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BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	Docket No. TO-011472
TRANSPORTATION COMMISSION,	)	Volume XXXIV
	)	Pages 4354 to 4491
Complainant,	)	
	)	
vs.	)	
	)	
OLYMPIC PIPELINE COMPANY,	)	
INC.,	)	
	)	
Respondent.	)	
_____	)	

A hearing in the above matter was held on July 9, 2002, at 9:30 a.m., at 1300 South Evergreen Park Drive Southwest, Room 206, Olympia, Washington, before Administrative Law Judge ROBERT WALLIS and Chairwoman MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD and Commissioner PATRICK J. OSHIE.

The parties were present as follows:

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Joan E. Kinn, CCR, RPR  
Court Reporter

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7 Cross-Examination by Mr. Trotter 4368

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9 Cross-Examination by Mr. Brena 4419

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1 confidentiality as to provisions in 1705-C and 1706-C,  
2 is the company prepared to waive confidentiality on  
3 those documents?

4 MR. BEAVER: If I have the right 1705-C, the  
5 only page of this document that is confidential is the  
6 last page, page 28, and it has some shipper information  
7 at the very top. I don't know if that's the information  
8 that people are interested in, but I would suggest that  
9 that particular part of the document remain  
10 confidential. We really don't care about the rest of  
11 it. If you look at the very top, it's got both actual  
12 and forecast volumes per segment, and frankly it's  
13 fairly easy to figure out who the shippers are when you  
14 know the segment.

15 MR. BRENA: Your Honor, Tesoro has joined in  
16 such motions when individual shippers are identified but  
17 has opposed such designations when it just has to do  
18 with among segments. You can't tell by looking at the  
19 segments which shipper is involved. You can perhaps in  
20 certain segments tell which refinery is involved, but  
21 there may be 50 shippers out of an individual refinery.  
22 So we would oppose the confidentiality designation of  
23 this document for the same reasons that we have opposed  
24 similar total throughput numbers that don't identify  
25 individual shippers.

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1                   MR. BEAVER:  And that is simply not our view  
2 of our obligations of the ICA, and all we're trying to  
3 do is comply with those obligations, Your Honor.

4                   JUDGE WALLIS:  Very well.  For the moment,  
5 unless there's a desire to pursue the issue, we would  
6 rule that the confidentiality designation will remain as  
7 to 1705-C, the portions that are so designated.

8                   MR. BEAVER:  And for clarification, that's  
9 just the last page, it's page 28.  And again, as far as  
10 we're concerned, it would only be the very top part of  
11 that page, the part dealing with volumes.

12                   MR. FINKLEA:  And, Your Honor, I don't  
13 believe that the cross that Tosco has in mind would  
14 require us to get into any of those numbers on the  
15 record, so.

16                   JUDGE WALLIS:  Very well, thank you.

17                   As to 1706-C?

18                   MR. BEAVER:  That's not a problem, Your  
19 Honor, we will waive confidentiality.

20                   JUDGE WALLIS:  Very well, we will so note  
21 that.

22                   Are we ready?

23                   MR. HARRINGTON:  Yes, Your Honor.

24                   JUDGE WALLIS:  Please proceed.  And,  
25 Mr. Harrington, could you bring that mike even closer to

4361

1 your mouth.

2 MR. HARRINGTON: (Complies.)

3 JUDGE WALLIS: Even closer than that.

4 MR. HARRINGTON: I better get my pad out of  
5 the way.

6

7 Whereupon,

8 HOWARD BENNETT FOX,

9 having been previously duly sworn, was called as a  
10 witness herein and was examined and testified as  
11 follows:

12

13 DIRECT EXAMINATION

14 BY MR. HARRINGTON:

15 Q. Mr. Fox, would you please state your full  
16 name.

17 A. Howard Bennett Fox.

18 Q. And what is your current position?

19 A. I'm the supervisor for the planning group for  
20 BP Pipelines.

21 Q. And are you here today to testify on behalf  
22 of Olympic Pipeline Company?

23 A. I am.

24 Q. Are you sponsoring Exhibit 1701-T, which is  
25 your substitute rebuttal testimony, and Exhibits 1702



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1 through 1704?

2 A. Yes, I am.

3 Q. And do you have any additions or corrections  
4 to your testimony that is 1701-T?

5 A. Yes, I have one correction on my substitute  
6 rebuttal testimony, page 16, line 22, where it says to  
7 be borrowed of 52 Million should be 55 Million.

8 Q. Thank you.

9 MR. HARRINGTON: Sorry, Your Honor, I wasn't  
10 aware we were going to have that one.

11 JUDGE WALLIS: Could we have the citation for  
12 that one again, please?

13 THE WITNESS: I just caught it.

14 JUDGE WALLIS: All right.

15 BY MR. HARRINGTON:

16 Q. Can you give the page and line, please?

17 A. Yes, it was page 16, line 22.

18 Q. Changing 52 to 55?

19 A. That's correct.

20 JUDGE WALLIS: Thank you.

21 Q. And with that change, do you adopt 1701-T and  
22 the exhibits previously mentioned as your testimony?

23 A. Yes, I do.

24 MR. HARRINGTON: And, Your Honor, I just need  
25 to mention that there are two exhibits that we think may

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1 have been a part of Mr. Fox's earlier testimony that we  
2 just noticed don't appear to be on the list, and we're  
3 just checking that now, and if it becomes an issue,  
4 we'll ask permission to raise it.

5 JUDGE WALLIS: Very well.

6 MR. HARRINGTON: Unless Mr. Beaver has  
7 figured it out in the meantime.

8 MR. BEAVER: One is HBF-3, which for some  
9 reason does not appear to have a number unless Ms. Mar  
10 has figured it out.

11 JUDGE WALLIS: Let's be off the record for a  
12 moment.

13 (Discussion off the record.)

14 MR. HARRINGTON: We'll offer 1701-T through  
15 1704.

16 MR. TROTTER: Well, Your Honor, 1702 I don't  
17 think we were served with, and I don't believe it's  
18 referred to in his testimony.

19 MR. HARRINGTON: Oh, I'm sorry, I just --

20 JUDGE WALLIS: I think that's a Tesoro  
21 document possibly used in cross.

22 MR. TROTTER: No, 17 --

23 JUDGE WALLIS: Let's be back off the record.

24 (Discussion off the record.)

25 JUDGE WALLIS: Now, Mr. Harrington, you are

4364

1 offering 1701-T, 1703, and 1704; is that correct, and  
2 withdrawing 1702?

3 MR. HARRINGTON: Correct, Your Honor.

4 JUDGE WALLIS: Very well. Are there any  
5 objections to 1701-T?

6 Let the record show that there is no response  
7 and that document is received.

8 And as to 1703 and 1704, are there questions  
9 or objections?

10 MR. FINKLEA: Your Honor, we have objections  
11 to 1704, in particular the representations regarding  
12 Tosco's case don't reflect that Tosco has not put on a  
13 full cost of service case but simply made adjustments  
14 from the company's case. So I think the numbers under  
15 Tosco's heading are highly misrepresentative of our  
16 position.

17 MR. BRENA: Your Honor, we would join in that  
18 objection. So far as I understand the numbers  
19 concerning direct rebuttal, Tesoro and WUTC are --  
20 they're accurately stated. But I would frame an  
21 additional objection as well. This is supplemental  
22 direct testimony is what it is. Whether it's a summary  
23 or representational or not, it was their obligation to  
24 file this with their rebuttal case, and it's relatively  
25 new to the process. I think I saw it yesterday perhaps.

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1 So I guess we addressed the supplemental, supplementing  
2 their existing case before to one of my objections.  
3 This is admittedly less offensive than what new  
4 information would be, and in making my objection I  
5 acknowledge that the numbers appear to be accurate with  
6 regard to direct rebuttal, Tesoro, and WUTC. I would  
7 join in Tosco's because it's presenting Tosco's column  
8 as though it's a full cost of service study, and they  
9 haven't presented their case as a full cost of service  
10 study, so a comparison is apples and oranges here, but  
11 the other four comparisons I acknowledge are accurate,  
12 but the time for them to have put forward such a chart  
13 has long since passed.

14 JUDGE WALLIS: Does Commission Staff have an  
15 objection to this document?

16 MR. TROTTER: We haven't had a chance to  
17 confirm the UTC column, I should say Staff, of course,  
18 not UTC alone, but we haven't had a chance to confirm  
19 whether they're correct, but we wouldn't object if this  
20 is taken as the company's view of the numbers.

21 JUDGE WALLIS: Very well.

22 MR. TROTTER: But we have a similar concern  
23 with respect to Tosco. It isn't -- as we understand  
24 Dr. Means, he was using the company's numbers in many  
25 respects as simply illustrative to show a comparison,

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1 not to support the figures.

2 JUDGE WALLIS: Apart from the nature of the  
3 presentation, that is whether it's a case for  
4 illustration, are the numbers accurate in that column?

5 MR. FINKLEA: We haven't had a full  
6 opportunity to double check them, but I believe that  
7 they are.

8 JUDGE WALLIS: Very well.

9 MR. FINKLEA: They look roughly correct.

10 JUDGE WALLIS: What I'm going to suggest is  
11 that we reserve a ruling on this subject to checking the  
12 accuracy. I think that this is an illustrative tool  
13 that can be very helpful to the Commission and the  
14 parties for comparative purposes if the numbers are  
15 accurate. I think that the nature of Tosco's  
16 reservation is not one that goes to strike at the heart  
17 of the value of the exhibit, that is a descriptive  
18 matter as to the origin of the numbers, and I don't  
19 believe that the Commission would be surprised or  
20 confused. So subject to parties verifying the accuracy  
21 of the numbers, it would be our inclination to receive  
22 the document.

23 CHAIRWOMAN SHOWALTER: Is there a title  
24 that's more accurate for Tosco such as Tosco's  
25 adjustments to the company's, I'm not sure what it is,

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1 direct case or something that would make you --

2 MR. FINKLEA: Tosco adjustments to company  
3 direct case is accurate.

4 MR. HARRINGTON: We would be happy to agree  
5 to change that heading.

6 JUDGE WALLIS: And the penultimate column to  
7 WTC Staff?

8 MR. BEAVER: Yes.

9 MR. BRENA: My concern with regard to the  
10 Tosco column went beyond its renaming, it went to that  
11 there were concern -- objections -- there were certain  
12 issues that Dr. Means adjusted. But then this assumes  
13 that Tosco's advancing a \$51 Million total cost of  
14 service, and they simply aren't. They have identified  
15 certain issues. So my problem is, is that -- is you got  
16 that total number down there that's being presented as  
17 though it's a comparative number with the other numbers.  
18 Tosco has, I think, made clear in its arguments that  
19 it's adopting many of the positions of Tesoro and Staff,  
20 and so this reflects Dr. Means' adjustments, but the  
21 total cost of service that they're purporting is not  
22 this number.

23 JUDGE WALLIS: Very well. Again, I believe  
24 that that is not something that strikes at the heart of  
25 the document, but something that will not confuse the

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1 Commissioners, and I'm comfortable with it remaining in  
2 the absence of some further clarification, so we will  
3 reserve ruling on 1704.

4 As to 1705, was there objection?

5 Let the record show that there's no response,  
6 and 1705-C will be received.

7 No, I'm sorry, that's Tosco's, isn't it?

8 MR. FINKLEA: Yes, Your Honor.

9 JUDGE WALLIS: Very well, we will reserve  
10 ruling on that.

11 Now are we ready for Mr. Fox?

12 MR. HARRINGTON: Mr. Fox is available for  
13 cross-examination. I would note, Your Honor, that with  
14 regard to 1705, we don't object to the admissibility of  
15 the exhibit. We do, however, have a serious question as  
16 to whether there's any basis for asking this witness any  
17 questions about it.

18 JUDGE WALLIS: Very well, please raise those  
19 at the time that the questions are asked.

20 Commission Staff.

21

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

23 BY MR. TROTTER:

24 Q. Good morning, Mr. Fox.

25 A. Good morning.

4369

1 Q. Mr. Fox, Mr. Peck, Olympic's CEO, testified  
2 in these hearings that it is likely that Olympic's  
3 investment in the Cross Cascades project would be  
4 written off this year; were you familiar with that?

5 A. Yes, I am.

6 Q. And is it -- did he testify correctly  
7 according to your understanding?

8 A. I'm not sure that it's been fully decided. I  
9 believe that's like -- the likely outcome, yes.

10 Q. And Olympic's investment in Cross Cascades is  
11 a little over \$21 1/2 Million; is that right?

12 A. That's correct.

13 Q. When that investment is written off, assuming  
14 it is, Olympic will have about \$150 Million in debt on  
15 its books and less than \$100 Million in net carrier  
16 property, correct?

17 A. That's approximately correct, yes. I believe  
18 -- excuse me, may I further that answer? I believe it's  
19 \$139 Million in debt plus accrued interest that gets you  
20 to the \$150 Million. \$1 1/2 Million of the Prudential  
21 debt was recently paid, and that's why it's gone down  
22 from the \$141 Million previously discussed in the  
23 interim case.

24 Q. Okay. So what is the -- you have currently  
25 \$139 Million in notes outstanding, correct?



4370

1 A. Subject to check, yes.

2 Q. And how much interest and principal has been  
3 accrued and not paid?

4 A. At this juncture it's -- I believe it's over  
5 \$9 Million, but that's also subject to check. I have  
6 not looked at the income statements.

7 Q. So approximately \$148 Million in --

8 A. That's approximately correct.

9 Q. With respect to the Prudential note that  
10 Olympic issued to Prudential in June of 2001, that  
11 restricts additional loans to Olympic from either  
12 internal or external sources, correct?

13 A. Did you say the waiver, I'm sorry?

14 Q. No, I'm saying the note as it is written  
15 restricts Olympic from receiving any loans from internal  
16 or external sources, correct?

17 A. The note with Prudential?

18 Q. Yes.

19 A. Yes, it does.

20 Q. But that condition was waived for the June  
21 2001 ARCO note, correct?

22 A. That is correct.

23 Q. And there is currently \$20 Million  
24 outstanding, that was a \$30 Million note, 10 of which  
25 has been drawn down, leaving \$20 Million at least in

4371

1 theory available to Olympic without violating the  
2 Prudential restriction?

3 A. I will accept the in theory, because it's not  
4 an automatic requirement of the lender.

5 Q. Right, it's not automatic that that \$20  
6 Million be made available to Olympic?

7 A. That is correct.

8 Q. But it is \$20 Million that's out there that  
9 would not violate the restriction as you understand it?

10 A. That is correct.

11 Q. Do you know when the most recent time has  
12 been that ARCO, excuse me, that Olympic asked ARCO for  
13 that \$20 Million?

14 A. I can't give you the exact date, but it was  
15 in the first quarter prior to the SeaTac sale.

16 Q. Was it before or after this Commission issued  
17 its order on interim rate relief?

18 A. I'm trying to remember when the order was  
19 issued, and I believe it was February.

20 Q. Early February.

21 A. I believe the answer is no.

22 Q. So it was before?

23 A. I believe so, yes.

24 Q. ARCO has not provided Olympic with any  
25 written terms and conditions under which it will let

4372

1 Olympic have that \$20 Million under the June 2001 ARCO  
2 note, has it?

3 A. Not anything reduced to writing.

4 Q. Turn to page 2 of your testimony, Exhibit  
5 1701-T.

6 A. (Complies.)

7 Q. On this page you provide a summary of your  
8 testimony, and I want to focus on your testimony on  
9 lines 11 through 21. On line 15, you state that Staff  
10 did not acknowledge that Olympic stopped paying  
11 dividends in 1997. Do you see that?

12 A. Yes, I do.

13 Q. And the fact is that Olympic paid dividends  
14 in 1997, but that was the last year it did so?

15 A. Yes, that's true.

16 Q. Okay. And isn't it also true that in  
17 Mr. Elgin's Exhibit 2102 where he showed dividend  
18 payments over time that he showed no entries for  
19 dividends in 1998, 1999, and 2000?

20 A. I was, in my testimony, I was addressing his  
21 testimony, not his exhibits.

22 Q. Okay.

23 A. He was asserting in his testimony that  
24 Olympic showed -- was essentially imprudent in its  
25 financial management, and I was addressing those

4373

1 comments rather than his exhibits.

2 Q. So they --

3 A. His exhibits to me were sort of a just a  
4 historical representation of the financial books, but he  
5 didn't refer in his testimony to the fact that they  
6 stopped paying dividends, nor did he refer to the fact  
7 that Olympic reduced their dividends by 50% starting in  
8 1996.

9 Q. The exhibit showed no dividends, but you were  
10 referring to his testimony here in your testimony?

11 A. Correct.

12 Q. You also refer to Olympic's application for  
13 and receipt of a federal income tax refund in 2001; do  
14 you see that?

15 A. I do.

16 Q. Has it been Olympic's policy that it pay only  
17 federal income tax that is appropriately due and owing?

18 A. I really can't answer that. It was -- by the  
19 time BP got involved, Olympic wasn't making sufficient  
20 income to have federal income tax, but it was obvious to  
21 me that nobody had looked to see if by virtue of the net  
22 operating losses that Olympic would be due a loss  
23 carryback that you're allowed, so we worked with our tax  
24 department to make sure that we could get that money  
25 recouped.

4374

1 Q. Is it prudent for a public service company to  
2 pay only the taxes that are legally due?

3 A. Obviously it's prudent, but to go back and  
4 get taxes that were paid in the past is I would  
5 characterize as beyond sort of normal behavior, although  
6 you would hope that tax departments would constantly  
7 look out for that. Apparently that wasn't done.

8 Q. On line 20, you say:  
9 Either Olympic receives increased  
10 tariffs to cover needed capital  
11 projects, or these projects will need to  
12 be canceled or deferred.

