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5 EXHIBIT NO. MARKED: OFFERED/ADMITTED:

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1 PROCEEDINGS

2 JUDGE WALLIS: Commission staff has called to  
3 the stand at this time its witness Robert G. Colbo.  
4 Mr. Colbo, would you please stand and raise your right  
5 hand?

6 MR. COLBO: I testified in the interim case.

7 JUDGE WALLIS: Mr. Colbo indicates he has  
8 been previously sworn in this matter. We believe  
9 that's correct. I will remind you that you have been  
10 sworn.

11 In conjunction with Mr. Colbo's appearance  
12 today, the Commission staff has presented Exhibits  
13 2001-T through 2006 and has also presented a document  
14 including one page, revised Page 29 of 40 to Exhibit  
15 RGC 6-C, which is Exhibit 2002 for identification. In  
16 addition, Olympic has presented a document designated  
17 2007, and Tesoro has presented documents designated  
18 2008 and 2009 for identification. 2001 through 2007  
19 are identified in the record of the June 13  
20 administrative conference.

21 2008 is the deposition of Robert Colbo, June  
22 5, 2002. 2009 is the deposition Exhibit 1 of Robert  
23 Colbo, and in addition, we have marked as Exhibit 2011  
24 a four-page document presented by Olympic for possible  
25 use on cross-examination consisting of Pages 111, 212,

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1 213, and 220 of FERC Form 6, 1999 for Olympic.

2 Mr. Trotter?

3

4

5

DIRECT EXAMINATION

6 BY MR. TROTTER:

7 Q. Mr. Colbo, please state your name and spell

8 your last name.

9 A. Robert Colbo, C-o-l-b-o.

10 Q. Are you employed by the WUTC as a

11 transportation program consultant?

12 A. Yes.

13 Q. In the course of your duties in that

14 position, did you have cause to prepare testimony and

15 exhibits in this case?

16 A. Yes.

17 Q. Is Exhibit 2001-T your direct testimony?

18 A. Yes.

19 Q. Would you please direct us to a page where

20 you have an errata?

21 A. Page 18.

22 Q. On Page 18, focusing your attention on the

23 sentence that begins on Line 8 with the words, "no such

24 amount," and continues onto Line 9, should that be

25 stricken?

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1           A.     Yes.  I think the import of the statement is  
2     that Mr. Collins in his case should have removed the  
3     551,000 from his rate-base number.  That is an  
4     incorrect inference since his starting point was  
5     plant-in-service, which already excluded nonoperating  
6     plant, so that sentence is probably inappropriate.

7           Q.     With the striking out of that sentence, if I  
8     ask you the questions that appear in Exhibit 2001-T,  
9     would you give the answers that appear there?

10          A.     Yes.

11          Q.     In the course of that testimony, you refer to  
12     various exhibits you sponsor, Exhibits 2002 through  
13     2006; is that correct?

14          A.     Yes.

15          Q.     Are those true and correct to the best of  
16     your knowledge?

17          A.     Yes.

18                 MR. TROTTER:  Your Honor, I will address  
19     Exhibit 2010 in surrebuttal, so I will move at this  
20     time for the admission of 2001-T through 2006.

21                 JUDGE WALLIS:  Is there objection?

22                 MR. MARSHALL:  No objection.

23                 JUDGE WALLIS:  Let the record reflect there  
24     is no objection and the exhibits are received.

25          Q.     (By Mr. Trotter)  Mr. Colbo, I would like

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1 first to talk to you about throughput. You sponsor  
2 Staff's proposal for throughput in this case; is that  
3 correct?

4 A. Yes.

5 Q. Does Staff's proposed throughput figure  
6 include any barrels associated with Bayview being  
7 operational?

8 A. No.

9 Q. The next subject is advertising expenses.  
10 Mr. Cummings for Olympic testified that the \$19,636  
11 that you removed for advertising expenses in your  
12 adjusting RA-11 was for communications by Olympic to  
13 the public in compliance with the federal rules. Do  
14 you recall his testimony?

15 A. Yes, I do.

16 Q. How did he respond?

17 A. I reviewed the Company's response to Staff  
18 Data Request No. 333, and along with that notation with  
19 respect to the \$19,000 advertising that was disclosed  
20 to be an other-expense item.

21 Another part of the response of that data  
22 request was that there was \$90,090 of federally-related  
23 customer notification expenses also included in "other"  
24 expenses. So it seems to me that if there were  
25 federally-related customer notification expenses



4709

1 included within the 19,000, it would have been included  
2 with the higher 90,000 number. I don't see any  
3 evidence in that data response that indicates that any  
4 of the 19,000 relates to federally-mandated customer  
5 notification.

6 Q. If, in fact, these costs are as Mr. Cummings  
7 represented them, should they be allowed in Staff's  
8 view?

9 A. Yes.

10 Q. I would like to turn your attention to  
11 Bayview terminal and your power adjustment, and could  
12 you refer to your Exhibit 2010? In your Exhibit 2003-C  
13 at Page 29, was that the corresponding page for your  
14 power and DRA adjustment?

15 A. What page did you give me?

16 Q. 29.

17 A. Yes.

18 Q. At the time you prepared that page, did you  
19 know the correct amount of a rate increase for Puget  
20 Sound Energy that was pending at that time?

21 A. No.

22 Q. Do you know the rate increase now?

23 A. Yes. There was a settlement in that case,  
24 and the Commission approved the settlement, and there  
25 now are tariff pages that will go into effect effective

4710

1 July 1st with those approved rates.

2 Q. Does Exhibit 2010 take into account those new  
3 proposed rates for Olympic?

4 A. Yes, they do.

5 Q. How else is Exhibit 2010 different from your  
6 Page 29 of Exhibit 2003-C?

7 A. References made with respect to the Bayview  
8 expenses for power, and formerly, Bayview received its  
9 power under Schedule 49, but now, they've been  
10 converted over to Schedule 31, and that change is also  
11 noted on Exhibit 2010, and in that regard, there was  
12 testimony from a Company witness relating to a new  
13 schedule at Bayview, and I think it was Ms. Hammer, but  
14 I could be mistaken, and she made reference to a  
15 Schedule 13. I think she meant to say Schedule 31 is  
16 effective for Bayview. In any event, that's what I've  
17 given as effective in this schedule.

18 Q. Are there any other differences between  
19 Exhibit 2010 and Exhibit 2003-C, Page 29, or have you  
20 addressed the changes?

21 A. I think I have. With respect to that change  
22 at Bayview on Line 8, the new anticipated future power  
23 level for Bayview is \$125,105 rather than the \$259,372  
24 that I indicated on the original Page 29. I think that  
25 summarizes the differences.

4711

1 Q. Did the Company's power adjustment in its  
2 rebuttal case use the settlement rates that were  
3 approved by the Commission?

4 A. No.

5 Q. Is Olympic still relying on an  
6 energy-cost-per-barrel approach?

7 A. Yes. They rely on a cost-per-barrel  
8 approach. I've addressed the differences between a  
9 cost-per-barrel approach and segregating out the  
10 variable portion and the fixed portion in my direct  
11 testimony.

12 Q. Ms. Hammer in her rebuttal testimony, Exhibit  
13 801-T, Page 10, refers to the Company's new SAP  
14 accounting system. Do you recall that?

15 A. Yes, I do.

16 Q. She testified on that page that quote, Each  
17 entry made into the SAP modules has an electronic audit  
18 trail which allows users to trace back to the original  
19 source, unquote. And on that same page at the bottom,  
20 she said, quote, Each entry made in SAP can be traced  
21 back to the original source whether it's a depreciation  
22 table, a third-party vendor, or a journal entry,  
23 unquote. Do you recall that testimony?

24 A. Yes, I do.

25 Q. Did you visit the place where Company records

4712

1 were made available to you?

2 A. Yes. Mr. Twitchell and I visited the  
3 Eccenture accounting offices for Olympic in Houston,  
4 Texas in February of this year.

5 Q. Was that during a time when the SAP system  
6 was operational?

7 A. Yes.

8 Q. Did you find that the SAP system allowed you  
9 to trace all entries back to their original source?

10 A. That was not our experience.

11 Q. Can you amplify on that?

12 A. Well, there are documents that support the  
13 entries into the ledgers. A couple of examples I can  
14 cite to involve expenses where BP Pipelines pays the  
15 expense for Olympic and then passes that charge back to  
16 Olympic. The only document that deals with that is a  
17 two- or three-page document that is called a "cash  
18 call," and it says X number of thousands of dollars,  
19 and it got recorded in the expense, but there is no  
20 detail as to what the vendor is, what the project is,  
21 what anything is. It just says "cash call."

22 The other examples I can think of include, as  
23 I testified in my direct case, we asked specific  
24 verification questions as they related to the  
25 depreciation expense in the SAP system, and we were

4713

1 told that the basic raw data by asset is entered into  
2 the system along with its cost, the date it was placed  
3 in service, the depreciation rate and so forth, and  
4 that the system in turn based on that data generates a  
5 composite depreciation number. We were told while we  
6 were there that there was no way to break out and  
7 display by fixed asset what the detail of depreciation  
8 was.

9           The other example I can think of relates to  
10 outside services expense where there are individual  
11 entries that are recorded in outside service, and then  
12 the system, after the monthly entries are complete,  
13 goes in and pulls out entries that relate to fixed  
14 assets and entries that relate to major maintenance and  
15 puts them in a different account, but whereas there is  
16 detail shown on the original entry that went into the  
17 one-time maintenance account with respect to the  
18 project and the vendor and the amounts and so forth,  
19 the entries that pull out those summary numbers at the  
20 end of the month and put them in a different account is  
21 just a dollar amount. There is no way to track and  
22 verify between the two which vendors, which projects,  
23 the composite amounts that make up those totals.

24           So we asked a lot of questions about  
25 verification and tracking and trails through the system

4714

1 while we were down there, and the common response we  
2 got is, "We can't do that. The system won't allow us  
3 to do that. We can't drill down. There is no  
4 additional detail available." We were just running up  
5 against road blocks, so I take exception to her  
6 testimony in her supplemental rebuttal case.

7 Q. Was one of your assignments in this case to  
8 analyze the testimony exhibits and work papers of  
9 Ms. Hammer and Mr. Collins in support of both their  
10 direct and rebuttal accounting exhibits?

11 A. Yes.

12 Q. In either its direct or rebuttal case, did  
13 the Company present a restated and pro forma results of  
14 operations in the sense generally applied at this  
15 Commission?

16 A. No, I don't think that's the case. The  
17 Company started with their basic test year and then  
18 developed -- and they call that the base period, and  
19 then they developed test period numbers in most cases  
20 based on budget information.

21 In their direct case, it was budget year 2002  
22 information, and in their rebuttal case, it was actual  
23 results for the seven months ended April, and there was  
24 two months of budgeted numbers for May and June of  
25 2002, and then based on that nine-month accumulation of

4715

1 data, they extrapolated it out to 12 months. There  
2 were some exceptions to that, but basically, that's the  
3 approach they took. There was no tie-in between the  
4 base-period numbers and the test-period numbers. In  
5 effect, they have substituted either 100 percent  
6 budgeted numbers or a combination of budgeted and  
7 actual and estimated, and there is no tie-in between  
8 the base period and the test period.

9           The way the Staff has presented its case, we  
10 start with the actual test-year numbers, and in our  
11 case, it was for calendar year 2001. Then we made  
12 restating actual adjustments to that, and after you add  
13 the restating actual to the base period or test year,  
14 you get test year as restated. After that's done, then  
15 you develop the pro forma adjustments which give effect  
16 to known and measurable changes not offset by other  
17 factors.

18           When those pro forma adjustments are added to  
19 the test year as restated, then you are at the position  
20 of looking forward on a forward-looking basis as what  
21 you could expect the operating results of the Company  
22 to be in the future before consideration is given to  
23 whether rates are going to be approved or not. But in  
24 each step along the way, the test period as adjusted  
25 and pro formed is firmly rooted in the base-period

4716

1 numbers. We did not separately develop test-period  
2 numbers and plunk it in the test-period column. We  
3 started with historic actual results, restated them and  
4 pro formed them so that our forward-looking look is  
5 still firmly rooted in actual operating expenses.

6 Q. You indicated that the Company supplied as  
7 part of their rebuttal case actual results through  
8 April 2002. Do you recall that?

9 A. Yes.

10 Q. Has the Staff audited those actual results  
11 through April 2002?

12 A. No. There has been no time.

13 Q. Are you able to offer any restating  
14 adjustments to those results without an audit?

15 A. No. Neither to those actual results nor to  
16 the budgeted results for the months of May and June.

17 Q. In your 30 years' experience at the  
18 Commission, have you ever reviewed a company's  
19 financial records and not found any restating actual  
20 adjustments when you've had an opportunity to audit?

21 A. No. Invariably, we find restating  
22 adjustments in the way of extraordinary items or  
23 nonrecurring items or account misclassifications or  
24 simple errors or whatever.

25 Q. Mr. Twitchell testified earlier that Staff is



4717

1 unable to audit budgeted amounts. Do you agree with  
2 him?

3 A. Yes, I do.

4 Q. Have Olympic's budgets proved accurate?

5 A. Not in the comparison that I've seen on an  
6 expense-by-expense line number comparison basis.

7 MR. TROTTER: I move for the admission of  
8 Exhibit 2010.

9 JUDGE WALLIS: Is there objection?

10 MR. MARSHALL: No objection. That's the  
11 power cost adjustment, no objection.

12 JUDGE WALLIS: 2010 is received.

13 MR. TROTTER: Other than the questions that  
14 Mr. Twitchell made to the second page of his testimony,  
15 we haven't tracked this completely through the Staff's  
16 results of operations. We are willing to do that if  
17 the Commission wants, and certainly, we can do it in  
18 the brief when we provide a final statement of the  
19 results of operations, but we thought this exhibit  
20 would be an expedient way of getting the issue before  
21 the Commission in a timely way. So with that, thank  
22 you for permitting me to make that statement, and the  
23 witness is available for cross.

24 THE WITNESS: I do have an addition to one of  
25 your questions, if I may? In my parlance, "known and

4718

1 measurable" does not mean substituting more recent  
2 actual experience for budgeted numbers. Known and  
3 measurable is the test that you apply in developing pro  
4 forma adjustments to restate historic results of the  
5 company. Known and measurable does not mean  
6 substituting one set of numbers with another set of  
7 numbers.

8 Q. And the substituting is what the Company did,  
9 in your opinion?

10 A. Yes.

11 MR. TROTTER: Thank you.

12 JUDGE WALLIS: Mr. Marshall?

13

14

15 CROSS-EXAMINATION

16 BY MR. MARSHALL:

17 Q. Good afternoon, Mr. Colbo. On this power  
18 cost adjustment, 2010, that we just talked about, you  
19 believe that's a known and measurable adjustment;  
20 correct?

21 A. Yes.

22 Q. You are taking a number that used to be for  
23 power costs and substituting a new number that's known  
24 now as of July 1st; right?

25 A. Yes.

4719

1 Q. You are substituting an actual new number  
2 that will be in effect in the rate year; correct?

3 A. Yes.

4 Q. And how do you find the rate year?

5 A. I didn't hear the question.

6 Q. In your testimony, you used the phrase "rate  
7 year." What's your definition of the rate year?

8 A. Rate year is the period of time from when the  
9 order in this case comes out with a decision as to  
10 whether or not there will be a rate increase and how  
11 much and the resulting operating results that would be  
12 expected based on that determination.

13 Q. So for example, the power costs, because  
14 those power costs are going to be in place in the rate  
15 year and you now know them with some agree of  
16 certainty, that's why you are going to make that  
17 change; true?

18 A. Did you ask with respect to power costs?

19 Q. Yes.

20 A. Yes, and I would further provide some  
21 additional information that that's true, and then we  
22 also gave effect -- when I did the power cost  
23 adjustment, I also had to give recognition to a  
24 different throughput number that the Staff is  
25 sponsoring because power --

4720

1 Q. Right. As salaries are going to go up for  
2 the rate year, you would want to make that change;  
3 true?

4 A. Yes.

5 Q. And if expenses for maintenance, recurring  
6 maintenance were going up, you would want to make that  
7 change too; correct?

8 A. Yes, if we could get a handle on it and if it  
9 was known and measurable --

10 Q. I'm just asking for the overall concept right  
11 now.

12 A. That's correct.

13 Q. Your testimony now because of the change in  
14 power costs essentially doubles the amount that you are  
15 recommending for an increase in this case from 78,000  
16 to \$161,000; right?

17 A. I think that was Mr. Twitchell's number, and  
18 I'll accept it subject to check.

19 Q. Do you know what the Staff's allocation is,  
20 the percentage between intrastate and interstate  
21 revenues, what the percentage is?

