the time, so they were grouped into this
24 category.

25 Q. At the time this work paper -- you provided

3832

1 this work paper to him, this information to him a
2 month ago?

3 A. No, at the time the accrual was made in
4 December of 2000, that's what the line item
5 contained, was projects or sites that did not have
6 defined scope at the time. They currently, or since
7 then, have had work identified.

8 Q. So is it your understanding that these
9 numbers are -- they have been further refined since
10 this work paper? Is this work paper accurate? Has
11 something been determined since this work paper?

12 A. Yes, the sites were identified previously.
13 Like I said, it was my understanding they did not
14 have defined scope. What that means is that it had
15 not been determined yet what type of work would
16 exactly be performed.

17 Q. I'd like to direct you to work paper two,
18 under operating expenses, line three, supplies and
19 maintenance materials.

20 A. I'm sorry, what work paper are you
21 referring to?

22 Q. It's page number four of the exhibit. It
23 is work paper two in the upper right-hand corner. It
24 is a spreadsheet. And line three is supplies,
25 maintenance and materials. Do you see the line?

3833

1 A. Yes.

2 Q. I believe one of the things you said is
3 that you took a look at the budget numbers and
4 compared them with actual spending and determined
5 that they were reasonable; is that correct?

6 A. That's correct.

7 Q. So I'd like to just draw your attention --
8 for supplies and materials, just eyeballing this,
9 what would you say would be the average actual
10 expense from October through April?

11 A. I would almost need my calculator to
12 determine that. I'm one of these people that relies
13 heavily on calculators.

14 Q. Well, the lowest is 17,000 and the highest
15 is 85,000, and the average is in the middle of those
16 two, right, so 50,000 or so, roughly?

17 A. I'll take your word for it. I -- again,
18 I'd need to perform the calculation to really
19 determine.

20 Q. Okay. And what are the budgeted amounts
21 that you consider to be reasonable in light of the
22 actual experience for May and for June?

23 A. The budgeted amounts that appear on this
24 particular spreadsheet appear to be 157,000.

25 Q. So roughly three times the average level of

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1 expense, and you consider that to be reasonable for
2 ratemaking purposes?

3 A. I consider the budget amounts to be
4 reasonable in total. They may not line up
5 necessarily for each line item, but for the
6 categories of total operating expenses, they are
7 within reason.

8 Q. So you eyeballed the total?

9 A. Yes.

10 Q. The total-total. Okay. And now I'd like
11 to go to work paper nine, litigation costs. Now,
12 what numbers did you provide in the direct case with
13 regard to litigation costs?

14 A. That would be the first column, entitled
15 October 2001 through April 2002, and also the amounts
16 in the column for May.

17 Q. Now, do you consider \$2.6 million to be a
18 reasonable cost for a rate case, or do you have an
19 opinion on that?

20 A. In my opinion, based on what has been spent
21 to date, it does not seem unreasonable.

22 Q. Could I ask you to speak to my client after
23 you're off the stand, please? You're aware that the
24 Commission is obligated to ensure that it's the
25 lowest prudent cost that's included for ratemaking,

3835

1 are you not?

2 A. Could you repeat that?

3 Q. You're aware that one of the ratemaking
4 standards is that it be the lowest prudently incurred
5 cost. Are you aware of that?

6 MR. BEAVER: Objection, no foundation.

7 MR. BRENA: I'm asking if she's aware of
8 it. I'm trying to lay a foundation.

9 JUDGE WALLIS: The witness may respond.

10 THE WITNESS: I'm going to ask you to
11 repeat that one more time.

12 Q. Are you aware of the Commission's
13 obligation to ensure that the public service company
14 includes costs which are the lowest prudent cost?

15 A. I'm not aware of ratemaking procedures, so
16 I don't believe I can respond to that question.

17 Q. Okay. Do you know -- do you have a sense
18 for -- I mean, the way this case was put together, it
19 was put together as a FERC case and then filed with
20 this Commission. Do you have a sense for what the
21 incremental cost of filing a FERC case with this
22 Commission would be? I mean, how much of this 2.6
23 million went into preparing a FERC case and how much
24 went into filing the FERC case with the WUTC? Do you
25 know?

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1 A. I would have to review the expenditures to
2 date to determine what portion of that had been
3 applied or work performed for the UTC case and what
4 work -- what portion had been performed for the FERC
5 in order to determine that.

6 Q. Who reviewed these invoices? Mr. Beaver?

7 A. I lost the paper. Hold on.

8 MR. BEAVER: I'm going to object to the
9 question, because it assumes that there -- I believe,
10 at least my understanding of the question assumes
11 there are 2.6 million in invoices, and I don't
12 believe that's what the testimony has been. So it
13 misrepresents the testimony.

14 MR. BRENA: I wasn't tying the review of
15 invoices to any particular number. I wasn't
16 intending to. In fact, 600,000 of it is for the
17 month of June, and there's no invoice on it. But
18 we'll get to that.

19 Q. Who reviews these invoices?

20 A. These are reviewed by several people within
21 BP, as well as Mr. Beaver.

22 Q. Who?

23 A. I'm sorry?

24 Q. Well, before they get paid, who signs off
25 on them? What's the process?

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1 A. I don't believe I can comment on the
2 process for every -- every vendor on this list. Some
3 of these invoices I have seen. Some of them are
4 provided to Mr. Beaver, as well as Mr. Talley.

5 Q. When you pulled up the numbers that you
6 gave Mr. Collins, isn't it true that you pulled up
7 the numbers by vendor?

8 A. That's correct.

9 Q. Isn't it true that the particular vendors
10 are engaged in more activities than this simple rate
11 case for Olympic?

12 A. Some of them do perform services other than
13 this rate case.

14 Q. Are you -- are you saying that \$2.6 million
15 incurred every five years is a reasonable level of
16 rate case expense for this Commission to approve?
17 Are you saying that?

18 A. I don't believe I can comment on that.
19 That would be -- I believe Mr. Collins has already
20 testified as far as how he applied this number to the
21 rate case.

22 Q. You have no opinion as to its
23 reasonableness?

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

25 Q. I asked if you thought it was reasonable to

3838

1 assume that \$2.6 million would be spent every five
2 years, if that was a reasonable rate case expense to
3 ask the Commission to include in shippers' rates. Do
4 you have an opinion on that?

5 A. This is the first rate case that I have
6 been involved in. I don't believe, you know, I can
7 comment --

8 Q. If you can't, you could just say no.

9 A. -- whether -- whether we would be in
10 litigation three years from now in the same
11 situation.

12 Q. Has Olympic had a contested rate case in 35
13 years of operation?

14 A. Not that I'm aware of.

15 Q. Do you think it would be fair to divide
16 2.6, assuming that is a reasonable amount, by 35,
17 instead of by five?

18 A. No.

19 Q. Why not?

20 A. I don't believe that you can predict in the
21 future that Olympic won't be in another rate case.

22 Q. Well, that just -- okay. Do you have a
23 comment on whether or not Mr. Collins' calculation of
24 \$600,000 in rate case expense for June is reasonable
25 or not?

3839

1 A. Mr. Collins estimated these numbers based
2 on his inquiry, so I don't believe I could comment.

3 Q. Okay. With regard to all of the numbers
4 that you provided Mr. Collins in the rebuttal case,
5 the actual information, the updated information, are
6 you aware of any party that's had an opportunity to
7 serve discovery with regard to the accuracy of any of
8 those numbers?

9 A. I'm not sure I quite understand your
10 question.

11 Q. Well, have -- as I understand it, Olympic
12 is proposing that its rates be set based on actual
13 information from October 2001 through April 2002,
14 with May and June budgeted, and then that whole thing
15 annualized. Is that your understanding?

16 A. That's my understanding.

17 Q. With regard to the actual information from
18 October 2001 through April 2002, the actual
19 information, have you, on behalf of Olympic, or has
20 Olympic had to respond to discovery with regard to
21 those actual amounts?

22 A. I know discovery has been served to
23 Olympic. I don't recall a specific question being
24 asked as far as further discovery on those numbers.

25 Q. I mean, let me ask it this way. Prior to

3840

1 your filing of the rebuttal case a week before this
2 hearing, did any party have any reason to believe
3 that those actual numbers would be substituted for
4 budget numbers?

5 A. I believe that it was indicated that we
6 would update the test period with actual information
7 as it was available.

8 Q. And where would that have been indicated?
9 Do you have in mind?

10 A. I don't recall exactly. It might have been
11 the interim case. I don't remember.

12 Q. The transition costs from one operator to
13 the other, Mr. Collins' testimony was is that they
14 were booked in December of 2001. Is that your
15 understanding?

16 A. Could you repeat that again?

17 Q. The transition costs, the cost of going --
18 the \$2.2 million of going from one operator to the
19 other operator, what was the source of the
20 information which Mr. Collins used for the transition
21 costs?

22 A. The transition costs were originally
23 accrued in -- I believe it was December of 2000. The
24 actual invoice was paid sometime in 2001. I don't
25 remember the exact month.

3841

1 Q. Do you know when the expense was incurred?

2 A. The expense was incurred in 2000.

3 Q. With regard to affiliated costs, aside from

4 the transition cost -- well, could I have just a

5 minute, please? Let me ask about the management fee.

6 Is it your understanding that there were two shipper

7 owners that bid to be the operator of this facility?

8 A. That's my understanding.

9 Q. And that Olympic accepted the highest of

10 the two owner operator bids? I mean, owner --

11 owner-related operator bids?

12 A. I was not at Olympic when that bid was

13 accepted. I -- I don't know.

14 Q. Were you here when Mr. Peck testified to

15 that?

16 A. Yes.

17 Q. Did you hear him say that they chose the

18 higher of the two bids?

19 A. I did hear him say that, yes.

20 Q. Okay. With regard to the money that --

21 after Equilon took its computers and left, then BP

22 Pipelines started paying Olympic invoices; correct?

23 Is that your understanding?

24 A. That is my understanding.

25 Q. Are you aware of what invoices they paid

3842

1 and for what purpose?

2 A. It was my understanding that Olympic did
3 not have any way of paying invoices at the time BP
4 took over operations, so BP Pipelines paid for all of
5 Olympic expenditures.

6 Q. Are you aware of what they spent the money
7 for?

8 A. I'm sorry, could you clarify your question?

9 Q. Well, they spent \$13 million. What for?

10 A. Costs incurred by Olympic.

11 Q. Do you know which costs they advanced the
12 funds for?

13 A. I was not here at that time.

14 Q. So the answer would be no?

15 A. That's correct.

16 Q. Now, just to take -- go back to Mr.
17 Collins' work papers, looking at, for example, work
18 paper number two, page four, if I could just return
19 to that for a minute.

20 A. I'm sorry, what work paper?

21 Q. Work paper two, on page four of Exhibit
22 728-C. Do you have it?

23 A. Yes.

24 Q. Could you tell me, for example, on line
25 four, outside services, it shows December '01, an

3843

1 amount equal to \$650,000. Are you aware of -- is
2 there any information in your case as to what the
3 money was spent on?

4 A. It was spent for services provided by -- to
5 Olympic.

6 Q. Well, I understand. What services? Where
7 would I go to find out what services that 650,000
8 paid for?

9 A. That information could be obtained from
10 Olympic team leaders and management.

11 Q. Has any of the information underlying
12 Olympic's request for rates, has this detailed
13 information been provided in Olympic's case?

14 A. I'm sorry, could you repeat that question?

15 Q. Well, if the Commission wanted to know what
16 you're spending your money on, how would they do it?

17 A. I would think that Mr. Talley could provide
18 information regarding what Olympic is spending their
19 money on.

20 Q. Now, you're the -- you're the accountant
21 responsible for the financial reporting; correct?

22 A. That's correct.

23 Q. And you're the person that supplied this
24 information to Mr. Collins for use in the model;
25 correct?

3844

1 A. That's correct.

2 Q. Okay. When you provided it to him, did you
3 drill down any of these details to ascertain what
4 this money was actually being spent for?

5 A. Olympic sets a budget that management
6 approves and management sets the levels of spending
7 for the expenditures that they are anticipating. I
8 compare the actuals to that budget for the
9 reasonableness of the level of spending. As far as
10 what the money is specifically spent on, that is a
11 management decision.

12 Q. So for this Commission to find out what
13 Olympic spent its money on for the actual spending
14 that it's using for ratemaking purposes, we have to
15 wait for Mr. Talley to take the stand and
16 cross-examine him to ask him those questions; is that
17 your testimony?

18 A. Yes, I believe he would be the best person.

19 Q. Is it anywhere in your case that I could
20 find out the actual expenditures that you're
21 proposing be used for test period expenses? Is there
22 anywhere in your case that I can find out what you
23 spent the money on?

24 A. I'm not sure I'm understanding your
25 question.

3845

1 Q. Well, it says, for example, \$1.2 million in
2 April of '02. What was that for?

3 A. It would have been services provided to
4 Olympic.

5 Q. What services?

6 A. To operate the pipeline.

7 Q. Is that the level of detail that's
8 contained in the case, that the parties and the
9 Commission are left to assume that \$1.2 million was
10 outside services paid for the operation of the line
11 without any specific detail as to for what services
12 and to operate?

13 A. That's the knowledge that I have for these
14 numbers. Any further detail I believe would need to
15 be directed towards Mr. Talley.

16 Q. Okay. So we do have to wait for Mr. Talley
17 to take the stand to ask him about what Olympic spent
18 its money on and it can't be found in the case; is
19 that correct?

20 A. I don't believe I can answer that question.

21 MR. BRENA: I have no further questions.

22 JUDGE WALLIS: Very well. I believe, Mr.
23 Trotter, you've asked your questions, and Mr.
24 Finklea, as well.

25 MR. FINKLEA: That's correct, Your Honor.

3846

1 JUDGE WALLIS: So we would ordinarily go
2 now to Commissioner questions. Chairwoman Showalter
3 is in a cabinet meeting with the governor and would
4 like to be present for the examination of the
5 witness. She expects to return at 1:30. Let's
6 recess now and return to the proceedings at 1:30 this
7 afternoon.

8 (Discussion off the record.)

9 JUDGE WALLIS: Let's be back on the record.
10

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

12 BY CHAIRWOMAN SHOWALTER:

13 Q. Ms. Hammer, I have a question that's
14 similar to Mr. Brena's, but I'll ask it in a more
15 general way. My general interest is who, if anyone,
16 in Olympic is responsible for making the judgments
17 that go into the request for a rate case? And I'll
18 just say that in my agency, I am not a payroll
19 expert, but I know who does the payroll. I'm not an
20 engineer, but I can tell you where in the agencies
21 the engineers are. I'm not a personnel expert, but I
22 do know who to go to or whom to refer someone to for
23 that kind of expertise.

24 So the question I have of you is who, if
25 anyone, would you say is responsible in the company

3847

1 for deciding what amounts to ask for in a rate case?
2 I'm trying to state it generally. If an outsider
3 were to come and say, Well, who's your regulatory
4 expert or who knows about regulation, that kind of
5 question, is there anybody you would point to?

6 A. Well, I guess, in my opinion, Mr. Talley
7 can provide the level of expenditures that is
8 necessary for Olympic. As far as specific regulatory
9 requirements, since I'm not that familiar with
10 regulatory requirements, I guess I would turn to the
11 attorneys, as far as, you know, what the regulatory
12 requirements are.

13 Q. So is it fair to say if an outsider said,
14 Who's your regulatory person, you would say, I don't
15 know if we have one; is that accurate?

16 A. For the state of Washington?

17 Q. Right.

18 A. For the state of Washington, I would say we
19 would have to talk to the attorneys. As far as FERC
20 regulatory matters, we do have a specialist within
21 the BP controllers group, which I rely on heavily.

22 Q. And who is that?

23 A. His name is Bob Kennedy.

24 Q. All right. And can you describe what Mr.
25 Kennedy's role has been, if any, in preparing this

3848

1 rate case or approving the numbers that went into it?

2 A. Mr. Kennedy has reviewed and signed off on
3 the FERC Form 6, which is the regulatory reporting
4 tool. And Mr. Collins did use a FERC Form 6 in his
5 preparation for the case.

6 CHAIRWOMAN SHOWALTER: Thank you.

7

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

9 BY COMMISSIONER HEMSTAD:

10 Q. I have just one area that I wanted to
11 pursue, and this should be brief. Mr. Brena was --
12 asked some questions with regard to Olympic Pipe Line
13 management as contrasted with British Petroleum
14 Pipeline and its management, and I guess at this
15 point I'm clear. Are any employees of Olympic Pipe
16 Line not employees of British -- BP Pipeline?

17 A. No, all of the employees within Olympic are
18 BP Pipeline employees.

19 Q. Okay. So when a question is asked if
20 anyone within Olympic Pipe Line management made a
21 decision, any decision made would have been made by
22 an employee of BP Pipeline under their contract to
23 manage Olympic?

24 A. That's correct. There is a management
25 through the board of directors for Olympic.

3849

1 Q. Yeah. Was it -- with exception of the
2 board, when you get your paycheck, is that check over
3 in Olympic Pipe Line -- is that an Olympic Pipe Line
4 check, or is it a BP Pipeline check?

5 A. It's a BP Pipeline check.

6 COMMISSIONER HEMSTAD: Okay, thank you.

7 That's all I have.

8 COMMISSIONER OSHIE: No questions.

9 JUDGE WALLIS: Very well. All right.

10 Let's recess now, and we'll reconvene at 1:30.

11 (Lunch recess taken.)

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

13 please, following our noon recess. Mr. Brena

14 referred to two documents in the course of his

15 examination. Those are Exhibits 728-C and 867. Are

16 you moving those for admission now, Mr. Brena?

17 MR. BRENA: I am, Your Honor.

18 JUDGE WALLIS: Is there objection?

19 MR. BEAVER: No.

20 JUDGE WALLIS: Let the record show that

21 there is no objection, and those documents are

22 received in evidence. Now, I believe it is Mr.

23 Beaver's turn.

24 MR. BRENA: Your Honor, Commissioner

25 questions did prompt one question that I'd like to

3850

1 ask this witness.

2 JUDGE WALLIS: Very well.

3

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

5 BY MR. BRENA:

6 Q. Ms. Hammer, Chairwoman Showalter asked you
7 about who the appropriate person was, and I believe
8 you -- with regard to regulatory -- the regulatory
9 person within BP, and I believe you identified Bob
10 Kennedy; is that correct?

11 A. I identified Bob Kennedy as the FERC
12 specialist.

13 Q. And the Chairwoman followed up on that
14 question to ask you what his involvement was in this
15 particular case, and I believe that your response was
16 is that he reviewed and approved the FERC 6 numbers
17 which Mr. Collins used; is that correct?

18 A. That's correct.

19 Q. Okay. With regard to the test year period
20 in the rebuttal case that goes from October 2001
21 through April of 2002, now, there are no FERC 6
22 filings with regard to any 2002 numbers; correct?

23 A. That's correct.

24 Q. So Mr. Kennedy has not reviewed any of the
25 actual expenses which were used for the test period

3851

1 January, February, March or April of 2002 or the
2 budgeted numbers or the calculation; is that correct?

3 A. No, not completely. He is a member of BP's
4 controller group, and BP's controllers group does
5 review the financial information on a monthly basis.

6 Q. Okay. So by review, you mean he gets the
7 financial statements in his SAP in-box the same as
8 you do?

9 A. No, we don't have SAP in-boxes for those
10 statements, those are through e-mail, but he reviews
11 it online in SAP.

12 Q. Okay. Do you know whether he's done that
13 with regard to those or you know that that's just
14 available to him? What's your testimony?

15 A. That's the process.

16 Q. I'm sorry, what's the process?

17 A. That's the process, BP's process of
18 reviewing financial information.

19 Q. Okay. So with regard to October 2001
20 through April 2002, some of those numbers have
21 appeared on the FERC 6 and some have not appeared on
22 the FERC 6; correct?

23 A. That's correct.

24 Q. And with regard to all the 2002 numbers,
25 they are not converted into the FERC 6 format until

3852

1 the end of 2002; correct?

2 A. They're not extracted into FERC Form 6
3 format until the end of the year.

4 MR. BRENA: Okay. Thank you.

5 MS. WATSON: Your Honor, I have one
6 question that was on my original list of questions to
7 ask and I simply forgot to ask it.

8 JUDGE WALLIS: Ms. Watson.

9

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

11 BY MS. WATSON:

12 Q. Ms. Hammer, did you advise Mr. Batch that
13 all of Olympic's past filings used the FERC
14 methodology?

15 A. I don't recall advising him that.

16 MS. WATSON: Okay. Thank you.

17 JUDGE WALLIS: Now Mr. Beaver.

18 MR. BEAVER: Thank you.

19

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

21 BY MR. BEAVER:

22 Q. Ms. Hammer, I'd like to follow up on the
23 question that Chairwoman Showalter asked and Mr.
24 Brena just asked, and I want you to assume that I'm
25 not asking you who within the Olympic BP team knows

3853

1 the most about the specifics of the numbers contained
2 in Olympic's case, but what I'm asking you is who was
3 responsible for putting together the rate filings at
4 both the FERC and the WUTC?

5 A. That would be Bernadette Zabransky.

6 Q. And who is Bernadette Zabransky?

7 A. She's the director of tariffs and
8 regulatory affairs.

9 Q. For what entity?

10 A. For BP.

11 Q. And are you familiar with Ms. Zabransky?

12 A. Yes.

13 Q. And does she have a team within BP that is
14 solely responsible for providing tariff rate support
15 and filings for pipelines that BP operates?

16 A. Yes.

17 Q. Do you know if tariff filings are a part of
18 the operating agreement between BP and Olympic?

19 A. I believe they are, yes.

20 Q. So can you tell us who the team was, if you
21 know, who was, in fact, responsible for the rate
22 filing here at the UTC?

23 A. That was Bernadette Zabransky.

24 Q. And who else was on that team?

25 A. There were several people on that team.

3854

1 Q. Okay. And who were they?

2 A. Myself, Mr. Fox, Mr. Batch.

3 Q. Were there any consultants who were on that
4 team?

5 A. Yes, REG.

6 Q. Do you know how much experience Ms.
7 Zabransky has with regard to tariff filings?

8 A. She has been involved with the tariff
9 filings and tariff matters since I have been employed
10 with BP.

11 Q. And how long has that been?

12 A. I've been employed with BP 17 and a half
13 years.

14 Q. Do you know how long she was doing that
15 prior to you coming to BP?

16 A. Not off the top of my head, but I know that
17 she has somewhere around 35 years experience, 35 to
18 40 years experience with BP.

19 Q. And to your knowledge, did she review and
20 approve the filing that was submitted here at the UTC
21 for Olympic?

22 A. Yes, she did.

23 Q. Is BP Pipelines one of the largest
24 operators of petroleum pipelines in North America?

25 A. I believe it is, yes.

3855

1 Q. And during your career, which I think you
2 said was about 17 and a half years with BP, can you
3 tell us what positions you held?

4 A. I've held several positions, mostly in the
5 financial analyst area, as well as the accounts
6 payable area.

7 Q. And during that time period, how many
8 pipelines that BP has operated have you been
9 associated with?

10 A. I believe between six or seven different
11 pipelines.

12 Q. And is the accounting for Olympic that
13 we've been talking about any different than the
14 accounting for these other pipelines that you have
15 been associated with in the past?

16 A. No.

17 Q. Do you know if BP has recently sold any
18 pipeline assets to Tesoro?

19 A. Yes.

20 Q. And which one?

21 MR. BRENA: Objection, scope.

22 MR. BEAVER: This all gets to the
23 accounting issue. I mean, this is --

24 JUDGE WALLIS: The witness may respond.

25 THE WITNESS: Yes. BP Pipelines sold its

3856

1 North Dakota system to Tesoro.

2 Q. And do you know approximately when?

3 A. I believe it was in 2001.

4 Q. And was the accounting for that pipeline
5 system any different than the accounting for the
6 Olympic Pipe Line system?

7 A. No.

8 MR. BRENA: Objection, scope, and asked and
9 answered. He's already asked this witness if the
10 other pipelines had different accounting systems or
11 not, and I don't -- I don't see what a transaction
12 between BP and Tesoro with regard to a pipeline has
13 to do with her testimony or the cross.

14 MR. BEAVER: I'll just indicate what my
15 next question's going to be, which is the crux, and
16 that's whether Tesoro has raised any issues with
17 regard to that accounting.

18 MR. BRENA: Objection.

19 JUDGE WALLIS: The witness may respond.

20 THE WITNESS: Not that I'm aware of.

21 Q. Ms. Hammer, you were asked some questions
22 by counsel for Tesoro regarding detail behind certain
23 numbers that are in Olympic's case. Do you remember
24 that testimony?

25 A. Yes.

3857

1 Q. In particular, you were asked questions
2 about a \$650,000 miscellaneous number, I believe.

3 A. Yes.

4 Q. And I think you were asked whether or not
5 the detail behind that number was somewhere in
6 Olympic's case. Do you remember that testimony?

7 A. Yes.

8 Q. Has the detail surrounding that number and
9 the other numbers that are contained in Olympic's
10 case been supplied in response to discovery to the
11 parties in this matter?

12 A. Yes, they were provided in the general
13 ledger detail.

14 Q. And were Olympic's general ledger detail in
15 fact provided to the intervenors and to Staff?

16 A. Yes.

17 Q. And would that detail provide the backup
18 information, for example, the \$650,000 number?

19 MR. BRENA: Your Honor, I'm going to object
20 at this point. First of all, I asked this witness
21 several questions about what was provided in
22 discovery, and she indicated that she didn't know.
23 Now, you can't learn that over lunch. And also, it's
24 unclear to me whether we're talking about the test
25 period that they're using to base their rates on or

3858

1 prior expenses.

2 MR. BEAVER: Can I respond? Your Honor,
3 Olympic has been served with several hundred
4 discovery requests in this matter. This witness has
5 been involved in the responses to some of those, and
6 the general ledger information is information that
7 she's been directly involved in the response to. So
8 obviously she doesn't know all of the responses to
9 all the discovery requests. In fact, probably only a
10 few of us know all of that information. But she
11 certainly knows the responses to some.

12 MR. BRENA: Well, and that was why I
13 explored this witness' knowledge with regard to
14 whether or not that backup information had been
15 provided. And this witness did not indicate any of
16 these answers. This is all new information.

17 MR. BEAVER: This is absolutely not true.
18 The question related to what was in Olympic's case.
19 And in my discussions with the witness, her
20 interpretation of case is simply, you know, the
21 testimony. I mean, that's the case. What I'm
22 talking about now is what was provided in response to
23 discovery. And to our knowledge, these ledgers are
24 not an exhibit to any testimony in this case.

25 MR. BRENA: I asked about both discovery

3859

1 and the case.

2 JUDGE WALLIS: We'll sustain the objection.

3 MR. BEAVER: Could I ask a related
4 question? I'm not sure that it would be covered by
5 this, and the question would simply be what is
6 contained in Olympic's general ledgers, the type of
7 data.

8 JUDGE WALLIS: Yes.

9 Q. Ms. Hammer, can you explain to us what is
10 actually in Olympic's general ledger information?

11 A. The general ledger contains each individual
12 invoice that has been processed, as well as any
13 journal entries that have been made.

14 Q. Have you, in fact, discussed Olympic's
15 general ledgers with the UTC Staff?

16 MS. WATSON: Objection. Is he talking
17 about the rebuttal or the direct?

18 MR. BEAVER: Actually, this is a general
19 question about any general ledgers. And then, if the
20 answer's yes, I'll ask which ones.

21 JUDGE WALLIS: The objection's overruled.

22 THE WITNESS: Yes, I did discuss some
23 general ledger information with Staff.

24 Q. And what general ledger information did you
25 discuss with Staff?

3860

1 A. When they were in Houston, we had several
2 discussions about the general ledger items.

3 Q. And was that in the context of reviewing
4 general ledger information?

5 A. Yes.

6 Q. And do you know what time period general
7 ledger information for Olympic was, in fact, provided
8 to Staff?

9 A. I believe that the general ledger
10 information that was provided was for the base period
11 of October 2000 through September of 2001, as well as
12 the most up-to-date general ledgers at that time.

