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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	Docket No. TO-011472
TRANSPORTATION COMMISSION,)	Volume XL
)	Pages 5090 to 5245
Complainant,)	
)	
vs.)	
)	
OLYMPIC PIPELINE COMPANY,)	
INC.,)	
)	
Respondent.)	
_____)	

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

The parties were present as follows:

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Joan E. Kinn, CCR, RPR
Court Reporter

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

2 JUDGE WALLIS: Let's be back on the record,
3 please, for our Friday, July 12, 2002, session in the
4 matter of Commission Docket TO-011472. We have a couple
5 of administrative matters this morning. Tesoro has
6 distributed a couple of documents I would like to
7 identify for the record at this time. The Kenai
8 Pipeline Company versus a PUC decision before the Alaska
9 Supreme Court, this document is marked as Exhibit 2313
10 for identification. Tesoro has also distributed another
11 document related to Mr. Grasso's testimony and
12 information about two further documents which are yet to
13 be physically supplied, and we will wait until
14 Mr. Grasso comes to the stand to identify those
15 documents.

16 We did engage in some preliminary discussions
17 about the process of reaching a decision on the outline
18 for briefs and tentatively have asked that parties
19 provide proposals, additional proposals, on Wednesday,
20 July 17th, and we are looking to the availability of
21 facilities for a teleconference for further discussions
22 on Thursday afternoon, July 18th.

23 Is there anything further of an
24 administrative nature?

25 MR. MARSHALL: Just one thing on that Alaska

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1 Supreme Court case, the actual title of the case is
2 misstated on the exhibit list. It's actually Tesoro
3 Alaska Petroleum versus Kenai Pipeline case from 1987.
4 And the 2312, the case that I put in in full is the 1992
5 case. But it's just misnamed here. It's clear from the
6 citation the proper citation name, and it's Tesoro
7 Alaska Petroleum versus Kenai Pipeline.

8 JUDGE WALLIS: Thank you, let's change that
9 on the exhibit list to Tesoro v. Kenai. Would that work
10 for you, Mr. Brena?

11 MR. BRENA: Yeah, that's fine.

12 JUDGE WALLIS: All right.

13 MR. BRENA: I would just point out that the
14 actual caption includes it both ways, but that that is
15 the more common way, Mr. Marshall is correct.

16 JUDGE WALLIS: Very well.

17 Mr. Marshall, I believe when we left off with
18 witness Brown, you were in the process of conducting
19 cross-examination. Are you prepared to proceed?

20 MR. MARSHALL: I am, thank you.

21 JUDGE WALLIS: Please do.

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1 Whereupon,

2 JOHN F. BROWN,

3 having been previously duly sworn, was called as a

4 witness herein and was examined and testified as

5 follows:

6 CROSS - EXAMINATION

7 BY MR. MARSHALL:

8 Q. Mr. Brown, when we broke last night with you,
9 we were talking regarding page 54 of your testimony
10 about your opinion on three years was more than adequate
11 time to have done some certain things for the pipeline
12 including testing and so on, and we had gotten through
13 some of the testing issues, environmental issues. And
14 during that questioning, you raised from time to time
15 the question about the refineries having already been
16 harmed, financially harmed, by the delay. Do you recall
17 your testimony in that regard?

18 A. Yes.

19 Q. Now Tesoro is at the southern end of the
20 northern segment; do you know that?

21 A. Yes.

22 Q. Do you know what I mean by the northern
23 segment?

24 A. That's the segment from Ferndale to Allyn, I
25 believe.

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1 Q. Right, and that's the segment that was shut
2 down for quite a while, wasn't it?

3 A. Yes.

4 Q. Completely shut down?

5 A. Yes.

6 Q. And do you know for how long?

7 A. It was shut down from the time of the
8 accident, the explosion, June of '99, until I want to
9 say early 2001, but I'm not -- I'm not sure of that
10 final date.

11 Q. In any event, a considerable length of time,
12 many months?

13 A. Yes.

14 Q. And throughout that period when the northern
15 segment was shut down, Tesoro was able to use much more
16 of the pipeline capacity than had ever been used before
17 because it now didn't have to compete with the two
18 refineries at the northern end of the segment, correct?

19 A. Well, of course there is the 16 inch and the
20 20 inch, and so I'm not sure that they got more
21 throughput by not having to compete with the northern
22 refineries.

23 Q. Before June 10th, 1999, Tesoro had to be
24 prorated in its use of the pipeline. In other words, it
25 could not use all of the pipeline that it had nominated

5098

1 or tried to use, correct?

2 A. I understand that the total pipeline system
3 was prorated.

4 Q. And after June 10th, 1999, Tesoro did not
5 have to prorate any of its nominations until the
6 northern segment was reconnected; isn't that true?

7 A. That I'm not sure of.

8 Q. And if you're not sure of that, then you
9 don't know whether Tesoro, in fact, substantially
10 benefited financially from the northern segment being
11 out of service in the period of time from June 1999 to
12 sometime as you stated in 2001?

13 A. I'm sorry, you said that -- maybe you better
14 repeat that, if you will.

15 Q. Assuming that Tesoro now does not have any
16 proration on its nominations, so it can ship as much as
17 it wishes now with the northern segment out of service,
18 didn't Tesoro benefit significantly financially from
19 that situation?

20 MR. BRENA: Your Honor, I would object. I
21 mean the assumption this witness, he has exhausted this
22 witness's knowledge, he said he didn't know whether or
23 not Tessoro had to prorate, so to go on to build up a
24 hypothetical when the witness has already exhausted his
25 knowledge is not helping.

5099

1 MR. MARSHALL: I asked him to assume.

2 JUDGE WALLIS: Is there any evidence about
3 the underlying assumption?

4 MR. MARSHALL: Yes, there is, there's
5 considerable evidence showing the actual throughput data
6 in all those periods of time that has been introduced in
7 this case, and it shows --

8 JUDGE WALLIS: Is there any information in
9 the record regarding the carrier's ability to avoid
10 proration?

11 MR. MARSHALL: Yes, there is.

12 CHAIRWOMAN SHOWALTER: Where?

13 MR. BRENA: Well, I would like to be directed
14 to it.

15 MR. MARSHALL: It's in the data showing the
16 amount of --

17 JUDGE WALLIS: There's nothing directly --
18 what I hear you saying, Mr. Marshall, is that it is an
19 inference rather than a statement of a witness.

20 MR. MARSHALL: It may be from the throughput
21 data going -- the amount of Tesoro going up from
22 previous levels before June 10th, 1999.

23 JUDGE WALLIS: Okay.

24 MR. MARSHALL: But then going back down.

25 JUDGE WALLIS: I'm going to sustain the

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1 objection in the absence of knowledge by this witness or
2 evidence in the record.

3 BY MR. MARSHALL:

4 Q. Do you have any idea what Tesoro's financial
5 condition was regarding the various phases of the
6 pipeline situation from June of 1999 up to the present?
7 You have testified that Tesoro was harmed by this, do
8 you have any evidence that Tesoro was financially harmed
9 by this?

10 MR. BRENA: Your Honor, this witness has
11 testified that Tesoro was harmed by the continuing
12 pressure restriction because less volume was available.
13 So if he would just -- if he would define what he means
14 by Tesoro by this. I mean we're talking about three
15 different things at least right now.

16 BY MR. MARSHALL:

17 Q. Well, let me back up a little bit and explore
18 the foundation for your statement about Tesoro's harm.
19 What specific throughput data have you looked at from
20 June of 1999 for Tesoro up to the present, if any?

21 A. I haven't looked at the individual throughput
22 data for Tesoro in detail.

23 Q. Have you looked at it at all from June of
24 1999 to say early 2001?

25 A. I saw some schedules of throughput. I don't

5101

1 know that I studied them carefully.

2 Q. Can you tell me whether Tesoro's throughput
3 went up after June 10th, 1999, compared to previous
4 periods?

5 A. I don't recall. I don't think I can at this
6 point.

7 Q. Can you tell me if Tesoro's throughput went
8 down at any specific point in time following June 10th,
9 1999?

10 A. It's my understanding that it did, but I
11 don't have --

12 (Cell phone interruption.)

13 BY MR. MARSHALL:

14 Q. You don't have any data?

15 A. I'm sorry.

16 Q. I apologize, I --

17 A. Forgot to turn off your telephone?

18 Q. Right.

19 A. I see, okay.

20 Q. It's not an alarm to figure out whether
21 testifiers are testifying truthfully. I wish I had one,
22 but it's not one of those.

23 A. From my standpoint, Mr. Marshall, I can
24 assure you I will testify truthfully. That's what I
25 swore to do, and I will do that.

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1 Q. Do you have the question in mind?

2 A. No, I don't.

3 Q. The question was, do you have any specific
4 information about Tesoro's throughput going down at any
5 particular point in time following June 10th, 1999?

6 A. I don't have that information before me.

7 Q. Have you seen anybody that's done any
8 calculations about whether Tesoro made money or lost
9 money from June 10th, 1999, up to the present compared
10 to prior periods?

11 A. I have not looked at any financial
12 information for Tesoro.

13 Q. Do you know whether it was an advantage for
14 Tesoro to have the northern segment of the pipeline out
15 of service?

16 A. Do I know whether it was an advantage?

17 Q. Yes.

18 A. They would have had total, not total access,
19 but they would have had shared access with the Equilon
20 refinery in the 20 inch line after that. I don't know
21 to what extent there was an advantage though.

22 Q. It's just something you haven't looked into?

23 A. Again, I haven't studied the particular
24 volumes for Tesoro and Equilon to make that comparison.

25 Q. With the northern segment out of service, the

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1 volumes from Tosco and from ARCO would not be imposed on
2 the system going south from the northern segment, true?

3 MR. BRENA: Asked and answered.

4 MR. MARSHALL: I'm going to refer
5 specifically to volumes and ask him about volumes.

6 JUDGE WALLIS: Very well.

7 A. I don't know that that's true, because for
8 some reason I want to say that there was some barge
9 shipment from the northern refineries that maybe came
10 down to Anacortes. I'm not sure of that, but I think
11 that that's the case.

12 BY MR. MARSHALL:

13 Q. Those barge shipments would have then had to
14 use the Tesoro docks and would have to contract with
15 Tesoro?

16 A. Or the Equilon docks.

17 Q. Do you know any details about that?

18 A. No, I don't, but I have that understanding.
19 That's my understanding at least.

20 Q. Now did you know that Tesoro actively sought
21 to delay the restart of the northern segment for its own
22 financial benefit?

23 A. I have no knowledge of that at all.

24 Q. You haven't seen any E-mails from Tesoro to
25 that effect?

5104

1 A. No, I have not.

2 Q. Do you know whether Tesoro made any money
3 from barge shipments by Tosco or ARCO during that period
4 of time?

5 A. I don't think they did, and I say that
6 because I have talked to some of the Tesoro people, and
7 to the extent that there was a -- there was product that
8 went across their dock, if they charged anything at all
9 it was a very nominal amount. It was -- it wasn't a
10 matter of making money.

11 Q. And who told you that?

12 A. I spoke with Mr. McGee in particular about
13 that.

14 Q. Mr. McGee runs the dock up there?

15 A. Mr. McGee is the -- I'm going to -- maybe I
16 ought to ask him right now what his exact title is, but
17 he's general counsel of Tesoro West Coast marketing I
18 think it is.

19 Q. An attorney?

20 A. Yes, but he's familiar with the operations.

21 Q. So apart from Mr. McGee, you have no
22 independent knowledge about docking charges or profits
23 made by Tesoro by use of the facilities for barges at
24 that time, correct?

25 MR. BRENA: Your Honor, I'm going to object.

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1 This hearing really isn't about Tesoro's profitability
2 or its docking arrangements. It has nothing whatsoever
3 to do with that. We're here to set rates for Olympic,
4 and this is outside the scope of this witness's
5 testimony and completely irrelevant to anything that has
6 to do with setting their rates.

7 JUDGE WALLIS: Mr. Marshall.

8 MR. MARSHALL: Certainly, This witness
9 brought up through questions by Mr. Brena the issue of
10 financial harm due to certain segments of the pipeline
11 being in service or not in service, and I'm exploring,
12 as I think I'm entitled to do, the credibility of this
13 witness's statement about what he knows to make any --
14 draw any conclusions from that. And I know that that's
15 not something that I expected the witness to know about,
16 and he's confirming that.

17 MR. BRENA: That doesn't state what this
18 witness said or what I crossed him on or what my direct
19 went to. This witness stated that as a result of the
20 continuing pressure restriction that shippers were
21 harmed because there was less available throughput to
22 all shippers available. And so -- and he did it within
23 the context of the permitting. He brought it up within
24 the context of the permitting, so his testimony is the
25 longer this pressure restriction exists, the less volume

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1 that can be flowed, and the harm to the shippers. That
2 line of questions doesn't go at all to the earlier
3 closure. It doesn't go at all to the docking
4 arrangements for Tesoro. It's just an observation that
5 as long as this pressure restriction is available,
6 there's less volume available to the shippers, and that
7 harms them because their alternatives are more
8 expensive.

9 (Discussion on the Bench.)

10 JUDGE WALLIS: The inquiry appears to be an
11 area that is not relevant and is not within the scope of
12 the earlier examination, so we will sustain the
13 objection.

14 BY MR. MARSHALL:

15 Q. Mr. Brown, you referred to a number of
16 lawsuits in your testimony; do you recall that?

17 A. Yes.

18 Q. And do you know that there are civil lawsuits
19 by Tosco for business interruption for not being able to
20 use the northern segment of the pipeline and by ARCO
21 against Olympic for not being able to use the northern
22 segment of the pipeline or not? If you don't know, you
23 don't know.

24 A. I know that there is a suit by ARCO, and I
25 think there is a suit by ARCO or by Tosco. That's my

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1 knowledge.

2 Q. That's the limit of your knowledge, you think
3 that there's a suit, but you don't know any details
4 about either?

5 A. I don't know the details. Well, I believe
6 that the suit by ARCO is a multimillion dollar suit and
7 it's for business interruption I think is the basis for
8 the suit, but that's it. I haven't looked at the
9 lawsuits.

10 Q. Okay. Now with regard to the HCA program
11 that we talked about before, is there a part of that
12 legislation, that regulation, relating to what's called
13 IMP? Are you familiar whatever with the IMP part of the
14 HCA rules?

15 A. Can you define IMP?

16 MR. BRENA: Your Honor, perhaps he could
17 direct me to what part of this witness's testimony he is
18 cross examining on.

19 MR. MARSHALL: This deals with the same area
20 about restoring pipeline, doing testing, and so forth.
21 It's exactly the same area that this witness has offered
22 an opinion on on how fast or how much effort needs to be
23 put in to getting back up to 100% pressure.

24 MR. BRENA: Thank you.

25 BY MR. MARSHALL:

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1 Q. Have you heard the phrase integrity
2 management program before, sir?

3 A. Yes, you used IMP, and I don't always
4 associate acronyms. So yes, I have heard of that.

5 Q. And do you know all that's involved in
6 integrity management program, what Olympic specifically
7 has to do under that program?

8 The record should reflect the witness is
9 looking through some notes.

10 A. What I'm looking at is my understanding of
11 it's the Department of Transportation Research and
12 Special Programs Administration Rule on Pipeline Safety,
13 Pipeline Integrity Management in High Consequence Areas,
14 Hazardous Liquid Operators With Less Than 500 Miles of
15 Pipeline. This was the rule that was issued taking
16 effect February 15th, 2002.

17 The one thing that I gathered from reading
18 this rule is that, well, I say the one thing, there are
19 several things. One is that the initial rule on the
20 pipeline standards affecting high consequence areas took
21 effect on May 29th, 2001, and this rule -- and that rule
22 covered pipelines having more than 500 miles of pipe.
23 The February 15th rule applied to pipelines that had
24 less than 500 miles of pipe. And my reading of the rule
25 is that, in fact, the initial rule required pipelines to

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1 -- well, first they -- the rule that took effect May
2 29th, 2001, applied to pipelines existing on that date
3 that were owned or operated by an operator who owned or
4 operated a total of 500 or more miles of pipeline
5 subject to the Section 195.452.

6 And one of the items that was there was to
7 develop a written integrity management program that
8 addresses the risk on each segment of pipeline. And I'm
9 not intending to just ignore what else is said, but it
10 talks about in the first column of the table and not
11 later than the date in the second column. And the
12 category 1 pipelines were required to prepare this
13 written program by March 31st, 2002, and they were to
14 include in the program an identification of each
15 pipeline or pipeline segment by December 31st, 2001, and
16 then include in the program a plan to carry out baseline
17 assessments of line pipe as required by, and as usual
18 with government regulations, paragraph C of this
19 section. And it requires a number of items, and then it
20 says, when must operators complete baseline assessments,
21 operators must complete base line assessments as
22 follows.

23 Q. I don't mean to interrupt you, but you're
24 just reading from the regulation. I was asking you
25 something very specific about what is your understanding

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1 of what Olympic must do under the integrity management
2 program.

3 MR. BRENA: Your Honor, I believe he was
4 responding to the question. He was explaining what
5 needed to be done according to the regulations.

6 JUDGE WALLIS: The question called for the
7 witness's understanding, so --

8 MR. MARSHALL: I just didn't want to take up
9 as much time as apparently the answer was taking up as
10 he went through line by line reviewing his notes and
11 reading from the regulations.

12 MR. BRENA: Well --

13 MR. MARSHALL: I was just asking for his
14 understanding of what Olympic must do, and so far he's
15 gone through and he's speculated about May 29th and some
16 other dates, pipelines of less than 500, more than 500,
17 but I was trying to find out about what he knew about
18 what Olympic must do.

19 MR. BRENA: Well, if he wanted to ask him a
20 different question, he should have. He's not sitting up
21 there reading from the regulation. He's using it as a
22 reference guide to explain his understanding.

23 JUDGE WALLIS: I seem to recall that we were
24 very accommodating to Mr. Brena in his desire to explore
25 witness's personal knowledge. If Mr. Marshall wishes to

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1 do the same, I think we should accord him that courtesy
2 as well.

3 Mr. Marshall.

4 BY MR. MARSHALL:

5 Q. Have you ever worked with integrity
6 management programs for oil pipelines before?

7 A. No.

8 Q. And do you know specifically what Olympic
9 must do under the new federal regulations, whichever
10 they may be, and I take it you're not really sure which
11 one applies to Olympic?

12 A. I didn't say that.

13 Q. Okay, which one --

14 A. That I did not say.

15 Q. Which one are you sure applies to Olympic?

16 A. As far as I'm concerned because of the way
17 that the rule is written and the fact that BP operates a
18 lot of pipelines, then it's my understanding that
19 because BP is the operator of Olympic that the rules
20 effective May 29th of 2001 apply to Olympic.

21 Irrespective of that though, the point that I
22 was getting to is that this rule talks about preparing
23 baseline assessments and then says that category 1, and
24 I'm putting Olympic in that category 1, is to complete
25 the baseline assessments not later than March 31, 2008,

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1 and that at least 50% of the line pipe is to be,
2 beginning with the highest risk pipe, is to be completed
3 not later than September 30, 2004. And I bring those up
4 because it's my understanding that there's, well, not
5 just my understanding, there has been a claim that all
6 of these rules take effect right away, and my reading
7 says that there is ample time to deal with these high
8 consequence area rules.

9 Q. So your understanding, in other words, is
10 that as far out as we can reasonably see, 2004 to 2008,
11 these new federal regulations impose new costs on
12 Olympic Pipelines that did not exist before those
13 regulations were enacted, true?

