

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND) Docket No. TO-011472
4 TRANSPORTATION COMMISSION,) Volume XXXVI
) Pages 4602 to 4700
5 Complainant,)
)
6 vs.)
)
7 OLYMPIC PIPELINE COMPANY,)
8 INC.,)
)
)
9 Respondent.)
)
)

10 A hearing in the above matter was held on
11 July 10, 2002, at 9:30 a.m., at 1300 South Evergreen
12 Park Drive Southwest, Room 206, Olympia, Washington,
13 before Administrative Law Judge ROBERT WALLIS and
14 Chairwoman MARILYN SHOWALTER and Commissioner RICHARD
15 HEMSTAD and Commissioner PATRICK J. OSHIE.

16 The parties were present as follows:

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Court Reporter

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1 -----
2 INDEX OF EXAMINATION
3 -----

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5
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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS:	PAGE:
MAURICE L. TWITCHELL	
Direct Examination by Mr. Trotter	4606
Cross-Examination by Mr. Marshall	4621
Cross-Examination by Mr. Brena	4655
Examination by Chairwoman Showalter	4663
Examination by Judge Wallis	4676
Cross-Examination by Mr. Marshall	4677
Cross-Examination by Mr. Finklea	4684
Cross-Examination by Mr. Brena	4686
Redirect Examination by Mr. Trotter	4698

4605

1 -----
2 INDEX OF EXHIBITS
3 -----

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5 EXHIBIT: MARKED: ADMITTED:

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7 MAURICE L. TWITCHELL

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

2 JUDGE WALLIS: Let's be on the record,
3 please. This is the Wednesday, July 10 session in the
4 matter of Commission Docket TO-011472. Last night
5 before we concluded, Mr. Twitchell came to the stand and
6 was sworn and his exhibits identified, and Exhibits
7 1901-T through 1915 have been received in evidence. He
8 is now available for the additional surrebuttal
9 examination by Commission Staff.

10

11 Whereupon,

12 MAURICE L. TWITCHELL,

13 having been previously duly sworn, was called as a
14 witness herein and was examined and testified as
15 follows:

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

17 BY MR. TROTTER:

18 Q. Mr. Twitchell, I would like to start with the
19 subject of accumulated deferred income taxes, and to
20 start off, could you just give us a concise definition
21 of that?

22 A. Best definition I can provide right now is
23 the exact definition that Mr. Collins provided in his
24 testimony, Exhibit 713, page 6, when he was asked what
25 accumulated deferred income taxes are, and his statement

4607

1 is:

2 Accumulated deferred income taxes arise
3 from tax --

4 JUDGE WALLIS: Please slow down just a bit,
5 Mr. Twitchell.

6 A. (Reading.)
7 -- tax timing differences typically
8 resulting from accelerated depreciation.
9 Accelerated depreciation results in
10 larger deductions for depreciation, and
11 hence the payment of lower income taxes
12 in the earlier years of an asset's life
13 and in smaller deductions and hence
14 higher taxes in the late years. Under
15 applicable Commission precedent, income
16 tax expense is normalized for purposes
17 of computing cost of service. A
18 pipeline is allowed to reflect in its
19 cost of service the income taxes it
20 would have paid but for the accelerated
21 depreciation deduction. However, on the
22 theory that the difference between
23 normalized taxes and taxes actually paid
24 represents an interest preloan from the
25 rate payers, the ADIT balance does not

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1 allow the pipeline to earn a return on
2 the ADIT balance which is required to be
3 deducted from the rate base.

4 Q. And what is your understanding of the
5 difference between Staff position and the company's
6 position in rebuttal?

7 A. Mr. Collins in Exhibit 701-T, page 13, states
8 that I have made an error in my calculation of ADIT in
9 the rate base. Mr. Ganz in Exhibit 1101-T, page 29 and
10 32, states at the end of period, ADIT is not consistent
11 with the rate base that I used. These statements point
12 out the lack of understanding of these two company
13 witnesses of the Staff's case and of regulatory theory.
14 My Exhibit 1901-T, page 35, uses end period ADIT because
15 that best represents the interest free funds provided by
16 rate payers. Back in 1975 and forward, many times this
17 issue has been presented to this Commission, why it is
18 appropriate to use end of period ADIT in the rate base
19 for this very reason. The Commission in every case has
20 accepted this as an appropriate adjustment.

21 In this case, the argument that the ADIT
22 being end of period balance is not in agreement with the
23 other items of the rate base is totally false. This is
24 where the company has not understood my case. In this
25 case, I have used end of period plant in service, end of

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1 period CWIP, end of period accumulated depreciation, and
2 end of period ADIT, so there is no inconsistent which
3 Mr. Ganz speaks of.

4 Q. Turning to the issue of the SeaTac sale, can
5 you describe your understanding of the differences
6 between the Staff and company rebuttal in that issue?

7 A. Yes, my testimony, Exhibit 1901-T, page 46,
8 discusses my calculation of the SeaTac sale. In the
9 original case of the company, they did not make an
10 adjustment per se that they identified for SeaTac, but
11 if you go in to Mr. Collins' exhibit work papers, he
12 makes an adjustment for SeaTac because SeaTac had not
13 yet been booked on the books of the company. Therefore,
14 it had to be an adjustment in the case.

15 In those work papers, the amount of the
16 SeaTac investment that he reduced the plant in service
17 and accumulated depreciation was \$3,634,300. In my
18 testimony, I pointed out that this was the wrong amount
19 and should be the amount that the company provided to
20 the Staff on February the 12th, 2002, and that amount
21 was \$6,814,000. So I pointed that out, and that
22 correction needed to be made. Ms. Hammer in her Exhibit
23 801-T, page 3, makes these recommended changes that I
24 talked about. The only problem, Ms. Hammer uses instead
25 of the amount that I used for the value of the SeaTac

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1 facility of \$6,814,000 uses \$6,829,000, a \$15,000
2 increase in the asset value, and makes no explanation of
3 why the \$15,000 is added.

4 In the direct case, the company used \$10
5 Million as the sale of the SeaTac. In the same letter
6 dated February the 12th, 2002, the company informed the
7 Commission that the sale of SeaTac would be for
8 \$11,000,000. Ms. Hammer in her testimony in making this
9 correction uses the sale of SeaTac of \$10,995,000, again
10 not explaining why there is a difference of \$5,000.
11 Mr. Ganz in his Exhibit 1101-T, page 12, states that I
12 erred in the way that I said this SeaTac calculation
13 needed to be used for rate making purposes and said what
14 I did was not in accordance with USOA. Since this item
15 was not on the books, there's no way they could have
16 been in accordance with USOA or myself. I had presented
17 this adjustment for rate making purposes only. Mr. Ganz
18 then states that the only reason why I have made this
19 change is to throw doubt upon the company's books and
20 records as not being accurate.

21 The amazing thing about this, in the
22 company's rebuttal case they have provided balance
23 sheets for January, February, March, and April for the
24 year 2002. On these balance sheets, they have not
25 recorded the sale of SeaTac according to the USOA or

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1 according to GAAP. They have reduced the plant in
2 service by the \$6,800,000 but have made no attempt to
3 increase the accumulated depreciation by the
4 \$10,000,000. Therefore, if anybody's calculations is
5 not in accordance with USOA, it is the company's as they
6 presented it in their rebuttal case.

7 Q. I would like to turn to the Bayview issue
8 with respect to ADIT, and with respect to that issue,
9 what is your understanding of the difference between
10 Staff and the company's rebuttal case?

11 A. Here again the company doesn't seem to
12 understand regulatory theory. Mr. Collins on Exhibit
13 701-T, page 13, states that I erred in not removing the
14 ADIT balance from the Bayview adjustment. Mr. Ganz in
15 Exhibit 1101-T, page 29, also states that the company
16 erred in not removing the ADIT balance in removing
17 Bayview from the rate base.

18 Q. Mr. Twitchell, when you said the company
19 erred, you mean he's claiming the Staff erred?

20 A. Yes.

21 Q. Okay.

22 A. Claims the Staff erred, yes.

23 Q. Go ahead.

24 A. In SeaTac we removed the impact of ADIT
25 because the plant was retired. Bayview is not being

4612

1 retired from the books. It's still on the books.
2 Staff's argument is because it's not used and useful, it
3 should no longer be included in rate base, but we are
4 saying that the calculation of AFUDC should meet against
5 the Bayview terminal until such time as the company can
6 do an engineering study to see what the plant is going
7 to be used for and if they should write it off at that
8 time or place it back in service. Since Bayview has not
9 been removed from the books, in the future it will
10 continue to be depreciated for tax purposes and book
11 purposes. There will continue to be the discrepancy
12 between the two that causes ADIT to happen. Therefore,
13 to remove the effect of the ADIT from the Bayview
14 adjustment would be totally improper for rate making
15 purposes.

16 Q. Am I correct that Mr. Colbo is responsible
17 for the theory on the Bayview adjustment, but you're
18 addressing just the ADIT piece?

19 A. Yes, Mr. Colbo is responsible for the Bayview
20 adjustment, but he would not be able to discuss the
21 ADIT.

22 Q. And that's your responsibility?

23 A. That is correct.

24 Q. On the issue of pro forma interest, what is
25 your understanding of the difference between the Staff

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1 and the company on that issue?

2 A. I discuss my pro forma interest adjustment in
3 Exhibit 1901-T, page 50. Exhibit 1911 is my adjustment
4 in the Staff case of what the pro forma interest should
5 be. Here again Mr. Ganz criticizes my calculation of
6 the pro forma interest on Exhibit 1101-T, page 30. He
7 states that the Bayview investment should not be added
8 back to the rate base to determine the base on which to
9 calculate pro forma interest expense. This demonstrates
10 his lack of understanding of regulatory theory.

11 Ever since 1974, this Commission in
12 calculating pro forma interest, excuse me -- before
13 about 1975, pro forma interest expense before this
14 Commission was calculated on the rate base times the
15 weighted cost of debt. We then noticed there was a
16 discrepancy in what the pro forma interest expense
17 should be and realized that CWIP represents debt and
18 equity although it's not in the rate base, and it's
19 recognized through AFUDC, so that the interest expense
20 is recognized. So the Staff recommended to the
21 Commission at that time that CWIP be included in the
22 calculation of pro forma debt, and this was -- has been
23 found to be appropriate ever since 1975.

24 In this case, we have included CWIP in the
25 rate base, so I don't need to add it back to the rate

4614

1 base for calculating the pro forma debt. But we have
2 removed Bayview from the rate base, yet Bayview
3 represents debt and equity investment. So to exclude
4 that investment from the calculation of pro forma
5 interest would understate the pro forma interest,
6 overstate the federal income tax, and leave you with a
7 higher revenue requirement in the end results.

8 Q. Turning to the issue of allocations between
9 jurisdictions, has Staff based its presentation on
10 jurisdictional separation factors?

11 A. Yes, the Commission in the interim order made
12 the statement that they would like to see this case
13 developed on an intrastate jurisdictional separation
14 basis. Therefore, that's what we have tried to do in
15 this case.

16 Q. And are there any issues relating to
17 allocation factors that are raised by the company's
18 rebuttal?

19 A. Yes, there are. Mr. Collins in his exhibits
20 of the case has in effect changed the allocations that
21 he used in his direct case which allocates more cost of
22 service to the State of Washington and less to the
23 interstate operations. In doing this, I feel that he
24 has misrepresented what the allocations should be.

25 Do you want me to go on?

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1 Q. Can you just explain what you think the
2 problem is and what the solution is for purposes of this
3 case?

4 A. In order to understand an allocation
5 procedure, it's very important to understand rate
6 making. Rate making begins with a 12 month period of
7 financial data, which is called actual results of
8 operations. This needs to be stated on an accrual
9 basis. On an accrual basis, it assures you that all the
10 expenses are recorded in the months that they should
11 have been recorded and nothing is in the wrong place.
12 For rate making purposes, we take the accrual actual
13 data and normalize it. The FERC even recognizes the
14 necessity of this. The definition of the base year is
15 12 months actual data, it doesn't say on an accrual
16 basis, but that's what it means, then has to be
17 normalized to determine the base year.

