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1 BEFORE THE WASHINGTON STATE
 UTILITIES AND TRANSPORTATION COMMISSION

2 In the Matter of the)
 Petition of)

3) DOCKET NO. TO-031973

 OLYMPIC PIPE LINE COMPANY,)

4 TESORO REFINING AND) Volume II
 MARKETING COMPANY AND) Pages 9 to 34

5 CONOCOPHILLIPS COMPANY,)

)

6 FOR AN Order Approving Terms)
 of a Settlement Agreement)

7 Between Olympic, Tesoro, and)
 ConocoPhillips and Approving)

8 Rates Set Pursuant to Said)
 Agreement.)

9 _____)

 In the Matter of the)
 10 Petition of)

) DOCKET NO. TO-081785

11 OLYMPIC PIPE LINE COMPANY,)

) Volume II

12 for an Order Approving Terms) Pages 9 to 34
 of a Storage Lease Agreement)

13 with BP West Coast Products,)
 LLC.)

14 _____)

 A hearing in the above matter was held on

15

16 Thursday, November 13, from 1:00 p.m to 1:30 p.m., at

17 1300 South Evergreen Park Drive Southwest, Room 206,

18 Olympia, Washington, before Administrative Law Judges

19 MARGUERITE E. RUSSELL and ANN RENDAHL.

 The parties were present as follows:

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 21 Attorney at Law, Danielson Harrigan Leyh & Tollefson
 22 LLP, 999 Third Avenue, Suite 4400, Telephone (206)
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23

24 Joan E. Kinn, CCR, RPR

25 Court Reporter

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1 THE COMMISSION, by DONALD T. TROTTER, Senior
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4 TESORO, bridgeline, by ROBIN O. BRENA,
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258-2000, Fax (907) 258-2001, E-Mail
6 rbrena@brenalaw.com.

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EXHIBIT LIST

2 1

Mitchell D. Jones (Olympic)

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Petition of Olympic Pipe Line Company for

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Approval of Amendment No. 7 to Tariff

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Settlement Agreement of 2003.

6 2

Mitchell D. Jones (Olympic)

7

Amendment No. 7 to Tariff Settlement Agreement

8

of 2003 (Exhibit 1 to Olympic's Petition for

9

Approval of Amendment).

10 3

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Amendments 1 through 6 of the 2003 Settlement

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14 4

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Olympic's Total Revenue Requirement

16

Spreadsheet and Cost of Service Variance

17

(Exhibit 4 to Olympic's Petition for Approval

18

of Amendment).

19 5

Mitchell D. Jones (Olympic)

20

September 30, 2008, Letter to Dave Danner,

21

UTC, from Olympic, notifying UTC of affiliate

22

transaction, amended TSA, and lease storage

23

agreement (Exhibit 5 to Olympic's Petition for

24

Approval of Amendment).

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1 6 Mitchell D. Jones (Olympic)
2 September 30, 2008, Letter to Shippers, from
3 Olympic, notifying them of affiliated
4 transaction, amended TSA, and lease storage
5 agreement (Exhibit 6 to Olympic's Petition for
6 Approval of Amendment).

7 7 Mitchell D. Jones (Olympic)
8 Original 2003 Joint Petition for Approval of
9 Settlement Agreement, filed with the UTC on
10 December 2, 2003, including original Tariff
11 Settlement Agreement as Attachment 1 (Exhibit
12 7 to Olympic's Petition for Approval of
13 Amendment).

14 8 Mitchell D. Jones (Olympic)
15 Petition of Olympic Pipe Line Company for
16 Approval of Transfer of Property.

17 9C Mitchell D. Jones (Olympic)
18 Confidential Lease Storage Agreement between
19 Olympic and BPWCP (Exhibit 2 to Olympic's
20 Petition for Approval of Transfer of
21 Property).

22 10 Mitchell D. Jones (Olympic) and Layne Demas
23 (Staff)
24 Settlement Agreement and Narrative Supporting
25 Settlement Agreement between Commission Staff

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1 and Olympic Pipe Line Company.

