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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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CITY OF KENNEWICK,	Petitioner,	)Docket TR-050967
v.		)Volume III
		)Pages 23-46
<hr/>		)
PORT OF BENTON and TRI-CITY AND	Respondents.	)
OLYMPIA RAILROAD,		)
		)
<hr/>		)
CITY OF KENNEWICK,	Petitioner,	)Docket TR-050967
v.		) (Consolidated)
		)
UNION PACIFIC RAILROAD,	Respondent.	)
		)
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A pre-hearing in the above-entitled matter was held at 9:35 a.m. on Monday, January 9, 2006, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge KAREN CAILLE.

The parties present were as follows:

CITY OF KENNEWICK, by John Ziobro, City Attorney, P.O. Box 6108, 210 W. Sixth Avenue, Kennewick, Washington 99336 (via teleconference bridge.)

PORT OF BENTON, by Tom Cowan, Attorney at Law, Cowan Moore Stam & Luke, P.O. Box 927, 503 Knight Street, Suite A, Richland, Washington 99352 (via teleconference bridge.)

Barbara L. Nelson, CCR  
Court Reporter

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1                   UNION PACIFIC RAILROAD, by Carolyn L.  
2                   Larson, Attorney at Law, Kilmer Voorhees & Laurick,  
3                   732 N.W. 19th Avenue, Portland, Oregon 97209 (via  
4                   teleconference bridge.)

5                   COMMISSION STAFF, by Jonathan Thompson,  
6                   Assistant Attorney General, 1400 S.W. Evergreen Park  
7                   Drive, S.W., P.O. Box 40128, Olympia, Washington  
8                   98504-0128.

9                   BNSF, by Kevin MacDougall, Attorney at  
10                   Law, Montgomery Scarp MacDougall, 1218 Third Avenue,  
11                   Seattle, Washington 98101 (via teleconference  
12                   bridge.)

13                   TRI-CITY AND OLYMPIA RAILROAD, by  
14                   Brandon Johnson, Attorney at Law, Miller Mertens &  
15                   Spanner, PLLC, 1020 North Center Parkway, Suite B,  
16                   Kennewick, Washington 99336 (via teleconference  
17                   bridge.)

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1                   JUDGE CAILLE: Let's go on the record. Good  
2 morning. This is a pre-hearing conference in two  
3 related dockets. The first docket that I'm going to  
4 mention is Docket Number TR-040664, and it's entitled  
5 City of Kennewick versus Union Pacific Railroad.  
6 This docket has been in existence for a while, and  
7 just recently Union Pacific Railroad filed a motion  
8 to consolidate this matter with the other case that  
9 is before me this morning for a pre-hearing  
10 conference, and that is Docket Number TR-050967, and  
11 it is entitled City of Kennewick versus Port of  
12 Benton and Tri-City and Olympia Railroad.

13                   My name is Karen Caille. I'm the  
14 Administrative Law Judge assigned to these  
15 proceedings. Today's date is January the 9th, and we  
16 are convened in the hearing room at the Commission's  
17 offices in Olympia, Washington.

18                   I would like to begin this morning by first  
19 taking the appearances for Docket Number TR-040664,  
20 and could we begin with you, Ms. Larson?

21                   MS. LARSON: Carolyn Larson, appearing on  
22 behalf of Union Pacific Railroad.

23                   JUDGE CAILLE: For those of you who will be  
24 entering your appearance for the first time, I'm  
25 going to ask you to state your name, spelling your

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1 last name for the court reporter, your address, both  
2 mailing and post office, your fax number and your  
3 e-mail address. So I'm sorry to interrupt, but let's  
4 proceed with the remainder of the appearances for  
5 040664. Would that be you, Mr. Ziobro?