13 Do you see that?

14 A. I do.

15 Q. Is it your testimony that unless rates are  
16 increased at the UTC and at FERC by 62%, the budgeted  
17 projects will need to be canceled or deferred?

18 A. Well, maybe another way to answer that is, do  
19 I believe based on the Staff's recommended .54%  
20 increase, do I believe that to be true, that's  
21 absolutely true in my mind.

22 MR. TROTTER: Your Honor, excuse me, the  
23 question was very direct. The question to him was, is  
24 it his testimony that unless rates are increased at the  
25 WTC and FERC 62%, the budgeted projects will be canceled

4375

1 or deferred. I would like an answer to that question.

2 A. I will be glad to answer it. My statement  
3 did not say receives a 62%. It says receives increased  
4 tariffs. It doesn't say 62%, does it? I don't believe  
5 it does. I mean it says increased tariffs.

6 Q. Okay, so you're not saying that unless rates  
7 are increased at the UTC and FERC 62%, the budgeted  
8 projects will need to be canceled or deferred?

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

10 Q. So you're not -- let me ask it a different  
11 way.

12 When you say receives increased tariffs, what  
13 increase do you have in mind in this testimony?

14 A. Certainly well above .54%.

15 Q. What number did you have in mind when you  
16 wrote this testimony?

17 A. Well over .54%. I mean I don't have a  
18 specific number in mind, but it's, you know, later in  
19 the testimony I talk about the 24.3% that was provided  
20 in the interim rate and how much additional debt Olympic  
21 will need, so it's fair to say that it's above that.

22 Q. Mr. Peck testified that Olympic was not  
23 expecting to get an increase of 62%. Do you know what  
24 increase Olympic is expecting to get?

25 A. No, I don't.

4376

1 Q. By covering the use of the phrase increased  
2 tariffs to cover needed capital projects, are you saying  
3 that the tariffs need to produce the amount of the  
4 capital, the amount that you have budgeted for capital  
5 projects?

6 A. No, I'm not.

7 Q. At the bottom of page 2 and over to page 3,  
8 you refer to an enormous potential refund liability. On  
9 the intrastate level, that is \$3 Million; is that  
10 correct?

11 A. I did the calculation earlier. That seems  
12 low.

13 Q. Do you know the number?

14 A. The -- oh, I'm sorry, on the refund, that  
15 would be the 24.3. I thought it was 4 frankly, but 3 or  
16 4 is probably in the ball park.

17 Q. How much cash does Olympic have on hand?

18 A. As of Friday afternoon, the last time we  
19 could get a bank balance, it was approximately \$10  
20 Million.

21 Q. On page 3, lines 4 to 5, referring to the  
22 .54% increase, you say it will require over \$100 Million  
23 of new capital for Olympic, and then you state on lines  
24 8 to 9 that Olympic needs another \$66 Million in capital  
25 spending over the next three years. Do you see that?

4377

1 A. Yes, I do.

2 Q. Is the \$100 Million figure a three year  
3 figure also?

4 A. No, I believe that is over a period of five  
5 to six years.

6 Q. On line 6 of page 3, you state:  
7 There is little hope that BP ARCO will  
8 provide additional loans or equity on  
9 top of the \$53 Million already loaned to  
10 Olympic.

11 Do you see that?

12 A. Yes, I do.

13 Q. When was the last time Olympic's owners  
14 provided equity to Olympic?

15 A. I don't know, although if I could further  
16 that response, and I don't know whether it's this is the  
17 right check sure to bring it up, but I believe that the  
18 loans to the extent that they're not being repaid  
19 essentially are equity in my mind.

20 Q. And are they recorded on Olympic's financial  
21 statements as equity?

22 A. No, they're not.

23 Q. They're recorded as debt, correct?

24 A. Yes, on the accounting books, yes.

25 Q. Well, accounting books and financial



4378

1 statements, correct?

2 A. That's correct.

3 Q. Do Olympic's owners expect to earn interest  
4 and return of principal on all of the outstanding loans  
5 on Olympic's books, which I think you stated was  
6 approximately 139, excuse me, \$148 Million including the  
7 accrued amounts?

8 A. Right, I can't speak for the other owner  
9 being Equilon, and I'm not sure I can even speak for BP  
10 per se. Looking at the cash flow modeling with various  
11 tariff increases, it's obvious that none of the loans  
12 will be fully repaid. We'll all be long gone before the  
13 loans will be repaid, if ever at all. And frankly at  
14 the .54% interest, there will be so much accrued  
15 interest, there's, you know, it just keeps compounding.

16 Did that answer your question?

17 Q. Well, do I take it from your answers that  
18 there is no expectation -- well, let me ask it.

19 At the increase that Olympic is requesting,  
20 are the owners expecting a return of and on the current  
21 \$149 Million in debt currently on Olympic's books?

22 A. Again, I can't speak for Equilon, but I'm not  
23 sure that BP has drawn a line in the sand and said they  
24 have to have all of the interest and principal repaid by  
25 a certain time, and I don't know to the extent that they

4379

1 would have any flexibility on that.

2 Q. You don't know one way or the other?

3 A. I don't.

4 Q. Are you assuming -- I will withdraw that.

5 Turn to page 4 of your testimony.

6 A. (Complies.)

7 Q. Excuse me, page 5.

8 A. (Complies.)

9 Q. Line 4, you say that BP ARCO essentially  
10 rescued Olympic in the summer of 2000, and you go on to  
11 say that BP ARCO, "voluntarily loaned Olympic \$53  
12 Million that Olympic had no other means of obtaining".  
13 And then finally in that paragraph you state that, BP  
14 ARCO also guaranteed nearly \$19 Million of loans by J.P.  
15 Morgan Chase to Olympic; do you see that?

16 A. Yes, I do.

17 Q. Starting with the last point, is it correct  
18 then that before the Whatcom Creek explosion, the \$19  
19 Million Chase note had no parent guarantees?

20 A. I don't know the answer to that. I was -- we  
21 were not the operator at that time period.

22 Q. Well, you're making a point here that the  
23 note was guaranteed, and that was a move forward, and so  
24 you don't know whether it was guaranteed before that or  
25 not?

4380

1 A. I don't.

2 Q. Did you assume in writing this testimony that  
3 it was not guaranteed?

4 A. Yeah, I was -- my assumption would be that  
5 prior to the events particularly in September of '99  
6 that to the extent that the cash flows, usually banks  
7 will use an EBITA ratio to determine how much debts  
8 they're willing to extend, and I believe back then there  
9 was plenty of debt capacity for Olympic.

10 Q. So prior to the Whatcom Creek explosion,  
11 Olympic was able to issue debt on its own credit without  
12 parent guarantees?

13 A. I'm not -- I'm just not sure on that, on the  
14 Chase loan, but I do know that the Prudential loan was  
15 backed up by throughput deficiency agreements, as we  
16 discussed in the interim case.

17 Q. Would you accept subject to your check that  
18 the Chase note had no parent guarantees when it was  
19 issued?

20 A. Sure.

21 Q. Did BP's ownership of the line substantially  
22 reduce the risk in Olympic Pipeline?

23 MR. HARRINGTON: Objection, unless we find  
24 out whose risk we're talking about.

25 MR. TROTTER: I thought the question said

4381

1 Olympic Pipeline risk.

2 THE WITNESS: I'm sorry?

3 MR. TROTTER: Olympic Pipeline's risk.

4 JUDGE WALLIS: Does the witness understand  
5 the question?

6 THE WITNESS: I heard the question, and I'm  
7 not sure I --

8 MR. TROTTER: I will rephrase it.

9 BY MR. TROTTER:

10 Q. Did Olympic Pipeline become less risky as a  
11 result of BP's ownership in the summer of 2000?

12 A. Risk is a pretty broad term. I'm not sure,  
13 do you mean financial risk, operational risk, business  
14 risk?

15 Q. Financial risk.

16 A. I'm not sure I know the answer to that. I'm  
17 not sure there is an answer to that.

18 Q. When you say BP voluntarily loaned Olympic  
19 \$53 Million, did you mean there was no substantial  
20 economic benefit to the BP refinery served by the line  
21 by use of the funds necessary to get the line up and  
22 running again?

23 A. I could speculate that that was true, but I'm  
24 here to testify on behalf of Olympic, not the affiliate.

25 Q. Did you hear Mr. Peck's testimony when he

4382

1 talked about the substantial economic benefit to the  
2 refinery as a result of the investment that BP made  
3 through loans?

4 A. I did.

5 Q. Do you agree or disagree, or do you have any  
6 opinion regarding his testimony on that point?

7 A. I don't have specific knowledge on that, but  
8 I suspect that that's true. I also heard Dr. Wilson's  
9 discussion about that as well.

10 Q. On page 6 of your testimony, you list three  
11 factors relating to Olympic's financial situation as of  
12 June 2000 when BP Pipelines came in; is that right, and  
13 it goes on to page 7?

14 A. Yes.

15 Q. The first is decline in throughput, the  
16 second is increase in expense, and the third is  
17 Olympic's decision not to come in for an immediate rate  
18 increase. Are those the three reasons you give?

19 A. Yes, I probably would have ordered them  
20 differently if I would have thought about it, but yes.

21 Q. Starting with the last one, you state that:  
22 Olympic's decision not to come in for an  
23 immediate rate increase due to the lower  
24 throughput and higher expenses.

25 Is it correct then that Olympic considered

4383

1 filing a rate case at the summer of 2000 or thereabouts  
2 and decided not to?

3 A. Actually, I presented a -- well, actually, I  
4 reviewed with the board I believe in September of 2000,  
5 perhaps August, a five year cash flow forecast, and I  
6 specifically remember in that power point presentation a  
7 very -- a specific bullet that said Olympic must improve  
8 or increase their tariffs, so I personally have  
9 knowledge of that, yes.

10 Q. Okay. And who recommended that, if anyone,  
11 that Olympic file a rate case at that time?

12 A. I believe it was me.

13 Q. And was Bernadette Zabransky involved in  
14 those discussions at all?

15 A. I believe so.

16 Q. Was she prepared to put a case together for  
17 Olympic at that time? That's her job, isn't it?

18 A. It is, but there was board discussion, there  
19 were board resolutions, and frankly I believe there was  
20 competing priorities for the board at that time,  
21 particularly after the change in operatorship, the BP's  
22 purchase of the GATX shares. I believe there was quite  
23 a bit going on at the time.

24 Q. And who made the decision not to file a rate  
25 case at that time?

4384

1 A. Nobody did.

2 Q. Oh, then I must --

3 A. You said who made the decision not to file a  
4 rate case.

5 Q. Yes.

6 A. There was no decision made. There -- that's  
7 -- you stated in the negative. It's -- it wasn't that  
8 somebody said, hey, let's not do it now. It was --

9 Q. Who decided not to accept your  
10 recommendation?

11 A. Again, nobody. You're stating it in the  
12 negative, and that's not the way it worked.

13 Q. Let me ask it a different way. You testified  
14 earlier that you recommended that a rate case be filed.

15 A. Right.

16 Q. Was that recommendation accepted?

17 A. Yes.

18 Q. Okay. When was the rate case filed?

19 A. I don't know the exact date. I believe it  
20 was in the summer of 2001 or November of 2001. Bear in  
21 mind I didn't get involved in this until essentially  
22 December of 2001.

23 Q. Let's go back to the beginning.

24 The Whatcom Creek incident occurred in July  
25 of 2000, correct?

4385

1 A. No.

2 Q. Or --

3 A. '99.

4 Q. '99, okay, I'm sorry.

5 CHAIRWOMAN SHOWALTER: June.

6 Q. June of '99, I'm sorry. Your testimony here  
7 says Olympic's decision not to come in for an immediate  
8 rate increase. By immediate, do you mean in close  
9 proximity to June of 1999?

10 A. In this testimony I did.

11 Q. Okay. When did Olympic first consider  
12 whether or not to file a rate increase after June of  
13 1999?

14 A. August or September of 2000.

15 Q. That's to your knowledge, right?

16 A. In other words, are you asking me did Equilon  
17 discuss it, I don't have any knowledge of that.

18 Q. Okay. So the first discussion that you --

19 A. I take that back. Could I add something to  
20 that? I did talk to the former financial analyst, an  
21 individual named Brian Connelly, and asked him his  
22 recollection on that, and he said it was discussed, but  
23 they certainly had more pressing matters at the time  
24 back after the explosion.

25 Q. Okay. So as far as you know from your



4386

1 experience, own personal experience other than your  
2 conversation with him, the first conversation was in the  
3 fall of 2000?

4 A. Correct.

5 Q. And is that when you made your  
6 recommendation?

7 A. Yes, it is.

8 Q. And it's your testimony that recommendation  
9 was followed when the tariff was filed here at the State  
10 of Washington and at FERC?

11 A. No.

12 Q. How did it happen?

13 A. I believe then Bernadette and others spent  
14 some time putting together a full presentation for the  
15 board, and I don't know when that took place. I wasn't  
16 -- at that point, I was no longer regularly attending  
17 the board meetings. But just for as a hypothetical,  
18 let's say it was December, then it was reviewed, and  
19 then data had to be gathered to -- and work with -- had  
20 to occur with REG, the tariff consultants, so it wasn't  
21 like a two week process. I think it evolved over a  
22 period of months, and then it had to be discussed with  
23 the shippers in a shippers meeting, I believe which  
24 occurred in May of 2001, so there was -- it's kind of a  
25 sequential process that had to take place.

4387

1 Q. Okay.

2 A. You don't just put it on.

3 Q. And on May 31st of 2001, the company filed a  
4 72% rate increase in the state of Washington, correct?

5 A. I believe that's true.

6 Q. And was the FERC filing right about the same  
7 time?

8 A. I'm going back to your 72%, I thought it was  
9 76%, but that doesn't matter. I don't remember the  
10 exact number. Again, I was not involved in it, so you  
11 can go ahead and ask me the question, but --

12 Q. But would you accept the date of filing was  
13 May 31st, 2001?

14 A. Subject to check, sure.

15 Q. And would you accept subject to check that  
16 that filing was permitted to be withdrawn in July of  
17 2001?

18 A. Sure.

19 Q. Do you know who made the decision to withdraw  
20 that filing?

21 A. I don't.

22 Q. Were you involved in that decision at all?

23 A. Not at all.

24 Q. Did that withdrawal also add to Olympic's  
25 financial problems? In other words, had they prosecuted

4388

1 that case, it would have potentially had rates in effect  
2 by now?

3 A. I have no opinion on that.

4 Q. Do you know whose decision it was to wait  
5 until October 31st, 2001, to file another rate increase  
6 with the State?

7 A. I don't.

8 Q. You weren't involved in that?

9 A. No, I was not.

10 Q. The second item on your list on page 6, you  
11 refer to significant increase in expenses for capital  
12 projects and O&M, and you state -- you refer to those  
13 increases being on top of growth and annual average  
14 operating costs of 10% per year between 1992 and 1997,  
15 and total operating costs increased 67% in that five  
16 year time period. Do you see that?

17 A. I do.

18 Q. And over on page 10, you indicate revenues  
19 were not increasing as fast as expenses over that  
20 period. Do you recall that?

21 A. I do.

22 Q. Isn't it true that Olympic earned well over  
23 100% on its book equity between 1992 and 1996, and it  
24 earned 74% on its book equity in 1997?

25 A. I haven't done those calculations, but those

4389

1 are accounting measures. Those aren't a kind of a true  
2 measure on an economics basis in terms of present value  
3 or true cash flow. So the short answer is no, I have  
4 not done those calculations. What I was more interested  
5 in looking at was Olympic's revenue coverage of its O&M  
6 expenses, and you will see that in my testimony as well  
7 in a few pages. That to me was more important, how much  
8 revenue, what was the coverage of revenue over O&M  
9 expenses over these time periods, and what is it now  
10 with the .54% increase.

11 Q. Well, did you do any calculation on what  
12 Olympic's return on equity was between the -- over the  
13 years 1992 through 1997?

14 A. I believe I did in the interim case, and I  
15 believe that was a result of a data request. But  
16 frankly, I wasn't interested in it.

17 Q. On page 7 of your rebuttal, you refer to  
18 Mr. Elgin's testimony regarding what he characterized  
19 were aggressive financial policies and pursuit of high  
20 returns and cash flows. Do you see that?

21 A. What line is that?

22 Q. 3 through 6.

23 A. Mm-hm.

24 Q. And he referred to dividend policy investment  
25 decisions and financing decisions, correct?

4390

1 A. Yes.

2 Q. And you respond to him by stating that many  
3 oil companies, oil pipeline companies in this country  
4 are wholly owned by large oil companies where most or  
5 all of the debt is owed to the parents or is guaranteed,  
6 and would you also agree that those companies have  
7 highly leveraged capital structures and high dividend  
8 payout ratios?

9 A. Are you referring to the parents or the  
10 companies?

11 Q. The oil pipeline companies.

12 A. Not the parents that own them?

13 Q. Right.

14 A. Yes.

15 Q. Have any of the oil pipelines that you  
16 contend are typical compared to Olympic, have any of  
17 those experienced a substantial decline in throughput  
18 such as what occurred with Olympic Pipeline?

19 A. Not that I can recall off hand.

20 Q. So you can't tell us how their parents  
21 responded to that situation?

22 A. No, I can't.

23 Q. Olympic's investment of \$21 1/2 Million in  
24 the Cross Cascades project that ended up producing no  
25 revenues contributed to Olympic's financial problems,

4391

1 did it not?

2 A. I don't believe that it has any bearing on  
3 the cost of service in this case. I mean it's not even  
4 being included frankly.

5 Q. I wasn't talking about cost of service but  
6 rather Olympic's financial problems. Are you saying  
7 that \$21 1/2 Million invested in an asset that produces  
8 no revenues has no impact on Olympic's financial status?

9 A. I think it impacted their past, and a  
10 portion, a small portion, if any, of the current debt is  
11 associated with that.