22 A. Just a moment. The FERC segment is  
23 approximately 62 percent, and the UTC segment is  
24 approximately 38 percent.

25 Q. You gave what the total would be for Staff

4721

1 using the allocation for Washington intrastate rates.  
2 Do you know what the 59 percent rate increase that  
3 Olympic has in its rebuttal case, what the total dollar  
4 amount is that Olympic is asking from Washington State  
5 intrastate rates, the increase?

6 A. I don't have that number in hand, no.

7 Q. Is it less than \$9 million a year, rate  
8 increase for Washington State intrastate rates?

9 A. Yes.

10 Q. Do you have an exact figure on that?

11 A. No.

12 Q. The throughput level that you are  
13 recommending in your case is approximately 108-million  
14 barrels per year; is that true?

15 A. That's correct.

16 Q. And the current rates are set at a level of  
17 121-million barrels per year, the current tariff in  
18 place now; is that approximately correct?

19 A. Yes.

20 Q. So all other things being equal, if  
21 throughput goes down by 13-million barrels a year, you  
22 would expect a need for significant revenue increase  
23 assuming all other things are equal; right?

24 A. I don't think I could agree with that.

25 Q. Didn't you say in your testimony at Page 29

4722

1 that throughput is critical because the revenue  
2 requirement is divided by the throughput, and that  
3 gives you the rate, Lines 4 to 5 of your testimony?

4 A. I have the page number. Could you give me  
5 the line number?

6 Q. Line 5 through 6. Very simply, the revenue  
7 requirement divided by the throughput gives the rate?  
8 As the throughput increases, the rate decreases, and  
9 the converse is true, is it not? As the throughput  
10 decreases, the rate increases; correct?

11 A. Yes.

12 Q. So that factor alone, if we were able to  
13 isolate that alone, the decline of throughput, all  
14 other things being equal, would cause rates to increase  
15 significantly; correct?

16 A. This is in reference to the 121-million  
17 barrels?

18 Q. I'm just asking this as a concept, just like  
19 your testimony was a concept.

20 MR. TROTTER: I'll object to the question.  
21 The key term here is "significantly" or  
22 "substantially," and if we could have some parameters  
23 so the witness can gauge what Mr. Marshall believes  
24 that is, that might help him, but right now, I'll  
25 object.

4723

1           MR. MARSHALL: I'll accept that as a friendly  
2 amendment.

3           Q.     (By Mr. Marshall) If the throughput  
4 decreases, the revenue requirement increases, all other  
5 things being equal.

6           A.     Yes.

7           Q.     And if you have a 13 to 18 percent decrease  
8 in throughput, you are going to have an increase in  
9 rates that you would call significant; right?

10          A.     Yes.

11          Q.     Switching to the cost side of the equation,  
12 in general terms, have safety costs gone up for all  
13 major oil pipelines in the United States following new  
14 federal regulations at the beginning of this year?

15                 MR. BRENA: Objection, foundation.

16                 JUDGE WALLIS: Does the witness know the  
17 answer?

18                 THE WITNESS: I know that there are new  
19 federal regulations. I also know that Company  
20 witnesses have stated that Olympic is ahead of the  
21 curve and they've already adopted a lot of the  
22 provisions that have been called for in the  
23 regulations.

24          Q.     (By Mr. Marshall) Right. So they were  
25 already putting into effect some of these costs that

4724

1 other U.S. oil pipelines are now seeing for the first  
2 time in 2002?

3 MR. BRENA: Objection, fact not in evidence.  
4 There is no evidence in the record at all other than  
5 unsubstantiated testimony that costs have gone up for  
6 other major pipelines or that it's impacted the rates.

7 MR. TROTTER: I guess I agree. The question  
8 was "all other pipelines." That's a lot of pipelines,  
9 and if this witness has personal knowledge of that,  
10 fine, but maybe the foundation needs to be laid first.

11 JUDGE WALLIS: Mr. Marshall, do you want to  
12 try that again?

13 Q. (By Mr. Marshall) Your last response to my  
14 question was basically that Olympic was ahead of the  
15 curve on adopting responses to federal regulations  
16 which you agree, don't you, have increased costs for  
17 all major U.S. oil pipelines; true?

18 A. I don't know how the regulations affect other  
19 pipelines. I presume that they have increased costs,  
20 but how they affect all the other pipelines, I don't  
21 know.

22 Q. Have you asked anybody about how these new  
23 federal regulations are increasing costs for pipeline  
24 companies in general?

25 A. No.



4725

1 Q. Have you tried to figure out what percentage  
2 of the increased costs Olympic is seeing are due to  
3 their being ahead of the curve, as you put it, of these  
4 new federal regulations?

5 A. No, but to the extent that they are ahead of  
6 the curve, those costs are already imbedded in our test  
7 year.

8 Q. Right, but I'm just focusing now on the  
9 change between prior periods. Take 1998 and the year  
10 2000 or 2001. There are increased costs that Olympic  
11 is experiencing by being, in your terms, ahead of the  
12 curve on these new federal oil pipeline regulations;  
13 right?

14 A. I would expect so.

15 Q. Let's go into your background a little bit.  
16 Are you a certified public accountant?

17 A. No.

18 Q. Are you an economist?

19 A. No.

20 Q. Are you an expert in the oil pipeline  
21 industry structure, financing, or operations?

22 A. No, no, no.

23 Q. Have you ever worked for an oil pipeline  
24 company before?

25 A. No.

4726

1 Q. Have you ever been out to see any of  
2 Olympic's physical facilities, their control room,  
3 their operations center, their pipeline system, any  
4 segment of their system, any of their physical assets  
5 at all?

6 A. The only facility that I'm aware of is their  
7 distribution facility in Tumwater that's a half a mile  
8 from my house. I've seen that.

9 Q. So you don't know about their control center  
10 and their communications center and how they operate in  
11 any way, shape, or form; true?

12 A. In general, I know about those things, but I  
13 haven't physically been there to see them in operation,  
14 no.

15 Q. Would you understand what a SCADA system is?

16 A. I think I know what it is.

17 Q. A communications system?

18 A. A control system that operates the pipeline  
19 and keeps the control center informed as to what's  
20 going on in the various segments.

21 Q. Would you know if there have been changes in  
22 those expenses and increased costs due to new  
23 communications standards or not?

24 A. I know that Mr. Talley has testified to that,  
25 and I don't have any reason to doubt that that stuff

4727

1 goes on.

2 Q. Do you hold yourself out to be an expert on  
3 FERC Form 6?

4 A. No.

5 Q. You are familiar though with the fact that  
6 FERC Form 6 that Olympic submits is required under the  
7 Washington Administrative Code for reporting on an  
8 annual basis?

9 A. Yes.

10 Q. Are you the one here at the Commission who  
11 reviews those FERC Form 6's when they come in each  
12 year?

13 A. No. Other than perhaps if there is a  
14 subsequent filing, we might review them in that  
15 context, a rate filing.

16 Q. Who gets those when they come in?

17 A. They go into the business office, and then  
18 they get stored in the records center.

19 Q. Is there anyone who reviews those, to your  
20 knowledge?

21 A. Not that I'm aware of.

22 Q. Have you seen the FERC Form 6's going back to  
23 before 1990? Since you started working on this case,  
24 have you taken a look back in the history of FERC Form  
25 6's that Olympic has submitted?

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1           A.     As I remember, our records center has FERC  
2 Form 6's available for the last four or five years, and  
3 I've looked at those. I haven't gone back to 1990.

4           Q.     Are you aware they go all the way back to  
5 1986? I'll represent this is from Commission files.

6           A.     Those files are not from the records center.  
7 It may be from archives or some other storage sight,  
8 but with respect to the FERC Form 6's at this  
9 Commission that are readily available, I think those  
10 are from the records center, and I'm only aware of them  
11 back for the last half-a-dozen years.

12          Q.     Were you the one responsible for suggesting  
13 that the Washington Administrative Code require FERC  
14 Form 6's to be submitted for oil pipeline reporting  
15 purposes?

16          A.     No.

17          Q.     That happened in 1989; is that right, when  
18 that regulation got adopted?

19          A.     I don't know when that regulation got  
20 adopted.

21          Q.     Were you the one at the Commission that was  
22 most responsible for oil pipeline regulation in 1989?

23          A.     Probably that's halfway accurate with respect  
24 to rate filings, but with respect to administrative  
25 matters associated with regulating pipelines and

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1 setting up filing requirements using FERC 6, I didn't  
2 have anything to do with that.

3 Q. There used to be a statute requiring oil  
4 pipelines to submit finances for approval as opposed to  
5 notice. Do you recall that?

6 MR. TROTTER: I'm going to object to the  
7 question. It's beyond the scope of this witness's  
8 direct testimony.

9 MR. MARSHALL: I'll withdraw the question.

10 Q. (By Mr. Marshall) Have you ever gone back  
11 and made a systematic review of the material on file  
12 here at the Commission that Olympic has submitted in  
13 the form of FERC Form 6's or any of the other filings  
14 that Olympic has had to make? Have you ever gone back  
15 and made a systematic review to make sure that you've  
16 taken into account all that material?

17 A. I'm not exactly sure how you define  
18 "systematic," but I'm sure there are documents around  
19 here someplace that I haven't seen, so I don't know how  
20 else to answer.

21 Q. Going back to FERC Form 6, are you familiar  
22 with the accounting approach that the FERC requires  
23 pipelines to use to fill out FERC Form 6, which is the  
24 Uniform System of Accounts?

25 A. I have seen the Uniform System of Accounts.

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1 Q. So you are familiar with it but you aren't an  
2 expert in it. Is that the distinction?

3 A. I think that's a fair way of putting it.

4 Q. Do you claim to have any expertise in the  
5 Uniform System of Accounts? Do you hold yourself out  
6 as an expert in any way, shape, or form on that?

7 A. On the Uniform System of Accounts for oil  
8 pipelines?

9 Q. Right.

10 A. Not really.

11 Q. Because of that, do you know in which ways  
12 the Uniform System of Accounts approach differs from  
13 that used by nonoil pipeline companies regulated by the  
14 WUTC?

15 A. Could you repeat that?

16 Q. Sure. Because you are not holding yourself  
17 out to be an expert -- you are just generally  
18 familiar -- do you know how the Uniform System of  
19 Accounts approach differs from that used by nonoil  
20 pipeline companies regulated by the WUTC?

21 A. I think not really.

22 Q. There are certain instructions that go along  
23 with filling out FERC Form 6 that are imbedded in the  
24 forms itself. For example, on Page 700, there are  
25 instructions on following FERC 154-B, as an example.

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1 Do you recall that?

2 A. I'm aware of that page.

3 Q. Do you completely understand the instructions  
4 on that page and other pages on how you actually fill  
5 out those forms?

6 A. No.

7 Q. Is there anybody at the WUTC that has gone in  
8 and done that, to try to figure out whether they  
9 completely understand the instructions on that form?

10 A. I haven't. I'm not aware of anyone else that  
11 has.

12 Q. Have you read the Opinion 154-B at Page 700  
13 that FERC Form 6 refers to?

14 A. At some time in the past, I have read it,  
15 yes.

16 Q. But you don't consider yourself to be an  
17 expert on that or knowledgeable about 154-B?

18 A. No, sir.

19 Q. Not in any way, shape, or form; right?

20 MR. TROTTER: I'll object to the question.

21 He answered it.

22 Q. I'll ask you just a wrap-up question. Do you  
23 consider yourself in any way, shape, or form an expert  
24 on oil pipeline regulation?

25 A. No, I do not.

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1 Q. Actually, a whole series of questions may  
2 have been eliminated by a change that Mr. Trotter had  
3 made, but I'm just going to make sure I understand  
4 that.

5 You made a change to take out a reference to  
6 testimony about an Exhibit CAH-4. Do you remember what  
7 page that was at that you made that change?

8 A. Yes. It was on Page 18 of my direct  
9 testimony, Lines 8 and 9.

10 Q. Let's turn to that. The part that you  
11 eliminated was the part that says, "No such amount has  
12 been removed from the Company's rate base is developed  
13 in CAH-4, which was Exhibit 703-C; correct?

14 MR. TROTTER: I believe it's 819.

15 Q. What you found from further review is that if  
16 you look at the FERC Form 6 form, which reports  
17 carrier, noncarrier property separately, what you found  
18 out is that indeed, Olympic never had that amount in so  
19 it never had to remove that \$551,000 amount. Is that  
20 true?

21 A. Yes, that is true. The starting point for  
22 Mr. Collins' exhibit was plant-in-service. By  
23 definition, that already excluded nonoperating  
24 property.

25 Q. But at the time you wrote your testimony, you



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1 didn't know that by definition it already excluded  
2 noncarrier plant.

3 A. I was under the impression that Mr. Collins  
4 had started with total assets, not plant-in-service as  
5 his beginning point.

6 Q. Now you know from reviewing the FERC Form 6,  
7 which we made those as separate exhibits, 2011, those  
8 pages from the 1999 FERC Form 6, and that's where those  
9 numbers were derived for Mr. Collins' exhibit; is that  
10 right? That's where you can go back and trace the fact  
11 that he never had the \$551,000 in the rate base to  
12 begin with so there was no need to take it out. Is  
13 that correct?

14 A. That is correct.

15 Q. So when did you determine that you ought to  
16 take that sentence out that criticized the Company's  
17 rate-base number for having 551,000 in that it should  
18 not have had in? When did that first come to your  
19 attention?

20 A. I can't remember exactly. It was fairly  
21 recent.

22 Q. Did you come to that conclusion yourself, or  
23 did somebody else notify you of it?

24 A. No, I came to it by myself, and the reason, I  
25 think, for the confusion on the point is that the Staff

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1 uses a different starting point for the development of  
2 its case as opposed to what the Company did. The  
3 approaches are totally different, most notably being  
4 what the base period is. We've used calendar year  
5 2001, and the Company used 12 months ending September  
6 30th.

7           The starting point in the development of the  
8 Staff case was, as Mr. Twitchell testified, the  
9 Company's response to Staff Data Request 303. Those  
10 asset balances in that schedule are total plant, total  
11 assets, and therefore, in the development of the Staff  
12 case, it was appropriate to remove the nonoperating  
13 portion, and that's why the Staff did it in its case,  
14 and I assume that it would, therefore, have been proper  
15 for Mr. Collins to have done it in his case too.

16           Upon further review, I discovered the  
17 starting point for his case was not total plant but  
18 plant-in-service, so in effect, it had already been  
19 removed, so he didn't need to remove it a second time.

20           Q. Your testimony was filed on May 24th, same as  
21 Mr. Twitchell's; correct?

22           A. Yes.

23           Q. Also, you had work papers that backed up your  
24 calculations.

25           A. Yes.

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1 Q. Were those work papers filed with the  
2 testimony on May 24th, or were they filed also on June  
3 3rd, same as Mr. Twitchell's?

4 A. They were filed in response to a data request  
5 by the Company, and I think it was concurrent with  
6 Mr. Twitchell's.

7 Q. Do you have a copy of your work papers to  
8 show how thick those work papers were?

9 A. Yes.

10 Q. Are they about, what, five or six inches  
11 thick?

12 A. I would say that's about correct, yes.

13 Q. Then here are literally hundreds and hundreds  
14 of pages of calculations, exhibits, and so on?

15 A. Well, there is quite a few pages, yes, of  
16 data.

17 Q. Do you have any estimate how many pages there  
18 are?

19 MR. TROTTER: I'm going to object on  
20 relevance grounds. We provided the work papers. The  
21 Company provided their work papers. It's irrelevant.

22 Q. The work papers were provided two days before  
23 your deposition; is that correct?

24 CHAIRWOMAN SHOWALTER: Don't we have an  
25 objection on the table?

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1 MR. MARSHALL: I withdrew the question.

2 MR. TROTTER: I'm going to object to this  
3 line of questions because it's for no purpose.

4 MR. BRENA: I will join in that. If there  
5 were any concerns with regard to discovery matters, the  
6 time to have brought those is not when a witness is on  
7 the stand with regard to what's been produced, but  
8 they've had every opportunity to pursue adequate  
9 discovery for months --

10 MR. MARSHALL: The discovery was limited  
11 until the time after the case was filed, as Your Honor  
12 knows.

13 JUDGE WALLIS: What point are you getting to,  
14 Mr. Marshall?

15 MR. MARSHALL: I'm trying to clarify the  
16 record and show that some of the statements about the  
17 confusion between the two cases is also just a product  
18 of the timing and the lack of the work papers that were  
19 not produced at the time that the Staff had this case.

