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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND) Docket No. TO-011472
TRANSPORTATION COMMISSION,) Volume V

4

) Pages 314 to 493

Complainant,)

5

)

vs.)

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)

OLYMPIC PIPELINE COMPANY,)

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INC.,)

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Respondent.)

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A prehearing conference in the above matter

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was held on December 17, 2001, at 3:40 p.m., at 1300

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South Evergreen Park Drive Southwest, Room 108, Olympia,

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Washington, before Administrative Law Judge ROBERT

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WALLIS.

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The parties were present as follows:

17

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Court Reporter

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

2 JUDGE WALLIS: This is a pre-hearing
3 conference before the Washington Utilities and
4 Transportation Commission on December 17 of the year
5 2001 before Administrative Law Judge C. Robert Wallis.
6 This is being held in Docket Number TO-011472, which
7 involves a request for increased rates that's presented
8 to the Commission by Olympic Pipeline Company, Inc., who
9 is the Respondent in this docket.

10 Let's have appearances at this time beginning
11 with the pipeline company.

12 MR. MARSHALL: Thank you, Your Honor, I'm
13 Steve Marshall representing Olympic Pipeline Company.

14 JUDGE WALLIS: For intervener Tesoro.

15 MR. BRENA: This is Robin Brena on behalf of
16 Tesoro, and with me is David Wensel.

17 JUDGE WALLIS: And for intervener Tosco.

18 MR. FINKLEA: Ed Finklea on behalf of Tosco.

19 JUDGE WALLIS: And for Commission Staff.

20 MR. TROTTER: Donald T. Trotter for
21 Commission Staff.

22 JUDGE WALLIS: The purpose of today's session
23 is to discuss the status of discovery responses and the
24 adequacy of responses that Olympic has provided to
25 Tesoro and Tosco. As we begin, I would like to ask

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1 particularly Mr. Brena to do your best to bring the
2 telephone microphone close to your mouth and to raise
3 the volume of your voice so that we can be sure that all
4 of us and the court reporter hear you.

5 The others are coming in loud and strong,
6 but, Mr. Brena, I'm having to strain to hear what you
7 say.

8 MR. BRENA: I will do my best, Your Honor.
9 JUDGE WALLIS: Much better, thank you very
10 much.

11 Let's begin with a very brief description of
12 status. If I may make a brief statement based on what
13 the parties have indicated, it is that Tesoro has placed
14 some discovery requests, data requests to Olympic.
15 Olympic has responded to those requests, and at this
16 juncture Tesoro believes that the nature of the
17 responses is inadequate for the purposes that the data
18 were requested.

19 Is that an accurate summary, although a very
20 brief one, Mr. Brena?

21 MR. BRENA: Your Honor, I would point out
22 that this is not data requests that we're requesting.
23 We're requesting compliance with Your Honor's order to
24 compel. So this isn't a situation where we have just
25 sent out discovery requests and there's a question about

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1 the response. We have had one motion to compel in order
2 to get a response at all. We had a second motion to
3 compel at which Your Honor entered a very specific
4 order. And so the way that I would summarize it here is
5 that we are trying to seek compliance with Your Honor's
6 order to compel.

7 JUDGE WALLIS: Mr. Marshall.

8 MR. MARSHALL: Yes, I believe Your Honor
9 stated it correctly.

10 JUDGE WALLIS: Very well. Today Olympic
11 Pipeline Company has provided by fax filing and by copy
12 via electronic mail two documents. The first is a 26
13 page document entitled Tesoro West Coast Company's
14 Notice of Olympic Pipeline Company's Noncompliance with
15 Order Compelling Discovery. And the second document is
16 entitled Tesoro West Coast Company's Motion to Compel
17 Responses to its Second Set of Discovery Requests
18 Relating to Olympic Pipeline Company's Amended Petition
19 for Immediate Rate Relief.

20 Let's go through first of all the notice of
21 noncompliance and identify the issues that are contained
22 in that statement. I will note that this matter was
23 called for beginning at 2:30 this afternoon. It was
24 delayed for a short while because of the need to track
25 down the documents that were sent in and was, after all

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1 the parties got on the line, was delayed further until
2 3:30 so that parties could read the documents and as
3 appropriate engage in discussions aimed at resolving the
4 matters identified therein.

5 Mr. Brena.

6 MR. BRENA: Yes, Your Honor.

7 JUDGE WALLIS: Beginning with the notice of
8 noncompliance.

9 MR. BRENA: Are you asking for a suggestion
10 about how best to proceed?

11 JUDGE WALLIS: No, I'm suggesting that we
12 proceed by going through the notice of compliance
13 beginning now.

14 MR. BRENA: Okay. Well, I would propose to
15 do it just an item at a time if that's acceptable.

16 JUDGE WALLIS: Yes, please proceed.

17 MR. BRENA: Roman Numeral Number II on the
18 bottom of page 3 is throughput. Your Honor ordered them
19 to provide the throughput information which we
20 requested. That order was somewhat modified in the last
21 pre-hearing conference so that Olympic was afforded the
22 opportunity to list affiliate shippers by name and
23 intervener shippers by name but to indicate
24 non-affiliated non-intervener shippers by code, and that
25 was acceptable to Tesoro.

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1 We have not received any throughput
2 information to date. Instead we just -- we have
3 received subsequently a letter that apparently they sent
4 to all of their shippers with regard to the throughput
5 information that we requested trying to request
6 objections to it. We would like a date set when we
7 could get the information that we have requested.

8 JUDGE WALLIS: Mr. Marshall.

9 MR. MARSHALL: Yes, Your Honor. On Friday we
10 sent an attachment to Interrogatory Number 20. I
11 believe I not only E-mailed but also by Federal Express,
12 multiple pages totalling over 30 pages of information
13 about throughput as best we could assemble that. It
14 includes every point at which the products were being
15 shipped, the amounts of product, the rates for the
16 product, by all the different shipping points.

17 In answer to what Mr. Brena wanted, there are
18 four refineries. The specifics of refineries are that
19 at Cherry Point, there's an Arco refinery, and then
20 there's a Tosco refinery. At March Point, there is an
21 Equilon refinery, and there is a refinery for Tesoro.
22 If you look at those points of delivery or at the place
23 where those originated, all that the interveners had to
24 do is to back out their own amounts, and they find out
25 the amount of both Equilon and Arco.

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1 We're trying to back that out for them, do
2 that additional calculation, but they have now enough
3 information to know all of the throughput information
4 from all of the places where product is being shipped to
5 all place at all prices in this extensive filing that we
6 made on Friday. The mathematical backing out they can
7 do, but we will commit if Your Honor wants us to do that
8 additional math for them as well.

9 JUDGE WALLIS: How burdensome is that or
10 would that be to accomplish?

11 MR. MARSHALL: Well, I don't think it would
12 be that burdensome, but, you know, we provided them all
13 the information that we think is responsive and complies
14 except for that calculation. That calculation again is
15 one that I think can be done by Tosco and Tesoro as well
16 as by us, but we will commit to go ahead and do that if
17 they believe that they need that for whatever purposes.

18 JUDGE WALLIS: Mr. Brena.

19 MR. BRENA: First, the request wasn't by
20 refiner, the request was by shipper. And there are
21 shippers that ship from each of the refiners that are
22 not in -- that are not affiliated or that are
23 affiliated, and so they're -- they simply didn't list it
24 the way that -- the way that we asked for it or the way
25 that the Commission allowed them to do it. Given that

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1 we're in an expedited situation, that we're trying to
2 comply with their emergency request, and given that they
3 have this information readily available, we know because
4 they produce it for Tesoro each month what Tesoro's
5 throughput is, they have it broken out by shipper. I
6 thought we were fairly clear. I thought the original
7 order to compel was fairly clear. I thought the
8 subsequent modification to the order to compel suggested
9 by Chairperson Showalter was fairly clear. They haven't
10 provided it.

11 In addition, we have requested the
12 information to date, and the last date of the
13 information -- the reason that we did that is because
14 their throughput took such a step up in September, and I
15 made a very specific point of wanting throughput all the
16 way through November. And so I would request that the
17 information be provided through November and that it
18 also be updated through December as soon as it's
19 available to us, which should be prior to the hearing.
20 The reason why that is so important in this case, as we
21 argued originally, is because there has been a
22 substantial change in throughput since July when all
23 four of the refineries have come on line, and there is a
24 substantial change as well in September when the FERC
25 rate was allowed to go into effect without review.

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1 So in summary, I want the information the way
2 that the Commission ordered it to be provided. I don't
3 want a work project from Olympic.

4 JUDGE WALLIS: Mr. Marshall.

5 MR. MARSHALL: Well, we provided information
6 that we had, which includes all of the information on
7 2001 volumes for '98, '99, 2000, and 2001 all the way
8 through the end of September, which is the last closing
9 date for the availability of the information. As
10 information is tallied up and becomes available, we will
11 provide it, but we have provided all that we had.

12 MR. BRENA: He indicated the last closing
13 date was September. My reading of what he supplied is
14 that they have provided October, October 1st
15 information. They had this information available. They
16 know what their throughputs are by shipper. It's
17 computer generated. It's provided to Tesoro. We want
18 it for October and November.

19 JUDGE WALLIS: When is it made available to
20 Tesoro?

21 MR. BRENA: I don't know the answer to that
22 question.

23 JUDGE WALLIS: So you don't know whether they
24 have any information that is more timely than September?

25 MR. MARSHALL: Sometimes, Your Honor, what

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1 happens on these shipments is that there are mixings of
2 product, and it's a technical thing. If they send out
3 batches of product on the pipeline, there's a mixing,
4 and there's a holding tank by which shippers are then
5 credited with shipments of product that had to be taken
6 off line and mixed and then reintroduced back into the
7 system. I think the issue here is simply one of what
8 the final numbers are rather than preliminary numbers.
9 And so even though somebody can tell what's been
10 shipped, the actual amounts that have been shipped and
11 the dollars that have been shipped and the dollars that
12 have been shipped don't get tallied up until all of the
13 balancing transactions and this generation of batching
14 movement volumes has been taken into account. I'm not
15 sure I know all the specifics about that, but it's not
16 as easy to say like pumping your own gas in your car.
17 There are these balancing and reconciliations that have
18 to be done.

19 What we have provided is we have been
20 providing as much information as I understand from
21 Olympic as to what these volumes are as those volumes
22 are finally tallied. It's a different question as to
23 whether they want the preliminary data. If they want
24 preliminary data in an unofficial form, we could ask
25 that, find out if that's available to that point. But

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1 that wouldn't necessarily include the balancing
2 information, and the totals might be off when they
3 finally do all that.

4 MR. BRENA: Your Honor, we are checking with
5 Tesoro to see, I'm quite sure that they don't get a bill
6 two and a half months after they ship. Not only do they
7 keep track of the information currently, but through the
8 nominations process, they have -- they allocate shipper
9 capacity in the current month, so they have already
10 allocated December capacity among all the shippers. So
11 they could not only provide October and November, but
12 they also have all the shipper nominations and
13 allocations for December. So they could bring this, you
14 know, setting aside minor corrections for balancing,
15 they could bring this all the way up to January 1st now.

16 MR. MARSHALL: Your Honor --

17 JUDGE WALLIS: Mr. Brena, do you concede that
18 they provided information as you requested for the
19 period up through September?

20 MR. BRENA: No, they have not indicated the
21 shippers. They have not provided it by the shipper. It
22 would be very -- it would be -- it's impossible to break
23 that down the way that they're suggesting breaking it
24 down. They're trying to provide us information by
25 refiner, and even that calculation is imprecise. We

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1 don't have the information we need for that calculation
2 either. But the way that we requested it and the way
3 that the Commission ordered it to be compelled was by
4 listing by an individual affiliated shipper, intervening
5 shipper, and then by the non-affiliated non-intervening
6 shippers individually by individual code.

7 JUDGE WALLIS: Why is that information
8 important to your client in preparation for the hearing
9 as opposed to the more generalized information?

10 MR. BRENA: Let me ask for clarification, is
11 it Your Honor's intension on each of these points to
12 argue the reasons for the motion to compel anew? I mean
13 I'm happy to do that if that's what Your Honor would
14 like to do --

15 JUDGE WALLIS: My preference would be --

16 MR. BRENA: -- order to compel --

17 JUDGE WALLIS: Mr. Brena, can you hear me?

18 MR. BRENA: -- very specific, and if it would
19 be helpful to Your Honor to go back and reargue the
20 motion to compel, I will do it.

21 JUDGE WALLIS: Mr. Brena, can you hear me
22 when I speak to you?

23 MR. BRENA: I heard what you said just then,
24 yes.

25 JUDGE WALLIS: I have more than once asked to

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1 interject while you're speaking, and you have not
2 responded.

3 MR. BRENA: Oh, I have not heard your
4 attempts to interject at all.

5 JUDGE WALLIS: All right.

6 It is not my intention to go through and
7 reargue your motion. However, it is my intention to do
8 my best to resolve the issues. And to do that, I need
9 to know when the two of you are engaged in a dispute
10 what the facts are and what information is available.
11 If I don't have that information, I don't know whether
12 the company has complied to the best of its ability to
13 comply. That's the reason for my inquiries. I would
14 much prefer not to be here until late this evening
15 working with you, but if that's what it takes, then
16 that's what we will do.

17 MR. BRENA: Thank you, Your Honor. I
18 understand the way that you're directing my response.
19 Let me say that we need the information broken down so
20 that we can analyze affiliated versus non-affiliated
21 shipments. We asked for it to be broken down by
22 individual shippers so that the impact on the individual
23 shippers of the interim rate could be assessed and
24 commented on. We thought it important to bring to this
25 Commission's attention and come forward what the impact

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1 of the ultimate decision would be on individual
2 shippers, whether individually identified or not, as
3 well as on the affiliate and non-affiliate mix because
4 of the affiliated issues inherent in their emergency
5 request.

6 MR. MARSHALL: And, Your Honor, we believe
7 that that's being done, because first of all, the two
8 interveners, Tosco and Tesoro, know exactly what the
9 impact is. In fact, we have asked questions of Tesoro
10 on what the financial impact would be, and they claimed
11 that they can make that calculation long before we even
12 sent out the shipper information on throughput. The
13 impact of the rate on other non-interveners seems to be
14 irrelevant since they haven't complained. And besides,
15 we're not ordered to identify them specifically by name
16 in any event.

17 As to the affiliated interest, that is the
18 shareholders of Olympic, both Equilon and Arco, we
19 believe that information can be derived from what we
20 produced, but we're willing to do that math for
21 Mr. Brena if he wants to have that math done. But the
22 simple fact is that the impact of the interim rate can
23 be calculated by Tosco and Tesoro right now and has been
24 capable of being computed a long time ago.

25 JUDGE WALLIS: Are there --

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1 MR. BRENA: A couple points.
2 JUDGE WALLIS: Mr. Brena.
3 MR. BRENA: In response.
4 JUDGE WALLIS: Mr. Brena, excuse me.
5 MR. BRENA: I'm sorry, Your Honor, did you
6 just interject?
7 JUDGE WALLIS: Yes, I did. Mr. Brena, in
8 terms of affiliated interests, are there individual
9 shippers other than the refiners that are affiliated
10 interests?
11 MR. BRENA: I don't know the answer to that
12 question.
13 JUDGE WALLIS: Mr. Marshall, do you know the
14 answer to that question?
15 MR. MARSHALL: Yes, the answer is no, there
16 are not.
17 JUDGE WALLIS: Very well. Mr. Marshall,
18 please do as you have indicated the mathematics to
19 identify the shipments by refiner.
20 MR. MARSHALL: We will do that, Your Honor,
21 right away and get that information to Mr. Brena before
22 the close of the day tomorrow his time.
23 JUDGE WALLIS: Very well.
24 MR. BRENA: If I may be briefly heard.
25 JUDGE WALLIS: Mr. Brena, you're fading

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1 again, I am having trouble hearing you.

2 MR. BRENA: If I may be briefly heard, it was
3 my understanding of the last pre-hearing conference that
4 the information was available by affiliate shipper as
5 well as by third party shippers and that it would --
6 they asked to and were given permission to substitute a
7 code for non-affiliated non-intervener shippers. Now
8 that's what they requested from the Commission, that's
9 what the Commission allowed them to do, so I would ask
10 for that information in that format.

11 The information by refiner does not break it
12 out by shipper. For example, there may be, in fact, a
13 considerable amount of the shipments from Tesoro's
14 refinery are not shipped by Tesoro, they're shipped by
15 independent shippers. And so you just can't get a
16 picture of the system by shipper if you break it down by
17 refinery, because that's only 4 people, and there are
18 they have indicated 70 shipping on this line or 29
19 active. That's important information for us to be able
20 to have.

21 For example, he suggests it's a mathematical
22 calculation at Cherry Point, that at Cherry Point there
23 is Tosco and there is -- and there is the Arco refinery.
24 Well, coming from both of the first, one is affiliated
25 and one is not affiliated, so we would need to know

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1 Tosco's volumes to subtract from those volumes. And
2 even that would not give us the information by shipper,
3 because coming out of either the Tosco or the Arco
4 refinery may be considerable shipments by an
5 unaffiliated shipper. And it's the same situation with
6 regard to consumer refineries Equilon and Tesoro.

7 MR. MARSHALL: Your Honor, if that's the
8 case, we'll note that too in our calculations that we
9 provide to Mr. Brena.

10 JUDGE WALLIS: Very well, so long as the
11 shipments that are undertaken by the affiliates are
12 identified, I believe that will satisfy Mr. Brena; is
13 that correct?

14 MR. MARSHALL: It appears to be --

15 JUDGE WALLIS: Mr. Brena.

16 MR. BRENA: That they be identified by?

17 MR. MARSHALL: By shipper.

18 MR. BRENA: By individual shipper?

19 MR. MARSHALL: The affiliated and

20 non-affiliated by individual shipper.

21 MR. BRENA: And to the degree that they're
22 not an affiliated shipper that there be an individual
23 code for that shipper substituted for the shipper name.

24 MR. MARSHALL: Well, we agreed to redact that
25 information. I don't know if we agreed on the

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1 particular code that can be cracked by somebody at a
2 later time.

3 JUDGE WALLIS: The information was to be
4 redacted, yes.

5 MR. MARSHALL: Right.

6 MR. BRENA: And a code was to be substituted.

7 JUDGE WALLIS: No, I don't recall that,
8 Mr. Brena. So you will have the information regarding
9 shipments by the affiliates and information regarding
10 shipments by non-affiliates in some detail as I
11 understand the status of the discussions at this point,
12 and that will be delivered to you by close of business
13 tomorrow.

14 MR. BRENA: Okay. Roman Numeral Number III,
15 monthly financial statements. There are two issues in
16 this area. One is prior to BP Amoco taking over the
17 operation of the line, and the second is trying to get
18 it up to date. I have tried to articulate the reasons
19 why we need it to date. There has been a substantial
20 change in their financial position and improving
21 financial position. We're trying to get the evidence
22 that we need to present that to the Commission for its
23 consideration. Olympic must maintain their monthly
24 records on a computer system. They should provide those
25 so that we have all the way through November, and

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1 December if it's available in projected. And when
2 December is actual, it should be made available to us.

3 In addition to that, there is the Equilon
4 information. That's very important information for us
5 because that is the period in time when they ran up
6 these large affiliated debts. And so far, they have
7 argued that the Equilon information was not available to
8 them. Now they have prepared their 2000 year tax
9 returns, and they had to have access to the information
10 for the entire year 2000 in order to prepare those tax
11 returns.

12 Equilon continues to be a shareholder and a
13 third owner on this pipeline and is fully capable of
14 responding to this sort of request. And Equilon and
15 Arco, a company that BP acquired, has had -- owns two
16 thirds of the company and has this information provided
17 to the board members that served on the boards
18 continuously throughout the change in managers. It is
19 not -- it is -- it -- and it might, if my memory of our
20 last conversation was correct, there hasn't been a
21 formal letter or request to Equilon to produce this
22 information. Now I would just bet -- I mean Equilon
23 stands to gain by this interim rate increase in an
24 amount equal to a third of the rate increase. The idea
25 that an owner, that one owner can come before the

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1 Commission and argue that it can't get information from
2 the other owner who continues to own and have a direct
3 financial interest in this interim rate is strange
4 indeed.

5 And I would like this information to be
6 ordered to be produced and if -- and I will bet that it
7 can be very easily. I point out that monthly financial
8 information is usually printed and presented to the
9 board at its -- at its monthly meetings, and there's
10 just no reason in the world why we can't have this
11 information, why it's not on a computer system that they
12 can just print it out. They have worked with it, it's a
13 current owner, and they have worked with it in the past
14 for preparing the tax returns, and they have it.
15 There's a party before this proceeding asking for a 62%
16 rate hike but apparently not willing to provide
17 information with regard to when it acquired this huge
18 affiliated debt. So I would ask again for the
19 information from January 1, 2000, through November, and
20 I would ask that it be compelled.

21 JUDGE WALLIS: Was that January 1 or July 1?

22 MR. BRENA: January 1, 2000.

23 JUDGE WALLIS: Because your --

24 MR. BRENA: We're asking for all the
25 information for 2000 and 2001, January 1, 2000, through

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1 November 2001.

2 JUDGE WALLIS: Very well.

3 MR. BRENA: And December when it's available.

4 JUDGE WALLIS: Mr. Marshall.

5 MR. MARSHALL: Yes, Mr. Brena is wrong again.

6 We provided to him last Friday as an attachment to the
7 request for Production Number 8 our -- I'm sure of that,
8 because we double checked, and we faxed him again the
9 information today, which I've got a date stamp on that
10 as well showing that we did go back and recreate the
11 data, find that we've got the information that Your
12 Honor requested us to provide prior to July 1st, 2000.

13 The additional request was to provide monthly
14 income and expense statements as well as the balance
15 sheets beginning January 1, 2000, to date that we
16 mentioned in our first answer that we had a difficult
17 time getting information from Equilon prior to July 1st,
18 2000. So Your Honor ruled that the company should
19 provide information for the year 2000, which according
20 to the representations it has not, and should provide on
21 a monthly basis information on months that were not
22 available at the time of production but became
23 available.

24 So what we have done in this attachment to
25 the request for Production Number 8 is to provide the

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1 information from January 2000 when, of course, Equilon
2 was operating this, through the end of June of 2000,
3 complying with that information from the Administrative
4 Law Judge. Insofar -- the idea that somehow we can make
5 estimates of our balance sheets, what they're going to
6 look like for December is -- I don't know where he comes
7 up with that idea. There really -- there isn't any
8 income statement for December. For November, I don't
9 know if there is any new income statement, even
10 unaudited, but we will check and find out if one has
11 become available, which is what Your Honor asked us to
12 do, which is when they became available to make those
13 available to Tosco and Tesoro, or at least to Tesoro.

14 MR. BRENA: This is Robin.

15 MR. MARSHALL: I would point out -- let me
16 finish -- I would point out that these income statements
17 that we have provided to Tesoro are unaudited
18 statements. They are the balance sheets, the best that
19 could be provided. They go into the details that we
20 provided in the prior information, same format that we
21 provided the July 1st, 2000, up to the current time that
22 we had them.

23 Now go ahead.

24 JUDGE WALLIS: Mr. Marshall, have you
25 provided the information through November?

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1 MR. MARSHALL: I'm going to check, but I
2 don't -- I don't know if we have. If it has now become
3 available, we will go ahead and do that and send it off.
4 I don't think that that will make much difference in
5 anybody's testimony, but we will go ahead and provide
6 that.

7 JUDGE WALLIS: But you have provided it
8 through October?

9 MR. MARSHALL: Yes, we have.

10 JUDGE WALLIS: Very well.

11 Mr. Brena.

12 MR. BRENA: Well, Your Honor, first I would
13 like Mr. Marshall to indicate specifically where he felt
14 that the information was provided with regard to the
15 year 2000.

16 JUDGE WALLIS: Mr. Marshall.

17 MR. MARSHALL: Yes, it's -- we believe that
18 it's -- we have -- I have it shown here that it was
19 faxed to Mr. Brena. Hold on a minute here, I'm being
20 shown something here. So I think -- I don't know if
21 Mr. Trotter is on the line if you have gotten a copy,
22 but I believe Mr. Brena has a copy of this.