14 MR. BRENA: Your Honor, I would object, this
15 has nothing to do with this witness's testimony. I had
16 objected earlier because I thought it was outside the --
17 he just said it was related to permitting. He hasn't
18 shown that the high consequence area regulation has
19 anything to do with permitting whatsoever or the
20 testimony that he's crossing on. There's no link there.
21 If somehow the high consequence area impacts the
22 permitting, then I would like that link to be closed, or
23 I would like this line of cross-examination, which
24 clearly deviates from this witness's testimony, to be
25 closed.

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1 JUDGE WALLIS: Mr. Marshall, do you plan on
2 proceeding much farther in this line of questions?

3 MR. MARSHALL: Just a couple more questions,
4 and I will link it up directly to his testimony.

5 JUDGE WALLIS: Very well.

6 BY MR. MARSHALL:

7 Q. So do you have the question in mind?

8 A. No.

9 Q. Okay. In other words, as far out as you can
10 see, from 2004 to 2008, these new regulations impose new
11 higher costs on Olympic Pipeline with respect to these
12 integrity management program issues, true?

13 A. Higher than what?

14 Q. Than before the regulations.

15 A. Well, I have no way of judging that. Whether
16 it will be higher, equal to, or less than, I don't know.

17 Q. Turn to page 54 of your testimony which you
18 should have before you and look at line 17 where it
19 says, instead it appears that Olympic has devoted
20 resources to other projects. Do you see that?

21 A. Yes, I see that.

22 Q. And other projects would include compliance
23 with the HCA, the integrity management programs, and all
24 of the other new regulations that are being imposed on
25 Olympic, and for that matter all other major U.S.

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1 pipelines in the United States, right?

2 A. It would include the projects that Olympic
3 has undertaken, and some of those projects, because I
4 have heard testimony that BP/Olympic is ahead of the
5 curve, would include projects to meet the high
6 consequence area regulations sooner than would be
7 necessary under the regulations. But from the
8 standpoint of all other pipelines in the U.S. and things
9 like that and what the effect is, I haven't studied
10 that.

11 Q. Let's move on to another area, Mr. Brown.
12 You said in answer to a question from Mr. Brena, and I
13 believe I have this down correctly from what you said,
14 that when Ms. Hammer was preparing her numbers, she had
15 managers who reported to her. Do you remember that
16 phrase, managers who reported to her?

17 A. I didn't -- I don't think that I said
18 managers that reported to her. I think I referred to
19 the deposition in which she indicated in her deposition
20 that various managers provided different projects that
21 she gathered and put into the list of projects for the
22 one time expenses.

23 Q. So maybe I had this down, managers had
24 presented information on projects to her. Is that a
25 better characterization of what you were saying before,

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1 Mr. Brena?

2 A. No. As I understand it, in her deposition,
3 and her deposition speaks for itself, as I understand
4 her testimony, she indicated that she didn't really know
5 anything about these individual projects. She was asked
6 questions about the individual projects, she didn't
7 know. And Mr. Brena then asked her about how the list
8 of projects was compiled, and it's my understanding that
9 she told Mr. Brena in the deposition that the various
10 project managers submitted their projects, and they were
11 compiled in this list of projects of the \$5.6 Million
12 one time expenses.

13 Q. Your testimony will speak for itself too, but
14 I wrote it down that the managers had presented this
15 information to her on what the projects were for
16 inclusion in the list, correct?

17 A. Well, we're talking semantics at this point,
18 Mr. Marshall, because --

19 Q. Maybe we are.

20 A. -- I gave you my understanding of what the
21 deposition said, and I think the deposition is pretty
22 clear that whether, you know, they presented or whatever
23 word you want to use, there were projects that were
24 included in that listing, and she simply compiled them
25 but didn't know what went into those projects.

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1 Q. And isn't that how you prepare a case, you
2 can't have 20, 30 individual managers come in and get on
3 the stand. You have to have one focal point to collect
4 the information. And then if further information is
5 required say from Bobby Talley on a particular project,
6 you can get into that project, true?

7 A. You ended with true, and there was a long --

8 Q. Let me break it down.

9 A. Maybe you better break it down.

10 Q. Sure. Isn't it ordinary for oil pipeline
11 companies or say other regulated companies if they have
12 a whole list of projects of the nature that we're
13 talking about here not to bring in each individual
14 manager for each individual project to testify. You
15 could wind up with 20 or 30 people, couldn't you?

16 A. I didn't suggest that we bring in 20
17 different people to testify. What I indicated was that
18 the person that was brought in to testify about the \$5.6
19 Million didn't really know anything about the projects
20 that were included in the listing.

21 Q. Now Ms. Hammer also referred in her
22 testimony, did she not, to Bobby Talley as being a
23 person who would be able to provide details on those
24 projects that were being questioned, right?

25 A. She indicated that he was one of the people,

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1 I believe.

2 Q. Okay. And Mr. Talley was here and available
3 for cross-examination, was he not?

4 A. Sure.

5 Q. And did you supply any questions to be asked
6 of Mr. Talley on any of the projects that you had
7 questions about?

8 MR. BRENA: Your Honor, I object, it's not
9 our burdon to meet their burdon through our cross. I
10 mean that's the clear implication of counsel's question,
11 why didn't we ask all the questions. I mean the fact is
12 is that they sponsored the numbers within Mrs. Hammer,
13 and Mrs. Hammer didn't know anything about the numbers
14 or the projects. That's the facts. Now the fact that
15 they but Bobby Talley on the stand and we could have
16 asked him a bunch of questions and maybe he would have
17 known or not known is just irrelevant.

18 MR. MARSHALL: My question was specific as to
19 Mr. Talley. Ms. Hammer did refer specifically to
20 Mr. Talley. My follow-up question is whether this
21 witness had any questions that Ms. Hammer referred
22 Mr. Talley to.

23 MR. BRENA: No, his question was, did he
24 supply any questions so that we could cross Mr. Talley.

25 MR. MARSHALL: Correct.

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1 MR. BRENA: What's that have to do with
2 anything?

3 JUDGE WALLIS: The objection I believe is
4 meritorious, and I think that the objection should be
5 sustained. I don't think this is an area that is proper
6 for your inquiry, Mr. Marshall.

7 BY MR. MARSHALL:

8 Q. Now when I asked you questions about the
9 Kenai case yesterday, we were willing to let you take
10 the time and look and consider that and think about what
11 the answer might be, and we also talked in your
12 testimony about how you referred calculations to
13 Mr. Grasso and to Mr. Hanley that you relied on. Do you
14 remember those?

15 A. Can we take those one at a time?

16 Q. Just generally, do you remember those lines
17 of inquiry?

18 A. I don't remember, well, I guess maybe there
19 was a question about what I stated in my testimony that
20 I agreed with Mr. Hanley on if that's what you have
21 reference to. But I --

22 Q. Let me withdraw the question and move to the
23 next question.

24 Do you think it's reasonable for Ms. Hammer
25 to know all the details of all the projects? And let's

5119

1 just take one example, let's take the line lowering
2 example. Do you think that she would be able to give
3 you detailed information about what the line lowering
4 project consisted of, how it was done, and other
5 information behind that?

6 A. I think that if she is put here to testify
7 about the \$5.6 Million of one time expenses that are
8 being claimed that she should know the details of what
9 goes into that. And as I indicated, Mr. Brena went
10 through the cross-examination on deposition and asked
11 her about each and every single project that's on the
12 listing, and her answer was I don't know, I don't know,
13 I don't know just repeatedly, and it -- she was
14 presented as the witness to support that amount.

15 Q. And she referred those details about, let's
16 take the line lowering project, to people who would have
17 the actual operational and engineering details such as
18 Mr. Talley, right?

19 MR. BRENA: Asked and answered.

20 JUDGE WALLIS: Mr. Marshall, I would agree,
21 we have come full circle here, and the objection should
22 be sustained.

23 BY MR. MARSHALL:

24 Q. Do you know about the line lowering project;
25 you refer to that issue, do you not?

5120

1 A. Yes, I refer to that in my testimony.

2 Q. And --

3 A. I'm not sure incidentally what page, but can
4 we --

5 Q. The issue --

6 A. Can we find that in the testimony so I can
7 see how I refer to it.

8 Q. Well, let's do a closed book examination for
9 a moment. Mr. Brena liked to do that.

10 A. I see.

11 Q. What did you say about line lowering in your
12 testimony?

13 A. I said that it's an example that could be a
14 capital item.

15 Q. And do you remember who would have the
16 information to answer that kind of question; would it be
17 Mr. Talley, or would it be somebody else?

18 A. Well, I would presume that Mr. Talley would
19 know about that.

20 Q. Let's move on to another area here. You were
21 asked some questions about the amounts for the cost of
22 regulation. Do you remember those questions?

23 A. Yes.

24 Q. When were you first retained by Tesoro in
25 this matter, whether at FERC or here at the WTC?

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1 A. I'm going to say that it was sometime in
2 April. I'm not certain of that date, but it was when
3 Olympic made its initial filing at the FERC. It may
4 have been in May of 2001. Again, I'm not sure of the
5 date, but it was in connection with the initial filing
6 that Olympic made that was rejected by the FERC.

7 Q. Do you charge Tesoro by the hour?

8 A. Yes, I do.

9 Q. Is your arrangement directly with Tesoro or
10 with a law firm?

11 A. Well, my arrangement I think is with the law
12 firm on behalf of Tesoro.

13 Q. And do you have any idea of how much total
14 that you have billed on these matters related to
15 Olympic?

16 A. No, I don't have.

17 Q. No idea whatsoever?

18 A. I haven't gone back to check, so no, I don't
19 know. It's been sporadic. It hasn't been continuous.

20 Q. Do you have any estimate whatsoever; is it
21 over \$100,000?

22 A. No, I don't think it is. I think it's less
23 than that, but I don't know.

24 Q. Have you testified for Tesoro before?

25 A. One other time.

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1 Q. And where was that?

2 A. In Alaska.

3 Q. And on what issue?

4 A. It was the intrastate rate proceeding
5 involving the Trans Alaska Pipeline System.

6 Q. That was wholly intrastate?

7 A. No, it wasn't wholly intrastate. It was the
8 intrastate portion of the Trans Alaska Pipeline System.

9 Q. In your interim testimony, you indicated that
10 Olympic's owners are fully integrated with Olympic's --
11 Olympic's owners are fully integrated with their
12 refineries and the pipeline. Do you recall -- let me
13 withdraw that and rephrase it.

14 Do you recall your testimony about how you
15 believe that the refineries that own Olympic, ARCO and
16 Equilon, are fully integrated to the extent that they
17 would not allow the pipeline to go belly up, that would
18 be cutting off their nose to spite their face. Do you
19 remember that generally speaking?

20 MR. BRENA: I object, he's crossing on his
21 interim testimony at this point.

22 MR. MARSHALL: I will tie this up. I just
23 want to set the preliminary stage.

24 JUDGE WALLIS: Very well.

25 A. I recall the last part of the testimony, but

5123

1 -- about cutting off the nose to spite the face, but I
2 don't recall the testimony about being fully integrated,
3 et cetera, et cetera.

4 BY MR. MARSHALL:

5 Q. Okay, well, that will be in the record, and
6 we can refer to that, but I want to go on to the next
7 question from that. The situation you describe where
8 the pipelines -- well, let me back up.

9 Are the pipelines, the refinery owners of the
10 pipeline, integrated with the pipeline or not?

11 A. When I use the term integrated, assuming I
12 did use that term in the testimony, I had in mind that
13 you had a refinery, ARCO to name one in particular, that
14 is owned by BP, and ARCO is the operator of the Olympic
15 Pipeline, ARCO owns a 62% interest in the Olympic
16 Pipeline, and that's how I used the term integrated.
17 And ARCO has production out of its refinery and uses the
18 refinery. I think I mentioned in my testimony that ARCO
19 had recently expanded the capacity of its pipe, of its
20 refinery, and that in that sense I -- it's my view that
21 ARCO would be cutting off its nose to spite its face by
22 letting the pipeline go belly up.

23 Q. Now the situation you describe here where the
24 owners also have another economic stake in the regulated
25 company, does that make oil pipeline regulation unique

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1 in your view?

2 A. Let me say that I don't think it makes it
3 unique. And, for example, EXXON, a company I think we
4 all know as being a large integrated company, owned an
5 interest in natural gas pipelines. Mobile owned an
6 interest in natural gas pipelines. Amoco, which is now
7 part of the BP organization, owned an interest in
8 natural gas pipelines. I think that Amoco owns
9 gathering pipelines, natural gas gathering pipelines.
10 So the fact that they own an interest in an oil pipeline
11 and have refineries, I don't see that regulation of oil
12 pipelines is unique because of the fact that you're
13 dealing with big oil companies that own refineries and
14 pipelines.

15 Q. Are the regulations on common carrier status
16 and natural gas pipelines different than the regulations
17 regarding oil pipelines?

18 A. There are some differences, but basically the
19 regulations are pretty similar.

20 Q. Can you contract for gas pipeline capacity
21 long term?

22 A. Yes.

23 Q. Now is there any similar situation with
24 respect to regulated electric, telephone, garbage, or
25 any other kind of regulated company here in Washington

5125

1 state that is similar to this integrated situation we
2 have just described with the oil pipelines?

3 A. Is there any similar situation, you mean in
4 contracting for service, or what do you have in mind?

5 Q. With regard to oil pipelines, the integrated
6 nature of the refineries with the oil pipeline, is there
7 anything like that with regard to let's take electric
8 utilities?

9 A. I'm not sure I understand what you have in
10 mind. I have said that there is that integration, but I
11 haven't looked at the ownership of electric companies or
12 what they -- what assets they own. It very well could
13 be. Well, let -- on electric companies, a thought does
14 come to mind, and that is that traditionally electric
15 companies have been fully integrated. They have had the
16 generating facilities, they have had the transmission
17 facilities, and they have had the distribution
18 facilities, and so traditionally they have been fully
19 integrated. Here we're talking about in this instance
20 as far as the Olympic Pipeline that there's the refinery
21 that gets the product in to its refinery and refines
22 that product and then sends it through the pipeline, so,
23 you know, there are similarities. They are by the
24 Washington law a regulated utility, and so whether
25 they're similar or different situations that -- the law

5126

1 is the law, and they're regulated.

2 Q. Do you know of any company regulated by the
3 WTC where the owners have loaned all of the debt or
4 guaranteed all of the debt of the regulated company?

5 A. Do I know that, no, I haven't looked into
6 that.

7 Q. Can you think of any situation where that
8 would be true for any other regulated company in
9 Washington state where the owners also have loaned all
10 the debt or guaranteed all the debt?

11 MR. BRENA: Your Honor, are we going to get a
12 question on this witness's testimony sometime soon.

13 JUDGE WALLIS: Mr. Marshall.

14 MR. MARSHALL: I do believe that this goes to
15 this witness's overall briefing that he has done, and
16 this is actually one of my last questions in the area,
17 so I would just like leave to complete this.

18 JUDGE WALLIS: Very well.

19 A. Would you repeat your question though?

20 BY MR. MARSHALL:

21 Q. Certainly. Do you know of any company
22 regulated by the WTC where the owners also have loaned
23 all of the debt or guaranteed all of the debt for the
24 utility?

25 A. No, but I also don't know of any company that

5127

1 has no equity. Ordinarily the companies that are
2 regulated by this Commission have equity, and as a
3 result of that, they're able to go out and borrow money
4 from other companies, other sources. So I would see
5 that the fact that we have this situation involving
6 Olympic is one that the owners have chosen to put them
7 in that position.

8 Q. One last line of questioning on outside
9 services, do you remember getting questions from
10 Mr. Brena on outside services?

11 A. Yes.

12 Q. And have you before you Exhibit 865 anywhere
13 in your materials?

14 A. I don't think I have it here. I don't see it
15 here.

16 MR. BRENA: We have a copy of it if you would
17 like us to provide it to the witness.

18 MR. MARSHALL: Yeah, I believe this was a
19 Tesoro exhibit, was it not?

20 MR. BRENA: Yeah.

21 MR. MARSHALL: Okay.

22 MR. BRENA: Well, I think so.

23 MR. MARSHALL: It's a single page.

24 MR. TROTTER: It's Staff.

25 MR. MARSHALL: With a handwritten legend at

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1 the top.

2 MR. BRENA: Let's see what we're talking
3 about here. I'm trying to figure out how the witness
4 and his counsel are both going to have a copy here.

5 MR. TROTTER: We have some extras, will that
6 help?

7 MR. MARSHALL: Oh, good.

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

10 (Discussion off the record.)

11 JUDGE WALLIS: Does the witness have the
12 document now?

13 BY MR. MARSHALL:

14 Q. Do you have the document in front of you?

15 A. I have a document in front of me. It does
16 not have an exhibit number, but I -- maybe I could just
17 show this to Mr. Marshall and be sure we're talking
18 about the same thing.

19 Q. Yes, we are.

20 A. Okay.

21 MR. BRENA: It's 865.

22 Q. You were asked about an increase in outside
23 services by Mr. Brena. Do you see in operating expenses
24 the last starred category called miscellaneous?

25 MR. BRENA: Your Honor, just perhaps a

1 suggestion perhaps to form into an objection later, it
2 would be more helpful if he were to cross examine this
3 witness not on Staff's case but if he were to do it on
4 the work papers that he referred to or something in
5 Olympic's case. I mean to the degree we're headed down
6 the road of cross examining this witness on Staff's
7 case, then that obviously isn't appropriate.

8 MR. MARSHALL: I want to refresh this
9 witness's recollection as to what was happening with
10 outside services, and this just happens to be the
11 easiest exhibit on which to show it.

12 MR. BRENA: Well, Mr. Collins' work papers
13 have outside services broken down by month. And in
14 terms of refreshing this witness's recollection, doing
15 it with a Staff thing doesn't refresh anything.

16 MR. MARSHALL: Well, if it doesn't refresh
17 his recollection, he can say. But the basis for my
18 question will be to ask him about whether he knows about
19 what has happened here in this category. If he doesn't
20 know, he can state that, and Mr. Brena can do whatever
21 redirect that he wants to do with this witness.

22 MR. BRENA: Well, the question isn't whether
23 or not he knows that, the question is whether or not
24 this is helpful to that inquiry. This is a Staff
25 prepared document not prepared or sponsored by this

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1 exhibit. If he wants to -- I'm not objecting to the
2 line of inquiry, let's get to Collins' work papers that
3 this witness testified from.

4 JUDGE WALLIS: Mr. Marshall, it does --

5 MR. MARSHALL: Well, the Hammer work paper
6 4.1 in column B is there, what Staff has is also there,
7 this just happens to be an easy way for me to do it. It
8 won't take very long to ask the questions. It has taken
9 longer to deal with the objection than the question.

10 MR. BRENA: Well, Your Honor, I don't think
11 that the record is helped, quick or long, in asking this
12 witness questions on a compilation that he didn't
13 sponsor or isn't familiar with and hasn't reviewed.

14 JUDGE WALLIS: If the witness is not familiar
15 with it, if it is not helpful to the inquiry, then the
16 witness is able to so state.

17 MR. MARSHALL: Correct.

18 BY MR. MARSHALL:

19 Q. So having all of that behind us, Mr. Brown,
20 you talked about the increase in outside services to
21 Mr. Brena when he asked you some questions yesterday; do
22 you remember that?

23 A. Yes, I do remember that.

24 Q. And do you have any knowledge as to whether
25 the increase in outside services that you mentioned is

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1 because the costs in other categories such as
2 miscellaneous were simply moved to outside services?

3 A. I have no knowledge of that. My testimony
4 yesterday related to the rebuttal case and that we had
5 no way at all of drilling down into the costs that were
6 reflected in Mr. Collins' work papers.

7 Q. Okay.

8 A. And so I don't know any -- this is the first
9 time I have seen this exhibit. I really don't know
10 where these figures came from. I haven't used this at
11 all in my testimony, so.

