

**Docket Nos. TR-210809 and TR-210814 - Vol. II
(Consolidated)**

**In the Matter of: City of Spokane Valley v. Union Pacific
Railroad Company**

May 10, 2022



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1 Foster, A-z-i-z-a, of Menke Jackson Beyer, on behalf of
 2 the City.
 3 JUDGE HOWARD: Thank you.
 4 And could we have an appearance for the
 5 Railroad?
 6 MS. REYNOLDS: Good morning, Your Honor.
 7 Rachel Reynolds on behalf of Union Pacific Railroad.
 8 JUDGE HOWARD: Thank you.
 9 Can we have an appearance for Staff?
 10 MR. ROBERSON: Good morning, Judge Howard.
 11 Jeff Roberson, AAG, for Staff.
 12 JUDGE HOWARD: Thank you.
 13 Since we're doing this hearing over Zoom,
 14 I'm going to ask that the parties be aware of any
 15 background noise and that you mute your microphone when
 16 you're not speaking. If you need to object or raise an
 17 issue, please identify yourself when you begin to speak.
 18 And we should make an effort not to speak over each
 19 other so the court reporter can make a clear record of
 20 our hearing today.
 21 Let's talk about our plans for today's
 22 hearing. Because this case began with the City's
 23 petition and complaint, I'm going to ask that the City
 24 tender its witnesses for examination first. Union
 25 Pacific and Staff may then cross-examine the witnesses

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1 one by one. I will then allow Union Pacific to tender
 2 its witnesses. The City may cross those witnesses.
 3 We can then end the hearing by allowing each
 4 party a chance to give a closing statement.
 5 I am not planning at the moment to provide
 6 an opportunity for opening statements, but if a party is
 7 interested in that, we can change that plan.
 8 I have received exhibits and exhibit lists
 9 from the City and from Union Pacific. I did not receive
 10 any exhibits from Staff. Since the parties could not
 11 stipulate before this hearing to the admission of all
 12 prefiled exhibits, I would suggest that the parties move
 13 for admission of their exhibits as they use them during
 14 their examination. The opposing counsel can object as
 15 needed.
 16 Is this workable for the parties or would
 17 one of the parties prefer instead to make a motion at
 18 the beginning of our hearing today?
 19 MS. FOSTER: Thank you, Judge Howard. Just
 20 for the record, Aziza Foster for the City. The City
 21 would like to just make a motion at the beginning as the
 22 City intends to object to all exhibits. And so for
 23 clarity, I think it may be easier if we proceed in that
 24 manner.
 25 JUDGE HOWARD: All right. Does the

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1 Railroad -- does Union Pacific plan to make a motion at
 2 the start of the hearing?
 3 MS. REYNOLDS: The Railroad stipulated to
 4 the City's exhibits, Your Honor, and in terms of
 5 responding to the City's motion, we're able to take that
 6 up now or take it up ad hoc as the examinations go on.
 7 Whatever Your Honor prefers.
 8 JUDGE HOWARD: All right. Thank you.
 9 Staff?
 10 MR. ROBERSON: So good morning, Judge
 11 Howard. Jeff Roberson for Staff. I have objections to
 12 portions of Ms. Ygbuhay's testimony, but Staff will
 13 otherwise stipulate to the exhibits. So probably
 14 clearer to do that at the start, but I leave it to your
 15 discretion.
 16 JUDGE HOWARD: All right. All right. So,
 17 Ms. Foster, would you please proceed with your motion
 18 regarding the evidence that you would like to make?
 19 MS. FOSTER: Thank you, Judge Howard. I
 20 think for clarity, we're technically making two motions.
 21 The first is objection to all exhibits attached to the
 22 prefiled testimony, so of Mr. Mays and Ms. Ygbuhay.
 23 The reason why is these exhibits were not
 24 properly filed with the prefiled testimony that were due
 25 on April 12th of 2022. As you note, Judge Howard, you

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1 yourself had to call that to the Railroad's attention.
 2 The City was going to wait until the hearing, as we're
 3 doing in this case, to object. And so that's why we're
 4 objecting to those exhibits. They were not timely
 5 filed.
 6 The City also objects to the
 7 cross-examination exhibits, all of them, that were filed
 8 by the Railroad. Once again, those exhibits were not
 9 timely filed. Those were due at noon on May 6th. Those
 10 exhibits were submitted late. I do note that
 11 Ms. Reynolds for the Railroad did email all parties
 12 letting them know that they were having technical
 13 difficulties; however, that email was, in fact, sent
 14 after the due date. The City does not see why the
 15 Railroad could not have sent that email before the due
 16 date.
 17 Further, this really -- that was the third
 18 failure by the Railroad to comply with the procedural
 19 schedule. Their initial response testimony, while
 20 emailed to the parties the day that they were due, they
 21 were technically filed late. And as Your Honor will
 22 note, there was that stricken, quote/unquote, rebuttal
 23 testimony, which was improper and untimely filed
 24 response testimony.
 25 So those are the objections that the City

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1 has.
2 JUDGE HOWARD: Thank you. And I will give
3 Union Pacific a chance to respond and Staff a chance to
4 comment as the third party here.
5 But so just to clarify, you referred to
6 there being three occasions when the Railroad filed
7 material late in this case. So would the first be the
8 response testimony itself?
9 MS. FOSTER: That is correct, Your Honor.
10 JUDGE HOWARD: And then the -- are we
11 counting the exhibits, porting it as the second
12 instance?
13 MS. FOSTER: No, Your Honor. The City is
14 technically counting the, quote/unquote, rebuttal
15 testimony, as the reason that the City moved to strike
16 that testimony was that it was technically response
17 testimony filed a couple weeks too late.
18 JUDGE HOWARD: All right. So we have
19 response testimony filed late, we have the rebuttal
20 testimony filed late, was there another instance of late
21 filed testimony?
22 MS. FOSTER: Your Honor, the third was the
23 cross-examination exhibits themselves, which were filed
24 after the deadline.
25 JUDGE HOWARD: All right. Thank you for

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1 that clarification.
2 All right. Could we have a response from
3 Union Pacific?
4 MS. REYNOLDS: Certainly, Your Honor.
5 Firstly, there are no substantive challenges to the
6 admission of this testimony. Firstly, with the exhibits
7 that were attached to prefiled statement, my legal
8 assistant inadvertently reattached the City's exhibits
9 to our exhibit list, and we did not note that until Your
10 Honor brought that up.
11 But certainly, we are all talking about
12 issues that overlap and interrelate. And so they're --
13 those exhibits were listed out, and they weren't brought
14 to our attention. Not that it is the requirement of the
15 City to bring it to our attention, but we are here on a
16 hearing to ascertain the truth and justice, and the
17 rules of evidence -- in fact, ER 102 tells us that we
18 should interpret the rules of evidence to ascertain the
19 truth, not on procedural technicalities. And as soon as
20 Your Honor brought that up to our attention, we did our
21 best to correct that.
22 In terms of the cross-examination, I was
23 asking what the status was because we had a volume of
24 documents. And as soon as I realized that we were
25 not -- we had not timely filed, I sent an email. We

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1 were ten minutes late for that.
2 Again, we're here on a truth-seeking
3 mission. And I can go through some of the documents
4 that are being objected to were actually part and parcel
5 of the City's complaint. Some of them are the completed
6 documents that should be considered pursuant to ER 104,
7 the rule of completeness. Some are statutes that cannot
8 be in dispute. Others were listed in the City's
9 cross-examination documents.
10 And I could take those up individually if
11 Your Honor would like to discuss those, but there is no
12 objection to the substantive information contained in
13 any of these exhibits. There's no objection to the
14 authenticity of any of these exhibits. And so pursuant
15 to ER 102 and Civil Rule 1, we would submit that the
16 City's motion should be denied.
17 JUDGE HOWARD: All right. Thank you.
18 Does Staff wish to give any comments on
19 this? I know it doesn't pertain directly to Staff.
20 MR. ROBERSON: Staff will stipulate to the
21 admission of those exhibits. We have no objection to
22 allowing them in.
23 JUDGE HOWARD: Okay. I am going to deny the
24 City's motion. I am concerned with the repeated
25 failures to meet deadlines, and that if it's repeated,

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1 that is not something that I normally take lightly.
2 I am not convinced, though, that there was
3 significant prejudice or -- or I'm not seeing -- I'm not
4 seeing the prejudice to the City from these oversights,
5 and it appears some of these oversights were -- at least
6 some of them were clearly unintentional. So I am going
7 to deny the motion.
8 Mr. Roberson, you mentioned that Staff
9 wanted to bring a motion as well?
10 MR. ROBERSON: Yes. Again, for Staff, Jeff
11 Roberson. With regard to the exhibit of Ms. Ygbuhay,
12 which is PY-1T, so it's WAC 480-07-495(1) provides that
13 the presiding officer may exclude evidence that's
14 irrelevant. It also provides that the Commission will
15 follow Washington's rules of evidence when ruling on the
16 admissibility of evidence.
17 ER 401 says that evidence is relevant if it
18 has any tendency to make a fact of consequence more or
19 less likely.
20 As far as Staff is concerned, there are
21 three types of facts of consequence here.
22 The first is whether or not public safety
23 requires the modifications to this crossing. That's
24 relevant under RCW 81.53.261.
25 The second set of facts that would be of

<p style="text-align: right;">Page 29</p> <p>1 consequence would go to how costs and maintenance are 2 allocated. That's relevant under the statutes 3 referenced in 81.53.261 dealing with allocation. 4 The third set of facts would be those that 5 make it more or less likely that the City and the 6 Railroad agreed to an allocation because they can do 7 that. 8 Portions of Ms. Ygbuhay's testimony don't go 9 to any of those facts. Taking them in specific, Exhibit 10 PY-1T at page 7, line -- or sorry, wrong page. It's 11 page -- I think it's on page 6. One second, Your Honor. 12 Sorry, it's page 2, lines 19 through 25. 13 JUDGE HOWARD: Page 2, you said? 14 MR. ROBERSON: Yeah, sorry. Page 2, lines 15 19 through 25. That testimony deals with other grade 16 crossings in Washington. It doesn't make a fact of 17 consequence with regard to this crossing more or less 18 likely, and Staff would object on grounds of relevance. 19 Exhibit -- or Exhibit PY-1T at lines 7 -- or 20 sorry, page 7, line 9 through page 8, line 25, this is 21 testimony about UP's agreements with entities other than 22 the City. It doesn't make any of those facts of 23 consequence any less likely. 24 Exhibit PY-1T, at page 8, line 26 through 25 page 9, line 5, this is about UP's internal policy.</p>	<p style="text-align: right;">Page 31</p> <p>1 involves a series of interrelated regulations from the 2 state and federal government. And we can't take this 3 particular situation in a vacuum, because there have 4 been not only agreements for other crossings throughout 5 the state of Washington, but there's been a prior 6 agreement in 2017 regarding this particular crossing. 7 And so part of the argument that the 8 Railroad has is that cities cannot decide to develop 9 construction projects that are not necessitated by the 10 public safety and then impose costs upon railroads. 11 And so this evidence bears upon the impact 12 economically upon the Railroad, and therefore, we would 13 submit that that is relevant. 14 I think the same argument bears, Your Honor, 15 if we move to page 7 of the prefiled testimony of 16 Ms. Ygbuhay and the average costs of materials for type 17 of maintenance, average cost of maintenance. We can't 18 consider the City of Spokane's Barker Road project in a 19 corridor when we were talking about the issue of State 20 regulation of the railroads. Particularly when our 21 argument is that this is something that is for the 22 City's benefit, requested by the City, and that request 23 is that the imposition of costs of funding a project 24 that happens to cross Union Pacific's railroad should be 25 funded.</p>
<p style="text-align: right;">Page 30</p> <p>1 Again, it doesn't make any of those facts discussed 2 above more or less likely, those facts of consequence. 3 And then PY-1T at page 9, lines 6 through 8, 4 that's about maintenance for the crossing surface 5 itself. It's not about maintenance for the crossing 6 devices. It's also irrelevant for purposes of the 7 petition and the City's complaint. 8 JUDGE HOWARD: Can I get your second-to-last 9 cite again? Was it page 8, line 25 and then it crossed 10 over to page 9? 11 MR. ROBERSON: I have page 8, line 26 12 through page 9, line 5. And that's all I have. 13 JUDGE HOWARD: All right. Thank you. Just 14 give me a moment here and I will allow for responses 15 here in just a moment. 16 All right. Would the -- would Union Pacific 17 like to respond to this? 18 MS. REYNOLDS: Yes, Your Honor. I think it 19 makes sense probably to take each one up individually. 20 And so I would direct Your Honor to page 2, lines 18 21 through 27, the testimony about other public grade 22 crossings, et cetera. 23 At issue in this case, and as stated by 24 Staff, a fact of consequence is how maintenance costs 25 are typically allocated. And typically allocated</p>	<p style="text-align: right;">Page 32</p> <p>1 So if we were to take that and extrapolate 2 that out to other crossings throughout the state, then 3 that would have a massive economic impact, and certainly 4 it wouldn't further the federal regulations regarding 5 safety allocation of costs. 6 Moving to page 8, how does UP spend the 7 moneys it collects from other parties for signal 8 maintenance. One of the implications -- well, it's 9 actually explicitly stated in the prefiled testimony of 10 Gloria Mantz, and I believe it is also implicitly 11 referenced in the prefiled testimony of Mr. Lochmiller 12 is that there is some sort of nefarious delay, in this 13 case, on behalf of the Railroad because they're refusing 14 to accept responsibility for what the City considers 15 Railroad responsibility. 16 And so providing the context for other 17 situations where these types of construction and 18 maintenance agreements can come up is important for Your 19 Honor to make a determination of whether cost and 20 maintenance are allocated to the Railroad or to the 21 City. 22 And that the standard isn't that this is -- 23 directly bears on any of the facts as the Staff has set 24 up. The standard is whether it makes any fact of 25 consequence more or less probable.</p>

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1 And so the standard for relevancy is
 2 exceedingly low, and the context of all of the City's
 3 prior agreements with this railroad and the Railroad's
 4 activities throughout the state of Washington do bear on
 5 the issues that are at play here.
 6 And I think that generally addresses the
 7 concerns that were raised by Staff unless Your Honor has
 8 additional questions regarding specific pieces of
 9 testimony we would submit.
 10 JUDGE HOWARD: Would you like to respond to
 11 I think it was the final item in the testimony that
 12 Staff objected to, which is page 9, line 6 through 8,
 13 the estimated cost for maintenance for the crossing
 14 surface?
 15 MS. REYNOLDS: Yes, Your Honor. I think
 16 that this bears upon the issues in this case because
 17 there's a 2017 agreement for the crossing itself,
 18 surface crossing. And there are agreements wherein the
 19 parties, including the City of Spokane Valley and Union
 20 Pacific Railroad, have entered into agreements
 21 consistent with the statute, RCW 81.53.261, which
 22 specifically allows the parties to negotiate out
 23 contracts.
 24 And it's also important when there's a
 25 presumption and an implication throughout the prefiled

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1 testimony of the City's witnesses that the Railroad has
 2 in some way failed to uphold its obligations under prior
 3 practices and conduct, as specifically stated by the
 4 City when there are costs that are being paid and that
 5 are -- that had been discussed previously. In other
 6 words, the suggestion from the City is that somehow
 7 Union Pacific has -- well, they've explicitly alleged in
 8 their complaint -- harmed the public by failing to enter
 9 into a construction and maintenance agreement in the
 10 time that's requested by the City and for the funding
 11 that's requested by the City.
 12 And so the estimated cost to UP for a
 13 different aspect is important for this court's
 14 consideration.
 15 JUDGE HOWARD: Is it the Railroad's position
 16 that the 2017 agreement that you mentioned that
 17 addresses the maintenance cost for the crossing service
 18 also applies to the signals and other safety devices?
 19 MS. REYNOLDS: No, the -- it's the -- it is
 20 indicative and illustrative. So the 2017 agreement, A,
 21 talked about the surface grading, and it's important for
 22 our discussion here today because it allocated all costs
 23 to the City of Spokane Valley. And it specifically
 24 stated in Section 12 that any future projects regarding
 25 this particular grade crossing would not be charged to

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1 the City absent some negotiation. Or I'm sorry, the
 2 Railroad absent negotiation and an agreement and an
 3 acceptance by the Railroad to undertake the cost.
 4 And I'm sorry, Your Honor, do you have
 5 additional questions?
 6 JUDGE HOWARD: Thank you. But no, I do not
 7 at this time.
 8 Would the City like to comment on Staff's
 9 motion?
 10 MS. FOSTER: Thank you, Judge Howard. Aziza
 11 Foster for the City. The City generally supports
 12 Mr. Roberson in Staff's motion, but has nothing specific
 13 to comment. Thank you.
 14 JUDGE HOWARD: So, Mr. Roberson, just to be
 15 clear, the second item of testimony that your motion
 16 focused on was page 7, line 9 to page 8, line 25?
 17 MR. ROBERSON: That is correct, Judge
 18 Howard.
 19 JUDGE HOWARD: All right. I am going to
 20 deny Staff's motion in part and I'm going to grant it in
 21 part. I am granting Staff's motion with respect to page
 22 7, line 9 through page 8, line 25 of the testimony at
 23 issue. This -- this material does pertain to the
 24 Railroad's practice in other jurisdictions, and this
 25 does not appear relevant for our proceeding here.