23 MR. BRENA: A copy of what, Mr. Marshall?

24 I'm just trying to identify the document.

25 MR. MARSHALL: It's called attachment to RFP

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1 Number 8, and the very first sheet says Olympic Pipeline
2 Company Income Statement, January 2000, unaudited, and
3 it goes on to contain maybe another 13 or 14 pages which
4 take you up to the end of June 2000. It goes month by
5 month from January to February to March to April to May
6 through June.

7 MR. BRENA: Is that an income statement or a
8 forecast?

9 MR. MARSHALL: A forecast, it would be just
10 what I said, Olympic Pipeline Company income statement
11 January 2000 unaudited, and it provides operating
12 expenses, non-operating expenses, revenues, provision
13 for income tax, throughput, shareholder equity,
14 liabilities, property plant equipment, all of the sorts
15 of things that we had provided in the earlier
16 documentation.

17 MR. BRENA: And --

18 MR. MARSHALL: Provides a balance -- there's
19 a balance sheet in addition to the statement of income
20 for each of the different months that have been
21 requested.

22 MR. BRENA: And you're saying that would --

23 MR. MARSHALL: -- my understanding is --

24 MR. BRENA: -- supplement --

25 MR. MARSHALL: And I'm not an accountant, but

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1 that's the best understanding I have.

2 MR. BRENA: Mr. Marshall, are you saying that
3 was attached, the 14 page financial statement was
4 attached to the supplemental?

5 MR. MARSHALL: It's attachment to Request for
6 Production Number 8. I believe if you check, you have
7 that. And if you haven't, we can fax it again, but I
8 show that it was faxed to you and re-faxed.

9 JUDGE WALLIS: Mr. Trotter, do you have that
10 document?

11 MR. TROTTER: I don't know. My notebook,
12 because of the volume of discovery going on at the
13 Commission, my paralegal doesn't have everything in the
14 notebook yet. This did not come through on the initial
15 filing. I don't have the supplemental in my notebook
16 yet.

17 MR. MARSHALL: I have been corrected. It's
18 been E-mailed to the parties. I guess it was converted
19 into a file and then E-mailed.

20 MR. BRENA: On what date was it E-mailed?

21 MR. MARSHALL: Well, again, I think you have
22 it. I think if you check your E-mails, you have it.

23 MR. BRENA: Well, we have checked -- well,
24 first of all, it's my understanding that all discovery,
25 that E-mail is a courtesy, but it's to be faxed. We

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1 have not received a fax of that information. It's not
2 included in materials that we have reviewed. We haven't
3 received that in an E-mail format either, but as
4 everyone is aware, we have been having some difficulties
5 with our E-mails. But we received the E-mail that we
6 phoned that your office indicated was the last E-mail
7 that we were to receive. We printed out every report on
8 those E-mails, and I have had my office staff go back
9 through and confirm those, and we have not received that
10 document that you're describing.

11 Perhaps Mr. Finklea can -- could comment as
12 to whether or not he's received it.

13 JUDGE WALLIS: Mr. Finklea.

14 MR. FINKLEA: Yeah, Mr. Marshall, this is
15 response to Request for Production Number 8.

16 MR. MARSHALL: Number 8.

17 MR. FINKLEA: Okay, I have an E-mail that is
18 -- that purports to have response to Request for
19 Production 8, 9, and 13.

20 MR. BRENA: What's the date of the E-mail,
21 Ed?

22 MR. FINKLEA: It's this afternoon at 2:45.

23 MR. BRENA: This afternoon?

24 MR. FINKLEA: Yes.

25 MR. MARSHALL: We wanted to make sure that

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1 everybody had that. Apparently you do, and if you want
2 it faxed -- first of all, I don't understand that we
3 have some kind of an order or agreement that we will fax
4 everything as we E-mail it. We have been trying to
5 Federal Express everything as we get this pulled
6 together, but my understanding is that we would provide
7 in the same format to everybody, all parties at the same
8 time information. And we wanted to make sure that this
9 information got at least E-mailed to everybody at the
10 same time so that you all had that, and then reconfirm
11 that. But the point is, it's a real simple point, that
12 this information has been provided.

13 MR. BRENA: Mr. Finklea, did you receive that
14 prior to 2:40 today?

15 MR. FINKLEA: No, I received it at 2:45
16 today, and what I have, I have just been opening the
17 document, these are imaging documents, and the one that
18 is an attachment to RFP Number 8 is a January 2000
19 unaudited -- it does look like something of an income
20 statement. It's January.

21 MR. BRENA: Your Honor, we haven't seen that.
22 Our understanding was the last responsive discovery was
23 served on us Friday afternoon. In fact, the last
24 discovery indicated that. We haven't received that
25 E-mail, but our E-mail is not reliable right now. Our

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1 server apparently is having some delay problems. I
2 would like that to be faxed to us. It sounds as though
3 it may be responsive.

4 MR. MARSHALL: We're faxing that to you as we
5 speak.

6 MR. BRENA: -- that after I file a pleading
7 to compel the discovery is something that is something
8 that is put in an E-mail to me, and it wasn't in the
9 Fedex package, and it wasn't faxed to us previously.

10 MR. MARSHALL: We thought we provided it to
11 you when we got your faxed copy of your motion to compel
12 moments before the conference was supposed to commence.
13 After we took a look at that, we wanted to make sure
14 that you --

15 MR. BRENA: The other point --

16 MR. MARSHALL: -- and therefore -- we're
17 trying to be responsive, and I believe we have been.
18 You have it in E-mail form. We're faxing it to you as
19 well because you now told us something that I didn't
20 know, that your E-mail was having a problem, so you
21 ought to have that.

22 JUDGE WALLIS: Gentlemen, I need to interject
23 that we can have only one person talking at a time,
24 because when two people talk, both voices break up, and
25 it's impossible for the court reporter to take any

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1 single person's comments.

2 Now, Mr. Marshall, when we began this
3 discussion, did you know that the material had only been
4 provided a few moments ago?

5 MR. MARSHALL: When we began this discussion,
6 we wanted to reconfirm that, because we saw Mr. Brena's
7 request saying that he hadn't gotten it, to shoot it to
8 him. And if there was some kind of information that we
9 didn't convey earlier, we wanted to make sure it was
10 conveyed. My statement is I thought that that had been
11 provided earlier. We had re-sent this, and we have
12 re-sent it in the form that was most likely to arrive
13 there as soon after we got his motion as we could find.
14 I told Mr. Brena, among a lot of the other responses
15 that we sent, Mr. Brena, we have already responded to
16 this, and this was another example of one that we
17 believe that we have responded to. If we hadn't, we
18 made sure that we got that information off to him.

19 MR. BRENA: This is Robin Brena. We have
20 never been told that that information was provided. We
21 have never received it. The fact that he read our
22 motion and put it on the E-mail, you know, that doesn't
23 change anything. Here I'm in a position, I still
24 haven't seen it, I still am not able to review it, and I
25 still don't know whether or not it's responsive to my

00344

1 request, and this is the third pre-hearing conference at
2 which this topic has come up. So I will -- I mean I
3 have -- I have no choice but to wait until he faxes it
4 and gets it to me and have an opportunity to review it.
5 Before I complete this, I would like Your Honor to
6 compel them to do that. And, you know, the idea of
7 sending it to us, you know, after the pre-hearing
8 conference is set to begin, that's not complying with
9 Your Honor's order at all and like many of the other
10 responses.

11 And also, I would like to focus on I would
12 like current financial information. Now I would like it
13 through November, and there is no reason in the world
14 this company can't produce that information. It must
15 keep -- I mean it's run by a huge company, and there's
16 no reason why they can't have up-to-date financial
17 information on their computer systems just a push button
18 away. That information is going to demonstrate a
19 dramatic improvement in their financial condition, and
20 I'm entitled to look at it. So I would like the
21 information through November, and I would like it
22 through December when it's available, and it should be
23 available prior to the hearing in January.

24 JUDGE WALLIS: Mr. Marshall --

25 MR. BRENA: If there is a hearing in January.

00345

1 JUDGE WALLIS: Mr. Marshall, if there's any
2 other topic as we go through these elements that you
3 have provided only today, it would help to cut short the
4 discussion by a considerable amount if you identify that
5 to us in your response to Mr. Brena.

6 MR. MARSHALL: The only thing that I can
7 think of that we provided today that we didn't think we
8 had already provided are the minutes of the meetings of
9 the board of directors. And as I explained to Mr. Brena
10 before we got on this call, those are not official
11 minutes, they are draft minutes, but we sent those out.
12 I believe we sent them out by E-mail and fax, but I'm
13 not sure. I'm going to check with -- we sent them by
14 E-mail, so perhaps we need to fax those as well to
15 Mr. Brena. But we did tell Mr. Brena earlier in a
16 conversation that those were available in at least draft
17 form. They're not -- because they had not been approved
18 by the board or signed off in any kind of formal way, we
19 didn't stand on that, but we gave him the best we could
20 for the draft minutes.

21 JUDGE WALLIS: Very well.

22 MR. FINKLEA: Your Honor, I will note that
23 what I received does appear to only be the 12 months of
24 the year 2000 and no income statement information for
25 the year 2001.

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1 MR. BRENA: Well, then we would be absent the
2 first six months of 2001, monthly income information for
3 2001, Mr. Finklea?

4 MR. FINKLEA: That's what I can ascertain
5 from what I'm seeing from what I have been able to print
6 off.

7 MR. MARSHALL: No, no, no, you have the 2001
8 information. This is only asking us for information
9 prior to July 1st, 2000, because we provided everything
10 following January 1st, 2000, through the last date that
11 we had a complete income statement for Olympic. People
12 have come back and asked us, this was in response to
13 Request for Production Number 8 in the initial set that
14 came out back, oh, I don't know how many weeks ago, but
15 the information for 2000 from July 1st through 2001 has
16 been provided already. That wasn't even an issue
17 before.

18 MR. TROTTER: Your Honor, if I might, this is
19 Don Trotter, we did get in response to Request Number 8
20 income statements for 2001 up through September.

21 JUDGE WALLIS: Very well. Mr. Marshall, will
22 you see whether the information is available for the
23 months of October and November. If it is, provide it by
24 close of business tomorrow. And if it's not, provide it
25 and the information for December as soon as the

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1 information is available.

2 MR. MARSHALL: Yes, Your Honor, we will.

3 JUDGE WALLIS: Very well.

4 MR. BRENA: The Roman Numeral Number IV is
5 the monthly budgets and cash flow, and cash flow
6 statements, and I would just repeat the same arguments
7 that I had with regard to the income and balance
8 information with regard to the prior Roman numeral. I
9 really have nothing to add.

10 JUDGE WALLIS: Mr. Marshall.

11 MR. MARSHALL: Again, I suppose the real
12 issue is one of have we provided information to them
13 showing what actually occurred rather than what was
14 budgeted. Requests in other forms have asked for what
15 our budgets are for the year 2002, and we have explained
16 in supplemental answers that those budgets have been
17 adopted, but they're very tentative because they depend
18 on the outcome, for example, of this rate case. And I
19 think that when we come to the budget for 2002, we have
20 tried to respond to what the budget is for that.

21 But as for past periods, it doesn't -- I mean
22 when you have financial information as to what was
23 actually spent and what the moneys were actually going
24 to, we thought that was more than responsive to the
25 issue about what's been requested. And also we might

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1 want to point out that FERC Form 6 provides a lot of the
2 budget information in terms of the actuals for prior
3 years. We have a financial forecast that we attached to
4 Request for Production Number 9, and the financial
5 forecast -- and I suppose that may be an issue about
6 what do we hope to have so what were we trying to budget
7 for. But those forecasts have also been provided.

8 MR. BRENA: Your Honor, this is Robin Brena,
9 supplemental response --

10 MR. MARSHALL: -- supplemental response to
11 Production Number 9.2 has a statement of cash flow as
12 well.

13 JUDGE WALLIS: Mr. Marshall.

14 MR. MARSHALL: Yes, I'm sorry.

15 JUDGE WALLIS: Both of you were talking at
16 the same time, and the reporter just can't hear what
17 anyone says. So, Mr. Brena, please don't interrupt
18 Mr. Marshall.

19 Mr. Marshall, please don't interrupt
20 Mr. Brena. Otherwise nothing either of you says can be
21 heard.

22 MR. BRENA: I'm sorry, Your Honor, that was
23 my fault. I thought he was through talking.

24 MR. MARSHALL: No, I was just trying to add
25 that also on our prior Request for Production Number

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1 9.2, we provided a statement of cash flows. And that
2 set, of course, is also part of the forecasting that
3 tried to be accomplished here, all the information that
4 I think has been responsive to these requests for
5 detailed financial information.

6 JUDGE WALLIS: Mr. Brena.

7 MR. BRENA: Your Honor, I don't understand
8 Mr. Marshall's comments in light of the -- on their
9 supplemental responses on page 42 with regard to the
10 cash flow and monthly budgets and cash flow statements
11 beginning on January 1, 2000, to date, their
12 supplemental response was to be provided. That was
13 their response as of Friday.

14 Now if I understand everything he just said,
15 it's that it's already been responded to. It hasn't
16 been. We need and want and have requested and the order
17 to compel has been entered that they would give cash
18 flow statements for each month, actual cash flow
19 statements. What they had previously provided were cash
20 flow forecasts for a year in which they had actual cash
21 flow information available. We want actual cash flow
22 statements, we want them through November, and we want
23 them through December when they become available. And
24 our understanding of their response was they were to be
25 provided, and I'm here just asking for when, not arguing

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1 about whether or not they have.

2 JUDGE WALLIS: Mr. Marshall.

3 MR. MARSHALL: Well, we think that they have
4 been provided, and I think that the earlier question
5 about Request for Production Number 9 was to try to
6 obtain information in the possession of Equilon.

7 But in terms of what the forecast, you know,
8 we have provided that in terms of what was actually
9 spent, so the actual budgets and cash flow statements
10 are better provided with the actual statements. For
11 going forward on forecasts with cash flow and for
12 budgets on 2001 and 2002, we separately provided those,
13 and we have provided attachments 9.1 and 9.2, which goes
14 beyond what this prior motion to compel required.

15 Now to the extent that there are some more
16 cash flow payments in October and November, we will
17 follow Your Honor's order on that as well as the prior
18 order in terms of unaudited income statements as they
19 become available. If they're available now, we will
20 provide them now. And when they become available for
21 December, we will provide them when they become
22 available for December.

23 MR. BRENA: Your Honor, this is Robin Brena.
24 What we have is a statement of cash flows January
25 through September for 2001. We do not have anything for

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1 October, November, or December or any sort of cash flow
2 projections on their part. We do not have any statement
3 of cash flow with regard to the year 2000, monthly cash
4 flows.

5 JUDGE WALLIS: Mr. Marshall, were any of
6 those documents sent?

7 MR. MARSHALL: Well, I believe on the -- for
8 the year 2000 again, all of the income statements
9 including all of the information that we have available
10 from Equilon we have provided. That's it. But it's
11 pretty extensive, as other people on this line have
12 stated. They include the income statements and the
13 assets and the liabilities, equities, operating
14 expenses, non-operating expenses, income tax
15 information. I'm not sure I understand what a budgeted
16 amount would have accomplished from Equilon that we
17 haven't already provided in this other information.
18 But, you know, the problem is we don't have anything
19 more than what we have provided from Equilon.

20 JUDGE WALLIS: Okay, just so I'm clear in my
21 own understanding, what you're saying is, taking
22 everybody's comments together, that Olympic has provided
23 the information for January through September of the
24 year 2001, and it's in a form that Mr. Brena requested;
25 is that correct?

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1 MR. MARSHALL: On the cash flow?

2 JUDGE WALLIS: No, I'm asking Mr. Brena.

3 MR. MARSHALL: Oh.

4 MR. BRENA: We did receive January through
5 September cash flow information. It's almost impossible
6 to discern anything from such a small print, so if it's
7 available in electronic format, we would like it that
8 way. But Your Honor is correct that that is what we
9 have received and all we have received. We have not
10 received --

11 JUDGE WALLIS: Okay, well, let's take it from
12 there.

13 As to the information for the year 2000,
14 Mr. Marshall, are you saying that that information is
15 not available except to the extent that documentation
16 has already been provided to Mr. Brena?

17 MR. MARSHALL: Yes, the income statements,
18 the unaudited income statements are all that we have had
19 from Equilon for that period prior to January 1st, 2000.

20 JUDGE WALLIS: Very well. Would you ask
21 Equilon if it has additional information comparable to
22 the information that you have sent for January through
23 September of 2001?

24 MR. MARSHALL: Yes, we may well have already
25 done that, but we will reconfirm.

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1 JUDGE WALLIS: Very well. And do you know if
2 information for October, November, and/or December is
3 now available?

4 MR. MARSHALL: I do not know, but I will
5 check for you as we agreed to do so in the prior
6 request.

7 JUDGE WALLIS: Very well. And if it is
8 available, will you provide it by the end of the day
9 tomorrow? And if it is not, will you provide a
10 statement to that effect?

11 MR. MARSHALL: Yes.

12 MR. BRENA: Your Honor, this is Robin, if I
13 could just add one thing. We have also asked for cash
14 flow budgets, I mean cash flow statements. So to the
15 degree that they have a projected cash flow for 2002,
16 that would be responsive, directly responsive. It's my
17 understanding from the technical conference that they do
18 project cash flow information for a limited.

19 And then I would like to make just one point.
20 So far as I am aware from the comments, nobody has even
21 asked Equilon for any of this information yet. I am
22 very concerned and continue to be concerned with this
23 suggestion that an existing shareholder who owns a third
24 of this company who operated this previously is not
25 willing to make the information within its control

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1 available to this Commission and to the interveners.
2 There is no excuse whatsoever for an existing owner not
3 to provide information to support its own rate increase.
4 So I, you know, if where we're leaving this is if he
5 needs to make a call and have them say, well, it's not
6 readily available, then that's, you know, that's not
7 sufficient for us. They should be able to provide the
8 information for cash flows for the year 2000.

9 That is very important. They ran up \$100
10 Million of affiliated debt in the year 2000. Whatcom
11 Creek was paid for in the year 2000. The statement of
12 cash flows with regard to who should bear the burdon of
13 this interim relief, that goes central to what we're
14 trying to put forward here. So we want -- we want in
15 the strongest possible terms not to have the current
16 operator owner hide behind the former operator who
17 continues to own this line when they have had continuous
18 board members the entire time.

19 JUDGE WALLIS: Mr. Marshall.

20 MR. MARSHALL: Yes, Your Honor.

21 JUDGE WALLIS: Are you requesting this
22 information on an ongoing basis from Equilon?

23 MR. MARSHALL: Yes, we are. And as we
24 pointed out before, many of the records that Equilon had
25 they have not made readily available, and it has

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1 required a lot of extra effort. We haven't enjoyed the
2 extra effort either, and we share some of the same
3 frustration. But, you know, we're trying to do our best
4 to get Equilon information. To the extent that, you
5 know, any of this information about what's been spent in
6 January needs to be supplied, that has been supplied in
7 these income statements.

8 JUDGE WALLIS: Very well. For --

9 MR. BRENA: May I ask, Your Honor,
10 specifically what efforts have been made to obtain the
11 cash flow information from Equilon?

12 JUDGE WALLIS: Mr. Marshall.

13 MR. MARSHALL: Well, the cash flow
14 information gets bound up in the income statement.
15 Whatever cash flow information has been requested we
16 believe is more than accounted for in these balance
17 sheets, statement of income, and other information
18 that's been provided.

19 MR. BRENA: Your Honor, my question was what
20 specific steps have been taken to acquire this
21 information from Equilon with regard to their cash flow
22 statements on a monthly basis for the year 2000.

23 MR. MARSHALL: Well, you know, I don't -- I'm
24 not the one that makes the call to Equilon, so I can't
25 make the representation about what specific questions

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1 were asked of what specific people. But I will say that
2 we have asked for all the information that has been
3 requested in these document requests, and they made a
4 good faith effort to try to get that. We have provided
5 these income statements for the time that Equilon was
6 operating this pipeline, January 2000 to July 1st, 2000.

7 JUDGE WALLIS: Mr. Marshall, if Equilon
8 refuses to provide documents, do you make a notation of
9 that?

10 MR. MARSHALL: We will begin to make a
11 notation of that. So far it's just a question of trying
12 to go through and find the documents. We haven't been,
13 you know, refused flatly that they won't provide
14 anything. It's just been very slow in having the
15 information provided, which is why we have given the
16 income statements as we have. We gave the income
17 statements for the Olympic owners since July 1st right
18 away. I believe those were provided on December 4 as
19 well as the cash flow statements on December 4th so that
20 all parties had that and have had it for a long time.
21 With regard to the information prior to July 1st, 2000,
22 we have noted the difficulties in trying to obtain that
23 information, but we have been making good progress in
24 getting that information made available to the parties.

25 MR. BRENA: Your Honor, this is Robin Brena,

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1 we made this request three weeks ago. Equilon is an
2 owner asking for a rate increase. It would not be
3 unreasonable to dismiss the interim rate request
4 entirely if they fail to provide the information
5 necessary to assess their interim rate. We want them in
6 the strongest possible terms. We do not want the
7 current operator to be hiding behind the former
8 operator. We want that former operator to provide that
9 information. And like I said, they are in part a third
10 owner requesting a 62% rate increase, and there is no
11 reason in the world why they shouldn't provide the
12 information necessary to support it if they have it.

13 JUDGE WALLIS: Mr. Brena, you have made that
14 point a number of times, and you need not make it again.

15 I do want to make it clear that we expect
16 that Olympic, as to any of these documents which may be
17 in Equilon's possession, that Olympic will request them
18 specifically in the way that Olympic receives that
19 request, will add any other information that Olympic may
20 know and that others don't in terms of describing or
21 assisting to find those documents, and that Olympic
22 provide them when they become available.

23 Mr. Marshall, does Olympic have information
24 regarding projected budgets and cash flow information
25 for the year 2002?

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1 MR. MARSHALL: I think we have provided that
2 in a separate response, but I think the budget for 2002
3 remains un -- remains unbudgeted because of the
4 uncertainty surrounding where money is going to be
5 obtained to do the financing for the things that need to
6 be done. But the 2002 budget is probably in response to
7 a different -- I'm trying to look through here as we
8 talk, it must be in response to a different set of
9 requests for information.

10 MR. TROTTER: Your Honor, this is Don Trotter
11 for Commission Staff. At the technical conference, the
12 company stated that it had an approved budget for 2002.
13 Some items were approved on a temporary basis, but there
14 was a budget approved for 2002.

15 JUDGE WALLIS: Mr. Marshall, do you know if
16 the company has provided that document?

17 MR. MARSHALL: I think they have. Let me ask
18 a couple of people here. Hold on just one moment.

19 MR. BRENA: Your Honor, we have not received
20 that document, and that also goes to the board request
21 for the minutes. And I would just remind you that we're
22 looking for not only for their projected budget, but
23 we're looking for their projected cash flow statements.
24 And my understanding of -- that as part of their cash
25 flow budgeting that they -- from the technical

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1 conference is that they go out to ten years for cash
2 flow budgeting for Olympic. I specifically asked a
3 question with regard to that. So we're looking for
4 projected budget information as well as cash flow
5 statements.

6 MR. MARSHALL: Well, the Request for
7 Production Number 9 just to make sure everybody is
8 centered on this, it says, please provide monthly
9 beginning January 1st, 2000, to date. So this Request
10 for Production Number 9 asks for what has -- monthly
11 budgets and cash flow statements as we interpret this
12 from January 1st, 2000, to today, which is December of
13 2001, so that has been provided.

14 Now the 2002 forecasts may be a different
15 request for production, but that's not the one that
16 we're on at the moment.