12 Q. Have you looked at the Hammer work papers?

13 A. I have looked at Mr. Collins' work papers. I
14 don't recall that I have looked at Ms. Hammer's work
15 papers.

16 Q. Okay.

17 A. I'm not familiar with the Hammer work paper
18 4.1, or at least I don't think I am.

19 Q. Okay. Now if the Hammer work papers show
20 that a miscellaneous expense item of \$1 Million was
21 moved to outside services, is that the first you have
22 heard of that; is that what your testimony is?

23 A. Wait a minute now, you said if the work
24 papers show that --

25 Q. Because you're not familiar --

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1 A. -- it was moved from one category to another,
2 and again, I don't think that the work papers that have
3 been presented by any of the witnesses show anything
4 other than, you know, just costs that were pulled off of
5 the books. And from moving from one category of expense
6 to another category of expense, I don't believe that
7 there's any showing at all in the work papers to that
8 effect.

9 Q. The reason I asked you the question that way
10 is you said that you were not familiar with Ms. Hammer's
11 work papers, so I asked you to assume that Ms. Hammer's
12 work papers showed a category of miscellaneous being
13 moved into outside services. Do you have that
14 assumption in mind?

15 A. You didn't ask me to assume that. You asked
16 me about the work papers showing this, and my answer was
17 that the work papers don't show that. Now you're asking
18 me to assume that?

19 Q. I first asked you whether you were familiar
20 with Ms. Hammer's work papers, and you said you were
21 not; do you remember that?

22 A. Yes.

23 Q. Okay. Then I asked you to assume because you
24 hadn't been familiar with Ms. Hammer's work papers that
25 there was a category of expense called miscellaneous

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1 that was moved into outside services. I asked you to
2 assume that. Do you have that in mind?

3 A. No, I do not have that in mind, because my
4 understanding of what you asked me was first about was I
5 familiar with the work papers, and my answer was no.
6 Then you didn't say, at least I didn't hear you say, to
7 assume that there were costs moved from one category to
8 another.

9 Q. That's what I'm asking you --

10 A. What I understood you to say was that the
11 work papers show that there were costs moved from one
12 category to another, and I don't know that the work
13 papers do show that. Now if you want me to assume that
14 that's the case, I can make that assumption, but I don't
15 have any basis at all because of the figures. I can't
16 make -- I don't have any basis for supporting that
17 assumption.

18 Q. That's simply why I asked you to make the
19 assumption, because you weren't familiar with the Hammer
20 work papers. If you assume that a category of costs,
21 miscellaneous, was moved into outside services, the
22 question simply was, is that the first time you would be
23 aware of that?

24 A. Let me start over again.

25 JUDGE WALLIS: Well, I'm not sure that it

5134

1 will be helpful to review the line of questions again,
2 Mr. Marshall. If you have a question of the witness now
3 going forward, why don't you state that, and let's start
4 from that point.

5 MR. MARSHALL: I think we made the point on
6 this because of the lack of familiarity with the work
7 papers, and I will conclude that line of questioning.

8 BY MR. MARSHALL:

9 Q. One more area, Mr. Brown, the issue of refund
10 liability. Do you recall --

11 A. I'm sorry, you said refund? I didn't
12 understand your --

13 Q. The issue of refunds.

14 A. Issue of, I'm sorry, okay.

15 Q. Do you recall on January 16th giving
16 testimony that you had not formed any conclusion
17 whatsoever as to whether there should be refunds of any
18 amounts paid by the shippers to Olympic for the FERC
19 rates that were put into effect?

20 MR. BRENA: Your Honor, is he cross examining
21 on the interim case again, and if he is, I object.

22 MR. MARSHALL: I'm asking about the refund
23 issues which this witness is well aware of and which
24 form a basis for recommendations that are being made
25 here to the Commission.

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1 MR. BRENA: Or perhaps he could direct me to
2 the part of his testimony that he's crossing on.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: Let me ask a slightly
5 different question then. Whatever is on your testimony
6 in January is there.

7 BY MR. MARSHALL:

8 Q. When did you first form an opinion that any
9 amount should be refunded to shippers from the FERC
10 proceeding or this proceeding?

11 MR. BRENA: Perhaps he can direct me to the
12 part of this witness's testimony that he's crossing on.
13 It's certainly not with regard to the FERC. It's not in
14 there. So to the degree that's a compound question,
15 there's nothing expressed with regard to FERC.

16 Q. I may be mistaken. Have you testified about
17 any refund issues?

18 A. I don't believe I have.

19 MR. MARSHALL: Okay, in that event then, I
20 won't ask you any further questions than I did in the
21 interim proceeding. I believe that concludes the
22 cross-examination of the witness.

23 JUDGE WALLIS: Very well.

24 MR. BRENA: Nothing.

25 JUDGE WALLIS: I was going to suggest that we

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1 take a 15 minute break. Is that agreeable with folks?

2 THE WITNESS: Good suggestion.

3 MR. BRENA: Certainly.

4 JUDGE WALLIS: All right, let's take 15.

5 (Recess taken.)

6 JUDGE WALLIS: Let's be back on the record,
7 please, following our morning recess.

8 Mr. Stokes, do you have any questions of the
9 witness?

10 MR. STOKES: I do not, Your Honor.

11 JUDGE WALLIS: Mr. Trotter?

12 MR. TROTTER: None.

13 JUDGE WALLIS: Commissioner questions?

14 Chairwoman Showalter.

15 CHAIRWOMAN SHOWALTER: I have some questions.

16

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

18 BY CHAIRWOMAN SHOWALTER:

19 Q. I might be getting my green stickies mixed up
20 between you and Mr. Grasso.

21 A. Okay.

22 Q. I'm having difficulty reading them besides.

23 But a good place to start might be page 43 of your

24 testimony. And beginning on line 13, you talk about

25 expenses for legal and consulting services. I have a

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1 question here. You say in the text, I believe, that you
2 have normalized this cost, yes, on the next page, and I
3 understand normalized to be flattening out the expense
4 over a period of years so that it's more reflective of a
5 given year's average cost; is that correct?

6 A. Yes.

7 Q. But that when you normalize, it is built into
8 a permanent rate base as long as the rate keeps going;
9 is that correct?

10 A. That is correct.

11 Q. Now my question is with on line 13 you use
12 the word unamortized or amortized and --

13 A. I'm sorry, you said --

14 Q. I'm sorry, page 43, line 13.

15 A. No, I got --

16 Q. The question is unamortized, has the word
17 unamortized in it.

18 A. Oh, the question, I'm sorry.

19 Q. Yes.

20 A. I was looking for that in the answer.

21 Q. Okay.

22 A. I'm sorry.

23 Q. I guess somebody else must have asked the
24 question here. But is there any distinction between
25 amortizing and normalizing, and I will just tell you

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1 what is in my own mind. I know that on some occasions
2 an extraordinary expense is amortized over a period of
3 years but then ends. We have had ice storm costs in the
4 past where it's recognized as a valid expense to cover
5 but not one that would be normalized, yet it is
6 amortized for a set period of time and then expires.

7 A. First --

8 Q. Is the word amortized used in both places,
9 both for a finite period of time or built into
10 normalized rates?

11 A. Let me try to answer it this way with an
12 example, and that is the 1996 rate filing of Olympic
13 that went into effect January 1st, 1997, had an increase
14 of 1.5 cents per barrel. And the result or the reason
15 for that was that there were some extraordinary costs
16 that were incurred in the year 1996, at least I
17 understand that that's what it was called was
18 extraordinary expenses. And so Olympic came and asked
19 for an amortization of the costs, which was about a \$5.3
20 Million net figure, and the 1.5 cents would run -- would
21 be included in their rates. Well, that was effective
22 January 1st, 1997, and even though there was a specific
23 figure that was used to base that 1.5 cents, that 1.5
24 cents continues in the Olympic rates.

25 Now from the standpoint of this specific \$1

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1 Million, it's I think a high level of expense for a one
2 year period and therefore have said let's amortize that
3 over a five year period, which then brings it to a what
4 I believe would be a normal expense for the test year.

5 Q. All right. Actually, I was going to bring up
6 the 1.5 cents. That piqued my interest as well because
7 it sounded to me as if in that case it either could have
8 or should have expired after the period of time that the
9 amount was collected. Now if it was not structured that
10 way, it did not expire. But actually one of my
11 questions to you was going to be, was that set to
12 expire, or did it become a permanent part of rates?

13 A. Sometimes my wife thinks that she and I have
14 minds that work together because we think a lot of times
15 without saying things to each other. It sounds like
16 that's what happened between you and me here. The 1.5
17 cents is an example, I didn't know you were going to ask
18 the question, but that's a good example of an
19 amortization amount.

20 Q. Except that it turns out it didn't expire.

21 A. There was nothing included. It was just at a
22 1.5 cent amount. There is another example, however, and
23 that is that their, I don't recall which rate filing it
24 was, but there was a filing to reflect the cost of the
25 SeaTac truck rack, I think. And that was put on as a

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1 surcharge until such time as the costs associated had
2 been recovered, and then it went away. In the case of
3 the 1.5 cents, however, it was put in the rate, and it
4 continues and continues and continues until a new rate
5 filing when the overall cost of service is examined.

6 Q. All right. So is the answer to my accounting
7 101 question that you can use the word amortization
8 either to amortize a discreet expense over a finite
9 period of time, maybe best in the form of a surcharge
10 that expires, or you can amortize a large expense over a
11 period of years but normalize it, meaning, if that's
12 what this means, put it into permanent rates?

13 A. Yes.

14 Q. Okay. But while we're on the subject of
15 expenses for legal and consulting services, I think one
16 of the issues that's developed in this case is the issue
17 of whether the company has on hand or has provided in
18 this record a witness who can vouch for the
19 appropriateness of certain expenses for regulatory
20 purposes, and I have asked that question of all of the
21 company witnesses, who is it that can vouch for those
22 expenses. The general answer I have gotten has been
23 Ms. Zabransky. But what I want to ask you about is I
24 guess the responsibility of a regulated company to
25 provide that. Is one of the -- is part of the

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1 responsibility of a prudently operated regulated company
2 the function of analyzing and supporting and
3 demonstrating the appropriateness of amounts spent in
4 light of the regulation?

5 A. My answer to that is definitely yes. The
6 burdon is on the regulated company to support the costs
7 that are included in the cost of service to develop the
8 rates that the shippers pay or that the consumers pay or
9 whatever type utility it is you're working with. It's
10 the burdon to justify the costs. And if, you know, the
11 claim has been made, and not just a claim, the fact is
12 that Olympic has had numerous filings, rate filings,
13 that haven't been challenged previously. They have just
14 been allowed to go into effect. They now have filed
15 this large rate increase, and of course Tesoro and Tosco
16 have challenged the level of the increase. And in that
17 regard, that puts the burdon on the company to support
18 the figures that are included. And it's my view that
19 they have failed in that. They have not brought
20 witnesses forward who have known the depth of the cost.
21 As I said yesterday, this term of drill down, it's
22 really been presented on the basis of here are the
23 costs, accept them.

24 Q. Well, and I -- and your answer is really
25 stated more in terms of a rate case and this proceeding,

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1 and I think my question is really going more toward what
2 does a regulated company need to have in order to comply
3 with its regulations, so take it a little bit out of --
4 a little bit of a different example. Take pipeline
5 safety regulations, there obviously will be a need for
6 somebody in the company to be familiar with the pipeline
7 safety regulations and to know how the company is
8 supposed to comply with them. Well, then there are
9 price regulations, that is the UTC and FERC.

10 A. Mm-hm.

11 Q. And I'm really trying to get at the
12 requirement of a company to have within its abilities,
13 whether it's by direct employees or consultants, but --

14 A. Let me --

15 Q. -- from the point of view of the operation of
16 the company, I don't really mean a rate case, I mean
17 from the operation of the company, isn't one of the
18 things that a regulated company does is tend to its
19 regulations in the same way it would tend to, it had
20 better tend to, its safety regulations or its Labor and
21 Industries regulations or other regulations?

22 A. As far as Olympic is concerned, and I will
23 focus on what they have done, they have brought forth
24 Mr. Wicklund, I think, who is responsible, at least
25 that's what I understood him to be, responsible for the

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1 regulations dealing with the high consequence areas. I
2 don't know if I go as far as safety, maybe he also is
3 involved in that. Mr. Talley I guess would be the
4 ultimate person to look to for that.

5 With regard to the books and records, you
6 have Ms. Hammer, who has presented testimony here.
7 However, under the accounting system that is there, all
8 of the accounting is done by Accenture. Now if the --
9 if there were questions raised about the accounts, and
10 there certainly have been questions raised about the
11 accounts, then you go to the person that is responsible
12 for putting those together.

13 When I was running the pipeline company, we
14 had a controller who was responsible. We had a person
15 in the, not just a person, but several people in the
16 rate department that were responsible for putting
17 together the rate filings. When it came to presenting a
18 case in chief to support the rate filing, there were
19 people that were there from the engineering that were
20 involved with whatever construction programs were going
21 on, we had people from the rate department, we had
22 people from the controller's department, the accounting
23 department, that would present testimony in support of
24 the figures that were included in the rate filing, and
25 they knew the details behind those figures.

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1 Q. One of the company's propositions is that we
2 should be following the FERC methodology and the FERC
3 guidelines, so I would like to ask you some questions
4 about that same regulatory function we just talked about
5 but in a FERC context versus how we do things here at
6 the UTC. In a FERC proceeding, if a rate request, rate
7 increase request, is contested, then I would assume that
8 just as if my income tax is challenged, it's not enough
9 to walk in with the income tax form and say I've got
10 everything in the right box. I would have to bring my
11 receipts or something to demonstrate the reasonableness
12 of why I said something was a capital gain or whatever.

13 MR. BRENA: Could I just ask for a
14 clarification that the Chairwoman's question is related
15 to a contested cost of service filing before the FERC.

16 CHAIRWOMAN SHOWALTER: If that's the same. I
17 don't know FERC's terminology, and so I'm assuming this
18 is a -- my terminology was a request for a rate
19 increase.

20 MR. BRENA: Well, I just -- there are market
21 based rates, there are income based rates, there are
22 cost of service rates.

23 CHAIRWOMAN SHOWALTER: Okay.

24 MR. BRENA: So I just want to be sure that
25 we're comparing apples and apples, we're talking about

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1 cost of service.

2 CHAIRWOMAN SHOWALTER: All right, that's
3 fine.

4 BY CHAIRWOMAN SHOWALTER:

5 Q. Assume this is a cost of service increase.
6 In the FERC forum, would it be expected that a person
7 familiar with the FERC regulations and familiar with the
8 expenses and expenditures of the company would be able
9 to testify about the appropriateness of certain
10 expenditures for certain regulatory treatment?

11 A. Very definitely. From the standpoint of a
12 contested proceeding, Olympic filed their case with FERC
13 and it was allowed to go into effect September 1st
14 subject to refund and subject to ultimate determination
15 as to the appropriateness of the costs that were
16 included. That's typical treatment by the FERC. And
17 the really only difference between your requirements
18 here and the FERC requirements is that the FERC will
19 either accept or reject a filing at the outset. And if
20 they accept the filing, then if it's contested, they
21 will accept it subject to refund and allow the rate to
22 go into effect, which is what they did. In your
23 situation here, as I understand it, the rates don't go
24 into effect until a certain time, and in that regard I
25 don't know whether it's 7 months or 11 months, but there

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1 is a period for you to investigate the rates and
2 determine the justness and reasonableness of those
3 rates, and they have to be justified based on the costs
4 that are presented. And I would think that the
5 procedure is no different at the FERC than it is here,
6 that the figures can't just simply be put in and say
7 accept them.

8 Q. So --

9 A. They have to be justified.

10 Q. What I'm trying to get at, I think, is any
11 expectations that the company might reasonably have had
12 about the level of support that might be needed if its
13 main experience had been at FERC. So, for example,
14 would it be expected that at FERC the filing of the Form
15 6's plus some reports of the books would be sufficient
16 without that other piece of the witness who says, and
17 furthermore these are the appropriate amounts for these
18 regulatory -- for this kind of regulatory treatment?

19 A. There are filings that are made at the FERC
20 that may not be contested.

21 Q. Right.

22 A. And if they're not contested, they're rubber
23 stamped, and the increase goes into effect. An index
24 filing, for example, is just rubber stamped. Now we
25 have heard a lot about page 700 in the Form 6 report

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1 that theoretically would give a shipper information to
2 object to the filing. And in my view that page 700
3 doesn't provide -- sorry, I feel a sneeze coming on --
4 the page 700 doesn't give a shipper any basis really to
5 object. You really have to dig down into the figures to
6 determine whether to object. And then, in that
7 instance, if there is a complaint that's filed, then the
8 burden is on the one making the complaint to justify or
9 to support the complaint.

10 In the case of the rate filing made by the
11 company, however, once it's contested, it's up to the
12 company to support the figures in that filing, and the
13 Form 6 doesn't do that. You have specific rules, cost
14 of service rules, that provide for a base period,
15 provide for a test period. You have that same thing
16 here, you just call it a test period, and then the Staff
17 makes pro forma adjustments. Okay, the FERC says you
18 must make adjustment to eliminate nonrecurring items.
19 That is not you may, you must make eliminations to the
20 base period costs to eliminate nonrecurring items, and
21 then you may make adjustments to normalize, and you may
22 make adjustments for known and measurable changes that
23 will occur within nine months of the end of the base
24 period.

25 Essentially your requirements here are, it's

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1 my understanding, are really identical. You don't call
2 a base period and a test period, you just take a test
3 period as the period of actual operation, and the Staff
4 has chosen the year 2001 for that purpose and then has
5 made pro forma adjustments.

6 Q. Well --

7 A. But it's up to the company to support every
8 figure that's in the filing when it's a contested
9 proceeding.

10 Q. All right. Getting back to this \$1 Million
11 that's been amortized, you have amortized it over five
12 years, so it becomes a \$200,000 a year amount. In your
13 view, is that amount enough for this type of company to
14 fund the kind of regulatory expertise that it needs to
15 comply with and demonstrate compliance with both UTC and
16 federal regulations?

17 A. In my view, it's adequate on an annual basis
18 to, you know, look at the possibility of a rate filing
19 every five years, something like that. Five years is
20 kind of an accepted normal period for amortization of a
21 cost like this, particularly at the FERC, and I think
22 that it's an amount that is reasonable to be included.

23 Q. Do you see this amount as the amount you need
24 averaged every five years or so to conduct a rate case,
25 or does it also include the ongoing function of a

1 regulated company to keep its books with an awareness of
2 what will be required in the next rate case?

3 A. You have the Uniform System of Accounts that
4 requires particular reporting, and the company is
5 required to keep their books in accord with those
6 uniform system or with the Uniform System of Accounts,
7 so they know what that is. Now the fact that they have
8 someone who does the accounting doesn't mean that it's
9 included in the regulatory expense.

10 Q. That's what I'm getting at.

11 A. And the fact that they have someone who looks
12 after the safety regulations doesn't go into the
13 regulatory expense. You don't, using Mr. Wicklund as an
14 example, I'm not sure where his salary and expenses are
15 recorded, but most likely they're in the salaries and
16 wages category, not in the litigation category.

17 Q. I see. So this particular expense may not
18 include other amounts such as the management fee --

19 A. That's correct.

20 Q. -- that would go toward this function I'm
21 talking about?

22 A. That's right.

23 Q. We regulate many, many types of companies of
24 greatly different sizes, but even our smallest companies
25 generally speaking have somebody in them who is quite

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1 aware of what the regulatory requirements are. By
2 regulatory in this sense I mean the UTC regulations, not
3 other regulations. It's really that function that I'm
4 speaking of, not the consultant who dips in every five
5 years, but the sense within a regulated company, whether
6 it's an employee or a regular consultant or someone who
7 has a grip on the types of expenditures that will or
8 won't be accommodated in a regulatory sense in rate base
9 or extraordinary costs, that kind of thing.