18 In rate making in this state, the way we also
19 have to make normalized adjustments to the test period.
20 An example of normalization in an electric and gas
21 company would be a weather adjustment. In order to see
22 that the company is not penalized in a year when the
23 weather is extremely hot or extremely cold, the Staff or
24 the company makes a weather adjustment by taking the
25 average weather for the last several years, determine

4616

1 what average is, and then rates are based on that
2 average. This same principle needs to be applied when
3 determining allocation factors for determining
4 Washington intrastate results of operations and total
5 company.

6 In this case, the allocation factors are
7 based on throughput, points of entrance and exit of the
8 fuel on the pipeline, the miles of pipeline, and the
9 number of barrels shipped through each of those miles of
10 pipeline. And then you get an allocation of -- a
11 weighted allocation of those three factors to come up
12 with allocation factors in how to allocate revenues,
13 expenses, and rate base to determine Washington
14 intrastate results of operations.

15 In the company's direct case, they provided a
16 1998 throughput analysis that they called normalized
17 throughput. They also normalized the throughput as it
18 affected points of entrance and points of exit. They
19 also by providing this normalized 1998 throughput
20 adjusted for seasonal differences. Seasonal differences
21 take into consideration such things as planned out down
22 time, unplanned down time, temperature of the day, and
23 other factors that affect the oil going through the
24 pipeline.

25 The company discussed with Mr. Colbo and

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1 myself their allocation factors as they had developed
2 them in the case. We told them that their allocation
3 factors were a good starting point but not necessarily
4 where they should be. We didn't necessarily agree with
5 the information they provided us, but we felt that the
6 best way to resolve this was to use those allocation
7 factors, and then at a later date when we're not in the
8 heat of battle in a rate case, the company and the Staff
9 could negotiate an agreement on what those allocations
10 should be.

11 I must state that the tariffs in this state
12 are based on allocation factors of the oil, how it
13 enters the pipeline and leaves. If you notice the
14 tariffs, there's a different tariff for every point of
15 entrance and every point of exit, so that information is
16 very critical. If you have information that is
17 abnormal, then your tariffs will be abnormal, the
18 allocation factors will be abnormal, and you will get
19 results that will either penalize the company or give
20 them a windfall.

21 In this case, I would have preferred to use
22 throughput for several years to determine what the
23 average throughput should be, what the average exit and
24 entrance should be. The miles per pipeline is pretty
25 much a given. The company provided one year, but they

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1 also told us they did not have records back beyond the
2 year 2000, so we accepted their allocation factors as
3 they presented them as being a reasonable approach for
4 purpose of this case.

5 Now the company comes forth in their rebuttal
6 case and they change from the normalized throughput, and
7 they use ten months actual and two months estimate.
8 They have a tremendous amount of planned and unplanned
9 down time in those ten months, which totally distorts
10 the amount of oil flowing through Washington and flowing
11 down to Portland. It also distorts the amount flowing
12 from points of entrance and points of exit. These
13 distortions cause the allocation factors to change and
14 in effect cause the allocations to the State of
15 Washington to go up 2% or 3%, which amounts to several
16 dollars when you figure that the cost of service is
17 right around \$36,000,000, I believe, so 3% becomes a
18 nice little adjustment just by changing the factors. I
19 believe that should pretty much cover it.

20 Q. What is your recommendation with regard to
21 that issue?

22 A. It's my recommendation that we use the
23 allocation factors as presented in the company's direct
24 case and in the Staff's direct case, because they're the
25 allocation factors that have been normalized to the best

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1 of our ability from the information we have in the
2 record for this case.

3 Q. And finally, Mr. Fox in his prepared rebuttal
4 testimony characterized the Staff's approach in this
5 case as mechanical application of the formula that Staff
6 used. In your opinion, is that a fair characterization?

7 A. No, that is not a fair characterization, and
8 here again it shows me that Mr. Fox does not understand
9 rate making, he doesn't understand what's going on in
10 front of the FERC and the WUTC.

11 Q. And let's focus on the beginning two items,
12 your use of end of period rate base and end of period
13 CWIP. Can you tell me how much lower rate base would be
14 if Staff uses average and monthly average rate base and
15 no CWIP?

16 A. I have the total right here, I can look it
17 up. The amount of plant in service we have added to the
18 rate base by going end of period I believe is about \$7
19 Million. The amount of CWIP being put in the rate base
20 going end of period and putting it in as if it was plant
21 in service is \$23 Million. So the net effect is right
22 around \$30 Million addition to rate base that in normal
23 rate making theory would not be included.

24 Q. Is it typical for the Staff to recommend an
25 average and monthly average rate base and no CWIP?

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1 A. Absolutely, and I think my testimony makes it
2 very clear that only in extreme circumstances do you
3 adjust the rate base to include CWIP or end of period
4 plant in service.

5 Q. What about working capital, is that a
6 mechanical application of Staff's formula?

7 A. The mechanical part of working capital in
8 this case is that we have accepted the approach as
9 presented by the company. They used the income sheet
10 balance of accounts payable, three different groups, I
11 don't remember what they are right now right off the
12 balance sheet. Because of all the errors the Staff has
13 found in the balance sheet in their accounting and
14 because of the Whatcom Creek explosion which overstates
15 accounts payable and accounts receivable in the way
16 they're accounting for it, any approach to use the
17 balance sheet to determine investor supplied working
18 capital was totally meaningless. Rather than be harsh
19 on the company and not allow them anything in the rate
20 base for working capital, we accepted their adjustment.

21 Q. What about the use of unaudited financial
22 data, is that a mechanical application of Staff's
23 traditional methodology?

24 A. That was one of the biggest heartaches that I
25 personally had in presenting this case. There were so

4621

1 many errors found on the balance sheet in this company
2 that you could give no credence whatsoever to the
3 financial records. Those errors were also in the income
4 statement that needed to be corrected. But like Dan,
5 Mr. Kermode, said yesterday, it wasn't totally
6 worthless, but it had a lot of errors in it. In the
7 spirit of fairness, the Staff has done everything they
8 can to try and take the financial records of this
9 company and present a case to the Commission that we
10 feel is the best possible record we can give them from
11 what they have provided us.

12 MR. TROTTER: Those are all my questions,
13 thank you.

14 JUDGE WALLIS: Mr. Marshall.

15 MR. MARSHALL: Thank you.

16

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

18 BY MR. MARSHALL:

19 Q. With regard to the surrebuttal, I will ask
20 you a few chronological questions about the timing of
21 the submission of different testimony. You started
22 working officially on this case on November 14th; is
23 that correct?

24 A. That's correct.

25 Q. And you submitted your testimony in this case

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1 on May 24th?

2 A. I will accept that subject to check. I don't
3 remember the exact date.

4 Q. Do you remember it was a Friday afternoon,
5 and you came up to Bellevue, and you hand delivered the
6 package to me?

7 A. I remember well.

8 Q. And that was before the Memorial Day weekend?

9 A. I believe it was.

10 Q. You were leaving for the vacation, and I was
11 left with the package.

12 A. I was glad to hand it to you.

13 Q. And Olympic had to file its rebuttal case on
14 June 11, correct?

15 A. That's correct.

16 Q. So Olympic had 18 days to respond including
17 Memorial Day?

18 A. The math is right.

19 Q. Did you submit your work papers on May 24th?

20 A. I believe that -- well, you tell me what day
21 you received them, and I will accept that subject to
22 check. I don't remember which day you sent them out.

23 Q. Data Request 702 was submitted to Staff, and
24 the response from Staff with the work papers I will ask
25 you subject to check was June 3rd in the afternoon.

1 MR. TROTTER: Can counsel also indicate the
2 date the data request was issued.

3 Q. It was issued June -- it was issued on the
4 28th of May as soon as we could get it out the door
5 after Memorial Day.

6 A. I will accept that that's accurate.

7 Q. Okay. And do you have those work papers in
8 front of you?

9 A. No, but I have them here. I have two
10 different set of work papers that I supplied the
11 company. I believe you received part of them in the
12 file, the electronic file, and part of them in this book
13 that I have in front of me.

14 Q. So this stack represents the work papers that
15 Olympic received on June 3rd; is that correct?

16 A. That's correct.

17 Q. And in there you have your various
18 calculations that are not contained in the exhibits,
19 calculations and cases and other materials? These are
20 your work papers, correct?

21 A. No, these do not include my electronic work
22 papers that were sent out with my exhibits
23 electronically at the time you received my exhibits.

24 Q. Right. But these have your -- they contain a
25 lot of the other calculations, backup to your exhibits,

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1 right?

2 A. This is a hard copy of everything I read,
3 looked at, worked with in connection with this case. It
4 does not include the calculations that are included in
5 the electronic version.

6 Q. Right. And your deposition was taken on June
7 5th; is that correct?

8 A. I will accept that subject to check.

9 Q. Two days after these work papers came out?

10 A. I will accept that.

11 Q. And again, Olympic had to submit its
12 testimony and rebuttal on June 11th?

13 A. I believe that's what you said.

14 Q. Now turn to page 2 in your testimony, which
15 is 1901-T, and a change that you made at the bottom of
16 that page on line 20 where you say:

17 The Commission should not require the
18 company to refund revenues collected,
19 because the company has not overearned
20 while interim rates have been in effect.

21 You changed that?

22 A. That's correct, I struck those words.

23 Q. And were those -- was that backed up by your
24 work papers that you submitted?

25 A. No.

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1 Q. On June 3rd?

2 A. No, it was not.

3 Q. You took that out of your work papers?

4 A. No, my work papers include -- for purposes of
5 putting our work papers together, the Staff had assumed
6 a rate of return calculation much larger than what
7 Mr. Wilson came through with. By using the rate of
8 return calculation that I used in my work papers, it
9 appeared that the company had not overearned. When we
10 put in the calculation of rate of return as provided by
11 Mr. Wilson, the company then needed an increase of
12 \$78,000, this statement was no longer applicable.

13 And not only that, in the order, the
14 Commission, and I didn't realize this when I wrote this,
15 the Commission had said that this -- the interim rates
16 were subject to refund. If I would have realized that
17 was in the order when I wrote this, I would have -- if I
18 still believed this way, I would have had to give
19 reasons why the Commission should divert from what they
20 had ordered in the interim order.

21 Q. My question was, in your work papers that you
22 had, where was the calculation that backed up your
23 original statement before this statement was changed?

24 A. The electronic data that I used, I changed
25 the rate of return to the return by Mr. Wilson,

4626

1 therefore I -- it was no longer there in the work
2 papers. As I -- if I had to give you every work paper,
3 I would have to give you every one I started at any time
4 and then show how it changes step by step. I can't do
5 that.

6 Q. But this was in the testimony that you handed
7 over to us on Friday before Memorial Day. This was not
8 stricken, was it?

9 A. That's right.

10 Q. And --

11 A. Because I was not aware of the conflict with
12 the order of the Commission.

13 Q. But the work papers that you submitted didn't
14 have the backup for that statement, it was then changed;
15 is that right?

16 A. It wasn't changed in that time frame. It was
17 changed before the case -- the testimony went to the
18 company.

19 Q. But the testimony wasn't changed before it
20 was delivered, was it?

21 A. No, it wasn't, but the work papers were.

22 Q. You're saying the work papers were changed
23 before they were delivered to the company?

24 A. They were changed as soon as I got the
25 information from Mr. Wilson what the rate of return

4627

1 should be.

2 Q. So we have never seen the backup for the
3 original statement that you made?

4 A. Well, since the statement was stricken from
5 my testimony, I never really made it.

6 Q. But you originally had backup for this, it
7 just got changed, true?

8 A. No. The problem with this statement is that
9 I did not understand the order by the Commission in the
10 interim rates. That order said these were subject to
11 refund. I am in error by even making this statement
12 without justifying why I feel that way, which I have not
13 done.

14 Q. Okay. But in order to make this statement,
15 you would have had to have made a calculation to come to
16 the conclusion that the company had not overearned while
17 the interim rates were in effect. You would have made
18 that calculation to make that statement, true?

19 MR. BRENA: Excuse me, objection at this
20 point. Asked and answered is one objection. The second
21 objection is relevancy. What we're discussing here is
22 work papers for testimony that is not before the
23 Commission. We're talking about an earlier draft of
24 testimony that this witness isn't sponsoring. I don't
25 see what this has to do with this rate case at all.

1 MR. TROTTER: I join in the objection, and in
2 the deposition of Mr. Twitchell this was all explained
3 to the company on June 5th, and all of this was gone
4 over, so I don't know how we're getting anywhere with
5 this. It just seems to be irrelevant.