20 We had representations made when we first  
21 started out that that was a rule, that when a case was  
22 filed, work papers were supposed to be filed with it.  
23 That was not the practice in this case, and in this  
24 case, what we had is we had a situation where the time  
25 to respond and to file the rebuttal case was very

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1 limited, and what we have found, for example, is one  
2 error here on the 551,000. We are going to go through  
3 some of the other, perhaps, miscommunications, but  
4 there is a reason for that, and the reason is one of  
5 timing, one of not having work papers from Staff  
6 available to us much before the testimony the Company  
7 was required.

8 MR. BRENA: Your Honor, if I could briefly.  
9 There was considerable conversation about work papers.  
10 It was within the context of a motion to compel  
11 discovery. That's the proper context for discovery  
12 disputes to be resolved, not brought into the record.  
13 It's irrelevant to the setting of the rate.

14 MR. MARSHALL: We actually didn't have the  
15 motion to compel. Work papers were produced following  
16 a data request, but the only point is they weren't  
17 produced at the time of the testimony, and given the  
18 short time between the time of the May 24th filing of  
19 Staff's case and the June 11th filing of the Company  
20 rebuttal, we have -- to the extent an explanation needs  
21 to be given for any kind of lack of communication or  
22 lack of connection between what the two cases are, this  
23 is necessary, I think, for the Commissioners to have as  
24 background.

25 MR. TROTTER: I would observe, number one,

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1 very shortly after we were asked for the work papers,  
2 we gave them. In addition, as Mr. Twitchell testified,  
3 we transmitted electronic versions of the exhibits,  
4 which have contained in them full backup showing all  
5 the calculations. Those were provided to the Company  
6 before the hard copy was provided.

7           And furthermore, the Company -- we did point  
8 out there was no explicit requirement on work papers  
9 except in the initial notice of hearing for the  
10 Company's initial filing. We did our best, and of  
11 course, all our calculations are based on Company  
12 figures to start with.

13           We are all laboring under very strict time  
14 lines, Staff and Company and Intervenors not excluded  
15 from that. So if you can just get to the issues... I  
16 don't think this is really probative of any issue  
17 pending before the Commission.

18           JUDGE WALLIS: The timing of the submissions,  
19 the circumstances of the submissions, I think, really  
20 are clear on the record. Unless there is a substantive  
21 reason to pursue the matter further, I do believe that  
22 the record is quite complete in regard to those facts  
23 and circumstances.

24           MR. MARSHALL: Thank you.

25           Q. (By Mr. Marshall) I'm going to turn to an

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1 issue in your testimony regarding throughput, and what  
2 was the Staff's test year amount of throughput? I  
3 believe it's in your Exhibit 2003-C, Page 21 of 40,  
4 Line 2.

5 A. Staff test year for calendar year 2001 was  
6 83,761,000 barrels.

7 Q. Staff chose a test year of 2001, January 1,  
8 2001 through December 31st, 2001. That was the choice  
9 that Staff made for a test year.

10 A. Correct, for the reasons specified in my  
11 direct testimony.

12 Q. In your direct testimony, you said the  
13 primary reason for Staff to choose the 2001 test year  
14 period was to, quote, capture an additional three  
15 months of actual throughput data, actual data, not  
16 estimates; is that right?

17 A. Yes. As you will recall, the pipeline became  
18 fully operational but at an 80 percent pressure level  
19 about midway through the year, so the Company's case  
20 cut off numbers as of September. The Staff thought it  
21 would be of considerable merit to get three additional  
22 months of what would amount to be more, quote, normal,  
23 unquote, facts and figures, one of which was  
24 throughput.

25 Q. To get more normal, you wanted actual data.

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1 You thought actual data was important.

2 A. Yes.

3 Q. You also said that Staff believes that would  
4 provide the best information available for the  
5 Commission to make a decision; correct?

6 A. Are you referring to some part of my  
7 testimony?

8 Q. Do you agree that's why you did this was to  
9 get the best information available for the Commission  
10 to make a decision?

11 A. Yes.

12 Q. You gave testimony in the interim rate case.  
13 Do you remember?

14 A. Yes.

15 Q. Part of the testimony that you gave in the  
16 interim rate case was also on throughput. Do you  
17 recall that?

18 A. Yes.

19 Q. Do you recall in the interim case that what  
20 you did is you took the second half of 2001, determined  
21 what that was, and then multiplied that by two to get  
22 an annualized amount of throughput?

23 A. I believe that is true, and it relates to the  
24 fact that I just relayed to you with respect to when  
25 the pipeline became fully operational, but it reduced



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1 pressure, and I believe that happened sometime in June  
2 of 2001, and so therefore, if we took the last six  
3 months of 2001 and multiplied by two, that was a crude  
4 approximation, given the time frame we had to work with  
5 in the development of the interim case.

6 Q. Your testimony of the interim case is already  
7 part of the record, so I will represent to you subject  
8 to check that you determined that the second half of  
9 2001 produced an amount of 51 thousand 507 million  
10 barrels, which you then multiplied by two for an  
11 annualized throughput number of 103-million barrels per  
12 year. Do you recall that?

13 A. I'll accept that subject to check.

14 Q. Did that sound about right --

15 A. Yes.

16 Q. -- 103-million barrels per year, based on  
17 actuals for the last six months for 2001?

18 A. I'll accept that subject to check. That's  
19 about right.

20 Q. You thought, at least in the interim case,  
21 that that was a fair way to adjust the test year  
22 throughput numbers, which were 83-million barrels, to a  
23 more representative year?

24 A. I missed the first part of that,  
25 Mr. Marshall. Could you repeat that, please?

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1 Q. Sure. The entire year of 2001, if you use  
2 that test year, you are only going to get 83-million  
3 barrels because the first half of 2001 was much lower.  
4 So what you were trying to do is capture the change to  
5 a full number of segments, although at 80 pressure, and  
6 that's why you used the approach that you used in the  
7 interim case.

8 A. In the interim case, yes. We've had a chance  
9 to review more numbers and get additional details and  
10 development of our direct case. The interim case was  
11 on an expedited basis.

12 Q. In its rebuttal case, Olympic used the last  
13 six months of 2001 and additional data from 2002 and  
14 came up with 103-million barrels approximately;  
15 correct?

16 A. That's correct.

17 Q. So it came up with about exactly what you had  
18 come up with in January using a few more months of  
19 actual data.

20 A. There is some similarity of the numbers, but  
21 I don't know what value that is, particularly with  
22 respect to the issue of downtime and the actual numbers  
23 that were developed in the Company's rebuttal case.  
24 There is no accurate count of that.

25 Q. Actual numbers reflect all variety of

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1 experiences that might happen in a month, whether it's  
2 from scheduling, batching, downtime. The actual data  
3 have to, by definition, imbed all of those factors in  
4 it; correct?

5 A. Yes. If the Company is involved in a  
6 significant construction and repair operation, how that  
7 impacts throughput. I don't think that that would be a  
8 proper basis to use to set rates in the future.

9 Q. That's going to go on for as long as anybody  
10 can tell, certainly into the rate year. There is no  
11 testimony that will stop in the rate year, is there?

12 A. I don't know what level of future  
13 construction and maintenance may or may not happen.

14 Q. There is no testimony that you are aware of  
15 that would suggest that any changes will be made to any  
16 of the construction in the future; is that fair to say?

17 A. I've heard testimony from Company witness's  
18 that if they don't get enough money, they are going to  
19 have to start curtailing things.

20 Q. Apart from that -- that probably goes without  
21 saying. If there is not enough money to do something,  
22 then that won't happen, but apart from that, if there  
23 is the money, is there any testimony anywhere that that  
24 level will not continue, certainly into the rate year  
25 and beyond?

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1           A.     I don't know that there is any testimony that  
2 it will not continue.

3           Q.     You actually did want to use the test year,  
4 2001, in order to, in your words, catch those three  
5 additional months of actual data, throughput data.  
6 That was the reason you gave, the chief reason you gave  
7 to use a calendar year 2001 test year.

8           A.     That was the main reason, yes. There were a  
9 couple of others as I explained in my testimony  
10 relating to year-end adjustments, and I can't remember  
11 what the other one was.

12          Q.     What we talked about rate year before, you  
13 said that it would not be -- it would be speculative to  
14 go beyond the rate year with changes in the future. In  
15 other words, if you were to think about something that  
16 might happen beyond the rate year, that, in your  
17 opinion, would be too speculative to use. Do you  
18 remember that testimony?

19          A.     Yes.

20          Q.     And that's true. Do you believe that, that  
21 generally speaking, if you go beyond the rate year, the  
22 calendar year after the order goes into effect, you are  
23 dealing with things that get beyond known and  
24 measurable and into the realm of speculation; right?

25          A.     Yes. It becomes more speculative the longer

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1 you go into the future.

2 Q. Let's turn to your recommendation here of the  
3 throughput level of 108-million barrels in this case.  
4 Unlike the interim case where you took actual numbers  
5 and you annualized it, you use a different approach to  
6 come up with 108-million barrels for your  
7 recommendation here; true?

8 A. Yes, I did.

9 Q. You are not using any numbers from the year  
10 2000 except for one month, July of 2001. You take that  
11 month and then you do a ratio with one month in 1998,  
12 August. You figure out a percentage, and then you  
13 multiply that percentage by throughput for the year  
14 1998. Is that basically what you did?

15 A. Yes. The proper approach we took was -- 1998  
16 was the last full calendar year before the Whatcom  
17 incident where operations were most normal.

18 Q. I just wanted to confirm that's what you did,  
19 and I'll ask some further questions about that.

20 MR. BRENA: Your Honor, I would like the  
21 witness not to be cut off. I would like him to be able  
22 to complete answers.

23 MR. TROTTER: I agree --

24 MR. MARSHALL: He gave an answer to that. I  
25 asked him --

1           JUDGE WALLIS: Mr. Marshall, let's take this  
2 in an orderly fashion.

3           MR. TROTTER: I just think the convention  
4 that's been permitted for Company witnesses, for them  
5 to explain their answers, and this witness should be  
6 treated no differently.

7           JUDGE WALLIS: Mr. Marshall?

8           MR. MARSHALL: I believe he gave the answer  
9 to my question, and I would like to explore, and he can  
10 give explanations later on as I explore, but I would  
11 like to do it in an orderly way as well.

12          JUDGE WALLIS: We do have the convention that  
13 witnesses are allowed to explain their answer, not to  
14 answer questions that weren't asked, and if during the  
15 course of a response, you believe that the response  
16 transgresses our practice, then please lightly  
17 interrupt the witness and call that to our attention,  
18 and we will deal about that. Does the witness have the  
19 question in mind and his response?

20          THE WITNESS: No.

21          Q.     (By Mr. Marshall) We were talking about how  
22 you developed the throughput number that you had, and  
23 my next question, and I'll let you explain fully how  
24 you did it, but my next question was going to be  
25 because of the way that you approached this, you did

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1 not apply that conversion factor to any of the actual  
2 numbers in the year 2001 or actual throughput numbers  
3 for the year 2002, did you?

4 A. We scanned all of the actual throughput for  
5 all of year 2001 and realized that July was the high  
6 month because that's the month that the pipeline first  
7 became more normally operational, and they had high  
8 throughput that month because they had those two  
9 five-day cycles, a total of 10 days where the pipeline  
10 was operated flat-out with no downtime.

11 Then we compared that high month with an  
12 equivalent high month from year 1998, which was the  
13 last year of normal operations before the explosion,  
14 and we made the assumption that there was probably a  
15 great deal of similarity between the two high months,  
16 the high month of July 2001 and the high month which  
17 ended up being August of 1998. Based on that  
18 relationship, we determined what an appropriate  
19 throughput level should be in this case looking  
20 forward.

21 There was considerable discussion in this  
22 case regarding the effects of downtime, and I think the  
23 consensus was that it was not a readily discernible  
24 number from any party, and therefore, I'm not sure -- I  
25 know the Company is engaged in a significant

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1 fixed-asset investment construction program, and I know  
2 they are doing a lot of maintenance and repairs, and  
3 I'm concerned that if you use actual numbers as  
4 Ms. Hammer does, there may be more downtime in there,  
5 and if we relied on a number based on that, it would be  
6 understating throughput, so I've used the approach that  
7 I've described.

8 Q. Use of actuals incorporates actual downtime,  
9 does it not?

10 A. Yes, but because of the uncertainty with  
11 regard to throughput, we don't know what's going to be  
12 happening in the future or not.

13 Q. The only variable there is whether the same  
14 level of work that is going on now will continue for  
15 the known and measurable period coming up; true?

16 A. I don't know whether that's the only variable  
17 or not. It's probably the most apparent one.

18 Q. It's the only one you've mentioned so far.

19 A. Yes.

20 Q. What you've done, to make sure we understand,  
21 is you took one month, July of 2001, another month in  
22 August 1998, and you multiplied that factor by the  
23 entire throughput of 1998; right?

24 A. Yes.

25 Q. So by definition, you didn't use any of the



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1 actual data in 2001 that you were seeking to capture  
2 when you used the test year of 2001.

3 A. No, for the reasons that I described. I'm  
4 not sure -- you said 2001, actual data for 2001?

5 Q. You didn't multiply your conversion factor by  
6 any throughput level in 2001 or 2002. You multiplied  
7 that by a throughput level for 1998.

8 A. Yes. We felt that was a more typical  
9 throughput when the pipeline was operating under normal  
10 circumstances, and our concern with the actual  
11 throughput that has transpired since July 2001 looking  
12 forward, because of the uncertainty about downtime and  
13 construction and all the other stuff, we had some  
14 reservations concerning whether those actual amounts  
15 would have been understated because they contained  
16 planned and unplanned downtime, and nobody could give  
17 us a firm handle on what those amounts were, so we had  
18 to go back and rely on calendar year 1988 data, which  
19 presumably was representative as being the last full  
20 year of operation before the explosion.

21 Q. We know what past downtime has been by  
22 looking at past actuals. The only question is what  
23 future downtime will be, and that depends on future  
24 regulation, future permitting, future funding and so  
25 on.

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1 A. Correct.

2 MR. TROTTER: I'll object to the question.

3 The first part of the question said that we know what  
4 the downtime is based on the actuals and we don't. We  
5 just know what the actual throughput was. It's  
6 incorrect and it's also compound.

7 MR. MARSHALL: I'll withdraw the question.

8 Q. (By Mr. Marshall) The actual throughput  
9 numbers include all factors, including downtime past  
10 experience; true?

11 A. Yes.

12 Q. So what you are now looking at is you are now  
13 speculating about how much you will have in the future  
14 by way of downtime; correct?

15 A. Yes.

16 Q. And that depends on the amount of federal  
17 regulations, the amount of permitting that's required,  
18 and partly some of the funding that would be available  
19 to do the work; right?

20 A. Yes.

21 Q. When you go to adjust a test year number for  
22 throughput, which is 83-million barrels a year, by your  
23 own test, it has to be through a known and measurable  
24 amount, not speculative; right?

25 A. It has to be known and measurable and

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1 representative, yes, and we thought that 1998, being  
2 the last full, complete calendar year before the  
3 explosion, odds are it would be more representative of  
4 what current throughput was with all these problems  
5 that the Company is dealing with and significant  
6 amounts of construction and so forth. We had no idea  
7 whatever as to how much actual downtime was included  
8 within that. That was a subject of great many  
9 inquiries, and we were never able to get a good answer.

10 Q. Of course, if you try to use 12 months of  
11 actuals, is that the actual best known data that you  
12 can get on what has occurred?

13 A. In terms of what has occurred, yes, but in  
14 terms of looking forward to the rate year as to what  
15 might occur, who knows.

16 Q. Right. Who knows what might occur in the  
17 rate year other than based on actual experience?

18 A. No, I disagree with that.

19 Q. In January, that's exactly the method you  
20 used. You took half a year, annualized it, and came up  
21 with 103-million barrels.

22 A. I told you that was the interim case. It was  
23 handled on an expedited basis. There was no in-depth  
24 review of anything related to throughput. We did the  
25 best we could with what we had in a limited period of

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1 time.

2 Q. The difficulty in making future predictions  
3 about throughput is compounded by the change in  
4 regulations at the federal level and the proposed  
5 change of regulations at the state level. Is that fair  
6 to say?

7 A. In the context of throughput?

8 Q. In the context of trying to find out how much  
9 work will have to be done on the pipeline, which also  
10 affects throughput in the future, would you agree that  
11 that difficulty in making those future estimates is  
12 compounded because of the recent change in federal  
13 regulation and the proposed changes in state  
14 regulation?

15 A. That is a factor that affects it, yes.

16 Q. Those regulations affect it because they will  
17 in turn affect the testing and repair frequency; is  
18 that right?

19 A. I think they will have some impact on those  
20 things.

21 Q. Are you an expert in that area, on those  
22 federal regulations and the testing requirements and  
23 the repair requirements?

24 A. No.

25 Q. Is there anybody that you relied on that's an

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1 expert in that area?