2 11 Layne Demas (Staff)

3 Qualifications of Mr. Demas, Staff's Witness.

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

2 JUDGE RUSSELL: Good afternoon, my name is
3 Marguerite Russell, and I'm here with Judge Ann Rendahl,
4 we are the Administrative Law Judges presiding over this
5 consolidated proceeding today. We're here before the
6 Washington Utilities and Transportation Commission on
7 November 13th, 2008, to begin a hearing in the
8 consolidated dockets of TO-031973 captioned in re the
9 Matter of the Petition of Olympic Pipe Line Company,
10 Tesoro Refining and Marketing Company and ConocoPhillips
11 Company, for an Order Approving Terms of a Settlement
12 Agreement and Rates Pursuant to the Settlement
13 Agreement, and TO-081785 captioned in re the Petition of
14 Olympic Pipe Line Company for an Order Approving Terms
15 of a Storage Lease Agreement with BP West Coast
16 Products, LLC.

17 We have two settlement agreements which
18 together purport to resolve all of the issues within the
19 consolidated dockets. Both Olympic and Staff have
20 provided witnesses in support of the settlement
21 agreements. And we, the Commission has had an
22 opportunity to review both settlement agreements, the
23 documents filed in support of the settlements, and the
24 unredacted lease storage agreement.

25 These documents were included in an exhibit

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1 list that was sent electronically to the parties, and so
2 after we take appearances today, and they will be short
3 appearances since all of you have appeared here on
4 Tuesday, after we take appearances, we will finalize the
5 exhibit list, and counsel may give opening statements if
6 that is desired, and then we will impanel the witnesses.
7 So let's go ahead and begin with appearances, and we'll
8 begin with Olympic.

9 MR. HARRIGAN: Good afternoon, my name is
10 Arthur Harrigan, and I'm here representing Olympic Pipe
11 Line Company. Do you need address, phone number, and
12 all that?

13 JUDGE RUSSELL: No, that's fine, we have that
14 on record.

15 And I take it then, Mr., and I may
16 mispronounce the name, Mr. Wion is not here today?

17 MR. HARRIGAN: That's correct.

18 JUDGE RUSSELL: Okay. And are you also
19 appearing on behalf of BP?

20 MR. HARRIGAN: I'm appearing on behalf of BP
21 as the operator of Olympic.

22 JUDGE RUSSELL: Okay.

23 MR. HARRIGAN: Not as the lessee, not the
24 company that's the lessee under the lease agreement.

25 JUDGE RUSSELL: I see, okay, thank you.

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1 And appearing on behalf of Tesoro.

2 MR. BRENA: Robin Brena, B-R-E-N-A.

3 JUDGE RUSSELL: Thank you.

4 And I remember last time we did not have a
5 representative appearing on behalf of Conoco, is that
6 still correct?

7 Okay, and appearing on behalf of Staff.

8 MR. TROTTER: For Commission Staff, Donald T.
9 Trotter, Assistant Attorney General.

10 JUDGE RUSSELL: Great, thank you.

11 As I stated before, we have the
12 electronically provided to the parties exhibit list,
13 does everyone have 11 exhibits? That would be the
14 current exhibit list as I know it.

15 MR. HARRIGAN: Yes.

16 MR. TROTTER: Yes.

17 JUDGE RUSSELL: Okay, thank you.

18 And Mr. Brena?

19 MR. BRENA: Yes, Your Honor.

20 JUDGE RUSSELL: Okay, thank you.

21 So I guess right now what I would like to do
22 is ask if there's any additions, and if not whether the
23 parties would like to stipulate to admission of the
24 exhibits.

25 MR. HARRIGAN: So agreed.

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1 MR. BRENA: That's agreeable to Tesoro, Your
2 Honor.

3 MR. TROTTER: And to Staff, Your Honor.

4 JUDGE RUSSELL: Okay, great, thank you, and
5 they will be received and admitted then.

6 Would the parties like to make any opening
7 statements before we empanel the witnesses, Olympic?

8 MR. HARRIGAN: Well, I have about a one
9 minute statement I would like to make, if I could, Your
10 Honor.

11 JUDGE RUSSELL: That's fine.

12 MR. HARRIGAN: First, I would just like to
13 introduce Mr. Jones, who is sitting right here, Mitchell
14 D. Jones, which is the Manager of the Tariffs and
15 Regulatory Affairs Department of BP Pipelines North
16 America, and BP Pipelines is also the minority
17 shareholder of Olympic and its operator. And seated to
18 my left is Stacy Myers, who is the Senior Regulatory
19 Counsel of Enbridge Pipelines, Inc., which is --
20 Enbridge is the majority shareholder of Olympic
21 currently.