6 MR. ZIOBRO: Correct. John Ziobro,  
7 Z-i-o-b-r-o, City of Kennewick.

8 JUDGE CAILLE: And --

9 MR. THOMPSON: And Jonathan Thompson,  
10 Assistant Attorney General, appearing on behalf of  
11 the Commission Staff. My mailing address is 1400  
12 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,  
13 98504, and my telephone number is 360-664-1225, and  
14 the fax is 586-5522, and my e-mail address is  
15 Jonat@atg.wa.gov.

16 JUDGE CAILLE: Thank you. Are there any  
17 other appearances for Docket 040664? Okay. Hearing  
18 none, then let's begin with the appearances for  
19 Docket Number TR-050967, City of Kennewick versus  
20 Port of Benton and Tri-City and Olympia Railroad.

21 MR. ZIOBRO: Again, John Ziobro, City of  
22 Kennewick. Would you like my fax and mailing  
23 information? I think the Commission already has it.

24 JUDGE CAILLE: I think we have that on --  
25 did you enter -- you entered an appearance in the

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1 other?

2 MR. ZIOBRO: Correct.

3 JUDGE CAILLE: Right. We have that, then.

4 MR. ZIOBRO: Great.

5 MR. COWAN: This is Thomas A. Cowan,  
6 C-o-w-a-n, Cowan Moore Stam, S-t-a-m, & Luke,  
7 L-u-k-e, Attorneys for the Port of Benton. Mailing  
8 address, Post Office Box 927, Richland, Washington,  
9 99352, phone number 509-943-2676; fax number is  
10 509-946-4257; my e-mail address is  
11 TCowan@CowanMoore.com.

12 I am appearing today because the attorney in  
13 our office who's been handling this matter, Daryl  
14 Jonson, has gone on vacation this week. We did not  
15 receive notice of these proceedings until January 4th  
16 of last week, and therefore I'm substituting at this  
17 point for Mr. Johnson. His name is spelled D-a-r-y-l  
18 J-o-n-s-o-n.

19 JUDGE CAILLE: Thank you, Mr. Cowan. I  
20 didn't catch -- Moore is spelled M-o-o-r-e?

21 MR. COWAN: Yes, it is.

22 JUDGE CAILLE: Okay. Thank you.

23 MR. JOHNSON: This is Brandon Johnson,  
24 J-o-h-n-s-o-n, on behalf of Tri-City and Olympia  
25 Railroad. I did send a notice of appearance in back

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1 in August that has our address and phone number. My  
2 fax is 509-374-4229, and my e-mail is  
3 BJohnson@MMSLegal.com. Like Mr. Cowan, we just got  
4 notice of this on the 4th of last week.

5 JUDGE CAILLE: Thank you.

6 MR. MacDOUGALL: This is Kevin MacDougall,  
7 last name is spelled M-a-c-D-o-u-g-a-l-l.

8 JUDGE CAILLE: Oh.

9 MR. THOMPSON: Did we lose them all?

10 (Recess taken.)

11 JUDGE CAILLE: Okay. Mr. MacDougall, could  
12 we continue with -- could you begin again?

13 MR. MacDOUGALL: From the beginning, Your  
14 Honor, or just from the fax number?

15 JUDGE CAILLE: You better begin from the  
16 beginning.

17 MR. MacDOUGALL: My name is Kevin  
18 MacDougall, spelled M-a-c-D-o-u-g-a-l-l, with  
19 Montgomery Scarp MacDougall, PLLC. The Scarp is  
20 S-c-a-r-p, and we are representing BNSF Railway  
21 Company, and the address is 1218 Third Avenue,  
22 Seattle, Washington, 98101. The phone number is  
23 206-625-1801; fax number is 206-625-1807; and my  
24 e-mail address is Kevin@MontgomeryScarp.com.

25 And we just received notice of these

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1 petitions on Friday, last Friday, and -- which is why  
2 we have not filed any kind of written notice of  
3 appearance yet, Your Honor.

4 JUDGE CAILLE: Okay. Friday, the 4th.  
5 Let's see. Is there anyone else to make an  
6 appearance in this second docket? All right.

