

1	BEFORE THE WASHINGTON UTILITIES AND	
2	TRANSPORTATION COMMISSION	
3	WASHINGTON UTILITIES AND)Docket No. TO-011472
4	TRANSPORTATION COMMISSION,)Volume XXXIX
5	Complainant,)Pages 4985-5089
6	v.)
7	OLYMPIC PIPE LINE COMPANY,)
8	INC.,)
9	Respondent.)
10	_____)

10 A hearing in the above matter was
 11 held on July 11, 2002, at 4:14 p.m., at 1300 S.
 12 Evergreen Park Drive Southwest, Olympia, Washington,
 13 before Administrative Law Judge ROBERT WALLIS,
 14 Chairwoman MARILYN SHOWALTER, Commissioner RICHARD
 15 HEMSTAD, and Commissioner PATRICK OSHIE.

16 The parties were present as
 17 follows:

18 OLYMPIC PIPE LINE COMPANY, INC.,
 19 by Steve Marshall, Attorney at Law, One Bellevue
 20 Center, Suite 1800, 411 108th Avenue, N.E., Bellevue,
 21 Washington 98004.

22 TESORO, by Robin Brena, Attorney
 23 at Law, 310 K Street, Suite 601, Anchorage, Alaska
 24 99501.

25 TOSCO CORPORATION, by Edward
 Finklea, Attorney at Law, 526 N.W. 18th Avenue,
 Portland, Oregon, 97209.

Barbara L. Nelson, CCR
 Court Reporter

1 THE COMMISSION, by Donald Trotter
and Lisa Watson, Assistant Attorneys General, 1400
2 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
Washington 98504-0128.
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1 JUDGE WALLIS: Let's be back on the record,
2 please. At the conclusion of the session with which
3 we began the afternoon, there was some question about
4 page numbering on one of the documents, that being
5 Exhibit 728, associated with one of the earlier
6 witnesses. Mr. Brena, do you have an explanation for
7 how that arose?

8 MR. BRENA: No, but I have an explanation
9 of --

10 JUDGE WALLIS: Do you have an answer, a
11 response that will correct --

12 MR. BRENA: Yeah, just so the record's
13 clear, I was asking questions with regard to
14 additional work papers for Brett Collins, which is
15 728-C. And when I referred to the record -- to the
16 second page four, and there was questions and answers
17 with the witness on that page, that page should
18 properly have been page five of the exhibit, which is
19 work paper number two. Now, having cleared that up,
20 though, we're not going to use that anymore.

21 JUDGE WALLIS: Very well. At least it's
22 clear for the record.

23 MR. BRENA: Yes. And for the purposes of
24 my continued cross, we're going to be working with
25 2311, page two.

4989

1 JUDGE WALLIS: Not that you're counting,
2 Mr. Brena, but how many minutes do you think you have
3 left?

4 MR. BRENA: I thought, going into the
5 break, I had 20. Gene Eckhardt is keeping a stop
6 watch on me and claims I have 15. Mr. Beaver's clock
7 stopped at noon, so I elect Mr. Beaver's watch.

8 JUDGE WALLIS: Thank you. Please proceed.

9

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

11 BY MR. BRENA (Continuing):

12 Q. Mr. Brown, just to reorient us, what I
13 would like to do is work through Exhibit Number 2311,
14 which is, as I understand your testimony, your
15 attempt to work with the numbers in the rebuttal case
16 to determine what the appropriate level of costs
17 should be; correct?

18 A. For purpose of this exhibit, that's right.

19 Q. Right. And that you intend for it to be
20 illustrative only and you're not recommending this be
21 used?

22 A. That's correct.

23 Q. Okay. Would you, please, just in summary
24 form, go through the adjustments that you made to the
25 rebuttal numbers and how you calculated these numbers

4990

1 in an effort to show what the cost of service should
2 be based on the rebuttal numbers that were provided?

3 A. I think the easiest way to explain what was
4 done is to look at the various columns, and I'll
5 start with the salaries, and I think once I describe
6 that, it will explain the rest of it.

7 Q. And we are on 2311, page two of two;
8 correct?

9 A. That's correct.

10 Q. Okay.

11 A. And in the monthly amount, the 521 is the
12 average amount of salary for the seven-month period,
13 October through April, and then we simply took -- and
14 that seven months is the actual months that were
15 used, and then multiplied that average by 12 to
16 arrive at the figure that is in the Tesoro test
17 period cost column. So 521 multiplied by 12,
18 actually, it works out to be
19 six-million-two-fifty-two, but rounding, it results
20 in the amount.

21 You look at each of figures below, where
22 there is a monthly amount shown and actual months
23 used and the multiplier, and the same thing applies.
24 The administrative fee, we just put in at the amount
25 that was included in Olympic's administrative fee.

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1 The oil loss is the amount that Staff and Olympic
2 have used in their -- Staff has used in their case
3 and Olympic used in its rebuttal case.

4 I'm going to drop down to line eight for
5 the moment, and the identified outside services there
6 amounts to the remediation costs that are included in
7 the Olympic rebuttal case of something -- 735,000, I
8 think it is, and then we added to that 201,000 for
9 amortization of the legal costs, which is what I had
10 discussed earlier. That comes out to the 936.

11 Fuel and power is based on the volume that
12 we are using and -- as throughput of 121 million
13 barrels. Insurance, we looked at the insurance costs
14 and thought that the monthly amount of 96,000 for the
15 period -- I believe it was December through April --
16 was more representative, and so we used five months
17 there and came out with a million-one-fifty-four, as
18 compared to 900,000 for the -- that's shown in the
19 rebuttal case.

20 Pipeline taxes, we looked at the amount and
21 thought that 145,000 was a representative average to
22 use, and we simply multiplied that by 12 to derive
23 that figure. Rentals, we used a six-month average of
24 October through April, excluding the month of March,
25 because it was so unrealistic compared to the other

4992

1 months, and so we used a six-month average there of
2 50,000, and 12 months on that is 594, roughly.

3 That leaves unidentified outside service on
4 line seven, and I must say that that's a -- it's a
5 plugged figure. It was after we looked at the 13
6 million of total outside service that Olympic had
7 included in their rebuttal case and we took care of
8 -- included the administrative fee, took care of the
9 identified outside service, we eliminated the 455,000
10 for the amortization of the transition cost, we ended
11 up -- oh, and knocked out the one-time maintenance
12 for the reasons I discussed earlier. We ended up
13 with five-million-three-forty-five.

14 And I don't accept that figure, but that
15 was the remainder after we had taken care of the
16 other items. We have no idea what that amounts to,
17 what the reason for that five-million-three is, but
18 we just threw it in, saying, okay, rather than trying
19 to split it in some way -- so that's the
20 five-million-three-forty-five.

21 Q. Okay. Let me -- first, in comparison with
22 their rebuttal case, you used -- you annualized only
23 the seven months of actual; you did not use, as they
24 did, the seven months of actual, plus two months of
25 budgeted, and then annualize those nine months;

4993

1 correct?

2 A. That's correct.

3 Q. With regard to the \$5 million that we could
4 not explain, we included the entire \$5 million within
5 the cost of service numbers that we calculated;

6 correct?

7 A. That's correct.

8 Q. With regard to the legal expenses, you
9 maintained the same number that you did in the direct
10 case, which is the amortization of the million
11 dollars; correct?

12 A. That's correct.

13 Q. Why did you not use the amortization of
14 their new number of 2.6 million?

15 A. There's no -- no reason for \$2.6 million
16 for the rate case that we have here. You know,
17 they've spent a lot of money, and it's just
18 unreasonable, and it's my view that the million
19 dollars is more reflective on a -- amortized on a
20 five-month period.

21 Q. And the transition cost you treated the
22 same way as you did in the direct?

23 A. That's correct.

24 Q. And when you put this in, even including
25 the \$5 million increase that's unexplained, when you

4994

1 put it into the capital structure of 46 percent
2 equity and the return on equity of 13 percent, what's
3 the bottom line here?

4 A. If you're asking -- and I'm not sure I
5 understand your question, but it sounds like apples
6 and oranges in the question, and I'll explain it this
7 way.

8 Q. Okay.

9 A. When you go from the twenty-seven-five that
10 is on page two for the operating costs and you put
11 that into the page one, line three, and then total it
12 down to total cost of service, you end up with \$38.6
13 million, which includes the return on the 46 percent
14 equity, I think, that Mr. Hanley has recommended, and
15 the related income tax allowance, all of those items
16 come out to \$38.6 million. And dividing that by the
17 throughput ends up with 31.83 cents.

18 Mr. Fox, I think, said that -- I've
19 forgotten the figure, but it seems like it was around
20 32 cents or 33 cents average rate that -- under the
21 existing tariff, so this is a little bit below that.
22 It may have been 35 cents that he used.

23 Q. Would you accept, subject to check, 35.3?

24 A. Yes.

25 Q. Okay. So the bottom line is that even if

4995

1 you work with the updated budget numbers, make the
2 same types of adjustments as you did before, even
3 with the unexplained \$5 million, and you put in the
4 capital structure and return, that Olympic ends up
5 with a rate decrease?

6 A. That's correct.

7 Q. The throughput number that you are
8 recommending be used in this case, would you please
9 explain what you're recommending and why?

10 A. Yes, as I explained in my testimony, the
11 throughput figure of a
12 hundred-twenty-one-three-forty-nine barrels that's
13 shown on line ten of Exhibit 2311 is the same
14 throughput figure that Olympic used when, in 1999, it
15 put rates into effect reflecting the entry into
16 service of the Bayview terminal. The Bayview costs
17 are included in the rate base and the Bayview volumes
18 are included.

19 The shippers have suffered for three years
20 now, and it looks like it's going to be some more
21 time, and so, for that reason, I think that the
22 appropriate throughput figure is the -- is the 121.3.

23 Q. Is that your best estimate of what normal
24 operating throughput would be on this line?

25 A. Yes, at the hundred percent pressure.

4996

1 Q. And that is Olympic's representation in the
2 most recent to this one rate filing?

3 A. That's correct.

4 Q. Do you consider that estimate of normal
5 operations to be conservative or aggressive?

6 A. Well, as I explain in my testimony, it's a
7 conservative estimate, because there have been a
8 number of things that have taken place since 1998.
9 They have used more efficient operations, they used
10 batching, things like that that -- and stripping of
11 the products with the result that, with all of those
12 things, and Mr. Talley mentioned this in the
13 technical conference we had and I think it's
14 mentioned in his deposition, that they have improved
15 the efficient operations of the system.

16 And so if you look at the 121, which was
17 back in 1998, and then take into consideration the
18 efficiencies that have been gained, it is a
19 conservative number.

20 Q. Now, as this case has proceeded, Mr. Talley
21 agreed that either Bayview should be -- Bayview and
22 its costs should be in or Bayview and its costs
23 should be out. Were you here during that part of his
24 testimony?

25 A. I'm not sure that I can -- I thought that

4997

1 what Mr. Talley was saying was we ought to use the --
2 their throughput number, which doesn't reflect
3 Bayview in operation, but we ought to have Bayview in
4 the cost.

5 Q. Okay. If you --

6 A. And in my view, that's just inconsistent.
7 Either you include the Bayview-related volumes and
8 include the Bayview costs, or you exclude the costs
9 and the volumes.

10 Q. Mr. Talley suggested that in our case that
11 we used 35,000 barrels in Bayview. Did we do that?

12 A. No. In fact, as I indicated, we used the
13 same quantity for throughput that Olympic used in its
14 1999 filing, when it made the rates effective to put
15 the Bayview terminal into operation. And the
16 derivation of that was to take the 116 and a half
17 million barrels or 116.3 million barrels that was
18 transmitted -- transported in 1998 under normal
19 operations and added five million barrels to that, or
20 roughly, I think his figure was 12,000 barrels a day.

21 Q. So in comparison with Staff's case, for
22 example, we both begin at the same beginning point,
23 1998, and then we include the five million barrels a
24 day that Olympic represented would be --

25 A. Five million barrels annually.

4998

1 Q. Five million barrels annually that they
2 represented would be associated with Bayview;
3 correct?

4 A. That's correct.

5 Q. Whereas Staff has taken a percentage based
6 on the pressure restriction of the 116 as
7 representative; correct?

8 A. That's my understanding, yes.

9 Q. Okay. Should this Commission set the
10 throughput with the pressure restriction?

11 A. No, I don't think so, because, again, from
12 the standpoint of the causes of the restriction, it's
13 the imprudence, in my view, of the operator in
14 operating the line. The restriction was the result
15 of the corrective action order that's been issued by
16 the OPS. And if you accept Olympic's presentation,
17 then you're making the shippers pay again for that
18 imprudence.

19 Q. Would your answer change if the imprudence
20 was a result of a former operator?

21 A. Doesn't make any difference.

22 Q. Would your answer change if it were under
23 different ownership?

24 A. Doesn't make any difference.

25 Q. Do you consider it to be consistent or

4999

1 inconsistent that Olympic has advanced a case that's
2 taken the cost associated with Whatcom Creek out, but
3 have left the pressure restriction in?

4 A. No, I don't think it's consistent, because
5 I think the -- by leaving the pressure restriction
6 in, you're really not in -- you're not reflecting or
7 taking out the indirect costs that are associated
8 with the Whatcom Creek. They say they've removed the
9 direct costs, but the indirect costs are pretty
10 great.