10 A. Well, presumably the Accenture people, and
11 I'm not sure if you know the company Accenture, but
12 Accenture is the spinoff of the Anderson consulting from
13 Arthur Anderson accounting or Arthur Anderson & Company,
14 Accenture is the spinoff, the consulting. They provide
15 the accounting for, as I understand it, for Olympic.
16 Presumably they're going to have someone in their shop
17 that knows what the rules are and knows where to put the
18 costs, presumably.

19 You heard Mr. Grasso testify yesterday about
20 Accenture recording the \$10 Million for the SeaTac in
21 the CWIP account. Well, that tells me that Accenture
22 doesn't have that person. Nevertheless, the costs for
23 Accenture are not included, as I understand it, in this
24 \$1 Million we're talking about. It's part of the
25 management fee. It's one of the services that's covered

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1 in the management fee.

2 Q. All right. So as a matter of cost, there are
3 a couple of places, I'm still getting back to this
4 function and what it is.

5 A. Well --

6 Q. Because doesn't -- I'm not sure how an entity
7 as remote as Accenture could know how to make that
8 judgment about what kind of project is this. I
9 recognize there are initial judgments made about how to
10 put something on the books. There's another layer about
11 how to fill out a Form 6. It then comes to what counts
12 or does not count for regulatory purposes, and isn't it
13 a joining of accounting and the knowledge of the
14 regulation and the knowledge of what this thing actually
15 is. For example, sale of SeaTac facility, if you don't
16 know what that means in a real world sense, how would
17 you know where to put it for regulatory purposes?

18 A. That's one of the problems you have here,
19 that you have BP is the operator, Ms. Zabransky
20 apparently is in charge of the regulatory matters, and I
21 don't know whether she gets involved in any of the
22 decisions that are made with regard to, you know, which
23 hole to put the costs in. You have Ms. Hammer who
24 really looks at the financial statements, but as I
25 understand the accounting system, invoices that come in

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1 are coded and then are sent to Accenture to be included
2 in the accounts, and if someone has miscoded something,
3 it gets put in the wrong account. That's one of the
4 reasons that in reviewing the costs once they're
5 challenged, you have to look at unusual items of cost
6 and make a determination and have someone support the
7 costs that are included that are being claimed for the
8 shippers to pay.

9 And I continue saying that they really have
10 not brought people forward to support the costs that
11 they have included. They haven't really brought people
12 from the accounting standpoint to say, yes, these are
13 the correct numbers, we have looked at them, here's what
14 they're made up of, things like that.

15 Q. In your experience for a company of this
16 size, a regulated company of this size, is it common to
17 rely heavily on outside consultants to provide this kind
18 of information, or is it more common for there to be say
19 a regular employee whose job this is?

20 A. I think it varies. I have worked with
21 companies, an example is Paiute Pipeline Company which
22 is a subsidiary of Southwest Gas, and they have people
23 on their staff that are responsible for their
24 regulatory, for the accounting, the engineering. They
25 have some services, treasury functions and general type

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1 services, that are maybe done by the parent company, but
2 they have people on the staff of the pipeline company to
3 deal with matters involving regulation. They're a
4 regulated utility. I don't know about -- I saw one of
5 the cases, I think, that was here in Washington, a small
6 water company, they didn't I'm sure have anyone
7 involved, because they're a very, very, very small
8 company. But, you know, you have BP, that's a big
9 company. They're a sophisticated company. They have --
10 they're one of the companies that is I'm going to say
11 the largest, if not, they're the second largest company
12 from the standpoint of having pipe in the ground.
13 They're subject to regulation all over.

14 Q. Okay. I've just got one other area to ask
15 you about. Tesoro's primary position is that this case
16 should be dismissed for basically unreliable numbers and
17 no witnesses to vouch for those numbers. But as an
18 alternative, it says, if the Commission decides to set
19 rates, you know, then, and then you have some
20 recommendations. The result of your recommendation is a
21 small decrease. Do you know the percentage decrease?

22 A. The figures I think that Mr. Grasso has are
23 an average rate of 29 cents, I think, something like
24 that. I'm not sure, he can confirm that figure. On the
25 exhibit that we looked at yesterday, the 2311 exhibit,

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1 it shows an increase of 31 or a rate, an average rate,
2 of 31.83 cents. Mr. Fox said that it was the present
3 average rate is 35.3 cents. I think that's the rate
4 before any increase is 35.3 cents.

5 Q. Okay. Actually, since you don't know, let's
6 assume for the moment, I know this isn't your
7 recommendation, but for the purposes of my question
8 assume that your recommendation was very close to 0%
9 increase.

10 A. All right.

11 Q. So it sounds like it's a little bit more of a
12 negative. But supposing it were after all of your
13 calculations it comes out to zero, and so I want you to
14 compare outright dismissal of the case in which nothing
15 has been resolved versus a determination by this
16 Commission that we find zero. What I want to get at in
17 this question is, are there advantages to making a
18 determination, that is to completing a rate case to
19 perhaps clear certain issues or expenditures or somehow
20 make the starting point for the next rate case more
21 manageable? Is that an aspect of completing the rate
22 case, or does it make no difference, because the next
23 time there's a rate case you've got to start all over
24 again with your test years and other things?

25 A. There are I guess at this stage of the game

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1 certainly the two options. The one is the dismissal,
2 the other is to see it through to the end. The
3 dismissal would, you know, clear the platter and let
4 them come back in immediately with a filing. Presumably
5 they have learned enough in this proceeding that they
6 know that they will have to come back in with support
7 for whatever filing they make.

8 You still have the matter of what is the
9 standard that you have here in Washington, and your
10 standard is to set just and reasonable rates. And in
11 doing so, there are -- there's one major issue, it was
12 an issue that the company asked your determination on,
13 and that is the methodology. And when they filed their
14 direct case, it was really just reusing the methodology,
15 and you still have that question to be addressed. In my
16 view, based on all of my experience, based on my
17 knowledge of what you have here in Washington, the
18 depreciated original cost is the appropriate methodology
19 to use, and they certainly haven't supported the use of
20 the FERC methodology, the 154-B methodology. So from
21 the standpoint of going through the proceeding, not
22 dismissing it, at least it would get that measure or
23 that issue resolved.

24 And when you look at --

25 Q. Well, let me stop you on that. Isn't the

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1 methodology somewhat independent of completing the case
2 or not? That is, it could be that this Commission could
3 determine the appropriate methodology but then determine
4 there were insufficient basis to proceed under with
5 whatever methodology that was.

6 A. That is certainly a way for you to proceed.
7 And if you were to proceed down that route, then, you
8 know, you could dismiss the case and respond to their
9 request on the methodology by saying that according to
10 the requirements that you have under the statute here to
11 establish just and reasonable rates that it's your
12 determination that the DOC is the appropriate
13 methodology to use. You're not required to follow the
14 FERC methodology. It's very clear from the cases that
15 we have seen that you have a separate requirement here
16 under the statute here, and you're not bound to support
17 or follow the FERC methodology here. And if DOC is the
18 methodology that is appropriate here in the State of
19 Washington, which I believe it is, then that's the
20 determination you can make.

21 If that's -- if you make that determination
22 and respond to their request for a declaratory order on
23 methodology, then you could dismiss the case and at the
24 same time respond saying the methodology that we're
25 going to use is consistent with our past practices, and

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1 we're going to require the depreciated original cost
2 methodology. In that case, then the next time they come
3 in for a rate proceeding, they would have knowledge to
4 start with that that is the way they have to file their
5 case.

6 CHAIRWOMAN SHOWALTER: Okay, thank you, I
7 have no further questions.

8

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

10 BY COMMISSIONER OSHIE:

11 Q. Mr. Brown, would you turn to page 55 of your
12 testimony, Exhibit 2301-T, please.

13 A. (Complies.)

14 Q. On lines 8 and 9, you express your opinion
15 that Olympic should be operationally capable of
16 operating its system at normal operating pressure within
17 the very near future. And in the cross-examination
18 conducted by Mr. Marshall, I believe you testified that
19 you do not have a particular knowledge of the
20 environmental permits required to construct the
21 pipeline, and I believe that you also testified that you
22 have no particular knowledge of the TFI procedure and
23 the analysis of the test results and its impact upon
24 construction activities. So my question is really what
25 was the basis for your opinion on lines 8 and 9 that the

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1 pipeline should be brought to normal operating pressure
2 within the very near future?

3 A. We have had the Whatcom Creek event that
4 occurred June of 1999. The 80% restriction was imposed
5 right after that. And as I understand Mr. Wicklund's
6 testimony, Olympic began in the year 2000 meeting the
7 requirements of the regulations that now are in place,
8 the high consequence area regulations, the testing
9 programs. The smart pigs, the TFI tools and the other
10 tools that are used, have been in existence, and, in
11 fact, in the 1996 rate filing that Olympic made, it
12 showed that they were using smart pigs on the line at
13 the time. So when I put all of that together, they have
14 had more than enough time in my view to get the pressure
15 restriction removed.

16 What has been done in my opinion is that they
17 have focused on other programs rather than focusing
18 first on getting the pressure restriction removed, and
19 that's the reason I say that operationally capable of
20 addressing the pressure restriction first. It's a
21 matter of priority. Their view is that they have all of
22 these other programs, and they have gone through these
23 programs, but they have not focused first attention on
24 getting the pressure restriction removed. That's the
25 reason for this testimony.

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1 Q. Is your testimony that the throughput should
2 be set at approximately 121 million barrels a year, in
3 light of the 80% pressure restriction, is your testimony
4 based upon your belief that the shippers should not have
5 to pay for the imprudent operation of the pipeline by
6 the operator or that the pipeline should be at 100%
7 pressure had the company been applying its resources to
8 restoring the pipeline to 100% pressure?

9 A. It's a little of both, but it's principally
10 that in my view -- keep in mind that the alert notices
11 issued by the Office of Pipeline Safety on things to be
12 done to pre 1970 ERW pipe, they were issued in 1988 and
13 1989. I haven't seen anything indicating that they did
14 anything. And certainly when we had the excavation for
15 the water line that ultimately, you know, the pipe was
16 banged by the back hoe, and in that course of things
17 they covered things up. It's my understanding that
18 there was even an AFE that was put together dealing with
19 that situation, and nothing was done. And then all of a
20 sudden in 1999, we have the rupture of the pipeline.

21 Well, the management of the pipeline should
22 have, you know, when you have two alert notices and you
23 have the specific statement that the pre 1970 ERW pipe
24 posed a substantial risk, then something should have
25 been done. There was ample time to do it. I mean we're

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1 talking about 1988 to 2002, 14 years. All of a sudden
2 the accident occurs in 1999, and we're now in 2002,
3 three years later, we have the 80% restriction. In my
4 view, I think that there's been more than enough time to
5 get the pressure restriction removed. And that, of
6 course, to the extent that you have the pressure
7 restriction and you establish rates now on the basis of
8 the reduced pressure, it requires the shippers to pay
9 that additional cost.

10 You asked about the amortization, Chairwoman.
11 This goes to your question also. But establishing rates
12 on the basis of that very low throughput gives the --
13 puts the burdon on the shippers to pay the costs instead
14 of on the company. So I have suggested using the 121.3
15 million barrels, because that is the figure that Olympic
16 itself used when it put the Bayview terminal into
17 service. They have done things in between 1998 and now
18 that have improved the efficiencies of the line, so --
19 and they say, okay, the Bayview terminal should be in
20 the costs. We agree. We say the Bayview terminal
21 should be in the costs. If the Bayview terminal was in
22 the costs, then the associated throughput should be
23 there. So their figures are 116 million barrels that
24 was actually transported in 1998 plus 5 million barrels,
25 and that gives you your 121.3, and that's the figure

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1 that we say ought to be used.

2 COMMISSIONER OSHIE: Okay, thank you,
3 Mr. Brown.

4 JUDGE WALLIS: Is there any follow-up from
5 Staff?

6 MR. TROTTER: No.

7 JUDGE WALLIS: Mr. Marshall, can you estimate
8 the time that you have for follow-up questions?

9 MR. MARSHALL: Actually, all I think I need
10 to do is to move for the admission of Tesoro Exhibit 826
11 that I don't think has been moved for admission, and I
12 won't have any further questions. It shouldn't be
13 objected to by Tesoro. It was an exhibit that they
14 offered.

15 MR. BRENA: That's fine.

16 JUDGE WALLIS: Is there objection?
17 Let the record show that there is --

18 MR. TROTTER: Excuse me, I haven't found it
19 yet.

20 Okay, no objection.

21 JUDGE WALLIS: Let the record show that there
22 is no objection, and 826 is received in evidence.

23 Mr. Brena, what's the expected length of your
24 time on redirect?

25 MR. BRENA: Well, it depends on the pace. I

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1 would like to give it a shot, go 10 or 15 minutes and
2 see how I do, and if I'm bogging down, then I'm bogging
3 down, and we should take a lunch break.

4 JUDGE WALLIS: All right, please proceed.

5 MR. BRENA: Okay.

6

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

8 BY MR. BRENA:

9 Q. I would like to ask a few questions with
10 regard to Commissioner Oshie's question, and I would
11 also like to talk a little bit about permitting. First
12 of all, should the company be proactive or reactive in
13 environmentally sensitive areas in its maintenance
14 program?

15 A. I think they should be proactive.

16 Q. When was this company first aware that they
17 had problems with pre 1970 pipe?

18 A. That's a difficult question to answer.
19 Certainly they were aware in 1988 when the first alert
20 notice was issued. How much before then, I'm not sure,
21 but at least by 1988.

22 Q. So they have been aware for 14 years and so
23 far as you are aware did nothing proactively to address
24 the issue until the seam broke?

25 A. That's my understanding, yes.

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1 Q. With regard to the Whatcom Creek incident,
2 when was the pipe damaged?

3 A. 1995.

4 Q. So with regard to the Whatcom Creek damage,
5 after 1995 is it your position they knew or should have
6 known of that damage at that time as a result of their
7 supervision of construction?

8 A. Yes.

9 Q. And with regard to since that time, they have
10 ran two smart pigs through and were specifically made
11 aware of the damage to the pipe at that location?

12 MR. MARSHALL: I object, this witness has no
13 foundation, no knowledge, no personal knowledge of any
14 of this.

15 JUDGE WALLIS: The witness may respond as to
16 whether he has knowledge, and if he does, he may.

17 A. I don't know how many smart pigs have been
18 run, how many times smart pigs have been run through the
19 line, but as I indicated earlier, at least in the 1996
20 rate filing, there was an indication of costs associated
21 with a smart pig, so they would have had some smart pigs
22 that would have been run through the line subsequent to
23 1995.

24 BY MR. BRENA:

25 Q. So with regard to the damage to the pipe

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1 which ultimately resulted in the Whatcom Creek incident,
2 they did nothing until it exploded?

3 MR. MARSHALL: Objection, no foundation, no
4 knowledge from this witness, and the previous answer
5 indicates that the witness has a tentative at best grasp
6 on what may or may not have been done.

7 MR. BRENA: Well, actually, this witness has
8 sat through this entire hearing, he has heard the
9 testimony of Mr. Talley, he has heard his
10 cross-examination, he has read all of it, he has
11 reviewed all the notices of violation, he has heard the
12 witnesses crossed with regard to the specific facts. If
13 he doesn't know, he can say so.

14 JUDGE WALLIS: The earlier response did
15 indicate --

16 MR. BRENA: The earlier response was with
17 regard to his knowledge of the specific how many pigs
18 and what lines they ran through.

19 JUDGE WALLIS: Yes, that's correct.

20 MR. BRENA: This question was with regard to
21 whether they did anything about the damage to the pipe
22 until after it exploded.

23 JUDGE WALLIS: Is this a preliminary question
24 for further examination?

25 MR. BRENA: It is.

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1 JUDGE WALLIS: Very well.

2 A. I'm not aware that they did anything with
3 regard to the damaged pipe prior to the explosion.

4 BY MR. BRENA:

5 Q. In your response to Mr. Marshall earlier, you
6 indicated that you were aware that an AFE was issued to
7 dig up and repair the pipe at the location of the
8 Whatcom Creek. Did I remember that correctly?

9 A. Yes.

10 Q. So they were aware of it to the point of even
11 authorizing some sort of expenditure and action, but it
12 simply didn't happen; is that your understanding?

13 A. Yes.

14 Q. So if -- what -- how should -- let's assume
15 that all of the things that Mr. Marshall said, this is a
16 very environmentally sensitive area, permittings take a
17 long period of time, do you wait for accidents to
18 happen, do you react to accidents, or do you proactively
19 when you find out there's a problem, do you proactively
20 go out and put a maintenance program in place that
21 solves the problem before something happens? How do you
22 run your pipeline companies?

23 MR. MARSHALL: Objection, there were about
24 five or six different questions in that.

25 MR. BRENA: I will rephrase.

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1 BY MR. BRENA:

2 Q. In the environment that Mr. Marshall
3 postulated that Olympic operates in, which is long
4 permitting times, environmentally sensitive areas, do
5 you wait for things to break before you go out and fix
6 them?

7 A. No, you really ought to have a program in
8 place that recognizes the long permitting program in
9 order to get the job done. And in my view, they have
10 had ample time to do that.

11 Q. Is that, in your opinion, is that what
12 prudent management would have done?

13 A. Yes.

14 Q. Chairwoman Showalter asked you some questions
15 about dismissal or moving forward with the rate case; do
16 you recall those?

17 A. Yes.

18 Q. I would ask you subject to check that
19 Tesoro's corrected case would result in a 15.88%
20 decrease to their existing rates; could you do that?

21 A. Yes.

22 Q. And that prior to the corrected case that the
23 adjustment was a 10.41% decrease; could you accept that
24 subject to check?

25 A. Yes.

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1 Q. Now I just want to be clear that the
2 Commission could dismiss this case, direct that a new
3 filing be filed with the Commission consistent with the
4 DOC methodology and with witnesses that could support
5 the numbers that were included in their rate case,
6 correct?

7 A. The hesitation I have is to direct them to
8 make a new filing. I think that at least it's my view
9 they could dismiss the case with statements that if they
10 come in with a new filing, it will be on this basis.
11 But I don't have the knowledge to be able to say that
12 they can direct them to come in with a rate filing.

13 Q. Okay. With that qualification aside, the
14 answer to my question would have been yes?

15 A. Yes.

16 Q. Okay. Chairwoman Showalter asked you
17 questions with regard to regulatory function, and I want
18 to be sure that the record didn't get confused, so let
19 me separate compliance functions with the rate making
20 process. Now you maintain your books and records on an
21 ongoing basis consistent with GAAP and the Uniform
22 System of Accounts, correct?

23 A. Yes.

24 Q. You don't maintain them consistent with rate
25 filings?

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1 A. That's correct.

2 Q. When you determine to make a rate filing,
3 then you have to go to the period at issue, and you have
4 to screen it for nonrecurring and extraordinary events
5 in order to take those numbers that you have maintained
6 and convert them into rate proper numbers?

7 A. That's correct.

8 Q. Okay. With regard -- when she was asking
9 which of these functions are in house versus out house,
10 with regard to the regulatory maintenance activities,
11 all of the, so far as you're aware, the costs associated
12 with those regulatory maintenance activities are
13 included in other places than the regulatory expense
14 category?

15 A. Yes.

16 Q. So the regulatory expense category really
17 involves the process of taking those maintained books
18 and records and going into them and making them rate
19 ready and then filing and pursuing the rate case,
20 correct?

21 A. Yes.

22 Q. And she was exploring with you whether or not
23 FERC required companies to support rates through, and
24 let me ask you, the FERC 6 reporting numbers, have they
25 been screened, or have they been adjusted for

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1 nonrecurring or normalization or amortization of any
2 costs?