12 Q. Well, \$21 1/2 Million of the current debt  
13 would be associated with that, wouldn't it?

14 A. Not necessarily.

15 Q. How much debt is associated with Olympic's  
16 investment of \$21 1/2 Million in the Cross Cascades  
17 project?

18 A. I don't know the exact answer, but it's  
19 certainly not -- it's certainly not \$21 1/2 Million. I  
20 mean it's -- I'm sure it's less than 10, but I don't  
21 have the exact numbers.

22 Q. As of July of 1999, the Bayview terminal was  
23 bypassed, correct?

24 A. That's correct.

25 Q. So as of that time, Bayview was not providing

4392

1 any incremental increase in throughput, was it?

2 A. I don't have specific knowledge on that.

3 Q. Well, doesn't that just follow from the fact  
4 that it's bypassed?

5 MR. HARRINGTON: Objection for lack of  
6 foundation.

7 JUDGE WALLIS: The question is permissible,  
8 the witness may respond.

9 THE WITNESS: Could you repeat the question,  
10 please.

11 BY MR. TROTTER:

12 Q. If Bayview was bypassed, then by definition  
13 it was not providing incremental throughput, was it?

14 A. Okay, I misheard that, yeah, I agree.

15 Q. And that project was built at a cost of over  
16 \$23 Million, correct?

17 A. Subject to check, yes.

18 Q. Does the fact that Bayview is not providing  
19 the incremental throughput that it was designed to  
20 provide contribute to Olympic's financial problems  
21 today?

22 A. I don't -- I don't see it as any different  
23 than the answer I gave on Cross Cascades.

24 Q. Turn to page 10 of your testimony, and you're  
25 referring to Dr. Schink on line 22 where he stated it

1 was not unusual for a pipeline like Olympic that is  
2 wholly owned by several large integrated oil companies  
3 to have an almost all debt capital structure. And then  
4 you refer to at least four other such pipelines during  
5 the 1999 to 2000 period over onto the next page, 11,  
6 correct?

7 A. Correct.

8 Q. Are you familiar with those four pipelines?

9 A. Yes.

10 Q. Have any of those four pipelines experienced  
11 an event similar to the Whatcom Creek explosion or  
12 otherwise have had substantial decreases in throughput?

13 A. I believe Colonial is one of those pipelines,  
14 and I know they have had -- they had an extended period  
15 of down when there was an explosion, I can't remember  
16 how many years ago, but I know it was a major  
17 interruption to their service.

18 Q. And how did their parents respond to that  
19 event?

20 A. I don't know.

21 Q. Turn to page 14 of your rebuttal, lines 17 to  
22 18, and you state:

23 With the requested tariff increase, the  
24 company would recommend to its  
25 shareholders to convert a certain amount



4394

1 of debt to equity.

2 Do you see that?

3 A. I do.

4 Q. And why would it be appropriate to convert  
5 debt to equity?

6 A. That's more of a comment in terms of just  
7 getting more familiar with what this Commission has  
8 looked to, is frankly more of a compromise comment than  
9 a recommendation, although in my interim testimony I did  
10 discuss the fact that BP as part of a finance committee  
11 presentation did recommend converting at least a portion  
12 of the debt to equity, so BP is -- had proffered that  
13 previously anyway.

14 Q. And --

15 A. But frankly it doesn't matter.

16 Q. Okay. Well, how much debt would be converted  
17 under your proposal?

18 A. I don't remember exactly what I had  
19 recommended.

20 Q. On page 24, excuse me, on the bottom of page  
21 23, you state that:

22 The capital structure of the pipeline  
23 does not matter because the owners make  
24 the investment decisions and handle its  
25 financing.

4395

1 Do you see that?

2 A. I do.

3 Q. Now you do agree that the capital structure  
4 of Olympic Pipeline is 100% debt today, correct?

5 A. Yes.

6 Q. And you have also observed that pipelines  
7 have high payout ratios, correct?

8 A. Correct.

9 Q. So under those circumstances of highly  
10 leveraged capital structures and high payout ratios, the  
11 owners provide the capital, correct?

12 A. That's correct.

13 Q. And at least since the summer of 2000,  
14 capital has come to Olympic from its owners in the form  
15 of debt, correct?

16 A. Yes.

17 Q. And at least since that time, Olympic has not  
18 paid any interest to its owners on that debt; is that  
19 correct?

20 A. Yes, that is correct.

21 Q. With a 100% debt ratio, Olympic can not  
22 access capital from any source other than its parents,  
23 correct?

24 A. I don't think that's correct, no. I think  
25 lenders look at earnings multiples. Essentially most of

4396

1 the lenders that we deal with will look at EBITA  
2 earnings before income taxes and depreciation and  
3 interest, and they'll look at a multiple of the cash  
4 flow. So no, I would say they look more at the cash  
5 flow of the company.

6 Q. You are aware that the FERC administrative  
7 law judge has indicated she will dismiss Olympic's  
8 filings, and she has stricken the hearing dates at FERC;  
9 is that correct?

10 A. I'm not sure I heard it exactly that way, no.

11 Q. Well, the administrative law judge at FERC  
12 has indicated that she will issue a proposed order  
13 dismissing or initial order dismissing the filing, and  
14 she has struck the hearing dates, correct?

15 A. I believe that is correct.

16 Q. And assume that order becomes, if it is  
17 issued, becomes final, the final FERC decision, what  
18 impact would that have on Olympic's ability to finance?

19 A. Well, obviously it would be -- it would be --  
20 it would be bad. I don't -- it's obvious that it would  
21 not be good.

22 Q. Let's assume that that case is dismissed,  
23 because she has also indicated at least in oral decision  
24 that refunds would be required; are you aware of that?

25 A. Vaguely, yes.

4397

1 Q. Okay. Well, let's assume that that's the  
2 case. And then assume that this Commission granted you  
3 a 62% rate increase. So no increase at FERC, in fact  
4 all the money gets refunded, and a 62% increase here.  
5 Would that 62% increase here, assuming it was granted,  
6 have any impact on Olympic's ability to finance given  
7 what would occur under our assumptions at the federal  
8 level?

9 A. Well, certainly any incremental cash is very  
10 important to Olympic. So yes, it will. I mean it -- at  
11 very least it would -- it would send a very positive  
12 signal to potential investors. That's just on the  
13 surface. I mean one of my goals is to make sure that  
14 Olympic does whatever it can to get cash, whether it is  
15 a sale of SeaTac, whether it is getting net income or  
16 income taxes refunded. So I mean any cash we can get is  
17 important.

18 Q. Let me ask it this way. Will ARCO free up  
19 the \$20 Million in the existing June 2001 note if  
20 Olympic is required to refund the rates it has  
21 collected, the revenues it has collected under its  
22 current FERC tariff and the case at FERC is dismissed  
23 and this Commission grants a 62% increase?

24 A. And this Commission -- I don't -- I don't  
25 know the exact answer. My gut feeling is that if this

4398

1 Commission did grant the 62% increase, certainly part of  
2 that \$20 Million would be, and maybe certainly is not  
3 the right word, but it would be my expectation that BP  
4 would be more inclined to loan some of that \$20 Million.

5 Q. Well, you said you had \$10 Million of cash in  
6 the bank, and if you had to refund \$10 Million under the  
7 FERC rates, you would have no cash in the bank, right?

8 A. Actually, it's 14, I believe.

9 Q. 14 in the bank or 14 refund?

10 A. I believe it's 14 refund.

11 Q. Okay. So if you were forced to refund \$14  
12 Million, you wouldn't have cash in the bank to pay it,  
13 would you?

14 A. That's correct.

15 Q. And you would have no revenue for projects,  
16 correct?

17 A. That's correct.

18 Q. And it's your testimony that BP would loan  
19 \$20 Million under those circumstances if this State  
20 grants their full increase?

21 A. Well, I didn't quite say it that way. I said  
22 it's my expectation or my belief that they would, but I  
23 don't -- I don't know for sure.

24 Q. Turn to page 16 of your testimony.

25 A. (Complies.)

4399

1 Q. And you refer to cash flow, your review of  
2 cash flows under the interim rate level of 24.3%; do you  
3 see that?

4 A. I do.

5 Q. Your analysis includes all debt owed to  
6 owners and third party lenders, in other words the \$148  
7 Million that we discussed earlier, correct?

8 A. I'm not sure of the context of your question.  
9 Are you asking did my cash flow statement reflect that  
10 debt?

11 Q. Yes.

12 A. In it? Theoretically the answer is no,  
13 because the interest isn't being paid, so it's not a  
14 cash flow impact. It's not an outflow from Olympic  
15 until it's paid.

16 Q. But you assumed that that was the level of  
17 debt outstanding in your cash flow analysis?

18 A. Again, I did have it in there, but it had no  
19 impact on cash flow.

20 Q. So did your model include or exclude payment  
21 of deferred interest owed to parents?

22 A. It included the paying of interest when  
23 Olympic's cash flow had enough incremental funds to do  
24 so.

25 Q. Wasn't one of the points of your analysis to

4400

1 determine whether there were sufficient cash flows to  
2 pay the \$149 Million in loans and accrued payments  
3 currently outstanding?

4 A. Was that the goal of the cash flow statement?

5 Q. No, was that one of the points of the cash  
6 flow statement, to see how much of that \$149 Million  
7 would be paid?

8 A. What I was looking for was to see what the  
9 cash flow picture looked like for Olympic, which I  
10 believe this Commission asked us to do back in the  
11 interim case. That's sort of the genesis of this whole  
12 thing, to see what did the financial picture look like  
13 at various tariff levels.

14 Q. All right.

15 A. So that was the main reason I started doing  
16 this.

17 Q. You assumed that the 24.3% interim increase  
18 would hold for the future, correct?

19 A. Yes.

20 Q. So you did not assume that there would be  
21 increased rates to pay for increased investments that  
22 the company made in the future, correct?

23 A. Correct.

24 Q. About the 20 --

25 A. Correct.

4401

1 Q. So you assumed that current rates, which are  
2 at the 24.3% increased level, were to -- were not  
3 sufficient to cover what you say are ongoing O&M and  
4 capital needs, correct? That's on lines 21 and 22.

5 A. On page 16?

6 Q. Yes.

7 A. 21 and 22?

8 Q. Lines 20 through 22.

9 A. Oh, okay, I'm with you.

10 Q. So the assumption of your analysis was that  
11 rates in effect today would be used to cover capital  
12 investment three years from now?

13 A. Based on this cash flow model, yes, it was  
14 assuming a 24.3% increase with no adjustments.

15 Q. Turn to page 13.

16 A. (Complies.)

17 Q. On line 17, you indicate that:

18 The regulatory response should be  
19 appropriate for the current state of the  
20 pipeline and incorporate expected  
21 fluctuations that will occur over the  
22 next several years.

23 Do you see that?

24 A. I do.

25 Q. And the expected fluctuations you refer to



4402

1 are getting the pipeline to 100% pressure and the  
2 capital budgeted to do that, correct?

3 A. Among other things, yes.

4 Q. And is the current state of the pipeline also  
5 that it is currently 100% debt financed, has \$149  
6 Million in debt and accrued interest and principal  
7 payments, and less than \$100 Million in net carrier  
8 property if Cross Cascades is excluded? Is that part of  
9 the current state of the pipeline as well?

10 A. Yes.

11 Q. On page 16 of your testimony, line 9, you  
12 state that the Staff:

13 Mechanically follows its regulatory  
14 model and opts to penalize Olympic on  
15 virtually every issue on which it could  
16 apply discretion.

17 Do you see that?

18 A. I do.

19 Q. The regulatory model to which you refer is  
20 the traditional UTC methodology, correct?

21 A. No, I specifically was addressing the  
22 testimonies of Mr. Colbo and Mr. Twitchell in terms of  
23 in their attached exhibits. To me that's the -- that's  
24 a model rather than the theoretical model.

25 Q. Okay, well, let's talk about your

4403

1 understanding of what they did. Do you understand that  
2 Staff is proposing to allow Olympic a rate base measured  
3 at the end of period level?

4 A. I read that, yes.

5 Q. And do you understand that to be a  
6 significant departure from what this Commission  
7 traditionally does with respect to public service  
8 companies and valuation of rate base?

9 A. I assumed that the way it was written, but I  
10 question the magnitude of that sort of deviation.

11 Q. Are you also aware that Staff is proposing to  
12 use construction work in progress in rate base also at  
13 an end of period level?

14 A. I am, but I have the same answer that I had  
15 on the using the end of period balances.

16 Q. And are you also aware that Staff has  
17 accepted Olympic's working capital calculation instead  
18 of insisting on an investor supplied working capital  
19 allowance that is traditionally used in this  
20 jurisdiction?

21 A. Again, I read all of that in the testimony,  
22 but none of us saw in the testimony what the magnitude  
23 of that was on the cost of service, and my feeling is  
24 that those are together not worth a lot.

25 Q. Well, I was focusing on your testimony of

4404

1 mechanically following a regulatory model, and I  
2 suggested three or four areas where there is significant  
3 departures from what this Commission traditionally uses  
4 in rate cases.

5 A. Right.

6 Q. Have you done any analysis of what this  
7 Commission traditionally allows in terms of average and  
8 monthly average rate base, generally no CWIP in rate  
9 base, and certainly no CWIP on an average basis in rate  
10 base?

11 A. I have had discussions with Mr. Twitchell and  
12 Mr. Colbo about some of those items, but what I was  
13 mainly addressing were the exclusion of 98% of the major  
14 maintenance costs, which are reasonable costs to me,  
15 including line lowering and right of way mowing. And  
16 what I had in mind was that this pipeline is operated by  
17 a company that operates many, many pipelines throughout  
18 the United States and knows what's reasonable to operate  
19 a pipeline, and frankly there's a bunch of folks telling  
20 this pipeline that through its adoption and assumptions  
21 or adoption of assumptions that some costs are not  
22 reasonable that we know as an experienced operator are  
23 reasonable, and that's really what I was addressing  
24 here.

25 Q. And that's what rate cases are for, aren't

4405

1 they?

2 A. I suppose.

3 JUDGE WALLIS: Mr. Trotter, how are we doing  
4 in terms of your examination?

5 MR. TROTTER: I just have a few more  
6 questions. I can probably finish by noon, or by 11:00.

7 (Discussion off the record.)

8 BY MR. TROTTER:

9 Q. Turn to page 16.

10 A. 16?

11 Q. Yes. And on page 16 at the bottom of the  
12 page, you identify -- you respond to the question, what  
13 is Olympic's long-term financial plan. Do you see that?

14 A. I do.

15 Q. Are you aware that the Staff asked for any  
16 document Olympic had prepared that addressed its capital  
17 structure and otherwise called for production of its  
18 long-term plan?

19 A. Amongst the hundreds of data requests that we  
20 got, I vaguely -- I mean I'm certain that that was asked  
21 by somebody at some point.

22 Q. Let me ask it this way. Is the plan that you  
23 testified to on pages 17 to 18 of your testimony ever  
24 reduced to writing other than in your testimony as a --

25 A. Not to my knowledge.

4406

1 Q. On page 19, you discuss the third issue  
2 identified by the Commission in its interim order. You  
3 quote it on lines 4 through 8, and one of those items  
4 starting on line 5 is Olympic's failure or I'm going to  
5 say alleged failure to notify the Commission of its debt  
6 financings. Do you see that?

7 A. I do.

8 Q. Did you address that issue in your rebuttal?

9 A. Did I address the issue of whether we  
10 notified the Commission on its debt financing?

11 Q. Yes. It says please respond, and I didn't  
12 see anything in your answer that responded to that item,  
13 so I asked --

14 A. Well, it is responsive. It says:  
15 The other issues are important but are  
16 overshadowed by the need to restore  
17 Olympic to an appropriate level of cash  
18 flow.  
19 I believe that addressed it.

20 Q. Okay. So did Olympic fail to notify the  
21 Commission of certain of its debt financings? You're  
22 saying that they did, but that was overshadowed by the  
23 need to restore the pipeline, or are you saying that you  
24 did, in fact, notify the Commission of all of your debt  
25 financings?

4407

1           A.     Well, certainly, as I'm sure we have produced  
2 on at least one data request, that we did file on the  
3 Prudential loan and we did file on the Chase loan.

4           Q.     And what about all the other ARCO loans?

5           A.     I can't comment on that. I don't --

6           Q.     Did you investigate that issue for purposes  
7 of this testimony?

8           A.     No.

9                   MR. TROTTER: Those are all my questions,  
10 thank you.

11                   JUDGE WALLIS: Let's take a 15 minute recess,  
12 please.

13                   (Recess taken.)

14                   JUDGE WALLIS: Mr. Finklea, it's your turn.

15                   MR. FINKLEA: Thank you, Your Honor.

16

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

18 BY MR. FINKLEA:

19           Q.     Good morning, Mr. Fox.

20           A.     Good morning.

21           Q.     First of all, in response to a question by  
22 Staff Counsel Trotter, you noted that Olympic doesn't  
23 have any income to pay taxes on; is that correct?

24           A.     That is correct.

25           Q.     Could you turn to what's been marked for

4408

1 identification as 1704.

2 A. Okay.

3 Q. Am I correct that under every scenario, the  
4 company's direct, the rebuttal, the Tesoro case, the  
5 WUTC staff case, and the Tosco adjusted case, that there  
6 is an assumption that the company pays income tax?

7 A. I believe your question, and I may be  
8 incorrect on this, but I think what I referred to when I  
9 was talking to Mr. Trotter was the period when we worked  
10 on getting an income tax refund, which was prior to the  
11 FERC 62% increase. So I believe that currently there's  
12 a taxable income, but back then there wasn't.

13 Q. And am I not correct though that based on,  
14 you were discussing this with Mr. Trotter, that based on  
15 past losses that you have carry forwards on losses as  
16 well?