7 MR. THOMPSON: Oh, actually, Your Honor, I'm  
8 sorry.

9 JUDGE CAILLE: Oh, please do, Mr. Thompson.

10 MR. THOMPSON: Jonathan Thompson, with the  
11 Attorney General's Office again, appearing on behalf  
12 of the Staff of the Commission.

13 JUDGE CAILLE: Thank you, Mr. Thompson. So  
14 let the record reflect there are no other  
15 appearances. Just for my -- satisfying my curiosity,  
16 we served the notices on December 30th, so did we not  
17 -- I'm just wondering why it took so long for you to  
18 receive the notice, if it didn't arrive until January  
19 4th? Well, maybe that isn't that long. Yeah, with  
20 the holiday, I guess that that probably is what  
21 happened, because we have a service date of the 30th  
22 on our -- anyway, I'm glad you all could make it, and  
23 for those of you who are substituting for the  
24 attorney who should be here, thank you very much for  
25 appearing.

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1           As I stated before going on the record this  
2 morning, part of the reason why there's sort of a  
3 rush on this is that a petition to consolidate the  
4 older docket, TR-040664, was filed by Union Pacific  
5 Railroad and supported by Commission Staff, and the  
6 only problem was is that there was no active docket  
7 for me to consolidate.

8           So now there is, and thanks to Mr. Ziobro  
9 activating that docket again. And the -- we are here  
10 to discuss whether these two dockets should be  
11 consolidated and then to look at the schedule to see  
12 if it needs to be adjusted, because today was the day  
13 that we were to meet for a pre-hearing conference to  
14 assign exhibit numbers to the exhibits and exchange  
15 cross exhibits and take care of any other items prior  
16 to going to hearing on the 19th of January.

17           So let's begin with the question of whether  
18 these matters should be consolidated. And I'd like  
19 to begin with Ms. Larson, and then hear from anyone  
20 who would like to speak or comment on the matter. So  
21 Ms. Larson, if you'll begin.

22           MS. LARSON: Sure. Carolyn Larson,  
23 representing Union Pacific. When Union Pacific was  
24 preparing its written testimony for the Docket  
25 TR-040664, it became apparent that it was very



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1 difficult to address the merits or the problems with  
2 the proposed crossing of the Union Pacific tracks  
3 without also talking about the tracks of the Port of  
4 Benton, which are less than 200 feet away.

5           One of the threshold issues that needs to be  
6 reviewed in this matter is whether a grade separated  
7 crossing is possible, and it certainly isn't -- it  
8 isn't feasible to discuss that without addressing the  
9 second set of tracks, because neither an  
10 under-crossing nor an over-crossing could be made of  
11 the Union Pacific tracks unless we also figured out  
12 what was going to happen with the Port of Benton  
13 tracks.

14           And even aside from that, there were a  
15 number of issues that we were noticing that affected  
16 both of the -- that affected the Union Pacific tracks  
17 when you consider that there are railroad operations  
18 also taking place on the Port of Benton tracks in  
19 terms of operating difficulties, and I think I laid  
20 those out in my motion.

21           So it was in connection with preparing our  
22 written testimony that we were noticing these  
23 problems, and that is what prompted my motion to  
24 consolidate, recognizing at the time that there was a  
25 procedural problem with that, since the second docket

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1 wasn't, at that point, active. So I do appreciate  
2 the fact that Mr. Ziobro has reactivated it so that  
3 this motion can be now considered.

4 JUDGE CAILLE: Okay. Mr. Thompson.

5 MR. THOMPSON: And I would just add, from  
6 Staff's standpoint, I don't have much to add beyond  
7 our written submission agreeing with Union Pacific's  
8 motion. It seems to me that it makes sense to have  
9 one proceeding in which the Commission -- you know,  
10 that would bind both of the railroads to the outcome  
11 in which we would be able to consider all the  
12 connected facts with regard to both railroads and the  
13 single-crossing, really, that would go over both of  
14 them, as proposed by Kennewick.

