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2 WITNESS: PAGE NO.

3

4 BOBBY J. TALLEY

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1 (Description of Exhibits 1601-T through 1629 and 1203-C  
2 to 1217 attached to back of the transcript.)

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| 4  | EXHIBIT NO. | MARKED: | OFFERED:          | ADMITTED: |
|----|-------------|---------|-------------------|-----------|
| 5  | 627         |         | 4133              | 4133      |
| 6  | 1601-T      |         | 4061              | 4061      |
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| 10 | 1616-C      |         |                   |           |
| 11 | 1617, 1618  |         |                   |           |
| 12 | 1619-T      |         | 4061              | 4061      |
| 13 | 1620 - 1628 |         | 4061              | 4061      |
| 14 | 1629        |         | 4072              | 4073      |
| 15 | 1203-C      |         |                   |           |
| 16 | 1204 - 1207 |         |                   |           |
| 17 | 1208 - 1215 | 4173    |                   |           |
| 18 | 1216, 1217  | 4173    | withdrawn on 4186 |           |
| 19 |             |         |                   |           |
| 20 |             |         |                   |           |
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| 25 |             |         |                   |           |

1 P R O C E E D I N G S

2 JUDGE WALLIS: Let's be on the record,  
3 please. This is the Tuesday, July 2 session in the  
4 matter of Docket No. TO-011472. This morning's session  
5 will begin with the examination of Mr. Talley. Are  
6 there any administrative matters before we proceed?  
7 Let the record show that there is no response.  
8 Olympic is calling Bobby J. Talley to the stand.  
9 Mr. Talley, would you please stand?

10 (Witness sworn.)

11 JUDGE WALLIS: In conjunction with  
12 Mr. Talley's testimony, some documents have been  
13 predistributed and premarked. These are on behalf of  
14 Olympic: Mr. Talley's rebuttal testimony, 1601-T  
15 through 1608-C, and 1619-T, which is Mr. Talley's  
16 direct testimony before FERC, through 1628.

17 In addition, Tesoro predistributed documents  
18 that have been marked as 1616-C, 1617, and 1618, and  
19 Commission staff has distributed a document identified  
20 as 1629 for identification. I believe that these  
21 documents were identified at the conference for  
22 administrative matters held on June 13th. To the  
23 extent that they are not, and we will compare the  
24 record in that document with this list, we will ask the  
25 court reporter to add the description of documents that

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1 are not identified. With that, Mr. Harrigan?

2 DIRECT EXAMINATION

3 BY MR. HARRIGAN:

4 Q. Mr. Talley, would you please state your full  
5 name?

6 A. Bobby J. Talley.

7 Q. What is your current position?

8 A. I am a vice president, district manager of  
9 Olympic Pipe Line.

10 Q. Are you appearing today on behalf of Olympic  
11 Pipe Line?

12 A. I am.

13 Q. Did you prepare Exhibits 1601-T and 1619-T,  
14 which are your direct and rebuttal testimony?

15 A. I did.

16 Q. Are you sponsoring today Exhibits 1602  
17 through 1608, some of which have a confidentiality  
18 designation after them, as well as Exhibits 1620  
19 through 1628?

20 A. I have.

21 Q. Do you have any corrections or modifications  
22 to your testimony?

23 A. I do not.

24 Q. Do you adopt this testimony as your own?

25 A. I do.

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1                   MR. HARRIGAN: We would offer Exhibits  
2 1601-T, 1619-T, 1602 through 1608-C, and 1620 through  
3 1628.

4                   JUDGE WALLIS: Any objections? Let the  
5 record show there is no response, and the exhibits are  
6 received in evidence.

7                   MR. HARRIGAN: The witness is available for  
8 cross-examination.

9                   JUDGE WALLIS: Commission staff?

10

11

12                                   CROSS-EXAMINATION

13 BY MR. TROTTER:

14           Q.     I would like to start with your rebuttal  
15 testimony, Exhibit 1601-T, Page 2, Line 7. You  
16 indicate that Olympic now questions if it can start any  
17 more new projects in the 2002 capital budget because  
18 intervenors have recommended that Olympic refund the  
19 temporary FERC rates and the WUTC interim rates. That  
20 refund liability would exceed all funds available for  
21 the 2002 capital budget, as Howard Fox testifies. Do  
22 you see that?

23           A.     Yes.

24           Q.     Is it your understanding that the total  
25 amount in question is 17 million, 3 million of which is

1 revenue from interim rates from this Commission?

2 A. As far as the 2002 capital budget?

3 Q. As far as the potential total refund  
4 liability.

5 A. I believe that's correct.

6 Q. Olympic knew when it filed FERC rates that  
7 those rates were potentially refundable?

8 A. Yes.

9 Q. Olympic asked for interim rates for this  
10 Commission to be subject to refund; is that correct?

11 A. That's my understanding.

12 Q. Has the FERC ALJ's proposed dismissal of  
13 Olympic's FERC filing changed Olympic's decision-making  
14 regarding projects in its 2002 capital budget?

15 A. I'm not aware that that decision has been  
16 final. There has been a discussion that if it is  
17 final, we are still proceeding on fact that until it's  
18 finalized, we are receiving interim rates that may be  
19 refundable.

20 Q. Turn to Page 4 of your testimony. I would  
21 like to ask you some questions regarding throughput,  
22 and you state at the bottom of the prior page, as  
23 testified to by Ms. Hammer, actual data for the last  
24 ten months as adjusted by two months of forecast show  
25 an annualized volume of approximately 103 million



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1 barrels per year. Do you see that?

2 A. Yes, I do.

3 Q. That is the throughput that Ms. Hammer is  
4 depending?

5 A. Yes.

6 Q. You say this is an actual known and  
7 measurable amount compared to the estimate you made in  
8 your initial filing of about 105 million barrels per  
9 year?

10 A. That's my opinion, yes.

11 Q. The 105 million, that was based on one month  
12 annualized; is that correct?

13 A. That's correct.

14 Q. Was that figure known and measurable, in your  
15 opinion?

16 A. I think it was the best figure they had  
17 available at the time. The pipeline system had been  
18 down for two years and had never operated at 80 percent  
19 operation pressure before. It was the first month that  
20 the old pipeline system had been up and running, and  
21 they took that month and adjusted it to come with an 80  
22 percent throughput figure.

23 Q. My question was, was that a known and  
24 measurable figure as you understand that concept?

25 A. It's not as measurable as the actual

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1 historical volume that we've gotten over the last 10  
2 months.

3 Q. Was it known and measurable? Was the  
4 105-million figure known and measurable, or was the  
5 fact that it contained an annualization element --

6 A. In my opinion, that's correct. It did not.

7 Q. Your current estimate also contains two  
8 months of estimated data, doesn't it?

9 A. That's correct.

10 Q. Now, at the time of the filing with this  
11 Commission -- the filing, I believe, was made on  
12 October 31st of 2001?

13 A. Yes.

14 Q. -- was the original throughput data you had  
15 at that time July 2001, what you used for --

16 A. Would you repeat that again? I'm sorry.

17 Q. You indicated that in the throughput estimate  
18 for your direct case, you used, and I don't think you  
19 stated the month, but it was July 2001 annual times 12;  
20 correct?

21 A. Yes.

22 Q. Was that the only throughput information you  
23 had on October 31st when the filing was actually made  
24 to the Commission?

25 A. There should have been some experience with

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1 August and September, but most of our throughput data  
2 can be somewhat seasonal, so I don't know that those  
3 three months would have been as valuable as the past 10  
4 months where you've got more seasonality involved in  
5 the number.

6 Q. I'm just focusing on your direct case now,  
7 and I was wondering why you would not have used the  
8 three months actual data that you had available at that  
9 time instead of the one month of July that you actually  
10 used.

11 A. I was not actually involved in putting  
12 together those numbers. I did review them and question  
13 why wouldn't we use actual historical data which shows  
14 what the operation will do for a period of time, the  
15 closer to a 12-month period rather than estimating or  
16 adjusting three months or 11 months or nine months.

17 Q. The reason that you didn't use 12 months  
18 ended September 30, 2001, throughput data in your  
19 direct case was that the pipeline had a substantial  
20 interruption of service during a portion of that  
21 period.

22 A. That's correct. We only had half a system  
23 operating.

24 Q. I would like you to assume that the pipeline  
25 in the year 2001 had actual throughput of 50-million

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1 barrels and assume that the year 2001 is the base year  
2 for rate-making purposes. With those two assumptions,  
3 should that 50-million barrels be used for rate-making  
4 on the basis that it is a known and measurable figure,  
5 or is there a need to understand the basis for that  
6 throughput before using it?

7 A. I think historical actual volumes are a  
8 better indicator over a 12-month period about how a  
9 pipeline system operates, unless there are extenuating  
10 circumstances that you can forecast. For example, if  
11 there is four refineries on the pipeline and you know  
12 one of them is going out of service, then I think  
13 that's something that you would have to adjust, but if  
14 there is no hydraulic changes in the pipeline system  
15 and there is no expectation that the suppliers that  
16 supply the fuel for that pipeline will change their  
17 operation, then I would say the 50,000 would be a  
18 better figure to use.

19 Q. Or 50 million?

20 A. 50 million.

21 Q. If you knew that in the year 2001 for that  
22 pipeline the pipeline was actually down for three  
23 months, then would you say it would be inappropriate to  
24 use the 50-million figure if prospectively it was not  
25 going to be down for three months in the following

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1 year?

2 A. If the pipeline was going to operate as it  
3 operated before when it produced the 50-million  
4 throughput, yes.

5 Q. Let me ask it again. The assumption was in  
6 the base year, the pipeline was down for three months  
7 and the base year throughput was 50 million. If you  
8 did not expect the pipeline to be down for three months  
9 in the year 2002, you wouldn't use the 50 million,  
10 would you?

11 A. No.

12 Q. I would like to turn to the Bayview terminal  
13 issue. Turn to Page 3 of your rebuttal. I'm focusing  
14 on the middle paragraph on that page, and in the last  
15 line, you indicate that Staff and Intervenors continue  
16 to be confused about the difference between capacity  
17 and throughput. Do you see that?

18 A. Yes.

19 Q. When Bayview was placed in service, Olympic  
20 came before this Commission seeking to recover its  
21 investment in rates, and it represented to the  
22 Commission that the Bayview terminal would expand  
23 pipeline capacity by 35,000 to 40,000 barrels per day.  
24 Is that correct?

25 A. That's my understanding.

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1 Q. Your testimony is that that statement to the  
2 Commission was incorrect?

3 A. No. My statement refers to the difference  
4 between capacity and throughput, and that capacity  
5 doesn't necessarily mean the same thing as throughput,  
6 and in this 1998 filing, a represented throughput of  
7 121 million, which was about 5-million barrels per year  
8 higher than what the system had represented before, and  
9 I'm saying that Staff and Intervenors did not use that  
10 5-million-barrels-per-year throughput as a basis for  
11 what throughput enhancements that Bayview would  
12 provide.

13 Q. Let me have you turn to Page 18 of your  
14 testimony, bottom of 17 and over to 18. Referring to  
15 the 35- to 40-thousand barrels per-day capacity  
16 assumption, you testified that, quote, We cannot find  
17 any support for that capacity assumption. It appears  
18 to us to be wrong, end quote.

19 A. Yes.

20 Q. On Page 20 of your rebuttal, you refer to the  
21 Staff throughput computation, and you indicate on Lines  
22 10 through 14 that the Staff added a capacity, not a  
23 throughput estimate, of 35,000 to 40,000 barrels per  
24 day for Bayview. Do you see that?

25 A. Yes.

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1 Q. Isn't it a fact that the Staff did not use  
2 35,000 to 40,000 barrels per day for Bayview in its  
3 calculation?

4 A. That was my understanding; that they added  
5 the 35- to 40,000 barrels per day and not the 5-million  
6 barrels per year.

7 Q. Is your understanding based on a review of  
8 Mr. Colbo's actual work paper or exhibit showing a  
9 precise calculation?

10 A. Yes, I did, awhile ago.

11 Q. It's your recollection that 35- to 40,000  
12 barrels per day is included in that exhibit?

13 A. That's what I remember.

14 Q. If you did not thoroughly understand Staff's  
15 throughput analysis, do you know why Mr. Colbo was not  
16 asked about it in his deposition?

17 MR. HARRIGAN: Objection. Calls for  
18 speculation about the actions of some attorney.

19 JUDGE WALLIS: The question calls for the  
20 witness's own knowledge, and if he has no knowledge, he  
21 may so state.

22 THE WITNESS: I do not.

23 Q. (By Mr. Trotter) Let's talk about the  
24 Bayview terminal itself, and please turn to Page 10 of  
25 your testimony, Lines 9 to 15. It's your testimony

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1 that Bayview currently provides overpressure relief for  
2 the incoming lines from the north. It provides bypass  
3 capability around the facility. It's used for a  
4 staging area for pipeline repair and replacement  
5 projects on the northern end and includes a multiunit  
6 pump station, and it also consists of office and  
7 maintenance shop space for the northern area  
8 maintenance team. Do you see that?

9 A. That's correct.

10 Q. Are there any other uses to which Bayview is  
11 put currently?

12 A. It houses spill response equipment and fire  
13 response equipment.

14 Q. Anything else?

15 A. It also currently and always has since it was  
16 built part of the SCADA system. It's part of our PLC's  
17 that respond back to the control center, part of the  
18 leak detection system, cathodic protection for not only  
19 the tank farm, manifold, and the mainline pipelines  
20 that are connected to it, and it has two of the  
21 mainline valves that are connected to the system.

22 Q. Anything else?

23 A. That's all I can recall.

24 MR. TROTTER: I would like to mark for  
25 identification Exhibit 1609, which is the deposition of



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1 Mr. Talley.

2 JUDGE WALLIS: The Exhibit 1609 through  
3 Exhibit 1615 will be identified for the record at the  
4 outset of Mr. Talley's appearance today.

5 MR. TROTTER: I would move for the admission  
6 of 1609 to 1615.

7 JUDGE WALLIS: Is there objection? Let the  
8 record show there is no objection, and those documents  
9 are received.

10 Q. (By Mr. Trotter) Please turn to Exhibit  
11 1609, which is Transcript 21. At Line 22, the question  
12 was asked: "So since June 10th of '99, the  
13 facility --" and we are referring to Bayview here "--  
14 has been used to store water for hydrotesting, diesel  
15 fuel for use in PIG runs," and then you give an  
16 affirmative, and then, "and it's been used to get  
17 product out of tanks that have been there for two  
18 years," and you give an affirmative, and then I asked,  
19 "Any other purpose," and you answered no. Did I  
20 correctly restate your deposition testimony?

21 A. I agree with what it says, yes.

22 Q. You didn't mention overpressure relief, a  
23 multipump station, a spill response equipment storage  
24 and fire equipment storage, the SCADA function, leak  
25 detection, cathodic protection, or two mainline valves.

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1 Is that correct?

2 A. That's correct.

3 Q. I would like to refer you now to Exhibit  
4 1629, which is the Company's response to WUTC Staff  
5 Data Request 367.

6 MR. TROTTER: I would move that exhibit into  
7 evidence at this time. It's a complete response by the  
8 Company.

9 MR. BEAVER: When I was looking at 1629,  
10 there is an attachment on it that is identical to  
11 1616-C, which is confidential. This particular  
12 attachment has very detailed shipper-specific shipper  
13 information, which by the ICA we are obligated to keep  
14 confidential. I don't know why the attachment is not  
15 identified as confidential. It absolutely should be,  
16 just like 1616-C is, and I would request that  
17 Attachment B, in fact, be designated confidential.  
18 This includes detailed shipper information for, I  
19 believe, Tosco, Equilon, Arco, Tesoro, but anyway, it  
20 should be confidential.

21 MR. TROTTER: Which is it?

22 MR. BEAVER: It's Attachment B to 1629.

23 JUDGE WALLIS: Let's be off the record for a  
24 moment.

25 (Discussion off the record.)

1           JUDGE WALLIS: During an off-the-record  
2 discussion, it has been determined that Attachment B to  
3 Exhibit 1629 is either identical or substantially  
4 similar to a document that has been distributed as  
5 Exhibit 1616-C, a confidential document. The parties  
6 have agreed to remove, physically, Attachment B from  
7 1629 to avoid the need for designation as confidential  
8 and also to avoid the need for duplication in the  
9 record.

10           Parties have leave to examine Attachment B  
11 proposed to 1629 to determine whether there is any  
12 difference, and if there is any difference and that is  
13 significant to the parties, then we will take up that  
14 matter as an administrative matter. Does that meet the  
15 parties' needs? With that, modification, Exhibit 1629  
16 is no longer confidential; is that correct?

17           MR. TROTTER: Yes.

18           JUDGE WALLIS: It's received in evidence.

19           Q.     (By Mr. Trotter) Mr. Talley, referring you  
20 to the cover page of Exhibit 1629, do you understand  
21 that this data request by Staff asked for a detailed  
22 history of the use of Bayview terminal, when it was  
23 placed in service, for what purpose it was used, and  
24 how that use changed, when and why, among other things?

25           A.     I don't have 1629 in front of me. I'm

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1 looking at 1616-C.

2 MR. HARRIGAN: There were copies just  
3 distributed earlier this morning. Do you have another  
4 one?

5 MR. TROTTER: No. It was distributed earlier  
6 to the parties.

7 Q. (By Mr. Trotter) Can you confirm that's what  
8 we were looking for?

9 A. Yes.

10 Q. Turn to Page 2 of the supplemental  
11 memorandum, which was provided and includes your  
12 declaration, but I'm focusing on the memorandum. Page  
13 2 referred to testimony in the first paragraph for  
14 Mr. Batch indicating that Bayview was being used for a  
15 number of purposes, including storage of petroleum  
16 products, storage of water for hydrotesting, storage of  
17 diesel fuel needed to run a smart PIG, and is it  
18 correct that he did not, at least in this document,  
19 Olympic did not report that Bayview was being used for  
20 emergency pressure release or any of the other uses  
21 that you had testified to orally this morning?