6 JUDGE WALLIS: I have concerns, Mr. Marshall,
7 with both the repetitious nature of the recent questions
8 and the repetition of the information in the deposition,
9 which we acknowledge has not yet been offered to the
10 record, and also on the question of relevance.

11 MR. MARSHALL: I believe the witness has said
12 there were two reasons to take this testimony out. One
13 was the Commission's order, and one was Dr. Wilson's
14 information. I just want to establish that if those two
15 premises are changed, and the Commission can change its
16 mind on a refund and Dr. Wilson's testimony may or may
17 not be accepted by the Commission, I just want to know
18 where the work papers were that showed that if those two
19 assumptions are in our favor, the company's favor, what
20 the backup work papers were to show that the company had
21 not overearned in the interim period. And I'm simply
22 just trying to find out, did he do those calculations,
23 and I don't believe I have received an answer to show
24 that he did the calculations in any form that we have
25 been presented. If I can get an answer to that, I will

4629

1 move on to the next topic.

2 JUDGE WALLIS: My recollection is that he, in
3 fact, has answered that he did do the calculations. He
4 explained the sequence of his calculations and explained
5 that the documents that you received in electronic form
6 did not contain that information. Is that essentially
7 what you have indicated you want to demonstrate for the
8 record?

9 MR. MARSHALL: But I guess I would like if
10 there were work papers that show that kind of
11 calculation, we haven't had that, and I would like the
12 witness to identify if those work papers are in
13 existence. I know what we got, we didn't get those work
14 papers. But if they're in existence still, I would like
15 to ask the witness if they are.

16 JUDGE WALLIS: You may.

17 MR. MARSHALL: Okay.

18 MR. BRENA: Your Honor, if I may briefly, the
19 witness has already said it was on a spreadsheet,
20 electronic spreadsheet, and that he changed the numbers
21 and that they don't exist. But additionally, there's no
22 obligation to provide work papers with regard to
23 unsponsored testimony. I mean the obligation -- what a
24 work paper is is something that supports the testimony
25 that's proffered by the witness. This testimony that

4630

1 he's discussing has not been offered by the witness into
2 this record, so on either point it's --

3 JUDGE WALLIS: I think you're correct, and I
4 expect that if the question is answered it will get a
5 simple one word answer and we can move on.

6 In terms of the process, I do recognize that
7 while the initially prepared pre-filed testimony has not
8 been offered to the record, that we do have a process
9 question, a fairness question, and I think it's
10 appropriate to engage in some non-duplicative
11 examination regarding that process. So you may ask the
12 question as to whether the work papers still exist.

13 MR. MARSHALL: Right.

14 BY MR. MARSHALL:

15 Q. Do you have that question in mind?

16 A. Yes, I do. And if you go to my electronic
17 file, which is labeled total results RASP.XLS, you have
18 that in hard form. The first page on that electronic
19 form is my Exhibit 1904 with the work papers behind it.
20 If you will look at the first page, the first sheet on
21 that exhibit, on the right is my calculation of what the
22 rate of return should be to calculate the revenue
23 deficiency in this case. In that work paper, the
24 capital structure is 80% and 20%, the cost of debt is
25 7%, the cost of equity is 9%. The only numbers I

4631

1 changed from what's on that spreadsheet to get the
2 answer I had here was the capital structure and the cost
3 of debt and cost in equity. Nobody gave those numbers
4 to me. They were just for purposes of seeing where the
5 case was coming out until such time as I had it. I
6 believe the capital structure I had used was 50/50, 13%
7 on equity, and 7% debt. No way do I want to represent
8 that that's the appropriate amount to be used.

9 Q. Okay, thank you very much.

10 Now in your work papers, there is also an
11 E-mail dated May 22nd from Mr. Eckhardt to yourself; do
12 you recall that E-mail?

13 A. I remember it well.

14 Q. Okay.

15 CHAIRWOMAN SHOWALTER: Can you include the
16 year?

17 MR. MARSHALL: Yes, it was this year.

18 BY MR. MARSHALL:

19 Q. So two days before the due date for your
20 testimony on May 24th, you received an E-mail from
21 Mr. Eckhardt.

22 A. That's correct.

23 Q. And Mr. Eckhardt said:

24 We need you here, NEED capitalized, here
25 tomorrow and Friday to wrap up the

4632

1 testimony. Please advise ASAP if you
2 have any problems.

3 Do you remember that?

4 A. Very much so.

5 Q. Okay. And did he also tell you that you had
6 an error in your testimony about opinion 154-B and that
7 he then set out a quote from 154-C?

8 A. In his E-mail he made that statement, but
9 when I got here, I helped him realize that there wasn't
10 an error and he was in error in making that statement.

11 Q. Now you then did get together with all of the
12 witnesses for Staff on Thursday and Friday, the 23rd and
13 the 24th; is that right?

14 A. We had several meetings. Usually counsel was
15 present in those meetings also.

16 Q. But did you have those meetings on the 22nd,
17 or excuse me, the 23rd and the 24th?

18 A. I was in the office, we had meetings, I can't
19 tell you what time and what date for sure, but we did
20 have a meeting concerning that memo.

21 Q. And you went through your testimony and the
22 testimony of the others, the other Staff witnesses?

23 A. No.

24 Q. Did you have any other E-mail in your work
25 papers other than this one E-mail?

4633

1 A. I had several E-mails from my attorney.

2 Q. I'm just asking about your work papers, is
3 this the only --

4 A. Oh, it's the only one I included in my work
5 papers, because it's the only one that I felt was an
6 actual work paper.

7 Q. Over the course of working on your testimony,
8 you sent and received a lot of E-mails I take it?

9 A. Yes.

10 Q. This is the only one that you felt was part
11 of a work paper?

12 A. I felt that because it addressed FERC
13 methodology 154-C that it was pertinent information that
14 I used in developing my case and I should include it. A
15 lot of the E-mails received were in electronic data
16 requests, electronic data requests of the company
17 responses and things that were in hard copy that just
18 made it easier to get the data out to everybody rather
19 than delivering everybody hard copies and having to deal
20 with all the paper.

21 Q. Did you review any of the testimony of other
22 Staff witnesses in that period of time before they were
23 submitted? Let me ask you specifically. Did you review
24 Mr. Elgin's testimony before it was submitted?

25 A. I read everybody's testimony before it was

4634

1 submitted.

2 Q. Okay. Now Mr. Elgin, and I will just ask you
3 subject to check to accept this, stated at page 2, line
4 11 of his testimony that, "shippers should not be
5 required to pay for prior operating losses". Do you
6 recall that?

7 A. Yes, I do.

8 Q. Anywhere in the case provided by Olympic,
9 direct or rebuttal, does Olympic ask to recover prior
10 operating losses? And if so, could you show me where in
11 Olympic's cases they have asked for prior operating
12 losses.

13 A. Yes, they have, and I can show it to you in
14 the capital structure. The capital structure is over
15 100% debt. A lot of that debt is money that has been
16 provided by the parent, and that debt represents losses
17 that the company has had since the Whatcom Creek
18 explosion. Those things have been recorded on the books
19 of the company I feel improper, and because they're in
20 the balance sheet, they show up in the company's request
21 for its authorized rate of return.

22 Q. Is that the only place that you find prior
23 operating losses as you have claimed?

24 A. When did I claim?

25 Q. Well, as Mr. Elgin has claimed.

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1 A. Thank you.

2 Q. Okay.

3 A. One of the problems the Staff had in the
4 audit of the books of the company is that we could not
5 verify the balance sheet or the income statement.
6 Therefore, we could not certify that those items were
7 not included in the income statement. One of the
8 problems we had with the income statement that in
9 December year 2000 there were no closing entries for the
10 year 2000. In the year 2001 in December, there were
11 closing entries, but there was no adjustment made for
12 only the nine months of the year 2001 results of
13 operations. So there are a lot of things going on in
14 the income statement and balance sheet that
15 misrepresents the books as I feel they should be
16 portrayed.

17 The casualty loss as it's recorded on the
18 books, they sent it to a third party, all of the
19 expenses for the casualty loss, the insurance company is
20 supposed to pay those and then put them back on the
21 book. That was such a black hole the company said they
22 did not want to include that in this rate case. It was
23 impossible to get to the numbers behind that, and so we
24 had to take the company on faith that they had removed
25 all of the inappropriate expenses from loss or from

4636

1 Whatcom County Creek. And, in fact, we did find out
2 that the company had expenses on the book for expenses
3 for Cross Cascade, which they had said were not included
4 in this case.

5 And so every time we turned around, we found
6 another situation where what the company portrayed the
7 books to be, that's not what they were.

8 Q. Are you familiar with Brett Collins' Exhibit
9 703-C where he sets forth his calculation of cost of
10 service?

11 A. Yes, I am.

12 Q. And in that exhibit, do you have that in
13 front of you?

14 A. I will in a minute. Can you tell me --

15 Q. Look at Schedule 1, page 1, of Exhibit 703.

16 A. I don't have the right exhibit -- yeah, which
17 one is it?

18 Q. 703.

19 A. Oh, his original?

20 Q. Right.

21 A. Oh, I'm sorry. What do you want me to look
22 at again?

23 Q. Look at Schedule 1, page 1.

24 A. I have that.

25 Q. Okay. The total cost of service there is

4637

1 \$56,535,000?

2 A. Are you talking about case 1 or case 2?

3 Q. Case 2.

4 MR. TROTTER: Excuse me, Your Honor, he may
5 not have the right exhibit. Can we go off the record to
6 make sure he does.

7 JUDGE WALLIS: Yes.

8 (Discussion off the record.)

9 BY MR. MARSHALL:

10 Q. On Schedule 1 of BAC-8C, 703-C, do you see
11 the total cost of service, the \$56,535,000 number?

12 A. Yes, I do.

13 Q. Okay. Do you believe any prior operating
14 losses are any part of that \$56 Million amount?

15 A. I don't know if they're there or not for the
16 same reason I gave a little while ago. This is based on
17 what the company calls test period, which is based on
18 budgets, which can't be audited, and so we don't know
19 what's included in that \$56 Million.

20 Q. Is there any prior operating loss that you
21 have determined that is in that figure, any specific
22 amount?

23 A. There is no amount that I have determined,
24 but there also may be an amount in there that I have not
25 determined, because I can not do either.

4638

1 Q. But you have looked for amounts that might
2 represent prior operating losses to determine --

3 A. I don't know how to do --

4 Q. -- to determine whether those were included
5 or not in that figure, correct?

6 A. No, I do not know how to look at a budget and
7 determine what's in it.

8 Q. But on the actuals in all the audited work
9 that you have done, you have looked to see if there are
10 any amounts that represent prior operating losses that
11 would have been included in that figure, correct?

12 MR. TROTTER: I will object to the question,
13 it assumes the Staff has audited the filing that was
14 made on June 11th. That's not a fact in evidence.

15 MR. MARSHALL: Actually, I believe that he
16 said he did do an audit; is that correct?

17 MR. TROTTER: My objection goes to this
18 exhibit which contains data outside of the time period
19 for which the Staff did its investigation.

20 MR. BRENA: I join in the objection. I think
21 the record should be clear with regard to what Staff did
22 and did not do when we switched cases, and this rebuttal
23 case is based on seven months up to April 2nd. And so
24 to the degree that Staff has looked at those actual
25 numbers, then that should be the inquiry. I think we're

4639

1 missing each other here.

2 JUDGE WALLIS: Mr. Marshall, do you want to
3 modify your question and start again.

4 MR. MARSHALL: Right.

5 BY MR. MARSHALL:

6 Q. My question I guess is a very simple one.
7 Have you determined that any amount in the \$56 Million
8 cost of service figure includes a prior operating loss?

9 A. I believe I answered that. I said I have not
10 determined that it includes or does not include a prior
11 operator loss.

12 Q. Just to be sure that we're clear on this, you
13 have uncovered no figure that represents a prior
14 operating loss that's in that amount?