17 JUDGE WALLIS: Mr. Brena, was that
18 specifically requested?

19 MR. BRENA: It is a different --

20 MR. MARSHALL: And I, you know, maybe we're
21 missing something, but we provided -- we provided this
22 stuff with a proposed 2002 income budget to the WTC
23 Staff in their Data Request Number 20, and I think it's
24 Staff's request that people are thinking about. When
25 Mr. Trotter mentioned, you know, having heard about this

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1 in the technical conference, I think he's correct that
2 we did talk about an income budget, and we provided that
3 to Staff and to all other parties on December 11, 2001,
4 in connection with Data Request WTC Staff Data Request
5 Number 20 for 2002. The issue we're talking about now
6 with Mr. Brena is just Request for Production Number 9,
7 which just comes up to date.

8 MR. BRENA: Well, I would like to point out
9 that with regard to that, a projection that was made up
10 to to date, I mean it seems to me like we're quibbling
11 over words about what to date means. If they have a
12 projected cash flow that is in existence now, I think
13 that that is responsive to the discovery. It's not --
14 that's the nature of a forecasted cash flow. And, in
15 fact, what they provided for 2000 initially was a
16 projected cash flow for 2000.

17 MR. MARSHALL: What I'm saying is that
18 Staff's Data Request Number 20 takes into account all of
19 2002, and you've got that, and you have had it since
20 December 11th.

21 JUDGE WALLIS: Mr. Brena, does that respond
22 to your inquiry?

23 MR. BRENA: Hold on just a second, please,
24 Your Honor. Let me ask for clarification from
25 Mr. Marshall. Did you respond to Staff's request with a

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1 2002 budget and projected cash flow?

2 MR. MARSHALL: We provided what Staff
3 requested, and I'm not -- I don't have that.

4 MR. TROTTER: Your Honor.

5 MR. BRENA: I'm asking for monthly budgets
6 and cash flow statements.

7 MR. MARSHALL: Their Request Number 20 said
8 -- wait a minute here.

9 MR. TROTTER: I have --

10 JUDGE WALLIS: Mr. Trotter is able to
11 respond.

12 MR. TROTTER: I have it right here, this is
13 Don Trotter. It said, provide any financial forecast
14 made by Olympic for periods after 2001, and then it had
15 some details, but that was the thrust of it.

16 MR. MARSHALL: Right, and what we did is we
17 responded again on the 11th, and no one has taken issue
18 with what we provided with the proposed 2002 income
19 budget month by month, January 02 all the way through
20 December 02 with a total 2002 forecast. Again, we have
21 put in the assumptions to that forecast, and no one has
22 -- and the UTC Staff has not said that this was not
23 responsive to what they wanted --

24 MR. BRENA: Can I ask Mr. Trotter --

25 MR. MARSHALL: -- that was discussed in the

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1 technical conference.

2 JUDGE WALLIS: Mr. Marshall.

3 MR. MARSHALL: I'm sorry, go ahead.

4 JUDGE WALLIS: Mr. Brena interrupted, and we
5 did not hear what you said. Could you repeat that?

6 MR. MARSHALL: Sure. I think what I said was
7 that no one has said that the information provided to
8 Staff in response to their discovery requests or their
9 Data Request Number 20 was not adequate to meet what
10 they wanted. We projected in that request the barrels
11 to be transported both total and per day, operating
12 revenue, anticipated expenses, power expenses,
13 non-operating expenses, and gave the assumptions on
14 which all of these revenue projections and budget
15 projections were made. Mr. Batch also in his testimony
16 provided the capital budget information as to what was
17 intended to be spent, and we provided details on the
18 forecast of what we hoped to spend in 2002. I think all
19 the parties will realize or remember that the amount
20 that's nearly \$24 Million is a breakdown by each of the
21 capital projects that we had. So we provided not only
22 the income budget with all of the assumptions, but also
23 the capital budget with all of the assumptions for 2002.
24 And that's all been provided for, you know, a long time
25 now, since December 11.

00363

1 MR. TROTTER: Your Honor, this is Don
2 Trotter. We asked for any financial forecast. We did
3 get a forecast income budget. We also got in another
4 response their capital budget for 2002. We did not get
5 a cash flow statement for 2002. If one existed, it
6 should have been provided, because that would constitute
7 a financial forecast. So in answer to Mr. Brena's
8 inquiry, what we got in that DR Number 20 was income
9 statement and not cash flow.

10 JUDGE WALLIS: Mr. Marshall, does a cash flow
11 projection exist for the year 2002?

12 MR. MARSHALL: You know, I can't -- I don't
13 know.

14 JUDGE WALLIS: Would you find out, and if it
15 does exist, provide it by close of business tomorrow?

16 MR. MARSHALL: Yes.

17 JUDGE WALLIS: Very well. It would help, I
18 think, to focus our attention if as we go through the
19 remaining issues we pay particular attention to
20 identifying exactly what the request was, exactly what
21 the response has been, exactly why it does not comply
22 with the request. We're starting to hear a number of
23 the arguments and the characterizations repeated, and
24 I'm not sure that it assists us at this juncture to do
25 that.

00364

1 To help the parties as well as to handle a
2 matter that I must deal with momentarily, let's think
3 about that as we take about a six minute recess, and we
4 will plan on being back on the record at 5:00 by Room
5 108 time.

6 (Brief recess.)

7 JUDGE WALLIS: I apologize for the delay, I
8 had some administrative details that needed to be
9 attended to because of obligations that I have tomorrow.

10 Are we ready to proceed, Mr. Brena?

11 (Discussion off the record.)

12 JUDGE WALLIS: This is Bob Wallis, did anyone
13 hear anything of what I said?

14 MR. FINKLEA: This is Ed Finklea for Tosco, I
15 heard you, Your Honor.

16 JUDGE WALLIS: Very good.

17 MR. BRENA: This is Robin, I heard that you
18 were back.

19 JUDGE WALLIS: Okay, that was the important
20 thing, but I was apologizing for having to deal with
21 some administrative details for tomorrow.

22 Are you prepared to proceed? We have dealt,
23 I believe, with item number 4; is that correct?

24 MR. BRENA: Yes, Your Honor.

25 JUDGE WALLIS: Okay, let's move on to number

00365

1 5.

2 MR. BRENA: The operating capital expenses
3 relating to the Whatcom Creek incident for the Office of
4 Pipeline Safety's corrective action order. We just --
5 what we're looking for here, there's obviously going to
6 be a prudence issue raised with regard to the interim
7 rate and whether or not this is a proper thing to
8 include for the purposes of a rate payer. And Olympic
9 was compelled to identify those operating costs and
10 capital expenditures that were direct costs from Whatcom
11 Creek for the Office of Pipeline Safety's corrective
12 action order. The response that we have gotten does not
13 identify those costs and doesn't break them out.

14 JUDGE WALLIS: Mr. Marshall.

15 MR. MARSHALL: Actually, they -- it is
16 responsive, and they are broken out. First of all, I
17 want to note that his Interrogatory Number 35 asks for:
18 Identify which of the operating and
19 capital expenses listed in
20 Interrogatories 33 and 34 above are
21 associated with the Whatcom Creek
22 accident, including those which are
23 associated with compliance with the
24 Office of Pipeline Safety's corrective
25 action order as amended.

00366

1 We pointed out in answer to Interrogatory
2 Number 4 about the Office of Pipeline Safety's
3 corrective action order, and there are multiple
4 iterations of that, but the point of that is that not
5 all of what the Office of Pipeline Safety was doing, and
6 maybe not much of that was from Whatcom Creek, but
7 rather from some other broader issues. In any event, we
8 have shown that on the income statements, all of the
9 costs directly associated with Whatcom Creek accident,
10 which we're not requesting for in the general case, are
11 listed in the casualty and other losses on Olympic's
12 income statement. And the Olympic income statements
13 have been previously provided, and the casualty and
14 other loss figures are noted down there on a month by
15 month basis.

16 Also, we have indicated that that's one
17 portion of the cost related to Whatcom Creek. Another
18 portion of the cost as we state clearly in our answer is
19 associated with an estimate of what insurance recoveries
20 and reimbursements may be obtained, and that is listed
21 as a claims receivable balance sheet account. So
22 therefore, all of the costs related to the Whatcom Creek
23 accident are accounted under casualty and other losses
24 and on the claims receivable balance sheet account.

25 The answer that we provided to Tesoro was

00367

1 that there aren't any capital expenses, capital
2 projects, related to Interrogatory Number 34 to which it
3 requests in Interrogatory Number 35 asks for
4 information. In other words, what we listed in
5 Interrogatory Number 34 in capital expenses didn't
6 include anything related to Whatcom Creek, so we believe
7 we have answered the interrogatory in full and provided
8 the data for them to identify where the line items are
9 in terms of the statement of income for Whatcom Creek.
10 I hasten to add that that's the aggregate amount, and we
11 are not asking for that in the general case at all.

12 JUDGE WALLIS: I'm sorry, did you mean the
13 interim or the general?

14 MR. MARSHALL: Well, we're not asking for any
15 recovery of the Whatcom Creek expenses in the interim
16 case as well.

17 MR. TROTTER: Your Honor, this is Don
18 Trotter, if I could interject.

19 JUDGE WALLIS: Mr. Trotter.

20 MR. TROTTER: The company did include Whatcom
21 County incident expenses in a 2001 projected results of
22 operations that Ms. Omohundro relied on to show that the
23 company was in a loss position. And the testimony of
24 the company remains that it is in a loss position, so
25 that evidence which supported that proposition is out

00368

1 there. It was provided, and it does contain the Whatcom
2 Creek figures.

3 MR. BRENA: This is Robin, may I reply?

4 JUDGE WALLIS: Mr. Brena.

5 MR. BRENA: I agree with Mr. Trotter's
6 assessment. It's not only there, but it's also in their
7 assertions of deteriorating financial condition when, in
8 fact, but for the Whatcom Creek accident and before it,
9 this company was on fine financial footing. It also
10 goes to the specific losses that they have identified,
11 that they have included those losses. They have
12 referred to income losses. They have sent a redline
13 version to the parties now indicating that they are
14 redacting those specific losses from their testimony,
15 but they have yet to do that with any filing before the
16 Commission. And even if they were to do that, they're
17 still continuing to assert that they have losses, and
18 the calculations that they have put forward in their
19 case include those losses.

20 Now we're trying to identify -- and the
21 corrective action order and safety is another one yet to
22 come, so I was wrong to put both of those in my comments
23 with regard to this one. This one is we're trying to
24 identify specifically those costs associated with
25 Whatcom Creek. Now by saying a portion of the costs

00369

1 directly related are reflected in this account doesn't
2 identify any of the costs. We don't know if it's 100%,
3 we don't know if it's 50%, we don't know if it's 30%, we
4 don't know what it is that they're saying there.

5 With regard to the remaining portion as an
6 estimate to be recovered through insurance
7 reimbursement, we don't know what the insurance
8 reimbursement estimate is, we don't know what portion
9 they're anticipating would be reimbursed, and we don't
10 know what portion of this claims receivable balance is
11 associated with Whatcom Creek.

12 So we have none of the information that we
13 need to identify a specific total to Whatcom Creek even
14 on their own books, and this is notwithstanding the fact
15 that they represent that all costs directly related were
16 tracked through a project numbering system. So they
17 have indicated that they track those costs, that they
18 have a system in place to do that, but they haven't
19 given them to us.

20 JUDGE WALLIS: Did your request in
21 Interrogatory 35 clearly ask for all of that
22 information?

23 MR. BRENA: Yes, Your Honor, it did. And let
24 me say again --

25 JUDGE WALLIS: Mr. Brena.

00370

1 MR. BRENA: Yes, Your Honor.

2 JUDGE WALLIS: There's a reference to
3 Interrogatories 33 and 34, did those limit the nature of
4 the information to be provided?

5 MR. MARSHALL: Yes, they do.

6 MR. BRENA: No, Your Honor. We -- in 33, we
7 identified anything operating; 34, anything capital.
8 But allow me to point out that I am just going back to
9 what they were compelled to provide, and what they were
10 compelled to provide was information with regard to the
11 Whatcom Creek expenses, and that's what I have asked --
12 that's what I asked to be compelled, that's what was
13 compelled. This answer does not do that.

14 JUDGE WALLIS: Mr. Marshall.

15 MR. MARSHALL: Yes.

16 JUDGE WALLIS: I have a question.

17 MR. MARSHALL: Yes.

18 JUDGE WALLIS: What information accompanies
19 Ms. Omohundro's testimony in support of her statement?

20 MR. MARSHALL: Her testimony is in the
21 general case, not the interim case, Your Honor, so it
22 doesn't have any bearing on this issue whatsoever.

23 MR. TROTTER: Your Honor, this is Don Trotter
24 again.

25 JUDGE WALLIS: Mr. Trotter.

00371

1 MR. TROTTER: The statement showing a loss
2 was an exhibit initially filed by the company in its
3 interim case sponsored by Ms. Omohundro. That testimony
4 is not going to be offered in the interim case. That is
5 true. Mr. Batch, however, does testify about continuing
6 losses, and that information that Ms. Omohundro provided
7 supports his testimony. So we assumed that documents
8 prepared by the company that purported to show a loss
9 position were still fair game. If the company does not
10 believe that that document is reliable, then they should
11 just say that, and we can deal with that. But we
12 assumed it was still reliable information and among the
13 information that tended to -- that purported to support
14 Mr. Batch's testimony, so that's why we were pursuing
15 it.

16 JUDGE WALLIS: The specific question that I
17 have at this time is whether the information
18 accompanying Ms. Omohundro's testimony provides the
19 answer to Mr. Brena's inquiry.

20 MR. MARSHALL: Yes, Your Honor, Ms. Omohundro
21 attached 2001 statement of income, which lists casualty
22 and other losses, the forecasts for 2001 and year to
23 date, and the forecasts meant up until whenever the
24 testimony was given, and then the remaining forecast for
25 the remainder of the year 2001. The question

00372

1 Interrogatory Number 33 and 34 asked to have the total
2 operating expenses by FERC account by month beginning
3 January 1st. And then the Interrogatory Number 35 says:

4 Please identify which operating and
5 capital expenses listed in Interrogatory
6 Number 33 and 34 are associated with the
7 Whatcom Creek accident.

8 And what we normally -- I mean what we quite
9 reasonably thought is that they wanted this operating
10 expense by FERC account by month. Ms. Omohundro
11 provided it by year, and now we broke this down, and
12 they have all the income statements showing the casualty
13 and other losses by month.

14 They also -- and Mr. Brena was incorrect
15 about this, it says in our supplemental response, a
16 portion of the costs relating to Whatcom Creek are
17 reflected as an expense under casualty and other losses
18 on Olympic's income statement with a remaining portion
19 as an estimate to be recovered through insurance
20 reimbursement, and it's recorded to a claims receivable
21 balance sheet account. In other words, all of the costs
22 related to Whatcom Creek are reflected and accounted
23 for, but they're accounted for by month in accordance
24 with the Interrogatory 33 on the total costs. There's
25 nothing in either 33, 34, or 35 that asks for specific

00373

1 amount by specific item number. It was just, again, 33
2 says, please list total operating expenses by FERC
3 account by month. We provided all of that in answer to
4 Interrogatories 33, 34, ad 35.

5 MR. BRENA: Your Honor, this is Robin Brena.

6 JUDGE WALLIS: I have a question for
7 Mr. Marshall. Mr. Marshall, does the listing casualty
8 and other losses include only expenses relating to
9 Whatcom Creek?

10 MR. MARSHALL: Yes, it does, that's exactly
11 what we said is we have been very specific about it.
12 During the technical conference, questions were asked
13 about that too and responded to in exactly the same way.

14 JUDGE WALLIS: And estimate of insurance
15 recovery claims receivable, is that also exclusively
16 limited to Whatcom Creek?

17 MR. MARSHALL: Yes, it is.

18 JUDGE WALLIS: Very well.

19 Mr. Brena, doesn't that respond to your
20 request?

21 MR. BRENA: I don't believe it does, Your
22 Honor. It's very helpful that the casualty and other
23 losses should be assumed from this point forward to be
24 100% associated with Whatcom Creek. That's what I
25 understood the representation of counsel to be, and I

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1 would assume that that could not be contradicted at
2 hearing. With regard to the remaining portion as an
3 estimate to be recovered through insurance reimbursement
4 and as recorded to the claims receivable balance sheet
5 account, did I understand him also to represent that
6 100% of that claims receivable balance sheet account is
7 associated with Whatcom Creek?

8 JUDGE WALLIS: Mr. Marshall?

9 MR. MARSHALL: I may have missed a little
10 piece of that last thing; what was said?

11 JUDGE WALLIS: Mr. Marshall, I heard you to
12 say that the estimate of insurance recoveries claims
13 receivable was exclusively Whatcom Creek related; is
14 that correct?

15 MR. MARSHALL: That's our understanding, yes,
16 Your Honor. And that's the statement that we have in
17 the supplemental response which comes directly from
18 Olympic. The remaining portion, portion of the costs
19 relating to Whatcom Creek, are an expense under casualty
20 and other losses, with the remaining portion as an
21 expense to be recovered through insurance reimbursement,
22 and it's recorded in the claims receivable balance sheet
23 account, and it's our understanding that that's all --
24 both entries are exclusive of Whatcom -- to Whatcom
25 Creek.

00375

1 JUDGE WALLIS: Very well, it appears to me
2 that --

3 MR. BRENA: Your Honor.

4 JUDGE WALLIS: Mr. Brena.

5 MR. BRENA: I would like to put on my case to
6 the degree possible based on facts rather than
7 representations, and they apparently have this
8 information by project, by a project numbering system.
9 They have represented that to us. I would like to see
10 the printout of the Whatcom Creek project under that
11 project numbering system to see if the total amounts
12 that they have tracked in fact reconcile in the way that
13 they have represented.

14 MR. MARSHALL: This is a brand new request,
15 and I think it should be put in the form of a new
16 request.

17 JUDGE WALLIS: Mr. Brena, it does appear to
18 me that this is a new request and that the company has
19 responded to your earlier request.

20 MR. BRENA: Your Honor, this is Robin again,
21 Robin Brena again, we have asked for them to identify
22 those specific expenses. They apparently thought that
23 it was responsive to indicate that they had the project
24 numbering system where they could directly respond to
25 what those expenses were. But they just haven't

00376

1 provided that. I think that -- I think that that is
2 directly responsive. Through this, what we asked for is
3 identify your Whatcom cost expenses. That's what we
4 asked for. We didn't ask for casualty and other loss
5 information, we didn't ask for insurance reimbursement
6 through claims receivable balance sheet information,
7 which I point out is based on estimates of recoveries,
8 not on actual amounts.

9 We're trying to figure out how much Whatcom
10 Creek cost this company. We will not be able to do that
11 on the information that they have offered, because while
12 the casualty and other losses is one indication, the
13 estimate of the amount to be recovered is not a -- it's
14 only an estimate and doesn't indicate what the total
15 expenses are. There is not a number in their books that
16 shows how much Whatcom Creek cost them, and it can not
17 be made available unless they break it out by this
18 project numbering system.

19 JUDGE WALLIS: Mr. Marshall, a brief
20 response.

21 MR. MARSHALL: Well, again, they asked in
22 Interrogatory Number 33 for total operating expenses by
23 FERC account. 35 follows up on that. What he's asking
24 for now is a brand new request.

25 JUDGE WALLIS: Very well, I agree, I believe

00377

1 that this is a new request and that the company has
2 responded to the prior request.

3 Number 6.

4 MR. BRENA: Your Honor, may I be heard very
5 briefly on that?

6 JUDGE WALLIS: Mr. Brena, is there anything
7 that you would say that you have not previously said,
8 because we do have your earlier remarks in mind?

9 MR. BRENA: Yes. I would like to just point
10 out that in the transcript, Your Honor held that:

11 To the extent the company has not in its
12 interim case identified the operating or
13 capital expenses that are directly
14 related to the Whatcom Creek accident,
15 the company should do so.

16 That's all we have asked for.

17 MR. TROTTER: Your Honor.

18 JUDGE WALLIS: Mr. Trotter.

19 MR. TROTTER: If I might, I'm sorry, it does
20 appear that in their response to RFP Number 8, they
21 include casualty and loss expenses from January through
22 September, and Mr. Marshall has stipulated that those
23 are 100% Whatcom Creek. And that's what I understood
24 you to mean, Your Honor, when you said you believed the
25 information was already provided. And so what I don't

00378

1 see, however, is on the insurance claims receivable.
2 That is not a line item on the balance sheet provided in
3 response to RFP Number 8 of Tesoro. And so to that
4 extent, I'm not sure the information of that sort has
5 been provided. Perhaps Mr. Marshall can help us if you
6 require his help.

7 MR. BRENA: If I can just make one
8 supplemental comment with regard to that.

9 JUDGE WALLIS: Mr. Brena, let's let
10 Mr. Marshall respond, and then you will have your turn.

11 MR. BRENA: Okay.

12 MR. MARSHALL: This is recorded through a
13 claims receivable balance sheet account. Those -- that
14 information has also been provided, and I'm trying to go
15 through and find the exact place where that's been
16 provided already. I don't have my hands on it right
17 now, but the answer is accurate, that portion of the
18 costs related to this are an expense under casualty and
19 other losses, and then the estimate of the amount
20 thought to be recovered through insurance reimbursement
21 is recorded to a claims receivable balance sheet
22 account.

23 All of this has been somewhat interesting in
24 that we're not asking for this either in the general
25 case or in the interim case. I don't think anybody is

00379

1 going to dispute that this accident has had an effect, a
2 negative effect, on Olympic's financial condition, but
3 none of this is being requested, and that will be tested
4 in the general case.

5 MR. TROTTER: Your Honor, if I might suggest,
6 if the company could confirm that in RFP 8 they have
7 accurately set forth the casualty loss amounts and then
8 give a specific cite to the parties as to where the
9 insurance claims receivable dollars associated with
10 Whatcom Creek are located, that might be the best we're
11 going to get. And if it's already been provided, then
12 so be it.

13 MR. MARSHALL: Sure, I think we can do that,
14 because I can't through all of the, you know, we have
15 books and books of material here, but we will find that
16 as Mr. Trotter suggested.

17 MR. BRENA: Your Honor, this is Robin Brena.

18 JUDGE WALLIS: Mr. Brena.

19 MR. BRENA: Perhaps if -- I read Your Honor's
20 ruling compelling this. I would like to give an example
21 of why this isn't responsive.

22 JUDGE WALLIS: Mr. Brena --

23 MR. BRENA: We assume that the casualty and
24 other losses --

25 JUDGE WALLIS: Mr. Brena.

00380

1 MR. BRENA: Yes, sir.

2 JUDGE WALLIS: I really believe that given
3 the information that we have available to us, looking at
4 the request, and recalling as best we can and as
5 supplemented by your reference to the record, that, in
6 fact, the company has responded to your inquiry. The
7 question remaining is where the estimate of insurance
8 recoveries claims recoverable appears, and Mr. Marshall
9 has pledged that he will provide that information. I
10 know that you don't agree with this, but I would like to
11 leave that topic and move on.

12 MR. BRENA: Yes, Your Honor, I'm happy to do
13 that. My comment was only to point out that that
14 information is based on an estimate of insurance
15 recovery, not based on the actual underlying cost.

16 JUDGE WALLIS: Yes.

17 MR. BRENA: But with that, I will leave it
18 there.

19 JUDGE WALLIS: Very well, thank you.

20 MR. BRENA: Number 6, documents evidencing
21 deterioration of Olympic's financial condition. It's my
22 understanding that Olympic agreed to identify and
23 produce documents that concerned the deterioration of
24 their financial position, including without limitation
25 correspondence, memorandums, or notes of discussion.

00381

1 They're claiming a financial catastrophe, and there must
2 be some internal memorandums that are responsive to
3 that, and that's what we were trying to get to, and
4 that's what they agreed to provide. They have referred
5 generally to documents in their case. We don't have a
6 single internal memorandum. We don't have a single
7 discussion with regard to their financial catastrophe.
8 They must exist. We're asking for them.

9 JUDGE WALLIS: Mr. Marshall.

10 MR. MARSHALL: Yes, Your Honor, we have
11 provided in answer to not only Interrogatory Number 37
12 but I think a more specific response to Interrogatory
13 Numbers 38 and to Mr. Brena when we were talking about
14 this prior to the reconvening of the conference here.
15 And I pointed out to him that the response to 37 was
16 actually better contained in the responses to 38 and 40,
17 and 40 also refers back to Interrogatory Number 10 as
18 well.