3 MR. MARSHALL: Is this in general or specific
4 for Olympic?

5 MR. BRENA: Both, I assume Olympic complies.

6 A. No, the FERC Form 6 numbers, as an example,
7 the Whatcom Creek expenses would be included in the FERC
8 Form 6 numbers as operating costs.

9 BY MR. BRENA:

10 Q. So in a contested proceeding before the FERC
11 in a cost of service, in a contested cost of service
12 proceeding before the FERC, the FERC never sets rates
13 just based on whatever the FERC 6 says?

14 A. That's correct.

15 Q. That you're aware of?

16 MR. MARSHALL: I will start to object on
17 leading questions that suggest the answer. I haven't
18 done it, because I was told that if we went ten minutes
19 we might be done, but I am afraid that this is going --

20 MR. BRENA: Well, I am taking a certain
21 liberty, and I will slow the process down.

22 MR. TROTTER: I will join the objection, Your
23 Honor. It has gone on a bit long in terms of leading.

24 BY MR. BRENA:

25 Q. So with regard to her questions of could BP

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1 Pipelines have come into this case with the expectation
2 that this is just the way that FERC allows rates to be
3 supported, do you have a comment specifically on whether
4 or not the expectations of FERC should be or are any
5 different than what this Commission should expect from
6 the company in terms of proving up its case?

7 A. I'm not sure I can give an example, but
8 there, you know, BP is involved in a lot of oil
9 pipelines that are subject to FERC regulation, and they
10 have a person, Ms. Zabransky, that's responsible for the
11 regulatory matters, and I can't imagine that she would
12 not be aware of the contested proceedings that have gone
13 on at the FERC and what's required in those proceedings.

14 Q. Do you believe that in Olympic's case it's a
15 lack of knowledge about how to file a rate case or it's
16 the failure to apply that knowledge to this case?

17 A. I think it's the failure --

18 MR. TROTTER: I'm going to object, that just
19 calls for speculation.

20 MR. MARSHALL: I join in the objection. I
21 again was hoping that we could avoid these kinds of
22 leading argumentative questions.

23 MR. BRENA: Well, that was not a leading
24 question. He offered the opinion that BP did not
25 advance a proper rate case, and Chairwoman Showalter

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1 explored with him whether or not that expertise was
2 available and typically used. So the question is, why
3 didn't it get applied in this case. And I'm not leading
4 him, I'm asking him whether or not it's his opinion that
5 BP Pipelines, which he already testified is the first or
6 second largest operator around, had the knowledge and if
7 they should have applied it. And if you would like to
8 take a break now, I would understand that entirely.

9 MR. TROTTER: My objection was simply the
10 question was for him to say why they did something or
11 didn't do something, and that was why I said it called
12 for speculation.

13 JUDGE WALLIS: It is possible that the
14 witness has personal knowledge upon which to base an
15 answer to the question, and in as much as the question
16 appears to be preliminary to an inquiry as to the basis,
17 then we will allow the question.

18 BY MR. BRENA:

19 Q. Do you have it in mind?

20 A. I think that for whatever reason, and I don't
21 know the reasons, I think that Olympic simply or BP as
22 operator simply didn't follow the rules that are
23 required.

24 Q. Do you think changing operators in the middle
25 of pressure restriction and safety issues may have

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1 contributed to the delay?

2 MR. MARSHALL: Objection, calls for
3 speculation.

4 JUDGE WALLIS: We are on pretty tenuous
5 ground here, Mr. Brena.

6 MR. BRENA: He was cross examined quite
7 extensively with regard to the delays in the permitting
8 and what his knowledge was or wasn't with regard to
9 those delays. The fact of the matter is is that in mid
10 stream they changed horses, and if that doesn't impact
11 how long it takes you to get across the creek, I don't
12 know what does. So I realize I'm asking him -- and I
13 asked him if he thought that may have impacted that
14 process.

15 MR. MARSHALL: The inquiry was about his
16 knowledge about what had to be done to cross creeks and
17 all of that. He had no knowledge there --

18 MR. BRENA: I withdraw the question.

19 MR. MARSHALL: -- and therefore he can't have
20 knowledge to compare.

21 MR. BRENA: I withdraw the question.

22 MR. BRENA: I have ten more minutes of
23 questions, would you like to hang in there with me?

24 (Discussion on the Bench.)

25 JUDGE WALLIS: Let's keep going, please.

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1 MR. BRENA: All right, I'm trying here.

2 BY MR. BRENA:

3 Q. Well, after reading the KPL case most of last
4 night, were you asked any KPL questions this morning?

5 A. No.

6 Q. What regulatory principle do you believe
7 should be brought forward from the KPL case that this
8 Commission should be made aware of?

9 A. Well, I think there are -- there's one major
10 and maybe a couple of minors.

11 The one major is that it was clearly
12 determined in the KPL case that there's a -- there is no
13 requirement for the State to follow the FERC regulation.
14 The State has its own law in which it is -- it regulates
15 utilities, and that differs from the regulation that is
16 imposed by the FERC, so there's no requirement that you
17 follow the FERC regulation.

18 And second, they're two minor points but
19 they're important points, is that the KPL decision
20 specifically addressed the question of the starting rate
21 base writeup and determined that that was part of the
22 valuation methodology and that it was not appropriate
23 under the cost based regime that was followed in Alaska.
24 And secondly, that there was no support for the deferred
25 return element to be included. With those in mind, then

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1 the DOC was the appropriate way to address matters.

2 Q. Did any of the questions you were asked with
3 regard to the movements over the facility or uniqueness
4 of tundra in Alaska, did any of those questions in your
5 mind compromise the logic or reasoning behind that
6 regulatory principle as it should be applied in this
7 case to Olympic?

8 A. No.

9 Q. Have you reviewed the KPL Supreme Court
10 opinion which has been proffered as a redirect Exhibit
11 Number 2313?

12 A. Yes I have.

13 Q. And in that opinion, does the Supreme Court
14 detail the oil movements through the KPL facilities and
15 their history?

16 A. Yes, it does.

17 Q. And isn't it -- are you aware that -- well --

18 MR. MARSHALL: This is --

19 Q. Based on your review of that case, was KPL
20 subject to FERC regulation?

21 MR. MARSHALL: I'm going to have to object,
22 because this is all appropriate for briefing. I thought
23 it was odd that this witness had the kind of testimony
24 that he did. I didn't go into it because I believed
25 that we could do this on briefing. The Supreme Court

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1 case came before the KPL case that we talked about
2 yesterday. The case we talked about yesterday is a 1992
3 case. This Supreme Court case is an earlier one. This
4 is simply a matter for briefing, and the vehicle here is
5 Mr. Brena, who was apparently involved in both cases, is
6 asking the witness who was involved in neither to agree
7 with him on a whole series of points that are
8 appropriate for legal briefing.

9 MR. BRENA: Well, actually, I only have a
10 question or two, if that exception can be applied to me.
11 But the questioning yesterday of Mr. Brown went
12 specifically to the oil movements through the KPL
13 facility and whether or not those oil movements caused
14 some dispersion on whether or not the regulatory
15 principles in KPL should be applied to this case. He
16 was specifically cross examined on it. Those specific
17 oil movements and their history is detailed in the
18 Supreme Court opinion, and what that opinion shows and
19 the testimony that I'm about to solicit is that this has
20 been a FERC regulated facility for 30 years, and they
21 have a rate on file today, and there is nothing within
22 Mr. Marshall's line of cross-examination with regard to
23 the -- to those oil movements that go to the regulatory
24 -- underlying regulatory principles. It is perfect
25 redirect.

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1 JUDGE WALLIS: We think that this is
2 appropriate redirect in response to that line of
3 questions.

4 MR. BRENA: Perhaps not perfect, but within
5 the scope, perhaps not even close to perfect.

6 BY MR. BRENA:

7 Q. Mr. Brown, was there anything in
8 Mr. Marshall's lines of questions with regard to the oil
9 movements from this facility that you believe
10 compromised the regulatory principles that you think
11 this Commission should consider in the KPL case?

12 A. No.

13 Q. You were asked a series of questions
14 attempting to say that somehow that Alaska was unique,
15 and regulatory principles from Alaska or Wyoming should
16 not be applied by this Commission. Do you have those in
17 mind?

18 A. Yes.

19 Q. Is there anything unique about Alaska or
20 Wyoming which in your judgment would compromise the
21 application of the regulatory principles from this
22 state, from those states to this Commission?

23 MR. MARSHALL: Objection, he has already
24 testified to his lack of foundation about Alaska and
25 Wyoming yesterday, so he has already admitted he has no

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1 basis upon which to answer the question.

2 MR. BRENA: He was asked -- we're using
3 uniqueness two different ways here. I'm asking whether
4 or not there's anything that has been suggested to him
5 in cross as uniqueness which would compromise the
6 application of the regulatory principles to this case by
7 this Commission.

8 JUDGE WALLIS: The witness may respond.

9 BY MR. BRENA:

10 Q. Do you have the question in mind?

11 A. Why don't you repeat it.

12 Q. I said, is there anything -- is there
13 anything that you're aware of which is unique about
14 Alaska or Wyoming where the regulatory principles that
15 evolved there with regard to the 154-B, the 154 -- the
16 rejection of 154-B starting rate base or -- and deferred
17 earnings adjustments that you think compromise those
18 decisions so that they should not be applied by this
19 Commission to Olympic?

20 A. None whatsoever.

21 Q. Does how much tundra Alaska has have anything
22 to do with it?

23 A. Not as far as pipeline regulation.

24 Q. With regard to the difference in competition
25 that was pointed out in the cross, is Olympic in your

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1 judgment unique from the lines that were considered in
2 Wyoming or Alaska with regard to competition matters?

3 A. No.

4 MR. MARSHALL: Again, objection, lack of
5 foundation. Clearly the witness didn't know what
6 alternatives existed either in Alaska or Wyoming.

7 MR. BRENA: I will allow the record to speak
8 for itself with regard to his testimony.

9 BY MR. BRENA:

10 Q. You were asked a series of questions about
11 whether or not there is something unique about an
12 integrated company in terms of how if Olympic is part of
13 an integrated whole, that should impact or not impact
14 this rate proceeding. Do you recall those?

15 A. Yes.

16 Q. Should who owns Olympic determine what a just
17 and reasonable rate is for Olympic?

18 A. No, it's the costs that are presented that
19 determine the justness and reasonableness.

20 Q. You were asked some questions with regard to
21 Exhibit 4.1 of the Hammer exhibit; do you have that in
22 mind?

23 A. Yes.

24 Q. And this is a before lunch question I want to
25 point out to the Commission, did you review the Hammer

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1 deposition and its exhibits?

2 A. Yes, I did.

3 Q. Is Hammer 4.1 one of the exhibits?

4 A. I find that it was. I didn't recognize it
5 when the questions were asked, but yes, it was.

6 Q. Were you offered the exhibit so that you
7 could review it to refresh your recollection?

8 A. No.

9 Q. Have you had an opportunity to review 4.1?

10 A. Yes.

11 Q. And does it show anything switching
12 categories from one category to the other, does that --
13 can that work paper be used to show that?

14 A. No.

15 MR. TROTTER: Counsel, can we have just a
16 reference to the record where that exhibit is found,
17 4.1?

18 MR. BRENA: It is an attachment to the Hammer
19 deposition, which is Exhibit Number -- help me,
20 Mr. Brown, I don't have it.

21 THE WITNESS: The one I have before me is
22 860.

23 MR. BRENA: 860.

24 MR. TROTTER: Thank you.

25 MR. BRENA: I have no further questions.

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1 JUDGE WALLIS: Is there another question from
2 the Bench?

3 CHAIRWOMAN SHOWALTER: Yes, two.

4

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

6 BY CHAIRWOMAN SHOWALTER:

7 Q. I wasn't sure how to interpret one of your
8 answers. Do you know Ms. Zabransky?

9 A. No, I do not.

10 Q. And have you ever -- have you directly
11 observed her work or any testimony before the FERC?

12 A. No, I haven't, but let me -- let me say that
13 I have a person who worked for me at -- when I was at
14 United. His twin brother worked for me at the
15 consulting firm. That person who worked for me at
16 United has gone to work for BP, and he knows -- and he
17 went with BP Pipelines I understand, and he knows much
18 about regulation. Ms. Zabransky as I understand it has
19 been there for over 30 years and is in charge,
20 reportedly in charge of the regulatory activities for
21 the pipeline section. I don't know her, but with 30
22 years or more of experience, I just find it difficult to
23 believe that she wouldn't know what the rules and
24 regulations are.

25 Q. All right. The other follow-up, assume that

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1 Olympic Pipeline is entirely at fault, that for many
2 years they have not done what they should do, et cetera,
3 et cetera, et cetera, and so that it is not fair or
4 reasonable to charge the shippers for any of those
5 mistakes. I'm trying to put what I believe to be your
6 primary position in sort of stark terms. Can there be a
7 gap between what is fair, just, and reasonable and what
8 is sufficient? That is supposing it is not fair at
9 first blush to charge shippers a certain amount of money
10 because of the fault of the company, but that if we do
11 that and award a decrease along the lines of your
12 recommendation, it will not be enough to induce the
13 company to operate the pipeline appropriately and
14 prudently. Is that a reasonable outcome, is that an
15 outcome in the public interest?

16 A. Let me try to answer it in this way. Your
17 obligation, I think, is to set just and reasonable
18 rates. And in doing so, you need to look at the costs
19 that have been presented. And as I have indicated, I
20 think that you should follow the precedent that you have
21 of the DOC methodology and arrive at a rate. I think
22 that the owners of Olympic, and particularly BP, BP
23 acquired ARCO. ARCO has been an owner of Olympic for
24 several years, several years prior to that acquisition,
25 and then BP acquired the GATX interest. They bought

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1 into the pipeline.

2 Now, per Mr. Fox, you have to give them an
3 increase, otherwise they're not going to, you know,
4 operate the pipeline. They're an owner of the pipeline.
5 Now do they go in -- let it go into bankruptcy? There
6 have been pipelines that have gone into bankruptcy and
7 come out. PG&E is currently in bankruptcy proceedings.
8 So the fact that they may go into bankruptcy doesn't
9 cause a problem. The fact is that they're owners of the
10 pipeline. They have assumed the risk of owning the
11 pipeline, and yet they're unwilling to put money into
12 the pipeline.

13 And with that in mind, again I think that
14 your duty is to look at the establishment of the rates
15 based on your way of doing things here, and that's in
16 the public interest to do that. If you were to allow
17 something that isn't based on costs, then is Puget Sound
18 going to come in and say, aha, you did something for
19 them. I know it's a different operation, an oil
20 pipeline versus an electric company, but the fact is
21 that I think you need to take into consideration the
22 precedent and the fact that you regulate utilities, and
23 you have laws, the Section 80 and the Section 81, that
24 regulate the utilities and the oil pipelines.

25 Q. But if it did, if there were a bankruptcy and

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1 the pipeline was taken over by someone else, then the
2 someone else is going to have to address the
3 deficiencies that you state are the fault of the
4 company.

5 A. Well, one of the --

6 Q. So it will have to borrow money to do it, et
7 cetera, et cetera. Now I suppose it's the difference
8 that the new entity would not be possibly burdened with
9 the debt that the current entity is burdened with.

10 A. That's correct.

11 CHAIRWOMAN SHOWALTER: Okay, thank you.

12 JUDGE WALLIS: Is there anything further of
13 the witness?

14 MR. MARSHALL: I do following up on a few of
15 Mr. Brena's. And I will try to make this very brief.

16

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

18 BY MR. MARSHALL:

19 Q. You spoke about the alert notice --

20 A. Yes.

21 Q. -- with Mr. Brena. Were you here when
22 Mr. Wicklund testified?

23 A. Yes.

24 Q. And you heard him speak about the response to
25 the alert notice that was appropriate in his expert

5184

1 view; do you remember his testimony?

2 A. I don't recall the testimony on that point,
3 I'm sorry, I don't.

4 Q. You don't recall any of his testimony on the
5 proper response to an alert notice given certain
6 conditions of cathodic protection of the environment in
7 which the pipe was located, whether there had been prior
8 hydro testing of the lines before?

9 A. Yes.

10 Q. Does that ring a bell now?

11 A. Yes.

12 Q. Okay. Now you know that according to
13 Mr. Wicklund's testimony, Olympic did hydro test the
14 system prior to the alert notice coming out; you
15 understand that, don't you?

16 A. It's my understanding that the hydro testing
17 was when the line was initially installed.

18 Q. Right. And you understand that Olympic did
19 have cathodic protection, correct?

20 A. That's my understanding, yes.

21 Q. And there was no evidence of corrosion when
22 they looked at that time back then when the alert
23 notices came out; do you remember that?

24 A. Well, you say that there was -- no, I don't
25 remember that portion of the testimony, and when you

5185

1 relate the alert notice and then cathodic protection and
2 hydro static testing --

3 Q. Are you familiar with that alert notice to
4 the extent that you know that if those conditions exist,
5 that is hydro testing, cathodic protection, and so
6 forth, then there are certain things that do not need to
7 be done back in that period of time with the alert
8 notices?

9 MR. BRENA: Your Honor, the question cut off
10 the witness in mid sentence.

11 JUDGE WALLIS: Does the witness want to
12 continue his answer to the prior question?

13 THE WITNESS: Yes.

14 JUDGE WALLIS: Please do.

15 A. My answer that I was going to complete is
16 that the fact that the alert notice was there and that
17 you have prior testing and that you had cathodic
18 protection on the line doesn't indicate that the
19 cathodic protection, for example, was still good. It
20 depends on the type of cathodic protection that's on the
21 line, whether it's just the tar type of protection or
22 anodes that are installed or whether you have rectifiers
23 that are installed, a number of things like that. So
24 that was the point I was going to mention, is that the
25 relationship between the alert notice and saying that

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1 cathodic protection was okay, I don't see that there's a
2 linkage there.

3 BY MR. MARSHALL:

4 Q. Are you aware of any petroleum pipeline that
5 had already hydro tested its system and had no evidence
6 of corrosion problem, any of those pipelines that had
7 re-hydro tested its system in response to the alert
8 notice?

9 A. No, but I think that -- I believe that it was
10 the 1989 notice, I would have to check that, but at some
11 point the ERW pipe manufactured by Lone Star was
12 specifically identified as one that was a problem, and
13 Olympic does have a lot of ERW pipe manufactured by Lone
14 Star in its system that was manufactured pre 1970.

15 Q. Now you're not suggesting that ERW pipe was
16 the cause of the Whatcom Creek incident, are you?

17 A. I didn't say it was.

18 Q. Right, I just wanted to make sure we had that
19 clarified.

20 And you seemed to indicate to Mr. Brena that
21 the TFI tool was available earlier than in the 1989
22 period or some other earlier period. Do you know when
23 that tool first became available?

24 A. If he specifically talked about TFI, I
25 thought my answer was that there was a smart pig that

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1 was available. I didn't say it was a TFI tool. But in
2 the -- I don't -- I'm sure it's an exhibit here, but in
3 the 1996 rate filing, there's a listing of individual
4 items of extra cost that were incurred, and one of the
5 items on that listing was some sort of a smart pig. And
6 I don't recall the exact designation. But I understand
7 that the TFI tool is a more modern tool. My answer was
8 that there were smart pigs, that, in fact, smart pigs
9 have been around from the 1980's.

10 Q. Assume for me that the TFI tool was not
11 available in 1996. Isn't it true that the TFI tool is
12 the only tool that can determine the longitudinal seam
13 issues that an ERW pipe presents?

14 A. I can't answer that.

15 Q. Because you don't have the background or
16 knowledge to answer that?

17 A. No, you said is it the only tool, and I don't
18 know if it's the only tool. It is a tool that is
19 available.

20 Q. Do you know of any tool other than the TFI
21 tool that can detect problems in the longitudinal seam
22 of a pipe susceptible to ERW welds?