11 Q. The Commission is faced with certain
12 choices. Do you believe that the proper solution to
13 Olympic's current problems is to charge its shippers
14 higher rates?

15 A. No, I don't.

16 Q. Well --

17 A. I think that the -- the only basis for
18 charging the shippers higher rates would be if the
19 costs were shown to be justified to develop the cost
20 of service, but that certainly is not the case in
21 this instance. There hasn't been any support shown
22 for the costs that Olympic is claiming, and
23 therefore, they can't be relied on to set rates.

24 Q. What is the proper solution, do you
25 believe, to Olympic's current problems?

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1 A. If you're asking me what I think that the
2 Commission should do to solve this problem, I'd say
3 that at this point this Commission ought to consider
4 doing the same thing that the FERC judge did, and
5 that is dismiss this case. The facts aren't there,
6 the costs aren't there. Certainly, their rebuttal
7 case is nothing to be relied on.

8 And if they feel that they're entitled to a
9 rate increase, let them come in with a new filing to
10 -- that's based on costs and support for the filing,
11 not just simply say, 154-B, take it or leave it, put
12 in all sorts of unsupported costs. I mean, you
13 really need to look at the costs, and those costs
14 haven't been supported at all.

15 Q. If the Commission elects to move forward
16 and does set rates, what do you think they should do
17 in that regard?

18 A. Well, from my standpoint, I think that we
19 ought to -- that the Commission ought to use the
20 figures that we've shown, which would result in a
21 rate decrease. Staff has shown a amount that is, you
22 know, for all practical purposes, an even level with
23 the existing rates, so, you know, it's either take
24 the Staff's position or take Tesoro's position. In
25 any event, there's no increase that's justified on

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1 the basis of what they've shown.

2 MR. BRENA: I have nothing further.

3 JUDGE WALLIS: Mr. Marshall.

4

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

6 BY MR. MARSHALL:

7 Q. Mr. Brown, we didn't get to the cases that
8 were listed, your Exhibit 2306, 07, 08, 09, 2310, but
9 let me go a little bit into background before we get
10 into those cases. You received an undergraduate
11 business degree in 1953, and then a law degree from
12 the St. Louis University School of Law in 1971;
13 correct?

14 A. Correct.

15 Q. And according to your exhibit, your resume
16 background, you're a nonresident licensed attorney in
17 the state of Missouri?

18 A. That's correct.

19 Q. Okay. And in the interim case, in the
20 transcript, you said that you were not here as an
21 attorney, you were not here to give legal opinions,
22 so what I say is not based on a legal opinion. Do
23 you remember that?

24 A. Yes.

25 Q. And is that true for your testimony here,

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1 as well, your answering testimony?

2 A. I'm not appearing as an attorney to give a
3 legal opinion. Obviously, I can't unring the bell in
4 having a legal education, and so when you look at the
5 cases that are there, I've read those cases that tell
6 me from, you know, my own educational standpoint,
7 what they stand for.

8 Q. So you're not giving a legal opinion, but
9 you're giving an opinion based on legal background?
10 I'm not sure I understand the distinction that you
11 just made.

12 A. Well, I'm not giving a legal opinion, but
13 if you -- you know, I've read those cases that you
14 referred to, and I have my views based on what I know
15 and my experience, my education and experience, what
16 those cases say.

17 Q. Okay. But they're not my exhibits; they're
18 your exhibits.

19 A. Okay.

20 Q. In response to an Olympic Data Request 531,
21 Tesoro said, quote, Mr. Brown does not offer Tesoro's
22 legal opinion in his testimony. Do you remember
23 that?

24 MR. BRENA: Your Honor, this was not
25 proffered as a cross-examination exhibit. I'm not

5003

1 sure what the Commission's practice would be in this
2 regard. I would like to see what he's quoting from,
3 I'd like the witness to have an opportunity to review
4 it, and I would like for these cross-examination
5 exhibits to be -- to be timely filed. So if -- I
6 mean --

7 MR. MARSHALL: It's not an exhibit; it's to
8 refresh his recollection. And we just want to move
9 on. I want to try to clarify it. I didn't expect
10 him to give the answer that he gave. I thought he
11 would be consistent with his interim testimony saying
12 that he's not giving a legal opinion at all, but now
13 he's beginning to make some distinction that I'm not
14 sure about.

15 JUDGE WALLIS: I think that there should be
16 some latitude. The nature of the document and the
17 circumstances under which it arise, I think, don't
18 prejudice Tesoro, and I think that the inquiry is
19 permissible. This has not been offered as an
20 exhibit. It's being used in a limited extent for
21 impeachment.

22 MR. BRENA: Could I allow him to see the
23 exhibit, please?

24 JUDGE WALLIS: Yes.

25 Q. Does that refresh your recollection?

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1 A. On what?

2 Q. On whether you're being offered to give
3 your legal opinion in your testimony?

4 A. I didn't say I was giving a legal opinion,
5 and what I just read is -- Tesoro and their counsel
6 prepared that response. I didn't prepare the
7 response. They said I'm not giving a legal opinion.
8 I'm not giving a legal opinion. What I said earlier
9 is that I can't unring the bell, I can't say I don't
10 have a legal education. I don't use it in the
11 practice of law. I'm not a practicing attorney; I'm
12 a consultant. But I use my knowledge I gained from
13 the legal education to read the cases and to say that
14 those cases say a particular thing. I'm not giving a
15 legal opinion on that; I'm giving my opinion as a
16 consultant.

17 Q. Would you accept, subject to check, that
18 your testimony, your answering testimony here, cites
19 14 cases and orders, ten statutes, has 343 lines of
20 legal argument and six footnotes?

21 A. If you've counted them, yeah, I'll accept
22 that.

23 Q. Let's turn to page 21 of your testimony
24 here, 2301-T. Do you see the footnote there that
25 starts on the bottom of page 21, and then goes over

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1 to page 22?

2 A. Yes, I do.

3 Q. And also on page 22, you cite a case here,
4 quote from it, the Kenai Pipeline case. Do you see
5 that?

6 A. Yes, I do.

7 Q. Now, is that case the case that you now
8 have excerpts from in your Exhibit 2309?

9 A. I'm pretty certain it is, yes.

10 Q. Could you double check to see if that's the
11 same one that you're talking about in 2309?

12 A. I think I need to get some tabs so it would
13 be easier to find them. I don't have them marked
14 individually.

15 Q. It's the second to the last one in the new
16 group of documents that was made available yesterday
17 or the day before.

18 MR. BRENA: Could we go off the record,
19 please, for a moment?

20 JUDGE WALLIS: Yes, let's be off the
21 record.

22 (Discussion off the record.)

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

24 Does the witness have the document now?

25 THE WITNESS: Yes, I do.

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1 JUDGE WALLIS: Are you prepared to respond?

2 THE WITNESS: Let me check something a
3 minute. I think I am. I'm pretty certain that's the
4 same case, and the -- I'm not sure that I can point
5 to the spot in 2309 where that particular quote would
6 appear. I think, as Mr. Brena indicated, when this
7 exhibit was introduced, there are a number of pages
8 to the exhibit. I think it was 108-page or so -- in
9 fact, I think you remarked that it was lengthy.

10 Q. It's 117 pages.

11 A. A hundred and 17 pages, and I'm not sure if
12 the exact quote that is in the testimony is in the
13 pages that are included in this exhibit, but I'm
14 pretty certain it's the same case.

15 JUDGE WALLIS: Let the record show that one
16 of Mr. Brena's staff persons has approached the
17 witness. What's the purpose of that, Mr. Brena?

18 MR. BRENA: Just putting in the indexes to
19 his case.

20 JUDGE WALLIS: Very well.

21 MR. BRENA: So he can track this.

22 JUDGE WALLIS: Let's be off the record for
23 a moment, please.

24 (Discussion off the record.)

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

5007

1 please.

2 Q. Mr. Brown, we've handed you now the
3 complete case, the Kenai case, which is Exhibit 2312
4 now. Do you have that?

5 JUDGE WALLIS: Let the record show that Mr.
6 Marshall did distribute a document of multiple pages
7 that has been designated 2312 for identification.

8 Q. Right. Is this the case? Can you now
9 tell, from the first page of this case, that this is
10 the order from the Alaska Public Utility Commission
11 that you referred to at page 22 of your direct
12 testimony, Order Number P 91-2. Do you see that up
13 there?

14 A. Yes.

15 Q. Okay. So this is the case, is that right,
16 that you're quoting from in your testimony?

17 A. In the testimony, that's correct. I
18 thought you asked in reference to 2309. I see that
19 it is the same case.

20 Q. Now that you had a cover page, you can make
21 that connection; right?

22 A. Yes, and my answer earlier was I wasn't
23 sure if the exact quote that is on page 22 was in the
24 pages that are included in 2309. That was the reason
25 I hesitated answering directly.

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1 Q. Have you seen the entire case before?

2 A. Oh, yes, I have. Yes.

3 Q. Okay.

4 A. I was involved in a proceeding a year ago,
5 and I looked at practically every case that was
6 issued by the state of Alaska relative to the use of
7 DOC versus 154-B, so yes, I've seen this case before.

8 Q. Did you have a full copy of this case here
9 with you in Olympia at these proceedings, the Kenai
10 case that I just handed out that's Exhibit 2312?

11 A. Yes, I -- I believe that I brought a book
12 with me that contains cases that were provided to me
13 during that proceeding I was involved in last year,
14 and it includes this case, as well as other cases
15 that were decided by the Alaska Commission.

16 Q. Now, turn to page three of Exhibit 2312,
17 which wasn't part of the excerpts that you have in
18 2309, and look down at the bottom of that page, the
19 second paragraph. Do you see where it says, In 1969,
20 Tesoro Alaska Petroleum Company built a refinery near
21 the KPL Marine Terminal Facility, began to ship
22 intrastate oil on KPL's system? Do you see that?

23 A. Yes, I do.

24 CHAIRWOMAN SHOWALTER: Counsel, I don't see
25 it yet, so just --

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1 MR. MARSHALL: Sure.

2 CHAIRWOMAN SHOWALTER: Maybe I'm not on the
3 right page. Oh, yes, I'm there now.

4 Q. My question to you is this case involved
5 Tesoro; right?

6 A. This particular case involved Tesoro, yes.

7 Q. And then the case goes on on this page
8 three to state that, beginning in 1974, all oil
9 transported over KPL's trunk lines was refined at the
10 local refineries, thus interstate movements over
11 KPL's pipelines ceased at that time. Do you see
12 that?

13 A. That's correct.

14 Q. Then, if you'd turn to page four, you find
15 as background facts, second to the last sentence on
16 that page, it states, The Chevron USA refinery was
17 closed in June 1991. Presently, none of this oil is
18 delivered through KPL's marine terminal tankers for
19 shipment elsewhere.

20 Did that closure of the Chevron refinery
21 leave only Tesoro as the sole shipper on an
22 intrastate line in this Kenai case?

23 A. I believe that is the case, but I can't be
24 certain of it.

25 Q. Who would have been the other shipper if

5010

1 there was another shipper beside Tesoro?

2 A. I don't know.

3 Q. Doesn't the sentence before that say,
4 Currently, all oil transported -- all oil transported
5 through these trunk lines is delivered to the Tesoro
6 refinery? Do you see that?

7 A. Yes. That would indicate that Tesoro is
8 the only shipper.

9 Q. Okay. So the facts of this case that you
10 quote in your testimony are that there are only
11 intrastate shipments, no interstate shipment, and
12 there's only one refinery that is shipping, that is
13 Tesoro; correct? That's the background for this
14 case?

15 A. That's what it sounds like, yes.

16 Q. Well, I mean, this is the case that you're
17 sponsoring. Is this true or not?

18 A. That's correct.

19 Q. Okay. Now, as background to this case, if
20 you look at -- I believe it's page 26 of the case.
21 I'm sorry, it's page 27. Can you turn to page 27 of
22 the opinion?

23 A. Okay.

24 Q. Do you see, at the very top of that page,
25 it says, Next, the Commission reviewed the pipeline

5011

1 it regulates, the pipeline. The circumstances under
2 which those pipelines operate are in many ways unique
3 and are different from those in the lower 48 states.
4 Do you see that?

5 A. Yes, I do.

6 Q. And why is the state of Alaska unique
7 compared to the lower 48 states?

8 A. That's a statement that the Commission
9 made, and I would say that they're looking at the
10 environment in which the pipelines operate, colder
11 climate, different construction conditions, things
12 like that. Again, it's the language that the
13 Commission used.

14 Q. Well, are you familiar with the unique
15 circumstances in Alaska compared to the lower 48
16 states of your own knowledge?

17 A. I am familiar with, for example, the TAPS
18 Pipeline in Alaska and the pipelines that are up on
19 the North Slope of Alaska, and the added construction
20 costs associated with the environment in which they
21 operate. Those things I'm familiar with, yes.

22 Q. Well, on this very page, doesn't it go on
23 to describe that Alaska is unique because effective
24 competition is often not possible and may not even be
25 desirable under such circumstances?

5012

1 A. Well --

2 Q. There's no competition with other
3 pipelines, with marine, with other roads, with
4 railroads. Do you see that?

5 A. I see that, and of course, from the
6 standpoint of the similarity, then, between Olympic,
7 there's no competition from -- for pipelines with
8 Olympic.

