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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

THE WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. TC-001846
)	Volume III
Complainant,)	Pages 26 to 224
)	
vs.)	
)	
BREMERTON-KITSAP AIRPORTER,)	
INC., C-903,)	
)	
Respondent.)	
_____)

10 A hearing in the above matter was held on
11 December 12, 2001, at 9:40 a.m., at 1300 South Evergreen
12 Park Drive Southwest, Room 108, Olympia, Washington,
13 before Administrative Law Judge MARJORIE SCHAER and
14 ROBERT DAMRON.

15 The parties were present as follows:

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest, Post
19 Office Box 40128, Olympia, Washington 98504-0128,
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20 BREMERTON-KITSAP AIRPORTER, INC., by JAMES K.
21 SELLS, Attorney at Law, Ryan, Sells & Uptegraft, 9657
22 Levin Road Northwest, Suite 240, Silverdale, Washington
23 98383, Telephone (360) 307-8860, Fax (360) 307-8865,
E-mail jimsells@rsulaw.com; and by DAVID W. WILEY,
24 Attorney at Law, Williams, Kastner & Gibbs, 601 Union
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dwiley@wkg.com.

Joan E. Kinn, CCR, RPR
25 Court Reporter

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

2 JUDGE SCHAER: We're here this morning for
3 hearings in Docket Number TC-001846. This is a
4 complaint case wherein the Commission Staff is seeking a
5 reduction in the Bremerton-Kitsap Airporter tariff
6 rates. We are in the Commission's Hearing Room 108 at
7 the Commission's headquarters in Olympia, Washington.
8 Today is December 13th, 2001. I'm Marjorie Schaer, and
9 I'm the Administrative Law Judge assigned by the
10 Commission to this proceeding. Seated at my right is
11 Robert Damron, who is the accounting advisor in this
12 proceeding.

13 I'm going to start by taking appearances, and
14 all counsel have previously appeared, so you can just
15 give me your name and the party that you represent, and
16 we will start with you, Mr. Thompson.

17 MR. THOMPSON: Okay, I'm Jonathan Thompson
18 representing the Commission Staff.

19 JUDGE SCHAER: Mr. Wiley.

20 MR. WILEY: Yes, Your Honor, David W. Wiley
21 representing the Respondent Bremerton-Kitsap Airporter,
22 Inc. And I just wanted to clarify on the record, I
23 believe it's the 12th today. You threw me off.

24 JUDGE SCHAER: Okay, thank you.

25 MR. WILEY: You're welcome.

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1 (Discussion off the record.)

2 JUDGE SCHAER: This morning we're going to
3 begin as I understand it with cross-examination of the
4 testimony of Mr. Robert Colbo, and I had asked the
5 parties earlier, Mr. Colbo presents both the direct
6 testimony and rebuttal testimony, and what is your
7 preference, Mr. Thompson, on whether you have all of the
8 cross-examination for him in one setting, or do you want
9 the ability to have him come back with his rebuttal
10 testimony after hearing the company's case in chief?

11 MR. THOMPSON: Our preference would be to
12 take both at once.

13 JUDGE SCHAER: Okay, does that cause any
14 problems for the company?

15 Then that's what we'll do. So would you like
16 to call your witness, Mr. Thompson.

17 MR. THOMPSON: Yes, the Staff would call
18 Robert Colbo.

19 (Witness sworn.)

20 JUDGE SCHAER: Thank you, your witness is
21 sworn, Mr. Thompson.

22

23 Whereupon,

24

25 ROBERT COLBO,
having been first duly sworn, was called as a witness

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1 herein and was examined and testified as follows:

2

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

4 BY MR. THOMPSON:

5 Q. Mr. Colbo, would you please state your full
6 name for the record.

7 A. Robert Colbo.

8 Q. And you're employed by the Washington
9 Utilities and Transportation Commission?

10 A. Yes.

11 Q. And what's your position?

12 A. Transportation program consultant.

13 Q. And you are the same Robert Colbo who has
14 pre-filed testimony, both direct and rebuttal, in this
15 case?

16 A. Yes.

17 Q. And those have been marked as Exhibits 1
18 through 19?

19 A. Yes.

20 Q. Do you have any corrections to your testimony
21 or exhibits that you would like to make at this time?

22 A. Yes.

23 Q. Okay, let's -- do you have a -- and what are
24 they specifically?

25 A. They are -- they relate primarily to Exhibit

00033

1 for identification RC-6, and it has to do with the fact
2 that that exhibit was reissued on December 5th changing
3 some of the numbers in that exhibit.

4 Q. Okay. And that was distributed to the
5 parties under my cover letter on December 5th?

6 A. That's correct.

7 MR. THOMPSON: Your Honor, I would offer that
8 revised Exhibit 6 together with my cover letter as an
9 additional exhibit to Mr. Colbo's testimony. Is that
10 appropriate?

11 JUDGE SCHAER: I think that what we usually
12 do with a revised exhibit, Mr. Thompson, is that we put
13 it in with the original exhibit, so that --

14 MR. THOMPSON: So that it replaces --

15 JUDGE SCHAER: -- it would have the same
16 number.

17 MR. THOMPSON: Okay.

18 JUDGE SCHAER: And that's why you have to
19 indicate when something is revised so that people know
20 which is the correct version to use.

21 MR. THOMPSON: All right.

22 BY MR. THOMPSON:

23 Q. And would you please explain generally what
24 corrections you made to your Exhibit 6.

25 A. Well, they are as listed in the cover letter

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1 dated December 5th that we have just talked about. The
2 first item, number one, changed the SeaTac concessions
3 from \$13,664 to \$13,634. The numbers 21 relate to fuel
4 taxes where the credit changed from \$22,385 to \$22,983.
5 The next item 3 relates to public utility taxes on line
6 27 which changed from \$31,838 to \$31,822, and the tax
7 rate changed from 1.823% to 1.926%. And on depreciation
8 expense at the bottom of page 1 of the December 5th
9 letter, which says number 3 but I assume it means number
10 4, the depreciation expense amount changed from \$75,253
11 to \$90,990. And then the final item is on page 2 of the
12 December 5th letter, and that adjusts the gain on the
13 sale of assets on line 52 from a credit of \$7,902 to a
14 credit of \$ 5,579.

15 Q. Okay. And do you have any further
16 corrections to your testimony?

17 A. Yes, I do.

18 Q. And could you please turn to Exhibit 1-T I
19 guess it would be, and if we could just march through
20 and have you identify those, please.

21 A. Yes, on page 3, line 8, my first action on
22 November 29th, 2001, should say November 29th, 2000.
23 The next one is on page 4 where -- it's on line 3 where
24 it says the letter dated December 22, 2001, the correct
25 date is 2000. And then on page 10, because of the

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1 changes in Exhibit Number RC-6, some of the numbers
2 changed that I was referring to in this section of my
3 testimony on lines 14 through 20. The \$48,823 amount on
4 line 14 is now \$33,086. On line 15, the \$8,015 amount
5 is now \$10,338. And on line 19, the rate base amount is
6 now \$349,453 in place of the \$381,875.

7 JUDGE SCHAER: Did everybody get all of those
8 changes?

9 MR. BURTON: I would like the last one,
10 please.

11 JUDGE SCHAER: Would you give the last one,
12 please.

13 A. On page 10, line 19 of in my testimony, where
14 I talk about the inclusion of the resulting \$381,875
15 total company rate base, the new number because of the
16 revised depreciation figure is \$349,453.

17 BY MR. THOMPSON:

18 Q. And are there any revisions to your rebuttal
19 testimony?

20 A. I'm not done with this exhibit yet.

21 Q. Oh, sorry.

22 MR. WILEY: What page are we on?

23 A. Now I'm on page 13, line 8, Mr. Spivey and
24 his wife's combined earnings of \$20,413, the correct
25 number is \$21,346. And on page 18, line 22, last line

00036

1 on the page, that's that rate base number that we
2 already talked about, the correct number is \$349,453.
3 Page 21, line 9, the income tax amount is now \$111,533
4 not \$117,774.

5 MR. WILEY: One more time on that one,
6 please.

7 A. Page 21, line 9, where it says income tax
8 expense is \$117,774, the correct number is \$111,533.

9 And on page 32, line 17, where it speaks of
10 the \$292,576 decrease, the correct number because of the
11 revisions to Exhibit Number RC-6 is \$277,964. And on
12 line 18, the increase in Pierce operations is now
13 \$35,152 in place of the indicated \$31,776. We're almost
14 there folks.

15 On page 33, line 4, where it shows the
16 company is overearning to the extent of \$260,800, that
17 amount is now \$242,812. On line 6 where the Pierce
18 County increase shows \$1.75, that amount is now \$2. On
19 line 11 where it talks about the overall decrease in
20 revenues of \$261,686, that amount is now \$257,047. And
21 the operating ratio indicated as 96.64 is now 97.56.

22 And that's what I have.

23 Q. So there's nothing further in your rebuttal
24 testimony?

25 A. Not that I'm aware of.

00037

1 Q. Okay. With those corrections to your Exhibit
2 6 and to your testimony which was pre-marked as Exhibit
3 1-T, is your testimony and the attendant exhibits true
4 and correct to the best of your knowledge?

5 A. Yes.

6 MR. THOMPSON: Staff would offer Mr. Colbo
7 for cross-examination if you need to have the Bench
8 requests.

9 JUDGE SCHAER: Are you going to offer his
10 testimony and exhibits?

11 MR. THOMPSON: Oh, and I would offer the
12 testimony and exhibits.

13 JUDGE SCHAER: What I would like to do at
14 this time is go through and identify these on the
15 record. Marked for identification as Exhibit 1 a
16 document labeled RC-1T, testimony of Robert Colbo. I
17 have marked for identification as Exhibit 2 the document
18 labeled RC-2 statement of qualifications. I have marked
19 for identification as Exhibit 3 the document labeled
20 RC-3 proposed tariff 6. I have marked for
21 identification as Exhibit 4 a document headed RC-4 staff
22 letter of November 29th, 2000. Marked for
23 identification as Exhibit Number 5 what's been
24 identified by the Staff as RC-5 Staff open meeting memo
25 of December 27th, 2000. I have marked for

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1 identification as Exhibit 6 a document entitled pro
2 forma income statement of Bremerton-Kitsap Airporter,
3 Inc., and I should indicate that there has been a
4 revised version of this exhibit provided. It was
5 revised on December 5th, 2001. And with that revision
6 there was provided a cover letter which indicates what
7 the changes to that revised exhibit are compared to the
8 original exhibit, and I'm going to mark both the cover
9 letter and the revised pro forma statement as Exhibit 6
10 for identification. I'm going to mark for
11 identification as Exhibit 7 a document entitled RC-7
12 uniform system of accounts for Class 2 bus companies.
13 I'm going to mark for identification as Exhibit 8 RC-8,
14 which is a five year extracted balance sheet. I'm going
15 to mark for identification as Exhibit 9 a document
16 headed RC-9 entitled owner compensation packet. I'm
17 going to mark for identification as Exhibit 10 orders in
18 RC-10 which is orders in cause TC1880. I'm going to
19 mark for identification as Exhibit 11 a document RC-11
20 orders in docket number D2576. I'm going to mark for
21 identification as Exhibit 12 RC-12 Commission order
22 granting tariff revisions in cause TC846. I'm going to
23 mark for identification as Exhibit 13 a document --
24 actually, lets go off the record for just a moment.
25 (Discussion off the record.)

00039

1 JUDGE SCHAER: I'm going to mark for
2 identification as Exhibit 13 a document entitled RC-13
3 and it is an important notice of end of fuel surcharge
4 program. I'm going to mark for identification as
5 Exhibit 14 a document headed RC-14, which is a Staff
6 open meeting memo of March 14th, 2001. I'm going to
7 mark for identification as Exhibit 15 a document
8 entitled RC-15, five years of income statements for
9 Bremerton-Kitsap Airporter, Inc. I'm going to mark for
10 identification as Exhibit 16 a document entitled RC-16,
11 order in cause U86130. I'm going to mark as Exhibit
12 T-17 a document entitled rebuttal testimony of Robert
13 Colbo. I'm going to mark for identification as Exhibit
14 18 a document entitled RC-18, total reduced copy of
15 December 21, 2001, monthly income statement.

16 THE WITNESS: I don't have that. Or wait,
17 maybe I do. Where are we, Your Honor?

18 JUDGE SCHAER: We're on the exhibits that
19 would have come with your rebuttal, Mr. Colbo.

20 THE WITNESS: Well, I don't have it, but I
21 can make a note and get it, I guess.

22 JUDGE SCHAER: Mr. Thompson, do you have
23 copies of the exhibits to Mr. Colbo's rebuttal
24 testimony?

25 MR. THOMPSON: Yes.

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1 THE WITNESS: Oh, excuse me, I do have it,
2 I'm sorry.

3 JUDGE SCHAER: Okay. And while we're at that
4 document, Mr. Colbo, I want to ask you about the date.
5 Is this December 21, 2001, or should it be a different
6 year?

7 THE WITNESS: That should be 2000, Your
8 Honor.

9 JUDGE SCHAER: Okay, then I'm going to ask
10 everyone to correct that date, and I will identify for
11 identification Exhibit 18 as RC-18 being a copy of the
12 December 21st, 2000, monthly income statement. I'm
13 going to mark for identification as Exhibit 19 RC-19,
14 just common elements of job descriptions for public
15 transit organizations.

16 And then at the beginning of the hearing I
17 distributed copies of Staff's responses to Bench
18 Requests 1 through 6, which I have marked for
19 identification as Exhibit 20. And I also distributed
20 Staff's response to Bench Request Number 10, which I
21 have marked for identification as Exhibit 21.

22 And Mr. Wiley has distributed a cross-exhibit
23 that I will go ahead and identify at this point also,
24 Exhibit 22, February 11, 1998, Staff memorandum about
25 this company in C-903.

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1 objection to admission of exhibits for identification 20
2 and 21, which were the Bench request responses.

3 MR. WILEY: No, Your Honor.

4 JUDGE SCHAER: Any concerns about those,
5 Mr. Thompson?

6 MR. THOMPSON: No.

7 JUDGE SCHAER: Okay, then I'm also going to
8 admit Exhibits 20 and 21.

9 MR. THOMPSON: Just for clarification, you're
10 reserving on 6 and 19?

11 JUDGE SCHAER: 9 and 19.

12 MR. THOMPSON: I'm sorry.

13 JUDGE SCHAER: Is that correct, Mr. Wiley?

14 MR. WILEY: Yes, Your Honor.

15 And I assume you're reserving on 22?

16 JUDGE SCHAER: 22 hasn't been offered yet,
17 it's only been identified. I will expect you to offer
18 that if you choose to.

19 MR. WILEY: Okay.

20 JUDGE SCHAER: So go ahead, Mr. Wiley.

21 MR. WILEY: Thank you, Your Honor.

22

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

24 BY MR. WILEY:

25 Q. Mr. Colbo, good morning.

00043

1 A. Good morning.

2 Q. It's been a while since we have been in a
3 rate case together, hasn't it?

4 A. Yeah.

5 Q. I would like to -- you lost me a little bit,
6 and I may have been the only one in the room who got
7 lost, on the substitute or revised Exhibit RC-6. That's
8 your letter or your counsel's letter to opposing counsel
9 and some of your changes. And where I lost you was
10 trying to identify the changes on the internal page
11 references. And if you wouldn't mind walking me
12 through, because these pages are not numbered.

13 A. Oh.

14 Q. And I was trying to track them, and I got
15 lost early on, and I just thought I would ask you about
16 it now. So could you help me by going to -- and please
17 let me know if I need to look at the original RC-6 for
18 any purpose in going back over your changes, but I would
19 like to identify them on the page. We've got a line
20 reference, that should be easy.

21 A. Okay.

22 Q. So let's start with concession SeaTac,
23 please.

24 A. Might I -- and on my copy of RC-6, I don't
25 have page numbers either, so maybe we should put page

00044

1 numbers in now so we know what we're talking about.

2 JUDGE SCHAER: That would be fine with me.

3 Anyone have any problem with that?

4 MR. THOMPSON: No.

5 A. I have numbered the summary pro forma income
6 statement as page number 1.

7 BY MR. WILEY:

8 Q. And up at the top it says the name of the
9 carrier, the certificate number, and it says pro forma
10 income statement 12 months ending 9-30-00, correct?

11 A. Yes.

12 Q. Okay, that's page 1?

13 A. Yes.

14 Q. Okay.

15 A. Page 2 are the restating adjustments.

16 Q. That's a double sided page that has been
17 provided, correct? That's what I have.

18 A. Well, I have restating adjustments on page 2,
19 and I have numbered pro forma adjustments on page 3.

20 Q. Okay.

21 A. And then I have a page 4.

22 Q. Okay.

23 A. Which is the separated results.

24 Q. Okay. And that also says pro forma income
25 statement, does it not?

00045

1 A. Yes.

2 Q. Up at the top, and then at the bottom it says
3 separation?

4 A. Yes, and it lists in Column B and E the
5 Bremerton operation and the Pierce County operation.

6 Q. Thank you, and that's page 4 you said,
7 correct?

8 A. Yes.

9 Q. And then that continues, does it not?

10 A. That's as far as I have.

11 JUDGE SCHAER: I am thoroughly confused at
12 this point.

13 MR. THOMPSON: I apologize, this is --
14 something strange happened in the copying of this
15 exhibit this morning. There are actually only four
16 sheets, right, but we have -- some of them have been
17 reproduced twice here, and it confused me.

18 THE WITNESS: I have the original.

19 MR. THOMPSON: We do have a clean copy that
20 maybe we should substitute rather than --

21 MR. WILEY: And, Your Honor, where I'm
22 getting confused right now is that I want to make sure
23 that the copy that was handed out today versus what I
24 received in the mail on December 6 are the same
25 documents. And if they're not, I want to just discard

00046

1 one of them.

2 JUDGE SCHAER: Let's go off the record for a
3 moment to discuss the logistics.

4 (Brief recess.)

5 JUDGE SCHAER: Let's be back on the record
6 after a brief recess. During this time, I believe,
7 Mr. Wiley, that you were able to, Mr. Thompson, excuse
8 me, you were able to get page numbers put on the revised
9 version of Exhibit 6, and I'm going to substitute this
10 document for the one that was admitted a few minutes
11 ago.

12 Do you have any concerns about that,
13 Mr. Wiley?

14 MR. WILEY: No, I don't, Your Honor. Now I
15 think I understand what has happened, so I'm going to
16 use this.

17 JUDGE SCHAER: So then everybody use this
18 copy. This copy has page numbers on the bottom of the
19 pages that I hope will help you with your questions,
20 Mr. Wiley.

21 MR. WILEY: Good.

22 JUDGE SCHAER: Why don't you go ahead with
23 that at this point.

24 BY MR. WILEY:

25 Q. Mr. Colbo, I think that the page numbering

00047

1 now is going to help me, but let's just walk through it
2 quickly.

3 A. 1 through 6?

4 Q. Excuse me?

5 A. Corrections 1 through 6?

6 Q. Yeah, RC-6, and this is the December 5 letter
7 from counsel.

8 A. Yes, I have it.

9 Q. On the concession SeaTac, the change at line
10 18 to the pro forma, where do I make that change
11 internally?

12 A. Yes, on page 1 of the exhibit.

13 Q. Okay.

14 A. Line 18.

15 Q. Okay.

16 A. Concession SeaTac.

17 Q. Okay.

18 A. The corrected number has already been entered
19 on the revised exhibit of \$13,634.

20 Q. Thank you. Let's just go down through these
21 and do them. Line 21?

22 A. Yes, fuel taxes.

23 Q. And that's on page 1?

24 A. Yes, everything is on -- I think everything
25 is on page 1.

00048

1 Q. Excuse me, page -- oh, the letter --

2 A. Well, let's just key in to page 1.

3 Q. Yeah. The reason I was confused, I'm sorry,

4 Mr. Colbo, is the letter of December 5th, which is the

5 revised RC-6, which is a part of the exhibit, refers to

6 page 4, and is that --

7 A. Well, I think the line numbers are consistent

8 throughout.

9 Q. Okay.

10 A. So if we tie to line page 1, I think we're

11 okay for all of it.

12 Q. Okay.

13 A. That's pretty much it.

14 Q. It carries out throughout the exhibit is what

15 you're saying?

16 A. I hope so.

17 (Discussion off the record.)

18 BY MR. WILEY:

19 Q. Counsel has indicated that on pages 1 through

20 3, it's line 18, and on page 4 it's line 11 for

21 concession SeaTac, for instance. So if we are guided by

22 this letter, we will be fine that way.

23 A. Okay.

24 Q. And down below, depreciation, that should be

25 item number 4, not item number 3, correct?

00049

1 A. Yes.

2 Q. And then on page 2 of the letter, gain loss
3 on sale would be the fifth revision, not the fourth,
4 correct?

5 A. Yes, that is correct.

6 Q. Okay. I haven't gone through to highlight
7 them all, but if I ask you questions about them, if you
8 slow down, I will find them.

9 A. Thank you.

10 Q. Okay. For instance, on the depreciation
11 adjustment, the change increases depreciation expense
12 approximately \$15,000 in the company's pro forma; is
13 that correct, your change?

14 A. Yes, I have accepted Mr. Burton's.

15 Q. And that was based on your acceptance of the
16 amortization period from five years to four years,
17 correct?

18 A. That's correct.

19 Q. Now would you please highlight for us I
20 believe it's line 72.

21 JUDGE SCHAER: Of what exhibit, please?

22 Q. I'm sorry, these questions are on RC-6, page
23 1, line 72, and then let me see if it's on any of the
24 other pages. No, it isn't. So the operating ratio
25 calculation appears only to be on line 72 of RC-6

00050

1 revised; is that correct?

2 JUDGE SCHAER: Also on page 4 at the bottom.

3 Q. Mr. Colbo, there is a reference to operating
4 ratio on page 4 of RC-6 as well, is there not?

5 A. There's references to operating ratio on line
6 72 of page 1 and line 49 of page 4.

7 Q. And the calculation for operating ratio at
8 line 49 on page 4 of RC-6 is a different calculation
9 other than the 82.76 reference than the line 72 at page
10 1, is it not?

11 A. You lost me.

12 Q. You're separating the operating ratio on page
13 4 by operations, and you're not doing that on page 1,
14 correct?

15 A. That's correct.

16 Q. Okay.

17 A. Page 1 is total company, page 4 is total
18 company split between the two routes.

19 Q. Now the operating ratio recommendation that
20 you are now proposing is 97.56; is that correct?

21 A. Yes.

22 Q. And you have --

23 A. I'm proposing 97 in my testimony.

24 Q. Okay, well, that's what I wanted to ask you.
25 Your pro forma shows 97.56 as the result of operations

00051

1 after all of your adjustments, correct?

2 A. Yes.

3 Q. And you have revised your testimony, at least
4 you gave us a page where you were revising your
5 testimony to reach 97.56, and by that I mean a change to
6 RC-1? Were you not, where you were referencing the
7 calculation. I will try to find it. If anybody finds
8 it before me --

9 A. Page 33.

10 Q. Okay, thank you.

11 A. Line 11.

12 Q. Thank you. So page 33, line 11, yes, you
13 are. And could you please clarify how that revised
14 operating ratio squares with, for instance, line 3 of
15 RC-1, page 33, where you talk about a 97% operating
16 ratio?

17 A. Yes, the 97.56 on page 1 of RC-6 follows from
18 the fact that I have rounded off the Staff recommended
19 revisions to existing rates to the nearest quarter.
20 Generally speaking, when bus companies have rates, they
21 like to keep things either in whole dollar amounts or to
22 the nearest quarter so when people get on the bus
23 drivers don't have to fumble with pennies and nickels
24 and dimes. That's the difference.

25 Q. I think your answer was going to the design

00052

1 of the rate rather than to the operating ratio, and my
2 question was, how does the 97% operating ratio
3 referenced on line 3 now square with the revision that
4 you have made to 97.56 in terms of the operating ratio
5 requirement? Would I be revising your testimony in
6 RC-1, page 33, line 3 to put 97.56 as your recommended
7 operating ratio?

8 A. The target operating ratio that I testified
9 to is 97. Since I accommodated the convenience of the
10 drivers to round off revised -- proposed revised rates
11 to the nearest quarter, that happens to be an operating
12 ratio that's higher than that, 97.56.

13 Q. So then my question is, should we not be
14 revising your target operating ratio reference to be
15 accurate to 97.56 rather than 97?

16 A. No.

17 Q. And that's because of the rate design --

18 A. Yes.

19 Q. -- allowance that you made?

20 A. Yes.

21 Q. But if we're talking about an operating ratio
22 target, aren't we talking now in terms of your testimony
23 about a higher than 97% operating ratio?

24 A. Yes, if the company -- if the rates proposed
25 when this is resolved come out to exactly to pennies,

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1 then we can accommodate 97.