17 A. I'm not sure to the extent that the carryback  
18 took care of the prior operating losses. I don't -- I  
19 don't know the exact number. There is a potential for  
20 that, and actually I have pursued that with our tax  
21 department.

22 Q. So is it your testimony that you anticipate  
23 that Olympic will be paying federal income tax in 2002?

24 A. Depending on the outcome of this case and the  
25 FERC case, very likely they will be paying income taxes.

4409

1 Q. Let's turn to the line that's marked income  
2 tax allowance on 1704. In the company rebuttal, the  
3 assumption is that there is \$6,864,000 in income tax  
4 allowance, and is my understanding correct that that's  
5 based on the assumption that the company has a capital  
6 structure that's 86% equity, and therefore you're  
7 earning income on equity that has to have a federal tax  
8 allowance?

9 A. Please repeat the question.

10 Q. Yes.

11 A. I'm not sure I understood it.

12 Q. Focusing on the company rebuttal case, the  
13 line that says income tax allowance, am I not correct  
14 that the assumption of a \$6,864,000 income tax liability  
15 is driven in large part by the fact that the company has  
16 a capital structure that's 86% equity in the company's  
17 rebuttal case?

18 A. Well, you said income tax liability, I  
19 believe the line says income tax allowance, so I  
20 wouldn't agree with you to the extent that those are two  
21 different concepts.

22 Q. Well, in rate making concept, by allowance  
23 aren't we saying here that you're allowed that revenue  
24 because you expect to have a tax liability associated  
25 with the allowed total return on the higher line of



4410

1 \$12,313,000?

2 A. I believe that you are trying to draw an  
3 absolute between a rate making cost of service  
4 calculation and what you actually pay to the federal  
5 government in income taxes, and that's not an  
6 appropriate distinction.

7 MR. FINKLEA: Your Honor, I would ask that  
8 the witness be directed to answer the question. I am  
9 not engaged in a debate with the witness about what is  
10 or isn't an appropriate distinction. The question that  
11 I would like answered is, is there in the company case  
12 an assumption that the company will pay \$6,864,000 in  
13 income tax, first of all.

14 JUDGE WALLIS: Mr. Fox.

15 A. Well, and I'm trying to answer your question.  
16 You asked me, do we assume that we're going to pay  
17 exactly \$6,864,000, and as you are well aware that a  
18 cost of service calculation includes an income tax  
19 allowance. It is not an income tax liability  
20 specifically to be paid to the federal government.

21 BY MR. FINKLEA:

22 Q. So for this purpose, by allowance what you  
23 mean is that the shippers are assumed to have an  
24 obligation to pay to the company enough money to enable  
25 the company to pay \$6,864,000 in taxes, correct?

4411

1           A.     I mean on a theoretical basis, that would be  
2 correct.

3           Q.     And hypothetically, if the company winds up  
4 with no federal income tax liability, that \$6,864,000 is  
5 simply extra cash available to the company to do  
6 whatever it wants with whether or not it pays federal  
7 income tax, correct?

8           A.     Yes, but I answered earlier that I believe  
9 there will be taxes paid in 2002.

10          Q.     And do you know if they will be anywhere near  
11 the \$6,864,000 that's in the company's rebuttal?

12          A.     I don't know the exact number.

13          Q.     Given that the company has 100% debt  
14 financing, am I first of all not correct that any  
15 interest paid on the debt is actually deductible from  
16 your tax liability?

17          A.     In most cases, that is correct, but there are  
18 IRS stipulations, regulations regarding debt between  
19 affiliate parents and the affiliated companies, so  
20 that's not an absolute, no.

21          Q.     The debt that's owed to third parties is all  
22 deductible, and the debt that's owed to parents is  
23 partially deductible; is that an accurate understanding?

24          A.     I would agree with the first part. I'm not  
25 sure I would agree with the second part, but I am not a

4412

1 tax attorney.

2 Q. But at the end of the year, the company's tax  
3 liability will be based on its actual capital structure,  
4 not on a capital structure that's 86% equity, correct?

5 A. Yes, and it will also be calculated on all of  
6 the ways that Olympic categorizes its capital and  
7 expenses as another example, and that's treated  
8 differently by the interveners and the WTC Staff in  
9 their rate making. So I think we're talking apples and  
10 oranges here. In fact, I know we are. We do not submit  
11 a FERC Form 6 to the IRS to pay taxes.

12 Q. To the extent that there is income tax  
13 allowance in the formation of the revenue requirement in  
14 this proceeding that is greater than what the company's  
15 actual tax liability is in any given year, am I correct  
16 that that is simply extra cash available to the company  
17 to do whatever it wants with?

18 A. I don't agree with that.

19 Q. Is it your testimony that if the company  
20 doesn't actually pay taxes equal to the income tax  
21 allowance that the shippers will be rebated any money?

22 A. I believe that in normal rate making that  
23 models are used, and models are used that assume income  
24 taxes on the return, and that is part of the whole  
25 equation. It is not a specific number that you can

4413

1 extract and say that's owed to the shippers. I don't  
2 agree with that.

3 Q. To the extent there's a difference between  
4 what's assumed for rate making purposes and what the  
5 company actually pays in taxes, would you agree that  
6 that is sometimes referred to as a phantom tax?

7 A. I have never -- I'm not aware of that.

8 Q. Could you turn to page 6 of your testimony.

9 A. (Complies.)

10 Q. On page 6, you discuss three reasons for the  
11 financial situation that Olympic faced in the summer of  
12 2000 when BP took over operations. You have listed your  
13 first reason you discuss as the decline in throughput  
14 due to Whatcom Creek and the hydro test failure, the  
15 second being the increase in expenses between 1992 and  
16 '97 as well as the expense increase due to hydro test  
17 failure, and in number 3 you discuss Olympic's decision  
18 not to come in for a rate case. Regarding the second  
19 reason, with respect to increases in operating expenses  
20 between '92 and '97, isn't it true that Olympic filed  
21 for a tariff increase in late '98 of 3 cents a barrel  
22 due to the Bayview investment?

23 A. I'm not sure if it was late '98; I thought it  
24 was late '97 actually.

25 Q. Disregarding the date, if the increase in

4414

1 operating expenses between '92 and '97 was a problem at  
2 that time, am I not correct that Olympic could have  
3 addressed that with the tariff increase that it filed at  
4 that time?

5 A. I believe they should have.

6 Q. Regarding the hydro test failure, when  
7 Olympic failed the hydro test of the ERW pipe, do you  
8 think the Office of Pipeline Safety acted in any way  
9 different than it would have if any other oil pipeline  
10 had failed that ERW test?

11 MR. HARRINGTON: Objection for lack of  
12 foundation.

13 MR. FINKLEA: Well, Your Honor, he discusses  
14 the hydro test failure as one of the reasons, and I'm  
15 just testing his representations regarding the effect of  
16 that on the company.

17 JUDGE WALLIS: The question is permissible,  
18 the objection is overruled.

19 A. Could you repeat the question, please.

20 BY MR. FINKLEA:

21 Q. When Olympic failed the hydro test of the ERW  
22 pipe, do you think the Office of Pipeline Safety acted  
23 in any way different than it would have if any other oil  
24 pipeline had failed the same test?

25 A. I don't know the answer to that. That's not

4415

1 my area of expertise.

2 Q. With respect to Olympic's current capital  
3 structure of 100% debt, but for the drop in revenue due  
4 to the rupture in pressure restrictions, in your  
5 opinion, would Olympic currently have an all debt  
6 capital structure?

7 A. I would guess probably not, but I wouldn't  
8 know that for sure.

9 Q. When BP purchased its interest in Olympic,  
10 the company at that time had an all debt capital  
11 structure; am I not correct?

12 A. I don't recall specifically. I know it was  
13 70% prior to the ERW seam failure and the Whatcom Creek  
14 incident.

15 Q. On pages 14 and 15 you discuss the  
16 recommendation to have tariff rates adjusted for  
17 volumes. I see this as a general recommendation, but I  
18 don't see anything very specific regarding how you are  
19 recommending that tariffs be adjusted for the volume,  
20 and my question is an open ended one. Do you have a  
21 specific recommendation for how tariffs should be  
22 adjusted to address the volume question?

23 A. I don't have a specific one, but it seems to  
24 me that it's -- it was just a -- it was an obvious --  
25 there was an obvious need from everybody's standpoint to

4416

1 be fair to all parties to have that but also, as you  
2 will notice below there, a mechanism to handle the  
3 capital spending as well.

4 Q. Are you familiar with the approach to volumes  
5 that's been recommended by Dr. Means on behalf of Tosco?

6 A. Reasonably familiar, yes.

7 Q. And is that an approach to adjusting volumes  
8 that has a risk sharing mechanism between the shippers  
9 and Olympic?

10 A. Yes, I believe it provided upside to Olympic  
11 by expediting the work to get the pipeline up to 100%  
12 operating pressure, as I recall.

13 Q. Could we turn to what's been marked for  
14 identification as 1705-C.

15 A. (Complies.)

16 Q. Mr. Fox, I will represent to you that this is  
17 a response to a data request that was made in the  
18 proceeding before the Federal Energy Regulatory  
19 Commission. These are documents from the company  
20 regarding the Bayview capital investment assumption, and  
21 my question is, you're familiar with the capital cost  
22 assumptions that have been made regarding Bayview; is  
23 that correct?

24 A. Pardon me?

25 Q. Are you familiar with the capital cost

4417

1 assumptions that have been made regarding the company's  
2 investment in Bayview?

3 A. If you could rephrase it, I'm not sure  
4 exactly what you're asking. Am I familiar with this  
5 study here?

6 Q. Well, let's start there, are you familiar  
7 with that study?

8 A. Only as of about an hour and a half ago.

9 Q. Is this a study that was done by Olympic in  
10 determining whether to make the Bayview investment?

11 A. I don't know. That was well before BP's  
12 time. It looks to be a study done by Ernst & Young.

13 Q. And Ernst & Young works for Olympic or worked  
14 for Olympic at the time?

15 A. Not -- well, it depends on what capacity. If  
16 you're trying to draw a parallel to them being the  
17 current auditors, no, I don't believe that they did. I  
18 believe they were hired as a consultant, but I have no  
19 knowledge of that at all.

20 Q. Is the company currently engaged in analysis  
21 to determine what additional investment would have to be  
22 made at Bayview in order to achieve the throughput  
23 assumptions that were made at the time of the  
24 investment?

25 A. I don't know for sure, but I understand that



4418

1 they could be. I don't know specifically, so I probably  
2 would say I'm not sure.

3 Q. Am I correct that the company did assume at  
4 the time of the Bayview investment that there would be  
5 significant incremental throughput at Bayview as a --  
6 for the whole system as a result of the Bayview  
7 investment?

8 A. I obviously wasn't around at that time, and  
9 so I don't -- I don't know the answer to that.

10 Q. From your review of this study, do you have  
11 any reason to believe it's other than a study that was  
12 prepared for Olympic in making the Bayview investment?

13 A. Do I have any other reason to believe that  
14 there was -- yeah, I think there was other investments  
15 in there as I recall reading through there this morning.

16 Q. But these are all analyses of investments  
17 that were being made by Olympic?

18 A. But it included more than Bayview. It had  
19 Cross Cascades, it had something referred to as a loop.  
20 It also interestingly had a comparison of operating  
21 revenue and cost of service, which refers to what I  
22 talked to Mr. Trotter about, which is the coverage of  
23 revenue that they assumed in their economics, if you  
24 would like to discuss that.

25 Q. And were there also assumptions about power

4419

1 cost savings that would result from Bayview?

2 A. I don't recall seeing that, but again, I just  
3 saw it this morning.

4 MR. FINKLEA: Your Honor, we will offer  
5 1705-C, and with that, I wouldn't have any further  
6 questions.

7 JUDGE WALLIS: Is there objection?

8 MR. HARRINGTON: I think it's already in, is  
9 it not, Your Honor, because we didn't object to it  
10 before, we just simply said we didn't think there was  
11 any basis for asking this witness questions about it.

12 MR. FINKLEA: Well, if it's in.

13 JUDGE WALLIS: Very well, the exhibit is  
14 received.

15 MR. FINKLEA: I have no further questions.

16 JUDGE WALLIS: Mr. Brena.

17

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

19 BY MR. BRENA:

20 Q. Good morning, Mr. Fox.

21 A. Good morning.

22 Q. I would like to ask you some questions about  
23 your background and what you consider to be your areas  
24 of expertise.

25 A. Okay.

4420

1 Q. What do you consider to be your areas of  
2 expertise?

3 A. My primary areas -- I probably should, it's  
4 obvious, but I am not a paid expert witness, as your  
5 witnesses are. My background is mainly in accounting,  
6 finance, planning, but over 20 years of experience in  
7 the oil and gas industry.

8 Q. Are you done? I don't mean to cut you off.

9 A. Yeah, I don't know if you wanted me to  
10 elaborate on any of that, but.

11 Q. Well, do you consider yourself a regulatory  
12 or rate expert?

13 A. I wouldn't go as -- no, I would not consider  
14 myself an expert. I do know that your client utilized  
15 me and my staff for our expertise in areas of FERC Form  
16 6 filings, accounting support, audit support when they  
17 purchased our Mandan pipeline last fall.

18 Q. Was the answer to my question that you do not  
19 consider yourself a regulatory or rate expert?

20 A. Well, I did say that, yes.

21 Q. Okay. Do you consider yourself a rate of  
22 return expert or capital structure expert?

23 A. Again, I'm not a paid -- somebody that does  
24 that as a living, but I have been involved in a number  
25 of cases over my 20 years.

4421

1 Q. I mean do you --

2 A. But do I hold myself out as an expert that  
3 would make a living doing it, no.

4 Q. Well, to the degree that -- with regard to  
5 capital structure and rate of return issues, are you  
6 intending through your testimony to say anything  
7 different or in addition to what your rate of return and  
8 capital structure expert, Mr. Schink, has said?

9 A. I'm not sure. I'm not sure what the  
10 questions I might get from you or the commissioners  
11 might be.

12 Q. Well, I mean if we're trying to -- if the  
13 commissioners are trying to figure out what Olympic's  
14 position is with regard to capital structure rate of  
15 return matters.

16 A. Right.

17 Q. Should they ask you those questions, or  
18 should they ask Mr. Schink those questions?

19 A. If they want to know the end result of the  
20 application of something, for example like return on  
21 equity, capital structure, I can tell you what happens  
22 at the output side. But in terms of the input, no, I'm  
23 probably not the best one to ask.

24 Q. But in terms of trying to decide what the  
25 rate making treatment should be, this Commission should

4422

1 look to your witness, to Olympic's witness, Mr. Schink,  
2 with regard to capital structure rate of return matters;  
3 is that fair?

4 A. In terms of the specifics, that's true. In  
5 terms of what's the impact on Olympic by accepting  
6 Mr. Wilson's recommended rate of return, I can comment  
7 on that. But again, that's the output side, that's not  
8 the -- I'm not going to get into a detailed discussion  
9 on discounted cash flow methodologies and things of that  
10 -- no, I won't.

11 Q. Okay. You mentioned your experience, have  
12 you been involved in many rate cases?

13 A. I have been involved in a few.

14 Q. How many?

15 A. Five or six that I can recall.

16 Q. And has your involvement been as a witness in  
17 those cases?

18 A. No.

19 Q. So other than the interim hearing and this  
20 hearing, this is the first time you have ever testified  
21 with regard to rate matters?

22 A. Yes.

23 Q. Now I'm trying to understand your position  
24 relative to Mr. Peck. Is he your boss?

25 A. No, he's not.

4423

1 Q. With regard to financing matters, if he were  
2 to say A and you were to say B as a hypothetical, who  
3 should this Commission rely upon?

4 A. Mr. Peck will ultimately make the decision or  
5 act -- I'm not even sure he will make the decision. He  
6 will work to move the decision forward, but I will  
7 certainly try to influence him either through my own  
8 efforts or with input from our treasury department.

9 Q. With regard to the issue of, well, first with  
10 regard to the issue of additional funds, you would make  
11 a recommendation to him, and he would be the -- then he  
12 would become the point, the contact point that would go  
13 within the different corporate bodies and get those  
14 funds. Is that kind of how it works?

15 A. That's kind of how it works.

16 Q. Okay. Now are you here only on behalf of  
17 Olympic today?

18 A. I believe we had this discussion at the  
19 interim case. I am employed by BP Pipelines North  
20 America, but I am also the Assistant Treasurer of  
21 Olympic, so if you could be more specific, I could  
22 answer your question.

23 Q. Well, who are you speaking for today? Who  
24 are you giving testimony for?

25 A. I can speak for either side. I mean

4424

1 ultimately or specifically my testimony is really geared  
2 towards Olympic, but I do work for BP Pipelines as well.

3 Q. Okay. And the reason that I ask that is you  
4 were responding to Mr. Trotter, some of his questions,  
5 and I wrote down some quotes, and I'm not sure that I  
6 captured them precisely, but you said, I'm here to  
7 testify on behalf of Olympic, not the affiliates, I  
8 think was one of them, and I don't know one way or the  
9 other with regard to another, and I'm not sure I can  
10 speak for BP. So let me take the specific issue of the  
11 circumstances under which BP will release additional  
12 funds, okay?

13 A. Mm-hm.

14 Q. Do you speak for BP and can you commit to  
15 this Commission the terms and circumstances under which  
16 BP will release funds to Olympic?

17 MR. HARRINGTON: Objection, that's two  
18 questions. They should be separated.

19 MR. BRENA: I will be happy to separate them.

20 BY MR. BRENA:

21 Q. Are you the person that will speak for BP,  
22 are you here to speak for BP with regard to the terms  
23 and conditions under which it will advance additional  
24 equity or debt to Olympic?

25 A. No, I won't do that.

4425

1 Q. Okay. With regard to the -- who in this case  
2 does, if anybody? Is there anybody in this case that is  
3 saying that we will give X amount of dollars if -- is  
4 anybody in this case capable -- let me rephrase it,  
5 please.