15 So it seems to us to make sense to include  
16 the -- either the Port of Benton as the -- as I  
17 understand it, the underlying property owner of the  
18 other -- the other adjacent tracks or the Tri-City  
19 and Olympia Railroad. I'm not certain of the --  
20 which, as between those two parties, would be the one  
21 that would ultimately have control over the use of  
22 the right-of-way, but in any event, one or perhaps  
23 both of them should be a party to this proceeding, in  
24 our view.

25 JUDGE CAILLE: Okay. Next.

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1                   MR. COWAN: This is Tom Cowan, Port of  
2 Benton. The Port not only owns the underlying  
3 ground; we own the track, as well. We acquired it  
4 from the Department of Energy.

5                   With regard to the consolidation, we would  
6 oppose it to the extent that we're not given an  
7 opportunity to respond. I don't know that the Port  
8 of Benton has even been properly served with notice  
9 of the petition. We've known about this since last  
10 summer, but we haven't been served.

11                   Our problem is that our agreement with the  
12 City is we were to negotiate something after the UP  
13 proceedings were completed. So we're just now  
14 getting involved in this. We have not done any of  
15 the discovery or had any opportunity to research the  
16 issues. There's going to be some significant issues  
17 with regard to Port of Benton track.

18                   First of all, the Port of Benton is a  
19 municipal corporation of the state, and I don't think  
20 we're amenable to a condemnation action by another  
21 municipality.

22                   Two, there's a reversionary interest in this  
23 track that belongs to the United States of America,  
24 that continues on for a period of time going forward.  
25 Those issues need to be briefed and responded to.

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1           So in the event that we're going to stick to  
2 the schedule in the original proceedings, we would  
3 object to being brought into that proceeding at this  
4 point because it's clearly a denial of our due  
5 process if we are brought in. If we are given ample  
6 time to prepare and respond to the petition and to do  
7 the necessary discovery, then we would not oppose a  
8 consolidation, but on the basis we're given time to  
9 respond to the proceedings.

10           JUDGE CAILLE: Mr. Cowan, when you said you  
11 did not receive notice of the petition, were you  
12 referring to the motion to consolidate or the actual  
13 petition for the at-grade crossing?

14           MR. COWAN: We were aware of the petition  
15 and received a copy and, in fact, last July, Mr.  
16 Thompson did file a notice of appearance. My copy of  
17 the petition we received was not a formal one filed  
18 with the WUTC; it was merely a draft copy sent to us  
19 by the City of Kennewick. Since we've appeared in  
20 the action, I don't know if we have an opportunity to  
21 get copies of the documents that are actually filed,  
22 then, with regard to the petition, if we have that  
23 opportunity, we're not going to object to the  
24 service.

25           With regard to the notice of this hearing, I

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1 don't see anything in the documents that tells us why  
2 there was a shortened notice period. Your comments  
3 that today was a day set for marking exhibits  
4 explains that.

5 I think, with regard to the due process, if  
6 we're given an opportunity to respond, I'm not going  
7 to object to either the petition or to the  
8 consolidation motion or this pre-hearing conference.  
9 Just a matter of us being given a fair opportunity to  
10 respond.

11 JUDGE CAILLE: Certainly.

12 MR. JOHNSON: Your Honor, this is Brandon  
13 Johnson, on behalf of the Tri-City and Olympia  
14 Railroad. I think Mr. Cowan hit the nail on the  
15 head, from our perspective. We have no substantive  
16 objection to consolidating these proceedings.  
17 However, it would be our position that we basically  
18 start from square one from a procedural standpoint,  
19 as this second petition was just now activated. We  
20 did have notice stemming from the summer.  
21 Interestingly, though, the copy I got of the petition  
22 was actually faxed to me by Daryl Jonson, Tom Cowan's  
23 partner, and he got his copy from the Port. I don't  
24 know that a copy was ever sent to the actual -- to my  
25 client, to the Railroad.