2 Q. I guess I don't understand your answer based
3 on my question then. Are you saying that we would then
4 -- we would add to the revenue requirement to hit the
5 97% or we would accept the revenue requirement which
6 would then come out to 97.56?

7 A. No, 97 is the target, and those \$3 and \$2
8 amounts on lines 4 and 8 of page 1 of Exhibit RC-6 have
9 been rounded to the nearest quarter. If as a result of
10 this hearing there are revised rates when all is said
11 and done, those can be adjusted to the actual numbers
12 that will yield a true 97%.

13 Q. And that would be at the election of the
14 regulating company or --

15 A. I guess it would be at the election of the
16 Judge or the Commission, whoever writes the orders.

17 Q. Okay. Well, I just want to understand your
18 testimony, and that is it appears that you're saying
19 that because of rate design issues, you have maintained
20 the reference to the target operating ratio, but the
21 actual operating ratio that your proposed rates now
22 yield is 97.56.

23 A. That's correct.

24 Q. Are you saying then that a 2.44% revenue
25 margin would be sufficient for this company to pay taxes

00054

1 and provide a reasonable profit to the company?

2 A. Yes.

3 Q. And have you done any further calculation
4 based on the adjustment upwards of the operating ratio
5 to update your conclusion regarding that revenue margin
6 of 2.44%?

7 A. Repeat the question, please.

8 MR. WILEY: Could I have that read back, Your
9 Honor.

10 JUDGE SCHAER: Would you read back the
11 question, please.

12 (Record read as requested.)

13 A. No.

14 BY MR. WILEY:

15 Q. I want to make sure I understand RC-6, and if
16 we could go back to it, please, because this -- it's
17 correct that this is your focal document in terms of the
18 Staff's position on rates in this proceeding, correct?

19 A. That's correct.

20 Q. Okay. Some sort of explanation of some of
21 the line items would be helpful for those of us who are
22 not accountants in terms of dealing with this on a daily
23 basis. Would you describe the adjustment that you made
24 on line 62, which is gain on sale of assets, which I
25 understand flows out of your acceptance of the

00055

1 amortization and depreciation adjustments of the
2 company; is that correct? It does flow out of your
3 acceptance of that?

4 A. Yes, I just accepted Mr. Burton's numbers.

5 Q. Okay. So when we say, and I can ask
6 Mr. Burton this too, but gain/loss sale of assets,
7 restating adjustment, a debit of \$15,917, what does that
8 -- can you give us in layman's terms what that
9 represents, please?

10 A. Well, with respect to line 62, that
11 adjustment just transfers the gain to line -- from line
12 62 to line 52, putting it above the line to consider it
13 as an operating expense.

14 Q. And you have, by accepting the company's
15 position, you added dollars to the amount up above the
16 line adjustment; is that correct?

17 A. Yes. Just a moment, I will verify that.
18 Yes, the number of line 52 gain/loss on sale, the credit
19 balance of \$5,579, line 52, page 1 of Exhibit RC-6, is
20 exactly the same as that appearing in Mr. Burton's
21 exhibit on line 44. I have accepted the company number
22 here.

23 Q. Thank you. You also prepared a Bench --
24 pursuant to a Bench request a combined pro forma in this
25 proceeding, did you not? And by combined, I mean the

00056

1 company and the Staff pro formas sort of contracted; is
2 that correct?

3 A. Yes.

4 Q. Is that a fair characterization of what
5 you're doing there? If I misstated it, please correct
6 me.

7 A. I think it's basically fair. If you could
8 refer me to the specific one you're talking about.

9 Q. Yes, it would be Exhibit 20, Bench Request
10 Response Number 6.

11 A. Yes, I have it.

12 Q. Now can you give us a little bit of
13 foundation on this. Is it correct that you have taken
14 the pro forma income statements, yours is RC-6, and
15 Mr. Burton's I will get you, is it RC-3, excuse me,
16 WTB-2, correct?

17 A. Yes. I'm pausing because my listing of it
18 shows it as WTC-2. It should be WTB-2.

19 Q. Yes, WTB-2.

20 A. Yes.

21 Q. And there is some restating adjustments at 3
22 and pro forma adjustments at WTB-4. But you take both
23 your RC-6 and Mr. Burton's and then compile the
24 contrasting restating and pro forma adjustments on your
25 response to Bench Request Number 6; is that correct?

00057

1 A. I'm not sure I understood all of that, but
2 with respect to the depreciation and the gain on the
3 depreciation, I have accepted his number in my final
4 revised Exhibit RC-6.

5 Q. I'm not asking about a specific adjustment.
6 I'm just asking about what your response to Bench
7 Request Number 6 represents.

8 A. Represents -- Bench Request Number 6
9 represents a comparison between Mr. Burton's exhibit and
10 my original Exhibit RC-6. And wherever there's a
11 difference, it attempts to explain that difference.

12 Q. Okay. Are you saying, when you emphasize
13 your original RC-6, are you saying that Bench Request
14 Number 6 would be further revised by your revised pro
15 forma RC-6?

16 A. Yes.

17 Q. Okay.

18 A. There would be fewer differences at that
19 point.

20 Q. Okay. And so it actually -- this would
21 actually be broader, meaning Bench Request Number 6
22 response, Exhibit 20, would actually be a broader
23 analysis than a current revised one because you have
24 accepted some of the company's adjustments?

25 A. That is correct.

00058

1 Q. Okay. But other than that, there aren't any
2 other revisions to Bench Request Number 6, are there,
3 that you can think of?

4 A. No.

5 Q. Okay. Now is it correct that we can look at
6 Bench Request Number 6, your response to Bench Request
7 Number 6, as sort of a template of where the parties
8 stand in this rate proceeding right now in terms of
9 their differences?

10 A. Yes, we can.

11 Q. Okay. And could we just then with that
12 foundation, could we sort of highlight those so that we
13 can have a road map of the remaining issues, okay. And
14 my first question to you is, in the far right-hand
15 column, you have very cogently provided explanations of
16 the line item adjustments, correct?

17 A. Yes.

18 Q. And right now they're on, for instance -- I'm
19 not going to ask you about the typographical errors and
20 adjustments because I think those are very self
21 explanatory. The fuel tax credit, for instance, which
22 is shown at line 9 on your response to Bench Request
23 Number 6, that involves a fuel credit adjustment that
24 you concur in, correct?

25 A. That's correct.

00059

1 Q. Okay. Now the next line 15, your note in the
2 right-hand side says, see note at the bottom of this
3 schedule titled "payroll tax differences". Is it
4 correct that these -- that the \$5,939 difference all
5 flows out of the compensation which the parties provide
6 for the owner and the taxes that would be attributable
7 to the differing compensation?

8 A. No.

9 Q. Okay. Can you describe what that is?

10 A. Part of that is due to that.

11 Q. Okay.

12 A. That's of the \$5,940, \$2,351 is attributable
13 to differences in owner compensation. The remaining
14 \$3,589 is attributable to differences in how Mr. Burton
15 and myself has handled the L&I tax refunds.

16 Q. Okay. And so -- and you have at the bottom
17 the note that those numbers that you have just referred
18 to are found. Can you explain essentially the
19 calculation there. That's you are -- Mr. Burton removed
20 the refund, you retained the refund, and then you
21 amortized it over a three year period; is that correct?

22 A. Yes.

23 Q. And that's where the number of \$3,589 comes
24 from?

25 A. Yes.

00060

1 Q. Okay. So I would take that one third
2 calculation and add it to the difference in payroll
3 taxes based on the differing level of recommended
4 compensation, and I would come up with \$5,940, which I
5 find in a rounded form at line 15; is that correct?

6 A. That is correct.

7 Q. Thank you. The next item is a very heavily
8 discussed but not very material adjustment to the public
9 utility tax rate which both Respondent and Staff
10 initially used an erroneous rate for, correct?

11 A. That's true.

12 Q. And now you have corrected that, and that
13 makes a difference now at least -- when you say
14 difference, that's again because a different revenue
15 requirement since the public utility tax is based on
16 gross revenue, correct? Let me ask it this way, maybe
17 it would be easier. What's the difference derived from,
18 the \$274 figure?

19 A. Let me take a look.

20 Q. Sure.

21 A. Oh, I used in my number the \$31,838.

22 Q. Wait a minute, you're going to have to take
23 me there, I'm not seeing that number.

24 A. We're talking about the \$274 difference
25 between \$31,838 and \$32,112.

00061

1 Q. Right.

2 A. I'm not exactly sure what the difference is,
3 Mr. Wiley. It's a \$275 difference.

4 Q. Right.

5 A. It may be the difference between 1.926 and
6 1.823 times the present level of revenues.

7 Q. I agree with you, it's not material. What I
8 was trying to address was whether it was based on a
9 different revenue figure because the company and the
10 Staff derived different revenue figures for proposed
11 rates.

12 A. Oh, no, it's not due to that at all.

13 Q. What is it due to?

14 A. It's present level revenues.

15 Q. Oh, okay. It says that, but I didn't
16 understand the basis of the calculation. So how do you
17 think there's a difference now? It appears you didn't
18 adjust the number of the company to the public utility
19 tax rate of 1.92, whatever it was. Just you had used
20 their older number, is that what you think happened?

21 A. I don't know what I did.

22 Q. Okay.

23 A. I think I took revenues and multiplied by
24 1.926 to come with up with my existing number per
25 revised Exhibit RC-6.

00062

1 Q. And the company's number might not be at all
2 different from yours if you took the present rates and
3 they concur on the public utility tax rate?

4 A. I'm assuming that the number would be the
5 same if that happened.

6 Q. Okay.

7 A. And if it isn't, it's only \$275.

8 Q. Legal and accounting, we will get into that
9 topic in much greater length, but right now on RC-6, the
10 \$8,555 figure that you come up with is test year legal
11 expenses; is that correct? Or is that a restating
12 adjustment?

13 A. I'm -- I have revised RC-6 here if you can
14 refer me to what you're talking about.

15 Q. Oh, I'm sorry, it's line 25, legal and
16 accounting. I'm just asking you on the exhibit, not
17 getting behind the theory of the number at this
18 juncture.

19 JUDGE SCHAER: What page number are you on,
20 Mr. Wiley?

21 MR. WILEY: Oh, I'm sorry, it's Bench Request
22 Number 6, Staff response, I'm sorry, line 25, and I will
23 have a number of questions about this exhibit.

24 THE WITNESS: And now that I am on the same
25 page you are, could you repeat the question?

00063

1 BY MR. WILEY:

2 Q. Yes, I'm saying, could you just tell me the
3 difference in the numbers as you understand. It's
4 \$100,000, and that's based upon what?

5 A. Mr. Burton's inclusion as a pro forma
6 adjustment of \$100,000 for the legal fees pertaining to
7 this case.

8 Q. And you provide no adjustment for legal fees;
9 is that correct?

10 A. That's correct.

11 Q. And the next line, which is 36, a figure of
12 \$15,737. And again, this is on the Staff response to
13 Bench Request Number 5. That's where you concur and
14 increase the depreciation expense by \$15,737, correct?

15 A. Yes, that's the \$15,000 you asked me about
16 earlier.

17 Q. Okay. Line 47 of Staff response to Bench
18 Request Number 6, that's the affiliated rent issue,
19 correct?

20 A. Correct.

21 Q. And could you just, we will explore that
22 further later too, but just tell me your figure is --
23 the \$37,000 figure is based on what, and the \$60,000
24 figure as you understand it is based on what?

25 A. \$60,000 is the amount that the company

00064

1 actually recorded on its books in the way of rental
2 payments paid to an affiliate for use of their facility.
3 In lieu of the actual booked and paid amounts, I have
4 substituted the actual cost plus a return associated
5 with that facility. That amount is less than the
6 \$60,000 that the company has recorded on their books.

7 Q. Do you have any calculation that addresses
8 the adjustment for return that you just referred to?

9 A. Yes.

10 Q. And is that in your testimony?

11 A. I don't -- well, I -- the fact that there was
12 a return element to it may be, but the exhibit, the
13 calculation isn't shown anywhere.

14 Q. And do you have that in work papers that you
15 could provide?

16 A. Yes, I do.

17 MR. WILEY: Your Honor, I would like to make
18 a request that that be provided to the company. I don't
19 know if there's an objection.

20 JUDGE SCHAER: Can you either make that a
21 record requisition, or if that's something that could be
22 found at the next break, it would be nice if it could
23 just be provided so we could question if necessary.

24 Would you be able to provide that after the
25 next break, Mr. Colbo?

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1 THE WITNESS: Yes, I can.

2 JUDGE SCHAER: And is that acceptable to you,
3 Mr. Thompson?

4 MR. THOMPSON: It is.

5 JUDGE SCHAER: All right, let's proceed.

6 BY MR. WILEY:

7 Q. Okay, two more left to go, Mr. Colbo. On
8 Staff response to Bench Request Number 6. Line 54,
9 officer salary, that's a familiar topic in this
10 proceeding, isn't it?

11 A. I went looking for that exhibit, and now I
12 can't find where we are.

13 Q. I'm sorry, I will let you get to it. I can
14 probably find it here. No, I don't think I have more
15 than one copy, I'm sorry.

16 A. Oh.

17 JUDGE SCHAER: We're on the last page of
18 response to Bench request 6, Mr. Colbo.

19 A. Oh, just a moment, okay, I'm with you.

20 Q. Okay. We've just got two more, and then you
21 can --

22 A. Then I can leave?

23 Q. No.

24 Line 54, I said that's a familiar topic in
25 this proceeding, correct?

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1 A. Oh, yes.

2 Q. And that reconciles the direct testimony of
3 yourself and Mr. Burton in terms of what you recommend
4 be included in rates for officer or owner compensation;
5 is that correct?

6 A. Yes.

7 Q. And that difference at the present time is
8 \$42,362; is that correct?

9 A. Yes.

10 Q. Okay. And finally, the item now getting more
11 familiar, the gain/loss on sale adjustment that we have
12 been talking about, that shows the effect of your
13 acceptance of the company's amortization of four years
14 on reducing -- explain the parents of \$5,579 in that
15 context, please.

16 A. The gain --

17 Q. It reduces the amount of gain, doesn't it?

18 A. It reduces the amount of gain because more
19 depreciation was taken or -- I'm accepting his number.
20 It gets complicated.

21 Q. Okay.

22 A. It has to do with the changed service life
23 going from five to four years, and as a result of that,
24 the gain is different than it would have been if I had
25 stuck with my five year amount.

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1 Q. I'm relieved to hear accountants say it gets
2 complicated, because we were trying to correlate the
3 adjustments ourselves, and for the non-accountants, it's
4 somewhat tricky at times.

5 Okay, I want to next go to some of your
6 statements in RC-1T, which is your direct exam
7 testimony, and we're going to skip around a bit. But I
8 want to first go to your discussion which I was not
9 completely clear on at page 12 of your testimony
10 regarding adjustments that you made for, rather
11 characterizing I should say, the use of bonuses by the
12 company. And the testimony -- the questions start on
13 page 11 on this adjustment and go over to your testimony
14 at page 12 where you talk about income tax approaches
15 used by the company. Are you with me?

16 A. Yes.

17 Q. Okay. Now would you describe, please, your
18 understanding of why a company would take -- would agree
19 to a distribution of compensation by bonus versus salary
20 under IRS regulations?

21 A. Yes, and my response is similar to the
22 company's response to one of the Staff data requests.
23 If the company pays dividends and distributes profits
24 rather than including those amounts as compensation,
25 then they pay tax, the corporation pays tax on more

00068

1 income. And the individual when he or she gets those
2 dividends pays personal income tax on them as well, so
3 they're taxed twice. If you class them as compensation
4 to the owner, taxable income is less. And for the
5 corporation, they get -- those amounts get passed
6 through to the individual, and they only get taxed once
7 on his tax, personal income tax return.

8 Q. So then you would agree that distribution of
9 proceeds via bonus versus a dividend to a shareholder of
10 a closely held corporation is a consistent approach to
11 reduce federal income taxes?

12 A. I don't know what you mean by consistent.
13 The IRS allows it.

14 Q. Well, you use a term on line 10 of page 12
15 that:

16 This is a perfectly legitimate
17 IRS-allowed approach to reduce income
18 taxes.

19 A. Would you make that reference again, please.

20 Q. Yes. At line 10 of page 12, you say:
21 This is a perfectly legitimate
22 IRS-allowed approach to reduce income
23 taxes.

24 A. Yes.

25 Q. And so I guess my question is, based on that

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1 statement, you see nothing inappropriate by the issuance
2 of bonuses to owners of closely held corporations rather
3 than dividends?

4 A. Not for tax purposes, I don't. But for
5 regulatory purposes, I certainly do.

6 Q. Okay. Well, then let's explore that a little
7 bit. If a regulated company is closely held like
8 Bremerton-Kitsap Airporter, Inc., do you know what I
9 mean by the expression closely held?

10 A. I think so.

11 Q. Okay. If it's a closely held corporation and
12 it's a regulated company like the respondent in this
13 proceeding, which master should the company serve in
14 making decisions like this, the Internal Revenue Service
15 or the regulatory entity?

16 A. I think they should do the right thing. I
17 think they should call owner's compensation owner's
18 compensation and call profits profits or dividends and
19 quit going through this charade.

20 Q. Okay. Well, I want to explore that, because
21 I just thought -- I thought you just testified that it
22 was entirely appropriate consistent with IRS regulations
23 to distribute excess profits through bonuses rather than
24 dividends. You --

25 A. I said for IRS purposes it's absolutely

00070

1 proper and allowed.

2 Q. Okay.

3 A. For regulation purposes, I don't think it's
4 proper to include those bonuses as operating salaries
5 for the owner.

6 Q. So your answer to my question when you used
7 the term do the right thing was basically your testimony
8 that the master the company should serve is the
9 regulatory entity in making a decision like that rather
10 than maximizing income through application of IRS
11 regulations; is that correct?

12 A. Well, the company on its books and records --
13 at rate case time, we can make the appropriate
14 adjustments to handle it the way we think it should be
15 handled.

16 Q. And I guess then that begs the question of
17 how do you think it should be handled? It appears that
18 you don't think it is appropriate to distribute excess
19 profits through bonuses.

20 A. That is correct.

21 Q. And why is that so?

22 A. Because it's profits, it's not an operating
23 expense of the company that should be used to calculate
24 rates. It's a distribution of earnings.

25 Q. Okay. So then you would argue that rather

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1 than distribute the profits to the owner of the closely
2 held regulated company, they should leave the excess
3 profits in retained earnings in the company to be used
4 for some other purpose other than owner's compensation;
5 is that correct?

6 A. They could do that, and they could distribute
7 dividends through those accumulated retained earnings.

8 Q. But isn't it true that if they distributed
9 dividends through the retained earnings, they would run
10 afoul of the double taxation issue with the IRS and also
11 continue to raise flags with you as the auditor about
12 excess compensation?

13 A. If they did that, there would be no flags
14 raised to us. If they declared bonuses more properly to
15 be profits, which, in fact, is what they are, that's
16 fine with us.

17 Q. So are you saying that in this proceeding and
18 in the test year period that we have totalled bonus and
19 salaries to be \$421,000, that if Mr. Asche as president
20 of the corporation had issued a dividend for \$265,000,
21 or excuse me, \$365,000, you would have thought that was
22 entirely appropriate and wouldn't have sought to reduce
23 the rates of Bremerton-Kitsap Airporter, Inc.?

24 A. Is \$365,000 the amount of the bonuses that
25 happened during our test year?

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1 Q. That's my understanding.

2 A. And now can you repeat the question?

3 Q. My question is, if rather than issue that
4 amount of money to bonus, that amount had been remitted
5 by a dividend, whether that, in fact, would have caused
6 the Staff not to file a complaint against
7 Bremerton-Kitsap Airporter, Inc., for overearning?

8 A. Well, that's not quite true.

9 Q. Well, I guess I'm asking you what approach
10 you would recommend that this company take if it
11 accumulates excess earnings to avoid running afoul of
12 your concerns that they are compensating their owners
13 too highly.

14 A. You asked me that if the 355 or --

15 Q. 365.

16 A. 365, whatever, was paid as a bonus, would I
17 be recommend -- would I -- would there be no complaint
18 proceeding and would existing rates therefore not need
19 to be rolled back. Is that --

20 Q. Yeah, that was one --

21 A. -- essentially your question?

22 Q. -- of my questions.

23 A. If I can refer you to Exhibit RC-6, page 1, I
24 have already done that. If you look at column F, line
25 72.

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1 Q. Hold on, I'm not finding -- okay, column F.

2 A. Line 72, the operating ratio after having
3 made that adjustment, in effect saying that the 355 or
4 365 is dividends or distribution of earnings and not an
5 expense for officer compensation, that operating ratio
6 is still pretty low, so rates would still be too high,
7 and there very well may be a complaint or some kind of
8 effort made to reduce present rates, and that still
9 leaves the issue of overearnings in prior years to be
10 addressed.

11 Q. Okay, well, I guess I want to go back to your
12 statement that you said that they should do the right
13 thing by calling it owner compensation and not bonus
14 when they distribute revenue, and that seemed to me to
15 suggest a qualitative judgment by you of a preference
16 for dividends over bonuses; is that correct or not
17 correct?

18 A. That's correct.

19 Q. Okay.

20 A. But that's only one element of the whole mass
21 of data that's presented on this sheet. There are other
22 factors that come into play as well.

23 Q. So then at least one factor that you say
24 would have ameliorated their position in your eyes in
25 part is the distribution of excess revenues by a bonus

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1 -- by a dividend rather than a bonus, correct?

2 A. Yes.

3 Q. Now you referred to line 72 of page 1 of
4 RC-6, and you're telling me that that, by your
5 calculations or by your estimate, that the difference
6 between a bonus and a dividend would actually increase
7 the operating ratio of the company by approximately 2
8 1/2 percentage points; is that correct?

9 A. Between per books and present level, yes.

10 Q. So --

11 A. Excuse me, between per books restated, and
12 present level, yes.

13 Q. Okay. And so we get that figure, do we not,
14 by looking at column D and column F and making the
15 calculation of the percentage difference?

16 A. Yes.

17 Q. Okay. So what -- by the way, do you know
18 what the consequence would be in terms of additional
19 federal income tax to the shareholder and to the company
20 if they paid excess revenues in dividends rather than
21 bonuses?

22 A. Just a moment, I have the company's response
23 to Bench Request 9.

24 Q. Okay, you're going to have to enlighten me in
25 terms of the relevance to -- excuse me, Bench Request 9,

00075

1 I was looking at the data request, sorry.

2 A. Oh.

3 Q. Did you say Bench request or data request?

4 A. No, I said Bench request.

5 Q. Okay.

6 A. I may have misstated myself. Could you
7 repeat the question?

8 MR. WILEY: Could I have it read back, Your
9 Honor.

10 JUDGE SCHAEER: Would you please read back the
11 question.

12 (Record read as requested.)

13 A. There would be more net income to the
14 company, so they would have to pay more federal income
15 tax, and there would be more taxable income to the
16 individual, and he or she would have to pay more tax.

17 BY MR. WILEY:

18 Q. So it would be an adverse effect, correct?

19 A. Yes.

20 Q. Now you said that one improvement or
21 amelioration of the excess earnings issue for this
22 company currently would be to do what we have just been
23 talking about, to make dividends rather than bonuses for
24 excess revenues, correct?

25 A. Yes.

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1 Q. Now if they did that under your
2 recommendation, there would be less excess revenues to
3 pay taxes with, correct?

4 A. Yes.

5 Q. The -- if, in fact, let's go back --

6 A. The taxes, yeah, there would. Well, say that
7 again.

8 Q. I think my question said, if they did what
9 you recommended in part, which is to dividend the excess
10 revenue rather than -- or income rather than to issue
11 bonuses to the shareholder, they would be in a position
12 where they would owe more income tax, both the company
13 and the shareholder?

14 A. Yes.

15 Q. And under your recommended revenue
16 requirement, there would be less income to pay taxes
17 with is my question; is that not correct?

18 A. What do you mean by revenue requirement?

19 Q. Under your proposed rates, revenue
20 requirement level, and methodology of regulating the
21 revenue and earnings of this company, there would be
22 less net dollars to pay taxes with than at present,
23 correct?

24 A. Are you assuming that Staff proposed rates
25 become effective?

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1 Q. Yes, my question assumes that if your -- that
2 there is less of -- there's less aggregate dollars in
3 the revenue margin than present to pay taxes with; isn't
4 that pretty clear?

5 A. Yes.

6 Q. Okay.

7 A. And there would be less taxes, because there
8 would be less income, less taxable income.

9 Q. That wasn't my question though. My question
10 was whether the result of your recommended regulation of
11 the earnings of this company would yield fewer dollars
12 to pay taxes with.