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1 I'm otherwise denying Staff's motion because
 2 it appears that this material may be relevant or may
 3 provide background information, but if -- if it turns
 4 out that this is not relevant later in the proceeding,
 5 then I may entertain another objection particularly with
 6 regards to page 9, lines 6 through 8.
 7 All right. Are there any other motions
 8 or -- or questions that we should address before we
 9 begin with cross-examination of witnesses?
 10 MR. ROBERSON: Staff has one. It's
 11 procedural. At the prehearing conference, we left the
 12 placeholder on the schedule for post-hearing briefing.
 13 It wasn't clear that Judge Pearson was going to want it.
 14 Given the large record and some of the legal issues that
 15 are presented by what the parties are discussing, Staff
 16 would prefer to have briefing in lieu of a closing
 17 statement. Whether that's one or two rounds would
 18 depend on what would be most helpful for you. But Staff
 19 would like to at least submit one round of briefing.
 20 JUDGE HOWARD: I -- I think I would be
 21 hesitant to do two rounds of briefing in this case, but
 22 I think considering one round of post-hearing briefing
 23 may be a valid approach.
 24 What does the City think of that?
 25 MS. FOSTER: The City agrees with Staff

<p style="text-align: right;">Page 37</p> <p>1 regarding one round of post-hearing briefing would 2 likely be beneficial to all parties. 3 JUDGE HOWARD: How about Union Pacific? 4 MS. REYNOLDS: Your Honor, Union Pacific 5 agrees with one round of briefing and agrees with both 6 Staff and the City that that would be helpful. We would 7 like the opportunity today to do a brief oral summary or 8 closing statement for Your Honor's consideration in 9 addition to that. 10 JUDGE HOWARD: Do any of the parties have 11 concerns with Union's -- Union Pacific's request for a 12 brief closing statement today in addition? 13 MS. FOSTER: The City does not, Your Honor, 14 and, in fact, the City would join with Union Pacific in 15 requesting a brief closing statement. 16 JUDGE HOWARD: All right. Why don't we put 17 a date on the calendar for the one round of post-hearing 18 briefing, simultaneous submissions from the parties. 19 What are we looking at -- so today's May 10th. Should 20 we say three weeks out, May 31st? 21 MR. ROBERSON: That works for Staff. 22 MS. FOSTER: That works for the City as 23 well. 24 MS. REYNOLDS: And that also works for Union 25 Pacific.</p>	<p style="text-align: right;">Page 39</p> <p>1 and foundation. 2 JUDGE HOWARD: All right. Let me -- let me 3 open the right document here. All right. So please 4 proceed with your -- your objection. 5 MS. REYNOLDS: Thank you, Your Honor. This 6 is referencing Exhibit RL-1T direct testimony. And I'm 7 specifically referring to page 3, beginning at line 28 8 and continuing onto page 4, line -- line 5. 9 There is a statement here about Union 10 Pacific concerns about traffic safety as there had been, 11 according to this statement, nine blocked crossing, 18 12 unsafe motorists, and one vehicle on the tracks reported 13 at this location. And there is no basis that is set 14 forth for where this evidence came from, what any of 15 this information means, and there's no documentary 16 evidence that underscores this. 17 And so it appears to be some sort of hearsay 18 or lacking foundation. 19 JUDGE HOWARD: Would the City like to 20 respond? 21 MS. FOSTER: Yes, thank you, Judge Howard. 22 In regards to whether or not this is hearsay, these, I 23 would say data, it came from Mr. Mays, and so that's a 24 statement of a party opponent as he is a representative 25 of UP.</p>
<p style="text-align: right;">Page 38</p> <p>1 JUDGE HOWARD: Okay. Great. Thank you. 2 And would any of the parties be concerned if 3 I set a page limit of 30 pages? 4 MS. FOSTER: The City is not concerned, 5 Judge Howard. 6 MS. REYNOLDS: The Railroad is not 7 concerned, Judge Howard. 8 MR. ROBERSON: Nor is Staff. 9 JUDGE HOWARD: Okay. Great. Thank you. 10 Then the single round of post-hearing briefs will be due 11 May 31st. There will be a 30-page limit. 12 And before we turn to examinations, since we 13 just had motions regarding the evidence, and I have 14 denied the City's motion, I have granted Staff's motion 15 in part just with respect to a portion of the testimony 16 as I've already discussed. Do the parties anticipate 17 any further objections to the -- to the prefiled 18 testimony itself? So the -- the direct testimony, the 19 response testimony, and the rebuttal testimony from the 20 City setting aside the supporting exhibits? 21 MS. FOSTER: The City does not have any 22 further objections, Judge Howard. 23 MS. REYNOLDS: Judge, we would like to raise 24 one objection to the testimony, the prefiled testimony 25 of Mr. Lochmiller filed by the City based upon a hearsay</p>	<p style="text-align: right;">Page 40</p> <p>1 Further Judge, I would direct you to Exhibit 2 EM-3, in which these are the diagnosis meeting minutes 3 with specifically Union Pacific's comments. And you 4 will note in the comments that there are reports of nine 5 blocked crossings, 18 unsafe motorist, and one vehicle 6 on the track reported. And so the foundation is Union 7 Pacific itself. Thank you. 8 JUDGE HOWARD: All right. I am going to 9 deny the motion. Generally, hearsay rules do not 10 precisely apply before the Commission. And furthermore, 11 it does appear that there is some evidence corroborating 12 this. But, of course, Union Pacific may feel free to 13 cross-examine the witness on -- regarding this 14 statement. 15 Okay. So if that -- if that is the 16 remaining objection to the prefiled testimony, setting 17 again -- again, setting aside the supporting exhibits, 18 then I would deem Exhibits BJ-1T, RL-1T, GM-1T, GM-8T, 19 EM-1T all admitted in their entirety and Exhibit PY-1T 20 admitted with the exception of lines -- page 7, line 9 21 to page 8, line 25. And then we will address the 22 supporting exhibits and move those into evidence as we 23 proceed with the hearing. 24 (Exhibits BJ-1T, RL-1T, GM-1T, GM-8T, 25 EM-1T, and PY-1T admitted.)</p>

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1 JUDGE HOWARD: All right. With that, the
 2 City may introduce its first witness and tender them for
 3 cross-examination.
 4 MS. FOSTER: Thank you, Judge Howard. The
 5 first witness the City would like to call is
 6 Mr. Johnson.
 7 Mr. Johnson, can you please turn on your
 8 camera. Maybe -- Brett, are you on the line?
 9 THE WITNESS: Yes, I am.
 10 MS. FOSTER: Thank you. Do you have the
 11 ability to turn on your camera?
 12 THE WITNESS: Yes, just a minute here.
 13
 14 EXAMINATION
 15 BY MS. FOSTER:
 16 **Q. How are you doing, Mr. Johnson?**
 17 A. Doing well.
 18 **Q. Thank you.**
 19 **Can you please state your name and occupation**
 20 **for the record?**
 21 A. I'm Brett Johnson. I'm assistant local programs
 22 engineer for DOT.
 23 **Q. Thank you.**
 24 **And how long have you been in your position?**
 25 A. Just shy of five years.

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1 JUDGE HOWARD: Let me -- let's swear in the
 2 witness before we -- I imagine you're about to tender
 3 him for cross, but...
 4 (Brett Johnson sworn.)
 5 JUDGE HOWARD: All right. Thank you. You
 6 may proceed.
 7 MS. FOSTER: Thank you, Judge Howard.
 8 BY MS. FOSTER:
 9 **Q. Mr. Johnson, I would ask that you either pull up**
 10 **or have your prefiled testimony in front of you. This**
 11 **has been designated as BJ-1T.**
 12 A. Yes, it's in front of me.
 13 **Q. Thank you.**
 14 **Can you just please quickly review that?**
 15 A. Okay.
 16 **Q. Thank you.**
 17 **Is that your testimony in this matter?**
 18 A. Yes, it is.
 19 **Q. Okay. Thank you.**
 20 MS. FOSTER: That is all I have. I believe
 21 I will now be turning it over to Ms. Reynolds for cross.
 22 JUDGE HOWARD: All right. Union Pacific may
 23 proceed with its cross.
 24 MS. REYNOLDS: Thank you, Your Honor.
 25 ////

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1 CROSS-EXAMINATION
 2 BY MS. REYNOLDS:
 3 **Q. Good morning, Mr. Johnson. Can you hear me?**
 4 A. Yes, I can.
 5 **Q. All right. I'd like to ask you just a few**
 6 **questions about your involvement with the Barker Road**
 7 **crossing and specifically the funding, all right?**
 8 A. Okay.
 9 **Q. Does the Barker Road crossing involve the**
 10 **installation of a new grade crossing protective device?**
 11 A. I guess -- I guess I don't understand that
 12 question exactly. You know, I believe --
 13 MS. FOSTER: Aziza Foster for the City.
 14 We'll object to this question. This is outside the
 15 scope of Mr. Johnson's knowledge and his testimony.
 16 He's specifically testifying to the federal funds, not
 17 the actual grade crossing itself.
 18 JUDGE HOWARD: Would Union Pacific like to
 19 respond to that?
 20 MS. REYNOLDS: Yes, Your Honor. RCW
 21 81.53.295 specifically contemplates federal funding for
 22 the installation of new grade crossing protective
 23 devices. That's straight from the statute. And
 24 Mr. Johnson's prefiled testimony reads, Are federal
 25 funds being used to upgrade the UPRR railroad crossing?

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1 And the answer is, Yes, with explanation.
 2 JUDGE HOWARD: I will deny the objection.
 3 I'll allow the question. You may need to repeat the
 4 question for him.
 5 MS. REYNOLDS: Yes, Your Honor, thank you.
 6 BY MS. REYNOLDS:
 7 **Q. Sir, I will ask again.**
 8 **Does the Barker Road crossing involve**
 9 **installation of a new grade crossing protective device?**
 10 A. Yes, yes, there will be crossing arms installed
 11 there with this -- with this project. That is within
 12 the scope of the project, yes.
 13 **Q. What type of highway funds are being [Zoom**
 14 **interference] installing the grade crossing protective**
 15 **device?**
 16 THE COURT REPORTER: Ms. Reynolds, I'm
 17 sorry, this is the court reporter. Can you please
 18 repeat that? It kind of cut out.
 19 MS. REYNOLDS: Yes, my apologies.
 20 BY MS. REYNOLDS:
 21 **Q. What type of highway funds are being used to pay**
 22 **the cost of installing the grade crossing protective**
 23 **device?**
 24 A. There are federal funds and state funds on this
 25 project.

1 **Q. And what type of federal funds are on this**
 2 **project?**
 3 A. These -- these funds come from SRTC, they're STP
 4 funds. So they're -- the SRTC awarded them to the
 5 Spokane Valley for this project.
 6 **Q. And when you say "SRTC," are you referring to**
 7 **the Spokane Regional Transportation Corridor or --**
 8 A. Council.
 9 **Q. Council.**
 10 A. Spokane Regional Transportation Council.
 11 **Q. All right. The federal funds that are being**
 12 **used for this project are not part of the**
 13 **railway-highway crossing program managed by the State of**
 14 **Washington to provide funding for safety improvements to**
 15 **reduce the number of fatalities, injuries, and crashes**
 16 **at public grade crossing known as Section 130, correct?**
 17 A. These are not 130 funds.
 18 **Q. And are you able to tell us today what funds are**
 19 **specifically being used relative to the grade crossing**
 20 **as opposed to the project as a whole?**
 21 A. Well, the -- the cost of these -- the crossing
 22 arms and -- and signals exceed the state funds that are
 23 available, so there will be federal and state funds used
 24 for this crossing.
 25 **Q. And my question is somewhat more specific in**

1 **Q. And the Phase 2 of the project entails more than**
 2 **just the Union Pacific Railroad Barker Road crossing,**
 3 **does it not?**
 4 A. Yes, it does.
 5 **Q. What else does this Phase 2 entail?**
 6 A. Well, there's roadway work up to -- up to each
 7 end of the crossing, so there was a Phase 1 project.
 8 There's actually been several phases of this project
 9 broken into phases due to the delay caused by, you know,
 10 this -- this crossing issue. So there's roadway work
 11 and then there's also a path -- path work to the north
 12 of this project.
 13 **Q. And when you say there's path work to the north**
 14 **of this project, that includes a multiuse path, correct?**
 15 A. That is correct.
 16 **Q. And that's a multiuse path that was requested by**
 17 **the City of Spokane Valley?**
 18 A. Yes, that's where that request came from.
 19 **Q. And so is it accurate, as we sit here today, you**
 20 **cannot tell the Commission what specific federal funds**
 21 **would be used specifically for the installation of the**
 22 **new grade crossing protective device?**
 23 A. Yes, it will be STP funds from -- that was
 24 awarded to the project from SRTC. So, you know, it
 25 depends on how -- either way, when they submit the fund

1 **terms of, is there a way for you to identify which**
 2 **federal funds and which federal funding source is being**
 3 **applied specifically to the Barker Road crossing?**
 4 A. Well, I'm just saying there's -- there's both
 5 state and federal funds applied to this project, and
 6 when the -- when the Valley submits their funding
 7 obligation for construction, that's when that will be
 8 totally clear on how they submit that.
 9 But there will be required to have fed funds on
 10 this project because the -- the cost of these
 11 improvements exceed the state funds available on this
 12 project.
 13 **Q. When you say "this project," are you referring**
 14 **to the piece of the project that goes from Euclid to the**
 15 **Spokane River on Barker Road?**
 16 A. No, I'm -- I'm referring to just the -- this
 17 last Phase 2, which we're currently -- that the Valley
 18 is working on to complete this -- this project.
 19 **Q. And Phase 2 includes what?**
 20 A. Well, this project includes the crossing that
 21 you reference. The work by the Union Pacific
 22 Construction had a current estimate for that work of
 23 \$613,758. That is the current estimate that I received.
 24 And the total construction of the project is 1.4
 25 million.

1 obligations for this project, there will be federal
 2 funds for this crossing work that the Railroad will give
 3 their estimate for.
 4 MS. REYNOLDS: Okay. I think those are all
 5 the questions I have for you. I thank you for your
 6 time, sir.
 7 JUDGE HOWARD: Is there -- is there any
 8 redirect by the City?
 9 MS. FOSTER: Yes, thank you, Judge Howard.
 10
 11 R E D I R E C T E X A M I N A T I O N
 12 BY MS. FOSTER:
 13 **Q. Mr. Johnson, will the City know the specific**
 14 **funds that will be used for this project until they**
 15 **receive project approval?**
 16 A. They know which funds are available right now.
 17 They have their -- the federal funds from SRTC and
 18 the -- I believe their state funds.
 19 **Q. Did the City receive more than one federal grant**
 20 **for this project?**
 21 A. Well, this specific project, I do not believe
 22 so. I mean, I...
 23 **Q. Okay.**
 24 MS. FOSTER: Thank you. That is all the
 25 City has.

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1 JUDGE HOWARD: All right. Thank you,
 2 Mr. Johnson, for your testimony today.
 3 THE WITNESS: You're welcome.
 4 JUDGE HOWARD: You may turn off your camera,
 5 and we will turn to the next witness for the City.
 6 Robert Lochmiller, if you would turn on your
 7 camera and I will swear you in.
 8 (Robert Lochmiller sworn.)
 9 JUDGE HOWARD: You may introduce the
 10 witness.
 11 MS. FOSTER: Thank you, Judge Howard.
 12
 13 EXAMINATION
 14 BY MS. FOSTER:
 15 **Q. Mr. Lochmiller, can you please just state your**
 16 **name and occupation for the record?**
 17 A. Yeah, my name's Rob Lochmiller. I'm a senior
 18 engineer project manager with the City of Spokane
 19 Valley.
 20 **Q. And how long have you been in that role?**
 21 A. Six and a half years.
 22 **Q. Okay. And then do you have your prefiled**
 23 **testimony in front of you?**
 24 A. I do.
 25 **Q. And is that your testimony in this matter?**

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1 A. Yes, it is.
 2 **Q. Thank you.**
 3 MS. FOSTER: That is all the City has at
 4 this point.
 5 JUDGE HOWARD: All right. Union Pacific may
 6 cross the witness.
 7
 8 CROSS-EXAMINATION
 9 BY MS. REYNOLDS:
 10 **Q. Good morning, Mr. Lochmiller.**
 11 A. Morning.
 12 **Q. Do you have the cross-examination exhibits that**
 13 **were filed and served by Union Pacific available to you?**
 14 A. Yes.
 15 **Q. All right. I'd like to direct your attention to**
 16 **your prefiled testimony, specifically where you**
 17 **reference the Manual on Uniform Traffic Control Devices**
 18 **at page 2, lines 16 and 17.**
 19 A. Okay.
 20 **Q. Do you recall offering prefiled testimony about**
 21 **the MUTCD?**
 22 A. Right.
 23 **Q. And so you agree that the MUTCD is applicable in**
 24 **these circumstances?**
 25 A. Yeah, the MUTCD has a national standard that

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1 involves traffic devices, so it relates to the signing
 2 and pavement markings that are part of this project.
 3 **Q. And, sir, it may be helpful for our court**
 4 **reporter if you can put your camera so that we can see**
 5 **your mouth.**
 6 A. Oh, sorry.
 7 **Q. Thank you. That's helpful.**
 8 **Are you aware that Washington State adopted**
 9 **the 2009 version of the MUTCD?**
 10 A. Yeah, I believe that's the current version.
 11 **Q. And the adoption of the MUTCD includes Section**
 12 **1A.07; do you agree with that?**
 13 A. I'm not familiar with that. I don't know every
 14 page of the MUTCD.
 15 MS. REYNOLDS: Okay. With Your Honor's
 16 permission, I would like to share my screen to display
 17 what has been marked as RL-5X.
 18 MS. FOSTER: Aziza Foster for the City.
 19 Judge Howard, the City is going to object to the
 20 introduction of this cross-examination exhibit. As
 21 Ms. Reynold's just stated herself, the 2009 version of
 22 the MUTCD is the most current version. What UP has
 23 entered into the record is the 2003 version, and
 24 therefore, it is no longer relevant to this case.
 25 JUDGE HOWARD: What does the -- what is the

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1 Railroad's response to that?
 2 MS. REYNOLDS: The version that is
 3 submitted, the section that is at issue, has not changed
 4 from 2003 to 2009. It's the same language, verbiage, et
 5 cetera.
 6 JUDGE HOWARD: If it -- I am concerned if
 7 it -- even if it didn't change, we're looking at
 8 something that changed, and that was a manual that was
 9 updated in 2009 before any of these circumstances,
 10 and -- and we're instead relying on the older exhibit,
 11 the older version of this manual.
 12 I'm -- I'm going to grant the objection.
 13 BY MS. REYNOLDS:
 14 **Q. Without referencing the -- or you've agreed with**
 15 **me that Washington has adopted the 2009 version of the**
 16 **MUTCD, correct?**
 17 A. I believe so.
 18 **Q. And while you've stated that you don't recall or**
 19 **haven't memorized the 2009 version of the MUTCD, you**
 20 **would have no reason to disagree with me that Section**
 21 **1A.07 of the MUTCD would apply?**
 22 A. I have no idea.
 23 **Q. And you would have no reason to disagree with me**
 24 **that that section states that the responsibility for**
 25 **maintenance of traffic control devices shall rest with**