6 Does anybody have authority who is a witness  
7 in this case to bind BP to advancing additional funds to  
8 Olympic?

9 A. Well, I guess the word bind is an interesting  
10 choice of words. The way I see it is you have to see  
11 what the tariff is first, ends up being first. You  
12 can't make a representation that BP is going to flat out  
13 do something without knowing what the end result is. So  
14 I'm not sure -- I mean certainly I can make  
15 recommendations, and frankly my group is one of the  
16 groups that will look at the economics and frankly have  
17 started looking at the economics of going for additional  
18 capital. But ultimately I would say it's probably the  
19 head of, well, it's probably Larry Peck that will decide  
20 whether to, you know, to put the more additional funds  
21 in.

22 Q. Okay. Do I understand, you do not have the  
23 authority to speak for BP or the terms and conditions  
24 under which BP may advance additional funds to Olympic?

25 MR. HARRINGTON: Object to the form of the



4426

1 question, and the word may is both is different and also  
2 renders the question ambiguous, because commitment and  
3 may are incompatible concepts.

4 MR. BRENA: I don't understand the objection,  
5 but I will try to rephrase my question.

6 BY MR. BRENA:

7 Q. Do you or do you not have the authority to  
8 commit BP to advancing additional funds to Olympic?

9 A. I probably should have asked you this  
10 earlier, but are you speaking in relation to the  
11 questions that Mr. Trotter asked me earlier, or are you  
12 asking this just sort of generally?

13 Q. Are you the man that can bind BP to advancing  
14 funds to Olympic or not?

15 A. Well, again, I'm not sure the word bind is  
16 the right word to use, but I do not have the specific  
17 delegation of authority to commit BP to loaning the  
18 money, but I will be heavily involved in influencing the  
19 decision.

20 Q. And my question only goes to authority, not  
21 to -- I mean so if I understand it correctly, you  
22 recommend, but somebody else decides?

23 A. Well, I think in Mr. Peck's testimony he said  
24 it was that the level that we were talking about it was  
25 definitely going to go to London, so I think that was

4427

1 already asked and answered.

2 Q. Well, I think so to, but I was just exploring  
3 whether -- how you viewed your authority.

4 A. Okay.

5 Q. So it's your understanding that neither you  
6 nor Mr. Peck have the authority to commit BP to any  
7 additional sums for Olympic, that's a London decision?

8 A. It will be a London decision.

9 Q. Okay. And I believe he also said that nobody  
10 had applied or requested those funds from London yet; is  
11 that your understanding as well?

12 A. I heard him say that, and I kind of cringed  
13 when he said that, because we, and he probably didn't  
14 know this because he has been traveling quite a bit with  
15 his work, that our -- my group, which is in planning,  
16 started the work several weeks, well, more than several  
17 weeks ago to look at building what he described as a  
18 financial memorandum, so that's work in progress.

19 Q. Building towards the recommendation is work  
20 in progress, no funds have been requested yet from  
21 London, correct?

22 A. Right, that's true.

23 Q. Okay. Now let me ask you a hypothetical. I  
24 mean in part I read your case to say that if we get so  
25 much shipper money that it will make it more likely that

4428

1 there will be additional investment. The problem I have  
2 with that is how does anybody in the room, I mean given  
3 that Olympic has not advanced any testimony by anybody  
4 with authority to make such a commitment -- well, I  
5 withdraw the question.

6 Let me ask it this way. Let's say you get a  
7 150% rate increase, you can't sit there today and say  
8 that there will be an additional penny put in this  
9 pipeline ever, can you?

10 A. I disagree with that. If we had a 150% rate  
11 increase?

12 Q. Yep, today.

13 A. Well, I would be campaigning pretty hard. I  
14 mean I would spend about as much time on that as I am  
15 working on this tariff case.

16 Q. And George Wallace campaigned for the  
17 presidency too, didn't he?

18 A. I believe so.

19 Q. So I'm not asking about a campaign. What I'm  
20 talking about is whether anybody can deliver. You can't  
21 deliver, can you?

22 A. Yeah, we would probably -- I would say  
23 there's about a 100% chance at a 150% increase that we  
24 would deliver.

25 Q. Yeah, but the point is it's not we, it's

1 somebody else other than you that has to make that  
2 decision, so you can't sit here and commit that there  
3 will be a penny of additional equity or loans ever put  
4 into this company regardless of what this Commission  
5 does. Now isn't that true, you can't commit to that?

6 A. No, I don't agree with that at all. I think  
7 you're --

8 Q. You do have authority to do it?

9 A. No. The question is whether it will be done.  
10 It's my belief that it will be done. At that sort of  
11 tariff increase, there's no question it would be.

12 Q. Well, what there is no question about --

13 A. In fact, if I could follow up with something,  
14 the economics would be such that it would be a no  
15 brainer for London. That thing would get passed through  
16 pretty quickly.

17 Q. Well, let me ask it to you this way, because  
18 I'm trying to figure out the situation. If there was a  
19 150% rate increase, there would be no reason for London  
20 to be contacted, would there?

21 A. That would probably be true.

22 Q. So all I'm trying to do is, I mean, you know,  
23 this hide and seek feature of your case, we may put  
24 additional money in if you guys do this, but you don't  
25 ever define what this is, and you don't ever put anybody

4430

1 forward that has the authority to commit the money.

2 MR. HARRINGTON: Objection, that's not a  
3 question.

4 JUDGE WALLIS: Mr. Brena.

5 MR. BRENA: Well, it would have been in an  
6 hour or two.

7 JUDGE WALLIS: You will have an opportunity  
8 to brief this.

9 MR. BRENA: I withdraw the question.

10 BY MR. BRENA:

11 Q. How much did ARCO pay for Shell's interest in  
12 this line?

13 A. Shell's interest?

14 Q. Yeah.

15 A. You mean GATX?

16 Q. No, I mean when ARCO bought into the Olympic  
17 line.

18 A. Oh, I'm sorry, when ARCO bought in back in --  
19 I have no idea.

20 Q. 1991.

21 A. I have not a clue.

22 Q. Do you know how much ARCO paid for GATX's  
23 interest?

24 A. I believe it was \$8 Million.

25 Q. For how much of an interest?

4431

1 A. It would have been --

2 Q. 25.1%?

3 A. About 25%, yeah.

4 JUDGE WALLIS: Mr. Brena, I'm looking at the  
5 clock for an appropriate breaking time for our noon  
6 recess. When you get to that point in the next few  
7 minutes, would you let us know.

8 MR. BRENA: Yes, Your Honor, I will.

9 JUDGE WALLIS: Thank you.

10 BY MR. BRENA:

11 Q. Would you accept subject to check that ARCO  
12 has paid \$35.4 Million for a 62 1/2% interest in  
13 Olympic?

14 A. No.

15 Q. Why not?

16 A. In 1990 for something that occurred in 1991,  
17 I don't believe my testimony addressed anything relating  
18 to ARCO or anything back in that period of time.

19 Q. Is what ARCO actually paid for its 62 1/2%  
20 interest something that you're capable of checking on?

21 A. I suppose I could.

22 Q. But you won't?

23 A. If you really want me to, I will. I just  
24 don't see why it's relevant.

25 Q. Well, thank you, I would.

4432

1           A.     All right.

2                   MR. BRENA:  This would be a good point to  
3 take a break.

4                   JUDGE WALLIS:  Let's reconvene at 1:30.  We  
5 did agree, well, I asked anyway that people could  
6 convene a little bit early, counsel convene a little bit  
7 early, for an administrative conference, so if we could  
8 be here at 1:15, we can spend some time sorting out  
9 exhibits for future witnesses.

10                   So we're in recess.

11                   (Luncheon recess taken at 12:00 p.m.)

12

13                   A F T E R N O O N   S E S S I O N

14                                   (1:35 p.m.)

15                   JUDGE WALLIS:  Let's be back on the record,  
16 please, following our noon recess.  As a preliminary  
17 matter, Mr. Brena has identified exhibits that were used  
18 in the examination of Mr. Smith that he's moving for  
19 admission at this time.  They're Exhibits 1209, 1212,  
20 1213, 1214, 1218, and 1616-C associated with Mr. Talley,  
21 and those documents are received in evidence.  There is  
22 an objection as I understand it to the character of some  
23 of these documents as partial documents rather than a  
24 complete on the part of the company; is that correct?  
25 Our ruling with regard to that has been that if another

4433

1 party believes it necessary to offer more or the  
2 remainder of a document, the party may do so, so those  
3 documents are received in evidence.

4 I will note that Exhibit 1703 is received in  
5 evidence. I'm not certain that the transcript from this  
6 morning's session would reflect that.

7 With that, I believe we're ready to go back  
8 to the examination of Mr. Fox. Mr. Brena.

9 MR. BRENA: Did you want to mark the  
10 operating agreement as well, Your Honor?

11 JUDGE WALLIS: The operating agreement has  
12 been distributed. I will note that I don't believe the  
13 Bench has received any copies, and our understanding  
14 with regard to that exhibit or that document is that it  
15 is an executed version of the document that's now in the  
16 record as Exhibit Number 48. With the understanding and  
17 on the representation of Olympic Pipeline Company that  
18 there are no other differences between the current  
19 Exhibit 48 and this document, let us mark this as  
20 substituted Exhibit Number 48 and strike the other  
21 document. Is that satisfactory to the parties?

22 MR. TROTTER: Yes, Your Honor.

23 MR. FINKLEA: Yes, Your Honor.

24 MR. HARRINGTON: Yes, Your Honor.

25 JUDGE WALLIS: Very well.



4434

1 Now, Mr. Brena.

2 MR. BRENA: Are you ready, Your Honor?

3 JUDGE WALLIS: Yes.

4 MR. BRENA: Okay.

5

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

7 BY MR. BRENA:

8 Q. Good afternoon, Mr. Fox.

9 A. Good afternoon.

10 Q. I would like to ask you just a few more  
11 questions, and I believe in responding to Mr. Trotter  
12 earlier, and I had a couple quotes written down, but you  
13 had indicated that it didn't matter whether it was debt  
14 or equity to the company. Do you recall having said  
15 that?

16 A. Vaguely. I'm not sure of the context in  
17 which it was made, but go ahead.

18 Q. Well, and that's what I wanted to explore  
19 with you. When you say it doesn't matter whether  
20 something is debt or equity, who are you saying that it  
21 doesn't matter to?

22 A. Well, certainly to Olympic. Cash, you know,  
23 they need cash, it comes in one way or another, and I  
24 believe Mr. Wilson also testified to that as well  
25 earlier.

4435

1 Q. So that was a reference that to Olympic that  
2 it satisfies their cash needs, and so it doesn't make  
3 any difference whether it's debt or equity; did I  
4 understand you correctly?

5 A. I think that in general when in terms of  
6 financing, in terms of getting the cash it needs, that's  
7 probably true. When it comes to things like  
8 deductibility of interest versus dividend payments, then  
9 that's a different story.

10 Q. Well, debt you have to pay back, right, and  
11 equity you don't?

12 A. Depends on who you're loaning it to or who  
13 it's being loaned from.

14 Q. Is it your intention that this debt would be  
15 repaid by Olympic?

16 A. Which debt are you referring to?

17 Q. The affiliated debt.

18 A. Is it my intention?

19 Q. Well, I'm trying to explore -- I mean one big  
20 difference between debt and equity, is it not, that debt  
21 has to be repaid, and that has a certain cash flow  
22 impact when you have to repay it, correct?

23 A. Well, I don't want to respond with a  
24 question, but has any of the debt been repaid to the  
25 affiliates? I mean obviously it hasn't.

4436

1 Q. So by saying that, are you suggesting that it  
2 never will be?

3 A. What I'm suggesting is although the  
4 shareholders loan the money, I believe would have liked  
5 to have it back, I think that certainly BP knows that  
6 they're not going to get it back any time soon, and they  
7 also know at certain tariff levels they may never get it  
8 back.

9 Q. If it doesn't matter to the parent, I mean it  
10 does matter to Olympic, doesn't it, whether or not it  
11 has to try to meet those commitments?

12 A. To the extent that the affiliates are not  
13 demanding payment, I'm not sure why it would.

14 Q. Well, you understand the different parties'  
15 positions in this case relative to capital structure, do  
16 you not, in rough terms?

17 A. Relatively rough, yes.

18 Q. I mean you understand that, for example, that  
19 Mr. Hanley's testimony stands for the proposition that  
20 Olympic should be afforded a 46% equity capital  
21 structure if they actually put equity in and that Staff  
22 has said something equivalent, conditioning their  
23 capital structure upon the actual putting in additional  
24 equity; do you understand that globally?

25 A. Sure.

4437

1 Q. I'm trying to understand, at one point in  
2 your testimony, you suggest that if you get your rate  
3 increase, then you may recommend that some of this debt  
4 be converted to equity. I'm trying to understand why as  
5 the treasurer of the company you're not pursuing that  
6 course of action now?

7 A. First of all, it's assistant treasurer, not  
8 treasurer.

9 Q. Okay.

10 A. As you may recall my interim testimony and  
11 maybe even today that I have recommended to the board  
12 that a certain amount of the debt be converted to  
13 equity. That was in December of 2000. So I have cited  
14 that at least a couple of other times.

15 Q. Now --

16 A. Does that answer your question?

17 Q. I'm not sure. You recommended to what board?

18 A. To the board of Olympic. Actually, I take  
19 that back, it was to the shareholder committee of  
20 Olympic, not that I think that it matters.

21 Q. Well, the board of Olympic isn't the one that  
22 decides whether or not the debt is converted to equity,  
23 correct?

24 A. And that's why I corrected myself, it was the  
25 shareholder committee.

4438

1 Q. Okay. What's the -- I mean not to suggest  
2 any particular tactic or strategy to you, but the thing  
3 that makes sense to me, and do you agree or disagree  
4 with this, is that they would just with a sweep of the  
5 pen create 46% equity to at least lock in that  
6 percentage of equity in this company so that they could  
7 capture that share of the capital structure and get  
8 increased cash flow because they would have that equity.  
9 Does that --

10 A. No, I disagree with that. First of all,  
11 you've got two shareholders, not the warmest of  
12 relationships between them. One of the shareholders was  
13 not interested in taking our recommendation. So if you  
14 were the one that was making the recommendation, would  
15 you want to go ahead and convert your side?

16 Q. This will go a lot faster if I ask the  
17 questions, Mr. Fox, but I'm happy to answer questions.

18 A. I've got a few.

19 JUDGE WALLIS: Could we treat that as a  
20 parable.

21 Q. In fact, I would be happy to answer whatever  
22 question you would like to ask me, but I don't think the  
23 Commission -- I think they have probably heard enough of  
24 my opinions already.

25 What you're saying is Equilon wasn't willing

4439

1 to consider that; is that what you meant?

2 A. They considered it and declined.

3 Q. Why?

4 A. That was not the philosophy of their company.

5 Q. Okay. Did you explore what their philosophy  
6 was and how it applied to this case at all?

7 A. They were unrelated.

8 Q. I'm just trying to understand why the owners  
9 of this company won't commit any equity to this company  
10 at the same time as they're asking for equity returns.

11 A. And I told you that --

12 Q. Because the shareholders don't get along; is  
13 that the answer?

14 A. Well, that's one answer, yes.

15 Q. Is there another one?

16 A. Nothing comes to mind.

17 Q. Is there any plan, I'm trying to understand  
18 the rest of your testimony where you suggest that at  
19 some point there may be a possibility for an equity  
20 dollar to come into this company from an owner. Given  
21 Equilon's intransigence to do that, how is it that it  
22 will be possible that there will ever be equity in this  
23 company?

24 A. I really can't answer that at this juncture,  
25 because I don't know with any certainty what the tariff

4440

1 levels will be and the resultant cash flow to know  
2 whether there's going to be any earnings to retain.

3 Q. Did --

4 A. In this company.

5 Q. Did any of that -- when I asked you why  
6 Equilon wouldn't consider that, you said it wasn't  
7 consistent with their company philosophy. Are you now  
8 suggesting that their company philosophy would change  
9 depending on the tariff letter, tariff rate?

10 A. I think there are a lot of sequential events  
11 that have occurred, that will occur with Equilon, with  
12 Equilon and BP, that may make it a different question,  
13 or excuse me, might result in a different answer once  
14 those sequential events have occurred. For example, I  
15 will give you one example is eventually Equilon will be  
16 Shell or is Shell, and they may have a different  
17 financial policy than Equilon, for example.

18 Q. I'm still trying to see a way where it's --  
19 where the owners are going to put some equity into  
20 Olympic Pipeline, just -- and I notice in your testimony  
21 on page 17 starting on line 24, you identify that in the  
22 longer term, Olympic's financial plan will not differ  
23 from that of other joint venture oil pipeline companies,  
24 which in other places you pointed out are heavy debt  
25 companies.

4441

1 A. Correct.

2 Q. So as you sit there today, it's the intention  
3 of Olympic to continue to debt finance this company into  
4 the foreseeable future?

5 A. I'm not sure that's accurate. One thing I  
6 will say, Mr. Brena, is that, you know, in my mind,  
7 looking at these loans from shareholders, that what  
8 difference are they between debt and equity, they, you  
9 know, they're, what are they, next in line from the  
10 shareholders in a bankruptcy proceeding, even though I  
11 should have said I'm not a lawyer before I said that.

12 Q. You don't have to be a lawyer to know banks  
13 win.

14 A. Yeah, I heard that.

15 Q. Yeah. Well, I mean obviously Equilon doesn't  
16 share that perspective that there's not a difference  
17 between debt and equity, because they're unwilling to  
18 convert their debt to equity, correct?