9 Q. Well, they're stating that there's not even
10 marine transport alternatives available to this Kenai
11 Pipeline; correct?

12 A. That's what the order says, yes.

13 Q. Well, do you know that there are any facts
14 different than what the order suggests? Is there
15 marine competition available or marine alternatives
16 available to the Kenai Pipeline?

17 A. I have not been to the Kenai Pipeline, if
18 that's what you're asking, so -- but the Commission
19 says there are no other means for the transportation
20 of oil that can effectively compete with pipelines in
21 Alaska. I'll accept that for what it says.

22 Q. Well, isn't Alaska concerned with the
23 fragile environment and they don't want to encourage
24 other competition to this pipeline? They just want
25 one pipeline?

5013

1 A. I'm not sure that that is the case. You
2 have the TAPS Pipeline. It is a major pipeline that
3 runs from the North Slope down to Valdez.

4 Q. But that's --

5 A. There are -- I'd like to finish the --

6 Q. Go ahead.

7 A. -- answer, if I may. There are pipelines
8 that connect to the TAPS project. There's the Cook
9 Inlet Pipeline, there's the Kenai Pipeline. In
10 addition, there has been considerable discussion
11 about construction of a gas pipeline. Certainly,
12 when you have a large quantity of oil and associated
13 gas, I mean, this -- the TAPS Pipeline project is, I
14 think, a 52-inch diameter pipeline, it's a big
15 pipeline. And so they allowed it to be built and,
16 yeah, they're concerned about the environment, but
17 that doesn't mean to say that they're not going to
18 permit other pipelines to be constructed.

19 Q. I'm not sure I understand your question --
20 or your answer to the question. Now, the TAPS
21 Pipeline is hundreds and hundreds of miles away from
22 the Kenai Pipeline, isn't it?

23 A. It's not near the Kenai Pipeline. I'm not
24 sure of the total distance. The fact is, though,
25 that you were asking me about other pipelines, and I

5014

1 told you what I felt about --

2 Q. We're just talking about competition with
3 the Kenai Pipeline at the moment. TAPS does not
4 compete with the Kenai Pipeline, does it?

5 A. Well --

6 Q. Or do you know? Maybe you don't know.

7 A. Not in this instance, it doesn't, but your
8 question was much broader than that, Mr. Marshall,
9 and so I answered the way I thought it should be
10 answered.

11 JUDGE WALLIS: Mr. Brown, I understand that
12 you do have a legal background, but would ask you to
13 rely on your counsel to voice objections to the
14 inquiries of counsel.

15 THE WITNESS: I'm sorry, I wasn't trying to
16 voice an objection. I was trying to tell you what I
17 thought his -- or tell him what I thought his
18 question was and that I thought I had answered it.

19 Q. Now, if you look at page 32, turn to that
20 for a moment, you see in the middle of that page the
21 sentence that starts, quote, with respect to
22 pipelines which are concurrently regulated by the
23 Commission and the FERC, equality between state and
24 federal rates is desirable. Do you see that?

25 A. I see that.

5015

1 Q. But in this case, of course, because there
2 are no interstate shipments and haven't been for a
3 long time, that factor didn't enter into this Kenai
4 decision, did it?

5 A. I'm sorry, I was focusing on something
6 else. Could you repeat --

7 Q. Let me restate the question.

8 A. All right.

9 Q. Because this Kenai Pipeline is a solely
10 intrastate pipeline, there are no interstate rates to
11 make equal to the state rate; correct?

12 A. In this instance, that's correct.

13 Q. Okay. And that's part of the background
14 that we just went through at page three and four
15 earlier. There's just one shipper and it's all
16 intrastate; right?

17 A. That's correct.

18 Q. And this page begins to talk about whether
19 to apply the trended original cost method to Alaska
20 pipelines. At the very beginning of the page, it
21 says, An inquiry should be made as to whether to
22 apply TOC to all Alaska pipelines because many of
23 them are regulated concurrently by the FERC. Do you
24 see that?

25 A. Yes, I do.

5016

1 Q. And then they go on to examine those
2 factors as to whether to apply TOC or not to apply
3 TOC, but in this instance, the factor about equality
4 with interstate rates just doesn't come into play in
5 this case; right?

6 A. Well, that's correct, except that there is
7 the sentence, However, there is no legal requirement
8 that interstate and intrastate rates for the same
9 service be equal. You've picked a sentence out of
10 the order, and there are -- the fact is that they
11 were dealing with should they apply the TOC, the
12 154-B versus the DOC, and the end result was that
13 they applied the DOC in this case. Those facts speak
14 for themselves.

15 Q. Okay. In that very sentence that you just
16 quoted, there's also a footnote that states, quote,
17 Although a uniform methodology for regulation of oil
18 pipelines in Alaska is desirable, it is not
19 necessary. We could agree with that, couldn't we?

20 A. I agree that -- with what you read.
21 However, the sentence that I just read has Footnote
22 17, which references Cook Inlet Pipeline Company, not
23 Footnote 16.

24 Q. We can agree that there's nothing to
25 prohibit either DOC or TOC or requiring that a

5017

1 methodology be uniform. All we're focusing on right
2 now is whether, under certain circumstances, that
3 would be desirable to have equality of interstate and
4 intrastate rates; right?

5 A. That's what -- what the footnote says, that
6 although a uniform methodology -- that's the one that
7 you referenced -- for regulation of oil pipelines in
8 Alaska is desirable, it is not necessary.

9 Q. Okay. So we can agree that this case
10 stands for the proposition that if you have
11 interstate and intrastate rates for a pipeline, it
12 would be desirable to have the same methodology?

13 MR. BRENA: Objection. He mischaracterizes
14 the case.

15 JUDGE WALLIS: I think he has some latitude
16 on cross-examination, Mr. Brena, and is probing the
17 witness' knowledge.

18 MR. BRENA: I'd also like to object. If he
19 intends to go through a 117-page opinion and pick out
20 individual sentences and represent them, I mean, then
21 perhaps giving the witness time to sit and review the
22 context for the sentence would be appropriate.

23 JUDGE WALLIS: Mr. Marshall.

24 MR. MARSHALL: I'll give the witness all
25 the time he wants. He prepared his direct testimony

5018

1 referring to this case, quoting from this case,
2 inserting excerpts from this opinion, and as an
3 exhibit. I am the only one that put in the entire
4 case, and I believe this particular page, is it not
5 part of your 2309 excerpts?

6 Q. Isn't page 27 part of 2309, sir? You
7 included pages 15 to 41.

8 MR. BRENA: Your Honor, just to deal with
9 my objection, I mean, I was involved in that case,
10 and if you picked a sentence out of that case for me,
11 I'd need a minute to read through it and put it in
12 its proper context. If what we're trying to do is
13 get the best record possible for the Commission, he's
14 taking one sentence and saying it means something,
15 then he should give the witness an opportunity to
16 review it in the context of the case.

17 JUDGE WALLIS: Mr. Marshall has indicated
18 that he would, and let me say that the Commission
19 will allow the witness the time that the witness
20 needs to review the document and respond to the
21 question. And again, I do think that we will allow
22 some latitude in cross-examination, so -- and I don't
23 believe that the question that was posed crosses the
24 line of permissibility, so the objection's overruled.

25 Let me ask if the witness would prefer to

5019

1 have some time over the dinner break to review the
2 document, if there's going to be further examination
3 on it?

4 THE WITNESS: I'm going to have to review
5 it, really, because, you know, if he's picking out
6 individual sentences on individual pages of a
7 117-page opinion, I'm going to have to, you know,
8 really go back and reread every sentence of this
9 opinion.

10 MR. MARSHALL: I'm going to stay within,
11 for the rest of these questions, within the segment
12 that he offered as an Exhibit 2309. So it may save
13 him time to know that that's what I'll be focusing
14 on. I did introduce pages three and four they didn't
15 have in there as part of the background facts, but
16 we're beyond that now. I don't think there's any
17 dispute about the background facts. And I don't have
18 too many more questions, but I want to be fair to
19 this witness and allow him to review it.

20 I can move on to some other areas, and then
21 we can take a break later, we can take a break now,
22 whatever the Commission prefers.

23 MR. BRENA: I'm happy to have the witness
24 proceed, if he's -- you know, and if he needs time,
25 he can say so.

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1 MR. MARSHALL: Okay. If he needs time to
2 read the opinion here now, that would be fine.

3 MR. BRENA: Well, please understand, my
4 question was just to give him an opportunity to read
5 the sentence in context before he had an opportunity
6 to respond, because that's my only question, not to
7 let him sit and read the whole darn thing; let him
8 put the sentence in context.

9 JUDGE WALLIS: Well, we do want to be fair
10 to the witness, as well as to the parties, the
11 opportunity for cross-examination and the opportunity
12 to respond to questions on cross. So if the witness
13 does need further time beyond the opportunity to
14 review the sentence in the context, you have that
15 opportunity, ask for it, and we'll see that you have
16 the time.

17 THE WITNESS: I'll take that opportunity.

18 JUDGE WALLIS: Very well. So Mr. Marshall,
19 if you would forego further questions on the document
20 in question, that is, the Alaska P.U.C. decision,
21 move on to other areas, then we can return to that.

22 MR. MARSHALL: Very well.

23 Q. Turning back, then, to your testimony at
24 page 22, briefly, just for the context, at line three
25 of your testimony on page 22, you make a statement

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1 that every state to have adjudicated the issue of the
2 appropriate rate base methodology for the regulation
3 of crude oil and petroleum product lines has adopted
4 the DOC methodology. Do you see that?

5 A. You left out the first part of it, and it
6 says so far as I am aware.

7 Q. Okay. Good point.

8 A. And that is an important point.

9 Q. Good point.

10 A. I have looked at different state
11 regulation, and so far as I'm aware, this sentence is
12 correct.

13 Q. Okay. And then you go on to state and use
14 examples from two states, Alaska and Wyoming;
15 correct?

16 A. That's correct.

17 Q. Are those the only two states you know of
18 that have adjudicated the issue of the appropriate
19 rate based methodology for the regulation of crude
20 oil pipelines and then have accepted a DOC
21 methodology?

22 A. I'm not aware of any others.

23 Q. Have you looked?

24 A. I've tried to research the matter, yes, and
25 I haven't found any.

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1 Q. And again, it may be, and we'll look into
2 this later, that Alaska is unique compared to the
3 lower 48 states?

4 A. I don't know that they're necessarily
5 unique as far as the regulation is concerned.

6 Q. Okay. Were you involved in the Wyoming
7 case that you cite on page 23 of your testimony?

8 A. No, I was not.

9 Q. Do you know if there have been any
10 challenges in any state other than Alaska and Wyoming
11 to the methodology that the -- the type of
12 methodology that the FERC uses for oil pipeline
13 regulation?

14 A. I'm not aware that there are or that there
15 have been.

16 Q. Are you aware that there have been any
17 challenges at the federal level to the federal 154-B
18 methodology following the Williams case decision,
19 which adopted 154-B?

20 A. There is one case that I am familiar with,
21 and that's the Endicott Pipeline case, which also is
22 an Alaskan case, but it's at the federal level, and
23 the presiding judge there determined that DOC was the
24 appropriate way to go. So that would be a challenge
25 to the 154-B.

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1 Q. I was talking about a court challenge.
2 You're referring to Administrative Law Judge Zimmet's
3 preliminary order in the Endicott case, which you
4 cite at Footnote Three, beginning on page 21 and
5 going over to page 22; right?

6 A. That's correct.

7 Q. So my question was related to do you know
8 of any court challenges to the 154-B methodology at
9 the federal level? Have there been any court
10 challenges?

11 A. Not that I'm aware of.

12 Q. So no shipper, to your knowledge, has ever
13 challenged 154-B in court; true?

14 A. Well --

15 Q. Is that true?

16 A. No, I cannot answer that question the way
17 you ask it. You said no shipper has ever challenged,
18 and I've said I'm not aware of a shipper that has
19 challenged. That doesn't mean that there haven't
20 been challenges; I'm just not aware of any.

21 Q. Okay. And do you know what happened to
22 Judge Zimmet's decision in Endicott, whether that was
23 upheld or reversed or changed by the Commission or
24 settled? Do you know what happened to that?

25 A. I believe it was settled, but I'm not

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1 certain of that.

2 Q. So you can't give any testimony from your
3 own personal knowledge about what happened after
4 that; right? Is that what you just said?

5 A. I don't know personally; that's correct.

6 Q. Okay. Well, do you know whether there are
7 unique circumstances in Wyoming about how that state
8 regulates oil pipelines or about that state in
9 general? Are you a native of Wyoming or been there?

10 A. No, I've been to Wyoming, but I'm not a
11 native of Wyoming.

12 Q. Is it an oil-producing state?

13 A. Yes.

14 Q. Okay. Did that factor enter into it, or do
15 you know?

16 A. Enter into what?

17 Q. This decision that you quote here, page 23
18 of your testimony?

19 A. I'm not sure I understand the question.
20 Did the fact that they produce oil -- if they produce
21 oil and they moved it intrastate, those factors
22 entered into the decision, if that's your question.

23 Q. Does it matter that Wyoming is landlocked?
24 Is that a factor that entered into it, or do you
25 know?

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1 A. I don't know.

2 Q. Do you know if they have any special
3 environmental or other state legislative policies
4 that entered into this decision?