22 And other than that, I just want to say that
23 this, as you know, is an amendment, what's before Your
24 Honors this morning is an amendment to the original
25 tariff settlement agreement, which among other things

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1 extends it for another five years using essentially the
2 same methodology that's worked very well for the first
3 five years, with some changes which Mr. Jones will
4 address. But they're not changes to the basic method,
5 which has been successful and has I think resulted in
6 conserving regulatory time that might otherwise have
7 been devoted to setting rates, while preserving all of
8 the authority of the Commission in the event that it had
9 any reason to intervene in the process.

10 And then with respect to the lease, as you
11 know, the lease is an element that's before you in part
12 because it supplies the revenue without which the
13 reduction in the rate base by the removal of 85% of
14 Bayview would create financial concerns, and I think
15 it's worth bearing in mind in looking at the lease that
16 although it's an affiliate transaction and that's the
17 reason that it's before the Commission, the affiliate is
18 the minority shareholder, not the majority shareholder,
19 of Olympic. And so this is indeed an arm's length
20 transaction in that Enbridge has no interest in the
21 company that's leasing the facility.

22 So with that, I will turn it over to whoever
23 else wants to make an opening statement, and then we'll
24 go from there. Thank you.

25 JUDGE RUSSELL: Thank you.

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1 Mr. Brena, did you have anything to add, or
2 did you wish to make an opening statement at this time?

3 MR. BRENA: Yes, Your Honor, I would make a
4 brief comment.

5 Tesoro supports the Commission's adoption of
6 the amended settlement, and while not a party to the
7 lease transaction, Tesoro also supports the Commission's
8 approval of the lease transaction consistent with the
9 terms of the settlement agreement with Olympic,
10 specifically Section 2.2(H). I would like to point out
11 that Tesoro as not a party to the lease transaction has
12 not had an opportunity to review the unredacted lease,
13 but nonetheless supports it to the Commission. And
14 Tesoro's support of this settlement, as has been
15 heretofore, is subject to the comments that, (a) that
16 there is no restriction on the Commission's authority,
17 it's our understanding and the basis for the settlement
18 in part, as well as the settlement or its approval or
19 comments by parties do not form any precedent with
20 regard to any future matter if and when the settlement
21 should expire.

22 JUDGE RUSSELL: Great, thank you.

23 And, Staff, do you wish to make an opening
24 statement?

25 MR. TROTTER: Very briefly, Your Honor.

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1 First of all, as you know, the Commission
2 Staff has made a statement in support of the agreement
3 which is contained in the narrative, and I don't want to
4 repeat that other than simply to reiterate the two
5 points Mr. Brena just made, that the agreement does not
6 in any way restrict UTC's ratemaking authority or the
7 Staff's role in evaluating any tariff filing by Olympic
8 during the term of the amended TSA, and consistent with
9 the last five years, nothing is precedential about the
10 methodology or treatment therein, and so Staff can
11 support this. It has seemed to have worked in a
12 beneficial way for a few years, and Staff supports its
13 continuation, but Staff does retain its discretion as
14 does the Commission.

15 Mr. Harrigan said that the transfer of
16 property agreement was arm's length, an arm's length
17 agreement, we really haven't evaluated that issue, and
18 we don't believe it needs to be resolved today. We
19 understand that's Olympic's position. There's sort of
20 maybe a complex legal analysis that we simply have not
21 undertaken, but we do support that agreement
22 nonetheless, regardless of whether it's arm's length or
23 not arm's length.

24 And then finally, I noticed when you read the
25 caption for Docket TO-031973, you correctly said that

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1 the caption written by Olympic said, and approving rates
2 set pursuant to said agreement, and that's what the
3 caption says, but actually the Company is not asking for
4 rates, the Commission to approve rates set pursuant to
5 the agreement, rather just to approve the agreement.
6 And the rates will come before the Commission in the
7 tariff filings, and the Commission under the agreement
8 has discretion to deal with that in the traditional way.

9 So that's all I have to say at this point,
10 the Staff does support the agreement and is presenting
11 Mr. Layne Demas of Commission Staff to answer any
12 questions that you may have regarding it.