13 A. That's true insofar as you limited your
14 question.

15 Q. Okay. Now you talked about at -- we teed off
16 on this issue by referring to RC-1 and your testimony
17 about taxes, which begins at 11 and 12. The issue of
18 making perfectly legitimate financial decisions to
19 reduce income taxes has certainly in this case by using
20 bonuses rather than dividends raised flags to you as a
21 rate auditor, has it not?

22 A. Yes.

23 Q. If the company did not distribute the excess
24 proceeds to the shareholder, let's say in the test year,
25 which I believe ended in September of 2000, correct?

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1 A. Yes.

2 Q. If it had not distributed the excess income
3 in bonuses and say had left all or a large part of the
4 \$365,000 that comprised the bonus in the company as
5 retained earnings, isn't it true that that would have
6 been far less likely to draw attention of the Commission
7 staff than the remission of bonuses did?

8 A. Well, that's one of the major -- one of the
9 main things in this case is the difference, yes, is
10 owner's compensation. So if owner's compensation would
11 have excluded the bonus, then that would have eliminated
12 one of the or reduced one of the major contentions,
13 that's correct.

14 Q. Well isn't it true that if Mr. Asche hadn't
15 received the \$365,000 bonus, we wouldn't be here?

16 A. I don't know whether that's true or not. As
17 I said, there are other issues remaining between the
18 parties.

19 Q. But they don't amount to as material an issue
20 as the owner's compensation, do they, the legal and
21 accounting expense?

22 A. No, but that's a big difference too, that's
23 \$100,000.

24 Q. Well, I agree with you on that, but I'm
25 saying that we wouldn't be in this proceeding if the

00079

1 \$365,000 bonus hadn't been issued in the test period,
2 correct?

3 A. I don't know whether we would be in the
4 proceeding or not.

5 Q. Are you aware of any complications to closely
6 held corporations, or any corporation for that matter,
7 if a retained earnings figure grows over the years?

8 A. I understand there are some federal income
9 tax regulations regarding retained earnings and what
10 happens if it isn't distributed.

11 Q. Okay. Could you give me the basic premise of
12 your understanding of that issue?

13 A. I know that accumulated earnings that build
14 up are taxed at some point.

15 Q. Do you know when that -- it reaches a point
16 where the tax is triggered, or are you testifying that
17 it occurs throughout the buildup, or what do you know?

18 A. I don't know the details.

19 Q. Haven't you had discussions with the
20 accountant for Bremerton-Kitsap Airporter, Inc.,
21 regarding the accumulated retained earnings issue?

22 A. We had a discussion where he said that was
23 one of the reasons that they treated it like they did,
24 including those large amounts as owner's compensation
25 rather than profits.

00080

1 Q. And when you say they treated it like they
2 did, what do you mean?

3 A. I mean they included the entire \$421,000
4 amount as owner's compensation rather than profits.

5 Q. Okay. Well, let's be clear on the terms
6 you're using just there. Rather than the profits, you
7 mean rather than retaining that amount as a retained
8 earnings in the corporation, correct? Because the
9 profits were there, but isn't what happens to the
10 profits the issue?

11 A. I think the issue is level of earnings and
12 profitability and rates that are fair, just, and
13 reasonable.

14 Q. Well, let's --

15 A. \$421,000 owner's allowance is not fair, just,
16 and reasonable.

17 Q. Okay, let's go back and try to answer my
18 question. I understand your view on this, and you will
19 get a chance to express it in addition to your
20 pre-filed. But I was asking you about your discussions
21 with the company's accountant and the issue of retained
22 earnings and the liabilities that flow from a growing
23 retained earnings issue, okay?

24 A. Yes.

25 Q. And I said, didn't you have discussions with

00081

1 the accountant with respect to the liability that the
2 company faced about the retained earnings issue? Yes or
3 no?

4 A. I had one brief discussion with Mr. Cox.

5 Q. And did you understand as a result of that
6 discussion that Mr. Cox or -- that Mr. Cox had advised
7 the company to take a specific action in the test period
8 with regard to the buildup of retained earnings?

9 A. I think we were -- it was a very brief
10 discussion. It was general in nature, and it didn't
11 relate to any test period at all. Just in general that
12 the company is seeking to minimize its overall tax
13 burdon.

14 Q. Okay. And how did you understand the company
15 was going to be doing that based on that discussion?

16 A. By classifying -- by reclassifying profits as
17 owner's compensation.

18 Q. Okay. Well, in other words, if the company
19 didn't take that course and simply continued to
20 accumulate the retained earnings in the company, what
21 did you understand the consequences of that will be?

22 A. If they didn't pay dividends, there would be
23 some federal tax obligations accruing to that.

24 Q. Okay. And by dividends, you also mean
25 bonuses, don't you?

00082

1 A. I guess they're one and the same.

2 Q. In the context of my question now, not in the
3 earlier questions, correct?

4 A. Then I'm a little bit confused where we are.

5 Q. Okay, let's back up then. What I'm asking
6 about now, Mr. Colbo, is what you understood based on
7 your, as you characterized it, a limited discussion with
8 the company's accountant regarding the issue of retained
9 earnings and federal income tax consequences, okay?

10 A. Okay.

11 Q. And we can use the figure of \$365,000 in the
12 test year if you want to use that figure or any other
13 dollar amount of retained earnings. But my question to
14 you seeks your understanding of what the accountant was
15 telling the company about what it had to do with excess
16 earnings. If you don't have an understanding, tell me,
17 but --

18 A. Just a moment. My understanding is provided
19 by the company in response to Staff Data Request Number
20 2.

21 Q. For the record, Staff Data Request Number 2
22 recalculates compensation paid to the shareholder over
23 the test period; is that correct in part?

24 A. I don't know about that at all.

25 Q. Okay. Well, I want to understand why you

00083

1 said in answer to my question about your understanding
2 of what the accountant was advising the company that
3 it's your understanding is based on the response of the
4 company in Data Request Number 2.

5 A. My understanding is to minimize the overall
6 tax obligations of the company and the prime
7 shareholder, the company has elected to classify, in
8 effect, treat profits as owner's compensation. So they
9 reduce the tax liability of both the company and the
10 tax, overall tax obligation of the company and the prime
11 shareholder.

12 Q. Is that understanding based on any
13 information you have about the peril of accumulated
14 retained earnings surpluses in the company?

15 A. That could be addressed either through doing
16 it the way they have done it, or it could be addressed
17 by distributing dividends. Either way, retained
18 earnings would be decreased, and they would effectively
19 deal with the tax liability flowing from excessive
20 retained earnings.

21 Q. Okay, I think you meant to answer my question
22 yes.

23 A. I don't --

24 Q. That is based on an understanding of the
25 perils of accumulated retained earnings in the company.

00084

1 So you're acknowledging, are you not, that allowing
2 retained earnings to accumulate in the company's coffers
3 would be a federal income tax problem for the company?

4 A. If retained earnings builds up, then there is
5 tax consequences flowing from that.

6 Q. That are adverse to the company and to the
7 shareholder, are they not?

8 A. It increases the federal income tax
9 liability.

10 Q. Well, and that could be quite substantial,
11 could it not? That's adverse? I mean who wants to pay
12 more taxes, right?

13 A. Well, it increases their liability to the
14 federal government and the Internal Revenue Service.

15 Q. You have already acknowledged that avoiding
16 tax is legitimate under federal law as you understand
17 it, correct?

18 A. For IRS purposes, there's nothing wrong with
19 that, it's fine.

20 Q. Okay.

21 A. For regulatory purposes, it's not fine.

22 Q. Okay, well --

23 A. As I stated before a couple of times.

24 Q. Well, we may go back to that point, but for
25 now, I want to understand you do acknowledge that

00085

1 there's a problem about accumulated retained earnings in
2 a company, and thus is it correct that you understood
3 that as a result of that problem, the company elected to
4 distribute its excess retained earnings in the form of a
5 bonus to its shareholder?

6 A. That's what they do.

7 Q. I'm not saying -- I'm saying this company;
8 when you say they, do you mean this company?

9 A. Yes.

10 Q. Okay. So if, in fact -- do other companies
11 do that in your experience?

12 A. I can't think of any, and certainly not
13 involving the magnitude of these numbers.

14 Q. But my question -- so your answer is no, you
15 don't know of any other companies that have distributed
16 retained earnings to the shareholder?

17 A. Through dividends presumably they have.

18 Q. Through bonuses?

19 A. I'm not aware of any off hand.

20 Q. And you're speaking with respect to regulated
21 companies or all companies in general?

22 A. I don't know about any of them, either one.

23 Q. Okay, so you're speaking of both then?

24 A. Yes.

25 Q. Now if, in fact, the company had left the

00086

1 excess revenues as retained earnings during the test
2 year, not distributed them to the shareholder, you have
3 talked about the consequences on the operating ratio,
4 which would have increased the operating ratio, correct?

5 A. It would have lowered the operating ratio.
6 Oh, wait a minute, you said if they did what with the
7 bonus?

8 Q. They left the retained earnings of \$365,000,
9 et cetera, in the company in the test period. You
10 testified, have you not, that it would have increased
11 the operating ratio by at least approximately 2.5%,
12 correct?

13 A. Can you refer me to that?

14 Q. Yes, it's line 72, page 1 of substitute RC-6
15 where you testified in column D that the operating ratio
16 through the bonus distribution format was 80.29 and that
17 if they had -- excuse me, excuse me, I want to restate
18 this question.

19 And if they had, in fact, dividended it I
20 believe was your testimony, that it would have been
21 82.76?

22 JUDGE SCHAER: Why don't we give the witness
23 a moment to find the reference, Mr. Wiley.

24 MR. WILEY: Sure.

25 THE WITNESS: I have RC-6 in front of me now.

00087

1 JUDGE SCHAER: I believe, Mr. Colbo, that you
2 were being asked to refer to the Staff Response to Bench
3 Request Number 6.

4 Is that correct, Mr. Wiley?

5 MR. WILEY: I believe, hold on, it's -- no,
6 it's the revised pro forma, RC-6, Your Honor.

7 JUDGE SCHAER: Okay.

8 MR. WILEY: And it might be in Bench Request
9 Number 6; I don't know, but I'm referring to line 72.

10 THE WITNESS: I have it.

11 BY MR. WILEY:

12 Q. Is it correct that your testimony is, if the
13 company did not use the bonus method but used the
14 dividend method, its operating ratio under your
15 calculations would have increased by 2 1/2% in the test
16 year?

17 A. If I said that, I don't know that that's
18 correct. On that page, line 72, there is no difference
19 between officer salary at per books restated and officer
20 salary at present. They're one and the same. So if
21 there's any change in operating ratio, it's due to other
22 things going on.

23 Q. Okay.

24 A. Its not due to owner's allowance.

25 Q. So any reference that you made to an

00088

1 adjustment in the operating ratio that would have been
2 affected by the -- by a revision in the company's
3 practices from bonuses to issuing dividends isn't
4 correct?

5 A. Well, if you look on line 72, Mr. Wiley,
6 columns B and D, that is the change in operating ratio
7 that would ensue by reclassifying owner's compensation
8 as dividends, and there is a significant change in the
9 operating ratio there, and there are other things that
10 play into it as well as the bonus amount.

11 Q. You did allude to that as just one factor,
12 but I'm still trying to go back to your earlier
13 testimony so that I understand.

14 A. I may have misunderstood the question.

15 Q. Are you saying that the operating ratio is
16 unaffected, that in column D and column F that the
17 change in percentage of operating ratios would be
18 unaffected by whether the company dividended or bonused
19 its excess revenues to the owner?

20 A. If you're talking about the difference
21 between column D and column F, yes.

22 Q. Okay. So then anything that you said earlier
23 that would involve that we should revise?

24 A. Well, I may have misspoke myself, or I may
25 have not understood the question. But at that point,

00089

1 the bonus adjustment, if you want to call it that, has
2 already been made.

3 Q. So it doesn't matter how it's characterized,
4 as bonus or a dividend, those calculations would be
5 unaffected; is that your testimony?

6 A. Between column D and column F, yes.

7 Q. That's my question.

8 A. But not between B and D.

9 Q. My question never even addressed B.

10 A. Okay.

11 Q. We've only dealt with D and F in my
12 questions.

13 A. That doesn't have anything to do with
14 reclassifying owner's allowance.

15 Q. Now you used the term earlier in your
16 testimony when I was asking you about the use of bonuses
17 and how you square that with your reference to
18 legitimate IRS practices, you used the term that it was,
19 you know, that you wanted the company to do the right
20 thing. How would you define doing the right thing in
21 the circumstances that they were faced with in the test
22 period with retained earnings growing? What is your
23 concept of doing the right thing?

24 A. The right thing may have been to come in
25 periodically through the years when these earnings were

00090

1 accumulating and lower rates.

2 Q. So you would -- so really then your reference
3 is not to any distribution of income to the owner, but
4 it is to come in and seek lower rates, that that should
5 be -- the onus is on the regulated company to come in
6 and to reduce its rates once the retained earnings
7 accumulates; is that correct?

8 A. When they start accumulating in this
9 magnitude, I think that would be a good thing to do.

10 Q. Okay. Well, isn't -- by the time the company
11 realizes, for instance, that its retained earnings
12 amount has grown by \$200,000 in a year, isn't it in
13 effect too late for them, at least as concerns the IRS
14 and their tax problem, to deal with that by the time
15 that that's recognized?

16 A. I don't know about the IRS aspect, and it
17 didn't just happen to be --

18 Q. My question --

19 A. -- one year. It's been going on for a number
20 of years.

21 Q. My --

22 A. There's plenty of time to do something about
23 that.

24 Q. Try to answer the question first, and then
25 you can modify it. But my question goes to the IRS

00091

1 liability, and by the time the company realizes in a
2 test year period that its accumulated retained earnings
3 has grown by \$200,000, isn't it too late from the IRS
4 obligation standpoint to deal with it?

5 A. They can give dividends.

6 Q. Okay. But then they pay double taxation and
7 have the problem, correct?

8 A. Yes, but they have the dividends and the
9 income to pay the tax liability.

10 Q. But even if they dividended the excess
11 earnings, you would still feel by your testimony that
12 they had a problem from the standpoint of regulatory
13 earnings, correct?

14 A. If they dividended it, then owner's
15 compensation would be less and more realistic, and that
16 would be good in terms of setting rates.

17 Q. So is it your testimony that if this company
18 had dividended the excess earnings in the test period,
19 it would have mitigated the problem?

20 A. Not the tax problem, but it --

21 Q. Well, the regulatory problem.

22 A. It would have presented revenues and expense
23 that were more realistic in terms of reclassifying
24 profits as owner's allowance.

25 Q. But my question goes, Mr. Colbo, as to

00092

1 whether it still would have raised flags with you as a
2 rate auditor whether the excess earnings were dividended
3 or bonused; you still would have had problems with the
4 retained earnings figure, correct?

5 A. That's not my concern, that's an IRS concern.

6 Q. No, I'm asking you from a regulatory concern.

7 A. I haven't addressed the issue of retained
8 earnings at all.

9 Q. Okay. Well, then I guess what I want you to
10 do, and speak hypothetically then, and tell me if, in
11 fact, Bremerton-Kitsap Airporter, Inc., had distributed
12 its excess retained earnings in the test period in the
13 form of a dividend to Mr. Asche rather than a bonus
14 whether that would have mitigated from your standpoint
15 as a regulatory utility accountant a problem with the
16 company's operations?

17 A. One of the problems, but there are others
18 relating to the 82.76% operating ratio in RC-6, line 72,
19 column D, present rates.

20 Q. Okay, well --

21 A. There are other issues that still show that
22 the company's overearning.

23 Q. Okay.

24 A. That is one of them.

25 Q. Okay. And how much of the problem would have

00093

1 been mitigated by use of a dividend rather than a bonus?

2 A. \$355,000.

3 Q. I think the figure is \$365,000.

4 A. I don't think it is.

5 Q. Okay, maybe you're right, I could be wrong, I
6 think you are maybe right. At any event, if it's
7 \$355,000, are you saying then that that would have
8 alleviated the pressure on the company from a regulatory
9 standpoint as far as their present rates, but you could
10 then remove \$355,000 of earnings that you would no
11 longer feel are excessive if they dividended that money
12 rather than bonused that money?

13 A. If they dividended it, then profits would be
14 -- expenses would have been reduced by \$355,000, and net
15 income would have been increased by \$355,000, and that
16 -- does that answer your question?

17 Q. Well, not completely. I think my question
18 goes to whether we would have a problem on excess
19 owner's compensation if we had bonused the money -- if
20 we had dividended the money rather than bonused it. I'm
21 taking it from your testimony that you wouldn't have had
22 a problem then with owner's compensation if they --

23 A. With owner's --

24 Q. Let me finish -- if they, in fact, had
25 dividended the excess income rather than bonused it?

00094

1 A. And expensed it.

2 Q. Dollar for dollar.

3 A. And expensed it.

4 Q. And dollar for dollar.

5 A. That's true with respect to that one issue.

6 Q. That's what I'm asking you about, that issue,
7 and I'm saying the dollar amount of that issue would not
8 be in dispute if the company had used a dividend rather
9 than a bonus; is that your testimony?

10 A. Yes.

11 Q. And you make that statement without any
12 reference, I understand, to the federal income tax
13 treatment and consequences of a dividend versus a bonus?

14 A. Yes.

15 Q. Let's shift a little bit to the issue of the
16 industrial insurance premium. I believe you talk about
17 that at page 11 of your testimony RC-1T, yes, lines 2
18 through 10. Do you have that in front of you?

19 A. Page 11?

20 Q. Yes.

21 A. Yes.

22 Q. You explain your restating adjustment in the
23 testimony here, do you not?

24 A. Yes.

25 Q. And you're discussing your treatment of an

00095

1 L&I credit received by the company during the test
2 period there, correct?

3 A. Yes.

4 Q. And that was an amount of \$10,767, correct?

5 A. Yes.

6 Q. Okay. What is your understanding of that
7 refund; was it by the Department of Labor and
8 Industries?

9 A. It was my understanding that it was.
10 Mr. Burton in his testimony says that part of it is from
11 Labor and Industries, and part of it is from CH32M or
12 something or other.

13 Q. What is your understanding of what CH32M is?

14 A. It's a company that manages industrial
15 insurance matters for their clients, one of whom
16 apparently is Bremerton-Kitsap Airporter.

17 Q. Are you familiar with retrospective rating
18 groups under the Washington Industrial Insurance Law?

19 A. I know that periodically there are
20 adjustments to -- there are comparisons made between
21 actual claim experience and premiums paid, and sometimes
22 there are adjustments made for that.

23 Q. And are you familiar with certain regulated
24 industries that the Commission regulates that are
25 members of these kinds of groups?

00096

1 A. Yes, there are some solid waste companies
2 that are.

3 Q. And in the past, there have been trucking
4 companies and courier companies and other types of
5 groups that the Commission regulates that do this, don't
6 they?

7 A. I don't know. I wouldn't be surprised.

8 Q. And what is your understanding of how those
9 groups work in terms of triggering refunds of industrial
10 insurance premiums? And by those groups, I mean these
11 retrospective rating groups.

12 A. As I said, I think there are comparisons made
13 between premiums paid and actual claim experience. And
14 if claim experience is less than premiums paid, there's
15 adjustments made and refunds given.

16 Q. Is that based on an experience rating that
17 the industry group has, or what's your understanding of
18 how you calculate or how you qualify for that refund?

19 A. Well, I'm not, as I said, my understanding is
20 it's a comparison made between premiums paid and actual
21 claim experience.

22 Q. So that would be an experience rating
23 quotient?

24 A. I guess that would be true.

25 Q. And did you, in fact, investigate whether

00097

1 this company, Bremerton-Kitsap Airporter, Inc., was a
2 participant in such a group during the test period?

3 A. No.

4 Q. And do you know whether the refunds then
5 related to conventional industrial insurance program
6 administration by the State or by a private entity?

7 A. Well, it was my understanding that it was
8 both by the -- that it was all from Labor and
9 Industries, but Mr. Burton in his testimony says that
10 part of it was from Labor and Industries and part of it
11 was from CH32M.

12 Q. And you don't know what portion of the
13 \$10,767 refund that you have identified in the test
14 period related to moneys administered by Labor and
15 Industries and what part related to moneys administered
16 by the retrospective rating group that you have
17 identified as CH3M or something?

18 A. I can find out that if you would like.

19 Q. I'm just asking you at the present time based
20 on your adjustment whether you have that information?

21 A. I didn't make a distinction between the two
22 parts. I dealt with the total amount of \$10,767.

23 Q. Okay. And can you tell me the rationale that
24 you use to basically require the \$10,767 as you
25 amortized it to be included in revenues?

00098

1 A. Yes, these adjustments are by nature
2 adjustments of prior claim and premium experience and --

3 Q. Can I interrupt you, when you say these
4 adjustments, are you referring to the retrospective
5 rating group or just conventional L&I premium
6 administration?

7 A. I don't know that there's a distinction. I
8 don't know that much about it. But in terms of this
9 adjustment, it was a refund given of premiums paid in
10 the past and comparing that with claims or
11 administration expense levels that were less than the
12 amounts previously received, and so they gave an
13 adjustment returning some of the increased premiums paid
14 in the past.

15 Q. I understand the mechanics of how that was
16 determined, but what I'm interested in is how you
17 treated it.

18 A. I amortized that refund over three years,
19 including one third of it in our test year.

20 Q. I understand that. I'm saying why you felt
21 that it was a normal type adjustment and not -- a
22 recurring adjustment.

23 A. Well, as I stated in my rebuttal testimony at
24 page 1 of Exhibit 17, lines 21 through 23, or excuse me,
25 lines 21 through lines 4 of the next page, in order for

00099

1 the rate -- if the refund was simply given and the
2 company eliminated it from consideration in terms of
3 setting rates as Mr. Burton has done, then the rate
4 payers would never get those savings passed back to
5 them. What I tried to do here is even things out over a
6 three year period and make that adjustment.

7 Q. But isn't that adjustment based on an
8 assumption on your part that this is a sort of
9 normalizing, recurring circumstance where refunds are
10 going to be reoccurring cyclically?

11 A. They do happen periodically.

12 Q. Are you saying that they do happen for this
13 company or for the industry in general?

14 A. For the industry in general.

15 Q. For this company, do you know if they have
16 ever experienced in test periods that you have looked at
17 retrospective rating credits for L&I?

18 A. No.

19 Q. Do you know if there is any -- are you
20 familiar with any formal or informal staff policy for
21 disposition and treatment of this type of credit?

22 A. I know that in the past for solid waste
23 companies that I have audited where there have been such
24 refunds that I have done the same thing as I have done
25 here, I have amortized them over a number of years.

00100

1 Q. Well, my question went to whether there was
2 an informal or formal policy about the treatment of
3 retrospective rating refunds to regulated companies.

4 A. I think the principle is that to eliminate
5 them would be to forever pass those savings back to the
6 rate payers, and that would allow them to accrue solely
7 to management or ownership of the company and not share
8 any of it with the customers.

9 Q. Okay. You have told me what the principle
10 is, but you haven't told me whether there's a policy,
11 informally or formally; that's what my question goes to.

12 A. Well, there is no formal policy written down
13 anywhere.

14 Q. And the informal policy may be a premise that
15 you understand but not that's a universally accepted
16 amongst the Staff or --

17 A. I don't know.

18 Q. Okay. All you can tell me is that that is
19 your principle then, correct?

20 A. Yes, and that allows the benefits to be
21 passed back to rate payers.

22 Q. Well, I understand what the effect is, but
23 I'm trying to get to the motivation for making the
24 adjustment, and that's based on your individual
25 understanding of it being a benefit that is somehow

00101

1 recurring to the company, correct?

2 A. They do happen periodically, yes.

3 Q. So one has to assume that this is a recurring
4 benefit to the company, but you have not reviewed this
5 company's books and records to establish whether there
6 ever has been another instance of them receiving a
7 refund from L&I in a retrospective rate --

8 A. No, I have not.

9 Q. You would acknowledge that as far as premium
10 expense is concerned, certainly premiums will continue
11 to be due over the future, correct?

12 A. Yes, they could be higher or lower.

13 Q. Generally in most industries they have, what,
14 have they gone up, or have they gone down, or can you
15 make any characterization?

16 A. I think since Mr. Locke wanted to be
17 reelected, he lowered the rates.

18 Q. And can you say that with specificity with
19 respect to the airporter industry?

20 A. No, but I think it was an across the board
21 decrease. I think there were a couple of them.

22 Q. But you don't know apparently if you say you
23 think?

24 A. There have been reductions in L&I rates from
25 the Department of Labor and Industries in the past few

00102

1 years.

2 Q. Across the board?

3 A. Across the board.

4 Q. In your experience, since you're alluding to,
5 you know, industry wide and L&I wide actions, don't
6 refunds depend entirely on the experience rating of more
7 than just a single taxpayer but typically of an industry
8 group?