5 A. Again, I'd have to go back and read the
6 entire decision in detail to be able to answer those
7 questions.

8 Q. Turning back to the outset of your
9 testimony here, in the -- even back a little bit
10 further. In the interim case, when I asked about
11 some of your statements about increasing throughput
12 and increasing rates, you referred that to Mr. Grasso
13 as the one who put together the schedules. In this
14 testimony here, you refer to a number of figures,
15 beginning on page two, about Olympic's average
16 return, then the -- and the overcollections and --
17 there's a number of things that you have in there.
18 Are all those from Mr. Grasso?

19 A. I believe that you were provided a work
20 paper of mine. It was a computer-generated work
21 paper that I think has the figure of 188 and a half
22 percent as the average return on that work paper.
23 The figure of 106.4 million in dividends is a figure
24 that was generated by Mr. Grasso. The overcollection
25 of 116 million was generated by Mr. Grasso.

1 Q. And there are other things that have been
2 generated by Mr. Grasso that you've referred to in
3 your testimony throughout the testimony?

4 A. I'm sure that there are, Mr. Marshall. For
5 example, subsequently in the testimony there's
6 reference to, and I don't know the page right at the
7 moment, but a comparison of -- in fact, it's on page
8 26, reference to Mr. Grasso's exhibit -- well, page
9 25, Exhibit Number GG-7, page 26 referenced Exhibit
10 Number GG-4. Those were generated by Mr. Grasso.

11 Q. Okay. If we turn, for example, to page 49
12 of your exhibit, your testimony, at line 16, you
13 refer to Mr. Grasso as the one who has worked up the
14 data on the claim of overcollection by Olympic from
15 its ratepayers in prior years. Do you see that, too?

16 A. Yes, and that, I believe, is simply a
17 reference back to the references on pages 25 and 26
18 to the exhibits that Mr. Grasso prepared.

19 Q. Well, if I wanted to do as Mr. Beaver did
20 with Mr. Elgin, ask you to include other periods of
21 time, for example, to include the year 1998 in some
22 of these figures, you would defer to Mr. Grasso on
23 redoing calculations such as that?

24 A. Yes, I think so.

25 Q. And if I wanted to get behind those numbers

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1 and ask about assumptions and so on, he would be the
2 one to ask about that, too?

3 A. Well, if you're going to ask him about
4 1998, I would assume you'd have to ask him about the
5 assumptions. I don't think that there were any
6 assumptions that were used. I think that his figures
7 are based on the facts as presented in the Form 6
8 reports of Olympic.

9 Q. Turn to page 35 of your testimony. Do you
10 see there, at line 12, where you refer to the witness
11 Hanley?

12 A. Yes.

13 Q. And then, down at line 19, you talk about
14 Olympic's dividend policy of 100 percent of net
15 income. Do you see that?

16 A. Yes, I do.

17 Q. And you're relying there on Mr. Hanley's
18 testimony to come up with that number?

19 A. I don't know if Mr. Hanley used that in his
20 testimony.

21 Q. Were you here for the testimony of Mr.
22 Elgin about the dividends between 1996 and 1998, for
23 example?

24 A. Yes.

25 Q. And do you have any reason to doubt those

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1 numbers that were discussed?

2 A. Well, I don't have any reason to doubt the
3 arithmetic, but I heard Mr. Elgin say that, you know,
4 if you add the dividend for 1996 and the dividend for
5 1997 and no dividend for 1998, and then divide by
6 three, or whatever the figures are, that you're going
7 to get, you know, that -- I think it was a 44 percent
8 payout. You know, you could say that there was no
9 payout in 1998, so yeah, I was here for that, but I
10 don't accept the premise. I agree with what Mr.
11 Elgin had to say in that regard.

12 Q. Do you accept the math?

13 A. I haven't done that math, so I don't know
14 -- I haven't checked it. I think Mr. Elgin said he
15 would check it -- accept it subject to check.

16 Q. Okay. I'm going to move to another arena
17 now, and I wanted to ask just a few background
18 questions. You had talked earlier to Mr. Brena about
19 your work in the pipeline industry. This was a
20 natural gas pipeline; is that right?

21 A. That's correct.

22 Q. It was not an oil pipeline?

23 A. No, it wasn't.

24 Q. Didn't move any petroleum products or other
25 hazardous products; it just moved natural gas; right?

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1 A. That's correct.

2 Q. Now, are you an engineer? Do you have
3 engineering background when you worked either for the
4 natural gas company or from any other thing?

5 A. I'm not an engineer, Mr. Talley isn't an
6 engineer, so we're on equal ground.

7 Q. Do you have operations experience in oil
8 pipelines?

9 A. Not in oil pipelines, but in gas pipelines,
10 I do, and I have operational experience in dealing
11 with matters involving regulatory agencies, for
12 example, the Office of Pipeline Safety, things like
13 that.

14 Q. Okay.

15 A. I don't have specifically with oil
16 pipelines.

17 Q. Okay. And do you consider yourself to be a
18 safety expert?

19 A. Again, for -- from the standpoint of gas
20 pipelines, I'd have to say that I know a lot about
21 safety. What a safety expert is, I'm not sure I can
22 go that far, but --

23 Q. Well, let's turn to page 54 of your
24 testimony. I'll dispense with the background and go
25 right to the point here and ask you to look at line

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1 13. Are you there?

2 A. Yes.

3 Q. And you give an opinion that three years is
4 more than an adequate time to have complied with the
5 safety requirements of OPS necessary to operate the
6 pipeline at normal operating pressure. Do you see
7 that?

8 A. I see that.

9 Q. Okay. Now, in your opinion, you go on to
10 state, the prudent operation of the pipeline would
11 dictate that the safety requirements to operate in a
12 normal operating pressure would be the highest
13 priority for Olympic. Do you see that?

14 A. Yes, I do.

15 Q. The normal operating pressure would be a
16 hundred percent compared to the 80 percent now;
17 correct?

18 A. That's correct.

19 Q. But the 80 percent's imposed as a safety
20 factor, isn't it?

21 A. The 80 percent was imposed as the result of
22 the Whatcom Creek accident and the requirement of
23 testing the pipeline.

24 Q. Let me be more specific. Is an 80 percent
25 pressure a safer pressure than a hundred percent

5031

1 pressure, all other things being equal?

2 A. What do you mean by all other things being
3 equal? That covers a broad area.

4 Q. Okay. Is operating anything by way of
5 pipelines at an 80 percent pressure going to put less
6 stress on the steel and the welds and the pumps than
7 operating at a hundred percent pressure, a higher
8 pressure?

9 A. It depends on the quality of the pipe.

10 Q. The higher the pressure, the increased
11 friction and the more you have to put power in and
12 DRA in and the higher the pressure on the actual
13 walls of the pipe. Are all those things true?

14 A. The higher the pressure, yeah.

15 Q. Okay. And the reason why there's any
16 concern about safety, that OPS will impose a
17 restriction on pressure, is because 80 percent
18 pressure puts less stress on the pipe, and therefore
19 provides a margin of safety; right?

20 A. Okay.

21 Q. Is there any disagreement about that?

22 A. Sounds fine to me.

23 Q. I mean, but you have some background in
24 this. Don't you believe that to be true?

25 A. I said it sounds fine to me.

5032

1 Q. So moving from 80 percent pressure to 100
2 percent pressure is not necessarily a safety issue;
3 it's more of an economic issue; correct?

4 A. I don't know that I can agree with that.
5 I'm not sure I understand it. What I'm saying in
6 this testimony, Mr. Marshall, is that, having been
7 involved with the operation of a gas pipeline that
8 was subject to the safety requirements, the
9 regulations of the Office of Pipeline Safety, it
10 required operating at different pressures, depending
11 on the density of the population and a whole bunch of
12 different factors. It required testing of the
13 pipeline. And the point is that we had to, when I
14 was in charge of running the pipeline, we had to
15 comply with those safety requirement rules, and if we
16 had something that reduced the capability of our
17 pipeline to operate, the first thing we would do
18 would be to correct that situation, if we had a
19 pressure restriction that was put on the pipeline.
20 That was -- it was obvious that it would reduce the
21 throughput, and so we'd work on getting that back as
22 quickly as possible.

23 And I think that it's my opinion, and
24 that's what it says, that three years is more than an
25 adequate time to have complied with the safety

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1 requirements of the OPS necessary to operate at the
2 normal operating pressure, and that's my opinion.

3 Q. At the moment, I'm just trying to draw a
4 distinction between increasing pressure for safety
5 reasons and increasing pressure for economic and
6 throughput reasons.

7 A. Well --

8 Q. You would agree, will you not, that a
9 pipeline at 80 percent can be safe and can operate
10 for the next ten years at that level? Isn't that an
11 option that OPS gives oil pipelines, if they choose
12 not to do hydro testing, for example?

13 A. I'm not sure that they give them an option
14 to do or not do hydro testing.

15 Q. Well, let's examine --

16 MR. BRENA: I would like the witness to be
17 given an opportunity to answer.

18 JUDGE WALLIS: It's difficult for the
19 reporter, also. I'm going to ask both the witness
20 and counsel to slow down just a bit and let each
21 other finish before you pick up, and I'm sure our
22 reporter will be grateful for that assistance.

23 Q. Go ahead and continue, or I'll re-ask the
24 question if you lost it.

25 A. Why don't you re-ask the question.

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1 Q. Do you know, of your own personal
2 knowledge, whether OPS gives an operator of an oil
3 pipeline the option of continuing to operate at 80
4 percent pressure or doing testing such as hydro
5 testing or TFI or other testing and the associated
6 repairs that go along with that testing? Do you know
7 if that is an option?

8 A. Certainly, there is the option of testing
9 the line. There's a requirement of testing the line,
10 as I understand it. And from the standpoint of how
11 long that you have the option to operate at a reduced
12 pressure, that I'm not sure of.

13 Q. Well, I take it from your answer that you
14 don't know, from your own personal knowledge, whether
15 OPS gives an oil pipeline operator the option of
16 continuing to operate at 80 percent pressure or, on
17 the other hand, doing a series of tests and making
18 associated repairs of those tests? Is that fair to
19 say, you just don't know?

20 A. I have read the regulations. Obviously,
21 not having oil pipeline operating experience, I
22 haven't applied those regulations to an oil pipeline.
23 My hesitancy in answering is that I think I have some
24 ideas on it, but I'm not sure to say that I know
25 absolutely. I'll answer it that way.

5035

1 Q. Do you know of a single regulation that
2 requires Olympic to do anything other than continue
3 to operate at 80 percent pressure on this oil
4 pipeline?

5 A. I don't think that there is any regulation
6 that requires them to operate at 80 percent or that
7 requires them to operate at 60 percent pressure. I
8 don't think that there's any such regulation that
9 requires that their -- the corrective action order
10 has reduced the pressure to the 80 percent limit.

11 My point is that they've had ample time to
12 get the line back up and it's the shippers, Tesoro
13 and Tosco, in particular, but also ARCO and Equilon
14 that are being damaged by the fact that pressure is
15 down.

16 MR. MARSHALL: I move to strike all of that
17 answer as non-responsive to the question about
18 whether he knows what OPS will allow an oil pipeline
19 operator to do to continue at 80 percent. That was
20 the only question before the witness.

21 MR. BRENA: There's been a line of
22 questions and, with regard to that particular
23 question, the witness put it within the context of
24 his testimony.

25 MR. MARSHALL: I just want a clear answer.

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1 JUDGE WALLIS: I believe that the answer
2 went well beyond the parameters of the question and,
3 to the extent that it did, that the response should
4 be stricken.

5 Q. Do you know whether, and let's be very
6 specific about this, Olympic Pipe Line is required to
7 do anything other than to operate at 80 percent
8 pressure?

9 A. I'm not sure I can you answer that question
10 --

11 Q. Very good.

12 A. -- Mr. Marshall.

13 Q. I'll accept that answer. Now, you said
14 that Olympic -- and your testimony is ample time,
15 more than adequate time to have complied with the
16 safety requirements of OPS. Remember that testimony
17 that we just read a moment ago?

18 A. Yes.

19 Q. Now, time is a function of doing things
20 like testing, evaluation of the testing data, getting
21 the permits, doing the work, getting the inspections
22 and then putting the line back in service. Are those
23 some of the elements that are required in doing the
24 work?

25 A. Yes.

5037

1 Q. Now, let's talk about doing the testing.
2 Do you know what kind of testing is being done right
3 now by Olympic or not?

4 A. If you're asking me today, right now, I'd
5 have to say no, I don't know what they're doing
6 today. But from the standpoint of the testing, it's
7 my understanding that they completed the hydro
8 testing of the Allen to Renton line and maybe hydro
9 testing from -- I'm sorry, Ferndale to Allen line. I
10 think that's where they hydro tested the line. And
11 they've been running the smart pigs through the line.

12 Q. Do you know what a TFI tool is?

13 A. It's a -- the exact terminology, transflux
14 inspection tool, that is designed, as I understand
15 it, to measure or to report, record anomalies that
16 exist in the pipeline.

17 Q. Is it any kind of anomaly or any specific
18 kind of anomaly?

19 A. I think that the TFI tool is for seam
20 failures, seam anomalies. I think that that's what
21 the TFI tool is for.

22 Q. Okay. And do you know how long it takes to
23 evaluate the data from a TFI tool, whether it has to
24 be done manually, whether it could be done by
25 computer, who has to do it?