13 JUDGE RUSSELL: Great, thank you.

14 I see that the witnesses are already
15 empaneled, they have done that themselves, so if both of
16 you will go ahead and stand up and raise your right
17 hand.

18 (Witnesses MITCHELL D. JONES and LAYNE DEMAS
19 were sworn.)

20 JUDGE RUSSELL: Great, thank you, you may be
21 seated.

22 MR. TROTTER: Pardon me, Your Honor, just for
23 the benefit of people not in the hearing room, Mr. Gene
24 Eckhardt who's the Assistant Director for Transportation
25 and Water or Water and Transportation is sitting to my

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1 right today.

2 JUDGE RUSSELL: Thank you.

3

4 Whereupon,

5 MITCHELL D. JONES and LAYNE DEMAS,

6 having been first duly sworn, were called as witnesses

7 herein and were examined and testified as follows:

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

9 BY JUDGE RUSSELL:

10 Q. I do have some questions for both of the
11 witnesses, Mr. Demas and Mr. Jones I believe. First of
12 all, in dealing with Olympic's petition for approval of
13 the amended TSA, and I believe it's Section 4.1 of the
14 amended TSA itself, both indicate that the rates that
15 are contained within the amended TSA are subject to FERC
16 approval, so I guess where are we in that process as far
17 as the proceedings before FERC at this time?

18 A. (Mr. Jones) The documents were filed on
19 September 30th with the FERC. They had -- we had
20 pre-met with them as well to try and find out the best
21 way to -- what methodology to use and --

22 MR. BRENA: I'm sorry, Your Honor, I can't
23 hear the panel at all.

24 JUDGE RUSSELL: Okay, thank you.

25 If you go ahead and push the button, there's

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1 a red light that comes on indicating that the microphone
2 is on.

3 A. (Mr. Jones) I'm sorry, I thought it was
4 automatic.

5 We made a filing with the FERC on September
6 30th as well, and the FERC had told us prior to that
7 that it would probably take them 30 to 60 days to review
8 it. They have not made any decisions yet, but I had one
9 conversation just asking them if they had any questions
10 to call me, and they said it was non-controversial, so.

11 Q. Okay, great, thank you.

12 And then also is it, and this may be a
13 question for the attorneys, is it your understanding
14 that this Commission needs to wait for FERC's approval,
15 or can we just go ahead and act on our own independent
16 of their proceedings?

17 MR. HARRIGAN: I don't know of any reason why
18 you would need to wait, Your Honor. There are
19 conditions in the agreement that would come into play if
20 FERC did not approve it, that would obviously affect
21 what happened. But I don't think there's any required
22 sequence as between FERC approval and WUTC approval.

23 MR. TROTTER: That's my understanding, Your
24 Honor. It's also my understanding, and perhaps
25 Mr. Harrigan can concur, that if FERC either denies

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1 approval of the TSA or does not act by February 1st,
2 then the TSA would not go into effect under its own
3 terms. So if the Commission approved it and FERC did
4 what I just say or didn't act, it would not go into
5 effect.

6 Q. Okay, thank you.

7 With regard to Olympic's petition, and I have
8 cited Paragraph 20 that also indicates FERC's approval,
9 that FERC must approve the removal of Bayview storage
10 facility from the rate base. I guess my question is,
11 are there steps in place or a plan in case FERC does not
12 approve the removal of Bayview from the rate base?

13 MR. HARRIGAN: The amended TSA permits the
14 two shipper parties, either of the two shipper parties
15 to terminate the agreement in the event that that
16 occurs.

17 Q. Thank you. And at that point, I guess I
18 would be curious would the company then withdraw its
19 petition before the Commission? Assuming that FERC's
20 disallowance or rejection of Olympic's plan to remove it
21 from rate base happens before an initial order comes out
22 from this Commission, would Olympic then withdraw the
23 petition?

24 MR. HARRIGAN: Well, I think if the agreement
25 were terminated, the petition for approval would be

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1 academic, so we presumably would withdraw the petition
2 at that point. I think that's -- I believe that's what
3 would happen. And then we would be, and this gets a
4 little complicated, but I believe we would then be
5 operating under circumstances governed by the existing
6 TSA, which at this point is subject to potential
7 termination by or was subject to potential termination
8 as of December 29th of this year. But since the events
9 that we're talking about could potentially happen later
10 than that, we would be somewhat in limbo, but I believe
11 that at least for the immediate future, rates would be
12 set pursuant to the existing agreement.