9 A. I don't know the specifics of how these
10 things are calculated.

11 Q. So then you can't tell me if the experience
12 of other companies would impact the issuance of refunds
13 in the future to Bremerton-Kitsap Airporter?

14 A. No, all I know is that during our test year
15 they got the \$10,700 something refund.

16 Q. And you don't know then, you would
17 acknowledge, would you not though, that circumstances to
18 establish or qualify for refunds are at least partially
19 if not completely out of the control of the regulated
20 company to trigger refunds?

21 A. Well, they could if they had an aggressive
22 safety program and sought to reduce claims, that would
23 have some impact on the potential for future additional
24 refunds and lower future rates.

25 Q. And assuming that the industry as a whole is

00103

1 rated, in establishing an individual rating for a
2 company, this taxpayer individually couldn't affect
3 other than its own performance the overall industry
4 rating, could it?

5 A. That's true, but for whatever the reason is,
6 the fact remains they got a \$10,000 plus refund during
7 my test year. That was their share of it.

8 Q. Okay, we're not disputing the fact that there
9 was a refund.

10 A. Okay.

11 Q. We're disputing your treatment of it as a
12 recurring credit.

13 A. As I said, it's --

14 Q. Okay.

15 A. These things happen, and they go credits, and
16 they go the other way too. Sometimes there's an
17 additional due. And if that happened, we would put the
18 increased amount in and spread it over a number of years
19 so that it wouldn't be all lumped up into one year.

20 Q. But again, you made no investigation of the
21 past to normalize this adjustment based on historic
22 operating experience of this company, correct?

23 A. Not of this company, no.

24 Q. Okay. Let's go, let's start in on the owner
25 compensation issue, okay. You have offered quite a bit

00104

1 of testimony on the -- in response to the direct
2 testimony of Mr. Asche and Mr. Burton and also on your
3 own about the job functions and responsibilities of
4 Mr. Asche, have you not? In reviewing Mr. Asche's
5 compensation and job functions in this rate proceeding,
6 did you personally make an on-site evaluation of
7 Mr. Asche's job functions at his terminal in Port
8 Orchard?

9 A. Not in this case.

10 Q. Did you ever seek to shadow Mr. Asche or ask
11 him or request that you shadow him for a part of the
12 business day to see what he did?

13 A. No.

14 Q. Okay.

15 A. We limited our inquiry to data requests.

16 Q. And how long has it been since you have been
17 to the terminal and met with Mr. Asche would you say?

18 A. I think I was there in 1998.

19 Q. In drawing comparisons to the
20 Bremerton-Kitsap management employees, which you do at
21 page 13 of your direct testimony, did you compile job
22 descriptions from the individual employees to understand
23 what they did, or how did you draw those comparisons
24 that you do at page 13 of your testimony?

25 A. Can you point me to a line number?

00105

1 Q. Yeah, you talk about the -- it generally
2 begins at page 12, line 18, when you talk about how you
3 drew the appropriate level of compensation for
4 Mr. Asche, and then you mention other people in the
5 company on page 13. And you also address this in a
6 shorter fashion in your rebuttal testimony about how you
7 contrast Mr. Asche's job responsibilities with others in
8 his company. And I'm wondering how you compiled this.
9 Was that solely based on a description data request from
10 the company?

11 A. Yes.

12 Q. Did you talk individually to any of these
13 employees or request the ability to talk to any of these
14 employees to ascertain what they did during the typical
15 workday?

16 A. No.

17 Q. So then your calculation really came off
18 charts or data that would be a line item describing the
19 position of the person and the name opposite the
20 description?

21 A. Yes.

22 Q. Okay. Do you know if any of these people did
23 more, performed more than one function at the company?

24 A. Yes, they do.

25 Q. Okay. And would that be accurate about

00106

1 Mr. Asche as well? In other words, he performs more
2 than one function for the company?

3 A. I think he -- according to the response to
4 the data request, he lists quite a few functions.

5 Q. Since we don't have the data requests in the
6 record, can you just tell us what your understanding of
7 the job functions he performs are? You have referred to
8 them in generic form in your rebuttal testimony, but I'm
9 just asking you now, what's your understanding of the
10 role of Mr. Asche in the management and operation of
11 Bremerton-Kitsap Airpporter?

12 JUDGE SCHAER: Mr. Wiley, is that included in
13 Exhibit 9?

14 THE WITNESS: I believe it is, Your Honor,
15 specifically page 28.

16 JUDGE SCHAER: I was looking at the reference
17 you gave to the testimony, and it refers to an exhibit.

18 MR. WILEY: Sure, it probably does, Your
19 Honor.

20 JUDGE SCHAER: If you could refer to that, it
21 might be helpful.

22 BY MR. WILEY:

23 Q. You have referred to the Data Request Number
24 3 that you also incorporate in RC-9 at page 28?

25 A. Yes.

00107

1 Q. Have you -- is that consistent with your
2 understanding of the broad overview of the job
3 description and functions that Mr. Asche provides for
4 Bremerton-Kitsap Airporter?

5 A. Yes.

6 Q. In addressing what you deem to be an
7 appropriate compensation level for Mr. Asche, you have
8 provided RC-9 as support for your position, have you
9 not?

10 A. Yes.

11 Q. And that, would it be fair to say that's a
12 compilation of various source data that establish the
13 actual compensation of Mr. Asche during the test year
14 and seek to support your dramatic revision downward of
15 that compensation?

16 A. That's true.

17 Q. You indicate in your compilation of the
18 owner's compensation packet and at page 13 of your
19 testimony that you reviewed prior Staff audits in
20 seeking to determine an appropriate level of
21 compensation for Mr. Asche; is that correct?

22 A. Yes.

23 Q. And, in fact, you recap his compensation at
24 page 9 of RC-9, do you not, through the Staff audit?

25 A. Yes, I do.

00108

1 Q. Okay. And looking at page 9, just so that we
2 have an understanding of what you're doing here, you
3 take the docket number as the first point of reference,
4 the proposed effective date, the test year, the pro
5 forma revenue, and then compare that to a base salary,
6 correct, and bonus and booked compensation. I mean we
7 can read the headings, but that's what you're seeking to
8 do; is that not correct? In other words, to split out
9 and compare the total compensation, the allowed
10 compensation, to the revenue requirement and by docket
11 number?

12 A. Present level revenues, yes. I'm comparing
13 present level revenues with owner compensation.

14 Q. And as far -- this chart also includes your
15 recommendation in this proceeding, does it not?

16 A. Yes.

17 Q. That, in fact, is the last line item on page
18 9 of RC-9, correct?

19 A. Yes.

20 Q. And this page, by the way, has not been
21 revised by any of your later changes in December, has
22 it?

23 A. I don't think so.

24 Q. Okay. And you tell us over to the right the
25 outcome and disposition, and that says current case in

00109

1 dispute, so that's how we match that in addition to the
2 docket number; is that right?

3 A. That was my attempt to accurately portray
4 what we're going through here today.

5 Q. Okay. Well, let me ask you about that. As I
6 go through RC-9 at page 9 and your testimony, isn't it
7 true that in the last three to four years, the Staff of
8 the Commission, which I assume includes you, has
9 proposed compensation for Richard Asche considerably
10 above the \$66,000 you now are advocating for Mr. Asche?

11 A. Well --

12 Q. Yes or no please first.

13 A. Okay, then repeat the question.

14 Q. As I go through page 9 of RC-9 and your
15 testimony, isn't it true that over the last three to
16 four years the Staff of the Commission, including
17 presumably you, have recommended owner compensation
18 considerably above the \$66,000 figure you recommend in
19 this proceeding? Yes or no?

20 A. No.

21 Q. Okay, why isn't it true that you have
22 recommended --

23 A. Because we didn't recommend them. Except for
24 this case, which is in dispute, they were withdrawn.
25 The results were never presented to the commissioners,

00110

1 the filings were withdrawn, the results were
2 preliminary, there was no final anything issued on it.

3 Q. But that's not my question, Mr. Colbo.
4 Whether the Commission formally adopted the Staff
5 recommendation or not isn't the issue. The issue is
6 whether during the processing and review of the filing
7 by Bremerton-Kitsap Airporter, Inc., the Staff allowed
8 in rates as compensation for Mr. Asche an amount
9 considerably above \$66,000. And you have said no, and
10 I'm asking you, well, can you go to page 9 of RC-9 and
11 tell me why the column that says total Staff allowed
12 compensation is erroneous?

13 A. Those dollars are correct, but there were no
14 final results. The filings were withdrawn before there
15 were final numbers actually applied.

16 Q. Well, I understand that, and your column case
17 clearly indicates that. But my question didn't go to
18 the ultimate disposition of the filing.

19 A. Okay.

20 Q. But to the recommendation by you and the
21 Staff as to allowed compensation levels of Mr. Asche as
22 owner of Bremerton-Kitsap Airporter, Inc.

23 MR. THOMPSON: I'm going to object as asked
24 and answered. I think he has explained that there never
25 was a Staff recommendation, because there wasn't a case.

00111

1 MR. WILEY: He didn't use that term at all,
2 Your Honor. He said that the Commission hadn't decreed.

3 JUDGE SCHAER: Mr. Wiley, I think a couple of
4 questions back that was asked and answered. I'm going
5 to sustain the objection.

6 MR. WILEY: I would ask you to instruct the
7 witness the next time to answer my question yes or no.
8 I don't object to him providing an elaboration, but he
9 has repeatedly failed to answer with a yes or no
10 response, and it is compounding the record here.

11 JUDGE SCHAER: Well, it is my recollection
12 that he said no and why, but we could go back a few
13 questions and have that read back. I don't know if you
14 want to pursue the question. That is my ruling,
15 Mr. Wiley.

16 MR. WILEY: I just wanted you to know that I
17 will object the next time I catch him doing it.

18 BY MR. WILEY:

19 Q. Mr. Colbo, your testimony then as I
20 understand it is, no, the Staff never recommended a
21 compensation amount above \$66,000 because the Commission
22 never approved the Staff recommendation; is that
23 accurate?

24 A. I'm saying -- no.

25 Q. That's not accurate either, okay.

00112

1 A. I'm saying that at some point in the
2 processing of this case, the Staff came up with these
3 numeric values for compensation for Mr. Asche, but that
4 the cases were never finalized. They were withdrawn at
5 some point. These numbers appeared in the analysis of
6 the work papers I have done to get this page 9.

7 Q. Are you saying that those analyses that
8 appeared at levels above \$66,000 were erroneous?

9 A. I'm saying that's how those cases were -- no,
10 that's how those cases were processed.

11 Q. That's not my question. I'm saying, are you
12 saying that the figures that were above \$66,000 that are
13 reflected in column H at page 9 of RC-9 are erroneous?

14 A. No.

15 Q. Then it's true, is it not, that at some stage
16 of at least two proceedings for rate filings by this
17 company that someone in the Staff recommended an owner's
18 allowance above \$66,000? Yes or no?

19 A. Yes, at some point in the processing of the
20 case, but it was later withdrawn.

21 Q. I understand your answer to all of these
22 questions about the entries on TC-980036 and TC-981332
23 at page 9 of RC-9 will all be predicated on the fact
24 that they're withdrawn; is that correct?

25 A. Yes.

00113

1 Q. They were withdrawn, but that isn't my
2 question. My question is to your chart and the entries
3 on the owner compensation level. And my question now to
4 you is, do you know upon what basis the Staff made
5 recommendations in -- at some stage in the proceeding in
6 a proceeding that was withdrawn that allowed owner's
7 compensation over \$40,000 in one case above your current
8 recommendation and over \$16,000 above your current
9 recommendation?

10 A. I know that for the amount in cause number
11 TC-980036, which is Mr. -- which was handled in, well,
12 February 15, 1998, that amount was based on a percentage
13 of revenue amount that was developed in the prior case
14 in Docket Number TC-920667. And since revenues had
15 increased so dramatically between those two parts, that
16 was the reason why there was this owner's allowance
17 increase. In cause number 981334, that was a case that
18 I did, and I came up with an amount of \$82,500, and I'm
19 not sure exactly how I came up with that number.

20 Q. Okay. Have you seen an exhibit that's been
21 identified as I believe 22 in this proceeding
22 previously, 20, I'm sorry, no, it's 22.

23 JUDGE SCHAER: Marked for identification as
24 Exhibit 22, Mr. Wiley.

25 A. I have it.

00114

1 Q. You do have it?

2 A. Yes.

3 Q. Have you seen that document before?

4 A. I think I probably have.

5 Q. And assuming you have seen it before, it
6 appears that you have some information at least to how
7 the number on owner's compensation got developed in
8 exhibit for identification 22, correct? I mean you
9 testified that it was based on an increase in gross
10 revenues?

11 A. Yes.

12 Q. Okay. And would you then acknowledge that
13 the size of the revenues has a bearing on the owner's
14 compensation at least that you establish for an
15 airporter company like Bremerton-Kitsap Airporter?

16 A. It's one of several factors that would be
17 considered.

18 Q. And your understanding of one of the
19 rationales for the owner's allowance being factored by
20 Staff at \$105,735, which is the net Staff allowed
21 compensation.

22 A. Yes.

23 Q. Is the fact that between 1992 and 1997, the
24 gross revenues had grown materially of this company?

25 A. Yes.

00115

1 Q. And thus it would -- the Staff felt it would
2 be fair to compensate the owner at a proportionately
3 higher rate due in part to the growth in revenues of the
4 company?

5 A. That's apparently what that Staff person
6 felt. I don't necessarily agree with that.

7 Q. Well, I just asked if that's what the
8 Staff --

9 A. That is correct.

10 Q. Okay. Now, in fact, today, are the revenues
11 shown on Exhibit 22 for identification, page 2, below
12 the revenues of Bremerton-Kitsap Airpporter at present?

13 A. Would you give me a reference again,
14 Mr. Wiley?

15 Q. Okay, Exhibit 22 for identification, page 2.

16 A. Yes.

17 Q. The gross revenues shown.

18 A. Line 17?

19 Q. Well, you can find them, yeah, it's line 17
20 that I'm looking at. It's the total income, but yeah.
21 Okay, total income, is the total income larger today
22 than that shown on page 2 of exhibit for identification
23 22?

24 A. Yes.

25 Q. And under the rationale at least used by that

00116

1 Staff person, you would expect the owner's allowance to
2 increase if we also adjust owner's allowances for
3 increase in operating revenues of the company, correct?

4 A. Yes, if that person had done this case.

5 Q. Thank you.

6 MR. WILEY: Your Honor, it's 12:00, I think
7 this would be a good place to break for lunch. I don't
8 know how you feel.

9 JUDGE SCHAER: How much more do you have,
10 Mr. Wiley?

11 MR. WILEY: On this topic or --

12 JUDGE SCHAER: All together.

13 MR. WILEY: It's always dangerous to
14 estimate. Hold on, I think we certainly will finish his
15 cross this afternoon, Your Honor.

16 JUDGE SCHAER: Would you have a significant
17 amount more?

18 MR. WILEY: Yes.

19 JUDGE SCHAER: Okay, let's go off the record
20 for a moment and discuss scheduling.

21 (Discussion off the record.)

22 JUDGE SCHAER: While we were off the record,
23 we discussed our lunch break for today and have
24 determined that we will break now and come back at 1:30.
25 We're off the record.

00117

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

2

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

4 (1:30 p.m.)

5 JUDGE SCHAER: Let's be back on the record
6 after our lunch recess.

7 Do you have additional questions, Mr. Wiley?

8 MR. WILEY: Yes, believe it or not, I do,

9 Your Honor.

10 JUDGE SCHAER: Go ahead.

11 BY MR. WILEY:

12 Q. I believe as we broke for lunch, Mr. Colbo,
13 you were talking about the references on RC is it 9, the
14 owner's compensation packet and the chart, yes, it's
15 page 9 of RC-9 and the chart that you derived from your
16 review of prior rate cases.

17 A. I have it.

18 Q. Okay, good. Now in an earlier data request
19 that was Bremerton-Kitsap Data Request Number 11, you
20 were asked to produce any E-mails, memoranda, or other
21 internal communication by Staff addressing or
22 referencing existing rate levels or proposed increases
23 sought by Bremerton-Kitsap Airporter, Inc., from 1998 to
24 present. Do you have that request in mind? I can hand
25 it to you.

00118

1 A. That's okay, I've got it here.

2 Q. Okay.

3 A. Just give me a minute. I have it.

4 Q. Okay. And in that response, you provided a
5 memorandum, included in the response was a memorandum
6 dated November 25, 1998, in TC-981332. It says draft,
7 and you provided that?

8 A. What was the docket number, Mr. Wiley?

9 Q. TC-981132.

10 A. I have it.

11 Q. And you provided that, and I believe you
12 alluded to that earlier in talking about you making the
13 decision on allowing 825 in as contrasted to the earlier
14 docket reference that I was asking a number of questions
15 on, correct?

16 A. Yes.

17 Q. Okay. Now in answer to our data request
18 number 11, you provided this memo. Can you tell me why
19 you didn't provide the memo that is identified as
20 Exhibit 22 in this proceeding when you provided the memo
21 that is TC-981332?

22 A. Well, apparently it was an oversight.

23 Q. So then for your response in Data Request
24 Number 11 from Bremerton-Kitsap Airporter, Inc., the
25 memo TC-980036 dated February 11, 1998, that's been

00119

1 marked for identification as Exhibit 22 in this
2 proceeding this morning should have been included in the
3 response, shouldn't it have?

4 A. It appears that it should have been.

5 Q. Okay, thank you. Now in both of those
6 documents, and I'm going to be referring to --

7 MR. WILEY: Your Honor, can I move for the
8 admission of Exhibit 22?

9 JUDGE SCHAER: Yes, is there any objection?

10 MR. THOMPSON: No objection.

11 JUDGE SCHAER: That document is admitted.

12 MR. WILEY: Thank you.

13 BY MR. WILEY:

14 Q. That shortens my question a little bit,
15 Mr. Colbo. In Exhibit 22 and the memo that you refer to
16 in RC-9, page 9, which is Docket Number 981332, there
17 are provisions for owner's allowance I think you
18 acknowledged above the present owner allowance provision
19 of \$66,000, correct?

20 A. Yes.

21 Q. Can you tell me why, you have alluded to one
22 factor as being the revenues of the company affecting
23 proposed owner allowance, can you tell me why you
24 retrogressed even from your own memo dated November 25,
25 1998, to the \$66,000 you're allowing in this proceeding

00120

1 in the course of four years? Instead of adjusting for
2 inflation, you reduced the amount of owner's
3 compensation, and I'm asking you why?

4 A. Yeah, I have now done additional studies and
5 research comparing Mr. Asche's salary with other
6 executives of other regulated companies, and I have also
7 done the study of municipal transit entities and what
8 their -- what they pay their key executives. That
9 wasn't done back in 1998.

10 Q. So I want to understand your answer. The
11 reason you are allowing \$16,500 less in owner's salary
12 is because in 1998 you didn't perform any review of
13 owner's allowances like you did in 2001 in conjunction
14 with the present filing; is that your testimony?

15 A. Yes.

16 Q. And are you saying then that the fact that
17 the gross revenues of Bremerton-Kitsap Airporter went up
18 some \$200,000 to \$300,000 in the four years had no
19 bearing on your adjustment downward for owner's salary
20 in this proceeding?

21 A. Revenue, it was -- was not a factor in coming
22 up with the -- it was one factor I considered, but one
23 of several.

24 Q. So then, excuse me, so then in answer to my
25 question, the answer is yes, you did consider that?

00121

1 A. That was one of the factors that I
2 considered.

3 Q. Well, how did you treat it then specifically?
4 If you considered it and we still have a reduction, yet
5 we have an approximately \$300,000 increase over the four
6 years, how did you consider it?

7 A. I recognized -- I just looked at it, and it
8 was one of the factors, it wasn't one of the weighty
9 factors, but it's one thing that I looked at.

10 Q. Is there any work paper or any other written
11 analysis you have produced or prepared that would weigh
12 these factors such as gross revenues in a formula that I
13 could look at? You're referring to RC-9 are you now?

14 A. I don't know where I'm referring now.

15 Q. Okay, I just wanted to keep up with you.

16 A. I could refer you to RC-6 where -- oh, no, I
17 take that back, excuse me. Maybe somebody can help me
18 here, but somewhere in my testimony I think I state that
19 the relationship between the \$421,000 owner's allowance
20 and the \$1.6 Million revenue is about 25%, and I further
21 stated that the relationship between that owner's
22 allowance of \$421,000 and the number of passengers
23 hauled represents \$3 and something per passenger hauled.
24 That's one analysis I did of how owner's allowance
25 relates to revenue.

00122

1 Q. Other than a testimonial reference though, do
2 you have any work paper or quantitative analysis, which
3 is what my question went to, where you would have
4 weighted factors such as increase in gross revenues, et
5 cetera?

6 A. No, and I suspect that the growth in revenues
7 was more a factor of increased passenger hauls, number
8 of passengers hauled.

9 Q. Well, that's your supposition, but I'm asking
10 whether you did any analysis quantitatively of that
11 supposition or any others as you arrived at the formula
12 that gets us to \$66,000?

13 A. No.

14 Q. Okay. Can you -- okay, it's true then that
15 you are recommending, if you look at RC-9, page 9, and
16 you look at the two most recent as opposed to this
17 filings by this company, you're recommending at a
18 minimum 16.5 below what you previously recommended, and
19 at a --

20 MR. THOMPSON: I'm going to object to the
21 form of the question. I think it's been discussed
22 before that he didn't recommend anything previously, and
23 Mr. Wiley continues to use the term recommend. And I
24 think it's been -- Mr. Colbo said that he never
25 recommended that figure previously.

00123

1 MR. WILEY: Well, Your Honor, if I have
2 misstated, I didn't intend to. Can I use the term
3 allowed as a verb? Would that be more appropriate?

4 JUDGE SCHAER: Well, I think maybe it would
5 be worthwhile to restate it. Maybe since it is called
6 allowed on the table, that probably would be a good way
7 to proceed.

8 BY MR. WILEY:

9 Q. Mr. Colbo, I didn't mean to misstate what you
10 had -- how you had characterized it. Isn't it true that
11 on page 9 of RC-9, you allowed in compensation at a
12 minimum \$16,500 more than at present in the last memo
13 that you did on this company, and indeed in a memo that
14 was drafted earlier on in that same year, 1998, that the
15 Staff allowed over \$40,000 more or approximately \$40,000
16 more in owner's salary than is being provided in this
17 proceeding?

18 A. That's true, but that was before I did the
19 additional research in this case.

20 Q. So your answer is yes, and your reason as to
21 why it is true is that it's based on this survey that
22 you refer to in RC-9?

23 A. Survey is plural.

24 Q. Okay, surveys. And, in fact, you didn't do
25 both the surveys, did you?

00124

1 A. No.

2 Q. Actually one was done by another party who is
3 not a witness; is that correct?

4 A. That is correct.

5 Q. Okay. Now with respect to those surveys,
6 which one did you perform?

7 A. This one here on page 9.

8 Q. Well, this -- is this a survey, or is this
9 just a chart?

10 A. It's a review of prior work papers.

11 Q. But excuse me, I need to know, is that a
12 survey though?

13 A. It was a survey of what the Staff had in
14 their work paper files in earlier filings for this
15 company's rate filings.

16 Q. So it's a recap --

17 A. Yes.

18 Q. -- of the previous filings by this company?

19 A. Yes.

20 Q. Okay. But I guess my question goes to the
21 survey. Now we have the Ms. Dobyms survey that I will
22 ask you about later.

23 A. Yes.

24 Q. But also the survey of what I'm going to call
25 the "analogous operations".

00125

1 A. Okay.

2 Q. Did you perform that survey?

3 A. I performed the survey on page 10.

4 Q. We're referring again for the record to RC-9,
5 page 10, correct?

6 A. That's correct.

7 Q. Okay. And what was that survey based on,
8 contact of all of these companies?

9 A. It was based on work paper files of the most
10 recent rate cases of other airporters in the state.

11 Q. So it wasn't based on personal contact by
12 you, but it was based on personal review by you of
13 filings by these companies; is that correct?

14 A. Yes, with the exception of the amount shown
15 for Shuttle Express in column C where the executive
16 salary is shown as \$250,000.

17 Q. Per company --

18 A. And if you have real good eyesight, you can
19 see that that was per a conversation that I had with the
20 company controller.

21 Q. So other than that inquiry, everything else
22 was based on historic records that you personally
23 reviewed and extracted, correct, to make this exhibit
24 page 10 of RC-9?

25 A. Yes. And additionally I did the case in

00126

1 column E for Centralia SeaTac Airporter, and I did have
2 conversations with that executive.