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1 **the public agency or official having jurisdiction; is**
 2 **that correct?**
 3 MS. FOSTER: Aziza Foster for the City. We
 4 will object. That statement is not in the record.
 5 Counsel is testifying.
 6 JUDGE HOWARD: I am going to -- I am going
 7 to grant the objection. We -- if we're -- if we're
 8 going to be crossing the witness on the contents of this
 9 manual, it would need to be in evidence.
 10 I am going to ask the -- Union Pacific to --
 11 just to clarify. Is this -- who is the publisher of
 12 this manual? Is this the Department of Transportation?
 13 MS. REYNOLDS: It's the Department of
 14 Transportation Federal Highway Administration. And
 15 it -- I -- I will submit to Your Honor that it gets
 16 quite confusing because there are WACs and RCWs, and
 17 it's a piecemeal adoption from the Washington State
 18 Legislature. So there's not a particularly simple way
 19 of producing -- essentially, the State of Washington has
 20 adopted the 2009 version, and then there are specific
 21 kind of excerpts where they have excerpted out
 22 modifications from the state in a very long series of
 23 administrative code provisions.
 24 JUDGE HOWARD: All right. So I don't want
 25 to put form before substance here. This is something

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1 that is publicly available. It is something that -- and
 2 it's a government document that's published and freely
 3 available. I believe the Commission can take
 4 administrative notice of it, but the problem is at this
 5 point that we don't have -- we don't have this document
 6 before us.
 7 MS. FOSTER: Judge Howard, if I may. I
 8 would actually object to the Commission taking judicial
 9 notice anyways. As Ms. Reynolds herself stated, it is a
 10 very complicated matter determining what portions of the
 11 MUTCD that the State of Washington has adopted versus
 12 what portions they have modified. And without UP laying
 13 a foundation, we have no knowledge of what sections --
 14 if the section that Ms. Reynolds is citing is even a
 15 section that the State of Washington has adopted, and UP
 16 has not entered that into the record.
 17 JUDGE HOWARD: All right. Would the --
 18 would the Railroad like to respond to that?
 19 MS. REYNOLDS: The response would be that
 20 the MUTCD was injected into this case by the prefiled
 21 testimony of Mr. Lochmiller who states that the signage
 22 is being installed in accordance with the MUTCD. And so
 23 the import of it was created by Mr. Lochmiller's
 24 testimony.
 25 And so I -- I don't think that we need to

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1 belabor this. I can move on if Your Honor would prefer
 2 us to and I can address this a different way.
 3 JUDGE HOWARD: I am -- yes, I am going to --
 4 after -- after hearing the City's position and
 5 reconsidering this, I do think it would be inadvisable
 6 to take administrative notice of the entire currently
 7 published manual. If -- if the Railroad could move on
 8 from this point, that would be helpful.
 9 MS. REYNOLDS: Thank you, Your Honor.
 10 BY MS. REYNOLDS:
 11 **Q. Mr. Lochmiller, are you familiar with the**
 12 **February 17th, 2017 Construction and Maintenance**
 13 **Agreement for the public highway at-grade crossing for**
 14 **Barker Road?**
 15 A. 2017, no, I'm not.
 16 **Q. All right.**
 17 MS. FOSTER: Objection, Your Honor. This
 18 isn't one of the cross-examination exhibits that was
 19 entered into for Mr. Lochmiller. It's outside of the
 20 scope of his testimony.
 21 JUDGE HOWARD: Would the Railroad like to
 22 respond?
 23 MS. REYNOLDS: I haven't sought to move
 24 anything into evidence, Your Honor. I asked him if he
 25 was familiar and he said no.

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1 MS. FOSTER: It's still outside the scope of
 2 his testimony, Your Honor.
 3 JUDGE HOWARD: I'm going to deny the
 4 objection on -- insofar as it's specifically focused on
 5 whether it's outside the scope of his testimony. I
 6 think she's free to cross on whether he's familiar with
 7 this agreement.
 8 MS. FOSTER: Thank you, Your Honor.
 9 BY MS. REYNOLDS:
 10 **Q. Sir, can you please pull up in front of you**
 11 **RL-8X?**
 12 A. Okay.
 13 **Q. Do you have that in front of you now, sir?**
 14 A. Yes, I do.
 15 **Q. And are you familiar with what is included in**
 16 **RL-8X?**
 17 A. It was an email from Mr. Mays to myself.
 18 **Q. And to be clear, it -- I'm sorry, sir. I cut**
 19 **you off. Can you finish your answer?**
 20 A. It was an email from Ellis Mays to myself, I
 21 believe, in December of 2020 regarding costs associated
 22 with the -- revising that crossing signal.
 23 **Q. And please take your time before answering this**
 24 **question, but does this appear to be a true and correct**
 25 **copy of the email exchange between you and Mr. Mays?**

1 A. Yes, it is.
 2 MS. REYNOLDS: All right. At this time,
 3 Your Honor, I would move to admit RL-8X into evidence.
 4 JUDGE HOWARD: It is admitted -- admitted.
 5 Thank you.
 6 (Exhibit RL-8X admitted.)
 7 MS. REYNOLDS: Thank you. And at this time,
 8 Your Honor, may I at least attempt to share my screen?
 9 I think it may be helpful to get through quickly.
 10 JUDGE HOWARD: Certainly.
 11 BY MS. REYNOLDS:
 12 **Q. Mr. Lochmiller, can you see on your screen an**
 13 **email from you dated Tuesday, December 8th, 2020?**
 14 A. Yes.
 15 **Q. All right. Do you agree that this email states**
 16 **that -- or this email was directed to Ellis Mays, Jeff**
 17 **Morse, and then there are cc's?**
 18 A. Correct.
 19 **Q. And can you read to me the first paragraph of**
 20 **this email?**
 21 A. Okay. (As read) The City's okay with this and
 22 would like to proceed with the agreement. The City will
 23 likely need some railroad flagging for the City's
 24 contractor to complete the road improvements within the
 25 UPRR right away to -- so if the contract- -- so if the

1 A. He provided that information, but that was the
 2 first he's ever acknowledged that the City would be
 3 responsible for those costs. So that was the only
 4 description we ever got, and really wasn't determined
 5 the implications until we received the draft
 6 Construction and Maintenance Agreement seven months
 7 later.
 8 MS. REYNOLDS: And I would respectfully move
 9 to strike the nonresponsive portion.
 10 JUDGE HOWARD: It's granted.
 11 Mr. Lochmiller, please focus on just -- just
 12 answering the question posed to you, and then Ms. Foster
 13 can -- will have a chance to ask you questions after
 14 this.
 15 THE WITNESS: Sure.
 16 A. Can you repeat the question?
 17 BY MS. REYNOLDS:
 18 **Q. Certainly.**
 19 **So your response to Mr. Ellis Mays sending you**
 20 **AREMA annual maintenance cost that the City will be**
 21 **billed for was, City is okay with this and would like to**
 22 **proceed with the agreement, correct?**
 23 A. That was my response to that email, yes.
 24 **Q. Okay. I'm going to stop sharing.**
 25 **In your prefiled testimony, you detail the**

1 City's contractor isn't able to work within the UPRR
 2 railroad at the same time the UPRR construction, then we
 3 probably need to add another five days to the flagging.
 4 **Q. All right. And I'm scrolling down to the bottom**
 5 **of page 3 of Exhibit RL-8X. And do -- do you see that**
 6 **there is an email dated Monday, December 7, 2020, from**
 7 **Ellis Mays?**
 8 A. Yes.
 9 **Q. And was your December 8th email in response to**
 10 **that December 7th email?**
 11 A. Yes.
 12 **Q. Okay. And the -- again, scrolling down to the**
 13 **Monday, December 7th email from Ellis Mays, do you agree**
 14 **that Mr. Mays was providing to you certain terms to be**
 15 **considered for the Barker Road project?**
 16 A. My understanding of that email was he's
 17 providing construction costs for the project. I do note
 18 that he provided number five, and really I did not
 19 review that nor anticipate the consequences of that
 20 statement and how it would relate to future maintenance
 21 funds for the remaining of the life of that signal work.
 22 **Q. But you agree that on December 7th, 2020, Ellis**
 23 **Mays sent you AREMA annual maintenance cost that the**
 24 **City will be billed for on a yearly basis for the**
 25 **maintenance of traffic control, correct?**

1 **proposed modifications to this subject crossing,**
 2 **correct?**
 3 A. Yes.
 4 **Q. Now, the proposed -- excuse me. The proposed**
 5 **modifications will not eliminate queueing at the**
 6 **railroad crossings, will they?**
 7 A. Queueing?
 8 **Q. Or lining up?**
 9 A. Queueing from the trains?
 10 **Q. Correct.**
 11 A. It would not eliminate queueing from the trains.
 12 It's an at-grade crossing.
 13 **Q. The multiuse path will separate bicycles and**
 14 **pedestrians from the roadway, correct?**
 15 A. Correct.
 16 **Q. But the multiuse path will not separate**
 17 **pedestrians and bicyclists from the actual tracks or**
 18 **crossing; is that right?**
 19 A. Correct. The path will cross the tracks as
 20 well.
 21 **Q. It, in fact, creates an at-grade crossing for**
 22 **pedestrians and bicyclists, correct?**
 23 A. Correct.
 24 **Q. And you signed the City of Spokane Valley's**
 25 **petition to modify warning devices at a highway-railroad**

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1 **grade crossing at issue in this case, correct?**
 2 A. Yes, I did.
 3 **Q. And the petition does not reference public**
 4 **safety, does it?**
 5 A. I'm not sure. I can't recall.
 6 **Q. Would you like me to -- if I could direct -- if**
 7 **I could direct your attention, sir, to RL-4X.**
 8 A. Okay.
 9 **Q. Do you have that in front of you, sir?**
 10 A. Yes, I do.
 11 **Q. And do you recognize this document?**
 12 A. Yes.
 13 **Q. What do you recognize it to be?**
 14 A. It's the UTC petition I put together and
 15 submitted.
 16 **Q. And on this first page of the petition under**
 17 **Petitioner's Information, there are two blue signatures.**
 18 **Are those your signatures, sir?**
 19 A. Yes.
 20 **Q. Is this a true and accurate copy of the petition**
 21 **that you completed and filed with the Utilities and**
 22 **Transportation Commission?**
 23 A. It looks like it, yes.
 24 MS. REYNOLDS: At this time, Your Honor, I
 25 would move to admit RL-4X.

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1 JUDGE HOWARD: It is admitted. Thank you.
 2 (Exhibit RL-4X admitted.)
 3 MS. REYNOLDS: Thank you.
 4 BY MS. REYNOLDS:
 5 **Q. Sir, can you take a look at RL-4X, your petition**
 6 **in this case, and tell me whether the petition**
 7 **references public safety.**
 8 A. It does not state that.
 9 **Q. In fact, the petition doesn't include the word**
 10 **"safety," does it?**
 11 A. I don't think so.
 12 **Q. And the petition does not allege that the public**
 13 **safety requires the installation of the proposed**
 14 **modification, correct?**
 15 A. Correct.
 16 **Q. And you can put that aside, sir.**
 17 **Do you agree that there are no fundamental**
 18 **changes between the current warning devices and the**
 19 **proposed modifications?**
 20 A. In regards to the actual signal crossing?
 21 **Q. That's correct, sir.**
 22 A. Well, all of it's being replaced with a new
 23 system so that's...
 24 **Q. It's all being replaced with a new system**
 25 **because the City's widening the roadway, correct?**

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1 A. Correct.
 2 **Q. But the system itself isn't changing**
 3 **fundamentally, correct?**
 4 A. Correct. I mean, there's a couple additional
 5 things, I believe, that changed. But for the majority,
 6 it's the standard signal crossing, at-grade crossing.
 7 **Q. The traffic control devices themselves aren't**
 8 **changing in any way except to cover the additional**
 9 **length to account for the roadway configuration changes,**
 10 **correct?**
 11 A. I think it was modified for the additional width
 12 of the roadway, and I believe there's additional warning
 13 flashing signs that were also added for a couple
 14 different directions and were not previous on the
 15 existing system.
 16 **Q. And were those additional warning devices**
 17 **included because the road is wider now or will be wider?**
 18 A. No, those flashes were added for additional
 19 public access on that side street.
 20 **Q. Where is that detailed in your petition, sir,**
 21 **the additional warning systems?**
 22 A. I think it's based on the additional -- the
 23 flashings, the flashers that was in my testimony, the
 24 number of them.
 25 **Q. Okay. There's new equipment that's being**

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1 **installed because when you move the roadway, you have to**
 2 **move the equipment, right?**
 3 A. Yeah.
 4 **Q. There's no -- but the new equipment is going to**
 5 **be the same design and function as the currently**
 6 **existing equipment, correct?**
 7 A. Okay.
 8 **Q. Do you agree with that?**
 9 A. I'm not sure I understand the question.
 10 **Q. The new equipment that will be installed under**
 11 **your proposed modification, it's the same design as the**
 12 **currently existing system?**
 13 A. I'm not responsible for the original design, so
 14 I -- and UPR's designing the system, so I don't know the
 15 fine details of that.
 16 **Q. Okay. Are you aware -- well, let me ask it this**
 17 **way.**
 18 **There isn't an improvement in the design of the**
 19 **device in your proposed modification, is there?**
 20 A. There's an improvement in my design?
 21 **Q. In the design?**
 22 A. In the City's design of the roadway?
 23 **Q. Of the device?**
 24 A. City hasn't designed the device.
 25 **Q. The proposed modification that's detailed in**

1 **your petition, is there an improvement in the design of**
2 **the device?**

3 A. I guess I'm confused what you're trying to ask.

4 **Q. Let me ask you differently.**

5 **Is the proposed modification that is the subject**
6 **of your petition marked as RL-4X, is there an**
7 **improvement in the functionality of that proposed**
8 **device?**

9 A. Like I said, I believe there's some improvements
10 on direction of flashers for certain traffic movements,
11 yes. But for the majority, it's basically the same, I
12 think.

13 **Q. Great.**

14 **Do you agree that currently there are two gate**
15 **mechanisms at the Barker Road UP crossing?**

16 A. Yes, one on each side.

17 **Q. And at the conclusion of this project, there**
18 **will be two gate mechanisms?**

19 A. Correct.

20 **Q. And there are currently two cantilevers at the**
21 **Barker Road crossing?**

22 A. Correct.

23 **Q. And at the end of this project, there will be**
24 **two cantilevers?**

25 A. Yes.

1 A. Yes.

2 **Q. Where did you get that information?**

3 A. That came from our diagnostics team meeting back
4 in, I believe, June of 2020. And that information was
5 provided by Mr. Mays for [inaudible], consultant
6 representing UPRR.

7 **Q. And did Mr. Mays tell you where he got that**
8 **data?**

9 A. I assume it's his -- from his collection of
10 maintenance records.

11 **Q. But you don't know that?**

12 A. I do not.

13 **Q. And you don't have any personal knowledge of any**
14 **of the safety data statistics regarding the UPRR**
15 **crossing, correct?**

16 A. I do not.

17 **Q. Okay.**

18 MS. REYNOLDS: Those are all the questions I
19 have for you at this time. Thank you very much.

20 JUDGE HOWARD: All right. Is there any
21 redirect from the City?

22 MS. FOSTER: Yes, Judge Howard. Just a few
23 questions.

24 /////

25 /////

1 **Q. And at the end of -- or as currently exist at**
2 **Barker Road, there are nine flashers at the crossing,**
3 **correct?**

4 A. I believe so.

5 **Q. And at the end of this project, there will be**
6 **ten flashers?**

7 A. Okay.

8 **Q. Do you agree with that?**

9 A. I believe that's the case, yeah.

10 **Q. All right. So there's no differences in the**
11 **type of traffic control devices that are being**
12 **installed?**

13 A. Other than the additional flasher, yeah.

14 **Q. There's no upgrades in the device technology**
15 **that is being proposed?**

16 A. I have no idea on the technology of the UPR's
17 signal crossing.

18 **Q. And the currently existing system has operated**
19 **safely for many years; do you agree with that?**

20 A. I have no idea. I do not know the stats of --
21 the stats of how well it functions.

22 **Q. Right.**

23 **Your prefiled testimony included a reference to**
24 **blocked crossings, unsafe motorists, and one vehicle on**
25 **the tracks.**

1 REDIRECT EXAMINATION
2 BY MS. FOSTER:

3 **Q. Mr. Lochmiller, do you have the authority to**
4 **enter into agreements on behalf of the City?**

5 A. I do not.

6 **Q. Okay. And then can I please direct you to the**
7 **Exhibit RL-X4, the petition?**

8 A. Okay.

9 **Q. Specifically, can you look at page 3 of the**
10 **petition, section 4 entitled Vehicle Traffic. And then**
11 **I would like to direct you to question ten or statement**
12 **ten, which states, Describe any changes to the**
13 **information in 1 through 7 above expected within ten**
14 **years.**

15 **Can you please read for me the response that you**
16 **wrote?**

17 A. Traffic volumes will increase as the vacant land
18 to the north is developed.

19 **Q. And will increased traffic volumes impact the**
20 **public safety?**

21 MS. REYNOLDS: Objection. Speculation.
22 Foundation.

23 MS. FOSTER: Your Honor, Ms. Reynolds was
24 asking about whether or not the public safety was
25 impacted or addressed in the petition. This goes

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1 directly to her questions.
 2 JUDGE HOWARD: I am going to deny the
 3 objection and allow the question.
 4 BY MS. FOSTER:
 5 **Q. I will reask it just so you have it, Rob.**
 6 **Will increased traffic volumes impact the public**
 7 **safety?**
 8 A. Yes.
 9 **Q. Okay. Then last question.**
 10 **Specifically, as we relate to what the City is**
 11 **going to be doing at the crossing, are the warning**
 12 **devices the only improvements that the City is going to**
 13 **be putting at this crossing?**
 14 A. No.
 15 **Q. What else will the City be doing at this**
 16 **crossing?**
 17 A. As far as roadway improvements, so there's
 18 actually -- we're going to install new median curb
 19 between northbound and southbound directions that will
 20 help eliminate people going through the tracks when the
 21 gate arms are down. That curb's also been extended
 22 further south to eliminate a left turn movement of a
 23 private road just south of the tracks. That was a
 24 concern.
 25 We're also widening on the north side of the

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1 tracks on Euclid for larger truck turning movements to
 2 make them be able to stay on the roadway and not jump
 3 the curb and accidentally hit any of the signal
 4 equipment.
 5 **Q. One final question.**
 6 **You noted that there was a concern of cars**
 7 **jumping the curb and trying to get around the track.**
 8 **Whose concern was that?**
 9 A. I recall it was the Union Pacific representative
 10 at our diagnostic meeting, and I believe that was Ellis
 11 Mays.
 12 MS. FOSTER: Thank you, Mr. Lochmiller.
 13 That's all I have, Judge Howard.
 14 JUDGE HOWARD: All right. Before we
 15 conclude with this witness, I just wanted to make sure
 16 we had a clear record regarding the supporting exhibits
 17 for his prefiled testimony. And this is probably down
 18 to my -- I didn't clearly address this earlier.
 19 So for Exhibit RL-2 and RL-3, are there any
 20 objections to the admissibility of those exhibits?
 21 MS. REYNOLDS: There are none from the
 22 Railroad, Your Honor.
 23 JUDGE HOWARD: All right. Staff, do you
 24 object to either of these exhibits?
 25 MR. ROBERSON: No.