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1           But, again, there's no substantive  
2 objection. However, I think we need to go to square  
3 one procedurally. And so I guess the second issue,  
4 which is how we adjust this procedurally, really  
5 answers the first question, which is whether there's  
6 an objection. Because if we're able to start from  
7 the beginning and give us the same amount of time  
8 that the UP was given, as well as the City in the  
9 initial petition, then I don't think we have a  
10 problem, but if we try to speed things up and cram  
11 this into a shortened time, then, in fact, that is  
12 objectionable, from our perspective.

13           JUDGE CAILLE: Thank you. Okay. Who have I  
14 not heard from who would like to speak?

15           MR. MacDOUGALL: Kevin MacDougall, with  
16 BNSF, Your Honor. As a general proposition, BNSF  
17 would not oppose the consolidation, but just as Mr.  
18 Cowan and Mr. Johnson stated previously, BNSF would  
19 have the same sort of concerns due to the fact that  
20 we've just received notice via facsimile of these  
21 matters last Friday, January 6th, and BNSF has not  
22 had an opportunity to perform any kind of  
23 investigation, nor an opportunity to participate in  
24 any sort of discovery. So consequently, BNSF would  
25 oppose proceeding along the case schedule that has

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1    been previously set.

2                   JUDGE CAILLE:  All right.  Anything further  
3    from anyone?

4                   MR. ZIOBRO:  Yeah, John Ziobro, for the  
5    City.  I think I'm responsible for some of the  
6    confusions in the record, so maybe I'll speak to  
7    that.

8                   The City understands that filing two  
9    petitions a year apart is a condition of its own  
10   making, so we are not opposing the motion to  
11   consolidate.  I just, to be honest, my client's not  
12   happy about it and they don't want to agree to it,  
13   but we don't believe there's a good substantive basis  
14   to object.  Some of the confusion, Your Honor, if you  
15   look at the actual petition that the City filed --

16                   JUDGE CAILLE:  Just a moment.  Let me --

17                   MR. ZIOBRO:  -- it does not have a party  
18    name for the Petitioner and Respondent, and so as for  
19    notice, if you looked at that, it might leave some  
20    question as to who the proper parties were to be,  
21    even though they may have been listed later on in the  
22    petition, although I will say I do not think you'll  
23    find reference to BNSF Railway.

24                   I would be glad to file an amended petition  
25    that includes all party names if anyone or the

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1 Commission believes that would just make the record  
2 cleaner. I'd be glad to do that.

3 JUDGE CAILLE: You know, I think that that  
4 would make the record cleaner if you would file an  
5 amended petition, and I see on my copy, too, really,  
6 the only reference -- it has Petitioner and  
7 Respondent, and it has the road name, but it pretty  
8 much doesn't really identify -- you know, this could  
9 be that, since it wasn't really -- I don't know if it  
10 was -- wasn't in an adjudicative mode, that could be  
11 why it was not followed up.

12 I myself had a little bit of difficulty  
13 getting addresses for the parties that are not -- the  
14 actual railroad and not the -- I'm sorry, not the  
15 attorneys. We have the addresses of the attorneys,  
16 but it was difficult coming up with addresses for --  
17 I believe it was the Port of Benton, or a contact  
18 person at the Port of Benton and a contact person at  
19 the Tri-City and Olympia Railroad.

20 So what I would like to do is make sure that  
21 everyone has notice of everything, and we can proceed  
22 and go forward with these two dockets. It may be  
23 that we need to start from square one in order -- on  
24 the '05 docket in order to satisfy everyone's due  
25 process rights.



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1           Now, have I heard from everyone on the '05  
2 docket regarding their position on the consolidation  
3 and the process, the need for more process in this  
4 proceeding? Is there anyone else who wishes to  
5 comment on this?

6           Ms. Larson, do you have any objections to  
7 our -- and I guess I should also ask Mr. Ziobro,  
8 since it's the City of Kennewick, to our setting out  
9 a procedural schedule that will accommodate this  
10 consolidation?