22 A. Yes, that's true. I think it was on my part  
23 of misstating it because you assume that people know  
24 these things are being used. The overpressure  
25 protection system has been in place. We couldn't

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1 operate the pipeline without it, so you take that for  
2 granted.

3 Q. So in your opinion sitting here today, it was  
4 in the deposition just an oversight that you didn't  
5 include the list that you gave today or in your  
6 testimony rebuttal?

7 A. That's correct.

8 Q. Let's focus on pressure relief for a moment.  
9 You said that you could not operate the system without  
10 it. How did Olympic operate the system before Bayview  
11 with regard to pressure release on the north end?

12 A. I don't know that. I have not studied how  
13 they operated before I got here.

14 Q. Do you know how much it would of cost to  
15 build a facility to do what Bayview is doing today?

16 A. Probably less than what they spent on it if  
17 you were simply trying to provide overpressure  
18 protection and offices and storage and data equipment.

19 Q. Do you know how much less?

20 A. No, I don't.

21 Q. Also in your deposition on Page 37, Exhibit  
22 1609, Transcript 37 around Line 16, you said, quote, I  
23 think what I've heard is that Bayview added some  
24 capacity for cross-Cascades and some additional  
25 capacity for Portland, unquote, and then you go on to

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1 say you don't know what those numbers are. Is that  
2 still your understanding, that a portion of Bayview is  
3 going to be used for the cross-Cascades project?

4 A. That's just information provided to me by  
5 employees at Olympic that were there before BP got  
6 there. There is no documentation that I had that told  
7 me that.

8 Q. So you can neither confirm nor deny that?

9 A. That's correct.

10 Q. You don't know how much of the total cost of  
11 Bayview was attributable to cross-Cascades purposes, if  
12 any?

13 A. I do not.

14 Q. If Bayview was not there, Olympic could still  
15 do testing on the line, couldn't it?

16 A. It would be very difficult, especially  
17 hydrotesting. We found that the hydrotesting that we  
18 did, we had nowhere to store water, and no one wanted  
19 to take the water from us, and that is the big problem,  
20 and Bayview was very handy for that purpose.

21 In addition to that, it would make  
22 maintenance project expenses go up to have to find  
23 facilities to stage projects on the northern end.

24 Q. Are there warehouse facilities available in  
25 the north end of your line?

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1           A.     They are now with Bayview.  They are not  
2 anywhere else.

3           Q.     I mean just generally.  Is there commercial  
4 storage warehouse space available in the economy of  
5 Whatcom or Snohomish counties?

6           A.     I have not personally looked, but I'm sure  
7 there is.

8           Q.     How did Olympic hydrotest before Bayview was  
9 in service?

10          A.     I don't know, sir.

11          Q.     On Page 10 of your testimony on the beginning  
12 of Line 16, you said, "One use of Bayview will be to  
13 store and consolidate ("batch") product shift from the  
14 Ferndale and Cherry Point refineries."  Do you see  
15 that?

16          A.     Yes.

17          Q.     Is that the primary purpose for which Bayview  
18 was built, to do batching?

19          A.     Again, I wasn't here when Bayview was built,  
20 but I've looked at Bayview and how I would use Bayview  
21 when it becomes operational and 100 percent.  I think  
22 there are several benefits you can get from Bayview.  
23 One is it provides opportunity to do maintenance on the  
24 connecting lines from the two refineries, Ferndale and  
25 Anacortes.  You can keep the line south of Bayview

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1 rateable and pumping, call the storage while you do  
2 that schedule or planned maintenance.

3           The other thing it does is we have a problem,  
4 even in our prorated system with shippers not meeting  
5 the barrel nomination requirements, so when we go to  
6 swing to them and the barrels are not provided, we have  
7 to either shut down the pipeline system or slow it  
8 down. Bayview would provide you the ability to fill  
9 that free space and keep the line rateable.

10           The other thing that Bayview could do under  
11 those circumstances is the way we operate line, 16-inch  
12 and then 20-inch on cycles, the two refineries are  
13 switching cycles once a week every six days.  
14 Typically, one is ahead of the other line when it sets  
15 down. You could prevent that down time and lost  
16 throughput by using Bayview to fill that space.

17           The other thing it does is you could stage  
18 fungible batches, and you could make those batches  
19 larger, which means as you go down segment two and  
20 three of the line, which is the 20-inch and 14-inch,  
21 that you could have longer strips. Strips allow the  
22 theoretical capacity of the pipeline system to be  
23 available, because we are taking deliveries into  
24 multiple locations at the same time. Without that, we  
25 are restricted to the capacity of a single line.



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1 Q. Are any of those uses available today?

2 A. They are not right now.

3 Q. Strips are a form of batching, aren't they?

4 A. I take that back. Let me correct that. We  
5 are doing some stripping and some batch and some  
6 fungibility, but not as much as we could do once  
7 Bayview is back in service.

8 Q. You are saying you are doing batching using  
9 Bayview today?

10 A. No, not using Bayview.

11 Q. I was focusing on uses of Bayview. So you  
12 are doing batching and these other activities apart  
13 from Bayview today?

14 A. That's correct.

15 Q. Was Bayview used for pressure release during  
16 the Whatcom Creek incident?

17 A. I wasn't here during the Whatcom Creek  
18 incident, but the relief valve was in place and the  
19 tank was there and the system was connected to the  
20 Ferndale/Allen leg ever since it was put into service  
21 in April of 1999.

22 Q. Did Bayview actually provide pressure relief  
23 during the Whatcom Creek incident?

24 A. That's my understanding.

25 Q. Is it your understanding that the valve

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1 malfunctioned and caused pressure to build up in the  
2 line?

3 A. It's my understanding that the valve that  
4 protects the lower flange ratings of the manifold  
5 closes, and upstream of that, there is a relief valve  
6 that releases pressure into Tank 209.

7 Q. Is it your understanding that the pressure  
8 relief system operated properly during the Whatcom  
9 Creek incident?

10 A. It relieved. I'm not sure if it operated  
11 properly. I don't know the details of that.

12 Q. Were there any changes made to the pressure  
13 release valve system relating to Bellevue after the  
14 Whatcom Creek incident?

15 A. There were a bypass put in, but they added a  
16 new relief valve that allows that same protection when  
17 you are not going directly into the manifold at  
18 Bayview, so you have both relief valves in place once  
19 it goes to 100 percent. You have one relief valve that  
20 protects the main line and one that protects the  
21 station piping.

22 Q. Those are changes that were made after  
23 Bayview was bypassed?

24 A. As part of the bypass.

25 Q. Did Olympic do PIG runs before Bayview was in

4081

1 service?

2 A. Yes.

3 Q. How did you store a product for PIG runs  
4 without Bayview at that time?

5 A. I don't think you need to store product to do  
6 PIG runs when you are rating normally. You only need  
7 to do that if you are not operating and you need to run  
8 an inspection tool and then shut down, and my  
9 understanding doing the testing was OPS only allowed  
10 enough product to get the tool from the input to the  
11 output launcher and then shut down.

12 Q. Isn't it necessary to store diesel fuel for  
13 use in PIG runs?

14 A. What I'm saying is if you are going to run a  
15 tool in diesel, you use a diesel batch that's going to  
16 the customer, but if your pipeline is not running and  
17 you are getting permission to run it just for that  
18 purpose, then you need to store that fuel somewhere for  
19 that inspection.

20 Q. So since the line is up and running, you  
21 don't need Bayview to store diesel for PIG runs?

22 A. Not for PIG runs.

23 Q. So in your testimony in your deposition,  
24 Transcript 21, when you were asked since June 10th of  
25 '99, the facility has been used to store diesel fuel

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1 for PIG runs, that would have been during the time the  
2 pipe was out of service.

3 A. That's correct.

4 Q. On Page 15 of your rebuttal testimony, Lines  
5 12 to 15, you indicate if Bayview was truly not  
6 operational, as Staff states, it would use no power or  
7 supplies or materials costs associated with it as these  
8 costs come to about a half-a-million dollars, which you  
9 state is consistent with Olympic's point that Bayview  
10 is operational. Do you see that?

11 A. Yes, I do.

12 Q. Do you know what Bayview's O&M costs would be  
13 if it was fully operational in performing batching  
14 functions and the other functions it was designed to  
15 do?

16 A. Outside of the use of the motors will  
17 probably be the only increase in power, you have to  
18 have power to maintain a facility like Bayview,  
19 lighting for security. You have to keep motors and  
20 valves, electric on them to keep them warm and  
21 operational. You have to have cathodic protection,  
22 which requires power. All those costs here represent  
23 initially what would be expected to pay outside of  
24 running the pumps and motors.

25 Q. Let's assume Bayview becomes fully

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1 operational. Do you have an estimate of what its O&M  
2 costs are in that position?

3 A. I do not, and a lot would depend on how the  
4 shippers use it.

5 Q. You said it's about a half-a-million dollars.  
6 Would you accept that the amount that Staff removed was  
7 467,300?

8 A. I'll accept that.

9 Q. Would you accept subject to your check that  
10 of that amount, 259,372 was for power expenses?

11 A. I'll accept that.

12 Q. Of that \$259,000 figure, 6,989 was payment  
13 for kilowatt hours, and the remainder was for demand  
14 charges and utility charges for leasing facilities.

15 A. Subject to check, I will agree.

16 Q. These are all in Mr. Colbo's exhibit, but it  
17 follows from that data that Olympic is paying about a  
18 quarter-of-a-million dollars in demand and related  
19 charges to get less than \$7,000 of kilowatt hours.  
20 Does that suggest to you that you are being served on  
21 the wrong rate schedule?

22 A. We've actually changed the schedule on two  
23 occasions since I've been here. I think we went from  
24 Schedule 49 to 48 and then to a Schedule 13 just  
25 recently.

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1 Q. When did you change to Schedule 13?

2 A. I believe it was in spring of this year.

3 Q. Does that have the \$250,000 a year demand  
4 charge?

5 A. I don't know. It's a lower overall reduction  
6 in our power costs though.

7 Q. Do you know how much?

8 A. I don't know off the top of my head. I  
9 apologize.

10 MR. TROTTER: Those are all my questions.

11 Thank you, Mr. Talley.

12 JUDGE WALLIS: Mr. Brena?

13

14

15 CROSS-EXAMINATION

16 BY MR. BRENA:

17 Q. Good morning, Mr. Talley. I would like to  
18 ask you some questions about your background before we  
19 get into this other stuff. Are you an engineer?

20 A. No, I'm not.

21 Q. Have you had any engineering training?

22 A. No, I have not.

23 Q. Have you worked within an engineering company  
24 at any point in your career?

25 A. I've been involved in lots of engineering

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1 projects within my experience in the pipeline industry.

2 Q. Do you have any formal education in  
3 engineering matters?

4 A. I do not.

5 Q. Is it fair to say that the college education  
6 that you do have is in business administration and  
7 labor negotiations?

8 A. That's true.

9 Q. Do you consider yourself to be an expert on  
10 rate-making matters?

11 A. I do not.

12 Q. Have you been involved in a rate case before?

13 A. No. This is the first time.

14 Q. You are aware that within the context of  
15 rate-making, there are certain terms of art that are  
16 used?

17 A. Yes.

18 Q. Do you consider yourself an expert with  
19 regard to the application of those terms, generally?

20 A. No.

21 Q. You've used throughout your testimony, and we  
22 can go a page at a time or I'll just ask you, known and  
23 measurable. Are you aware that's a term of art in  
24 rate-making?

25 A. I've been told that, yes.

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1 Q. Do you know what that term of art means for  
2 rate-making purposes?

3 A. It's the ability to know and measure a  
4 particular thing for the basis of rate-making.

5 Q. Do you know when something needs to be known  
6 and measurable?

7 A. I guess I don't understand the question.

8 Q. Well, if you are applying a known and  
9 measurable standard, is there a point in time when that  
10 standard is applied?

11 A. Are you referring to the base year and test  
12 year?

13 Q. Yes.

14 A. Yes.

15 Q. Do you know what point that standard should  
16 be applied?

17 A. It should be applied during the test year.

18 Q. At the time of the rate filing or afterwards?

19 A. I'm not sure I know the answer to that.

20 Q. Have you reviewed any cases to see how  
21 different jurisdictions or regulatory agencies or  
22 bodies have applied the known and measurable standard  
23 with regard to any particular facilities?

24 A. I have not.

25 Q. You use the term "rate year" in your



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1 testimony. Do you know what the definition of a rate  
2 year is before this Commission?

3 A. Well, that's the test year period where you  
4 will determine the rate as it goes forward.

5 Q. Have you read this Commission's regulations  
6 that define rate year?

7 A. I have not.

8 Q. Do you know whether or not the definition of  
9 rate year as it's applied by this Commission is the  
10 same or different than the FERC concept of the test  
11 year?

12 A. I do not.

13 Q. Used and useful. Are you aware that's a term  
14 of art within rate-making?

15 A. I've been told that.

16 Q. Have you reviewed any cases relative to used  
17 and useful?

18 A. I have not.

19 Q. Did you draft your testimony?

20 A. Yes. I worked several weekends with my  
21 attorney.

22 Q. You chose these rate-making terms of art in  
23 the draft that you created?

24 A. Yes, with my attorney.

25 Q. Working with your attorney in a cooperative

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1 fashion?

2 A. That's correct.

3 Q. Was the first draft of your testimony, was it  
4 from the attorney's computer or yours?

5 MR. HARRIGAN: Objection, privileged.

6 MR. BRENA: I don't believe it is.

7 MR. HARRIGAN: Mr. Talley is an officer of  
8 Olympic Pipe Line Company, and counsel presumably with  
9 whom he was working was a lawyer for the Company, and  
10 they are working on a matter relating to the rendition  
11 of legal advice and, in fact, creating work product,  
12 which the final of which, of course, is the witness's  
13 testimony, but now we are talking about drafts.

14 MR. BRENA: That would be correct. We are  
15 talking about a draft, and I'm just exploring how his  
16 draft of the testimony was developed, and I think I'm  
17 entitled to do that.

18 JUDGE WALLIS: Perhaps, Mr. Brena, if you  
19 rephrased the question and were to ask whether the  
20 witness composed the first draft.

21 Q. (By Mr. Brena) Did you compose the first  
22 draft?

23 MR. HARRIGAN: I have the same objection;  
24 although, I take it from the Court's statement that  
25 it's going to be overruled, but I don't think the

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1 essence of the question has changed.

2 (Discussion off the record.)

3 MR. BRENA: I'm happy to rephrase the  
4 question if it would save time.

5 Q. (By Mr. Brena) You understand that the  
6 testimony that you are sponsoring is sponsored under  
7 your oath?

8 A. I do.

9 Q. The testimony that you've advanced to this  
10 Commission indicates that the Bayview terminal is used  
11 and useful as that term is used in rate-making. Do  
12 you understand that?

13 A. I understand that, yes.

14 Q. If you don't know and you haven't  
15 investigated what that term of art means, then how is  
16 it that you can come before this Commission and verify  
17 under oath that the Bayview terminal is used and  
18 useful?

19 A. Based on the information I received through  
20 my attorney.

21 Q. If I ask the same question with regard to the  
22 known and measurable standard, would you give the same  
23 answer?

24 A. I would.

25 Q. With regard to rate year and any term of art

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1 relating to rate-making that's in your testimony, we  
2 would go through the same colloquy?

3 A. That would be correct.

4 Q. Some of the questions that have explored,  
5 you've indicated in your responses several times that  
6 you are not here and have limited knowledge. Is that  
7 fair to say with regard to Whatcom Creek causes and  
8 events?

9 A. That is correct.

10 Q. Let me ask you just a hypothetical, and let's  
11 say the hypothetical is that there is a former operator  
12 who imprudently operates the line, and then there is a  
13 change of operators, and the new operator operates the  
14 line perfectly. Do you believe that because the new  
15 operator does a good job that the ratepayers should  
16 have to suffer the consequences of the old operator  
17 doing the bad job?

18 MR. HARRIGAN: Objection. Lack of foundation  
19 for the witness to answer the question which he has  
20 already said is outside his area of expertise, which is  
21 the area of rate-making. Secondly, it assumes facts  
22 not in evidence.

23 MR. BRENA: It was asked as a hypothetical,  
24 and this witness has used terms of art throughout, and  
25 I'm exploring with him what it is he truly means by

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1 having limited knowledge with regard to the events  
2 associated with what potentially may be imprudent  
3 operation by the former operator in the form of a  
4 hypothetical.

5 JUDGE WALLIS: The witness may respond. If  
6 the witness does not know the answer, he may say so.

7 THE WITNESS: I'm not an expert, and I don't  
8 know whether the ratepayers should pay or not pay. I  
9 would think that the ratepayers and the Commission  
10 would want to insure that they had a facility that was  
11 going to be available to provide the services to the  
12 public service group that would be dependable and  
13 reliable.

14 Q. (By Mr. Brena) Do you know anybody in this  
15 hearing that's saying anything different than that?

16 A. No.

17 Q. So isn't that a common goal of everyone in  
18 the room?

19 A. I would hope so.

20 Q. You were asked a few questions with regard to  
21 your understanding of Staff and Intervenors' case with  
22 regard to Bayview and the intervenors confusing  
23 capacity and throughput, and Mr. Trotter just followed  
24 up on the sum of your testimony with regard to that.  
25 Do you have that in mind?

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1 A. Yes.

2 Q. Is it your understanding of Tesoro's case  
3 that Tesoro has proposed a throughput number that  
4 includes within it the Bayview terminal at a throughput  
5 level of 35- to 40,000 barrels?

6 A. Per day, yes.

7 Q. That's your understanding?

8 A. Yes.

9 Q. What is the throughput numbers that Tesoro  
10 has proposed?

11 A. I don't recall. I don't have it in front of  
12 me. I believe it was 130 million per year.

13 Q. In responding to Mr. Trotter's questions, one  
14 of the things that you said is that even though that  
15 capacity was represented in the filing, in fact, their  
16 calculation of throughput on which the filing was based  
17 is based on 120-million barrels; is that correct?

