

**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



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of) DOCKETS TR-210809
CITY OF SPOKANE VALLEY) and TR-210814
) (Consolidated)
))
To Modify Warning Devices at)
Highway-Railroad Grade Crossing)
of Union Pacific Railroad Company)

CITY OF SPOKANE VALLEY,)
))
Complainant,)
))
v.)
))
UNION PACIFIC RAILROAD COMPANY,)
))
Respondent.)

EVIDENTIARY HEARING, VOLUME II

Pages 13-151

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

May 10, 2022

9:30 a.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue, Suite 1840
Seattle, Washington 98101
(206) 287-9066 | Seattle
(360) 534-9066 | Olympia
(800) 846-6989 | National
www.buellrealtime.com

1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 MICHAEL HOWARD

4

5

6 FOR CITY OF SPOKANE VALLEY:

7

AZIZA FOSTER
Menke Jackson Beyer LLP
807 N. 39th Avenue
8 Yakima, Washington 98902
(509) 575-0313
9 zfoster@mbje.com

10

11 FOR UNION PACIFIC RAILROAD CO.:

12

RACHEL TALLON REYNOLDS
12 Lewis Brisbois Bisgaard & Smith LLP
1111 Third Avenue, Suite 2700
13 Seattle, Washington 98101
(206) 436-2020
14 rachel.reynolds@lewisbrisbois.com

15

16 FOR COMMISSION STAFF:

17

JEFF ROBERSON
17 Office of the Attorney General
Utilities and Transportation
18 Division
PO Box 40128
19 Olympia, Washington 98504
(360) 664-1188
20 jeff.roberson@utc.wa.gov

21

22 WITNESSES:

23

PEGGY YGBUHAY
23 ROBERT LOCHMILLER
BRETT JOHNSON
GLORIA MANTZ
24 ELLIS MAYS

25

	EXAMINATION INDEX	
		PAGE
1		
2	EXAMINATION OF BRETT JOHNSON	
3	By Ms. Foster	41
4	By Ms. Reynolds	43
5	By Ms. Foster	48
6		
7	EXAMINATION OF ROBERT LOCHMILLER	
8	By Ms. Foster	49
9	By Ms. Reynolds	50
10	By Ms. Foster	68
11	EXAMINATION OF GLORIA MANTZ	
12	By Ms. Foster	71
13	By Ms. Reynolds	72
14	By Ms. Foster	93
15		
16	EXAMINATION OF ELLIS MAYS	
17	By Ms. Reynolds	96
18	By Ms. Foster	97
19	By Mr. Roberson	113
20	By Ms. Reynolds	117
21	EXAMINATION OF PEGGY YGBUHAY	
22	By Ms. Reynolds	120
23	By Ms. Foster	121
24	By Mr. Roberson	131
25	By Ms. Reynolds	135

EXHIBIT INDEX

- 1
- 2 EXHIBITS FOR ADMISSION
- 3 BJ-1T Direct Testimony
- 4 RL-1T Direct Testimony
- 5 RL-2 Photos of Current Warning Devices
- 6 RL-3 Proposed Warning Device Layout
- 7 RL-4X Petition to UTC
- 8 RL-5X MUTCD Section 1A.07
- 9 RL-6X City's Website and Article re: Barker
Project
- 10 RL-7X Diagnostic Meeting Minutes with UPRR
11 Comments
- 12 RL-8X Mays Email December 8, 2020 Regarding
13 Signal Maintenance
- 14 RL-9X Signed Preliminary Engineering Agreement
- 15 GM-1T Direct Testimony
- 16 GM-2 PowerPoint of Project Phasing
- 17 GM-3 City Safety Grant Award
- 18 GM-4 STBG Grand Award
- 19 GM-5 Breakdown of Project Funding
- 20 GM-6 Comprehensive Plan SEPA Analysis
- 21 GM-7 Northeast Industrial Area Planned Action
Ordinance SEIS
- 22 GM-8T Rebuttal Testimony
- 23 GM-9X Petition to UTC
- 24 GM-10X Exhibit C to Complaint - August 4, 2021
Email
- 25

EXHIBIT INDEX (Cont.)