15 A. Let me answer it this way. I looked at the
16 work papers provided to support this exhibit. Those
17 work papers did not allow me to make an audit of the
18 income statement and the balance sheet. I was not able
19 to determine what was in those seven months actual. In
20 those work papers, they did give me the balance sheet
21 balances for plant in service and accumulated
22 depreciation. In those numbers, I found the error in
23 the way that SeaTac was booked. I found an error that
24 the company in December 2001 had included Cross Cascade
25 in the plant in service and therefore had overstated

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1 depreciation by \$500,000. I also found that in March or
2 April, one of those two months, they corrected the error
3 five months later when the error should have been
4 corrected in the month that the error was made, because
5 then your balance sheet had been misstated for five
6 months. They did provide an income statement for seven
7 months actual. They provided no backup, how those
8 numbers were derived. We did not go to an audit on
9 those numbers, and I can not tell you what is included
10 or what is not included in the income statement and
11 balance sheets of Olympic except for those items I
12 discussed concerning Cross Cascade and the sale of
13 SeaTac.

14 Q. So on those issues where you found that you
15 determined that you needed to adjust for SeaTac and
16 Cross Cascades, you took care of that?

17 A. No, actually --

18 Q. In your case, in your response.

19 A. In my case I adjusted those.

20 Q. Right.

21 A. And in the company's rebuttal case,
22 Ms. Hammer said she adjusted correctly for SeaTac, but
23 the balance sheet didn't, so there's a conflict there.

24 Q. That was the \$5,000 amount?

25 A. No.

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1 Q. The \$15,000 amount?

2 A. No, Ms. Hammer said she made a \$10 Million
3 adjustment but didn't explain what it was. I assume
4 that these are the adjustments to the balance sheet that
5 needed to be made to state them correctly. She doesn't
6 state if she corrected the balance in every month and
7 came up with the appropriate amount for average monthly
8 average or what. I don't know what she did, because she
9 gave a flat number and did not explain it.

10 Q. But for your case, on SeaTac and Cross
11 Cascade, you have corrected for everything that you
12 determined that Ms. Hammer had done incorrectly or
13 Mr. Collins with regard to SeaTac and Cross Cascade?

14 A. That is not correct. Mr. Talley in his
15 testimony said that there were expenses on the income
16 statement associated with Cross Cascade. We were not
17 able to identify what those dollars are. Therefore, we
18 were not able to make that adjustment. But in my
19 testimony, I stated that there are expenses included in
20 the results of operations for Cross Cascade that we were
21 unable to adjust to.

22 JUDGE WALLIS: Mr. Marshall, we're looking
23 for a time to take the noon break --

24 MR. MARSHALL: Sure, this would be fine.

25 JUDGE WALLIS: -- when you reach a stopping

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1 point, and you say you have reached a stopping point.

2 MR. MARSHALL: Yes.

3 JUDGE WALLIS: So let's resume the hearing at
4 1:30 p.m., please.

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

6

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

8 (1:30 p.m.)

9 JUDGE WALLIS: Let's be back on the record
10 for our afternoon session. I wanted to acknowledge for
11 the record that we have received the revised Exhibit
12 Number 2116, which represents Olympic's actual capital
13 structure. That was distributed earlier today.

14 With that, let's return to the examination of
15 Mr. Twitchell.

16 Mr. Marshall, I believe we interrupted you.

17 MR. MARSHALL: Thank you.

18 BY MR. MARSHALL:

19 Q. Mr. Twitchell, I want to ask you some
20 background questions on what you were asked to do and
21 what steps you took to prepare your testimony. We have
22 already established that you were officially on board on
23 November 14th of last year, but you were in fact
24 contacted in June of 2000 by Mr. Colbo and some others
25 to see if you were interested in doing work in this

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1 area; do you remember that?

2 A. Yes, before I retired, I was approached by
3 Bob Colbo, Gene Eckhardt, and others to see if I was
4 interested in taking a look at this rate case.

5 Q. And then you officially started on November
6 14th, and who gave you that assignment on November 14th
7 and indicated what they wanted you to cover?

8 A. I answered that in my deposition. I guess I
9 can answer it here, but I hope I don't leave anything
10 out, because I answered it quite thoroughly there. The
11 assignment I received, Mr. Colbo sent me, Fed Ex'd the
12 work papers and testimony of Olympic Pipeline to read
13 before November the 14th, and I was supposed to come
14 down to the company on around the 13th and be involved
15 in a meeting. They then called me up and said no, they
16 weren't ready to sign a contract yet, so I said fine.
17 They called me back in on the 14th basically with
18 Mr. Colbo, and he said that because he works with
19 operating rates more than rate base, they wanted to have
20 somebody that had regulatory theory on rate base, so
21 they were interested that I look at the company's case
22 concerning basically rate base items. And then when
23 they finalized the agreement, I got that same
24 understanding from Mr. Eckhardt.

25 Now did I say more in the deposition; I don't

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1 remember.

2 Q. Well, on November 14th -- step back a minute.

3 The company filed its case and testimony and
4 exhibits in support on December 13th; do you remember
5 that?

6 A. I'm sorry, what was December 13th?

7 Q. December 13th, Olympic's direct testimony and
8 exhibits were filed.

9 A. I guess the case -- what was the case I had
10 in November then?

11 Q. That's my next question, what was the case
12 that you had in November?

13 A. It must have been the case that you withdrew
14 and then refiled. That's the only thing I can imagine.

15 Q. Did you also by November 14th -- by the way,
16 you were asked to take a look at the FERC methodology as
17 part of your assignment, right?

18 A. I don't think that's quite right.
19 Mr. Trotter, I couldn't think of your name for a minute,
20 Mr. Trotter did give me I believe six different orders
21 from court orders and FERC orders concerning 154-B and
22 told me that I might want to read those in preparation
23 for looking at the case.

24 Q. Okay. And in your deposition, they wanted
25 you to discuss the FERC methodology?

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1 A. No, they didn't.

2 Q. Okay. Could you turn to page 7 of your
3 deposition, which is Exhibit 1917.

4 A. What page, sir?

5 Q. Page 7.

6 A. Okay.

7 Q. At line 8 to line 13, the question was:
8 Did anybody tell you that you were to
9 find reasons not to adopt the FERC
10 methodology, for example.

11 Answer: No, they provided me with FERC
12 orders which I supplied to the company
13 and asked me to read them, asked me to
14 discuss the FERC methodology.

15 Do you see that?

16 A. Yes.

17 Q. Okay. Initially -- and this was at the
18 initial time when you were being given your assignment,
19 correct?

20 A. That's correct.

21 Q. Now -- and you were given some materials by
22 counsel on some FERC orders, correct?

23 A. That's correct.

24 Q. Did you do any independent research on FERC
25 orders yourself other than what was given to you? Did

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1 you look for any other court orders on your own?

2 A. Yes, I did research. No, I did not look at
3 any court orders on my own.

4 Q. You looked at what was supplied to you?

5 A. Yes, I did look at what was supplied to me,
6 but I did more than that.

7 Q. Now were you also given on November 14th
8 Olympic's petition for a policy statement and order
9 clarifying the Olympic Pipeline rate methodology?

10 A. I don't remember that title. If you showed
11 it to me, I can tell you if I have seen it.

12 Q. Okay. Let me hand it to you because it's on
13 file.

14 A. Yes, I have seen this.

15 Q. Was that listed among the things that you
16 looked at in your work papers?

17 A. It was not included in my work papers that I
18 supplied to the company. I figured this was part of the
19 documentation of this case, and I wouldn't need to
20 provide in my work papers all data request responses,
21 all orders, and everything else relating to this case.

22 Q. At the time you were given the assignment,
23 was it your understanding that Mr. Colbo was the only
24 one currently on Commission Staff who had worked on
25 Olympic's tariffs, oil pipeline tariffs, since 1983?

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1 A. No, it wasn't.

2 Q. Who else at the Commission had worked on that
3 who was currently on the Commission?

4 A. At the time I didn't know who had worked on
5 oil pipeline and if it was limited to Bob Colbo. I
6 since have come to know that Ed Nicola worked on it and
7 maybe others.

8 Q. Did you ever talk to Ed Nicola?

9 A. I have talked to Ed Nicola lots of times.

10 Q. But about this, of course.

11 A. No, I have not talked to Ed Nicola about oil
12 pipelines.

13 Q. Okay. So the only one that you have talked
14 to on Commission Staff that has had any background in
15 actually working on oil pipeline tariff filings has been
16 Mr. Colbo, true?

17 A. I don't know if it's true or not. I imagine,
18 I don't know if Mr. Trotter has any experience in that,
19 I don't know if Gene has any experience in that, I don't
20 know if other members of Staff have had experience in
21 oil pipeline or not, and I have talked to many Staff
22 members in the course of this case about the different
23 adjustments I have presented in this case.

24 Q. From what you understand, was there anybody
25 more knowledgeable than Mr. Colbo about oil pipeline

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1 tariff filings?

2 A. I don't know, but Mr. Colbo admitted to me
3 that he didn't feel qualified to take on oil pipeline
4 regulation because it involved rate base, and his
5 experience was with operating ratio, and that's why they
6 asked me to come in and take a look at it, because they
7 knew this would include rate base items.

8 Q. So my question was, was there anybody on the
9 Commission Staff other than Mr. Colbo who knew anything
10 more than Mr. Colbo?

11 A. I did talk to Danny Kermode, is that how you
12 say his name, Danny Kermode, and he provided me with a
13 stack of papers a foot and a half high on an ARCO
14 pipeline case that I honestly didn't have time to read,
15 and so he must have had some experience, because he had
16 that.

17 Q. Okay. As part of your review, did you look
18 at any of Mr. Colbo's prior memos or work papers on any
19 of the prior tariff filings by Olympic or any other oil
20 pipeline?

21 A. Yes, I did, because in the company's case,
22 they presented as exhibits Mr. Colbo's memos on prior
23 filings of Olympic Pipeline. So yes, I read those and
24 was aware of what was in them.

25 Q. And I'm not going to cover this again because

4649

1 it's in your deposition, but there were work papers that
2 you had not seen from a prior filing that you were shown
3 at your deposition?

4 A. At my deposition I was shown work papers of
5 Mr. Colbo's. I believe it was when he went to Texas to
6 look at the books and records. It wasn't -- it was
7 owned by a different company at that time. But no, I
8 did not look at those work papers.

9 Q. Okay. Now are you a lawyer?

10 A. I don't think so. No, I'm sorry, I'm not.

11 Q. Did you take notes on any of the cases that
12 you read that you were supplied other than in the
13 margins of the work papers, any separate notes?

14 A. Yes, I did, but I didn't do those until after
15 I provided you with my work papers, and you asked me at
16 the deposition, I made some very brief notes. I also
17 read the orders again, most of the notes I took were
18 underlining in those orders.

19 Q. Okay. You said among other things that you
20 have read the Williams case. Do you recall what the
21 Williams case said about the use of the parents' capital
22 structure?

23 A. No, you would have to give me a reference. I
24 read these orders that were provided to me and got a
25 very strong feeling that --

4650

1 Q. That was just a simple question. I mean --

2 A. Oh, I thought you wanted to know what I did.

3 Q. No, I asked you, did you read the Williams
4 case about the use of the parents' capital structure. I
5 think your answer is you don't recall.

6 A. I did.

7 MR. TROTTER: Your Honor, excuse me, the
8 question was whether -- I don't think that was the
9 question, and if we could have an order number instead
10 of a reference to title, that might help refresh the
11 witness's recollection, and he can review the order
12 again if we need something read into the record.

13 Q. Do you recall -- turn to your deposition,
14 page 34. The question I asked is:

15 Well, let me ask you about the Williams
16 case in terms of how it suggests debt
17 owed to the parents of an oil pipeline
18 company be treated. Do you know how the
19 Williams case treats that for capital
20 structure purposes?

21 And you answered after an objection:

22 I don't remember the details of what I
23 read here. I read it so that I would be
24 familiar with what was going on, and
25 then I had to get on with the duty of

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1 understanding the company's case.

2 Was that your understanding at the time of
3 your deposition on June 5th?

4 A. That's my exact words that I used in the
5 deposition on the 5th.

6 Q. Now have you talked to anybody live at the
7 FERC about the FERC methodology?

8 A. That question was also asked on deposition.
9 I said no, but I have been on Internet and tried to get
10 information from the FERC.

11 MR. BRENA: Your Honor, if I may --

12 Q. And you were unsuccessful?

13 MR. BRENA: If I may, we are just repeating a
14 deposition that is going to be offered into the record.
15 I thought that it was the practice of the Commission not
16 to sit here and just reask what has already been deposed
17 on.