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1 JUDGE HOWARD: All right. Thank you.
 2 I will deem RL-2 and RL-3 admitted.
 3 (Exhibits RL-2 and RL-3 admitted.)
 4 JUDGE HOWARD: All right. Mr. Lochmiller,
 5 thank you for your testimony. You may turn off your
 6 camera.
 7 THE WITNESS: Thank you.
 8 JUDGE HOWARD: The City may -- will call the
 9 next witness from the City, Gloria Mantz.
 10 Would you please turn on your camera and I
 11 will swear you in.
 12 (Gloria Mantz sworn.)
 13 JUDGE HOWARD: Thank you. You may introduce
 14 the witness.
 15 MS. FOSTER: Thank you, Judge Howard.
 16
 17 EXAMINATION
 18 BY MS. FOSTER:
 19 **Q. Ms. Mantz, can you please state your name and**
 20 **occupation for the record?**
 21 A. Yes. My name is Gloria Mantz, and I'm the City
 22 engineer for the City of Spokane Valley.
 23 **Q. And how long have you been in this position?**
 24 A. About three months.
 25 **Q. And what was your position before being City**

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1 **engineer?**
 2 A. I was the capital improvement programs
 3 engineering manager, and I oversaw the capital programs
 4 for the City including this project.
 5 **Q. And how long were you in that position?**
 6 A. About five years.
 7 **Q. And do you have your prefiled testimony in front**
 8 **of you?**
 9 A. I do.
 10 **Q. Okay. And is that your testimony in this**
 11 **matter?**
 12 A. It is.
 13 MS. FOSTER: That's all the City has at this
 14 point, Your Honor.
 15 JUDGE HOWARD: All right. Union Pacific may
 16 proceed with its cross.
 17 MS. REYNOLDS: Thank you, Your Honor.
 18
 19 CROSS-EXAMINATION
 20 BY MS. REYNOLDS:
 21 **Q. Good morning.**
 22 A. Good morning.
 23 **Q. Ms. Mantz, have you had an opportunity to review**
 24 **the petition to modify warning devices at a**
 25 **highway-railroad grade crossing that was filed by the**

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1 **City of Spokane valley in this case?**
 2 A. I can pull it up. I haven't seen it for a
 3 while.
 4 **Q. If you could -- if I could direct you to, ma'am,**
 5 **what has been premarked as GM-9X.**
 6 MS. REYNOLDS: And, Your Honor, this is the
 7 same as RL-4X, and I'm not sure if Your Honor would
 8 prefer me to refer to the already admitted exhibit or
 9 lay foundation with this witness.
 10 A. I have it in front of me.
 11 JUDGE HOWARD: Since it's marked separately,
 12 let's -- let's just proceed on -- on the formal side
 13 here and if you would lay foundation.
 14 MS. REYNOLDS: Thank you, Your Honor.
 15 BY MS. REYNOLDS:
 16 **Q. Ms. Mantz, you indicated you have 9 -- what's**
 17 **been marked as GM-9X in front of you; is that correct?**
 18 A. I do.
 19 **Q. And do you recognize this document?**
 20 A. Yeah.
 21 **Q. Do you believe it's a true and correct copy of**
 22 **the petition that was filed in this case?**
 23 A. I do.
 24 MS. REYNOLDS: Your Honor, we would move to
 25 admit what has been marked as GM-9X.

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1 JUDGE HOWARD: It is admitted. Thank you.
 2 (Exhibit GM-9X admitted.)
 3 BY MS. REYNOLDS:
 4 **Q. Ms. Mantz, do you know whether the petition**
 5 **references public safety?**
 6 A. I do not know.
 7 **Q. All right. Do you see a request in the petition**
 8 **of an installation of a new grade crossing protective**
 9 **device?**
 10 A. What section are you looking at?
 11 **Q. Throughout the entire petition.**
 12 A. Can you repeat the question, please?
 13 **Q. Can you -- well, the petition does not request**
 14 **installation of a new grade crossing protective device,**
 15 **does it?**
 16 A. Well, Section 7 talk about the gates, the new
 17 gates and the cantilevers.
 18 **Q. Can I direct you to the top of page 1 where**
 19 **there is a caption. Are you there?**
 20 A. Just above Section 1, is that what you're
 21 referring to?
 22 **Q. There's language in all caps that starts with**
 23 **the word "Petition" on the right-hand side; do you see**
 24 **that?**
 25 A. Yes.

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1 **Q. Can you read those words into the record,**
 2 **please?**
 3 A. Petition to modify warning devices at
 4 highway-railroad grade crossing.
 5 **Q. It is not a petition to install a new device, is**
 6 **it?**
 7 A. It does not say "new."
 8 **Q. Okay. And you can put that aside. Thank you**
 9 **very much.**
 10 **Do you agree that the Barker Road project is**
 11 **driven by anticipated future growth and economic**
 12 **development in Spokane Valley?**
 13 A. No, it -- actually, no. It's actually to help
 14 with current traffic and also anticipated growth. So
 15 it's not just for future growth.
 16 **Q. It's both current and future?**
 17 A. Oh, yeah.
 18 **Q. All right. And the Barker Road project would**
 19 **widen the roadway, correct?**
 20 A. Yes.
 21 **Q. In addition to widening the roadway, the project**
 22 **also has components for installation or modification of**
 23 **the sewage system in the city?**
 24 A. Yes, in Spokane County.
 25 **Q. And the project also includes the creation of a**

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1 **multiuse path for bicycles and pedestrians, correct?**
 2 A. Yes, whenever we improve the road, we're
 3 required to provide an extra facility for bikers and
 4 pedestrians.
 5 **Q. Is that a City requirement?**
 6 A. No, Washington requires us to do that.
 7 **Q. All right. Do you agree that there are no**
 8 **fundamental changes between the currently existing**
 9 **crossing traffic control devices and the proposed**
 10 **modifications?**
 11 A. I'm not familiar with how the devices operate,
 12 but...
 13 **Q. I will move on, then.**
 14 **Let me just ask you this: Did you have any part**
 15 **in designing the proposed modifications that are**
 16 **detailed in the petition that we just talked about?**
 17 A. I did not.
 18 **Q. Okay. Your prefiled testimony states that the**
 19 **City first documented concerns along the Barker corridor**
 20 **in its SEPA analysis for the 2016 Comprehensive Plan**
 21 **Update, correct?**
 22 A. Yes, there's concerns about the corridor and the
 23 growth that was in there.
 24 **Q. And as part of that analysis, the City undertook**
 25 **something called the Northeast Industrial Area Planned**

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1 **Action Ordinance, correct?**
 2 A. Yes.
 3 **Q. And that resulted in a document that has been**
 4 **marked in your prefiled testimony as GM-7; is that**
 5 **correct?**
 6 A. I do not have GM-7. I have GM-9 through 20, but
 7 I don't have 7 in front of me. It was not provided to
 8 me.
 9 **Q. All right. I can share my --**
 10 MS. REYNOLDS: Your Honor, I would -- the
 11 Railroad does not have any objection to the
 12 admissibility. In fact, we stipulated to the
 13 admissibility of GM-7 as part of our prehearing
 14 discussions. And with that, we would ask to move this
 15 document into evidence, and I would request permission
 16 to publish.
 17 JUDGE HOWARD: Thank you.
 18 Does Staff any objections with this exhibit?
 19 MR. ROBERSON: Staff will stipulate to the
 20 admission of all the City's exhibits as well as the
 21 Railroad's exhibits.
 22 JUDGE HOWARD: Thank you. It is admitted.
 23 (Exhibit GM-7 admitted.)
 24 MS. REYNOLDS: Thank you and I will attempt
 25 to share my screen.

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1 BY MS. REYNOLDS:
 2 **Q. Ms. Mantz, do you see on your screen something**
 3 **that states "Northeast Industrial Area Planned Action**
 4 **Ordinance SEPA Analysis"?**
 5 A. I do.
 6 **Q. And it's very lengthy, and I'm just scrolling so**
 7 **that you can familiarize yourself and acquaint yourself**
 8 **with this document. But do you generally recognize this**
 9 **document?**
 10 A. Generally I do.
 11 **Q. All right. Appendix A of this document --**
 12 **Appendix A of this document is titled "Existing**
 13 **Transportation Conditions Report for Spokane Valley**
 14 **Northeast Industrial Area PAO," do you see that, ma'am?**
 15 A. I do.
 16 **Q. And if we go down to page 64 of what's been**
 17 **marked GM-7, do you see an area of Appendix A titled**
 18 **"Rail Operations"?**
 19 A. I do.
 20 **Q. And can you read into the record the portion of**
 21 **the Rail Operations section that I have highlighted in**
 22 **blue?**
 23 A. Sure. (As read) There are four at-grade
 24 crossings of the main line railroads within the study
 25 area illustrated in Figure 11, one for each rail line on

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1 both Barker Road and Flora Road.
 2 **Q. And then can you read what I have now marked in**
 3 **blue into the record, please?**
 4 A. (As read) Historic crash data indicates that the
 5 grade crossings on Barker Road and Flora Road for both
 6 rail lines have operated safely over the last 25 years.
 7 **Q. And do you agree that the next sentence reads,**
 8 **Figure 12 shows that despite high train volumes, it has**
 9 **been over 25 years since a crash occurred at any of the**
 10 **four at-grade rail crossings in the study area?**
 11 A. That's what it says.
 12 **Q. So the City deemed the UP Barker Road crossing**
 13 **to be safe, correct?**
 14 A. That's what that statement says.
 15 **Q. Okay. If we go on to -- my apologies if this is**
 16 **hurting your eyes, ma'am. It's an imperfect science.**
 17 **If we go to page 65 of 138 in GM-7, there is a**
 18 **section that is titled "Traffic Impacts of At-Grade Rail**
 19 **Crossings," do you see that?**
 20 A. I do.
 21 **Q. And this references Figure 13, which is Vehicle**
 22 **Queue Lengths at Barker Road At-Grade Rail Crossings**
 23 **When Gates are Down During the Peak Hour. And there's**
 24 **some data in Figure 13; do you see that?**
 25 A. Yes, I see the queueing lengths for the UP and

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1 the BNSF crossing.
 2 **Q. All right. And there was an estimate that was**
 3 **done by the City to estimate both the average queue**
 4 **lengths and then the worst case scenario queue lengths;**
 5 **do you agree with that?**
 6 A. Yes.
 7 **Q. And can you read what is highlighted in blue**
 8 **into the record?**
 9 A. (As read) The estimate includes both the
 10 average, which is the 50th percentile queue length due
 11 to an average gate down time in the worst case, which is
 12 a 95th percentile queue length during the peak hours,
 13 still the longest gate down time observed. The latter
 14 likely occurs a handful of times per year, although it's
 15 about five times more likely to occur on a BNSF line
 16 than a UP line because trains are five times more
 17 frequent on the BNSF line.
 18 **Q. So, Ms. Mantz, do you agree with me that the**
 19 **worst case scenario of queuing at the Barker Road**
 20 **crossing only occurs a handful of times per year and is**
 21 **more likely to occur at the BNSF crossing?**
 22 A. Yeah, however, the table does say that on
 23 average, you still see 225 feet of queueing in the
 24 northbound lane and 500 feet in the southbound lane.
 25 **Q. Will the third lane that will be installed as**

1 **part of the Barker Road project eliminate queueing at**
2 **the Barker Road crossing?**

3 A. So the queueing happens because of the railroads
4 when the gates are down. So the project not eliminate
5 the queueing, but it will reduce it.

6 **Q. It will reduce it for traffic that's going**
7 **northbound and intending to turn left, correct?**

8 A. And also southbound, we are going to have a left
9 turn lane on Euclid Avenue that's going to -- for
10 eastbound traffic.

11 **Q. Are you familiar with a City of Spokane Valley**
12 **Risk-Based Safety Assessment for the analysis of fatal**
13 **and serious crashes?**

14 A. Yes.

15 **Q. And do you agree that as part of that risk**
16 **assessment, the City analyzed the top ten intersections**
17 **with high priority crashes?**

18 A. Can you please pull that exhibit that you're
19 referring to because I think it's been taken out of
20 context.

21 **Q. I guess my question was before I refer to an**
22 **exhibit is, are you familiar that the City analyzed the**
23 **top ten intersections with high priority crashes?**

24 A. So like I said, you're taking that out of
25 context. The exhibit that you're referring to is not

1 states, it takes it out of context and it's not the best
2 available evidence.

3 JUDGE HOWARD: I will allow the questions
4 about 19X as it's -- sorry, GM-19X, but I will allow the
5 City to introduce the complete version of this report.
6 Do you require extra time to -- to submit this?

7 MS. FOSTER: Yes, Your Honor.

8 JUDGE HOWARD: All right. How about a week
9 from today, let's see, May 17th, and the City could
10 introduce the complete version of this report?

11 MS. FOSTER: That's perfect, Your Honor.
12 Thank you.

13 JUDGE HOWARD: All right. You may proceed
14 with your questioning.

15 MS. REYNOLDS: Thank you, Your Honor.

16 BY MS. REYNOLDS:

17 **Q. Do you agree that the Executive Summary, first**
18 **page of 19X, identifies roadways with high priority**
19 **crashes?**

20 A. Yes, but if I can direct you to the very first
21 paragraph, that it says, This analysis follows five
22 steps yielding the following results for each step. So
23 you're only showing three steps out of the five.

24 **Q. And I would like to ask you about the third of**
25 **the five steps, ma'am.**

1 complete, and that was only one of the elements that we
2 looked when we evaluated the areas where we're going to
3 be applying for a grant.

4 **Q. So you are familiar with the Risk-Based Safety**
5 **Assessment?**

6 A. Yes, 2018 one, yes.

7 **Q. Okay. I can go ahead and pull that up.**
8 **So, ma'am, can I direct your attention to**

9 **GM-19X?**

10 A. Yes.

11 **Q. And is -- are you familiar with this document?**

12 A. I am familiar with the document, and like I
13 said, this is an incomplete executive summary.

14 **Q. All right. The -- is the document Executive**
15 **Summary complete?**

16 A. No, there's two pages to that. That's what I'm
17 saying, this is incomplete.

18 **Q. Okay. What's missing from this?**

19 MS. FOSTER: Aziza Foster for the City. The
20 City will then object to the introduction of this
21 exhibit as it is not complete.

22 JUDGE HOWARD: Ms. Foster, could you --
23 could you repeat the last part of your objection?

24 MS. FOSTER: Yes. We're objecting because
25 this is not a complete exhibit. And as Ms. Mantz

1 A. Sure.

2 **Q. Do you agree with me that the third step is to**
3 **identify locations in the City transportation network**
4 **that are associated with priority crashes?**

5 A. What third step says that top ten locations are
6 those. It doesn't say that those are all of the
7 locations. We have a really big City, so there's lots
8 of locations we have issues.

9 **Q. Sure. But among the top ten locations or**
10 **intersections, Barker and Euclid are not listed,**
11 **correct?**

12 A. Exactly. It doesn't make it any less important,
13 though.

14 MS. REYNOLDS: Okay. I'll move to strike
15 the nonresponsive portion.

16 JUDGE HOWARD: I will grant -- I will grant
17 that motion to strike for everything in the answer
18 following the word "Exactly."

19 MS. REYNOLDS: Thank you, Your Honor.

20 JUDGE HOWARD: And I would -- Ms. Mantz, I
21 would just -- I would suggest that you just focus on
22 answering the question posed to you and then Ms. Foster
23 will have a chance to ask you follow-up questions after
24 this.

25 THE WITNESS: All right. Thank you.

1 BY MS. REYNOLDS:
 2 **Q. Ms. Mantz, I'd like to direct your attention**
 3 **back to your prefiled testimony. You testified that the**
 4 **third lane that will be installed as part of the project**
 5 **will reduce rear-end --**

6 MR. ROBERSON: Your Honor, if I may, I think
 7 Ms. Reynolds' email is up on the screen. I don't know
 8 if that's a problem.

9 MS. REYNOLDS: Oh, yeah, it is.

10 JUDGE HOWARD: Oh, yeah, we might want to
 11 stop sharing. And, you know, since we're already
 12 pausing for a moment anyways and we were discussing
 13 GM-19X, I don't believe that was moved into evidence
 14 formally or I might not have given a clear ruling on
 15 that. Were there any objections to the admission of
 16 that beyond what the City has already articulated?

17 MS. FOSTER: Not in addition to what the
 18 City has already articulated, no.

19 JUDGE HOWARD: All right. Thank you.
 20 GM-19X is admitted.

21 (Exhibit GM-19X admitted.)