18 A. That's correct.

19 Q. That 120-million barrels, according to the  
20 testimony you just gave, only included about 5,000  
21 barrels for the use of Bayview; correct?

22 A. 5 million per year.

23 Q. So it's your testimony that Olympic  
24 represented to this Commission in the Bayview filing  
25 that its steady state normalized level of operations

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1 that it anticipated would be 121-million barrels on a  
2 going forward basis; correct?

3 A. That was my interpretation, yes.

4 Q. And you are not aware that that's the  
5 throughput level that Tesoro has proposed that this  
6 Commission adopt?

7 A. No, it's not what I'm aware of.

8 Q. Is it fair to say that Olympic would have a  
9 hard time justifying putting \$24 million into Bayview  
10 if only current uses were permitted?

11 A. That's correct, and that's a decision that  
12 I'll take the blame for being at that current state.

13 Q. That's what you answered in your deposition,  
14 isn't it?

15 A. Yes.

16 Q. And I quote, I'm sure you would have a hard  
17 time justifying that if that were your only intention,  
18 right after you indicated the current uses for Bayview?

19 A. That's correct.

20 Q. You used an interesting phrase in one of your  
21 answers, and I wrote it down and the record will  
22 reflect it I'm sure, but are you aware that after you  
23 explored with Mr. Trotter all the potential future uses  
24 of Bayview and he asked you if those uses were  
25 available today, you indicated that they were not? Do

4094

1 you remember that?

2 A. Not specifically.

3 Q. Well, the phrase you used is, "once Bayview  
4 is back in service." That was the phrase that you used  
5 in responding to Mr. Trotter. Do you recall using that  
6 phrase?

7 A. I meant at 100 percent.

8 Q. Is it your opinion that Bayview is in service  
9 today consistent with its intended purpose of being  
10 used -- let me rephrase. Is it your testimony before  
11 this Commission that Bayview is currently in service  
12 for its original intended purpose?

13 A. It is not. I am saying that Bayview is being  
14 used -- is not being used the way it was originally  
15 intended to and that part of the reason is of the  
16 priorities that I have set on trying to get the system  
17 back to 100 percent.

18 Q. By that, you mean that you haven't brought  
19 Bayview back into line because your focus is first to  
20 return the line to 100 percent?

21 A. That's exactly it. There is a bigger prize  
22 to get the system at 100 percent in areas than to get  
23 Bayview up and running first.

24 Q. Have you assessed what's necessary to get  
25 Bayview up and running?



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1           A.     I know what steps we have to go.  There is a  
2 process.

3           Q.     Have those steps been initiated at this  
4 point, or are you waiting until after the 100 percent?

5           A.     They have not, and my intent is to have  
6 Bayview up at the same time we get to 100 percent.

7           Q.     I would like to draw your attention to  
8 1619-T, Page 3, Line 14 of your direct, restrictions on  
9 operating pressure, that first Q and A.  You were  
10 asked, "Are there any restrictions placed on the  
11 maximum allowable operating pressure," and you answered  
12 yes and referred specifically to the restriction placed  
13 by the Second Amendment to the Corrective Action Order;  
14 correct?

15          A.     That's correct.

16          Q.     The question you were asked is, is there any  
17 restriction.  Is it your testimony that the only  
18 restriction, the only pressure restriction that's been  
19 imposed on the Olympic system was pursuant to the  
20 Second Amendment to the Corrective Action Order?

21          A.     No.

22          Q.     The fact is that there are additional  
23 pressure restrictions that have been placed on this  
24 line.  Isn't that the case?

25          A.     Well, after the Whatcom Creek incident, there

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1 was a pressure restriction in the initial Corrective  
2 Action Order on the Ferndale to Allen and Allen to  
3 Renton that restricted flow before the pressure would  
4 resume operation again, but the line has been down all  
5 during that time, and the items that were necessary to  
6 restart those met the criteria for returning them to  
7 normal pressure.

8 Q. When you say "the criteria," the criteria was  
9 that OPS allowed it, wasn't it?

10 A. Yes, but you had to have internal  
11 inspections. They had to have hydrotest, and there had  
12 to be some training SCADA reviews. There were several  
13 items that had to be met before OPS gave their  
14 approval.

15 Q. I understand that there was criteria, but  
16 OPS's approval was based fundamentally on Olympic  
17 demonstrating that the line could be brought back up to  
18 full pressure safely; correct?

19 A. Yes.

20 Q. Is the pressure restriction that was imposed  
21 by the First Amendment, is that the only pressure  
22 restriction that you left off when you answered this?

23 MR. HARRIGAN: Objection. The witness has  
24 not testified that he left anything off. The question  
25 here is, are there any restrictions, obviously speaking

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1 as of the date of this testimony, not some historical  
2 event.

3 MR. BRENA: The fact of the matter is he was  
4 asked if there were any restrictions, and those  
5 restrictions continue to this date and were in place at  
6 the time of this testimony, and this witness didn't  
7 bring them forward to this Commission. So that's  
8 leaving them off to me. If he wants to correct that  
9 representation, he's able to.

10 JUDGE WALLIS: The witness may respond.

11 THE WITNESS: I'm not quite sure I understand  
12 your question. Could you repeat it?

13 Q. (By Mr. Brena) Other than the pressure  
14 restriction imposed by the Corrective Action Order, are  
15 there any other pressure restrictions that you failed  
16 to bring forward in your direct testimony in response  
17 to this question?

18 MR. HARRIGAN: Same objection.

19 JUDGE WALLIS: Overruled.

20 THE WITNESS: Are you referring to the  
21 Corrective Action Order in this amendment?

22 Q. Yes, I am.

23 A. The only restrictions I'm aware of are the  
24 Corrective Action Order and the Second Amendment in  
25 relationship to restrictions on operating pressure.

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1 Q. Is Whatcom Creek in Bellingham?

2 A. Yes, it is.

3 Q. At the time of the Whatcom Creek incident,  
4 did Olympic have the proper franchise agreement in  
5 place to even be operating the line through the City of  
6 Bellingham?

7 A. The franchise agreement had expired at the  
8 time of the incident.

9 Q. How much before the time of the incident had  
10 Olympic been operating without the proper authority in  
11 the City of Bellingham?

12 A. I don't know when the franchise agreement  
13 expired.

14 Q. So at the time of Whatcom Creek, there was no  
15 franchise agreement; correct?

16 A. There was an expired franchise agreement, and  
17 I believe it's like a contract that either party  
18 demands that the contract continues in place.

19 Q. Did the City of Bellingham as part of its  
20 negotiations for a new franchise agreement require or  
21 impose pressure restrictions after Whatcom Creek?

22 A. They did, and those were adopted by OPS.

23 Q. So aside from the Second Amendment, there is  
24 the Corrective Action Order itself and the pressure  
25 restrictions by the City of Bellingham.

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1 A. That's correct.

2 Q. As a result of not having a franchise  
3 agreement, aside from the pressure restriction, was  
4 another requirement to the City of Bellingham to  
5 authorize Olympic to continue to use its pipe that it  
6 hydrotest every inch of the pipe within the City of  
7 Bellingham?

8 A. Yes, in the 10 miles that ran through the  
9 City.

10 Q. During that hydrotesting, was there a seam  
11 failure in the 1970 Lone Star pipe?

12 A. Yes, there was.

13 Q. Was hydrostatic testing, was that a  
14 requirement of former franchise agreements with the  
15 City of Bellingham?

16 A. No, but because we needed a franchise  
17 agreement with the City and the City had safety  
18 concerns, we agreed to do a hydrotest to get a  
19 franchise agreement.

20 Q. So it wasn't voluntary that you did the  
21 hydrotest in the City of Bellingham. You did the  
22 hydrotest through the City of Bellingham because it was  
23 a requirement of the City of Bellingham in order for  
24 you to operate your line through the City; correct?

25 A. I was not there, but my understanding is we

4100

1 volunteered to do hydrtesting in the City to give  
2 them the assurance that the pipeline was safe.

3 Q. Do you think there was any realistic  
4 possibility of that city allowing you to reopen that  
5 line at full operating pressure without hydrtesting?

6 MR. HARRIGAN: Objection, calls for  
7 speculation.

8 Q. If you know.

9 A. I would only speculate if I answer that.

10 Q. I would like to draw your attention next to  
11 1601-T, Page 6, Lines 2 through 5. Now we are to the  
12 rebuttal case, and where in the direct case, you said  
13 that the only -- you were asked about any pressure  
14 restrictions, and you brought one of three forward.  
15 Now, in the rebuttal case, you say the reason the  
16 entire pipeline is at 86 percent pressure.

17 By "entire pipeline," you are drawing a  
18 distinction between the Office of Pipeline Safety's  
19 pressure restrictions on certain segments of the line  
20 earlier versus the Second Amendment expanding the  
21 pressure restriction system-wide. That's what that  
22 word "entire" means, isn't it?

23 MR. HARRIGAN: I move to amend the  
24 argumentative and inaccurate preamble to the question.

25 JUDGE WALLIS: Mr. Brena would you rephrase

4101

1 the question, please?

2 MR. BRENA: I would.

3 Q. (By Mr. Brena) By the word "entire," you are  
4 intending to distinguish between the pressure  
5 restrictions imposed on certain segments of the line  
6 earlier, which you have not referred to in your  
7 testimony anywhere, from the Second Amendment in  
8 position of the pressure restriction over the entire  
9 system; is that correct?

10 A. I would like to explain it to you if you  
11 would like.

12 Q. I would like for you to answer my question,  
13 and if your explanation answers my question, I'm happy  
14 to hear it.

15 A. Yes, I am showing a difference.

16 Q. I would like to draw your attention to  
17 Exhibit 637, and I realize in saying a 600 number, it's  
18 not within yours, but I would still like to ask you  
19 some questions about it, so if you would be provided  
20 it, and what 637 is is a schematic of the pipeline  
21 system, and I would also like available to the witness  
22 Exhibit 649-C, which I believe the "C" has been waived,  
23 which is the Corrective Action Order, which is in  
24 evidence.

25 Mr. Talley, just so you are aware, I'm going

4102

1 to be looking at the exhibit, the schematic, and  
2 working through the different pressure restrictions  
3 and identifying what segments and when, so you kind of  
4 need to work with the Corrective Action Order and the  
5 schematic because we are going to go back and forth.

6 JUDGE WALLIS: It is about time for our  
7 morning break. Would this be a good point, Mr. Brena?

8 MR. BRENA: This is a half-an-hour line of  
9 questions, so yes.

10 JUDGE WALLIS: We'll be off the record.

11 (Recess.)

12 JUDGE WALLIS: Mr. Brena?

13 Q. (By Mr. Brena) Mr. Talley, do you have your  
14 schematic and the Corrective Action Order set out?

15 A. Yes, I do.

16 Q. Just so I understand, I'm looking at the  
17 schematic, Page 2 of 3, which is Bates stamped F-12246,  
18 which is the northern end of the pipeline, segments 1  
19 and 2; correct?

20 A. Yes.

21 Q. The next page is segment 3, but I don't have  
22 any questions on that. This schematic is a correct  
23 schematic?

24 A. Yes, it looks correct.

25 Q. If you were going to put an X, where would



4103

1 you put an X in this schematic with regard to where the  
2 Whatcom Creek incident occurred?

3 A. North of Allen about where the arrow is at.

4 Q. So that's the segment Ferndale to Allen, the  
5 16-inch line which is 37 miles long; correct?

6 A. That's correct.

7 Q. Just about where the arrow points, that's  
8 about where Whatcom Creek is.

9 A. Probably on the back end of the arrow.

10 Q. That is within the City of Bellingham.

11 A. Yes, Whatcom Creek is in the City of  
12 Bellingham.

13 Q. The first pressure restriction put on Olympic  
14 was on this segment; correct?

15 A. It was on that segment and the segment from  
16 Allen to Renton on the 16-inch.

17 Q. Those were put on immediately at the time of  
18 Whatcom Creek.

19 A. Yes. Very typical of incident or safety  
20 related condition, OPS will come in and restrict  
21 operating pressure.

22 Q. So this was well before the seam failure.

23 A. Yes.

24 Q. Now, why was the pressure restriction placed  
25 on the Allen to Renton 16-inch line?

4104

1           A.     Because it was the same pipeline system as  
2 far as Lone Star pipe and some of the river crossings,  
3 and OPS, in my understanding, put the restriction on  
4 until they could understand all of the causes related  
5 to the incident in Bellingham.

6           Q.     I would like to switch over to the Corrective  
7 Action Order, and I'm going to ask you some questions  
8 on Page 18 and 21 of the exhibit, which is Page 5 of  
9 the Second Amendment.

10           MR. TROTTER:    Could I have an exhibit number?

11           MR. BRENA:    1649, which is the Corrective  
12 Action Order with two amendments.    In the first bullet  
13 point, it points out that Ferndale to Allen and Allen  
14 to Renton 16-inch segments already are subject to items  
15 7 and 9 of the Corrective Action Order to limitations  
16 more restrictive than 80 percent of maximum operating  
17 pressure; correct?

18           A.     Correct.

19           Q.     In the second amendment, that's the  
20 recognition of what we just talked about that these two  
21 lines were restrictive in the initial Corrective Action  
22 Order; correct?

23           A.     That's correct.

24           Q.     The First Amendment to the Corrective Action  
25 Order redefined the 80 percent to lower it even

4105

1 further, correct, from maximum operating pressure to  
2 the lower of maximum operating pressure?

3 A. I'm not quite sure I follow.

4 Q. What did the First Amendment to the  
5 Corrective Action Order do?

6 A. It restricted the operating pressure on the  
7 Ferndale to Allen and Allen to Renton segments that  
8 were not operational at the time.

9 Q. There is the Corrective Action Order, the  
10 First Amendment, and the Second Amendment; correct?

11 A. Uh-huh.

12 Q. The Corrective Action Order pressure  
13 restricted the line with regard to Ferndale to Allen  
14 and Allen to Renton, those two 16-inch lines; is that  
15 correct?

16 A. That's correct.

17 Q. The First Amendment to the Corrective Action  
18 Order further restricted the pressure by redefining  
19 what that 80 percent meant so that it even lowered the  
20 pressure; correct?

21 A. If you could point me specifically to what  
22 you are talking about.

23 Q. The First Amendment to the Corrective Action  
24 Order, which begins on Page 6 of 21 of the exhibit,  
25 captioned "Amendment to Corrective Action Order," and

4106

1 on Page 5 of the First Amendment, which is Page 10 of  
2 21 of the exhibit, item 7, that is the amendment to the  
3 original item 7 and 9 which imposed the original  
4 restriction, and it points out that it's 80 percent of  
5 normal operating pressure or 80 percent of the surge  
6 pressure at the point of failure, whichever is lower,  
7 so they redefined the pressure restriction that they  
8 had set forth in the original Corrective Action Order  
9 to make it more restrictive.

10 A. I don't know that that's more restrictive.  
11 It's the same restriction.

12 Q. Let me draw your attention to Page 8 of 21,  
13 which is Page 3 of the First Amendment. Under the  
14 operating pressure caption it says, "At the time the  
15 order was issued, there was no knowledge of the  
16 pressure at which the pipeline failed on June 10th,  
17 1999, and the pressure --

18 A. I'm sorry. I'm not on that page. Where are  
19 you at?

20 Q. Page 8 of 21, the discussion of the  
21 amendments.

22 A. This is the First Amendment?

23 Q. Correct.

24 A. What page of the First Amendment?

25 Q. If you take a look at the upper right-hand

4107

1 corner of the exhibit, turn to Page 8 of 21.

2 A. Mine has been photocopied a couple of times,  
3 so I can't make that out.

4 Q. Can you see the Bates stamp number in the  
5 lower right-hand corner?

6 A. Yes.

7 Q. It's 1069211.

8 A. I'm on that page.

9 Q. Under the "operating pressure," under  
10 "discussion of amendments," the first bullet point  
11 under "operating pressure," it explains what it did in  
12 the initial Corrective Action Order; correct?

13 A. Yes.

14 Q. The second sentence says, "Based on further  
15 investigation, this may not be sufficiently  
16 restrictive. Item 7 and 9 are revised to require the  
17 reduced operating pressure to be based on the lower of  
18 surge pressure at the point of failure and the normal  
19 operating pressure." Do you see that?

20 A. Yes.

21 Q. How do you read that language, Mr. Talley?

22 A. Well, it's still an 80 percent restriction,  
23 but they wanted to insure that that 80 percent was  
24 included to surges and not just pump pressure.

25 Q. So where it was at 80 percent of maximum

4108

1 operating pressure under the first Corrective Action  
2 Order, in the First Amendment to the Corrective Action  
3 Order, they defined it as 80 percent of maximum  
4 operating pressure or 80 percent of the surge pressure  
5 at the point of failure, whichever was lower.

6 A. Right.

7 Q. So they made it more restrictive in the First  
8 Amendment; correct?

9 A. When you interpret it that way, yes.

10 Q. Do you interpret it differently?

11 A. Clarification of the 80 percent restriction  
12 is the way I interpret it. We are talking about a  
13 pipeline that's not running.

14 Q. The pressure restriction obviously wasn't  
15 intended to be applied to a pipeline not running, was  
16 it?

17 A. No.

18 Q. So they intended for the pressure restriction  
19 to be applied to it when it was running; right?

20 A. That's correct.

21 Q. You see the language, "This may not be  
22 sufficiently restrictive." So certainly it appears  
23 from this that OPS intended for the First Amendment to  
24 put in a more restrictive criteria in applying the 80  
25 percent than it had in its initial Corrective Action

4109

1 Order. Is that fairly stated?

2 A. I think it's in line with what OPS does in  
3 any incident or safety-related condition is to make  
4 initial restrictions until they understand the details  
5 of what happened and then the bottom five whatever  
6 change is required on the pipeline based on the new  
7 information.