13 Q. And what month would that be through?

14 A. I believe it was through February or March.

15 Q. Of what year?

16 A. 2002.

17 Q. And do you know if the March and April
18 general ledger information for 2002 has been provided
19 to the parties?

20 A. The general ledger information?

21 Q. Yes.

22 A. I don't believe the general ledger
23 information for April has been provided as of yet.

24 MR. BRENA: Could I ask a point of
25 clarification? If this witness is referring to the

3861

1 general ledger line detail or if she's referring to
2 general ledger summary by category?

3 THE WITNESS: I was referring to the
4 detail. The summaries for all months have been
5 provided.

6 Q. And when you say summaries for all months,
7 what months are you referring to?

8 A. Referring to October of 2000 through April
9 of 2002.

10 Q. Ms. Hammer, can you turn to Exhibit 865, if
11 you have that handy? Do you have 865 in front of
12 you?

13 A. Yes.

14 Q. Now, Staff counsel asked you a question
15 about one item on this document, and that was under
16 operating expenses, miscellaneous. Do you see that?

17 A. Yes.

18 Q. And you were asked questions about how many
19 percent the actual number was compared to the budget
20 number. Do you remember that testimony?

21 A. Yes.

22 Q. With regard to the total operating
23 expenses, would you agree that the actual was within
24 at least 90 percent of the budget?

25 A. Yes.

3862

1 Q. Do you know why it is that the
2 miscellaneous number for the four-month actual is
3 significantly different than the budget amount for
4 that same four-month period?

5 A. Yes. When the budgets are prepared,
6 they're prepared in total, and the budget line items
7 are not necessarily a one-to-one with actuals. It's
8 more on the total operating expenses that the budget
9 is compiled.

10 Q. And with regard to the total expenses on
11 this document, would you agree that the actuals were
12 approximately 90 percent of the budget?

13 A. Yes.

14 Q. I believe you testified that you actually
15 don't determine whether something is properly
16 capitalized or expensed. Do you remember that
17 testimony?

18 A. Yes.

19 Q. Could you tell us who does make that
20 determination within the Olympic system?

21 A. The project managers and the team leaders
22 or supervisors would make the determination on
23 whether it -- something should be capitalized or
24 expensed.

25 Q. Do you know what criteria those individuals

3863

1 use?

2 A. Yes, they use BP's capitalization
3 guidelines, which are generated from the FERC
4 guidelines.

5 Q. And do you know whether any training is
6 provided concerning how to, in fact, use those
7 guidelines?

8 A. Yes, there is training provided to the
9 project managers.

10 MR. BRENA: Objection, and I'd move that
11 that be struck. You know, this witness' knowledge
12 just can't expand that great over lunch. I explored
13 with this witness whether -- what the training of the
14 project managers were, whether she knew what it was
15 or whether she didn't know what it was. I went
16 through all that in great detail and she didn't
17 provide any information with regard to this. So to
18 come back after lunch now and respond completely
19 differently to questions that she was asked before
20 lunch just simply isn't appropriate.

21 MR. BEAVER: First of all, this was in
22 response to a question that Ms. Watson asked last
23 week. And I think if you look at the questions that
24 Mr. Brena asked this witness and the one that I just
25 asked, they're actually very different. I'm simply

3864

1 asking about the capitalization versus expense issue
2 in the BP guidelines.

3 MR. BRENA: And my questions today explored
4 whether she was familiar with how they were trained
5 on any level and went through in some detail if they
6 had any accounting background, if they had any
7 guidance, if she knew how they were trained to make
8 these calls between both capital and expense, as well
9 as what box to put it in, and she didn't indicate
10 that they had any.

11 JUDGE WALLIS: We'll let the witness
12 respond.

13 MR. BEAVER: And I think she did. Was
14 there an answer to the question?

15 MR. BRENA: There was. That was a motion
16 to strike it.

17 MR. BEAVER: Okay.

18 Q. Ms. Hammer, there were quite a few
19 questions raised by at least a couple of the
20 questioners concerning BP's process, that is, its
21 accounting process. And I would like you to describe
22 what the BP process is as far as taking data, let's
23 say from a vendor invoice, and getting it within the
24 financial information?

25 A. Accenture is responsible for collecting

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1 that data and making entries into the financial
2 system and then preparing financial statements.
3 Those statements are then reviewed by myself, as well
4 as BP's controllers group for accuracy and they are
5 also reviewed by the supervisors, Olympic's
6 management and project managers, as well.

7 Q. For example, the project manager would be
8 whom?

9 A. Project managers can be engineering
10 employees or they can be supervisors of Olympic.

11 Q. My question probably wasn't very clear.
12 Are these the individuals who are responsible for the
13 work that the vendor is actually doing for Olympic?

14 A. Yes.

15 Q. And does somebody also check to see that
16 the invoice and the billing is consistent with the
17 contract that Olympic has with a vendor?

18 A. Yes.

19 Q. And who is that?

20 A. That would be the project manager and the
21 team leader, supervisor.

22 Q. Now, where within this process do you
23 actually fit in?

24 A. My function is one of reporting to
25 Olympic's management and board of directors, as well

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1 as BP, the financial status of Olympic.

2 Q. At your level, do you actually, for
3 example, take an invoice and compare it to the
4 entries made by Accenture?

5 A. No.

6 Q. And Accenture used to be Andersen
7 Consulting?

8 A. That's correct.

9 Q. Now, there was also testimony about the SAP
10 system. Do you remember that?

11 A. Yes.

12 Q. And what does SAP stand for?

13 A. I'm not certain.

14 Q. And can you tell us what it is?

15 A. It's a -- it's a German system.

16 MS. WATSON: Objection. This is in her
17 direct testimony. It's asked and answered.

18 MR. BEAVER: Could I respond?

19 JUDGE WALLIS: Is there a reason to bring
20 it out now, Mr. Beaver?

21 MR. BEAVER: Yes, there was a lot of
22 questioning about changing to the SAP system from the
23 ISP system, and this is just totally preliminary so
24 that I can ask her about that change.

25 JUDGE WALLIS: Very well.

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1 THE WITNESS: Can you repeat the question?

2 Q. I think the question was what is the SAP
3 system?

4 A. It's a financial system that BP uses. It
5 contains the general ledger, accounts payable and the
6 fixed assets.

7 Q. And at some point, BP apparently used the
8 ISP system?

9 A. That's correct.

10 Q. And do you know what the differences are,
11 if any, between those two systems?

12 MR. BRENA: Objection. She testified as
13 having no personal knowledge and no experience with
14 regard to BP's ISP system, and now she's being asked
15 to compare them.

16 MR. BEAVER: I don't believe that was her
17 testimony at all. I think she indicated that she did
18 have some familiarity with it.

19 JUDGE WALLIS: It's not consistent with my
20 recollection, either, Mr. Brena.

21 MR. BRENA: Okay.

22 JUDGE WALLIS: The witness may respond.

23 THE WITNESS: They're simply different
24 software packages to gather the financial
25 information.

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1 Q. And I actually forgot when this change took
2 place, but when did BP go from the ISP to the SAP
3 system?

4 A. May of 2001.

5 Q. And was that a change that affected all of
6 the pipelines that BP operates?

7 A. Yes.

8 Q. In your view, would it have been reasonable
9 for Olympic to have stayed on the ISP system when its
10 operator switched to the SAP system?

11 A. No.

12 Q. And why is that?

13 A. The ISP system was no longer being
14 supported.

15 Q. Okay. Now, you provided some testimony
16 with regard to various adjustments that were made in
17 Olympic's rebuttal case, and some of the testimony
18 related to calculations that you personally did and
19 others related to calculations that Mr. Collins did.
20 Do you remember that testimony?

21 A. Yes.

22 Q. With regard to the calculations that Mr.
23 Collins made, did you attempt to verify his work?

24 A. Yes.

25 Q. And did you, in fact, verify the accuracy

3869

1 of his work?

2 A. Yes.

3 Q. By the way, has Olympic actually paid any
4 fines or penalties associated with Whatcom Creek?

5 A. No.

6 Q. Do you have Exhibit 624 handy?

7 A. No.

8 Q. This is simply the exhibit that shows
9 various payments made by Olympic to BP.

10 A. Yes.

11 Q. And there are various categories on that
12 exhibit; is that correct?

13 A. That's correct.

14 Q. And could you tell us what the first
15 category is?

16 A. It's AP items billed to Olympic from BP.

17 Q. And could you tell us what that is?

18 A. Those are invoices -- Olympic invoices that
19 were paid by BP on Olympic's behalf.

20 Q. And do you know approximately when those
21 payments were made by BP?

22 A. The second column were invoices paid
23 through October of 2001, and the first column was
24 invoices paid in 2000.

25 Q. Okay. Ms. Hammer, with regard to salaries

3870

1 and wages paid for individuals who work on the
2 Olympic system, are those wages and salary determined
3 by a global BP Pipelines system?

4 A. Yes.

5 Q. And is there a scale that applies to all of
6 the BP Pipelines folks that work on pipelines
7 throughout the country?

8 MR. BRENA: Objection, scope. There's no
9 testimony to any of this anywhere in this case, and
10 there's no cross on it.

11 MR. BEAVER: I thought there were some
12 questions raised on Friday about salary and wages,
13 but --

14 MR. BRENA: Yes, there were some salary and
15 wages, but this didn't -- none of this -- it had
16 nothing to do with this question, which is how BP
17 Pipelines nationally --

18 MR. BEAVER: Well, I think it's directly
19 related to the issue raised on Friday. I'm simply
20 trying to establish how it is that the salary and
21 wages for the folks working on the Olympic system are
22 set. And I think she's going to indicate that this
23 is -- that everybody within BP Pipelines that works
24 anywhere in the country, there's a set salary and
25 wage system and that applies to the Olympic folks, as

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1 well, and then I'm going to ask her if she knows how
2 that system was established.

3 MR. BRENA: I maintain my scope objection.

4 JUDGE WALLIS: I'll sustain the objection.

5 Q. Do you have Exhibit 859 handy?

6 A. Yes.

7 Q. And is this your deposition?

8 A. Yes.

9 Q. You were asked some questions with regard
10 to the testimony on page 70, and that relates to the
11 Sea-Tac terminal sale, and the impact of the terminal
12 barrels on the throughput calculation?

13 A. Yes.

14 Q. I think some people followed it, I think
15 some may not have followed the explanation that was
16 provided. Can you explain what terminal barrels
17 means?

18 A. A terminal barrel is the barrel that
19 actually is in the tank at the facility.

20 Q. And does the terminal barrel -- in fact, is
21 it part of throughput?

22 A. No.

23 Q. But is a terminal barrel recorded on some
24 of Olympic's data sheets?

25 A. Yes.

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1 Q. So if you were trying to determine the
2 throughput of the system, why would you delete or
3 subtract terminal barrels?

4 A. The terminal barrel would be a duplicate --
5 or duplicate barrel of what actually moved through
6 the pipeline.

7 Q. So with regard to the testimony on page 70,
8 did the subtraction of the Sea-Tac terminal barrels,
9 in fact, have any impact on the throughput
10 calculation?

11 A. No.

12 Q. There was testimony about the three percent
13 calculated planned down time and three percent
14 unplanned down time with regard to the throughput
15 calculation. Do you remember that testimony?

16 A. Yes.

17 Q. And can you tell us how that three percent
18 for both planned and unplanned down time was derived?

19 A. The three percent planned down time was
20 what the schedulers use on a monthly basis of one day
21 a month for scheduled maintenance. The three percent
22 unplanned down time was estimated based on the
23 project workload for Olympic, and the amount of time
24 necessary to take the -- to be down in order to do
25 the work.

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1 Q. And with regard to Olympic's direct case,
2 why was this three percent for each planned and
3 unplanned down time used?

4 A. The original throughput estimate was based
5 on a two-cycle period in July, where there was no
6 down time associated during those two cycles. In
7 order to estimate an average level of throughput,
8 down time needed to be calculated.

9 Q. And although it's likely obvious, but was
10 this three percent, did it have any impact at all on
11 the throughput numbers that were provided in
12 Olympic's rebuttal case?

13 A. No.

14 Q. And why is that?

15 A. The throughput relied on in the rebuttal
16 case was based on actuals. Down time would have
17 already been included in those numbers.

18 Q. With regard to the April and May estimated
19 numbers, I think there may be some confusion as to
20 how those numbers were derived. Can you just tell us
21 how that was done?

22 A. Those estimates were based on the average
23 level of throughput that Olympic had experienced for
24 the previous ten months.

25 Q. Ms. Hammer, you were asked some questions

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1 about the transition from the Equilon accounting
2 system to the BP system. I think you testified that
3 you were not involved with Olympic at that time. Do
4 you remember that?

5 A. Yes.

6 Q. Do you know what individuals or entities
7 were involved in that transition?

8 A. Accenture was involved in that transition,
9 as well as a group of people within BP.

10 Q. Now, you were also asked some questions
11 about the accuracy of the Equilon information, and
12 does the accuracy of any Equilon information have any
13 impact on either the base or test period expense data
14 that's part of Olympic's case?

15 A. No.

16 Q. You testified that it's possible that
17 invoices associated with work performed on the
18 Olympic system might go to various individuals, but
19 you also indicated that all invoices must go to
20 Houston to get into the system?

21 A. That's correct.

22 Q. And when you say Houston, could you be more
23 specific as to what in Houston?

24 A. All invoices must be received through
25 Accenture in order to get into the financial system.

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1 MR. BEAVER: That's all I have.

2 JUDGE WALLIS: Are there follow-up
3 questions?

4 MS. WATSON: We have a few.

5

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

7 BY MS. WATSON:

8 Q. Ms. Hammer, you referred to total budget as
9 being the proper comparison for Olympic's budget on a
10 calendar year basis; correct?

11 A. That's correct.

12 Q. Do other BP Pipelines accrue interest
13 during construction, or IDC?

14 A. I'm not an expert in that area. I don't
15 believe I can answer that.

16 Q. Do you know if Olympic accrues IDC?

17 A. Could you define IDC?

18 Q. Yeah, that's the interest during
19 construction.

20 A. I don't have any knowledge of that.

21 Q. Okay. Do other BP pipelines accrue AFUDC?

22 A. From my understanding, yes.

23 Q. Does Olympic?

24 A. Do they accrue it?

25 Q. Yes.

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1 A. I'm not sure how the calculation is made.

2 I'm -- I'm not involved in that process.

3 Q. You testified earlier that you did not know

4 how much planned and unplanned down time were

5 included in your rebuttal testimony, is that -- or

6 I'm sorry, in your rebuttal throughput. Is that

7 testimony still correct?

8 A. Yes.

9 MR. BEAVER: I'll withdraw my almost
10 objection.

11 Q. If there was a problem with balance sheet
12 data maintained by Equilon, wouldn't the impact -- or
13 wouldn't that impact the base year balance sheet
14 figure?

15 A. Equilon's balances were brought forward on
16 the balance sheet, yes.

17 MS. WATSON: Thank you.

18 JUDGE WALLIS: I have a question or two for
19 the witness.

20

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

22 BY JUDGE WALLIS:

23 Q. Could you tell me if, over the lunch hour,
24 you had any conversations relating to the training of
25 Staff people or to the individuals who might offer

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1 regulatory assistance?

2 A. I did not have any conversations as far as
3 training. I was reminded that we do have a tariff
4 position in BP. When Chairwoman Showalter asked me
5 the question, I was thinking more on the lines of who
6 -- what person could attest to the number or to the
7 level of expenditures appropriate for Olympic. I
8 wasn't necessarily thinking on the lines of who
9 actually manages our tariffs.

10 Q. You say that you did not have any
11 conversations about training that your managers might
12 have in terms of allocating between expenses and
13 capital items?

14 A. I believe I was asked if they had training.
15 That was to the extent. Mr. Brena didn't ask me
16 about specific training on capital versus expense; he
17 asked me if there was -- if the managers had had
18 training in accounting. In other words, had they had
19 Accounting 101.

20

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

22 BY CHAIRWOMAN SHOWALTER:

23 Q. The question was, over the lunch hour, did
24 you have any conversations about the subject of how
25 managers or project managers contribute to the

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1 financial records or any training they may have had
2 in that regard?

3 A. I was asked if the project managers had
4 training in capital versus expense treatment. That
5 was it.

6 Q. Okay. Is that a conversation that occurred
7 over the lunch hour?

8 A. Yes.

9 Q. With who?

10 A. And previously.

11 Q. And with whom?

12 A. Mr. Beaver.

13 CHAIRWOMAN SHOWALTER: Thank you.

14 JUDGE WALLIS: Very well. Is there
15 anything further of the witness? Ms. Hammer, I
16 think we're done with you.

17 THE WITNESS: Thank you.

18 JUDGE WALLIS: You may be excused from the
19 stand. Let's be off the record for a few moments
20 while Ms. Omohundro steps forward and arranges her
21 materials.

22 (Recess taken.)

23 JUDGE WALLIS: Let's be back on the record,
24 please. Witness please stand, raise your right hand.
25 Whereupon,

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1 CHRISTY A. OMOHUNDRO,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4 JUDGE WALLIS: Mr. Marshall.

5

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

7 BY MR. MARSHALL:

8 Q. Please state your name.

9 A. Christy Omohundro.

10 Q. And your address?

11 A. 1306 Fifth Street, Kirkland, Washington,
12 98033.

13 Q. And on what party's behalf do you appear
14 today?

15 A. On behalf of Olympic Pipe Line Company.

16 Q. Did you prepare Exhibits 131 -- or 1301-T,
17 1308-T, and the attached exhibits, 1302 to 1304 and
18 1309?

19 A. Yes, I did.

20 Q. And do you have any modifications or
21 corrections to make?

22 A. Yes, I believe there is an errata sheet
23 that's been prepared. How would you like me to
24 handle that?

25 MR. MARSHALL: We've been marking those as

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1 a separate exhibit, rather than going through them
2 individually.

3 JUDGE WALLIS: Yes, I am marking a
4 three-page document, entitled Errata for Christy A.
5 Omohundro, as Exhibit 1312 for identification.

6 Q. Is 1312 your errata sheet?

7 A. I have 1308-T. Oh, let's see. I don't
8 have a marked exhibit before me. I'm sorry.

9 Q. The errata sheet's been marked as Exhibit
10 1312. Do you see your errata sheet?

11 A. Yes.

12 Q. With the corrections described in that
13 errata exhibit, do you adopt the testimony here
14 today?

15 A. Yes.

16 MR. MARSHALL: Okay. The witness is
17 available for cross-examination.

18 JUDGE WALLIS: Well -- very well.

19 MR. MARSHALL: Yes, we move the testimony
20 and exhibits into evidence.

21 JUDGE WALLIS: Is there objection?

22 MR. TROTTER: Yes, Your Honor. First of
23 all, we did not object to the deposition going in so
24 that we can adequately argue the motion, Exhibit
25 1305.

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1 JUDGE WALLIS: Very well. So let's ask if
2 there's objection to receiving the deposition dated
3 April 26th, 2002, that's previously marked as Exhibit
4 1305 for identification?

5 MR. MARSHALL: Well, I would object if the
6 other testimony is not in. It seems like we're
7 trying to get a deposition exhibit in, which is a
8 cross-examination exhibit, before the actual
9 testimony of the rebuttal and the attachments.

10 MR. BRENA: The whole point of the motion,
11 I believe, is to determine whether or not the
12 testimony should come in. She's verified the
13 deposition is correct. I think it would be
14 inappropriate to allow into evidence her testimony
15 until the motion is heard.

16 MR. MARSHALL: Well, you know, in response
17 to depositions, normally you don't do redirect on
18 your own witness in a deposition. What this witness
19 of course has done is supply rebuttal testimony that
20 answers a lot of the questions that were raised in
21 the deposition. It is, in a sense, by way of
22 redirect examination of a deposition that you'd be
23 able to do that. Otherwise, that would be the way it
24 would work in court. So I think that normally
25 depositions are taken to get discovery and to impeach

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1 a witness, but there would not be otherwise an
2 opportunity to respond unless it were with the
3 rebuttal testimony.

4 MR. TROTTER: Your Honor, I think the
5 reason we did this was simply to respond to the
6 Commission's desire to have the deposition right
7 before you now, so that you can consider the motion
8 in context. If it's not moved, it's before you now,
9 it's not that huge a deal to us, but that's why it's
10 here.

11 JUDGE WALLIS: Very well. We will reserve
12 ruling on the exhibits moved by the company, 1301-T
13 through 1304, 1308 and 9 and 1312 and on 1305 pending
14 argument on the matters.

15 MR. TROTTER: I would like the witness to
16 at least respond that the testimony that is in 1305
17 is true, which was your deposition, that she gave
18 true answers to the questions therein?

19 THE WITNESS: Yes.

20 MR. TROTTER: Thank you.

21 JUDGE WALLIS: Very well.

22 MR. TROTTER: Your Honor, I'm happy to
23 start if -- because we did support the motion to
24 strike. I'd be happy to start or Mr. Brena can
25 start. Your choice.

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1 MR. BRENA: Mr. Brena started quite enough.

2 MR. TROTTER: Let me start with one point.

3 If you could look at Exhibit 1312, the errata sheet,
4 I counted 22 changes that are identical in adding the
5 words general tariff to various points in her
6 testimony. We -- her testimony was unqualified
7 before that. She testified that every tariff filing
8 before this Commission since 1983 -- I think she's
9 expanded that in her rebuttal -- were based on the
10 FERC methodology. She now is saying it's only
11 general tariff increases since 1983.

12 Now, I asked her in Exhibit 1305,
13 transcript page four, Do you have any corrections to
14 make in your testimony? And her answer was, The only
15 correction I would make has to do with my most recent
16 position, which is director of regulatory policy for
17 PacifiCorp. So she did not seek to qualify her
18 testimony under oath.

19 Now, the significance of this, of course,
20 is Mr. Collins admitted that there was a rate filing
21 involving the Sea-Tac terminal that was not based on
22 the FERC methodology. So we had shown that the
23 company's testimony that filings were always based on
24 the FERC methodology was false. And then, again, we
25 asked her deposition testimony, which she indicated

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1 was true today. Well, now apparently they're
2 qualifying it to only general tariff applications,
3 but fundamentally --

4 CHAIRWOMAN SHOWALTER: Mr. Trotter, I'm
5 really sorry to interrupt your line here, but I just
6 need to be reminded, because the motions came up some
7 time ago. Is the motion to strike all of Ms.
8 Omohundro's testimony or just a portion? And if so,
9 tell me what portions.

10 MR. TROTTER: Our -- Mr. Brena can --

11 MR. BRENA: Yes to both.

12 CHAIRWOMAN SHOWALTER: Yes to --

13 MR. BRENA: Yes to both. We moved to
14 strike it all and Staff has been more specific.

15 MR. TROTTER: So let me get to the
16 specifics, but I wanted to point that out right off
17 the bat, because it's very surprising to me that the
18 day of hearing we get this kind of treatment.

19 If you look in the direct testimony, 1308,
20 page three, this is where she's asked to summarize
21 her testimony, and on line 15 through 18, she talks
22 about a decision to switch methodologies should be
23 made in the context of regulatory history of the
24 company with regard for the investment backed
25 expectations of the company, and throughout her

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1 direct and rebuttal, she consistently refers to the
2 switch, and on pages seven to nine of her direct, she
3 talks about investment backed expectations.

4 There's two problems with this. First, we
5 asked her -- we asked her in her deposition,
6 transcript 16, about whether she had studied
7 Olympic's decisions on how to make its capital
8 investment. She testified, quote, I am not the
9 expert, nor did I study necessarily how Olympic made
10 decisions on how to make its capital investments in
11 this state. So she has no testimonial knowledge on
12 what were Olympic's investment backed expectations.

13 Secondly, in order to switch a methodology,
14 and this is a theme we've articulated from the
15 outset, you have to prove that the Commission adopted
16 a methodology to begin with, and all -- the only
17 documentation they've ever provided are Staff
18 memoranda and other -- the documents not signed by
19 you and not issued by you or your predecessors,
20 obviously. No orders of the Commission finding what
21 an appropriate rate methodology is.

22 When rates are allowed to go into effect by
23 operation of law, that does not mean that there's an
24 affirmative determination that the rates are fair,
25 just and reasonable or that anything underlying that

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1 filing is approved, but they are simply allowed to go
2 into effect by operation of law.

3 So this witness has not provided a factual
4 basis for the, quote, switch, unquote, and she has no
5 knowledge of the actual investment backed
6 expectations of Olympic.

7 The other major area that we will focus on
8 at this point is also in her direct testimony at
9 three. She speaks to oil pipelines having no duty to
10 expand capacity. She repeats that theme in her
11 rebuttal testimony at seven and -- that -- any
12 testimony by this witness on duty to expand capacity
13 is a conclusion of law, and that's a matter of
14 statutory interpretation.

15 RCW 81.28.010 requires all common carriers
16 to construct, quote, sufficient service facilities,
17 unquote, to transport -- and I'll paraphrase -- all
18 property offered to it, unquote, but also empowers
19 the Commission to order a common carrier to make
20 available adequate and sufficient facilities.

21 We believe, as a matter of law, common
22 carriers have a duty, that there may be regulatory
23 requirements and the Commission may have to allow
24 certain terms and conditions, but I think the duty is
25 there as a matter of law.

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1 So there's two problems with the testimony.
2 First, she admitted she's not a lawyer and she
3 admitted in transcript six that she was not intending
4 to provide any legal opinions in her testimony.
5 Secondly, her legal conclusion is wrong and really
6 does not help the Commission in its -- in making its
7 decision.

8 In our prior pleading, we pointed out that
9 this witness testified that oil pipelines are
10 different because they have to compete for capital
11 sources with alternatives worldwide, and we pointed
12 out in the deposition that other companies do exactly
13 the same thing. And she has filed rebuttal
14 amplifying her point.

15 I guess we won't move to strike that.
16 We'll just examine her on that if she's permitted to
17 testify. But in these key areas, where she's
18 testifying essentially to issues of law and citing
19 Staff memoranda to dictate what the Commission did in
20 the absence of any orders dealing with it is simply
21 inappropriate.

22 So her testimony on duty to expand should
23 be stricken. Her duty -- her testimony on investment
24 backed expectations should be stricken for the
25 additional reason that there is no such thing as a

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1 reasonable investment backed expectation in the
2 methodology. That's the Duquesne U.S. Supreme Court
3 case.

4 And then, finally, it doesn't matter what
5 Staff memoranda said or did not say; it matters what
6 the Commission did. And the only facts that this
7 company has been able to produce on what the
8 Commission did is that it allowed rates to go into
9 effect by operation of law. And legal consequences
10 flow from that and they aren't the legal consequences
11 that -- to which this witness testifies. I'd be
12 happy to respond to any questions you have.

13 CHAIRWOMAN SHOWALTER: Well, I'm trying to
14 tease out your grounds, and I may be getting some of
15 Mr. Brena's arguments mixed up with yours. But one
16 type of ground is that this witness is not qualified
17 to speak about the subject matter, but a different
18 ground could be that essentially her testimony is
19 assuming a fact not in evidence, for lack of a better
20 way to put it.

21 On the latter, what I hear you saying is
22 that because there hasn't been established that FERC
23 -- excuse me, that this Commission approved a
24 methodology to begin with, then you say there can be
25 no permissible testimony about a switch. Is that

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1 what you are saying?

2 MR. TROTTER: That's a major part of what
3 I'm saying.

4 CHAIRWOMAN SHOWALTER: So on that count
5 only, you're saying no matter who is testifying to
6 this, whatever the qualifications, until it's
7 established that there was or is a methodology, it's
8 impermissible or should be impermissible to testify
9 about switching? Is that the gist of it?