3 Q. As you prepared page 10 or during the rate
4 filing?

5 A. No, during the rate filing.

6 Q. Okay.

7 A. And also a similar statement in the first
8 column A for Grey Line of Seattle.

9 Q. And again, your testimony would be that when
10 the company filed, during the pendency of the filing,
11 you had conversations with them --

12 A. Yes.

13 Q. -- about some of this information?

14 A. That's correct.

15 Q. You can't tell me whether it was with respect
16 to verifying the executive salary per se, can you, that
17 you had a conversation --

18 A. I think it was a discussion regarding pay
19 levels and duties performed and time spent.

20 Q. Okay. And so that would be your testimony
21 with respect to Gray Line, with respect to Centralia
22 SeaTac Airport, and a question that you did point to,
23 was it Mr. Sherrill or who is it at Shuttle Express?

24 A. Yes, I think it's Jimmy Sherrill.

25 Q. Now other than this survey, your recap of

00127

1 Bremerton-Kitsap filings, which is page 9 of RC-9, and
2 the survey performed by another Staff person, was there
3 any other basis upon which you relied in arriving at
4 this reduced allowance for salary in this proceeding
5 versus the immediately prior proceeding?

6 A. Well, I also have -- are you talking about
7 surveys of salary?

8 Q. I'm talking about what supports your
9 conclusion that you arrived at of \$66,000 in this
10 proceeding as opposed to your earlier 82.5 allowed
11 salary in the immediately preceding rate filing.

12 A. Okay. Another Staff member did the survey of
13 municipal transit entities.

14 Q. Yeah, I referenced that in my question.

15 A. I prepared the, based on information
16 contained in that survey, I prepared page 14 of Exhibit
17 9.

18 Q. Hold on until I get there. That all deals
19 with the public transit system?

20 A. Yes.

21 Q. Correct?

22 A. Yes.

23 Q. I'm going to call that as one source.

24 A. Okay.

25 Q. The survey and the conclusions.

00128

1 A. Okay. I also recapped the information on
2 page 15, which comes from an Avista case in 1999, and
3 the related order that follows it, part of -- an extract
4 of a part of that order. And I also provided on pages
5 23 through 25 a Staff exhibit from another Staff member
6 relating to chief executive officers of electric and gas
7 utility companies in the United States. And on page 26
8 and 27, Ms. Dobyms put together this schedule surveying
9 chief executive compensation in Washington state for the
10 year 2001 on pages 26 and 27.

11 Q. So your answer is that you prepared RC-9 and
12 that the enclosures in RC-9, you selected the enclosure
13 that make up RC-9; is that correct?

14 A. I selected the enclosures that make up RC-9?

15 Q. You personally --

16 A. Oh.

17 Q. -- selected the enclosures --

18 A. Yes.

19 Q. -- that made up the owner's compensation
20 packet in RC-9?

21 A. Yes.

22 Q. And my question then goes back to whether,
23 other than the references, the two surveys, and the
24 Commission case, the big utility Avista case, and the
25 list of Washington executive compensation, whether you

00129

1 based your conclusion of \$66,000 to allow for owner
2 compensation in this proceeding on any other external
3 source?

4 A. I learned that Mr. Asche spends his winters
5 in Arizona. That was a factor that I put into it as
6 well.

7 Q. Well, excuse me, that sounds a little
8 subjective. Could you be a little bit more specific
9 about how you learned it and what relevance that has?

10 A. I had a conversation with the operations
11 manager when I tried to get in touch with Mr. Asche on
12 the phone asking him some questions relating to this
13 filing or to a fuel surcharge filing. I can't remember
14 exactly which. I was told that he was in Arizona for
15 the winter and that he reported back to the office once
16 every six weeks.

17 Q. And so you essentially docked his owner
18 compensation for that factor, is that --

19 A. No, I did not.

20 Q. Well, then why --

21 A. That was one of the factors that I considered
22 in all of the factors that I considered in arriving at
23 the \$66,000 owner's compensation.

24 Q. Well, if you considered it, I assume it had
25 some influence on the number you arrived at.

00130

1 A. It doesn't have any -- there's no work sheet
2 that shows any calculation or anything.

3 Q. Okay. So you can't quantify how much you
4 attributed to the Arizona winter issue, but it certainly
5 was a numeric factor in leading you to your \$66,000
6 calculation?

7 A. It was one factor that I took into account of
8 all the factors that are included in Exhibit Number
9 RC-9.

10 Q. Okay, and I'm trying to get you to all of
11 those factors. So you have articulated gross revenues,
12 the surveys and other data in RC-9, the winter in
13 Arizona issue. Is there anything else that you would
14 list as a factor that comprised the criteria upon which
15 you arrived at the \$66,000 figure?

16 A. At page 28 of Exhibit RC-9, there is the
17 company's response to Staff Data Request Number 3 where
18 Mr. Asche reveals his duties and responsibilities.

19 Q. I meant to include that when I said RC-9.

20 A. I'm sorry.

21 Q. You had previously referenced that, but
22 assume that that's included in RC-9.

23 A. Okay.

24 Q. Is there any other factor other than what you
25 have just articulated that influenced your

00131

1 quantification of owner's salary in this proceeding at
2 \$66,000?

3 A. The company's response to Staff Data Request
4 Number 19.

5 Q. Can I just interrupt you before you allude to
6 that. Isn't it true that this response came after you
7 arrived at the proposed salary of \$66,000 and rates?

8 A. I received the response to this data request
9 on August 16th.

10 Q. I guess we're talking about two different
11 things, I'm sorry. I was looking at your Response
12 Number 19, sorry, I apologize.

13 Okay, I'm looking at that response, and can
14 you tell me, that dealt -- deals with the question of
15 what Mr. -- what job functions Mr. Asche performed and
16 how he characterized the time he put in on the job.
17 What in this response led you to reduce the former
18 allowed salary to \$66,000?

19 A. The totality of the response. It's all
20 related to what duties he has and the time he spends
21 doing those duties. That's one of the factors we
22 consider when we set owner's allowance.

23 Q. Could you be a little bit more specific about
24 what in the totality of the response you found to be
25 meriting of a reduction in allowed salary as opposed to

00132

1 what you understood in 1998 when you recommended an
2 \$82,500 --

3 A. In 1988 I didn't do any of this work. This
4 was an -- Exhibit Number 9 is a summary of all of the
5 information I did trying to come up with a \$66,000 --
6 trying to come up with a reasonable operating owner's
7 allowance for Mr. Asche. In 1998, I didn't do any of
8 this stuff. I knew that owner's allowance was going to
9 be an issue in this case, and in order to establish a
10 reasonable owner's allowance, we did all of this
11 additional work trying to come up with an objective
12 basis to set the salary.

13 Q. Okay. I've got two questions flowing out of
14 that answer. First of all, how did you know that
15 owner's salary was going to be an issue in this case and
16 wouldn't have been an issue in 1998?

17 A. The company withdrew in 1998. This time they
18 didn't, and the salary is still higher.

19 Q. Is that --

20 A. Booked.

21 Q. Isn't it true that the company withdrew its
22 filing for a rate increase in this proceeding?

23 A. Yes, they did, and it was changed into a
24 complaint.

25 Q. Okay, well, my question then goes to why you

00133

1 knew that owner's allowance was going to be an issue in
2 this case and didn't believe it was going to be an issue
3 in the previous case?

4 A. It's an issue in both cases.

5 Q. So you correct -- so your testimony is that
6 owner's allowance was an issue in both proceedings
7 whatever the disposition of the proceeding?

8 A. Yes, and what that allowance would be to set
9 rates that were fair, just, and reasonable.

10 Q. Okay. Now then let's go back to your answer
11 to data request or our answer to your Data Request
12 Number 19, and I again apologize for confusing those two
13 responses. What, you said it was the totality of the
14 circumstance, it was the answer, it was your survey, but
15 I was asking you specifically what in that answer,
16 because you pointed to that as one of the factors that
17 led to your allowance of \$66,000, what specifically did
18 you find in there that led you to that adjustment?

19 A. The duties that he said he performed and the
20 hours he spent doing those duties.

21 Q. And you're saying that you didn't feel that
22 \$82,500 was an appropriate allowance for him based on
23 how he described the duties and the time increments that
24 he did in the answer to Data Request Number 19?

25 THE WITNESS: Could I have that read back,

00134

1 please.

2 JUDGE SCHAER: Joan, could you read that
3 question back, please.

4 (Record read as requested.)

5 A. Yes, and in addition -- in light of the
6 additional work that I did with the rest of the material
7 that's presented in Exhibit RC-9.

8 BY MR. WILEY:

9 Q. Okay, then that's what my original question
10 goes to, Mr. Colbo. I'm just asking you to identify
11 what factors, surveys, RC-9, et cetera, what criteria
12 you relied upon to arrive at your number. I understand
13 you don't have work papers supporting it, I asked for
14 those. But I'm just asking you to list those, and you
15 have listed Data Request Number 19, our answer thereto,
16 you have listed the materials that were provided in
17 RC-9, you have answered gross revenues of the company;
18 is there anything else that you would list as a factor
19 that led to your arrival at \$66,000 to allow for owner's
20 compensation in this proceeding?

21 JUDGE SCHAER: I'm confused, Mr. Wiley, in
22 this question, do you mean to encompass all of the
23 things he has already stated --

24 MR. WILEY: All of the things --

25 JUDGE SCHAER: So the Snow Bird thing and all

00135

1 of this other stuff is in this.

2 BY MR. WILEY:

3 Q. Is there anything else other than what I have
4 just identified that you have testified to?

5 A. I don't think so.

6 Q. Okay. Now the reason I ask that, Mr. Colbo,
7 is that you, at least in your rebuttal testimony, you
8 talk about -- you make a reference at RC, excuse me, in
9 your original testimony RC-1T, page 37, you conclude, do
10 you not, that this company has overearned for five
11 consecutive years to a total of \$1,155,000?

12 A. Yes.

13 Q. Did you, in fact, make any adjustment on the
14 owner's compensation based on your conclusion that the
15 company has overearned for five years?

16 A. No.

17 Q. So your answer is that you didn't look at the
18 past five years to make any judgment about owner's
19 allowance in this proceeding?

20 A. That is true.

21 Q. Okay.

22 A. That wasn't one of the factors.

23 Q. Is it true that this is the first time that
24 the Staff over the past filings by this company -- let
25 me withdraw that and ask it another way.

00136

1 Over the last four to five years, is it true
2 that it is only in this proceeding that the Staff had
3 information upon which it concluded that this company
4 was overearning?

5 A. See, if you look at page 9 of Exhibit RC-9,
6 that shows the history of rate filings for this company.

7 Q. Yes, it does.

8 A. Since 1985. And in each of those cases, the
9 company made a filing asking for increased rates. And
10 in each case, it was either denied, or the company
11 elected to withdraw that filing.

12 Q. Wait a minute.

13 A. Except for this instance.

14 Q. Well, what about, I'm going up above, it
15 says --

16 A. Oh, I'm sorry, except for the present, where
17 present rates were affected in 1991.

18 Q. So at least in 1991 it was approved as filed
19 or as amended, correct?

20 A. Yes.

21 Q. Okay.

22 A. So in each of those instances when the
23 company elected to either withdraw or there was a formal
24 Commission decision by order saying that the proposed
25 increases were disallowed, apparently there was

00137

1 overearnings going on there.

2 Q. Well, you say apparently there was
3 overearnings going there, you looked at the company in
4 1998, and you have also reviewed Exhibit 22, and it
5 looks like there's exchanges between the Staff and the
6 company where that's suggested, isn't it? You say
7 apparently, wasn't that actually done? In other words,
8 wasn't there actual representation by the Staff that
9 you're overearning?

10 A. In terms of making decisions where their
11 rates or proposed rates should be fair, just, and
12 reasonable, that's different from -- that's an informal
13 process. When we get into a formal process, then the
14 Commission decides what the salaries should be.

15 Q. But I think --

16 A. Or whether there are overearnings. All I'm
17 saying is except for 1991 in page 9, every time this
18 company made a rate increase request, they either
19 withdraw it or it was rejected.

20 Q. Okay, I understand that that's your
21 characterization of Exhibit 9, but mine is a much
22 broader question than RC-9, page 9.

23 A. Okay.

24 Q. Mine is, isn't it true that, let's say the
25 last two filings in February and December of 1998, that

00138

1 overearnings as an issue was communicated by the Staff
2 to the company?

3 A. Yes.

4 Q. Why then is it that it is only in this filing
5 that this Staff has gone on the offensive in a complaint
6 proceeding against the company?

7 A. I think the size of the total compensation
8 package that Mr. Asche paid himself this year was
9 significantly higher than in the past.

10 Q. But in 1998, that, as you term it package,
11 was well above what you have allowed in rates currently
12 or previously, was it not?

13 A. Yes.

14 Q. Okay. So why is the specter of overearnings
15 so pronounced now and it wasn't in 1998?

16 A. Well, in 1998, as I said, the amount of
17 compensation Mr. Asche paid himself wasn't as much, and
18 in 1998, those high salaries hadn't been going on for as
19 long as they have now as we look at the situation in
20 2001.

21 Q. Well, that is --

22 A. The situation is getting worse instead of
23 better in terms of salary.

24 Q. Well, if Mr. Asche had incurred the potential
25 threat of an excess earnings deficit by leaving for

00139

1 excess earnings in the company in 2001, or in, excuse
2 me, in the test year 2000 and had paid himself a total
3 of \$256,000 as your memo of 1998 shows he was being --
4 he was compensating himself with, or page 9 of RC-9
5 reflects, let's say he paid himself in the test year
6 that we're now dealing with \$256,000 and left the
7 remainder of the difference between that and what he
8 actually paid in retained earnings, would you have still
9 pursued this complaint?

10 A. The pointed issue is just is to set rates
11 that are fair, just, and reasonable. That's what we're
12 trying to do here.

13 Q. Can you answer my question, please,
14 Mr. Colbo?

15 A. Could you repeat it?

16 Q. Pretty specific question.

17 MR. WILEY: Could I have it read back, Your
18 Honor.

19 JUDGE SCHAER: Could you read the question,
20 please.

21 (Record read as requested.)

22 MR. WILEY: I will restate, I'm sorry.

23 BY MR. WILEY:

24 Q. If Mr. Asche in this test year had paid
25 himself \$256,000 and left the balance in retained

00140

1 earnings in the company, would you still have pursued
2 this complaint proceeding?

3 A. I don't know.

4 Q. Well, if you don't know, can you tell me who
5 on the Staff made the decision to pursue the complaint
6 proceeding?

7 A. I can tell you that in 1998 we were aware of
8 the situation. There were some discussions amongst the
9 Staff with respect to whether we should or should not do
10 anything. And for whatever reason, it was put on the
11 shelf, and it was never dealt with, never pursued.

12 Q. Well --

13 A. I don't recall why.

14 Q. Who --

15 A. It might have been other staffing
16 requirements, other rate case activity. I don't know
17 why.

18 Q. Okay.

19 A. But I was aware that the company was
20 significantly overearning in 1998.

21 Q. But you didn't make a decision to pursue a
22 complaint proceeding then; is that your testimony?

23 A. That is correct.

24 Q. In 2001, the issue still was pending of
25 overearning, correct?

00141

1 A. Yes.

2 Q. Who made the decision to pursue a complaint
3 proceeding against this company in 2001?

4 A. I think it was a joint decision of myself and
5 Mr. Eckhardt.

6 Q. And can you tell me what -- is Mr. Eckhardt
7 your immediate supervisor?

8 A. Yes.

9 Q. And his title is?

10 A. Assistant director of water and
11 transportation.

12 Q. So then in answer to my question, the
13 decision to pursue a complaint against Bremerton-Kitsap
14 Airporter, Inc., was made jointly by you and
15 Mr. Eckhardt; is that correct?

16 A. That's correct.

17 Q. When the company withdrew its rate increase
18 in 2001, is that when the decision was made to pursue a
19 complaint? Is that the decision you're referring to
20 that was made jointly?

21 A. I don't recall exactly when the decision was
22 made.

23 Q. Do you know if it was before or after it
24 sought withdrawal of, meaning Bremerton-Kitsap, sought
25 withdrawal of its rate increase filing?

00142

1 A. I think that we had very serious concern
2 about the ongoing profitability of the company for five
3 years, or as I have shown in my exhibit, for a number of
4 years, and our mandate is to set fair, just, and
5 reasonable rates. To do nothing one more time and to
6 let these existing present rates go forward would have
7 been irresponsible with that mandate.

8 Q. Isn't it true then in the -- that unless and
9 until Bremerton-Kitsap Airporter, Inc., had filed for a
10 general rate increase in late 2000, early 2001, you
11 never would have pursued a complaint against this
12 company?

13 A. That's probably true.

14 Q. You mentioned when we were talking about
15 income taxes, and serving two masters is the term I used
16 if you will recall, that one of the -- that the concept
17 of doing the right thing as you understood was for the
18 company to come in in a general rate decrease filing; is
19 that correct?

20 A. That's one of the things they could have
21 done.

22 Q. Can you -- well, what else could they have
23 done? That's the only thing I understood you to say.

24 A. That pretty well covers it.

25 Q. Okay. Can you tell me any auto

00143

1 transportation companies that have come in to the
2 Commission for a general rate decrease filing other than
3 for fuel surcharge adjustments?

4 A. No.

5 Q. To your knowledge, has there ever been an
6 auto transportation company that has come in for a
7 general rate decrease filing?

8 A. We don't hear from companies when, generally,
9 when their earnings are what they deem to be
10 satisfactory. We are the squeaky wheel that gets the
11 grease when things go bad and they have a rate filing.
12 We hear from them when they need rate relief.

13 Q. So your answer is you can't list any company
14 that's ever come in to the Commission, that's an auto
15 transportation company at least, for a general rate
16 decrease filing?

17 A. No.

18 Q. You say at page 17 of your testimony, excuse
19 me, your RC-17, which is your rebuttal testimony, page
20 6, let's go to that briefly. You say at line 5, 4, 5,
21 and 6:

22 In the proper context, owner's allowance
23 simply reimburses the executive in
24 accordance with his or her duties.
25 Now I take it that that is sort of a

00144

1 foreshadowing of your testimony that you have given
2 today about the answer to Data Request Number 19 by the
3 company, is that correct, where you didn't find -- where
4 you found various increments of job performance that
5 ultimately led you to arrive at the \$66,000 owner's
6 allowance figure; is that correct? Do you understand
7 what I'm saying?

8 A. No.

9 Q. Does that, in fact, relate or correlate to
10 the sort of references you made to Bremerton-Kitsap's
11 response to Staff Data Request Number 19 where they
12 describe job duties?

13 Can you tell me what you're looking at?

14 A. I'm looking at the company's response to
15 Staff Data Request Number 19.

16 Q. Okay.

17 A. That's one of the things that I was referring
18 to there. I think Mr. Asche at another point, and I
19 don't recall exactly where, maybe even in his testimony.

20 Q. Excuse me?

21 A. It may have been in his testimony where he
22 said he's -- that he pretty much runs things and he has
23 responsibilities across the board throughout the
24 company.

25 Q. Now let me take that statement in isolation

00145

1 that you just made. It would be my layman's
2 understanding that a person who "pretty much runs things
3 across the board at a company" should receive high
4 compensation vis-a-vis other people in the company. Is
5 that a fair assumption, or is that incorrect?

6 A. Depends on what those other duties are when
7 he's doing all those other duties. If he's driving the
8 bus, he should not receive the high compensation of a
9 CEO type for those -- for the length of time he spends
10 doing that duty.

11 Q. Okay, and that's what I understand your
12 statement at lines 4 through 6 of RC-17, page 6, to be
13 saying.

14 A. That's what it says.

15 Q. And I guess what I'm asking you is, how can I
16 quantify or put into some sort of tangible formula how
17 you know that, how you convert a job function to a
18 specific compensation level even in a range of high,
19 low, medium? I mean can you help me with the subjective
20 sound of that assertion?

21 A. The \$66,000 -- it is difficult to do. What I
22 had to rely on was Ms. Doby's survey, which was
23 exclusively dealing with CEO types of transit entities
24 that were strictly involved with CEO type activities at
25 a high level of multidimensional, multifunctional,

00146

1 several types of service operatings, op rooms, large
2 entities. And their average salary for those entities
3 whose annual revenues are less than \$10 Million was
4 \$66,000 plus dollars. That was the source of -- to my
5 way of thinking, that confirmed my \$66,000 number for
6 Mr. Asche.

7 Q. Okay, my question wasn't going to the
8 quantification of \$66,000. I think we have gone over
9 that. My question went to your statement at lines 4
10 through 6 about the "proper context" of how you arrive
11 at a specific reimbursement amount for owner
12 compensation. And I am saying, and you elaborate a
13 little bit more in that paragraph, but I'm asking you,
14 how do I understand what that proper context is? Can
15 you give me any examples of how a formulaic approach to
16 this would work?

17 A. I gave the example of if he -- if Mr. Asche
18 actually spends time driving the bus, then for those
19 hours, he would make \$10.25 an hour for the hours that
20 he drove the bus.

21 Q. So if you do -- if you're a small business
22 owner, and you have heard of the expression chief bottle
23 washer, haven't you?

24 A. Yes.

25 Q. Okay. If you're a small business owner and

00147

1 you act in that chief bottle washer capacity, are you
2 saying that because you do somewhat menial or
3 ministerial jobs that your salary should be
4 correspondingly reduced?

5 A. If it's a regulated small company and you
6 could hire someone else at those lower rates to do those
7 menial tasks, then yes.

8 Q. But wouldn't you in effect be adding wages in
9 that process if you added employees to do tasks that
10 somebody who acts, the other expression you hear a lot
11 is a one armed paper hanger, running around covering all
12 bases, wouldn't you be adding to your cost base in doing
13 that?

14 A. The jobs are there, and they're being done,
15 and presumably they need being done. Whether it's being
16 paid to the chief executive when he does those menial
17 tasks or whether there's menial employees doing those
18 menial tasks, the total amount paid should be -- should
19 approximate the same.

20 Q. Well, then if Mr. Asche needed to cover a
21 weekend dispatch job or he talks about occasionally
22 there's a passenger stranded that he goes out and picks
23 up, you're really suggesting that if you perform those
24 jobs as a small regulated business owner, you're going
25 to suffer in having your salary reduced because you

00148

1 performed menial tasks?

2 A. I guess yes. To the extent that you as an
3 owner perform those menial tasks, the owner's allowance
4 would include the amount for the going prevailing wage
5 of similar people providing those menial tasks.

6 Q. Now is that adjustment, which is new to me,
7 is that adjustment something that is codified in even a
8 Staff policy?

9 A. It's codified -- it's -- the whole issue of
10 owner's allowance and owner's compensation when the
11 owner and the -- and the -- is also an employee of the
12 company is a gray area, and all of these factors are
13 taken into account in the establishment of a reasonable
14 owner's allowance to be included in rates.

15 Q. I perpetually unfortunately for my clients
16 seem to be delving into gray areas, Mr. Colbo, so I
17 apologize if I seem to be questioning this. But I'm
18 wondering how we can objectify this at all. If, for
19 instance, if you were expecting somebody to advise a
20 regulated company, a business owner of the regulated
21 company, as to what tasks he should not, he or she
22 should not perform at risk of their current owner's
23 compensation, is there any standard that you could point
24 to?

25 A. The standard that rates should be fair, just,

00149

1 and reasonable.

2 Q. Well, that's a legal standard; I'm talking
3 factual.

4 A. But at some point a judgment has to be made
5 as to what the owner pays himself in view of the
6 activities and the duties and the time he spends doing
7 it. It's a gray area.

8 Q. And you basically perform those duties at
9 your own risk if you're going to be in a rate
10 proceeding, I take it?

11 A. There are employees at Bremerton-Kitsap who
12 drive buses, who do safety work, who do public relations
13 and governmental relations, and who do some of these
14 other things. They're already there on the payroll.

15 Q. I understand that from your rebuttal
16 testimony particularly. But when we have an instance
17 when the company wants to better serve a stranded
18 customer and the only person to pick up that customer is
19 the owner and president of the company, are you not
20 suggesting that if he performs that duty, he suffers the
21 risk of having his salary reduced by episodes like that?

22 A. If he were to document those episodes and
23 present them at the time of the rate case, then
24 presumably the Staff would review that information.

25 Q. Did you ever ask him for that kind of

00150

1 documentation as to what tasks you felt were beneath his
2 particular level?

3 A. We asked him in data requests for his duties
4 performed.

5 Q. And we provided that, and you concluded that
6 some of them are too menial to be performed by an
7 executive of a regulated company. But my question went
8 to whether you specifically asked him to document the
9 times and frequencies and circumstances under which he
10 performed duties that you did not think were befitting
11 of an executive of a regulated company?

12 A. I did not ask him specifically for that. And
13 again, the \$66,000 Staff number pretty much is -- relies
14 upon the survey that Ms. Dobyms did correlating the
15 chief -- what the prevailing rate for transit operators
16 for transit operations, what they pay their CEO for CEO
17 type work.