8 Q. But the point of the question is that they  
9 put one restriction in the Corrective Action Order, and  
10 then the First Amendment they made it more restrictive  
11 by including 80 percent of surge pressure, whichever is  
12 lower.

13 MR. HARRIGAN: Surge pressure at the point of  
14 failure. I object unless the question quotes the  
15 document correctly.

16 MR. BRENA: I accept the modification.

17 Q. (By Mr. Brena) Were you aware of this change  
18 before just talking about it with me?

19 A. I was aware of the 80 percent restriction  
20 that included service, yes.

21 Q. But you weren't aware of when that was  
22 imposed?

23 A. No. I wasn't here then.

24 Q. But you are putting on quite a bit of  
25 testimony that's not during the period you were here,

4110

1 aren't you?

2 A. Yes. I'm generally responding to the  
3 Corrective Action Order; that's correct.

4 Q. Were you or were you not aware that the First  
5 Amendment added the surge pressure restriction to the  
6 initial Corrective Action Order?

7 A. In my opinion, it refined the original  
8 restriction on the pipeline. It was not a different  
9 restriction. Again, in my experience, OPS typically  
10 does that. That's the way it typically works. What  
11 happened, we don't know, restrictive pressure of the  
12 pipeline when we get new information or facts regarding  
13 what happened to the pipeline when we redefine that.

14 Q. And I appreciate that, but my question was,  
15 were you aware of this change in the 80 percent between  
16 the Corrective Action Order and the First Amendment  
17 that we just talked through?

18 A. I think I said no, I assumed and understand  
19 that to be just a redefinition of the original  
20 restriction.

21 Q. I would like to go back to Page 18 of 21, and  
22 because your copy may not be clear, it's in the lower  
23 right-hand corner, the Bates stamp number is  
24 OPL-1069221.

25 A. I'm there.



4111

1 Q. Now, we talked through the first bullet point  
2 at the top of the page, and I would like to go to the  
3 second bullet point, the Allen to Renton 20-inch  
4 segment and the Renton to Portland 14-inch segment, and  
5 let me just stop there and go back to the schematic,  
6 and when I look at the schematic, essentially we are  
7 talking about the 20-inch line from Allen to Renton,  
8 and then we are talking about from Renton to Portland  
9 is a 14-inch line, and we are talking about those two  
10 remaining main sections; correct?

11 A. Yes.

12 Q. It says, "Following the test failure, OPS  
13 recommended that the operating pressure on the 14-inch  
14 line be reduced to 80 percent of maximum operating  
15 pressure," and to go back, so they recommended a  
16 restriction on the Renton to Portland 14-inch line of  
17 80 percent as a result of the seam failure; correct?

18 A. That's correct.

19 Q. It says, "Respondent has indicated that it  
20 has voluntarily done so." Do you know when the Renton  
21 to Portland 14-inch began to be operated at a pressure  
22 less than 100 percent?

23 A. I do not.

24 Q. Do you know that it was operated at less than  
25 100 percent prior to the seam failure?

4112

1 A. I do not.

2 Q. You don't know when the restriction was  
3 placed, when operationally?

4 A. Are you talking about when Olympic  
5 voluntarily reduced the pressure to 80 percent?

6 Q. Correct.

7 A. I do not know.

8 Q. It says the remainder of the lines are  
9 currently operated at less than 80 percent of maximum  
10 operating pressure, and by "the remainder," I'm  
11 assuming that it means the Allen to Renton 20-inch line  
12 and the related lines; correct?

13 A. They would be referring to laterals; that's  
14 correct.

15 Q. So it says, "Item 19 makes this reduced  
16 operating pressure mandatory." So what OPS is saying  
17 here in my reading of this, and if you know, is that  
18 this line had been operating at 80 percent prior to the  
19 seam failure, and the Second Amendment made that a  
20 mandatory requirement. Is that your understanding or  
21 not?

22 A. That's what I'm reading here, yes.

23 Q. Now, going back to the schematic, is it  
24 practical to operate this line with the 16-inch line  
25 from Ferndale to Allen at 80 percent pressure and then

4113

1 from Allen to Renton, that 16-inch line at 80 percent  
2 pressure, and then all the rest of the line at 100  
3 percent pressure?

4 A. Say that again.

5 Q. Is it practical to operate, and I'm thinking  
6 about the initial pressure restrictions after Whatcom  
7 Creek, on Ferndale to Allen the 16-inch line and Allen  
8 to Renton that 16-inch line, they were pressure  
9 restricted as a result of Whatcom Creek; correct?

10 A. That's what you just said.

11 Q. Do you agree with that?

12 A. According to the Corrective Action Order,  
13 yes.

14 Q. Is it practical to operate the whole rest of  
15 the system at 100 percent if those two major segments  
16 are operating at 80 percent?

17 A. I would assume, and again, I wasn't here,  
18 that if you are not certain what the causes of the  
19 accident that you may want to take those same  
20 precautions until you understand the holes in the rest  
21 of your system.

22 Q. So the prudent thing to do would be to take  
23 it all down to 80 percent until you get it straightened  
24 out.

25 A. Until you understand it.

4114

1 Q. Do you know if that's what Olympic did?

2 A. I wasn't here, sir.

3 Q. Now, just looking at this, and I'm not an  
4 engineer so I apologize for this whole line of  
5 questions to follow, but if I look at this -- you got  
6 two 16-inch lines going into Renton; correct?

7 A. That's correct.

8 Q. So all the product from all four refineries  
9 comes in on two 16-inch lines; correct?

10 A. Yes.

11 Q. Coming out, you have two 16-inch lines and  
12 one 20-inch line.

13 A. Correct.

14 Q. So setting aside --

15 MR. HARRIGAN: Counsel, excuse me, but I  
16 think you said you have two 16-inch lines coming into  
17 Renton. Do you mean Allen?

18 MR. BRENA: I meant Allen, yes.

19 Q. (By Mr. Brena) Coming out of Allen, you have  
20 two 16-inch lines and one 20-inch line; correct?

21 A. That's correct.

22 Q. Let's forget about the one lateral 16-inch  
23 line for Fredonia. For the purposes of my questions,  
24 forget about that 16-inch line going out, okay? If you  
25 have a pressure restriction on the 16-inch line going

4115

1 in, and you got a pressure restriction on the 16-inch  
2 line going out, the capacity and throughput on those  
3 two lines would be equivalent; right?

4 A. Not necessarily.

5 Q. An 80 percent 16-inch line going in wouldn't  
6 have the same throughput as an 80 percent 16-inch line  
7 going out of Allen?

8 A. It depends on if it's the same pipe, the  
9 elevations, the horsepower. There are lots of  
10 different things that could make a difference between  
11 the two 16-inch lines. Diameter-wise, they are alike.  
12 Elevation-wise, horsepower-wise, they could be much  
13 different.

14 Q. What's the case with these two lines? Is the  
15 throughput capacity of the 16-inch line going in that  
16 was pressure restricted greater, less than, or equal to  
17 the pressure restriction of the 16-inch line going out  
18 of Allen?

19 A. I don't know.

20 Q. Let's assume they are the same since we don't  
21 know if they are different, okay?

22 A. Okay.

23 Q. All that leaves is a 16-inch line coming in  
24 and a 20-inch line going out. It makes sense, doesn't  
25 it, that that 20-inch line can't be operating at full

4116

1 pressure even if you wanted it to be when it's only  
2 being fed by a 16-inch line?

3 A. I agree with that.

4 Q. So the 20-inch line was operationally  
5 pressure restricted as a result of the restrictions on  
6 the Ferndale to Allen 16-inch line and the Allen to  
7 Renton 16-inch line. Operationally, that 20-inch line,  
8 for all practical purposes, was pressure restricted  
9 based on the other pressure restrictions. Is that  
10 right?

11 A. I'm not sure I followed that.

12 Q. Don't feel bad. I don't think you are alone.  
13 I'm not sure I followed it.

14 A. I might be able to help you here a little  
15 bit. I think I know where you are going.

16 Q. All I'm trying to say is, there isn't any  
17 practical way to run that 20-inch line at full  
18 pressure, regardless of the safety, issues because you  
19 don't have enough product to feed it if you've got one  
20 pressure restriction 16 and one other 16 coming in, and  
21 you got a 20 and a pressure restricted 16 coming out.  
22 In effect, you've got the volume from a 16 coming in  
23 and you've got the volume from a 20 coming out; right?

24 A. I think you stated very clearly the same  
25 reason why getting up to 100 percent would be the same

4117

1 case if we can get certain segments up to 100 percent.  
2 As long as we are feeding the lines at 80 percent, we  
3 well be operating at 80 percent. I think you stated  
4 that clearly, and I'll go along with it.

5 Q. So practically speaking, the system goes up  
6 together and comes down together.

7 A. Right.

8 MR. BRENA: May I have a moment? No further  
9 questions.

10 JUDGE WALLIS: Mr. Finklea?

11 MR. FINKLEA: Yes, Your Honor. I do  
12 apologize, but I do have a cross-examination exhibit  
13 that I only got this morning, so I will distribute it  
14 at this time. I thought given the time estimates that  
15 that would happen after the lunch break.

16 JUDGE WALLIS: Mr. Finklea, is this something  
17 that you are going to begin examining about  
18 immediately?

19 MR. FINKLEA: Yes. My examination is only  
20 focused on -- this is a response to a data request, and  
21 it's all Olympic documents, but yes, my examination  
22 will focus on these documents.

23 JUDGE WALLIS: Do the Company and the Witness  
24 need time to review this before the questions begin?

25 MR. HARRIGAN: We do, Your Honor, and I

4118

1 wonder when this was identified as being a  
2 cross-examination exhibit for this witness?

3 MR. FINKLEA: We were only able to secure  
4 this this morning, and I had my legal assistant drive  
5 it up just this morning. It's only been in the room  
6 for the last 45 minutes.

7 JUDGE WALLIS: When did the Company provide  
8 the information?

9 MR. FINKLEA: This was provided as a response  
10 to a FERC data request, and I believe the request was  
11 made to the Company back in January, and the response  
12 came to Tosco on the 14th of March. It's an FERC staff  
13 request. Tosco, as well as the other parties, were  
14 provided the response, I believe, on the 14th of March.

15 MR. HARRIGAN: We would object to the use of  
16 the exhibit period, Your Honor, because of the untimely  
17 provision or notice that it was going to be used,  
18 arriving as it does toward the end of the  
19 cross-examination of the witness who presumably is  
20 going to be finished today.

21 MR. FINKLEA: Your Honor, these are all  
22 Olympic documents. I believe that the witness will be  
23 familiar with these documents. These are all documents  
24 that were provided either to this Commission or to  
25 others at the time that Bayview was being proposed for



4119

1 inclusion in the Company's rates. So I don't think  
2 there will be any surprise here. There are no  
3 documents here that are not familiar to the Company.

4 MR. HARRIGAN: Your Honor, the issue here  
5 really is among the thousands of pages of paper that  
6 have been provided to various regulatory bodies to be  
7 given a series of documents that we haven't even had a  
8 chance to look at enough to know what they are is not  
9 conducive to the orderly presentation of the evidence  
10 in this case, and apparently, there is no apparent  
11 reason for the delay.

12 JUDGE WALLIS: The documents that have just  
13 been distributed appear to be untimely. Tosco has had  
14 these since March. They've had the witness's rebuttal  
15 testimony for some time now, and presenting these  
16 documents at this time renders it difficult for the  
17 parties to understand and deal with the documents.

18 If something comes up on cross-examination  
19 today that may be inconsistent with these documents, it  
20 might be possible to refer to them in impeachment of  
21 the witness, but in terms of a document for  
22 cross-examination, the Commission is reluctant to allow  
23 the use on this short notice.

24 MR. FINKLEA: Your Honor, in the alternative  
25 then, what I will do today is identify these as

4120

1 potential cross-examination exhibits for Witness Fox  
2 and pursue this line of questioning with Mr. Fox next  
3 week. I think that will give Olympic plenty of time to  
4 review the documents, and we will identify them now as  
5 Witness Fox cross-examination exhibits.

6 JUDGE WALLIS: We will so identify them but  
7 will not foreclose further discussion about their use.

8 MR. FINKLEA: I understand. In light of your  
9 ruling, I have no questions.

10 JUDGE WALLIS: Questions from the Bench?

11

12

13 CROSS-EXAMINATION

14 BY CHAIRWOMAN SHOWALTER:

15 Q. Mr. Talley, I think I have a couple of  
16 follow-up questions. Beginning with the Bayview issue,  
17 I want to understand your position. Is it your  
18 position that all of the costs for Bayview should be  
19 included in rate base even though Bayview is not being  
20 used for all of the purposes or perhaps even the  
21 primary purpose for which it was constructed?

22 A. What I would really like to represent is that  
23 Bayview will be a useful facility and that I have made  
24 a decision based on priorities, and I'm looking at  
25 capacity for the whole system. I'm looking at

4121

1 throughput for the whole system, and what I see is a  
2 bigger prize to getting the whole system to 100 percent  
3 than getting Bayview operational. That might have some  
4 effect on its ability to be in the rate base, but it  
5 has some use as it's currently being used, even though  
6 it's not what it was originally intended for.

7 Q. But are you proposing that only the value or  
8 the pro rata share, some proportion of the costs should  
9 be put into rate base because Bayview was not fully  
10 being used for everything for which it was built, or  
11 are you proposing that all of the costs of Bayview be  
12 included in rates?

13 A. I would like to see all of the costs be  
14 included. I think it will help us to complete our  
15 capital projects and safety improvements.

16 Q. I'll use an analogy. Sometimes analogies are  
17 not fair, and I'm very aware of that. If you were  
18 constructing a house and garage for someone to rent,  
19 and the garage was ready but the house was not, would  
20 you think it was fair to charge the tenant for all the  
21 house and the garage?

22 A. Strictly on that analogy, no.

23 Q. Suppose you said, "The reason your house  
24 isn't finished is I've got more important things to do.  
25 I've got a whole apartment building full of people that

4122

1 are homeless. I've got good reasons for not doing what  
2 I want to do."

3           Would that justify charging rent for both the  
4 house and the garage to the tenant who wanted to use  
5 it?

6           A.    I think the problem is I see the pipeline  
7 getting to 100 that big prize and Bayview as the small  
8 prize and that the homeowner or the ratepayer would  
9 want me to go after the big prize first, and there is  
10 more throughput, more volumes for them available by  
11 going after that prize first.

12          Q.    I'm very aware that sometimes analogies break  
13 down. I'm doing it in order to simplify or have an  
14 image. If you are going after the big prize first, as  
15 you say, wouldn't those costs that are used and useful  
16 be appropriate to include but not costs for something  
17 that isn't being used for its purpose or one of its  
18 major purposes?

19          A.    I think that's something that the Commission  
20 has to decide. I personally would like to see it  
21 included because I think it helps us not only to get to  
22 100 but helps us get the safety improvements that I  
23 think not only the Commission but the shippers want to  
24 see in the system and the reliability. It's a matter  
25 of focus and what's important, and I think we have to

4123

1 have that money in order to complete those projects.

2 So my position would be to see it included.

3 Q. If I were the bank loaning you money for your  
4 house and apartment and your garage, and you said to  
5 me, "Look, I really need to go ahead with this  
6 apartment; so therefore, I want you to give me the  
7 money for the house, even though I'm not going to build  
8 the house right now." Would that be appropriate?

9 A. I agree that it seems inappropriate to ask  
10 for that, but I also know that from my perspective of  
11 trying to get the system up to 100 percent and get  
12 Bayview operational, it takes money to do that, and  
13 we've got to have the funds to be able to complete  
14 those projects.

15 Q. But as part of the money going to what you  
16 might call sunk cost. I take it Olympic has expended  
17 some money for Bayview and wants to be able to cover  
18 that cost, and I think your view is you need to cover  
19 that cost before you can get to the next cost.

20 A. Right.

21 Q. But isn't it a regulatory issue, whether it's  
22 from a ratepayer's point of view, it's appropriate for  
23 them to pay for those sunk costs before the product of  
24 those costs is available to them?

25 A. A difficult question for me to answer. Only

1 that sometimes the focus is that Bayview is only about  
2 tanks, and I wanted to offer up that Bayview is a lot  
3 more than tanks, and even though it is not fully used  
4 as it was intended, it is being used, and the system is  
5 trying to be developed to 100 percent to give the  
6 ratepayers what else they want, which is more  
7 throughput in the system.

8 Q. On Page 5 of your testimony, the rebuttal  
9 testimony -- this is Exhibit 1601. I'm looking at  
10 Lines 14 through 16 -- you say, "If the Commission  
11 adopts the recommendations of Staff and Intervenors,  
12 Olympic will not be able to undertake or complete the  
13 capital projects listed in your Exhibit 13-C."

14 This is probably the most definitive  
15 statement I have heard thus far from the witnesses that  
16 certain things will not occur unless -- well, I guess  
17 they will not occur if the Commission adopts the  
18 recommendations of Staff or Intervenors. Do you stand  
19 by that statement?

20 A. I have been told by Larry Peck and Bob Batch  
21 that if we don't have funds that we have to look at  
22 completing our projects based upon the amount of  
23 revenue that we bring in. The timetable that I have  
24 proposed to get us to 100 percent requires \$66.3  
25 million over the next two-and-a-half years. If we

4125

1 don't have that money, then I can't complete the  
2 projects, and what I've done in 13-C is characterize  
3 those projects into three cases. One is --

4 Q. I think you are going further than the  
5 answer. Let's stick with the money that you need to  
6 carry on the projects. What was the figure you gave  
7 me?

8 A. 66.3 million.

9 Q. Is it your assumption that the only way to  
10 get the 66.3 million is through rate revenue?

11 A. No. I think we need rate revenue to attract  
12 capital investment in Olympic so we can do those  
13 projects.

14 Q. Are you asserting that if the rate is as  
15 either Staff or Intervenors recommend, you will not be  
16 able to attract capital?