23 A. I have not looked into that.

24 Q. Okay, no further questions in that area.

25 One other area on the KPL case, I will just

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1 ask one question. We went through yesterday on Exhibit
2 2312 the background facts of the case. And at page 3 of
3 2312, which is a 1992 decision, it states very clearly
4 that in 1974 interstate movements over KPL's pipeline
5 ceased. Do you remember that?

6 A. I see that. Wait a minute, wait a minute.

7 Yes, I see that.

8 Q. And the decision that Mr. Brena asked you to
9 look at, the state supreme court decision, was from an
10 earlier period, wasn't it? It was before 1992, it was
11 1987, was it not?

12 A. Yes. And it does describe in the supreme
13 court decision the operations of KPL as it existed in
14 1987.

15 Q. Right, and we're looking at a 1992 decision
16 in Exhibit 2312.

17 A. Oh, I understand.

18 MR. BRENA: Okay, no further questions.

19 JUDGE WALLIS: Is there anything further for
20 the witness?

21 MR. BRENA: Yeah, I have a few.

22

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

24 BY MR. BRENA:

25 Q. Mr. Brown, you were just asked some questions

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1 about whether there's any tests that can detect the pre
2 1970, and none came to mind. Is hydro testing one?

3 A. Yes.

4 Q. Mr. Marshall's questions, as did
5 Mr. Wicklund, failed to mention the overpressure
6 situation and whether or not a line -- the alert notice
7 addressed overpressure. Do you recall that as being
8 part of the alert notice as well?

9 A. Yes.

10 Q. If there was a circumstance that developed on
11 the line that involved significant overpressure for
12 whatever reason, then isn't that a reason in your
13 estimation to go in and prudently take a look at whether
14 there's a problem there?

15 MR. MARSHALL: Objection, lack of foundation.

16 JUDGE WALLIS: Overruled.

17 BY MR. BRENA:

18 Q. Is overpressure, he went through cat -- he
19 went through erosion protection, he went through whether
20 it had been previously tested, he didn't ask about
21 overpressure situations, that those seams shouldn't be
22 placed over pressure. If you had a repeated
23 overpressure situation, isn't that a reason for you to
24 come in and do another risk assessment and respond?

25 A. Yes.

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1 Q. The Chairwoman asked you some questions about
2 Ms. Zabransky and your knowledge and experience with her
3 and in general about BP. How did you spend last summer?

4 A. A month of it was spent in Alaska involved
5 with the TAPS case, in which BP is an owner. I was
6 going to say major owner, and I think they are a major
7 owner of TAPS.

8 Q. Was Ms. Zabransky in and out of the hearing
9 room during that five weeks of hearings, or do you know?

10 A. I don't know.

11 Q. Was Mr. Read and Mr. Collins' firm, were they
12 expert witnesses in that proceeding?

13 A. Yes.

14 Q. Did BP Pipelines have a major presence in
15 that room during that entire proceeding?

16 A. They certainly did.

17 Q. Was there any question in your mind that BP
18 Pipeline understood as a result of the positions that
19 Tesoro took in that proceeding as to what is proper
20 support for rate filings?

21 A. None whatsoever.

22 Q. The Chairwoman asked you some questions with
23 regard to whether or not a just and reasonable rate
24 could be sufficient, and let me ask it this way. Are
25 setting cost based rates in the public interest?

5191

1 A. Yes.

2 Q. Why?

3 A. That is the normal way that rates are
4 established for regulated industry. It's consistent
5 with the legislative requirement, which, of course, is
6 applicable to public interest, so yes.

7 Q. How many, if you know, do you have some sense
8 for how many billions and billions of dollars have been
9 invested in regulated companies based on cost based
10 regulation?

11 A. I have no way to estimate that in today's
12 world, but it -- the number is very, very, very large.

13 Q. If for some reason BP Pipelines chooses not
14 to invest under regulatory principle, under cost based
15 regulatory principles, should this Commission try to
16 induce them by deviating from cost based regulation for
17 BP's benefit?

18 A. No.

19 Q. Do you think that this Commission should be
20 involved in any way with a company trying to hold equity
21 hostage to get a higher rate?

22 A. No, I do not.

23 Q. Do you think that there is any justification
24 at all for any commission to bail out companies that
25 have \$116 Billion of book equity?

5192

1 MR. MARSHALL: I'm going to object as
2 leading, argumentative, and --

3 MR. BRENA: I withdraw the question, and I
4 have no further questions for this witness.

5 JUDGE WALLIS: Very well.

6 Is there anything further?

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

9 Mr. Brown, thank you for appearing, you are
10 excused from the stand.

11 (Luncheon recess taken at 12:50 p.m.)

12

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

14 (2:00 p.m.)

15

16 JUDGE WALLIS: Let's be back on the record,
17 please, following our noon recess. There is an
18 administrative matter that I would like to ask both
19 Mr. Brena and Mr. Marshall. There is a pending response
20 on the part of the Commission to a motion for sanctions
21 that involves six, actually seven data requests, and I
22 wanted to inquire of counsel, Mr. Brena, have you
23 received that information, and, Mr. Marshall, has the
24 company provided information in response to those data
25 requests, and if so, when was that done?

5193

1 MR. BRENA: The answer is no, there has been
2 nothing, no additional information provided since the
3 motion was heard.

4 MR. MARSHALL: As we understood the order
5 from, at least the proposed order, it had sanctions in
6 there, but our response was, of course, that --

7 JUDGE WALLIS: Yes, we have read the
8 response, and all we're asking right now --

9 MR. MARSHALL: Right, the time with which to
10 compile that would have been so long it would not have
11 been able to have been done during the hearing. So
12 although we have continued, and Mr. Talley is here to
13 respond, we have continued to try to assemble that data,
14 what is clear is that the original representation to the
15 Commission is exactly right, and it's taken an
16 extraordinary amount of time to go painfully through
17 manually to do it, which is why, of course, we thought
18 we had a clarification and agreement that we would
19 provide the green sheets rather than try to do the
20 compiling of the actual information, but Mr. Beaver can
21 speak directly to that.

22 JUDGE WALLIS: All that --

23 MR. BRENA: If we're going to reargue this, I
24 would be happy to do that.

25 JUDGE WALLIS: We're not asking that the

5194

1 matter be reargued, all that we were asking for was a
2 status report.

3 MR. BEAVER: And, Your Honor, the effort has
4 been ongoing. It takes approximately two days to do one
5 month, that's 40 solid days, and we don't have 40 days
6 between when that motion and order came out and today.
7 We've got at this point I think seven months done. And
8 we also brought Mr. Talley here specifically along with
9 a group of green sheets so we could actually go through
10 exactly what has to be done.

11 JUDGE WALLIS: All that we were asking for
12 was a status report.

13 MR. MARSHALL: And we could have Mr. Talley
14 give the specifics on where we are on that material too.

15 JUDGE WALLIS: I don't believe that will be
16 necessary.

17 Mr. Grasso has returned to the stand, and in
18 conjunction with his appearance we have three additional
19 documents at this point. We have a document entitled
20 FERC Index Filing consisting of 17 pages. That is
21 Tesoro's response to Bench Request Number 2. In
22 addition, we have two documents relating to Commission
23 Bench Request Number 3, which is related to the FERC
24 rule makings. The numbers are as follows. The FERC
25 Index Filings are 2418 for identification, and the

5195

1 notice of proposed rule making of July 27, 2000, is 2419
2 for identification. Finally, Exhibit 2420 for
3 identification is the final rule 18 CFR parts 352, 357,
4 and 385 dated December 13, 2000.

5 So, Mr. Brena, is my recollection correct
6 that we have completed the additional direct or
7 surrebuttal examination of this witness and commissioner
8 questions, and the witness is now available for cross?

9 MR. BRENA: Yes, Your Honor.

10 JUDGE WALLIS: Very well.

11 Mr. Marshall, do you want to lead off on
12 this?

13 MR. MARSHALL: Yes, thank you.

14 JUDGE WALLIS: Please proceed.

15

16 Whereupon,

17

GARY GRASSO,

18 having been previously duly sworn, was called as a
19 witness herein and was examined and testified as
20 follows:

21

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

22

BY MR. MARSHALL:

23

Q. Mr. Grasso, one of the exhibits we have just

24

now marked is the exhibit dealing with order 620. I

25

believe that's Exhibit 2419.

5196

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. And were you here for the testimony of George
5 Ganz?

6 A. Yes, I was.

7 Q. And you reviewed his direct or his rebuttal
8 testimony, his pre-filed rebuttal testimony?

9 A. Earlier, yes.

10 Q. Do you happen to have a copy of that with
11 you?

12 A. No, I don't.

13 Q. Okay. I'm going to hand you what's been
14 marked as Exhibit 1101-T and ask you to turn to page 5.

15 A. You have it open.

16 Q. Do you see where I have marked on the side
17 the question and answer?

18 A. Lines 9 through 14.

19 Q. Yes. And in Mr. Ganz's testimony, did he
20 identify this order 620 and state that:

21 In a recent rule making proceeding, the
22 FERC updated the USOA to be more
23 consistent with GAAP but denied an oil
24 company oil pipeline industry initiative
25 to shift to GAAP financial statements.

5197

1 Do you see that?

2 A. Yes, I do.

3 Q. And earlier I thought this might have been in
4 the record already actually, the exhibit, but I don't
5 believe the exhibit was. It was just the reference to
6 this order 620.

7 With regard, shifting gears, with regard to
8 the indexation alternatives that FERC has available to
9 it now since the I believe it was in the 1992 Energy
10 Policy Act that Congress directed the FERC to come up
11 with a more simplified way of oil pipeline regulation.

12 A. Correct.

13 Q. And in connection with that, did FERC
14 actually issue an order that created the index
15 alternative method; do you remember what order that is?

16 A. 571 or 561, there's a series of oil pipeline
17 orders.

18 Q. Okay.

19 A. So it's 571 or -- which was alternatives cost
20 of service rate making.

21 Q. And that was FERC's response to the
22 congressional mandate to provide a simplified
23 alternative to oil pipeline rate regulation, correct?

24 A. Yes.

25 Q. And in that order, FERC requires all

5198

1 interstate shippers, all interstate pipeline companies,
2 to actually file each year in accordance with the
3 producer price index formula what their rates would be,
4 and they must file if it would require a rate decrease,
5 and they have an election to file if it would cause an
6 increase. Is that roughly correct?

7 A. I think I said that yesterday as well.

8 Q. So anybody familiar with the FERC orders and
9 with the legislation and the history of that would know
10 that that's a requirement for all interstate shippers,
11 correct?

12 A. Interstate pipelines?

13 Q. Right, interstate oil, excuse me, interstate
14 oil pipeline companies.

15 A. That is correct.

16 Q. And if -- and apparently there aren't
17 alternatives on indexation or market rates here in
18 Washington state at this moment, are there, or do you
19 know?

20 MR. TROTTER: Objection.

21 MR. MARSHALL: I will withdraw the question.

22 BY MR. MARSHALL:

23 Q. If there is a requirement for all interstate
24 pipeline companies to file, then the filings that you
25 have here, of course, are a matter of open knowledge. I

5199

1 mean people would know that you could look and find
2 filings at least when rates are decreased, correct?

3 A. That's correct.

4 Q. Because the decreases are mandatory?

5 A. Absolutely.

6 Q. And you found that Olympic did file the
7 mandatory decreases and sometimes the increases at the
8 FERC in response to that legislation order, correct?

9 A. As I fully expected.

10 Q. Right. And does that have an impact on the
11 FASB 71 issue on the accounting, or is that something
12 beyond your area?

13 A. I would not even want to address that. The
14 indexing methodology was put in place once the -- within
15 the time period after existing rates had -- 1992 were
16 deemed just and reasonable, which means that they were
17 cost based, and the index was applied to the original
18 cost based rate. So you're adjusting for inflation, and
19 to the extent how that affects FASB, I have no opinion.

20 Q. Now in your resume', which I believe is
21 attached, I would like you to turn to page 5 of your
22 resume' which is attached to your May 13th testimony.

23 A. Sure.

24 Q. Do you want to turn to that a moment.

25 A. I'm there.

5200

1 Q. You have been involved in a number of
2 proceedings including the Trans Alaska Pipeline System
3 rate case before?

4 A. Yes, I have.

5 Q. And you worked for Mr. Brena on that, for
6 Tesoro on that?

7 A. Yes, I did.

8 Q. And at page 5 of your resume', do you see
9 some other Alaska proceedings too, the Cook Inlet
10 Pipeline Company and Kenai Pipeline Company proceedings?

11 A. Yes.

12 Q. The Kenai Pipeline Company proceedings, is
13 that the same proceeding that we were talking about with
14 Mr. Brown in reviewing the order here yesterday and
15 today from the Kenai Pipeline Company case?

16 A. I'm hesitating because there are a couple of
17 cases, and it's about ten years ago. It is the last
18 case that Kenai had. I think that might have been the
19 1992 case.

20 Q. So that case that we had, that long one that
21 was dated in 1992, that was the case that you worked on
22 before the Alaska Public Utilities Commission?

23 A. Subject to check.

24 Q. And that was in Exhibit 2312. Did you take a
25 look at Exhibit 2312 yesterday?

5201

1 A. Not really.

2 Q. Or today?

3 A. No.

4 Q. Now you indicate in your resume', and I will

5 just read from it, this is in reference to the Cook

6 Inlet Pipeline Company and the Kenai Pipeline Company

7 case:

8 The client prevailed in both instances,

9 obtained lower rates than those on file

10 prior to the filing the rate increases,

11 and eventually purchased Kenai Pipeline

12 from Chevron in lieu of substantial

13 refunds.

14 Do you see that?

15 A. Yes.

16 Q. So Chevron owned the Kenai Pipeline prior to

17 the case?

18 A. I believe so, yes.

19 Q. And during the case?

20 A. Yes.

21 Q. And then the client in this case is Tesoro;

22 is that correct?

23 A. That's correct.

24 Q. So this sentence means Tesoro purchased the

25 Kenai Pipeline from Chevron in lieu of the substantial

5202

1 refunds; is that correct?

2 A. That was my interpretation. They purchased
3 -- they did purchase the pipeline, and the case was in,
4 boy, I really don't want to go back that far and say
5 where the case was at that point.

6 Q. Now were all of these Alaska proceedings that
7 you have listed on your resume' for Tesoro and
8 Mr. Brena?

9 A. Yes, they were.

10 Q. How many cases in total have you worked on
11 for Tesoro and Mr. Brena in your career?

12 A. Those and this one.

13 Q. And I asked questions of Mr. Brown earlier
14 today, how much time have you spent on this case since
15 you were hired, both at the FERC and here at the WUTC?

16 A. Quite a bit of time.

17 Q. What is your hourly rate?

18 A. \$195.

19 Q. And how much have you billed to date?

20 MR. BRENA: Your Honor, I think that I'm
21 going to object to this line of questions. I didn't say
22 anything with regard to the last questions. When it
23 came time to review the salaries for the public service
24 company whose rates are at issue, we heard strenuous
25 objections even when it had to do with the salaries by

5203

1 category, and now he's inquiring into individual amounts
2 now, so I object to this as irrelevant.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: With any witness on the stand,
5 the compensation being paid, the interest the client and
6 the witness have in it is appropriate cross-examination.

7 MR. BRENA: Mr. Batch refused to disclose his
8 salary to me.

9 MR. MARSHALL: In particular because
10 Mr. Brown raised the issue about what the appropriate
11 amount is for a regulatory amount, this is also doubly
12 relevant. But in any event, a witness, particularly an
13 expert witness, is always in court allowed to respond to
14 questions about how much the witness is being paid.

15 JUDGE WALLIS: The question is allowed.

16 A. I really don't know, because I'm not in
17 charge of the billing department. I mean I can give you
18 a general idea. And over what period?

19 BY MR. MARSHALL:

20 Q. Since starting work on this Olympic case,
21 whether at the FERC or the WUTC, what in total do you
22 believe you or your firm has billed on that matter?

23 A. In the approximately 12 months, probably
24 around \$150,000.

25 Q. And have you material or amounts that you

5204

1 have yet to bill that have been incurred in the last
2 month?

3 A. Well, that would be true, yeah.

4 Q. And how much additional beyond the \$150,000
5 do you have yet to bill?

6 A. Probably around \$35,000, though don't quote
7 me on that. That's a general ball park.

8 MR. BRENA: That's all we're going to pay
9 him.

10 THE WITNESS: For this week.

11 MR. BRENA: Yeah.

12 BY MR. MARSHALL:

13 Q. In this case involving the Kenai Pipeline
14 where Tesoro bought the Kenai pipeline from Chevron in
15 lieu of the refunds, was there any extra compensation
16 paid to you or your firm as a result of that?

17 MR. BRENA: Objection, scope and relevance.

18 JUDGE WALLIS: Mr. Marshall.

19 MR. MARSHALL: Same interest background
20 question for experts to find out what their interest
21 might be. In fact, if contingency fees are permitted to
22 an expert, then you're allowed to inquire into that. If
23 they received a bonus due to good results or any kind of
24 results, we're entitled to inquire into that.

25 MR. BRENA: I agree with regard to this

5205

1 proceeding. We're talking about his compensation for a
2 case ten years ago here. I want to put this in its
3 proper perspective.

4 JUDGE WALLIS: I think that's beyond the
5 proper scope, Mr. Marshall.

6 BY MR. MARSHALL:

7 Q. In the interim case, you testified in answer
8 to some questions that I had about the potential for
9 refunds and whether you had done any analysis on whether
10 any refunds would be due from the FERC in your opinion;
11 do you recall that?

12 MR. BRENA: Objection, now we're
13 cross-examining this witness in the interim case again.
14 I, you know, call me old fashioned, I would like him to
15 ask questions on this witness's testimony.

16 JUDGE WALLIS: Mr. Marshall.

17 MR. MARSHALL: One of the puzzling things to
18 us is how much time has been devoted to, and we will do
19 the briefing on this, but I do think that it's
20 appropriate cross-examination to ask what other
21 potential objectives there are for a party in this case
22 through the witnesses that they're advancing. And the
23 Kenai Pipeline case, we found that the objective that
24 was achieved and is in the resume' of this witness was
25 that as a result of the proceedings, Tesoro acquired the

5206

1 pipeline from the prior owner, and that was a result.
2 I'm simply trying to inquire as to whether -- and that
3 was due to the substantial refunds that were due.

4 When I asked this witness back in the interim
5 case whether this witness or the other two Tesoro
6 witnesses had formed any opinions, and this was as of
7 January 16th, about whether any refunds would be due,
8 they all claimed not to have any opinion whatsoever
9 about it. Now I do think that the potential for refunds
10 here is a driving force, a motivating factor behind the
11 testimony of these witnesses in this case. I think it
12 goes to motive, I think it goes to the credibility of
13 the experts that have been promoted, and it will be part
14 of the briefing that we will do.

15 MR. BRENA: If he wants to explore that with
16 regard to this case, I have no objection, but he's not.
17 I mean he is exploring the interim case. He's not -- I
18 mean let him phrase his questions in terms of this
19 witness's testimony in this case.

20 JUDGE WALLIS: Was your question,
21 Mr. Marshall, of a preliminary nature?

22 MR. MARSHALL: It was.

23 JUDGE WALLIS: Please proceed.

24 BY MR. MARSHALL:

25 Q. Do you recall the testimony you gave in the

5207

1 interim case that you had not formed any opinion
2 whatsoever about --

3 A. That's correct.

4 Q. -- potential refund liability?

5 A. That's correct.

6 Q. At what point in time following January 16
7 did you form any opinion about potential refund
8 liability at FERC or here?