22 JUDGE HOWARD: Sorry, Ms. Reynolds, you may
 23 proceed.

24 MS. REYNOLDS: Thank you very much.

25 BY MS. REYNOLDS:

1 **Q. The proposed modifications will not eliminate**
 2 **queueing at the railroad crossing, correct?**

3 A. It will not.

4 **Q. It will not create additional room for queueing**
 5 **traffic except for the motorists making left turns?**

6 A. It will provide storage for the northbound
 7 traffic and for eastbound traffic on Euclid.

8 **Q. Northbound traffic turning left and eastbound**
 9 **traffic turning left as well, correct?**

10 A. Yes.

11 **Q. Are you familiar with Washington State**
 12 **Department of Transportation's five-year crash data for**
 13 **the Barker Road corridor project from 2012 to 2016?**

14 A. I don't know that I can say that I'm familiar
 15 with it, no.

16 **Q. Okay. I'd like to switch topics and ask you**
 17 **about the timing of this project, okay?**

18 A. Sure.

19 **Q. All right. How was the project, the Barker Road**
 20 **project, originally phased?**

21 A. So after we secured the grants for the project,
 22 this project was very successful, we decided to phase
 23 the project into two phases. So the first one was north
 24 of Euclid, two, south of Trent Avenue, and the next
 25 phase would have gone from Euclid down to the river.

1 **Q. Ms. Mantz, I would like to point you back to**
 2 **your prefiled testimony, specifically at page 2 where**
 3 **you state that the third lane that will be installed as**
 4 **part of the Barker Road corridor project will reduce**
 5 **rear-end and turning-related crashes. Do you recall**
 6 **stating that in your prefiled statement?**

7 A. Yes.

8 **Q. Or your prefiled testimony.**

9 **Do you agree the third lane will not eliminate**
 10 **rear-end accidents?**

11 A. It will not, but it will reduce them, yes.

12 **Q. Do you agree the third lane will not eliminate**
 13 **turning-related crashes?**

14 A. It will not eliminate them a hundred percent,
 15 no.

16 **Q. Can you tell the Commission how many rear-end**
 17 **collisions were associated with the Barker Road crossing**
 18 **in the ten years before beginning this project?**

19 A. I do not have that information. Is that in my
 20 testimony?

21 **Q. Can you tell the Commission how many**
 22 **turning-related crashes were associated with the Barker**
 23 **Road crossing in the ten years before the beginning of**
 24 **this project?**

25 A. I don't have that information handy, no.

1 **Q. And isn't it true that projects like this or**
 2 **projects of this magnitude have variability in terms of**
 3 **timelines?**

4 A. Can you repeat that question, please?

5 **Q. Isn't it true that projects of this magnitude**
 6 **have variability in terms of timeline?**

7 A. Sure.

8 **Q. And projects like this will have changes**
 9 **throughout their life span; do you agree?**

10 A. That's true for anything, I guess.

11 **Q. What was your expectation or understanding for**
 12 **how long it would take to negotiate the Construction and**
 13 **Maintenance Agreement for the Barker Road crossing with**
 14 **Union Pacific?**

15 A. Well, we started in coordination with the UP in
 16 2019. We were hoping that we would have a crossing
 17 agreement by 2020. That's -- the project that we have
 18 left is -- claimed to have advertised a year and a half
 19 ago if we would have had that agreement in place.

20 **Q. And when did the diagnostic take place for this**
 21 **project?**

22 A. I do not recall the date.

23 **Q. Were you present at the diagnostic?**

24 A. I was not.

25 **Q. Have you seen the notes associated with the**

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1 **diagnostic?**
 2 A. At one point. I -- I do not remember the date.
 3 **Q. You wouldn't have any reason to disagree with**
 4 **representation that the diagnostic occurred at the end**
 5 **of June 2020, would you?**
 6 A. I don't know what you mean by the
 7 "representation."
 8 MS. FOSTER: Aziza Foster for the City. The
 9 City is going to object to this line of questioning.
 10 This is starting to get outside of the scope of Mrs.
 11 Mantz' testimony. She testified to the project as a
 12 whole, not the specific improvements to the crossing.
 13 JUDGE HOWARD: I'm going to deny the
 14 objection and allow the questioning insofar as it's --
 15 we're addressing what her knowledge is.
 16 BY MS. REYNOLDS:
 17 **Q. Did you ask Union Pacific how long it could take**
 18 **to negotiate and to have a finalized or executed**
 19 **construction and maintenance agreement?**
 20 A. I did not specifically ask that question.
 21 **Q. As part of your project timeline, what**
 22 **contingencies did you plan for in negotiating the**
 23 **necessary various agreements with Union Pacific?**
 24 A. I don't know what you mean by that.
 25 **Q. Did you plan in any sort of delays or timing to**

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1 **allow for negotiations with the Railroad for the**
 2 **Construction and Maintenance Agreement for this**
 3 **crossing?**
 4 A. You always plan for delays when you're dealing
 5 with the Railroad.
 6 **Q. Do you also plan for delays when you're dealing**
 7 **with the State Department of Transportation?**
 8 A. Not as extensive as with the Railroad.
 9 **Q. Okay. I would like to direct your attention to**
 10 **your prefiled testimony, which has been stipulated as**
 11 **admissible by the Railroad and I believe by Staff.**
 12 MS. REYNOLDS: And at this point, we would
 13 ask Your Honor if we could move into evidence GM-2.
 14 JUDGE HOWARD: Yes, it is admitted. And
 15 just to be clear, since it appears that the parties are
 16 agreeing to the admissibility of the supporting
 17 exhibits, GM-2 through GM-7 are all admitted. I've
 18 already spoken to GM-7, so GM-2 through 6 are all
 19 admitted.
 20 (Exhibits GM-2 through GM-6 admitted.)
 21 MS. REYNOLDS: Thank you, Your Honor.
 22 A. Will you be able to pull that up on the screen
 23 because I don't have that in front of me? Thank you.
 24 BY MS. REYNOLDS:
 25 **Q. Yes, ma'am.**

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1 **Do you see a PowerPoint on your screen?**
 2 A. Yes.
 3 **Q. Okay. And do you recognize that this is a**
 4 **PowerPoint that was titled "PowerPoint of Project**
 5 **Phasing" attached to your prefiled testimony?**
 6 A. Yes.
 7 **Q. Great.**
 8 **I wanted to take you to page 4 of 6. And you**
 9 **say, Project 2 was split into two additional phases; do**
 10 **you see that?**
 11 A. Yes.
 12 **Q. And then underneath that, it says, Project 2A,**
 13 **Spokane River to Euclid East. WSDOT did not approve**
 14 **inclusion of multiuse path.**
 15 A. That's correct.
 16 **Q. And what do you mean by "WSDOT did not approve**
 17 **inclusion of multiuse path"?**
 18 A. So when we phase a project, because we did not
 19 have the agreement with the UP, we decided to advertise
 20 the project from the river to Euclid South. We intended
 21 to include the multiuse path with that segment of the
 22 project, but at that time, WSDOT indicated that the
 23 multiuse path had not independent utility because it had
 24 no connection to the north. So they only allow us to
 25 include the road portion of the work from the river to

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1 Euclid at that time.
 2 **Q. And so that was a delay, at least in part,**
 3 **caused by the State Department of Transportation?**
 4 A. It is, but at this point, everything else has
 5 been constructed. We're just waiting for the UP to give
 6 us approval so we can finish the last segment of the
 7 project.
 8 MS. REYNOLDS: I'll move to strike the
 9 nonresponsive portions.
 10 JUDGE HOWARD: Granted for everything
 11 following, "It is."
 12 MS. REYNOLDS: Thank you, Your Honor.
 13 BY MS. REYNOLDS:
 14 **Q. Are you aware, Ms. Mantz, if there are any**
 15 **federal aid highway funds being used to install a new**
 16 **grade protective device?**
 17 A. Yes, we have a federal grant that will
 18 participate in the costs of those improvements.
 19 **Q. And an installation of what specifically?**
 20 A. The signal improvements of the UP that are
 21 required by the UPRR.
 22 **Q. When you say "required by the UPRR," what do you**
 23 **mean?**
 24 A. Whatever was designed by UPRR staffing
 25 consultant.

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1 **Q. The City of Spokane Valley reached out to UPRR**
 2 **as part of the Barker Road project, correct?**
 3 A. We have to.
 4 **Q. The Railroad didn't come to the City of Spokane**
 5 **Valley and propose the modifications that we're here**
 6 **discussing today, did they?**
 7 A. No.
 8 MS. REYNOLDS: Ma'am, thank you very much
 9 for your time. Those are all the questions I have.
 10 JUDGE HOWARD: Do we have any redirect from
 11 the City?
 12 MS. FOSTER: Yes, Judge. We do have a few
 13 redirect questions.
 14
 15 R E D I R E C T E X A M I N A T I O N
 16 BY MS. FOSTER:
 17 **Q. Ms. Mantz, are crashes the only safety concerns**
 18 **at an at-grade crossing?**
 19 A. No, they're not. I mean, the safety of
 20 pedestrians and vehicles and bikers as well too.
 21 **Q. Okay. Can crashes ever be completely eliminated**
 22 **by traffic safety improvement projects?**
 23 A. I don't believe so.
 24 **Q. Okay. Will the improvements to this crossing,**
 25 **will it at least reduce queueing at the crossing**

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1 **location?**
 2 A. It would reduce queueing, yes.
 3 **Q. And then last question.**
 4 **Has the multiuse path already been constructed?**
 5 A. So we -- right now, we are constructing the
 6 multiuse path from the river to just south of the UPRR
 7 railroad right-of-way.
 8 MS. FOSTER: Okay. And those are the only
 9 questions that the City has.
 10 JUDGE HOWARD: All right. I have just one
 11 clarifying question for Ms. Mantz.
 12 THE WITNESS: Okay.
 13 JUDGE HOWARD: On -- and this may be my own
 14 lack of understanding of -- of -- of the technicalities
 15 here, but on page 4 of your testimony, you refer to the
 16 Highway Safety Improvement Program grant of \$267,000.
 17 THE WITNESS: Yes.
 18 JUDGE HOWARD: And then on the next page of
 19 your testimony, you refer to there's more than 800,000
 20 in federal funding.
 21 I was just curious, what was the source of
 22 that larger amount of federal funding if you recall?
 23 THE WITNESS: Yeah, I do recall. So yes, so
 24 there's two federal funding sources for this project.
 25 We have \$267,000 from the Highway Safety Improvement

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1 Program, which they're being used right now to pay for
 2 the multiuse path that is being constructed right now
 3 from the river to south of the railroad tracks.
 4 And then we have the grant, the FSWA grant,
 5 the STBG grant that will be used for the last segment
 6 that we have in part for the crossing devices at the UP
 7 railroad. Did that answer your question?
 8 JUDGE HOWARD: Yes, yes, and that was my
 9 only question. So thank you for your testimony today.
 10 You may turn off your camera.
 11 THE WITNESS: Thank you.
 12 JUDGE HOWARD: And that was the last City
 13 witness. And we've been going since 9:30. I think we
 14 should take a brief recess. Let's say return at 11:30,
 15 and we will try to proceed. It looks like we have
 16 between roughly an hour of the hearing left based on our
 17 estimate and it could be less. What do to parties
 18 think? Well, let's be off the record now.
 19 (Recess from 11:17 a.m. to 11:31 a.m.)
 20 JUDGE HOWARD: Let's be back on the record.
 21 We're returning after our recess and we're turning to
 22 Union Pacific's witnesses.
 23 Let's have witness Ellis Mays turn on his
 24 camera. All right.
 25 (Ellis Mays sworn.)

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1 JUDGE HOWARD: Ms. Reynolds, you may
 2 introduce your witness.
 3 MS. REYNOLDS: Thank you, Your Honor.
 4
 5 E X A M I N A T I O N
 6 BY MS. REYNOLDS:
 7 **Q. Good morning. Can you please state and spell**
 8 **your name for the record?**
 9 A. Yes. My name is Ellis, E-I-I-i-s, Mays,
 10 M-a-y-s.
 11 **Q. What is your current occupation, Mr. Mays?**
 12 A. I'm the public project manager for UP.
 13 **Q. And I'm having a bit of difficulty hearing you.**
 14 **So can you make sure that you speak a little slowly so**
 15 **everyone on the hearing, and most importantly, our court**
 16 **reporter, can get everything you're saying?**
 17 A. Sure.
 18 **Q. All right. Have you -- are you familiar with**
 19 **your prefiled testimony that was filed in this case?**
 20 A. Yes.
 21 **Q. Do you have that with you?**
 22 A. I do.
 23 **Q. And is the prefiled testimony that was submitted**
 24 **your testimony offered truthfully?**
 25 A. Yes.

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1 MS. REYNOLDS: All right. With that, Union
 2 Pacific would tender Mr. Mays for cross-examination.
 3 JUDGE HOWARD: Thank you. And to be clear,
 4 so we have -- is Ellis Mays direct testimony EM-1T. Is
 5 there any objection to the supporting exhibits filed on
 6 April 13th and revised on May 5th that we have not
 7 already addressed today and those exhibits are EM-2
 8 through EM-6?
 9 MS. FOSTER: Not from the City, Judge
 10 Howard.
 11 MR. ROBERSON: Nor from Staff.
 12 JUDGE HOWARD: All right. So those Exhibits
 13 EM-2 through EM-6 are also admitted.
 14 (Exhibits EM-2 through EM-6 admitted.)
 15 JUDGE HOWARD: All right. And the City
 16 indicated cross for this witness, so you may proceed.
 17 MS. FOSTER: Thank you, Judge Howard.
 18
 19 CROSS - EXAMINATION
 20 BY MS. FOSTER:
 21 Q. And good morning, Mr. Mays.
 22 A. How are you?
 23 Q. Good.
 24 What is your knowledge of municipal
 25 infrastructure improvement projects?

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1 A. My knowledge would be limited to the impacts of
 2 the Railroad, which typically would be --
 3 THE COURT REPORTER: Mr. Mays, this is the
 4 court reporter. I'm having a little trouble hearing
 5 you.
 6 JUDGE HOWARD: I am also -- I think it might
 7 be your connection to the Internet. And I'm not an IT
 8 person, but it does seem to be the case. Do you have
 9 any -- perhaps you could call in?
 10 THE WITNESS: Let me try that.
 11 JUDGE HOWARD: Okay. Let's go off the
 12 record for a moment.
 13 (Recess from 11:35 a.m. to 11:37 a.m.)
 14 JUDGE HOWARD: Let's be back on the record.
 15 And, Ms. Foster, you may proceed with your cross.
 16 MS. FOSTER: Thank you, Judge Howard.
 17 BY MS. FOSTER:
 18 Q. And just -- Mr. Mays, I'm going to reask that
 19 first question just so that we have it on the record.
 20 What is your knowledge of municipal
 21 infrastructure improvement projects?
 22 A. I do not have knowledge of those projects
 23 outside of the impacts to the Railroad's property.
 24 Q. And do you have the cross-examination exhibits
 25 that the City submitted in front of you?

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1 A. I do have them. I can pull them up.
 2 Q. Okay. Can you please pull up the exhibit marked
 3 EM-X9?
 4 A. EM-X -- sorry.
 5 Q. 9.
 6 A. Got it.
 7 Q. And do you recognize --
 8 A. Okay.
 9 Q. Do you recognize this document?
 10 A. Yes.
 11 Q. And can you just state what it is, please?
 12 A. What I'm looking at now is a document, it looks
 13 like a recital of the State statute.
 14 Q. Specifically, would you agree that it's RCW
 15 81.58.285?
 16 A. Yes.
 17 MS. REYNOLDS: Just to correct the record
 18 5-3, not 5-8.
 19 MS. FOSTER: 5-3, yes. Thank you,
 20 Ms. Reynolds.
 21 JUDGE HOWARD: And -- and is it section 295?
 22 MS. FOSTER: 295, correct.
 23 JUDGE HOWARD: All right.
 24 BY MS. FOSTER:
 25 Q. And do you believe this to be a correct copy of

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1 the RCW?
 2 A. To the scope that I would use it, yes.
 3 MS. FOSTER: The City would move to admit
 4 Exhibit EM-X9.
 5 JUDGE HOWARD: It is admitted.
 6 (Exhibits EM-X9 admitted.)
 7 BY MS. FOSTER:
 8 Q. Mr. Mays, can you take a second for me and just
 9 read the RCW? Actually, can I have you read that into
 10 the record, please?
 11 JUDGE HOWARD: Just to be clear, sorry --
 12 sorry to interrupt your questioning there. But it
 13 generally isn't necessary for the witnesses to read the
 14 longer amounts of material into the record because it is
 15 in the record at this point. But feel free to ask your
 16 questions.
 17 BY MS. FOSTER:
 18 Q. Well, Mr. Mays, I would just like you to read
 19 the statute. You can read it to yourself and just let
 20 me know when you've read it, and that's perfectly fine.
 21 A. Okay.
 22 Q. Okay. Is there any requirement in RCW 81.53.295
 23 for the expenditure of Section 130 funds?
 24 MS. REYNOLDS: Objection. Calls for a legal
 25 conclusion.