17 A. That's what I've been told.

18 Q. By whom?

19 A. Howard Fox.

20 Q. You are not saying it's likely that you won't  
21 be able to attract capital or the parents may not  
22 infuse any equity into the Company? You are saying  
23 flat out that Olympic will not have the funds to go  
24 forward with these projects?

25 A. What I'm saying is if there are no infusions

1 of cash from the parents and we can't attract loans, we  
2 won't be able to do these projects.

3 Q. But do you recognize that sentence you just  
4 uttered is different than the sentence in your  
5 testimony? The testimony says, "If the Commission  
6 adopts the recommendations of Staff and Intervenors,  
7 Olympic will not be able to undertake or complete the  
8 capital projects."

9 A. Yes. Because those recommendations won't  
10 support us to get the type of tariff revenue that we  
11 need to attract that capital investment.

12 Q. What I believe you have to be implying is  
13 that if the Commission adopts the recommendations of  
14 Staff and Intervenors, Olympic will not be able to  
15 borrow or obtain equity from the parents, period. Is  
16 that what you were saying?

17 A. That's what I'm saying based on my  
18 understanding of discussions with Larry Peck and Howard  
19 Fox.

20 Q. So have you been told that if the Commission  
21 adopts the recommendations of Staff and Intervenors,  
22 the Company will not get more money for projects?

23 A. No. I haven't been told that specifically.  
24 I have been told that I will have to do projects based  
25 on the revenue that Olympic has available to it, and



4127

1 based on what Intervenors and Staff are recommending,  
2 Howard Fox tells me that we won't have the revenue  
3 available to us.

4 Q. I believe in a question by Mr. Trotter  
5 regarding throughput adjustments -- this was with  
6 respect to your testimony on Page 4, Line 4 -- you said  
7 you were not involved in putting together the original  
8 numbers. That was your answer.

9 A. Correct.

10 Q. My question to you is, who was?

11 A. I believe it was Cindy Hammer and Bernadette  
12 Zabranski and REG.

13 Q. I have been asking each witness who in the  
14 Company or consulting with the Company is knowledgeable  
15 about regulatory matters and has made judgments about  
16 what amounts to ask for, so I'm going to ask you the  
17 same question.

18 A. My understanding is that would be Bernadette  
19 Zabranski, head of our tariff group in Chicago.

20 Q. Is she a witness in this case?

21 A. I do not believe so.

22 Q. Am I correct that she is not one of the BP  
23 employees under contract to Olympic?

24 A. She would show up in the management.

25 Q. I asked Mr. Batch a question earlier with

4128

1 respect to an organization chart that showed a  
2 regulatory box for Olympic, and the chart showed that  
3 it was vacant.

4 A. Right.

5 Q. Have you made any attempts to hire a  
6 regulatory person who would follow regulatory matters  
7 within the State of Washington?

8 A. That position was not intended to be someone  
9 to be involved in rate-making. That position was  
10 intended to be more for someone that would maintain  
11 relationships with organizations like WUTC, Pipeline  
12 Safety Group, Office Pipeline Safety, Department of  
13 Ecology, and that box became vacant, and Jim Clark, our  
14 health, safety, and environmental manager, has been the  
15 one maintaining those relationships.

16 Q. So for rate-making purposes, price  
17 regulation, am I correct that Ms. Zabranski is the main  
18 person to make judgements about what should or  
19 shouldn't be requested in rates?

20 A. Yes.

21 CHAIRWOMAN SHOWALTER: Thank you. I have no  
22 further questions.

23

24

25

CROSS-EXAMINATION

4129

1 BY COMMISSIONER HEMSTAD:

2 Q. I just wanted to pursue a bit further the  
3 testimony that the Chair just did. I had the same  
4 reaction on Page 5, Line 14 that declared a statement  
5 there that Olympic will not be able to undertake or  
6 complete the capital projects listed in Exhibit, and I  
7 believe it's 1603-C.

8 In your earlier testimony, you discuss and  
9 use the phrase "used and useful" with regard to the  
10 Bayview terminal as an asset in place and operational.  
11 Is it your view that the \$66 million of anticipated  
12 capital investment is used and useful now?

13 A. I'm sorry, Commissioner. The 66 million?

14 Q. For additional capital investment over the  
15 next three years. I take it you are not suggesting  
16 that's used and useful as up to the present time.

17 A. No.

18 Q. Let's take a couple of examples. Let's  
19 assume that instead of the cost being \$66 million, you  
20 get your efficiencies or bids or determination that  
21 some of these investments aren't needed. I say  
22 that essentially as a hypothetical, and the cost only  
23 comes to \$30 million, but if this Commission has  
24 granted you the rates that you are requesting, what is  
25 your view as to how we should deal with the fact that

4130

1 your rates have been determined at a level that's more  
2 than you need?

3 A. I believe as far as the rate is concerned,  
4 there was a comment I made here about the possible  
5 settlement on automatic adjustments that was proposed  
6 in one of the settlement discussions and that I  
7 supported that because I think it solves a lot of the  
8 problems that the parties had about throughput and  
9 about down time and things like that that could be  
10 periodically adjusted, because a lot of our businesses  
11 are not driven by us. It's driven by the shippers.

12 So to the extent that we can forecast what  
13 they will do and it dictates what we are able to do as  
14 far as revenues and historical volumes show that an  
15 automatic adjustment would be a mechanism of truing  
16 that up.

17 Q. Do you understand that at least the normal  
18 rate-making procedures that have been used here would  
19 require the Company to incur its capital cost and then  
20 come back to the Commission for review of those costs  
21 and the assumption that they are prudently incurred  
22 than to incorporate that into rates on a going-forward  
23 basis.

24 A. I'm not suggesting that tariff revenue has to  
25 pay for the \$66 million in projects. I'm suggesting

4131

1 that there has to be sufficient for us to track the  
2 investment that's required to complete those projects.

3 Q. I understand the distinction you are making,  
4 but still in any event, do you understand that at least  
5 the historical way this Commission has dealt with  
6 capital costs that the utility incurs the cost and then  
7 comes back to the Commission for their approval and  
8 their addition to the rate base?

9 A. Yes, I understand that.

10 COMMISSIONER HEMSTAD: That's all I have.

11

12

13 CROSS-EXAMINATION

14 BY COMMISSIONER OSHIE:

15 Q. I want to follow-up on a question that was  
16 asked by Commissioner Hemstad, and that has to do with  
17 the incentive to attract capital assuming that for this  
18 question that it's from the parents of Olympic Pipe  
19 Line.

20 You've asked for what I understand is  
21 approximately a 59.2 percent rate increase. Is it your  
22 testimony that unless you receive 59.2 percent rate  
23 increase from this Commission that there will be no  
24 incentive of the parents to invest capital in Olympic  
25 Pipe Line?

4132

1           A.     That's not my testimony, and I would refer  
2     you to Larry Peck's testimony because I wouldn't be  
3     involved in that decision. My role is more of I know  
4     where the projects are. I know what it costs for me to  
5     do them, and if I don't have the revenue to do them,  
6     then I have to act accordingly, and I would rely on  
7     Larry Peck and Howard Fox to make those decisions and  
8     recommendations.

9           Q.     Your testimony then is that based on what  
10    you've been told by either Mr. Peck or Mr. Fox that the  
11    revenues won't be there for your capital projects  
12    unless you receive the rate increase that Olympic Pipe  
13    Line has requested?

14          A.     Rate increase sufficient to attract capital  
15    investment.

16          Q.     And you don't know what that might be then?

17          A.     I do not.

18                    COMMISSIONER OSHIE: No more questions.

19                    JUDGE WALLIS: Let's be in recess now until  
20    1:30.

21

22                    (Lunch recess taken at 12:05 p.m.)

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4133

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AFTERNOON SESSION

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(1:35 p.m.)

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FURTHER CROSS-EXAMINATION

BY MR. BRENA:

Q. Mr. Talley, you were asked quite a series of questions with regard to whether or not Olympic would or would not be able to do certain capital improvements in the future based on levels of revenue by the Commissioners. Do you have those in mind?

A. I think so.

Q. You are not here as a finance person for

4134

1 Olympic, are you?

2 A. I am not.

3 Q. You are not here to express an opinion with  
4 regard to whether or not or under what circumstances  
5 Olympic can or cannot raise funds from either equity or  
6 external sources.

7 A. I'll leave that to Mr. Fox.

8 Q. So in your responses if someone were to read  
9 your testimony with regard to those statements, you  
10 were asked to assume that for the purposes of your  
11 analysis that there would be no revenue from any source  
12 except for rates; correct?

13 A. That's correct.

14 Q. So the comments in your testimony relate to  
15 that assumption that you were asked to make and not  
16 your judgment on whether that assumption is true or  
17 false?

18 MR. HARRIGAN: I object to the form of the  
19 question unless counsel specifies the specific question  
20 he is relating to, not referring generally to the  
21 witness's testimony.

22 JUDGE WALLIS: I think in context, the  
23 meaning of the question appears clear to me. If  
24 witness has any concerns about its mean, the witness  
25 may ask.



1                   THE WITNESS:  Could you repeat the question  
2  again, please?

3           Q.       (By Mr. Brena)  The comments in your  
4  testimony should properly be read as your analysis  
5  based on that assumption, and by "that assumption," I  
6  mean the assumption that there would be no revenue  
7  except for a revenue from rates; correct?

8           A.       That's what I'm referring to.

9           Q.       You are not intending to offer any testimony  
10 with regard to the likelihood or lack of likelihood of  
11 that assumption.  That's an assumption you were given;  
12 correct?

13          A.       Yes.  My comments are based strictly on  
14 comments by Mr. Peck and Mr. Howard.

15          Q.       If there is any confusion at all about first  
16 we have Mr. Peck's testimony in the record, and he's  
17 the person we should look to to determine the accuracy  
18 or inaccuracy or reliability of the assumptions that  
19 you were given for the purposes of your testimony;  
20 correct?

21          A.       Yes.

22                   MR. BRENA:  I have nothing further.

23                   JUDGE WALLIS:  Mr. Finklea?

24

25

1 CROSS-EXAMINATION

2 BY MR. FINKLEA:

3 Q. Good afternoon, Mr. Talley. Just a couple of  
4 questions as a follow-up. At the time you prepared  
5 your testimony, did you assume that Olympic would  
6 collect the revenue that it was collecting for its  
7 interstate service pursuant to the FERC interim tariff  
8 increase?

9 A. In what regard?

10 Q. In two regards. One that you would continue  
11 collecting the interim revenue, and then second, that  
12 it would not be the subject of a significant refund.

13 A. I think when I put my testimony together, it  
14 was in regards of what would be required for us to be  
15 able to attract the capital investment to do our safety  
16 capital projects and to explain my thoughts on the  
17 difference between throughput and capacity as it was  
18 defined by Staff and Intervenors in making their test  
19 years.

20 Q. When you were focused on the revenue side,  
21 what level of revenue from your interstate service were  
22 you assuming Olympic would collect?

23 A. Well, we filed for the 62-and-a-half percent,  
24 and hoping to collect that, I have no figure in mind.

25 Q. Am I correct that approximately two-thirds of

4137

1 your revenues are received from interstate as opposed  
2 to intrastate service?

3 A. I believe that's correct.

4 Q. Now, you were asked several questions by  
5 Commissioners about the throughput issue, and you  
6 mentioned in discussions about an automatic adjustment  
7 provision. Are you familiar with the surcharge  
8 mechanism that was proposed by Dr. Means on behalf of  
9 Tosco?

10 A. I recall reading it.

11 Q. Am I correct that it does provide a level of  
12 adjustment in revenue to account for the uncertainty  
13 regarding throughput?

14 A. I'm not 100 percent clear on it, but I  
15 believe it does.

16 Q. Does it address some of your concern about  
17 revenues given the uncertainties about the Company's  
18 throughput?

19 A. My position is simply to state that I believe  
20 that mechanism, whether it's a surcharge or another  
21 adjustment mechanism, is a way to address concerns  
22 about throughput in this system.

23 Q. You consider that a positive way of  
24 addressing the concern?

25 A. Well, we are going to be at 80 percent, as

4138

1 I've said in my testimony, closer to 2004, and there  
2 has to be a mechanism to insure the ratepayers that we  
3 are collecting rates at a revenue based on a throughput  
4 that's measurable for that we are not getting a  
5 windfall, and I think if that's the concern, then this  
6 mechanism helps address that.

7 MR. FINKLEA: I have nothing further.

8 JUDGE WALLIS: Redirect?  
9  
10

10

11 REDIRECT EXAMINATION

12 BY MR. HARRIGAN:

13 Q. Following up on some of the questions by  
14 Commissioner Showalter regarding whether Bayview should  
15 be included in the rate base. Does the proposal by the  
16 Staff about which you testified in your rebuttal  
17 testimony include a factor for the projected throughput  
18 increase arising from the implementation of Bayview?

19 A. Yes.

20 Q. Does the approach by Tesoro about which you  
21 testified in your rebuttal include both a factor for  
22 the throughput increase from Bayview and the assumption  
23 of 100 percent maximum allowable operating pressure?

24 A. Yes.

25 MR. BRENA: Objection, and I would move to

1 strike that. I specifically probed this witness's  
2 understanding of Tesoro's proposal, and he indicated he  
3 had no understanding of what Tesoro's throughput number  
4 was or whether it was included or not. Now after lunch  
5 he does and has testified to that.

6 MR. HARRIGAN: The witness's prior testimony  
7 was that he did not recall that the number that Tesoro  
8 came up with for the barrels per year was approximately  
9 the same. That is 121 million as Olympic's number. He  
10 was not asked whether he had any understanding of the  
11 factors that were or were not used by Tesoro in  
12 arriving at that number, and that is what this  
13 addresses; namely, that the factors used, which are  
14 part of his testimony at Pages 20 and 21 of his  
15 rebuttal testimony, include Bayview.

16 JUDGE WALLIS: My comfort level,  
17 Mr. Harrigan, would be raised a bit, I believe, if you  
18 were to parse that out and to ask your questions in a  
19 form that were more appropriate to direct. If you take  
20 those step by step, it may be permissible for you to do  
21 that.

22 MR. HARRIGAN: Thank you.

23 Q. (By Mr. Harrigan) With regard to the Tesoro  
24 approach to the rate calculation, what, if any, role  
25 does Bayview play?

4140

1           A.     They use the defined capacity and they also  
2 use at 100 percent.

3           Q.     When you say that, the defined capacity, what  
4 do you mean?

5           A.     The 35- to 40,000 barrels a day and not the  
6 5-million barrels per year.

7           Q.     The 35,000-barrel-per-day figure comes from  
8 where?

9           A.     I believe it came from a presentation about  
10 capacity to this Commission.

11          Q.     Made in 1998?

12          A.     That's correct.

13          Q.     What does that same submission indicate the  
14 throughput effect of Bayview would be?

15          A.     121 million, about 5-million barrels per  
16 year.

17          Q.     The 121 million includes 5-million barrels  
18 per year. What's the basis for your saying that?

19          A.     That's 100 percent, which is the 116 million  
20 that the system did prior to Bayview and the 5-million  
21 barrels per year of throughput that would be increased  
22 by the use of Bayview.

23          Q.     Since you have now said the Staff approach  
24 and the Tesoro approach include a throughput factor for  
25 Bayview, what is the effect of that information upon

4141

1 your view as to whether the costs to create Bayview  
2 should be included in the rate base if either of those  
3 approaches should be adopted?

4 A. If you are going to use those approaches, you  
5 should include the cost.

6 Q. Now, Olympic in its -- at least prior to this  
7 hearing beginning, I believe it's correct that Olympic  
8 had some discussions about the potential use of the  
9 tracking method, and in your view, is that an  
10 appropriate method to use to measure the actual effects  
11 of various changes on throughput?

12 A. I'm sorry. Would you repeat that again?

13 Q. Are you of the view that the use of some form  
14 of tracking mechanism that relates throughput to rates  
15 is appropriate?

16 A. I do.

17 Q. If one uses a tracking mechanism and if, in  
18 fact, Bayview does produce an increase in throughput,  
19 what is your view with regard to whether that means  
20 Bayview should be included in the rate base?

21 MR. BRENA: Objection, scope.

22 JUDGE WALLIS: The witness may respond.

23 THE WITNESS: It should.

24 Q. (By Mr. Harrigan) Why?

25 A. Because it's providing the benefits that it

4142

1 was designed for.

2 Q. Could Bayview be used for its original  
3 purpose with some positive effect on throughput even  
4 though the line is currently operating at only 80  
5 percent?

6 A. It could. I have made it a priority to get  
7 the line to 100 percent and get Bayview up to 100  
8 percent at the same time the line is there. I feel  
9 there is a bigger prize in throughput getting the line  
10 to 100 percent first several months earlier.

11 Q. What is the limiting factor that prevents you  
12 from working on getting to 100 percent currently and  
13 also currently getting Bayview up and running?

14 A. Mainly resources. We are already working our  
15 staff to the max and we don't have any additional  
16 resources. So it's a matter of either working on  
17 Bayview or working on getting a line to 100 percent.

18 Q. What generally are the things that you need  
19 to do to get Bayview operating if you were to start on  
20 it tomorrow, for example?

21 A. It would require a hazardous operations  
22 review. The findings from that review would then  
23 determine what modifications would be required. If  
24 they were minor, that could be done in as little as two  
25 to three months. If they were major, it would require



4143

1 a budgeting and planning and project process.

2 Q. Is the reason that Bayview is not operating  
3 today because of the Whatcom Creek accident?

4 A. Bayview is not operating today because we are  
5 addressing the ERW problems that we would have to  
6 address in the high consequences area of ruling.

7 Q. Is that happening because of Whatcom Creek?

8 A. No.

9 Q. What does the Tesoro approach to the rate  
10 base assume with regard to the level at which the line  
11 is operating; that is, whether it's 80 or 100 percent?