EXHIBITS FOR ADMISSION

GM-11X Google Map of Spokane Valley, WA

GM-12X NEPA Categorical Exclusion Documentation Form (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 73-80)

GM-13X Widener & Associates Environmental Justice Letter (City of Spokane Valley's Response To Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 85-89)

GM-14X United States Department of the Interior 11/15/2019 Letter (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 102-107)

GM-15X Widener & Associates Environmental Justice Letter 12/30/2019 (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 108-113)

GM-16X Utility Notice 1/27/2021 (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Page 121)

GM-17X SEPA Checklist (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 161-175)

GM-18X WSDOT Local Agency Federal Aid Project Prospectus (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 1, Pages 394-397)

EXHIBIT LIST (Cont.)

EXHIBITS FOR ADMISSION

GM-19X Risk-Based Safety Assessment (City of Spokane Valley's Response to Union Pacific Railroad Co.'s Request for Production of Document, No. 12, Page 3)

GM-20X Mays Email dated October 19, 2020

EM-1T Direct Testimony

EM-2 City's Website and Article re: Barker Project

EM-3 Diagnostic Meeting Minutes with UPRR Comments

EM-4 Mays Email dated October 19, 2020

EM-5 Mays Email December 8, 2020 Regarding Signal Maintenance

EM-6 101 Definitions and Procedures

EM-7X Email Exchange re Construction and Maintenance Agreement

EM-8X Email Exchange re Signal Design

EM-9X RCW 81.53.295

PY-1T Direct Testimony

PY-2 Signed Preliminary Engineering Agreement

PY-3 Construction and Maintenance Agreement

PY-4 Mays Email dated August 4, 2021

PY-5 2017 Construction and Maintenance Agreement

PY-6 Public Project Manual

PY-7 Surface Estimate

EXHIBIT INDEX (Cont.)

1
2
3
4
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7
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15
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EXHIBITS FOR ADMISSION

PY-8X 2017 Construction and Maintenance Agreement
For DOT 66256C

PY-9X RCW 81.53.295

1 LACEY, WASHINGTON; MAY 10, 2022

2 9:30 A.M.

3 --oOo--

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

5

6 JUDGE HOWARD: Let's be on the record. Good
7 morning. Today is Tuesday, May 10th, 2022, and the time
8 is 9:30 a.m.

9 This is a hearing in consolidated Dockets
10 TR-210809 and TR-210814. These dockets are captioned
11 respectively In the Matter of the Petition of the City
12 of Spokane Valley and City of Spokane Valley v. Union
13 Pacific Railroad Company.

14 The City has petitioned to modify a public
15 road crossing over Barker Road. It has also filed a
16 complaint seeking to assign maintenance costs to the
17 Railroad.

18 My name is Michael Howard, and I am an
19 administrative law judge presiding over today's
20 proceeding.

21 Let's take appearances from the parties, and
22 then we'll talk about how we're going to proceed this
23 morning.

24 Can we start with the City?

25 MS. FOSTER: Thank you, Your Honor. Aziza

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

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

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

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

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

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

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,

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

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.

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

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.

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.

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

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

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.

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

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.

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

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.

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.)

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 E X A M I N A T I O N

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.

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 /////

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

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?

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 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 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 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.

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 E X A M I N A T I O N

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?

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

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

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

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

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

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

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.

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 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 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 respectively 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 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

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.

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?

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

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

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

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

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.

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 E X A M I N A T I O N

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

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

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 devises at a
25 highway-railroad grade crossing that was filed by the

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.

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.

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

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

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.

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

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

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 queueing 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 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 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 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. 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. 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. 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

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

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.

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

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.

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

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

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.)

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-l-l-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.

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

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?

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?

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

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.

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

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

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

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?

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

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

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

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 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 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: 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

1 may proceed.

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

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.

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

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

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

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 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 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 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 E X A M I N A T I O N

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?

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

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

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

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

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.

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

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,

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.

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

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?

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 /////

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

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?

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.

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

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 /////

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

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

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?

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,

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.

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 queueing, which will also help

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

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

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

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

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.

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

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

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

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 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.)

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STATE OF WASHINGTON
COUNTY OF THURSTON

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

Taylor Garlinghouse
Tayler Garlinghouse, CCR 3358