19 First of all, the definition of deteriorating
20 financial condition is meant to address the general
21 financial situation of Olympic, and Olympic in its
22 testimony has provided details of its inability to pay
23 accruing interest on debt which, apart from other
24 negative factors, constitutes a financial condition that
25 continues to worsen. We say that our condition is not

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1 deteriorating as rapidly as it once was when we had no
2 revenue coming in when the pipeline was shut down. And
3 I think Mr. Brena wants to try to figure out whether
4 we're claiming that things are continuing to worsen.
5 They're not worsening as fast as they were, but they
6 certainly are not good by any measure.

7 The information on deteriorating financial
8 condition is provided in the hundreds and hundreds of
9 pages of the financial records, debt documents and other
10 financial materials produced in this case. That's
11 everything that we have produced in this case, both in
12 the initial testimony and in the data responses, goes to
13 that issue. I mean this is an issue, a request that
14 sweeps at everything, and that's what we're relying on.
15 And when they ask for what Mr. Batch knew and asked to
16 identify the documents, quote, reflecting the
17 deterioration of the financial condition that Mr. Batch
18 was aware of when he gave his testimony, we responded
19 that it was in reference to the case that had been
20 supplied to the parties.

21 I guess what Mr. Brena wants us to list each
22 and every document that's already been provided. That
23 would be exactly what we would have to say. And further
24 to that, I think that they're not entitled to anything
25 more than the documents themselves that support the

00383

1 claim of a deteriorating financial condition. That's
2 our claim. I mean they ask us what supports our claim,
3 that's what supports our claim, the documents on file in
4 this case.

5 MR. TROTTER: Your Honor, this is Don
6 Trotter, it was unclear to me if -- could the company
7 represent whether or not there are any correspondence or
8 memoranda in which the issue was discussed?

9 MR. MARSHALL: The issue of a bad condition,
10 financial condition?

11 MR. TROTTER: The issue of deteriorating
12 financial condition.

13 MR. MARSHALL: Well, it's all -- I mean the
14 income statements, the statements, everything in here
15 shows the bad financial condition.

16 JUDGE WALLIS: Mr. Marshall, that's not the
17 question.

18 MR. TROTTER: I will just repeat it, Your
19 Honor. The question was whether any memoranda or
20 correspondence or other similar types of discussion
21 documents, internal or external I suppose, that address
22 the deteriorating financial condition exist.

23 MR. MARSHALL: Well, the answer is yes, and
24 the answer is we have supplied all of the information.
25 Is there something other than an attorney-client

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1 privileged document that talks about the deteriorating
2 financial condition or the notes at the board of
3 directors meetings? I don't, you know --

4 JUDGE WALLIS: Are you representing,
5 Mr. Marshall, that no other document exists apart from
6 documents that might be subject to attorney-client
7 privilege that fall within the request?

8 MR. MARSHALL: I guess I would like to reply
9 by saying we have produced everything of any
10 significance that we can think of that's not related to
11 an attorney-client privileged detail to date, and
12 including everything that people could have asked at the
13 technical conference. Is there some note that somebody
14 made to themselves somewhere that we haven't turned
15 over, that might be. But I think every important
16 financial document that relates to the condition of
17 Olympic has been produced, all of the minutes of the
18 board, all of the statements of income, all of that
19 background material has been produced.

20 JUDGE WALLIS: Have you made a good faith
21 effort to assure that no such other documents exist?

22 MR. MARSHALL: I believe we have, but I will
23 ask that Olympic do it again and assure to me that they
24 have made that request and identify anything further
25 that they might have along that line. But we have

00385

1 produced literally by now thousands of pages of material
2 on this, including the general case that we filed here
3 on the 13th of December, both at the FERC and here. And
4 some of those documents, I have to say I haven't even
5 been able to go through all of them myself. But I will
6 ask them to assure me that all of the documents that
7 relate to their deteriorating financial condition have
8 been, in fact, produced to the parties in the interim
9 case, in the general case, and the data responses.

10 MR. BRENA: Your Honor, this is Robin Brena.

11 JUDGE WALLIS: Mr. Brena.

12 MR. BRENA: First, to the degree Mr. Marshall
13 is asserting attorney-client privilege with regard to a
14 document, it's his obligation to list that document and
15 assert the privilege. It isn't done generally, it's
16 done specifically. And to the degree that we may have
17 an issue with that, with the assertion of that
18 privilege, it's listed so that we can ask for an in
19 camera review to see if, in fact, it meets that
20 privilege. So just generally asserting attorney-client
21 privilege is not appropriate.

22 Secondly, it is simply not possible that a
23 company can have a financial crisis and not have
24 internal memorandums discussing it. They had a finance
25 committee who met for the purposes of arranging the

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1 long-term financing. In the last pre-hearing
2 conference, I asked specifically for the memorandums
3 from that committee. There must have been memorandums
4 prepared for the board describing not only their
5 financial situation but what available options were
6 available to the board to resolve it.

7 Now those are the internal discussions and
8 memorandums that I'm looking for here, not what their
9 case is, not what they're trying to rely on, what I'm
10 trying to rely on. So I just can not accept that a
11 company can have such an emergency that it requires a
12 62% emergency relief, but there's not a single internal
13 document that memorializes a single discussion of it or
14 analysis of it or proposals for it.

15 JUDGE WALLIS: Mr. Marshall, you have heard
16 the discussion. I believe that Mr. Brena is correct.
17 If you and your client intend to claim attorney-client
18 privilege, you need to identify the matter as to which
19 privilege is claimed.

20 Other than that, I think Mr. Brena has been
21 clear in his description of documents of this sort fall
22 within the correspondence, memoranda, or notes of
23 discussion, and you have represented that no such
24 documents exist. You have also indicated that you will
25 go back to your client with a specific request to verify

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1 that no such documents exist, and we will leave it at
2 that. Can you tell me when you may have a response to
3 that request?

4 MR. MARSHALL: Well, I will get a
5 verification on the materials other than the
6 attorney-client materials.

7 The attorney-client privileged materials, I
8 don't know how or even to what degree. I put the -- I
9 made that response out of an abundance of caution of
10 knowing that Olympic is represented by other counsel,
11 and I assume that there have been attorney-client
12 privileged materials that might relate to this broad
13 category. In terms of trying to prepare a log on
14 privilege, that wouldn't be capable of being done here
15 in the time that we have tomorrow.

16 But I will go back, and I will ask the
17 clients for any and all other materials that would
18 relate to this deteriorating financial condition.

19 Again, this request that we have for interim
20 rate relief is necessary to help prevent the further
21 deterioration of the financial condition, and I think
22 that what we have to ask is, are any of the parties
23 suggesting that there isn't a financial emergency on
24 behalf of Olympic, that their financial condition is not
25 dire? It's inconceivable that anybody can legitimately

00388

1 question that this company has the worst financial
2 condition of any utility, public service company, or
3 other company coming before the Commission.

4 JUDGE WALLIS: Mr. Marshall, I think that may
5 be a matter that there may be some disagreement on, and
6 that I expect will be one of the matters explored at the
7 hearing, and I would suggest that we just leave that as
8 a rhetorical question and move on.

9 MR. MARSHALL: Yes, Your Honor.

10 MR. BRENA: Number 7, causes for Olympic's
11 deteriorating financial condition. This is related to
12 the last conversation. I just would like to say that I
13 think at this point that after their production of
14 internal memorandum and board minutes, board reports,
15 and analysis of their financial position and its
16 solutions that -- that in response to our request for
17 causes, they haven't identified any documents, and so we
18 would just like to consider their response complete and
19 not be in a situation where we show up at hearing and
20 they contradict and come up with additional causes. So
21 if Mr. Marshall will represent that their answer is
22 complete, then we will just move on to the next one.

23 JUDGE WALLIS: Mr. Marshall.

24 MR. MARSHALL: Excuse me, Interrogatory
25 Number 40 specifically had this request:

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1 Page 1, line 22 and 23 of Bob Batch's
2 supplemental testimony, he refers to his
3 belief that Olympic faces a
4 deteriorating financial condition.

5 (a)Please explain when Mr. Batch
6 believes this deteriorating financial
7 condition began, and list every cause
8 Mr. Batch believes created this
9 deteriorating financial condition.

10 So this interrogatory is limited to
11 Mr. Batch's belief, and we believe that we have provided
12 the information on which Mr. Batch bases his belief of
13 the deteriorating financial condition. The question is
14 not one that asks for every cause that somebody else
15 might know about or have for its deteriorating financial
16 condition, but simply what Mr. Batch believes to be the
17 cause of the deteriorating financial condition.

18 Our response goes on for about a page and a
19 half with regard to what Mr. Batch believes and when he
20 became aware of it. He obviously was not aware of
21 anything until he became president of Olympic on August
22 1st, 2000. And then he only knows about the
23 deteriorating financial condition as the answer,
24 supplemental answer, shows from Olympic's balance sheet,
25 financial statements, debt, and other documents that

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1 have been provided to the parties. So we believe we
2 have answered this as to Mr. Batch's knowledge, belief,
3 and so forth about cause and what he meant when he gave
4 his testimony.

5 MR. BRENA: Your Honor, this is Robin Brena.

6 JUDGE WALLIS: Mr. Brena.

7 MR. BRENA: Your ruling on this was:

8 Very well, the company has responded by
9 reference to Interrogatory Number 38.

10 Mr. Ryan, will you verify whether that
11 is the company's complete response or
12 whether Mr. Batch or the company are
13 aware of documents that support that
14 response.

15 With regard to Interrogatory Number 38, it
16 asked them -- alleged that they face an emergent
17 financial situation, and we asked them to describe in
18 detail what they mean by that as well. So it's our
19 understanding that this -- that their response is
20 complete with regard to the company, not only with
21 regard to Mr. Batch. And if that is not the case, then
22 I would like them to supplement it with any other
23 information that they think is appropriate. We're
24 perfectly entitled to know what they think as a company
25 are the causes of their financial distress.

00391

1 JUDGE WALLIS: Mr. Trotter, did you wish to
2 make a comment?

3 MR. TROTTER: Just briefly. Mr. Batch is the
4 company's only witness in its direct case, and we
5 assumed that he was setting forth Olympic's case. And
6 if there is more to Olympic's direct case than Mr. Batch
7 has filed, then we need to know about that.

8 MR. MARSHALL: Well, we, again, just to
9 recapitulate on the answer to 40, Interrogatory Number
10 40, which asks for his belief and when he came to know
11 about the financial condition of Olympic, we have
12 answered that question, and we have answered that as
13 completely as we can. You're right, he is the only
14 witness, and to the extent that he's the only witness
15 that we have and unless something comes up that we had
16 no reason to believe that he would have known about,
17 that answer is going to have to suffice.

18 JUDGE WALLIS: Very well, we will note that
19 that appears to be a complete response.

20 MR. BRENA: Roman Numeral Number VIII,
21 federal income tax returns and estimated tax
22 information. Your Honor ordered them to provide not
23 only -- they provided the 2000 year tax return. They
24 were also obligated to provide 2001, any kind of
25 worksheets or calculation of tax. They have not

00392

1 provided that.

2 JUDGE WALLIS: Mr. Marshall.

3 MR. MARSHALL: Yes, we have, of course,
4 provided the income tax returns that were requested. Of
5 worksheets of federal estimated tax calculations, I
6 don't know if we have -- I'm asking the people that are
7 here in the room with me right now, I don't know the
8 answer to that question on estimated tax calculations.
9 I just point out that when you're not making money, you
10 don't have to pay much in the way of taxes, so the
11 answer may be that there's absolutely nothing on federal
12 estimated taxes for quarterly payments beyond the notion
13 that this company is losing a ton of money. And the
14 worksheets might be, and I will double check, but we
15 have asked this question, and the fact that we haven't
16 gotten anything is probably an indication that there
17 hasn't -- there's no estimated tax liability at all,
18 because there's no estimated earnings that could be
19 taxed.

20 MR. BRENA: Your Honor, I pointed out at the
21 time of the motion to compel that they had made a
22 considerable federal income tax payment in September.
23 And but the general argument aside, either the
24 worksheets exist for their federal income taxes, or they
25 do not. We believe that they probably are prepared

00393

1 quarterly, and we don't think that they're probably
2 paying \$9 Million or \$10 Million in September into a
3 federal income tax account without some estimate of what
4 their tax liability would be likely to have.

5 I think it would go a lot faster if we
6 focused just on what the request is, and what the
7 request is, if they have their worksheets, their federal
8 tax worksheets for 2001 should be -- were compelled to
9 be produced and have not been. They either exist or
10 they don't. If they exist, we're entitled to have them.

11 JUDGE WALLIS: Mr. Marshall, I think that
12 statement is probably correct.

13 MR. MARSHALL: Well, it is. And again, I
14 don't think that this company is going to be making any
15 money in 2000. It didn't make any money in, or excuse
16 me, it didn't make any money this year, didn't make any
17 money last year. They have a federal income tax credit
18 that can carry over, but that's different than federal
19 estimated tax calculations with quarterly payments.

20 JUDGE WALLIS: The question is whether those
21 documents exist. You have indicated you don't believe
22 so, but you will verify whether they do. And if they do
23 exist, you will provide them; is that correct?

24 MR. MARSHALL: That's correct.

25 JUDGE WALLIS: Very well.

00394

1 MR. TROTTER: Your Honor, this is Don
2 Trotter, was there a date by which the company could
3 provide those if they exist?

4 JUDGE WALLIS: Mr. Marshall, is that
5 something that you also would be able to do by close of
6 business tomorrow?

7 MR. MARSHALL: I think so.

8 JUDGE WALLIS: If it appears that you're not
9 able as to any of these items to respond by close of
10 business tomorrow, please communicate with the other
11 parties and state the reason and the status, ongoing
12 status, of the request. And if it appears that there
13 are documents, state when they will be available, and
14 again, alacrity is of the essence.

15 MR. MARSHALL: Certainly.

16 JUDGE WALLIS: Very well.

17 MR. MARSHALL: Although once again, I don't
18 believe there's any serious thought that we're hiding
19 some additional revenue sources that would create a huge
20 amount of income for those folks, but we will go ahead
21 and do that.

22 JUDGE WALLIS: At this juncture, I don't know
23 that we need to speculate, but I am concerned about the
24 documents that have been requested, and I think that
25 your response as we have summarized it and as you have

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1 agreed answers that request, so let's move on.

2 MR. BRENA: Category Number 9, minutes at
3 board meetings including attachments.

4 MR. MARSHALL: One moment here, on our 2000
5 taxes, tax returns that have been provided to the WTC
6 Staff Data Request Number 28, the income which is listed
7 on item line 30 is negative \$21 Million. On line 31,
8 the total tax is none. And the request went to a
9 request that we show the estimated tax information,
10 quote, used for purposes of calculating its quarterly
11 tax deposits.

12 So there again, I just wanted to make the
13 record clear that we don't have any reason to believe
14 that there are going to be any quarterly tax deposits,
15 but we will double check and give whatever information
16 we have on those estimated tax information forms. But
17 we just want to point out the previous information
18 submitted to the WTC I believe by at least December 11th
19 shows that there's no reason to believe that there's any
20 income last year, this year, years into the future.

21 JUDGE WALLIS: Very well.

22 MR. BRENA: Your Honor, this is Robin Brena.

23 JUDGE WALLIS: Mr. Marshall, before I lose
24 it, or have I already lost the question I had in mind,
25 the question I had in mind was to verify that you have

00396

1 provided to all parties the information that you
2 supplied to Staff in response to the Staff's data
3 request; is that correct?

4 MR. MARSHALL: Yes, Your Honor, we have.

5 JUDGE WALLIS: Very well.

6 MR. BRENA: We have received the 2000 year
7 income tax that was provided, Your Honor.

8 JUDGE WALLIS: Very well.

9 MR. BRENA: I'm concerned that Mr. Marshall's
10 restatement of our request is too narrow. Our request
11 was for any calculation or worksheet that a federal
12 income tax for 2000 or 2001. We will accept their tax
13 form for 2000. With regard to 2001, we just aren't
14 asking for, you know, a quarterly report. We're asking
15 for any worksheets they have of their federal income tax
16 liability. That's what we have asked for, that's what
17 was ordered to compel. I'm concerned that the way that
18 he restated what he was checking for may be narrower
19 than that request.

20 JUDGE WALLIS: Mr. Marshall, do you
21 understand the request?

22 MR. MARSHALL: I believe I do. I was simply
23 reading from Mr. Brena's page 13 of their analysis of
24 response when he said:

25 Olympic has not provided the estimated

00397

1 tax information that it used for
2 purposes of calculating its quarterly
3 tax deposits. Olympic should be ordered
4 to provide the information by close of
5 business on December 18, 2001.

6 I thought that was the statement of what they
7 wanted.

8 JUDGE WALLIS: Well, do you understand now by
9 reference back to the data request?

10 MR. MARSHALL: Yes, they apparently want
11 information used to calculate on worksheets federal
12 estimated taxes for 2001.

13 JUDGE WALLIS: And that is the information
14 that you --

15 MR. MARSHALL: And we will provide that even
16 though there may not be any quarterly tax deposits as
17 Mr. Brena's motion to compel noted.

18 JUDGE WALLIS: Thank you.
19 Item 9.

20 MR. BRENA: Minutes of the board meetings
21 including attachments. We had requested a complete and
22 up to date copy of the board of directors minutes for
23 the last -- from January 1, 1998, to date. Mr. Marshall
24 has -- the ones that were provided to us are frankly a
25 hob goblin. Some of them are signed. Some of them are

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1 not signed. It's not clear that they are official
2 minutes. It's not clear whether they have been adopted.
3 There are no attachments or memorandums that were
4 provided to the board. There's no analysis of the
5 company. There's just in many cases just blank copies
6 of the minutes.

7 Mr. Marshall and I have discussed bringing
8 these from -- and they were only provided through March
9 of this year. He has indicated that they have had three
10 board -- he has represented to me that they have had
11 three board meetings since March of this year and that
12 he has provided those minutes to me. I haven't received
13 those, and so I would request that they be faxed to me
14 immediately.

15 Also, he's indicated that they are unofficial
16 minutes and that they may be subject to revision. I'm
17 very confused by that, because in standard corporate
18 practice, at the next board meeting, the first thing,
19 your first order of business is to review the minutes
20 from the prior meeting and approve them. So I don't
21 understand how there could be months of unadopted board
22 minutes. In addition -- in addition -- so I want a
23 complete copy of official board minutes to the degree
24 they're available. And to the degree they're not
25 available, whatever fashion that they're available in.

00399

1 Also, you know, for each individual board
2 member, they get a packet. And in that packet, for
3 example, would include reports from the finance
4 committee with regard to the financing, with -- would
5 have reports from the management with regards to the
6 financial position of the company and different ways to
7 structure different situations. None of those internal
8 memorandum that should tell a story about their internal
9 analysis and -- has been -- has been provided. And it
10 has to exist, we have requested it, they said that they
11 would provide it, and we don't have it.

12 JUDGE WALLIS: Mr. Marshall.

13 MR. MARSHALL: Yes, once again, I think
14 Mr. Brena has the information. He doesn't know it. We
15 sent this to him by E-mail, which apparently he doesn't
16 get because his E-mail is not up and running. When we
17 heard that earlier today, we went out and we faxed him
18 these additional copies of the board of directors
19 minutes so he has it by fax as well as by E-mail.

20 It had taken -- I mean it was correct, the
21 latest minutes that we had provided to this point before
22 was to March of 2001. And Mr. Brena is correct that
23 these minutes that we have supplied here for an April
24 24th meeting, a meeting on June 7th, and a
25 teleconference meeting held on September 4th are all in

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1 a format that are still in draft form. Regardless of
2 what corporations or boards do at each meeting in
3 approving prior minutes, this is what we have. I mean
4 we have now provided what they have.

5 That was our concern before was producing
6 minutes after March of 2001 because there were no
7 official minutes. Now what we have done is we have
8 supplied Mr. Brena with the unofficial minutes. That's
9 the best we can do, and he doesn't like that because
10 they're unofficial minutes. But that's it, that's what
11 we have. Can't do any better than that. And it
12 indicates on there that these minutes are draft minutes,
13 and you will even see a handwritten notation that has
14 some scribblings on there about whether these things
15 were -- where they're changed and a couple of small
16 responses or -- and details. But it does explain that,
17 all of what was done at those three meetings held after
18 March of 2001. So what we have done is we have tried to
19 provide them even though they're unofficial with these
20 minutes. They haven't -- they just haven't yet been
21 signed and filed by the corporate secretary, but we have
22 given them all that we have by way of these drafts.

23 JUDGE WALLIS: Mr. Marshall.

24 MR. BRENA: Your Honor, if I may be heard
25 briefly.

00401

1 JUDGE WALLIS: Mr. Brena, please wait for a
2 moment.

3 MR. BRENA: Your Honor?

4 JUDGE WALLIS: Please wait for a moment.

5 MR. BRENA: Oh, okay.

6 JUDGE WALLIS: Mr. Marshall.

7 MR. MARSHALL: Yes.

8 JUDGE WALLIS: Mr. Brena also asked for
9 attachments and materials such as were provided to board
10 members in packets related to the meeting. Would you
11 address those, please?

12 MR. MARSHALL: Yes, on the packets relating
13 to the meeting, I'm not sure, I have to go back and take
14 a look at what the actual request was. It says -- it
15 does indicate that memorandums, reports, or documents
16 provided to individual board members. There aren't
17 packets per se that are distributed in advance to the
18 board of director meetings. Some individual board
19 members have kept materials that may have been presented
20 at board meetings or may not have been presented at
21 board meetings. It's very difficult to separate out
22 what they have that was presented at a board meeting to
23 individual board members or what they may have had in
24 some other capacity. But we're trying to figure that
25 out and provide that information as well. But the

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1 minutes, now we're up to date on all of that.

2 JUDGE WALLIS: Very well. Will you be able
3 by close of business tomorrow to resolve the issues
4 relating to information provided to the board members
5 relating to meetings?

6 MR. MARSHALL: We will try to do our best.
7 That may be one of those where we have to say that
8 that's going to take longer than tomorrow to do. As I
9 understand it, Mr. -- the attorney for Olympic,
10 Mr. William Beaver, who you met out here, is the one
11 that has attended board meetings. He is the one that is
12 trying to find out whether there are these materials and
13 assemble them for us. We have been in touch with him.
14 This is how we got these draft meeting minutes is
15 through Mr. Beaver's efforts to get us that. We have
16 asked him to try to pull together any of the materials
17 that may have been passed out to the board members prior
18 to a meeting or at the meeting. We're not trying to be
19 restrictive on that. We will provide anything that we
20 can, but it may not be that we can do that by the end of
21 the day tomorrow.

22 JUDGE WALLIS: Please do what you can, and
23 make a report as to any efforts that remain unrequited
24 by the end of the day.

25 MR. MARSHALL: Sure. And again, I think that

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1 after people read these minutes and so forth, they can
2 determine whether there are -- the minutes sort of speak
3 for themselves as to what was discussed.

4 JUDGE WALLIS: Very well.

5 MR. MARSHALL: And much of the time these
6 information wouldn't be of any relevance to the issues
7 here, but we are going to go ahead and try to assemble
8 all we can.

9 JUDGE WALLIS: Thank you.

10 Mr. Brena.

11 MR. BRENA: Your Honor, perhaps it's my turn,
12 I can barely hear you. I have my ear within an inch of
13 the speaker phone, so anything you can do to speak a
14 little louder would be greatly appreciated on my end.

15 JUDGE WALLIS: I made the mistake of leaning
16 back, I apologize.

17 MR. BRENA: Oh, okay.

18 I just wanted to say that after I made my
19 initial comment, my Staff had brought me in a copy of
20 the minutes that he referred to. They indicate that
21 these copies of these minutes, they were faxed from Karr
22 Tuttle Campbell to Perkins Coie at 2:03 today, and they
23 were faxed from Perkins Coie to me at 1425, so these
24 were documents that were provided afterwards, and then
25 the same with -- the same with the fax.