12 A. I believe it assumes that the line is at 100  
13 percent.

14 Q. What is necessary in the way of funding to  
15 get the line to 100 percent so that assumption would be  
16 realized?

17 MR. BRENA: Objection. He's being asked a  
18 series of questions unrelated to cross-examination.  
19 This whole thing of that he's feeding in to what needs  
20 to be done in order to get to 100 percent, nobody has  
21 asked him that.

22 MR. HARRIGAN: If I may explain the  
23 relevance, Your Honor. The relevance is to the issue  
24 that was raised, I believe, by Commissioner Hemstad  
25 with regard to the sequencing; that is, whether you

4144

1 base the rate on things or whether you base the rate on  
2 investments that have already been made, and the  
3 purpose of this question is related to the fact that  
4 you cannot assume the results of the investment in the  
5 rate base without assuming the investment in the rate  
6 base.

7 JUDGE WALLIS: It appears that the topic is  
8 beyond the scope of the expertise that the witness  
9 indicated he had, and consequently, we will sustain the  
10 objection.

11 MR. HARRIGAN: I accept that ruling, Your  
12 Honor. I respectfully would differ, however, that the  
13 witness can shed some light on the relationship between  
14 funding and the assumption contained in the Tesoro rate  
15 proposal of 100 percent maximum operating pressure  
16 because he knows about what work can be done for how  
17 much money.

18 JUDGE WALLIS: Thank, you, Mr. Harrigan.

19 Q. (By Mr. Harrigan) You were asked some  
20 questions about whether you actually believed at the  
21 time of your deposition that Bayview provided pressure  
22 relief. Would you please explain what the facts are  
23 with regard to whether Bayview provides pressure  
24 relief, and if so, how?

25 A. Bayview when it was first built was connected

4145

1 to protect the Ferndale to Allen 16-inch from  
2 overpressure protection. That segment was the first  
3 segment of the line that was put into service and has  
4 been in service since day one and continues to be  
5 today. It runs piping in through the existing  
6 manifold, and that pressure relieves into Tank 209.

7 Q. Without Bayview, is there a tank available  
8 for that product to go into in case of the need for a  
9 pressure relief discharge?

10 A. There is not.

11 Q. Given the fact that Olympic's throughput  
12 calculation that you've already explained includes  
13 approximately 5-million barrels attributable to Bayview  
14 based on the 1998 filing, do you believe that it was a  
15 prudent investment to put \$24 million or so into  
16 Bayview to achieve that?

17 A. I believe that 5-million barrels justifies  
18 the revenue.

19 Q. You were asked some questions about the  
20 difference between Olympic's original throughput  
21 projection of 105 million and its revised projection of  
22 103 million, one being based on one month times 12 and  
23 the other on 10 months. How close was the original  
24 projection given that it was a projection?

25 A. It was an original projection of 290 a day

4146

1 versus 282, which was 105 versus 103. It's about two  
2 percent different. It's pretty close.

3 Q. What is your view as to which of the two  
4 reasonably close approximations is the more reliable?

5 A. The 282, the actual volumes.

6 Q. Did Bayview make any contribution, in fact,  
7 to the timing of the restoration of the 16-inch line at  
8 operations after the Whatcom Creek event?

9 A. It actually expedited it. Again, hydrotest  
10 the water was required, and without having somewhere to  
11 put that water or store it in order to do the testing  
12 would have taken much longer.

13 Q. You were asked a question or two about how  
14 Olympic hydrotested before it had Bayview, if, in fact,  
15 it really needs Bayview in order to store the water.  
16 Do you have any understanding that Olympic did any  
17 hydrotesting except at original construction?

18 A. None that I'm aware of, and during original  
19 construction, you would not have probably needed a tank  
20 because you would not have had fuel contamination in a  
21 brand-new pipeline.

22 Q. You were asked whether, in fact, Bayview  
23 would have or did serve as a pressure relieving  
24 facility at the time of the Whatcom Creek accident.  
25 What information do you have with regard to the

4147

1 pressure conditions in the line at that time?

2 A. Well, several things as far as how the relief  
3 system works. There is a relief valve that protects  
4 the pipeline whenever it sees a surge, and that  
5 relieves into the tank at Bayview. Is that what you  
6 are referring to?

7 Q. Yes. As a consequence of whatever did happen  
8 with respect to relief being provided at Bayview or  
9 anywhere else, what information do you have as to  
10 whether the pressure in the line exceeded the maximum  
11 allowable operating pressure at the time of the  
12 accident?

13 A. There was a surge study done by Stoner which  
14 indicated that the surge pressure did not exceed the  
15 MAOP of the line.

16 Q. Is that including at the location of the  
17 rupture?

18 A. Yes.

19 Q. Would you take a look at your direct  
20 testimony Page 3?

21 JUDGE WALLIS: Which exhibit is that,  
22 counsel?

23 MR. HARRIGAN: That is --

24 JUDGE WALLIS: 1619?

25 MR. HARRIGAN: Yes, Page 3.

1 Q. (By Mr. Harrigan) You were asked some  
2 questions about restrictions on the line other than the  
3 one that you mention here in this answer. The question  
4 you were asked is, are there any restrictions placed on  
5 the maximum allowable operating pressure that the  
6 Olympic Pipe Line system can operate. That question  
7 was asked in testimony submitted on December 13th,  
8 2001. What restrictions existed on that date?

9 A. The 80 percent restriction on the pipeline  
10 regarding the repairs to get back to 100 percent.

11 Q. Is that the restriction you refer to in your  
12 answer?

13 A. Yes.

14 Q. You were asked some questions about the  
15 restrictions created by the series of Corrective Action  
16 Order and amendments. What portions of the line were  
17 not restricted arising from the Whatcom Creek incident  
18 prior to the Second Amendment to the Corrective Action  
19 Order?

20 A. The leg of the line that came from Anacortes,  
21 16-inch to Allen, and the 20-inch line south from Allen  
22 to Renton, and the 14-inch line from Renton to Portland  
23 in the lateral.

24 Q. What was the event that led to the imposition  
25 of an 80 percent restriction on those parts of the

4149

1 pipeline?

2 A. The seam failure on the Ferndale to Allen in  
3 September of '99.

4 Q. That related to what type of pipe?

5 A. That was a pre 1970 ERW pipe.

6 Q. What is the reason that the entire pipeline  
7 is currently operating at 80 percent?

8 A. In regards to the Corrective Action Order?

9 Q. No. In general, what is the reason the line  
10 is now operating at 80 percent instead of 100 percent?

11 A. As we addressed the high-consequences-areas  
12 ruling and the TFI run, we have to complete those in  
13 order to get the line up to 100 percent.

14 Q. Does the fact that you've completed it as to  
15 part of the line mean that you can put part of it at  
16 100 percent?

17 A. You can raise up the pressure on parts of the  
18 line where you completed the inspection and repairs,  
19 but you have to have all segments that that line is  
20 connected to at 100 percent before you will be able to  
21 increase throughput.

22 Q. You were asked some questions by Mr. Brena  
23 about the change in the definition of the type of  
24 restriction that applied on the line that occurred in  
25 the First Amendment to the Corrective Action Order.

4150

1           Would you get out Exhibit 49 there, which is  
2 the Corrective Action Order and amendments, and if you  
3 could turn to the page with the stamp number at the  
4 bottom that ends in 213.

5           JUDGE WALLIS: Did you mean to say 649?

6           MR. HARRIGAN: I guess I did.

7           Q.     (By Mr. Harrigan) I'll just read this aloud  
8 for a second here, Mr. Talley. It says, "Restrict the  
9 maximum operating pressure of the Ferndale, Washington,  
10 to Allen, Washington, to 1056 pounds per square inch,  
11 which is 80 percent of the normal operating pressure or  
12 80 percent of the surge pressure at the point of  
13 failure, whichever is lower, unquote.

14           Now, what is, generally speaking, not as to  
15 this specific situation, but generally speaking, what  
16 is the relationship between surge pressure and  
17 operating pressure?

18           A.     Surge pressure is typically higher than  
19 operating pressure.

20           Q.     So is it self-evident from this statement  
21 that this resulted in a greater restriction on  
22 permissible operating pressure than simply restricting  
23 it to 80 percent of normal operating pressure?

24           A.     No, it's not.

25           Q.     What, in fact, was the result, a greater



4151

1 restriction or no change?

2 A. Actually, the surge pressure was higher at  
3 the point of a rupture than the MAOP.

4 Q. Did this definition change the level of the  
5 restriction on leave it the same?

6 A. It stayed right where it was at because it  
7 was already at the lower setting.

8 Q. You were also asked some questions about  
9 whether the restriction of the two 16-inch lines coming  
10 into Allen at 80 percent resulted in a practical  
11 inability to fully utilize the 20-inch line exiting  
12 Allen. Were both of those two 16-inch lines, in fact,  
13 required to operate only at 80 percent immediately  
14 after the Whatcom Creek event?

15 A. No. Just the Ferndale to Allen segment.

16 Q. So was there any change from normal  
17 operations with respect to the link between the other  
18 16-inch line and the 20-inch line?

19 A. Not into the Second Amendment of the  
20 Corrective Action Order.

21 Q. That arose again from...

22 A. The ERW failure.

23 MR. HARRIGAN: I have no other questions.

24 JUDGE WALLIS: Any follow-up?

25

1                                   FURTHER CROSS-EXAMINATION

2   BY CHAIRWOMAN SHOWALTER:

3           Q.    I was a little confused when you were  
4   answering a question about whether the high consequence  
5   area regulation is a factor in Olympic's operating at  
6   80 percent.  At least I thought I might have understood  
7   that just standing alone, the high consequence area  
8   regulation might be a current bar to Olympic operating  
9   above 80 percent.  Could you just explain in your own  
10  words what you meant by that?

11          A.    Of course, new regulations and testing  
12  require new restrictions, and after, particularly the  
13  northern two segments of the 16-inch, after we ran the  
14  TFI tool, because of the high-consequences-area ruling,  
15  the immediate actions that had to be taken constituted  
16  D rate, and because there were some immediate actions  
17  required in the information received from the TFI tool,  
18  that let us use the D rate that was already in place,  
19  gave us a year to repair those anomalies.  So that is,  
20  in fact, a D rate that's being required because of the  
21  testing that we are doing, and that falls under the  
22  high-consequences-area ruling.

23          Q.    If there is another pipeline elsewhere in the  
24  country in a high consequence area operating at 100  
25  percent, does the rule trigger any reduction in

4153

1 required pressure, or does there have to be some  
2 demonstration that something is wrong with the pipe  
3 before that trigger would be pulled?

4 A. The trigger would be the day we got the  
5 information back on the TFI runs.

6 Q. I'm not talking about Olympic. I'm trying to  
7 get a sense of how the rule works. If in another part  
8 of the country there is a pipeline operating at 100  
9 percent, does the rule by itself cause a reduction in  
10 pressure, or does it call for testing, and a poor test  
11 would trigger a reduction in allowed pressure?

12 A. What the rule requires is that you have to  
13 mitigate, and it depends on the type of testing you are  
14 doing. In this particular case, we did the TFI, which  
15 requires the mitigation of immediate actions. The same  
16 applies if it were a corrosion tool or if it were a  
17 defamiation tool.

18 In any pipeline the operator has, from the  
19 time he gets that information, he has 180 days to  
20 repair that. Immediate actions require you to make  
21 repairs immediately, and then there is a 60-day window  
22 for another level of repairs, and there is a 180-day  
23 window, and as part of that process to mitigate or  
24 repair is either a reduction in operating pressure or  
25 shut down on the system, and it doesn't make any

4154

1 difference whether it's Olympic or a pipeline in  
2 Louisiana.

3 Q. Is the general structure of the rule to  
4 require testing of pipelines, and if there is a failure  
5 in the test, then the rule says you don't operate at  
6 100 percent?

7 A. When you become aware of it, and typically  
8 with internal line inspection, it would be after the  
9 first review analysis by the vendor and gives you  
10 notification that you have a problem. That's a  
11 trigger.

12 Q. Isn't the trigger under the rule a failed  
13 test of some kind?

14 A. It's not a failed test. It's a known defect  
15 or anomaly.

16 Q. But don't you find out whether you have a  
17 known defect or anomaly by testing?

18 A. Yes.

19 Q. Is the rule we are talking about in effect  
20 today?

21 A. Yes.

22 Q. Is the trigger provision for requiring  
23 reduced pressure in effect today?

24 A. Yes. Mr. Wicklund mentioned in his testimony  
25 yesterday that what the rule requires is for you to set

4155

1 a baseline. You can decide that I will start my  
2 baseline tomorrow and then use that as the basis for  
3 developing the information you will use for your  
4 baseline, or you can go back as far as five years and  
5 use information from previous testing to establish your  
6 baseline.

7 Q. Does the rule operate effective today or  
8 earlier to cause pipelines to reduce their pressure  
9 below 100 percent today?

10 A. Yes. It's one of the actions that an  
11 operator can take to mitigate immediate action item  
12 they find from the testing.

13 CHAIRWOMAN SHOWALTER: Thank you.

14 JUDGE WALLIS: Mr. Trotter?

15

16

17 FURTHER CROSS-EXAMINATION

18 BY MR. TROTTER:

19 Q. I'm going to refer you to Mr. Colbo's  
20 normalized throughput adjustment exhibit. It's 2003-C,  
21 Page 21. It has 34 lines on it, and I'm going to ask  
22 you where the Bayview barrels are, in your opinion?

23 A. My understanding is testimony that he started  
24 with this figure that I identify as 35- to 40,000  
25 barrels a day capacity adjusted as numbers for the rate

4156

1 case from that.

2 CHAIRWOMAN SHOWALTER: What line number are  
3 you looking at?

4 THE WITNESS: This is Page 24 of 40.

5 JUDGE WALLIS: What line?

6 THE WITNESS: It's the first bullet point  
7 about four paragraphs down.

8 MR. TROTTER: Opposite the arrow?

9 THE WITNESS: Opposite the arrow.

10 JUDGE WALLIS: Does that satisfy your  
11 suggestion for subject to check?

12 MR. TROTTER: Let me ask a couple of  
13 questions, and I'll try to speak as loudly as I can.

14 Q. (By Mr. Trotter) Referring to Page 21 of  
15 Exhibit 2003-C, is it correct that the 1998 throughput  
16 figure of 116-million-plus barrels would not include  
17 Bayview?

18 A. That's correct.

19 Q. 2001 throughput would not include Bayview  
20 either, would it?

21 A. That's correct.

22 Q. I will ask the witness to accept subject to  
23 check that there are no Bayview volumes on Exhibit  
24 2003-C.

25 A. Yes.

4157

1 Q. You indicated that in your opinion, Bayview  
2 is justified by 5-million barrels of additional revenue  
3 per year?

4 A. Yes.

5 Q. Did you say that you believed it was prudent  
6 on that basis? Did your counsel use the word  
7 "prudent," to your recollection?

8 A. I don't recall if he said it was prudent.

9 Q. Are you aware that Staff asked for any  
10 documents supporting the cost justification for Bayview  
11 at the time it was decided to be built?

12 A. I don't know that I'm fully aware of that,  
13 no.

14 Q. Is your analysis of this \$5-million barrel,  
15 was it reduced to writing?

16 A. Just simply a statement that if it produces  
17 the 5-million barrels a year, it would be worthy of the  
18 investment.

19 Q. What would be the expected gross revenues to  
20 Olympic of an additional 5-million barrels per year?

21 A. I'm not sure I can answer that off the top of  
22 my head, two- or three-million dollars.

23 Q. What discount rate did you use in your  
24 analysis?

25 A. None. Just current tariffs, about three

4158

1 cents a barrel.

2 Q. Did you make any assumptions about the useful  
3 life of Bayview?

4 A. I did not.

5 Q. I think you agreed earlier you are not a  
6 financial analysis; is that correct?

7 A. I did.

8 Q. Are you aware of any study in writing by you  
9 or anyone regarding the cost justification for Bayview  
10 at the time it was built?

11 A. No. I have tried to find information and I  
12 have not.

13 Q. Your counsel asked you whether Bayview could  
14 be made operational on a short-term basis, and you said  
15 a study would have to be done, but it could be done and  
16 it's really a resource issue. Do you recall that?

17 A. Yes.

18 Q. In point of fact, Olympic's plan for Bayview  
19 is to conduct a study after the line is up to 100  
20 percent pressure and deal with Bayview at that time; is  
21 that correct?

22 A. I don't know if we would wait until it's  
23 completely done at 100 percent. As we get down to  
24 having half the system up, we will have more resources  
25 available, and I anticipate that Bayview will come up



4159

1 around the time the whole system gets at 100 percent.

2 Q. That's expected to be sometime in early 2004?

3 A. That's correct.

4 Q. With respect to pressure relief, isn't it  
5 correct that the cost of an overpressure valve plus  
6 tank is in the \$750,000 range, and with sight costs  
7 would be in the range of a million dollars?

8 A. That depends on how big a tank and how big a  
9 valve you buy.

10 Q. What's your estimate of what it would cost  
11 for an overpressure valve, associated piping and tank  
12 for the role that is needed on the north end of your  
13 line that Bayview is currently serving?

14 A. I can only guess at it. Somewhere between  
15 one and two million.

16 Q. The numbers I quoted you were reflected on a  
17 June 21st, 2002, letter from Olympic to the Commission  
18 in regard to the current rule-making docket. Have you  
19 seen that letter before?

20 A. No, I have not, sir.

21 Q. But your best estimate would be in the one-  
22 to two-million-dollar range?

23 A. I'm not sure what's all included in that  
24 estimate. It would include property, permitting,  
25 secondary containment, those types of things.

4160

1 Q. 250,000 was the maximum for permitting, but  
2 it included the valve and the tank and the piping, but  
3 presumably, the land would be extra, but that would be  
4 taken into account in your \$2-million top end?