13 Q. I see, thank you.

14 Getting into another area of the petition for
15 approval of the amended TSA, Olympic has stated that and
16 has agreed in the amended TSA to seek economic means to
17 enhance the throughput capacity from Renton to Portland,
18 can you go ahead and maybe even the panel go ahead and
19 explain that?

20 MR. HARRIGAN: You want to panel that one,
21 Mitch?

22 A. (Mr. Jones) Sure, there's a bottleneck in
23 the last segment of the Olympic Pipe Line permit into
24 Portland. It's only a 14 inch pipe compared to large
25 diameters and multi pipes on the rest. The

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1 debottlenecking is, short of, you know, laying a whole
2 new pipe, there's a lot more behavior oriented and
3 working with shippers to debottleneck the facilities at
4 their property at the ends of the pipe or the
5 debottlenecking of the plant and equipment coming into
6 the Olympic Pipe Line. So we have studies underway, we
7 know where we can get bits and bites of more capacity
8 over time, but we want to do that in an economic manner,
9 not just replace a pipe that -- in a way that would be,
10 you know, never pay itself off, so.

11 MR. HARRIGAN: It might actually be of
12 interest to explain the role that the surge analysis
13 played in figuring out how to do that.

14 A. (Mr. Jones) Okay, one of the requirements in
15 a consent to create to get the pipe back up to, you
16 know, full operating conditions was to do surge
17 analysis, and the surge analysis has shown that the way
18 we were operating before 1999 led to problems with
19 hydraulic pressure, drains going through the pipe, and
20 so we're limited in the pressure that certain pieces of
21 pipe can have now and the way we operated from before.
22 So it's the system is operated differently and has more
23 constraints on it now based on the study.

24 Q. Okay, thank you.

25 And I have another question relating to that,

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1 and it's in the same vein, and that is that Olympic has
2 agreed to use its best efforts to achieve 100% of the
3 maximum allowable operating pressure. What percentage
4 are we at now?

5 MR. HARRIGAN: Let me just clarify. The
6 original TSA required Olympic to achieve 100% MAOP
7 operation by a date certain, which it did, so it's
8 currently basically at 100%. And what this agreement
9 requires is that Olympic continue to use its best
10 efforts to continue to operate at that level, but what
11 constitutes 100% MAOP is all constrained by the -- there
12 isn't just one pressure that applies throughout the pipe
13 line, there are all these different places which
14 according to the surge analysis are permitted to have
15 different levels of pressure. So 100% MAOP really means
16 that you're maximizing the pressure that's allowed at
17 given, you know, places along the line. And one of the
18 things that the surge analysis did in addition to
19 identifying those constraints is to give Olympic
20 information about how to tweak the line to enhance
21 throughput. So it's -- that's part of the mechanism
22 that Olympic is using to -- will be using to satisfy the
23 condition of the current agreement.

24 A. (Mr. Jones) And to go a little bit further,
25 we've had meetings with shippers and have explained and

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1 given a list of some of the things that we could do to
2 get the throughput increased in I think our annual
3 shippers meeting in April this year, I believe they went
4 through those.

5 Q. Okay, thank you.

6 I do have a question relating to the shippers
7 as well. Having delved into the prior history of
8 TO-031973, I did see that there were shippers prior to
9 BP West Coast, LLC who were storing at the Bayview
10 facility, and the petition itself says that those
11 shippers have had adequate notice of the lease storage
12 agreement and they were able to adapt. Can anybody tell
13 me what the status of the shippers' potential storage
14 facilities or I guess -- Mr. Jones.

15 A. (Mr. Jones) Sure. Without going into the
16 names of the shippers, because that is protected.

17 Q. Sure.

18 A. (Mr. Jones) One of the shippers used the
19 facility maybe three times in the last three years, and
20 it was just an occasional use, and they were fine with
21 it going away. They basically said, you know, they
22 didn't have any plans for it right now. The other
23 shipper just recently started using it more regularly,
24 but the product that they were actually shipping is
25 being phased out, so they said that the timing is

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1 perfect for them and it wasn't an issue for them as
2 well.