9 A. I believe it's when I completed my cost of
10 service run for my testimony, and it showed that rates
11 would drop.

12 Q. You had done no preliminary analysis from the
13 original time that you began work on this case?

14 A. Without the establishment of a rate, I have
15 to say that's correct.

16 Q. You began working on this in May of last
17 year?

18 A. No. In May of last year you filed the case
19 on May 30th of 2001.

20 Q. So you started working in June of last year;
21 is that correct?

22 A. It may have been late June.

23 Q. In all that time from June until January 16,
24 you had formed absolutely no opinion whatsoever about
25 the proper rates for Olympic at the FERC or here; is

5208

1 that correct; is that your testimony?

2 A. Since we couldn't get the proper information
3 out of you, we could not put together the proper cost of
4 service to even begin the analysis.

5 Q. Did you do any analysis of Olympic's FERC
6 case submitted in May?

7 A. That was the case that was dismissed? I'm
8 not really sure. I really have to take a look at what
9 was filed.

10 Q. Then there's --

11 A. And it -- I mean that's -- I put that out of
12 my mind, let's put it that way.

13 Q. Then there was a July 30th filing at the
14 FERC; do you remember that?

15 A. That's right.

16 Q. And did you do any analysis on that?

17 A. I probably did an analysis that was
18 attorney-client privileged at the request of Mr. Brena.
19 So what kind of analysis?

20 Q. Analysis on the potential for any refund at
21 all, which would have, of course, included whether or
22 not you believe that the case filed by Olympic in your
23 opinion had any merit whatsoever?

24 MR. BRENA: Compound question.

25 A. I have to think I put together some runs for

5209

1 him.

2 Q. Some runs, what do you mean by runs?

3 A. Cost of service runs, potential cost of
4 service runs based on certainly not on the hard
5 documents we needed, but obviously everybody would do a
6 I think an analysis like that, but I don't really
7 remember the specific things, but they would have been
8 for him.

9 Q. And do you recall any of the outcomes of any
10 of the runs, whether any of the runs that you did showed
11 that there would be any increase due to Olympic under
12 your assumptions in your runs?

13 MR. BRENA: Your Honor, I believe that any
14 earlier runs would be protected under the
15 attorney-client privilege and as attorney work product.
16 But beyond that, we have gone through Kenai, we have
17 gone through the dismissed case, we have gone through
18 the interim case, and we have gone through the FERC
19 filing, and I still don't-- I mean we're here to set a
20 rate in the state of Washington for Olympic, and I'm at
21 a complete loss for what this line of cross-examination
22 is driven to. If he wants to know if the witness has a
23 contingency fee in refunds, ask him. I mean but I don't
24 -- I'm -- so relevancy and scope. And I would renew my
25 objection, there doesn't appear to be anything

5210

1 preliminary about that prior question, it appears that
2 that is the line of questioning.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: I think this now goes to the
5 credibility of the witness, who said he had formed no
6 opinions whatsoever under oath in this chamber on
7 January 16 about potential refund liability. Now he's
8 said to have actually done runs, and I would like to
9 know what the outcome of the runs were before January
10 16th that he has now stated that he has done.

11 MR. BRENA: I don't think it goes to the
12 credibility of the witness at all. Until you get the
13 right numbers to put into the right model, you can't
14 form a conclusion about what the refund liability should
15 be, and I think that's what his testimony was. But what
16 he appears to be doing is impeaching his testimony in
17 the interim proceeding. He's not even attempting to
18 impeach his credibility -- I mean so -- I mean this is
19 no more proper than to go back to the Kenai Pipeline
20 company case or some other proceeding that he has been a
21 witness in and start asking him whether or not that
22 testimony was proper. This is just -- this just has
23 nothing to do with what we're here for.

24 (Discussion on the Bench.)

25 JUDGE WALLIS: The objection is sustained.

5211

1 BY MR. MARSHALL:

2 Q. Apart from the runs that you did following
3 July 30th, did you do other runs of data to show what
4 the likely outcome in your opinion would be of Olympic's
5 filings either at the FERC or the WUTC prior to January
6 16th?

7 A. Now when you say July 30th, we did not get
8 your work papers until October, late October, and I
9 stick by what I said, that I was very busy with the
10 interim case, so I may be getting some things mixed up.
11 But I stand by what I said back then in another case.

12 Q. The question is, between July 30th and
13 January 16th, did you do other runs of data to show what
14 the likely outcome would be of the rate proceeding
15 either at the WTC or at the FERC for Olympic?

16 A. No. I did the testimony for the interim
17 case, and that's where I first saw the rate based on the
18 costs that were given that would indicate what the
19 proper rate should be.

20 Q. Did you review Olympic's testimony filed on
21 December 13th?

22 A. Yes, I did.

23 Q. Both at the FERC and here?

24 A. Yes.

25 Q. And when did you review that testimony?

5212

1 A. Over -- during the Christmas holidays. I
2 remember working on my interim testimony New Year's Eve,
3 trying to watch a movie, getting called by Mr. Brena at
4 12:00 in Virginia. And I was thoroughly involved in the
5 interim proceeding and put the FERC testimony aside. As
6 I said, I did the interim proceeding until after that
7 case was well over. Thank you for refreshing my memory.

8 MR. BRENA: Just call his wife if you want to
9 impeach him.

10 THE WITNESS: And ask her who won.

11 BY MR. MARSHALL:

12 Q. Did you have any discussions with any of the
13 other Tesoro witnesses about the outcome of the FERC
14 case or the WTC case before January 16th of this year?

15 A. About the outcome, the outcome wasn't known
16 then.

17 Q. No, about what your opinion was on the likely
18 outcome, what your recommendations were going to be?

19 MR. BRENA: Your Honor, I'm going to renew my
20 objection. He appears to be continuing to try to
21 impeach testimony from the interim proceeding. I can't
22 figure out what else he's doing.

23 JUDGE WALLIS: Mr. Marshall, at this
24 juncture, that does appear to be beyond the purpose of
25 this proceeding, if you can tie that in or bring it up

5213

1 to the testimony that the witness is now presenting.

2 MR. MARSHALL: Certainly. Actually, I am
3 trying to ask, because I do think that impeaching a
4 witness on a related matter is permissible
5 cross-examination. It doesn't have to be exactly in
6 this case, and if there's enough of a connection because
7 of this issue of refund in this case to merit not only
8 getting the runs from Mr. Grasso, but asking him the
9 questions about when he formed his opinions. There's
10 also a number of other issues that we will be addressing
11 in the briefing regarding the timing of the various
12 motions that Tesoro has made. I think there's an
13 element here that deserves to be explored, and it does
14 go to the credibility of the witness. Certainly if we
15 were to get a stipulation from Mr. Brena that we have
16 impeached Mr. Grasso on his testimony in January, that
17 would be a very relevant issue for any fact finding body
18 to know. Is a witness on the stand impeached. That is
19 a cross-examination, and it's appropriate in court.
20 It's certainly appropriate when it's in a related
21 proceeding.

22 MR. BRENA: I believe that this witness has
23 been asked at least ten times when he formed it and
24 asked several questions. He has indicated that prior to
25 that testimony he did not form a conclusion, he did not

5214

1 have the information, he did not have the information
2 that he needed. It's been asked and answered at least
3 ten times. There's no impeachment whatsoever in my
4 view, and he has gone over this and over this and over
5 this.

6 JUDGE WALLIS: Can the court reporter please
7 read the question back, please.

8 (Record read as requested.)

9 JUDGE WALLIS: It does appear to me to be
10 repetitive, Mr. Marshall.

11 MR. MARSHALL: Well, Your Honor, this witness
12 has testified he did do runs, he did do data runs. And
13 Mr. Brena has raised an attorney-client objection to
14 that. It's clear I think to me at least that this
15 witness has formed some opinions about the likely
16 outcome of the proceeding, and I do believe that this is
17 relevant. I don't think he can keep those runs, once
18 he's given testimony here about what his ultimate
19 conclusions are, he can keep out prior work product that
20 he has developed to show where he's headed.

21 CHAIRWOMAN SHOWALTER: Mr. Marshall, is your
22 ultimate goal a discovery one to get some runs, or are
23 you saying that because an expert does some level of
24 analysis that therefore that he must have formed an
25 opinion of the kind of opinion that you give as a

5215

1 witness under oath in this proceeding? Is that your
2 basis for impeachment, or is this a discovery request?

3 MR. MARSHALL: Well, this didn't start out as
4 a discovery request, because I had no way of knowing
5 that the witness had done any runs prior to January
6 16th. I did ask him a preliminary in the interim rate
7 case, whether he had formed any opinions whatsoever
8 about this issue, and he said no. Now if he has done
9 earlier runs to form opinions, then I believe that that
10 does go to the credibility of the witness.

11 Now the only way I suppose now to show
12 whether he has or he hasn't, and this is where I think
13 Mr. Brena raised his objection, would be to ask for
14 those work papers. The work papers of all the witnesses
15 should have been entirely produced. Once you put in
16 your opinion, once you file your testimony and your work
17 papers, you can't then try to segregate out prior work
18 product that you have done on the same matter. And so I
19 don't believe that the objection of Mr. Brena to try to
20 preserve the attorney-client privilege on the work
21 papers is valid.

22 And I was -- I know I -- and I understood the
23 ruling from the Administrative Law Judge that I was not
24 to go into that area any further. I was trying to
25 explore this last question, whether he had had other

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1 discussions with other witnesses. I do believe that
2 this is a very critical inquiry, because as we know, now
3 at the FERC there is a potential refund liability out
4 there that exceeds the cash on hand of Olympic. Olympic
5 has less cash on hand than the potential refund
6 liability for the FERC refunds alone, and this witness
7 has put this all into play through his resume' showing
8 what happened in an earlier case through the Kenai case.

9 So there is several linkages here. One is
10 work product, one is the credibility of the witness, and
11 the third is simply to now to get prior work papers that
12 apparently should have been produced in response to our
13 data request that haven't been produced.

14 JUDGE WALLIS: Mr. Marshall, if it is true,
15 just for the sake of discussion, that one of the parties
16 to this proceeding has a motive that is not directly
17 related to the result, how is that relevant to the
18 Commission's review of the evidence on the issues that
19 the Commission is responsible for deciding?

20 MR. MARSHALL: The rules of evidence in this
21 state, rule 6.11(b) on scope of cross-examination,
22 states:

23 Cross-examination should be limited to
24 the subject matter of the direct
25 examination and matters affecting the

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1 credibility of the witness.

2 The credibility of the witness in terms of
3 what he has testified to this very Commission in a part
4 of the proceeding under which he is still continuing to
5 be under oath I believe is absolutely proper
6 cross-examination. The witness said he did not have an
7 opinion whatsoever in January. It now turns out that he
8 did runs, and this is a -- it's not a side issue. This
9 is an issue about potential refund liability that has a
10 potentially dramatic effect on Olympic, and this witness
11 is now trying to say, I'm sorry, you can't have these
12 prior runs because they're part of attorney-client work
13 product.

14 MR. BRENA: Well, covered a lot of ground
15 here, but this entire effort is an attempt -- he brought
16 forward testimony from the interim proceeding that he is
17 now attempting to impeach. His opportunity to impeach
18 that testimony was then with regard to that testimony,
19 not now, so it's completely inappropriate to try and
20 impeach his testimony there now. I mean just like if
21 they come in for the next rate case, you know, so that's
22 an improper use of it.

23 Secondly, it makes no difference at all to
24 setting this rate what the FERC refund obligation is.
25 That is a FERC matter, and the fact that how that

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1 relates to their cash on hand, that is a FERC matter,
2 and so that has nothing to do with this proceeding.

3 Secondly, this witness has testified already
4 that these weren't work papers for the testimony that he
5 is sponsoring here. They were preliminary runs before
6 he even got the data, by the way, if you ask him, or
7 capital structure or rate of return information from
8 Mr. Hanley, before he had all the inputs necessary to
9 even form his testimony. And the heart of it is, I
10 think Chairwoman Showalter went to it, at what point do
11 you form an opinion that is verifiable under oath with
12 regard to the refund obligations. And what this witness
13 has said several times, and nothing has undermined that,
14 that he did not form an opinion yet, nor could he, nor
15 can you form an opinion until you get the right
16 discovery to put into your model and the right capital
17 structure to apply it to. So, you know, so to the
18 degree that it's even a discovery issue, these are not
19 work papers, so.

20 I mean and I'm not even sure what -- if we're
21 -- if this is a discovery request, if this is a motion
22 to compel, but at some point I think we ought to ask
23 this witness some questions about the testimony that
24 he's here to give, and this is all a side show.

25 MR. TROTTER: Your Honor, if I might just

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1 comment briefly. Assuming there were model runs done a
2 long time ago, it's my understanding that work papers is
3 what is supporting your current testimony. The Staff
4 does over time many different analyses, rough drafts of
5 things and so on, that aren't work papers. They have
6 quoted the rule of evidence correctly. Certainly you
7 have discretion in this regard. And I guess I would
8 agree that doing a run and forming an opinion about it
9 are two different things. And that doesn't mean he
10 didn't form an opinion, but I wouldn't necessarily infer
11 that he did just based on doing a run. But my main
12 focus here is that I don't think we have ever supplied a
13 work paper called a work paper of something that was
14 done before that it did not support the case that was
15 actually filed. So if that helps, I will end there.

16 (Discussion on the Bench.)

17 JUDGE WALLIS: We have reviewed the arguments
18 of the parties and believe that the objection should be
19 sustained.

20 BY MR. MARSHALL:

21 Q. Mr. Grasso, in your testimony, you have gone
22 back in time to look at different periods and make
23 different calculations on those periods; generally
24 speaking, is that right?

25 A. Yes.

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1 Q. Now have you gone back in time to adjust
2 retrospectively for known risks that have occurred since
3 those filings?

4 Let me ask it this way, you look puzzled.

5 A. Yeah.

6 Q. Any time you set a rate for a regulated
7 company, you have to assess what the financial and
8 operational risks are in order to set up proper rate of
9 return for the company, for the regulated company,
10 correct?

11 A. Correct.

12 Q. And if you could see far enough in advance,
13 you would know, for example, to set aside insurance
14 reserves, buy more insurance, do other things to manage
15 risk. That would be one thing you could do if you could
16 see far enough in the future.

17 A. Agreed.

18 Q. For example, if we could tell there would be
19 an earthquake here tomorrow, you know, and you don't
20 have earthquake insurance, you would go out and buy
21 earthquake insurance if you could, if you could get down
22 there quickly.

23 A. Assuming the insurers don't know the same
24 information.

25 Q. Right. But let's suppose you by virtue of a

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1 time machine go ahead in the future, and you can see
2 that this risk has happened, and then now you're
3 transported back, you would take different measures, and
4 you would deal with that risk in some fashion, correct?

5 A. I would say that's correct. I would also say
6 that I didn't do any kind of risk assessment.

7 Q. Right, that was going to be my point. If you
8 go back and you start to look at rates retrospectively
9 and you're looking at it from the perspective of the
10 future, don't you have to take into account all known
11 events, including all known risks that have transpired?
12 Isn't that a fair thing to do? If you're going to go
13 back and actually retrospectively look at rates,
14 shouldn't you take into account all knowledge rather
15 than selective knowledge?

16 A. I did not go back and look at rates. I
17 looked at what was collected through revenue versus your
18 own numbers from your 154-B type filing, and I inserted
19 your own costs from the Form 6.

20 Q. But that doesn't --

21 A. That's all I did. That's not assessing a
22 rate.

23 Q. But doesn't that have to do with the amount
24 of return on equity, which is a function of risk, right?

25 A. Yes. And by using your model in your

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1 assumptions, the real rate of return that you used was a
2 test period of the current period going back.

3 Q. Now if you --

4 A. To 1983.

5 Q. If you want to go back and do retrospective
6 rate making, one of the big components is a rate of
7 return which is related to risk. And in order to come
8 to a conclusion that there is an overcollection, you
9 have to assess whether there has been a proper rate set
10 in the past, right?

11 A. You're characterizing what I did as
12 retroactive rate making or retrospective rate making. I
13 just did a comparison of -- illustrative comparison of
14 what was there under whatever rates were in place, the
15 gross revenues collected against the cost of service,
16 and just making a demonstration. It wasn't retroactive
17 rate making. We're not trying to reduce any rate for
18 those types of analyses. They're illustrative only.

19 Q. Now with perfect hindsight, you could go
20 back, and you could set rates at exactly the level that
21 would cover what your costs are, because you would know
22 them to the penny, and what your risks are, because you
23 would know exactly what kind of risks you encountered if
24 you had that kind of ability, that kind of foresight.

25 A. Yes, and using your analysis about looking

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1 forward into the future, you could set rates which
2 recover those costs as well.

3 MR. MARSHALL: Now at this time, there was
4 some questions about SeaTac, Your Honor, and what we
5 would like to do with regard to what this witness had
6 said yesterday, we would like to make an offer of proof
7 through Ms. Hammer about what occurred on that specific
8 item that was testified to. She is here, she's
9 available to explain how that was handled. We believe
10 that what her testimony would show is first of all it
11 didn't have any impact on the rates in this case.
12 Second of all, she was the one who uncovered that issue.
13 Third, that issue was uncovered with respect to an
14 internal report and not on the financial books and
15 records of the company. So because we were surprised by
16 what this witness had to say about that issue yesterday,
17 we would like the opportunity to present Ms. Hammer on
18 that very limited issue, on the SeaTac testimony that
19 Mr. Grasso gave.

20 MR. BRENA: Your Honor, the time for them to
21 put on their direct case has long since passed. In
22 terms of surprise, there was no surprise. If you recall
23 the witness's testimony, he even took you to the line in
24 Mr. Collins' work paper where he indicated that the
25 SeaTac terminal, that there was a CWIP adjustment with

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1 regard to that, so Mr. Collins made the adjustment in
2 his model, he made the adjustment to CWIP at the time,
3 there is no possible surprise that could have occurred
4 from this witness's testimony that SeaTac went into
5 CWIP, because Collins in his own work papers took it out
6 of CWIP. So the concept of surprise and the need to put
7 somebody on the stand to demonstrate this is completely
8 inappropriate.

9 I would also like to point out that there was
10 never a representation made that that mistake resulted
11 in higher or lower rates. He took you right to the
12 Collins work paper where Mr. Collins eliminated that
13 mistake on their financial reporting for rate purposes.
14 So he not only didn't say that there was a rate impact,
15 but he showed you where there wasn't a rate impact as a
16 result of that financial mistake on the records. So
17 there is no surprise, there is no confusion in the
18 record, and there is no prejudice to them, and there is
19 no impact on the rate. Now there is just no -- so I
20 completely object to this.

21 JUDGE WALLIS: Let me ask if other parties
22 have observations on this issue?

23 MR. STOKES: I would join in the objection,
24 Your Honor.

25 MR. TROTTER: Well, overall it's, I don't

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1 know enough to support or not, but I do -- it is my
2 understanding that the company did acknowledge the
3 mistake and did remove the impact of it. I don't think
4 anyone has testified as to who caught the mistake or
5 not, so I'm not sure whether that particularly matters.
6 The third point regarding whether it was recorded on the
7 financial records or not, I'm not sure we have had
8 specific testimony that it was or was not. It showed up
9 in the work papers, and I do believe the representation
10 was that these figures were taken off of monthly balance
11 sheets. So that at least I guess there's an implication
12 that it was on the monthly balance sheets, but whether
13 it was put on permanent financial records, I'm not sure
14 that's a material issue or not. So I'm not sure this
15 information adds much to the record based on my
16 understanding of it.