00404

1 JUDGE WALLIS: Mr. Marshall, I thought we
2 were going to identify documents of that sort.

3 MR. BRENA: -- his representation that these
4 are complete and all that are available. And then with
5 regard to the memorandums and analyses, like I say, have
6 said before and I won't belabor now, here is a board of
7 directors that is supposed to be facing a financial
8 catastrophe. They must have had internal memorandums
9 and reports. They must have acted based on those
10 reports. We're entitled to see them.

11 JUDGE WALLIS: Mr. Brena.

12 MR. BRENA: And know what the story is behind
13 the actions they have taken.

14 JUDGE WALLIS: Mr. Brena.

15 MR. BRENA: This is a regulated company, and
16 I was surprised to hear and I would be surprised to
17 learn that they don't keep in their corporation minutes
18 the information that's provided to their board members.

19 JUDGE WALLIS: Mr. Brena.

20 MR. BRENA: Yes.

21 JUDGE WALLIS: I will ask you again, it is
22 not necessary and please don't repeat your arguments and
23 your assumptions. What we are interested in right now
24 is the nature of compliance.

25 Related to that, Mr. Marshall, I did, I

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1 believe, ask you to identify any material that was sent
2 today, and it appears that the board minutes were among
3 those documents. If there's anything else that arises
4 during the course of our discussion, please identify
5 that in your response.

6 MR. MARSHALL: Yeah, I thought that that's
7 the one thing that I did refer to.

8 JUDGE WALLIS: Oh, yes, that's correct, I
9 apologize, you did say that already.

10 MR. MARSHALL: Okay. And we had sent that by
11 E-mail to Mr. Brena as soon as we got that, and I didn't
12 understand until we were involved in discussions that
13 his E-mail was not working properly, so we additionally
14 faxed it.

15 JUDGE WALLIS: Okay, very well, thank you.

16 MR. BRENA: And I was just clarifying, Your
17 Honor, for the record that the E-mail sent by them --

18 JUDGE WALLIS: Yes.

19 MR. BRENA: -- today at 1:45 p.m. Seattle
20 time.

21 JUDGE WALLIS: Yes, that's fine, thank you.

22 MR. BRENA: Are we on number 10?

23 JUDGE WALLIS: I believe so.

24 MR. BRENA: Capital improvements done to
25 comply with safety standards. I believe that they were

00406

1 -- they agreed to list the capital improvements for 2002
2 that they were required to comply with the Office of
3 Pipeline Safety corrective action order, as well as any
4 other safety standards. Now we have a list of
5 correspondence back and forth from OPS to Olympic. We
6 just simply, you know, they have asserted that their
7 2002 budget involved safety items. We have asked them
8 to break those out based on whether it's a corrective
9 action order or a general safety standard and to
10 identify it. They haven't done it.

11 JUDGE WALLIS: Mr. Marshall.

12 MR. MARSHALL: The question, of course,
13 relates to what items was done to comply with the Office
14 of Pipeline Safety corrective action order, and what we
15 have done, of course, is to try to correct the perhaps
16 misimpression that Mr. Brena has that there was a --
17 there's an actual order that has been issued and has
18 been made final. We have listed all of the different
19 correspondence related to a corrective action order to
20 show that this corrective action order had not and never
21 has become final, as we said in our supplemental
22 response. We have tried to give all of the background
23 and context for this.

24 And in addition, you know, I think the
25 parties ought to look at the I think that it's the Batch

00407

1 Exhibit Number 21 to the FERC filing that tries to
2 identify in general terms what was done in accordance
3 with what general direction or corrective action order,
4 but we have to be very clear that there is no order that
5 has become final on this. Again, Mr. Batch's BCB Number
6 21 in this docket, which is also in the FERC docket,
7 talks about those, all of those issues that we talked
8 about in this answer in terms of the different letters,
9 correspondence back and forth between OPS and Olympic,
10 DOE and Olympic, and so on.

11 It was necessary to set all of this forth in
12 some detail, and we did so in answer to our -- to
13 supplement Interrogatory Number 4 so that we don't have
14 a misimpression. The categorization of capital
15 expenditures in the context of an order not becoming
16 final is problematic, but I think if this answer is read
17 in the context of BCB 21 and the other responses we have
18 made, we will have done as best we can to identify those
19 actions taken versus the corrective action order.

20 I want to hasten to say that the corrective
21 action order doesn't necessarily relate to Whatcom Creek
22 accident either. Corrective action order and some of
23 the various amendments and letters following up on that
24 relate to an ERW weld issue, which is a longitudinal
25 weld in a certain kind of pipe that wasn't even used up

00408

1 in the Whatcom Creek area, which the accident -- there
2 were a number of other safety standards that were
3 adopted and applied to all pipelines that don't have
4 anything to do with the Whatcom Creek accident that
5 people have been trying to comply with. So to say that
6 a corrective action order is out there and then to
7 assume that that relates to Whatcom Creek is also an
8 assumption that we have tried to make plain in the
9 supplemental answer.

10 MR. BRENA: Your Honor, if I may. Your
11 Honor, and I'm just quoting from the transcript, you
12 held:

13 Let me ask that the items be identified
14 as to whether they are to comply with
15 the Office of Pipeline Safety corrective
16 action order, if the information is
17 readily available, whether it is
18 required to be done to comply with any
19 other safety standard.

20 And the conversation -- and that holding was
21 within the conversation of the 2002 budget. They have
22 indicated a capital budget for 2002, and Your Honor
23 compelled them to identify those items in that budget
24 that relate to the corrective action order, and to the
25 degree the information is readily available, to what

00409

1 safety standard, if any, they relate to.

2 MR. MARSHALL: And that's been done in BCB

3 21. If you look at that, that's the proposed 2002

4 budget. It goes through each of the line items in the

5 capital budget. It has comments on where this might be

6 found in terms of -- I will just give you an example.

7 One is a request for information about containment, and

8 there is a Department of Ecology containment request

9 that Olympic work on containment, and so there is a

10 budget item for that in the capital budget that's

11 attached as Exhibit 21.

12 MR. BRENA: Are you referring to,

13 Mr. Marshall, are you referring to an exhibit in the

14 supplemental -- I'm sorry, would you please identify the

15 exhibit that you're referring to?

16 MR. MARSHALL: This is BCB 21. The question,

17 of course, is one of first of all, what actions are

18 taken to comply with the Office of Pipeline Safety

19 corrective action order. And because there is no final

20 order, we tried to do the best to explain that and to

21 try to identify things that we -- Olympic has been doing

22 to try to respond in general to the thrust of some of

23 these concerns. On other safety standards, for example,

24 on this Department of Ecology spill prevention plan, we

25 have a statement in there about what the proposed budget

00410

1 is and how that relates to that and so on down the line
2 in this BCB 21.

3 MR. BRENA: Your Honor, that was a response
4 that was given, that generally lists what their budget
5 is, and was given prior to the motion to compel being
6 argued or given, and we had asked --

7 MR. MARSHALL: -- Thursday--

8 MR. BRENA: We had asked for them to go ahead
9 and break that down. Well, we didn't ask, Your Honor
10 ordered them to identify what items in their capital
11 budget they're doing as a result of the Office of
12 Pipeline Safety and what actions are attributable to
13 other safety standards and to identify those capital
14 items. That's all we're asking for.

15 MR. MARSHALL: What I pointed out is that on
16 the 13th when this testimony was filed, BCB 21, it has a
17 listing of the proposed 2002 budget and a set of
18 comments that identify what the project is trying to
19 accomplish, in other words whether it's being requested
20 by the Department of Ecology for spill prevention or
21 what other safety standard it was trying to meet.

22 MR. TROTTER: Your Honor, this is Don
23 Trotter, if I might.

24 JUDGE WALLIS: Mr. Trotter.

25 MR. TROTTER: I'm a little confused by the

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1 reference to BCB 21, because as I understand it,
2 Mr. Batch's interim case only goes through BCB 7, so is
3 the reference to an exhibit in the general rate case?

4 MR. MARSHALL: It is and, you know, that
5 response to a data request is not part of our request in
6 this case, but if it wants to be made as part of this
7 answer, we will incorporate that in this interim case as
8 well.

9 MR. TROTTER: Well, I guess, Your Honor, my
10 question would be if, and I don't have BCB 21 before me,
11 but if it contains the information responsive to this
12 request, if the company would just indicate that that is
13 their response, then that might move us forward. Just a
14 suggestion, Your Honor.

15 MR. MARSHALL: I think the parties ought to
16 take a look at that, and we can talk about that
17 tomorrow. After you have a chance, Don, to take a look
18 at BCB 21, and Mr. Brena, to take a look at BCB 21, take
19 a look to see if this doesn't respond, and if not in
20 full, in large part to what you are looking for. And it
21 may be that you can't identify any particular capital
22 expenditure to a particular order from one of the Office
23 of Pipeline Safety or the Department of Ecology or what
24 it may be, but that's all set forth in the supplemental
25 answer as to why that would be difficult to do. What

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1 BCB 21 tried to do is it tries to identify in as good a
2 form as we can the nature of the capital budgets for
3 2002 in terms of just the kind of questions that I think
4 that you're asking at that interrogatory.

5 MR. BRENA: Your Honor, perhaps -- we're
6 going to pull that exhibit, and perhaps we could just go
7 on to the next one.

8 JUDGE WALLIS: Very well, let's do that.

9 MR. BRENA: Until we have an opportunity to
10 review that exhibit.

11 JUDGE WALLIS: Thank you.

12 MR. BRENA: Number 11. Actually, well, and
13 it just showed up, hold on.

14 Well, it's going to take a little longer than
15 just a quick glance, I'm afraid.

16 JUDGE WALLIS: Well, Mr. Marshall has
17 indicated that that appears to respond to your request
18 and has invited further discussions tomorrow. That
19 appears to be a good plan. Let's leave it at that and
20 move on.

21 MR. BRENA: Okay. Number 11. On Number 11,
22 we asked specifically for an explanation as to why there
23 was such short maturities on the affiliated debt and how
24 the interest rates were calculated. We also asked for
25 them to identify the terms, the individual terms for the

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1 default for the loans with Arco and Equilon. They have
2 asserted that they are in default. In the technical
3 conference, they did indicate specific terms that were
4 in default. In their supplemental response, they have
5 not. So I would like for them to explain the reasons
6 for the short maturity and the interest rate and how
7 they were calculated, and I would like for them to
8 indicate each term of the note they feel is in default,
9 which is what they did at the technical conference.

10 And the reason for this request is, of
11 course, to bring things out of the technical conference
12 so that it's in usable discovery form. Let's see, and
13 in this regard, Your Honor ordered, and I'm quoting from
14 the transcript:

15 Very well, to the information to the
16 extent that the company can provide an
17 explanation for the brief maturity rate,
18 the brief maturity date and the
19 determination of the interest rate, the
20 company should do so. To the extent
21 that it's able to identify the terms
22 which are in default of the loans of
23 Arco and Equilon, the company should do
24 so.

25 JUDGE WALLIS: Mr. Marshall.

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1 MR. BRENA: That's what we would like done.

2 JUDGE WALLIS: Mr. Marshall.

3 MR. MARSHALL: You know, I had this
4 conversation with Mr. Brena before we got on to this
5 call earlier today, and I pointed out to him that we
6 have already responded to Interrogatory Number 8, 9, 7,
7 6, a number of them that are in our supplemental
8 responses. And what we have said quite clearly is that
9 all of the loans of Arco and Equilon are in technical
10 default, this is in answer to Interrogatory Number 8,
11 and that the Prudential and Chase loans are current.
12 Each of the loans with Arco and Equilon are in technical
13 default because interest has not been paid when required
14 in accordance with the notes, and the notes speak for
15 themselves.

16 With regard to the final note by Arco, I have
17 pointed out to Mr. Brena that the revolving note, and
18 which has been provided, of course, as all of the notes
19 have, in Paragraph 6(a), which again was gone into
20 detail in the technical conference, states that,
21 borrowers in default of the terms of this note for any
22 agreement, in other words, the lender -- excuse me, I
23 will start out again.

24 The lender will have no obligation to
25 advance funds under this note if (a)

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1 borrower is in default under the terms
2 of this note or any agreement that
3 borrower has with lender, including any
4 agreement made in connection with the
5 signing of this note.

6 All of the notes, of course, including this
7 note, require regular monthly payments of interest, of
8 accrued unpaid interest, and none of those conditions
9 have been made to pay interest. So the fact of the
10 matter is that Mr. Brena knows the reasons for default,
11 and they are that no interest has been paid on those
12 notes with Equilon and with Arco. So I don't know if
13 there's much to be gained by that. We think that we
14 have applied that in our supplemental answer at page 8.
15 We said:

16 Mr. Fox was questioned as to whether
17 Olympic was in default on his notes to
18 Arco, and Mr. Fox confirmed. Those
19 notes provide the best evidence of their
20 conditions. It was his understanding
21 that Olympic was in default on all notes
22 to Arco including the last one.
23 Again, I don't think there's any uncertainty
24 at all about why they're in default on these notes. If
25 there's any remaining dispute about what that is, and

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1 this response of mine here to Mr. Brena earlier and
2 again now and at the technical conference should suffice
3 to prove that -- why they're in default. I think we
4 have answered this fully in all of the prior
5 interrogatories and the supplemental and in the
6 technical conference on the 4th of December.

7 With regard to the short maturities and the
8 interest rate, those are a product of the negotiations
9 between the parties, and we have indicated earlier that
10 the -- in answer to Interrogatory Number 7 that the
11 short interest or the short maturity of interest is
12 something that to be more appropriately obtained from
13 the lenders reference than the note, including Chase and
14 Prudential. But the fact of the matter is that those
15 are the conditions that were imposed by the lenders, and
16 there's nothing further that can be added to that as
17 well. Those are all statements made not only in the
18 prior answers, but in the supplemental answer and at the
19 technical conference.

20 MR. BRENA: Your Honor, if I may.

21 JUDGE WALLIS: Mr. Brena.

22 MR. BRENA: First, if -- Olympic has not
23 responded by indicating what terms of the notes are in
24 default. They were compelled to, and they have not.
25 Now if Mr. Marshall wished to be -- I mean he has just

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1 made representations about the individual terms that are
2 in default. It seems to me that the easiest thing to do
3 is for him to supplement his response to make those
4 representations that those are all the terms that are in
5 response, and that would be acceptable to Tesoro.

6 We had this conversation earlier. He
7 mentioned page 8 then about Mr. Fox, and he said he
8 confirmed -- there is no discussion whatsoever in the
9 response as to what individual terms are in default.
10 That is a conversation that took place in the technical
11 conference. That is important to understand why those
12 terms are in default. I would prefer to have full
13 responsive discovery to my request rather than
14 representations of counsel in the middle of argument.

15 MR. TROTTER: Your Honor, this is Don
16 Trotter, I can confirm that at the technical conference
17 there were specific terms addressed. And as Your Honor
18 knows, the pre-hearing conference order does say that we
19 can't rely on those. So it's my belief as well that the
20 discovery is essential to follow up on those notions.
21 But this topic was discussed, so I think the information
22 does exist.

23 MR. BRENA: Your Honor, if I may continue
24 with regard to the short maturities and interest rate.
25 I mean here's a situation where a company created its

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1 own crisis by borrowing \$50 Million or \$60 Million that
2 was due to be paid back in six months with no way to pay
3 it back, and it's affiliate debt. Now somebody had to
4 have a plan, and they -- and I mean you don't go out and
5 borrow money that you don't have any way to pay back.
6 They could have -- we could be at the end of this rate
7 case, and they could get every penny that they're asking
8 for, and they still could not -- they didn't even file a
9 rate case before then. So, you know, the explanation
10 that, well, this is best by the lenders when the lenders
11 are their affiliates and they're shareholders in this
12 situation and created -- it created a financial crisis
13 of their own making that they're trying to use to get
14 emergency relief, you know, there needs to be some
15 explanation for why the affiliates funded this company
16 with short-term debt that was sure to go into default.

17 Now that is what we're asking for, an
18 explanation for why you go out and borrow \$40 Million or
19 \$50 Million that you can't pay back in six months. Now
20 from the corporate minutes, we have divined that it
21 appears that the shareholders had in mind a long-term
22 arrangement, and they were going to roll the short-term
23 debt into a long-term arrangement. But whatever the
24 explanation is, we shouldn't have to divine it. Their
25 -- much of their case relies on their self created

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1 crisis because of the short-term nature of the affiliate
2 debt. We're entitled to an explanation, you ordered
3 them to give us one, we want to hear what it is.

4 JUDGE WALLIS: Mr. Marshall.

5 MR. MARSHALL: Well, again --

6 JUDGE WALLIS: Not again, just a brief --

7 MR. MARSHALL: -- Olympic doesn't have
8 control over what the amounts loaned to Olympic will be
9 or what the interest rates are going to be. It is
10 entirely up to people who are not beholden to Olympic.
11 True, they are shareholders in Olympic, but it's no
12 different than to say, Mr. Brena, why don't we borrow
13 money from Tesoro because Tesoro is a shipper on
14 Olympic. They have an interest in keeping this pipeline
15 going. I'm sure that Mr. Brena would say, well, Tesoro
16 is unwilling to give you guys any money because what are
17 you going to pay it back with, why should we loan you
18 any money.

19 JUDGE WALLIS: Mr. Marshall.

20 MR. MARSHALL: Yes.

21 JUDGE WALLIS: I again am concerned that
22 we're going into an argument phase when really at this
23 juncture we're -- I don't think it pays us to speculate
24 about what people were thinking or their motives. What
25 we're looking for is documentation and statements of

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1 reasons if they exist, and I would like to see us
2 confining our discussions to those. I think it will
3 help us get to where we need to be a little bit faster.

4 Let me see if I understand what you're
5 saying. You're saying that you believe that the
6 company's response to Mr. Brena's data request is
7 complete; is that correct?

8 MR. MARSHALL: That's correct, the prior
9 responses we made and the supplemental responses that
10 incorporate those prior responses we believe in the
11 short maturity and interest issue that are complete.
12 And we believe we have responded also to what the issues
13 are on why the loans are in default, which by the way is
14 a combination of legal conclusion and fact based on the
15 notes themselves and the facts that their payments on
16 interest have not been made.

17 JUDGE WALLIS: And, Mr. Brena, you find that
18 this strains your credulity and believe that there is
19 more, but you're faced with Mr. Marshall's
20 representation that the response is complete; is that a
21 correct statement?

22 MR. BRENA: Yes, but it's not a complete
23 statement. In the corporate minutes, there's
24 indications that this finance committee was working on a
25 financing package with Olympic or for Olympic, and

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1 there's some explanation that their long-term plans
2 broke down because of a shareholder conflict. So let me
3 say that the reasons for the short maturity are known to
4 Olympic. That is evidenced by their own corporate
5 minutes. And so I would like for them to proffer why it
6 is that they -- why it is that -- their understanding of
7 why their shareholders, their lenders, funded them money
8 on a maturity date that could not possibly be repaid.
9 It seems like a reasonable thing to be able to ask them.

10 JUDGE WALLIS: Mr. Trotter, do you --

11 MR. BRENA: And so I would say that no, it
12 just doesn't strain my imagination, but it also
13 contradicts their board minutes.

14 MR. FINKLEA: Your Honor, this is Mr. Finklea
15 for Tosco, we strongly join Tesoro in this request.

16 JUDGE WALLIS: Mr. Trotter.

17 MR. TROTTER: Your Honor, it does strike me,
18 in Mr. Marshall's response he referred to motives of the
19 lenders, but certainly the entity getting the money had
20 reasons to get it on the terms that they got it. And so
21 it does seem to me that if there is no explanation, they
22 should, for the short maturity, they should identify
23 that. And if there is, they should explain what was
24 going on. There should be a story there, and if there
25 is, then it should be told.

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1 JUDGE WALLIS: Very well, Mr. Marshall,
2 Mr. Batch is your witness, perhaps Mr. Batch could
3 respond to this either by saying that there is no
4 explanation or to provide such explanation as he is
5 aware of.

6 MR. MARSHALL: Very well. What we will
7 probably be doing is what we suggested at the technical
8 conference with Mr. Fox was asked about this, and that's
9 to say this was the best that could be done under the
10 circumstances. Why would anybody loan money to this
11 outfit under any terms.

12 MR. TROTTER: Your Honor.

13 JUDGE WALLIS: Mr. Trotter.

14 MR. TROTTER: Your Honor, at the technical
15 conference, there was discussion about a financing
16 committee and a strategy that apparently did not come to
17 fruit. And there was also discussion of what
18 Mr. Marshall just said, but there was definitely
19 discussion about that, and it does not appear in this
20 response.

21 JUDGE WALLIS: Very well. Mr. Marshall, we
22 really would like you to follow up on the discussions at
23 the technical conference and confirm those and
24 supplement them to the extent that the company is able
25 to do so. That is consistent with the ground rules on

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1 which the technical conference was conducted, and I
2 think it would help move us along if that is
3 accomplished.

4 MR. MARSHALL: We will further supplement
5 that. We thought that we had answered fairly
6 definitively in the supplemental response to
7 Interrogatory Number 10, but we will speak to those
8 specific issues in further response.

9 JUDGE WALLIS: Thank you.

10 MR. BRENA: Your Honor, and just one comment,
11 I suspect -- we have asked for the information from the
12 finance committee through -- that was provided to the
13 board, and I suspect that much of the story is told in
14 those documents, and we specifically requested those to
15 the degree they were provided to the board, which they
16 should have been.

17 Are we at number 12?

18 JUDGE WALLIS: I believe we are.

19 (Brief recess.)

20 JUDGE WALLIS: We left off, I believe, ready
21 to take up item 12; is that right, Mr. Brena?

22 MR. BRENA: Yes, Your Honor.

23 JUDGE WALLIS: Please proceed.

24 MR. BRENA: Are you ready for me to proceed?

25 JUDGE WALLIS: Yes, please proceed.

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1 MR. BRENA: We asked for a reconciliation
2 between the \$72 Million that they borrowed from their
3 shareholders in the year 2000 versus their reported Form
4 6 capital expenditures of only \$12 Million. Your Honor
5 held that, according from the transcript again:

6 Mr. Ryan, it does strike me that the
7 question is a fair one and that the
8 reconciliation between the exhibits in
9 the FERC Form 6 should be a relatively
10 easy matter for the company to do, and
11 therefore I will ask the company to
12 provide that information.

13 The information which they provided doesn't
14 provide a reconciliation between these numbers at all as
15 near as I can determine. My argument is done.

16 JUDGE WALLIS: Mr. Marshall.

17 MR. MARSHALL: My argument is that this
18 supplemental response is it. Notes aren't earmarked for
19 specific capital expenditures, period. There's no
20 reconciliation needed.

21 JUDGE WALLIS: Very well.

22 Mr. Trotter, do you have any observations on
23 this item?

24 MR. TROTTER: One moment.

25 MR. MARSHALL: I do believe there is a typo

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1 in our supplemental response about the \$12 Million for
2 capital expenditures, and I think we say in our answer
3 \$2 Million.

4 MR. TROTTER: Your Honor, I think the request
5 was that the company appears to have borrowed \$72
6 Million in a year in which they had capital expenditures
7 of only \$12 Million. The response does refer to notes
8 with respect to Equilon, and it's my understanding that
9 those notes were based on moneys that were allegedly
10 given to Olympic in a prior year. Now if that's -- if
11 my recollection is correct, that would be at least an
12 explanation of why at least to that extent the numbers
13 do not appear to be consistent, but that's not what they
14 -- how they responded, so my recollection may not be
15 correct. But it did appear there might be more of a
16 story here than the response, but Mr. Marshall probably
17 knows the exact details of that.

18 MR. BRENA: And, Your Honor, just to clarify
19 what I expected, there's \$72 Million at issue, and
20 there's \$12 Million accounted for. That's \$60 Million
21 missing. And whether or not a note is earmarked for a
22 capital expenditure or not, there must be some
23 explanation for where \$60 Million went to. It didn't go
24 to capital expenditures, and so I was asking for a
25 reconciliation from the \$72 Million number to the \$12

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1 Million number. In my mind, that reasonably anticipated
2 an explanation for the missing \$60 Million.