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1 MS. FOSTER: It doesn't. I'm asking what
 2 the statute states, and specifically Mr. Mays testified
 3 that this is not a Section 130 project. So it's very
 4 relevant that I get what he believes the RCW to state on
 5 the record.
 6 JUDGE HOWARD: At the Commission, we will
 7 frequently allow testimony as a matter of practice that
 8 is in sort of a gray area between regulatory opinions
 9 and legal opinions. So I will allow the -- allow the
 10 question.
 11 BY MS. FOSTER:
 12 **Q. And I will repeat the question for you,**
 13 **Mr. Mays.**
 14 **Is there any requirement in RCW 81.53.295 for**
 15 **the expenditure of Section 130 funds?**
 16 A. No, I do not see any indication of Section 130
 17 in that section.
 18 **Q. Okay. Thank you.**
 19 **I would now like to direct you to your prefiled**
 20 **testimony, specifically page 2, and the question at**
 21 **lines 12 and 13. So you'll note -- can you -- I'm**
 22 **sorry. Let me back up.**
 23 **Can you please read lines 14 through 16 for me?**
 24 A. Sure. (As read) No, this project is not a
 25 Section 130 crossing safety project. Excluding the

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1 installation of the median, this project does not
 2 eliminate vehicular hazards at the rail-highway
 3 crossing. Furthermore, this project promotes increased
 4 pedestrian use at this crossing.
 5 **Q. Thank you.**
 6 **So your testimony talks about the exclusion of**
 7 **the median; however, with the inclusion of the**
 8 **installation of the --**
 9 THE COURT REPORTER: Ms. Foster, you cut out
 10 for me --
 11 A. Can you repeat the question?
 12 BY MS. FOSTER:
 13 **Q. Yes, certainly. Apologies.**
 14 **So your testimony talks about the exclusion of**
 15 **the eight-inch high concrete median; however, with the**
 16 **inclusion of the eight-inch-high concrete median, does**
 17 **this project eliminate vehicular hazards at the rail**
 18 **highway crossing?**
 19 MS. REYNOLDS: Objection. Foundation.
 20 Speculation.
 21 MS. FOSTER: His testimony talks about the
 22 exclusion is not going to eliminate vehicular hazards,
 23 and I want to know why he excluded that from his
 24 calculation.
 25 JUDGE HOWARD: I'm going to deny the

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1 objection.
 2 A. No, this project does not eliminate hazards at
 3 the at-grade crossing.
 4 BY MS. FOSTER:
 5 **Q. Even with the inclusion of the eight-inch-high**
 6 **concrete median?**
 7 A. With the inclusion of the eight-inch-high
 8 median, this project does not eliminate hazard at the
 9 at-grade crossing.
 10 **Q. Will it help reduce hazards?**
 11 A. I could not say that it would reduce with the
 12 information that I have.
 13 **Q. Okay. So do you agree that this project is**
 14 **adding an additional lane to Barker Road?**
 15 A. I would add -- I would agree that this project
 16 does add a turn lane to this road, which is an
 17 additional lane, correct.
 18 **Q. Okay. And won't the addition of an additional**
 19 **lane, won't that help alleviate rear-end incidents and**
 20 **accidents?**
 21 MS. REYNOLDS: Objection. Speculation.
 22 MS. FOSTER: He testified to the fact that
 23 this project won't reduce or alleviate rear-end
 24 accidents.
 25 JUDGE HOWARD: I'm going to allow the

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1 question.
 2 BY MS. FOSTER:
 3 **Q. Would you like me to repeat, Mr. Mays?**
 4 A. Sure.
 5 **Q. So with the inclusion of this additional lane,**
 6 **won't that additional lane help to alleviate rear-end**
 7 **incidents and accidents?**
 8 A. I don't have sufficient information to deduce
 9 the number of rear-end accidents that are present.
 10 **Q. Generally, then, in general, will the addition**
 11 **of an additional lane help to alleviate rear-end**
 12 **incidents and accidents?**
 13 A. As a general statement, I would say that's too
 14 broad. There are instances where it would not. So as a
 15 general statement, I couldn't answer that yes.
 16 **Q. Okay. I would now like to point you back to**
 17 **your testimony, page 2, specifically at lines 24 and 25.**
 18 **Can you please read those lines to me?**
 19 A. Sure. Yes. (As read) UP includes signal
 20 maintenance fees and all construction and maintenance
 21 agreements wherein the project type or funding do not
 22 prohibit their inclusion.
 23 **Q. So based upon that testimony, can there be**
 24 **instances in which the funding does prohibit the**
 25 **inclusion of signal maintenance fees?**

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1 A. I understand that that could be the case, yes.
 2 **Q. Okay. And that is also the case in which the**
 3 **project type could prohibit the inclusion of maintenance**
 4 **fees?**
 5 A. Can you specify "project type"?
 6 **Q. We could talk about a road widening project**
 7 **simply just adding a curb and gutter, actually replacing**
 8 **the track ties, just depending upon the construction**
 9 **project.**
 10 A. Can you repeat the question with that
 11 understanding? Sorry.
 12 **Q. Sure.**
 13 **Is -- based upon your testimony, are there**
 14 **project types that would preclude the inclusion of**
 15 **signal maintenance fees in the Construction and**
 16 **Maintenance Agreement?**
 17 A. There are no project types based on your
 18 definition of "types" that would exclude signal
 19 maintenance fees, assuming there are signals, traffic
 20 control devices being installed.
 21 **Q. Okay. Thank you.**
 22 **Can I now have you pull up Exhibit EM-X8,**
 23 **please?**
 24 A. Okay.
 25 **Q. And can you please -- do you recognize this**

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1 **document, these documents?**
 2 A. Yes.
 3 **Q. And can you just explain to me what these are,**
 4 **please?**
 5 A. This -- this is an email chain between myself
 6 and Jeff as far as the first email. I'm not sure -- the
 7 trailing emails are -- looks to be dating back to some
 8 plan review comment type.
 9 **Q. Okay. Would you agree if I told you that these**
 10 **are emails regarding signal design and comments relating**
 11 **to signal design?**
 12 A. I would agree that these are regarding signal
 13 placement.
 14 **Q. And then do you believe this to be a true and**
 15 **correct copy of these emails?**
 16 A. From what I can see, this appears to be true.
 17 **Q. Okay. Thank you.**
 18 MS. FOSTER: The City would move to admit
 19 Exhibit EM-X8 into the record.
 20 MS. REYNOLDS: No objection from the
 21 Railroad.
 22 JUDGE HOWARD: Admitted.
 23 (Exhibit EM-X8 admitted.)
 24 BY MS. FOSTER:
 25 **Q. So, Mr. Mays, can I please just have you quickly**

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1 **review this email chain and just let me know when you've**
 2 **finished reviewing it?**
 3 A. I reviewed it.
 4 **Q. Okay. Thank you.**
 5 **So based upon this email chain, did the City not**
 6 **respond to and incorporate your various signal design**
 7 **requests into this crossing layout?**
 8 A. Can you specify my request?
 9 **Q. Well, I have various emails here such as on page**
 10 **4 of 9, the very first email in which you state, Jeff,**
 11 **please see attached diagram per our call if you have the**
 12 **actual dimensions.**
 13 **Did they not -- when you requested and made**
 14 **comments, did they not then incorporate those comments?**
 15 A. It does appear that they haven't accommodated
 16 any recommendations, correct.
 17 **Q. Okay. And then does UP have to approve the**
 18 **crossing layout when there are modifications to an**
 19 **at-grade crossing?**
 20 A. For what purpose do you say "have"? I guess I'm
 21 a little confused by the question.
 22 **Q. I mean, would the City be allowed to proceed**
 23 **with the project if they had not gotten your approval on**
 24 **their crossing layout?**
 25 MS. REYNOLDS: Objection. Vague. Calls for

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1 a legal conclusion.
 2 MS. FOSTER: It's not vague, Your Honor.
 3 They testified to the fact that UP didn't request
 4 anything. That the City was the one who created these
 5 designs. I'm getting to the fact that UP was the one
 6 who requested these designs and the City cannot go forth
 7 without UP approval.
 8 JUDGE HOWARD: I will allow the question.
 9 A. The City can, from my understanding, proceed
 10 through a petition process without UP's approval.
 11 BY MS. FOSTER:
 12 **Q. That's not the question -- I appreciate the**
 13 **answer.**
 14 **Isn't it true that in order for the City to**
 15 **actually physically do the work, the City needs a**
 16 **Construction and Maintenance Agreement from UP?**
 17 A. That's correct.
 18 **Q. Would UP have started drafting and/or would they**
 19 **enter into a Construction and Maintenance Agreement if**
 20 **the City does not have an approved crossing layout?**
 21 A. Typically, no.
 22 **Q. Okay. Thank you.**
 23 **Then just a few -- few more questions, Mr. Mays.**
 24 **Can fees and project costs change from the**
 25 **initial estimate that you send to a municipality to the**

1 **actual Construction and Maintenance Agreement?**
 2 A. The fees and the estimate are what is reflected
 3 as exhibit to the CM agreement.
 4 **Q. Understood.**
 5 **But you mentioned how you sent these estimates**
 6 **in a December 8th email to Mr. Lochmiller. Are you**
 7 **saying that those fees will never change from when UP**
 8 **then sends a Construction and Maintenance Agreement?**
 9 A. No, because those estimates expire.
 10 **Q. So the fees and costs can change?**
 11 A. The fees provided in the estimates and the costs
 12 therein can expire.
 13 **Q. But I'm asking if they can change, meaning, will**
 14 **the numbers in the Construction and Maintenance**
 15 **Agreement ever be different from the estimate that you**
 16 **provided by the email?**
 17 A. That could be the case wherein the agreement is
 18 not signed before the estimates expire.
 19 **Q. Okay. Thank you.**
 20 **Just one last question. This goes back to that**
 21 **December 8th email.**
 22 **So if that email constituted City approval of**
 23 **the cost and fees, then why did UP require a**
 24 **Construction and Maintenance Agreement?**
 25 A. One second. Let me pull up that email.

1 **Mr. Lochmiller constituted the City's approval of the**
 2 **cost and fees for this project, why then did UP require**
 3 **a Construction and Maintenance Agreement?**
 4 A. The Construction and Maintenance Agreement has
 5 other documents, has other paragraphs, and other
 6 information that would be shared as part of that
 7 agreement. This email would not include those terms for
 8 those other items.
 9 **Q. So then this email doesn't constitute approval**
 10 **of the project?**
 11 MS. REYNOLDS: Objection. Calls for a legal
 12 conclusion.
 13 MS. FOSTER: It doesn't. Once again, they
 14 keep -- they've testified to the fact that this email
 15 somehow constituted City approval to maintenance fees.
 16 JUDGE HOWARD: I will allow the question.
 17 And -- and -- but the Railroad may feel free to redirect
 18 on this point.
 19 BY MS. FOSTER:
 20 **Q. So once again, Mr. Mays, this email did not**
 21 **constitute approval of the project; is that correct?**
 22 MS. REYNOLDS: Objection. Asked and
 23 answered.
 24 MS. FOSTER: He didn't answer my question.
 25 You objected and I'm reasking it.

1 JUDGE HOWARD: Are we able to give an
 2 exhibit for this email?
 3 THE WITNESS: Yeah, I'm not seeing --
 4 MS. FOSTER: It is Exhibit EM-5.
 5 A. Okay. Can you repeat the question? I'm sorry.
 6 BY MS. FOSTER:
 7 **Q. Sure.**
 8 **If the email, which UP has stated constitutes**
 9 **approval of all the cost and fees regarding this**
 10 **crossing, if that email constituted approval from the**
 11 **City, then why did UP then require a Construction and**
 12 **Maintenance Agreement?**
 13 MS. REYNOLDS: Objection. Calls for a legal
 14 conclusion.
 15 MS. FOSTER: It doesn't, Your Honor. His
 16 testimony has been that Mr. Lochmiller accepted these
 17 costs and fees. This goes directly to the fact that
 18 that email did not constitute acceptance.
 19 JUDGE HOWARD: I will allow the question.
 20 As I indicated, at the Commission, we will frequently
 21 allow testimony about regulatory practice and opinions
 22 that -- that are in the gray area.
 23 MS. FOSTER: Thank you.
 24 BY MS. FOSTER:
 25 **Q. So once again, Mr. Mays, if that email from**

1 JUDGE HOWARD: Yeah, I am agreeing with the
 2 City on that one.
 3 BY MS. FOSTER:
 4 **Q. Would you like me to ask again, Mr. Mays?**
 5 A. Yes, please.
 6 **Q. Does the email from Mr. Lochmiller -- or I'm**
 7 **sorry. Why -- is that email from Mr. Lochmiller**
 8 **approval of the project? Did that email constitute**
 9 **approval of the project?**
 10 A. The email was never intended to approve the
 11 project. This email is an approval of the estimates and
 12 AREMA costs and the other items that are listed out.
 13 MS. FOSTER: Okay. That is all the City
 14 has, Judge Howard.
 15 JUDGE HOWARD: All right. Do we have any
 16 redirect from Union Pacific?
 17 MR. ROBERSON: If I may, Your Honor, I have
 18 a small number of questions that probably would be
 19 better asked before redirect, if possible.
 20 JUDGE HOWARD: Does Union Pacific mind if
 21 Staff asks his questions now or should we take them
 22 next?
 23 MS. REYNOLDS: I agree with Staff, that it
 24 may make sense to do them now.
 25 JUDGE HOWARD: All right. Mr. Roberson, you

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1 may proceed.
 2 CROSS - EXAMINATION
 3 BY MR. ROBERSON:
 4 **Q. Good morning, Mr. Mays. You were just talking**
 5 **about your testimony, page 2, line 14, which is your**
 6 **discussion of whether or not this is a Section 130**
 7 **program.**
 8 **To your knowledge, are there other federal aid**
 9 **programs that fund grade crossing improvements?**
 10 A. Yes, I am aware there would be other federal
 11 funds available for other types of projects, yes.
 12 **Q. And could you tell us what those programs would**
 13 **be?**
 14 A. I -- I couldn't recite exactly, but I'm
 15 certainly familiar that -- familiar enough to know that
 16 there are other federal sources of funds --
 17 **Q. Are --**
 18 A. -- outside of Section 130.
 19 **Q. Sorry.**
 20 **Are service transportation block grants under 23**
 21 **USC Section 133 one of those types of programs?**
 22 A. I'm not familiar.
 23 **Q. Are highway safety improvement program grants**
 24 **under 23 USC Section 148 another example?**
 25 A. I'm not familiar.

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1 **Q. Okay. So do you do a lot of grade crossings,**
 2 **projects at grade crossings?**
 3 A. I do grade crossing projects, yes.
 4 **Q. And so -- personally, so you work for Benesch;**
 5 **is that correct?**
 6 A. Correct.
 7 **Q. So is that a contractor for Union Pacific?**
 8 A. We have a contract with UP, a consultant on
 9 behalf of UP, correct.
 10 **Q. So you run UP's public construction projects; is**
 11 **that -- is that a proper understanding of your job?**
 12 A. In the state of Washington, I manage the
 13 projects, even outside of construction, to include the
 14 preliminary side as well.
 15 **Q. Okay. So, I guess, do you have much experience**
 16 **with grade crossing improvement programs?**
 17 A. The programs as in the funding?
 18 **Q. Well, no, just grade crossing improvements.**
 19 **We'll talk about the funding in a second.**
 20 A. I have -- I do have experience working grade
 21 crossing projects, yes.
 22 **Q. So does that include like signals,**
 23 **reconstruction, signals maintenance, installing new**
 24 **grade crossing, protective warning devices?**
 25 A. Generally it would include projects where grade

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1 crossing, the traffic control system would be modified
 2 in some way.
 3 **Q. Okay. Do you often deal with the funding**
 4 **sources?**
 5 A. I do not directly deal with the funding sources.
 6 **Q. Okay. But you are aware that state law doesn't**
 7 **require the expenditure of Section 130 funds for it to**
 8 **be considered a federal aid program, correct?**
 9 MS. REYNOLDS: Objection. Calls for a legal
 10 conclusion.
 11 JUDGE HOWARD: I am going to deny the
 12 objection and we've already -- I've already denied a
 13 similar objection.
 14 A. Can you repeat the question? Sorry.
 15 BY MR. ROBERSON:
 16 **Q. Yeah.**
 17 **Are you aware that state law doesn't require the**
 18 **expenditure of Section 130 funds for a program to be**
 19 **considered funded by a federal aid program?**
 20 A. Yes, I would imagine that to be true.
 21 **Q. Okay. Ms. Foster was just asking you about kind**
 22 **of reductions in traffic accidents, and you said you**
 23 **couldn't say if this project would reduce the number of**
 24 **accidents because I think you said you didn't have**
 25 **sufficient info. I'm just curious, what kind of info**

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1 **would you need?**
 2 A. I believe the claim was regarding rear-end
 3 accidents, and the information would be typically
 4 incident data.
 5 **Q. So I guess I don't understand how the baseline**
 6 **would affect whether or not the project would reduce the**
 7 **number of collisions. Right? Because this is -- this**
 8 **question is relative to the baseline, right?**
 9 A. Can you reword that a different way, I guess?
 10 **Q. Well, I guess you're saying you couldn't answer**
 11 **her question because you didn't know how frequent**
 12 **accidents were, but her question was whatever that**
 13 **baseline is, doesn't this project reduce the number of**
 14 **accidents from that baseline?**
 15 A. Well, that cannot be the case. There could be
 16 motorist confusion at some cases when you have
 17 additional lanes that aren't needed.
 18 **Q. Okay. Do you have any reason to believe that**
 19 **this extra lane isn't needed?**
 20 A. I don't have enough information to say one way
 21 or another.
 22 **Q. And the information you would need would be the**
 23 **frequency of accidents?**
 24 A. That would be a very big piece of it.
 25 **Q. Okay.**

1 MR. ROBERSON: Okay. I think that's all the
 2 questions I have, Judge Howard. Thank you.
 3 JUDGE HOWARD: Thank you.
 4 Union Pacific may redirect the witness.
 5 MS. REYNOLDS: Thank you, Your Honor.
 6
 7 REDIRECT EXAMINATION
 8 BY MS. REYNOLDS:
 9 **Q. Mr. Mays, can you please pull up the statute. I**
 10 **believe it was marked EM-8X. I'm sorry, EM-9X. Do you**
 11 **have that in front of you, sir?**
 12 A. I do.
 13 **Q. Okay. Does this project involve the**
 14 **installation of a grade crossing protective device?**
 15 A. This project includes -- includes -- it includes
 16 a reinstallation. I mean, in layman's terms a
 17 relocation potentially.
 18 **Q. And have you seen any evidence or data that**
 19 **there's an installation of a new grade crossing**
 20 **protective device that's associated with the UP Barker**
 21 **Road crossing?**
 22 A. Can you clarify "new"?
 23 **Q. Yes. Is there anything -- other than relocating**
 24 **devices, is there -- is this a new system that's being**
 25 **installed or an existing system?**

1 **Q. In other words, the City of Spokane Valley**
 2 **developed a project and went to the Railroad, not the**
 3 **other way around; is that right?**
 4 A. Correct.
 5 **Q. I'd like to ask you about the construction and**
 6 **maintenance process.**
 7 **Is it common for parties to agree to terms in**
 8 **less formal ways before memorializing the terms in a**
 9 **Construction and Maintenance Agreement?**
 10 A. Yes.
 11 **Q. And did you interpret the December 8th email**
 12 **from Robert Lochmiller saying the City is okay with this**
 13 **and like to move forward as an indication that you**
 14 **should include City responsibility for maintenance in**
 15 **the draft CMA?**
 16 A. Yes.
 17 **Q. Was elimination of rear-end accidents the**
 18 **impetus for the proposed grade change modifications at**
 19 **Barker Road?**
 20 A. Not that I'm aware.
 21 MS. REYNOLDS: Okay. Mr. Mays, those are
 22 all the questions I have for you at this time. Thank
 23 you.
 24 JUDGE HOWARD: All right. Mr. Mays, thank
 25 you for your testimony today. You may feel free to turn

1 A. No, there are no additional devices being
 2 installed at this location.
 3 **Q. And do you know what federal aid highway funds**
 4 **are at issue for the project modifications to the**
 5 **crossing specifically as opposed to the project at**
 6 **large?**
 7 A. No, I don't have -- I don't have that level of
 8 information.
 9 **Q. Now, you were asked a series of questions about**
 10 **the City incorporating Union Pacific's requested changes**
 11 **into the design of the proposed crossing modifications.**
 12 **Do you remember those questions?**
 13 A. Yes.
 14 **Q. Did Union Pacific approach the City of Spokane**
 15 **Valley and say, We would like to make grade crossing**
 16 **modifications at Barker Road because of concerns about**
 17 **public safety?**
 18 A. No.
 19 **Q. What was the impetus for the discussions between**
 20 **the City of Spokane Valley and you and your colleagues**
 21 **at Union Pacific about the Barker Road project?**
 22 A. My understanding of the project was it was
 23 predominantly a pedestrian activity at the time and
 24 potentially just some amount of future development. You
 25 know, it's pretty typical.