10 MR. TROTTER: That's -- on that issue, yes,
11 but the point is that the facts of what -- all
12 they've provided are Staff documents and things in
13 Staff files and so on and making inferences from
14 that. That's what they're doing. They have no order
15 by the Commission. So in absence of an order of the
16 Commission -- and all they have is -- and she agreed
17 on the record that they -- that the Commission
18 allowed rates to go into effect by operation of law.

19 Now, she testifies that you, quote,
20 necessarily determined, unquote, that rates were
21 fair, just and reasonable and sufficient. That's in
22 her testimony on -- one second. Her direct testimony
23 on page eight, line three to five.

24 CHAIRWOMAN SHOWALTER: And I guess what I'm
25 trying to understand is whether the argument you just

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1 made is a grounds to strike testimony and not hear it
2 or it's a grounds to cross-examine, impeach,
3 otherwise contradict what the witness says.

4 MR. TROTTER: Yes.

5 CHAIRWOMAN SHOWALTER: And why is it
6 grounds to strike testimony?

7 MR. TROTTER: When it's a conclusion of
8 law, it needs to be stricken, and certainly the
9 Commission necessarily determined that such rates
10 were fair, just, reasonable and sufficient is a
11 conclusion of law. So there are no facts, they
12 haven't provided you any order, there's just simply
13 no factual basis for us to examine on.

14 CHAIRWOMAN SHOWALTER: All right. And on
15 the conclusion of law issue, is the reason that
16 you're saying it should be stricken simply because it
17 is a conclusion of law or because you say Ms.
18 Omohundro is not a lawyer?

19 MR. TROTTER: I'm saying both. She's not a
20 lawyer, she can't testify to conclusions of law, it
21 is a conclusion of law, and they haven't provided you
22 any orders to substantiate it. And Staff memos and
23 other documents of what people may have thought are
24 not relevant.

25 CHAIRWOMAN SHOWALTER: All right. But on

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1 the issue of her not being a lawyer, we regularly
2 allow testimony in the hearing room about regulatory
3 principles, and we don't require that the statements
4 come from lawyers, even if what they are stating
5 would be a conclusion of law, because we say,
6 generally, these are people who are familiar with
7 regulation, they're a regulatory expert, not a legal
8 expert, and we put their testimony in that context.

9 And I'm wondering why that shouldn't apply
10 here. Or is it because, in addition, there's sort of
11 nothing to hang onto legally, meaning no order or no
12 grounds to say in the first place that there is a
13 regulatory policy?

14 MR. TROTTER: Right. Here, I think I've
15 pointed out testimony that is very specific. It's
16 not a general policy. And if she wants to talk about
17 what's in the public interest, I suppose she can do
18 that. But here she's saying, The Commission
19 necessarily determined --determined that such rates
20 were fair, just, reasonable and sufficient. That's a
21 very specific conclusion of law. And then her
22 testimony that oil pipeline companies have no duty to
23 expand service, that's a very specific conclusion of
24 law, not a general, as a policy matter, you should
25 condition the expansion of pipeline on certain

1 factors or whatever.

2 So I think it's categorically different
3 than a general policy witness who might talk about
4 what they think your policy ought to be. She's
5 talking about what a statute means.

6 And we pointed out that the statutes do
7 talk about the Commission ordering adequate
8 facilities to be provided and a duty to serve persons
9 who tender property to you. She responds and said,
10 No, that's not -- you haven't given me anything
11 convincing enough to change my mind. Well, you know,
12 that's just problematic. It's purely -- whether they
13 have the duty or not is a result of an interpretation
14 of a statute, and that's not a testable issue for
15 testimony.

16 JUDGE WALLIS: Have you parsed out the
17 specific pages and lines of testimony to which you
18 object?

19 MR. TROTTER: Yes. It would be in the
20 direct, page three, lines 12 to 18, where she talks
21 about duty to expand and the investment backed
22 expectations. Then line 19 on, where she talks about
23 the switch. Page four, lines 14 to 16, where she
24 talks about what the Commission did in absence of a
25 Commission order. Page five, lines 18, through page

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1 six -- excuse me, seven, line three, where she talks
2 about the duty, again. And then page seven to page
3 -- page seven, line 18, through page nine, line --
4 well, to the end, where she talks about investment
5 backed expectations, and then also duty to expand.

6 And then it's very hard in the rebuttal to
7 go through it, because it's -- the testimony about
8 switching methodologies is pervasive. But in terms
9 of the testimony on duty, that's on page seven of the
10 rebuttal and over onto page eight. And page eight,
11 line 13, to page nine, line eight. Page nine has
12 another problem, line 16 through 21. She adopts the
13 testimony of -- or at least refers to and accepts the
14 testimony of Mr. Schink on cost of capital, and she
15 admitted in her deposition she wasn't a cost of
16 capital expert.

17 So those would be the main points. But,
18 again, on page ten of her rebuttal over to page 12,
19 line 11, she again cites Staff memos for what the
20 Commission did. And that includes -- that's -- that
21 exists in her Exhibits 1302 -- I think it's all of
22 her exhibits, other than her resume, are not direct
23 documents of the Commissioners; they are Staff
24 memoranda and other documents that seek to
25 characterize it. And that's simply not appropriate.

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1 If they had an order, that would be one thing, but
2 they don't.

3 COMMISSIONER HEMSTAD: Mr. Trotter, is it
4 your position that Staff memoranda on -- taking the
5 Staff's position that no methodology has been adopted
6 by the Commission, that Staff memoranda on tariff
7 filings that are allowed to go into effect and the
8 underlying reasoning would not be relevant to this
9 Commission as it decides the issue of methodology?

10 MR. TROTTER: They are not relevant for the
11 purpose that Olympic is using them. They are saying
12 that you adopted a methodology, you determined rates
13 were fair, just, reasonable and sufficient, and now
14 you can't switch, for all the reasons that she said.

15 COMMISSIONER HEMSTAD: But what about on
16 the merits, as to what evidence we would look at as
17 to what methodology we should adopt?

18 MR. TROTTER: It may be relevant for that.
19 It's not offered for that, but the -- our core point
20 is that when you allow a tariff to go into effect by
21 operation of law, that does not include a
22 determination that the underlying methodology is
23 appropriate or not appropriate.

24 COMMISSIONER HEMSTAD: I think we
25 understand that point.

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1 MR. TROTTER: And so on. And most of the
2 testimony flows from that basic divergence of legal
3 opinion.

4 MR. BRENA: Commissioner Hemstad, if I may
5 respond briefly to your last question?

6 MR. MARSHALL: Well, this isn't Mr. Brena's
7 motion at the moment, so I would like an opportunity
8 to respond to Mr. Trotter before Mr. Brena does his
9 motion.

10 JUDGE WALLIS: Why don't we take Mr. Brena
11 in turn and see if there are any further Commissioner
12 questions.

13 CHAIRWOMAN SHOWALTER: Yes, I do. I have
14 -- let's assume that there has been no order
15 approving or affirming FERC methodology out of this
16 Commission and that, therefore, there is no approved
17 methodology coming out of this Commission. Assume
18 further that Ms. Omohundro is not an expert in FERC
19 methodology and she's not a lawyer, but let's assume
20 she is or can present herself to be a regulatory
21 practice expert, and that she is qualified to testify
22 about what we should or shouldn't do based on her
23 view of not the law and not our prior orders, but her
24 view of what we ought to do in this situation.

25 If you assume all that is true, why should

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1 we grant your motion to strike this testimony?

2 MR. TROTTER: Because that's not her
3 testimony. Her testimony is based on the legal
4 conclusion that when you -- that you -- I don't want
5 to misquote it here. That you necessarily determine
6 that rates were fair, just, reasonable and
7 sufficient. She's talking about a switch of
8 methodologies, which assume that you adopted one to
9 begin with, she says you created by your actions
10 investment backed expectations on behalf of Olympic,
11 and on and on and on.

12 If she had said, you know, we believe that
13 we filed our tariffs on this methodology and they
14 were allowed to go into effect by operation of law,
15 and you should continue to allow them to go into
16 effect by operation of law and here's why, that is
17 one thing, but she goes way beyond that to put much
18 more legal spin on those facts than the law would
19 permit.

20 JUDGE WALLIS: Mr. Brena.

21 MR. BRENA: It was my understanding that we
22 would argue our motions were covering the same
23 material, that I would go ahead and argue my motion,
24 and then Mr. Marshall would be able to respond to
25 both.

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1 JUDGE WALLIS: Yes.

2 MR. BRENA: Okay. Well, first,
3 Commissioner Hemstad, the 1983 memo is in the record.
4 And it will be presented as a part of the record and
5 the Commission will have access to what Staff had to
6 say in 1983. This witness picking up the memo and
7 reading it and telling you what her opinion of it is
8 adds nothing to the record at all. So it isn't -- so
9 the issue isn't whether or not the Commission should
10 consider what its Staff may have said at an earlier
11 point in determining the merits of the methodology
12 question; the question is does this witness have
13 anything to add to that memo.

14 We can all sit and read that memo, and some
15 of us have the legal background and training to
16 interpret how to apply it. But she's either a legal
17 witness or a policy witness or a fact witness, and
18 she isn't any in this case. So she doesn't -- she
19 doesn't present herself as a legal witness. She
20 doesn't have facts to add. She has no facts within
21 her personal knowledge or experience, other than her
22 review of that 1983 experience and her purported
23 review of certain cases.

24 So she's not a fact witness, she's not a
25 legal witness, so that leaves open the possibility

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1 that the Chairwoman was exploring about whether or
2 not she's presenting herself as a regulatory expert
3 in some capacity.

4 You can't be a regulatory expert unless you
5 understand the policies underlying the methodology
6 you're advocating. I mean, and she's very, very
7 clear in her deposition that she doesn't have any
8 idea whatsoever what the underlying policies are
9 underlying the FERC methodology, so she cannot be a
10 regulatory expert.

11 But I would rather prefer to argue this
12 with the specifics of her deposition first, and then
13 come back to the conceptual overview of how those
14 should be viewed, and what I'd like -- what I'd
15 propose to do is just to walk through her deposition
16 with the Commission so you can see how extreme her
17 testimony is compared with her lack of legal, factual
18 or regulatory expert experience for the opinions that
19 she's advancing.

20 And you will ultimately see in her
21 deposition that she acknowledged that her own opinion
22 wasn't even the issue; that the ultimate issue was
23 whether or not a methodology produced a just and
24 reasonable rate and not whether it had been used in
25 the past at all, which undercuts all of her testimony

1 in this hearing.

2 So I'd like to start on page 89 of the
3 deposition, and with your indulgence, just take a
4 little while and walk through who this witness is and
5 what she knows and whether it's helpful to you.

6 MR. MARSHALL: At the risk of -- during
7 this procedure where we go through the deposition,
8 there were also passages in the deposition that
9 clarify certain of the answers that she's given, so
10 I'm a little concerned that we're just going to be
11 taking excerpts that are favorable to one view and at
12 that time not have the complete picture.

13 JUDGE WALLIS: Mr. Marshall, you'll have
14 the opportunity to respond.

15 MR. MARSHALL: Okay.

16 MR. BRENA: Well, and a good advocate
17 before a Commission doesn't present one side of the
18 story if the other side's going to hurt him in just
19 about one minute. That's not a very good way to
20 approach trying to persuade people of what you're
21 trying to say, in my experience.

22 So I'd like to start on page 89, line 11,
23 with the question, Have you ever read 154-B? I mean,
24 how -- I have skimmed it, she responds. The next
25 question, Have you -- do you know how many 154 series

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1 of orders there are? And there are three. No. Have
2 you ever read 154-C? And she responds no. Have you
3 ever read Williams 1? And she says, I've read
4 generally some information about Williams. I don't
5 know if it was to Williams 1.

6 I'd like to go to page 90 of the
7 deposition, line 11 -- line eight. Do you know
8 whether or not that case that you reviewed was
9 Williams 1 or Williams 2? I don't know. Do you know
10 whether -- do you know that there are two Williams?
11 Answer, I don't know, no. Have you read Williams 2?
12 And she's unable to respond to that.

13 MR. MARSHALL: Well, actually, she does
14 respond to that.

15 JUDGE WALLIS: Mr. Marshall, please refrain
16 from giving your observations until it's your turn.

17 MR. BRENA: On the bottom of page 90, Mr.
18 Marshall attempts to save time in the deposition, and
19 the last line on page 90 and going over on page 91,
20 he states, She has not tried to make an independent
21 analysis of FERC methodology in any kind of way,
22 shape or form to offer legal opinions or other
23 opinions about FERC methodology.

24 This is the counsel defending her,
25 acknowledging that she has no knowledge whatsoever

3901

1 with regard to FERC methodology. And this is a
2 witness that they've advanced that it's in the public
3 interest for you to adopt that methodology.

4 I go on. I'd like to go to page 91 now.
5 I'm -- which I guess I flowed over into. Line 15, on
6 page 91. Prior to this case, have you ever reviewed
7 any FERC rate filing? And there is a series of
8 objections. Mr. Marshall states, Objection, this
9 witness has not reviewed the rate filing at the FERC
10 in this case, either. He has acknowledged that the
11 witness that he's advancing has never even read the
12 FERC filing in this case. I'd like to go to page 92,
13 line seven.

14 MR. BEAVER: Could I interrupt for a
15 minute? I just -- could I just tell Ms. Omohundro
16 where her deposition transcript is? She asked and I
17 don't want to, without permission, tell her where it
18 is.

19 JUDGE WALLIS: Yes, you may.

20 MR. BEAVER: Thank you.

21 MR. BRENA: 1305. Okay. I'd like to go to
22 page 92 of the deposition, line seven. Have you ever
23 reviewed a FERC rate filing before in your career
24 before this case? Not more than cursorily. Okay. I
25 ask, Have you reviewed the FERC filing in this case?

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1 No, I haven't. The cursory review of the FERC filing
2 that you referred to concerned electrical wholesale
3 matters? Yes. Next question, What methodology does
4 FERC use to regulate electrical wholesale matters?
5 Answer, I don't know.

6 Go down to the bottom of the page on line
7 25. Do you know the details of any methodology that
8 FERC applies under any situations? Answer, I am not
9 an expert on FERC methodology. I think I said that
10 at the add set -- onset. Is the answer to my
11 question that you knew? The answer is, No.

12 This is a regulatory witness that they're
13 advancing or a policy witness that they're advancing
14 who has acknowledged that she doesn't know the
15 details of any FERC methodology applied to any
16 situations.

17 I'd like to go to page 97 of the
18 deposition, line 11. My question, Okay. Do you know
19 why or the policy behind allowing a starting rate
20 base under federal regulation? No.

21 This is a witness who has acknowledged in
22 her deposition that she doesn't even know what the
23 policy concerns are behind the starting rate base.

24 Next question, Do you know why a TOC was
25 adopted under federal regulation? Answer, No. I'd

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1 like to go to page 101 of the deposition, please,
2 line 22. Do you know what types of entities are
3 regulated under 154-B? No, I don't. Are railroads
4 regulated under 154-B? Mr. Marshall objects. I
5 don't know what companies are or are not regulated
6 under 154-B, so no, I don't know. Do you know if
7 tractor-trailer rigs and interstate commerce are
8 regulated under 154-B? I think I have answered that.
9 The answer is no. The answer is no.

10 How do you know that Olympic's filing was
11 based on 154-B? I have not made the allegation that
12 Olympic's filing was based on 154-B anywhere in my
13 testimony.

14 At the bottom of the page, on page 102,
15 line 23, Do you know whether or not Olympic has ever
16 filed a proper federal filing under any federal
17 regulation? On the top of page 103, I don't know
18 that.

19 Page 104 of the deposition, line seven,
20 Okay. Has Olympic filed its case, filed its rates
21 before the Washington Commission on a consistent
22 basis? I don't know.

23 And bear in mind that the core of her
24 analysis is you've done it in the past, you should do
25 it in the future. She doesn't know what you've done

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1 in the past, and she's acknowledged that.

2 Page 110 of the deposition, line 18.

3 Speaking specifically to her about the Staff memo in
4 1983 by Mr. Colbo, Is that Staff memo -- is that
5 Staff memo Commission action, in your view? No.

6 Now, I'd like to relate her answer back to
7 Mr. Trotter's argument. She is acknowledging that
8 the Staff memo is not Commission action, but her
9 whole testimony is based on the premise that the
10 Commission has adopted the methodology in the past.
11 So her deposition is factually directly in opposition
12 to her testimony that she's presenting to the
13 Commission.

14 I'd like to go to page 117 of the
15 deposition. And at this point, I'm just trying to
16 determine in the deposition whether anything that she
17 says or anything that this Commission may have done
18 or may not have done is relevant to this proceeding.
19 And I ask her, Well, if this Commission determines
20 that the prior methodology results in unjust and
21 unreasonable rate at hearing, then should they give
22 any consideration whatsoever in your mind to the fact
23 that it's been used in the past? And she answers, on
24 line 21, If the Commission determines that a rate is
25 unjust and unreasonable, I don't think it should

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1 approve it.

2 My next question is, So the real issue
3 before the Commission is not continuing a methodology
4 or not -- which is the core of her testimony -- the
5 real issue before the Commission is setting a
6 methodology that results in a just and reasonable
7 rate; is that fair? To which she answers, That's
8 fair.

9 She has admitted in her deposition that her
10 testimony is irrelevant to what we're here to do,
11 which is set a just and reasonable rate. It doesn't
12 matter what's happened in the past; it matters what
13 is a just and reasonable rate now.

14 I go on on page 118, line 18, I mean, the
15 real issue here, isn't it, is what methodology should
16 produce a just and reasonable rate? You agreed with
17 that; correct? Which she answered, Yes.

18 The next question, If this Commission
19 determines that the methodology that Olympic Pipe
20 Line has used in the past does not produce a just and
21 reasonable rate, then it should not order that
22 methodology be used to set future rates regardless of
23 whether or not it's been used in the past; isn't that
24 true? Yes, is her answer.

25 Then I turn to the underlying regulatory

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1 policies behind, for example, starting rate base. On
2 page 120, line five, I asked, Do you believe that an
3 investor in a regulated rate setting should recover
4 an investment which they did not invest? No.

5 She has given specific testimony that you
6 shouldn't recover investment you don't invest. That
7 is what the starting rate base does.

8 Page 122 of the deposition, line 13 --
9 well, let's start with line six. Do you have any
10 reason to believe that, prior to 1996, that Olympic
11 deferred that portion of their equity return? Going
12 to the deferred return issue. Bear in mind, there
13 are really only two issues. People are talking a
14 long, long time about FERC versus DOC. There's
15 really only two things for you to decide with regard
16 to that. One is whether or not you're going to
17 allow a retroactive calculation of prior deferred
18 earnings when they haven't demonstrated that they had
19 any deferred earnings in prior years, whether you're
20 going to allow that to be collected in future rates.
21 The second thing is whether or not you're going to
22 allow them to recover a return on investment that
23 they didn't make, which is what the starting rate
24 base does. Those are the only two differences
25 between the methodologies that -- period.

3907

1 So we're getting -- this is going to the
2 deferred return portion. Do you have any reason to
3 believe that they deferred any return? I don't know.
4 And she goes on to support she doesn't know if they
5 did or did not.

6 Okay. You read from the Staff memo in
7 1983. Do you understand that Olympic's rates in 1983
8 were set under 154, and not 154-B? I don't know
9 whether they were set under 154 or 154-B, she says.

10 Well, all I can tell you is is that her
11 deposition is perhaps some of the best testimony we
12 have that you should not adopt FERC's methodology in
13 this case. But to go to whether it should be struck,
14 in what way is this testimony helpful or relevant to
15 this proceeding? She is not a legal expert, but she
16 has given a great deal of legal advice. She is not a
17 fact witness, because she has no facts to offer. If
18 you read this deposition, she read the 1983 Staff
19 memo and then, without knowing whether or not they
20 had filed consistent or not, without knowing anything
21 about the methodology, without knowing whether or not
22 -- testifying that it hadn't really been adopted,
23 then she goes on to postulate that it's in the public
24 interest for you to continue something that was never
25 adopted, that hasn't been consistently applied, and

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1 gives testimony on the reasons that contradict her
2 very testimony.

3 She is not a regulatory expert that offers
4 -- that understands -- and she has acknowledged that
5 she's not a regulatory expert with regard to the
6 underlying principles underlying 154-B, which is what
7 their rate case is based on. She's unfamiliar with
8 the principles, she's given testimony against those
9 principles, not in favor of them. She's never even
10 read the orders.

11 So I don't know -- I mean, in what way can
12 this witness possibly be a regulatory expert whose
13 policy evaluation of a methodology that she knows
14 absolutely nothing about, in what way should that be
15 allowed into this proceeding? I think it should not.

16 And in considering this, I would just say
17 work through that deposition and read what it is that
18 she said, and then compare it with her testimony.
19 And in her testimony, she offers a legal analysis of
20 the public interest under the Hope decision. She's
21 not an attorney. And how can you be a public
22 interest regulatory expert when you don't know
23 anything about the policies that you're advocating?
24 And she has acknowledged that. That's not my
25 opinion. That was her opinion. That was her

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1 statement in her deposition.

2 So she hasn't qualified herself as a
3 regulatory expert with regard to these matters, she
4 is not a legal expert and she is not a fact expert.
5 If the attorneys want another opportunity to brief,
6 which is what this is, they'll have an opportunity to
7 brief. This adds nothing to the factual or policy
8 issues that are before this Commission. These are
9 issues that should be taken up by counsel on
10 briefing. And they just tried to get a free shot at
11 briefing it early, and that shouldn't be permitted.
12 Thank you.

13 JUDGE WALLIS: Questions? Mr. Finklea.

14 MR. FINKLEA: Well, I won't go back over
15 any of the arguments of either Staff or Tesoro, but
16 I'll just note that Tosco does support Staff and
17 Tesoro's motions.

18 JUDGE WALLIS: Very well. Mr. Marshall.

19 MR. MARSHALL: The issue of methodology, of
20 course, is a very relevant part of what we're trying
21 to do here. In fact, it came up in the June 27th
22 open meeting session, when it was indicated it ought
23 to be decided early on. But for this witness, we
24 would not have any exhibits regarding what the past
25 Staff memoranda analysis and policy determinations of

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1 the Staff have been, what they looked at, what the
2 issues are about one methodology versus another, but
3 more importantly, what the result is if you apply one
4 methodology versus another.

5 This witness is the only witness that
6 sponsors the exhibits that have the Staff memoranda
7 and the background material. It's not in the record
8 otherwise. I mean, it's -- it was said by Mr. Brena
9 that somehow we would have Staff's 1983 memorandum in
10 the record. But for Ms. Omohundro's exhibits, it
11 wouldn't be there. It's not an exhibit otherwise.

12 CHAIRWOMAN SHOWALTER: Mr. Marshall, the
13 issue at this point is Ms. Omohundro's qualifications
14 to give her testimony. And in that regard, do you
15 agree first Ms. Omohundro's not a lawyer?

16 MR. MARSHALL: Yes, she's not a lawyer.

17 CHAIRWOMAN SHOWALTER: All right. Do you
18 also agree that she is not a fact witness? Do you
19 agree that she has no facts in her own direct
20 experience?

21 MR. MARSHALL: She has done a review, I
22 guess an audit of past practices, and to that extent,
23 she brings forward facts about what the past practice
24 has been, as she understands it, based on what the
25 filings have been and what the basis for the filings.

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1 And we agree, there's no question that this
2 Commission has not formally adopted one methodology
3 or another for oil pipelines. We said that in our
4 petition that we filed on October 31st, we've said
5 that consistently throughout. That's a red herring.

6 We're trying to figure out what the past
7 practice has been, because there's been a series of
8 tariffs that have been adopted, accepted, whatever
9 the terminology may be. But we're not claiming that
10 there is a formal adoption of the methodology. What
11 we're trying to do, since this pipeline's been in
12 operation and been regulated by this Commission since
13 1965, is determine what the past practice has been.

14 And we further concede, and Ms. Omohundro
15 concedes that this Commission can change
16 methodologies at any time. It can move to whatever
17 methodology it wishes. And we're not trying to say
18 that there's a vested right somehow in one
19 methodology, but we're saying something very
20 important, which is --

21 CHAIRWOMAN SHOWALTER: Mr. Marshall, it's
22 not you who are -- right now we have to decide
23 whether Ms. Omohundro is qualified to give the
24 testimony she gives, and if you --

25 MR. MARSHALL: Right.

3912

1 CHAIRWOMAN SHOWALTER: At the risk of
2 oversimplification, if the company's position or her
3 position is that because you, the Commission, have
4 had this practice in the past, practice defined by
5 the Staff memo, you should continue it in the future.
6 Doesn't it -- isn't there still the question of
7 whether Ms. Omohundro is qualified to give testimony
8 about what underlies that practice? That is, what is
9 this practice called FERC methodology that you
10 allege.

11 MR. MARSHALL: Correct.

12 CHAIRWOMAN SHOWALTER: If all -- if the
13 only level of detail that she's actually qualified to
14 testify about is continue the Staff memo, that isn't
15 an expert.

16 MR. MARSHALL: That's right. Your question
17 to me was what kind of fact background does she
18 bring, and I was responding to the fact part. The
19 fact part was she tried to gather as much information
20 about what the past practice is, and so that's step
21 one.

22 And what she's done, and no other witness
23 does this in this case, is she brings to you, the
24 Commissioners, in one coherent package, a review of
25 what the past practice is, the best that we can

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1 understand it and the best she's been able to present
2 it to you and her understanding.

3 The next step is to try to determine --
4 again, this is a fact part -- what has the Staff
5 itself determined the impact to be if you use that
6 methodology versus another methodology. And so
7 that's --

8 COMMISSIONER HEMSTAD: If I can pursue the
9 point. Mr. Brena said that the Staff memo is already
10 in front of us. It may be in front of us some other
11 way. You're suggesting that it is not. If it is
12 not, I assume you could -- and were we to grant Mr.
13 Brena's motion -- you could ask us to take
14 administrative notice of the earlier Staff memoranda,
15 could you not?

16 MR. MARSHALL: I suppose, but that -- I
17 guess we could do it a number of different ways, but
18 what I'm suggesting is that there's a several step
19 process in Ms. Omohundro's analysis. The first two
20 steps were, one, determine what the past practice
21 was. And there wasn't just one memorandum in 1983;
22 there were a series of memoranda. The next most
23 important one was the 1996 memorandum and the 1998
24 memorandum.

25 COMMISSIONER HEMSTAD: That was my point

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1 about asking to take administrative notice of those
2 historical memos.

3 MR. MARSHALL: I suppose, although we just
4 recently became aware of a number of work papers from
5 Staff in the 1983 memorandum. They've been put into
6 Ms. Omohundro's analysis, they've been made part of
7 her rebuttal testimony. And then, after the rebuttal
8 testimony is filed, we have yet been presented
9 another fax that, in 1996, that Staff received from a
10 witness that also helped determine what the
11 methodology was. At that time --

12 CHAIRWOMAN SHOWALTER: Okay. But, Mr.
13 Marshall, let's assume all of the Staff memoranda and
14 work papers are admitted into the record. Those are
15 documents from the past. They may or may not be
16 relevant, but just assume for the purposes of this
17 argument that they are in front of us.

18 The question is what can Ms. Omohundro --
19 what are her qualifications, what can she add, what
20 kind of analysis can she add to those documents? Why
21 is she qualified to say anything about those
22 documents?

23 MR. MARSHALL: Right, the first foundation,
24 of course, was to get the past practice and then to
25 determine whether that past practice made a

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1 difference. I mean, if there's no difference in
2 outcome, you don't need to proceed on to analysis.