2 A. No.

3 Q. You said earlier that it would be speculative  
4 to assume that Olympic would be able to achieve 100  
5 percent operating pressure any time during the rate  
6 year. Do you recall that?

7 A. Yes, I think I did say that, and we have  
8 asked a lot of people when the Company will be getting  
9 back to 100 percent pressure, and nobody knows for  
10 sure.

11 Q. The rate year goes from, let's say, it's  
12 October 2001 to October 2003. Is the earliest anybody  
13 has indicated to you that pressure could go up to 100  
14 percent, assuming everything goes correctly, is after  
15 that period of time?

16 A. Yes.

17 Q. At Page 28 of your testimony, you propose  
18 that your estimate of throughput at 80 percent pressure  
19 be used to set rates in this case but that those  
20 tariffs implementing those rates expire on December  
21 31st, 2003, at Page 28, Lines 15 to 17.

22 A. Yes.

23 Q. So your recommendation about throughput has  
24 an additional protective layer there so that whatever  
25 the throughput is, people are going to have to come in

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1 and make a change before December 31st. You are going  
2 to have to file a case before then to make that change  
3 before they expire; right?

4 A. I think in my deposition and under  
5 questioning from Mr. Brena, I think I alluded to the  
6 fact that rather than have the rates returned to their  
7 prior level, it might be a better idea to require the  
8 Company to file a rate case.

9 Q. But in your testimony here on Page 28, you  
10 are recommending that the tariffs expire on December  
11 31st, 2003?

12 A. Yes, in any testimony here, that's correct.

13 Q. Are you changing that testimony?

14 A. No. Well, I'm saying -- yes, I guess I am.  
15 This testimony says that rates will revert to their  
16 prior level, which is essentially where they are now  
17 because the Staff recommendation is a small percentage  
18 increase, and in my deposition for Mr. Brena, he  
19 pointed out that if there were changes in throughput,  
20 it might be better to require a rate case rather than  
21 just have the rates revert to their prior level.

22 Q. Are you changing your testimony or not?

23 A. I agreed with him that that would be a better  
24 way to go, yes.

25 Q. So you are changing your direct testimony in

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1 this case?

2 A. Yes.

3 Q. What's your direct testimony now in this  
4 case?

5 A. That rather than have them expire and revert  
6 to their prior level in January 1, 2004, that the  
7 Company be required to come in and file a new case.

8 Q. If the rates had expired on December 31st,  
9 2003, Olympic would have had to come in for a new rate  
10 filing sometime next spring at the latest, right, in  
11 other words, seven months before the end of that year,  
12 2003?

13 A. Okay.

14 Q. That's right, isn't it?

15 A. Yes.

16 Q. If we were to use an 11-month schedule,  
17 because this has become more like a utility case, that  
18 would mean that you would have to file in January in  
19 order to get those rates in effect by the end of  
20 December, 2003, or close to it; right?

21 A. Yes.

22 Q. So what test-year data would we have if the  
23 Company did that, filed in January of next year?

24 A. Hopefully, among other things, we would have  
25 a better handle at that point on throughput in

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1 particular and more recent results across the board on  
2 revenues, expenses, everything.

3 Q. But just focusing on throughput, so what we  
4 would have is we would have January, February, March,  
5 April, May, June, and so forth for throughput for 2002.  
6 Don't we already have a half year of throughput for  
7 2002?

8 A. When and if Olympic were to file in 2003  
9 effective 2004, whatever, I don't know what the  
10 throughput numbers would be that Olympic would present.  
11 I don't know what the Staff position with respect to  
12 throughput in that case would be.

13 Q. I'm just asking you right now what the test  
14 year would be. The test year is the actual 12-month  
15 calendar period prior to the time you file.

16 A. That's probably reasonable.

17 Q. That's what you basically did in filing  
18 Staff's case.

19 A. That would be the starting point, yes.

20 Q. So if Olympic came in for a rate filing on  
21 January 1st of 2003, it would submit as test-year data  
22 the prior 12-month actual data for throughput; right?

23 A. Presumably, they would, yes.

24 Q. Is your proposal for coming in for new rates  
25 or to have rates expire on December 31st, 2003, based



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1 on an assumption that Olympic will, in fact, have  
2 increased operating pressure by January 1st, 2004? Is  
3 that the assumption that's built into that?

4 A. In fact, no, but the presumption was that by  
5 that time, hopefully, either it will have happened or  
6 there will be a date certain where it will happen, and  
7 there will be a more firm approximation of what  
8 throughput will actually be at whatever pressure level.

9 Q. Is that another way to say that it's likely  
10 nothing will happen prior to January 1st, 2004, to  
11 actually achieve 100 percent operating pressure?

12 A. I didn't say that at all.

13 Q. Your assumption is somehow that people would  
14 know more about where things might be in the future on  
15 getting back to 100 percent pressure?

16 A. Or at whatever pressure level. I'm saying  
17 there is a lot of uncertainty about throughput now.  
18 Even in the Staff case where we have calendar year  
19 2001, for the first six months of the year, throughput  
20 was degraded because the pipeline wasn't fully  
21 operational.

22 If we come in with a rate increase effective  
23 January 1, 2004, we will at the very least have 12  
24 months of actual throughput at 80 percent, which will  
25 be significantly higher than the 83,700,000 barrels

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1 that we used as the base period in our test year, and  
2 presumably, we will also have a great deal of more  
3 certainty at that point as to when or if 100 percent  
4 pressure will be achieved and what the impact of that  
5 will be. I'm just saying that it will tend to reduce  
6 the uncertainty about throughput by having more recent  
7 data.

8 Q. Are you aware that the Company has proposed,  
9 suggested that there be a throughput adjustment  
10 mechanism that could be defined by a collaborative or  
11 some other process so that nobody is concerned about  
12 what the actual levels might be. There is not going to  
13 be anybody harmed or helped by what may occur by  
14 setting an actual throughput number.

15 A. I'm aware of that proposal.

16 Q. In your direct testimony, you said that  
17 proposal would have a beneficial effect of removing a  
18 contentious issue and removing speculation. Do you  
19 remember that, in general?

20 MR. TROTTER: I'll object since the rebuttal  
21 proposal was filed after the direct testimony so it  
22 could not have been referred to.

23 MR. MARSHALL: I will withdraw and modify  
24 that question.

25 Q. (By Mr. Marshall) At Page 30 of your direct

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1 testimony, you said at Lines 5 through 7, "A tracking  
2 mechanism would seem to resolve a very contentious  
3 issue in a way that would protect both Olympic and its  
4 customers." Do you remember that?

5 A. Yes.

6 Q. I tip my hat to you. Actually, Olympic was  
7 agreeing with you that that kind of adjustment  
8 mechanism might well be advantageous to adopt and  
9 propose that a tracking mechanism be developed in a  
10 collaborative. Do you recall that testimony?

11 A. Yes, I do.

12 Q. There are only two shippers here out of 70.  
13 Wouldn't it be appropriate to have a collaborative to  
14 do that kind of tracking mechanism rather than to try  
15 to do it here in this setting?

16 A. Rather than to do it here in this setting?

17 Q. If you are trying to adopt a tracking  
18 mechanism here in the middle of this rate case, first  
19 of all, that would take additional time to try to  
20 develop a proposal. Second of all, not all the parties  
21 that might be affected by that would necessarily be  
22 here. Are both those things true?

23 A. Yes.

24 Q. If you wanted to avoid having to come in for  
25 a rate case just because of uncertainty about what

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1 throughput might be in the future, isn't it true that a  
2 tracking mechanism would be one way of allaying that  
3 type of cost, expense, and time?

4 A. That would be one option, yes.

5 Q. Did you have any particular tracking  
6 mechanism in mind when you made that proposal?

7 A. No, nothing specific, just the concept.

8 Q. Do you think that concept is workable?

9 A. I don't know whether it is or not. I know  
10 there has been some preliminary discussions regarding  
11 tracking in the settlement discussions, but I wasn't a  
12 party to that, and I don't think they progressed very  
13 far.

14 MR. BRENA: Your Honor, I would move that  
15 that last answer be struck from the record. The  
16 content and substance of settlement negotiations should  
17 not be brought into the transcript or the rate  
18 proceeding. The very nature of settlement  
19 negotiations -- and one of Olympic's witnesses, Witness  
20 Fox, went into a little bit too, but I want to draw a  
21 line and say that settlement conversations shouldn't  
22 come into this room.

23 MR. TROTTER: I think we are all going to  
24 agree. I will remind the witness not to refer to that  
25 if you can help it.

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1 Q. (By Mr. Marshall) You referred in your  
2 testimony at Page 30 to a PCA, which actually you  
3 changed to PGA, in the gas industry to remove tracking  
4 mechanism designed to remove some volatility. The  
5 costs are large and volatile. Have you had direct  
6 experience with that kind of tracking mechanism?

7 A. Not directly, no.

8 Q. Do you know that those tracking mechanisms do  
9 tend to work to smooth out volatility and protect both  
10 the regulated company and customers?

11 A. I think that's true, yes.

12 JUDGE WALLIS: Let's take a 10-minute break.

13 (Recess.)

14 JUDGE WALLIS: Shortly before we took a brief  
15 recess, we heard a motion to strike certain testimony  
16 of Mr. Colbo. All parties agreed that a motion was  
17 well-founded and the motion is granted. Mr. Marshall,  
18 have you had the opportunity to review the remaining  
19 cross-examination?

20 MR. MARSHALL: Yes, I have. I should be able  
21 to finish before 5:30 and maybe before.

22 Q. (By Mr. Marshall) Turning to Page 20 at Line  
23 7 of your testimony, you discussed the adjustment to  
24 what you call one-time maintenance expenses or OTM  
25 expenses. Do you see that?

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1 A. Yes.

2 Q. The total amount of those OTM expenses that  
3 you are adjusting is \$5.6 million, and of that, you  
4 take 98 percent of the 5.6 million out of the expense  
5 category, capitalize 40 percent of it and normalize 58  
6 percent of it for a five-year period; right?

7 A. Just a moment, please. No, that's not  
8 exactly correct.

9 Q. Let me back up. There is a total of 5.6  
10 million in OTM expenses that you are going to make an  
11 adjustment to; right?

12 A. The actual OTM expense recorded by the  
13 Company for year 2001, according to Page 9 of Exhibit  
14 2003-C, is \$3,295,502, so I have capitalized 40 percent  
15 of that number and amortized 58 percent of that number  
16 to make the adjustment to this account. I haven't used  
17 as the starting point the 5.6 million.

18 Q. When you say that you normalized that, the 58  
19 percent of that \$3-million amount, when you say  
20 "normalized," what do you mean?

21 A. I thought I said "amortized", but normalize  
22 means to recast for a more representative number that  
23 can be included in the base of expense, which would be  
24 used to set rates for the future as opposed to what was  
25 actually recorded on the books of the Company.

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1 Q. You picked a five-year period?

2 A. Yes.

3 Q. As opposed to some other period?

4 A. Yes.

5 Q. There were two percent of these expenses that  
6 you left in as expenses; right?

7 A. That's correct. I've left it all in. The  
8 question is one of timing and how much is to be  
9 included in the test-year numbers.

10 Q. Did you hear Mr. Kermode's testimony  
11 yesterday about the tank-painting example where you  
12 take a third of the tanks over three years and start  
13 painting one-third. You go to the next year, another  
14 third, and then the cycle would repeat itself, so you  
15 could have nine years of one-third, one-third,  
16 one-third. Do you remember that, basically?

17 A. I remember his testimony in that regard, yes.

18 Q. In that regard, he said for administrative  
19 convenience, it really doesn't matter whether you  
20 expense it or capitalize it. You could do either, and  
21 you come up with basically the same result.

22 MR. TROTTER: I'll object. I don't think  
23 that was exactly his testimony. He talked about a  
24 three-year amortization period, I believe.

25 JUDGE WALLIS: Perhaps you could reask the

1 question, Mr. Marshall.

2 Q. (By Mr. Marshall) Taking an assumption, if  
3 you had a situation where you had tanks and you were  
4 painting them every three years starting with a third  
5 of them one year and so on, isn't it fair to say that  
6 it doesn't really matter whether you expensed that or  
7 amortized it or capitalized it if you kept doing it for  
8 a long enough period of time?

9 A. If you had been doing that for a long period  
10 of time and if you could demonstrate that throughout  
11 time in historical experience or whatever for a period  
12 of time, you could show that you had, for example,  
13 three tanks and you painted one a year and that the  
14 effect with respect to recording expense would be the  
15 same if you just wrote off your actual painting expense  
16 for each year or capitalized it each year and wrote off  
17 a third of each years, in each of the three years, if  
18 you could demonstrate that that was your experience for  
19 a period of time where that was, in fact, happening,  
20 then -- and I think the phrase that Mr. Kermode used  
21 with respect to that demonstration was something to the  
22 effect that if you could establish that as a track  
23 record -- then yes, I think his point was well-taken,  
24 but that has not been demonstrated in this case.

25 Q. Take the pipe replacement example. If you



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1 had a situation where pipe was being replaced year  
2 after year and the Company was treating that as an  
3 expense every year, year after year, and all of a  
4 sudden in one period of time, somebody said, Well, we  
5 ought to be capitalizing that, wouldn't it be proper to  
6 do one of two things, to either go back and look at all  
7 of the pipe that has been expensed and capitalize it so  
8 it's a rate base, or continue that same process in the  
9 future of expensing it?

10 A. No, I don't believe that would be correct.  
11 With respect to continuing doing that in the future,  
12 my answer is as I earlier stated. If you could  
13 demonstrate that that kind of stuff was happening on a  
14 routine basis and there was not much of a difference  
15 between capitalizing it and amortizing it over a number  
16 of years or just expensing it every year, if you could  
17 establish that as having been an historic pattern, then  
18 yes, that would probably work, but with the second part  
19 of your question related to if you had expensed it in  
20 the past and now you've changed gears and say, should  
21 it be capitalized, would it be correct to go back and  
22 increase rate base, which in your question, I think,  
23 presupposed that rate base might be understated because  
24 all that other stuff had been expensed and not  
25 capitalized, that part is not correct because in the

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1 past, if the Company had been expensing those items,  
2 rates would have been set on those expenses, and those  
3 expenses would have already been fully recovered in the  
4 present rate, so that would not be correct.

5 Q. But there would be some gap between the last  
6 time rates were set and the current rates had been set,  
7 and the fact that you have a question about going back  
8 in time and recharacterizing an item as capital rather  
9 than expense means that we ought to be careful about  
10 making a change now between what the Company has been  
11 doing on its records and how it treats plant in this  
12 period. Is that fair to say?

13 A. Could you repeat that, please?

14 Q. Sure. Your question about going back and  
15 capitalizing things that have been put on the books as  
16 expenses, and there may be periods where it's between  
17 rate periods, so you might recover those expenses;  
18 true?

19 A. No. If it's between rate periods --

20 Q. -- you don't recover.

21 A. You do recover them if they were included in  
22 the base that the rate was set with in the beginning.

23 Q. But not otherwise.

24 A. I don't know exactly what that means. If  
25 rates are set with a high level of expense because

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1 there was a lot of heavy maintenance going on, painting  
2 or whatever, to use your example, and if rates were set  
3 on that basis and the Company didn't come in for five  
4 years, those levels of expense would still be imbedded  
5 in the present rates that the Company would be  
6 continuing to collect in the future, and so that's my  
7 answer. You continue to collect as long as present  
8 rates are in effect, so those amounts are recovered  
9 even more than once, potentially.

10 Q. At the beginning of this testimony of your  
11 cross-examination, you mentioned that Olympic was ahead  
12 of the curve in terms of responding to federal  
13 regulations on a number of new things that had to be  
14 done for repair, replacement, education and so on. Do  
15 you remember that testimony?

16 A. Yes.

17 Q. So on a forward-going basis, isn't it true  
18 that Olympic will have continuing expenses subject to  
19 those new regulations that it hasn't had in the past?

20 A. I presume that's the case. I'm not 100  
21 percent sure. To the extent they are ahead of the  
22 curve and already imbedded in the historic results as  
23 captured in the test year, then yes, but my  
24 recollection is there has been no showing of the  
25 Company in any of their pro forma or restating or any

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1 other kind of adjustments updating expenses to the more  
2 current levels in their case. They have not made any  
3 measured impact of what those additional expenses for  
4 maintenance or safety or whatever else is a result of  
5 these new regulations. The Company has made no showing  
6 of that and haven't included any of that in their case.

7 Q. Your recollection is that no testimony from  
8 Mr. Talley and the other witnesses that the current  
9 level of expenses that they are incurring are likely to  
10 stay at that same high plateau for the foreseeable  
11 future?