1 off your camera.
 2 And could we have Peggy Ygbuhay turn on her
 3 camera. Please raise your right hand and I will swear
 4 you in.
 5 Oh, and, Mr. Mays, would you mind muting
 6 your phone that you're calling in. I'm going to mute
 7 this from here just so we're not getting that feedback.
 8 (Peggy Ygbuhay sworn.)
 9 JUDGE HOWARD: Thank you.
 10 Ms. Reynolds, you may introduce the witness.
 11
 12 EXAMINATION
 13 BY MS. REYNOLDS:
 14 **Q. Good morning. Could you please state your name**
 15 **for the record?**
 16 A. Yes. Good afternoon. Peggy Ygbuhay,
 17 Y-g-b-u-h-a-y.
 18 **Q. And what do you do for a living?**
 19 A. I work for Union Pacific Railroad in our
 20 engineering department for industry and public projects.
 21 **Q. How long have you been employed in that**
 22 **capacity?**
 23 A. This is my 28th year.
 24 **Q. And do you have in front of you your prefiled**
 25 **testimony in this case that is marked as Exhibit PY-1T?**

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1 A. I do.
 2 **Q. And is that your testimony?**
 3 A. Yes.
 4 MS. REYNOLDS: All right. With that, Union
 5 Pacific would tender Ms. Ygbuhay for cross-examination.
 6 JUDGE HOWARD: Thank you. And just so we're
 7 making a clear record here, we've already admitted PY-1T
 8 with the exception of page 7, line 9 to page 8, line 25.
 9 Were there any objections to the supporting Exhibits
 10 PY-2 through PY-7?
 11 MS. FOSTER: Not from the City.
 12 MR. ROBERSON: Nor from Staff.
 13 JUDGE HOWARD: All right. Thank you. PY-2
 14 through PY-7 are admitted.
 15 (Exhibits PY-2 through PY-7 admitted.)
 16 JUDGE HOWARD: And, Ms. Foster, you may
 17 proceed with your cross.
 18 MS. FOSTER: Thank you, Judge Howard.
 19
 20 CROSS - EXAMINATION
 21 BY MS. FOSTER:
 22 **Q. Good afternoon now, Ms. Ygbuhay. What is your**
 23 **knowledge of municipal infrastructure improvement**
 24 **projects?**
 25 A. I have very little knowledge of municipal

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1 improvement projects.
 2 **Q. Has preliminary engineering been completed for**
 3 **this project?**
 4 A. It's still in a preliminary engineering phase
 5 until we enter into a Construction and Maintenance
 6 Agreement.
 7 **Q. But has UP been reimbursed for the preliminary**
 8 **engineering costs that it has already expended?**
 9 A. Union Pacific accepted an agreement from the
 10 City for reimbursement of the preliminary design phase
 11 and engineering phase.
 12 **Q. Right. But my question was whether or not Union**
 13 **Pacific had actually been reimbursed, meaning, has the**
 14 **City executed their portion of the contract and paid UP**
 15 **for the preliminary engineering costs?**
 16 A. That is my understanding, that they are paying
 17 for these costs to -- reimbursing UP.
 18 **Q. Okay. Now I would like to go to your testimony,**
 19 **if we may.**
 20 **You mention that you have local agreements in 21**
 21 **of the 23 states in which you operate. What are those**
 22 **21 states that you have a cost sharing agreement in?**
 23 JUDGE HOWARD: Ms. Foster, I may stop you
 24 there. Are we within the portions of the testimony that
 25 we did not admit? Is it page 7, line 9 through page 8

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1 line 25?
 2 MS. FOSTER: You're correct. My apologies,
 3 Judge Howard. I'll clarify a little bit.
 4 BY MS. FOSTER:
 5 **Q. Do you have a cost sharing agreement in**
 6 **Washington?**
 7 A. I do not.
 8 **Q. Okay. So do you have a cost sharing agreement**
 9 **with the City of Spokane Valley?**
 10 A. We have various agreements with various
 11 agencies, and I have not analyzed each agreement. So
 12 each agreement has different articles and sections
 13 relative to maintenance costs. So I believe there was
 14 one agreement. I don't -- I don't recall this time if
 15 it was actually with the City of Spokane Valley or a
 16 different City in the state of Washington.
 17 **Q. Okay. So to the best of your knowledge, is**
 18 **there a cost sharing agreement between UP and the City**
 19 **of Spokane Valley?**
 20 A. Not that I'm aware as I sit here today.
 21 **Q. Do you currently charge the City of Spokane**
 22 **Valley for signal maintenance at this crossing location?**
 23 A. No.
 24 **Q. Okay. I would, in fact, like to pull up now I**
 25 **believe it's our cross-examination Exhibit P Y-8X, but**

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1 **it's also the exhibit to your testimony, PY-5, which is**
 2 **the 2017 Construction and Maintenance Agreement. Can**
 3 **you pull that out?**
 4 A. Yeah.
 5 MS. FOSTER: And, Judge Howard, I think this
 6 may be a question Ms. Reynolds had when she was
 7 cross-examining, but would you like us to lay foundation
 8 for the cross-examination exhibit even though it's the
 9 same as her testimony?
 10 JUDGE HOWARD: Do the other parties have any
 11 concerns or objections to this?
 12 MR. ROBERSON: None from Staff.
 13 MS. REYNOLDS: None from Union Pacific, Your
 14 Honor.
 15 JUDGE HOWARD: All right. I don't believe
 16 that there is a need to -- to lay the foundation. I'm
 17 going to change my thinking on that slightly. We can
 18 admit PY-8X into evidence.
 19 (Exhibit PY-8X admitted.)
 20 MS. FOSTER: Thank you, Judge Howard.
 21 BY MS. FOSTER:
 22 **Q. Would you agree that this 2017 agreement was**
 23 **entered into between UP and Spokane Valley regarding**
 24 **surface construction work?**
 25 A. Yeah, surface maintenance work, that's correct.

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1 **Q. Okay. And there was a statement by your counsel**
 2 **which stated that pursuant to this agreement, all**
 3 **maintenance costs were to be borne by Spokane Valley.**
 4 **Do you agree with that statement?**
 5 A. Maintenance costs relative to the road
 6 approaches --
 7 **Q. In the --**
 8 A. -- outside of the --
 9 (Simultaneous talking.)
 10 A. Yeah.
 11 **Q. Yes, you would. Okay.**
 12 **So I would like to point to you, if you could**
 13 **please go with me to page 13 on your Exhibit PY-8X.**
 14 A. Yes, I'm here.
 15 **Q. Okay. Specifically, Section 5, Subsection A,**
 16 **can you please read that for me?**
 17 A. (As read) The political body shall at its own
 18 sole expense maintain, repair, and renew our costs to be
 19 maintained, repaired, and renewed the entire crossing
 20 area and roadway except the portions between the track
 21 tie-ends, which shall be maintained by and at the
 22 expense of the Railroad.
 23 **Q. So Spokane Valley doesn't pay all maintenance**
 24 **costs at this location?**
 25 A. No, not outside of the track tie-ends, that's

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1 correct.
 2 **Q. Okay. So UP does pay maintenance costs for its**
 3 **facilities?**
 4 A. Yes, Union Pacific is bearing the maintenance
 5 burden here, yes.
 6 **Q. Okay. And then lastly, I just want to reference**
 7 **and go to your Exhibit PY-6, which is the Union Pacific**
 8 **Public Policy Manual.**
 9 A. Okay.
 10 **Q. So are there ever times in which, you know,**
 11 **you're doing a project and there are certain things in**
 12 **the public projects manual, but there's a conflict**
 13 **between state and federal law?**
 14 A. I mean, I guess I would have to know what
 15 specifically you're referring to.
 16 **Q. Well, sure. I'm just thinking about in this**
 17 **case, I'm assuming that -- I don't want to get into my**
 18 **own testimony or my own thoughts, but I'm assuming the**
 19 **Public Project Manual was introduced into evidence**
 20 **because there's a section in there on UP charging**
 21 **maintenance costs to municipalities. Is that an**
 22 **accurate statement of what's in the Public Project**
 23 **Manual?**
 24 A. Yes.
 25 **Q. Okay. But we also have a statute at issue here,**

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1 **which states the opposite, correct? Which states that**
 2 **if there's a federal aid project, the Railroad is to**
 3 **bear the cost of maintenance; is that also correct?**
 4 MS. REYNOLDS: Objection. Misstates --
 5 A. That is correct.
 6 MS. REYNOLDS: -- the statute.
 7 MS. FOSTER: I'm -- I'm -- I could cite the
 8 statute exactly for what it states. I'm just trying to
 9 point out that there's a conflict between the Public
 10 Projects Manual and the statute to help illuminate my
 11 question.
 12 JUDGE HOWARD: I will allow the question.
 13 BY MS. FOSTER:
 14 **Q. So you would agree with me, then, that there's a**
 15 **conflict between the statute and there's a conflict**
 16 **between the Public Project Manual?**
 17 A. Yeah. The Public Project Manual provides the
 18 Union Pacific guidelines for public projects.
 19 **Q. Right. But there's a conflict with state law,**
 20 **correct?**
 21 A. Which is why we're here today, yes.
 22 **Q. Well, have you ever had that in other**
 23 **jurisdictions?**
 24 A. There has been -- not me personally, but my --
 25 my company has, yes.

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1 **Q. Certainly.**
 2 **So when you're doing a project and there is a**
 3 **conflict between the manual and we'll say state and/or**
 4 **federal law, what controls?**
 5 MS. REYNOLDS: Objection. Calls for a legal
 6 conclusion.
 7 MS. FOSTER: She just stated that there have
 8 been instances. That's important to this. You
 9 introduced the Public Project Manual into the record as
 10 though that's the law in this case.
 11 JUDGE HOWARD: I will allow the question
 12 because it -- it could be understood as going to what
 13 their practice is.
 14 BY MS. FOSTER:
 15 **Q. And once again --**
 16 A. Federal law.
 17 **Q. Federal law --**
 18 **(Simultaneous talking.)**
 19 **Q. I'm sorry.**
 20 A. Federal law.
 21 **Q. Okay. Well, what about when there's a conflict**
 22 **between state law and your projects manual? You may**
 23 **have not encountered that situation, and that's fine.**
 24 **I'm just trying to get to your own personal knowledge.**
 25 A. Yeah, again, the conflict is discussed and

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1 either negotiated with the parties of interest and/or we
 2 go to litigation.
 3 **Q. Okay. But I just want to go back, because I**
 4 **think we may have talked over each other.**
 5 **Federal law controls over the Public Project**
 6 **Manual is what you said?**
 7 MS. REYNOLDS: Objection. Misstates --
 8 A. Federal --
 9 MS. FOSTER: I'm asking her to clarify her
 10 statement.
 11 A. Yeah, again, federal -- federal law provides
 12 information and -- and laws relative to the maintenance
 13 practices. And this is actually not in conflict with
 14 our Public Project Manual.
 15 BY MS. FOSTER:
 16 **Q. Right. But I'm not asking specifically about**
 17 **maintenance. I'm talking about the Public Project**
 18 **Manual as a whole, that when you have instances in which**
 19 **there is conflict between the project manual and there**
 20 **is conflict between the state or federal law, which one**
 21 **controls for UP?**
 22 A. The Public Project Manual is in compliance with
 23 federal law.
 24 **Q. That's not the question I'm asking. I'm asking**
 25 **if there's a conflict, which controls?**

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1 MS. REYNOLDS: Objection. Incomplete
 2 hypothetical.
 3 MS. FOSTER: I've asked this question.
 4 She's not answering my question.
 5 JUDGE HOWARD: I'm going to allow the
 6 question.
 7 BY MS. FOSTER:
 8 **Q. I'm going to ask, if there's a conflict between**
 9 **either the Public Project Manual and state or federal**
 10 **law, which one controls?**
 11 A. Federal law.
 12 MS. FOSTER: Okay. Those are the only
 13 questions I have, Judge Howard.
 14 JUDGE HOWARD: All right. Does Staff have
 15 any cross that it would like to...
 16 MR. ROBERSON: Just a few questions, Judge
 17 Howard.
 18 JUDGE HOWARD: All right. Ms. Reynolds, are
 19 you fine with Staff proceeding with its cross now or
 20 would you like to do redirect now?
 21 MR. ROBERSON: Either way. It's Your
 22 Honor's discretion.
 23 JUDGE HOWARD: All right. Mr. Roberson, you
 24 may proceed.
 25 /////

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1 CROSS - EXAMINATION
 2 BY MR. ROBERSON:
 3 **Q. So good afternoon, Ms. Ygbuhay. On page 6 of**
 4 **your testimony, you testified that UP derives no**
 5 **benefits from the proposed project; is that correct?**
 6 A. That's correct.
 7 **Q. Does UP benefit from a safer crossing?**
 8 A. Union Pacific doesn't have any ascertainable
 9 benefit to crossing improvement projects.
 10 **Q. Do you know why crossings have warning devices?**
 11 A. It's been part of the federal rules and safety
 12 since the introduction of vehicles that they started
 13 putting active traffic control devices at railroad
 14 crossings for the motorists --
 15 **Q. Can you -- sorry, go ahead.**
 16 A. For the motorists' information in accordance
 17 with the Manual on Uniform Traffic Control Devices.
 18 **Q. Why do motorists need information that there's a**
 19 **grade crossing?**
 20 A. Because the -- it's just another intersection
 21 so --
 22 **Q. A motorist could cross in front of a train,**
 23 **right? And hit the train?**
 24 A. A motorist could cross in front of a train, yes.
 25 **Q. Can a car crash derail a train?**

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1 A. A car crash? You know, I'm -- I'm not a -- I
 2 don't think that's -- I think that's outside of my area
 3 of expertise. I'm more public projects, sorry.
 4 **Q. Okay. So but there's the possibility without**
 5 **warning devices that you would have crashes, right?**
 6 A. There's a -- there's a possibility to have
 7 crashes with or without, that's correct.
 8 **Q. Do you think that motorists are more likely to**
 9 **stop and not be hit by a train if there's a flashing bar**
 10 **telling them not to enter the crossing?**
 11 MS. REYNOLDS: Objection. Incomplete
 12 hypothetical. Argumentative.
 13 JUDGE HOWARD: I'm going to allow the
 14 question.
 15 A. So I'll answer it this way, Jeff, and then maybe
 16 you can ask an additional question. But the Manual of
 17 Uniform Traffic Control Devices is basically created for
 18 the safe traversal of motor vehicles over all types of
 19 roadways. So it is there specifically for the
 20 enhancement of motor vehicle use at -- at crossings and
 21 elsewhere.
 22 BY MR. ROBERSON:
 23 **Q. So piggybacking on that, the MUTCD does have a**
 24 **chapter on rail warning devices, right? Chapter 8?**
 25 A. Yes, part 8. That's correct.