18 JUDGE WALLIS: Mr. Marshall, if these
19 questions are preliminary--

20 MR. MARSHALL: They are preliminary, it will
21 take very little time to go through these.

22 JUDGE WALLIS: Very well.

23 MR. MARSHALL: And then the deposition may or
24 may not be admitted in any event, and I am using the
25 deposition more for purposes of refreshing the witness's

4652

1 recollection. It wasn't my exhibit. So if somebody
2 else chooses to introduce it, that's their choice later
3 on.

4 BY MR. MARSHALL:

5 Q. So did you ever connect with anybody on the
6 Internet at the FERC?

7 A. No, I didn't.

8 Q. Okay. Have you talked to anybody who has
9 been retired from the FERC who knows about methodology?

10 A. No, I have not.

11 Q. And is this the first oil pipeline case you
12 have worked on in your career?

13 A. Yes, it is.

14 Q. And have you ever talked to anybody before
15 this case who operates an oil pipeline company?

16 A. I don't know.

17 Q. You're not familiar I take it with oil
18 pipeline operations, financing, structure; is that true?

19 A. I'm more aware of it now that I have worked
20 this rate case than I was before.

21 Q. But you made no special study or systematic
22 study of oil pipelines to find out how they're financed
23 typically and historically, correct?

24 A. No, I did not.

25 Q. And if someone were to say Olympic's policies

4653

1 are not prudent compared to other oil pipelines in the
2 United States, you wouldn't be able to offer an opinion
3 on that one way or the other; is that right?

4 A. That's correct.

5 Q. You're not an expert on FERC methodology,
6 true?

7 A. I'm becoming one. I don't know if I'm there
8 yet or not, but I know a lot more about it now than I
9 did six months ago.

10 Q. Okay. Could you turn to your deposition,
11 page 15.

12 A. (Complies.)

13 Q. Excuse me, page 46.

14 A. I'm there.

15 Q. Line 20.

16 A. I have it.

17 Q. Did you give the following answer to the
18 following question?

19 Question: You're not an expert on FERC
20 methodology, true?

21 Answer: That's true, I do not set
22 myself up as an expert.

23 A. That's exactly what I said.

24 Q. And turn to page 74 of your deposition.

25 A. (Complies.)

4654

1 Q. Did you give the following answer to the
2 following question?

3 Question: Are you an expert on FERC
4 methodology?

5 Answer: Absolutely not.

6 Did you give that answer?

7 A. Yes, I did.

8 Q. Are you a CPA?

9 A. No, I am not.

10 Q. Are you familiar with the accounting approach
11 that the FERC requires oil pipelines to use, which is
12 the Uniform System of Accounts?

13 A. I'm aware that they use the Uniform System of
14 Accounts as prescribed by FERC.

15 Q. But are you familiar with that Uniform System
16 of Accounts; are you an expert in that?

17 A. I have looked at the company's books. I am
18 aware of how they use the Uniform System of Accounts. I
19 do not set myself up as an expert in being able to keep
20 books under the USOA, no.

21 Q. Have you ever performed a cost of service
22 calculation based on FERC 154-B methodology?

23 A. No, I have not except for this case, but I'm
24 not sure this case is on 154-B.

25 Q. Did you apply the FERC 154-B methodology to

4655

1 Olympic's case?

2 A. No, I didn't. I looked at Olympic's case and
3 judged it on its merits.

4 MR. MARSHALL: I have no further questions.

5 THE WITNESS: Do you want this back?

6 MR. MARSHALL: You can have that.

7 THE WITNESS: Thank you.

8 JUDGE WALLIS: Mr. Finklea.

9 MR. FINKLEA: No questions.

10 JUDGE WALLIS: Mr. Brena.

11 MR. BRENA: Two, Your Honor.

12

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

14 BY MR. BRENA:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. I would like to draw your attention to
18 Exhibit Number 1916, which is the declaration by you and
19 Mr. Colbo in support of the Staff's motion to dismiss.

20 A. I have it.

21 MR. MARSHALL: Your Honor, this wasn't
22 covered by direct. I think this is friendly cross as
23 well. This is not within the scope.

24 JUDGE WALLIS: Mr. Brena.

25 MR. BRENA: What was the objection?

4656

1 MR. MARSHALL: Beyond the scope, friendly
2 cross.

3 MR. BRENA: I just asked him to turn to the
4 page.

5 MR. MARSHALL: But that entire exhibit, the
6 page that you have asked him to turn to is beyond the
7 scope.

8 JUDGE WALLIS: We might as well face the
9 issue now.

10 MR. BRENA: Okay.

11 CHAIRWOMAN SHOWALTER: What was the exhibit
12 number though?

13 JUDGE WALLIS: 1916.

14 MR. BRENA: The beyond the scope, he was
15 asked a series of very broad ranging questions, and he
16 solicited a series of responses with regard to what
17 numbers he relied on and didn't rely on and his
18 characterization of what numbers the Commission should
19 rely on and what efforts they went through in order to
20 put a case forward before this Commission. This is his
21 -- this is a declaration that sets those facts forward.
22 My total inquiry is to ask him if this declaration
23 continues to be true today.

24 MR. MARSHALL: Well, this declaration is part
25 of a series of declarations and responses. It's already

4657

1 on file. And if the only question is, is this
2 declaration true today, if that's the single question
3 that the witness can give a single word answer to,
4 that's fine. But otherwise, we're just going to go down
5 a path where it's beyond the scope and rearguing an
6 issue that has already been submitted to the Commission
7 in the past. And other responsive -- other responsive
8 declarations which have been filed in this have not been
9 obtained because this came to us today.

10 MR. BRENA: This didn't come to anybody
11 today. And with regard to whether it's beyond the scope
12 or not, I have responded to that.

13 JUDGE WALLIS: Yes, this is one of the
14 documents that Tesoro provided on approximately June
15 14th.

16 (Discussion on the Bench.)

17 JUDGE WALLIS: The objection is overruled.
18 Mr. Brena, you may ask your question.

19 BY MR. BRENA:

20 Q. Do you have the declaration in front of you?

21 A. I have it in front of me.

22 Q. Are the things that you said that you stated
23 in that affidavit, do they continue to be true today?

24 A. Yes, but in working with the company, the
25 Staff accepted their answer even though it wasn't

4658

1 complete for purposes of moving forward.

2 Q. Okay. I would like you to turn to Exhibit
3 1917, your deposition.

4 JUDGE WALLIS: Mr. Brena, we're having
5 trouble hearing you.

6 Q. I would like you to turn to --

7 JUDGE WALLIS: I'm having trouble hearing
8 you.

9 Q. I would like you to turn to Exhibit 1917 in
10 your deposition. If you were asked these same questions
11 and answers today, would you give the same questions and
12 answers?

13 A. I'm not sure, because I have gained more
14 knowledge than I had at that time, and I think that's
15 been demonstrated by the answers that I have given
16 Mr. Marshall.

17 Q. And is there anything that comes to mind
18 outside of your questions and answers with Mr. Marshall
19 that would change your position?

20 A. It wouldn't change my position, but I have
21 gone back and read the orders that were given to me and
22 reviewed them more thoroughly. I have studied the
23 company's rebuttal case and listened to their witnesses
24 on cross-examination, which has increased my knowledge.

25 Q. Okay. Mr. Marshall asked you a series of

4659

1 questions with regard to their cost of service set
2 forward in their rebuttal case.

3 A. I remember that.

4 Q. 56,535.

5 A. Yes.

6 Q. Did Staff consider whether to update its case
7 with the new cost of service numbers that were contained
8 in the rebuttal case?

9 A. Considered, yes; decided to do it, no. The
10 reason why we decided to do it, because we felt the
11 interim case as presented, we had not audited the
12 results, we found errors in the calculations, we went
13 and sat down with the company and got through the
14 calculations in detail to understand them and found that
15 even though they had updated to seven months actual, two
16 months budget, and three months average, that we didn't
17 feel that their exhibit could be used for rate making
18 purposes because we couldn't audit it and confirm and
19 make necessary adjustments to the case.

20 JUDGE WALLIS: Excuse me, Mr. Twitchell, you
21 referred to the company's interim case, did you mean
22 their rebuttal case?

23 THE WITNESS: Thank you very much,
24 absolutely, I'm sorry.

25 BY MR. BRENA:

4660

1 Q. And you also started your answer by saying we
2 did do it, and I think you meant to say we did not, we
3 decided not to update our case to include the rebuttal
4 numbers for the reasons that followed.

5 A. Your question was did we consider doing it.

6 Q. Right.

7 A. My answer was yes. My answer that even
8 though we considered it, we decided not to do it for the
9 reasons I gave.

10 MR. BRENA: Okay, I have nothing further, and
11 I would move the introduction of 1916 and 1917.

12 JUDGE WALLIS: Mr. Marshall.

13 MR. MARSHALL: 1916 is already part of the
14 record. We would object to having that come in because
15 there are other responsive declarations that are
16 attached to that same proceeding. I think it's being
17 taken out of context.

18 JUDGE WALLIS: There's no objection to 1917?

19 MR. MARSHALL: No, the deposition, no.

20 JUDGE WALLIS: 1917 is received.

21 Mr. Brena, a brief response.

22 MR. MARSHALL: So long as it's understood
23 that the exhibits to 1917 also come in. Otherwise, the
24 testimony doesn't make much sense.

25 JUDGE WALLIS: Are the exhibits attached?

4661

1 MR. MARSHALL: Mr. Twitchell has two
2 attachments, Exhibit 1, Exhibit 2, I don't believe that
3 they're attached, but they should be, because without
4 them, the testimony is unintelligible.

5 JUDGE WALLIS: Let's be off the record for a
6 moment.

7 (Discussion off the record.)

8 JUDGE WALLIS: During a brief off the record
9 discussion, it has been determined that the document in
10 question that is work papers to Mr. Twitchell's exhibits
11 in deposition are an attachment to a proposed exhibit,
12 the deposition of Mr. Colbo. And by agreement of the
13 parties, the work papers will become an attachment to
14 Mr. Twitchell's Exhibit 1917, which is received in
15 evidence, and the work papers will then be referenced
16 rather than included in conjunction with an offer of
17 Mr. Colbo's deposition.

18 MR. MARSHALL: Correct. And just to clarify
19 the record, the exhibit we're talking about is
20 identified in the deposition of Mr. Twitchell as
21 Twitchell Exhibit Number 2.

22 JUDGE WALLIS: Very well.

23 Back to Exhibit 1916 for identification,
24 Mr. Brena, would you respond briefly to Mr. Marshall's
25 concerns.

4663

1 MR. FINKLEA: Your Honor, I don't have a
2 Latin response, but it does seem to me that as long as
3 it's in the pleadings file, we don't need it two places.
4 And as you noted earlier, the voluminous nature of this
5 record is already noteworthy.

6 JUDGE WALLIS: The record is voluminous. It
7 is available in other places. At the same time, there
8 is sometimes an advantage to having documents available
9 in numbered order so they're easily found for reference.
10 The objection is overruled for the reasons stated by
11 counsel, and 1916 is received.

12 Now are there other questions from counsel?

13 Questions from the Bench?

14

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

16 BY CHAIRWOMAN SHOWALTER:

17 Q. Mr. Twitchell, this morning when you started
18 out in surrebuttal you said that for a variety of
19 reasons you felt -- you feel that the company's case is
20 not dependable or its numbers are not reliable, and
21 therefore we can not rely on it, but that the Staff had
22 put together as sound a presentation as the Staff could.
23 Is that an approximate paraphrase of what you said?

24 A. Yes, it is.

25 Q. All right. Taking the first clause of that

4664

1 thought, if you are correct that the company has not put
2 on an adequate case here with dependable numbers, if
3 you're correct, then the Commission would have two
4 choices, end the matter because there was not an
5 adequate case, or assemble and review whatever reliable
6 evidence there is, whether from the company or other
7 parties, and do the best job it can. There may be other
8 choices, but I'm focused on the latter possibility. My
9 question is, is the evidence that you and the Staff have
10 given and the evidence that you have relied on in your
11 opinion sound enough for us to make such a decision?
12 You said it was the best you could do, but you did not
13 say it is --

14 A. Are you through? I wasn't --

15 Q. I wasn't quite through. But you didn't say
16 that the Staff's case with other evidence in this case
17 is sufficient for us to adopt the Staff's position, and
18 I just want to hear what your opinion on that is, if you
19 can give it.