12 A. I'm saying that the Company -- there has been  
13 testimony that costs are going up, but there has  
14 been -- as a result of federal rules and state rules  
15 and everything else, there has been no adjustments in  
16 the Company's case giving effect to any of those  
17 increased expenses, whether they exist or not. I  
18 presume there is something there, but the Company  
19 hasn't made any showing in its direct case or its  
20 rebuttal case as to what those initial costs are in  
21 terms of a number we can get a handle on and give  
22 effect to.

23 Q. You are unaware of the testing program, the  
24 repair and replacement and education program?

25 A. I'm aware they happen, and I'm aware to the

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1 extent they have happened, they are in the base test  
2 period. Beyond that, the Company has made no pro forma  
3 adjustment giving effect to those increased costs  
4 either in its direct case or its rebuttal case.

5 Q. I need to understand. You are not saying  
6 that they haven't said that the same level of expenses  
7 that they are now incurring won't incur into the future  
8 and continue on at the same level they are now  
9 experiencing.

10 A. I'm not saying what?

11 Q. You are not disagreeing with any of Olympic's  
12 witnesses who have said that the level of expenses that  
13 they are seeing now are not going to occur in the  
14 future. Let me rephrase that.

15 MR. TROTTER: Your Honor, can we just be  
16 given some specific testimony? I don't think that's an  
17 accurate characterization of the Company's testimony at  
18 all. I don't see anything about identifying any  
19 specific cost level, and that's what this witness has  
20 just testified to. So I'll object to the question and  
21 ask that Mr. Marshall direct us to some specific  
22 testimony.

23 Q. (By Mr. Marshall) You have testimony about  
24 existing amounts being spent; right?

25 A. I have said that to the extent Olympic is

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1 ahead of the curve, that that base level of effort is  
2 reflected in the Staff test year for the year 2001 with  
3 respect to federal regulations.

4 Q. Maybe I can say it this way better. There is  
5 no testimony that you are aware of that that level will  
6 go down in the future; correct?

7 A. I'm not aware of any.

8 Q. There is also testimony about tests that are  
9 being currently done, evaluated, and the repairs and  
10 replacement that will have to be done following those  
11 tests. You've heard testimony about that too;  
12 correct?

13 A. I don't recall anything specifically. If you  
14 could show me.

15 Q. You are aware that they are doing TFI runs  
16 right now to look for anomalies on weld seams and that  
17 those TFI runs are being examined for the test data,  
18 and when the test data is known, they will have to get  
19 permits to do the actual excavation, and the excavation  
20 will either lead to repair or replacement; you are  
21 aware of that testimony?

22 A. I think you are correct that Mr. Talley  
23 testified regarding those things.

24 Q. And you are aware that that effort is going  
25 to continue on to the foreseeable future, according to

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1 his testimony; correct?

2 A. I'm not sure how often you have to do that,  
3 but I guess it will continue.

4 Q. You have no information that it won't  
5 continue, is a better way of putting that.

6 MR. TROTTER: I'm going to object. He now  
7 has the witness guessing. The Company has provided no  
8 quantification of these impacts. So this is purely  
9 calling for speculation.

10 JUDGE WALLIS: Mr. Marshall?

11 MR. MARSHALL: I'll move on to another area.  
12 I think I've exhausted this witness's knowledge in this  
13 area. Let's stand on what Mr. Talley and Mr. Batch  
14 have said.

15 Q. (By Mr. Marshall) Did you rely on anybody  
16 outside of the rate staff for any information on  
17 whether to expense or to capitalize a certain item in  
18 this collection of costs?

19 A. Yes.

20 Q. Who would that be?

21 A. Some of the engineers in the Commission  
22 pipeline safety.

23 Q. Did you rely in particular on Kim West to  
24 give you some advice?

25 MR. BRENA: Your Honor, we are just repeating

1 the deposition again.

2 JUDGE WALLIS: If counsel merely wants to  
3 have that information in the record, then the  
4 deposition is an acceptable way to do it. If you are  
5 looking to impeach or lay a foundation for further  
6 questions, then that's a different matter.

7 MR. MARSHALL: I think we've determined from  
8 the last two witnesses that sometimes they agree with  
9 the deposition and sometimes they don't, so I think  
10 it's a fair question to ask, and I'm not the one  
11 sponsoring the depositions in this exhibit. It's  
12 Mr. Brena.

13 JUDGE WALLIS: You may proceed.

14 Q. (By Mr. Marshall) Was that person Kim West?

15 A. Yes.

16 Q. Do you know if she ever even looked at a  
17 line-lowering project, for example, or any other  
18 project?

19 A. The impression I had in my discussion with  
20 her that she was familiar with the kind of things we  
21 looked at, and I know that engineers routinely go out  
22 in the field and review various aspects of Olympic's  
23 operation and facilities. Whether she has actually  
24 physically gone out to a specific line-lowering, I  
25 don't know.



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1           Q.     In your deposition, you said that you didn't  
2 have any idea whether she looked at any line-lowering  
3 or berm projects or anything else, did you?

4           A.     I think that's what I just said. I know that  
5 they go out in the field and review physical stuff  
6 about the pipeline, but whether it related to a  
7 specific line-lowering, I don't know.

8           Q.     Just a few more questions. With regard to  
9 the change in operator, if you assume that a new  
10 operator is better than a prior operator, would there  
11 be benefits to the shippers?

12          A.     "Better" is a pretty broad term. I don't  
13 even know how to respond to that. I guess there would  
14 be some benefits if it was a better operator for  
15 everybody involved.

16          Q.     If there are benefits to the shippers,  
17 shouldn't transition charges be paid for that benefit  
18 by the shippers?

19          A.     Solely as a result of an ownership or  
20 operatorship change, no, I don't believe so. That's  
21 not related to the specific service of providing  
22 transportation, and I don't think those costs should be  
23 passed on. I think it's more related to additional  
24 acquisition costs rather than additional operating  
25 expense.

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1 Q. So even if you make an assumption that an  
2 operator is better, you would disallow all costs in  
3 making a change from one operator to the other?

4 A. I don't think it's proper for ratepayers to  
5 pay for additional costs of acquisition solely based on  
6 the cost of transition between the two. If it is a  
7 better operator and there are efficiencies, those will  
8 be reflected in the operating results that the operator  
9 implements, and they will be passed on to ratepayers in  
10 that matter, but I don't think the additional costs  
11 incurred by the new operator or owner should be passed  
12 on automatically to the ratepayers.

13 Q. So if it's not passed on automatically, it's  
14 worth looking at the question as to whether a new  
15 operator provides more benefits than a prior operator.  
16 At least you will admit that's a factor that should be  
17 considered.

18 A. That's a factor that should be looked at, but  
19 as I said, I'm opposed to those kind of costs being  
20 passed through to ratepayers. It's not directly  
21 related to the cost of providing the basic  
22 transportation service, and that's my answer.

23 Q. In your testimony, did you identify any  
24 public interest factor beyond just cost information in  
25 your testimony? For example, did you look at

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1 specifically safety as a public interest factor in your  
2 testimony?

3 A. Safety as it's being implemented by the  
4 Company is imbedded in the base-period expenses that  
5 the Staff used for their test year, calendar year 2001.  
6 Those safety costs are given recognition to in the  
7 Staff result of operations.

8 Q. One more series of questions on the SeaTac  
9 remediation. Because SeaTac facilities have been sold,  
10 does that mean that the remediation costs go away for a  
11 prior owner, or do they stay with the prior owner, or  
12 do you know?

13 A. I know what the Company has represented. My  
14 basic sense is that if you sell the facility, then the  
15 remediation costs associated with it should go away,  
16 but we have some testimony in this case to the effect  
17 that even though the SeaTac facility is sold that  
18 Olympic in some manner will still be liable for those  
19 remediation costs. That's what the Company has  
20 represented.

21 Q. Have you looked at the documents on the sale  
22 of the SeaTac facilities to see whether any of the  
23 remediation liabilities have been retained, either by  
24 operation of law or by contract?

25 A. No, I have not.

4776

1 Q. Are you familiar generally with Superfund  
2 responsibilities for remediation of a prior-owned  
3 facility?

4 A. No.

5 Q. Do you understand that owners of property, no  
6 matter what they would like to do with responsibility  
7 for remediation, always continue to have that  
8 obligation unless otherwise provided for in contract?

9 A. I know that there are some stringent federal  
10 requirements about Superfund site and cleanup in  
11 general terms, but in specific terms as it relates to  
12 the SeaTac facility, I'm not aware, and the other part  
13 of that is that the SeaTac remediation amount that's  
14 included in the Company case is a budget number, not an  
15 actual expenditure number, so there is a difference  
16 there too.

17 Q. Do you know whether the power costs for  
18 SeaTac have gone down simply because they sold some  
19 terminaling facilities at SeaTac? Aren't they still  
20 going to have to pump the same amount of material jet  
21 fuel to the end of that line, and therefore, have the  
22 same amount of power costs, or is it something that you  
23 don't know?

24 A. With respect to the transportation of the  
25 fuel that gets to SeaTac and the operation of the pump

4777

1 that gets it there, there will continue to be power  
2 costs consumed and incurred by Olympic.

3 I would have expected that with respect to  
4 the movement of fuel within the terminal and pumping it  
5 out the tanks and into the trucks or out to the planes  
6 or however they do it, I would assume that once that  
7 facility is sold, that obligation is no longer the  
8 obligation of Olympic but rather the obligation now of  
9 the Port of Seattle that owns that facility.

10 Q. So that's an assumption both as to the amount  
11 of that power and who may still have that obligation.

12 A. Yes.

13 Q. Going back briefly to this changeover to BP  
14 as the operator, do you know that that was a result of  
15 a bid where there was any acquisition of majority share  
16 of the pipeline?

17 A. The acquisition cost was a result of a bid?

18 Q. No. It's just the opposite. The acquisition  
19 cost didn't have anything to do with the change in  
20 operator. The old contract with Equilon expired; do  
21 you recall that?

22 A. Yes.

23 Q. The new contract was put out to bid; do you  
24 recall that?

25 A. Yes.

4778

1 Q. And that happened before there was any  
2 acquisition change by BP becoming the majority  
3 shareholder of Olympic; correct?

4 A. Yes. BP became majority owner of the line  
5 after the operator change happened. Is that what you  
6 said?

7 Q. Do you agree with that?

8 A. Yes.

9 Q. So it wasn't part of any acquisition cost,  
10 was it?

11 A. What wasn't a part of any acquisition cost?

12 Q. The change in operators was not part of an  
13 acquisition cost as you just testified a few moments  
14 ago.

15 A. I don't believe so.

16 MR. MARSHALL: Thank you. No further  
17 questions.

18 JUDGE WALLIS: Off the record for a  
19 scheduling discussion.

20 (Discussion off the record.)

21 JUDGE WALLIS: We will take our dinner  
22 recess.

23 (Dinner recess taken at 5:40 p.m.)

24

25

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1

EVENING SESSION

2

(7:00 p.m.)

3

JUDGE WALLIS: Back on the record. I believe

4

we are ready to move on to Mr. Brena.

5

6

7

CROSS-EXAMINATION

8

BY MR. BRENA:

9

Q. Good evening, Mr. Colbo.

10

A. Good evening.

11

Q. I was a little bit confused by your testimony

12

with regard to the transition costs from one operator

13

to the other. Were you suggesting that they should be

14

disallowed because it was unrelated to providing

15

service, or were you suggesting that they should be

16

disallowed because they were related to the acquisition

17

or both or neither?

18

A. Irrespective of whether BP has gained

19

majority control of Olympic, acquisition costs are

20

disallowed because they aren't related to the providing

21

of the basic service of the line, that is, transporting

22

oil.

23

Q. You just said acquisition costs are not

24

allowed. Did you mean transition costs?

25

A. Yes. Transition costs are not allowed

4780

1 regardless of whether or not they have acquired control  
2 of the pipeline.

3 Q. And you were asked if a case has been made  
4 that the new operator was better than the old operator  
5 -- remember that line of questions?

6 A. Yes.

7 Q. Do you know how much the management fee was  
8 for the old operator, offhand?

9 A. Offhand, I don't. I know what it is for the  
10 present operator.

11 Q. Do you know how much it increased?

12 A. No, not between the new and the old.

13 Q. Could you accept subject to check that it  
14 doubled?

15 A. I believe that I've heard some testimony to  
16 that effect. I would accept that subject to check.

17 Q. With regard to the representativeness of  
18 throughput, you had emphasized the impact of downtime,  
19 and you were asked a series of questions about whether  
20 or not the projects would continue, and therefore, the  
21 downtime would continue to be representative.

22 First of all, has the Company put on my  
23 evidence to show that the actual throughput that is  
24 used in this case will be representative of future  
25 operations?



4781

1 A. I'm not aware of any.

2 Q. Isn't it true that the type of work that's  
3 being done on the pipeline will also impact throughput,  
4 not just that there is projects ongoing, but the type  
5 of projects?

6 A. That will have influences on throughput as  
7 well, yes.

8 Q. Take hydrotesting, for example. There has  
9 been extensive hydrotesting through the last period;  
10 correct?

11 A. Yes, as testified to by Mr. Talley.

12 Q. You cannot operate a line as you hydrotest  
13 it, can you?

14 A. No.

15 Q. What you hydrotest with is water, so you have  
16 to shut down the line entirely to conduct that type of  
17 testing.

18 A. Yes. I think Mr. Talley testified to that in  
19 some detail.

20 Q. In the type of testing that they will be  
21 doing in the future, does it require shutting down the  
22 line entirely to conduct it?

23 MR. MARSHALL: Objection, lack of foundation.

24 Q. If you know.

25 A. I'm not sure how often they have to do

4782

1 hydrotesting. One of the problems we have in  
2 comparing -- I mentioned problems of measuring downtime  
3 in the actual numbers from July 2001 forward through  
4 April of 2002, but also, we don't have any analysis of  
5 downtime for the historic year 1998, which was the last  
6 year of normal operations, if I can use that term, so  
7 that's the problem. We don't know how to get a handle  
8 on that downtime issue, and it relates both to historic  
9 '98 and current experience.

10 Q. Does the type of product flowing through the  
11 line impact the throughput?

12 MR. MARSHALL: Objection, lack of foundation.  
13 This witness has testified he has no knowledge of  
14 pipeline operations, and I also object on friendly  
15 cross.

16 JUDGE WALLIS: The inquiries appear to be  
17 related to the accounting treatment of practices, and  
18 there has been quite a bit of inquiry in that regard.  
19 I think the witness ought to be able to explain whether  
20 he knows or not.

21 THE WITNESS: I know that heavier-grade  
22 products move slower through the line than gasolines,  
23 et cetera.

24 Q. (By Mr. Brena) Batch size, does that also  
25 impact it, how the batch size may have changed from the

4783

1 representative year to currently to the future?

2 A. Yes.

3 Q. Are these all things that discovery was  
4 requested on?

5 A. I believe so.

6 Q. Have you seen any discovery produced that  
7 would indicate whether or not the throughput that they  
8 are using is representative or not?

9 A. I know there was a considerable amount of  
10 effort trying to get at downtime, and I don't think  
11 that was ever successful, and I think there was  
12 inquiries in the other areas as well.

13 Q. Are you aware of whether or not Tesoro's  
14 refinery was shut down for nine-and-a-half weeks during  
15 that period?

16 MR. TROTTER: I'll object to the question  
17 until "during that period" can be defined.

18 Q. During the period in which Olympic is using  
19 its actual throughput.

20 A. Did that relate to a fire?

21 Q. There was actually a fire in a different  
22 refinery. If you don't know...

23 A. I guess I don't know.

24 Q. Do you think the type of product flowing  
25 through the line would have changed as a result of the

4784

1 September 11th events?

2 A. I don't know.

3 Q. Would you expect there to be a little less  
4 jet fuel flowing through that line as a result of  
5 September 11th?

6 A. I would presume that there was less flight  
7 activity out of SeaTac due to passenger uncertainty.

8 Q. You were asked a series of questions with  
9 regards to OTM. What does OTM stand for?

10 A. "One-time maintenance."

11 Q. How should nonrecurring expenses be treated  
12 for rate-making purposes, generally?

13 A. Nonrecurring?

14 Q. Yes.

15 A. They should be normalized, smoothed out so we  
16 don't have peaks and valleys. That would be a peak,  
17 and the object of regulation is to get a representative  
18 test period, and that would involve smoothing things  
19 out and avoiding the highs and the lows.

20 Q. If a cost is truly not going to reoccur at  
21 any point in the future, do you agree that rate-making  
22 is prospective in nature?

23 A. Yes.

24 Q. So if I spend a million dollars today on  
25 something that will never reoccur again, then you agree

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1 that that cost must be adjusted in some fashion.