19 A. They were not willing to do it in December of  
20 2000.

21 Q. Was ARCO willing to convert its debt to  
22 equity?

23 A. With Equilon's joining in, yes.

24 Q. And how much was specifically recommended, to  
25 what capital structure level would the forgiveness have



4442

1 risen?

2 A. I don't recall that a specific amount was  
3 identified.

4 Q. So as best as you can recall, it was a  
5 general conversation about whether or not to forgive  
6 some of the debt, but not a specific conversation?

7 A. No, it was a specific presentation with  
8 general concepts.

9 Q. You have been asked and you respond a little  
10 bit with regard to why there was no notification of this  
11 debt to the Commission, and I believe that you indicated  
12 that there was notification with regard to the third  
13 party debt earlier. And you acknowledge --

14 JUDGE WALLIS: Is that correct, Mr. Fox?

15 A. Yes, to the best of my knowledge there was,  
16 on both the Prudential and the Chase, there was  
17 notification.

18 Q. And is the converse of that true so far as  
19 you're aware that there was not notification with regard  
20 to any affiliated debt?

21 A. To the best of my knowledge, that's true.

22 Q. You are aware of the obligation to notify the  
23 Commission at this point of such debt instruments?

24 A. I was aware only after these proceedings  
25 started.

4443

1 Q. Is your awareness limited to -- I mean  
2 there's two characteristics of the affiliated debt.  
3 First, it's affiliated, it's affiliated transactions,  
4 and secondly, it's debt. Have you in learning about  
5 this learned that there are specific requirements with  
6 regard to both, both affiliated transactions and  
7 incurring indebtedness?

8 A. I will go back to my I'm not a lawyer speech.  
9 I have not read the statute specifically.

10 Q. You are aware generally of that affiliated  
11 transactions are given a higher level of scrutiny in  
12 rate matters?

13 A. I will take your word for it.

14 Q. You're not independently aware of that?

15 A. Based on some of the goings on in these  
16 hearings, I would expect that they do get more scrutiny.

17 MR. BRENA: If I could just have a minute.

18 JUDGE WALLIS: Yes.

19 BY MR. BRENA:

20 Q. I would like to direct your attention to  
21 Exhibit 1706.

22 A. Okay.

23 Q. Have you had an opportunity to review this  
24 exhibit?

25 A. I read it.

4444

1 Q. Is it consistent with your understanding of  
2 facts and events that are represented within it?

3 A. Could you please rephrase that question?

4 Q. Is there anything in here that -- do you know  
5 whether the representations made in the letter are  
6 consistent with your understanding of the events  
7 associated with the negotiated purchase of GATX's  
8 interest?

9 A. I was -- I am not on this letter, nor was I  
10 part of the negotiations, so this was the first I had  
11 ever seen it.

12 Q. Were you aware that at the time that BP was  
13 made the operator of this line that GATX had terminated  
14 negotiations with Equilon and was currently negotiating  
15 with ARCO for the purchase of its interest?

16 A. Again, I was not --

17 MR. HARRINGTON: Objection, excuse me, I  
18 believe that the question assumes a fact not in  
19 evidence, namely that June 12th was at the time that BP  
20 was made the operator.

21 MR. BRENA: It does, Your Honor, and the last  
22 paragraph of the letter says:

23 As I indicated during our telephone  
24 conference, the minutes of the board  
25 meetings should reflect that this

4445

1 disclosure was made before the board's  
2 deliberations regarding the selection of  
3 a new pipeline operator.

4 It's specifically in the letter, although not  
5 in the minutes, I might add.

6 MR. HARRINGTON: My objection is --

7 JUDGE WALLIS: The question is permissible.

8 MR. HARRINGTON: Just to clarify, Your Honor,  
9 my objection was to the form in that the question itself  
10 said that the statements were made at the time that BP  
11 was selected as the operator, which is clearly not  
12 correct.

13 JUDGE WALLIS: The witness may respond.

14 BY MR. BRENA:

15 Q. Do you have the question in mind?

16 A. No.

17 Q. I asked if you were aware or not that at the  
18 time that BP was selected as an operator that GATX had  
19 terminated its negotiations for the purchase of its  
20 shares with Equilon and was currently engaged in those  
21 conversations with Atlantic Richfield?

22 A. I have no specific knowledge on that. I was  
23 not directly involved in those negotiations. I was  
24 very, very superficially aware that we were trying to  
25 purchase GATX's shares.

4446

1 Q. But with regard to the timing, were you aware  
2 that these negotiations were ongoing with one of the two  
3 owners at the time of the vote electing -- the vote  
4 passing the resolution making BP the operator?

5 A. I don't recall.

6 MR. BRENA: I don't believe I have anything  
7 further, Your Honor. I would move for the introduction  
8 of 1706.

9 JUDGE WALLIS: Is there objection?

10 Let the record show --

11 MR. HARRINGTON: No objection.

12 JUDGE WALLIS: Let the record show that there  
13 is no objection, and 1706 is received.

14 MR. BRENA: Oh, I'm sorry, Your Honor, I may  
15 have spoke too early, because 1707 was broken out  
16 separately than 1706, so I do have a question or two  
17 further.

18 BY MR. BRENA:

19 Q. Could I direct your attention to 1707,  
20 please, Mr. Fox.

21 A. Sure. Oh, okay.

22 Q. First, were you aware of this privilege log?

23 A. Indirectly.

24 Q. Do you know why Olympic's business strategy  
25 was not disclosed but was withheld as a confidential

4447

1 trade secret?

2 A. No, I have no knowledge of that.

3 Q. Do you know why the ARCO documents concerning  
4 their purchase of GATX were withheld as internal ARCO  
5 documents?

6 A. I don't have specific knowledge, but I --  
7 frankly I -- I would guess anything where we have our  
8 economics, which would have things like BP's hurdle  
9 rates and things like that, I would expect that it would  
10 be privileged.

11 Q. Okay, well, I'm trying to understand your  
12 answer. There's no claim of privilege that I see with  
13 regard to the ARCO documents. There's just a statement  
14 that they're ARCO documents and so they're not provided.

15 A. Sorry, I was looking at the wrong one. I  
16 don't know.

17 Q. Take the authority to negotiate the purchase  
18 of GATX's Olympic Pipeline Company shares, for example.

19 A. Mm-hm.

20 Q. The date of the document wasn't included, and  
21 it's just withheld because it's an internal ARCO  
22 material. Is it -- I mean are you aware of these  
23 materials?

24 A. The authority to negotiate, I would have to  
25 know the date.

4448

1 Q. As would we.

2 Did you review Olympic's business strategy?

3 A. At what point in time?

4 Q. There's not a date indicated. The  
5 confidential trade secret document that's referred to  
6 here in this privilege log.

7 A. Which line are you on?

8 Q. I'm on the bates number EY005872 through  
9 EY005877, date of document not available, Olympic  
10 business strategy. It is the second substantive row.

11 A. I have no idea what that is.

12 Q. So you haven't reviewed that?

13 A. It's not specific enough for me to know  
14 exactly what it would be.

15 Q. Would you in your position with Olympic be  
16 aware of what their overall business strategy was?

17 A. Generally, yes.

18 Q. But you're not aware of what this document is  
19 referring to?

20 A. It's not familiar to me at all.

21 Q. And similarly, have you reviewed these  
22 materials with regard to ARCO's presentation with regard  
23 to Olympic's background?

24 A. Is that another line on here?

25 Q. Yes, it's the fourth substantive line.

4449

1 A. I'm not sure which one you're talking about.

2 The ARCO presentation regarding Olympic background?

3 Q. Correct.

4 A. No, I have no idea what that document refers  
5 to. I would need a lot more information than that.

6 Q. And with regard to the ARCO profit and loss  
7 summary concerning Olympic, are you familiar with those  
8 documents?

9 A. I need a line. I don't know what line you're  
10 looking at.

11 Q. It's the fourth and fifth line from the  
12 bottom row from the bottom.

13 A. Okay.

14 Q. ARCO P&L summary Olympic.

15 A. That's pretty vague, I don't know what it is.

16 Q. Is there any reason that you're aware of that  
17 those documents would be withheld from Tesoro's review?

18 A. I believe that's a legal question that I'm,  
19 again, I'm not a lawyer, so I don't -- I wouldn't have  
20 an opinion or a comment on that.

21 MR. BRENA: I have nothing further, Your  
22 Honor, and I would move for 1707 to be introduced.

23 JUDGE WALLIS: Is there objection?

24 MR. HARRINGTON: No objection.

25 JUDGE WALLIS: 1707 is received.



4450

1                   Commissioners, questions?

2

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

4 BY CHAIRWOMAN SHOWALTER:

5           Q.     Mr. Fox, if you could turn to page 5 of your  
6 testimony.

7           A.     I'm there.

8           Q.     You make reference on line 4 to BP ARCO and  
9 then later on line 9 to BP Pipelines, and I am still  
10 confused, I think, about the relationship. But first of  
11 all, are there separate stockholders -- this is not the  
12 right way to put the question. What I'm trying to get  
13 at is does the profit, if any, made by Olympic BP  
14 Pipelines and BP ARCO ultimately go to the same  
15 investors?

16          A.     I believe that's true, but I'm not sure. I'm  
17 going to have to think it through. I mean BP ARCO is  
18 the BP that purchased ARCO, the company, so when we say  
19 BP/ARCO that means sort of the merged company. And, of  
20 course, BP Pipelines is the subsidiary of BP PLC, so I  
21 mean.

22          Q.     Well, now you have introduced a new one, BP?

23          A.     PLC.

24          Q.     PLC?

25          A.     Is the corporation.

4451

1 Q. All right.

2 A. That's the big BP corporation.

3 Q. All right. But are any of these companies  
4 independent in the sense that of who the ultimate  
5 beneficiaries are?

6 A. If you're talking about do any of these  
7 companies not dividend their earnings to BP, do they  
8 just retain them; is that what you're getting at? I'm  
9 not -- because I mean --

10 Q. All right, here's another question. Is one  
11 of these BP's, and if so tell me which, a publicly held  
12 company in which one can buy stock, individuals can buy  
13 stock?

14 A. Right.

15 Q. Is it --

16 A. No, only BP PLC, and I believe you can only  
17 buy what's called, well, it's an ADR, and I don't know  
18 -- depository receipts because it's a company from the  
19 UK, but it's traded on the stock exchange, but it's BP  
20 PLC.

21 Q. All right.

22 A. And that's the only one that I am aware of  
23 that's publicly traded.

24 Q. Okay. What is the relationship of BP PLC to  
25 BP ARCO?

4452

1           A.     Probably a way to look at it is it's a  
2 subsidiary of BP PLC.

3           Q.     All right.  What is the relationship of BP  
4 Pipelines to BP PLC?

5           A.     It is also a subsidiary of BP PLC.

6           Q.     All right.  What's the relationship of BP  
7 Pipelines to BP ARCO?

8           A.     They're the same basically.  I mean they're  
9 -- it's -- I'm not sure how hierarchially how it works,  
10 but there is no legal entity called BP ARCO.  That's  
11 just a kind of a shorthand for the former owner called  
12 ARCO and the merged company called, you know, well, BP  
13 coming in and buying ARCO the corporation.

14          Q.     Then is BP ARCO actually formally BP PLC,  
15 formally?

16          A.     More or less, yes.  It's not a -- it's not a  
17 -- it's not a legal entity, it's just kind of shorthand  
18 for, hey, ARCO used to be a shareholder in this company,  
19 BP came in and purchased ARCO, and when they did so, you  
20 know, BP now had a stake in Olympic.  Does that answer  
21 your question?

22          Q.     More or less.

23          A.     Sorry.

24          Q.     Now do you have a role or a hat both in  
25 Olympic as assistant treasurer and also in BP Pipelines?

4453

1 A. That's correct.

2 Q. And what is your title in BP Pipelines?

3 A. Supervisor of planning.

4 Q. And do you have any title in anything else  
5 such as BP PLC or BP ARCO?

6 A. Not that I'm aware of.

7 Q. So you have two hats, and both of those hats  
8 or both of those entities that you're part of ultimately  
9 benefit, if they do benefit, BP PLC; is that correct?

10 A. I suppose that's correct, yes.

11 Q. All right. If you could turn to page 8, no  
12 excuse me, page 14.

13 A. Okay.

14 Q. I think Mr. Trotter asked you some questions  
15 about converting debt to equity. In this instance, if  
16 there were conversion of some of the debt to equity,  
17 what's the practical effect of that? Is it simply to  
18 remove an interest payment requirement, or is it more  
19 than that?

20 A. The only other thing that would really occur  
21 is a restatement of the balance sheet, I believe.

22 Q. All right. But supposing you have \$50  
23 Million of debt that you now convert to equity. In this  
24 instance, in this case, would there be any actual  
25 equity, or is it already gone? In other words, does

4454

1 Olympic have that \$50 Million, or it simply no longer  
2 needs to pay the interest on the debt \$50 Million?

3 A. It's the latter.

4 Q. Okay. So what would be the debt-equity ratio  
5 if, for example, \$50 Million of debt were converted to  
6 equity? Does that count in the ratio, or is it still  
7 zero because it's not there?

8 A. You know, to be honest, I would have to see  
9 the accounting. I mean it's an accounting entry  
10 ultimately, so I believe it does impact the ratio,  
11 because now you've got a liability of \$50 Million that's  
12 moved over to the bottom of the balance sheet. It's  
13 moved from liabilities down to stockholders equity, and  
14 I would have to, frankly, I would have to check into  
15 that. But I think it would change debt to equity ratio,  
16 but that's an accounting concept.

17 Q. All right. But if you don't know, that's  
18 okay. But if the parents of Olympic actually signed  
19 over a check tomorrow for \$50 Million, that would be  
20 equity in the company, and that would be there, and I'm  
21 assuming that the debt-equity ratio would not be  
22 identical if there was a direct infusion of \$50 Million  
23 versus a conversion.

24 A. Or a forgiveness of debt.

25 Q. Or a forgiveness of debt.

4455

1           A.     Right.  I don't want to speculate, but I  
2 understand your question.  It sounds logical, but I'm  
3 not sure from a pure accounting transaction standpoint  
4 whether that's what would take place or not.

5           Q.     All right.

6           A.     But I can check.

7           Q.     There are some more accountants coming up, so  
8 I will ask that question.

9           A.     Thank you.

10          Q.     All right.  Could you turn to page 15, line  
11 5.  You say Olympic recommends a collaborative process  
12 to adopt an automatic adjustment mechanism.  Are you  
13 recommending that we order a collaborative process or  
14 that we hope there is one or what?

15          A.     No, actually this is more in the spirit of  
16 kind of what I think is one of the big issues that I'm  
17 not sure people have really addressed, which is -- which  
18 should be sort of a symbiotic relationship between  
19 Olympic as an entity that ships products and the  
20 shippers that vitally need Olympic healthy and doing the  
21 right things, and instead it's turned out to be an  
22 adversarial sort of relationship.  This was more of a I  
23 think there needs to be greater cooperation and  
24 communication rather than frankly dragging everything  
25 through the legal process.  That's what I meant by the

4456

1 collaborative process, that it ought to be, you know,  
2 the parties should recognize that, you know, we're -- we  
3 all have some stuff to gain and stuff to lose if we  
4 don't -- if we don't work together.

5 Q. All right. So it sounds to me that that's  
6 more a hope or an aspiration of what might occur between  
7 the parties, among the parties, as opposed to something  
8 that we're supposed to do once it's here.

9 A. Yeah, I don't --

10 Q. Aren't we in the other mode?

11 A. Right, and I'm not sure whether -- I mean  
12 frankly I would have preferred to see it through  
13 settlement discussions, and it was discussed, but, you  
14 know, I'm not sure that all the parties wanted to do the  
15 same tracking mechanism that I have below there, which  
16 would include capital. So you really can't just do  
17 volume, you also have to do the capital as well.

18 Q. All right. Could you turn to page 16.

19 A. (Complies.)

20 Q. On lines 20 and 21, you say the cash flows do  
21 not cover ongoing O&M and capital needs, and Mr. Trotter  
22 asked you some questions, but my question is does this  
23 statement or analysis change if debt is converted to  
24 equity?

25 A. The answer is no, it -- mainly because there

4457

1 is no interest being paid currently, so it has no cash  
2 flow impact whatsoever. This comment was addressed. It  
3 would have a net income impact, but it would not have a  
4 cash flow impact, because Olympic doesn't write checks  
5 every month to Equilon and BP for interest expense. If  
6 it did, then you would be correct.

7 Q. All right. But since the statement is the  
8 cash flows produced do not cover ongoing O&M and capital  
9 needs, I would have thought that one of the ongoing O&M  
10 expenses or costs is debt and that, among other things  
11 this shows you I'm not an accountant, is interest,  
12 that's what I meant.

13 A. Yeah, if you don't mind, I want to grab  
14 something real quick. Well, actually, I won't even do  
15 it. I believe Mr. Colbo or Mr. Twitchell's schedules if  
16 you look at their model and look at -- they've got  
17 revenue at the top and then operating expenses. As I  
18 recall, I do not see in O&M an interest expense line.  
19 It's below there. And that's, this is meant in the  
20 context of operating and maintenance, normally one  
21 doesn't consider financing costs in normal operating and  
22 maintenance costs. That's usually a little bit lower in  
23 a financial statement, if you will.

24 Q. Okay. What about capital, well, capital  
25 needs, is that -- what is that meant here, is that



4458

1 capital needs for the future?

2 A. Yes.

3 Q. Actually, I guess I shouldn't be looking at  
4 what was scratched out. I take it that answers the  
5 question.

6 If you could turn to page 19.

7 A. (Complies.)

8 Q. Regarding the audit work, you say you expect  
9 to see audited financial statements in July, and do you  
10 have any more specific date or updated date?

11 A. No, I don't. I think we will by the end of  
12 the month for sure. I don't know if it's going to be in  
13 two weeks or three weeks, but it will be in that time  
14 period.