5 A. And secondary containment, which we are  
6 required to do no.

7 Q. But not 23 million.

8 A. No.

9 MR. TROTTER: That's all I have at this time.  
10 Thank you.

11 JUDGE WALLIS: Mr. Brena?

12

13

14 FURTHER CROSS-EXAMINATION

15 BY MR. BRENA:

16 Q. I think we need to evoke a  
17 no-lunch-before-redirect rule in this proceeding. That  
18 would be my recommendation. Mr. Talley, I would like  
19 to draw your attention to Exhibit 637. That's the  
20 schematic.

21 A. Yes.

22 Q. I'm not sure, but I think perhaps you just  
23 answered a question to your counsel that the Allen to  
24 Renton 16-inch line pressure restriction was not  
25 imposed until the Second Amendment. Is that what you

4161

1 just said?

2 A. I said on a 20-inch.

3 Q. You acknowledge that the Ferndale to Allen  
4 16-inch line, the pressure restriction was at the time  
5 of Whatcom Creek; correct?

6 A. Yes.

7 Q. You acknowledge that the Allen to Renton  
8 16-inch line, the pressure restriction was at the time  
9 of Whatcom Creek; correct?

10 A. Yes.

11 Q. And our conversation with regard to the  
12 20-inch line was to the effect that if those lines were  
13 restricted, the 20-inch line could not practically  
14 operate at full operating pressure anyway; correct?

15 A. If I said that, that was incorrect, because  
16 we operate the 16-inch to 20-inch that way today and  
17 have always operated it that way.

18 Q. What way is "that way"?

19 A. 16-inch to the 20-inch.

20 Q. No. At what pressure are you operating the  
21 20-inch?

22 A. At 100 and at 80.

23 Q. Now, as a result of the Second Amendment to  
24 the Corrective Action Order, do you know whether or not  
25 the line operationally changed its throughput level at

4162

1 all?

2 A. Could you repeat that again, please?

3 Q. As a result of the Second Amendment to the  
4 Corrective Action Order, do you know whether or not the  
5 line changed its operating throughput at all?

6 A. When you say "the line," you are referring to  
7 the portions that were still operational?

8 Q. Well, isn't it true that the whole system was  
9 operating at 80 percent before the Second Amendment to  
10 the Corrective Action Order?

11 A. For a period, yes.

12 Q. So as a result of the Corrective Action  
13 Order, the Second Amendment to the Corrective Action  
14 Order, there wasn't any change in the actual operating  
15 pressure for the line at all, was there?

16 A. Well, it's my understanding that initially,  
17 it operated at 100 percent between Anacortes and Allen  
18 and Allen to Renton on a 20-inch. Then they  
19 implemented a voluntary 80 percent operation. I'm not  
20 sure what date that was, but it was not for the whole  
21 period from the accident to the Second Amendment.

22 Q. So at the time of the Second Amendment, the  
23 entire Olympic system was operating under 80 percent  
24 pressure; correct?

25 A. That's correct.

4163

1 Q. So as a result of the Second Amendment, there  
2 was not, in fact, any change in operating pressure or  
3 throughput whatsoever on the Olympic system; correct?

4 A. I guess I don't follow that because there was  
5 a change in operations. In what sense?

6 Q. Before the Second Amendment to the Corrective  
7 Action Order, the entire system was already operating  
8 at 80 percent pressure; correct?

9 A. Yes.

10 Q. The Second Amendment to the Corrective Action  
11 Order did not change the operational pressure of the  
12 line or its throughput at all, did it?

13 A. No.

14 Q. You mentioned the use of Bayview for pressure  
15 relief.

16 A. Yes.

17 Q. And if there is high pressure, then there is  
18 a relief valve that goes through the manifold at  
19 Bayview and then spills over into Tank 209?

20 A. 209 has a line that goes from the tank that  
21 goes through the manifold, and it's connected to every  
22 relief valve in the manifold, and it's also connected  
23 to the relief valve that protects the main line,  
24 Ferndale to Allen.

25 Q. It goes into Tank 209?

4164

1 A. Yes.

2 Q. What's the capacity of that tank?

3 A. I don't know off the top of my head. I want  
4 to say 30,000.

5 Q. How many tanks are at Bayview?

6 A. Six.

7 Q. What is the total capacity of the Bayview  
8 facility?

9 A. Around 500,000 barrels.

10 Q. So of the 500,000 barrels of available  
11 capacity of tankage, the amount of tankage that's  
12 necessary for pressure relief is 30,000 barrels?

13 A. Well, a tank would be necessary.

14 Q. Is that the smallest tank in the facility?

15 A. Yes.

16 Q. So of the 500,000 barrels of capacity at the  
17 Bayview terminal, only 30,000 barrels are associated  
18 with pressure release currently; correct?

19 A. That would be correct.

20 Q. Now, you were asked some questions -- and I  
21 apologize. I may have been confused by them -- but did  
22 you say that if somebody is suggesting that the  
23 throughput from Bayview is in, then it also follows  
24 that the costs should be included in rates too?

25 A. I believe that's what I said.

4165

1 Q. Is the reverse true that if the costs are in  
2 that the throughput should be in?

3 A. Logical.

4 Q. Do you understand that Tesoro is saying, put  
5 the throughput in and the cost in?

6 A. Yes. I understand they are also saying, put  
7 the 100 percent in while you are operating at 80  
8 percent.

9 Q. I'm only speaking about Bayview now. But you  
10 understand with regard to the Bayview terminal, it's  
11 Tesoro's position to put the throughput in because the  
12 costs are in. I mean, do one or the other. Let me ask  
13 it this way. Do you and I agree that the cost and  
14 throughput should either be out or in?

15 A. I like to see both. I agree.

16 Q. You agree with that statement?

17 A. Yes.

18 Q. Do you understand that its Olympic's position  
19 that the costs are in but there is no throughput in?

20 A. I think Olympic's position is that Bayview  
21 still has use, and even though it's not being fully  
22 utilized, it still has use.

23 Q. I'm talking about the throughput. The  
24 Bayview terminal is not increasing the throughput in  
25 that barrel, is it?

4166

1           A.     I understand.  I'm explaining to you the  
2 Olympic position.

3           Q.     But we are talking about whether throughputs  
4 and costs should be both in and both out, and we agreed  
5 that they should be both in or both out.

6           A.     I understand that.

7           Q.     The Olympic position is the costs should be  
8 in but the throughput should be out; correct?

9           A.     It's a matter of choice.  I look at it as the  
10 throughput for the whole system, and I'm trying to  
11 address the throughput at 100 percent because there is  
12 lower throughput to get back in the system than looking  
13 at one terminal.

14                   MR. BRENA:  Could I move that that be struck  
15 and an instruction to the witness to answer my  
16 question, please?

17                   MR. HARRIGAN:  I think it was responsive  
18 because the issue really is in combination of those  
19 ingredients.

20                   JUDGE WALLIS:  Let's let the witness's  
21 response stand.  You may repeat your question.

22           Q.     (By Mr. Brena)  You understand, do you not,  
23 that Olympic is suggesting that 100 percent of the  
24 costs associated with the Bayview terminal should be  
25 included in shipper rates, even though the Bayview



4167

1 terminal is not adding any throughput whatsoever to  
2 those shippers.

3 A. I understand that it's not being fully  
4 utilized, yes.

5 Q. Well, fully utilized, there is not a  
6 barrel -- it's not increasing the throughput a single  
7 barrel, is it?

8 A. There is still barrels being stored there,  
9 even though it's minimal.

10 Q. By "being stored there," you mean that have  
11 been sitting there for a couple of years?

12 A. Yes.

13 Q. I believe you said if the Bayview terminal  
14 puts in 5-million barrels per day, then the \$24 million  
15 seems prudent. I think that was the thrust of the  
16 colloquy between you and your counsel; is that correct?

17 A. That's close.

18 Q. Let me ask that another way. At zero  
19 throughput, is that \$24 million prudent in your  
20 judgment?

21 A. Again, I refer you that it's a judgment why  
22 it's not being utilized. Your answer is obvious that  
23 if you have no intention of ever using a facility that  
24 it wouldn't be prudent, and I'm telling you that it's  
25 not being used as a matter of priorities.

4168

1 Q. Do you know in the current rates that Tesoro  
2 has been paying three cents for every barrel that goes  
3 by the Bayview terminal for the last three years?

4 A. Yes.

5 Q. So the shippers have been paying for that  
6 facility for three continuous years already. How much  
7 throughput has it added to the system so far?

8 A. Obviously, since it's been out of service, it  
9 hasn't.

10 MR. BRENA: I have no further questions.

11 JUDGE WALLIS: Is there anything further of  
12 this witness?

13 MR. HARRIGAN: I have a few. It's my turn,  
14 thank you.

15

16

17 REDIRECT EXAMINATION

18 BY MR. HARRIGAN:

19 Q. Mr. Talley, if a condition of getting the  
20 Bayview costs into the rate base were for you to turn  
21 your forces to work and get Bayview operating in a few  
22 months at 80 percent, could you do it?

23 A. I would do my best to do it.

24 Q. Could you do it?

25 A. Yes.

4169

1 Q. Would it benefit the shippers for you to do  
2 so instead of devoting the resources to where they are  
3 currently being devoted?

4 A. Not in my opinion.

5 Q. With regard to Commissioner Showalter's  
6 questions about the effect of the HCA regulations, what  
7 are the sorts of things that you have found in the line  
8 with the various smart PIG tools that have led to the  
9 need to dig up, inspect, and repair?

10 I am referring back to the question about  
11 whether the fact that this work is going on is a result  
12 of a, quote, failed test, unquote, and what I'm asking  
13 you is, what are the kinds of anomalies and their  
14 causes that have been found in the line by using the  
15 TFI tool, the deformation tool, and the corrosion tool  
16 to inspect the lines? In other words, why is this work  
17 going on?

18 A. We've been finding lots of topside dents on  
19 the pipe. We've found some cracked defects with the  
20 TFI tool, which shows there have -- found some seam  
21 problems so far, expect to find more as we run the tool  
22 and get the analysis from the other sections.

23 Q. The topside dents are normally caused by  
24 what?

25 A. Third-party damage.

4170

1 Q. The seam problem, what type of pipe has that  
2 been with?

3 A. That's been with the ERW, not only with the  
4 low frequency but some with high frequency as well.

5 Q. Is there any other reason besides the  
6 application of the HCA requirement that the pipeline is  
7 currently operating at 80 percent?

8 A. Yes. There is still action for the  
9 Corrective Action Order which include running our S&I  
10 plan, which includes TFI inspection and repair.

11 Q. Is there any difference in the requirements  
12 of the two, between HCA and the Corrective Action  
13 Order, in terms of the practical results?

14 A. Actually, they are very similar.

15 Q. I'm not sure that it was clear, but what is  
16 the approximate revenue change based on a  
17 5-million-barrel annual increase in throughput, revenue  
18 to Olympic?

19 MR. BRENA: Objection, no foundation. To  
20 answer that question, you would have to run a  
21 cost-of-service study.

22 MR. HARRIGAN: I'm speaking about gross  
23 revenue based on whatever is paid per barrel.

24 JUDGE WALLIS: The witness may respond if he  
25 knows.

4171

1                   THE WITNESS: I'm not sure the exact amount,  
2 but somewhere around two- to three-million dollars a  
3 year.

4           Q.       (By Mr. Harrigan) I take it you have not  
5 calculated what percent that represents up to a  
6 \$24-million investment?

7           A.       I have not.

8           Q.       What was the effect on Olympic's timing in  
9 getting to 100 percent of the fact that it began a  
10 process of testing and inline inspections before the  
11 HCA regulation became effective?

12          A.       That actually put us ahead of an alignment  
13 with the high-consequences-area ruling. We were able  
14 to use most of the stuff we did getting to 100 percent  
15 as far as our baseline for the new rule.

16                   MR. HARRIGAN: I have no other questions.

17                   MR. BRENA: I have one follow-up.

18

19

20                               FURTHER CROSS-EXAMINATION

21 BY MR. BRENA:

22          Q.       Under the HCA rules, isn't it true that a  
23 pressure restriction, pressure reduction is one of what  
24 could be several mitigating factors?

25          A.       Yes. I think I said that earlier.

4172

1 Q. So if you got a dent in a line, you don't  
2 have to reduce the pressure, do you?

3 A. It depends on if that dent has a gouge in it  
4 or a wrinkle bend, and it depends upon the individual  
5 dent.

6 Q. But another option is to go repair it, isn't  
7 it?

8 A. That's one of the possibilities, yes.

9 MR. BRENA: No further questions.

10 MR. HARRIGAN: If the defects are of a  
11 certain type, is there a requirement with respect to  
12 either -- what are your choices if there are a number  
13 of defects of a serious variety under HCA?

14 THE WITNESS: If you have several of them to  
15 put it together repair program versus trying to do one  
16 serious defect would require a pressure reduction or  
17 setting down the pipeline.

18 MR. HARRIGAN: No other questions.

19 JUDGE WALLIS: Mr. Talley, it appears that we  
20 are just about questioned out at this point. We want  
21 to thank you for appearing in this proceeding. You are  
22 excused from the stand at this time, and let's be off  
23 the record while the next witness, Mr. Smith, gathers  
24 his materials and steps forward.

25 (Discussion off the record.)

4173

1           JUDGE WALLIS: The Company, Olympic, is  
2 calling to the stand its witness Leon P. Smith.  
3 Mr. Smith, would be stand and raise your right hand?

4           (Witness sworn.)

5           JUDGE WALLIS: In conjunction with  
6 Mr. Smith's appearance, some documents have previously  
7 been identified for the record. Those are Exhibits  
8 1201-T and 1202, which are described in the transcript  
9 of the June 13, 2002, administrative conference. In  
10 addition, Exhibits 1203-C through 1207 have been  
11 presented for possible use in cross-examination of this  
12 witness by Tesoro at an earlier time.

13           And today, documents which are numbered 1208  
14 through 1215 have also been supplied by Tesoro at the  
15 start of the day for possible use in the examination of  
16 this witness. Finally, the Company has presented two  
17 documents for use in the examination of this witness,  
18 which we are numbering Exhibits 1216 and 1217. I will  
19 ask that the reporter in the transcript identify the  
20 documents 1203-C through 1217 with the designations on  
21 the matrix cover sheets to save us the time of reading  
22 those into the record.

23           I understand that there is a disagreement as  
24 to the appropriateness of use of the documents that the  
25 parties have provided today, those being Exhibits No.

4174

1 1208 through 1217 for identification, 1208 through 1215  
2 being presented by Tesoro. Gentlemen, which of you  
3 would care to go first?

4 MR. BRENA: With regard to which exhibit,  
5 Your Honor?

6 MR. MARSHALL: I suppose since I have an  
7 objection to the first batch of exhibits that were  
8 given to us this morning for the first time, maybe I  
9 should just describe that. Apparently, some of this  
10 material at the top, for example, on Exhibit 1210,  
11 attached carriers response to Tesoro Interrogatory 17  
12 and a couple of other interrogatories and also the  
13 cross-examination testimony in that case, some of them  
14 at the top indicate they were received on July 1st at  
15 8:15; in other words, yesterday morning.

16 I have not seen these before this morning. I  
17 haven't had a chance to thoroughly review it. I don't  
18 know where those interrogatory answers came from. I  
19 don't know whether other interrogatory answers that  
20 might explain these interrogatory answers more fully  
21 are available somewhere else because we simply haven't  
22 had occasion to look into any of that.

23 Having said that -- I don't want to stop the  
24 proceedings and ask for more completeness on this, but  
25 we do have two documents ourselves, one of which



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1 actually is just for the Commission records. 1217 is a  
2 tariff filing from the Commission's records and was an  
3 exhibit to Ms. Omohundro's testimony. The other one is  
4 a related document from Mr. Smith faxed to Mr. Colbo  
5 dated October 16th, 1996, that explains Mr. Smith's  
6 help with this Commission staff in terms of that tariff  
7 filing from 1996.

8           Those were produced to us by way of a Public  
9 Disclosure Act request at a very recent time. Because  
10 so many of those have been coming in, I can't tell the  
11 Commission exactly when. So what we have here is a lot  
12 of documents coming in, several from Mr. Brena, one  
13 from us that hasn't already been known to the parties,  
14 and I'm willing to have the same ruling apply to both  
15 sets. I know we are all trying to do our best to get  
16 material to each other, and I don't fault Tesoro for  
17 not presenting the stuff to us in time so we would have  
18 it before this morning, given everything else that we  
19 have been doing, and for that same reason, I would like  
20 that same courtesy with regard to documents that we  
21 just recently received from Staff through the Public  
22 Disclosure Act.

23           JUDGE WALLIS: Mr. Brena?

24           MR. BRENA: Documents aren't the same things.  
25 My documents are cross-examination documents. His

1 documents are direct examination documents for prefiled  
2 testimony that was filed some time ago. I've had a  
3 real problem with them changing their case as it moved  
4 along, and it shouldn't start changing by them  
5 supplementing their direct testimony while the witness  
6 is about to take the stand.

7           So heretofore, the same ruling shouldn't  
8 apply because heretofore, when someone has to prefile  
9 direct, they don't get to go on the stand and offer  
10 substantial new exhibits to supplement their direct  
11 testimony. There is no opportunity to prepare proper  
12 cross with regard to that. So they don't fall in the  
13 same bucket.

14           Those materials are materials that were a  
15 matter of public record. They could have been filed  
16 with their case if they wanted it filed. What happened  
17 is they had a witness whose testimony was struck, and  
18 now they are trying to modify this witness's testimony  
19 after the fact to try and slide in some of the exhibits  
20 under this witness.

21           You can't change -- sometimes you can, but  
22 you've got your direct case and then you've got your  
23 rebuttal case, and it doesn't get to change. At some  
24 point, it has to quit changing, and that point is well  
25 past now. So with regard to his documents, my

4177

1 objection is that they are supplemental direct  
2 documents; that they had every opportunity for months  
3 to prefile and did not. That's my argument with regard  
4 to their exhibits.