18 Q. But you --

19 A. That's the basis of the \$66,000.

20 Q. But you have no analogous survey or criteria,
21 which is what all of my questions have been driving at
22 recently this afternoon, you have no analogous criteria
23 about what a small regulated business owner should do to
24 support an owner's allowance.

25 A. Well, Bremerton-Kitsap is \$1.6 Million,

00151

1 that's not real small.

2 Q. Well, I think in the annals of corporations,
3 it's fair to call it a closely held small company. But
4 assuming, putting aside the revenues, but assuming the
5 label of a small business owner, which Mr. Asche I think
6 will testify tomorrow he considers himself and he's in
7 organizations that are so allied, is there anything
8 analogous to what you have provided on a public sector
9 salary front that you could give us to give us some
10 confidence about the criteria that will be used to judge
11 an owner's allowance of a small regulated auto
12 transportation company?

13 A. Keep detailed records of your duties, time
14 spent, hours performed, duties performed, write it down,
15 document it.

16 Q. And once those are provided, under what
17 standards will they be judged; can you tell us that?
18 Quantitatively, can you tell us anything about --

19 A. The standard would be what you would have to
20 pay someone else to do those duties on an arm's length
21 basis.

22 Q. So then in answer to my earlier question,
23 Mr. Colbo, I believe you're now testifying that if you
24 perform a duty such as weekend dispatch when your
25 dispatcher is on vacation or weekend driver when your

00152

1 passenger is stranded, if you perform that duty and
2 you're the owner and the chief executive of a company,
3 your pay allowance will be reduced if you perform those
4 duties? Yes or no?

5 A. I'm thinking. If you're doing those duties,
6 then you're not doing CEO duties, and your CEO -- you
7 would get paid for those duties at those rates, but then
8 that's time away from your CEO duties, and that would
9 take the pro rata reduction.

10 Q. So yes is the answer?

11 A. So it's a balancing act.

12 Q. Then the answer to my previous question is
13 yes.

14 A. Okay.

15 Q. Well, do you agree or not?

16 A. Yes.

17 Q. Thank you.

18 You talked a lot in your testimony both today
19 and in RC-1T about a survey of public sector
20 transportation companies, did you not?

21 A. Yes.

22 Q. Okay. For instance, at page 15 of your
23 direct testimony, you talk about the survey that was
24 performed. By the way, was it performed in anticipation
25 of a hearing either on a rate increase or on this

00153

1 complaint case? Was the survey that Ms. Dobyms
2 performed done in conjunction with or anticipation of a
3 rate increase proceeding of this company or a complaint
4 proceeding against the company?

5 A. It was during the rate increase proceeding.

6 Q. So it was in the context of what we will term
7 litigation of the rate issue; is that right?

8 A. Yes.

9 Q. Isn't it true that Ms. Dobyms' survey was
10 predicated on the belief that gross revenues and
11 ridership census numbers merit higher salary if larger
12 than Bremerton-Kitsap Airporter's compensation to its
13 owner? Do you want me to restate that?

14 A. Please repeat it.

15 Q. Isn't it true that the survey that was
16 performed was based on the assumption that higher gross
17 revenues and higher ridership translate into higher
18 chief executive compensation than that of
19 Bremerton-Kitsap?

20 A. No, that's not correct.

21 Q. Okay. What criteria or assumption was it
22 performed on?

23 A. It was performed under the assumption of what
24 their actual -- what their actual duties were as chief
25 executives and how comparable they were to Mr. Asche's

00154

1 chief executive duties.

2 Q. Now this survey that was performed was at
3 your direction; is that correct?

4 A. Yes.

5 Q. And it was anticipated -- it was in
6 anticipation of this rate proceeding litigation, not --
7 it wasn't just done for the sake of doing it, correct?

8 A. No, that is correct.

9 Q. Okay. And were there -- you have talked
10 about assumptions and what the survey might have
11 proceeded under, and you said, I think you have just
12 said that it wasn't based on any criteria, it was just
13 based on a survey of public sector companies, and then
14 you translated the survey results into some conclusions.
15 Is that what you were trying to say in answer to my
16 question?

17 A. I don't think so. Could you repeat that?

18 Q. Yeah, I want to understand what criteria that
19 the survey proceeded under; what were the directions?

20 A. The directions were go out to the municipal
21 bus entities and find out what they pay their CEOs for
22 CEO type activities relating to transit operations.

23 Q. Okay. And I guess that begs my question of
24 why you even approached public sector municipal
25 transportation entities. What relevance did that have

00155

1 to a regulated auto transportation company?

2 A. Neither one of them have competition.
3 They're both hauling people in buses or vans. And
4 executives, chief executives of both, do chief executive
5 work and chief executive tasks.

6 Q. Now I want to go over one of those
7 statements, please. You say neither one of them have
8 competition. Can you please define that more
9 specifically?

10 A. Generally speaking, there's only one
11 municipal transit entity within a county, and generally
12 speaking there are no other certificated bus holders
13 that have rights in Kitsap County as does
14 Bremerton-Kitsap Airporter, Bremerton-Kitsap
15 Transportation Company. It has a permit to do business.

16 Q. Don't you mean though in answer to my
17 question about competition, don't you mean that
18 generally it doesn't have regulated competition? You're
19 not suggesting, are you, that there aren't other
20 companies or entities competing for the business that
21 Bremerton-Kitsap provides?

22 A. Well, certainly people can take their cars in
23 both cases, or they can car pool, or there's all kinds
24 of options. But generally speaking, in county municipal
25 transit operations, there's only one official county

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1 agency or that does the transit operation. The county
2 does not have two transit operations competing with one
3 another. Neither are there multiple certificated auto
4 transportation permit holders that compete with
5 Mr. Asche in Kitsap County.

6 Q. Okay. So then your answer is yes, you meant
7 to limit the statement about competition regarding
8 Bremerton-Kitsap to regulated competition?

9 A. Yes.

10 Q. And you have acknowledged already in your
11 previous answer that there are other providers who
12 compete for the same traffic that Bremerton-Kitsap
13 Airporter serves, correct?

14 A. That's true.

15 Q. Okay. And you have indicated cars, parking.
16 How about ferries from Kitsap County that take people to
17 King County and to the airport?

18 A. That would probably be an alternative for
19 that situation.

20 Q. How about courtesy vans from hotels in Kitsap
21 and Pierce County that take people who stay at their
22 hotels for free as a part of their room rate to the
23 airport?

24 A. That would be an alternative way of getting
25 there as well.

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1 Q. And reduced and free parking at the airport,
2 would that not be also serving the same market from
3 Bremerton-Kitsap and Pierce Counties to SeaTac Airport,
4 in other words people would drive their cars but
5 wouldn't have to pay for parking?

6 A. That may divert some people to other means.
7 I would only say that since 1990 or 1991 when the
8 present rates were set for this company, their passenger
9 counts have increased more than 116%, so they're getting
10 customers from somewhere.

11 Q. That didn't, boy, I mean I can't even get you
12 back to my question with that comment.

13 A. You --

14 Q. My question to you was, you're acknowledging
15 -- I'm asking you what forms of competition, unregulated
16 competition, there are for the same customers, and you
17 have indicated cars, ferries, parking, courtesy vans.
18 How about limousines, they in a very loosely regulated
19 fashion compete for airport customers in the same
20 fashion, do they not?

21 A. I think there are some limousine companies
22 that do that.

23 Q. So whatever your comment was about the growth
24 in revenues or passenger counts, you certainly would
25 acknowledge that in the last decade, more and more

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1 entities competing for the same customers have sprung up
2 and proliferated in this area, correct?

3 A. I don't know whether there's more or less now
4 than in the past, but I acknowledge that there are other
5 means of getting to the airport other than
6 Bremerton-Kitsap Airporter.

7 Q. And when you drew a comparison between public
8 sector transportation companies and Bremerton-Kitsap
9 Airporter, did you adjust for any of the comparisons
10 that you were making based on the differing types of
11 competition or lack thereof that the public sector
12 providers experience as opposed to the private regulated
13 provider we're here facing?

14 A. No, but I'm not sure that the same factors
15 exist for both.

16 Q. Neither am I, but I'm asking you whether you
17 drew any comparison?

18 A. No.

19 Q. Is it true then that the factor that you most
20 wanted to focus on was not external competitive forces,
21 but ridership and sales volumes?

22 A. That's not true.

23 Q. What other factors did you most want to
24 study?

25 A. I have already told you that the instructions

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1 going into the survey were survey other bus operations,
2 and presumably that we already had a handle on the
3 regulated bus operations from the work paper files of
4 the Staff in prior airporter rate cases that have come
5 before us, and what we wanted to do was find out what
6 prevailing CEO rates, pay rates were for CEOs of other
7 bus operations. And the thing that immediately comes to
8 mind is these municipal county-wide transit operations,
9 and we wanted to see what the prevailing arm's length
10 rate for CEO work for bus operations of these municipal
11 entities, what that prevailing pay scale was.

12 Q. When you say prevailing arm's length rate for
13 CEO compensation, what do you mean by that?

14 A. I mean that the CEOs are employees of the
15 entity, not employees and owners who say their own pay.
16 They report to somebody. They are responsible to other
17 people who set their pay loads.

18 Q. And those would be county executives or
19 governmental officials; is that correct?

20 A. Presumably.

21 Q. What, in your analysis, what part does
22 entrepreneurial risk play in relation to the financial
23 reward that an executive of a transit -- of a bus
24 company would yield?

25 THE WITNESS: Could you read that back,

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1 please.

2 JUDGE SCHAER: Please.

3 (Record read as requested.)

4 A. None for either.

5 BY MR. WILEY:

6 Q. Okay, do you feel then that entrepreneurial
7 risk is a criterion upon which compensation should be
8 awarded?

9 A. I just said it should not be.

10 Q. For private bus company providers?

11 A. Or municipal.

12 Q. Well, what kind of entrepreneurial risk do
13 municipal executives take on?

14 A. Risk leads to return, which is net income.
15 It has nothing to do with compensation for executives
16 for the work they provide.

17 Q. Well, that's your theory, but it may not be
18 an economic theory. And my question is really what part
19 entrepreneurial risk plays. You say none.

20 A. Yes.

21 Q. And then I say, well, my question to follow
22 up that answer was, well, if it has no relation, then
23 are you saying that the survey of public sector
24 executives is completely -- completely correlates to
25 compensation of private regulated companies?

00161

1 A. I think there is a correlation between
2 studying the compensation of executives of municipal
3 transit operations, what they pay their CEOs, and what
4 Mr. Asche pays himself.

5 Q. And you say that on criteria that you have
6 listed?

7 A. Yes.

8 Q. Correct?

9 A. Yes.

10 Q. Now you said that entrepreneurial risk, and
11 you said this in your rebuttal testimony,
12 entrepreneurial risk has no bearing or pertinence to
13 owner compensation. It only has relevance to return on
14 investment. Is that correct?

15 A. Or net income profit, yes.

16 Q. Can you clarify that in the context of this
17 proceeding, which I believe you are advocating be
18 regulated on an operating ratio as opposed to the
19 Lurito-Gallagher methodology?

20 A. That's where I said it relates to or profits.

21 Q. Okay. Well, isn't owner -- I'm just trying
22 to understand this premise of yours. Isn't owner
23 compensation an item of cost that at whatever level is
24 allowed into rates upon which the rate of -- the
25 operating ratio is regulated? I mean --

00162

1 A. That's absolutely true.

2 Q. Okay, well, then that's why I don't quite
3 understand your answer to the extent that owner
4 compensation is a portion of those rates that we are
5 regulating through the operating ratio methodology.

6 A. Owner compensation is included in the base of
7 expenses that are covered when fair, just, and
8 reasonable rates are set.

9 Q. And so the level of that owner compensation
10 becomes very relevant and very pertinent to the overall
11 operating ratio that is established through regulated
12 rates, correct?

13 A. Yes, but as it relates to risk, that is a
14 function of profits, not compensation to executives for
15 duties performed.

16 Q. Okay, let me ask you this way. Are you
17 saying that owner's compensation is set without regard
18 to any risk factor that the owner of the regulated
19 company assumes in owning and running the company?

20 A. That's true.

21 Q. Thus whether -- thus I assume based on that
22 testimony that you would not advocate use of a
23 Lurito-Gallagher methodology, which does regulate risk
24 to some extent or reward risk to some extent, correct?

25 A. It regulates risk when it sets the operating

00163

1 ratio that sets profits, not owner's allowance.

2 Q. But again, we're talking semantics here,
3 aren't we, Mr. Colbo?

4 A. I don't think we are.

5 Q. Okay.

6 A. I think there's a big difference between
7 owner's duties and the compensation he or she should get
8 for those duties and that amount that should be carried
9 forward and included in rates. There's a big difference
10 between that and risk, which is compensated for in
11 return and net income. It's not compensated for owner's
12 allowance for duties performed.

13 Q. So in other words, you would make absolutely
14 no adjustment for the owner's salary even if it's
15 dealing with debt, financing issues, et cetera, and the
16 management that is required to keep your head above
17 water as a regulated company; you would make no
18 adjustment in owner's allowance for the relative risk
19 and the management therefore of by the executive in
20 setting owner's allowance?

21 A. If you're negotiating loans, seeking
22 financing, that would be part of the activities that you
23 would provide as CEO, and there would be compensation
24 for that activity in the determination of your owner's
25 allowance.

00164

1 Q. Okay. So you would give some recognition --

2 A. Yes.

3 Q. -- to the dealing -- let me finish -- with
4 dealing with risk factors in establishing or in allowing
5 a dollar amount of owner's compensation for those
6 dealings, the risk, the equity, the financing, et
7 cetera?

8 A. If you're talking about running the operating
9 aspects of the business, yes. If you're talking about
10 setting up profits and return based on the risks of your
11 operation, it hasn't got anything to do with owner's
12 allowance.

13 Q. My question didn't go to that. It went to
14 owner's allowance and whether there is any premium of
15 quotient to the owner's allowance for dealing with risk
16 management issues and financing?

17 A. There is none.

18 Q. That's a different answer than you gave
19 formerly.

20 A. I don't know that that's true.

21 Q. Okay. Now if, in fact, you're not giving any
22 dollar amount allowance for as a CEO of a regulated
23 company for dealing with risk management issues and
24 equity financing or debt financing issues, are you
25 giving any quotient in dollars for owners allowance to

00165

1 cash flow management responsibilities?

2 A. It's the -- it's all of the CEO activities,
3 the mix of CEO activities, and are all taken into
4 account in the determination of what the proper owner's
5 allowance should be. They are factored in, and that's
6 the beauty of Ms. Doby's study of CEOs of municipal
7 entities. They do those. Those kinds of CEO people do
8 those kinds of activities or have people that do it, and
9 those factors are -- that's how we arrived at the
10 \$66,000 amount for owner's allowance.

11 Q. Well, you just wrapped up a lot of your
12 testimony real quickly in one answer, so I want to parse
13 it a little bit so I understand what you're saying. My
14 question said, do you give any allowance premium factor
15 to cash flow management. You said, yes. Then you said,
16 that's the beauty of the public sector survey, because
17 apparently those executives do those kind of issues.
18 They certainly don't do with risk, personal risk,
19 financial, personal financial risk, do they?

20 A. They are held accountable. Presumably the
21 board or whoever they report to expects them to make
22 operating performance targets. Presumably there's some
23 kind of accountability.

24 Q. Well, now you're confusing, aren't you, job
25 performance accountability with personal financial risk,

00166

1 which I'm saying for instance with this company,
2 everything that this individual presumably owns is at
3 stake based on the financial performance of the company.
4 And I'm asking you, in this type of company, isn't cash
5 flow management and risk management recognized as a
6 factor that will increase the owner's allowance? I
7 don't know what your answer is for that based on your
8 previous statement.

9 A. If Mr. Asche does cash flow management and
10 risk management as a part of his CEO activities, then
11 that would be included in the \$66,000 owner's allowance
12 that I have allowed for his compensation in this case.

13 Q. So you're saying that you did find that he
14 performed those duties and that he --

15 A. I'm not disputing what he said his duties
16 were.

17 Q. Well, you said earlier that our answer to
18 Number 19 led you to the \$66,000, and part of his duties
19 as described there, I believe, are day-to-day cash flow
20 management activities. So you're saying you did
21 recognize that and allowed that in the \$66,000
22 allowance?

23 A. Yes, I'm not disputing his duties.

24 Q. And did you add anything in that formula
25 based on the fact that his personal finances are

00167

1 completely at risk based on the financial performance of
2 this company?

3 A. No.

4 Q. And you would agree, would you not, that in
5 the public sector, the personal financial holdings of
6 the public sector executive are not at risk based on the
7 performance of his job. His job might ultimately be at
8 risk, but his personal financial fortunes are not
9 dependent on his job performance, are they?

10 A. No, but when you start -- but when you start
11 talking about risk of losing it all, that's not owner's
12 allowance; that's return.

13 Q. Okay, we're going to have to get into your
14 understandings of risk and return a little bit later,
15 but we'll hold that for later.

16 As far as the survey is concerned, you
17 understand -- you made the parallels between the public
18 sector and the private regulated sector. When you get
19 to your recommendation here, and we have talked about
20 risk and your distinctions therein, is it realistic to
21 expect an owner of a regulated bus company to accept the
22 considerable risk of operation for a revenue margin of
23 2.44%?

24 A. The 2.44% gives recognition to the five prior
25 years where the total return was significantly more than

00168

1 that.

2 Q. Well, again, you haven't answered my
3 question, Mr. Colbo.

4 A. Okay, ask the question again.

5 Q. Is it realistic to expect an owner of a
6 regulated bus company to accept the considerable risk of
7 operations for a total return or revenue margin of
8 2.44%?

9 A. Yes, when taken in the context of the statute
10 that says, when setting the rates, the Commission is to
11 take notice of the fact if there have been overearnings
12 in the prior five years.

13 Q. Okay, so I understand your answer to be, yes,
14 if you interpret the statute that you cite in the
15 fashion that you interpreted it?

16 A. Yes.

17 Q. You acknowledged that there was no precedent
18 for your interpretation of that statute, didn't you?

19 A. I'm not aware of it being applied anywhere
20 else before. I'm not aware of these kinds of excess
21 earnings before either in the regulated bus companies.

22 Q. Now let's back up on that statement. Are you
23 saying that you have surveyed all past and present
24 companies and can state unequivocally that no regulated
25 auto transportation company has earned at an operating

00169

1 ratio of 82%, for instance? Have you made that review
2 to back that broad statement up?

3 A. In any of the cases that I worked on, I have
4 not run across these kinds of bonuses paid for the
5 executive of a bus company.

6 Q. That isn't my question. My question is, have
7 you reviewed all auto transportation companies' results
8 of operations to confirm that no other bus company has
9 achieved an operating ratio, not an owner's return, but
10 an operating ratio of 82%, approximately 82%? Have you
11 personally made that investigation of all companies, or
12 have you only made conclusions based on rate filings
13 that you have worked on?

14 A. I am not -- I haven't made a personal review
15 of that, but --

16 Q. That's not my question.

17 A. -- I have never even heard of anything
18 approximating that.

19 Q. But you haven't done the research to confirm
20 that?

21 A. No.

22 Q. Did any of your surveys that you either
23 delegated to Ms. Dobyms or you personally compiled, did
24 any of those surveys look at salaries of trucking
25 company executives prior to deregulation, and by that I

00170

1 mean privately owned regulated trucking companies prior
2 to deregulation?

3 A. I just looked at bus companies or entities.

4 Q. Do you know whether the Commission's archives
5 would have annual reports from regulated closely held
6 trucking companies that would include information on
7 owner compensation and operating ratios?

8 A. I think we have in the files old annual
9 reports of truck companies. Whether they're closely
10 held or whether their owner's allowance is separately
11 stated on a line item where it can be specifically
12 identified, I don't know.

13 Q. And you didn't research that to determine
14 whether closely held regulated intrastate trucking
15 companies prior to 1995 would have reported operating
16 ratios and owner's compensation at comparable levels
17 than we have with this company in the present
18 proceeding?

19 A. I don't know.

20 Q. Do you think that would have been as relevant
21 as the public sector survey?

22 A. No, I don't. Motor carriers are motor
23 carriers, buses are buses.

24 Q. But the fact that they are privately held and
25 regulated by this Commission and are a transportation

00171

1 company wasn't relevant to you, wouldn't be relevant to
2 you I should say?

3 A. Well, in both cases, why -- when we were
4 regulating motor carriers, we had the same goals of
5 setting fair, just, and reasonable rates. So in that
6 context, it would have been part of the job to review
7 owner's salary.

8 Q. But you didn't go back and do that now?

9 A. No.

10 MR. WILEY: This would be a good point to
11 break, Your Honor. We're going to finish this
12 afternoon, I promise.

13 JUDGE SCHAER: Well, when you say we're going
14 to finish, are you talking about you're going to
15 finish or --

16 MR. WILEY: Oh, excuse me.

17 JUDGE SCHAER: -- so there's going to be your
18 questions and then questions from the Bench and then
19 redirect? Because I'm not very optimistic about
20 finishing with this witness today, Mr. Wiley.

21 MR. WILEY: Do you want to continue then?
22 It's up to you.

23 JUDGE SCHAER: How much more do you have?

24 MR. WILEY: I would say another hour.

25 JUDGE SCHAER: Okay, then I think probably

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1 this would be a good time to take our afternoon recess.

2 MR. WILEY: Okay.

3 JUDGE SCHAER: I would encourage you to try
4 to ask a question once to the extent you can try to keep
5 things moving.

6 MR. WILEY: If the witness cooperates, I
7 will.

8 JUDGE SCHAER: So let's take our afternoon
9 recess and be back at 3:15. We're off the record.

10 (Brief recess.)

11 JUDGE SCHAER: Let's be back on the record
12 after our afternoon recess. While we were off the
13 record, Mr. Wiley had a document distributed which I
14 have marked for identification as Exhibit 23. I
15 understand that this is a work paper regarding an
16 affiliate rent adjustment.

17 Go ahead, Mr. Wiley.

18 BY MR. WILEY:

19 Q. Mr. Colbo, this morning you talked a little
20 bit about the affiliated rents adjustment to the
21 response to Bench Request 6 and your adjustment and the
22 dollar amount there. At page 20 of Exhibit 1, you
23 reference in your testimony earlier Staff rate
24 adjustments on affiliated rents for this company and
25 note that you have not found an affiliated interest

00173

1 application for lease approval. Have you ever asked the
2 company to submit the lease for approval?

3 A. No, I searched the Commission records and
4 couldn't find it.

5 Q. You wouldn't have any objection to our
6 submitting the lease in this proceeding for ultimate
7 approval by the Commission if that is, in fact, the case
8 that the lease hasn't been submitted, would you?

9 A. I would have no objection.

10 Q. Do you know why -- do you know if that issue
11 was ever raised by Staff previously as to where is your
12 affiliated interest lease approval?

13 A. I don't believe it was raised.

14 Q. Okay. Can you please explain the basis for
15 your adjustment at line 45 of I believe it's RC-6. I
16 had a question designed before we got the revision, so
17 we better check it. Yeah, it's still line 45 of RC-6,
18 of \$22,930, reducing the rent actually paid by
19 Bremerton-Kitsap from \$60,000 to \$37,000 odd dollars?

20 A. Yes, that's what I do in my pro forma Exhibit
21 6, and the support for the \$37,000 amount is Exhibit 23.

22 MR. WILEY: And that is for identification,
23 Your Honor, I would now move for its admission.

24 JUDGE SCHAEER: Any objection?

25 MR. THOMPSON: No objection.

00174

1 JUDGE SCHAER: That document is admitted.
2 Go ahead, Mr. Wiley.

3 BY MR. WILEY:

4 Q. Mr. Colbo, I understand your testimony is
5 that the basis for your adjustment is now shown on
6 Exhibit 23; is that correct?

7 A. Yes.

8 Q. And that will answer once we get through it,
9 and I hope we don't have to go through it item by item,
10 but that basically gets us to the adjustment in line 45
11 of RC-6, correct?

12 A. Yes.

13 Q. Okay. Can you tell me why, you know, what
14 formula or what policy motivated your adjustment of
15 affiliated rents on line 45?

16 A. The Commission has an affiliated interest
17 statute that requires the Staff to review affiliated
18 transactions to make sure that the transaction is fair
19 and reasonable and objective.

20 Q. So you're referring to RCW 81.16 et sec and
21 your provision of the statute in answer to Data Request
22 Number 1 from Bremerton-Kitsap Airporter, correct?

23 A. I will take your word for that.

24 Q. And if I'm incorrect about that number, you
25 do recall providing the statute in response?

00175

1 A. Yes.

2 Q. So is it correct then that it's your
3 interpretation of the statute that you reduce the
4 affiliated rents to I believe you termed it cost plus
5 improvements?