20 A. Okay. The rate base, I believe we have been
21 able to make the corrections to the balance sheet, that
22 the numbers that we included in the rate base as
23 adjusted fairly represent the situation the company is
24 in. That comes from the balance sheet. The test period
25 that the Staff used for the year 2001 are books I feel

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1 we have been able to make enough adjustments to that to
2 say even though there are problems that we could not
3 resolve, it's good enough that you can make a decision
4 from that.

5 When you then start making the restating
6 actual and pro forma adjustments to the per booked
7 figures, that's where the Staff got in trouble, because
8 all of their adjustments are based on budgets, and there
9 was no way we could confirm or convert what should be
10 used for expenses. We did look at the operating
11 expenses in prior years. And if you will look at my
12 Exhibit 1910, it has a history of revenues and expenses
13 for the last 20 years. And if you will notice the
14 second page of that exhibit, the operating expenses for
15 the last -- from 19 -- in 1996 was \$25 Million. In '97
16 it was \$26 Million. In '98 it was \$22 Million. In '99
17 it was \$24 Million. And then after the explosion, it
18 went to \$41 Million and \$38 Million. That demonstrates
19 to me that something is going on here that isn't normal
20 operating results of operations. It sounds like because
21 of the explosion or for whatever reasons, they have a
22 tremendous construction program or deferred maintenance
23 program that they're now putting on the books.

24 The Staff can not say that those items should
25 not be done, but for rate making it should be normalized

4666

1 and look forward what the expenses should be in the
2 future at a reasonable rate. And \$41 Million and \$31
3 Million is obviously not correct. So we took a look at
4 their budgets, we noticed that several of their expenses
5 were very high. We looked at their budgets, tried to
6 determine from their budgets what was proper about those
7 expenses. We talked with engineers on the staff from
8 pipe safety, and we made our best effort to adjust those
9 items that we felt were -- should not be included as an
10 expense in a rate case and tried to present it at a
11 level that we thought was -- would be fair, just, and
12 reasonable.

13 Even though for accounting purposes they
14 might expense some of those items, for rate making
15 purposes those items should be normalized by either
16 amortizing them over five years or capitalize them and
17 then depreciate them over the normal life of the plant,
18 which the company had not done. And so we did the best
19 effort we could to look at those budgets without being
20 able to go and find out was the pipe 1000 feet, was it
21 900 feet, was it 600 feet, was there a mountain on top
22 of the pipe, was it out in the middle of someone's back
23 yard. We couldn't determine that because there was no
24 facts.

25 I hope that answers your question.

4667

1 Q. Well enough, thank you.

2 I want to ask you regarding your testimony
3 about the interim order, I'm not sure I understood your
4 implication, but are you assuming that if our order says
5 subject to refund it means that there must be a refund?

6 A. No, I don't understand that at all, but legal
7 counsel told me that that's what your order says.

8 CHAIRWOMAN SHOWALTER: I don't know if you
9 want to go into that.

10 MR. TROTTER: I will follow it up on my
11 cross.

12 CHAIRWOMAN SHOWALTER: Okay.

13 MR. TROTTER: Redirect.

14 BY CHAIRWOMAN SHOWALTER:

15 Q. Go ahead.

16 A. I feel that if you order a refund and I take
17 exception to what you say in the order, I should give
18 you a reason why I take exception to the order. And if
19 I don't do that, then you don't have the information you
20 need to change what you said in your order. But I do
21 not feel that because the Commission finds something to
22 be so in a case that that means it's cut in stone. It
23 means that if I take exception to what you said, I have
24 to explain why.

25 Q. But is your view that we did order refunds?

4668

1 MR. TROTTER: If the witness could refer to
2 that order and the specific language, that might get us
3 somewhere. This was also raised in the deposition, and
4 that might also help. But I think if he just refers to
5 the order, he can see the language that he was referring
6 to.

7 A. I have too many books, I had to remember
8 where it was. The order on page 19 at the very bottom
9 says:

10 Any revenues collected under this tariff
11 sheet are collected subject to refund
12 based on the level of permanent rates
13 found to be appropriate in the review of
14 the company's general rate proceeding in
15 Docket Number TO-011472. If refunds are
16 required, the company will pay interest
17 on the refunds based on the fair rate of
18 return determined by the Commission in
19 calculating permanent rates in that
20 docket.

21 Q. All right. And my question to you is, were
22 you thinking that that language is our determination
23 that refunds are required?

24 A. No, I think if the Commission takes a look at
25 this case and looks at the facts of what has happened

4669

1 with throughput, they will be able to make a
2 determination if the company has had earnings sufficient
3 to cover normal operating expenses and if a refund
4 should be granted or not.

5 Q. All right. So is it your understanding that
6 what that order means is that the interim amounts are
7 subject to refund but that a decision of whether to
8 require a refund is not made in that order but could be
9 made later?

10 A. That's exactly how I understand it. You were
11 actually -- I feel you were putting the company on
12 notice, these are subject to refund if we so choose, but
13 we can do what we want to still.

14 Q. Okay, thank you.

15 You gave some testimony about using end of
16 period CWIP. And I believe you said that it would --
17 it's the extreme case when we -- when the Staff would
18 suggest that be included. Am I right so far?

19 A. Yes.

20 Q. All right. Can you tell me why you did
21 choose to include it in this case?

22 A. I would refer you to my testimony, but I will
23 basically say the same thing again here, and the answer
24 is that it's non-revenue producing. The plant that the
25 company is now putting into the rate base is because of

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1 problems with the pipeline and lack of maintenance in
2 years past, and so now they're bringing the pipeline up
3 to the maintenance level it should be. The maintaining
4 of that pipeline will not increase the flow of
5 throughput. It will have absolutely no impact on
6 revenues unless you increase tariffs. And since that is
7 the case, there's no way the company can get a return on
8 that plant, because it won't increase the throughput.
9 Therefore, it's appropriate to consider it as
10 non-revenue producing and include it in the rate base so
11 they can make a return on it going into the future.

12 Q. So what is extreme or unusual about this case
13 is the functioning of the pipeline or the
14 non-functioning of the pipeline?

15 A. The function of the pipeline because of the
16 circumstances it finds itself in. The Whatcom County
17 Creek caused a great deal of difficulty. They then had
18 to do some special testing on the line that showed that
19 their maintenance wasn't what it should be, so they had
20 to do a crash program of maintenance that is not normal.
21 That makes it very unique and not a normalized
22 situation, therefore they should be able to make a
23 return on it. And if you don't let them have a return
24 on that, then they have to turn right around and ask for
25 a new rate case so they can make a return on it. And

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1 it's not the Staff's position to increase regulatory
2 lag, it's to delay it, and so that's what we're trying
3 to do in this case is to eliminate as much regulatory
4 lag as we can.

5 Q. All right. And speaking of regulatory lag,
6 Mr. Fox was concerned about regulatory lag and the lag
7 between spending new funds and coming in and getting
8 them into rate base. If we complete this rate case with
9 a rate based on the evidence in this case, will we be up
10 to date more or less so that a later expenditure of
11 funds is simpler to address than if there had not been a
12 completed rate case for some years?

13 A. Yes, I think the experience of this rate case
14 I hope has increased the awareness of the company, the
15 Staff, and the Commission of the situation this company
16 is in. And to follow this rate case up with a new rate
17 case with audited books, with normalized adjustments
18 that can be supported, with pro forma adjustments that
19 can be supported, it would be much easier now to present
20 that case according to FERC's definition of what a base
21 period is and a test period is as well as what the
22 Commission's test year is with restating actual and pro
23 forma, and both -- that's just two ways of saying the
24 same thing. So it's my opinion that the company should
25 have a better feel of presenting a case and be able to

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1 do a much better job.

2 Q. Okay. Could you turn to page 8 of your
3 testimony.

4 A. I have it.

5 Q. On lines 17 and 18, you have a sentence:
6 The return should be competitive enough
7 to allow the company to attract
8 sufficient external capital at
9 reasonable terms to meet its obligation
10 to provide services.

11 I wasn't clear whether this part of your
12 testimony was simply an explication of general rate
13 making principles or whether you are also the witness
14 for me to ask the question, is the Staff rate or the
15 rate that would be produced from the Staff
16 recommendation competitive enough to allow the company
17 to attract sufficient external capital?

18 A. Okay, let me answer that twice. This is an
19 explanation of regulatory theory that is my
20 understanding of regulatory theory as it should be
21 presented. That question has been answered by
22 Mr. Wilson's testimony, and his testimony as I
23 understand it, I think Ken Elgin too, basically says
24 that the rate of return they're offering applied against
25 the rate base will provide the company with adequate

4673

1 funds.

2 Q. All right. Could you turn to page 20.

3 A. (Complies.)

4 Q. The question at line 2 is:

5 Did Olympic actually defer on its books
6 any portion of its return.

7 And you answered no. How did you determine
8 that they did not defer?

9 A. The way I determined that is that the books
10 and records do not have this. In the company's case,
11 they presented the base year with that included as a
12 line item, but on their books it's not there. So in
13 effect, they have presented the base year as if it's per
14 books, and it's not. In my Exhibit I think it's 1903, I
15 provide what the company's books actually show, which we
16 received from Data Request 303. 303 shows the revenues
17 and expenses, and that item is not included on their
18 books.

19 Q. All right. My last question is on page 47,
20 and I'm looking at lines 15 to 21, and I have to say
21 this paragraph gave me a headache until I figured out
22 the difference between the sentence on line 17, which
23 says the FERC method allows the company a return on this
24 non-investment, and the sentence on 19, which is thus
25 the FERC methodology does not allow the company a

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1 return, and I see it now, of this non-investment.

2 A. That's very critical, of the non.

3 Q. And so your point is this is inconsistent and
4 not rational rate making theory. And I have a grasp
5 that that seems to be inconsistent, but could you
6 describe to me in a little more -- with a little more
7 meaning I guess why that is not rational.

8 A. In any company, they have rate base. The
9 rate base should represent the assets that the company
10 is using to provide service, and they have borrowed
11 funds or used their own funds to build that plant. The
12 company is entitled to recapture that plant as it's used
13 up. They receive the money for that investment through
14 depreciation, and so as it's depreciated, they record it
15 as an expense, which is a non-cash item. And so in
16 revenues, they get the revenues that they can then use
17 to invest in other plant. That's one way the cash flow
18 is used. And so the plant is the return to them that
19 they have invested.

20 Now because they have invested their money in
21 the plant, they're entitled to a return on that
22 investment, and that's the rate of return. It gives
23 them a return of debt and equity, so they get their
24 interest expense, plus the return they're entitled to on
25 equity. So not only do they have the plant returned to

4675

1 them, but they receive a return on that.

2 Now if we put something in the rate base that
3 investors did not invest and you don't give them a
4 return on it, I mean if you don't give them a return of,
5 that's okay. But if you don't give them a return of,
6 why should you give them a return on when they didn't
7 invest it or vice versa. If you give them a return on
8 but not a return of, it's not logical, because it's
9 either theirs or it's not.

10 Q. All right. But then it seems inconsistent to
11 give a return on but not of or vice versa, but isn't
12 your point that it's not rational to give a return on or
13 of on something that's not invested?

14 A. That's exactly my point.

15 Q. So it's not really the inconsistency, it's
16 that the treatment is of something you're calling a
17 non-investment.

18 A. That would have improved my testimony, thank
19 you.

20 CHAIRWOMAN SHOWALTER: Well, thank you,
21 that's all I have.

22 COMMISSIONER HEMSTAD: I don't have any
23 questions.

24 COMMISSIONER OSHIE: No questions.

25

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

2 BY JUDGE WALLIS:

3 Q. Mr. Twitchell, you referred this morning I
4 believe to the effect of throughput assumptions and a
5 change that you made in your testimony or exhibits
6 related to that; is that correct?

7 MR. MARSHALL: It's power.

8 A. No, it's not correct. I did not make a
9 change to my throughput, but we did make an adjustment
10 as counsel just stated on power supply. Mr. Colbo went
11 into his exhibits and gave effect of the order the
12 Commission had just granted to Puget in increasing their
13 rates. That effect we then put through all the
14 exhibits, and that increased the revenue requirements
15 for interest in Washington from 80,000 or 78,000,
16 whichever number you had, to 161,000.