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1 A. I don't know, again, because I haven't
2 operated an oil pipeline and I'm not an engineer, how
3 long it takes. However, I do know that, in the
4 corrective action order, it specifies that the tests
5 are to be conducted and that they're to be analyzed
6 and within six months, I think is the time period,
7 for any repairs, any necessary repairs.

8 Q. Is it six months after the evaluation of
9 the data and the detection of the anomaly or six
10 months after the tests have been run?

11 A. I think it's six months after the detection
12 of the anomaly. Obviously, you wouldn't repair if
13 you don't have an anomaly.

14 Q. So my earlier question was how long does it
15 take to analyze that data, the anomalies and all of
16 that. You don't know?

17 A. I don't know that. And again, looking at
18 it from the effect on the shippers, I think that
19 there's been more than enough time to complete the
20 testing to get it back up.

21 Q. I understand your conclusion. I'm trying
22 to get at the basis for your conclusion. So far,
23 we've talked about testing, what you understand about
24 some of the testing and the data. Now, let's say
25 that you've determined that there's some anomalies

5039

1 that need to be repaired. Do you know about the
2 permitting processes in Washington State, how long it
3 takes to get permits here?

4 A. No. However, I did hear Mr. Cummings say
5 the other day that a lot of the reason that he's
6 spending dollars that are included in the cost of
7 service is to pave the way for getting permits very
8 quickly. So I don't know how long it takes, but
9 there certainly, under the circumstances, should be a
10 way of getting those permits pretty quickly.

11 Q. I'll just have to ask you to accept this on
12 faith, but do you know that Olympic's pipeline
13 crosses over 400 rivers, streams, drainage ditches
14 and all that are now subject, because of a listing in
15 western Washington, of the Puget Sound chinook as
16 threatened?

17 A. No, I don't.

18 Q. Do you know anything at all about the
19 listing of endangered species in western Washington
20 and the impact that it's had on construction?

21 A. I'm sorry, the listing --

22 Q. Of the Puget Sound chinook, in particular,
23 as an endangered species, and the impact that has had
24 on getting permits for any kind of construction near
25 any kind of water?

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1 A. I know that there has been some concern
2 about the salmon as being a endangered species, but I
3 don't know the balance of it.

4 Q. Do you know about the fish windows for
5 construction and repairs?

6 A. I'm told --

7 Q. Did you hear about that?

8 A. I'm told that there are.

9 Q. Do you know anything about that, though?

10 A. Nothing other than what I've read, I guess
11 that Mr. Talley has discussed.

12 MR. MARSHALL: Is this a good time to take
13 a break, because I think -- were we intending to do
14 an evening session or not an evening session?

15 JUDGE WALLIS: Let's be off the record for
16 a scheduling discussion.

17 (Discussion off the record.)

18 JUDGE WALLIS: Let's be back on the record,
19 please.

20 Q. Do you know about the HCA regulations for
21 oil pipelines? Are you familiar with those?

22 A. I've read them, yes.

23 Q. Do you know what those three areas are that
24 are the factors in the HCAs?

25 A. Population, effect on waterway.

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1 Q. You're missing number two, aren't you?

2 A. Yeah, I've forgotten what it is. I don't
3 have it before me.

4 Q. Unusually sensitive areas. Does that ring
5 a bell?

6 A. Okay.

7 Q. And isn't all of western Washington,
8 because of the Puget Sound chinook listing, now an
9 unusually sensitive area?

10 A. Well, I don't know that all of it is, but
11 probably a good part of it is.

12 Q. And do you know -- you probably don't know
13 about the third runway at Sea-Tac, so I'm not going
14 to ask you about that.

15 A. I'm sorry, about what?

16 Q. The third runway at Sea-Tac and the permits
17 on that. Are you familiar with the proposed state
18 regulation for lateral lines in this state and the
19 requirements that that would impose on Olympic? Have
20 you even looked at those?

21 A. The requirements that they will impose on
22 Olympic?

23 Q. Let me step back. Are you aware that there
24 are any proposed state regulations on safety that
25 might affect Olympic or not?

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1 A. I think I've seen something to that effect,
2 that there are some that might affect Olympic.

3 Q. But you couldn't give me the details?

4 A. That's correct.

5 MR. MARSHALL: Okay. Nothing further.

6 JUDGE WALLIS: Very well.

7 MR. MARSHALL: In that area. I'm sorry.

8 CHAIRWOMAN SHOWALTER: Let's try by 7:00.

9 MR. MARSHALL: Good.

10 JUDGE WALLIS: Let's take our evening
11 recess at this time and be back on the record at 7:00
12 p.m.

13 (Evening recess taken.)

14 JUDGE WALLIS: Let's be back on the record,
15 please, following an evening recess. During the
16 recess, it was determined that to provide the best
17 opportunity for all of the Commissioners to hear the
18 additional information to be presented by this
19 witness, we would interrupt the cross-examination of
20 the prior witness and take up with that portion of
21 Mr. Grasso's testimony.

22 Tesoro has called Mr. Gary Grasso back to
23 the stand in this proceeding. Exhibits 2401-T
24 through 2411 have been previously identified on the
25 record of the June 13 administrative session. In

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1 addition, Tesoro has presented six documents for use
2 in the direct examination of this witness. These are
3 2412, Total Cost of Service Corrected; 2413,
4 Historical Opinion 154-B; 2414, March 29, 1995 Staff
5 Recommendation in TO-950104; 2415 is a September 3,
6 1996 Memorandum from Cathie Anderson to Gene
7 Eckhardt; 2416 for identification is a December 30,
8 1996 Staff Recommendation in TO-951518; and 2417 for
9 identification is a January 27, 1998 Staff
10 Recommendation in TO-981613. Mr. Brena.

11 Whereupon,

12 GARY GRASSO,

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

16

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

18 BY MR. BRENA:

19 Q. Good evening, Mr. Grasso.

20 A. Good evening.

21 Q. Are you sponsoring in this proceeding
22 Exhibits 2401 through 2417?

23 A. Yes, I am.

24 Q. Do you have errata with regard to Exhibit
25 2401?

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1 A. Yes, I do, a small one. On page 34, line
2 16, the last word intrastate should be interstate.
3 Line 18, the word intrastate should be interstate.
4 Line 19, the first intrastate should be interstate.
5 And that's it.

6 Q. With those errata, do you adopt the
7 exhibits that we've identified?

8 A. Yes, I do.

9 MR. BRENA: I would offer the exhibits into
10 evidence at this time.

11 JUDGE WALLIS: Is there objection?

12 MR. MARSHALL: I only would like the
13 opportunity to review these latest ones for
14 additional materials from those same files for
15 completeness, and we'll do that over the evening.

16 JUDGE WALLIS: Very well. Is that an
17 objection or a --

18 MR. MARSHALL: It actually is an objection,
19 unless they're complete, but I may be able to
20 withdraw that objection tomorrow after further
21 review.

22 JUDGE WALLIS: Let's reserve ruling on 2414
23 through 2417. Those are the documents to which you
24 refer, Mr. Marshall?

25 MR. MARSHALL: Yes.

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1 JUDGE WALLIS: Very well. And 2401-T
2 through 2413 are received in evidence.

3 Q. Mr. Grasso, have you made certain small
4 corrections that you think should be made to your
5 testimony in Exhibit Number 2412?

6 A. Yes, I have.

7 Q. Would you please describe those
8 corrections, please?

9 A. Yes, these were made after the rebuttal
10 case was received. And I made three changes to my
11 cost of service analysis, and I presented a schedule
12 with four columns, starting off with 2402-C, which
13 was the original schedule.

14 Q. And those are set forth in Exhibit 2412,
15 page one of one?

16 A. That is correct.

17 Q. Would you please go through the three
18 corrections and describe each one?

19 A. Yes, I will. Change one related to my
20 error in excluding test year AFUDC. I had changed a
21 small label, which affected a formula, which didn't
22 carry through the AFUDC in that amount. That
23 resulted in an increase of my original cost of
24 service of thirty-seven-eight-six-oh to
25 thirty-seven-nine-seven-six. The second change --

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1 COMMISSIONER HEMSTAD: I'm sorry, would you
2 point out the --

3 CHAIRWOMAN SHOWALTER: I think -- are you
4 on line seven?

5 THE WITNESS: Line seven, I'm sorry.

6 COMMISSIONER HEMSTAD: And then the change
7 is from what to what?

8 JUDGE WALLIS: Let's be off the record for
9 just a minute.

10 (Discussion off the record.)

11 JUDGE WALLIS: Please continue.

12 THE WITNESS: Okay. I had made three
13 changes, all computational. Change one was to change
14 AFUDC calculation to give effect of AFUDC in the test
15 year. Change two was a change that Mr. Collins made
16 to his model correcting the income tax allowance
17 calculation for the -- I would call it the south
18 Georgia adjustment. So I had to, since I adopted his
19 model, I made that change myself, as well. And then
20 change three was to implement the correction to plant
21 in service that Ms. Hammer made.

22 Cumulatively, our rate would change from
23 31.2 cents contained in Exhibit 2402-C to what we are
24 now adopting, which is 29.91 cents. This is found on
25 11, line 11, and it is the systemwide average rate.

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1 I made no other changes to that.

2 MR. BRENA: Before we proceed forward, is
3 that clear on the record? Yes? Okay. I know the
4 hour is late, listening to us.

5 Q. Mr. Grasso, in part, in the rebuttal case,
6 your experience and background has been challenged
7 and would you please explain what experience and
8 background that you believe qualify you to advance
9 the opinions that you have to this Commission?

10 A. Well, I have participated in many cost of
11 service studies over the years, and while I've not
12 been an operational employee of an oil pipeline
13 company; I have consulted for them. Natural gas
14 companies, as well. I have constructed costs of
15 service from scratch and I have constructed them --
16 assisting companies putting them together.

17 Q. How many years have you been working at
18 this stuff?

19 A. Since 1975. Twenty-seven years.

20 Q. Do you consider yourself an expert on rate
21 methodology issues for pipelines?

22 A. Yes, I do.

23 Q. Both gas lines, crude lines and product
24 lines?

25 A. Yes, I do.

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1 Q. You heard Mr. Brown describe the proper way
2 to put a rate case together?

3 A. Yes, I did.

4 Q. Do you agree with his observations about
5 the proper way to put a rate case together?

6 A. Absolutely. If I may expand on that?

7 Q. Yes.

8 A. My direct experience is -- it's almost kind
9 of a roll up your sleeves, get your hands dirty type
10 of a practice. I have gone down to companies and
11 stayed there for a while. You get to know the
12 company, you go through the books, you talk to the
13 people, you put the numbers together, you're
14 comfortable with what you're doing, because that's
15 what you're going to be supporting.

16 Q. And in doing that process, do you review
17 the numbers in the financial statements to ensure
18 that the proper rate treatment is afforded to
19 extraordinary items and nonrecurring items?

20 A. Absolutely. That's one of your basic
21 tenets when you're going to review these kinds of
22 numbers. The Commission have -- the FERC, and I'm
23 sure state commissions, as well, have certain
24 requirements about what is proper, what is improper,
25 and you want to put together the best possible case

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1 you can with the most reliable numbers when you're
2 presenting them.

3 Q. Is it possible to do that without knowing
4 what the money was spent for?

5 A. No, not really. I mean, you're really
6 getting down to the root level of costs, if you can.
7 You should be with the financial people of the
8 company. You should have access to the root records.
9 You should be able to test certain expenses, have
10 projects explained. It's a process.

11 Q. Do you believe that that's a process that
12 Olympic went through in this rate proceeding?

13 A. I do not believe that is a process that
14 they used.

15 Q. What's the basis for your understanding?

16 A. Well, basically, throughout the discovery
17 process, we came to that conclusion, but more
18 importantly, when we were here in Olympia a few weeks
19 ago, we had our consultants meeting. We -- we being
20 John Brown and myself -- met with Olympic's
21 consultants and Staff's consultants and went through
22 the process that they did to put together this
23 rebuttal case and learned that, really, it was a
24 matter of, except for a few minor items, pulling
25 numbers off of the financial statements and putting

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1 them into the model.

2 Q. What methodology do you think this
3 Commission should apply to Olympic in this
4 proceeding?

5 A. The depreciated original cost methodology.

6 Q. Would you, in summary form, explain the
7 differences between the methodology you're suggesting
8 and the FERC 154-B methodology?

9 A. Well, Mr. Brown gave the basics of the DOC,
10 and to get to your TOC on top of that, if supported,
11 you can get a starting rate base writeup for plant --
12 valuation plant as of December 31st, 1983, and then
13 there is a deferred earnings calculation, which is
14 the rate of inflation times the rate base. That is
15 the -- and that is capitalized into rate base. And
16 these amounts are amortized over the life of the rate
17 base.

18 Q. Other than the different treatment of
19 deferred earnings and the writeup to starting rate
20 base, is there any other substantive difference
21 between the two methodologies?

22 A. Well, under the 154-B methodology, one
23 really needs to construct the rate base from 1983
24 forward and keep that up-to-date. Under the
25 depreciation original cost methodology, one really

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1 needs the current year's numbers or, if one is doing
2 an average, two years' numbers at most, and you've
3 got a benchmark for future ratemaking.