11           MS. LARSON: This is Carolyn Larson. No, I  
12 have no objection at all.

13           MR. ZIOBRO: The City has no objection,  
14 either.

15           JUDGE CAILLE: Okay. All right. Then I  
16 think what we'll do is go off the record and discuss  
17 a schedule that will accommodate everyone. Hopefully  
18 we can reach a consensus on this, and then we'll come  
19 back on the record and I will put that schedule into  
20 the record, so --

21           MR. ZIOBRO: Your Honor.

22           JUDGE CAILLE: Yes.

23           MR. ZIOBRO: John Ziobro. Can I ask for one  
24 clarification? As to the amended petition, if  
25 they're sent to each of the respective attorneys,

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1 will everyone be satisfied with that, or would they  
2 like a copy to their client, as well?

3 MR. COWAN: This is Tom Cowan. The Port of  
4 Benton would accept service in that fashion.

5 MR. JOHNSON: This is Brandon Johnson. You  
6 can just send it to me, John. That's fine.

7 MR. MacDOUGALL: This is Kevin MacDougall,  
8 and you can send it to me, as well.

9 MR. ZIOBRO: Thank you all.

10 JUDGE CAILLE: Okay. Thank you. Then  
11 anything else before we go off the record? All  
12 right. Let's go off.

13 (Discussion off the record.)

14 JUDGE CAILLE: Let's go back on the record.  
15 We have had an off-record discussion concerning  
16 scheduling, and I'm going to read into the record the  
17 schedule as the parties have agreed to it. And then  
18 I will ask the parties if they wish to make any  
19 comments on the record that they may have made off  
20 the record.

21 The City will be filing an amended petition  
22 by January the 13th, 2006. Let's see. Any motions  
23 on jurisdictional issues will be filed by February  
24 14th, 2006. Responses, if there are objections, will  
25 be due February 28th, 2006. Discovery will begin

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1 immediately, and this is informal discovery, and we  
2 have a discovery -- informal discovery deadline or  
3 closing May 10th, 2006. There is an understanding  
4 that if the parties need more time, a request for an  
5 extension will be considered.

6 June 12th, 2006, will be the filing date for  
7 the City's pre-filed testimony. July 12th, 2006,  
8 will be the filing date for the Tri-City and Olympia  
9 Railroad and the Port of Benton's pre-filed  
10 testimony. Dispositive motions will be due on August  
11 the 14th, 2006. Answers to those motions will be due  
12 August 28th, 2006. We will hold a pre-hearing  
13 conference on October 5th, 2006, in order to exchange  
14 cross exhibits and mark those exhibits and attend to  
15 any other matters that need to be attended to before  
16 the hearing begins, and we will have the hearing here  
17 in Olympia on October 12th and 13th, 2006.

18 Is there anything that anyone -- oh, in  
19 addition, I have asked about a protective order, and  
20 the parties have agreed that they will attempt to  
21 work out things informally, but if it becomes  
22 necessary for a protective order, all you need to do  
23 is advise me and I will have a protective order  
24 prepared and signed by the Commission.

25 Let's see. I think that covers everything

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1 that I wanted to mention. Is there anything that any  
2 of the parties would like to add?

3 MS. LARSON: Yes, this is Carolyn Larson.  
4 It occurs to me that, under this scheduling, we will  
5 not know until the hearing what position the WUTC  
6 Staff is taking on the petitions of the City.

7 MR. THOMPSON: What I had envisioned is -- I  
8 mean, it seems to me the City carries the burden  
9 here, and -- well, maybe that's why -- I guess that's  
10 probably why we had the date in the middle there,  
11 Commission Staff will file testimony on the last  
12 schedule.

13 MS. LARSON: Although maybe it would have  
14 made better sense for you to follow the railroads, so  
15 you're hearing both sides.