5 JUDGE WALLIS: Is there any distinction  
6 between the two documents that Olympic is proposing and  
7 that 1217 for identification, in fact, was earlier  
8 filed, as you acknowledged, with a different witness.

9 MR. BRENA: Certainly that goes to the less  
10 surprise or prejudice, but this witness has put on no  
11 direct testimony whatsoever related to either one of  
12 these. It's not even apparent to me how these can even  
13 get in. If nobody cross-examines on them, he can't  
14 redirect on them. This witness will never be entitled  
15 to say a word about either one of these exhibits. So  
16 letting them in when there is not a word of testimony  
17 supporting them and there is not even an opportunity  
18 procedurally for this witness to sponsor these is  
19 inappropriate.

20 I don't intend to cross-examine this witness  
21 on either one of these, and it's not apparent to me how  
22 this witness is going to be able to say one word with  
23 regard to either one of these. So at the end of the  
24 day, we are going to have two exhibits unsponsored by  
25 this witness for which he has never said a word. They

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1 can't get into the record under those circumstances,  
2 and that's the problem with shifting around.

3 I would like to say that there has been a lot  
4 of that in this case that I haven't said a word about.  
5 Ms. Hammer sponsored the cost-of-service runs that  
6 Mr. Collins prepared in their direct case. They had  
7 Ms. Hammer as their cost-of-service expert. I didn't  
8 say, "Wait a minute. You've got the wrong witness.  
9 Let's strike all that testimony." So there has been a  
10 lot of shifting in their case that I haven't said a  
11 single word about, but all I can say is, I don't know  
12 how these can get in.

13 MR. TROTTER: Your Honor, if I could indicate  
14 that with respect to this 1217, we said yesterday that  
15 we would be willing to work with the Company on getting  
16 filings that the Company has made before the Commission  
17 in an acceptable format and produce those, and I've had  
18 no contact from the Company on that offer. It's not  
19 apparent that this witness has any knowledge of this  
20 particular filing, but I'm still willing to work with  
21 the Company on getting those if they are willing to  
22 work with me.

23 On the first document, I don't know how this  
24 pertains to this case. I guess that remains to be  
25 seen, but I didn't hear Mr. Marshall asking for

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1 supplemental direct, but as to the second one, I'm not  
2 sure it needs to be offered in this format. As I said,  
3 we are willing to work with the Company if they are  
4 willing to work with us on this issue.

5 MR. MARSHALL: Just a couple of responses to  
6 Mr. Brena and Mr. Trotter. We did have the argument  
7 yesterday about the Commission records and practices,  
8 and it was represented that Olympic would not be  
9 prejudiced because those materials would be received  
10 into evidence. 1217 is one of those documents that  
11 comes from Staff files with regard to a tariff filing  
12 in 1996.

13 The reason why it links up with this witness  
14 and why 1216 is being offered is because we will show  
15 that actually, Mr. Colbo directly called Mr. Smith  
16 about that particular filing, and 1216 shows that  
17 Mr. Colbo used the information and material from  
18 Mr. Smith from the FERC about how the rate base works,  
19 how the entire federal methodology works.

20 So we are offering 1217, the tariff filing  
21 made in 1996, together with the connection to this  
22 witness, which appears from state archive documents.  
23 They are a matter of public record only in the most  
24 attenuated sense in that we had to ask for those for  
25 the Public Disclosure Act request, and we've been

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1 making those requests and those materials have been  
2 coming in, but they've been coming in in bits and  
3 pieces, necessarily.

4 CHAIRWOMAN SHOWALTER: Isn't it still the  
5 case, despite everything you just said, that if you  
6 want to bring them in through this witness, it is in  
7 the nature of supplemental direct? Just answer that  
8 question. Is this supplemental direct?

9 MR. MARSHALL: It may well be, or it may be a  
10 supplement to whatever comes in the cross. The point  
11 of the fact is before this witness has had a chance to  
12 examine any of this, before we had a chance to review  
13 this on June 11th, we did not have -- or if we had, it  
14 was in a great big box that had just been produced. It  
15 wasn't apparent to us that it connected up.

16 So I guess what I'm saying is that this  
17 material, in terms of trying to link up for the benefit  
18 of the Commission, what's the background, what's the  
19 story about how we are, where we are today with regard  
20 to how these tariffs have been reviewed, the past  
21 practice, the methodology that was used for the  
22 recommendations made by Staff, and I'm not trying to  
23 argue that the Commission has formally adopted a  
24 method, but I do believe that we all agree that the  
25 past practice is something that's a factor that's

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1 relevant that can be taken into consideration should be  
2 understood.

3 CHAIRWOMAN SHOWALTER: Isn't there kind of a  
4 bootstrapping argument you are making here? We've  
5 already allowed, under fairly extraordinary  
6 circumstances, a massive rebuttal case very late in the  
7 game. We allowed it in on condition that the  
8 intervenors here be given some flexibility to  
9 cross-examine and absorb the rebuttal case; hence, oral  
10 redirect and potentially more flexibility on  
11 cross-examination exhibits, but this is adding yet  
12 another element to the rebuttal at an even later stage.

13 MR. MARSHALL: Again, what I was told  
14 yesterday is that the materials from the Commission's  
15 files, the past practice and what was used for  
16 determination, would be coming in, because this is what  
17 we tried to do in terms of saying there are certain  
18 facts on what the Commission staff reviewed and how  
19 they based their materials on --

20 CHAIRWOMAN SHOWALTER: I think we should go  
21 back and look at that order ruling by Judge Wallis. My  
22 memory is that it said as to policy and legal issues,  
23 counsel could argue, and as to others, some factual  
24 evidence was already in the record through other  
25 witnesses, and, we said, if parties can try to achieve

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1 a stipulation of records, which it does not extend to,  
2 a Company witness adding more exhibits.

3 MR. MARSHALL: This exhibit, however, is part  
4 of Commission staff file. That's my point. I'm trying  
5 to say there are files that the Commission staff has  
6 and that the background for what Commission looked at  
7 is important.

8 It just happens that one of the things in  
9 Commission staff's files is a fax from Mr. Smith to  
10 Mr. Colbo dated October 16th, 1996, and rather than  
11 have me ask Mr. Colbo about that and not have the  
12 opportunity to ask Mr. Smith about that, it seemed to  
13 me to be appropriate to have this witness, who sent the  
14 fax to Mr. Colbo and who is going to supply testimony  
15 about why FERC methodology is what it is and compare  
16 and contrast what it might be with other methodologies,  
17 to have that opportunity.

18 CHAIRWOMAN SHOWALTER: Why would you have  
19 that opportunity to ask those questions?

20 MR. MARSHALL: I can put this in as a  
21 cross-examination exhibit for Mr. Colbo, Mr. Twitchell,  
22 or Mr. Elgin now that we have that.

23 CHAIRWOMAN SHOWALTER: It's not offered today  
24 for that purpose, so the issue is, why should this  
25 witness --



1           MR. MARSHALL: I understand. I guess the  
2 real question is if it's going to come in, and I  
3 thought these Commission files would come in, whether  
4 by stipulation or some other means. I thought that was  
5 the gist of where we were headed yesterday --

6           JUDGE WALLIS: My recollection is that the  
7 parties were free to offer documents and that we would  
8 consider receipt of the documents as evidence depending  
9 on the interchange amongst the parties, and I do recall  
10 that Mr. Trotter did offer to work with the Company in  
11 terms of official notice, which is a route that remains  
12 open to the Company.

13           MR. MARSHALL: Correct. If this document  
14 were to come in later following this witness's  
15 testimony, he would not be available to be questioned  
16 on did he send it? Is there an authentication  
17 question? What was the context in which the material  
18 was presented?

19           I could ask Mr. Colbo that, and I'm willing  
20 to do that if that's the ruling of the Commission, but  
21 I think it would be helpful to the Commission while  
22 this witness is here in the context of what he's  
23 testified about to know that there is an actual tariff  
24 filing here that was reviewed by Commission staff based  
25 in large degree on input as demonstrated in

1 Commission's own file from this particular witness.

2 MR. BRENA: May I respond briefly? First,  
3 Tesoro isn't at this time addressing the issue of  
4 whether this document is appropriate or inappropriate  
5 to bring in a different way. To the degree that  
6 judicial or administrative notice is appropriate with  
7 regard to the documents, they are free to offer that at  
8 any time, and I don't know whether these particular  
9 documents fall within those particular rules or not, so  
10 I'm not prejudging that. I just haven't got there.

11 Also, Tesoro also indicated a willingness --  
12 in fact, it was Tesoro's package of prior tariff  
13 filings which was objected to that got withdrawn from  
14 one of their witnesses with the understanding that we  
15 would bring such a package back under Mr. Brown. So  
16 I'm willing to work on stipulations, and they are  
17 always willing to file as appropriate under judicial or  
18 administrative notice.

19 The point of my objection to these documents  
20 for this intended use are that it is supplemental  
21 direct, and not only are the documents supplemental  
22 direct, but opposing counsel just illustrated what he  
23 intended to do with them, which was to solicit  
24 additional supplemental direct from the witness  
25 concerning the background and use of these documents.

1           Now, that's the point. That's the point.  
2   The documents are wrong and his intended use is wrong.  
3   So he not only intends to use the documents for  
4   supplemental direct, but he also intends to use the  
5   witness, to find a way to ask the witness questions  
6   that would be further supplemental direct.

7           I think that the bottom line here is their  
8   case has to quit changing at some point. This has been  
9   a huge burden on us to move forward with this case  
10  given their rebuttal case, and we are all doing the  
11  best we can, and this is outside the rules that we've  
12  established and shouldn't be allowed.

13           MR. MARSHALL: I'm perfectly willing to  
14  withdraw these two exhibits with this witness, because  
15  frankly, they are part of the Commission files. I was  
16  giving the parties the opportunity to ask this witness  
17  who is here today about what is in Commission staff's  
18  files, and if the parties don't wish to take that  
19  opportunity to inquire as to what was said between  
20  Mr. Smith and Mr. Colbo at that time, I will withdraw  
21  it.

22           CHAIRWOMAN SHOWALTER: If they wanted that  
23  opportunity, they would have presented these as  
24  cross-exhibits.

25           MR. MARSHALL: I'm not sure that people

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1 understood. This has come in a mass of material from  
2 State archives.

3 CHAIRWOMAN SHOWALTER: You need to worry  
4 about your client and your position, and they need to  
5 worry about theirs, but you shouldn't worry about  
6 theirs.

7 MR. MARSHALL: I understand. Again, I'm  
8 willing to withdraw those because I think they can come  
9 in in another context. They are part of Commission  
10 staff's files, if no questions wish to be asked of  
11 those exhibits. Again, I actually thought that this  
12 would be a better approach to offer them and identify  
13 that this witness has connection to an exhibit in  
14 staff's files, so I withdraw it.

15 JUDGE WALLIS: We appreciate that and  
16 understand at this point you are withdrawing those; is  
17 that correct?

18 MR. MARSHALL: Yes, but only with the  
19 understanding again that we had yesterday that these  
20 general files --

21 JUDGE WALLIS: This does not foreclose future  
22 efforts to advance them into the record.

23 MR. MARSHALL: Right.

24 JUDGE WALLIS: I have a question or two  
25 regarding Exhibits 1208 through 1215 for

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1 identification. When did you receive those,  
2 Mr. Marshall?

3 MR. MARSHALL: I received those this morning  
4 in the hearing room.

5 JUDGE WALLIS: At the start of the hearing?

6 MR. MARSHALL: When it was passed out to  
7 everybody else.

8 JUDGE WALLIS: Is there anything in this  
9 package that the witness is unfamiliar with?

10 MR. MARSHALL: I don't know about these  
11 responses to interrogatories. These are from a case  
12 involving the Trans Alaska Pipeline rate methodology  
13 that says, "Carrier's response to Tesoro  
14 Interrogatories 15, 17, 20..."

15 The problem I have with those is I have no  
16 idea where those came from. There is no  
17 authentication. I have no idea what other materials  
18 there are. What's 1 through 14? What's 16, 18, 19?  
19 Are there things beyond 21? I just don't know, and  
20 nobody asked us about it ahead of time. Nobody gave us  
21 an opportunity to try to find that out. We haven't had  
22 an opportunity.

23 JUDGE WALLIS: Mr. Brena?

24 MR. BRENA: First, my understanding so far is  
25 that opposing counsel's only objections go to 1209,

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1 1210, 1211. Is that correct, the interrogatories?

2 MR. MARSHALL: Those were the questions that  
3 were asked about me in particular. I don't have an  
4 objection on the affidavit or the direct and cross of  
5 Mr. Smith and the Trans Alaska Pipeline rate  
6 methodology, but there again, we did not have notice  
7 ahead of time so that we haven't been able to find  
8 whether there are other materials that may be around,  
9 but I'm not going to object to those two.

10 MR. BRENA: The excerpt from Farmers Union 1  
11 or Farmers Union 2 or the Williams pipeline, 54-B?

12 MR. MARSHALL: With regard to those excerpts,  
13 we have consistently said we think that the actual  
14 cases ought to be used rather than selected excerpts.

15 JUDGE WALLIS: In that instance, you would  
16 have the opportunity to respond with a complete.

17 MR. MARSHALL: Because we got those when we  
18 were here in the hearing room, it's very difficult to  
19 respond and present the more complete document today.  
20 Those could have been provided a long time ago.

21 MR. TROTTER: I have complete copies if there  
22 is a concern in that regard for, I think, all three.

23 MR. BRENA: So my understanding is correct  
24 that we are only dealing with objections to 1209, 1210  
25 and 1211?

1                   JUDGE WALLIS: I believe that's correct;  
2 Mr. Marshall?

3                   MR. MARSHALL: Right. Although, I haven't  
4 had a chance to examine the excerpts to find out what  
5 in these multipage-page cases, what else would we do  
6 with them.

7                   MR. BRENA: Then if I could just direct my  
8 comments to the three that I understand are being  
9 objected to, Your Honor?

10                  JUDGE WALLIS: Mr. Brena?

11                  MR. BRENA: First turning to No. 1209,  
12 Mr. Smith gave testimony before the Alaska Commission  
13 with regard to the TAP settlement methodology, whether  
14 it should be continued or not. He was asked if we were  
15 provided a transcript of his testimony as part of his  
16 prior testimony.

17                  This is an interrogatory to Mr. Smith asking  
18 him specifically with regard to his testimony if he was  
19 suggesting that the Alaska Commission should adopt a  
20 methodology that would generate more revenue than is  
21 necessary for the carriers to recover the actually and  
22 prudently incurred costs relating to providing service  
23 plus a reasonable rate of return on the remaining  
24 investment. That is the heart of the cost-based  
25 methodology, and he was asked if his testimony was

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1 suggesting anything but the use of a cost-based  
2 methodology, and he responded no.

3 I can't quote it, but this particular  
4 interrogatory, and I could quote it if asked, in the  
5 nonopposed direct and cross-examination of Mr. Smith,  
6 in a part of that, the specific interrogatory is  
7 discussed and what its meaning is and its impact for  
8 the case, so it's part of Exhibit 1212. It's part of  
9 what was discussed in 1212, so there is specific  
10 references in it. So that conversation with regard to  
11 my examination of this witness and that proceeding  
12 would not be clear without it. Also, he acknowledges  
13 it in the cross-examination.

14 So there is no surprise to this witness.  
15 These are specific interrogatory requests that were  
16 entered into. On the top you see 43 LPS-E. These were  
17 entered into the case. This one was specifically  
18 discussed within the scope of the direct examination,  
19 which is unopposed. I don't know if this witness has  
20 had it for over seven hours.

21 I would like to point out that today was not  
22 the day for Mr. Smith. Today was the day for Mr. Fox,  
23 and what happened here is Mr. Fox, I understand, has  
24 some in-laws visiting and so was unable to make it, so  
25 I found out yesterday that Mr. Smith was going to be on



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1 today. So Elaine, my assistant, was up until 1:51 in  
2 the morning last night going through these cases, after  
3 learning that Mr. Smith was going to be on tomorrow and  
4 not Mr. Fox, going through and pulling these cases and  
5 copying these relevant things in order to put together  
6 these exhibits. I couldn't get them to you any faster  
7 than I can, particularly given the change in the  
8 witnesses. I didn't think we were going to have  
9 Mr. Smith for another week, so that was what I thought  
10 until yesterday, and I didn't get out of the hearing  
11 room until 9:30 or ten o'clock.

12 JUDGE WALLIS: Very well. We appreciate the  
13 parties' comments.

14 MR. BRENA: The same comments would apply  
15 with regard to 1210 and 1211, and the witness is  
16 available to respond to those.

17 JUDGE WALLIS: The Commission overrules the  
18 objection that the Company has posed to Exhibits 1208  
19 to Exhibit 1215. In light of the comments of counsel  
20 regarding timing, harking back to the scheduling  
21 discussion that we had earlier and the commitment to  
22 have Mr. Smith appear at the end of the party's case,  
23 in light of the recent change in schedule which was to  
24 accommodate the needs of one of the Company's  
25 witnesses, and in light of the content of these

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1 documents which relate to matters in which Mr. Smith  
2 was directly involved, we do not think that it is  
3 untoward to have them presented at this time for  
4 potential use in the proceeding.

5           The Company is in a little bit different  
6 situation in that it did have the opportunity to  
7 conduct discovery in the preparation of its rebuttal  
8 case. It was afforded the opportunity to present an  
9 extended rebuttal case. Other parties were put at a  
10 disadvantage by the volume and the nature of that  
11 material, and a part of our process here was an  
12 accomodation to the Company and allowing it to make  
13 that presentation on the condition that other parties  
14 be able to respond appropriately with further direct  
15 examination and with cross-examination.

16           I think the discussion of counsel today make  
17 clear the appropriateness of that ruling, and I think  
18 that this is consistent with the Commission's intention  
19 when that ruling was made. Are we ready to proceed?  
20 We will take a recess at this time.

21

22                           (Recess taken at 3:15 p.m.)

23

24