3 Q. Okay, thank you, that's helpful.

4 One of my other questions relates to the
5 settlement agreement between Staff and Olympic Pipe
6 Line, and that would be at Paragraphs 15 and 16, and
7 this may just be a clarification question for the
8 attorneys. It lists in Paragraph 15 the recommendation
9 that the Commission issue an order, et cetera, et
10 cetera, and then in Paragraph 16 it says that -- it
11 recommends that the Commission issue another order, et
12 cetera, et cetera. I assume that both parties are not
13 indicating that we need to have two separate orders
14 because we have two separate dockets.

15 MR. TROTTER: That's correct, Your Honor.

16 Q. Okay, thank you.

17 And as I stated with regards to the question
18 of the shippers, I have delved into the prior record a
19 bit, and I noticed that there was a bankruptcy filing on
20 behalf of Olympic. And I guess my question right now
21 is, Olympic is removing the Bayview, 85% of the Bayview
22 storage facility from rate base, at this time with that
23 kind of a reduction and given the prior bankruptcy, does
24 the Company have internal mechanisms to recognize a
25 potential cash shortfall or a financial shortfall before

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1 it reaches emergency levels? And certainly I will point
2 out also that the Commission is not trying to
3 micromanage the business, but it is a concern that this
4 has taken place in the past.

5 A. (Mr. Jones) The financial state of Olympic
6 is much better than it was five years ago. With the
7 lease that we have in place, we feel comfortable that
8 it's a non-issue.

9 Q. Okay, thank you.

10 And my last question relates to the refunds
11 that were referenced in the settlement agreements. The
12 settlement agreements indicate that those refunds to the
13 shippers that were previously ordered for Olympic to pay
14 have been paid, I just want to clarify that that is the
15 case.

16 A. (Mr. Jones) They were paid in full.

17 Q. Okay, so that is exhausted, that is no longer
18 a liability of the Company?

19 A. (Mr. Jones) Correct.

20 JUDGE RUSSELL: Okay, thank you.

21 I am out of questions, so if any of the
22 parties wish to make a closing statement, otherwise I
23 believe -- Mr. Brena, did you wish to make a closing
24 statement.

25 MR. BRENA: No, thank you, Your Honor.

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1 JUDGE RUSSELL: Okay, thank you.

2 And Mr. Trotter?

3 MR. TROTTER: No, Your Honor. I would note I
4 believe Olympic's witness was prepared to kind of make
5 his own opening statement in support of the settlement,
6 and he didn't do that. So I don't know if it's
7 necessary for him to do it now or not, but I just
8 thought I would note that. That's obviously
9 Mr. Harrigan's call and your call, but I just wanted to
10 note that.

11 MR. HARRIGAN: I actually think the gist of
12 the opening statement has probably been covered in
13 answering the questions, Your Honor, but I will leave
14 that call to Mr. Jones.

15 MR. JONES: Actually, I have a closing
16 statement now.

17 JUDGE RUSSELL: That will work also.

18 MR. JONES: What I would like to say is I've
19 actually been here since the development of the first
20 TSA, and it has worked really well, as can be attested
21 even by the shipper parties. The new TSA is very
22 similar to the old one, only better. We've actually --
23 we had some tweaks we wanted to do on the carrier side,
24 and the shippers wanted Bayview removed, and so we found
25 a way to do a win/win there. The calculations, we've

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1 clarified where certain costs go, we've removed certain
2 costs, by all accounts it's a better document we think.
3 General mechanism from the Staff perspective is still a
4 depreciate original cost methodology, not much has
5 changed there. All the Commission's rights are
6 approved. There's a dispute resolution mechanism.
7 Parties have audit rights. And we think the lease is
8 just a natural outcome of taking it out of the rate
9 base, and the shipper that was using it is really going
10 to be the one paying for it now instead of everyone. So
11 in conclusion I think this is a win/win for everyone.

12 JUDGE RUSSELL: Okay, thank you.

13 With that, because I have no further
14 questions, I will let you know that the Commission will
15 deliberate on the proposed stipulations, and as I stated
16 previously at the prehearing, I have targeted personally
17 a December 5th, 2008, deadline for getting out the
18 initial order.

19 And if none of the parties has anything else?

20 Hearing nothing, thank you all for being here
21 today, and we are adjourned.

22 (Hearing adjourned at 1:30 p.m.)

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