4 Q. I'd like to explore that further and I'd
5 like to break the question into two parts. First,
6 I'd like to discuss TOC. In your judgment, would
7 this Commission's application of a TOC result in any
8 administrative convenience because it's consistent
9 with the FERC methodology?

10 A. Based on my review of the filings made,
11 that would be a least consideration one should give.

12 Q. And you were explaining that each time you
13 file under the TOC, you have to go all the way back
14 to 1983 and recalculate from '83 forward in order to
15 derive the proper rate base calculation?

16 A. I didn't precisely say that. I said you
17 need to start from 1983. One doesn't need to go back
18 each and every time one files a new rate case to 1983
19 to bring the rate base up-to-date. And that is a
20 significant fact that needs to be brought out.

21 Q. In terms of how Olympic has treated its
22 filings, has it gone all the way back to 1983 and
23 treated rate base differently each time it's filed
24 its version of the 154-B methodology?

25 A. Absolutely. From every filing from 1995

1 forward.

2 Q. And so if this Commission were to adopt a
3 TOC approach and Olympic were to continue to file in
4 the future as it has in the past, then, in each rate
5 proceeding, this Commission would have before it
6 calculations running beginning in 1983 and going
7 forward before it?

8 A. If they followed the same set of
9 assumptions which they have in the past, that's
10 exactly what will happen.

11 Q. How would you assess whether or not the TOC
12 or the 154-B, in terms of judicial uncertainty with
13 regard to its treatment? Do you believe there's
14 greater judicial uncertainty with regard to the DOC
15 or 154-B? And please explain your answer.

16 A. If I may ask you to please explain judicial
17 uncertainty.

18 Q. Well, which of these methodologies have
19 been tested under the fire of judicial review?

20 A. Absolutely. That would be the depreciated
21 original cost methodology. We've heard
22 representations that the Opinion 154-B methodology
23 has never been challenged, but let's put this on the
24 record. Clearly, in the ARCO decision at the FERC,
25 which was the forerunner of Opinion 351, the judge

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1 noted that Opinions 154-B and 154-C did go to the
2 court of appeals, but that matter was settled. So no
3 one ever had a chance to raise the issue about
4 whether 154-B and C are proper.

5 Then we heard about Lakehead, the Opinion
6 397 and 397-A, as basically saying 154-B is the
7 methodology. That also went to the court of appeals,
8 but that also was settled. So it has gone before
9 courts, but before courts can act, they've been
10 settled.

11 Q. And by courts, you're referring only to the
12 D.C. Circuit and the federal methodology as applied
13 by the FERC; correct?

14 A. Yes, that's correct.

15 Q. Did Farmers Union One and Farmers Union Two
16 result in, in your mind, in considerable uncertainty
17 with regard to how, if this methodology ever makes it
18 up to the D.C. circuit, it may view it?

19 MR. MARSHALL: I would object as calling
20 for legal opinions outside of this witness' knowledge
21 and foundation. He's not an attorney.

22 MR. BRENA: He is a rate methodology expert
23 and is giving his assessment of whether or not the
24 D.C. circuit has addressed the issues associated with
25 these and how they've addressed them. It's within --

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1 MR. MARSHALL: He's actually asking for
2 speculation on how the D.C. circuit might address it.
3 I think that's beyond the realm of this witness and
4 probably any other witness on speculation of that
5 nature.

6 MR. BRENA: Well, no, I was asking
7 specifically if the decisions they've already issued
8 cast doubt on how they may view the underlying issues
9 in 154-B.

10 JUDGE WALLIS: The question is within the
11 sphere of the purposes for which the witness is
12 offered. We understand that he is not an attorney
13 and that his views are not legal advice or don't
14 represent the views of an attorney. Does the witness
15 have the question in mind?

16 THE WITNESS: Yes, I do. The valuation
17 methodology was rejected as completely unsupported.
18 That's of the ICC. And it's been a while since I've
19 read Farmers Union Two, but it wasn't a glowing
20 recommendation to go back to the Commission and form
21 a new type of trended original cost methodology. I
22 believe it was really stating that there was no basis
23 for evaluation and that depreciated original cost
24 should be the preferred choice. That's what I
25 remember. I could be wrong about that.

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1 Q. Okay. In this case, do you believe that
2 the Commission should take into consideration
3 Olympic's calculation of deferred earnings from 1983
4 forward in setting future rates and allow them to be
5 collected in future rates?

6 A. Well, no, I do not.

7 Q. Why not?

8 A. The first -- the last filing that was made
9 prior to the 1995 filing was the 1983 filing that was
10 made after Williams One, which was Opinion 154.
11 That's where the Commission continued the valuation
12 method, and so the company filed under that
13 methodology and those rates continued in effect
14 through the next filing made in 1995. That was a
15 12-year period where the rates that were being
16 charged were basically rendered under 154
17 methodology.

18 Opinion 154-B, which set forth the basic
19 framework of the TOC, was issued in June 26th, 1985.
20 It did not require companies to come in and file, but
21 certainly the methodology was out there and companies
22 could choose to file a new rate case under the new
23 methodology or not. My assumption is that when a
24 company doesn't file, it had made some sort of
25 determination that it was better off under the

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1 current regulatory regime than under the new version.

2 Q. The basis for the rates under 154, have you
3 examined their rates in relation to either a
4 properly-calculated DOC or 154 in Exhibit 2404 and
5 2407?

6 A. Yes.

7 Q. Would you please explain what those
8 exhibits stand for?

9 A. Sure. 2404? 2404 is an Opinion Number
10 154-B cost of service from 1984 to 1999, compared to
11 revenues collected pursuant to rates calculated
12 under, in quotes, federal methodologies.

13 Q. Does that exhibit show that Olympic has had
14 overcollections under 154-B during the same period in
15 which they are asking this Commission to allow them
16 to collect deferred returns from those same periods?

17 MR. MARSHALL: Objection to the
18 characterization of overcollections. Assuming facts
19 not in evidence. I mean, if this witness wants to
20 give an opinion on that, that's fine, but the
21 question just makes an assumption of fact.

22 MR. BRENA: Yes, it did. And so I
23 acknowledge that it did, but I think that it was
24 proper.

25 JUDGE WALLIS: The witness may respond.

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1 THE WITNESS: The answer is, if we're
2 looking in 1995, yes, it was \$11.7 million. Perhaps
3 if I gave you a little background on this schedule, I
4 took the basic assumptions that Olympic had filed in
5 its July 31st, 2001 filing before the FERC and used
6 those inputs and then went back to the company's Form
7 Sixes for that time period to insert operating
8 expenses. Those operating expenses were full
9 expenses. In other words, they were not put through
10 any kind of regulatory filter. If they were spent, I
11 gave it to them.

12 The operating revenues shown through '84
13 through '95 would have been rates collected pursuant
14 to the Williams 154 methodology.

15 Let me state, on the federal side, with the
16 passage of the Energy Policy Act of 1992, those rates
17 were grandfathered as being just and reasonable under
18 the act.

19 Q. So there's been a specific determination
20 that the prior rates have been just and reasonable
21 during these same periods in which they are trying to
22 collect deferred earnings in future periods?

23 A. Yes, that's correct.

24 Q. Would you please explain Exhibit 2407, as
25 well?

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1 A. This is basically the same type of
2 calculation, except I changed the model to a DOC cost
3 of service. And by that, I removed deferred -- the
4 calculation for the amortization of deferred return
5 and the starting rate base writeup.

6 Q. And would you please explain the conclusion
7 of that model?

8 A. Well, the rates in place through 1995 would
9 have resulted in a cumulative overcollection of 102
10 -- \$102 million. And again, this is illustrative.

11 Q. So Olympic has collected \$102 million in
12 this period over the amount that would have been
13 allowed them if they would have been regulated under
14 this Commission's traditional methodology; is that
15 correct?

16 A. Yes, using their own numbers, yes.

17 Q. And that is without using their reported
18 numbers, without it making any adjustments whatsoever
19 for extraordinary costs or nonrecurring costs or
20 normalization?

21 A. That's right.

22 Q. Now, with regard to the starting rate base,
23 do you believe that this Commission should adopt --
24 allow a writeup to rate base based on a transition
25 rate base concept?

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1 A. No, I do not. It has not been supported.
2 It is not a given. Under the FERC methodology, under
3 154-B, a starting rate base amount can be challenged.

4 Q. Is -- I'm sorry. Is a starting rate base,
5 is that cost based?

6 A. No, it is not.

7 Q. Now, I want to talk with you for a while
8 about Olympic's prior filings, but to start out with,
9 in your professional opinion, has Olympic ever filed
10 a proper 154-B rate filing?

11 MR. TROTTER: Excuse me, Counsel. If I
12 could ask just for clarification, if he means that
13 this Commission -- we've had a lot of testimony about
14 filings, and it was not clear whether it was at this
15 Commission or FERC or both.

16 MR. BRENA: I'm happy to clarify it. This
17 line of questions goes to filings with this
18 Commission.

19 MR. TROTTER: Thank you, Counsel.

20 THE WITNESS: No.

21 Q. Would you -- has -- well, let's go through
22 them. In Olympic's 1983 filing, would you please
23 explain what Olympic did in that filing?

24 A. Well, it followed the FERC's 154
25 methodology, and I have not really specifically

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1 reviewed that in terms of whether that was proper or
2 improper.

3 Q. In terms of what that means in comparison
4 with 154, as it applies to Olympic, does 154 result
5 in substantially higher rates than 154-B?

6 A. I think my exhibit demonstrated that.

7 Q. Okay. With regard to Olympic's 1995
8 filing, which is -- part of which is set forth in
9 Exhibit 2414, would you please explain what Olympic
10 did there?

11 A. The -- 2414? I'm sorry.

12 Q. Well, I'm hoping.

13 A. Yeah. This was their first filing before
14 the Washington State Commission under 154-B.

15 Q. Was it a proper 154-B filing?

16 A. No, it was not.

17 Q. Why not?

18 A. From the face of the filing, I cannot
19 determine, under their equity rate base calculation,
20 that the company ever deducted or amortized the
21 starting rate base writeup from 1983 forward. That
22 starting rate base writeup is amortized each year, so
23 eventually it will disappear from rate base.

24 Q. Did they use the end-of-year 1985 capital
25 structure properly?

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1 A. No. No, they used that to construct their
2 equity portion of the rate base from 1983 forward.
3 The Commission's pronouncement under 154-B said the
4 capital structure in place at June 26th, 1985, would
5 be the capital structure to use when commencing the
6 determination of a 154-B.

7 MR. TROTTER: Your Honor, I apologize for
8 interrupting again, but we're using the word
9 Commission.

10 THE WITNESS: I'm sorry.

11 MR. TROTTER: I think in that instance, it
12 was FERC. So if we could have an understanding with
13 the witness, when he means FERC, to say that, and if
14 it's this Commission, say Commission or WUTC, if
15 that's acceptable to Mr. Brena.

16 MR. BRENA: Certainly. Certainly, for the
17 clarification of the record, I think that's very
18 important.

19 Q. Their 1996 filing, their next filing, which
20 is -- part of which is set forth in Exhibit 2415, was
21 that a 154-B filing at all?

22 A. It purported to be a 154-B filing. I'm
23 sorry, which one, 24 --

24 Q. 2415, the 1996 filing.

25 A. Oh, I'm sorry.

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1 Q. The first 1996 filing, the surcharge?

2 A. No, that was just a surcharge filing. I
3 believe it was filed only within the state of
4 Washington, because it was -- it related to
5 facilities at Sea-Tac. I did not see a concurrent
6 filing at the FERC.

7 Q. So with regard to this filing, at least, it
8 was filed in one jurisdiction and not the other?

9 A. That is correct.

10 Q. With regard to their second filing in 1996,
11 set forth in part in Exhibit 2416, would you please
12 explain what Olympic did there?

13 A. Well, at that point, the company did insert
14 an amortization of the starting rate base writeup,
15 and it did use a capital structure as of June 26th,
16 1985, I believe. They -- the company changed the
17 amortization of the deferred earnings and AFUDC from
18 the average remaining life concept to the useful life
19 concept and instituted these changes back to 1983.
20 Therefore, from one filing in 1995 to the next filing
21 in 1996, all historical numbers changed.

22 Q. Setting aside for the moment whether or not
23 any of these filings are proper, in your judgment,
24 under 154-B, have any of these -- have Olympic's
25 filings been consistent with each other?

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1 A. No, I think I've just demonstrated that the
2 changes that they've made would not allow a
3 comparison between filings to see what was considered
4 proper in 1995, whether that appears historically in
5 1996.

6 Q. With regard to their 1998, their Bayview
7 filing set forth in Exhibit 2417, would you please
8 explain that filing?

9 A. Let me go to that one. That was to
10 institute a three-cent charge for the new Bayview
11 facilities. The company submitted a 154-B filing.

12 Q. Did they change all their assumptions and
13 apply them retroactively to 1983?

14 A. I believe I'm looking at here, again, that
15 the rates of return capital structures were changed.
16 The starting rate base amortization may have been
17 changed, as well, which means I just need to look at
18 that to make sure. Subject to further check, I'll
19 say that and check on that.

20 Q. Now, setting aside whether the 154-B was
21 proper or whether it was internally consistent with
22 any other filing they made, and just looking at their
23 filings between the two jurisdictions, has Olympic
24 always filed the same between the two jurisdictions?