17 Q. Could you identify the adjustments that were
18 affected by that change?

19 A. I would want -- I probably could do that, but
20 Bob Colbo made those adjustments, and I really think
21 that he ought to support those.

22 Q. We will ask Mr. Colbo, thank you.

23 JUDGE WALLIS: Are there follow-up questions?

24 MR. MARSHALL: Yes, just a couple.

25

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

2 BY MR. MARSHALL:

3 Q. When Chairwoman Showalter asked you about the
4 end of year period, do you remember that?

5 CHAIRWOMAN SHOWALTER: CWIP.

6 A. Oh, right, sorry.

7 Q. The end of year period just to be clear is
8 the end of 2001; is that right?

9 A. In the company's case, we used the test
10 period for the 12 months ending December 31st, 2001. So
11 the balances that we include are December 31st, 2001.

12 Q. And that's Staff's calendar year 2001
13 testimony?

14 A. That is correct.

15 Q. That matches with Staff's other testimony?

16 A. What other testimony?

17 Q. Staff selected a 2001 calendar year test
18 year.

19 A. That's correct.

20 Q. So this end of period matches with that
21 calendar year test period?

22 A. Oh, I think I understand what you're getting
23 at. No, that was the dilemma. An income statement is
24 for a period of time, and for rate making purposes you
25 take 12 months. A balance sheet is for a point in time.

4678

1 And so in order to compare the balance sheet to the
2 income statement, you have to take average, monthly
3 average balance sheets for the 12 months, so it's
4 comparative and matches with the income statement. That
5 is the preferred way of the matching principle for
6 revenues, expenses, and rate base.

7 In this case, because of the unique nature of
8 the plant that is going into service right now that is
9 non-revenue producing, we recommended not to violate
10 that principle of matching for the sake of prudence that
11 the company needs to make a return on this plant to
12 mitigate regulatory lag. So no, we're not matching.
13 But yes, we're trying to be reasonable in our approach.

14 Q. Just happens it's the same end of calendar
15 year period as the end of the Staff test period, end of
16 2001?

17 A. I don't know what you mean that it just
18 happens to be, we chose that to be the end of period
19 because that's the data we had available.

20 Q. Right.

21 A. On income statements and balance sheets.

22 Q. Right. Now since that time, since the end of
23 December 2001, there have been other investments made in
24 plant that are not revenue producing; is that fair to
25 say?

4679

1 A. I would imagine so.

2 Q. And those aren't being captured by this end
3 of period adjustment that you're talking about.

4 Everything since January 1st, 2002, is not captured by
5 what you described to Chairwoman Showalter, true?

6 A. Yes. Anything that has been invested in
7 either as an expense or capitalized as -- I mean
8 capitalized or expensed that should have been
9 capitalized is not included in this end of period amount
10 after the date of January 1st. If -- well, I will leave
11 it there.

12 Q. So there would be some regulatory lag.
13 Assuming that there are some capital investments that
14 have been made since January 1st, 2002, that is not
15 captured in this end of period adjustment or any other
16 part of this case, true?

17 A. Yes, regulatory lag is something that I think
18 is a good thing. Regulatory lag means that for the
19 period of time of the regulatory lag, if the company is
20 not making its authorized rate of return, then the
21 company has a responsibility to cut back on their
22 operating expenses so they do make them, so it makes
23 them a mean, clean, operating machine.

24 Q. My question is simply, everything after
25 January 1st is not included by way of new capital

4680

1 investments?

2 A. And rightfully so, it shouldn't have been.

3 Q. Please turn to your deposition at page 51,
4 and you answered some questions by Chairwoman Showalter
5 about what you understood their interim order to do with
6 regard to your position on refund, and I just want to
7 ask you --

8 A. What page is that?

9 Q. Page 51, line -- the whole page, but I
10 believe that after an objection you began to answer at
11 line 17:

12 Did you get that, following answer:

13 Yes, I did, but in reviewing the interim
14 order that superseded what I was
15 thinking would be appropriate at the
16 time, the interim order basically states
17 on page 19, I believe, that any revenues
18 collected under this tariff sheet are
19 collected subject to refund on the level
20 of permanent rates found to be
21 appropriate. And after reading that and
22 reviewing my testimony, I realized I was
23 in conflict with what was in that order.

24 And then you went on again at page 52 to give
25 your rationale beginning on line 15. Were those the

4681

1 only reasons that you gave at the time for changing your
2 testimony about the refund was the review of the
3 Commission's order?

4 A. I think the deposition will speak for itself.
5 I said what I said there.

6 Q. Fair enough. Now with regard to the starting
7 rate base, you have heard that referred to, there was a
8 couple of questions on that, as the transitional
9 starting rate base.

10 A. Yes, I have.

11 Q. And do you recall what it was in transition
12 from?

13 MR. TROTTER: I will object, this is beyond
14 the scope of cross. The Chairwoman simply asked whether
15 starting rate base had been booked or not, and
16 Mr. Marshall could have engaged in this earlier and
17 elected not to.

18 MR. MARSHALL: Talked about whether it was
19 invested or related to investments or not. That was the
20 question.

21 MR. TROTTER: I withdraw my objection.

22 JUDGE WALLIS: The witness may respond.

23 A. Yes, I do.

24 BY MR. MARSHALL:

25 Q. Transitional from the valuation method where

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1 the property was valued including a component of
2 replacement value and fair market value; was that the
3 transition?

4 A. I don't think that states the whole facts.
5 Do you want me to state them?

6 Q. Is it your understanding that the
7 transitional starting rate base is explained in the
8 154-B opinion by the FERC; is that where you find the
9 rationale for that?

10 A. You can find it there, but you can also find
11 it in the court orders that found fault with the way the
12 FERC was doing it.

13 Q. Do you think that the court has found fault
14 with the transitional starting rate base; has any court
15 found fault with that?

16 MR. TROTTER: I will object, it lacks
17 foundation, on the basis that no court has ever
18 considered it.

19 Q. Well, has any court ever found fault with
20 that whether -- to your knowledge?

21 A. It was my understanding in reading the orders
22 that I read that the ICC had been using the trended cost
23 rate base. That method was found to be lax, liberal,
24 and the ICC was brought to task and was told -- they
25 took regulation away from the ICC and gave it to the

1 FERC and told FERC that that approach was inappropriate
2 and the FERC would have to come up with a new method.
3 The FERC then picked up the ICC regulatory approach and
4 made some movement towards more rational rate making,
5 but not completely, and continued with methods that were
6 used by the ICC which were found to be inappropriate.

7 Q. My question was, has any court found the
8 transitional starting rate base to be inappropriate?

9 A. And my answer to that was, I don't know.
10 Counsel has just told me it's never been determined in
11 the court, but I do know that in my reading of the
12 orders and court cases that I read that there was a
13 great deal of doubt stressed on the ICC method of
14 regulation, and the FERC was told to clean it up.

15 Q. So the answer to my question is, you don't
16 know of any court that has taken exception to use by the
17 FERC of the transitional starting rate base, true?

18 A. All I can tell you is what I have read.

19 Q. Have you read any decision that takes issue
20 with the FERC's use of transitional starting rate base?

21 A. I have answered that, I believe. I have
22 read, and I listed those in my deposition what I have
23 read, where it takes exception to the way the ICC
24 regulated. If that was not in a court, then it was a
25 decision or an opinion stating that it had serious

4684

1 flaws. So I guess -- I'm not an attorney, and I haven't
2 interpreted on a legal basis, but as I read those
3 orders, I come to a very clear understanding that the
4 TOC was not an appropriate way to be doing rate making,
5 and the FERC was told to clean it up.

6 Q. Is it your understanding that TOC is the same
7 as transitional starting rate base, or do you know?

8 A. It's related.

9 MR. MARSHALL: No further questions.

10 MR. TROTTER: Thank you.

11 Mr. Twitchell, I think you referred --

12 MR. BRENA: I had a question.

13 MR. FINKLEA: And I had one as well.

14 MR. BRENA: Go ahead.

15

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

17 BY MR. FINKLEA:

18 Q. Mr. Twitchell, am I correct that the interim
19 rates in this proceeding went into place on February 2nd
20 of 2002?

21 A. That's my understanding.

22 Q. So if the Staff case is built on a 12 months
23 ending December 31, 2001, as long as the final rates in
24 this proceeding are at or below the interim rates, am I
25 correct that the "regulatory lag" is limited to one

4685

1 month?

2 A. No.

3 Q. Why?

4 A. Because that's only one factor to take into
5 consideration for regulatory lag. There's nothing in
6 this record to say what the company has actually earned
7 for the year 2000 and even for the year 2001. We have
8 -- rate making is prospective. We have taken a look at
9 the result of operations for the year 2001, made
10 adjustments that we thought were appropriate for
11 restating actual and pro forma for known and measurable
12 changes to show what their results of operations will
13 look like in the future. So we're stating based on our
14 adjustments, in the future, the company should be able
15 to cover their costs if those adjustments are accepted
16 by the commissioners and found to be fair, just, and
17 reasonable. Our case does not state anything to the
18 fact if the company has or has not recovered its
19 operating expenses through the year 2001 or through the
20 first few months of 2002. Our case just doesn't address
21 that issue.

22 Q. In your opinion, by having had interim rates
23 since February, has the concern about regulatory lag
24 been minimized?

25 A. Yes, it has, because the company has received

4686

1 some revenues. If, in fact, they weren't making their
2 authorized rate of return, then their loss would be
3 less. If, in fact, they have overearned, then they have
4 had no regulatory lag, and they're making in excess.

5 MR. FINKLEA: I have nothing further.

6 JUDGE WALLIS: Mr. Brena.

7

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

9 BY MR. BRENA:

10 Q. Mr. Twitchell, who has control over the
11 length of time a regulatory lag is lagged?

12 A. The company.

13 Q. And how is that?

14 A. I believe my testimony answers that
15 statement, and basically it's a company's responsibility
16 when they see that they're not making their authorized
17 rate of return to come to the Commission and ask for
18 rates to cover their operating costs and return on their
19 investment. If for some reason the company is in dire
20 straits, financial straits, they then have the option of
21 requesting from the Commission interim rates until such
22 time as they can demonstrate on the record the need for
23 revenues because of losses.

24 On the other hand, if the company is
25 overearning, they continue to collect those overearnings

4687

1 until such time as the Staff or the Commission brings I
2 believe it's called a complaint, that's a legal term,
3 against the company and presents a case where the burden
4 of proof is on the Staff to reduce their rates. And so
5 like I said earlier, regulatory lag has a way of making
6 the company not be geared to a rate of return, but to
7 make sure that their operations are sufficient to
8 maintain their plant but not excessive.

9 Q. So if there's a concern because of additional
10 investment and the company looks at its total picture
11 and decides that it's undercollecting, then the solution
12 to the problem is just to come in and file?

13 A. Well, I hope if there's additional
14 investments and they know they're going to have them,
15 then they can foresee that yes, we're going to put all
16 of this plant in and it won't be covered in our
17 additional rates. So it is their responsibility then to
18 present a rate case that will show the costs that are
19 known and measurable and not offset by other factors and
20 apply for rates so that they will be able to make a
21 return on that.

22 An example of that very issue was back in the
23 early '70's I worked at Pacific Power Light, and they
24 had just built the Centralia steam plant, which was \$40
25 Million. At that time, that was I think 50% of the rate

4688

1 base. The steam plant wasn't completed until after the
2 end of the rate case, but they came in and asked for
3 rates, the Staff made the recommendation that the steam
4 plant be included in rates so that the company would be
5 able to have an opportunity to experience its authorized
6 rate of return without being penalized for regulatory
7 lag.

8 Q. In response to my question, in part you said
9 to the degree that the increasing investment, the costs
10 associated with the increasing investment are not offset
11 by other factors. By that, is it fair to say that
12 potentially reducing costs coming out of a spiked period
13 or increasing throughput as Olympic returns to
14 normalized operations would be offsetting factors
15 against -- could be offsetting factors which would
16 perhaps prevent them altogether from coming in with a
17 filing?