3 JUDGE WALLIS: Mr. Marshall.

4 MR. MARSHALL: Well, there's nothing missing.

5 He set up an equation here that says you're going to
6 borrow everything for capital expenditures, and because
7 you haven't shown what you're spending on capital
8 expenditures equal to the amount you borrowed in a
9 particular year, therefore there must be some
10 explanation that you need to make. There isn't.

11 These notes are not earmarked specifically
12 for capital expenditure. Notes can be done to refinance
13 other notes, for example. There's no missing \$60
14 Million here. That's a false premise. And there is no
15 -- because there is no earmarking specifically for
16 capital expenditures, there's no reconciliation
17 necessary.

18 MR. BRENA: If the explanation is the \$60
19 Million went to other operating expenses or expenses
20 associated with Whatcom Creek or whatever it was spent
21 on, whether or not the \$72 Million they borrowed is
22 earmarked for capital expenditures is only one part of
23 the issue. The other part is that if you borrow \$72
24 Million but you only spend \$12 Million on capital
25 improvements, and if it's correct that you don't earmark

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1 it, then what was the money used for.

2 JUDGE WALLIS: Mr. Brena --

3 MR. MARSHALL: -- in its response to

4 Interrogatory Number 31 states that --

5 JUDGE WALLIS: Mr. Marshall.

6 MR. MARSHALL: Yes.

7 JUDGE WALLIS: Hang on for just a second.

8 Mr. Brena, it does appear that the company's
9 response says that the notes are not earmarked
10 specifically for capital expenditures and that the
11 remaining balance was incurred to cover cash needs. It
12 appears to be a full response. It may be that as
13 Mr. Trotter indicates there's more to the story, but I'm
14 not sure that this request calls for it, and it strikes
15 me that the response is adequate.

16 MR. BRENA: Your Honor, we still have the
17 issue of the difference between 72 and 43, and we still
18 have -- I mean I suppose that cash needs, to my way of
19 thinking, just saying cash needs does not provide a
20 reconciliation of one balance to another. I mean of
21 course it was cash needs, to state the obvious. But I
22 would like identified in more detail what cash needs
23 this money was borrowed for. I mean they went out and
24 borrowed \$72 Million, and if what they're saying is they
25 can't explain where it went other than cash needs, it

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1 just seems to me that there ought to be something more
2 than that to be a proper reconciliation of the numbers.

3 JUDGE WALLIS: Well, I'm not sure that
4 they're numbers that by definition can be reconciled in
5 that I'm not sure that your postulation is correct that
6 the two numbers are directly related so that they must
7 add up. The company has provided you its financial
8 statements and is updating those financial statements.
9 Those statements appear to give a more complete picture
10 of the company's cash and other financial indicators.
11 And as Mr. Marshall has indicated, I'm not sure that I
12 see that there -- that there is the kind of equation
13 that your inquiry appears to suppose.

14 MR. BRENA: Your point is well taken, Your
15 Honor. Assuming that the point is correct or at least
16 you're holding, that there's still a need for the
17 explanation. We have asserted that they borrowed \$72
18 Million, and they have indicated that they have recorded
19 notes in the amount of 43 where Mr. Batch's testimony
20 included \$72 Million of loans.

21 JUDGE WALLIS: Mr. Marshall, can you address
22 that?

23 MR. MARSHALL: Well, without talking to
24 Mr. Batch, no. But, you know, I don't know, I think
25 that Equilon loaned 45, others may have loaned the rest.

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1 It may just be that simple. But he hasn't asked for
2 that reconciliation in this Interrogatory 31, so I don't
3 -- I can't really speak to what he's now asking.

4 JUDGE WALLIS: It does strike me that the
5 answer appears to be an adequate response and that we
6 should move on.

7 MR. BRENA: Number 13, security documents for
8 notes. I am just trying to be sure that Mr. Marshall
9 has produced in response to the Staff or us all security
10 documents relating to the notes. And the reason for my
11 question is as we found out in the technical conference
12 that there were additional security documents which had
13 not been provided.

14 We were shown, for example, we had a
15 discovery request with a second amendment to a master
16 agreement we didn't have at the time, a master agreement
17 or a first amendment. We were told that there may be
18 throughput agreements, which we have a copy of the
19 throughput agreements. And there was a reference with
20 regard to the minutes, that there may have been an
21 agreement with regard to some long-term financing at
22 some point. So I am just asking for him to confirm for
23 the purposes of going forward in this case that all
24 security instruments have been provided to either Tesoro
25 or the Staff.

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1 JUDGE WALLIS: Mr. Marshall.

2 MR. MARSHALL: Yes, in response to WTC Staff
3 Data Request Number 16, we provided all of those
4 documents identified in the technical conference, which
5 included Attachment 1 to this request, the master shelf
6 agreement, the security agreement associated with the
7 Prudential note that was identified in BCB Number 5 at
8 page 3. This is a stack about an inch and a half thick
9 of throughput and deficiency agreements and master shelf
10 agreement, so.

11 And not only that, this was, of course,
12 provided some time ago now, December 11th, and I hadn't
13 heard from Mr. Brena that he had any further issue about
14 that. He's stating that our response is no response,
15 but we think that actual pre-hearing conference
16 transcript shows that Your Honor said, "I believe this
17 was covered elsewhere." And then we did respond in
18 Request for Production Number 3 that these security
19 notes and instruments were provided in the response to
20 the WTC Staff Request Number 1, Question Number 3, which
21 had been provided to Tesoro. So we supplemented this,
22 you know, three or four different ways.

23 MR. BRENA: And I would just ask for
24 clarification, Your Honor.

25 Mr. Marshall, have you identified each of

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1 those security agreements and the notes to which they
2 have attached?

3 MR. MARSHALL: We have responded in a
4 supplemental response, we have responded in a Staff data
5 request, all of the security agreements that are
6 responsive in both of those we have been told are the
7 security arrangements that have been made. I can't do
8 any more than what the client has told me and --

9 MR. BRENA: Your Honor --

10 MR. MARSHALL: -- heard from the technical
11 conference on --

12 JUDGE WALLIS: Mr. Brena.

13 MR. BRENA: Yes, sir.

14 JUDGE WALLIS: You interrupted Mr. Marshall,
15 and as a consequence, we did not get the end of his
16 statement nor any of yours.

17 Mr. Marshall, would you please restate your
18 response.

19 MR. MARSHALL: Yes. I think that it's clear
20 that for the technical conference, all of the security
21 arrangements were identified, and we have represented,
22 Olympic has represented that Staff Data Request 16 and
23 then the Tesoro request for production Number 3 where we
24 refer back to the Staff data request, that those are the
25 security agreements that are in existence. And I think

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1 that it's, you know, everybody's notes from the
2 technical conference should indicate that those are the
3 things that were identified by Mr. Fox and Ms. Cindy
4 Hammer. I don't think we can say anything more. This
5 has been supplemented two or three different times now.

6 JUDGE WALLIS: Mr. Trotter, do you have any
7 observations?

8 MR. TROTTER: Yes, Your Honor. The data
9 request UTC Number 16, they did say that the master
10 shelf agreement and the security agreement were
11 associated with the Prudential note, and those were the
12 -- I think those were the additional documents that were
13 given. So in addition to the first notes that were
14 provided and then the response to Staff Data Request 16,
15 which are associated only with the Prudential note, we
16 have assumed now that we have all of the documents.

17 MR. MARSHALL: Right, the notes themselves,
18 that's a good clarification, Mr. Trotter, the notes
19 themselves provide additional security arrangements, but
20 these were the ones that were asked that extended to the
21 Prudential notes in addition to the material that's
22 already embodied in the notes previously produced.

23 MR. TROTTER: Well, let's be specific, I
24 think our request was for the Prudential notes because
25 those were the only items that were identified at the

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1 technical conference. Mr. Brena's request asked for any
2 security arrangement associated with any of the notes,
3 and I'm taking it from your discussion that there aren't
4 any as to the other notes, just the notes themselves.
5 And as to the Prudential note, there is the master shelf
6 agreement and the security agreement. But as to the
7 other notes, the notes are what they are, and there's no
8 other security agreement associated with them other than
9 what was provided.

10 MR. MARSHALL: Right, and that's what I was
11 trying to get at, the notes do provide for, in the text
12 of the notes themselves, for additional security.

13 JUDGE WALLIS: Very well.

14 Mr. Brena, does that respond to your inquiry?

15 MR. BRENA: Perhaps. Let me ask a point of
16 clarification.

17 It was my understanding that the Arco note
18 was secured by a throughput agreement, throughput and
19 deficiency agreement, and that that has been provided;
20 is that correct?

21 MR. MARSHALL: That's true.

22 JUDGE WALLIS: Mr. Marshall, you indicated
23 you believe it has been provided?

24 MR. MARSHALL: Yes, that's correct.

25 MR. BRENA: And then just so there's no

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1 confusion, there was some reference in one of those,
2 actually in the Prudential loan document, with regard to
3 some security or financing agreement that had been
4 reached between the shareholders. That agreement has
5 not been memorialized, and there is no security
6 agreement associated with it?

7 MR. MARSHALL: I'm not sure I understand the
8 question.

9 MR. BRENA: In one of the introductory
10 paragraphs to the Prudential note, there is a reference
11 to a financing agreement between the shareholders. I'm
12 just asking if I understand your representations, that
13 there is not a financial agreement between the owners
14 and that it is not secured; it doesn't exist, there is
15 no security.

16 MR. MARSHALL: Yeah, and I think the notes
17 themselves indicate security in addition to whatever
18 else was produced in regards to Prudential material.

19 MR. BRENA: Okay, I think based on those
20 representations, Your Honor, I'm fine.

21 JUDGE WALLIS: Thank you, let's move on.

22 MR. BRENA: Okay. External financing. We
23 asked for Olympic to identify any steps that they have
24 taken in order to obtain external financing. My
25 understanding of their response is that they have not

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1 made based on their judgment any formal loan
2 applications, and they go on to explain all the reasons
3 why. I just want to be sure that the representations
4 that they have made are complete and that we can rely on
5 them and that there has not been any application to any
6 external lender.

7 JUDGE WALLIS: Mr. Marshall, can you make
8 that representation?

9 MR. MARSHALL: Well, we have made it in the
10 first response to Request for Admission Number 13 that
11 Tesoro has asked. We have said it again at the
12 technical conference. We said it again in response to
13 Interrogatory Number 10. There's probably -- we can
14 keep saying it several times over, but I think that the
15 company has been very clear that any applications that
16 it would make to external sources would not only be
17 futile, but also because of the Prudential note, it's
18 probably restricted, any application that Olympic could
19 make now to the two shareholders. And of the two
20 shareholders, it's clear in answer to Interrogatory
21 Number 10 that Equilon has refused to loan further funds
22 to Olympic. And then we further go on in response to
23 supplemental response on Interrogatory Number 10 to
24 indicate all of these things in significant detail. The
25 one thing we haven't done that we're considering doing

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1 and may do is to ask Tosco and Tesoro for a loan, and we
2 haven't done that yet, but I'm not going to preclude our
3 doing that.

4 MR. BRENA: Your Honor, this is Robin, the
5 answer that they supplied was long on explanation and
6 completely devoid of any step that they have taken to
7 obtain external financing. So if the representation is
8 they have not taken any steps, for whatever reason, they
9 have not taken any steps to obtain external financing, I
10 will accept that representation and move on.

11 JUDGE WALLIS: Mr. Marshall, at the risk of
12 continuing this further, can you say yes or no as to
13 whether that statement is accurate?

14 MR. MARSHALL: I think our Interrogatory
15 Answer Number 10 is the best we can say. We have a
16 Prudential note that prohibits, as Mr. Brena is aware,
17 of getting external financing from anybody until that
18 note is paid off. If Mr. Brena's client wants to pay
19 that note off, then we can start making application. We
20 have set forth all of the reasons why we have done --
21 Olympic has done what it has done. And it's not only a
22 restriction in the Prudential note, but it's the
23 futility of trying to get external financing from
24 anybody under the circumstances confronting Olympic.
25 And we have said that in response to Request for

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1 Admission Number 13 a long time ago, that any such
2 request for external financing would be futile. Those
3 are the words, and we stick by that statement.

4 JUDGE WALLIS: And the company has not
5 undertaken any of those steps; is that correct?

6 MR. MARSHALL: Since the Prudential note was
7 made and since those restrictions were imposed, it has
8 not asked for anybody to go out and repay the Prudential
9 note ahead of time and to loan further funds. We may,
10 as I say, because of the extensive information that
11 Tosco and Tesoro have about the finances of Olympic, we
12 may want to ask them to put their money where their
13 mouth is and see if we can get a loan from them, but we
14 haven't done that yet.

15 JUDGE WALLIS: Very well, it appears to be a
16 response to the inquiry, and I believe it's time to move
17 on.

18 MR. BRENA: Efforts to obtain internal
19 financing. By internal financing, I'm referring to
20 affiliate financing. Mr. Marshall is right, and I
21 pointed out to them in the technical conference that the
22 terms of the note did not allow them to get external
23 financing, and therefore I asked them to describe the
24 process by which they could obtain internal financing
25 and where they were in that process. The answers that

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1 we have gotten back describe Olympic's internal
2 budgeting process and do not describe the process
3 whereby Olympic requests or their affiliates may loan
4 them money.

5 And I have asked them where they are in the
6 process, what steps they have undertaken to raise funds
7 necessary for the capital budget from affiliate lending
8 sources. I have asked them to identify those affiliate
9 lending sources and identify specifically what steps
10 they have taken to do that. What we have gotten again
11 is long on explanation and short on steps. I'm not
12 interested in any reasons why they have or haven't done
13 it. I'm interested in an explanation as to what the
14 process is in order to draw down money on the Arco
15 revolving loan. I'm interested in what the process is
16 that they request funds from other affiliates and to
17 what degree other affiliates may be available. They
18 have identified that Equilon is not available. They
19 have not identified whether alternative sources are or
20 may be available. And so far their response -- I mean I
21 don't know what the process is, and I don't know where
22 they are in the process of drawing it down.

23 At the technical conference, I asked them
24 several times, have you made any sort of internal
25 request for the funds that you're saying that you need,

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1 and I just can't seem to get a clear answer. I get
2 answers about private conversations in hallways. I just
3 don't -- I don't -- I don't -- I am not aware of any
4 step that they have taken to obtain internal financing
5 either through the Arco note or through any other
6 source, and I would like to -- a description of the
7 process, and I would like the -- where they are in the
8 process of asking to be granted.

9 In the pre-hearing -- in the motion to
10 compel, and I'm quoting again, Judge Wallis, you held,
11 and I quote:

12 It strikes me that a description of the
13 authorization of budgeting process need
14 not be lengthy or unduly detailed, and
15 it should be a matter well known to
16 Olympic and that a response would be
17 appropriate.

18 And I would like one.

19 JUDGE WALLIS: Mr. Marshall, can you help
20 clear this up?

21 MR. MARSHALL: Yes, our answer to
22 Interrogatory Number 10, we stand by that. There's
23 nothing more. I would note parenthetically that
24 Mr. Brena has just now said and on his questions about
25 external financing why it was futile, because the

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1 Prudential note, as he quite correctly now admits
2 following a five to ten minute argument before on
3 external financing, doesn't allow Olympic to go out and
4 get external financing from anybody until that
5 Prudential note is paid off. The same thing is true for
6 this internal financing issue. We can keep repeating
7 ourselves, but I think that Interrogatory Number 10
8 states the status of where we are on financing, and we
9 will stand by that answer.

10 MR. BRENA: And, Your Honor, I think this
11 one's going to go the full circle. If they're willing
12 to represent that they haven't taken any steps to obtain
13 internal financing either under the Arco note or from
14 any other source, we would be willing to accept that
15 representation and move on.

16 MR. MARSHALL: That's not what we said.

17 MR. BRENA: The technical response to
18 Interrogatory Number 10, they go through a detailed
19 explanation of all the reasons and all the suspicions,
20 and all we want to know is what the process is and where
21 they are in it.

22 JUDGE WALLIS: Mr. Marshall.

23 MR. MARSHALL: Interrogatory Number 10 does
24 talk about what we have tried to do both externally and
25 internally. There is no process any more than there is

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1 a process for going outside to obtain external
2 financing, as Mr. Brena has now said. The only process
3 that we can describe is, look, Arco and Equilon both
4 know that there is a need for funds. Neither one of
5 them has an obligation to loan a penny more to Olympic
6 any more than anybody, a shareholder of Enron would want
7 to put any money into Enron from this point on.

8 They have taken steps, as we have said in our
9 interrogatory responses, to file these applications for
10 rate increases at the FERC and the WUTC. If we get rate
11 increases, if there is a positive response to the
12 request for funds -- and by the way all pipeline
13 expenses and capital expenses that serve the interests
14 of shippers ought to be paid by the shippers in rates.
15 They shouldn't have to be paid by somebody that happens
16 to own shares. This is a fee that should be paid. If
17 those applications at the FERC and the UTC are granted
18 on general rates and on the interim, then there may be a
19 reason to be able to go back and ask for further
20 lending.

21 But at this time, pending the outcome of
22 these events, that Mr. Fox has said would be futile. He
23 put this all in his Interrogatory Number 10. So where
24 we are right now in the process is we are in the process
25 of asking for general rates to cover the expenses that

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1 we have so that there is no reliance on having to
2 continue to ask for borrowing of moneys that may never
3 be recovered.

4 JUDGE WALLIS: Mr. Trotter, do you have any
5 observation?

6 MR. TROTTER: Well, Your Honor, it seemed to
7 me that your order was pretty specific, and there has
8 been a supplemental response. And if that's the
9 complete response, then so be it.

10 JUDGE WALLIS: It does strike me again that
11 the company's response is complete and that it appears
12 to answer the questions that have been asked.

13 Again, Mr. Marshall, you are representing
14 that there is nothing further; is that correct?

15 MR. MARSHALL: Yes, there is no further
16 understandings with Arco or Equilon on -- do we have the
17 idea that they will loan us some more money under
18 certain sets of circumstances, the answer is no, Mr. Fox
19 said that.

20 JUDGE WALLIS: So then the answer to the
21 question, without reservation then, is yes, there are,
22 there have been no steps; is that correct?

23 MR. MARSHALL: No, the steps that we have
24 outlined is that the board of directors has authorized
25 the filing of these rate cases in order to secure the

00443

1 necessary backing through rates to enable the company to
2 go out and obtain more financing through debt or equity
3 or both. But until that happens, it's a futile effort
4 to try to obtain anything further from either external
5 sources, and the internal sources that we have indicated
6 have -- if the money can't be obtained, this pipeline
7 system will not be operated unsafely. It may well be
8 that the pipeline has to be shut down until we can find
9 out how to maintain this in a safe and reliable manner.

10 JUDGE WALLIS: What I'm looking for,
11 Mr. Marshall, is really a yes or no answer. Is there
12 anything other than what you have described or not?
13 Yes, there is; no, there isn't.

14 MR. MARSHALL: We have said all that we can
15 say in our supplemental answers, and I don't purport to
16 try to summarize all of them. They are there, they have
17 been filed, everybody has them. But I would take that
18 as a whole rather than try to say yes or no, we haven't
19 taken any particular steps. We think the filing of the
20 cases at the FERC and the UTC is a step.

21 JUDGE WALLIS: Very well, let's move on.

22 MR. BRENA: Your Honor, I have tried very
23 hard to refrain from argument. It's getting
24 increasingly difficult to do that when there's
25 suggestions that this pipeline may somehow be allowed to

00444

1 be shut down and strand --

2 JUDGE WALLIS: For Mr. Brena, Mr. Marshall,
3 that's not the purpose of our session here today, and
4 that kind of broaching that topic is not responsive to
5 the inquiries that we have to address. It wasn't
6 responsive to my question, and I am going to state that
7 it will not be considered. People will have the
8 opportunity to argue and to present evidence on
9 consequences of different options, and this is just not
10 the time. So let's disregard the statements that were
11 made. Let's not respond to them, and let's move on.

12 MR. BRENA: Number 16, Your Honor, debt
13 versus equity financing. They agreed to advance their
14 best efforts to acquire and explain why their
15 shareholders chose to fund this company with debt
16 instead of with equity. This is a -- this is a
17 relatively important issue in this case. There is no
18 equity investment in this company, and there should be
19 some explanation offered as to why they chose to fund it
20 in the way that they did.

21 It's further my understanding that much of
22 the Equilon what's being deemed a loan today was in fact
23 just funds given to Olympic Pipeline that were not
24 characterized at the time and that later were
25 characterized as loans.

00445

1 It appears to me that the thin capitalization
2 of this company to them choosing to fund the Whatcom
3 Creek expenses through loans instead of equity has put
4 this company in a tough financial position, and we would
5 like an explanation as to why they are loaning money the
6 company can't pay back instead of stepping up and
7 supporting it with equity.

8 JUDGE WALLIS: Mr. Marshall.

9 MR. MARSHALL: Olympic has provided a
10 supplemental response to Interrogatory Number 16, and we
11 will stay with that answer. But the real question that
12 Mr. Brena is asking is why don't these shareholders put
13 in more money of their own and not even have it as a
14 loan but just have it be more good money after bad. The
15 fact is that this company doesn't have much equity when
16 you take out all of the costs that have been incurred
17 while the pipeline was shut down. That's the
18 explanation.

19 MR. TROTTER: Your Honor, this is --

20 MR. MARSHALL: Their explanation.

21 MR. TROTTER: Your Honor, this is Don
22 Trotter.

23 JUDGE WALLIS: Mr. Trotter.

24 MR. TROTTER: My recollection of the order
25 was that Olympic would agree to make best efforts to

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1 inquire, and the response basically reiterated the prior
2 responses. So if there was an effort to inquire, maybe
3 that could be addressed.

4 JUDGE WALLIS: Mr. Marshall, did you make
5 or --

6 MR. MARSHALL: Yes, of course we did.

7 JUDGE WALLIS: -- was there an effort to
8 inquire?

9 MR. MARSHALL: That's what all of the prior
10 interrogatory answers reflect is a concerted effort by
11 Olympic to respond. Your Judge's order was as follows:

12 I'm a little bit concerned here that
13 this is not a matter that is necessarily
14 easy of explanation and that its
15 relevance may be a little bit more
16 tenuous than other questions. I will
17 accept Mr. Ryan's representations that
18 the company will make its best efforts
19 to inquire and then supply any response,
20 and I believe that will deal with this
21 item.

22 What we have done is indicated in our prior
23 answers to Interrogatories 10 and 11, which incorporate
24 the response to Interrogatory Number 10, and all of the
25 references to Mr. Fox at the technical conference, this

00447

1 is an argumentative question. It is not easy,
2 necessarily easy of information. And its relevance
3 really is tenuous. Basically the question is why don't
4 the shareholders put in more money. It's more easy to
5 answer than to ask why don't Enron shareholders put in
6 more money.

7 JUDGE WALLIS: So your response is that there
8 was an inquiry, and you have completely stated the
9 nature of your response; is that correct?

10 MR. MARSHALL: Yes, when you take all of the
11 responses together in the various interrogatories that
12 we have referred to in these supplementations, we have.

13 MR. BENA: Your Honor, may I ask for
14 clarification as to what specific inquiry has been made
15 since the motion to compel has been entered?

16 JUDGE WALLIS: Mr. Marshall, Mr. Ryan did say
17 that he would make an inquiry.

18 MR. MARSHALL: Yes, inquiries have been made
19 to Mr. Beaver and Mr. Fox and Ms. Hammer and to
20 Mr. Batch. All of these people have sent in suggested
21 answers to us that are protected under attorney-client
22 privilege, of course. We have incorporated those
23 answers into all the various supplementations. Those
24 supplementations have been reviewed by all of those
25 people that we have mentioned. I believe that that

00448

1 constitutes inquiry in a fairly deep and concerted way.

2 MR. TROTTER: Your Honor, this is Don

3 Trotter.

4 JUDGE WALLIS: Mr. Trotter.

5 MR. TROTTER: It was unclear to me whether
6 any of those persons were representing shareholders of
7 Olympic, and perhaps Mr. Marshall could confirm which
8 ones were representing the answer of the shareholders.