25 A. No, they have not, or it has not.

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1 Q. Has Olympic made multiple indexing filings
2 with the FERC that they have not filed with this
3 Commission?

4 A. Yes, they have. After 1995, companies were
5 allowed to file increases associated with an index
6 methodology, and while the FERC did not require
7 companies to increase rates when those indices went
8 up, the FERC did require companies to decrease rates
9 when the index decreased. I reviewed tariff sheets
10 from the FERC and found that Olympic did file
11 increases and decreases under the federal methodology
12 at the FERC.

13 Q. Now, Mr. Kermode had indicated that he was
14 unable to find such filings within the public record.
15 Will you please explain why that would be true?

16 A. It's really only very recently that the
17 FERC has made an effort to take oil pipeline filings
18 and get them onto their Regulatory Information
19 Management System, or RIMS, so that the public can
20 get a docket number and can search a case online.
21 Without knowing that or being familiar with the
22 procedures of the FERC, one would have to know that
23 one would need to put a formal request in with the
24 oil pipeline tariff branch to get the tariff book.

25 Q. Do you have -- you have copies of those

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1 index filings with you, don't you?

2 A. I believe I have filings going back to the
3 '70s with me, or tariff sheets.

4 Q. Specifically with regard to the index
5 filings --

6 A. Yes, I do.

7 Q. -- that have been made?

8 A. Sorry.

9 MR. BRENA: We did not prepare these as
10 part of the direct. We did not expect the testimony
11 to develop like it did. If the Commission would like
12 copies of the indexed filings that have been
13 submitted, we would be happy to provide those. And
14 we can -- it's not something that need be decided now
15 for us, but if you want it, we'll give it to you.

16 JUDGE WALLIS: We'll take that under
17 advisement.

18 MR. BRENA: Okay.

19 THE WITNESS: Well -- I'm sorry.

20 Q. I'm sorry, were you going to add something,
21 Mr. Grasso?

22 A. Well, the upshot of that is that the
23 federal methodology argument that's being made here
24 really applies only to the 154-B cost of service type
25 increases. When it comes to the indexed filings,

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1 whether they're increases or decreases, the company
2 has not filed here, as well, here being the WUTC.

3 Q. Do you think that the fact that the company
4 files differently and files indexing files is
5 something that the company should have brought to
6 this Commission's attention in light of Mr. Kermod's
7 testimony that he was not able to find those?

8 A. Well, probably even -- well, the answer is
9 yes to that specific question, when Mr. Kermod made
10 that observation.

11 Q. But with regard to the company's position
12 that they've filed consistently with the FERC
13 methodology, do you feel that the company should have
14 brought forward that they've been making indexing
15 filings with the FERC that they have not been filing
16 with this Commission for years?

17 A. Well, as of 1995, the FERC methodology
18 falls into four areas, and that's a indexed
19 methodology, cost of service methodology, a market
20 based rate methodology, and a negotiated settlement
21 methodology. So to that extent, the answer is yes.

22 Q. I'd like to turn your attention to their
23 154-B filing that was presented by Olympic in this
24 proceeding. Do you believe that they filed a proper
25 154-B -- well, and you can just take it a filing at a

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1 time, if you'd like -- in this proceeding?

2 A. Would it help to go to Exhibit 2413?

3 Q. Mr. Grasso, let me withdraw that question
4 and ask another one. I would like, before we leave
5 this area of prior rate filings, for you to explain
6 what Exhibit 2413 represents?

7 A. Exhibit 2413, I constructed by reviewing
8 all the filings made under the federal methodology
9 here at the WUTC. And I took five-year intervals,
10 1984, 1989, 1994 and 1999, and listed the rate base
11 contained in each filing. So just focusing on the
12 column marked 1994, and then looking at the filing
13 column, that is the rate base for 1984 that is
14 contained in each one of the filings.

15 Q. Now, this is -- for example, this is the
16 statement of the amount of rate base in the company
17 as of the year 1984 in subsequent filings; correct?

18 A. That's correct.

19 Q. So if they had filed consistently, this
20 number should remain the same; correct?

21 A. Yes.

22 Q. Okay. And so in each of their filings they
23 have subsequent to 1984, they have restated the rate
24 base for the year 1984 in every single filing;
25 correct?

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1 A. That's correct. And this is all based on
2 assumptions that go into the model, but the
3 assumptions are always applied retroactively,
4 changing the rate base numbers from filing to filing.

5 Q. And this issue is one of the reasons why
6 you feel that there would be tremendous
7 administrative burden associated with litigating rate
8 cases before this Commission under a TOC methodology;
9 is that correct?

10 MR. MARSHALL: I guess I would object to
11 that as a long, leading question.

12 MR. BRENA: I'll make it shorter.

13 MR. MARSHALL: Maybe I should have --

14 MR. BRENA: Just trying to be helpful.

15 JUDGE WALLIS: We do --

16 MR. BRENA: I guess I'll rephrase the
17 question.

18 JUDGE WALLIS: We do understand the efforts
19 of Counsel to expedite the process. Mr. Brena, you
20 agreed to rephrase the question; is that correct?

21 MR. BRENA: Yes, at this hour, I'm not sure
22 I know the difference between a leading and
23 nonleading question, but I'll do my very best.

24 Q. Would you cast in your own words what sort
25 of administrative burdens these kinds of changes in

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1 rate base from filing to filing represent?

2 A. Well, I remember a question yesterday from
3 the Chairwoman about the continuance of a consistent
4 methodology, and under the methodology employed here,
5 where current assumptions, such as the test year real
6 rate of return being applied back to 1983 in each
7 filing, if the company files a rate case again here
8 and follows the same methodology, we can add another
9 string of different numbers for these rate bases from
10 1984 forward.

11 And so in that manner, you really -- once
12 you close out this case, you've got a whole new case
13 coming up.

14 Q. And in that new case, the Commission will
15 have to revisit again what the proper rate base was
16 all the way back to 1984; correct?

17 MR. MARSHALL: Well, I object that that
18 assumes a fact not in evidence. The starting rate
19 base amortization period is 24 years. It may be -- I
20 think it's in year 22, according to Dr. Means. If
21 you come in in another two years, the starting rate
22 base may have been completely amortized. So I
23 disagree with the assumptions in the question as not
24 being realistic, misstating facts in evidence.

25 MR. BRENA: The reason that the rate base

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1 changes has nothing to do with the starting rate base
2 and its amortization, that doesn't change these
3 numbers; what changes these numbers is the deferred
4 return calculation. That each time they come in and
5 file, they apply a new return, a calculation, and new
6 capital structure and they calculate it all the way
7 back to 1983 and recalculate AFUDC and therefore --
8 and recalculate their deferred earnings and therefore
9 restate their rate base. So --

10 JUDGE WALLIS: Is that the question to the
11 witness?

12 THE WITNESS: I think I have it in mind.

13 MR. BRENA: Yes.

14 JUDGE WALLIS: Mr. Grasso.

15 THE WITNESS: Well, the fact that the AFUDC
16 is recalculated causes the deferred return
17 calculation to change. That does not change each and
18 every time in and of itself; it changes merely
19 because of the assumptions. The company consistently
20 uses the same index for inflation, so it would be the
21 other changes that would change the deferred return
22 calculation.

23 Q. Now, I want to explore that just a little
24 bit longer. The AFUDC calculation changes depending
25 on the backcasting of rate of return and capital

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1 structure; is that correct, or not?

2 A. No, it is not correct, because --

3 Q. All right.

4 A. -- the company does not backcast, as I
5 understand backcasting from a different rate
6 proceeding; the company merely uses the real rate of
7 return used in the test year and uses that as the
8 real rate of return for 2000 through 1983, adds the
9 current year's rate of inflation to come up with a
10 nominal rate of return, which is applied to the AFUDC
11 calculation. In essence, it's a backwards
12 methodology. The Commission has always stated that
13 --

14 CHAIRWOMAN SHOWALTER: The FERC?

15 THE WITNESS: The FERC, I'm sorry, the FERC
16 has always stated that the nominal return always has
17 to be calculated out first. Then you subtract
18 inflation to arrive at the real rate of return.

19 Q. So in periods of -- in periods of high
20 inflation, rate base would be one number restated all
21 the way back to '83, where in periods of low
22 inflation, it would be -- it would be restated in an
23 entirely different basis, because of the changes to
24 the rates of return in the test year?

25 A. Yes.

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1 Q. I'd like to leave their historic filings
2 and I'd like to talk about their filings in this
3 proceeding supporting -- well, their filings in this
4 proceeding. Do you believe that, in this proceeding,
5 Olympic has filed a proper 154-B calculation?

6 A. Well, with my caveat of the changing rate
7 base scenario because of the different assumptions,
8 one can merely look at this schedule on 2413 from May
9 1st to June 2002, that is 13 months, and just see the
10 differences due to their changing assumptions that
11 they put into the rate base.

12 Q. Have they calculated their test period
13 costs correctly, in your estimation, in their direct
14 case, Case Two?

15 A. No, I believe Mr. Brown has addressed that,
16 and I agree that it is done incorrectly.

17 Q. Have they properly applied the known and
18 measurable standard with regard to the test period
19 adjustments?

20 A. Based on my conversations with the
21 consultants, I would say no.

22 Q. Have they -- have they adjusted properly
23 for nonrecurring, extraordinary and expenses that
24 should be amortized or capitalized?

25 A. The only adjustments I really saw were to

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1 the elimination of the accrual for the remediation
2 and an attempt to normalize legal expenses.

3 Q. Aside from those specifics, would the
4 answer be no?

5 A. Well, except the fuel and power and oil
6 losses, which were done differently, as well.

7 Q. Okay. Did they correctly calculate AFUDC?

8 A. Oh, absolutely not. One of the criticisms
9 of my calculation -- and this is too detailed to go
10 into. I'll just give it at a high level -- is that I
11 misapplied a amortization ratio of AFUDC. In my
12 direct testimony, I did not change the amortization
13 rate -- or the in-service ratio, excuse me, of AFUDC,
14 based on the fact that the company did not support
15 why it changed its in service ratio from its filing
16 on July 31st before the FERC and its direct case
17 filed in December 2001.

18 On rebuttal, the company explained that
19 Cross-Cascades was contained in their CWIP
20 calculation in the July filing. In December, the
21 company removed it and therefore changed its in
22 service ratio to 100 percent from 50 percent, since
23 they now had a better grasp on the volumes -- I mean,
24 on CWIP.

25 Unfortunately, Cross-Cascades expenditures

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1 did not occur in 1983 through 1994, and they made
2 that change all the way back to 1983. And in my
3 mind, that casts doubt upon their explanation.
4 Further, the company has stated it does not have the
5 proper balances, monthly balances, in its possession
6 from prior to 2000, I believe, and the monthly
7 balances are what you need to do the proper
8 calculation, because that would allow you to
9 determine that the construction work in progress, or
10 CWIP, contains only proper costs and no capitalized
11 overheads or losses or any failed projects, as the
12 Commission stated in Opinion 435.

13 Q. Thank you for taking --

14 A. The FERC Commission.

15 Q. Oh. Thank you for taking it at a high
16 level.

17 A. I can get more detailed.

18 Q. Just for the record, I promised him that
19 I'd ask that question. I didn't want to do it. I'd
20 like to -- I'd like to draw your attention now,
21 Olympic's Case One was based -- its base year was the
22 year 2000; correct?

23 A. Correct.

24 MR. MARSHALL: You know, Case One is out of
25 the case, and I know that this might be of historical

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1 footnote type interest, but in view of the lateness
2 of the time, this does not seem to be an appropriate
3 thing to get into at all.

4 JUDGE WALLIS: Mr. Brena.

5 MR. BRENA: Well, I'm about to demonstrate
6 that it was used, the base year for Case One was the
7 year 2000, and that that is the same base year that's
8 used for FERC 6 reporting. And in their FERC 6, page
9 700 numbers, they put forward an entirely different
10 cost of service than they put forward to this
11 Commission for the identical base year. It goes to
12 the credibility of their filings, it goes to the
13 integrity of their filings, and I'd like to be able
14 to pursue it.

15 MR. MARSHALL: Case One is not in the case.

16 MR. BRENA: Your Honor, if I may, just one
17 comment. Either is any of the filings from 1983
18 forward part of this case, but it goes to their
19 historic filings.

20 JUDGE WALLIS: The objection is overruled.
21 The purpose of the inquiry is not to discredit Case
22 One, but to pursue the proposition that's being
23 offered as to inconsistency.

24 Q. Would you please explain the inconsistency
25 between Case One that they filed with this Commission

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1 as a basis for rates and what they reported for the
2 identical period with the identical numbers in their
3 Sheet 700?

4 A. The year 2000 rate base, and I'm not
5 talking about the average rate base, but the year
6 ending rate base that would be contained in Case One,
7 is approximately \$3 million higher than the same cost
8 of service rate base found in page 700, the year
9 2000. And I believe that FERC Form 6, or even if
10 it's filed here as a Form 6, is in the record.

11 CHAIRWOMAN SHOWALTER: Excuse me, but the
12 Form 6 for what year?

13 THE WITNESS: The year ending December
14 31st, 2000.

15 Q. And were both of those purporting to be
16 154-B cost of service calculations?

17 A. Yes, they were.

18 Q. I'd like to ask you, you were here when Mr.
19 Ganz, in his rebuttal, took issue with Mr. Kermode's
20 suggestion that GAAP accounting would be proper to
21 use in interpreting the uniform system of accounts?