6 A. Cost plus return.

7 Q. Okay. Could you please define cost plus
8 return, please?

9 A. Yes, costs are the expenses that you actually
10 incur. In addition to that, you're entitled to pay any
11 interest associated with the investment and return on
12 the net depreciated investment as well.

13 Q. And is that the return formula, which is what
14 I don't understand in terms of your quantification of
15 that, is that shown on Exhibit 23?

16 A. Yes.

17 Q. Okay, could you just point to it? You don't
18 need to belabor it.

19 A. Yes, the interest portion of the return is
20 the \$6,545 in interest expense.

21 Q. Could you point out where that -- I'm just
22 not -- oh, here it is.

23 A. Okay.

24 Q. Interest expense per Data Request Number 9 is
25 in the center of the middle column?

00176

1 A. Yes.

2 Q. Okay.

3 A. And the return on the equity portion is the
4 \$20,142 three or four lines below that.

5 Q. And where did you come up with the 15%?

6 A. Oh, it was just an estimate of what I thought
7 might be reasonable.

8 Q. Again, it's not standard to the auto
9 transportation industry or to Staff policy, it's just
10 what you used in this instance; is that --

11 A. That's correct.

12 Q. And so that gets us to the \$37,000, that and
13 a couple other entries there get us to that figure?

14 A. Yes, the expense, the interest cost, and the
15 return, those, the total of those three things comprise
16 the total amount of allowance for rent.

17 Q. And I don't mean to belabor this, but I want
18 to understand as we move on. Your interpretation of the
19 affiliated interest statute is that for an affiliated
20 rent expense, you apply the statute by calculating the
21 cost, the original cost, and adding a return and making
22 an adjustment to the actual rent paid based on that
23 calculation?

24 A. Yes.

25 Q. And again, that goes from your interpretation

00177

1 of the law?

2 A. Yes, and it gives recognition to the order
3 that the Commission issued in Cause Number UT-950200,
4 which is how they arrived at an affiliated transaction
5 for that case.

6 Q. And that was a utility case in 1995?

7 A. Yes.

8 Q. And you provided that in answer to a data
9 request?

10 A. I'm not sure that I did.

11 Q. What's the caption for that?

12 A. It's UT-950200.

13 Q. And who was the regulated company?

14 A. I'm not sure. It might have been a telephone
15 company. I think that's what the T stands for.

16 Q. And I'm sure your counsel can provide us a
17 more complete citation.

18 A. I can do that too if you want.

19 Q. Not now, but thank you. I will get that from
20 you later.

21 You say in your rebuttal testimony on this
22 issue at lines 9 through 13 of Exhibit 17, with regard
23 to the affiliated rent and the payment thereof by BKA to
24 Mr. Asche --

25 A. Can you let me catch up with you, Mr. Wiley?

00178

1 Q. Absolutely.

2 A. Where are we at?

3 Q. We're at lines 9 through 13 at page 8 of your
4 rebuttal testimony. And if I start moving too fast for
5 you, let me know. I'm just trying to save time.

6 JUDGE SCHAER: Mr. Wiley, I have had it
7 pointed out to me by counsel in other cases that it's
8 more helpful if you give the page number first and then
9 the line numbers.

10 Q. Is that easier for you?

11 A. I'm there.

12 Q. Okay, thanks.

13 MR. THOMPSON: I didn't get there.

14 MR. WILEY: I believe it's lines 9 through 13
15 at page 8 of the rebuttal testimony. Now I've got to
16 check it myself. Yes.

17 BY MR. WILEY:

18 Q. It begins:

19 Particularly in light of the fact that
20 the company has no debt, it would
21 clearly have lowered the company's
22 expenses to have purchased the property
23 itself rather than leasing from
24 Mr. Asche at well above his costs. It
25 was imprudent for the company to enter

00179

1 into this lease when it could have
2 purchased the building itself.

3 Again, I want to get back to some of the
4 issue we talked about this morning. In this type of
5 circumstance, keying off that statement that I just
6 quoted, if a shareholder of a regulated company has an
7 investment opportunity and that opportunity provides
8 personal income tax benefits, is it your view that it
9 should only -- that the shareholder of the regulated
10 company should only consider the rate making consequence
11 and not consider any beneficial personal income tax
12 consequence with regard to who makes the investment, the
13 company or the individual?

14 A. Well, if the entrepreneur wants to make the
15 investment, he can make the investment and lease it to
16 someone else, not necessarily the bus company. And he
17 can make -- and he can have whatever tax advantages flow
18 from that.

19 Q. But if he leases it to his own regulated
20 company, it will suffer the consequence in terms of a
21 rate making adjustment to cost plus return rather than
22 fair market value?

23 A. That's true.

24 Q. Okay. And if -- are you saying that
25 consistently if a shareholder considers the income tax

00180

1 consequences and makes the decision based on the impact
2 of the income tax consequence, it will necessarily
3 suffer a rate making consequence in seeing the
4 affiliated rent reduction that you accomplished here?

5 A. Yes.

6 Q. Okay. Do you feel that there's any rock and
7 a hard place irony to the owner of the regulated company
8 through this process?

9 A. Well, yes.

10 Q. Okay. And if this company, if
11 Bremerton-Kitsap Airporter had rented the terminal in
12 Port Orchard from a third party and not its owner, based
13 on the information you have, would there have been any
14 reduction whatsoever in the rent Bremerton-Kitsap
15 Airporter paid to the property owner?

16 A. Not if it was in place.

17 Q. So the \$60,000 would have been allowed in
18 rates?

19 A. If that was arrived at in an arm's length
20 transaction between the lessee and the lessor, that
21 would have been what we would have allowed.

22 Q. And based on the appraisal that you saw
23 submitted with the testimony of Mr. Asche, do you have
24 any reason to doubt that the rental payment of \$60,000
25 is an arm's length amount?

00181

1 A. No.

2 Q. Page 33 of Exhibit 1, you talk about
3 precedent for circumstances involving transportation
4 companies and rollbacks of rates, and this was in
5 response to some data requests originally, wasn't it,
6 Mr. Colbo?

7 A. Yes, I believe it was.

8 Q. And you cite, I think you were asked
9 originally, give us any examples of situations where
10 there was a rate filing by a transportation company and
11 a -- converted into a complaint or maintenance of a
12 complaint in that proceeding by the Staff; remember
13 that?

14 A. I hate to interrupt, Mr. Wiley, but I didn't
15 catch your reference to what page.

16 Q. Oh, I believe it's at page 33 of Exhibit 1.

17 A. Could you show me what line number?

18 Q. Okay, I'm sorry. I think it's at lines, you
19 cite some examples at lines 33 and 34.

20 A. Of page 33?

21 Q. Excuse me, not lines, page 33 and 34, yeah,
22 that's where you begin, the question is:

23 What Commission precedents are there in
24 situations such as this when a company
25 initially asks for an increase but the

00182

1 Staff investigation indicates a need for
2 a decrease?

3 And you go on to give some examples, correct?

4 A. Yes.

5 Q. And the examples you give, and I want to
6 characterize them quickly and see if this is fair, the
7 first one is the deferred recycling commodity credit for
8 recycling for solid waste providers.

9 A. Yes.

10 Q. The second one beginning on line 6 at page 35
11 is the tip fee war in Whatcom County when we had
12 competing disposal sites. And the third one is the
13 Shuttle Express fuel surcharge, correct?

14 A. Yes.

15 Q. And those are the two examples, the three
16 examples, excuse me, that you cite where somebody goes
17 in for -- a transportation company that's regulated by
18 the Commission goes in for an increase and suffers a
19 rate rollback, correct?

20 A. Yes.

21 Q. Now the examples you use, for instance the
22 deferred commodity recycling adjustment, that really
23 doesn't have anything to do with the circumstances here
24 of a general rate increase and a rollback. I mean it
25 just deals with a fluctuating secondary market, correct?

00183

1 A. I'm looking for my Exhibit 16, Mr. Wiley.

2 Q. Exhibit 16, I don't know what that is. Okay,
3 is that your case decisions, yeah. RC-16, Exhibit 16?

4 A. Oh, wait a minute. Oh, no, that's not --

5 Q. Those are telephone company --

6 A. Excuse me, I'm looking for something I can't
7 find.

8 Q. Well, I'm really only keying off your
9 testimony, and if you want to supplement it with
10 exhibits, you're free to do that, but I'm just testing
11 your comparison here.

12 A. Okay, I'm with you now.

13 Q. Okay. I'm just -- your testimony at RC -- at
14 Exhibit 1 where you talk about circumstances where
15 transportation, regulated transportation companies
16 suffered rate rollbacks.

17 A. Yes.

18 Q. And you cite to the deferred accounting
19 mechanism, and then my question to you where you wanted
20 to go look was, that really wasn't a general rate
21 decrease, it was a -- it was a mechanism instituted to
22 reflect in rates the fluctuating secondary market for
23 recycleables, correct?

24 A. Yes, after it became aware to us that the
25 market commodity values had spiked pretty dramatically

00184

1 and yet we weren't seeing any filings coming in from the
2 companies seeking lower recycle rates.

3 Q. I think you answered my question in a way,
4 yes?

5 A. Okay.

6 Q. Okay. Now number -- the second example you
7 use is a tip fee war in Whatcom County in 1997. Wasn't
8 that also a mechanism that the Commission instituted,
9 the Commission Staff instituted, to reflect the
10 fluctuation of disposal fees in the Whatcom County
11 haulers regulated rates?

12 A. Yes.

13 Q. It wasn't a circumstance of general rate
14 decrease in a rate proceeding brought by the company,
15 correct, in a rate increase proceeding brought by the
16 regulated transportation company?

17 A. No.

18 Q. Okay.

19 A. I'm not exactly sure. I don't think it was.

20 Q. Would you accept my representation subject to
21 check that that's what it entailed?

22 A. Yes.

23 Q. Okay. And finally, the example of Shuttle
24 Express and its 1999 fuel surcharge, that occasion of
25 rate rollback was entirely predicated by the unilateral

00185

1 action by the carrier in misstating a fuel expense,
2 wasn't it?

3 A. Yes.

4 Q. That had nothing to do with a general rate
5 increase sought by the company that the Staff then
6 sought to roll back the rates on?

7 A. Yes.

8 Q. Okay. Until the present case involving
9 Bremerton-Kitsap Airporter, there hasn't been any
10 circumstance, has there, despite these three references
11 in your testimony, to a complaint against a regulated
12 transportation company in which it sought to roll back
13 underlying or core rates as opposed to rates that are
14 affected by external forces such as secondary markets or
15 disposal site prices or fuel prices, correct?

16 A. Yes.

17 Q. Let's go on to the adjustment on RC-6 for
18 legal and accounting expense, something somewhat near
19 and dear to the hearts of some of the people at the
20 table. That is found -- and let's also reference it on
21 your response to Bench Request Number 6 so we can all be
22 on the same page. The adjustment is a restating
23 adjustment, excuse me, it's a pro forma adjustment,
24 isn't it?

25 A. It's a Mr. Burton pro forma adjustment.

00186

1 Q. It's a Burton pro forma adjustment that you
2 don't make.

3 A. That's it.

4 Q. Is that how -- is that a correct --

5 A. You got it.

6 Q. Okay. And Mr. Burton in a number to be
7 better refined and quantified throughout this proceeding
8 had calculated \$100,000, none of which you allow in the
9 form of a pro forma adjustment; is that correct?

10 A. That's correct.

11 Q. So we can't really find it on RC-6 is your
12 answer, because you didn't make it?

13 A. You're right.

14 Q. Okay. On your direct and rebuttal testimony,
15 you opine, do you not, that legal and accounting
16 expenses relating and related to this proceeding should
17 not be allowed in rates, correct?

18 A. Yes.

19 Q. Isn't it true that the normal practice at the
20 Commission is to allow in rates reasonable legal and
21 accounting costs incurred by a regulated company in a
22 rate case?

23 A. In normal circumstances, yes.

24 Q. Do you also understand from Mr. Burton's
25 testimony, which you have read, correct?

00187

1 A. Yes.

2 Q. Do you also understand from his testimony
3 that no recovery of legal and accounting costs is sought
4 by this company from -- until the point at which this
5 proceeding changed from a -- or shall I say until the
6 point at which it sought to withdraw its rate increase
7 proposal?

8 A. I understand that's what he said, yes.

9 Q. And do you not find that more reasonable?

10 A. Yes.

11 Q. Okay. Why is the recovery of defensive legal
12 and accounting costs in this proceeding unreasonable in
13 your view, please?

14 A. Several reasons. The five prior years of
15 overearnings, the listing of prior filings of this
16 company where routinely they have been withdrawn or
17 denied except for in 1991. I just think it's a waste of
18 everybody's time to -- I think this case should never
19 have been filed in the first place. There was no
20 revenue requirement. I think the whole thing was --
21 there has been overearnings, I think the company can
22 absorb whatever legal expenses there are.

23 Q. Well, there might be some agreement that the
24 case might not originally have been filed. But my
25 question went to why in this specific case in the

00188

1 posture it's in now, which is a defensive posture from
2 the regulated company's standpoint, why you would
3 believe that its legal and accounting costs shouldn't be
4 allowed?

5 A. Well, I think I will repeat the answer I gave
6 before, and the other thing is I think it's highly
7 improper to include the full \$100,000 in the base upon
8 which present or permanent rates would be set.

9 Q. You did say that, and I will ask you about
10 that.

11 A. Under the pretext that presumably we're going
12 to be here next year litigating all this all over again,
13 and there will be another \$100,000. I don't think
14 that's very realistic.

15 Q. I guess just my follow-up to that then is,
16 but you normally do allow legal and accounting costs for
17 rate cases, so wouldn't that assumption about being back
18 here pertain to any other company as well?

19 A. In both cases, if the Commission decides to
20 allow something, it would be my view that that should be
21 amortized over a number of years and not included in the
22 basis upon which permanent rates would be set now.

23 Q. Okay. So I understand your answer to be,
24 yes, if that would apply to other companies, and you
25 don't believe that this amount should be allowed in over

00189

1 a 12 month period, but over a longer period of time in a
2 pro forma adjustment?

3 A. That's correct, and I want to reiterate that
4 I don't think this is normal circumstances for this
5 company and their history of rate applications.

6 Q. So then you do acknowledge that part of the
7 reason you are denying or want -- seek to deny any
8 allowance for legal and accounting costs in this case is
9 because of the five year past history of what you term
10 overearning, correct?

11 A. That's correct.

12 Q. Is it also your view that if the Commission
13 allows -- seeks to allow legal and accounting costs as a
14 pro forma adjustment, it should not be granted for less
15 than a three year amortized period? I guess I can ask
16 the question this way. What is your position about
17 three versus five versus current year?

18 A. Well, I think my testimony says that under
19 normal circumstances, the policy would be to do it over
20 three years. But because of the circumstances with this
21 case, if the Commission does decide to allow it, they
22 should amortize it over five years.

23 Q. And is that five year judgment that you're
24 rendering, because you have said that you don't want to
25 allow any because of the five year overearning, but

00190

1 taking that statement a bit differently, is the five
2 years to be consistent with the five past years, the
3 five prospective years, for allowing legal and
4 accounting costs to match up with your perceived five
5 years of overearning?

6 A. That's just a circumstance, no.

7 Q. Okay. Can you cite to any other contested
8 transportation rate proceeding where before the hearing
9 took place you advocated complete disallowance of a
10 company's legal and accounting costs?

11 A. I can make reference to a waste management
12 case, a formal solid waste case, where waste management
13 incurred hundreds of thousands of dollars of legal
14 expense, and in the Commission order in that case, which
15 was one of the generic solid waste cases, and I don't
16 have the cite, but --

17 Q. I know the case.

18 A. The Commission scaled back extensively the
19 extent of those legal expenses and amortized them over a
20 period of years.

21 Q. I believe you're talking about the 1991
22 recycling commodity adjustment case where they modified
23 the Lurito-Gallagher for recycling purposes, and I
24 understand that citation. But my question went to
25 whether you -- whether there was any other case where

00191

1 you as the Staff before the hearing had advocated
2 complete disallowance of the company's legal and
3 accounting costs?

4 A. I'm not aware of any before the hearing.

5 Q. You also talk at the end of your testimony in
6 Exhibit 1, towards the end of your testimony, you talk
7 about this concept that we have talked a lot about in
8 our testimony about the 97% operating ratio. You
9 acknowledge, do you not, that that is totally
10 unprecedented in terms of Commission orders and
11 Commission policy on the operating ratio regulation of
12 auto transportation?

13 A. I'm not aware of any operating ratio that
14 high for an auto transportation company.

15 Q. So the answer is yes?

16 A. Yes.

17 Q. Thank you. And I want to understand, your
18 basis, the complete basis for you advocating such an
19 extraordinarily high operating ratio in this proceeding
20 is based on your observation and your premise that this
21 company has overearned for the last five years?

22 A. Yes.

23 Q. At Exhibit 1, page 31, and I will get you the
24 line, sorry I didn't provide the line, on line 5, you
25 acknowledge that that high an unconventional and

00192

1 operating ratio in your own words is to some extent
2 "retroactive rate making", correct?

3 A. Yes, followed by the rest of that sentence.

4 Q. Let me -- I understand. Isn't it true that
5 without your view that the company had earned excess
6 revenues over the past, you would never have advocated
7 the 97% operating ratio, and you would never have
8 acknowledged that you're retroactively rate making in
9 your proposal?

10 A. I didn't hear the first few words.

11 Q. Isn't it true that had it not been for your
12 view that the company had overearned for the past five
13 years and had, in effect, to some extent is the term you
14 used, that you were to some extent retroactively rate
15 making, you never would advocate anything but a 93%
16 operating ratio?

17 A. That's true.

18 Q. And by doing that, aren't you in effect
19 taking away from future revenues and reducing rates,
20 taking away from future revenues based on historic
21 operating experience?

22 A. Yes, for the next three years.

23 Q. And do I understand correctly that you
24 believe that despite the retroactive effect that you at
25 least have partially acknowledged of this

00193

1 recommendation, that you find justification for the
2 rollback of present rates based on past operating
3 practices to be authorized by RCW 81.04.360?

4 A. That's correct, and it's not retroactive in
5 the sense that prior customers are going to -- will be
6 given refund checks. It's that rates in the future will
7 be lower than they otherwise would have been.

8 Q. I couldn't hear you, I'm sorry, I was
9 listening hard, but --

10 A. I just further clarified to say that I don't
11 mean retroactive in the sense of tracking down prior
12 patrons and giving them refunds for ticket prices.

13 Q. And you make that clear in your testimony,
14 correct?

15 A. Yes.

16 Q. And one of the -- I'm trying to kind of tie
17 this to your further statement on page 31 in lines 5
18 through 12. Is it correct that when you say that the
19 company, at line 12, where you say that the company has
20 paid grossly excessive salaries to its CEO and did --
21 and reaped a windfall, you say, and didn't reinvest for
22 the benefit of customers or consumers, you don't deny
23 the fact that \$168,000 or thereabouts per year of the
24 company's profits have been used to reinvest in
25 operating equipment for the benefit of customers, do

00194

1 you? I mean do you deny that that's been done?

2 A. I think it's been done, but I think it's been
3 done from internally generated funds.

4 Q. Can you clarify that? Do you mean by --
5 hasn't that been generated from the cash flow of the
6 company?

7 A. Yes.

8 Q. Okay. And isn't that reinvestment at least
9 in part for the benefit of customers?

10 A. Yes.

11 Q. Okay.

12 A. And also to the benefit of shareholders.

13 Q. And doesn't that cycle of investment in the
14 company equipment involve the use of company profits not
15 purely for the largess or the benefit of the owner, but
16 for improvement of the plant and equipment?

17 A. For both, yes.

18 Q. Okay. You also talk about, at near the
19 conclusion of your testimony, about a special reserve
20 account. It begins at page 36 of Exhibit 1 where you're
21 setting forth some of your sort of the concluding
22 flourish of recommendations for your testimony.

23 A. I like your terms.

24 Q. Thank you. In that testimony, you advocate
25 establishing a, quote, credit account or special reserve

00195

1 account for this company, correct?

2 A. Yes.

3 Q. Could you please describe in far more detail
4 than you have thus far in your testimony to date what
5 concept you have for the special reserve account? What
6 is it, you know, where would it exist, who would
7 administer it? Give us some detail on this.

8 A. I tried to provide that detail in my rebuttal
9 testimony.

10 Q. It was too limited in my opinion. You didn't
11 answer questions like where would it exist, who would
12 administer it.

13 A. Okay, if you want to hit me with those
14 questions one at a time, go for it.

15 Q. Where would the fund exist?

16 A. At a bank.

17 Q. At any bank?

18 A. Yes.

19 Q. One selected by the company?

20 A. Yes.

21 Q. Who would administer the fund?

22 A. The company.

23 Q. How would funds be directed into this
24 account?

25 A. If the company earned in excess of a 97%

00196

1 operating ratio for any calendar year, those surplus
2 earnings would be put into the account.

3 Q. How would that practically be accomplished?

4 A. Write a check.

5 Q. And how would we measure when that point is
6 achieved? Would it be the month following the end of
7 the calendar year? I mean can you give me --

8 A. Sure, that sounds good.

9 Q. Well, it sounds just by your rather facile
10 answer that you think this is an easy squeezy idea --

11 A. No, I --

12 Q. -- and we're serious in asking you to flesh
13 it out for us.

14 A. Okay, I didn't mean to imply that. After the
15 books are closed and the income is finalized for the
16 year, there's a net income number. To the extent that
17 operating expenses divided by operating revenues exceeds
18 or is less than 97%, those extra dollars would be put
19 into the fund.

20 Q. Well, now wait a minute, isn't it 97.56% by
21 your revised testimony?

22 A. No, 97% is the target. The 97.5 results from
23 the fact that I used rounded to the nearest quarter.

24 Q. Okay, so it's --

25 A. The target is 97.

00197

1 Q. So anything above or below --

2 A. Below.

3 Q. -- 97?

4 A. Yeah.

5 Q. Would trigger this account being activated?

6 A. Yes, and adjusted annually.

7 Q. And funds would be withdrawn how, by the
8 company? You said write a check?

9 A. Mm-hm.

10 Q. And it would -- then it would go -- it would
11 go from the business operating account, the conventional
12 one, to this special account?

13 A. In the bank.

14 Q. And the company would write the check. And
15 would it be based on financial results that are audited
16 or that the company itself prepares or that you provide?

17 A. It would be company results of operations.
18 The only stipulation would be that owner's allowance as
19 booked by the company would have to be at that level
20 approved by this Commission in this case for proper
21 operating allowance, owner allowance.

22 Q. So other than that line item of expense
23 allowed into the rate base, there could be variation
24 that the company as the Commission has said in some
25 orders could squeeze as much profit out of its revenue

00198

1 requirement level that it was allowed as possible, but
2 anything -- nothing over \$66,000 could be paid to the
3 owner of this business?

4 A. I didn't say \$66,000. I said whatever number
5 the Commission finally comes up with in its order in
6 this case.

7 Q. I guess my question assumed that the
8 Commission had adopted your allowance.

9 A. Thank you.

10 Q. And it was \$66,000, and my question about the
11 interworkings of this account is, other than that line
12 item of allowed expense in the rate base, anything else
13 could, you know, be more efficient and not trigger a
14 lid; is that correct?

15 A. I think I agree with what you're saying, but
16 I'm not sure, Mr. Wiley. Let me give you these
17 additional circumstances. In the derivation of that
18 97%, I have moved the fuel tax credit above the line and
19 included it and called it an operating expense.

20 Q. Are you referring to an exhibit right now?

21 A. Yes, I'm referring to Exhibit 15, page 1,
22 line 54, column G.

23 Q. Okay, hold on, going too fast.

24 JUDGE SCHAER: But in the right order.

25 Q. Column G.

00199

1 A. Line 51, or line 54, the 97.1, rounded it's
2 97. That's the source of the 97 operating ratio.

3 Q. So are you saying that Exhibit 15 is the
4 predicate upon which your special reserve account is
5 based?

6 A. I'm saying that would be a good basis to
7 proceed, yes.

8 Q. Okay. So other than the owner's allowance
9 that you put an absolute lid on at \$66,000?

10 A. Yes.

11 Q. Assuming your allowance is approved by the
12 Commission?

13 A. Yes.

14 Q. No other line item of expense would be
15 limited in that fashion, correct?

16 A. Correct.

17 Q. Okay. Now so you were saying what kind of
18 review would be required to trigger this. In other
19 words, is it audited financials, is it financials that
20 the Commission approves, is it financials that the
21 company submits; how would you get to that threshold?

22 A. The inputs into the calculations would be the
23 financial results of the company as supplied by their
24 accountant.

25 Q. Okay. So it would be reviewed at a minimum,

00200

1 didn't have to be audited, but it would be reviewed by
2 the company; is that correct?