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1 **Q. So that's to create safe car-rail interactions,**
 2 **right?**
 3 A. Yes.
 4 **Q. Okay. So without the warning device, it's**
 5 **possible that a car could enter the crossing and hit a**
 6 **train, right?**
 7 A. Yeah.
 8 **Q. Okay. Would UP benefit from not having cars hit**
 9 **its train or trains?**
 10 A. Will UP benefit from cars not hitting us?
 11 **Q. At Barker Road, I guess, specifically?**
 12 A. At Barker Road? I don't know that it's
 13 necessarily a benefit or it's, in fact, a detriment that
 14 vehicles would crash into our railroad operations.
 15 **Q. Okay. So just so I'm clear, UP is indifferent**
 16 **as to whether or not cars hit its trains?**
 17 MS. REYNOLDS: Objection. Argumentative.
 18 JUDGE HOWARD: I'm going to allow the
 19 question.
 20 A. Union Pacific endorses the road authorities and
 21 the jurisdictions to provide as safe a crossing as
 22 possible so that the motor vehicles do not interact with
 23 train operations.
 24 BY MR. ROBERSON:
 25 **Q. That's not my question. My question is, is**

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1 **Union Pacific indifferent to its cars -- or its trains**
 2 **being hit by cars at grade crossings?**
 3 A. Union Pacific wants to see zero collisions at
 4 our crossings. It is --
 5 **Q. And why is that --**
 6 A. -- not indifferent.
 7 **Q. Okay. So why does UP want to see zero**
 8 **collisions?**
 9 A. Because we -- collisions are catastrophic
 10 typically with -- with railroad and vehicles and -- and
 11 pedestrians and the like. So we -- we endorse the
 12 federal law for contributions for grade separations and
 13 the elimination of at-grade crossings altogether.
 14 **Q. Okay. So is it fair, then, to say that UP**
 15 **derives a benefit if you avoid these kinds of**
 16 **catastrophic collisions?**
 17 A. I don't know that we derive a benefit, but we
 18 want to work with the communities to get to a zero
 19 incident, yes.
 20 MR. ROBERSON: I think I'm done, Judge
 21 Howard. Thank you.
 22 JUDGE HOWARD: All right. Do we have any
 23 redirect?
 24 MS. REYNOLDS: Yes, Your Honor. Thank you.
 25 /////

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1 REDIRECT EXAMINATION
 2 BY MS. REYNOLDS:
 3 **Q. To be clear, are there any traffic control**
 4 **devices at the Barker Road crossing today?**
 5 A. There are.
 6 **Q. There's not just an unfettered access for cars**
 7 **to go onto the tracks at this current moment, correct?**
 8 A. There aren't, that's correct.
 9 **Q. Are you aware of prior accidents at the Barker**
 10 **Road crossing on UP's tracks?**
 11 A. I'm not.
 12 **Q. Are you aware of any derailments at the Barker**
 13 **Road crossing?**
 14 A. I'm not.
 15 **Q. I'd like to direct your attention back to the**
 16 **construction and maintenance agreement from 2017, which**
 17 **has been admitted as Exhibit PY-5. Do you have that in**
 18 **front of you?**
 19 A. I do.
 20 **Q. And can I direct your attention to Section 6.**
 21 **What is Section 6 titled?**
 22 A. No Project Expenses to be Borne by Railroad.
 23 **Q. And what does Section 6 say?**
 24 A. (As read) The political body agrees that no
 25 project costs and expenses are to be borne by the

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1 Railroad. In addition, the Railroad is not required to
 2 contribute any funding for the project.
 3 **Q. And then can I direct your attention to Section**
 4 **12?**
 5 A. Yes.
 6 **Q. And Section 12 involves future projects?**
 7 A. That's correct.
 8 **Q. Future projects are to be funded by whom**
 9 **according to the 2017 CMA?**
 10 A. It -- it says that it -- future projects will
 11 not be allowed until there is an agreement between the
 12 Railroad and political body.
 13 **Q. And was there an agreement reached in this case?**
 14 A. No.
 15 **Q. Now, I'd like to go back to the statute, Section**
 16 **295, that you were asked about.**
 17 A. Okay.
 18 **Q. Do you have that in front of you?**
 19 A. Yes.
 20 **Q. You were asked about whether this state law**
 21 **conflicts with UP's Public Project Manual. Do you have**
 22 **an opinion about the conflict of this particular statute**
 23 **in UP's Project Manual?**
 24 A. Do I have an opinion about the Public Project
 25 Manual and the statute?

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1 **Q. Yes. Do you believe that they're in conflict?**
 2 A. I mean, one -- one's our policy manual and one
 3 is the state's law.
 4 **Q. Do you see that RCW 81.53.295 discusses the**
 5 **installation of a grade crossing protective device?**
 6 A. Yes.
 7 **Q. Does the Barker Road project, as it relates to**
 8 **the crossing at UP's lines, involve the installation of**
 9 **a grade crossing protective device?**
 10 A. It involves the installation of the traffic
 11 control devices I believe that are contemplated here.
 12 **Q. Is it installing any new devices? Does the**
 13 **Barker Road project involve the installation of any new**
 14 **devices?**
 15 A. The Barker Road project, as proposed by the
 16 City, is to widen the crossing and basically install the
 17 same devices that exist today; two cantilevers, two
 18 flashings -- sorry. Ten flashing light pairs and two
 19 gate arms. The -- there is an additional flashing light
 20 pair that is being contemplated or proposed by the City
 21 as a result of the diagnostic meeting held in, I
 22 believe, 2020.
 23 MS. REYNOLDS: Thank you very much for your
 24 time. Those are all my questions.
 25 JUDGE HOWARD: All right. Ms. Ygbuhay,

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1 thank you for your testimony today. You may turn off
 2 your camera.
 3 And I believe that was our last witness for
 4 today. We can turn to brief closing statements and, of
 5 course, we already have the -- the deadline for
 6 post-hearing briefs. So I imagine these closing
 7 statements today would be relatively brief, but I would
 8 appreciate counsels' arguments and thoughts.
 9 So let's turn to the City first.
 10 MS. FOSTER: Thank you, Judge Howard.
 11 There has been a lot of discussion today,
 12 both from the City and UP, regarding RCW 81.53.295 and
 13 the apportionment of maintenance costs. But really,
 14 that statute is somewhat irrelevant. It's --
 15 essentially, it's a mandatory statute. It's a shell.
 16 If federal highway funds, state highway funds are being
 17 used for a grade crossing project, then the maintenance
 18 costs shall be borne by the Railroad. So really the
 19 issue here is whether or not that statute applies.
 20 So the real issue is RCW 81.53.261 or
 21 whether or not this Commission will grant the City's
 22 petition and allow them to modify the grade crossing at
 23 Barker Road. If the Commission does so, then -- then
 24 the 295 applies. If it doesn't -- if they don't, it
 25 doesn't apply.

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1 And so in order for the Commission to grant
 2 this petition, it's actually kind of simple. It just
 3 has to determine whether or not the public safety is
 4 being helped or being improved by -- by the improvements
 5 to this crossing.
 6 Contrary to what it seems like Union Pacific
 7 may be suggesting, which is that the Railroad has to be
 8 the one that comes up with the improvements to the
 9 crossing, that it can never be a City or a municipal
 10 initiated project. And that's simply not in the statute
 11 and taking their position to the end. Well, cities
 12 could essentially never improve grade crossings because
 13 cities can't do anything unless the Railroad comes up
 14 with it on their own.
 15 But in this case, there is absolutely a
 16 public safety aspect to allowing this petition and
 17 allowing the widening of Barker Road.
 18 First, we are adding signals specifically to
 19 Hadmer [phonetic] Lane and some of the side roads. If
 20 you look at Euclid, Euclid is not a continuous street.
 21 There's a lot of offsets. I'm from that area. It's a
 22 real interesting area. It's not the safest area as it
 23 is.
 24 Second, the City is adding another lane,
 25 which will help with queuing, which will also help

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1 reduce certain queuing and turning-related crashes.
 2 They're also expanding the turn radius, which will help
 3 cars and trucks from jumping the curb on Euclid.
 4 Lastly, they are adding a concrete median at
 5 the request of UP, which will stop cars from jumping the
 6 tracks that get annoyed at having to wait so long
 7 because there's such a long queue and such a long
 8 backup. And that will also help public safety by
 9 preventing certain amounts of crashes in other instances
 10 at the grade crossing.
 11 And that's all the City has for their
 12 closing, Judge Howard.
 13 JUDGE HOWARD: Thank you.
 14 Would the Railroad like to give a closing?
 15 MS. REYNOLDS: Yes, Your Honor, and I would
 16 like to share my screen if I can.
 17 JUDGE HOWARD: Certainly. I assume we're
 18 looking at an exhibit that's been admitted?
 19 MS. REYNOLDS: It is a demonstrative
 20 PowerPoint, Your Honor.
 21 JUDGE HOWARD: All right.
 22 MS. REYNOLDS: Are you able to see the
 23 PowerPoint?
 24 JUDGE HOWARD: Yes, thank you.
 25 MS. REYNOLDS: The Union Pacific Railroad

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1 believes the dismissal of both the petition and the
 2 complaint is warranted for three separate reasons.
 3 Number one, the petition is facially
 4 deficient. It fails to allege the public safety need,
 5 and therefore, does not meet the plain language of
 6 section 261.
 7 Second, the petition fails to state the
 8 necessity from the standpoint of public safety for the
 9 installation of the proposed modifications and does not
 10 indicate the cost or the installation or maintenance
 11 also required by section .271.
 12 Finally, as to the complaint, the complaint
 13 relies upon section 295, which contemplates installation
 14 of new grade crossing protective devices, not redoing
 15 what is already there as is the case in this case.
 16 So this is a case of cause and effect. I
 17 just heard the City's counsel state that public safety
 18 could be, quote, helped or improved. I heard the
 19 statement, quote, public safety aspect.
 20 Staff asked questions of the Railroad
 21 witnesses that said things like, Does this impact the
 22 public safety? Or, Is there a reduction in accidents?
 23 All of those safety considerations may be
 24 affected, but they weren't -- concerns about this
 25 particular grade crossing, were not the impetus for this

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1 project.
 2 This is not a public safety project. The
 3 Barker Road UPRR crossing according to the City's own
 4 data has been safe for 25 years. There have been no
 5 accidents in the past 25 years. The Barker Road project
 6 is developed -- or it was really motivated by future
 7 growth and development, and according to Ms. Mantz, some
 8 concerns about current traffic patterns.
 9 The City has proposed this project for the
 10 City's benefit. The City's installing and modernizing
 11 sewage lines. The City is constructing a multiuse path.
 12 The -- this is a 1.3-mile-long corridor, and it happens
 13 to cross over Union Pacific Railroad's crossing. Union
 14 Pacific Railroad was not the impetus of this project,
 15 and I think that's the crux of the argument.
 16 The effect of the City's decision is to
 17 reinstall basically the same traffic warning devices and
 18 system as currently exists.
 19 How do we know they're basically the same?
 20 If we compare the sections from the petition, and
 21 although they're worded slightly differently, I think
 22 the witnesses all acknowledged today that it's
 23 essentially the same system. It's not new technology.
 24 It's not updated in accordance with concerns about the
 25 existing system. They're just putting an additional set

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1 of flashers.
 2 There is going to be one cantilever and one
 3 flood gate flasher for each direction of travel, both
 4 now and then, or in the future. There will be nine
 5 flasher sets, two stop bars, two W10-1 approach signs,
 6 two railroad crossing pavement markings, and two W10-4
 7 approach signs.
 8 There's a difference between the number of
 9 bells that's listed in the proposed description, which
 10 would make sense because they're adding an additional
 11 lane.
 12 There's nothing in this petition that says
 13 we've had some close calls, we've had cars jumping the
 14 tracks, we've had accidents or we've had derailments
 15 that is causing the City of Spokane Valley to file this
 16 petition.
 17 Now, we know the best evidence that there
 18 are no safety concerns is there is no changes
 19 fundamentally to the system.
 20 So let's look at the petition quickly. The
 21 City's prefiled testimony and the statements here today,
 22 including most recently in the argument, talks about
 23 impacts to public safety, but that is not the standard.
 24 The burden of proof is on the City as the petitioner
 25 and the complainant. And this statute, upon which they

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1 rely, states the City shall deem that the public safety
 2 requires the proposed modifications. And then their
 3 petition specifically must allege in writing that the
 4 public safety requires the installation of specified
 5 signals or other warning devices at such crossing or the
 6 specified changes in the method and manner of existing
 7 crossing warning devices.
 8 And it's important to be precise in the
 9 language with this because railroads are not obligated
 10 to fund every public project that happens to cross their
 11 lines. The funding is triggered when there is a public
 12 safety need that's associated with the railroad. And
 13 the -- not only does the evidence not support that
 14 public safety required these changes to an already safe
 15 crossing, but the petition didn't meet the statute, and
 16 therefore, dismissal is warranted.
 17 If you go to 271, the next section, it also
 18 further describes what the petition must include, also
 19 not included in the City's petition. The petition must
 20 describe the proposed modification, including the
 21 necessity from the standpoint of public safety for such
 22 installation and include the approximate cost of
 23 installation and related work and the appropriate annual
 24 cost of maintenance. The petition again is deficient
 25 under 271.

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1 And then finally, 295, we have talked about
2 this previously. Union Pacific doesn't characterize
3 their reinstallation of the same basic traffic control
4 system as a new installation that a railroad must fund
5 under 295. This is a reinstallation of an already
6 existing system.
7 And I'm -- it's conspicuous for its absence
8 of specific evidence of what specific federal aid
9 highway funds are coming to use for the construction and
10 installation of the modification. There's -- there are
11 a lot of prefiled statements and testimony that was
12 given today that there's federal funding for the
13 project. The project is a 1.3-mile-long corridor that
14 happens to cross this Union Pacific Railroad, but no one
15 has offered specific evidence about the federal funds,
16 the federal aid highway funds, that are being used for
17 these particular devices. And so for two reasons,
18 Section 295 does not apply.
19 And the evidence that we have in the record
20 is that there are federal funds overall for this lengthy
21 project, but there is a deficiency in the evidence and
22 in the record about those federal funds as they relate
23 specifically to this modification.
24 Finally, 261 allows parties to enter into
25 contract and negotiate costs, and that's exactly what

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1 they had done in the previous CMA that was dated 2017.
2 And I think that I -- I will correct myself here, City
3 paid maintenance costs. The Railroad was paying certain
4 maintenance costs. But the important thing is that the
5 parties were required to negotiate about future
6 projects, which is exactly what happened here.
7 And despite the sense of urgency that is
8 listed in the complaint that says it's harmful to the
9 public, the parties previously agreed that they were
10 going to enter into this negotiation period. And
11 urgency does not justify disregard of the statutory
12 requirement that the public safety required these
13 modifications to be made.
14 Finally, in December 2020, whether
15 Mr. Lochmiller or Mrs. Mantz were authorized to accept
16 terms on behalf of the City or not, Union Pacific was
17 told that the City accepted these terms. And the Union
18 Pacific Railroad acted in accordance with what they were
19 told in the plain language of the December 8th email.
20 December 7th, Union Pacific says, Here's the estimated
21 costs that we're going to bill you, City of Spokane
22 Valley, and the representative for the City of Spokane
23 Valley said, Okay. We agree with that.
24 And so whether or not there was inherent or
25 actual authority isn't the relevant inquiry. The

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1 relevant inquiry is whether Union Pacific acted in
2 accordance with what it understood the course and
3 conduct of this negotiation were.
4 So the burden is on the City, and the City
5 has failed to produce pleadings that satisfy the
6 statute. They haven't proven the public safety
7 necessity, only impacts on public safety. There's no
8 evidence that 295 applies because they're not installing
9 new protective devices, they're just the same thing
10 moved to accommodate an additional lane, and common
11 sense.
12 If we were to take the City's argument to
13 its logical conclusion, I mean, roadways, railroads,
14 bicycle lanes, all of that type of stuff impacts the
15 public safety. And the goal of municipalities, the goal
16 of transportation companies, and the goal of
17 Commissions, like the UTC, is to provide for public
18 safety, and public safety is always a consideration.
19 But only in particular instances is there a
20 public safety requirement or necessity. And what we did
21 not hear from the City is a necessity from a public
22 safety concern about this particular crossing, which
23 warrants imposition of maintenance costs onto the
24 Railroad.
25 And for those reasons, the Railroad requests

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1 that the Commission dismiss the complaint and the
2 petition. Thank you.
3 JUDGE HOWARD: All right. Thank you.
4 Would Staff like to give a brief closing
5 statement?
6 MR. ROBERSON: Very briefly. There we go
7 with the video. Staff will largely defer its arguments
8 to its brief. I note a couple of points.
9 One, the Railroad moved initially to dismiss
10 the complaint for deficient pleadings. Judge Pearson
11 denied that. That was I think in the prehearing
12 conference order. That was not appealed. So basically
13 that closing argument constituted a collateral attack on
14 Commission order. It's improper. You should disregard
15 the argument.
16 To the extent, I think the parties agree on
17 what the relevant facts are. It's whether or not public
18 safety requires the installation of these warning
19 devices or the modification, whether there's a
20 statutorily allocated apportionment of maintenance, and
21 whether or not the parties agreed.
22 I think the latter two are fairly technical
23 and I'm just going to talk about those on brief, but I
24 will discuss the public safety issue, which seems to be
25 the largest one here at the hearing.

1 The statute I believe says the Commission
2 needs to determine whether or not public safety requires
3 the modifications, the installation, whatever, of the
4 warning devices.

5 The City presented evidence that the
6 population is growing, traffic is increasing, they're
7 concerned about traffic, accidents, those kinds of
8 things. These modifications were intended to address
9 that. Call it an impact on public safety, call it
10 whatever you want. That's how you measure public
11 safety. Will this make the road safer?

12 Staff submits that the City has carried its
13 burden on that by showing that by installing the extra
14 lane, by installing the, you know, extra flashers to
15 make sure that all the lanes are aware that they need to
16 stop when the cantilever arm goes down or what have you,
17 that those reduce the frequency of accidents and improve
18 the safety of the crossing.

19 So the Commission should find accordingly
20 and enter an order to that effect. And like I said, I'm
21 going to defer the rest of my argument to the brief.

22 JUDGE HOWARD: All right. Thank you. I
23 would like to thank everyone for participating in this
24 proceeding today and the witnesses for their testimony.
25 I will take all of this under advisement and issue an

1 CERTIFICATE

2
3 STATE OF WASHINGTON
4 COUNTY OF THURSTON

5
6 I, Tayler Garlinghouse, a Certified Shorthand
7 Reporter in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and
9 accurate to the best of my knowledge, skill and ability.



10
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12
13
14
15
16 ~~Justin Garlinghouse~~
17 Tayler Garlinghouse, CCR 3358

1 order in the near future. As we noted already, we have
2 the post-hearing briefs due May 31st with a 30-page
3 limit.

4 I would -- frequently for initial orders at
5 the Commission, we have a ten-day deadline following the
6 hearing. But here the parties have asked for the
7 post-hearing briefs. I would therefore try to get my
8 order finished my goal now is probably June 14th, about
9 two weeks after those post-hearing briefs. And I will
10 send the updated exhibit list to the court reporter
11 after our hearing today showing what has been admitted.

12 Is there anything else that we should
13 address before we adjourn today?

14 MR. ROBERSON: Not from Staff.

15 MS. FOSTER: There's nothing from the City,
16 Judge Howard.

17 MS. REYNOLDS: Nothing from Union Pacific.

18 Thank you, Your Honor.

19 JUDGE HOWARD: All right. Thank you all.

20 We are adjourned.

21 (Adjourned at 12:48 p.m.)
22
23
24
25

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