2 A. In some fashion, yes. As I said, I think the  
3 appropriate method would be to smooth it out.

4 Q. Under certain circumstances, is it  
5 appropriate rate-making treatment just to disallow the  
6 cost?

7 A. That would be an option too, depending on  
8 what circumstances the cost was incurred for, what the  
9 purpose was, what purpose it served, what related to  
10 providing service or whatever.

11 Q. Did you attend Ms. Hammer's deposition?

12 A. Yes, I did.

13 Q. Do you have in mind when the one-time  
14 maintenance expenses when she was cross-examined on her  
15 sponsoring those level of maintenance expenses?

16 A. I do recall that, yes.

17 Q. Do you recall whether or not she had any  
18 knowledge with regard to any of the expenses that was  
19 set forth as one-time expense so that they could be  
20 properly categorized or used?

21 A. She had little, if any, specific knowledge  
22 about what was actually expended versus what was in the  
23 budget.

24 Q. Did she answer any questions that you recall  
25 relating to what the projects were for?

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1 A. She had no knowledge about projects.

2 Q. Do you recall how she compiled that  
3 particular list?

4 MR. MARSHALL: There were objections about  
5 depositions speaking for themselves, and I think we are  
6 now just asking a witness to try to summarize some  
7 other deposition from another witness, so given the  
8 lateness of the hour, I'll object.

9 MR. TROTTER: I will join. I'm assuming this  
10 April deposition is in the record.

11 MR. BRENA: These are foundational questions.  
12 Tesoro has disallowed costs that this witness has  
13 normalized, and the question that I'm ultimately  
14 exploring is in the absence of information, what sort  
15 of rate treatment is appropriate in a case.

16 Here's a situation where the witness that  
17 sponsored the one-time maintenance expenses was not  
18 able to answer a single question with regard to what  
19 they were for or whether they would be reoccurring or  
20 nonrecurring, and this witness has capitalized to  
21 normalized those expenses, and if there is a complete  
22 failure of a case, then what's the appropriate  
23 rate-making treatment, but I will rephrase the  
24 question.

25 JUDGE WALLIS: Mr. Marshall, are you

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1 persuaded?

2 MR. MARSHALL: Absolutely. I just hope we  
3 don't go through Talley and all the other depositions  
4 and ask Mr. Colbo to summarize those too.

5 MR. BRENA: It was foundational in nature,  
6 but I will rephrase.

7 Q. (By Mr. Brena) When counsel for Olympic was  
8 asking you questions, they were asking you about line  
9 replacements. Are there any line replacements in the  
10 one-time maintenance costs at all?

11 A. In the study that I did of 2002 proposed  
12 budget for one-time maintenance on Pages 10 and 11 of  
13 my Exhibit 2003-C, there is all kinds of expenses for  
14 river surveys, risk studies, matrix surveys, painting,  
15 mowing, study on control center locations, line depth  
16 surveys, hazardous operating assessments, and there was  
17 one item that I see on Page 10 involving line-lowering  
18 on East Creek, so there is a mix of a whole bunch of  
19 difference things there.

20 Q. So far as you are aware, was line replacement  
21 on the list at all?

22 A. I don't see it there.

23 Q. Now, there has been a lot of testimony in  
24 this proceeding about whether or not 900 feet or 1,100  
25 feet of line replacement should be capitalized or

4788

1 expensed. You've sat in the hearing room and heard  
2 that.

3 A. Yes, I did.

4 Q. Is that an issue in this proceeding at all?

5 A. Well, I don't know specifically whether there  
6 was line replacing recorded in my test period for this  
7 Company. We heard testimony from the Company that this  
8 kind of thing routinely goes on.

9 What I did was take the study that I did from  
10 the 2002 budget of one-time maintenance expense and  
11 develop percentage relationships as to what I thought  
12 should be capitalized and what I thought should be  
13 amortized and what I thought should be expensed, and I  
14 applied those percentages against the base of the  
15 one-time maintenance expense as it was incurred by the  
16 Company during our test period.

17 Q. Let me phrase my question slightly  
18 differently because it was inartful. If line  
19 replacement has been done by the Company, it's included  
20 in their costs and has not been adjusted, so far as you  
21 are aware, by you or any party; correct? It's not a  
22 contested issue.

23 A. It's been adjusted by me to the extent that I  
24 applied -- well, line adjustments aren't in this study,  
25 so specifically, no. My position was the budget for



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1 2002 was a representative basis to form to get it to  
2 establish relationships between what was expensed, what  
3 I think properly for rate-making purposes should have  
4 been expensed, amortized, and capitalized, so that was  
5 meant to be a representative test.

6 Q. But you did not, nor did anybody that you are  
7 aware of, recharacterize the treatment for rate or  
8 other purposes of line replacement.

9 A. No, I did not.

10 Q. With regard to Page 10 and 11, different  
11 types of containment are included on it. Do you see  
12 that?

13 A. Yes.

14 Q. What do you understand "containment" to mean?

15 A. Berms or other devices that are designed to  
16 localize and keep from spreading leaks on tanks or from  
17 the pipe.

18 Q. Is there any question in your mind that if  
19 you built a containment dyke that it would last for  
20 greater than a year?

21 A. I think those are permanent-type efforts.

22 Q. And the dyke restoration project, would that  
23 fall in that same category?

24 A. Yes, and can you point me to the line number  
25 or where you see that item?

4790

1 Q. Page 10, Squamish County dyke restoration  
2 project, \$230,000? You have it capitalized.

3 A. Yes. Thanks for the reference, and that's  
4 why I capitalized it, because I think that the benefits  
5 to that extend well beyond even five years. That's the  
6 point of the capitalization entries. That's a  
7 permanent-type effort.

8 Q. You were asked a series of questions with  
9 regard to whether or not some level of expenses may be  
10 expected to continue in the future. Do you recall  
11 that?

12 A. Yes.

13 Q. As far as you are aware, has there been any  
14 quantification of what level of expenses are expected  
15 to continue and when?

16 A. No. I made a couple of references to a track  
17 record, and if it can be demonstrated that that would  
18 happen over a period of years, and that hasn't been  
19 done.

20 Q. Even assuming that that is correct, that  
21 these expenses of this type will continue at some  
22 level, then does that make them correct to expense what  
23 should otherwise be a capitalized item?

24 A. No. That's the point of my adjustments.  
25 Those same percentages would apply in the future as

4791

1 well.

2 MR. BRENA: I have nothing further.

3 JUDGE WALLIS: Commissioner questions?

4 CHAIRWOMAN SHOWALTER: I think you've  
5 answered the questions I had stored up for you. I have  
6 no questions.

7 COMMISSIONER HEMSTAD: I have just one.

8

9

10 CROSS-EXAMINATION

11 BY COMMISSIONER HEMSTAD:

12 Q. Are you aware of what other states that  
13 regulate pipelines do with regard to traditional as  
14 against the FERC methodology?

15 A. I know what's been represented from comments  
16 on Tesoro's witnesses, and that is that no other state  
17 has ever approved the TOC FERC 154-B approach.

18 Q. But you don't know of your own knowledge.

19 A. No.

20 COMMISSIONER HEMSTAD: Thank you.

21 COMMISSIONER OSHIE: I have no questions.

22 JUDGE WALLIS: Follow-up should be limited.

23 Mr. Trotter, do you have redirect?

24 MR. TROTTER: Yes, I do.

25



4793

1 whether you substituted a number in your adjustment.  
2 Can you identify what number you substituted? Was it  
3 the new rate?

4 A. It was the rates that were applied against  
5 the kilowatts consumed to arrive at the new change  
6 power-cost number. That's my answer.

7 Q. Did you use the test-year usage at the  
8 facilities that you had listed on your exhibit?

9 A. Yes. The usage units didn't change, only the  
10 cost of the kilowatts consumed. The rate in the tariff  
11 schedules that were applied to arrived at the billed  
12 amounts.

13 Q. So the units stayed the same but the new rate  
14 applied?

15 A. Yes.

16 Q. Is that by definition the proper pro forma  
17 adjustment?

18 A. That is the proper definition of pro forma,  
19 yes.

20 Q. You were asked questions about the known and  
21 measurable concept, and I think an example was offered  
22 if wages go up; do you recall that?

23 A. Yes.

24 Q. If you were told that wages go up, does that  
25 automatically mean a pro forma adjustment is

4794

1 appropriate?

2 A. In and of itself, no. Known and measurable  
3 means there has to be some quantification of it in  
4 terms of how much it went up, from what to what, the  
5 effective date, and it has to be -- just to say that  
6 costs have gone up, there is more to it than that.

7 Q. Would you also have to take into account  
8 whether there were offsetting factors?

9 A. Yes.

10 Q. Assume that wages went up but the number of  
11 employees went down. Would that be an example of an  
12 offsetting factor?

13 A. It could be, yes.

14 Q. You were also asked some questions with  
15 regard to throughput. All else being equal, as  
16 throughput goes down, rates go up. Do you recall that  
17 line of questioning?

18 A. Yes.

19 Q. I would ask you to assume that a company,  
20 hypothetically, a company was earning in excess of a  
21 fair rate of return and throughput went down. Under  
22 that assumption, all else being equal, would that  
23 automatically mean that rates would have to go up?

24 A. No.

25 Q. You were asked about public interest

4795

1 considerations. In your opinion, is a fair, just, and  
2 reasonable rate of public interest consideration this  
3 Commission should consider in this case?

4 A. It's statutory mandate, yes.

5 Q. Is your analysis directed toward that  
6 public-interest factor?

7 A. Yes.

8 Q. You were asked some questions about the  
9 impact of new regulations on costs and also either  
10 increased use of SCADA or costs associated with SCADA.  
11 Do you recall those questions?

12 A. Yes.

13 Q. Has the Company offered any pro forma  
14 adjustment to take into account the alleged increases  
15 in those types of costs?

16 A. I think I stated that a couple of times in my  
17 response to Mr. Marshall. The Company has proposed no  
18 such pro forma adjustments.

19 Q. With respect to throughput, is it true that  
20 Staff's adjustment reflects an 80 percent pressure  
21 condition?

22 A. Yes, it does. Turning again to Page 21 of 40  
23 in Exhibit 2003-C, specifically Line Nos. 1 and 2 where  
24 I show the '98 throughput of 116.2-million barrels,  
25 that was the throughput at 100 percent pressure, and on

4796

1 Line 2 where I capture the 2001 throughput, that is at  
2 80 percent pressure. That's the reason why we picked  
3 those two time frames, to try to get a handle on that  
4 pressure differential and the impact it would have on  
5 throughput.

6 Q. You were asked a number of questions about  
7 the downtime, and I asked this question of Mr. Talley.  
8 If I told you a specific pipeline had 50-million  
9 barrels of throughput in a particular year, does that  
10 tell you anything about whether that level is  
11 appropriate for rate-making purposes?

12 A. Well, it's a good starting point. In my  
13 responses to Mr. Marshall, I made some references to  
14 inability to measure throughput in the current period  
15 that the Company is basing its throughput assumptions  
16 on, but equally important is the question of throughput  
17 for year '98, and we don't have any downtime in the  
18 current months and downtime in 1998, and there has been  
19 no determination of either part of that, so it's  
20 difficult to say where that leaves us in terms of  
21 setting a normal throughput level for setting rates.

22 Q. Did the Company provide a study of downtime  
23 for calendar year 2001 or year ended September 30,  
24 2001?

25 A. Did you say downtime study?



4797

1 Q. Yes.

2 A. No. We don't have any good numbers on  
3 downtime. That's the whole point.

4 Q. What about for any period covering 2002? Did  
5 they provide a study for that period?

6 A. There has been no definitive downtime studies  
7 at all.

8 Q. Was the point of your analysis on Page 21 of  
9 Exhibit 2003-C to make a reasonable estimate of the  
10 Company's throughput at 80 percent pressure?

11 A. Yes.

12 MR. TROTTER: That's all I have. Thank you,  
13 Mr. Colbo.

14 JUDGE WALLIS: Is there recross?

15 MR. MARSHALL: No.

16 JUDGE WALLIS: Is there anything further of  
17 the witness? Mr. Colbo, thank you very much for  
18 appearing today. You are off the stand. Let's be off  
19 the record while Mr. Colbo steps down and Mr. Elgin  
20 steps forward.

21 (Discussion off the record.)

22 JUDGE WALLIS: Mr. Elgin, did you testify in  
23 the interim proceeding.

24 THE WITNESS: Yes.

25 JUDGE WALLIS: Commission staff has at this

4798

1 time called back to the stand Kenneth L. Elgin, who was  
2 a witness in the interim phase of this proceeding.  
3 Mr. Elgin, I'll merely remind you that you have been  
4 previously sworn in this docket.

5 THE WITNESS: Thank you.

6 JUDGE WALLIS: In conjunction with  
7 Mr. Elgin's appearance, Commission staff has presented  
8 some prefiled testimony. These have been marked as  
9 Exhibits 2101-T through 2104-C at the administrative  
10 conference on June 13th, and we will look to the  
11 designations and marking in the transcript of that  
12 docket for these documents.

13 In addition, Commission staff had presented  
14 documents also there marked as 2105, 2106, and 2107,  
15 but Commission staff is withdrawing those exhibits from  
16 use in this docket. Is that correct, Mr. Trotter?

17 MR. TROTTER: Yes.

18 JUDGE WALLIS: In addition, Olympic has  
19 presented several documents for possible use on  
20 cross-examination of this witness. Those include  
21 Exhibits 2108 through 2112 for identification, which  
22 were marked at the June 13th conference.

23 Tesoro has presented for possible use on  
24 cross-examination an exhibit numbered 2113, which  
25 consists of the deposition of Mr. Elgin on June 5,

4799

1 2002. Finally, Olympic has recently produced some  
2 additional documents for use potentially on  
3 cross-examination of this witness. These include a May  
4 6th letter to Mr. Marshall from Mr. Trotter numbered  
5 2114 for identification.

6 MR. TROTTER: Excuse me, Your Honor. I  
7 offered that as a potential redirect exhibit.

8 JUDGE WALLIS: Thank you for that correction.  
9 Olympic has offered the 1997 FERC Form 6, which is  
10 marked as 2115, a reformatted compilation of  
11 Mr. Elgin's KLE 6, which is marked as 2116, and a FERC  
12 Form 6 documents for 1999 and 2000, which are marked as  
13 2117 and 2118 for identification.

14 In addition, we note that the testimony  
15 marked as 2101-T is substituted direct testimony of  
16 this witness, and the 2102 is a revised version of the  
17 document. With that, I believe that the witness is  
18 available. Mr. Trotter?

19 MR. TROTTER: Thank you, Your Honor.

20

21

22 DIRECT EXAMINATION

23 BY MR. TROTTER:

24 Q. Mr. Elgin, please state your name and spell  
25 your last name for the record?

4800

1 A. Kenneth L. Elgin, E-l-g-i-n.

2 Q. You are employed by the WUTC in the  
3 regulatory services division as the case strategist; is  
4 that right?

5 A. Yes.

6 Q. In the course of your duties in that  
7 assignment, did you have cause to prepare testimony and  
8 exhibits in this case?

9 A. Yes.

10 Q. Is Exhibit 2101-T a substituted version,  
11 which I'll just call 2101-T from now on, is that your  
12 direct testimony?

13 A. Yes.

14 Q. If I asked you the questions that appeared  
15 there, would you give the answers that appear?

16 A. Yes.

17 Q. Do you sponsor Exhibits 2102, the revised  
18 version, which we will refer to as 2102, 2103, and  
19 2104-C?

20 A. Yes.

21 Q. Are those documents true and correct to the  
22 best of your knowledge?

23 A. Yes.

24 MR. TROTTER: I move for the admissions of  
25 2101-T, 2102, 2103, and 2104-C.

4801

1 JUDGE WALLIS: Is there objection?

2 MR. BEAVER: No, Your Honor.

3 MR. TROTTER: I have a few areas to cover in  
4 surrebuttal.

5 JUDGE WALLIS: Let the record show the  
6 exhibits are received in evidence.

7 Q. (By Mr. Trotter) Mr. Elgin, Mr. Fox in his  
8 rebuttal testimony stated that Olympic's financial  
9 situation should be considered in the context of the  
10 practices of other oil pipelines. Do you recall that?

11 A. Yes.

12 Q. Did you evaluate FERC Form 6 information for  
13 other pipeline companies in preparation of your  
14 testimony?

15 A. No.

16 Q. Why is that?

17 A. My analysis was specific to Olympic, and my  
18 understanding of the Commission's order in the interim  
19 phase requested an analysis related to the  
20 circumstances which gave rise to the situation facing  
21 Olympic at the time, and so I did my analysis  
22 exclusively to its Form 6.

23 Q. Has Olympic shown that maintaining high  
24 payout ratios and highly-leveraged capital structures  
25 is appropriate from a financial perspective?

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1 A. No, it has not.