3 CHAIRWOMAN SHOWALTER: And how would she
4 know that difference? Doesn't the depositions
5 demonstrate she can't really analyze the differences,
6 because she hasn't got the expertise in FERC
7 methodology?

8 MR. MARSHALL: Actually, that's where Mr.
9 Brena cited selective quotations. Ms. Omohundro said
10 two things about knowing how the FERC methodology
11 worked. And by the way, it's changed over time.
12 First, she looked at the Staff memoranda to determine
13 what they said on how it worked. Second, she
14 consulted with Brett Collins, who, at pages three to
15 12 of his testimony, describes exactly how 154-B
16 works with regard to starting rate base, trended
17 original cost. And third, Ms. Omohundro actually
18 very clearly states her understanding of that. Let
19 me --

20 CHAIRWOMAN SHOWALTER: But what are her
21 qualifications? In other words, any number of people
22 could -- doctors, lawyers, accountants, engineers
23 could read the memos and could talk to Mr. Collins.
24 The question is why is she qualified to give us
25 testimony about it? And I wish you'd focus on that

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1 question. What are her qualifications? Not what she
2 said in her testimony or her deposition, unless it's
3 about her qualifications to analyze those things.

4 MR. MARSHALL: Certainly. I think her
5 understanding of what the end result is of the
6 methodology, how it works and what result it produces
7 is important. And when you get, then, to the end
8 result, the two questions that she gives opinions on,
9 which are helpful I believe to this Commission, very
10 helpful, on the ultimate point of methodology, is
11 what should you do knowing that it produces a
12 different outcome.

13 First, this Commission, in her view, should
14 ask is there a sufficient difference between oil
15 pipelines and other regulated utilities? Because the
16 proposition here is that this Commission should not
17 adopt an oil pipeline methodology similar to FERC's
18 here in this situation, but it should adopt one
19 similar to other utilities that this witness is very
20 familiar with.

21 So one of the questions that she has
22 addressed is are there sufficient differences based
23 on her knowledge between oil pipelines, the history
24 of oil pipelines, the nature of the business, and
25 other utilities that are regulated or with a

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1 depreciated original cost methodology.

2 And then the final question to which she
3 brings a great deal of experience to bear is what do
4 you do in the application of this end result, knowing
5 that it produces -- and Staff memoranda show this and
6 her own review shows this, that if you apply the
7 federal methodology, you get a much larger revenue
8 requirement, a much larger rate than if you applied
9 the depreciated original cost in other parts of
10 utility.

11 So what do you do with that end result when
12 you look at the public interest factor in the
13 circumstances of this case. And at the very outset
14 in her direct testimony and her rebuttal testimony,
15 her opinion, based on the end result of the public
16 interest standard and her knowledge about this
17 company's dire financial condition, which, by the
18 way, was confirmed by this Commission's order in the
19 interim case, is that this would be the wrong time to
20 move to depart from a past practice.

21 Now, whether we call it switching
22 methodologies, that may have been a term that I think
23 Mr. Trotter took exception with, but what Ms.
24 Omohundro quite clearly says is that this would be
25 the wrong time to depart from what has been a past

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1 practice because of all the circumstances, the public
2 interest factors are significant here.

3 No other witness has addressed the public
4 interest factors in terms of should you move away
5 from a past practice. No other witness has
6 identified the significant difference in the end
7 result from applying one methodology to another.
8 This is entirely within the realm of expertise of
9 this witness --

10 CHAIRWOMAN SHOWALTER: Why?

11 MR. MARSHALL: -- as a regulatory expert.

12 CHAIRWOMAN SHOWALTER: Why? That's really
13 the question. It's not that there's no other
14 witness. You may not have a witness if she's not
15 qualified. But why -- what is the reason that Ms.
16 Omohundro's qualified to talk about the difference
17 between the FERC methodology result and the -- some
18 other methodology result?

19 MR. MARSHALL: I guess what you have to
20 look at is if you're trying to compare two things,
21 and you have experts that know the federal side, and
22 you need an expert on the state side, are you going
23 to find that expertise in one individual, true
24 expertise.

25 Now, Ms. Omohundro really understands how

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1 this Commission applies general utility ratemaking.
2 There's no question about that, that she's an expert
3 and has that background. So the question is, well,
4 how do you bring in a witness to compare an oil
5 pipeline methodology with what this Commission is
6 more familiar with. And so the comparison is the
7 issue.

8 And now, how does she come to that
9 knowledge about the FERC side, because we've
10 established that she is very familiar with the UTC
11 side. How she comes to that knowledge is, again,
12 like every other expert, she can rely on experts to
13 supply information necessary to make a comparison,
14 and she's done that by reviewing Staff memoranda, by
15 reviewing what Mr. Collins has said, and also now by
16 what Leon Smith has said. So that supplies the basis
17 for the ability to make a comparison, but she's the
18 only witness that makes a comparison.

19 I have to say that nobody who has
20 background in the UTC methodology is taking a look at
21 the past practice and saying what's the end result,
22 how does this fit in with the public interest
23 standard, and how does this fit the facts of this
24 particular company within the end result, within the
25 public interest standard. Now, that --

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1 CHAIRWOMAN SHOWALTER: Assuming Ms.
2 Omohundro is an expert in our regulatory policies as
3 applied to electric utilities, how is that expertise
4 brought to bear in her testimony?

5 MR. MARSHALL: Well, again, I think Mr.
6 Trotter said, for example, on duty to expand, she
7 doesn't know the difference between an oil pipeline
8 duty and a electric utility. Well, she does. I
9 mean, she has that background. There's some
10 significant differences between oil pipelines and
11 regular utilities that have a direct bearing on what
12 methodologies have been applied to oil pipelines in
13 the past.

14 The 1983 memorandum attached by Staff
15 identifies a number of them. Ms. Omohundro has
16 identified several of the differences that say if you
17 are an oil pipeline, there is justification for
18 having that kind of difference.

19 Now, with regard to just a couple of other
20 points that weren't in the memorandum that we
21 submitted, Mr. Trotter talked about the Sea-Tac
22 supplemental tariff. That was a negotiated rate and
23 that's why we just wanted to be clear that we weren't
24 trying to talk about all rates, whether they're
25 negotiated, but general pipeline methodology rates.

3921

1 It's -- we're trying to confine it to the main
2 question that I believe the Commission wants to know
3 about.

4 But this is a very important and relevant
5 question, what methodology ought to be applied. And
6 frankly, we thought that Staff would supply a
7 balanced view of why one versus the other, and --

8 JUDGE WALLIS: Mr. Marshall, again, we seem
9 to be leaving the main purpose of our discussion
10 here. I think the Commission at this time may be
11 ready to consider the arguments that the parties have
12 raised and make a decision.

13 MR. MARSHALL: I would just point out --

14 MR. BRENA: Could I briefly respond?

15 MR. MARSHALL: -- that paragraph 29, at our
16 answer on page 12, addresses some of the -- I didn't
17 -- what I was trying to do in my oral comments here
18 was not to be repetitive of what's in our written
19 response, and I would urge the Commission to read
20 that.

21 I also have -- and I don't want to read
22 these excerpts to reply to Mr. Brena, but I do have
23 copies of excerpts that I think put his excerpts in
24 perspective, and I would like to pass that out,
25 rather than go through that.

3922

1 JUDGE WALLIS: Let's hear briefly from Mr.
2 Brena, and then, if you wish, you may distribute
3 that. Not right now, please.

4 MR. BRENA: I think the Commissioners'
5 questions go to the heart of the matter. First of
6 all, with regard to the prior -- prior practices,
7 Tesoro has put in, under 1311, a comprehensive
8 listing of all the prior filings. It was going to
9 introduce it under this witness. It was objected to
10 by Olympic, and Tesoro has withdrawn it and intends
11 to put it in under witness Brown.

12 So you will have before you the filings
13 that are relevant for you to consider, and Olympic
14 will have every opportunity, if it feels that we
15 haven't given you all the things that we should, to
16 supplement it for completeness. You can take
17 administrative or judicial notice of these things.
18 This witness adds nothing to that. Counsel for
19 Olympic began with that she stated what the past
20 practice was. She doesn't know what the past
21 practice was. When she was asked directly, you read
22 from the Staff memo --

23 JUDGE WALLIS: Mr. Brena, I think you're
24 repeating some of the points you made earlier, and I
25 know the Commission is anxious to take this under

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1 advisement and move on.

2 MR. BRENA: Okay. Let me see if -- to the
3 degree that he suggested that she may compare and
4 contrast oil pipeline regulation with utility
5 regulation, she has no experience with regard to oil
6 pipeline regulation and has demonstrated none. I
7 think -- well, I'll just stop there, then.

8 JUDGE WALLIS: Okay.

9 MR. BRENA: Thank you.

10 MR. FINKLEA: Your Honor, I have one
11 observation from Mr. Marshall's argument. Tosco
12 offered an exhibit during the cross-examination of
13 Mr. Collins that does show what the calculated
14 difference is between using the depreciated original
15 cost and the trended original cost, so as far as what
16 the difference in this case, I think there's record
17 evidence of what the difference is.

18 Also, when Dr. Means was on the stand on
19 Friday, we again showed what the difference between
20 -- at his recommendations, what the difference in
21 rates would be if you used TOC versus DOC, so I think
22 there's plenty of facts on that.

23 JUDGE WALLIS: Thank you, Mr. Finklea.

24 COMMISSIONER HEMSTAD: I have one question
25 to Mr. Trotter. I understand your motion is limited

1 to striking portions of the testimony. Are you also
2 joining in Mr. Brena's motion to strike all of it?

3 MR. TROTTER: Well, I think after being
4 reminded of his part of the deposition -- I was
5 focusing on my part -- he's made some significant
6 points. There's not too much left of this testimony
7 after -- if you grant the motion on my basis. It
8 really isn't too helpful, so we would support it.

9 JUDGE WALLIS: Very well. We'll take an
10 afternoon recess at this time and --

11 CHAIRWOMAN SHOWALTER: Mr. Beaver wanted to
12 give us the excerpts from the deposition.

13 JUDGE WALLIS: Yes, of course. And we'll
14 be off the record.

15 (Recess taken.)

16 JUDGE WALLIS: Let's be back on the record,
17 please. The Commission has deliberated upon the
18 motion and the answer -- motions and the answer, and
19 the oral comments, as well as the written comments.
20 The Commission observes that it is relatively liberal
21 about allowing policy witnesses to discuss legal and
22 policy matters, but we also note that Ms. Omohundro
23 explained candidly, honestly in her deposition that
24 she lacks the specific expertise that relates to her
25 topic, and the Commission concludes that she lacks

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1 the expertise to support her testimony.

2 The information that she supports is
3 largely either in the record or, according to
4 counsel, will be offered to the record. The legal
5 arguments that she makes are, in fact, legal
6 arguments and they may be made, as may the policy
7 arguments, by counsel.

8 So consequently, in light of all of the
9 factors, the Commission does not believe that Olympic
10 is substantially harmed by the lack of Ms.
11 Omohundro's testimony.

12 So with that, I believe that Mr. Cummings
13 is the next witness. Let's be off the record for a
14 moment to allow Ms. Omohundro to leave and Mr.
15 Cummings to come forward. Are there any -- in case
16 there's any question, the motions to strike are
17 granted.

18 MR. MARSHALL: With regard to that, a
19 clarification on the exhibits. I understand that
20 it's not the Commission's desire to keep out any of
21 the factual portions of the exhibits that have been
22 put forward, including the various files from Staff
23 that we had as exhibits; is that correct? Or should
24 we develop a different set of exhibits and introduce
25 them at some point?

1 JUDGE WALLIS: It is my understanding that
2 other witnesses would be able to sponsor those
3 exhibits. Is that true, Mr. Marshall?

4 MR. MARSHALL: I don't know. I mean, this
5 was --

6 JUDGE WALLIS: I think there was some
7 discussion earlier that official notice might be
8 taken of those documents, as well, because -- to the
9 extent that they are records from the Commission.

10 MR. MARSHALL: May I make a suggestion that
11 what we do is put together a set of those that we
12 would like the Commission to take judicial notice of,
13 and then, as I understand it, the Commission is
14 willing to do that?

15 JUDGE WALLIS: Well, what I would suggest
16 is is that you gather the materials, and you're free
17 to request that the Commission take notice, free to
18 offer them as a stipulated exhibit, or just to offer
19 them, and the Commission will review any issues that
20 parties raise at that time and make an appropriate
21 ruling.

22 MR. MARSHALL: The other alternative, and
23 this would be one that we would prefer, would be to
24 have those marked as cross-examination exhibits for
25 Mr. Colbo, who, after all, was the Staff witness from

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1 whom most of these files come. That would probably
2 be appropriate. If we're allowed leave to do that,
3 then we will change those into cross exhibits for Mr.
4 Colbo.

5 MR. TROTTER: Well, Your Honor, the
6 documents will speak for themselves. Mr. Colbo is
7 not held out as a witness in this subject area. I
8 think the better course is to mark their exhibits,
9 we'll take a look at them, and the Commission can
10 take official notice of documents in their own file.

11 But we're very concerned about marking work
12 papers that were never addressed to the
13 Commissioners. But certainly memos that -- public
14 open meeting memos certainly are fair game and we'll
15 work in a cooperative way with the company to see
16 that the appropriate documents are presented.

17 JUDGE WALLIS: My suggestion to you, Mr.
18 Marshall, is that you decide what documents you wish
19 to have the Commission consider and develop a
20 strategy for getting them to the Commission. You're,
21 of course, welcome to inquire of other parties and
22 see if you can get a stipulation and get them to come
23 in. That way, Mr. Brena has also indicated that he
24 will be proposing some documents for admission.

25 We've just received a document entitled

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1 Substitute Exhibit to Rebuttal Testimony. Is this
2 something that the parties are aware of?

3 MR. BRENA: No, I was not, Your Honor.

4 Could I just ask for a representation on the record
5 as to what this concerns?

6 JUDGE WALLIS: Well, let's -- why don't we
7 get the witness sworn and qualified, and then we will
8 proceed. Mr. Cummings, please stand.

9 Whereupon,

10 DANIEL M. CUMMINGS,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13 JUDGE WALLIS: Please be seated.

14

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

16 BY MR. MARSHALL:

17 Q. Mr. Cummings, please state your name.

18 A. My full name is Daniel M. Cummings.

19 Q. And what is your current position?

20 A. My current position is Director of Public
21 Affairs for BP America, which includes the whole West
22 Coast. I report to the West Coast Government and
23 Public Affairs Group.

24 Q. And on whose behalf are you testifying
25 today?

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1 A. I'm here testifying on behalf of Olympic
2 Pipe Line today and BP Pipelines North America.

3 Q. And did you prepare Exhibit 1401-T and the
4 supporting exhibits, 1402 to 1410?

5 A. Yes.

6 Q. Do you have any changes or modification to
7 that testimony?

8 A. Two slight typos. In going through the
9 page 15 of my testimony, when speaking about the --
10 the date of the technical conference was in December
11 2001, not December 2000. And there's a typo on page
12 18, which, when talking about the amount of traffic
13 on -- it's Interstate 5. It's listed as 1-5, so it
14 would be I-5, or Interstate 5. And then the
15 substituted -- what I believe is Exhibit Number 8,
16 which, for clarification purposes for the Commission,
17 that is a printout from the Commission's Web site
18 regarding the Citizens Committee on Pipeline Safety,
19 which was created, including the minutes from
20 previous meetings, as well as agendas discussing a
21 number of the issues that I take up in my testimony.

22 Q. Okay. And do you have a substituted
23 exhibit to your rebuttal testimony?

24 A. That's correct. I believe that's been
25 submitted.

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1 JUDGE WALLIS: Can we be off the record for
2 just a moment?

3 (Discussion off the record.)

4 JUDGE WALLIS: Let's be back on the record
5 following a brief interruption.

6 MR. MARSHALL: We intended to do that in
7 some other testimony, but it didn't work out that
8 way.

9 Q. With those modifications and corrections,
10 Mr. Cummings, do you adopt this testimony as your
11 own?

12 A. Yes, I do.

13 MR. MARSHALL: The witness is available for
14 cross-examination.

15 JUDGE WALLIS: Are you offering the
16 exhibits at this time?

17 MR. MARSHALL: Yes, we offer the exhibits.

18 JUDGE WALLIS: Is there objection to 1401-T
19 through 1410?

20 MR. BRENA: There is, Your Honor.

21 JUDGE WALLIS: Including Substituted 1408.
22 Mr. Brena.

23 MR. BRENA: First, and my objection goes
24 solely to 1408, the substituted exhibit that was just
25 handed out. I -- the exhibit that was attached to

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1 his testimony is, aside from the sheet, is one page.
2 This is what has just been handed to me. I have
3 never seen this before. It's dated June 20th. It is
4 -- I don't know how many pages and I don't know what
5 it says. So I'm opposing the substituted exhibit.
6 This isn't the way you're supposed to do it.

7 If you have something ten days ago to hand
8 out, then I might have been in a different position
9 and might have been in a position to actually
10 cross-examine this witness with regard to this
11 voluminous exhibit that he's tried to substitute. So
12 I'm opposing the substitute of this.

13 JUDGE WALLIS: Other counsel?

14 MR. TROTTER: Staff has no objection.

15 MR. FINKLEA: Tosco joins Tesoro in its
16 concern with the substitute DCM-8. I do understand
17 that these are minutes of pipeline safety committee
18 meetings and -- but this is an awful lot of
19 information to be handed out just as the witness is
20 about to take the witness stand.

21 JUDGE WALLIS: Mr. Marshall.

22 MR. MARSHALL: These are all from the
23 Commission's own files, from the Commission's
24 records.

25 JUDGE WALLIS: How do you respond to the

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1 concern that, on the face of the document, it
2 indicates that it was prepared on June 20th, and
3 you're only first providing it today?

4 MR. MARSHALL: Apparently it was a clerical
5 error, according to Mr. Maurer, that it was intended
6 to be filed in the more complete form and it was not,
7 and it wasn't discovered here until today. But
8 that's the only reason.

9 MR. BRENA: We didn't even get it before
10 lunch. I mean, I'm not, you know, mistakes can
11 happen, but they've had it here all day and we didn't
12 even get to look at it over lunch. So I have no way
13 to cross-examine on this document whatsoever.

14 JUDGE WALLIS: We have the representation
15 that it contains printouts from the Commission's Web
16 site, and that may be entirely true, but I think that
17 Mr. Brena has an awfully good point, that, for
18 whatever reason, it was available to counsel before
19 the witness stepped forward, it's dated June 20th,
20 and it was not provided to allow people to examine
21 and prepare for cross-examination.

22 So we will sustain the objection to
23 Substituted 1408, and receive the other documents in
24 evidence.

25 MR. MARSHALL: The first pages of the

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1 original document refer to the minutes that are
2 attached. I'd just like to point that out, that the
3 actual reference here to this Web site would be that
4 you would click on these different minutes that are
5 on the first page or the second page of the actual
6 Web site page. In other words, the backup clickings,
7 the backup actual documents that are referred to in
8 the first part are the ones that are attached here to
9 this exhibit to make it more complete.

10 JUDGE WALLIS: Thank you, Mr. Marshall. So
11 the witness is available for cross-examination.

12 MR. TROTTER: Thank you.

13

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

15 BY MR. TROTTER:

16 Q. Good afternoon, Mr. Cummings.

17 A. Good afternoon.

18 Q. Turn to page one of your Exhibit 1401-T.

19 And in the first answer, you indicate you are the
20 West Coast Public Affairs Director for BP America,
21 Inc. Do you see that?

22 A. Yes, I do.

23 Q. And it is in that capacity that one of your
24 roles is to manage the public affairs of Olympic Pipe
25 Line; is that right?

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1 A. That's correct.

2 Q. How many companies are included within your
3 scope of duties?

4 A. Within my scope are a number of other
5 business units that are operated here on the West
6 Coast, which include the retail operations in the
7 Pacific Northwest, terminals and distribution,
8 marine, and I also work in conjunction with the BP
9 Cherry Point Refinery. My main client is the Olympic
10 Pipe Line system. And this is a recent change, if I
11 can give just some slight background.

12 I was originally hired by Olympic Pipe
13 Line, I was an employee of the pipeline just prior to
14 the takeover. I came on board at the same time when
15 Mr. Peck and the new shareholders from BP came on
16 board. I was hired by the board to manage the
17 government and public affairs, it was during the
18 transition from operatorship from Equilon to BP, and
19 in that capacity, became a BP employee in August of
20 2000. I subsequently -- becoming a BP employee, was
21 an employee of BP Pipelines North America, assigned
22 specifically to the Olympic Pipe Line.

23 In early 2002, BP underwent a
24 reorganization in its government and public affairs
25 area globally, and I was moved from the Pipeline

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1 Business Unit, where I have been since August of
2 2000, to the Global Corporate Communications Group,
3 which includes the West Coast Public Affairs. So I
4 now report, under that reporting relationship, to --
5 Los Angeles is where our regional office is, but I
6 also have a dotted line responsibility reporting to
7 Bob Batch, the president of the pipeline.

8 Q. Well, let me ask it this way. With respect
9 to the calendar year 2001, was the scope of your
10 duties as you said, the retail operations, marine and
11 BP refinery?

12 A. No, that was only since April of 2002.

13 Q. Okay.

14 A. So my scope of my operations was a hundred
15 percent with the Pipeline Business Unit assigned to
16 Olympic.

17 Q. Okay. Is Olympic the only pipeline that
18 you deal with as a representative -- in a
19 representative capacity?

20 A. No, there's also a gas line up north, which
21 is from the Sumas area to the Cherry Point Refinery,
22 which is owned by BP, as well.

23 Q. So during calendar year 2001, 100 percent
24 of your time was spent on Olympic versus other
25 companies?

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1 A. That's correct.

2 Q. Turn to page three, starting on line ten,
3 costs of community communications, and --

4 JUDGE WALLIS: Exhibit 1401?

5 MR. TROTTER: Yes, I'm sorry, 1401-T.

6 Q. I just want to focus on your references to
7 Staff. Line 13, you say, Staff seeks to disallow
8 certain community communications expenses. Do you
9 see that?

10 A. I do.

11 Q. And just so we're clear, are you referring
12 to Staff's restating adjustment RA-11, where Staff
13 proposes to remove \$19,636 from what it called
14 advertising expenses?

15 A. Subject to check, I'd have to look to see
16 the specific reference to -- if I could get a copy of
17 that. I reference the the RGC-4T, and I'd like to --

18 MR. TROTTER: If Counsel can provide him a
19 copy, or I can.

20 CHAIRWOMAN SHOWALTER: Does it have an
21 exhibit number?

22 MR. TROTTER: Yes, just a moment. 2001-T.

23 JUDGE WALLIS: While Mr. Trotter is
24 collecting that document, I have a suggestion for
25 counsel relating to the testimony of the witness. If

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1 the witness does happen to say he doesn't know and
2 you wish to supplement the answer, you may ask if the
3 witness could refresh his recollection and come back
4 on redirect. And if the answer is yes, then proceed
5 to do that, but if not, then I think we would be
6 inclined to say that the opportunity for giving
7 direct and cross testimony has passed, and that we
8 would not ordinarily entertain correcting testimony.
9 Mr. Trotter.

10 Q. Are you able to answer the question?

11 A. If you wouldn't mind restating the
12 question.

13 Q. Yeah. Are you referring in your testimony
14 on page three, with respect to Staff disallowance of
15 certain expenses related to community communications,
16 you're referring to RA-11, in which Staff removed
17 \$19,636 from what it called advertising expenses?

18 A. Yes.

19 Q. And is it your testimony that that entire
20 amount was for expenses associated with mandatory
21 community communications activities required by
22 federal regulations?

23 A. Yes.

24 Q. Are you aware of any adjustment in the
25 company's case where Olympic is proposing any

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1 adjustment for future costs of complying with federal
2 requirements regarding community communications?

3 A. I'm not aware of any future allocations or
4 adjustments.

5 Q. Turn to page six. Actually, it's the
6 bottom of page five over to the top of page six.
7 You're referring to the issue of lobbying, and you
8 indicate on page six of your Exhibit 1401-T, line
9 four, that Olympic already excluded the small amount
10 of Olympic's costs that were for lobbying. Do you
11 see that?

12 A. That's correct.

13 Q. And so the parties are agreed that it is
14 appropriate to remove lobbying costs from results of
15 operations?

16 A. That's correct.

17 MR. TROTTER: Your Honor, just a moment. I
18 want to refer to the exhibits we had marked for Mr.
19 Cummings.

20 JUDGE WALLIS: Exhibit 1411 for
21 identification.

22 MR. TROTTER: Can we go off the record for
23 a moment?

24 JUDGE WALLIS: Yes, let's be off the
25 record, please.

3939

1 (Discussion off the record.)

2 JUDGE WALLIS: Yes, let's be back on the
3 record.

4 Q. Mr. Cummings, do you recognize Exhibit 1411
5 as the company's response to UTC Staff Data Requests
6 332 and 333?

7 A. I believe that that is -- it's numbered as
8 322-390; is that correct?

9 Q. Yes.

10 A. Yes, I do recognize that.

11 Q. And these are confidential exhibits, so I
12 won't refer to specific numbers in my question, but
13 turning to the first page of the exhibit, the DR 332,
14 and we asked whether Olympic's -- one of Olympic's
15 exhibits, Schedule Two, contained lobbying expenses,
16 and the answer is that there were amounts for that
17 activity in the schedule; is that correct?

18 A. Yes, I do believe that that's -- this is
19 332 or 333?

20 Q. 332. The figure begins with, for the
21 salaries and wages portion --

22 A. Right.

23 Q. -- the figure begins with a six. Do you
24 see that?

25 A. Right, correct. I have it now.

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1 MR. TROTTER: And for the record, Your
2 Honor, the exhibit to which we're referring is 819.

3 JUDGE WALLIS: Thank you.

4 Q. So does the response to DR 332 indicate
5 that the company did not remove all lobbying
6 expenses?

7 A. I'm not -- if you can ask the question
8 again?

9 Q. Yes. Doesn't this response indicate that
10 all lobbying expenses were not, in fact, removed?

11 A. I believe all lobbying expenses were, as
12 answered here, recorded in both salary and wages and
13 other expenses.

14 Q. Okay. But there was no adjustment to
15 remove the salaries and wages portion, was there?

16 A. I would not be aware of any. I would refer
17 that to Ms. Hammer or some other appropriate person.

18 Q. But if there wasn't an adjustment for that
19 amount, there should have been? Can we agree on
20 that?

21 A. We can agree on that.

22 Q. Would you agree, subject to your check,
23 that Olympic reported to the Washington State Public
24 Disclosure Commission \$18,000 of lobbying related
25 compensation paid to you for the period February 2001

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1 to December 2001?

2 MR. TROTTER: May I approach the witness,
3 Your Honor?

4 THE WITNESS: Subject to check.

5 JUDGE WALLIS: Mr. Trotter, you've just
6 handed the witness a document. Can you share with us
7 what document you provided to the witness?

8 MR. TROTTER: These are the PDC disclosure
9 forms.

10 JUDGE WALLIS: Do other counsel have copies
11 of those?

12 MR. TROTTER: No, I just thought he could
13 just look at them here and confirm it.

14 THE WITNESS: That's correct. But the only
15 --

16 JUDGE WALLIS: Let's hang on for just a
17 second. Mr. Marshall, if you would like to look at
18 that, it appears to be available for your examination
19 now.

20 MR. MARSHALL: I'd like to urge the same
21 rule that's been applied to us be applied to others
22 in terms of documents --

23 JUDGE WALLIS: We do ask all counsel, if
24 you do have documents that you may use on
25 cross-examination, to provide those documents to

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1 others at the earliest time that you are aware that
2 you may be using them, and it will help facilitate
3 the process from many standpoints. That's the reason
4 why we do have that standard for Commission
5 proceedings.