3 A. Yeah.

4 Q. Company accountant?

5 A. It would be -- it would be calculated and
6 prepared by him.

7 Q. Okay. And based on that, the trigger at the
8 reserve account would occur at the bank?

9 A. The trigger would occur if the resulting
10 operating ratio was less than 97%.

11 Q. That's what I'm assuming by my question.

12 A. And if it did, then the company would have to
13 make a deposit into the account at the bank.

14 Q. And that's where they "write a check"?

15 A. Yes.

16 Q. Now you say that this fund would be used to
17 lower rates.

18 A. Yes.

19 Q. Can you tell me how that would work?

20 A. Yes. At the time that the company proposed a
21 rate increase, they made a filing, the Staff would
22 conduct its normal review, and if there was a revenue
23 requirement developed that was positive, the balance in
24 that account would offset the revenue requirement as
25 determined from the Staff audit.

00201

1 Q. But what if there was no rate -- let's say
2 the company proceeded -- achieved, because of its
3 efficiencies, an operating ratio below 97%, it
4 determined certainly based on the tenor of this
5 proceeding that it wasn't going to file a rate increase,
6 how would the Staff approach the adjustment of rates
7 based on the special reserve account?

8 A. Well, if there was no rate filing, the money
9 would just be in the account.

10 Q. Well, then what would happen at the end of
11 the three year life that you expect for this fund?
12 Would it go back to the owner?

13 A. Give me a minute. I don't have an immediate
14 answer for you on that.

15 Q. Well, wouldn't you acknowledge, and that's
16 why I think you seem somewhat surprised that we're
17 troubled by this concept, but wouldn't you acknowledge
18 that that's one of the basic mechanics of its operation
19 that has to be addressed?

20 A. I would say that if the company didn't file,
21 apparently then they didn't earn below a 97 operating
22 ratio for three years and --

23 Q. No, my question assumes just the contrary.
24 My question assumes that it was efficient, as it has
25 historically been, it achieved an operating ratio below

00202

1 97%, it didn't touch the owner's allowance that you
2 allowed at the \$66,000 level, and it didn't go in for a
3 rate increase or rate adjustment, what happens to the
4 money?

5 A. I would suggest returning it in the form of
6 lower rates for some period in the future.

7 Q. Well, how would that mechanism work? Are you
8 saying that you would file another complaint case as the
9 Staff and force the company to lower rates? You're not
10 saying that refund it to customers obviously?

11 A. No.

12 Q. Because the logistics of that would be
13 impossible, would they not?

14 A. No, but it would -- it would be used to lower
15 fares of future rate customers. And if it was -- if it
16 was set up and specified in the order in this case, then
17 it would happen at the order of the Commission.

18 Q. Okay. But I guess you're saying that that's
19 an issue that hasn't been resolved?

20 A. Yes.

21 Q. And my question though to you is, at the
22 present time based on your testimony about this special
23 reserve account, what would you suggest about the -- at
24 the end of the third year period when there's excess
25 revenues accumulated, there's no rate case filed, and

00203

1 there's some pot of money that is hanging out there in
2 suspense?

3 A. Well, I just -- I thought I just said that
4 upon further reflection, it should probably be used to
5 lower existing rates for a period of time.

6 Q. And my question was following that answer,
7 how would that be done, through a complaint?

8 A. Presumably if the -- if this idea was
9 accepted by the Commission in this case and it was put
10 in the order of the Commission, the company would comply
11 with the order if there was money in that account at the
12 end of three years.

13 Q. Okay, but I'm asking you what element --
14 you're on the Staff, you can tell me what recommendation
15 you would make to the Commission about how that money
16 would be remitted in the form of lower rates, and my
17 question is, would the Staff file a complaint to
18 accomplish that?

19 A. If that's what it took.

20 Q. And who would pay the taxes on the excess
21 revenues that are generated below the 97% operating
22 ratio threshold?

23 A. Income taxes?

24 Q. Yeah.

25 A. The company.

00204

1 Q. And would the rate payers be expected to
2 contribute to that in any event, to that excess fund
3 tax?

4 A. No.

5 Q. Okay. And has this concept of special
6 reserve account ever been tried before for auto
7 transportation companies?

8 A. No.

9 Q. Has it ever been tried before for a regulated
10 transportation company that you're aware of?

11 A. No.

12 Q. Has it been tried ever before at the
13 Commission that you're aware of?

14 A. No.

15 Q. Can you, based on that observation, can you
16 understand that there's concern about the details of the
17 implementation and operation of this account?

18 A. Yes, I can, and I would only reiterate that
19 it flows from our belief that there have been
20 significant overearnings in prior years, and something
21 should be done about that in a determination in the
22 present case.

23 Q. So you're saying then that a trial balloon
24 like that should be attempted even if presently we don't
25 understand how it would work?

00205

1 A. I'm sure, yes, I'm sure the details would be
2 worked out.

3 Q. And is there any Staff policy that you're
4 aware of or Commission order that authorizes the
5 establishment of such an account under certain specified
6 circumstances?

7 A. In the past?

8 Q. Yes.

9 A. I'm not aware of any.

10 Q. Is there a present policy or one developed
11 for this?

12 A. No, other than what's presented in my
13 testimony.

14 MR. WILEY: One minute, Your Honor?

15 JUDGE SCHAER: Certainly.

16 (Discussion off the record.)

17 BY MR. WILEY:

18 Q. Mr. Colbo, in response to a data request from
19 the company, you indicated that the Commission -- you
20 had not identified any complaint by any customer
21 consumer about the present rate levels of
22 Bremerton-Kitsap Airporter, Inc.; do you recall that
23 response?

24 A. Yes, I do.

25 Q. And since you filed that response, are you

00206

1 aware of any complaint filed by a customer or consumer
2 of Bremerton-Kitsap Airporter, Inc., alleging that the
3 rates are too high at present?

4 A. No.

5 MR. WILEY: I don't believe I have any
6 further questions, Your Honor. I would acknowledge that
7 I have shortened my allotment after the break.

8 JUDGE SCHAER: I really appreciated the
9 efficiency of the questions, Mr. Wiley, thank you very
10 much.

11 Why don't we take about a ten minute recess
12 to allow the next questioners to get their thoughts in
13 order and give the court reporter a break, and let's be
14 back on the record at 4:15, please.

15 (Brief recess.)

16 JUDGE SCHAER: Let's be back on the record
17 then after a brief afternoon recess.

18

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

20 BY JUDGE SCHAER:

21 Q. At this point, Mr. Colbo, I'm going to go
22 through and try to clarify my understanding by asking
23 you a few questions. And I've got some questions
24 written in different ways about the same topic. I think
25 the way to approach it would be when you talk about an

00207

1 owner's allowance, should I consider that to be the
2 equivalent of talking about a CEO's salary for this
3 company?

4 A. Yes.

5 Q. So if, for example, this company was owned by
6 one person or all the stock was owned by one group and
7 none of them worked for the company but they hired a CEO
8 to run the company, would the salary of that person in
9 the theory be equivalent then to the owner's allowance?

10 A. Exactly. In that instance, it would be an
11 arm's length transaction where the person running the
12 business was not the person who owned it, and he would
13 therefore not be setting his own salary, so that would
14 be an arm's length transaction.

15 Q. And then the owners of a company also get
16 paid for their investment in the company; is that
17 correct?

18 A. Yes, that's the return element.

19 Q. And that return element would either be a
20 return on equity or a portion of the operating ratio
21 that is the margin; is that correct?

22 A. Yes, the margin is designed to cover
23 interest, federal income taxes, and profit. The
24 interest and the profit would be the, combined and
25 weighted, would be the overall rate of return.

00208

1 Q. Okay. Now Mr. Wiley asked you some questions
2 referring to Exhibit 1, page 12, line 8, which is the
3 note I wrote to myself, regarding which master should be
4 served. Do you recall that series of questions?

5 A. Yes.

6 Q. Am I correct that many regulated companies
7 keep books in one manner for income tax reporting, and
8 then they keep their books in a different manner for
9 their regulated reporting?

10 A. That's not uncommon.

11 Q. So that, for example, there might be a
12 different depreciation schedule for tax reporting as
13 compared to regulatory reporting and some other
14 differences, is that --

15 A. That's true.

16 Q. And as I read your testimony at line 10 about
17 this being a perfectly legitimate IRS allowed approach,
18 am I correct that what you're discussing there is that
19 for IRS purposes, the company might want to report the
20 owner's allowance plus the return as a salary, although
21 for regulated purposes, you would have the owner's
22 allowance be like the CEO salary, and you would have the
23 bonus be like the return or profit?

24 A. That's true.

25 Q. Is that what you are recommending for this

00209

1 company?

2 A. Yes.

3 Q. Okay. And I note that one of your final
4 recommendations was that this company not be allowed to
5 pay out amounts as a bonus to Mr. Asche and the other
6 stockholders. Would you have a problem with them doing
7 that so long as there was a clear distinction between
8 what was to be treated as CEO salary and what was to be
9 treated as profit?

10 A. Not if it was clearly labeled and left a
11 trail to track.

12 Q. And that would be something that should be on
13 the company's regulated books that are kept consistently
14 with the uniform system of accounts; is that where that
15 should show up?

16 A. Yeah, I think that's -- I think I agree with
17 what you're saying.

18 Q. Okay. Now I got a little bit confused by the
19 discussion of whether amounts are paid out as dividends
20 as opposed to bonuses. Mr. Wiley asked you some
21 questions about would that increase taxes paid by the
22 company and by the individual. And I understand why
23 that would increase taxes paid by the company, I think.

24 A. What would increase taxes paid by the
25 company?

00210

1 Q. If you were to pay amounts out as a dividend.

2 A. Yes.

3 Q. But why would it increase the taxes paid by
4 the individual?

5 A. Because dividends are income to the
6 individual.

7 Q. But aren't bonuses income to the individual?

8 A. Yes, but they're only taxed -- if it's taxed
9 as wages, owner's allowance, it's only taxed once as
10 wages. If it's taxed as income to the corporation, it
11 gets taxed once then, and then if it gets distributed to
12 the stockholder and declared on his or her individual
13 tax return, then it would be taxed a second time.

14 Q. Okay, and that's where I'm getting confused.
15 I understand that at the company level it would change
16 how its taxed and give you double taxation, but I don't
17 understand how after the money gets to the individual,
18 since they're already paying tax on either the wages
19 plus the bonus and instead it would be wages plus the
20 dividend, why does that mean their tax goes up?

21 A. Because if it was received as dividends,
22 their wages would by definition go down, and so they
23 would be paying less taxes that way on their individual
24 return. But when they got the dividend check, that
25 would be income to them, and it would have to be paid on

00211

1 that basis.

2 Q. But wouldn't that be the same as paying tax
3 on the wages plus a bonus?

4 A. No, because it gets taxed -- in that
5 circumstance when it's -- when the profit -- when the
6 excess profits, if you want to call them that, are taxed
7 as wages, that is a deductible expense when calculating
8 the corporation's federal income tax. So it would just
9 be counted as an income item to the individual, and it
10 would be reported on his income tax return. If instead
11 you call those amounts dividends, that would increase
12 the profits of the company, and they would pay tax on
13 that.

14 Q. Yes, and I understand the company would pay
15 more.

16 A. Yes. Then when you sent the dividend to the
17 stockholder, that would be income to him or her, and he
18 would pay personal income taxes at that time on that.

19 Q. And would he pay more or less in personal
20 income taxes than he would have paid if that amount had
21 been called a bonus and come to him as wages?

22 A. Oh, it would be more.

23 Q. Why?

24 A. Because he had more income.

25 Q. Okay, I'm not sure I understand, but I will

00212

1 move on.

2 A. The point is, when it's paid -- when it's
3 called an operating expense of the company and it's
4 included as compensation, it's --

5 MR. WILEY: Right.

6 A. -- it's taxed once.

7 Q. Yes.

8 A. But when it's sent to the individual as a
9 dividend distribution, it's taxed by the corporation and
10 at the individual level.

11 Q. I understand that, and I understand that's
12 double taxation at the company. But Mr. Wiley asked you
13 also if that would have an effect on the individual, and
14 that's the only part of this I want to focus on is the
15 effect on the individual.

16 A. Oh, okay.

17 Q. Because I wasn't -- that part of it confused
18 me. It seemed to me like you would have the same number
19 either way. And unless there's something involved like
20 capital gains or how dividends are treated or something
21 else, I don't know why there would be a difference
22 there. Perhaps I should ask Mr. Burton about this.

23 A. It may be that the combined tax rate of the
24 corporation and the individual wouldn't be as much as
25 the tax rate of the individual if everything went to

00213

1 him, or it would be more than if everything went to the
2 individual.

3 Q. Okay, thank you.

4 A. I'm not sure.

5 Q. Looking next at Exhibit 6.

6 MR. WILEY: Not Bench Request 6, but --

7 JUDGE SCHAER: Exhibit 6, Mr. Wiley.

8 BY JUDGE SCHAER:

9 Q. I'm looking at the bottom of that page, line
10 72, I believe Mr. Wiley asked you a series of questions
11 about if this \$355,000, I believe you said \$355,000, had
12 been paid out as a dividend, would that change operating
13 ratio, and you said yes; is that correct?

14 A. Yes.

15 Q. And I want you to look, am I correct that it
16 would change the per books operating ratio shown in
17 column B because you would have that much coming out as
18 an expense before you got to this point?

19 A. Yes, net income would be more because that
20 \$355,000 wouldn't be called an expense anymore.

21 Q. And then moving from column B as in boy to
22 column D as in dog and stopping for a moment at column
23 C, looking at line 51, then if you had already taken
24 this out in column B, you would no longer be making the
25 adjustment shown at line 51; is that correct?

00214

1 A. Yes, if it had been paid out as dividends.

2 Q. So then if that's already been taken into
3 account, would the number in line 72 of column D be the
4 same as it is now?

5 A. I think the answer is yes.

6 Q. And would the same answer apply to the number
7 in column F?

8 A. Yes.

9 Q. Okay. And one of the concerns that I have in
10 this proceeding is that when we get to the end and I
11 have to start making decisions that I can tell what an
12 adjustment is and that all of the parties are talking
13 about the same thing in an adjustment. So I want, I
14 have a few more questions, I want you to stay with your
15 Exhibit 6, and I want you to turn to page 3, please.
16 And looking at the line for -- looking at adjustment
17 PA-1, remove fuel, surcharge revenue, it appears that
18 the only difference between your adjustment and
19 Mr. Burton's is the \$290 on line 27 for taxes, public
20 utility; is that correct?

21 A. Are you comparing my PA-1 with his PA-1?

22 Q. Yes.

23 MR. THOMPSON: Your Honor, which exhibit are
24 we looking at?

25 JUDGE SCHAER: We're looking at Exhibit 6,

00215

1 page 3.

2 A. That's true.

3 BY JUDGE SCHAER:

4 Q. What does this amount represent?

5 A. Oh, it's 1.926 times 15,032, I think.

6 MR. WILEY: Right.

7 A. In other words, I gave a tax effect to the
8 corrected revenues -- wait a minute, that's what it is.
9 It's the 1.926 times the \$15,000 reduction. Oh, it's
10 the revenue reduction because of the fuel surcharge
11 revenue. Revenues are down, therefore the taxes on that
12 revenue that the company pays to the State would also
13 decrease.

14 Q. Okay. And on the same exhibit, now let's
15 look at page 2 for a moment, line 72.

16 A. Yes.

17 Q. You appear to include a rate base amount of
18 \$349,453 in column E.

19 A. Yes.

20 Q. For adjustment, adjust nonrecurring L&I tax
21 credit. Should this amount be moved to page 2, column
22 D, under the adjustment RA-3, adjust to Burton
23 depreciation schedule?

24 A. Yes.

25 MR. WILEY: I want to track that. Is that

00216

1 the \$7,178 figure that we're talking about?

2 THE WITNESS: No, it's the rate base number
3 below that.

4 MR. WILEY: Oh, okay.

5 THE WITNESS: It appears that it might be in
6 the L&I credit column rather than the Burton. It should
7 be one column to the left. It should be in the
8 depreciation column.

9 MR. WILEY: It's just in the wrong column.

10 JUDGE SCHAER: Yes, okay, thank you.

11 THE WITNESS: I agree.

12 BY JUDGE SCHAER:

13 Q. On the same page in column J at line 70,
14 should that amount be \$92,103 rather than \$91,505?

15 A. Oh.

16 Q. This is under your adjustment RA-9, federal
17 income tax.

18 A. I see. Say that again, please.

19 Q. Should that amount be \$92,103 rather than
20 \$91,505?

21 A. Yes.

22 Q. Okay.

23 JUDGE SCHAER: Does everyone have that?

24 Okay.

25 BY JUDGE SCHAER:

00217

1 Q. Just a couple more questions. Mr. Colbo, if
2 the company had achieved its allowed operating ratio of
3 93% for the test period, would the company have been
4 able to pay Mr. Asche the same level of bonuses for the
5 period?

6 A. I don't believe so.

7 Q. Okay. I would like to look at Exhibit 22 for
8 a moment.

9 A. What was the exhibit reference?

10 MR. WILEY: 22.

11 Q. 22, please.

12 MR. WILEY: 22, Staff memo.

13 Q. Are you there?

14 A. Exhibit 22, yes.

15 Q. 22, yes, Mr. Caballero and Ms. Hansen's memo
16 of February 11, 1998. Just briefly reviewing this, it
17 appears that the purpose of this memo was to recommend
18 that this docket be suspended; is that correct?

19 A. That's correct. But before that could
20 happen, the company withdrew the filing.

21 Q. And, in fact, the last line indicates unless
22 withdrawn by the company; is that correct?

23 A. Yes.

24 Q. Looking at the salary amount that is included
25 in here, was \$108,000 compensation or compensation plus

00218

1 a bonus, if you know?

2 A. It was -- it did not include any bonus.

3 Q. Okay.

4 A. But that, as I said, that's what the number
5 was at some point in the processing of it, but it was
6 withdrawn, and it didn't come before the Commission.

7 Q. Now I believe that this memo reflects that
8 the company was earning an operating ratio somewhere in
9 the mid to low 80's; is that correct?

10 A. Yes, and that's even with the owner's
11 allowance of \$109,000.

12 Q. Okay. So just trying to understand the
13 difference between an open meeting memo and a case going
14 to hearing.

15 A. Yes.

16 Q. If you were trying to get a case suspended
17 and with the numbers that you had already, and you were
18 showing an operating ratio in the mid to lower 80's,
19 would you be then looking to lower or examine other
20 items to the same degree of scrutiny that you might if
21 it did go to hearing?

22 A. I think -- let me answer you this way. If an
23 item is presented -- if it's handled informally and
24 presented at a Wednesday open meeting, the Commission
25 has the discretion to allow the rates to go into effect

00219

1 under the premise that those results portrayed are fair,
2 just, and reasonable. If it goes from that point to a
3 formal hearing where the Commission has to write an
4 order, then the Commission makes determinations of what
5 proper rates are and what proper expenses are, and then
6 it's not a question of allowing the rates to become
7 effective, but approving the rates and approving each
8 line item of expense and revenue that makes up their
9 determination of what a rate should be.

10 Does that answer your question?

11 Q. Well, let me ask it this way. If this case
12 had gone to hearing, would Staff have felt bound by any
13 of the numbers on here, including the \$108,000
14 compensation, or would they possibly have recommended a
15 lower amount after they studied that in more depth?

16 A. Oh, I think the issue of the low operating
17 ratio would have had to have been addressed, yes.
18 That's to say it should have been investigated further.

19 Q. Now looking at the second page of this called
20 Attachment 1, column J, line 60, salaries R Asche, it
21 appears to me in looking at this that the Staff number
22 was \$105,000 rather than \$108,000 shown in column D; is
23 that correct?

24 A. Yes, it appears that there was some kind of a
25 separation made between the passenger hauling operation

00220

1 and the baggage and charter operations.

2 Q. Okay. Now you had an extensive discussion
3 with Mr. Wiley about excess retained earnings and
4 various effects on excess retained earnings, and do
5 excess retained earnings occur because of excess
6 earnings? Is there some relationship there?

7 A. Yes.

8 Q. Then going back to your Exhibit 6, I want to
9 look at the second page now, column B. It appears that
10 portions of your adjustment RA-1 and RA-2 are handled by
11 a separate adjustment number by the company; is that
12 correct?

13 A. Well, let me turn to Mr. Burton's exhibit.
14 Yes, that is true.

15 Q. And so can you tell me, can you identify the
16 amounts and the line numbers that, from his exhibit,
17 that are in these two adjustments on your exhibit? And
18 if you can't, I'm going to ask Mr. Burton that, just as
19 a warning.

20 A. In my RA-1, column B, from lines 1 through 9,
21 all those are are mis -- entries that exchange numbers,
22 but the net effect of it all is zero. All I'm doing is
23 trying to get the proper dollars in the -- into accounts
24 that will facilitate my separations between the
25 Bremerton operation and the Fort Lewis operation on page

00221

1 4. So I have -- so the net effect of the revenue
2 adjustments on line 14 is to increase revenue by
3 \$15,923, which is the sum of lines 11, 12, and 13.
4 Everything else just rearranges things but doesn't
5 change anything in total. But then the -- as a result
6 of all of that, Bremerton income is on one line, and
7 Pierce County income is on another line. With respect
8 to the gain on sale on line 52, when all is said and
9 done, I have accepted Mr. Burton's \$5,579 gain. There's
10 no difference between the parties on that item.

11 Q. And what adjustment number does Mr. Burton
12 use for that, please?

13 A. RA-3, line 44.

14 Q. Okay. Does that also relate to the amount on
15 line 62 of your exhibit?

16 A. Line 52, oh, yes, the first part.

17 Q. 62.

18 A. Yes, the first part of line -- in column A,
19 the \$15,917, all I did there was reclassify it, as I did
20 the revenue up above. I just moved it from a below the
21 line item on line 62 to an above the line item on line
22 52. And then after that, I had to adjust it one more
23 time in column D to obtain the \$5,579 gain on sale,
24 which is in agreement with Mr. Burton.

25 Q. That's the number on the right-hand column?

00222

1 A. Yes.

2 Q. And that's all reflected in Mr. Burton's
3 RA-3; is that correct?

4 A. Yes, we end up with the same number.

5 Q. Okay.

6 MR. WILEY: Your Honor, before you leave RA-6
7 or RC-6, Exhibit 6, when you talked about the amount of
8 \$92,103 that should have been reflected, is that \$92,103
9 in parens or not in parens? I assume it's not in
10 parens. Mr. Thompson and I both assumed it was in
11 parens where you clarified on line 70.

12 THE WITNESS: It should not be in parens.

13 MR. WILEY: Right, thank you.

14 JUDGE SCHAER: Okay, hold on just a moment,
15 please.

16 BY JUDGE SCHAER:

17 Q. Okay you're talking about, Mr. Colbo, looking
18 at page 2, Exhibit 6, in column RA-9, in line 69, you
19 show a positive amount of \$92,103.

20 A. Yes.

21 Q. And that number stays unchanged, correct?

22 A. Yes.

23 Q. And then in line 70, you show a figure now in
24 brackets of \$91,505.

25 A. Yes.

00223

1 Q. And is it correct that that number should
2 remain in brackets but should be changed to \$92,103?

3 A. Yes. I answered Mr. Wiley too quickly. The
4 expenses for federal income tax increase on line 69,
5 that means that net income decreases.

6 Q. So those two things --

7 A. So those are --

8 Q. -- should be the same number, but one
9 positive and one negative?

10 A. Yes.

11 JUDGE SCHAER: Are we all in the same place?

12 MR. WILEY: Thank you.

13 JUDGE SCHAER: All right. And I don't have
14 anything further.

15 I did want to ask you, Mr. Wiley, I have
16 reserved ruling on Exhibits 9 and 19. You had asked to
17 be able to question before you spoke to whether or not
18 you objected to those.

19 MR. WILEY: I have asked enough questions,
20 Your Honor, that I think they can go into the record.
21 It goes to the weight at this point.

22 JUDGE SCHAER: Okay, then Exhibits 9 and 19
23 are admitted.

24 Mr. Thompson, did you have any redirect?

25 MR. THOMPSON: I do, Your Honor.

00224

1 JUDGE SCHAER: Can you give me an estimate of
2 about how much?

3 MR. THOMPSON: I would say 15 minutes.

4 JUDGE SCHAER: Okay, let's go off the record
5 for just a moment to discuss scheduling.

6 (Discussion off the record.)

7 JUDGE SCHAER: Let's be back on the record
8 after a brief recess to discuss scheduling. We are
9 going to recess for the day at this time and reconvene
10 tomorrow morning at 9:30 in hearing room 206, at which
11 time we will take up Staff redirect for Mr. Colbo.

12 Is there anything else to come before us?

13 Hearing nothing, we are off the record.

14 (Hearing adjourned at 4:55 p.m.)

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