2 Q. Has Olympic provided evidence as to how other  
3 oil pipelines with the same financial policies or  
4 similar financial policies as Olympic responded when  
5 there was a significant decline in revenues due to a  
6 loss of throughput?

7 A. No.

8 Q. What are the financial implications of an oil  
9 pipeline maintaining a high payout ratio and  
10 highly-leveraged capital structure when a major  
11 disruption in throughput occurs?

12 MR. BEAVER: I'm going to object. This is an  
13 area that actually was covered directly in his direct  
14 testimony. I don't really see what was added by our  
15 rebuttal case that would have prompted additional  
16 surrebuttal on this issue. He spends a substantial  
17 amount of time on this very issue in here.

18 JUDGE WALLIS: Mr. Trotter?

19 MR. TROTTER: This is following on the  
20 substantial rebuttal case that was filed, and this is a  
21 different question than what Mr. Elgin addressed  
22 directly.

23 MR. BRENA: Your Honor, I would like to be  
24 heard on this matter as well. As I understood it, we  
25 would have flexibility with regard to the types of

1 questions that we would ask as a result of the  
2 substantial rebuttal case that was put in, and I think  
3 that it's going to be a tremendous waste of our  
4 valuable remaining time to try to parse through what  
5 has changed from the rebuttal to the direct, where to  
6 draw that line and when to draw that line, and we  
7 haven't drawn that line yet in this proceeding, so I  
8 think a certain amount of flexibility is appropriate  
9 and called for under the circumstances.

10 JUDGE WALLIS: The objection is overruled.

11 Q. (By Mr. Trotter) Proceed.

12 A. I think I recall your question to be what  
13 were the financial implications.

14 Q. What are the financial implications of an oil  
15 pipeline maintaining a high payout ratio and a  
16 highly-leveraged capital structure when a major  
17 disruption in throughput occurs?

18 A. First, the pipeline, Olympic, and really for  
19 that matter, any firm that has significant financial  
20 leverage that pursued similar financial policies, in  
21 the event of a disruption of throughput on the system  
22 or any disruption in its ability to deliver service or  
23 any curtailment in revenues, in all likelihood, there  
24 would be a default on the debt, and it would force the  
25 company in a default situation either to, in this

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1 specific instance, to issue additional equity, or in  
2 the alternative, sell assets to pay down debt.

3 Q. Mr. Fox testified that in his opinion there  
4 were three significant factors affecting Olympic's  
5 financial situation in the summer following the Whatcom  
6 Creek explosion, and his factors were a significant  
7 decline in throughput, significant increases in capital  
8 and O&M costs, and a decision not to seek an immediate  
9 rate increase as a result of the Whatcom Creek incident  
10 and the fallout of that. Are there other factors the  
11 Commission should consider in that context?

12 A. Yes. I think that I agree with Mr. Fox, or  
13 he agrees with me, that there was a decline in  
14 throughput, but what his rebuttal testimony failed to  
15 address was the lost financial flexibility as a result  
16 of its past financial practices, and that includes the  
17 significant expenditures for new projects, its decision  
18 to finance those projects with additional debt, and the  
19 failure of those investments to provide any new source  
20 of revenue in order that the Company could service that  
21 increased amount of debt burden occasioned by those  
22 investments.

23 The other thing that Mr. Fox in his rebuttal  
24 testimony failed to acknowledge is that the Company did  
25 issue additional debt to finance its ongoing



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1 operations, and this created as a result a real  
2 problem, in my estimation, with its financial  
3 statements. So therefore, he seems to suggest that it  
4 was just related to the loss of throughput and  
5 increased expenses but failing to give a complete  
6 picture of really, what were the financial  
7 circumstances that gave rise to this situation.

8 Q. The investments that you identified that did  
9 not provide additional revenue, you are referring to  
10 the cross-Cascades project and Bayview?

11 A. Yes, I was.

12 Q. In your testimony in the interim phase of  
13 this case, you identified the disparity between the  
14 Company's total capital invested in the pipeline and  
15 its investment in, I think you called it long-lived  
16 assets; do you recall that?

17 A. Yes, I do.

18 Q. With the potential write-off of  
19 cross-Cascades, assuming that does occur, will that  
20 narrow that gap or widen that gap?

21 A. It will create further problems by widening  
22 the gap. I was surprised to hear that testimony in  
23 terms of what the Company's plans were to do with that,  
24 and it just further exacerbates the problem that we  
25 were faced with in the interim case.

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1 Q. I would like you to turn to your Exhibit  
2 2102.

3 A. Yes.

4 COMMISSIONER HEMSTAD: Are you on 2102 or  
5 2102-R?

6 MR. TROTTER: I'll call it 2102-R.

7 Q. (By Mr. Trotter) What are the implications  
8 of this exhibit in context of what Mr. Fox referred to  
9 as standard industry practices for oil pipelines?

10 A. This exhibit, in my estimation, clearly shows  
11 that by any standard of measurement, whether it be  
12 accounting rates of return on book equity or a  
13 cash-flow analysis that Mr. Fox referred to with  
14 respect to this economic analysis of cash flows or net  
15 present values, by any standard that you would want to  
16 measure, this Company over a period of 10 years  
17 achieved extraordinary returns.

18 If I could point out the significance of what  
19 this exhibit states is you will see that the dividends  
20 for just a very narrow period, 1990 to 1995, were \$42.4  
21 million, and during that same time period, Olympic  
22 generated about \$46.7 million in income, so  
23 approximately 90 percent of the income was paid out in  
24 dividends. Then in 1995, if you look at the total  
25 property line, the balance of property, that's

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1 \$39,227,000. Over a five-year period, the entire  
2 investment and facilities serving the public were  
3 returned to the owners.

4 I just can't overemphasize how incredibly  
5 quick the Company was able to realize a return of its  
6 entire investment in its facilities. I think that what  
7 this exhibit does say is in a way, and why I undertook  
8 this is to try to take another look at what we would  
9 call an "end result test." In other words, what did  
10 the Company actually experience with respect to  
11 revenues, expenses, and rate base, and what kind of  
12 returns did it achieve over some extended period of  
13 time, and it clearly shows to me that, as I said, by  
14 any standard, these are extraordinary returns the  
15 Company realized.

16 Q. Mr. Fox testified that the regulatory  
17 approach to Olympic should be tailored to acknowledge  
18 the fluid nature of Olympic's operation and send  
19 appropriate signals to attract capital -- on these  
20 terms with enough incentives to manage the pipeline.  
21 Do you recall that testimony?

22 A. Yes, I do.

23 Q. How would you respond to that?

24 A. First, I would note that in the Company's  
25 case, I don't see any testimony or exhibits that put

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1    forth a financial plan and a showing to this Commission  
2    under what circumstances the Company would be able to  
3    attract capital on reasonable terms.  There is no  
4    evidence whatsoever that says, These are the terms and  
5    conditions.  This is the financial plan.  This is how  
6    we plan to go forward.

7                The second point I would make in the context  
8    of that testimony is that the test in terms of  
9    attracting capital is truly met by the Commission's  
10   adoption of its traditional rate-of-return methodology  
11   for rates.  Applying a fair market rate of return to  
12   the Company's investment and long-lived assets meets  
13   that capital attraction test.

14               It's the basic premise that virtually every  
15   regulatory Commission operates under.  It is truly the  
16   language, the historical language of American finance.  
17   This is how investors make capital available.  They  
18   make an investment.  They expect a return on that  
19   investment, and all accounting standards and  
20   measurements of that investment is on the basis of  
21   invested capital, the book investment.

22               I've already talked a little bit about that  
23   disconnect in the balance sheet, and I want to  
24   emphasize, it's clearly something that deserves  
25   attention by this Company's management.  They need to

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1 fix that balance sheet. Again, I want to emphasize  
2 that the Company's entitlement to earn a fair return on  
3 those investments devoted to public service in my mind  
4 meets that capital attraction standard. By any other  
5 measure, whether it's a total invested capital which  
6 the Company seems to put forth, it's beyond reason, and  
7 it's just not fair to shippers.

8 Q. There was some discussion in the  
9 cross-examination of Mr. Smith that led to Exhibit  
10 1218, which was the chart showing a straight line for  
11 trended original cost and a curved line for depreciated  
12 original cost. Do you recall that exhibit and that  
13 questioning?

14 A. Yes, I do.

15 Q. In your opinion, what does Exhibit 1218  
16 attempt to show?

17 A. It's an attempt to show under some very  
18 narrow theoretical assumptions that the cash flows or  
19 the return over the life of an asset under trended  
20 original cost or depreciated original cost, the net  
21 present value, or the area under the curves are  
22 identical, and those very narrow assumptions for all  
23 intents and purposes in the real world of a corporation  
24 that's a going concern never in my estimation apply  
25 over a long period of time.

4810

1 Q. What are the assumptions underlying the graph  
2 on Exhibit 1218?

3 A. The underlying assumptions are a constant  
4 rate of return, which implies a constant real rate of  
5 return and constant inflation, constant depreciation  
6 rates, so in other words, there can be no change in the  
7 life of the asset, so there would be no adjustments to  
8 the reserve with respect to negative salvage or a gain  
9 on the asset at the end of its useful life.

10 The other assumptions are that there are no  
11 changes to investments over time. In other words,  
12 nothing is done to the investment to enhance the life  
13 or to deal with any changes to the property, and  
14 finally, my biggest problem with the exhibit is that  
15 there is a basic disconnect between how assets are  
16 financed and how the cash flows accrue under trended  
17 original costs.

18 Q. Following up on that last point, are the  
19 assumptions that you listed, the constant real rate of  
20 return and so on, could that be term as steady state?

21 A. That's correct.

22 Q. Do firms in the economy in this country  
23 finance based on those assumptions?

24 A. No, they don't.

25 Q. Can you expound on that?

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1           A.     The cost of capital changes over time both in  
2 terms of real and nominal dollars. We've all witnessed  
3 in particularly the most recent five to ten years the  
4 drastic changes in reductions in cost of capital for  
5 any holder of any type of security, so that the TOC  
6 with its steady state of assumptions did not take into  
7 account the dynamic changes in the economy and the  
8 underlying cost of capital to change over time.

9           The other thing is that assets are financed  
10 based on first-year capital costs, that you can't  
11 finance a major project unless there is specific types  
12 of project financing where you securitize the cash  
13 flows from a specific project in order to levelize out  
14 the streams so you have those constant payments.  
15 That's not the way corporations finance and it's not  
16 the way investments are made. Investments are lumpy,  
17 and capital additions are lumpy, and the rate-setting  
18 process recognizes that with the  
19 depreciated-original-cost methodology.

20           MR. TROTTER: Those are all my questions.  
21 Thank you, Mr. Elgin. He's available for  
22 cross-examination.

23           JUDGE WALLIS: Mr. Beaver?

24

25

1 CROSS-EXAMINATION

2 BY MR. BEAVER:

3 Q. Good evening, Mr. Elgin.

4 A. Good evening, Mr. Beaver.

5 Q. Did you prepare any work papers at all for  
6 your testimony?

7 A. No.

8 Q. So for example, your Exhibit 2102, there were  
9 no work papers at all for that exhibit?

10 A. No. As you can tell, those are summary  
11 numbers pulled directly off specific line items off the  
12 Company's FERC Form 6's over the periods that are  
13 designated. They are just put into a column and the  
14 calculations are made. They are very straightforward  
15 calculations.

16 Q. So the calculations, for example, for return  
17 on equity, I assume that those are calculations that  
18 you made?

19 A. Yes. Return on equity is simply income  
20 divided by book equity, so the two figures right above  
21 it, if you divide the \$2,626,000 of book equity divided  
22 by \$8 million of income, return on equity is 305  
23 percent. It's a very straightforward calculation.

24 Q. Prior to just now, when did you provide that  
25 information to Olympic?



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1           A.     I don't think it would be necessary.  I think  
2     this evidence speaks for itself, that anybody who would  
3     see this exhibit would know that's how that calculation  
4     is done.

5           Q.     Were you here when we had discussions about  
6     how Olympic calculated annualization estimates?

7           A.     Yes, I was.

8           Q.     And about how we were supposed to provide  
9     work papers with regard to that calculation?

10           MR. BRENA:  Objection.  Beyond the scope of  
11     this witness's cross, and enough on the work papers  
12     already.

13           MR. BEAVER:  Your Honor, I believe we should  
14     have been provided with at least some explanation as to  
15     how these numbers on this document were obtained, and I  
16     was here during a very lengthy, over one-hour  
17     discussion, about why it is Olympic was being chastised  
18     for not providing a calculation for an annualized  
19     number.

20           MR. TROTTER:  Your Honor, I can respond.  I  
21     do think the exhibit speaks for itself, but in  
22     addition, we did make Mr. Elgin available for  
23     deposition.  He was deposed, and no questions were  
24     asked about this, so if the Company was truly concerned  
25     about how the numbers were calculated, they could have

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1 asked him.

2 MR. BRENA: Again, Your Honor, that was  
3 within the context of a motion to compel the production  
4 of work papers under very specific circumstances  
5 completely outside of the rate proceeding in terms  
6 of --

7 JUDGE WALLIS: We do see some distinctions  
8 between the circumstances Mr. Beaver mentioned and  
9 these circumstances. Mr. Beaver, is this your ultimate  
10 question, or are you planning to take it further?

11 MR. BEAVER: I actually was wanting to know  
12 if there were other work papers, because we were not  
13 provided any with how this document was numbered or  
14 generated, and it's my understanding there are none.

15 JUDGE WALLIS: I believe Mr. Elgin said that;  
16 is that correct?

17 THE WITNESS: That's correct, Your Honor.

18 Q. (By Mr. Beaver) I would like to talk about  
19 your background. Are you a CPA?

20 A. No, sir.

21 Q. Have you ever attempted to become one?

22 A. No, sir.

23 Q. Have you ever been an accounting auditor?

24 A. No, sir.

25 Q. Have you ever been employed by a petroleum

4815

1 pipeline?

2 A. No.

3 Q. Have you ever had any responsibilities  
4 operating a petroleum pipeline?

5 A. No.

6 Q. Have you ever provided any services of any  
7 kind to a petroleum pipeline?

8 A. No.

9 Q. Other than this matter involving Olympic,  
10 have you ever provided any testimony in any proceeding  
11 involving a petroleum pipeline?

12 A. No.

13 Q. Have you ever been qualified as an expert  
14 with regard to the financing or financial policies  
15 concerning the oil pipeline industry?

16 A. I don't think there would be any need for me  
17 to say -- the expertise that I have in finance would  
18 transfer across all industries.

19 Q. I think my question was whether you have ever  
20 been qualified as an expert; in other words, whether  
21 you have been qualified by a commission or a court to  
22 provide expert testimony concerning the financial  
23 policies of the petroleum pipeline industry.

24 MR. TROTTER: You mean in addition -- other  
25 than this proceeding?

4816

1 MR. BEAVER: Yes.

2 MR. TROTTER: I'm not sure the witness  
3 understands what "qualified" means.

4 Q. (By Mr. Beaver) Do you understand what that  
5 means? In other words, have you been allowed  
6 previously to provide expert testimony with regard to  
7 the financing or financial policies of the oil pipeline  
8 industry?

9 A. Well, again, the financial policies of the  
10 oil pipeline industry and how they operate and report  
11 items on their balance sheet and income statement would  
12 transcend all industries. I don't see anything unique  
13 about oil pipeline industries. I will say my expertise  
14 in finance could not be used to ascertain the financial  
15 policies of an oil pipeline company.

16 Q. Let me ask you this: What, if anything, did  
17 you do to study the oil pipeline industry in the United  
18 States as far as its financing policies?

19 A. I answered this similar question in the  
20 deposition. I began my efforts with some general  
21 readings of oil pipeline regulation, and I don't have  
22 the titles, but I just did some general research on oil  
23 pipelines, their cost characteristics, the nature of  
24 the industry, familiarized myself with a little bit  
25 about that industry, noticed some differences and

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1 similarities between oil pipelines and natural gas  
2 pipelines, and then began to understand a little bit  
3 about rates. I did some research when the Company  
4 filed the initial case, and so that's the extent of my  
5 specific research and understanding and how I went  
6 about familiarizing myself with the oil pipeline  
7 industry.

8 Q. Can you give me any titles of anything that  
9 you read?

10 A. I believe one of the books was titled, "Oil  
11 Pipeline Regulation in the United States." Another one  
12 was entitled -- I can picture the book. I can't picture  
13 the title. I also looked at Bonbright to see if there  
14 was anything in Bonbright about the industry.

15 I recall some softcover publications about  
16 the industry. I looked in our library on some  
17 softcovers regarding oil and pipeline gas industry and  
18 regulations. Just in general, I can't remember the  
19 specific titles, but again, it was a minimum amount of  
20 research to begin to familiarize myself with the  
21 industry and to understand it in the context of my  
22 knowledge about public utility regulation in general.