15 Q. But you think by August 1st you will have the  
16 audited financial statements from Ernst & Young?

17 A. I don't have anything signed in blood yet,  
18 but the audit is wrapping up. I participate in weekly  
19 teleconferences with Ernst & Young and our Eccenture  
20 group, and it is proceeding.

21 Q. And are you the person from Olympic who is  
22 the liaison to Ernst & Young or one of them?

23 A. I am one of them. I'm not the main one. The  
24 controller for our business unit is the main one.

25 Q. Who is the controller?

4459

1 A. Paul Kent, K-E-N-T.

2 Q. And while we're at it, I think I have asked  
3 this question before, but who is the treasurer?

4 A. Lew Storino, S-T-O-R-I-N-O.

5 Q. And is that the treasurer and controller of  
6 Olympic?

7 A. Lew Storino I believe is the assistant  
8 controller of Olympic, and Paul Kent is his boss, the  
9 controller of, excuse me, I said Olympic, I meant BP  
10 Pipelines.

11 Q. Who is the treasurer of Olympic?

12 A. Lew Storino is the treasurer, sorry, I got a  
13 little confused, Lew Storino is the treasurer of  
14 Olympic, he is also the assistant controller to BP  
15 Pipelines, Paul Kent is his boss, and he is the  
16 controller of BP Pipelines.

17 Q. All right. And who is the person, the lead  
18 person at Ernst & Young, who is actually doing this  
19 audit?

20 A. In terms of managing it or doing the actual  
21 work? There's several people on it. There's a, I'm not  
22 sure if he's a partner or a managing auditor, named Dave  
23 Marcourt.

24 Q. Does he appear to be the person most involved  
25 and most in charge of --

4460

1 A. In charge --

2 Q. -- your audit?

3 A. Yes. But in terms of doing the actual audit  
4 work and testing of accounts and stuff, that would be an  
5 individual named Andy Kroll.

6 Q. And since this is a question I asked in the  
7 interim and it wasn't answered because you were the  
8 person to answer it and weren't here at that time.

9 A. Sorry.

10 Q. At that time, who was the Arthur Anderson  
11 lead person?

12 A. The individual's name was Brandon Sear,  
13 S-E-A-R.

14 Q. All right. If you could just turn to Exhibit  
15 1704, and do I take it that all of these numbers are in  
16 thousands?

17 A. Correct.

18 Q. Okay, all right. Finally, I would like to go  
19 back to page 2, at lines 20 and 21, which says:

20 Either Olympic receives increased  
21 tariffs to cover needed capital  
22 projects, or these projects will need to  
23 be canceled or deferred.

24 And you had discussion with Mr. Trotter about  
25 just how big an increase or how little an increase would

4461

1 be needed to go forward with the projects or cancel the  
2 projects. I would like to get away from that specific  
3 for the moment and simply ask you about the factors or  
4 the overall dynamics.

5           It strikes me that there are, well, there are  
6 probably more than two theories to this case, but one  
7 theory is whatever has happened in the past, BP knows  
8 that it needs some money to go ahead with finishing its  
9 capital projects, and it knows how much that is or it  
10 will decide how much that is, but that decision is more  
11 or less independent of regulatory theory or what  
12 otherwise might be considered to be the correct rate.  
13 Another theory in this case is that it doesn't matter  
14 what BP needs, it matters what is fair for the shippers  
15 to pay, and it simply is not fair for the shippers to  
16 pick up the tab when, and then there's a lot of whens,  
17 but it has to do with decisions in the past of either  
18 the current owners or the current Olympic or the past  
19 owners or the past Olympic, but there are various  
20 assignments of fault.

21           And it strikes me that it is possible  
22 theoretically for both theories to be true in the sense  
23 that it can happen that whatever is the regulatory  
24 response may not be sufficient for the company to do  
25 what it feels like doing or not doing, and we might be

4462

1 in that gap, which is what the Commission will have to  
2 decide. I don't know that we're in that gap, because I  
3 think the parties have also argued other things that  
4 might close that gap. But I want to explore what it  
5 would mean if the rates are not sufficient for BP and  
6 Equilon to infuse capital into the company, whether it's  
7 debt or equity. And so what are the factors that you  
8 would take into account when you're developing your  
9 analysis for recommendation to the hierarchy up to  
10 London?

11 A. Okay.

12 Q. What do you look at when deciding to make a  
13 positive recommendation or a negative recommendation on  
14 infusing capital?

15 A. I think if you look at this exhibit that you  
16 referenced, didn't you just reference this one, the  
17 1704?

18 Q. Yes.

19 A. I mean if you just look at the deviation even  
20 between -- we can, you know, ignore the Tosco column,  
21 although I'm not sure that's appropriate either, but  
22 even between the WUTC Staff and Tesoro, you know,  
23 allowed total return, there's a differences of \$2 1/2  
24 Million operating expense, \$2.4 Million. I mean there  
25 are wide variations even between the interveners and the

4463

1 Staff, and it occurs to me that there are choices to  
2 make, and there's a wide range of choices obviously, on  
3 any one of these categories. And I agree with you that  
4 I think this is a situation that may be atypical of a  
5 normal -- of a normal situation with a steady state  
6 operating regulated company.

7 I think the things that we're going to look  
8 at is the end -- I mean we're going to look at the end  
9 result, which is the tariff. I mean when all is said  
10 and done, we have our, you know, it's -- it's not an  
11 absolute one dimensional look, but you certainly have  
12 volume and you have capital needs and you have operating  
13 expenses, and the last thing to plug in is the tariff.  
14 And when you do the discounted cash flow and look at the  
15 capital put in, that's really where the kind of the  
16 rubber hits the road is what is the present value, what  
17 is the internal rate of return, what's the discounted  
18 return on investment based on that capital employed.  
19 But unfortunately, you need all the pieces to do that.  
20 I mean you asked what were the things we would look at,  
21 I mean that's -- it's the economics.

22 Q. And I guess I'm trying to get a better  
23 picture of what those economics involve. So let's  
24 assume that it's the Staff case, and I kind of want to  
25 stay away from the real calculation of the numbers, but

4464

1 let's say it is the Staff case, in other words it's at  
2 the lower end. Aren't you looking at going ahead, you,  
3 I shouldn't say you. Isn't London looking at risking  
4 some money, whether it's either debt or equity, for the  
5 purpose of completing some projects. And when it's  
6 doing that, isn't it looking at what other kind of  
7 return it might get on that money. And at the same  
8 time, don't they have to take into account their role as  
9 a shipper, because they don't exactly know what would  
10 happen if they don't sink that well, if they don't sink  
11 that money in. One alternative is it just stays at 80%,  
12 so that's pretty easy to calculate, wouldn't it be?

13 A. Right. And we have done some calculations in  
14 that area. Obviously the bulk of the benefit has  
15 already occurred when we got that north end of the line  
16 up from being down completely. But, you know, from my  
17 viewpoint, I'm looking more from the Olympic standpoint,  
18 I don't look, although, you know, I have seen or on a  
19 limited basis the impact on the refinery, my view is  
20 really Olympic's, you know, what does it look like to  
21 Olympic. Will they look at that? Absolutely, but  
22 again, the bulk of the benefit has already occurred.

23 Q. Well, could it be that it actually isn't  
24 worth getting the pipeline up to 100%, because it  
25 actually turns out not to be worth anybody's while? If

4465

1 it's not worth BP as a shipper's while and the  
2 intervener shippers say, well, we don't think we should  
3 have to pay it, is a rational result to keep this  
4 pipeline at 80%?

5 A. I hope my boss isn't listening right now on  
6 the bridge line, because I'm going to have to pay him a  
7 compliment. He actually has really pressed that  
8 question to the point where we actually did run  
9 economics to see if it did make sense. And  
10 unfortunately, the way economics work is, you know,  
11 you're creating a -- one of the inputs here through this  
12 process into the equation to determine whether it makes  
13 sense. And while I know it's a rate making no-no to say  
14 you want a tariff to incorporate capital yet to be  
15 spent, it's kind of a chicken and egg thing. At a 35%  
16 rate, which is currently in effect, it doesn't look all  
17 that good to go from 80% to 100%, or at least that's  
18 what I recall that it looked like.

19 Q. What did you mean by a 35% rate?

20 A. That's the overall average or at least the  
21 last time I looked at it for the pipeline.

22 MR. HARRINGTON: You said percent.

23 A. I'm sorry, I meant cents per barrel, that's  
24 the average overall for the pipeline shipments on the  
25 line.



4466

1 Q. Without an increase?

2 A. Without any --

3 Q. That's pre --

4 A. Yeah, pre anything.

5 Q. All right.

6 A. And now you run the economic's again at 45  
7 cents. Obviously that changes the economic outcome. Do  
8 you see what I mean? So it's -- you've got to look at  
9 it --

10 Q. Right.

11 A. When you run economics, you're going to look  
12 at it with different tariff levels.

13 Q. I see what you mean there, but doesn't it  
14 matter who pays? In other words, in order to get the 45  
15 cents, it presumes that the shipper interveners as well  
16 as the shipper owners are paying that.

17 A. Right.

18 Q. And at least it seems to be the position of  
19 Tesoro that that shouldn't be their burdon because it's  
20 paying for things that wouldn't be necessary had Olympic  
21 conducted itself over the years and also recently in a  
22 different way, and so that shouldn't be their burdon, it  
23 should be the owner's burdon.

24 A. Right. But when you look -- if you look at  
25 this exhibit and you see the disparity in perception of

4467

1 what the total cost of service is, it's tremendous, it's  
2 almost unbelievable. And, you know, I would probably go  
3 a step further and say and unfair to Olympic as well. I  
4 mean we talk about fair, just, and reasonable, and it  
5 seems like we're always talking about rate payers, but  
6 it has to be fair to Olympic as well. And when I look  
7 at their cost of service and the choices that they make,  
8 personally to me it's not fair, the excluded cost, the  
9 capital structure, the rate base, the return on equity,  
10 it's all skewed towards the shippers.

11 Q. If --

12 A. And -- I'm sorry.

13 Q. If there had been no change of ownership and  
14 you had been with Olympic for the last ten years and  
15 everything that had happened to Olympic had occurred and  
16 all the decisions were the same and you had made them,  
17 would you feel the same way?

18 A. With Olympic did you say?

19 Q. Mm-hm.

20 A. Could you restate that question?

21 Q. Right.

22 A. I'm not sure I understood it.

23 Q. Well, I will make a comment first. It  
24 strikes me that part of the dynamic of this case is that  
25 BP came in late as an operator, late in the sense of the

4468

1 last decade, and in essence is saying, well, it's not  
2 our fault what these people did before us, you know, we  
3 weren't there. You say you recommended a rate increase,  
4 you recommended that the board get a tariff increase,  
5 but I'm -- so what I'm -- but I'm saying, suppose you  
6 look at Olympic as an entity and supposing we blind  
7 ourselves for this question to the changing owners,  
8 managers, personnel. Would you think given how Olympic  
9 as an entity has conducted itself over the last ten  
10 years that nevertheless it would be fair for us to award  
11 a 59% increase?

12 A. The best way I can answer that is to say that  
13 I think, and I probably should think it through a little  
14 further, but I think it's irrelevant what happened in  
15 the past. And I think if I start talking about what  
16 happened in the past, I will get castigated for  
17 retroactive rate making. So, you know, that's -- I'm  
18 thinking of the elements that are in our \$56.5 Million  
19 of cost of service, and I don't, unless I'm missing  
20 something, I don't see anything in there that  
21 specifically relates to the bad things, quote, unquote,  
22 that were done in the past, not your quote, but I don't  
23 see anything in there that's related to that. I'm  
24 thinking of things like line lowering, right of way  
25 mowing, painting, things that are recurring costs that

4469

1 people are pulling out of the cost of service that  
2 strikes me as not impartial, even though that's probably  
3 a double negative. It's -- there is a lot of partiality  
4 it seems like, so that's -- all I'm saying is I think  
5 that it needs to be fair to Olympic as well. And, you  
6 know, that's -- that -- beyond that, it sends a signal  
7 to not just BP and Equilon or any other potential  
8 investor, but to anybody else that may be interested in  
9 investing in Olympic, so I think there's two parts to  
10 it.

11 Q. Right. But don't we send a signal also that  
12 if we say, well, we're only going to start clean today  
13 and assume everybody is innocent and no one did anything  
14 wrong or imprudent or irresponsible.

15 A. Right.

16 Q. And so starting today, here's what you need,  
17 doesn't that also send a signal that a company can make  
18 several mistakes, some of which you have I think  
19 acknowledged here, such as failure to go and get a rate  
20 increase earlier, and it won't make any difference in  
21 the end, that the Commission frankly needs to bail the  
22 company out?

23 A. Yeah, it doesn't sound good hearing it that  
24 -- stated that way, but something occurred to me when  
25 you said that, which is that another way to look at it

4470

1 is that the shippers unfairly or inappropriately  
2 benefited by Olympic's failure to go in for the rate  
3 increase. I mean they have enjoyed the increased tariff  
4 over that time period, and so, you know, I'm empathetic  
5 with their position, but when I look at these costs  
6 here, I don't, and maybe somebody at break can tell me  
7 where it is, but there is no Whatcom Creek charge or  
8 remediation cost, there are no Cross Cascades costs,  
9 there's no litigations, fines, and penalties in these  
10 numbers, so I'm struggling a little bit to understand  
11 why -- what sort of ghost of years past are embedded in  
12 our numbers, because I don't think they are.

13 Q. All right. So if you take your numbers on  
14 all the factors that you just mentioned but maybe change  
15 the debt-equity ratio, which we may consider doing for  
16 policy reasons, would that come closer to what you think  
17 would be fair? In other words, there are so many fac --  
18 there are so many moving pieces here, but part of it is  
19 what's included and what's excluded as a reasonable  
20 cost, but part of it is the cost of capital.

21 A. I think what I heard you say is something in  
22 the way of a compromise sort of solution, and I'm not  
23 sure if I heard the question right.

24 Q. Well, I shouldn't -- I'm not really  
25 suggesting a compromise, because at this point we'll

4471

1 just make the decision, but how we make our decision on  
2 all of these different elements may -- we may pick and  
3 choose in the sense that they're quite different factors  
4 that go into considering whether line lowering is an  
5 appropriate maintenance or capital cost.

6 A. Right.

7 Q. Versus what the right capital structure is.

8 A. Right. Well, when I -- I mean when I look at  
9 sort of the what are the four major elements of  
10 differences in this case, I think if we look at the  
11 Staff's case versus Olympic, it's a -- the gap is about  
12 \$20 Million, and I see around \$7 Million, a third, is  
13 rate base, \$6 Million is operating costs, the bulk of  
14 which is major maintenance, the line lowering and all of  
15 that. 5 I believe is capital structure and a couple for  
16 return on equity. Those are really only four sort of  
17 issues.

18 The way I see it is, and it's obviously a  
19 biased view, is that Olympic is operated by a company  
20 that operates pipelines throughout the country and by  
21 and large is regulated by FERC, and, you know, I think  
22 that methodology and approach is something that should  
23 be considered when we look at the final rate. So I  
24 don't -- I mean I'm not sure I answered your question  
25 directly, but I tried to.

1 Q. That was good enough.

2 Another question, is one of the options here  
3 bankruptcy of Olympic? That is, if the -- if whatever  
4 we determine is not -- if whatever rate we determine is  
5 not sufficient in the eyes of the owners to go ahead, is  
6 the likely option just not completing the 100% projects,  
7 or is a likely option, is an equally likely option let's  
8 just sell the assets.

9 A. Yeah, I was intently listening to Larry  
10 Peck's testimony when that same question was asked, and  
11 I think Larry's right that it's not highly probable, but  
12 it is possible. And the finance committee of Olympic  
13 has looked at that on a couple of occasions, what would  
14 it mean, how would the assets go, and, you know, what  
15 would the implications be. It would be speculation  
16 whether BP would consider it. I mean it hasn't been  
17 floated, but it could happen. I would say it's a  
18 possibility.

19 Q. If it did happen, would the assumption be  
20 that somebody would buy the pipeline assets and set up a  
21 pipeline company, and then everyone else would continue  
22 to be a shipper?

23 A. I think the, and this is fully an opinion,  
24 that likely the only type of company that would buy it  
25 are these master limited partnerships that you probably

4473

1 saw there, the oil proxy group, five of them, mainly  
2 because they -- their value is derived from growth, so  
3 they tend to be the ones that are buying pipelines. I  
4 can't imagine anybody else frankly.

5 Q. But you could imagine that type of entity  
6 buying it?

7 A. I wouldn't say -- I wouldn't -- I wouldn't  
8 know what the likelihood would be, but if anybody would,  
9 they would, but I don't know why they would.

10 CHAIRWOMAN SHOWALTER: Thank you.

11 THE WITNESS: Thank you.

12

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

14 BY COMMISSIONER HEMSTAD:

15 Q. Several different witnesses have been asked  
16 the question about the verifiable numbers in the  
17 company's case. And at various times, questions were  
18 referred to Mr. Fox as a person who would have the  
19 answers to those. Are you the person who verifies the  
20 numbers that ultimately went into the rate case here?

21 A. No, as I said earlier, I wasn't -- if you're  
22 talking about the I believe someone said May 2001, I  
23 wasn't really involved until approximately December of  
24 2001, so the answer is no.

25 Q. Okay. And do you have an opinion who is the



4474

1 person in the company who ultimately verified the  
2 numbers that went into the case?

3 A. And when you say the case, are you talking  
4 about the cost of service model?

5 Q. Well, the financial statements. I don't mean  
6 audited, the cost of service numbers that came in here.

7 A. I mean ultimately I would -- I would say it's  
8 the integrity of the financial statements would be the  
9 responsibility of the controller of our business unit,  
10 Paul Kent, but for Olympic specifically, it would be --  
11 it would be Cindy Hammer.