6 MR. TROTTER: I apologize, Your Honor.

7 MR. MARSHALL: I just recall Dr. Means
8 having congressional record material that I wasn't
9 allowed to inquire on because we had not made it
10 available before. This is coming in in exactly the
11 same kind of timing. So I guess, just for
12 consistency, I don't care which way it is. I'd just
13 like to have the same treatment one way or the other.

14 MR. TROTTER: Your Honor, I thought it was
15 a simple subject to check, and if I'm foreclosed, I'm
16 foreclosed, but that's what happened.

17 JUDGE WALLIS: I do think it would be
18 appropriate to apply the same rule consistently, and
19 we will foreclose the use of the document.

20 MR. TROTTER: Okay.

21 CHAIRWOMAN SHOWALTER: It's not entered.
22 It's not in the record. He's just asking if he -- I
23 mean --

24 COMMISSIONER HEMSTAD: Counsel asked,
25 subject to check, if a PDC amount was as described.

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1 I wouldn't even think you would have to show him the
2 document. The other day, with Dr. Means, the inquiry
3 was a very generalized reference to a general
4 discussion in congressional testimony almost 20 years
5 ago. I don't think the two circumstances are
6 comparable.

7 MR. TROTTER: I did think it was within the
8 subject to check convention that we have. I offered
9 him that just so he could check it quickly, but --

10 CHAIRWOMAN SHOWALTER: Well, why don't you
11 just plain ask the question --

12 MR. TROTTER: Okay.

13 CHAIRWOMAN SHOWALTER: -- subject to check
14 and leave the document out of it.

15 MR. TROTTER: I'll do that.

16 Q. Let's refer to the second page of Exhibit
17 1411, Response to Staff Data Request 333. This asked
18 for expenses within the company's direct case
19 incurred relating to advertising or public relations;
20 is that right?

21 A. That's correct.

22 Q. And there's a figure in the second
23 paragraph that begins with the number nine that was
24 included in other expenses. Do you see that?

25 A. Yes, I do.

3944

1 Q. And is that amount for public education
2 costs required by the federal government?

3 A. Yes, it is. The costs in that amount went
4 to direct communication we had with the landowners
5 along the 16-inch pipeline from Ferndale to Renton in
6 both segments during December -- the December and
7 January 2000, 2001 period. We sent direct
8 communications to citizens in that county to talk
9 about what we had done to restore the safety and
10 integrity of the 16-inch pipeline running from
11 Ferndale to Allen station.

12 And then, later, in the spring, we ran a --
13 we did a similar piece of mail, direct mail to
14 landowners along the 16-inch pipeline from Allen to
15 Renton station, and I believe, under the 49 CFR, it
16 does call for public education and communication, and
17 that's one of the recommended practices under the
18 pipeline guidelines.

19 Q. And Staff did not remove that amount from
20 its results of operations analysis, did it?

21 A. Not that I'm aware. But I do believe they
22 looked to remove the \$19,000 amount, which I think
23 was encompassed in that, and that went for specific
24 chambers of commerce ads that we took -- we belong to
25 a number of chambers of commerce up and down the

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1 pipeline corridor, and each year they publish a book
2 of the people who belong to the chamber, and this was
3 an advertisement that we took out in a number of
4 chambers talking about the new operators of the
5 Olympic Pipe Line system, what -- sort of what our
6 goals from a safety standpoint and referencing our
7 web page for further input and also referencing our
8 community line if they had any questions about the
9 pipeline system.

10 Q. Would you accept, subject to your check,
11 that a company named Tower, Limited, on behalf of
12 Olympic, reported to the Washington State PDC \$64,956
13 of lobbying related compensation for 2001?

14 A. Subject to check, yes.

15 Q. Would you accept, subject to your check,
16 that Olympic did not exclude any portion of that
17 amount in its case?

18 A. Subject to check, I'll accept that.

19 Q. On page two of your testimony, 1401-T, line
20 20, you indicate that in your testimony you would
21 describe pending federal legislation and state
22 regulations that may increase Olympic's costs. Do
23 you see that?

24 A. Yes.

25 Q. And you also cover, on lines seven to 19,

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1 relocation orders under franchise agreements that, in
2 your opinion, are likely to increase due to Sound
3 Transit construction and other regional road
4 improvement projects. Do you see that?

5 A. Yes, that's correct.

6 Q. Is it your understanding that Olympic, in
7 its case, has proposed no adjustment for those two
8 items in your testimony?

9 A. Subject to check, I am not aware if they
10 have or have not.

11 Q. On page nine of your rebuttal -- of the
12 rebuttal, you refer to the high consequence area
13 rule, and that was -- that became effective earlier
14 this year; is that correct?

15 A. That's correct.

16 Q. You refer then to Mr. Wicklund. Is he the
17 witness that we should direct the questions on the
18 high consequence area?

19 A. On the specifics to the high consequence
20 areas. I can talk a little bit about the general
21 observations, but Mr. Wicklund, who I believe is
22 going to be the next witness, will be able to speak
23 specifically to the costs that would be incurred by
24 Olympic to comply with the new high consequence areas
25 rule and the integrity management portion under that.

3947

1 Q. Okay. I'll ask him. Turn to page 17. And
2 here you're talking, beginning on line seven, about
3 certain items you call public interest factors. Do
4 you see that?

5 A. Yes.

6 Q. And you say on line 11 that returning to a
7 hundred percent pressure would enable the pipeline to
8 carry approximately 40,000 barrels per day more of
9 product than it can at 80 percent pressure. Do you
10 see that?

11 A. Yes.

12 Q. Did you develop that figure or was it
13 supplied to you?

14 A. It was supplied to me. I believe that,
15 under the test period, that that was the
16 determination that was made, that moving from the
17 current throughput of approximately 280 to 282,000
18 barrels per day, boosting from 80 to a hundred
19 percent operating pressure, would add an additional
20 40,000 barrels per day.

21 Q. Do you know what down time was assumed in
22 coming up with that figure?

23 A. No, I do not.

24 Q. Who supplied it to you?

25 A. I received that specifically from the folks

3948

1 -- REG, et cetera, Ms. Hammer, I believe, who were
2 putting together the numbers regarding those.

3 Q. Okay. Was that figure based on a study you
4 conducted?

5 A. No.

6 Q. Does this figure assume that Bayview is
7 fully operational in terms of its original intended
8 purpose for batching and so on?

9 A. I'm not sure. The other person that I
10 would refer this to is Mr. Talley, who I believe is
11 going to be a subsequent witness that can testify to
12 this, as well. This is used really for hypothetical
13 purposes from a policy standpoint as to arguing, you
14 know, if you go from 80 to a hundred percent
15 pressure, what the policy implications are from
16 removing trucks and barges and moving that into the
17 pipeline.

18 Q. Okay. And you go on to discuss if all the
19 product, and I assume you mean the 40,000 barrels,
20 were sent on truck, that would mean approximately 160
21 more trucks a day, or over 58,400 trucks per year?

22 A. Correct.

23 Q. And is your point here that that would be a
24 lot of traffic congestion?

25 A. My point here is that removing -- by going

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1 from 80 to a hundred percent pressure, you'll take
2 that number of trucks, you know, approximately, off
3 the road, or an equivalent number of barges, which
4 really is in the public interest from both a safety
5 standpoint and an environmental standpoint.

6 Q. Do you know whether that 40,000 barrels per
7 day is, in fact, being transported on 58,400 trucks
8 per year?

9 A. My understanding, it would be probably a
10 mix of not only trucks, but probably barges and
11 ships, as well. The -- and I talk extensively, I
12 believe on the next page, about the combined output
13 of the four refineries, which is listed in the
14 state's own energy department records as to what that
15 amount is and, you know, doing a simple calculation
16 of at 560,000 barrels a day, if Olympic's only
17 transporting 280 to 282, that's really about 50
18 percent of the product, so that other 50 percent has
19 to be transported one way or another, and that would
20 -- since there are no other alternative pipelines in
21 the system, it would be either by truck or barge or
22 ship.

23 Q. Do you know at what price the tanker trucks
24 are carrying product that would otherwise go over
25 pipeline, if it was -- if the capacity was available?

3950

1 A. I believe that was answered, if you can
2 give me a moment. Specifically in -- this is WUTC
3 Staff Data Request Number 341, the response for that
4 would be the refineries to Seattle would be about
5 \$1.47 per barrel, refinery to Portland's about \$1.68
6 per barrel.

7 Q. And that's via truck?

8 A. That's correct.

9 Q. What about barge?

10 A. The barge rates, refinery to Seattle, are
11 approximately 84 cents a barrel, and refinery to
12 Portland's about \$1.05 per barrel.

13 Q. Would the reduced congestion benefits of
14 pipeline shipping be one substantial reason why
15 shippers prefer pipeline transport over tanker truck
16 transport?

17 A. Could you ask -- it was a little confusing.
18 If you could ask that again.

19 Q. Your testimony is if all of this 40,000
20 barrels is transported by truck, that's going to
21 engender a lot of traffic congestion, and on the next
22 page, you multiply that by several times. So I'm
23 just asking, is that a substantial reason why
24 shippers prefer to use pipeline, to avoid that
25 situation?

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1 A. Well, I think it's probably two reasons.
2 One, it's the safety factor, you know. A pipeline,
3 you know, is safer than transporting by truck, but it
4 substantially is the cost, and I mean, the cost of,
5 you know, a similar movement between, you know, the
6 refinery and Seattle, and I'll refer to Supplement
7 Two to WUTC Number 21, for example, is about -- you
8 know, here we're talking about to truck refinery from
9 the refinery to Seattle is \$1.47 a barrel, the
10 trucking cost is 25 cents a barrel, so there's a
11 substantial cost reduction.

12 THE REPORTER: I'm sorry, give me those
13 numbers one more time.

14 THE WITNESS: \$1.47 per barrel via truck
15 versus 25 cents per barrel under the pipeline. And
16 that's from Anacortes, Skagit County, to Seattle
17 destination points under the current tariff filed
18 before the Commission.

19 Q. But even if the prices were equal, wouldn't
20 shippers still prefer pipeline because it's safer and
21 doesn't lead to the congestion problems that you're
22 identifying in your testimony?

23 A. Yes. One of the other advantages of the
24 pipeline is that you're able to schedule about a
25 month in advance, you know, when we take nominations

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1 from the customers, we -- they transmit to us their
2 request to ship on the pipeline, and we're generally
3 able to ship within a six to 12-hour period of when
4 their request is from a month, you know, previous.

5 So that's, you know, from a standpoint of
6 being able to deliver on time and to deliver the
7 specific product and specific batch to their terminal
8 facilities, it's a superior way to transport.

9 MR. TROTTER: Thank you. That's all I
10 have.

11 JUDGE WALLIS: Next.

12

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

14 BY MR. FINKLEA:

15 Q. Good afternoon, Mr. Cummings. I am Ed
16 Finklea, representing Tosco. I just have a couple of
17 questions. At page eight of your testimony, you are
18 discussing new high consequence area regulations. Am
19 I correct that complying with these regulations is
20 something that Olympic is working into its future
21 plans, but that, at least in 2001, you weren't
22 incurring any cost to comply with these regulations?

23 A. I don't think that's correct. We -- to
24 comply with the regulations also means that you have
25 to do a test period for your initial data runs.

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1 We've done the internal inspections on the pipeline
2 system. Also, the standards from which you would
3 repair under the high consequence areas rule, we have
4 been undergoing an extensive repair program. But I
5 would refer the specifics to -- on not only the HCA
6 rule, but the specifics on the integrity management
7 portion of that to Mr. Wicklund.

8 Q. And you don't know yourself which costs are
9 in or out of the test period in this proceeding, I
10 take it?

11 A. For HCA purposes?

12 Q. Yes.

13 A. No, I'm not aware of the -- but I think
14 that person that probably could talk about that would
15 be Mr. Talley under his -- from an operational
16 standpoint and also from the costs that are allocated
17 to the individual inspections and repairs.

18 MR. FINKLEA: I have nothing further.

19 JUDGE WALLIS: Mr. Brena, do you have
20 questions?

21 MR. BRENA: I do.

22

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

24 BY MR. BRENA:

25 Q. Good afternoon, Mr. Cummings.

3954

1 A. Good afternoon.

2 Q. I'd like to start out on page three of your
3 testimony, lines 11 through 18, where you state that
4 Staff and Tesoro seek to disallow certain of these
5 expenses. And by these expenses, what expenses are
6 you referring to?

7 A. I believe that, subject to check, it's the
8 expenses talking about community communication
9 related expenses between Olympic communicating with
10 -- out in the community.

11 Q. Okay. I'm not trying to play hide the ball
12 on you, but the references to Mr. Grasso and Mr.
13 Brown that you refer to concerned the treatment of
14 roughly a million dollars in regulatory expenses for
15 legal and consulting services. Are you aware of
16 that?

17 A. I was not aware of that, but I believe that
18 it would be a portion of that, is what my -- is what
19 they are seeking, but I will take your word for it.

20 Q. Well, would it be helpful for you to review
21 the parts of the testimony that you cited before you
22 answer?

23 A. It would be helpful.

24 Q. Okay. If I may approach?

25 A. I'm sorry, that's -- if I may?

3955

1 Q. Sure.

2 A. Okay.

3 Q. Okay. Have you had an opportunity to
4 review the relevant portions of Mr. Brown and Mr.
5 Grasso's testimony?

6 A. Yes.

7 Q. Are we talking apples and apples here?
8 You're suggesting that Tesoro's seeking to disallow
9 costs of community communications, but those portions
10 of the testimony you cite go to the appropriate
11 treatment for a million dollars in regulatory
12 expenses for legal and consulting.

13 A. Okay.

14 Q. Okay. Is it your understanding, then, that
15 within that million dollars of regulatory expenses
16 for legal and consulting, that there are costs
17 associated with community outreach?

18 A. Under the -- in my testimony, I talk about
19 certain expenses, and it's my understanding that they
20 would be related to Whatcom Creek, although, in this
21 case, we have worked very hard to exclude all of
22 those costs from an outside consulting standpoint
23 which would relate to Whatcom Creek from a public
24 affairs standpoint, so I believe that those that
25 would be allowed should be allowed, because they

3956

1 relate directly to public education. Those that
2 relate to Whatcom Creek, we've already excluded.

3 MR. BRENA: I would ask that the witness be
4 instructed to answer the question that I asked.

5 Q. Do you have my question in mind?

6 A. If you could restate it.

7 Q. Okay. You suggest that Tesoro, in these
8 portions of the testimony, is seeking to disallow
9 community outreach, but the testimony addresses
10 regulatory expenses of a million dollars for legal
11 and consulting services. Is it your testimony that
12 the community outreach costs that you go on to
13 discuss are included within that million dollars that
14 Mr. Brown and Mr. Grasso referred to in that portion
15 of the testimony that you cite?

16 A. I believe a certain portion are included in
17 those, and they would be under the outside consulting
18 expenses.

19 Q. Okay. I'm curious. How do you know that?

20 A. From -- how do I know --

21 Q. How do you know that a portion of that
22 million dollars was used for that purpose?

23 A. Because the -- my understanding, the
24 expenses that are related to -- specifically to
25 Olympic, the outside consulting expenses, with the

3957

1 exception of this rate case, there are very few
2 outside consulting expenses other than the public
3 affairs consultants, which I -- you know, work
4 directly for me. So that is an assumption that I am
5 making, but --

6 MR. BRENA: No, I'm just curious. Can your
7 witness please be provided access to Exhibit 847-C,
8 and I would ask that confidentiality be waived on
9 this exhibit.

10 JUDGE WALLIS: Does the witness have the
11 document now?

12 THE WITNESS: Yes, I do believe this is the
13 document.

14 JUDGE WALLIS: There's a request to waive
15 confidentiality. How does the company respond to
16 that?

17 CHAIRWOMAN SHOWALTER: Is it confidential?

18 JUDGE WALLIS: It's marked as confidential,
19 even though it's not on colored paper.

20 CHAIRWOMAN SHOWALTER: Doesn't have a C.

21 MR. BEAVER: Your Honor, we'll waive
22 confidentiality.

23 JUDGE WALLIS: Very well.

24 Q. Mr. Cummings, before we get into the
25 specifics of that exhibit, on line 13, you say,

3958

1 Tesoro seeks to disallow certain of these expenses.

2 In fact, did Tesoro propose to disallow any of these
3 expenses?

4 A. I believe your witness has asked to
5 disallow --

6 Q. Is that your understanding of his --

7 A. -- these expenses.

8 Q. I'm sorry.

9 A. That's my understanding of his testimony.

10 Q. If I were to suggest that he suggested
11 normalization of a million dollars over a five-year
12 period so that none of it was disallowed, it was just
13 a normalized expense, would that change your answer
14 at all as to whether or not Tesoro were seeking to
15 disallow these costs?

16 A. Yes.

17 Q. Okay. And then, further on, you
18 characterize Tesoro's witness Grasso states that such
19 expenses are one-time expenses. Is it your
20 understanding that witness Grasso has treated these
21 as though they're one-time expenses?

22 A. I would need to see a specific reference to
23 what you're referring to.

24 Q. Well, where did you get this idea from that
25 witness Grasso, I mean, suggests these are one-time

3959

1 costs?

2 A. It's my understanding from the previous
3 testimony, but I would have to see a specific
4 reference to that.

5 Q. And have you ever? Have you ever seen a
6 specific reference where our witness Grasso suggested
7 that these should be disallowed or treated as
8 one-time expenses?

9 A. Yes, I believe I have, but I can't
10 reference the exact document.

11 Q. Okay. You did review the specific language
12 that's indicated that you cited in your testimony
13 following that statement?

14 A. Yes.

15 Q. Would you like to review it again to see?

16 A. Yes.

17 Q. Would it be fair to characterize what
18 witness Grasso did was tried to amortize a
19 representative level of recurring expenses, rather
20 than categorize these as one-time expenses?

21 A. Yes.

22 Q. Okay. Now --

23 A. If I may, the document that you reference
24 here to, though, the amount that is included, after
25 reviewing that, for public affairs or, you know, the

3960

1 area in which I work is a very small amount of that
2 million dollars. I would guess that it would be less
3 than -- easily less than five percent of the total.

4 MR. BRENA: Okay. I would move to strike
5 that, and I would appreciate it if we would have a
6 question and answer. He volunteered that completely
7 outside the scope of the question. And I'm moving
8 into that area now, anyway.

9 JUDGE WALLIS: The motion is granted.

10 MR. BRENA: Okay.

11 JUDGE WALLIS: I will mention to the
12 witness, we've had this discussion with other
13 witnesses, that it's very helpful for the process if
14 you listen closely to the question and respond to the
15 question that is asked. It helps things go faster.

16 THE WITNESS: Okay.

17 Q. Turning to Exhibit 847-C, first, in the
18 cover letter, it describes what's in the million
19 dollars as \$400,000 in attorneys' fees and
20 approximately 600,000 in costs for tariff
21 consultants, auditors, and other types of
22 consultants. Do you see that?

23 A. Yes.

24 Q. Okay. There's no reference whatsoever to
25 community outreach in this discovery response, is

3961

1 there?

2 A. I believe it would be other types of
3 consultants in that response.

4 Q. Well, my question was is there any specific
5 reference to public outreach in this discovery
6 response?

7 A. No.

8 Q. Okay. Now, turning to the detail, and I
9 quote -- put quotes around that, that's provided,
10 now, looking at that detail for what that million
11 dollars is for that was provided to the ratepayers,
12 would you tell me what this money was spent for,
13 please? For example, the December 1st attorneys'
14 fees for \$94,000, or the 2001 total of 168,000, can
15 you tell what that was for?

16 MR. MARSHALL: This witness has not
17 sponsored this exhibit and he has described a very
18 small part of this related to his community education
19 expenses. He's going into a totally different area.
20 I mean, that's asking the wrong witness.

21 JUDGE WALLIS: Mr. Brena.

22 MR. BRENA: Well, that's what I'm trying to
23 explore. This witness referred specifically to our
24 witness' testimony and treatment of this million
25 dollars, characterized it as though we were trying to

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1 disallow, characterized it as one-time expenses, and
2 characterized it as public outreach expenses, so I'm
3 exploring with him whether it's any of the above.

4 MR. MARSHALL: It says certain of the
5 expenses. And I think this witness is not going to
6 be able to respond to legal expenses and other
7 expenses, so I think it would be better to zero in on
8 those community communication expenses.

9 JUDGE WALLIS: I do think, Mr. Marshall, in
10 light of the witness' testimony, that counsel be
11 allowed the opportunity to explore that testimony in
12 cross-examination, and I think that the question is
13 permissible. Does the witness have the question in
14 mind?

15 THE WITNESS: I would ask that it be
16 repeated.

17 MR. BRENA: Well, I'll take up -- let me
18 try it this way.

19 Q. We were surprised by your testimony,
20 because there's no way that we could figure out from
21 that exhibit that there was any community outreach
22 costs in there. So would you look at this exhibit
23 and tell me how we were supposed to know whether or
24 not there's any community outreach in here? I mean,
25 there isn't any description that describes what any

3963

1 of this money was spent for; isn't that fair to say?

2 A. I believe that the -- it's not a complete
3 description as to what this -- what this entailed,
4 but there was -- there were no further discovery
5 requests for us to elaborate on this specific area.
6 I might add that I do not have the expertise to
7 really be discussing the fees specifically in this
8 area, as I say in my testimony. It's a certain
9 amount of expenses. Those expenses would be public
10 communication efforts surrounding the tariff case,
11 and they're a very small portion of these outside
12 consulting expenses.

13 MR. BRENA: I would move that that last
14 response be struck. My question to him is, looking
15 at this exhibit, how anybody could tell whether or
16 not there's any costs of community outreach in it,
17 and I would like an answer to that question and I
18 would like his response struck.

19 JUDGE WALLIS: The motion is granted.

20 THE WITNESS: I believe they would be
21 included under the other professional services
22 category.

23 Q. Do you know that?

24 A. I do not know that without having --
25 specifically looking at the ledger itself.

3964

1 Q. Would you acknowledge that there is no way
2 that a ratepayer would know that, either, based on
3 the discovery that was provided?

4 A. Based upon what was provided in this
5 description, it would be difficult to tell what the
6 specific amounts were for in this specific area.

7 Q. Difficult or impossible?

8 A. Difficult, but probably not impossible. I
9 think it would just warrant a further question as to
10 the specific breakdown of the expenses themselves.

11 Q. Okay. So is where we're at is is that we
12 don't know whether or not there are community
13 outreach expenses in this million dollars? Is that
14 where we're at right now?

15 A. No.

16 Q. You do -- you do know that they're in
17 there?

18 A. Yes, I believe that under the expenses,
19 that the way that they were expensed during the 2001
20 year for this rate case, including the -- including
21 the interim case, that they would fall under this
22 category, but that would be subject to check.

23 Q. And which category are you referring to?

24 A. Outside professional services.

25 Q. There isn't a category called outside

3965

1 professional services.

2 A. I believe under the May 2001, middle of the
3 -- middle of the --

4 Q. Oh, other professional services?

5 A. I'm sorry, it's a bad copy. You're
6 correct.

7 Q. It is a bad copy, I agree. Okay. Now, is
8 it your testimony that 49 CFR 195.440 mandates that
9 Olympic hold 15 public community meetings over two
10 years and spend hundreds of hours of time in enabling
11 the public to recognize and respond to pipeline
12 hazards?

13 A. Yes, the 49 CFR that you refer to is merely
14 a floor in the -- under the federal regulations, and
15 each pipeline company or operator is allowed to put
16 together programs for pipeline education. BP is
17 simply ahead of the curve of the rest of the industry
18 on this, and as a matter of fact, as I testify to in
19 my testimony, I reference the new standard, which is
20 being put together under the API standard on public
21 education, as well as the community right to know
22 types of aspects, which are in the current
23 legislation which is pending before the Congress.

24 So in this matter, it's simply a floor
25 where BP is going ahead and is ahead of the curve on

3966

1 the public education and outreach.

2 Q. Do you have my question in mind?

3 A. Yes.

4 Q. My question was is it your testimony that
5 49 CFR 195.440 mandates this effort be done. And in
6 answering that it's a floor and that BP's ahead, are
7 you acknowledging that this regulation does not
8 mandate it, but BP has taken -- has gone beyond the
9 floor?

10 A. If I can reference the specific CFR, I'll
11 look at that, answer your question.

12 Q. Isn't that cited in your testimony?

13 A. It is cited in my testimony, but I'll look
14 at it further.

15 Q. Okay.

16 A. Yes, as a matter of fact, these programs
17 that we do do meet the CFR. They are public
18 education type of outreach program, which allow for
19 first responders and members of the community to come
20 out and see where the pipeline alignment is, how to
21 recognize those types of emergencies, as well as
22 working -- Partners in Preparedness, which is a
23 training program that we've done for local fire
24 departments and emergency personnel throughout the
25 entire pipeline corridor.

3967

1 Q. How long has 49 CFR 195.440 been in effect?

2 A. According to this publication, June of
3 1991.

4 Q. Is it your testimony that the prior
5 operator, in not conducting eight public community
6 meetings a year and spending hundreds of hours,
7 failed to meet the CFR standard for community
8 education?

9 MR. MARSHALL: Well, wait a minute. This
10 assumes a fact not in evidence. There's no testimony
11 what the prior operator did or didn't do. I think
12 Mr. Brena's now jumping to a conclusion here.

13 MR. BRENA: Well, I will explore that,
14 then. I'm happy to rephrase my question.

15 Q. Do you know what the prior operator did to
16 satisfy this requirement?

17 A. Yes.

18 Q. And did they conduct hundreds of hours of
19 time and 15 public community meetings in a two-year
20 period?

21 A. Many more than 15 public meetings over a
22 two-year period.

23 Q. Are you aware that many pipelines send out
24 a flier once a year to people explaining what the
25 pipeline risks are in compliance with this

3968

1 regulation?

2 MR. MARSHALL: Well, I would object now.
3 Counsel's testifying. There's absolutely no
4 foundation that any pipeline just simply sends out a
5 flier and that's in compliance with this. This is
6 just a -- we can put Mr. Brena under oath, but that
7 would be the only way to get that fact into evidence.

8 MR. BRENA: It's not a fact I'm trying to
9 get into evidence. I'm asking him if he's aware of
10 that. He can say yes or he can say no.

11 MR. MARSHALL: Well, it's like when did you
12 stop doing something you never started doing. It
13 assumes a fact not in evidence.

14 JUDGE WALLIS: Will you rephrase the
15 question, Mr. Brena?

16 MR. BRENA: Certainly.

17 Q. Are you aware of how other pipeline
18 operators comply with this requirement?

19 A. Yes.

20 Q. And do they comply in a manner similar to
21 what BP is doing in this situation?

22 A. Yes, they do. As a matter of fact, I've
23 been asked by a number of other pipeline companies
24 throughout the country to come and teach them about
25 what we've been doing with the Olympic system. You

3969

1 asked about the prior operator. The expenses for
2 those public community meetings are included in
3 Whatcom Creek expenses and were not included in this
4 tariff proceeding. So the shippers and the
5 intervenors in this matter actually get the benefit
6 of having complied with this federal regulation and
7 not having to -- it's included in other costs.

8 The specific floor, BP also, when you
9 reference a mailer, we do that, as well, mailing to
10 the specific landowners. But as I said, that's
11 really merely a floor and not a ceiling for what you
12 can do from a public communication effort. I think
13 that in the aftermath of the Whatcom Creek accident,
14 that there was a call from communities throughout the
15 pipeline corridor to have public community meetings.
16 We've been invited to communities throughout and
17 we've work closely with the Citizens Committee on
18 Pipeline Safety on these types of public community
19 meetings. And where the federal regulation only
20 calls for a certain minimum amount, we -- BP goes
21 beyond that, and now the other companies throughout
22 the industry are looking to emulate and utilize the
23 best practices that we have put forth, not only in
24 the new standard which is being promulgated before
25 the API, but also in new community right to know

3970

1 types of issues being discussed on the state and
2 federal level.