22 A. Yes, I was.

23 Q. Do you have a comment in that regard?

24 A. Well, I believe -- did you say would be
25 proper or improper?

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1 Q. I'm not sure. My understanding was Mr.
2 Ganz suggested that Mr. Kermode's use of GAAP was an
3 improper suggestion with regard to the uniform system
4 of accounts. And I'm asking if you have an opinion
5 with regard to that matter and what it is?

6 A. Yes. Mr. Ganz based his observation on a
7 notice of proposed rulemaking issued by the FERC, and
8 I thought this was in the record, but it was quoted
9 from during his testimony, issued on July 27th, 2000,
10 and quoting the fact that the FERC was blocking the
11 industry initiative to institute GAAP financial
12 reporting requirements, and yes, that language is in
13 that proposed rulemaking.

14 However, in the next four pages, the
15 Commission explains what it meant to do by this
16 rulemaking, which updated the FERC Form 6. The
17 Commission noted that its system of accounts, to be
18 updated in this rulemaking, would be brought
19 up-to-date with the financial accounting standards,
20 and that the position of the industry would be to
21 eliminate 23 out of 46 pages from the FERC Form 6 by
22 instituting GAAP financial reporting.

23 And the Commission said we really can't do
24 that because the uniform system of accounts presents
25 a consistent basis for pipeline companies and

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1 shippers and consumers to compare company-to-company,
2 records-to-records. There was no required reporting
3 on the GAAP financial statements side, and the
4 Commission was afraid that details that people would
5 need would get lost and subsumed into major accounts.
6 But it took great pains to say that they were
7 bringing up the uniform system of accounts to the FAS
8 standards.

9 Q. But it's your understanding that GAAP was
10 specifically intended to apply to the uniform system
11 of accounts, but, for the purposes of the form of the
12 report, the Commission preferred its own form?

13 A. That's correct.

14 MR. MARSHALL: I would object that the
15 document speaks for itself. This witness'
16 interpretation -- if it's in the record, it's in the
17 record, but I think we've had difficulty with the
18 interpretations before.

19 CHAIRWOMAN SHOWALTER: Is it in the record?

20 MR. MARSHALL: If it's not in the record, I
21 think that would be the best evidence, rather than
22 this witness' off-the-cuff interpretation of it.

23 MR. BRENA: Well, Your Honor, I'd object to
24 that colloquy of off the cuff. I mean, this is a
25 regulatory expert weighing in on something that's

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1 been the subject of considerable debate between the
2 company and the Staff, and the fact is is the Staff
3 witness got it dead right.

4 JUDGE WALLIS: We understand and, in
5 context, I think that the examination is proper. We
6 would accept Mr. Marshall's offer to provide that
7 document in full, so that when the Commission reviews
8 the testimony of the witnesses in this area, it will
9 have access to that document.

10 MR. MARSHALL: It may be in the record
11 already, but if this witness has a copy of it and
12 he's being examined on it, the practice has been that
13 we make copies available so that we can all track and
14 follow what is being quoted and said.

15 MR. BRENA: I'm happy to provide it if it's
16 not in the record. I will undertake to do that and
17 that will be filed with the Commission tomorrow.

18 JUDGE WALLIS: Do you have further
19 questions on that document?

20 MR. BRENA: I do not.

21 JUDGE WALLIS: Very well.

22 Q. And speaking with -- generally with regard
23 to the quality of the financial information that was
24 provided and maintained on Olympic's books and
25 records, would you tell me how they recorded Sea-Tac?

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1 A. Well, when we met with the company's
2 consultants in an effort to determine how the models
3 were constructed, those meetings were very fruitful
4 and helpful in understanding what was going on. But
5 within a few minutes, it was either Staff or Mr.
6 Brown found an inconsistency in one of the work
7 papers on plant in service when it came to the
8 recording of Sea-Tac. And eventually, as Ms. Hammer
9 noted, Sea-Tac ended up being placed into
10 construction work in progress after it had been
11 deducted from plant in service twice.

12 Mr. Collins, in his final model, made the
13 correction to get to the right plant number in his
14 rate base, but the work papers would not have allowed
15 us to get to his number without our discussions with
16 the company and finding that the entries made by
17 Accenture were incorrect.

18 Q. And by incorrect, they sold Sea-Tac, but
19 they put it in CWIP?

20 A. That's right.

21 Q. With regard specifically to the numbers,
22 the operating numbers in their rebuttal case, is it
23 your opinion that those numbers are supported or are
24 understood by any party to this proceeding?

25 A. Not that I've heard testified here, and I

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1 can tell you that I'm not comfortable with the
2 methodology that was employed.

3 Q. Have you heard any witness in this
4 proceeding with knowledge of what the money was spent
5 on that they've proposed be used to set rates in
6 their rebuttal case?

7 A. No, I have not.

8 Q. Does their rebuttal case even support their
9 rate filing before this Commission?

10 A. No, it does not. The rate filing on the
11 rebuttal case reduced the request for an increase to
12 59 percent. The rates that are on file that may go
13 into effect will be at a 62 percent increase, and at
14 the FERC side, those rates have been collected since
15 September 2000. So what we have is rates being
16 collected at a 62 percent increase, yet the company
17 now claims they can support a 59 percent increase.
18 I'm not an attorney, but to me that's almost a de
19 facto rate change without the proper filings.

20 Q. With regard to your understanding of the
21 logic, is that logic one of the reasons that FERC has
22 dismissed their filing outright, that the
23 administrative law judge at FERC has dismissed their
24 case outright?

25 A. Absolutely.

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1 MR. BRENA: I have no further questions.

2 JUDGE WALLIS: Does Commissioner Hemstad
3 have any questions of the witness?

4

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

6 BY COMMISSIONER HEMSTAD:

7 Q. I listened carefully to your description of
8 Exhibit 2413, and I really don't want to repeat the
9 detailed discussion, and I'm not concerned about your
10 accuracy, but my ability to understand what you've
11 said. So let me ask just a couple of questions here.
12 You selected four years, 1984, '89, '94 and '99, as
13 examples, apparently?

14 A. That's correct.

15 Q. And do I understand that every one of these
16 figures represents what the starting rate base for
17 1983 is? Is that how I read all these figures?

18 A. This is the trended original cost rate
19 base, not the starting rate base component thereof,
20 but the total rate base under trended original cost.
21 And I selected five years in order to cut down the
22 exhibit. It would be the same for each year
23 changing.

24 Q. I'm curious why the number is dropping. Is
25 that because of the depreciation rates that are

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1 affecting it? For example, take your first column.

2 It goes from 68 million --

3 A. Mm-hmm, yes.

4 Q. -- down to 64 million. Or no, I'm not
5 stating that accurately. It represents all of the
6 different filings of the company. But do you have
7 any explanation or is it just random as to why they
8 all trend down?

9 A. What really happens is that any prospective
10 changes that the company or any company may garner
11 from pronouncements by the FERC of how the 154-B
12 should be established, the company has applied
13 backwards, not prospectively. So if --

14 Q. Okay.

15 A. -- the rate of return changed, that gets
16 applied backwards. The capital structure changes,
17 it's applied backwards.

18 Q. That's the backcasting, as the term is
19 used, or is that something different?

20 A. Backcasting, there would be some basis for
21 backcasting off of your test year. This is really
22 just a use of a -- I guess you really could call it
23 backcasting. But it's just taking a stated rate of
24 return and plugging it in to each individual year.
25 If amortization methodologies change, like they went

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1 from useful life -- or average remaining life to
2 useful life, that would tend to change rate base, as
3 well, and that's applied retrospectively, as well as
4 prospectively.

5 And then, in some of these rate bases,
6 Commissioner, '96 forward, let's say, Cross-Cascades
7 is in CWIP calculation, which increases AFUDC. So to
8 say that the rate base is trending down, well, in the
9 December filing made here and at the FERC, the
10 company's first direct case, the company pulled out
11 Cross-Cascades, and so AFUDC was lower. But then the
12 company changed capital structure, changed rate of
13 return, changed the in-service ratio and basically
14 offset the removal of Cross-Cascades retroactively by
15 bumping up different rates of return.

16 Q. All right. Your discussion about Sea-Tac,
17 maybe I misunderstood. Did you say that currently,
18 when Sea-Tac was sold, it was accounted for in CWIP?

19 A. Yes, it was an improper entry.

20 Q. But, I mean, that would be just a plain
21 mistake. I mean, a CPA isn't going to take a sale
22 number and put it under construction work in
23 progress, is it?

24 A. But that's what happened.

25 Q. But, I mean, was there a rationale for

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1 that, or is it just an error?

2 A. Neither Ms. Hammer nor Mr. Collins nor Mr.
3 Reed knew why that happened, except when we looked at
4 the numbers, we could see, in April, the plant was
5 taken out of plant in service. Then, instead of
6 adjusting accumulated depreciation, it was adjusted
7 out of plant in service again, and then the same \$11
8 million, or actually 10.995, was placed into CWIP,
9 thereby giving an effect of \$59 million to CWIP at
10 that time, when there should have been 49, and I
11 think we caught that within ten minutes of looking at
12 those numbers.

13 So if we caught that, and we're looking --
14 we're just looking to understand what was going on,
15 we caught it; not the company. And those are the
16 numbers that were going to go into their rate case.

17 Mr. Collins eventually caught the mistake,
18 but if you look at his rebuttal case, he changes one
19 of his schedules setting forth plant and takes that
20 deduction out as an adjustment to CWIP. It says
21 Sea-Tac, CWIP. So clearly, I think when we get new
22 financials, we'll see a correction there.

23 And that may have been the source of the
24 original \$10 million overstatement of rate base in
25 their first filings -- no, I take that back. No, I

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1 strike that. I don't know what the original \$10
2 million overstatement of rate base was related to.

3 Q. Well, so do I take it it is your conclusion
4 that the financial statements or the financial
5 information that we have in front of us is so suspect
6 that it cannot be relied upon or cannot be used as a
7 basis for coming up with workable figures?

8 A. That's my concern for a figure like that.
9 We were told that those work papers would support the
10 rebuttal case, if you remember the -- that was the
11 basis for the meeting being called. And when you're
12 presented with numbers and you find a mistake like
13 that, you have to wonder if there's anything else
14 that got by. So that's another basis for not really
15 trusting what's going on.

16 Q. Perhaps this is too speculative, but we've
17 been advised that we will have an audited financial
18 statement sometime this summer. Do you have any
19 sense or expectation as to what that will look like?

20 A. I'm not a CPA, and I don't know -- so I
21 don't know how one can do an audit for the year 2001
22 when 1999 and 2000 are outstanding. And I'll leave
23 it at that.

24 COMMISSIONER HEMSTAD: That's all I have.
25 I'd probably have some more if I had some time to

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1 think about it.

2 MR. BRENA: Your Honor, I know that we're
3 about to lose Commissioner Hemstad. If he would like
4 to ask Mr. Brown any questions before he leaves, I'd
5 certainly think that that would be appropriate to
6 have Mr. Brown --

7 COMMISSIONER HEMSTAD: I'll waive my right
8 to ask questions.

9 JUDGE WALLIS: Very well. In light of the
10 hour, it would be my suggestion that we break and
11 resume tomorrow morning at 9:30.

12 MR. BRENA: With the cross-examination of
13 Mr. Brown?

14 JUDGE WALLIS: With the cross-examination
15 of Mr. Brown, and then Mr. Hanley and Mr. Grasso can
16 flip coins or --

17 MR. BRENA: It will be Mr. Grasso.

18 JUDGE WALLIS: All right. I do have a
19 couple of administrative matters. One is that the
20 company has distributed Bench Data Request Number One
21 response. The question was posed whether this
22 provided the information that the Commission
23 requested in making this bench request. The answer
24 to that is yes.

25 And let me ask if there is to be any

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1 objection to the Commission's receipt of this
2 document?

3 MR. BRENA: I have not had an opportunity
4 to review it yet, Your Honor.

5 JUDGE WALLIS: Very well. We'll defer that
6 until tomorrow morning. The indexed filings that
7 were referred to by Mr. Grasso are items that the
8 Commission is interested in having in the record and
9 in reviewing, and for convenience, let's call that
10 Bench Request Number Two and assign Exhibit Number
11 2418 to that.

12 Mr. Brena, if you could have those
13 available tomorrow morning so that other counsel can
14 take a look at them, we would appreciate that.

15 MR. BRENA: Yes, Your Honor.

16 JUDGE WALLIS: In addition, and let's call
17 this Bench Request Number Three and Exhibit 2419, the
18 federal rulemaking document that Mr. Grasso referred
19 to, unless by some chance a party discovers that that
20 is already in the record.

21 MR. BRENA: Yes, Your Honor.

22 JUDGE WALLIS: Is there anything else of an
23 administrative nature before we conclude this
24 evening? Let the record show that there's no
25 response, and we'll take up at 9:30 tomorrow morning.

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1 COMMISSIONER HEMSTAD: And I regret I won't
2 be able to be here tomorrow, and I'm happy to see all
3 of you leave, but I guess it's been fun. But I found
4 working with everybody here to be very -- both
5 informative and, at a certain level, enjoyable.

6 (Proceedings adjourned at 8:27 p.m.)

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