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6 BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION
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8 CITY OF KENNEWICK,)

9 Petitioner,)

10 v.)

11 UNION PACIFIC RAILROAD,)

12 Respondent.)

DOCKET NO. TR-040664

BNSF'S MOTION TO ALLOW FILING
OF PREPARED TESTIMONY OF
JAMES T. LABBERTON

13 _____)
14 _____)

15 CITY OF KENNEWICK,)

16 Petitioner,)

17 v.)

18 PORT OF BENTON and TRI-CITY &
OLYMPIA RAILROAD,)

19 Respondent.)

DOCKET NO. TR-050967

BNSF'S MOTION TO ALLOW FILING
OF PREPARED TESTIMONY OF
JAMES T. LABBERTON

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22 I. Relief Requested

23 BNSF Railway Company (BNSF) requests that the Commission allow and
24 admit the

25 filing of prepared testimony of James T. Labberton¹, as well as live testimony in the
26 hearing on the above-captioned matter.

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¹See Attachment No. 1, Prepared Testimony of James T. Labberton.

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II. Argument

Respondent BNSF has moved to allow the testimony of James T. Labberton, BNSF Terminal Manager at Pasco, Washington. Counsel for BNSF apologizes for the fact that it did not previously disclose the name and prepared testimony of a company representative, however it did not do so as a tactic to surprise the other parties at the hearing on this matter. Upon initial investigation, after being informed of the City of Kennewick's ("City") filing of the underlying petition for an at-grade crossing, BNSF believed that it did not have an interest, either operationally or through property ownership, at the location of the proposed at-grade crossing. However, after receipt of the City's exhibits filed in preparation of the upcoming pre-hearing conference and hearing, BNSF realized that it may, in fact, have an interest in relation to its switching operations at said location.

Not only will the direct testimony of Mr. Labberton only take approximately 10 - 15 minutes, but his testimony will also allow the Commission to benefit from the presentation of all relevant facts, which is one of the main goals of all Commission hearings.

III. Conclusion

Based on the foregoing, BNSF Railway Company requests that the Commission allow the filing of prepared testimony of James T. Labberton, as well as his live testimony in this matter.

DATED this 13th day of October, 2006.

Montgomery Scarp MacDougall, PLLC

s/Kevin MacDougall
Kevin MacDougall, WSBA No. 31280
Of Attorneys for Respondent
BNSF Railway Company