12 Q. Okay. Now Ms. Hammer, I can't with  
13 confidence at this point precisely recall, but she  
14 referred various questions about numbers to other  
15 people, and that's what I think gives everyone a bit of  
16 degree of discomfort about how do we know the numbers in  
17 front of us are the numbers?

18 A. Right. May I respond?

19 Q. Sure.

20 A. I think one of the questions, as I recall,  
21 and luckily this time I got a lot less deferred  
22 questions than I had last time, but I think the question  
23 was regarding the balances, how did we know that the  
24 balances from Equilon when we took over were  
25 appropriate; was that one of them?

4475

1 Q. I think so.

2 A. Okay. I was part of the team that both bid  
3 on the operatorship for Olympic and was part of the  
4 transition team that took over from Equilon, including  
5 the operating agreement and the management fee, et  
6 cetera. You know, if you put yourself in BP's place,  
7 given these circumstances and all that's gone on, I mean  
8 one thing that ought to give you a little bit of comfort  
9 is why wouldn't BP want to go as -- turn over as many  
10 stones as they could to look for impropriety, bad  
11 balances, bad I mean accounting, why else would we spend  
12 \$100,000 or whatever the number was to do something just  
13 short of a forensic audit on Olympic. I mean we looked,  
14 we looked hard at, you know, is Cross Cascades really  
15 \$21 1/2 Million, are these balances right, do -- when --  
16 these transactions between Equilon and Olympic, are they  
17 all on the up and up, et cetera. I mean we did all of  
18 that, so in terms of the integrity, we had every  
19 incentive to find problems, and we didn't.

20 The other thing that I would say is that the,  
21 and I don't want to get into a discussion about base  
22 years and test years, but I believe that the WTC Staff's  
23 test year is the 2001 actuals. I believe that's  
24 correct. And Ernst & Young will be auditing the 2001  
25 actual results, and that should give, at least gives me

4476

1 anyway, a lot of assurance on the integrity of the  
2 numbers and the appropriateness of how they were  
3 recorded.

4 Q. In your testimony, and it's come up in the  
5 testimony of others, well, I'm looking at page 3,  
6 beginning at line 8 and into line 9, criticizing the  
7 Staff's recommendation, and you say:

8 Simply stated, .54% is not going to  
9 benefit anyone in this case,  
10 particularly when another \$66 Million in  
11 capital spending needs to take place  
12 over the next three years.

13 And I want to pursue that in the -- your  
14 response to a question from the Chair with regard to  
15 Exhibit 1704, again which was a summary of the numbers,  
16 and you stated again the difference between the  
17 company's rebuttal case and the Staff case, and you  
18 broke it out, a difference of \$7 Million in rate base.  
19 Now is any of the \$66 Million included in that rate base  
20 difference between you and the Staff?

21 A. No, no, it's not.

22 Q. Let me phrase it another way. Is any of the  
23 \$66 Million of anticipated future capital needs  
24 projected at all in your case, or is it essentially all  
25 current rate base and your operating expenses?

4477

1 A. It's the latter.

2 Q. And am I wrong then with the conclusion that  
3 you are not asking in advance for any of the \$66 Million  
4 in this case?

5 A. Are you wrong?

6 Q. In --

7 A. We are not asking for it in advance, no.  
8 We're asking for a fair rate based on the investment  
9 that has already been made in this pipeline.

10 Q. Do I take it from that then, when you do make  
11 those investments, you would come back in here then and  
12 say, if we could accelerate it, then you would rapidly  
13 spend the -- commit \$66 Million of capital improvements,  
14 you will be back in here for another rate case to  
15 recover that \$66 Million?

16 A. If it were up to me, we would be in weekly  
17 frankly, and I don't -- I don't mean that  
18 disrespectfully. I just think that, you know, obviously  
19 people talk about regulatory lag and things of that  
20 nature, this is -- this might be the picture in the  
21 dictionary under the term regulatory lag. I mean it's  
22 -- there is a big chunk of capital that will be spent,  
23 and we will want to get it incorporated as soon as we  
24 can.

25 Q. I understand, but --

4478

1 A. So yes, we will be in here frequently.

2 Q. But with that improvement, presumably that  
3 goes to your ability to increase throughput?

4 A. That's true.

5 Q. And therefore greater revenues?

6 A. That's true as well.

7 Q. So that's not unlike say take an electric  
8 company that builds a new power plant, it brings it on  
9 line, it starts getting the revenues from it, but it  
10 hasn't yet added it to rate base, but then when it comes  
11 in for its next rate case, it brings in those costs. In  
12 that sense, are you -- would your situation -- would you  
13 see your situation to be analogous to any other  
14 regulated utility in front of us?

15 A. I don't have any knowledge of or very limited  
16 knowledge on other regulated utilities, but I suspect  
17 that the difference may be that the example that you  
18 gave was expanding the revenue base, maybe new customers  
19 or, you know, more units produced overall. But what  
20 we're talking about here is getting this thing back to  
21 where it was, and that's to me a distinction.

22 You know, I think -- I think the other thing  
23 is just when you -- on a real simplistic view, if you  
24 just look at how much the revenue covers the operating  
25 and maintenance costs, just coverage of operating

4479

1 expenses, and I have in my testimony where I don't know  
2 what the average was for the industry, but it was -- it  
3 was about 185% or something like that, and then I look  
4 at the Staff's recommendation, and it's 1.07. That  
5 alarms me, and I go, well, I don't know if that's the  
6 way it's done in other regulated utilities, but that's  
7 -- that's not enough coverage.

8 Q. Mr. Peck when he was on the stand or in his  
9 testimony, I don't recall which, said that if the rates  
10 are not high enough, begging the question about what  
11 high enough is then the assumption that what we would  
12 order would not be by that standard high enough, BP  
13 would have to resign as the operator of the system. Do  
14 you have any views on that as to what that would mean?

15 A. I do, but they would only be opinions. I  
16 wouldn't be in a position -- I would have limited input  
17 into that.

18 Q. But who would operate it?

19 A. I --

20 Q. Or is the implication is that it would simply  
21 be shut down?

22 A. Like I said, I think that's possible. I  
23 think probably a greater likelihood is that one of these  
24 master limited partnership companies, of which I think  
25 Enron was real -- a big player in that arena, would be

4480

1 -- would be about the only ones that would have enough  
2 incentive to come in and take on this sort of pipeline.

3 Q. All right, so the implication would be  
4 that --

5 A. It wouldn't be good.

6 Q. -- if BP were to resign, maybe that's  
7 metaphorical, but to resign as the operator, the  
8 implication is that the company would put it up for  
9 sale?

10 A. That's -- I would think so, but I don't know  
11 for sure.

12 Q. All right. One last question I have. The  
13 100% debt capital structure of a company, I assume as an  
14 accountant you have a general familiarity with the IRS  
15 and what it looks at as it audits companies, and it's my  
16 understanding that the IRS would take a look at that  
17 kind of a structure and say, you can have 100% debt, but  
18 we're not going to treat it as 100% debt, because you're  
19 simply expensing all of your what otherwise would be  
20 profits or earnings, and they will create their own  
21 capital structure for you, won't they?

22 A. That's true, and again, I'm not a tax  
23 attorney, so I don't know, but they will -- they can --  
24 it's not -- it's -- it -- I think the way I understand  
25 it is that they will look at each of the individual

4481

1 transactions and the nature of the affiliated debt, so  
2 it's not a given, but it's certainly a risk.

3 Q. But they're not going to accept at face value  
4 a corporation with 100% debt without being skeptical  
5 about it?

6 A. I think you're right, I think you're right.

7 COMMISSIONER HEMSTAD: All right, that's all  
8 I have.

9

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

11 BY COMMISSIONER OSHIE:

12 Q. I'm trying to square, Mr. Fox, your testimony  
13 and the response to I believe it was Commissioner  
14 Hemstad's question about the amount of research I guess  
15 that was done on the records of Olympic Pipeline, I  
16 believe you used the term you completed nearly a  
17 forensic audit of the records that were developed and  
18 produced by Olympic Pipeline, with the testimony as I  
19 understand it and I remember it from Mr. Peck that BP  
20 did not do due diligence before acquiring Olympic  
21 Pipeline. And just as I remember the statement, it was  
22 just, well, we just took it the way it was because it  
23 was part of the deal when BP acquired ARCO, so can  
24 you --

25 A. Right, I --



4482

1 Q. Can you square the, you know, what I think is  
2 an inconsistency --

3 A. Sure.

4 Q. -- with your testimony --

5 A. Sure.

6 Q. -- either your testimony or that of  
7 Mr. Peck's.

8 A. If you look at the total value of the  
9 acquisition of ARCO, Olympic was insignificant, it was  
10 -- or not insignificant, immaterial, just purely on a,  
11 you know, cash flow from various assets. You've got to  
12 realize it was a, don't quote me on the number, but it  
13 was many, many billions of dollars in the transaction.  
14 So there was -- you do the due diligence on the big  
15 pieces, you can't do due diligence on every single  
16 dollar of potential cash flow. That's just -- a deal of  
17 that magnitude is just -- it wouldn't make sense, and  
18 you wouldn't have enough time to do it either.

19 What I was describing is what occurred after  
20 BP took over as operator in 2000. That is when we did a  
21 lot of due diligence and tried to do a lot of due  
22 diligence.

23 Q. You stated that Ernst & Young would have the  
24 financial audit completed by this summer, I understood  
25 let's say by August, and that was a guess, an estimate

4483

1 of the time. Now that would be the financial statement  
2 for 1999?

3 A. No, for 2001.

4 Q. So it would be for 1999, 2000, and 2001?

5 A. No, it would be for 2001.

6 Q. Just 2001?

7 A. Correct.

8 Q. So they would complete that, the audit for  
9 2001 before they completed the audit for 1999 or 2000?

10 A. Correct.

11 Q. What did you mean by, and I think the term a  
12 financial memorandum? I think it was in response to a  
13 question that Mr. Brena asked you?

14 A. I believe Larry Peck described it in his  
15 testimony. It is essentially a document that BP uses to  
16 authorize generally larger capital projects in the  
17 corporation. It involves a writeup and a fair amount of  
18 economics to justify capital projects.

19 Q. Then you said that that was being prepared?

20 A. That has started to be prepared, yes.

21 Q. And what capital projects would that pertain  
22 to?

23 A. That would pertain to -- it's not specific,  
24 it's the total spending for Olympic, so it would be the  
25 -- it would essentially be the \$66 Million.

4484

1 Q. So the financial memorandum would cover in  
2 your opinion the \$66 Million that is referenced in your  
3 testimony?

4 A. Yes.

5 Q. And do you know what the projects are that  
6 are covered by the \$66 Million?

7 A. I haven't memorized them, I believe I've got  
8 them on a piece of paper somewhere, several pieces of  
9 paper.

10 Q. Well, if the -- does the financial memorandum  
11 then, that's a justification to the board of directors  
12 for the capital projects that are named in that  
13 document?

14 A. It can be for individual projects, or it can  
15 be for programs, if you will. So, you know, on the  
16 exploration production side, if they've got five  
17 drilling wells, it may be for each of the individual  
18 wells if they're individually significant, or it could  
19 be for all five as a drilling program as just to give  
20 you as kind of an example.

21 Q. Well, if the financial memorandum is being  
22 completed, I guess it's a work in progress I think to  
23 use your words, then the \$66 Million that is referenced  
24 in your testimony is just an estimate?

25 A. No. The \$66 Million is based on projections

4485

1 from our Olympic engineering department on known work  
2 that will need to be done over the next three years, so  
3 they're named projects.

4 Q. But that hasn't been approved yet by the  
5 board of directors?

6 A. No.

7 Q. And the financial memorandum would be the  
8 basis for approval by the board?

9 A. The --

10 Q. As one of the bases for --

11 A. Yeah, the -- what Larry Peck described as  
12 needing to go in a financial memorandum was I believe,  
13 and I don't remember exactly, but I think it was -- it  
14 wasn't for the \$66 Million of projected spending. I  
15 think it was for the authorization to loan the  
16 additional \$20 Million, which is in a way a subset of  
17 the \$66 Million, because it's money that would need to  
18 be loaned to help fund that.

19 COMMISSIONER OSHIE: I don't have any other  
20 questions, thank you.

21

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

23 BY CHAIRWOMAN SHOWALTER:

24 Q. I forgot to ask one question. Could you turn  
25 to Exhibit 48, the substitute 48, that's the management

4486

1 or operating agreement.

2 A. Oh, sure.

3 Q. Page 17.

4 A. Okay.

5 Q. I'm looking in the middle of the page, and

6 one of the sentences:

7 Company authorizes operator to prepare  
8 any justifications required to be filed  
9 with such tariffs. Operator will keep  
10 all necessary records required by  
11 regulatory order applicable to any such  
12 tariff filings.

13 My question is, who is the primary person in  
14 BP pipelines with this function; is that Ms. Zabransky?

15 A. It is.

16 Q. All right. And to whom does Ms. Zabransky  
17 report?

18 A. Ironically my boss.

19 Q. Why is that ironic?

20 A. Because I keep hearing her name brought up  
21 through various parts of this hearing.

22 Q. All right. But she doesn't report to you?

23 A. No, she does not.

24 Q. So she's on a parallel level with you?

25 A. Yes.

4487

1 Q. More or less?

2 A. Yes, she is.

3 Q. And your boss is?

4 A. George Ott.

5 Q. George Ott?

6 A. Yeah, O-T-T.

7 Q. Is that who you told me the treasurer was?

8 A. No, that's Lew Storino.

9 Q. That's what I thought. So in other words,  
10 you're the assistant treasurer, but your boss is not the  
11 treasurer?

12 A. No, the treasurer, assistant treasurer is  
13 Olympic.

14 Q. All right.

15 A. The planning accounting controller is BP  
16 Pipelines.

17 Q. All right. And who is Mr. Ott's boss?

18 A. Is Fiona Cummings.

19 Q. All right.

20 A. Who is the commercial manager for BP  
21 Pipelines.

22 Q. All right. Now I'm trying to figure out  
23 where Mr. Peck fits into this.

24 A. There are -- should I do it on the white  
25 board?

4488

1 Q. If you want to, or you need not.

2 A. There's the -- we have a business, you know,  
3 leader named Lee Edwards, and he has several direct  
4 reports. He has a commercial manager; he has a crude  
5 oil business line manager, which are just pipelines that  
6 transport crude oil; there is a products business line  
7 manager, who is Mr. Peck; and then there's a commercial  
8 manager; as well as several other functions like law and  
9 information technology.

10 Q. All right.

11 A. So that's where Mr. Peck fits in.

12 Q. All right. Ms. Zabransky is not a witness in  
13 this case. I'm just trying to figure out if anyone  
14 over, directly over, Ms. Zabransky, not directly, but in  
15 the chain of command above Ms. Zabransky has been a  
16 witness in this case. I believe the answer must be no.

17 A. Over Bernadette in terms of in her direct --  
18 like a superior, if you will?

19 Q. Either her direct superior or anyone else up  
20 the chain.

21 A. Or hierarchially superior, is that what you  
22 mean?

23 Q. That's what I mean.

24 A. Well, Larry Peck would be.

25 Q. All right. Then I take it Ms. Zabransky

4489

1 reports to somebody who reports to somebody who reports  
2 to Mr. Peck or something along --

3 A. Well, or to his parallel that reports to  
4 Mr. Edwards, the positional leader.

5 Q. But if it's parallel, then --

6 A. Can I draw a --

7 Q. Sure.

8 A. -- org chart real quick?

9 Q. Go ahead.

10 A. Or should we do that at break; would that be  
11 better?

12 Q. Are you saying you want a break?

13 A. No, no, no, I'm just saying I don't want to  
14 do it with, you know, with all that pressure on me.

15 Q. Just put Ms. Zabransky down, and then just  
16 draw if there is a chain of command that includes  
17 anybody we have heard from in this case, I would be  
18 interested.

19 A. (Drawing.)

20 How's that.

21 Q. All right, well, then from your diagram, I  
22 see Ms. Zabransky's name in the lower right-hand corner,  
23 and I see Mr. Peck over in the upper left-hand, and it  
24 doesn't look to me as if Ms. Zabransky reports to  
25 anybody who ultimately reports to Mr. Peck, that they're



4490

1 on different --

2 A. Different --

3 Q. -- parts of the tree.

4 A. That's right.

5 CHAIRWOMAN SHOWALTER: Okay, thank you.

6 JUDGE WALLIS: Are there follow-up questions,

7 Mr. Trotter?

8 MR. TROTTER: Yes, just a couple.

9

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

11 BY MR. TROTTER:

12 Q. Mr. Fox, you said that BP looks at the  
13 economics to see if it makes sense to get to 100%; do  
14 you remember that?

15 A. Yes.

16 Q. And for economics, are you referring to the  
17 hurdle rate analysis that Mr. Peck testified to earlier?

18 A. I'm not sure exactly what analysis he's  
19 referring to, but it would be a discounted cash flow  
20 analysis, present value.

21 Q. Okay.

22 A. To the rate of return.

23 Q. And whether the rate of return matched the  
24 hurdle rate that BP had?

25 A. Correct.

4491

1 Q. And would that be examining the incremental  
2 investment that would be involved, the return on the  
3 incremental investment, the \$66 Million?

4 A. It would be a point forward analysis rather  
5 than a full cycle, which would include all of the  
6 investment, yes.

7 Q. And by all of the investments, the \$149  
8 Million that we talked about earlier would not be  
9 involved in that economics that you addressed?

10 A. Correct.

11 MR. TROTTER: That's all I have, thank you.

12 JUDGE WALLIS: Let's be off the record for  
13 just a minute.

14 (Discussion off the record.)

15 JUDGE WALLIS: Let's be in recess for ten  
16 minutes, please.

17 (Recess taken at 3:10 p.m.)

18

19

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