3 Q. I'm trying to reconcile your testimony
4 where you're saying BP is going beyond the floor
5 that's required by the standard, but, yet, when I
6 explore if all this work is required by the standard,
7 you're saying, yes, it is.

8 Is it true that BP goes beyond the standard
9 or is it true that everything that BP's doing is in
10 compliance with the standard? Which is the truth?

11 MR. MARSHALL: There's several questions in
12 the preamble to this. I would ask him to just phrase
13 a question. One of the parts of the preamble I think
14 was assuming facts not in evidence, that the statute
15 creates a specific floor. I'd ask the question be
16 rephrased.

17 MR. BRENA: I like the way the question was
18 phrased. It characterized two parts of his
19 testimony, one in which he's indicated that this
20 regulation requires a floor and that all this
21 activity is required under this particular
22 regulation.

23 On the other hand, he's just made a speech
24 that BP goes well beyond the floor and is raising the
25 standard above what has been used under this

3971

1 regulation. I'm asking him to reconcile the apparent
2 inconsistency.

3 JUDGE WALLIS: The question is permissible.
4 Does the witness have the question in mind?

5 THE WITNESS: After that long discussion,
6 I'd ask that the question be rephrased or re-asked.

7 Q. Is it true that BP is doing only what's
8 required under the regulation and all this is
9 required, or is it true that BP has gone beyond the
10 regulation and is leading the industry in a new area?

11 A. The answer is both.

12 Q. You were asked on page six whether or not
13 the community outreach has been effective.

14 A. Yes.

15 Q. Have the community communication activities
16 been effective, and you answer yes. You go on for a
17 page and a half and describe positive things that
18 people have said about BP Pipelines. Do you have
19 that in mind?

20 A. Yes.

21 Q. Did any of those positive things relate
22 directly to helping people recognize and respond to
23 the risk of spills?

24 A. Yes.

25 Q. Isn't it fair to say that your

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1 characterization of why this outreach has been
2 effective is is that it's persuaded people that BP
3 Pipelines is a great operator and has little, if
4 nothing, to do with recognizing hazardous conditions
5 and reporting them to authorities?

6 A. Well, I'd agree that BP is a great
7 operator, but specifically on the top of page seven,
8 when I talk about Congressman Larson's discussion
9 reaching out to the community, he attended our
10 community meetings that we had in the Bellingham area
11 and talked to residents about specifically about what
12 we were training and how to recognize emergencies and
13 how to -- and all of the programs that we're doing.

14 The community outreach that we're doing
15 goes beyond just recognizing pipeline leaks, and I
16 think that, you know, eventually the standards will
17 catch up under the CFR. But they talk about our
18 damage prevention program, what we're doing to repair
19 the pipeline, the new valves that we've incorporated
20 into the pipeline system, talking about -- we have a
21 mock up of our control center to explain to people
22 better how our control center operates and how that
23 works, and so we have it as a number of public
24 displays and we're able to show the public when they
25 come out, and elected officials and interested

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1 parties, specifically communicating what we do as an
2 operator.

3 Q. I understand that's your goal, but isn't it
4 true that the CFR is quite specific that the
5 community outreach is to enable the public,
6 government organizations, and people to recognize
7 emergencies and report them to agencies? That is the
8 standard that should be applied, should it not?

9 MR. MARSHALL: Well, I disagree that he's
10 quoted the CFR correctly. He said and persons
11 engaged in excavation-related activities. The
12 excavation-related activities part he left out, so --

13 Q. I accept that modification to recognize and
14 report. Now, everything that you just said you were
15 doing may be a fine thing to do for BP Pipelines, but
16 what does it have to do with transporting oil for
17 your ratepayers?

18 A. I think what it allows is the public to
19 better understand what we do as an operation. And by
20 doing that, and I'll give a specific example. You
21 know, for the communities to understand what we're
22 doing, the communities then support us, elected
23 leaders support us. When we want to go in and get
24 specific permits to do excavation work, that allows
25 us to -- what I call these are license to operate

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1 types of issues. It allows us to get in, get the
2 permits on a timely basis, communicating with public
3 officials and interested people within the cities, it
4 allows us to get in to do the repair work, which is
5 required under the high consequence areas integrity
6 management rule, thus giving us less down time, which
7 less down time means that the pipeline is operating
8 more, which translates to the shippers being able to
9 ship more product on the line.

10 So by having these types of public
11 education programs, we're able to communicate with
12 all of the stakeholders involved in the state as to
13 how BP is operating a safe pipeline within the state,
14 and that translates into getting, you know, number
15 one, we were able to get the 16-inch pipeline up in a
16 timely manner so that we have, you know, competitive
17 supply from all the refineries to all of the
18 locations, and it allows for getting a solid fuel
19 supply to Sea-Tac Airport. So it's in the public
20 interest.

21 But if I can further elaborate, your
22 question goes specifically to 49 CFR 195.440, but our
23 community outreach also talks about CFR -- 49 CFR
24 195.442, which is a damage prevention program. And
25 under the -- not only under the federal regulations,

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1 but also the state mandate, as passed in the 2000
2 Pipeline Safety Act within this state, there was a
3 mandate to, you know, improve the damage prevention
4 programs in this state. We've worked very hard to
5 consolidate the one-call program to now where we have
6 five one-call numbers before, now we have one, where
7 we enlighten and work with communities and landowners
8 to understand damage prevention practices and do
9 one-calls so that we have fewer incidents of one-call
10 related incidents within the state.

11 I think that all of these go to, you know,
12 these community outreach programs and public
13 education go to all of these, not just the one
14 specific cite that you have to -- within your
15 question.

16 Q. I'm not going to move to strike that. The
17 -- now, your question went beyond, and I was
18 intending to get to the other things, but those go
19 well beyond recognizing and reporting spills;
20 correct?

21 A. Our public education program does go beyond
22 that; correct.

23 Q. Now, isn't it true that what this money is
24 really being spent for is to repair what is a
25 tattered reputation in solving problems that you

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1 would not have had but for Whatcom Creek in the first
2 instance?

3 A. No, I think that it's going and talking
4 about a safe pipeline, talking about what we're doing
5 as an operator. I can't comment on what the prior
6 operator did. I worked with the prior operator for a
7 short period of time, but I was not working for the
8 company at the time of the Whatcom Creek accident.
9 All I can talk about is, you know, moving forward
10 from a point where we took over the operations. And
11 after making an analysis of what we were doing on a
12 public outreach basis, I felt it was needed to change
13 the tone and the direction of the public outreach
14 program, so we instituted these programs and it's
15 been very successful.

16 Q. Well, you'd agree that Whatcom Creek had a
17 tremendous public relations impact on Olympic's
18 ability to operate, would you not?

19 A. Yes.

20 Q. And you'd agree that these funds are being
21 expended so that Olympic can operate more efficiently
22 than that reputation previously would have allowed,
23 would you not?

24 A. No, those are -- those costs are under the
25 Whatcom Creek related expenses from public affairs

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1 standpoint and they're not included in this rate
2 case.

3 Q. Okay. I'd like to draw your attention to
4 page nine. Now, you mention certain federal
5 regulations?

6 A. Yes.

7 Q. The operator qualification rule?

8 A. Correct.

9 Q. Now, these regulations are in effect today?

10 A. The operator qualification rule was first
11 set forth April 27th, 2001, and Olympic must complete
12 it by October 28, 2002, so we still have a few months
13 before the full compliance of this new rule.

14 Q. Is there any question that BP Pipelines
15 will qualify under the operator qualification rule?

16 A. Not that I'm aware of.

17 Q. The emergency response training required by
18 the CFRs that you refer to, doesn't Olympic conduct
19 emergency response training currently?

20 A. Yes, in conjunction with the State
21 Department of Ecology and the Departments of
22 Emergency Management along the corridor. We're doing
23 one about every month with the counties along the
24 corridor.

25 Q. Then the current emergency response

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1 training requirements that are being met, do they
2 meet this CFR or do you need to do something else?

3 A. Well, we actually run the programs in
4 conjunction with our public outreach. I'll give you
5 an example. Two weeks ago, down in Cowlitz County,
6 we started about 7:30 in the morning and did the
7 Partners in Preparedness, which brought in law
8 enforcement, department of emergency management, fire
9 personnel to walk through the emergency response and
10 how to respond to a pipeline emergency.

11 At the end of that meeting, we had our
12 public education portion where we set up in a room
13 across the hall, and those people were able to -- as
14 well as other people from the general public, able to
15 see the other programs that we do. So we combine the
16 programs where we can, so that we can -- not only
17 education about the specifics, the pipeline
18 emergencies, which is really for a training program
19 for first responders, but, you know, to work with the
20 general public on the other issues regarding pipeline
21 safety.

22 Q. Are you aware whether or not Tesoro has
23 suggested the removal of a single penny for any of
24 these purposes?

25 MR. MARSHALL: Your Honor, the page nine

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1 that Mr. Brena's referring to talk about the federal
2 regulations permanently raising Olympic's cost of
3 doing business. It doesn't refer to disallowance, so
4 I don't know if he's still on that page, and I think
5 he is, but the premise of his question is incorrect.

6 MR. BRENA: Well, as I understood his
7 testimony, they're doing a great many things
8 currently that are included within the scope of their
9 operating expenses that they're here to try and
10 collect. And I was just asking him if it was his
11 understanding that Tesoro, as a ratepayer, had raised
12 an objection with regard to any of these safety
13 matters.

14 JUDGE WALLIS: I think the question is
15 permissible and the witness may respond.

16 THE WITNESS: Well, these are really an
17 industry wide. So all pipeline operators, including
18 Tesoro, in the new North Dakota system, has to comply
19 with these rules.

20 JUDGE WALLIS: Excuse me. Did you hear the
21 question, Mr. Cummings?

22 THE WITNESS: I believe he's asking about
23 compliance with this rule, but if he'll ask it again,
24 I'll --

25 JUDGE WALLIS: Mr. Brena.

3980

1 Q. I asked whether you were aware of Tesoro
2 contesting a single penny that Olympic is putting
3 into its emergency and safety programs?

4 A. No, I think there's just a general policy
5 debate about how that should be -- how that should be
6 applied. I think that's a debate that companies
7 have.

8 Q. Was your answer to my question is that
9 you're not aware of a single penny that Tesoro is
10 asking this Commission to disallow?

11 A. I'm not aware of any.

12 Q. In fact, I mean, it's fair to say, from a
13 common sense perspective, would you agree, that the
14 cost of you -- of Olympic not operating safely may
15 well be visited on your ratepayers, as well as
16 Olympic? I mean, everybody has a stake in running a
17 safe line, don't they?

18 A. Everyone has a stake in running a safe
19 line. That's correct.

20 Q. And so far as you're aware, Tesoro has
21 offered to pay every penny that Olympic has asked
22 with regard to safety matters; correct?

23 A. I disagree with that. I think the one area
24 that I can specifically state is the right-of-way
25 mowing. I think that's a good example of why we need

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1 to have the state new regulations which are coming to
2 final rule require a, you know, once per week
3 right-of-way inspection. We need to have a good
4 mowed right-of-way to be able to do that from an
5 aerial standpoint, as well.

6 It also helps landowners be able to tell,
7 you know, where the definition of their land for the
8 pipeline is and have a clear corridor so that when
9 our over flights are coming through, that our pilots
10 can look and spot if there's potential hazards with
11 --

12 Q. You're talking about the right-of-way
13 mowing in the one-time expense category?

14 A. I believe that's -- I believe that's
15 included in that, yes.

16 Q. Do you know how that -- the one-time
17 expense category was put together?

18 A. No.

19 Q. Do you know how many times right-of-way
20 mowing is in that exhibit?

21 A. I believe it's once in that exhibit.

22 Q. Do you know?

23 A. If you can refer me to a specific exhibit.

24 JUDGE WALLIS: Let's be off the record for
25 just a moment.

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1 (Discussion off the record.)

2 JUDGE WALLIS: Let's be back on the record,
3 please. Mr. Brena, you indicate you have just a few
4 more minutes of examination. We will continue until
5 you've concluded, if your estimate is correct.

6 MR. BRENA: Thank you, Judge Wallis.

7 Q. Are you intending to suggest anywhere in
8 your testimony that cost -- that future costs --
9 future increases in costs, that your ratepayers start
10 paying for those before they're incurred by the
11 pipeline company?

12 A. I think that compliance costs are, you
13 know, under the specific requirements, but as I said,
14 you know, you have the rules set forth both on the
15 state and federal level, a floor, and I think that,
16 you know, the interpretation is left open to the
17 individual companies. There are many companies that
18 do the exact floor and the minimum, and I will -- you
19 know, it's my understanding across the industry. But
20 the industry is also moving forward and there's also
21 a demand from a public interest standpoint, you know,
22 from the state. You know, when we took over as the
23 operator, we met with a lot of communities, we met
24 with a lot of people.

25 And the interest was not to the have a

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1 program or operate the pipeline to the bare minimum
2 standards that the rest of the industry might do. So
3 we have gone above and beyond that, and I think that,
4 you know, I think that it was -- they're reasonable
5 and necessary expenses based upon what the public and
6 the stakeholders are asking for in this state.

7 MR. BRENA: I would ask that the response
8 be struck and that he be directed to answer my
9 question, which was is he suggesting in his testimony
10 at any point that future increases in costs be
11 included in current rates before they're incurred.

12 JUDGE WALLIS: The motion is granted. Does
13 the witness have the question in mind?

14 THE WITNESS: Yes. If I may take a moment.
15 Two specific areas, I think. One is the operator
16 qualification rule, because there are necessary
17 training, but that is not a final rule and it's not
18 fully in effect, so it means that we have to work to
19 comply with that rule. The other would be the high
20 consequence areas rule. There's a lot of work that
21 needs to be done in that regard and that it's
22 necessary for us to do a lot of work up front to meet
23 that federal regulation, as well.

24 Q. Rather than ask that that be struck, I'll
25 ask my question again. Are you intending to suggest

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1 through your testimony that future increases in costs
2 be included in current rates before the costs are
3 actually incurred?

4 A. If you might, can you ask that a slightly
5 different way? It seems to be a confusing question.

6 Q. Okay. Let me give you a hypothetical.
7 Let's say costs in the year 2004 relating to
8 compliance issues are going to go up \$100,000, okay.
9 We know that. Are you asking that that future
10 increase in costs be included in rates that are set
11 today before those costs are actually incurred by the
12 operator?

13 A. No, I'm not asking that. What I'm saying
14 is that rules -- to be able to comply with the rules,
15 you need to spend money to comply. And I'll defer
16 that specifically to Mr. Talley, who then can talk
17 about -- in his testimony, who can talk about the
18 compliance matters.

19 Q. Would you agree that when you send the
20 money, that the ratepayers should pay you back? That
21 should be the way rates are set?

22 A. I can agree with that.

23 Q. Okay.

24 A. But in this case, you know, we end up
25 having to frontload the cost to be able to comply

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1 with these federal rules and regulations. If you
2 don't spend the money up front to comply, you're not
3 going to be in compliance by the time the rule comes
4 into effect. So it means a front end, you know,
5 compliance cost for the company, which should be paid
6 by the ratepayer and it should be -- that's a
7 reasonable cost.

8 Q. Okay. I'm not sure what your answer is
9 now. Let's say we have some compliance costs coming
10 up that aren't in the test period, okay. Are you
11 saying we should start paying them now based on your
12 word that they may go up in the future or -- or,
13 alternatively, would you agree that once your costs
14 go up, then you come and ask for your ratepayer to
15 pay more?

16 A. I think that when you are incurring the
17 cost is when you should ask your ratepayer to pay.

18 Q. And not before?

19 A. And not before.

20 Q. Okay. Now, with regard to franchise
21 agreements, you mention about relocations --

22 A. Yes.

23 Q. -- on page 16 of your testimony. And you
24 say, We don't know exactly when we will receive
25 requests from cities, but we know we will continue to

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1 receive them, okay. Are there relocations costs that
2 are within the test period?

3 A. Are there relocation costs within the test
4 period?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. Now, the fact that there will be
8 more of them in the future, you're not asking for us
9 to pay for relocations before you do the relocation,
10 are you?

11 A. No, but in the -- we need to have a certain
12 level of compliance with the franchise agreements
13 that we have. We operate, you know, in nine counties
14 and over 20 plus cities throughout the pipeline
15 corridor, and we have franchise agreements with
16 those, and many of them have relocation requirements,
17 which can tend to be a very short deadline for us to
18 come in and relocate the pipeline, and it can be a
19 considerable expense to be able to do that.

20 Q. I'm sorry, but we're agreeing that when you
21 pay that expense, that that's the time to come in and
22 ask the ratepayer to share in it, not before?

23 A. Yes, I think I'm saying in my testimony
24 that there will be future relocation expenses.

25 Q. Okay. Now, on page 17, you talk about the

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1 public interest factors associated with returning to
2 a hundred percent. Now, are you aware -- I see you
3 are an attorney?

4 A. Yes.

5 Q. Are you licensed to practice in the state
6 of Washington?

7 A. Yes, I am.

8 Q. Are you aware of -- RCW 81.28.10, and I'll
9 just read a part of it. Every common carrier shall
10 construct, furnish, maintain and provide safe,
11 adequate and sufficient service facilities, as well
12 as RCW 81.28.240, which is under the caption,
13 Commission may order improved facilities and
14 services, that if facilities or services are deemed
15 inadequate or insufficient, this Commission may order
16 that they be constructed adequately. Are you aware
17 of those statutes?

18 A. I will take your word from reading from
19 that. I am aware of the statutes in general, yes.

20 Q. Well, I'm wondering. We all agree that
21 it's in the public interest to return this line to a
22 hundred percent. You haven't heard any party suggest
23 otherwise, have you?

24 MR. MARSHALL: This is beyond the scope of
25 this witness' testimony and, in terms of expansion,

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1 I'd object.

2 JUDGE WALLIS: It appears to me to be
3 within the -- within a permissible area.

4 THE WITNESS: Yes, I would -- I would
5 disagree with that, with your assertion. I have
6 heard -- I heard in the interim case one of your
7 witnesses testify to questioning expenses for
8 reboring rivers and doing landslide types of
9 mitigation, specifically boring the Stillaguamish
10 River, we can't return the system to a hundred
11 percent operating pressure until we rebore and do
12 that tie-in. That's a specific example.

13 Q. Is it your testimony that Tesoro was
14 suggesting that Olympic not do what's necessary to
15 return to a hundred percent? Is that what you just
16 said?

17 A. I think it's your witness that testified to
18 questioning that expense from a capital expenditure
19 standpoint, yes.

20 Q. Okay. And specifically that line of
21 questioning went to whether or not the expense
22 associated with that should be treated as an expense
23 or capitalized; correct?

24 A. I believe that there was that discussion,
25 as well.

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1 Q. Okay.

2 A. Or whether it should be -- but the question
3 also talked about if that was a necessary expense to
4 do, and that is a necessary expense to return to a
5 hundred percent.

6 CHAIRWOMAN SHOWALTER: Can I just
7 interrupt? Were you just talking now about the
8 interim case or this case? I heard you mention the
9 interim.

10 THE WITNESS: The interim case. I was in
11 the audience listening to testimony during the
12 interim case.

13 Q. Let me ask perhaps what's implied by the
14 question. Is it your understanding that there's any
15 testimony in this general rate proceeding that
16 suggests that it's not in the public interest to
17 return to a hundred percent? I mean, isn't it true
18 that everybody in the room wants this line to return
19 to a hundred percent?

20 A. Yes, I just think there's a difference of
21 opinion in how we get there.

22 Q. Okay. Why don't, in your judgment, based
23 on these statutes, why is it that the Commission
24 doesn't just order Olympic to do what's necessary to
25 return to a hundred percent, because it is in the

3990

1 public interest, as you have acknowledged?

2 A. Because I believe the federal regulations
3 supersede the state's authority in that.

4 Q. So you do not believe that this Commission
5 has the regulatory authority to require, as a
6 condition of this rate case, that Olympic return to a
7 hundred percent in a certain time frame pursuant to
8 those statutes that I provided you?

9 A. I'm not saying that. I'm saying that,
10 under the federal laws and regulations, this is an
11 interstate pipeline which is regulated by the Federal
12 Office of Pipeline Safety, and that they have the
13 ability to sign off when we go to a hundred percent.
14 If the Commission were to order us to go to a hundred
15 percent, I'm not sure that that would be binding.

16 Q. Well, okay. I appreciate -- you drew a
17 finer distinction than I was. Then let me rephrase
18 it to say that why shouldn't this Commission order
19 Olympic to return to a hundred percent as soon as
20 possible? And let me rephrase the question.

21 Why doesn't this Commission order Olympic
22 to comply with OPS's requirements necessary to return
23 to a hundred percent as soon as possible and set a
24 time frame for getting that done?

25 A. I don't think they have to. I think the

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1 Commission Director of Pipeline Safety, Doug
2 Kilpatrick, has worked with us in the Office of
3 Pipeline Safety to determine the necessary
4 requirements to go back to a hundred percent. I
5 don't think there needs to be any specific order to
6 do that. I think, as you said, it's in everyone's
7 interest to go back to a hundred percent, and we
8 worked with the Commission Staff and specifically the
9 Pipeline Safety Division to determine what is
10 required to go back to a hundred percent.

11 Q. Why shouldn't this Commission, in its
12 regulatory capacity -- you acknowledge it's in the
13 public interest that that happen. Why doesn't the
14 Commission, within its regulatory responsibility,
15 simply require that that be done?

16 A. I think that that would be a question that
17 would be potentially in conflict with the federal
18 delegation of authority that they have from the
19 Office of Pipeline Safety, the Department of
20 Transportation.

21 MR. BRENA: Okay. Was I a liar by very
22 much?

23 JUDGE WALLIS: No.

24 MR. BRENA: Oh. Then I'm done.

25 JUDGE WALLIS: Very well.

3992

1 MR. BRENA: Quit while I'm still an honest
2 man.

3 JUDGE WALLIS: Okay. Let's be off the
4 record, take our evening recess, and return to the
5 record at 7:15 this evening.

6 (Evening recess taken.)

7 JUDGE WALLIS: Let's be back on the record,
8 please. We've interrupted the examination of Mr.
9 Cummings and are ready to return now for Commissioner
10 questions.

11

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

13 BY CHAIRWOMAN SHOWALTER:

14 Q. Okay. Mr. Cummings, you said that there
15 was a price differential, \$1.45 a barrel for moving
16 by truck versus 25 cents a barrel through the
17 pipeline; is that correct?

18 A. That's correct, according to spot -- a spot
19 analysis that was done.

20 Q. All right. My question is do you know the
21 comparable figure for barging?

22 A. Yes.

23 Q. What is that?

24 A. I could -- I believe this is in the Staff
25 Data Request, WUTC Staff Data Request Number 341.

3993

1 The barge rates comparable, refinery to Seattle, is
2 about 84 cents per barrel.

3 Q. Is that spot rate or some other rate that
4 you have?

5 A. That was just a -- that was an inquiry that
6 was made. That, you know, the -- of course, longer
7 term contracts, large contracts would probably be a
8 lower rate than that, and that also included with
9 trucking rates, as well. This was just an initial
10 inquiry that was made on behalf of -- I believe, in
11 fact, Crowley Maritime, also, in a response on Data
12 Request Number 414, gave a 70-cent per barrel, so
13 even less than that, so -- between --

14 Q. All right.

15 A. -- the refinery to Seattle.

16 Q. All right. If you could turn to page --
17 page 13 of your testimony.

18 A. Okay.

19 Q. And then, on lines six through 21, you're
20 describing activities that may permanently increase
21 the cost of operating the pipeline, or at least
22 that's how I took the statement to be.

23 A. That's correct.

24 Q. All right. The last sentence, on lines 19
25 and 21, say, As noted above, Olympic and BP will, as

3994

1 they have in the past, submit formal written comments
2 on such rules, consistent with the State
3 Administrative Procedures Act.

4 Are you implying by this that the increase
5 in cost is not only whatever the rules in an
6 operational sense require you -- require the pipeline
7 to do -- if that was a sentence, a phrase -- but
8 also, as well, appearing before this Commission to
9 participate in rule-making?

10 A. No, that's just that we've been an active
11 participant in the rule-making since we became the
12 operator. And I think that's making reference to --
13 that we'll continue to, you know, be active in the,
14 you know, commenting on the rule-making procedures
15 and providing cost data. As a matter of fact, we
16 provided, although it was somewhat after the period,
17 there's an open docket right now on this, the
18 hazardous liquid pipeline rules, and there was a
19 request regarding the costs as to what it would
20 pertain to pipelines, and we did submit, in between
21 the time when the -- before the final rule comments
22 were made, we submitted costs to that, and that's
23 what the reference is to.

24 Q. All right. But is the activity of
25 participating in the rule-making a cost that is

3995

1 included in your rates?

2 A. No, because much of that cost is actually
3 borne by the individuals. It would be salary and
4 expense, you know, if it was, but there's a
5 considerable number of people that actually work --
6 we work with out of our Chicago office that work with
7 us on these, and so that is an expense that is borne
8 by the Pipeline Business Unit and not as part of this
9 proceeding.

10 But to comply with the rules, yes, I mean,
11 it's anticipated that there will be considerable cost
12 as to the rules which have been set forth, and one --

13 Q. I'm actually not interested in that.

14 A. Okay.

15 Q. I'm just talking about the regulatory work
16 and the costs of regulatory work before this
17 Commission. So I take -- I took your answer to be
18 that those costs are not included in your -- in the
19 rate case here?

20 A. I think a certain amount would be, but that
21 -- these rate costs -- these costs are, I think,
22 itemized in a different area and not under the rate
23 proceeding. It's under the rule-making. It would be
24 in the rule-making sense.

25 Q. Well, all right. A similar question on the

3996

1 previous page, page 12, lines 11 to 15 is a
2 discussion of rules.

3 A. Right.

4 Q. And that Olympic and BP have been active
5 participants in the rule-making process. And my
6 question is are the costs of participating in the
7 rule-making process in some of the costs that are
8 included in the rate case or not?

9 A. I don't have an answer to that. I don't
10 know what the -- I know the specific cost of what it
11 -- what the rules would affect, how they would affect
12 Olympic. I'm not sure how the costs of actual Staff
13 time and response is treated, whether that -- I would
14 assume that it's under the normal salary and expense
15 areas that are covered under pipeline employees, and
16 so I would think that the answer would be yes.

17 Q. All right.

18 A. But that is an ongoing cost of working with
19 not only the Commission, but, you know, the Staff on
20 these rules.

21 Q. All right. And then, if you could turn
22 back to page six, lines four and five, you say here,
23 Olympic already excluded the small part of Olympic's
24 costs that were for lobbying?

25 A. Right.

3997

1 Q. And the reason I asked you this line of
2 questions is that if you look on page five, lines --
3 well, 20 through 24, you see that the definition of
4 lobbying means attempt to influence the passage or
5 defeat of any legislation, et cetera, or the adoption
6 or rejection of any rule, standard or rate.

7 And the reason -- so the reason I -- and so
8 this is in the definition of lobbying that you
9 included. And my question really is, when you -- on
10 lines four and five, when you say, Olympic already
11 excluded the small part of Olympic's costs that were
12 for lobbying --

13 A. Correct.

14 Q. -- did you mean to exclude both legislative
15 and agency-related activities or only legislative?

16 A. The legislative and agency-related
17 activities are excluded, but the definition of
18 lobbying I think is a -- my understanding of the --
19 under RCW 40.2.17, is that when they're in official
20 agency rule-making, when it's -- when notice and
21 procedure is sought from individual companies, that
22 that is not considered lobbying. If they are asking
23 for comments to specific rules and regulations on
24 behalf of, you know, whether it's a regulated entity
25 or any type of company or public citizen, that is not

3998

1 considered lobbying. That's simply considered
2 commenting, you know, as to the rule as to how it
3 would affect -- what the effect would be.