18 MR. MARSHALL: Objection to the form of the
19 question as being leading and assuming facts not in
20 evidence. Assuming a normalized rate of pressure and
21 calling it known and measurable is not appropriate, it's
22 contradictory.

23 MR. BRENA: With regard to leading, yes, I'm
24 trying to --

25 JUDGE WALLIS: It is cross-examination.

4689

1 MR. BRENA: With regard to his confusion, if
2 Mr. Twitchell is similarly confused, I would be happy to
3 rephrase it.

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

6 THE WITNESS: I understood it, I was ready to
7 answer it, but I would like to hear it again before I
8 answer it.

9 BY MR. BRENA:

10 Q. You mentioned in response in part that
11 increasing investments could be offset by other factors.
12 In this particular case, is it possible that declining
13 operating costs as a result of coming out of an
14 extraordinary period and increasing throughput as a
15 result of a return to normal operations may offset
16 entirely the need for Olympic to come in and file an
17 additional rate case to capture their increasing
18 investment?

19 A. Let me answer it this way, the company -- the
20 Staff is certain that the company -- it's in their best
21 interest to get up to 100% pressure and throughput. The
22 quicker they do that, the more that they will be able to
23 collect in revenues, the more the parent company will be
24 able to ship their own oil and make their return on
25 that, and so there are offsetting factors as you move

4690

1 forward. That's one reason why I feel it would be
2 inappropriate to pick up CWIP or plant beyond December
3 31st, 2001, because we don't know when that throughput
4 is going to get to 100% pressure.

5 As far as cutting operating expenses, it's my
6 opinion that the operating expenses in this test year
7 are terribly high. Those operating expenses need to be
8 capitalized, bring those operating expenses down to a
9 reasonable normalized amounts, and so that would
10 definitely make it more -- make the company -- give the
11 company the opportunity to experience their authorized
12 rate of return.

13 And the throughput and the 100% pressure is
14 the same question except there's an element of when they
15 return to 100% pressure. At that time the company says
16 they will then begin to use Bayview, and at that time
17 they will be able to move I believe they have said
18 30,000 to 40,000 barrels a day, which will increase
19 their revenues and offset the investments they're making
20 in plant. So it's my opinion that the Staff has been
21 forward looking, as forward looking as they possibly can
22 in taking these factors into consideration to see that
23 the company doesn't experience regulatory lag or that
24 the company receives a windfall.

25 Q. Thank you. I just want to be sure the record

4691

1 is clear on a point. Chairwoman Showalter was asking
2 you in effect whether the record is sufficient to allow
3 the Commission to set rates, and you responded in part
4 that with regard to the rate base number, you felt that
5 it was sufficient to set rates, correct?

6 A. That's correct.

7 Q. And with regard to the test period that Staff
8 used, you felt that Staff was able to make enough
9 adjustments so that it would be sufficient for the
10 Commission to set rates; is that correct?

11 A. That's correct.

12 Q. Okay. It wasn't clear to me, you went on to
13 discuss the adjustments that the company made, I think
14 you said the restating the actual and the budget. What
15 I would like you to -- I would like you to continue that
16 response. Do you feel that the record is sufficient for
17 this Commission to set rates based on the company's test
18 year adjustments in either its direct case or its
19 rebuttal case? Would you address those two distinctly
20 from the other things.

21 A. I'm going to have to break that down. First
22 of all, your question makes me realize that I left an
23 important part of the equation out of an answer to the
24 Chairwoman. Throughput is a very critical calculation
25 for determining what revenues will be generated in this

4692

1 rate case. Even if the rate base is right and the
2 expenses are right, the revenues will determine by
3 throughput. There is a great deal of confusion on the
4 record about what that throughput should be. It's all
5 over the board. I feel the Staff has presented a
6 throughput number that is conservative, is a number that
7 should be used for using rates, so I feel they do have
8 on the record data sufficient to set rates.

9 Now to the question of the company's direct
10 case. Does a direct case have sufficient evidence for
11 the Commission to make a determination for setting
12 rates.

13 Q. Mr. Twitchell, if I could, and I will
14 certainly allow you to continue that, I don't mean to
15 cut you off, but my question was intended to focus on
16 the operating expense numbers and whether or not you
17 feel that the operating expense numbers that are in the
18 case are sufficient, not only with regard to the test
19 period that Staff used, but with regard to the test
20 period adjustments that the company has presented in its
21 direct case and also the test period adjustments that
22 they have presented in their rebuttal case.

23 A. I thought that's what I was addressing.

24 Q. Okay.

25 A. I was first going to address the direct case

4693

1 and then the rebuttal case, because each case has its
2 own problems.

3 Q. Okay.

4 A. The problem I have with the company's direct
5 case I have stated very clearly in my testimony. The
6 company -- the FERC requires the company to present a 12
7 month period stated actually on the accrual basis. They
8 are then supposed to make normalized adjustments to that
9 12 month period. And after they make the normalized
10 adjustments, they then call that the base year. The
11 company has not done that. They then are told to look
12 at revenues, expenses, and rate base items that will
13 change over the next 9 months and adjust that base year
14 for those changes, and that becomes the test period.
15 The company has not done this.

16 The company has presented a base year they
17 call it, and it is basically their books for the year I
18 believe October 1st through September 30th. They then
19 have a column that's called base period. Then they have
20 a column that says base period adjustments. Then they
21 have a column that says test period adjustments. And
22 then they have a column that says test period. Their
23 test period is their budgeted results, as they say here,
24 adjustments to base period for changes that are known
25 and measurable within 9 months subsequent to the base

4694

1 period. But what they have really done is picked up the
2 budgets through July 2002 with no testimony supporting
3 that except it's the budget. And they take their
4 budget, and they take what they call their base year,
5 which is actually their actual recorded data, and
6 subtract the difference and call them base period
7 adjustments and test period adjustments, which they have
8 not supported except for power supply and a couple of
9 other adjustments. But on the whole, they have said our
10 budgets are correct, therefore we're going to adjust
11 that, and they give no testimony for it. On top of that
12 -- and they don't list them as adjustments, they have
13 adjusted for the sale of SeaTac and included it as a
14 benefit to the rate payers, but nowhere do they show
15 what that adjustment is.

16 On top of that, they have included items
17 which they say the FERC 154-B allows for rate making
18 purposes. That is the writeoff of starting rate base,
19 deferred return, the amortization of the deferred
20 return, the impact of their interest expense, and a
21 calculation for AFUDC clear back to 1984, and they don't
22 have any records except for some work papers that
23 Mr. Collins has to support it. So they give no
24 testimony of why the starting rate base writeoff, the
25 deferred return, the AFUDC, or the amortization of the

4695

1 deferred return why it's appropriate except the FERC
2 allows it. Those aren't on their books, they're not --
3 they're not supported.

4 Nobody in the case says why they're right
5 except I guess I -- what I hear the company saying, that
6 if the FERC says it's okay, if the USOA system of
7 accounts says it's okay, if USOA says it's okay, if TOC
8 says it's okay, then that's all the justification you
9 need, you don't have to have a witness to explain it.
10 The problem I have with that, I can't put the FERC on
11 the witness stand, I can't put USOA on the witness
12 stand, I can't put 154-B on the witness stand. The
13 company has to provide witnesses to support those items.
14 They have not done that. They have just put them in the
15 record as if they were on their books, and they're not.

16 And so as I look at the direct case, they
17 have not provided enough information to justify what
18 they're asking for. That's exactly why we started with
19 books and then made adjustments that were appropriate.
20 I did not feel like those adjustments were appropriate.
21 The company had not supported them, so I didn't put
22 those into my case. So no, I do not feel the company's
23 direct case will support any kind of a rate case,
24 because they have not provided testimony and exhibits to
25 justify what they have done.

1 Not only that, their direct case has so many
2 problems with the books, I could probably list at least
3 20 items that we found on their books that are
4 inappropriate that cast great doubt on the books. The
5 company -- the Staff has tried to rectify that. So the
6 answer to the direct case, because of all those
7 problems, I don't feel the Commission has anywhere near
8 the information that they need to say what the company
9 has presented is right, because the company hasn't
10 presented it is right except, as I said, they say it's
11 because of USOA, FERC, 154-B, et cetera.

12 Now we move to the rebuttal case. The
13 rebuttal case the company recognized adjustments that
14 the Staff made and has tried to correct their direct
15 case. Ms. Hammer has made adjustments to the balance
16 sheet. She says it's two \$10 Million adjustments. She
17 doesn't explain what they are. Instead of using
18 budgets, they now use seven months actual, two months
19 budgets, and three months average. There's no way that
20 can be audited. It has the exact same problems with the
21 case that their direct case has, only now because of
22 Staff's testimony they now have presented testimony why
23 they included the starting rate base write-up, why they
24 include the deferred return, and why the Staff is wrong
25 in including it, and have tried very hard to now meet

4697

1 their burden of proof. The problem I have with the
2 burden of proof that they have met in the interim case
3 is that no witness says --

4 Q. Excuse me, you said interim case.

5 A. I'm sorry, I meant rebuttal.

6 Q. Rebuttal.

7 A. Thanks for correcting me, I don't want to
8 confuse the record.

9 The problem I have is that if you read their
10 rebuttal case, all the witnesses say either the staff
11 erred in the way they approached this, for whatever
12 reason, or the Staff didn't follow USOA or didn't follow
13 FERC, didn't follow 154. They say that 154-B says that
14 if you use that, you can establish fair, just, and
15 reasonable rates. Well, that's fine that it's written,
16 that's what it says, but the burden of proof is on the
17 company to make why that's so, not just because the FERC
18 said it. And so once again, the company has referred to
19 the USOA, 154-B, TOC, all these written documents that
20 say it's okay to do this, and that's their burden of
21 proof. I don't think that's accomplished that. I think
22 they missed the point.

23 I hope if they come back for another rate
24 case in the future that they will put witnesses on the
25 witness stand that can testify that their books are

4698

1 accurate on an accrual basis and give testimony for
2 every adjustment they make and not hide any of the
3 adjustments in the work papers. And I don't mean that
4 critical, but the adjustments they list in this case as
5 adjustments aren't all the adjustments they have made in
6 the case. It's a list of 17 of them, but there are
7 several adjustments that they claim are per books that
8 are not, and they haven't satisfied them.

9 So the answer is, I do not feel the company
10 has presented a case in the direct case or in their
11 rebuttal case that the Commission has enough information
12 to know if what the company is doing is right or not,
13 because the company hasn't stated that.

14 MR. BRENA: No further questions.

15

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

17 BY MR. TROTTER:

18 Q. Mr. Twitchell, I believe you used the term
19 ICC trended cost method, should that be the ICC
20 replacement value method or valuation method, fair value
21 method?

22 A. Replacement cost, yes, it's the ICC
23 replacement cost new that includes the TOC and the
24 starting rate base and other items. So you're right, I
25 misrepresented it.

1 Q. Mr. Marshall asked you several questions
2 about what you reviewed in learning about the FERC
3 methodology. Did you also, and I believe you may have
4 mentioned this, but did you also read the company's
5 direct case?

6 A. Yes.

7 Q. And did you also discuss the issues with
8 Mr. Collins and Ms. Hammer?

9 A. Yes, I asked them specific questions to
10 understand their representation of the case.

11 Q. And did you rely on material Olympic provided
12 you as support for their use of the FERC methodology?

13 A. Yes, I did.

14 Q. Are you aware that Mr. Smith, a witness for
15 Olympic, testified under oath in this proceeding when
16 asked whether he considered himself a 154-B cost of
17 service expert, "I would say I'm a conceptual expert on
18 it, not a detail expert on it"?

19 A. Yes, I'm very aware of that testimony.

20 Q. Are you aware of any witness in this
21 proceeding testifying on behalf of Olympic that has held
22 themselves out as a detail expert on the FERC
23 methodology that they are advancing?

24 A. No, and to my recollection, that question was
25 asked of each of the witnesses, and all of them denied

4700

1 being an expert on the FERC methodology.

2 Q. On the details?

3 A. On the details, yes, I'm sorry.

4 MR. TROTTER: Those are all my questions,
5 thank you.

6 JUDGE WALLIS: Is there anything further of
7 the witness?

8 Let the record show that there is no
9 response.

10 Mr. Twitchell, thank you for appearing today.
11 You are excused from the stand at this time. Let's be
12 off the record, please.

13 (Recess taken at 3:00 p.m.)

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