16 MR. THOMPSON: Yeah, you know, conceivably  
17 the Staff could come in in support of establishing a  
18 new at-grade crossing, and then the railroad would --  
19 if we file at the same time as the railroads, who are  
20 filing in opposition to the City's petition, then the  
21 railroads would need --

22 JUDGE CAILLE: Another round.

23 MR. THOMPSON: -- another round. So as it  
24 stands, do we have the time to just, if necessary,  
25 add a third round of --

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1           JUDGE CAILLE:  So were you thinking of  
2  responding at the same time as the railroads?

3           MR. THOMPSON:  Responding at the same time  
4  as the railroads.

5           JUDGE CAILLE:  And then -- let's see.  Where  
6  were we?  Well, you know, dispositive motions are due  
7  on the 14th.  I suppose we could move -- or do you  
8  think you can fit in between -- probably not.  July  
9  12th and October 14th, that's not a lot.  Let's go  
10 back off the record just a moment so we can figure  
11 this out.

12           (Discussion off the record.)

13           JUDGE CAILLE:  Let's go back on the record.  
14 All right.  We've discovered that we don't have to  
15 change anything pursuant to our off-record  
16 discussion, so we will keep the schedule as I  
17 previously read into the record.  And now I'll ask if  
18 there's anyone who would like to add anything that  
19 was mentioned during our off-record discussions or  
20 otherwise.

21           MS. LARSON:  Yes, this is Carolyn Larson.  
22 Do we have a time of day for our pre-hearing  
23 conference?

24           JUDGE CAILLE:  What would be best for the  
25 parties, because it will be here, so --

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1                   MR. COWAN: Probably afternoon would be  
2 best.

3                   JUDGE CAILLE: Is afternoon better? How  
4 about 1:30, then? Will that work? That's October  
5 the 5th.

6                   MS. LARSON: Sure.

7                   MR. COWAN: Works for us.

8                   JUDGE CAILLE: And on hearing days, we  
9 usually begin at 9:30 in the morning.

10                  MS. LARSON: Okay.

11                  JUDGE CAILLE: Okay. I've covered the  
12 protective order. The only last thing that I'd like  
13 to remind the parties is that the Commission  
14 encourages settlements, and I know that there have  
15 been efforts to settle in the original docket, but  
16 should there be an opportunity for the parties to  
17 come to some consensus on the issues, please keep the  
18 Commission informed.

19                  If you should need a mediator, usually, if  
20 you'd contact our head ALJ, another ALJ besides  
21 myself would be able to do a mediation. I will  
22 prepare a pre-hearing conference order memorializing  
23 what we have discussed today and setting forth the  
24 schedule and any other procedural matters.

25                  I did not -- I will check and see how many

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1 copies of any documents you filed need to be filed  
2 with the Commission. I did not have an opportunity  
3 to do that this morning, but I will include that in  
4 my pre-hearing conference order.

5 Is there anything else from anyone?

6 Anything, any concerns?

7 MR. MacDOUGALL: Just one thing, Your Honor,  
8 we were talking earlier --

9 JUDGE CAILLE: Is this Mr. MacDougall?

10 MR. MacDOUGALL: This is Kevin MacDougall.  
11 I just wanted to confirm the fact you were, in fact,  
12 agreeable to possibly extending some of these  
13 deadlines if the need arose.

14 JUDGE CAILLE: Yes, I'm hoping that that  
15 will not occur, but I know that there was some  
16 concern by the parties about the amount of time for  
17 discovery. But I think we pretty much added about  
18 another month in order to accommodate that, so  
19 there's approximately 120 days for discovery. But  
20 it's understood that if problems arise, you just need  
21 to bring them to me and we'll attempt to work them  
22 out.

23 MR. MacDOUGALL: Thank you, Your Honor.

24 JUDGE CAILLE: Anything else from anyone?

25 MR. COWAN: Not from us, Your Honor.

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1 MS. LARSON: No.

2 JUDGE CAILLE: All right. Thank you very  
3 much for participating in this pre-hearing  
4 conference, and it is now adjourned. Thank you.

5 MR. COWAN: Thank you, Your Honor.

6 MS. LARSON: Thank you.

7 (Proceedings adjourned at 10:53 a.m.)

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