4 The specific pieces of lobbying that are
5 included, which include for the period under
6 question, would be outside contract lobbyists that we
7 have, and those have been excluded, and any salary
8 and expense which, during the test period, was
9 included as part of my salary and expense, and those
10 were excluded. But the individuals that are working
11 on behalf of these rules are working -- are BP
12 personnel, are responding on behalf of the company as
13 to how that would affect after that has already been
14 sought.

15 Q. And I'm just trying to find out -- all I
16 really want to know is what is or isn't included in
17 your definition of lobbying, mostly because you
18 quoted --

19 A. Those expenses which are to respond to the
20 rule-making under this hazardous liquid and, in fact,
21 gas, because we've responded under the gas, as well
22 as BP, are not included in the lobbying expense,
23 which we have -- which have been excluded.

24 Q. All right. And therefore, they --

25 A. My portion would be -- and any portion from

3999

1 the contract lobbyists that we have, any other BP
2 personnel that's not excluded.

3 Q. All right. And therefore, they are
4 included unless, for some other reason, they've been
5 excluded somewhere else?

6 A. They are included, correct.

7 Q. But you do not mean, by saying you excluded
8 them as -- you do not mean by saying you excluded
9 lobbying to mean you've excluded a participation in
10 rule-makings in front of this body; am I right on
11 that?

12 A. For those portions of salary and expense
13 that are for our lobbyists, yes, those have been
14 excluded.

15 Q. All right. I'm just talking about
16 activities. And let's just keep the realm of
17 activities -- activities in front of this Commission.

18 A. Okay.

19 Q. And I think you mentioned two types.

20 A. Right.

21 Q. I don't know if there needs to be a
22 distinction, but one type is where we ask the company
23 for certain information.

24 A. Right.

25 Q. Another type would be where the company

4000

1 opposes a rule or makes a recommendation on a rule.

2 A. Right.

3 Q. And for any of those activities, have you
4 included any of those activities in the term lobbying
5 when you said lobbying costs have been excluded?

6 A. Yes.

7 Q. You have?

8 A. Yes.

9 Q. Okay. And what type?

10 A. What type would be that salary and expense
11 which is the portion which includes that which was
12 asked before, and I believe that that was asked by
13 Mr. Trotter specifically under WUTC Data Request
14 Number 332. Those are the expenses which have been,
15 my understanding, that were intended to be excluded
16 because they were lobbying.

17 Q. And they include, in other words, those are
18 lobbying expenses that are for activities in front of
19 this body?

20 A. And the state legislature.

21 Q. Well --

22 A. And the other bodies.

23 Q. I'm trying to separate the legislative from
24 the agency work.

25 A. Oh, I see.

4001

1 Q. And so --

2 A. No, we don't report separately for how much
3 for the agency versus -- it's the public disclosure
4 requirements are is you -- all legislative bodies,
5 you list the bodies that you are -- potentially have
6 matters before, and that includes, on BP's part, not
7 only this Commission, but the Department of Ecology,
8 et cetera. So we would list all of those. There's
9 no breakout specifically as to how much time is spent
10 with each -- with this agency versus others.

11 Q. All right. So then, whose expenses have
12 been excluded from the rate case that are for
13 regulatory work?

14 A. That would be our lobbyists, as well as
15 that portion that's reported to the public disclosure
16 Commission for my salary, as well. It's the portion
17 of my activities which include -- or included up to
18 the test period lobbying. I no longer -- that's not
19 a part of my duties any longer, and so I -- that is a
20 part of another person's duties within BP, so --

21 Q. All right. If the company, if BP Pipelines
22 or Olympic Pipe Line writes us a letter about a rule
23 --

24 A. Right.

25 Q. -- saying, We would like you to amend it in

4002

1 the following ways --

2 A. Yes.

3 Q. -- is that --

4 A. I believe that's excluded. That is not
5 considered lobbying. There's a certain threshold
6 that you have to meet under the RCW under the Public
7 Disclosure Act for it to cross over the line between
8 actively participating as a -- you know, requesting,
9 or under the, you know, Administrative Procedures
10 Act, and when you are actually lobbying and there is
11 a threshold that you have a certain amount of
12 contacts with the agency before it becomes a lobbying
13 situation, is my understanding.

14 JUDGE WALLIS: Mr. Cummings, I am going to
15 ask you to please wait until the question is
16 concluded before you begin your answer and to slow
17 down your pace a little bit --

18 THE WITNESS: Okay.

19 JUDGE WALLIS: -- out of mercy for our
20 reporter.

21 Q. Have you participated in rulemakings or
22 other regulatory work before this Commission?

23 A. Yes.

24 Q. When you do so, do you consult with
25 employees of Olympic Pipe Line or BP about what our

4003

1 regulations should or shouldn't be?

2 A. Yes.

3 Q. And whom do you regard as the most
4 knowledgeable within BP and/or Olympic on regulatory
5 issues?

6 A. It depends on the issue. If it's
7 integrity, Mr. Wicklund, who will be following me as
8 a witness. If it's regarding the health, safety
9 types of issues, Mr. Clark, who is the health safety
10 environment manager. If it's other integrity types
11 of issues, really, from a national perspective or
12 operator qualification, it would be Mr. Knoelke,
13 who's in our BP office, but there are a number of
14 people who are quite knowledgeable about all the
15 rules and regulations from a national standpoint and
16 have actually sat on a number of committees that have
17 written a number of the rules or have been on the
18 panels with the -- not only the American Petroleum
19 Institute, but also for the Office of Pipeline Safety
20 when they're going and doing their rulemaking.

21 Q. And am I right that the work that you've
22 been involved in has been on the safety regulation
23 side of the Commission's business versus the
24 ratemaking side of the Commission's business?

25 A. The majority of my time has been -- almost

4004

1 the bulk of it is more on the safety side than the
2 ratemaking. I have worked in conjunction on the
3 ratemaking side, but only providing input to, as the
4 case is put together, about the costs such as that
5 I'm testifying about today and what those costs will
6 be and sort of what the climate is from a legislative
7 and regulatory standpoint.

8 Q. On the regulatory side of things, who
9 within Olympic or BP do you regard as the most
10 knowledgeable person about price regulation?

11 A. Price regulation?

12 Q. Well, what I mean is ratemaking, rate
13 regulation versus the safety regulations?

14 A. That would be Ms. Zabransky in Chicago, in
15 the Lisle office.

16 CHAIRWOMAN SHOWALTER: Thank you. That's
17 all.

18 COMMISSIONER HEMSTAD: Nice to see you, Mr.
19 Cummings. I don't have any questions.

20

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

22 BY COMMISSIONER OSHIE:

23 Q. Mr. Cummings, a follow-up, just briefly,
24 on, at least tangentially, some of the questions that
25 were asked by the Chair. And I note from your

4005

1 testimony, and of course you had briefly mentioned
2 early, is that you worked for BP America?

3 A. Correct.

4 Q. And other witnesses who have appeared
5 before us worked for BP Pipelines of North America,
6 so I'm assuming that's a different employer?

7 A. It is. And actually, I heard it referred
8 to earlier as British Petroleum, and if I can just
9 correct the record. There really is -- BP is the
10 merging of five companies. The old British
11 Petroleum, Amoco, ARCO, Burmah Castrol, and Vastar,
12 and the five coming together of those companies, the
13 five companies, now make up BP. BP Pipelines North
14 America is under the umbrella of BP America, so --

15 Q. I've noted from your -- as you were
16 questioned, I believe by Mr. Brena in your
17 cross-examination, you referred to the other pipeline
18 companies that are within your responsibilities as
19 clients, and I don't remember how many other clients
20 that you have, other than Olympic Pipe Line, but you
21 named off a number of them.

22 A. That's correct. I now work with -- there's
23 a natural gas line that is under -- that BP operates
24 north from Sumas down to the BP Cherry Point
25 facility, as well as the Intalco facility, but there

4006

1 are a number of other entities within BP that I work
2 with, and that includes the retail operations branded
3 under the ARCO label. The terminals and
4 distribution, which are the -- those are the trucks
5 that the terminals where the pipeline delivers to,
6 both in Seattle and in Portland, and the trucks that
7 go out and service the retail facilities, marine,
8 which includes the shipping for those issues, as
9 well. And I also work with the BP Cherry Point
10 Refinery, as well.

11 Q. Would -- the West Coast Public Affairs is
12 generally, then, Washington, Oregon?

13 A. It's the entire West Coast, but there are
14 two pipeline systems that BP has. One is the Olympic
15 system, under the BP umbrella, is the Olympic system
16 and then in the L.A. basin, from the Carson Refinery
17 down in Los Angeles to a terminal facility in
18 Victorville, California.

19 Q. And the Carson facility is one of your
20 clients, as well, under BP America?

21 A. Under BP America. I work with them, but
22 they are not one of my specific clients, but I do
23 work. Carson is the other large refinery on the West
24 Coast for BP.

25 Q. You said that your primary client was

4007

1 Olympic Pipe Line and perhaps you could put that in
2 some kind of percentage basis of the time that you
3 spend working for Olympic Pipe Line?

4 A. Up until April of this year, it was
5 virtually a hundred percent and I would do some
6 backup occasionally on other issues and working with
7 the Pipeline Business Unit out of Chicago on some
8 other sort of national pipeline issues, but it's now
9 -- it's probably about anywhere from 65 to 75 percent
10 of my time. But it's expected to decrease as we get
11 closer to a hundred percent operating capacity, and
12 just my duties have changed within the company, as
13 well.

14 Q. Do you keep track of your time with Olympic
15 Pipe Line or working for Olympic Pipe Line by hours
16 or by days, or is it just an estimate that you have
17 at the beginning of each year that I'll spend so much
18 time on working for the company on projects? How do
19 you allocate your time and how do you -- in essence,
20 you've been an attorney in private practice -- bill
21 for it?

22 A. Excuse me for interrupting.

23 Q. That's okay.

24 A. I apologize. Unlike billable hours, it's
25 really keeping track of your clients, but until

4008

1 recently, there were agreements within the government
2 of public affairs back to the individual business
3 unit, so they tracked that time. Now it is much more
4 on a basis of those clients that you are assigned to
5 just keeping track, you know, from the subject areas.
6 So it's really more of an estimate as to what my
7 time. But I am collocated at the Olympic facility,
8 and so I use office space there, but also service the
9 other clients.

10 Q. By estimate, you estimate at the end of the
11 month or at the beginning of the month? I mean, I'm
12 trying to --

13 A. It would probably be at the end of the
14 quarter, and as we proceed through the year, we're
15 really only under one quarter of the change since
16 where I was virtually at a hundred percent to now,
17 and it still is a very large percentage of my time.
18 But unlike before, those salary and expenses now are
19 not borne by BP Pipelines, and therefore not borne by
20 the ratepayers. So my time is actually not billed to
21 the shippers or anybody else, it's not passed on.
22 It's covered under the global umbrella of BP, and I
23 work as a service to all of these clients on the West
24 Coast.

25 COMMISSIONER OSHIE: Okay. Thank you. No

4009

1 more questions.

2 JUDGE WALLIS: Follow-up? Mr. Marshall.

3

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

5 BY MR. MARSHALL:

6 Q. Mr. Cummings, just a few questions, based
7 on some questions that Mr. Brena had about whether --
8 I think his questions were whether you should have a
9 shipper pay for a cost that you haven't yet incurred.
10 In Washington State, when rates go into effect, you
11 have the first year that rates go into effect called
12 a rate year. Just assume that with me for a moment.

13 If you know that costs are going to be like
14 -- say costs for buying electricity were going to go
15 up and they will be up beginning that rate year, even
16 though they may not be up right at this very moment
17 in time, but you know that they're going to be going
18 up, Mr. Brena asked you questions about fairness. Do
19 you think it would be fair to ask a shipper to pay
20 for the cost of power that we know he will pay when
21 the rates go into effect?

22 A. I'd say yes. In the aspect of power rates,
23 Olympic is one of the largest industrial users of
24 electricity in the state of Washington. I believe
25 it's in the top ten, based on the number of pumps

4010

1 that the facilities use, including the different
2 stations pumping. So that is a cost that has, you
3 know, increased since the line came back up. But if
4 it's a known and measurable type of cost that can be
5 projected, or at least you're going to know that that
6 cost is going to be up, that is something that should
7 be recovered.

8 Q. Now, a lot of your testimony, of course,
9 was about regulations, both federal regulations,
10 state and local franchise regulations. Are there
11 pending state regulations that would create costs
12 that would be starting by October, November,
13 December?

14 A. Yes, there are.

15 Q. And those costs, can they be determined
16 with any kind of known and measurable quantity at
17 this time?

18 A. Well, we responded in the rule-making that
19 the permitting costs alone are between 10,000 and
20 \$250,000 to do a lot of the work that is sought under
21 the new regulations. And one example we're -- and
22 I'll just speak briefly about the -- we're concerned
23 about the rule is that there was -- part of the rule
24 requires that the new and existing girth welds on the
25 pipeline be excavated and examined. Now, under the

4011

1 federal standard, that's only new girth welds that
2 need to be examined and x-rayed. This would require,
3 under the state regulation, to virtually excavate 54
4 miles of pipeline that Olympic has in lateral lines
5 every 70 feet or less and examine every single girth
6 weld.

7 Now, that is a cost that really is almost
8 immeasurable, because it's a requirement. And we're
9 hoping to work with Staff and we've provided comments
10 on that, but that's just one cost that could severely
11 escalate the costs of operating just due to that
12 requirement. The other --

13 Q. But just to interrupt here. You don't know
14 whether that requirement will be, in fact, imposed,
15 but it could be a cost that's imposed that would
16 start before or just coterminous with the start of
17 the rate year?

18 A. That is a -- that's proposed final rules.
19 My assumption is is that under the -- unless it's
20 changed before the implementation of the final rule,
21 that would be the final rule.

22 Q. But we don't have any cost for that in this
23 case, do we?

24 A. No.

25 Q. Okay. Now, if, by the same token, you know

4012

1 that a cost is going to disappear for the rate
2 period, your understanding is that that would be
3 taken out if it's known and measurable?

4 A. That's my understanding.

5 Q. So the shippers wouldn't have to pay for a
6 cost that they wouldn't be seeing in that rate year,
7 but they equally should be paying for costs that they
8 would see in that rate period?

9 A. That's correct.

10 Q. And just by the timing of this proceeding,
11 you don't happen to know what those final regulations
12 would be for the state, nor, because of that, what
13 those costs would be, even though those would be
14 costs that would be incurred in the rate year;
15 correct?

16 A. Yes, it's --

17 MR. TROTTER: I'll object to the question.
18 It calls for speculation. He said the rule is
19 pending and it hasn't been finalized, and it's also
20 leading.

21 MR. MARSHALL: That's my only point.

22 Q. Now, on franchise agreements, on relocation
23 expenses, are those expenses that BP would want to
24 incur unless it were ordered by the city?

25 A. No. A good example is Bellevue, where we

4013

1 had a relocation issue. They are putting in a new
2 culvert to -- for stormwater runoff, and the project
3 was budgeted and estimated to cost \$500,000, and
4 ended up costing \$3 million. And that's certainly an
5 expense that -- something that was unanticipated. It
6 was a very difficult project to undertake and the
7 project isn't finished. So it's an ongoing cost that
8 we have to work with because the relocation's not
9 finished. Qwest has not done their relocation.
10 Until Qwest finishes their relocation, the project
11 isn't closed out. So we have costs that are
12 reoccurring costs and could reoccur for the next
13 couple of years.

14 Q. Using that example, if -- once the Bellevue
15 relocation of whatever road that is is finished, I
16 take it you may not have to do a relocation on that
17 road or maybe in Bellevue, but do you have enough
18 other franchise agreements and relocation issues so
19 that that category of costs will continue to be at
20 the same plateau as far out as you can reasonably
21 anticipate?

22 MR. BRENA: Objection, foundation and
23 scope.

24 MR. MARSHALL: It's just in response to Mr.
25 Brena's line of questioning about what kinds of costs

4014

1 should be included and what costs should be included
2 to be paid by the shippers, and we're talking about
3 his recurring costs versus the categories of costs
4 that are going off into the future.

5 JUDGE WALLIS: The witness may respond.

6 THE WITNESS: Well, we're notified
7 generally and given time to respond and work with the
8 individual municipalities, but my experience in the
9 two plus years that I've been on this project is that
10 we have reoccurring costs that continue on these
11 relocations. We had one on 180th Street in Tukwila
12 to, when Sound Transit was coming through, for I
13 guess it's the Sounder train they were putting
14 through. We anticipate with the Seattle lateral
15 line, runs very close to where the Sound Transit
16 proposals are for light rail. Bellevue has notified
17 us about relocations in the Factoria area, because
18 they have a sewer line that's damaged and needs to be
19 repaired and it's in very close proximity to the
20 Olympic system, and that's just in really sort of the
21 Seattle area. That doesn't include the other
22 portions of the line where we have franchise
23 agreements, and there are requirements for when we're
24 notified by the municipality to relocate the line,
25 we're given a deadline to get in and relocate the

4015

1 line.

2 Q. And how do you know about these franchise
3 things? Is this within the scope of your duties, to
4 work with cities and so forth on those kinds of
5 issues?

6 A. Yes.

7 Q. Now, some questions were asked, and I'm
8 just going to touch on this briefly, about inquiries
9 made to barge companies on barge rates. Were you the
10 one that made those calls?

11 A. No.

12 Q. Okay. And do you know whether those barge
13 companies understood this to come from somebody who's
14 likely to ship or not ship, or do you know the
15 details about those questions?

16 A. I don't know the details about the
17 questions.

18 Q. We talked briefly about local and state
19 rules. Are there any pending -- is there any federal
20 legislation pending that's likely to be adopted prior
21 to the rate year, that is, a year starting sometime
22 in October of this year?

23 MR. BRENA: Objection. He's just repeating
24 his direct.

25 MR. TROTTER: I'll join the objection. It

4016

1 also calls for speculation.

2 MR. MARSHALL: I do actually believe that
3 it is in his direct testimony, but I'm not sure. Can
4 you point to me where that is in the direct
5 testimony? I think there have been some developments
6 since the time the rebuttal testimony was filed that
7 make it more likely that federal legislation will be
8 passed.

9 MR. TROTTER: On page 16 to 17.

10 JUDGE WALLIS: If the area is explored on
11 direct, then I would sustain the objections.

12 MR. MARSHALL: Okay. Fair enough. I don't
13 have any further questions.

14 JUDGE WALLIS: Is there anything further of
15 the witness?

16 MR. BRENA: I have one question.

17

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

19 BY MR. BRENA:

20 Q. Who made the call on the barge rates?

21 A. I believe it was Mark Usellis, who works
22 with APCO, or who used to work with APCO Associates.

23 Q. And at whose request did he make those
24 calls?

25 A. He made those calls on my request.

4017

1 Q. When?

2 A. I believe earlier this spring. I don't
3 know the timing.

4 Q. Was that information provided to witness
5 Schink?

6 A. I'm not sure if that was or not. I'm not
7 sure.

8 MR. BRENA: Thank you.

9 MR. TROTTER: Just one, Your Honor.

10

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

12 BY MR. TROTTER:

13 Q. You referred to your opinion that barge
14 contracts for barge traffic would be less than spot
15 prices, you quote. Can you tell us how much less?

16 A. I can't. It would be speculation upon my
17 part, but it's pretty well known within the industry
18 that if you have a long term contract for a specific
19 amount -- and this just really comes from historical.
20 After the Whatcom Creek accident, virtually every
21 barge on the West Coast was hired to take the
22 overflow of product from both Mr. Finklea's client,
23 Tosco, and the BP Cherry Point Refinery, because the
24 pipeline segment was closed, you know, the 37-mile
25 segment between Ferndale and Allen was closed, so

4018

1 those long-term contracts were entered into to ship
2 the product to the other destinations, but I don't
3 have any idea what those costs would be.

4 JUDGE WALLIS: Mr. Cummings, thank you for
5 appearing with us today. You're excused from the
6 stand at this time. Let's be off the record while
7 Mr. Wicklund comes forward.

8 (Recess taken.)

9 JUDGE WALLIS: Let's be back on the record,
10 please. In conjunction with Mr. Cummings'
11 appearance, the Commission Staff referred to Exhibit
12 1411, and I believe confidentiality was waived on
13 that. Is that correct, Mr. Marshall?

14 MR. MARSHALL: I believe so.

15 JUDGE WALLIS: And Tesoro inquired into --
16 inquired of the witness as to Exhibit 847. Is there
17 objection to either of those documents? Let the
18 record show that there's no response, and 1411 and
19 847 are received into evidence. Mr. Wicklund, would
20 you please stand?

21 Whereupon,

22 THOMAS WICKLUND,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25 JUDGE WALLIS: Please be seated. Mr.

4019

1 Harrigan.

2 MR. HARRIGAN: Thank you, Your Honor.

3

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

5 BY MR. HARRIGAN:

6 Q. Mr. Wicklund, would you please state your
7 full name?

8 A. Thomas A. Wicklund.

9 Q. And what is your current position?

10 A. Currently, I am the Olympic Integrity
11 Manager.

12 Q. And are you appearing on behalf of Olympic
13 this evening in this proceeding?

14 A. Yes, I am.

15 Q. Did you prepare your testimony, Exhibit
16 1501-T?

17 A. I don't have that exhibit number on the
18 documents that I have -- oh, sorry. I don't have
19 that on the documents that I have. It says TAW-1T.

20 Q. Right. You did prepare your testimony in
21 this case, however, which has been assigned the
22 Exhibit Number of 1501-T. I will just represent that
23 to you.

24 A. Okay.

25 Q. Did you do that?

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1 A. Yes, I did.

2 Q. Okay. And I understand you have one
3 correction, which consists of deleting the last
4 question and answer from that testimony; is that
5 correct?

6 A. That's correct.

7 Q. Do you have any other corrections?

8 A. No.

9 Q. And do you adopt that testimony, as
10 corrected, as your own?

11 A. Yes, I do.

12 MR. BRENA: Could I ask for clarification
13 with regard to the modification to his testimony?
14 Was that just to delete the Q&A whether or not he was
15 concluding his testimony?

16 MR. HARRIGAN: The Q&A is a question that
17 in his answer he actually referred to another
18 witness, and basically there is no particular reason
19 for him to be testifying to that, but -- on something
20 where he simply is referring it to another witness.

21 CHAIRWOMAN SHOWALTER: Well, can we be more
22 precise?

23 MR. HARRIGAN: Yes.

24 CHAIRWOMAN SHOWALTER: Page seven, the last
25 Q&A is line 11. The second to the last is line three

4021

1 through ten.

2 MR. HARRIGAN: Yes, my apologies.

3 Q. What you're deleting, Mr. Wicklund, is line
4 three through ten, is that correct, on the last page?

5 A. Yes, it is.

6 MR. HARRIGAN: Okay.

7 MR. FINKLEA: Well --

8 MR. HARRIGAN: My apologies for forgetting
9 that the actual last question and answer was the
10 concluding of the testimony.

11 MR. FINKLEA: May I inquire, do they also
12 intend to delete lines one and two, which seem to be
13 an affirmative statement which is then otherwise just
14 hanging out in mid air?

15 MR. HARRIGAN: I would stipulate to that.

16 MR. FINKLEA: Thank you.

17 MR. HARRIGAN: We would move Exhibit 1501-T
18 into evidence.

19 JUDGE WALLIS: Is there objection? Let the
20 record show that there is none, and 1501-T is
21 received.

22 MR. HARRIGAN: And Mr. Wicklund is
23 available for cross-examination.

24 JUDGE WALLIS: Commission Staff.

25 MR. TROTTER: Thank you.

4022

1

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

3 BY MR. TROTTER:

4 Q. Good evening, Mr. Wicklund.

5 A. Good evening.

6 Q. Your testimony relates to new federal

7 regulations relating to what are called high

8 consequence areas, or HCAs; is that correct?

9 A. Yes, it is.

10 Q. Isn't it true that there is no adjustment

11 made by Commission Staff in its rate case portrayal

12 that has disallowed any expenses relating to the

13 costs of the company complying with those

14 regulations?

15 A. I'm not completely familiar with the

16 Staff's position.

17 Q. You don't know one way or the other?

18 A. That's correct.

19 Q. Okay. Do you know whether Olympic has

20 offered any adjustment in its direct or rebuttal case

21 where it has adjusted for the measurable cost impact

22 of compliance with the HCA rules?

23 A. What I intend to speak to are the

24 requirements of the rules themselves and the ongoing

25 nature of the rules, but not necessarily any specific

1 costs that are included or excluded.

2 Q. So you don't know one way or the other?

3 A. That's correct.

4 Q. Okay. Turn to page three of your
5 testimony. And at the bottom of the page, and then
6 going over to the next couple of pages after that,
7 you explain what the HCA regulation does; is that
8 correct?

9 A. Yes, in brief.

10 Q. And in brief, among other things, it
11 requires the company to establish an integrity
12 management program and, as you say on the top of page
13 five, a plan for the baseline assessment of the
14 pipeline to be completed by March 31st, 2008, and
15 then a framework to address each area of the
16 integrity management program. Do you see that?

17 A. Yes.

18 Q. Did you have occasion to read the
19 deposition testimony of Mr. Talley in this case?

20 A. I have read some of Mr. Talley's testimony,
21 and which particular document you're referring to,
22 I'm not positive.

23 Q. Okay. Well, let me represent to you that
24 we discussed this in some respects in his deposition,
25 which has been marked for identification as Exhibit

4024

1 1305, just for the record. And he testified that --
2 and I'm referring to page 142, In fact, we were
3 probably ahead of the regulation in some of the
4 things that we were going to be required to do
5 anyway. And he's referring to the HCA regulations.

6 Does that -- does that testimony ring true
7 for you, that Olympic was already doing things that
8 the HCA later would require it to do?

9 A. Yes, it is. And it is consistent with BP's
10 general beliefs and programs that we've operated for
11 other pipeline systems.

12 Q. Okay. And so when BP took over Olympic
13 Pipe Line, it was already at that time implementing
14 some of the provisions that would later become
15 codified in the HCA rules?

16 A. They fit very nicely with the HCA rules,
17 yes.

18 Q. And with respect to the integrity
19 management program, did Olympic have such a program
20 prior to the HCA rules in effect?

21 A. I'm not aware.

22 Q. It does say that the integrity management
23 program must include a plan for baseline assessment
24 of the pipeline to be completed by March 31st, 2008.
25 Has Olympic already completed that baseline

4025

1 assessment of the pipeline?

2 A. The inspections that have been completed
3 can be considered within the HCA rule. The rule
4 allows for regression and including previous
5 inspections up to five years prior to this year.

6 Q. So is your answer yes, that Olympic already
7 has --

8 A. Yes. Yes, it is.

9 Q. Okay. And Olympic has, in fact, already
10 tested all of its line, including laterals; is that
11 correct?

12 A. Yes, with several different types of tools.

13 Q. And does Olympic already have an ongoing
14 maintenance program to make repairs consistent with
15 HCA requirements?

16 A. It is an ongoing program, yes.

17 Q. And when did that program start?

18 A. The first inspections finished in May to
19 July of 2000, and repairs began in about September of
20 2000.

21 Q. Okay. Now, on page five of your testimony,
22 you refer to a written plan for the baseline
23 assessment, and then the -- you identified that the
24 HCA regulation outlines conditions of concern and in
25 what time frame they must be remediated, and then

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1 certain standards involving metal loss and so on. Do
2 you see that?

3 A. Yes, I do.

4 Q. Are all of these requirements consistent
5 with BP's standards that were in effect when BP took
6 over the line?

7 A. These are -- in the current program, we are
8 tailoring everything to be very consistent with the
9 HCA rule. Beginning in 2000, we were consistent with
10 this or exceeding it.