9 MR. MARSHALL: Well, I don't -- I don't
10 believe we are able to answer on behalf of shareholders.
11 We can't. We haven't been asked to. We're representing
12 Olympic. I'm not here to represent Arco, Equilon, or
13 anybody else.

14 MR. TROTTER: Your Honor, I had interpreted
15 the requirement to make the inquiry of the shareholders,
16 so maybe there was a misunderstanding, and maybe the
17 misunderstanding was my own.

18 MR. BRENA: The misunderstanding would be
19 shared by me, so it would not be his alone.

20 MR. FINKLEA: That was certainly Tosco's
21 understanding as well.

22 JUDGE WALLIS: Mr. Brena, can you --

23 MR. BRENA: It's not clear to me whether the
24 inquiry which Mr. Marshall just represented was inquiry
25 that happened in response after the motion to compel or

00449

1 was merely a recitation of prior -- of things that had
2 happened prior to the entry of the order, so could I
3 have clarification on both of those?

4 JUDGE WALLIS: Mr. Marshall.

5 MR. MARSHALL: Well, we said in our answer,
6 our supplemental answer, that as indicated in our prior
7 responses, Olympic Pipeline Company operates through its
8 board of directors pursuant to Delaware corporate law,
9 and our shareholders act through corporate law by
10 electing a board of directors. The decisions on
11 financing are made by the board of directors, not by
12 Olympic shareholders. I don't represent Olympic
13 shareholders. I never have, and I can not. I can not
14 speak for them. I can't speculate as to why they do
15 certain things and not other things. This is a matter
16 of corporate law, and it's a matter of who I represent.
17 I have no ability to compel anybody in those two
18 instances to provide any information to me.

19 What we did is we get through the board of
20 directors of a company, those board of directors are
21 duly elected, and I don't -- I don't see in the
22 transcript where we were required to go out and talk to
23 shareholders and find out why they might do X versus Y.
24 We tried to answer in accordance with the corporate
25 structure, and we tried to answer as completely as we

00450

1 can, and we have made these inquiries after receiving
2 the ruling of the administrative law judge here on what
3 was the ability to provide debt financing rather than
4 equity financing.

5 JUDGE WALLIS: In reviewing the transcript at
6 page 214, it does appear that Mr. Marshall's response
7 falls within that, and I think it's time to move on.

8 MR. BRENA: Any future plans for external
9 financing. We asked for it, and looking for the
10 reference quoting Judge Wallis:

11 Very well, the future plans for external
12 financing, if any, should be provided.
13 The capital structure ratio objectives
14 and related information can wait for the
15 general rate case if it's pertinent to
16 them.

17 JUDGE WALLIS: Mr. Marshall.

18 MR. MARSHALL: Yes, Mr. Brena says that there
19 is no supplemental response to this. In fact, there
20 was, pages 24 and 25 of our supplemental responses. We
21 said:

22 As stated in all prior answers to data
23 requests, Olympic's plans for future
24 financing are heavily dependent on the
25 outcome of this Docket Number TO-011472

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1 and the parallel FERC proceeding.

2 And then we go on to repeat the information
3 set forth in Interrogatory Number 10 at the conference,
4 technical conference on December 4th, and then concluded
5 by saying:

6 Olympic has no ability to obtain
7 external debt financing, no ability to
8 obtain additional financing from
9 Equilon, and uncertain ability to obtain
10 financing from Arco.

11 Our plans are to wait for the outcome of this
12 docket to find out what is even within the realm of the
13 possible.

14 MR. BRENA: Your Honor, this is Robin Brena.
15 In their response, this is one of those responses in
16 which he is correct to say we said no response. What we
17 intended to say was that there was no response that was
18 responsive to our request. So I would like to clarify
19 that.

20 Secondly, in his response, he says:
21 As stated in all prior answers to data
22 requests, Olympic's plans for future
23 financing.

24 Well, that's what we're asking about, what
25 plans? We're asking them to describe those plans.

00452

1 Instead, he's describing what they're heavily dependent
2 on. Either they have a plan for future financing or
3 they don't. He refers specifically to those plans in
4 his response, but he doesn't describe what they are.
5 That's what we're asking for a description of.

6 JUDGE WALLIS: Mr. Trotter, do you have any
7 observations?

8 MR. TROTTER: No.

9 JUDGE WALLIS: Mr. Marshall, do you represent
10 that there are no future plans except such as the
11 company has identified in its responses to data
12 requests?

13 MR. MARSHALL: Yes, all of our future plans
14 are contingent on the outcome of this and the parallel
15 FERC proceeding, which is what we said.

16 JUDGE WALLIS: Very well, let's move on.

17 MR. BRENA: Your Honor, if I may with regard
18 to this particular point, I mean there is this finance
19 committee out there that's been struggling with how to
20 put in place long-term financing for this company for
21 some time. There is currently a shareholder
22 disagreement on it, and the actual loan documents
23 themselves evidence that there can be shareholder funded
24 loans into this -- into this company. So it would -- it
25 would seem to me as though again this goes back to what

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1 are their long-term financing plans for this company.
2 JUDGE WALLIS: And Mr. Marshall is
3 representing that there are none and that none can be
4 attempted until the present rate proceedings are
5 concluded.

6 Is that right, Mr. Marshall?

7 MR. MARSHALL: That's what we said, and
8 that's absolutely correct, that all of these have to
9 await the outcome of these proceedings.

10 JUDGE WALLIS: So it strikes me that that is
11 the company's response.

12 MR. BRENA: I apologize, Your Honor, I agree,
13 I didn't understand him to say that until you just
14 clarified it, thank you.

15 Sources of internal financing. I have just
16 asked them to identify what potential sources of
17 internal financing are available to them. I think
18 perhaps I'm just going to move on from this one, because
19 I think it will follow the same cycle as the external
20 financing, the specifics of the external financing plans
21 that we asked.

22 Is that reasonable to assume, Mr. Marshall?

23 MR. MARSHALL: Well, once again, we have
24 responded to this request even though you state that
25 there's no response, and the response is on pages 38 to

00454

1 39 of the supplemental responses served last Friday.

2 MR. BRENA: And it's your representation
3 that's a complete response?

4 MR. MARSHALL: It refers to other
5 interrogatory answers, and this is the response.

6 MR. BRENA: Your Honor, I will just accept
7 those representations and move on.

8 JUDGE WALLIS: Very well.

9 MR. BRENA: Payments to shareholders or
10 affiliates. I would just like to know how much Olympic
11 has paid to its shareholders or affiliates. We have
12 received a representation there have been no dividends
13 paid. We have received certain representations with
14 regard to payments under the management contract. If
15 those are all the payments that have been made to
16 shareholders or affiliates, then we can just move on
17 from this as well. If there are other payments that
18 have not been set forth in either of those two sources,
19 then I would like an answer compelled with regard to
20 those others, other payments.

21 JUDGE WALLIS: Mr. Marshall.

22 MR. MARSHALL: There are no other payments
23 that we're aware of other than the ones just stated by
24 Mr. Brena.

25 MR. BRENA: Thank you. And based on that

00455

1 representation, I have completed with the notice of
2 noncompliance.

3 JUDGE WALLIS: Very well. Shall we move on
4 to the second motion to compel.

5 MR. BRENA: Your Honor, I'm sorry, nobody is
6 talking, are you waiting for me to go forward with my
7 motion?

8 JUDGE WALLIS: I asked whether we should
9 proceed with that at this time.

10 MR. BRENA: Yes, we're certainly prepared to.

11 JUDGE WALLIS: Very well.

12 MR. BRENA: There are some very important
13 issues in this interim rate proceeding that we have
14 tried to go to the heart of with regard to these, our
15 second set of discovery requests, and I would like to
16 just go through them one at a time.

17 JUDGE WALLIS: Please proceed.

18 MR. BRENA: Just in general argument, and
19 then when we get into the specifics, then I would like
20 to argue them specifically. Is that acceptable, Your
21 Honor?

22 JUDGE WALLIS: I believe it is, with the
23 understanding that the argument is limited to the
24 question of whether or not items should be compelled.

25 MR. BRENA: Well, the first thing that I

00456

1 would like to state is that the discovery rule is in
2 place, that the discovery standard is a broad standard,
3 and that it relates to information which may lead to
4 relevant information. It's not restricted to relevant
5 information. So I don't think it would be appropriate
6 to cast discovery in terms of what is essential to have
7 or in other such mandatory terms in order to go forward
8 with a particular procedural schedule. I think it's
9 important for the discovery rule not to be narrowed or
10 modified in a fashion down to -- in that fashion.

11 That being said, we tried very hard based on
12 the discovery that we looked at to focus on particular
13 areas that we want answers to. They're interrogatories,
14 there's four of them, they're not complicated, they
15 involve information that should be readily available to
16 Olympic.

17 As near as Tesoro has been able to determine,
18 the cause for their previous financial distress is the
19 Whatcom Creek and a failed Cascade, Cross Cascade
20 project. Now in both of those -- in the first situation
21 in Whatcom Creek, the costs associated with that are
22 costs associated with the negligent operation of the
23 line, and we think there is a legitimate issue that
24 should be brought forward in the interim rate issue as
25 to whether or not that is something that a rate payer

00457

1 should be responsible to pay. It's the same with the
2 failed Cross Cascade project. So to just take these
3 briefly just one at a time and then to reserve argument.
4 The first request I'm looking for, ensure the
5 policy number and the amount of insurance claims Olympic
6 has filed as a result of Whatcom Creek accident. The --
7 in various board minutes, the board has indicated a
8 likely recovery factor, and we think that just asking
9 for what claims have been filed under what insurance
10 policies is very important. To the degree that they're
11 asking to be reimbursed for costs from the rate payer
12 for which they are otherwise reimbursed by insurance, we
13 think that the interim rate increase should not be
14 allowed. So we have just asked for them to list what
15 insurance claims they have made by what policy and what
16 amounts. That would also help us clarify something we
17 have had a very difficult time clarifying, which is what
18 are the Whatcom Creek expenses. We think that to the
19 degree that they filed for these insurance claims, it's
20 a good and efficient way to identify what those claims
21 in fact are.

22 With regard to the second request, we have
23 asked them to identify what third parties and what
24 claims they expect to recover some of those costs
25 associated with the prior negligent operation of the

00458

1 line. Obviously to the degree they're asking the rate
2 payer to pay a dollar of the cost, they should match
3 with the same dollar from insurance, they also should
4 match with the same dollar from third parties. So we're
5 trying to quantify to the degree we can third party
6 payments to the company for expenses that they have
7 identified or associated with their financial distress
8 and their need for interim rates.

9 The third request goes to the Cross Cascades
10 project. The corporate board minutes indicate that
11 there's about \$23 Million that they were considering
12 writing off in 1998 or 1999. We have asked with regard
13 to that project how it has been properly accounted for.
14 Because to the degree that their financial distress is
15 associated with a failed future pipeline project, we
16 believe that is a shareholder and not a rate payer
17 issue, and so we want to quantify and identify again the
18 source and cause of their distress so that we can put on
19 a case that indicates to what degree their distress
20 should be borne by their rate payers. To the degree
21 that it's negligent operation of the line or a failed
22 expansion project, we feel their shareholders should be
23 responsible for that. To the degree that it's
24 associated with safety improvements or normal recurring
25 operating expenses, we think that that would be a rate

00459

1 payer expense.

2 And the final request asks them to quantify
3 the total amount of casualty and other loss related to
4 Whatcom Creek which they have booked to date.

5 So with regard to each of those, we have not
6 received a response. With regard to each of those, we
7 think that it's reasonable to ask for it. There is a
8 major issue in this case, and the major issue in this
9 case is, which of these -- what's the source for their
10 distress, what's the cause for their distress, and to
11 what degree as a matter of regulatory law should that be
12 borne by the rate payers versus the shareholders versus
13 the insurers versus their self insurance or versus third
14 party claims for contribution.

15 So that would be my overall comments, Your
16 Honor.

17 JUDGE WALLIS: Let's ask for a response from
18 others on that point.

19 Mr. Marshall.

20 MR. MARSHALL: Yes. Once again, Mr. Brena is
21 incorrect. We have responded to Interrogatory Number 1,
22 2, 3, and 4. First of all, we noted that this discovery
23 is dependent on the parties being very careful not to
24 overload. And I refer back to the initial pre-hearing
25 conference of November 21st, and we had statements from

00460

1 all the parties that the thing that we need to do is
2 make sure that discovery is narrowly targeted so that we
3 could meet the interim case deadlines which were
4 pressing people. We have literally responded with
5 thousands and thousands of pages of material here, and
6 we have responded by producing more in this last month
7 than many general rate cases have throughout the entire
8 discovery period.

9 This issue here, let me address Interrogatory
10 Number 1 first, they want to know about all insurance
11 claims Olympic has made. We have made it very clear
12 that we aren't asking for anything related to the
13 Whatcom County accident. Whether we get reimbursed for
14 that or not reimbursed for that should not matter to
15 anybody. Moreover, it won't be known as to whether any
16 reimbursements are going to come from the insurance
17 companies for a long time to come. And having Mr. Brena
18 say that it's vital to his interim case or even his
19 general case does not stand up to logic. We said that
20 this, in our response, well, we said this was not
21 relevant to Olympic's interim case, not reasonably
22 calculated to lead to discovery of admissible evidence
23 in the interim case. We also said it duplicates
24 information already requested in Tesoro's first
25 discovery request.

00461

1 We said without waiving our objections, we
2 referred them to Interrogatories, our responses to
3 Interrogatories 1, 4, 35, 37, 39, and 40, which address
4 the issues of casualty loss resulting from the Whatcom
5 Creek incident, and all the reasons for Olympic's
6 financial condition in all of the materials that have
7 been produced. They know what the total costs are of
8 the Whatcom Creek accident, because they are booked to
9 an account. They know the total. They also know, and
10 we will point out to the response where it's booked,
11 what amounts are booked in expected or at least
12 estimated insurance recoveries. That's all I think that
13 they need for the time being so that we can get on with
14 this and both parties, all parties, present their case
15 on the interim rate relief issue and then move into the
16 general rate case.

17 With regard to Interrogatory Number 2, they
18 want to know by defendant, case number, and dollar
19 amount all losses that Olympic has filed legal action
20 for recovery as a result of the Whatcom Creek accident.
21 There too it hardly matters what will happen down the
22 road from that, but the truth is we won't know what will
23 happen on that. You can make claims with insurance
24 companies, you can make claims in court, and that won't
25 answer the question as to whether that will ever be

00462

1 forthcoming. But in any event, we're asking for
2 reimbursements in amounts that we're not asking Tosco or
3 Tesoro to help out on.

4 It is clear as can be that for a long period
5 of time Olympic had no income coming in, and that is
6 absolutely true that that was initiated by the Whatcom
7 Creek accident, but that the steps taken to do testing
8 of other types unrelated to the cause of the Whatcom
9 Creek accident caused the pipeline to be shut down for a
10 further period of time. It is not accurate for
11 Mr. Brena to try to say that Olympic was negligent in
12 causing a Whatcom Creek accident, and therefore
13 everything coming from that either directly or
14 indirectly ought to be a cost where you're not being
15 able to recover either interim rates or general rates.
16 But the point is we're not asking for Whatcom Creek
17 accident recoveries. We're not asking anybody to become
18 an insurer of this and to make any payments for that.

19 With regard to Interrogatory Number 3, it
20 asks about the amounts expended on the Cross Cascades
21 pipeline project. There again, this was an issue that
22 isn't relevant to the interim case. The interim case
23 deals with a very specific issue about what is the
24 current condition now, and do you need interim rates
25 before you get to the end of this to be able to continue

00463

1 to operate safely and reliably. The main case will deal
2 with this issue. I think given the amount of limited
3 time that we all have to prepare for the interim case,
4 we should not be and can not be going into the general
5 rate case issues now. There just isn't time given all
6 of the other data requests and all that have been
7 responded to in the period of time over the holidays
8 that we have.

9 And finally on Interrogatory Number 4, it's
10 -- they ask again for the dollar amount of the total
11 casualty and other loss related to Whatcom Creek that
12 Olympic has booked to date. We pointed out what those
13 are. We have given an answer to this. We don't believe
14 that any of this is relevant to the interim case, but we
15 have provided those bookkeeping entries.

16 So Mr. Brena's statement that he doesn't have
17 information on which to prepare an interim case we
18 believe is incorrect. He has it. We have responded.
19 Without waiving our objections, we have responded to all
20 of the things we have been talking about for the last
21 three hours or so.

22 MR. TROTTER: Your Honor.

23 JUDGE WALLIS: Mr. Trotter.

24 MR. TROTTER: This is Don Trotter. The
25 company has represented as clear as it can that it's not

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1 asking for Whatcom Creek costs in the interim case, and
2 we understand that now, but I think it is reasonable to
3 have them identify these numbers so that we can remove
4 them from any of our analysis in this phase of the case
5 and to be sure that we have the numbers, the correct
6 numbers. Now if the company has supplied the precise
7 number, presumably it would be pretty easy to either
8 cite the exact number -- just recite the exact number,
9 that would be very little burdon on that, or state
10 exactly where in the discovery that exact number is
11 found. We do have some numbers in their pro forma
12 income statements, and if the total column is the
13 number, then give us the column and line number, and we
14 can move on. I think it would be a very, very minimal
15 burdon, but it certainly is relevant for us to eliminate
16 those costs from our analysis. We need to know the
17 amount with no dispute about what it is.

18 On the -- so I think that covers 1, 2, and
19 with respect to number 2, the claims, to the extent that
20 we understand what the claims are, there's at least --
21 it's at least relevant to an improving financial
22 position. If there are claims outstanding, that
23 certainly would reflect somewhat positively on future
24 prospects of the company. Frankly, I'm not sure that
25 that's going to get us too far down the road, but it is

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1 probative in that regard. And again, if it's a burdon
2 issue, so be it. But if not, it does seem to me to be
3 somewhat relevant.

4 On the Cross Cascades project, I don't have
5 the data request in front of me, but I think it asked
6 for the accounting. It would seem that to the extent
7 that moneys have been invested in this project that have
8 not borne fruit or if there's been an uncompensated
9 writeoff and that's affecting their financial position
10 that that's certainly something we should at least take
11 a look at.

12 The last request deals again with Whatcom
13 Creek amounts. And again, if we have the number, then
14 they should be able to recite it. I think we do have
15 the number, so if a specific column and line number can
16 be stated, then I think we can move on very rapidly on a
17 couple of these. Thank you.

18 MR. FINKLEA: Your Honor, Ed Finklea for
19 Tosco.

20 JUDGE WALLIS: Mr. Finklea.

21 MR. FINKLEA: And I think Mr. Brena and
22 Mr. Trotter have explained the relevancy of this
23 information, and I think it should be produced. The
24 fact that the company represents that nothing having
25 anything to do with the Cross Cascades project is in the

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1 case doesn't answer the question that Mr. Brena asked,
2 and I think customers are entitled to numbers. That's
3 all that we're asking for is numbers. And as
4 Mr. Trotter has explained, if the numbers have been
5 provided, then all Olympic has to do is point us to the
6 numbers. If they haven't been provided, then they
7 should be.

8 MR. BRENA: Your Honor, if I may briefly
9 reply to the general points before turning to the
10 individual ones.

11 JUDGE WALLIS: Well, I would be interested in
12 your response to Mr. Marshall.

13 MR. BRENA: Okay. First of all with regard
14 to his representation that they are not intending to
15 rely on Whatcom Creek or the Cross Cascade information
16 for their interim rate relief, that just isn't what
17 their case says. And he can make what representations
18 he chooses, but they have based their request for
19 interim relief on two things, a deteriorating financial
20 position and losses that they identified specifically
21 that include these numbers. And they -- and the other
22 -- the other basis has to do with affiliated debt that
23 they undertook to pay for those extraordinary expenses.
24 So the hardest part of this case is to sort out how much
25 those expenses should be.

00467

1 Now one good way to do it with Whatcom Creek
2 is to see what the actual insurance claims have been by
3 the company. That's pretty clear. If they have
4 incurred losses, we have asked for them to list the
5 insurer. There's nowhere that they have indicated who
6 their insurers are. We have asked for them, with regard
7 to Interrogatory Number 1, we have asked for them to
8 produce a policy number and the dollar amount claimed in
9 total. That's very useful cross check, and it's
10 important.

11 Now before I go through the specifics, I want
12 to say that this distinction between the interim and the
13 general rate case is starting to be lost on me. It's
14 starting to be lost on me because their direct case has
15 been filed. We have every right to serve general
16 discovery on them any time we choose. They have claimed
17 burdon and overload before when they're preparing their
18 case. Their case is prepared. The burdon is entirely
19 on us in this case. They are doing -- they are
20 responding to nothing -- to nothing else.

21 Now so I am asking for this information on an
22 interim basis, and I have explained why, but it's -- but
23 I don't think that the request could be granted or
24 denied based on the interim rate alone. I think that
25 it's a question that needs to be asked, that needs to be

00468

1 answered for both rate cases. It's important to the
2 interim rate case, because unlike their general rate
3 case, they are basing their request for interim rates on
4 losses and a deteriorating financial position that are
5 almost entirely the result of Whatcom Creek and the
6 Cascades project.

7 If you take those out, if you take those out
8 of the equation, this company was making money before
9 Whatcom Creek and now is making a whole lot more than it
10 was even then. So we're entitled to know not just a
11 representation that they're not or that -- we're
12 entitled to explore whether or not their financial
13 condition is deteriorating or improving and what the
14 cause of it is, and we need specifics to do that. What
15 number should we back out, Mr. Marshall, and based on
16 what claims.

17 JUDGE WALLIS: Does that conclude your
18 response?

19 MR. BRENA: I'm just reviewing my notes, Your
20 Honor.

21 It does my general ones. I'm ready for
22 argument on Number 1.

23 JUDGE WALLIS: Mr. Marshall, I would like to
24 hear your response to the issue in general and to the
25 points that have been raised, and specifically would

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1 like to hear your response to the point that's been
2 raised that the company is representing that it is not
3 pursuing these expenses. And consequently, to the
4 extent the company is making that representation, is not
5 the exact valuation of those expenses and information
6 supporting that calculation properly subject to
7 discovery?

8 MR. MARSHALL: The interrogatories that they
9 have asked about Whatcom Creek in Interrogatory Number 1
10 and 2 ask what insurance claims have you made and what
11 legal actions have you filed for recovery of these
12 losses. That will produce nothing but speculation as to
13 whether any of those losses will be covered by insurance
14 or by any claims. It advances nothing in terms of the
15 interim case or the general case to say yes, we have a
16 claim for this particular expense or that particular
17 expense.

18 We have said in our earlier discussions on
19 this in response to Interrogatory Number 35 that the
20 Whatcom Creek accident costs are reflected under expense
21 item casualty and other losses in Olympic's income
22 statement. The parties know how much that is. Having
23 information about what claims have been made to get
24 reimbursement for these when we know that the
25 reimbursement issues will not be decided for a long time

00470

1 to come will add nothing but additional burdon and work
2 on Olympic in the next few days until we get to the
3 interim case hearing on the 7th and 8th of January.
4 It's a chase that's not worth the effort of the parties
5 at this time. It won't provide them with any
6 information that will be useful for the case.

7 With regard to Interrogatory Number 4, that
8 asks for the dollar amount of the total casualty and
9 other loss related to Whatcom Creek that Olympic has
10 booked to date. We talked about that at length in
11 response to Interrogatory Number 35 already. It's
12 booked as an expense under casualty and other losses on
13 Olympic's income statement. We have answered that. So
14 to the extent that they want the information on
15 Interrogatory Number 4, we think they have that. They
16 don't need anything further in that regard.

17 With regard to the Cross Cascades pipeline
18 project, what's been spent on that and how that has been
19 spent, there again, we are going to have a futile effort
20 for the interim case to say, gee, these expenses were
21 either good expenses or they were in Mr. Brena's words
22 negligent expenses. It's not in the realm of
23 possibility to make decisions on whether these expenses
24 were negligent or not negligent, to use his phrase.
25 Those expenses and all past expenses by Olympic are what

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1 they are. The status of the financial condition of
2 Olympic is what it is. And where to go from here is the
3 whole purpose of the interim case. Is there a need for
4 interim rate relief or not.