17 MR. BRENA: I would like to add one
18 additional point. It's 3:00 in the afternoon. This is
19 supposed to be the last day of hearing. If they
20 intended to do this, they knew it this morning at 8:00.
21 You know, this kind of last, you know, I'm trying to get
22 my witnesses off the stand, I'm trying to get them cross
23 examined on their testimony, and I'm trying to go home.
24 Now if they intend to spend this last day in these
25 different side shows, that shouldn't be allowed. And

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1 specifically they shouldn't sit here for eight hours
2 knowing that they're going to do this because of
3 something that happened yesterday and then spring it at
4 3:00 in the afternoon. I would like to go home. I
5 would like for this hearing to end. I would like for
6 this witness to be cross examined on his testimony, and
7 then I would like my next witness to be cross examined
8 on his testimony, and the same courtesies we afforded
9 them, and then I would like to go home.

10 JUDGE WALLIS: Mr. Marshall, could you
11 indicate when the company determined to offer additional
12 evidence?

13 MR. MARSHALL: Over the noon hour, Your
14 Honor, when we analyzed this and had the discussion.
15 Neither -- Ms. Hammer was not available here yesterday
16 to hear Mr. Grasso and his testimony. We had to relate
17 it to her, explain what the issue was. It was then that
18 she told us, (a), she was the one who discovered the
19 issue, (b), it wasn't in the case, if anything it was in
20 some work papers, it was discovered before it got in the
21 case. And finally, it wasn't an issue about
22 compromising the financial records of the company, as
23 was implied last night. It was an issue of an internal
24 reporting that did not make it onto the books and
25 records.

1 This whole issue about SeaTac and the
2 recording of this is an issue to cast aspersions on the
3 financial records of the company, and we just wanted to
4 make sure we clarified that. Now at least Mr. Brena has
5 said it did not make its way into this case at all, so
6 part of what we were trying to establish here through
7 Ms. Hammer he has now admitted and conceded, and that's
8 well and good. But if the impression still is on behalf
9 of the commissioners that somehow this undermines the
10 credibility because of the work paper issue, we would
11 like the opportunity to address it. If the Commission
12 doesn't feel that this is a big issue, and obviously we
13 do not, then that's fine. We could pass on, and we will
14 be concluded with this witness's testimony.

15 MR. BRENA: Your Honor, I did not admit or
16 concede anything. I just repeated what this witness's
17 testimony was yesterday, that Mr. Collins had
18 specifically adjusted in the rate case in his column for
19 the CWIP to take SeaTac out. What that means is it's
20 not in the rate case.

21 (Discussion on the Bench.)

22 JUDGE WALLIS: The offer of proof will be
23 denied.

24 MR. MARSHALL: Those are all the questions we
25 have of Mr. Grasso.

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1 JUDGE WALLIS: Mr. Stokes, you have none?

2 MR. STOKES: We have no questions, Your

3 Honor.

4 JUDGE WALLIS: Commission Staff?

5 MR. TROTTER: Yes.

6

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

8 BY MR. TROTTER:

9 Q. Just a couple questions, Mr. Grasso. You
10 were just asked some questions regarding rate of return,
11 are you a rate of return expert?

12 A. No, I am not.

13 Q. Is it your general understanding that the
14 risks facing a company are embedded in the rate of
15 return that an investor expects at a point in time?

16 A. Yes, I do.

17 Q. Would you turn to your Exhibit 2413.

18 A. I'm there.

19 Q. Okay. And I'm not quite sure what this is
20 intended to portray, so let me ask you some questions.
21 Am I correct that what you have reported, and let's just
22 pick the 1984 column for right now, you are showing of
23 the various filings that Olympic has made through time,
24 they reported their 1984 rate base in the amounts shown
25 in the 1984 rate base column?

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1 A. That's correct.

2 Q. And under the FERC methodology, is deferred
3 return calculated based on a calculation from years
4 prior to the base year?

5 A. Yes, it is.

6 Q. And so in the 1995 filing, the first line,
7 the company would have calculated the 1984 rate base for
8 purposes of calculating the deferred return associated
9 with 1984?

10 A. Please -- I didn't hear the last part of
11 that, I'm sorry.

12 Q. The company would have calculated the 1984
13 rate base in the 1995 rate case, rate filing, excuse me,
14 there wasn't a case, in order to calculate the deferred
15 return associated with 1984.

16 A. That's correct.

17 Q. And you didn't calculate on this exhibit what
18 that deferred return was for 1984, right?

19 A. No, I just pulled it off of the filings which
20 are behind this.

21 Q. Okay. You just pulled the rate base figure
22 off?

23 A. That's right.

24 Q. Okay. And so the company's rate filing in
25 1984 would have calculated the deferred return

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1 applicable -- start over.

2 The company's rate filing in 1995 would have
3 calculated deferred return associated with 1984 using a
4 rate base of \$68,380,000, right?

5 A. That's right, well, the deferred return would
6 have been -- is embedded in that cost.

7 Q. Right.

8 A. In that rate base.

9 Q. Right. And then let's move on to 1998, the
10 December '98 filing. In that filing, according to this
11 exhibit, the company in computing the deferred return
12 associated with 1984 used a rate base of \$67,293,000; is
13 that right?

14 A. That is correct.

15 Q. And that would have generated a different
16 deferred return for 1984 than the amount in the 1995
17 case?

18 A. That is correct. The rate base would change
19 because assumptions are applied retroactively from 1984
20 to the date of the filing, 1999.

21 Q. Now let's move over to the 1994 column, and
22 again comparing the 1995 filing to the 1998 filing, the
23 rate base for 1994 is over 3. -- it's almost \$3.2
24 Million higher in '98, the '98 filing, than in '95,
25 correct?

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1 A. That is correct, that's what their filing
2 shows.

3 Q. And so in calculating the deferred return for
4 1994 in the 1998 filing, it would be based on a higher
5 level of rate base?

6 A. Yes.

7 MR. TROTTER: That's all I have, thank you.

8 JUDGE WALLIS: Commissioner questions.

9

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

11 BY CHAIRWOMAN SHOWALTER:

12 Q. Well, my questions revolve around that
13 Exhibit 2413 as well, but I think you have mostly
14 answered them. With respect to the filings, I am a
15 little mixed up as to what has been filed here and what
16 hasn't been, but you've got the July 1 filing. Was
17 there a filing here July 1?

18 A. No, there was not.

19 Q. Okay. So your title up here called WUTC
20 filings really should be /FERC filings?

21 A. That's correct, because I believe that the
22 company filed the same rate increase in October here,
23 which would have been based on the July 31st filing at
24 the FERC.

25 Q. All right. So the July 1 FERC filing is the

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1 same as an unstated October UTC filing, or is that the
2 same as the December 2001?

3 A. The October.

4 Q. The October, so there's -- if I put July 1
5 FERC/October UTC, that's the same information?

6 A. That's correct.

7 MR. BRENA: Your Honor, if you just took out
8 July and put in October, then that would reflect all of
9 the WUTC filings, correct?

10 THE WITNESS: It would -- I do not believe
11 they actually filed the physical filing in October.
12 They filed the rate, which they said was the same at the
13 FERC.

14 CHAIRWOMAN SHOWALTER: All right.

15 THE WITNESS: That's why I used July.

16 CHAIRWOMAN SHOWALTER: I think it's clear
17 enough, but your method was a lot simpler than mine.

18 BY CHAIRWOMAN SHOWALTER:

19 Q. I take it from your testimony you are
20 familiar with not only FERC methodology, but what
21 Olympic filed with the FERC in the last year or so. Am
22 I right? Are you representing or assisting Tesoro in
23 the FERC proceeding as well as this proceeding?

24 A. Yes, I am.

25 Q. All right. In the most recent filing at

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1 FERC, did Ms. Zabransky supply testimony?

2 A. No, in fact, only four witnesses that are in
3 this proceeding, I think it's four, are in the FERC
4 proceeding, maybe it's five.

5 Q. Okay. You were asked a few questions about
6 risk, and Mr. Marshall asked you a question about
7 looking backwards and asked, wouldn't you then know the
8 risks. This is perhaps semantics, but isn't risk only a
9 forward looking concept, that is, after the fact, events
10 are certain, but only before the fact do you face risks?

11 A. I would agree with that.

12 Q. So that in a rate case, risk may be assessed
13 and a rate based on that prospective risk established,
14 at which time the risk does or doesn't play out the way
15 it was once anticipated; is that correct?

16 A. That's correct, that's my understanding,
17 either it will happen or it won't.

18 Q. Can you give me in very summary form, not the
19 detail, but just labels, subject labels, what you see to
20 be the most significant differences between Tesoro's
21 case or presentation and the Staff case. And if you
22 don't feel qualified to answer, that's fine.

23 A. We're both using DOC methodology, maybe based
24 on different periods. But we do have the Bayview
25 facilities, and I don't think we would agree with the

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1 treatment of the Bayview facilities that the Staff would
2 propose. I think it would either be planned out for
3 future use or in, but they wouldn't get anything for it.
4 Rate of return, of course, and capital structure are the
5 big issues as well.

6 Q. And throughput?

7 A. Throughput, of course.

8 Q. So are those -- I'm looking for the major
9 differences between your cases, the different --

10 A. Yes, I didn't put a side by side comparison
11 in here. Obviously the Staff had not filed yet when we
12 filed our testimony.

13 Q. Right.

14 A. And I haven't really looked at that.

15 Q. All right.

16 A. I know there is an exhibit that was handed
17 out a couple of days ago which listed the various costs
18 of service.

19 CHAIRWOMAN SHOWALTER: That's all the
20 questions I have, thank you.

21 JUDGE WALLIS: Commissioner Oshie.

22 COMMISSIONER OSHIE: No questions.

23 JUDGE WALLIS: Mr. Marshall, do you have any
24 follow-up?

25 MR. MARSHALL: No follow-up.

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1 JUDGE WALLIS: Mr. Trotter.

2 MR. TROTTER: No.

3 JUDGE WALLIS: Mr. Brena.

4

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

6 BY MR. BRENA:

7 Q. I would like to explore with you the
8 Chairwoman's last question. Focusing just on operating
9 expense differences between the Staff and Tesoro, what's
10 the difference in the number between Tesoro and the
11 Staff with regard to total operating expenses?

12 A. I really need to look at that exhibit. I
13 really just don't have the Staff case in mind and the
14 numbers.

15 Q. Which exhibit are you referring to, the one
16 that was --

17 A. The one that was put in that showed the --

18 Q. The one that --

19 A. -- Staff --

20 Q. -- Olympic advanced?

21 A. Yes.

22 MR. TROTTER: Mr. Fox sponsored it.

23 Q. Okay, well --

24 A. You're talking about the level of expenses.

25 Q. Yes. I will have Elaine look for that

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1 exhibit, and I will move on, and I will come back to
2 this in just a minute.

3 All of Olympic's witnesses in the FERC
4 proceeding also appeared in this proceeding, correct?

5 A. Correct.

6 Q. In this proceeding there were just lots more
7 witnesses, correct?

8 A. Correct.

9 Q. But there were not any different -- I mean
10 there is not a witness at FERC that is not also before
11 this Commission?

12 A. That is correct.

13 Q. Now you were asked a series of questions with
14 regard to your overcollection calculation and whether or
15 not that was retroactive rate making. Who was proposing
16 that you go -- that this Commission look to prior
17 periods in order to set future rates?

18 A. I think through -- my Exhibit on 2413 shows
19 that the company through its assumptions and methodology
20 has done just that.

21 Q. And so Tesoro is not suggesting in any way
22 that this Commission in setting proper rates look to
23 prior periods?

24 A. No, we're not.

25 Q. Okay. Your schedule, 2413, there's been

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1 several questions on that and how it's set up and what
2 it means. Could you on a higher level than you
3 discussed AFUDC yesterday, could you explain what the
4 purpose -- why is that exhibit there? What were you
5 intending to show?

6 A. Inconsistency in the use of the federal
7 methodology in the rate filings used to advance the
8 rates at this Commission.

9 Q. Does it also illustrate anything with regard
10 to the use of a TOC?

11 A. When applying these types of assumptions
12 back, you're going to get different answers all the
13 time.

14 Q. And by these kinds of assumptions, you're
15 talking about assumptions that go into a TOC that are
16 not necessary to be made with regard to the DOC?

17 A. Absolutely.

18 Q. Would you amplify your answer further,
19 please?

20 A. If you review the filings, the company's real
21 rate of return has changed for prior periods. Use of
22 certain capital structures to set the starting rate base
23 has changed, amortization methodologies for recovery of
24 AFUDC and deferred earnings have changed, not
25 necessarily at all the plant numbers, but it's the

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1 assumptions that go in to create the deferred return and
2 the AFUDC balances and an amortization of the starting
3 rate base that would be affected every time a change is
4 made retroactively.

5 Q. And those -- everything that you just listed
6 are issues that need to be resolved in resolving what a
7 proper rate should be under a TOC, but those are not
8 issues that need to be resolved with regard to setting
9 rates under a DOC; is that correct?

10 A. No, because you're looking at one period
11 versus now, 19 --

12 JUDGE WALLIS: Mr. Brena, you have handed the
13 witness a document, could you identify what that
14 document is so that the rest of us can follow along.

15 MR. BRENA: Exhibit 1704.

16 BY MR. BRENA:

17 Q. Mr. Grasso, it's my intention to go through
18 these issues. Well, first of all, would you please list
19 in order of priority in terms of magnitude of impact,
20 and taking into consideration the throughput issue
21 because this throughput is not stated on this, would you
22 go through what you think is the most significant
23 difference between Tesoro's position and Staff's
24 position, what you think it would be.

25 A. Well, return on tax because of capital

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1 structure, rates of return.

2 Q. Okay. Let me -- let's do these one at a
3 time, okay. And return in tax, that is because
4 Mr. Wilson used 20% equity and Mr. Hanley used 46%
5 equity, and Mr. Wilson used 9% return on equity and
6 Mr. Hanley used 13%?

7 A. That's correct. That results in
8 approximately \$3 Million more allowed by Tesoro.

9 Q. Okay. Now with regard to whether that's a
10 difference or not between the Staff and Tesoro, and
11 Mr. Hanley will be up before the Chairwoman to ask a
12 question to to see if that is a difference, but do you
13 understand Mr. Hanley's testimony to be that that level
14 of capital structure, the 46%, to be dependent upon the
15 addition of that actual equity by the owner companies?

16 A. Yes, I do.

17 Q. And in the absence of that equity, then
18 Tesoro's recommendation is that they use the actual
19 capital structure, which would be zero?

20 A. That's correct.

21 Q. So this difference that you just pointed
22 out --

23 A. 100% then.

24 Q. This difference that you just pointed out
25 essentially goes away unless the owner companies pony up

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1 equity?

2 A. That's correct.

3 Q. Okay. What would be the -- well, is
4 throughput the next important, most important issue --

5 A. Yes, it is.

6 Q. -- that is between Staff and the throughput
7 that Staff used; do you have that in mind?

8 A. It's approximately 103 million.

9 Q. 108 subject to check, would you --

10 A. 108 subject to check.

11 Q. And Tesoro's recommended level of throughput
12 is what?

13 A. 121, 121 Million.

14 Q. Okay. With regard to what would be next?

15 A. Well, we're different on operating expenses.

16 Q. And how much different are we?

17 A. Staff is approximately \$2.4 Million higher.

18 Q. And do you know why that is?

19 A. I did not do an analysis really of their
20 expenses.

21 Q. Go back and forth, okay.

22 If I could just have a moment.

23 Okay, do you have anything further that you
24 would add to illustrate the differences, either off of
25 this exhibit or otherwise, between the positions Tesoro

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1 has taken in this proceeding and the positions that
2 Staff has taken, or have we covered them?

3 A. I think we have covered them. I mean other
4 than the fact that we're about \$1.3 Million higher in
5 our cost of service, then you're down to the throughput
6 issue.

7 Q. Now you mentioned that Tesoro and Staff used
8 slightly different test periods, and by that you mean
9 that Staff used 2001 in its entirety, where Tesoro used
10 the same test period as in case 2 of Olympic's direct
11 case, which ended in October of 2001?

12 A. That is correct.

13 Q. So they're off by three months?

14 A. That is correct.

15 Q. Okay. And then with regard to the treatment
16 of Bayview, you indicated specifically that we did not
17 agree with the Staff's treatment of Bayview. Would you
18 amplify that answer, please.

19 MR. TROTTER: Your Honor, that question was
20 dealt with already. He already explained the difference
21 and why.

22 MR. MARSHALL: That's correct, I join.

23 MR. BRENA: Well, I'm asking him to amplify
24 his answer.

25 MR. TROTTER: And that's a vague question.

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1 MR. BRENA: Oh, well, actually, that's a
2 phrase I picked up from Mr. Trotter in this proceeding.

3 MR. TROTTER: Really?

4 MR. BRENA: But I will quit using it now.

5 Okay, let me rephrase, and maybe we can get
6 past this.

7 BY MR. BRENA:

8 Q. What has Staff done in their case with
9 Bayview?

10 A. They have removed it from rate base, but I
11 believe they have put it into CWIP to allow for a
12 calculation of AFUDC to be put into the cost of service.

13 Q. And in our case, we have left it in and also
14 the --

15 A. The associated --

16 Q. -- we have assumed normal operations and
17 included the cost associated with it as well.

18 A. That is correct.

19 Q. If the Commission were to elect to remove
20 Bayview, if they did not adopt our position with regard
21 to Bayview, what do you think should be the proper rate
22 treatment for Bayview?

23 MR. MARSHALL: This has been asked and
24 answered.

25 MR. BRENA: No, it hasn't.

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1 JUDGE WALLIS: The objection is overruled.

2 A. Bayview should be removed from our
3 calculations, the effect of the plant throughput
4 lowered.

5 BY MR. BRENA:

6 Q. Do you think that Bayview should go into CWIP
7 and be allowed to --

8 A. Oh, absolutely --

9 JUDGE WALLIS: I'm sorry, we have to have
10 just one at a time.

11 BY MR. BRENA:

12 Q. Do you think that it would be proper if you
13 removed Bayview to put it in CWIP and allow it to accrue
14 additional AFUDC?

15 A. No, I do not.

16 Q. Why not?

17 A. Because it's not there at its intended use,
18 original intended use, and if it was going to be coming
19 back on line, it could be considered plant held for
20 future use. So we're not writing it off, it's just
21 being held in abeyance and then can be brought back in.

22 Q. And if it's plant held for future use, is it
23 appropriate for it to accrue AFUDC?

24 A. The accrual of AFUDC stops when plant is put
25 into service. Once it's removed and held for future

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1 use, normally a company has a plan for that plant, and
2 the future use isn't two or three years down the road.
3 I don't believe one accrues AFUDC on that, but I don't
4 know for sure. I mean AFUDC allows for funds used
5 during construction, the plant has been constructed,
6 it's been put into an operational category called plant
7 held for future use. So I think based on that
8 definition, the AFUDC would stop accruing.

9 Q. Taken as a whole, would you say there are
10 greater similarities or differences between Staff and
11 Tesoro's position in this proceeding?

12 A. Be more specific, please.

13 Q. Well, the numbers work out pretty much the
14 same, don't they?

15 A. Well, I would say that they do.

16 MR. BRENA: I have nothing further.

17 MR. TROTTER: Two follow-ups, if I might.

18

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

20 BY MR. TROTTER:

21 Q. Mr. Grasso, would you accept subject to check
22 that Staff is not proposing to include Bayview in CWIP?

23 A. I would accept that.

24 Q. And are you aware of any court decisions in
25 this case on how property held for future use is treated

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1 for rate making purposes?

2 JUDGE WALLIS: Do you mean in this state?

3 Q. In this state, excuse me.

4 A. No, I do not.

5 MR. TROTTER: Okay, nothing further.

6 JUDGE WALLIS: Is there anything further?

7 Let the record show that there is nothing

8 further for this witness.

9 Mr. Grasso, thank you for appearing, you are
10 excused from the stand.

11 Let's take our afternoon recess at this time
12 for 15 minutes, please, and we will resume with
13 Mr. Hanley.

14 (Recess taken at 3:25 p.m.)

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