23 Q. Did you study any particular petroleum  
24 pipelines, the financing policies of any particular  
25 pipelines to compare with Olympic?

4818

1 A. No, I did not.

2 Q. How many interstate petroleum pipelines are  
3 in the State of Washington?

4 A. Inter?

5 Q. Inter. You do agree that Olympic is an  
6 interstate petroleum pipeline; is that correct?

7 A. It has both a jurisdiction of inter and  
8 intrastate. At the time of my deposition, I believe it  
9 was the only one. I did not know the jurisdictional  
10 status of the Chevron pipeline, and I believe there is  
11 one other pipeline, and I don't know what the  
12 jurisdictional status is of that either.

13 Q. Are you aware of any other utilities or  
14 public service companies that this Commission, the  
15 WUTC, regulates that provide both inter and intrastate  
16 service over the same facilities that are not publicly  
17 traded and that are solely owned by very large  
18 publicly-traded entities who also have either provided  
19 or guaranteed all of the regulated entities' debt?

20 A. No, I'm not aware of any.

21 Q. Now, if I limited that question to any  
22 entities who provide simply intrastate service, are you  
23 aware of any?

24 A. Just simply intrastate service with all the  
25 other restrictions in your prior hypothetical?

4819

1 Q. Right.

2 A. No, I'm not aware of any.

3 Q. Would you accept subject to check, and I  
4 actually believe this is found in Exhibit 219, Lines 2  
5 and 5, that the combined equity in 2001 for BP and  
6 Shell was over \$117 billion?

7 A. I'll accept that subject to check. Their  
8 combined book equity; we are talking book equity?

9 Q. Yes.

10 A. I want to make sure what I'm checking. We  
11 aren't talking market capitalization or --

12 Q. Book equity. Would you agree that Olympic's  
13 debt is either guaranteed by its two shareholders or  
14 was provided directly by those shareholders?

15 A. Currently, that's correct.

16 Q. Do you by any chance know the percent of the  
17 volume of product that Olympic ships that is intrastate  
18 versus interstate?

19 A. The actual volumes, I don't know. I believe  
20 there is probably a correlation. I heard Mr. Colbo  
21 earlier testify of the approximately 60/40 percent  
22 revenue, so I would presume there would be a  
23 correlation between the revenues and the volume, but I  
24 did not study that and look at those specific figures.  
25 I looked at them in the FERC Form 6, but then in terms

4820

1 of did I remember them, no. I could look that up for  
2 you if you would like.

3 Q. Is it your recollection that the 60 percent  
4 was the interstate and the 40 percent was the  
5 intrastate?

6 A. That's my understanding.

7 Q. Do you know the percent of the intrastate  
8 volume that travels down Olympic's facilities that  
9 necessarily has to go down facilities that Olympic uses  
10 also for interstate transportation?

11 A. I don't know how one would unwind the  
12 commodity in the pipeline to say this commodity is the  
13 interstate and this is the intrastate, but I've not  
14 done that study. I don't know.

15 Q. But you agree that all of the product that is  
16 shipped on Olympic's line originates as one of four  
17 refineries?

18 A. Yes.

19 Q. And in order for that product to get to a  
20 destination point, it necessarily has to go down either  
21 the 16-inch main line or the 20-inch main line;  
22 correct?

23 A. Yes, that's my understanding.

24 Q. The 16-inch and the 20-inch main line are  
25 used for interstate transportation; isn't that correct?



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1 A. I don't know.

2 Q. Do you know if in making Staff's  
3 recommendation to this Commission, it considered  
4 whether there was any reason to have a rate-making  
5 methodology for intrastate shipments that was  
6 consistent with the methodology used for interstate  
7 shipments?

8 A. In this case?

9 Q. Yes.

10 A. If I understand your question, did Staff  
11 consider whether there was merits to having the same  
12 methodology for both inter and intrastate? Is that how  
13 I understand your question?

14 Q. Let me try to rephrase it. In developing  
15 Staff's recommendation to this Commission, which as I  
16 understand it is currently at about a one percent  
17 increase in the intrastate tariff; is that correct?

18 A. Yes.

19 Q. Did Staff consider whether there was any  
20 reason to have a methodology for intrastate tariff  
21 rate-setting that was consistent with the methodology  
22 used for interstate rate-setting?

23 A. I'm not aware of any specific discussions  
24 that we had regarding that.

25 Q. Are you finished?

4822

1           A.     I'm trying to go back and think over the  
2 course of the time and what discussions we had and what  
3 considerations that we gave to that, but my primary  
4 responsibility was not to look at -- initially was to  
5 do cost-of-capital.

6                     Subsequent to that, Staff hired Mr. Wilson to  
7 do that, and so I don't believe that I was involved,  
8 and I'm trying to go back and remember what kind of  
9 discussions I was involved in regarding what we would  
10 do and what kind of case we would put together, but I  
11 don't remember specifically addressing that. I don't  
12 recall.

13          Q.     Let's assume that this Commission adopts the  
14 Staff's recommendation of a one percent tariff rate  
15 increase, and let's assume that ultimately the FERC  
16 adopts Olympic's request for essentially a 59 percent  
17 increase. Do you have those assumptions in mind?

18          A.     Yes, I do.

19          Q.     Would you agree that if that, in fact, was  
20 the case that the interstate shippers would end up  
21 paying a disproportionate share of Olympic's cost?

22                     MR. BRENA: Objection. As a matter of law,  
23 there is no disparity in rates or subsidy as a result  
24 of that actual scenario. The answer to that question  
25 cannot possibly be relevant to rate-setting in this

1 proceeding.

2 MR. TROTTER: I will note, Your Honor, that I  
3 think it's beyond the scope of this witness's  
4 testimony. We have done some legal briefing on these  
5 issues that were raised by the Company in the interim  
6 case, but it's beyond the scope of this witness's  
7 testimony on these federal state issues.

8 MR. BRENA: It's been settled law for 40  
9 years that we have concurrent jurisdiction with regard  
10 to oil pipeline in that the rates may be different from  
11 one to the other, and there is not a cross-subsidy  
12 issue.

13 MR. BEAVER: Obviously, we don't agree, and  
14 this is truly an issue that needs to be briefed. I'm  
15 simply trying to get facts into the record that will  
16 allow me to make the legal argument. I will indicate  
17 that on Page 18, Line 15 through Page 19, Line 8, of  
18 Mr. Elgin's testimony, he goes in-depth as to what he  
19 or the Staff is recommending that the Commission do,  
20 and it says here that Staff recommends the Commission  
21 adopt the approach recommended by Mr. Wilson.

22 I'm trying to explore what went into that  
23 recommendation, and I think this particular issue is  
24 fair game, and all I'm trying to do is find out whether  
25 this was considered and also whether or not this

1 potential great disparity between the two jurisdiction  
2 of rates was considered.

3 JUDGE WALLIS: The objection is overruled.

4 Q. (By Mr. Beaver) Do you have the question in  
5 mind?

6 A. Yes. No, I don't think that that is an  
7 unreasonable outcome. The FERC has its reasons for  
8 doing what it wants to do and interprets the statutes  
9 that give rise to that agency, and this Commission has  
10 its own enabling statutes and its own rate-making  
11 policies, and it's not unusual to see different  
12 jurisdictions have divergent policies regarding cost  
13 recovery regarding methodologies with respect to rates  
14 under any number of issues, so I don't think it's  
15 unreasonable.

16 This Commission would act and determine  
17 what's a fair rate, and the FERC would act  
18 independently, and because there would be a difference  
19 in rates does not mean that one rate is unfair and the  
20 other is fair.

21 Q. Actually, I don't think reasonable or fair or  
22 unfair were in my question, and really what I was  
23 asking, and I believe this would be an accounting  
24 issue, is whether if the assumptions that I've asked  
25 you to make prove to be true, the interstate shippers

4825

1 would end up paying a disproportionate share of  
2 Olympic's cost of service.

3 A. And that is an incorrect statement.

4 Q. That's your opinion?

5 A. Yes. It's not opinion. That's factually  
6 incorrect. It's not an opinion. It's based on fact.  
7 The Commission would determine what's the appropriate  
8 cost and would design rates based on a cost of service  
9 for the intrastate operations. That is a reasonable  
10 rate. What the feds do with respect to its  
11 jurisdiction and how it wants to determine cost of  
12 service is an independent matter, and that's the way it  
13 wants to classify and identify costs, and that's up for  
14 the FERC to decide.

15 Q. Mr. Elgin, you made a statement that I found  
16 very confusing, and it was suggesting that this  
17 Commission is basing rates upon the intrastate  
18 facilities, and I'm trying to understand. Did the  
19 Commission staff attempt to separate out those costs  
20 that were for intrastate shipments versus interstate  
21 shipments and try to segregate facilities that were  
22 intrastate versus interstate?

23 A. The facilities aren't segregated. That's  
24 what Mr. Twitchell did when he did an allocated cost  
25 results for the Washington intrastate operations, and

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1 it's not unusual. It's commonplace all the time where  
2 you have joint costs of service to do cost allocations  
3 between jurisdictions, whether it be inter or  
4 intrastate or for any number of different kind of  
5 services, whether they be regulated or unregulated.  
6 The Commission does it all the time in its  
7 administration of the public service laws and in  
8 establishing rates that are fair, just, and reasonable.

9 Q. I'm going to move on to a new topic,  
10 Mr. Elgin. Do you have your testimony, which is 2101,  
11 in front of you?

12 A. Yes, I do.

13 Q. Could you turn to Page 4, Lines 18 through 23  
14 and let me know when you've got that?

15 A. Yes, I have that.

16 Q. You state that throughout the 1990's and up  
17 until the Whatcom Creek explosion in 1999, the  
18 Company's dividend policy, its investment decisions,  
19 and its financing decisions were extremely aggressive,  
20 and then on Line 22, you indicate Olympic implemented a  
21 dividend policy under which virtually all its earnings  
22 were paid to its owners in the form of cash dividends.  
23 Do you see that?

24 A. Yes, I do.

25 Q. Did you study the dividend policies of any

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1 other petroleum pipelines in the United States?

2 A. No.

3 Q. So I take it you don't know how Olympic's  
4 dividend policy actually compared to the petroleum  
5 pipeline industry in this country?

6 A. I've not done a personal study. I've heard  
7 the testimony of Dr. Schink regarding that issue, and  
8 I've read Mr. Fox's rebuttal testimony, but I've not  
9 done a study.

10 Q. Are you aware of the five companies that were  
11 selected by Mr. Hanley, who is one of Tesoro's experts,  
12 as a proxy group?

13 A. Yes.

14 Q. So you understand that those are all  
15 stand-alone companies? In other words, they are not  
16 owned by some entity like a BP or a Shell?

17 A. They are limited partnerships, is my  
18 understanding.

19 Q. And they are all publicly traded?

20 A. That's correct.

21 Q. Do you know what their dividend payout policy  
22 is?

23 A. My understanding is their dividend policy is  
24 one of the things that needs to be tempered with that,  
25 and I don't have the specifics in front of me so I

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1 can't answer that, but I recall Dr. Wilson's testimony,  
2 and it's my understanding when I initially reviewed  
3 that that one of the things with those companies was  
4 their dividend policy was not only paying dividends in  
5 cash but also in the context of a special dividend,  
6 which were a return of capital.

7           So to the extent that you look at the  
8 dividends, you have to consider that those companies  
9 have unique policies with respect to a stand-alone  
10 company, so I don't recall the specifics, but I do know  
11 that they do have that unique circumstance surrounding  
12 them.

13       Q.     Do you recall the testimony being that their  
14 payout actually approached 100 percent and in some  
15 cases even more because of what you described?

16       A.     That's correct, but they also have equity.

17           MR. BEAVER: I guess I'm going to move to  
18 strike the last part of that answer. I'm not really  
19 sure how it was responsive of the question.

20           MR. BRENA: I think it was directly  
21 responsive. He was putting it in the comparative and  
22 he responded to it in the comparative and explained his  
23 answer.

24           MR. TROTTER: Mr. Brena is correct.

25           JUDGE WALLIS: I believe the answer was



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1 responsive.

2 Q. (By Mr. Beaver) Did these limited partners  
3 have entities like BP or Shell guaranteeing all of  
4 their debt?

5 A. No, they don't.

6 Q. During the 1990's, do you know what Puget  
7 Sound Energy's dividend payout was?

8 A. Yes.

9 Q. What was it?

10 A. Anywhere from 85 percent to some years over  
11 100 percent.

12 Q. And that's an entity regulated by this  
13 Commission?

14 A. Yes.

15 Q. Is it one of the largest ones regulated by  
16 this Commission?

17 A. It is the largest energy utility regulated by  
18 this Commission, and its only operations are within the  
19 State of Washington.

20 Q. Is that dividend payout something that you've  
21 recommended?

22 A. No. In fact, I've consistently taken the  
23 position that dividend policy is something that the  
24 Commission ought not to be engaged in. It's something  
25 up to the discretion of the board, and I might add that

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1 Puget Sound Energy recently cut its dividend because it  
2 was out of line and was something that was not  
3 sustainable, so their dividend policy currently is more  
4 in line with what you would traditionally see for an  
5 energy company stand-alone.

6 Q. I know because my checks are less, but it's  
7 still about 80 percent, isn't it?

8 A. No, I don't believe so. Depending on  
9 earnings, it may go up to 80 percent, but I think under  
10 normal weather and normal power supply conditions, it  
11 would probably be more on the order of 55 to 65  
12 percent.

13 Q. Mr. Elgin, in your testimony, I don't believe  
14 you have indicated what you would have recommended as  
15 the dividend payout for Olympic. All you've indicated  
16 that you believe, at least as you have interpreted its  
17 policy, it was too high.

18 A. Well, I think you are mischaracterizing my  
19 testimony. It's not just the dividend policy. It's  
20 the dividend policy combined with its investment  
21 decisions and how it chose to invest and finance those  
22 investments over the period, so it's a combination of  
23 all those factors.

24 Q. I understand that. I'm only talking about  
25 the first one so far, just the dividend payout, and you

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1 have objected or at least have criticized the, as you  
2 put it, virtually all of Olympic's earnings being paid  
3 to its owners in the form of cash dividends. So I'm  
4 assuming that the payment of some dividends to the  
5 owners, in your mind, was not imprudent or improper.

6 A. No. If you look carefully at my testimony  
7 and read it, Mr. Beaver, all it says -- there is  
8 nothing normative about my testimony at all. It says  
9 that paid virtually all of its earnings in the form of  
10 cash dividends.

11 Q. Are you criticizing that fact?

12 A. No. I'm just stating a fact.

13 JUDGE WALLIS: Mr. Beaver, I want to call  
14 your attention to the time. We set 8:30 as our target.  
15 Time really has flown. If you are at an appropriate  
16 point to break, perhaps we could do that now. If you  
17 have a few more questions to complete this area of your  
18 cross, you may proceed.

19 MR. BEAVER: Could I ask a couple of  
20 questions?

21 Q. (By Mr. Beaver) Mr. Elgin, could you take a  
22 look at both your Exhibit 2102 and our exhibit, which  
23 is 2116? That's the one that summarizes some of the  
24 information from yours.

25 A. Yes, I have that.

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1 Q. During the time period covered by your  
2 exhibit, Olympic had profits from 1990 through 1998; is  
3 that correct? I should say net income.

4 A. Well, according to my exhibit, even in '99,  
5 it had some net income, but there was a significant  
6 drop-off between '98 and '99.

7 Q. I actually excluded '99 because of the  
8 accident thinking it was kind of an anomaly, but it  
9 paid dividends to its shareholder from 1990 through  
10 1997; is that correct?

11 A. That's correct.

12 Q. It actually retained all of its earnings in  
13 1998; is that correct?

14 A. Yes.

15 Q. If you actually do the simple math, you find  
16 out that from 1990 to 1998, its dividend payout ratio  
17 actually was only 76.7 percent. Do you agree with  
18 that, subject to check, given the hour?

19 A. If you would calculate dividend payout ratio  
20 and say that we would lump that entire period together,  
21 I'll accept that you did the math correctly.

22 Q. Then from 1996 through 1998 again, three  
23 years where Olympic had substantial net earnings, its  
24 dividend payout was, in fact, only 44.7 percent. Do  
25 you see that?

1           A.     Yes, and again, if you do that, that is  
2 significantly weighted by the fact that one year, you  
3 did not pay, so the percentage is weighted by that one  
4 observation, but your math is correct under those  
5 assumptions.

6           MR. BEAVER: This is a good place to break.

7           JUDGE WALLIS: Let's be recessed. We will  
8 resume the examination of Mr. Elgin at 9:30 tomorrow  
9 morning.

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11                         (Hearing recessed at 8:35 p.m.)

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