5 Mr. Brena seems to think that, well, we can
6 segregate out those expenses that are legitimate from
7 those expenses that he doesn't consider to be
8 legitimate, and somehow we can give less than what might
9 be needed for an interim amount. I think the Commission
10 will make a decision on the interim amount depending on
11 the existing financial condition of Olympic and the
12 existing need to have further expenditures for the safe
13 and reliable operation of this pipeline. Those are
14 things that don't demand, require, or in any way relate
15 to how many claims Olympic has made against any
16 insurance company, any other third party, or what
17 expenses may have been made in the past on any other
18 particular issue.

19 We think that we're about to go down a path
20 here on a lot of further details that really won't play
21 out and have any importance for the Commission on the
22 7th and 8th. In any kind of a general way, you have to
23 take a company's financial condition for what it is. It
24 is what it is. And there are a lot of factors that
25 contribute to where it is. The question that the

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1 Commission will have to ask is, what do they do given
2 the current status of the financial condition. Do they
3 allow an interim rate increase, or don't they. They can
4 always make it subject to refund under the conditions
5 that we talked about before, the various factors at the
6 end of a general case. But I think we're spending an
7 awful lot of time on purely speculative and
8 argumentative matters by Mr. Brena.

9 The final point I would make is that these
10 interrogatories, like many others, are multiple parts.
11 They're just not one interrogatory. They're just not
12 simple. And when you start to answer questions, it just
13 the question begets question begets question. And we're
14 now to the point where we have -- I'm staring at the
15 table, and it's just under about a foot and a half of
16 paper that's been produced by Olympic to date already.
17 So I doubt that whether the parties have even read the
18 general case filings that have been made. That was a
19 fairly significant filing.

20 What we have to do is we have to focus on
21 what's going to be essential for this interim case, and
22 the amount of claims that have been made, the
23 speculative nature of whether any of that is going to be
24 recovered can't and won't be known by the 7th and 8th of
25 January.

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1 MR. BRENA: Your Honor, this is Robin, I
2 would like to respond, I would like to briefly respond.

3 JUDGE WALLIS: Very briefly, please.

4 MR. BRENA: It was my understanding that he
5 began the general comments by saying they were not
6 relying on the interim case. It's my understanding of
7 the comments that he just made that they are relying on
8 all the losses that are associated with Whatcom Creek as
9 well as the Cross Cascade failed project, and that is
10 exactly what I feared. We don't think -- if they're not
11 entitled to recover it from a rate payer, they're not
12 entitled to recover it from a rate payer whether it's in
13 an interim or a general rate case, and I just heard
14 Mr. Marshall specifically rely on the losses. He said
15 their current financial position is their current
16 financial position however they got there. Well, the
17 way they got there was Whatcom Creek and the failed
18 Cross Cascades project as near as we can figure out.

19 I also heard Mr. Marshall start to define the
20 scope of our discovery based on what's essential for the
21 interim rate. I'm entitled to this for the interim
22 case. I'm also entitled to this under the general case.
23 So let's get to it. Let's not waste our time, you know.
24 I mean what do I have to do, resupply the same thing to
25 get the information? Whether it's a three day response

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1 or a ten day response, it's going to be a ten day
2 response before we get a response to it. We need to
3 know their insurers, we need to know their policy
4 numbers, we need to know their dollar amounts.

5 And then finally, you know, I'm disappointed
6 to hear that we have to rely on their calculation of
7 expected insurance recoveries based on some -- based on
8 some book. Their board of directors indicate that they
9 should expect a 60% recovery factor but that we're not
10 entitled to see any of that. You know, this is beyond
11 just making representations. We want to see information
12 that supports their claims that they're in a
13 deteriorating financial position with regard to matters
14 which are or should be a rate payer issue. You know,
15 with regard to his general comments, perhaps they ought
16 to just put some money into this company.

17 I'm ready to proceed specifically.

18 JUDGE WALLIS: Mr. Trotter, let me call on
19 you for any concluding observation.

20 MR. TROTTER: Just a couple, Your Honor. I
21 do think that it is material to understand how a company
22 gets into a position that it's in and what its future
23 prospects are. It's very clear in reading the interim
24 relief orders that the Commission wants to know what the
25 short-term prospects are. If those are improving

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1 because of lack of nonrecurring items such as an event
2 like Whatcom Creek, then that's pertinent. And so it is
3 important to understand how a company got there and what
4 their future prospects are, and that's what the Staff is
5 attempting to look into, and certainly the details on
6 Whatcom Creek and so on are pertinent to that. Whether
7 the precise details are available or not and if there's
8 an issue of burdon, well, then so be it. But I think
9 the requests are at least pertinent to get a better grip
10 on the causes of the situation and the future prospects.

11 JUDGE WALLIS: Do you speak in favor of all
12 of the requests?

13 MR. TROTTER: I think generally, yes. Yes.

14 JUDGE WALLIS: Very well.

15 When we embarked by taking our first steps
16 down the path that we are now on, my recollection is
17 that Mr. Brena was asked what the nature of his
18 inquiries in discovery would be and how they would
19 differ between the interim and the general. And if I
20 recall correctly, his response was that his areas of
21 inquiry would be similar but that the depth would be
22 different between the general and the interim rate
23 request.

24 What I have heard this evening is a little
25 bit different, and I hear Mr. Brena saying, well, we

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1 have to answer this question ultimately, we're going to
2 raise it and resolve it in the interim, and we need that
3 information, so we might as well get it now and have it.
4 I am just not comfortable with that.

5 As Mr. Trotter points out, the Commission's
6 focus in a matter involving interim relief is narrow.
7 It is not an in-depth review of the kind that can be
8 taken even in as short a suspension period as applies to
9 this pipeline company. We simply can not litigate
10 everything on the interim that we have to litigate in
11 order to resolve the questions in the general. That is
12 not an acceptable approach. It is not a workable
13 approach. It is not an approach that the Commission has
14 used.

15 The Commission looks at the financial
16 situation of the company as it exists. If this were an
17 earthquake that devastated the company or if it were
18 something caused by their own actions, it still is a
19 situation that, a financial situation, that does need to
20 be explored in an appropriate level of depth to
21 determine whether the Commission should under the
22 pertinent standards grant interim relief. But it is not
23 and can not become the full rate case.

24 With that predicate, let's look at the
25 individual items. I really in light of the hour would

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1 ask counsel to limit the length of your argument, make
2 your points, make them once, and let's get matters
3 resolved and move on.

4 Mr. Brena.

5 MR. BRENA: With regard to Interrogatory
6 Number 1, we have asked for the insurer, the policy
7 number, and the dollar amount of all insurance claims
8 they have filed as a result of Whatcom Creek. And we
9 have asked them to explain if those are some of -- if
10 those are part of the reason for the deteriorating
11 financial position. That's what we have asked for.

12 With regard to Your Honor's concern, I
13 believe my response was one of lesser intensity. There
14 would have been, had this been a general rate case
15 question, there would have been requests for the
16 policies. There would have been requests for
17 production. Our entire second set of discovery is four
18 simple interrogatories. What we're asking for in
19 Interrogatory Number 1, an insurer, a policy number, and
20 a dollar amount. Now that can't be a list more than
21 five insurers and policy numbers and dollar amounts.
22 That is not burdensome. It is not intensive. It is
23 very simple to provide. We're entitled to have it so
24 that we can separate out the reasons associated with
25 their financial condition.

00478

1 This is not a situation where there has been
2 an earthquake. This is a situation where they have
3 mismanaged their company in the past and it has resulted
4 in huge expenses due to negligent operation. We need to
5 figure out in the interim rate how to separate out those
6 expenses. We have to have the numbers to do that. Now
7 it's particularly a concern because where Olympic came
8 forward initially with the refundability proposal, they
9 have withdrawn their refundability proposal, and any
10 amounts that they collect from the shippers that is
11 improperly paid will never be recovered under -- may
12 never be recovered until the refundability issue is
13 raised.

14 So we, as part of the interim case, we need
15 to have this information. This is probably three
16 insurers, probably four policy numbers, and probably
17 four dollar amounts. We do not think that this broaches
18 the -- goes beyond the scope of the intensity that I
19 indicated that we would restrict ourselves to in
20 response to Your Honor's question.

21 JUDGE WALLIS: Why is this information
22 essential? Well, let me rephrase that.

23 Why is this information appropriate for an
24 inquiry given the limited scope of the interim
25 proceeding?

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1 MR. BRENA: Given the limited scope?

2 JUDGE WALLIS: Yes, what does the answer
3 contribute?

4 MR. BRENA: The answer lets us know the
5 degree to which they're asking for rate payer and
6 perhaps non-refundable relief that they have also filed
7 insurance claims for. It would identify -- it would be
8 a cross check, an objective cross check, on their
9 Whatcom Creek bookings, because they're likely to file
10 insurance claims that are complete. We have had a very
11 hard time trying to get them to quantify the Whatcom
12 Creek expenses, so it would help do that. And it would
13 also identify the degree to which they expect to be
14 compensated from their insurers for these expenses for
15 which they're requesting interim relief, perhaps
16 non-refundable from their rate payers.

17 JUDGE WALLIS: Mr. Marshall.

18 MR. MARSHALL: Well, information about policy
19 numbers, claims, insurers, dollar amounts that might be
20 claimed can never be resolved before the 7th and 8th of
21 January. I fear that what Mr. Brena is doing is he's
22 trying to open up yet a whole nother line of inquiry by
23 speculating on what we might recover from insurance on
24 amounts on the Whatcom Creek incident, which we by the
25 way have said in our income statement. We have totalled

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1 up what those amounts are. He can argue if he wants to
2 the Commission that we can recover all or none or half
3 of these amounts. It will all in the end be
4 speculation. But he's just opening another door for a
5 whole new set of inquiries that won't take us any
6 further on this interim case.

7 JUDGE WALLIS: Mr. Trotter.

8 MR. TROTTER: I have nothing to add, Your
9 Honor.

10 JUDGE WALLIS: Mr. Finklea.

11 MR. FINKLEA: Well, Your Honor, the more I
12 hear from Mr. Marshall, the more I think this is so
13 appropriate for the interim request, because we're going
14 to precisely the question that the company has teed up,
15 which is the nature of this financial emergency. And
16 the limited amount of discovery in the second set would
17 certainly not be burdensome. I haven't heard anything
18 to the effect that it is. And I think it's Mr. Brena is
19 absolutely right, that this is a level of inquiry that's
20 essential for the interim as well as ultimately for the
21 general, and this is certainly going to be an inquiry in
22 the general as well. But this is a very limited
23 discovery, it wouldn't be burdensome, and it would be
24 highly relevant to the interim request.

25 JUDGE WALLIS: Very well, I'm satisfied based

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1 on the discussion relating to this matter that there is
2 no indication that it is burdensome and that it is
3 appropriate for discovery, and the company should
4 respond.

5 Let's move on.

6 MR. BRENA: Interrogatory Number 2, we ask
7 for the same type of information with regard to
8 outstanding legal claims.

9 JUDGE WALLIS: Mr. Marshall.

10 MR. BRENA: Against third parties. My
11 arguments would simply be repeated, Your Honor.

12 JUDGE WALLIS: Mr. Marshall, would yours as
13 well?

14 MR. MARSHALL: Yes, again, the outcome of any
15 of these claims won't be known until long after the
16 interim case is decided. It's just a matter of
17 speculation.

18 JUDGE WALLIS: Well, we haven't -- we're not
19 addressing the question of admissibility or the question
20 of for what purpose the information might be offered in
21 the event of a hearing. We're simply looking at whether
22 it appears to be discoverable based on the discussions
23 and the analysis that's been presented so far, and I
24 believe based on those discussions for the same reasons
25 identified in support of the earlier matter, the

00482

1 insurance claims, that it is appropriate that the
2 company respond to this request.

3 MR. MARSHALL: Just as a matter of
4 clarification, is the response limited to the first
5 sentence of each of these two interrogatories? Are we
6 to provide the insurer, policy number, and dollar amount
7 of the claims and then the defendant, case number, and
8 dollar amount of all losses? Would that be it, or are
9 we going to be opening up another line of inquiry based
10 on all of that?

11 JUDGE WALLIS: I don't have the
12 interrogatories in front of me. That appears to be the
13 nature of the request.

14 Mr. Brena, is that correct?

15 MR. BRENA: It asks for a list by insurer,
16 policy number, and dollar amount all insurance claims
17 Olympic has filed as a result of the Whatcom Creek
18 incident. The second sentence is:

19 Please also explain whether the losses
20 for which Olympic has filed such
21 insurance claims contributed to the
22 deteriorating financial condition that
23 Mr. Batch described in his testimony.
24 And the answer to the second question is yes
25 or no.

00483

1 MR. MARSHALL: No, it's asking for
2 explanation, and that's what I fear is we're going down
3 a slippery slope. These aren't just simple
4 interrogatories. They're multipart interrogatories.
5 We're going to get Mr. Brena arguing that, well, you
6 supplied this information but not that information, and
7 we will be back here again. I think that if the
8 limitation is to the insurer, policy number, and dollar
9 amount that's claimed, that the amount for legal actions
10 that have been filed, that's one thing. But if he wants
11 to go beyond that, I think we ought to have a clear
12 understanding that he waits for another day for that.

13 MR. BRENA: Your Honor, this is Robin Brena.
14 He may interpret that second sentence as a yes or no
15 question.

16 JUDGE WALLIS: Is that an observation or a
17 commitment?

18 MR. BRENA: That is a commitment.

19 JUDGE WALLIS: Mr. Marshall, does that
20 satisfy your concern?

21 MR. MARSHALL: Well, I guess I -- so instead
22 of asking please explain whether losses are, are these
23 losses contributing to the deteriorating financial
24 condition or not? I guess that's what you're asking
25 now?

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1 JUDGE WALLIS: May we interpret the question
2 that way, Mr. Brena?

3 MR. BRENA: You may.

4 JUDGE WALLIS: Very well. On that basis,
5 please respond.

6 MR. BRENA: It's the same with the second
7 interrogatory. It's the same second question, Your
8 Honor.

9 JUDGE WALLIS: Yes.
10 Let's move on.

11 MR. BRENA: So may I assume the same thing
12 with regard to the second question of the second
13 interrogatory?

14 JUDGE WALLIS: Yes.

15 MR. BRENA: I'm sorry, I didn't hear you.

16 JUDGE WALLIS: Yes, if you're making the same
17 representation.

18 MR. BRENA: I'm sorry, I can't hear if I'm
19 interrupting or not.

20 JUDGE WALLIS: Please proceed.

21 MR. BRENA: Okay. Interrogatory Number 3,
22 and I will just read it:

23 Please indicate the total dollar amount
24 Olympic has expended on the Cross
25 Cascade pipeline project, and explain

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1 how and in what period Olympic has
2 accounted for these amounts.

3 And then the second, there's a second
4 sentence that is the same as the sentence in the first
5 two. In this regard, let me say that the corporate
6 minutes for the company indicate that they have expended
7 between \$21 Million and \$23 Million with regard to the
8 Cross Cascades project, and there was some indication
9 that that amount was to be written off. We are just
10 trying to understand what happened to that money and how
11 it was accounted for so that we can properly evaluate
12 their interim request.

13 I have nothing further.

14 JUDGE WALLIS: Mr. Brena, are you merely
15 asking for the total amount?

16 MR. BRENA: The total amount and how it has
17 been accounted for.

18 JUDGE WALLIS: What do you mean by that?

19 MR. BRENA: How it's impacted their financial
20 statements, where it is in their financial statements.
21 There was some indication in 1998 that they intended to
22 write off \$23 Million, but we don't know if they did or
23 what period they did or not. So we're asking for what
24 the accounting treatment of those expenses has been on
25 their books.

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1 JUDGE WALLIS: Mr. Marshall.

2 MR. MARSHALL: Well, I don't know anything
3 about the Cross Cascade pipeline project, but it's very
4 difficult for me to respond to this. I think this is
5 clearly going to open a door on asking everything that
6 anybody did on anything in the past and say, well, if
7 you didn't do that, then you wouldn't be in as bad a
8 position as you are now. You can take out Whatcom
9 Creek, you can take out this, there would still be a
10 need for interim relief and a need for general relief in
11 the case.

12 So I'm -- and this also apparently, Cross
13 Cascades pipeline project, predated the BP acquisition
14 of heirs of Arco, it predated the operating management
15 agreement of July 1st, 2000. This is just one of those
16 situations where Mr. Brena has pulled out something from
17 prior minutes apparently, and I'm not even sure where
18 that is, and is trying to make an argument that somebody
19 at some time may not have invested money in what he
20 considers to be an appropriate project.

21 I think to try to go into that is going to
22 raise a host of problems trying to go back and
23 reconstruct the history of three, four, five years ago,
24 or more. I don't know. I have no idea what this Cross
25 Cascades pipeline project will entail, you know, how

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1 burdensome it will be. It doesn't seem simple as
2 Mr. Brena is trying to explain it.

3 JUDGE WALLIS: Mr. Finklea.

4 MR. FINKLEA: Well, I think like the Whatcom
5 situation that this is something that could lead to
6 discovery that's relevant if indeed we find that there
7 was a major investment and that's been written off. And
8 even if the rate payers are being asked in the general
9 to fund that investment, if that investment is part of
10 what has precipitated the financial emergency they're
11 presenting to the Commission, that's relevant to the
12 question of whether an interim is appropriate.

13 JUDGE WALLIS: Mr. Trotter.

14 MR. TROTTER: It does seem to me that the
15 amount should be relatively easily ascertainable. If it
16 was written off, it should be known. And if -- these
17 accounts are usually -- projects are usually the
18 balances are kept separate in separate accounts, so the
19 burdon should be fairly slight. I think the answer
20 might be pretty clear. If it's still accumulating on
21 their books, then we will know that. If it has been
22 written off in a prior period, we will know that. We
23 can draw the conclusion that comes from that.

24 I do think, for example, if there was an
25 uncompensated writeoff in the test year, then on a going

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1 forward basis, we would want to know that. Now but if
2 that's not what happened, then it will help to know that
3 too. But there is a specter of these costs and how they
4 were treated, and to me the burdon, if it is significant
5 burdon, then perhaps you should rule accordingly. But
6 it seems to me on its face the burdon should be fairly
7 slight.

8 JUDGE WALLIS: Mr. Marshall, are you
9 representing that there is any burdon to this?

10 MR. MARSHALL: Your Honor, I simply don't
11 know. I don't know enough about the Cross Cascade
12 pipeline project. But, you know, let's assume for the
13 moment that it was written off or let's assume that it
14 wasn't. Whether it was or wasn't written off says
15 nothing about whether these costs were appropriately
16 incurred. You have to have another leap of argument to
17 say, well, certain costs were incurred, certain costs
18 were written off, therefore those costs were imprudent,
19 and therefore there shouldn't be any accounting for the
20 interim case or the general case for this.

21 I think we're getting into just a complete
22 bog on that kind of thing. You can make the argument
23 about any cost or series of costs or group of costs,
24 gosh, we didn't need to do that. But does that say that
25 you should or shouldn't have interim rates? I don't

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1 think so. I think this is one of those issues where you
2 have to cross so many other logical bridges to get to
3 the point where this has an impact on whether interim
4 rate relief is required that down that path is to start
5 down a path that really doesn't have an end.

6 But I don't know about the amounts expended.
7 I don't know whether anybody even, if you could say they
8 were written off or not written off, could say a thing
9 about whether this was a good idea, a bad idea, one that
10 should be dusted off and done again, or not. I mean all
11 of those are implicit in this request. All of those
12 arguments are there in justifying why anybody should
13 start going down that path to begin with. And I don't
14 think those, I mean unless we want to have a full
15 general case on everything that's been spent, we can
16 head down that way profitably.

17 MR. BRENA: Your Honor, may I reply briefly?

18 JUDGE WALLIS: I would like to, I think, make
19 a ruling at this juncture. I don't believe that we are
20 looking at the question of admissibility at this
21 juncture. I think we are looking at the question of the
22 completeness and accuracy of the company's
23 representation of its financial situation, and I do not
24 believe that the information that's been requested is
25 burdensome. With that, I do think it's appropriate that

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1 the company respond to the request.

2 MR. BRENA: With regard to Interrogatory
3 Number 4, I think most of the arguments have been made.
4 We just want them to say a dollar amount associated with
5 Whatcom Creek. You know, it's not -- it's not going to
6 be ultimately in anybody's benefit if you have five
7 different calculations of the Whatcom Creek expenses.
8 This is -- we just simply asked:

9 Please indicate by dollar amount the
10 total casualty and other loss related to
11 the Whatcom Creek accident which Olympic
12 has booked to date.
13 We just asked them just put a dollar amount
14 to it.

15 JUDGE WALLIS: Mr. Marshall.

16 MR. BRENA: And then the second sentence is
17 the same as the other -- as the second sentences on all
18 of them are the same.

19 JUDGE WALLIS: Yes.

20 Mr. Marshall.

21 MR. BRENA: And I make the same points with
22 regard to the second sentence and the same
23 modifications.

24 JUDGE WALLIS: Mr. Marshall.

25 MR. MARSHALL: Well, actually, I think we

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1 have provided the accounting for the Whatcom Creek
2 accidents in response to Interrogatory Number 35
3 already.

4 JUDGE WALLIS: Well, in that event, it
5 strikes me that you can refer to the total dollar amount
6 if that is the answer to the question as it is phrased
7 here, and we can then move on.

8 Mr. Trotter and Mr. Finklea, do you have
9 comments?

10 MR. TROTTER: No, Your Honor.

11 MR. FINKLEA: No, Your Honor.

12 JUDGE WALLIS: Mr. Brena.

13 MR. BRENA: That completes our motion, Your
14 Honor.

15 JUDGE WALLIS: Very well.

16 MR. BRENA: And Tesoro has nothing further.

17 JUDGE WALLIS: Very well.

18 Is there anything further to do this evening?

19 I will note that the question of timing of
20 the interim docket is not resolved, and I would like to
21 make arrangements for us to teleconference again on
22 either Thursday or Friday. I think probably Thursday
23 would be better. I don't have my calendar here. Would
24 it be acceptable to the parties to notify you by fax or
25 E-mail or both on Wednesday with the time and

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1 arrangements for a conference to discuss that
2 scheduling?

3 MR. TROTTER: Yes, Your Honor, for Commission
4 Staff.

5 JUDGE WALLIS: Mr. Brena, will you be able on
6 Thursday based upon the responses that are due in
7 tomorrow to address the question of scheduling?

8 MR. BRENA: Yes, Your Honor, and I would only
9 put one proviso in. I'm assuming that all responses
10 served will be served electronically and by fax. We
11 have had unreliability by our Internet provider, so I
12 don't -- wouldn't to rely just on the Internet.

13 JUDGE WALLIS: Mr. Marshall.

14 MR. BRENA: But given that it's served in
15 both fashions, yes, Your Honor.

16 JUDGE WALLIS: Mr. Marshall.

17 MR. MARSHALL: Your Honor.

18 JUDGE WALLIS: Is that something the company
19 can do?

20 MR. MARSHALL: Yes, we can. We will send
21 everything out electronically and then start to fax to
22 Mr. Brena. I don't -- if it's okay with the other
23 parties, we will just stay with the electronic version
24 for them.

25 MR. TROTTER: That's acceptable to Staff.

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1 MR. FINKLEA: That's acceptable to Tosco.

2 JUDGE WALLIS: Very well.

3 MR. FINKLEA: And, Your Honor, I would just
4 note that I believe there is a pre-hearing conference in
5 a Puget rate case on Thursday afternoon, so I will be in
6 Olympia, so if we could -- if the -- if our continuing
7 conference occurs on Thursday, if it's in the morning, I
8 could attend personally. Otherwise my associate will
9 attend by phone.

10 JUDGE WALLIS: Very well.

11 Is there anything further?

12 MR. BRENA: Nothing for Tesoro, Your Honor,
13 thank you.

14 JUDGE WALLIS: Very well, thank you all very
15 much, and this conference is adjourned.

16 (Hearing adjourned at 8:30 p.m.)

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