11 Q. Okay. So beginning in the year 2000, you
12 were meeting the standards that are now in effect as
13 of 2002?

14 A. Yes, I believe that's correct.

15 Q. On page six, you refer to regulations
16 requiring pipeline operators to take preventive and
17 mitigative measures to protect HCAs -- that's
18 starting on line five -- including a risk analysis of
19 pipeline segments and so on. Had Olympic already
20 done the activities you refer to in the paragraph
21 starting on line five prior to the HCA being in
22 effect?

23 A. When I became involved with Olympic in the
24 fall of 2000, the inspection -- ongoing inspections,
25 there were inspections that were complete and there

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1 was a plan in place for future inspections. So
2 whether or not there was a risk assessment consistent
3 with the HCA rules at that time, I don't -- I
4 wouldn't say yes.

5 Q. Still on page six, line 11, you indicate
6 that after establishing a baseline assessment, the
7 operator must perform follow-up assessments at
8 periodic intervals not to exceed five years. Was
9 that consistent with BP's standards before the HCA
10 rules went into effect?

11 A. Pretty close. I've been involved with our
12 program in the lower 48 in the past, and we had some
13 lines where we would inspect and repair on a more
14 frequent basis, as frequently as every three years,
15 and other lines which we felt were at low risk, we
16 might extend that to a seven-year cycle, and with
17 some that were the least risk, up to ten years.

18 Q. For Olympic, what would have been the cycle
19 in effect prior to the HCA under BP's standards?

20 A. Five years fits very well with Olympic,
21 considering the population density and other risks.

22 Q. So you would have had a five-year interval
23 prior to the HCA being implemented anyway?

24 A. Yes.

25 Q. Okay. Is there any particular aspect of

4028

1 the HCA regulations that jump out to you that were
2 not already contemplated by Olympic's preexisting
3 safety program as it was implemented by BP Pipelines?

4 A. There's very rigorous requirements for
5 documentation for putting a process in place,
6 documentation, reevaluation of population density to
7 check for change in any other environmentally
8 sensitive areas where we may not have had that
9 aggressive a program in place.

10 Q. But in terms of the safety standards
11 themselves, in terms of when you repair a defect,
12 what type of defect gets repaired, things like that,
13 those were already established as BP Pipelines
14 standards?

15 A. Yes, they were.

16 MR. TROTTER: Those were all my questions.
17 Thank you very much.

18 JUDGE WALLIS: Mr. Finklea.

19

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

21 BY MR. FINKLEA:

22 Q. Good evening, Mr. Wicklund.

23 A. Good evening.

24 Q. I'm Ed Finklea, I represent Tosco. In
25 light of Staff's questions, I'm down to one question.

1 If you could turn to page four, at line 20, you state
2 that most of Olympic's system is located within a
3 high consequence area. Can you help us quantify, by
4 most, what you mean?

5 A. I think a conservative estimate would be as
6 little as 75 percent, but possibly much more than
7 that.

8 Q. And is the -- is your range because you're
9 not certain how high consequence area is going to be
10 defined or just based on your own knowledge of where
11 the pipeline route is?

12 A. Based on my knowledge of our analysis of
13 the HCA areas along the pipeline route. As an
14 example, we have recently taken a hard look at the
15 three pieces of 16-inch, which we refer to as the
16 north 16, and all 54 miles are considered in an HCA
17 area.

18 MR. FINKLEA: I have nothing further.

19 JUDGE WALLIS: Mr. Brena, do you have any
20 questions?

21 MR. BRENA: I do have one or two.

22

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

24 BY MR. BRENA:

25 Q. Good evening.

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1 A. Good evening.

2 Q. I have some questions on your background
3 and what you've done. You said that you have
4 established your -- you mentioned in your testimony
5 on page two, lines 15 forward, that you had
6 established and coordinated a risk-based long-range
7 smart pig inspection and repair program for BP's
8 lower 48 states liquids pipeline and that that's been
9 significant in managing the repair cost.

10 As part of that, have you been responsible
11 for or involved with smart pigging for pre-1970 Lone
12 Star ERW pipe?

13 A. I have been involved with inspection and
14 repair programs involving pre-1970 pipe, yes.

15 Q. And when did you first become involved in
16 those programs?

17 A. Probably the late '80s.

18 Q. And what was your involvement?

19 A. Direct involvement with the running of the
20 inspection tool, interpretation of data, assembling
21 of repair program, and coordinating the actual
22 completion of the repairs.

23 Q. You were aware of the notices by the Office
24 of Pipeline Safety in 1988, 1989, concerning the risk
25 to this type of pipe?

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1 A. I am aware of those notices.

2 Q. And based on those notices, you put in
3 place a program to inspect and repair those -- to
4 address the issue?

5 A. In the system that's being referred to
6 here, at that time, we did not have any specific
7 concerns over -- about our pre-'70 ERW pipe, so they
8 weren't treated on a different basis as other lines.

9 Q. By the system referred to here, are we
10 talking about BP's lower 48 liquids pipelines?

11 A. Yes, it is.

12 Q. Okay. So did you test for this type of
13 pipe based on those notices in the late '80s?

14 A. No, I would say that we did not take any
15 extra measures at that time.

16 Q. When were the extra measures taken?

17 A. I don't believe we've had any previous bad
18 experience with pre-'70 ERW pipe.

19 Q. Okay. And I'm just trying to understand.
20 I understood that you had been involved in testing
21 and repair for that type of pipe; correct?

22 A. In a general sense, we have inspected and
23 repaired lines that had pre-'70 ERW. But to say that
24 was a specific concern of the inspection and repair,
25 no.

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1 Q. Did BP Pipelines do anything in response to
2 those notices in the late '80s with regard to this
3 pipe?

4 A. There was a significant risk assessment
5 done in the late '80s.

6 Q. Could you tell me a little about that,
7 please?

8 A. It considered operating conditions,
9 location, types of pipe, staffing, whatever you can
10 consider that may be a potential risk to operating
11 that system safely.

12 Q. So is part of it it identified all that --
13 all the pipe that could be at risk? That was the
14 first step?

15 A. It was included in those steps, yes.

16 Q. And then it did a risk assessment based on
17 various factors that may impact whether or not that
18 risk would be realized with regard to that pipe?

19 A. Yes.

20 Q. And when was this assessment, this risk
21 assessment completed?

22 A. I believe it was 1989 or 1990.

23 Q. And based on that risk assessment, were
24 there any -- was there any testing or repair of the
25 pre-1970 ERW pipe?

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1 A. Not that I'm aware of.

2 Q. So the result of the risk assessment would
3 be -- you said it was significant. Can you give me
4 some idea the scope of the risk assessment that was
5 done at that time?

6 A. I'm not sure I understand what you mean by
7 --

8 Q. Well, how many people were involved, how
9 many resources went into it, how comprehensive was
10 the risk assessment?

11 A. Actually, I wasn't a participant at that
12 time. I was in Alaska on a different assignment.
13 And upon return, I was aware that the risk assessment
14 had been done, I had seen it. I don't know it
15 thoroughly, its contents, but I was aware that it had
16 been completed and I don't know who participated.

17 Q. You'd consider it a thorough risk
18 assessment on this issue?

19 A. On all issues relating to risk assessment
20 or risks of operating a pipeline safely.

21 Q. Okay. The conclusions to the risk
22 assessment were what?

23 A. I can't necessarily quote what all the
24 conclusions were. I know that they considered
25 operating staff level, as well as types of pipe and

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1 those sorts of things. I am aware that we -- our
2 inspection program, thinking of pipe only, our major
3 issues were more along the lines of corrosion than
4 they were along seam failures.

5 Q. Are you aware of any similar effort that
6 was conducted with regard to Olympic Pipe Line
7 specifically?

8 A. I have no knowledge.

9 MR. BRENA: Thank you. I have no further
10 questions.

11 JUDGE WALLIS: Questions from the bench?

12 CHAIRWOMAN SHOWALTER: No.

13 COMMISSIONER HEMSTAD: No.

14 JUDGE WALLIS: Redirect.

15 MR. HARRIGAN: Thank you, Your Honor.

16

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

18 BY MR. HARRIGAN:

19 Q. The risk assessment you were just
20 describing that you became aware of, at least,
21 related to what geographic region of the country?

22 A. In general, the lower 48 states for BP
23 pre-merger with Amoco.

24 Q. Okay. And did it include the Olympic line?

25 A. No, it did not.

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1 Q. Okay. With respect to the 1988 notices
2 with respect to the risks associated with the Lone
3 Star pipe, what were the criteria that one was
4 required to evaluate in considering whether to engage
5 in certain types of testing, such as hydro testing?

6 A. The two notices, first in '88, was
7 primarily focused on selective corrosion related to
8 the seam area. The second notice, which came out in
9 '89, was more directly related to seam flaws, not
10 corrosion.

11 Q. Seam flaws, meaning manufacturing flaws?

12 A. Yes.

13 Q. Mm-hmm.

14 A. And both of those alert notices suggested
15 the operators consider evaluating their system,
16 potentially, possibly hydro testing as one measure of
17 validating the integrity of the pipe, but it also
18 suggested considering whether you had previous tests
19 that were still valid, also whether or not you had an
20 adequate cathodic protection system.

21 THE REPORTER: What was that?

22 THE WITNESS: Cathodic protection system.

23 Q. C-a-t-h-o-d-i-c.

24 A. And that's a means of preventing corrosion
25 to the pipe. I'm drawing a blank on the third item,

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1 but the key was if you had valid records of original
2 construction or a hydrostatic test pre-1988, of these
3 alert notices, that that would be considered valid
4 documentation of the integrity of the system.

5 Q. Okay. Based upon the information that you
6 have gained about Olympic's line since you began
7 handling its in-line inspection programs, did
8 Olympic, in fact, have such a -- have data with
9 respect to a hydro test at the time of construction?

10 A. Yes, they do.

11 Q. And did Olympic, based on your experience
12 with its line, or does it have adequate cathodic
13 protection or is there a corrosion problem?

14 A. They do not have a problem. There are
15 areas of corrosion. It is something that we are
16 finding with these in-line inspections, but it's not
17 significant. It's not considered a sign of
18 inadequate cathodic protection.

19 Q. Okay. And had Olympic, over the period of
20 time since the line was constructed, had a lot of
21 problems with the ERW pipe?

22 A. No.

23 Q. Under the criteria of the 1988 and 1989
24 notices, was a hydro test of the Olympic line
25 indicated under those circumstances?

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1 A. No.

2 Q. When did the -- when was the first notice
3 of rulemaking issued with respect to the high risk
4 areas, which I'm misnaming here?

5 A. The first notice --

6 Q. The HCAs. When was the first notice of
7 potential rulemaking about that?

8 A. In April of 2000.

9 Q. And when was the initial version of that
10 rule actually adopted? An approximate date would be
11 acceptable.

12 A. I believe it was December of 2000.

13 Q. Okay. As of the spring of 2001, which
14 would have been two-thirds of a year after BP took
15 over as operator; right?

16 A. Yes.

17 Q. What was the status of any activities on
18 the part of BP in terms of in-line inspection that
19 would be usable under the HCA criteria? In other
20 words, what -- first of all, tell us what inspections
21 that the HCA rules actually call for, and then tell
22 us, among those inspections, where Olympic's programs
23 stood as of the spring of 2001?

24 A. In 2000, Olympic had completed --

25 Q. Let's start with what the in-line

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1 inspections are that are required under the HCA
2 program.

3 A. Correct.

4 Q. What types?

5 A. Oh, okay. The in-line inspections, as a
6 point, are one option to assess the system.

7 Q. Mm-hmm.

8 A. Hydrostatic test is another option.

9 Q. Okay.

10 A. And other ways of evaluating the system
11 would be considered if you can prove a valid case,
12 but in-line inspection is the preferred method.

13 Q. Okay. And are we talking about more than
14 one type of in-line inspection that the operator must
15 consider if that's the way he's going to go?

16 A. There are several types.

17 Q. What are they?

18 A. The first is called a deformation or a
19 geometry tool, which is to assess the roundness of
20 the pipe itself looking for dents.

21 Q. This is basically looking for third party
22 damage, mainly?

23 A. Third party damage and also rocks.

24 Q. Okay.

25 A. Which are known to push up from the

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1 underside of the pipe.

2 Q. Mm-hmm.

3 A. The second type is an MFL, magnetic flux
4 leakage, which is generally understood to evaluate
5 wall loss or corrosion. And in addition to that,
6 there is language in the HCA rule about evaluating
7 the seam, and that is where the TFI type, which is
8 transverse flux inspection, is used to look at the
9 actual ERW seam.

10 Q. Okay. So as of the spring of 2001, where
11 did Olympic stand in terms of accomplishing in-line
12 inspections of these three kinds?

13 A. The entire system was inspected with a
14 geometry and an MFL tool in 2000.

15 Q. Mm-hmm.

16 A. All 11 segments. And repairs had begun, as
17 I was answering earlier, in the fall of 2000 and
18 continued on to date. We have had ongoing inspection
19 repair programs.

20 Q. Okay. So the inspections had occurred
21 prior to the end of 2000 of the two kinds you just
22 mentioned; correct?

23 A. Yes.

24 Q. But the repairs resulting from those
25 inspections are still going on; is that right?

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1 A. Yes, they are.

2 Q. Okay. Then what about the TFI inspection?
3 Where did that process stand as of the spring of '01?

4 MR. BRENA: Objection. I certainly think
5 this is, I mean, a valid line, but witness Talley is
6 the witness that put in the testimony relative to
7 this. This witness has not testified with regard to
8 any of the testing on the Olympic system and
9 certainly wasn't asked any questions on it. So this
10 is not only beyond the scope of cross, but he didn't
11 even testify to it. This is using redirect to
12 supplement his direct testimony, and that's
13 inappropriate.

14 MR. HARRIGAN: Your Honor, I believe this
15 responds directly to the inquiry by Staff with
16 respect to whether BP had, in fact, accomplished all
17 of the requirements for inspection and repair called
18 for under this program prior to the time of the test
19 year.

20 And I'm simply trying to get a clear
21 picture from the witness who was asked to answer that
22 question of what the actual status was as of the time
23 that this rule was adopted.

24 MR. TROTTER: Just for the record, I don't
25 think -- at least I don't recall asking a question

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1 about all the repairs being completed, but rather
2 more that the procedures were in place and they were
3 consistent with BP's standards. That's my
4 recollection of the state of the record.

5 JUDGE WALLIS: I believe this is beyond the
6 scope of the testimony and the questions that were
7 asked of the witness and would sustain the
8 objections.

9 Q. What is the current status of the repair
10 work or the current status of the excavation and
11 checking and repair work arising from any TFI
12 inspections that have taken place?

13 MR. BRENA: Same objection, Your Honor.

14 MR. HARRIGAN: Same ruling, Your Honor?

15 JUDGE WALLIS: Yes, Mr. Harrigan. Is your
16 microphone on, Mr. Harrigan?

17 MR. HARRIGAN: Yes, it is.

18 JUDGE WALLIS: Thank you.

19 Q. Are the standards for when one must
20 excavate in response to a particular piece of data
21 arising from an inspection tool under the HCA rule
22 the same as they were prior to that rule being
23 adopted?

24 A. No.

25 Q. What has happened to them under that rule?

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1 A. They are much more conservative.

2 Q. Are they more conservative than the
3 standards that BP was previously applying?

4 A. Yes, they are.

5 Q. What, under the HCA rules, what are -- are
6 there specific requirements for the timing of repair
7 of certain types of defects under certain
8 circumstances?

9 MR. BRENA: Your Honor, this appears to be
10 just going through a pre-prepared list of redirect
11 questions that have been typed up and aren't related
12 to his testimony or to the cross.

13 MR. HARRIGAN: Your Honor, that question is
14 scribbled on this piece of paper that was handed to
15 me while the witness was testifying.

16 MR. BRENA: Well, that's the only one.
17 Hold up the other piece.

18 MR. HARRIGAN: I have actually not looked
19 at my typewritten notes since I started asking
20 questions.

21 MR. BRENA: Typewritten redirect should
22 cause a great deal of suspicion to begin with. But,
23 anyway, joking aside, it appears that this witness is
24 headed down the path of putting on an hour of
25 redirect for five minutes of cross, and --

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1 MR. HARRIGAN: I think I'll be done by
2 8:30.

3 CHAIRWOMAN SHOWALTER: Go.

4 JUDGE WALLIS: Please.

5 Q. Are there requirements for the timing of
6 repairs of certain types of defects under the HCA
7 rule?

8 A. Yes, there are. There are several
9 requirements as far as timing goes. What they refer
10 to is immediate conditions, which means you need to
11 dig up and repair as soon as possible or take other
12 measures to ensure the integrity of the system, that
13 being -- one other measure would be to derate the
14 pipeline operating pressure until you can get out
15 there and dig it up and find out what's there and
16 make any necessary repairs. Second, there are what
17 are called 60-day conditions. And again, you have 60
18 days from the time of having enough knowledge of the
19 -- of what's expected to go out and dig them up and
20 make necessary repairs. And then the final is a
21 180-day condition, same idea.

22 Q. Is one required in -- are those
23 requirements new?

24 A. With the HCA rule, they are.

25 Q. Okay. In making the assessments that the

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1 HCA rule calls for, is one required to take into
2 account the availability of new technology as it
3 develops?

4 MR. BRENA: Scope.

5 MR. HARRIGAN: The general issue to which
6 this question responds, Your Honor, has to do with
7 the notion that the rules and requirements are really
8 no different from what previously existed.

9 JUDGE WALLIS: I think that's beyond the
10 scope of the questioning.

11 MR. HARRIGAN: I have no other questions.

12 JUDGE WALLIS: Is there anything further?

13 MR. BRENA: I have one.

14

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

16 BY MR. BRENA:

17 Q. You mentioned that there were three
18 criteria in the 1989 notice, and you remembered the
19 standards for hydrostatic testing and whether it had
20 been previously applied, and you remembered the
21 cathodic protection. You don't remember the third
22 one?

23 A. I do now.

24 Q. And what's the third one?

25 A. The third one is any history of seam

4045

1 failures.

2 Q. Avoiding increasing the pipeline's
3 longstanding operating pressure. Was that a central
4 point in the 1989 notice alert?

5 A. Yes, there is a mention of that.

6 Q. Well, it has the same status as the other
7 three that you've mentioned, and in fact, there's
8 four, isn't that the case? Would you like to review
9 it?

10 A. I'm familiar with that. That is mentioned
11 in there, yes.

12 Q. Okay. So when you say mentioned, number
13 one is hydrostatic testing, number two is avoiding
14 increasing longstanding operating pressure, number
15 three is the corrosion protection, and number three
16 (sic) is if there is a seam failure; correct?

17 A. I believe that's correct.

18 Q. Okay. Are you aware of whether or not
19 there was periodic and regular overpressure
20 situations in the Olympic line as a result of the
21 failure of valves at the Bayview terminal?

22 A. I have not been involved with the previous
23 -- the history of the Olympic system prior to my
24 coming on in the fall of 2000. So I've heard
25 conversations, but details are very limited.

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1 Q. Well, you know it's the case that, over 50
2 times, they were pumping against a closed valve,
3 don't you?

4 MR. HARRIGAN: Objection for lack of
5 foundation.

6 JUDGE WALLIS: Sustained.

7 Q. Do you know it's the case that they were
8 pumping against a closed valve over 50 times?

9 MR. HARRIGAN: Same question. Same
10 objection.

11 JUDGE WALLIS: The witness may state
12 whether he knows the answer.

13 THE WITNESS: Please restate.

14 Q. Do you know whether or not on the Olympic
15 Pipe Line system, that over 50 times, that it was
16 pumping against a closed valve at the Bayview
17 terminal?

18 MR. HARRIGAN: Same objection.

19 JUDGE WALLIS: The witness may respond.

20 THE WITNESS: I'm not familiar with those
21 details.

22 Q. Have you reviewed -- you have indicated
23 that part of your responsibility is to respond to the
24 Office of Pipeline Safety Corrective Action Order,
25 haven't you?

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1 A. Yes, sir.

2 Q. And you're not aware of the failure to test
3 or the overpressure situations that occurred at the
4 Bayview terminal?

5 MR. HARRIGAN: Same objection. The witness
6 has already answered this question.

7 MR. BRENA: I made it more broadly, and
8 he's indicated in his testimony that it's part of his
9 duty.

10 JUDGE WALLIS: The witness may respond.

11 THE WITNESS: The details that I have
12 primarily have come from the CAO as it is written,
13 and there is mention of some overpressure events in
14 the CAO as part of their fact-finding.

15 Q. And as part of your job and responsibility,
16 are you testifying that you haven't investigated
17 whether or not there's been any overpressure
18 situations on this line?

19 A. When I came on in the fall of 2000, the
20 issues related to that particular part of the CAO had
21 been addressed.

22 CHAIRWOMAN SHOWALTER: What is the CAO?

23 MR. BRENA: Corrective action order by the
24 Office of Pipeline Safety with its two amendments.

25 THE WITNESS: Corrective action order,

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1 yeah.

2 Q. So you were the person in charge of
3 ensuring compliance with the corrective action order;
4 correct?

5 A. No.

6 Q. I'm reading from your testimony, page one,
7 starting on line 12. It says, I work with BP
8 engineering groups and Olympic Staff to ensure
9 compliance with federal integrity regulations in the
10 Office of Pipeline Safety's Corrective Action Order.
11 Is that accurately stated?

12 MR. HARRIGAN: Objection. If this is
13 suggested as a contradiction of the witness' prior
14 testimony, work with and being in charge of are not
15 the same thing.

16 MR. BRENA: My question is is whether or
17 not the testimony is accurately stated.

18 JUDGE WALLIS: The witness may respond.

19 THE WITNESS: It is in the sense that I
20 work with, but in charge of is incorrect. I do
21 report on status of -- I should say I work with
22 others in BP's staff in tracking the status of the
23 corrective action order that can then be conveyed to
24 the Office of Pipeline Safety.

25 Q. So you're aware generally of the

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1 communications that have gone back and forth between
2 Olympic and the Office of Pipeline Safety with regard
3 to the -- with regard to the requirements under the
4 corrective action order?

5 A. In general, yes.

6 Q. Okay. Let me ask you a hypothetical
7 question. If you knew that some pre-1970 Lone Star
8 ERW pipe had been in an overpressure situation at
9 least 50 times as a result of the pipeline pumping
10 against a closed valve, would you take steps to
11 ensure yourself that the ERW pipe maintained the
12 integrity of its seams?

13 MR. HARRIGAN: Objection, assumes facts not
14 in evidence and contrary to the evidence.

15 MR. BRENA: I asked it as a hypothetical.

16 JUDGE WALLIS: It's a hypothetical
17 question. The witness may respond.

18 THE WITNESS: If I was put in that
19 situation today, I would consider that in my
20 assessment of the system.

21 Q. And by consider that in your assessment, if
22 those were the underlying facts, you would step
23 forward and do a risk assessment to see whether or
24 not the ERW pipe seams had integrity, would you not?

25 MR. HARRIGAN: Same objection. It's

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1 assuming facts not in evidence, and a hypothetical is
2 not appropriate if the facts are not in evidence.

3 JUDGE WALLIS: The witness may respond.

4 THE WITNESS: Could you please restate?

5 Q. Well, I'm just trying to understand. You
6 said that BP did a risk assessment in its whole
7 system in the late '80s, and it wasn't in a situation
8 where -- so I'm asking you if you're in a position
9 where you had pre-1970 ERW pipe and it had been
10 alleged or it were true that, over 50 times, that
11 those pipe seams had been put in overpressure
12 situations, wouldn't the prudent thing to do be to
13 step forward and do a risk assessment of the
14 possibility of a seam failure?

15 MR. HARRIGAN: Same objection.

16 JUDGE WALLIS: Overruled.

17 THE WITNESS: The reality is the assessment
18 is complete for that segment to the line, it has been
19 hydro tested since the failures, since the failure in
20 the system, so an assessment has actually been
21 completed and validated. Given those -- that
22 hypothetical for today, in my position, I don't have
23 a concern for the Ferndale to Allen segment.

24 Q. I was asking as a hypothetical. I
25 understand that it's all been tested now and it's

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1 with regard to the facts of this case. I'm asking
2 you if you were brought into a pipeline and it had
3 pre-1970 ERW pipe and the seams had been put in an
4 overpressure situation over 50 times, isn't the
5 prudent thing to do is an immediate risk assessment
6 with regard to the risk of seam failure? Is that a
7 prudent thing to do, in your judgment?

8 A. I believe that's what I answered a couple
9 of questions ago, that I would definitely consider
10 that in the assessment of the system.

11 Q. So you would assess the system and you
12 would assess that particular overpressure both; is
13 that correct?

14 A. Yes, it should be done.

15 MR. BRENA: Okay. Thank you. No further
16 questions.

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

19 BY MR. HARRIGAN:

20 Q. Were the assessments that were performed
21 under your direction since you came to assist Olympic
22 performed in any way as a result of the Whatcom Creek
23 incident?

24 MR. BRENA: Objection. That's beyond the
25 scope of the cross. If we're going to open up the

1 reason for that, we'll be here another hour.

2 MR. HARRIGAN: The cross, Your Honor, was
3 directly related to counsel's, in effect, attempt to
4 introduce through hypotheticals an erroneous state of
5 facts with regard to the causes of the Whatcom Creek
6 incident and then to relate those events to the
7 assessment.

8 MR. BRENA: No, it was not. It's
9 uncontested in this case that the Whatcom Creek
10 pipeline failure was not ERW pipe. So he's -- if he
11 wants to go into Whatcom Creek, then I have to
12 follow.

13 JUDGE WALLIS: I think that we've managed
14 to -- pretty much to stay out of the creek so far and
15 would suggest that we try to continue that practice.

16 MR. HARRIGAN: All right.

17 JUDGE WALLIS: So I'll sustain the
18 objection, Mr. Harrigan.

19 Q. What -- the term overpressure is not a
20 self-defining term. What is maximum allowable
21 operating pressure?

22 A. Definition?

23 Q. Basically, yes, the essence of it.

24 A. Given that you consider the type of pipe,
25 the yield strength of the material, diameter, wall

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1 thickness, all go into determining a design limit.
2 Your maximum allowable operating pressure, if you
3 hydro test to validate the design limit, you can
4 operate there, but your hydro test actually
5 determines what your MAOP will be.

6 Q. Okay. And is the maximum allowable
7 operating pressure what you're allowed to operate at
8 all day long?

9 A. Yes, it is.

10 Q. And is there also a maximum allowable surge
11 pressure?

12 A. Yes, there is. It is ten percent above the
13 maximum allowable operating pressure.

14 Q. Okay. And is the line designed to
15 withstand maximum allowable surge pressure in order
16 for it to have that allowable surge pressure?

17 A. Yes, it is. And the hydro test also
18 validates that.

19 Q. Okay. Do you have any knowledge that 50
20 times or any number of times this line experienced
21 pressures in excess of maximum allowable surge
22 pressure? Do you have any knowledge of that?

23 A. Of those -- of 50 times, of 50 occurrences?

24 Q. Or any other number?

25 A. Only what I've read in the statement of

1 facts in the CAO.

2 Q. And?

3 A. And it does say there -- whether it's 50 or
4 40, it's somewhere's in that range.

5 Q. Of what events?

6 A. I would need to look.

7 MR. HARRIGAN: All right. I have no
8 further questions.

9 JUDGE WALLIS: Anything further of the
10 witness?

11 MR. BRENA: No, Your Honor.

12 JUDGE WALLIS: Mr. Wicklund, you're excused
13 from the stand.

14 THE WITNESS: Thank you.

15 JUDGE WALLIS: Is there anything further
16 this evening? Let the record show that there's no
17 response, and that today's session is concluded.

18 (Proceedings adjourned at 8:43 p.m.)

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