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A P P E A R A N C E S

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1 BELLINGHAM, WASHINGTON, DECEMBER 1, 2015

2 9:30 A.M.

3 -ooOoo-

4
5 JUDGE PEARSON: Good morning. Today is
6 Tuesday, December 1, 2015, just after 9:30 a.m., and we
7 are here today for an evidentiary hearing in docket
8 TR-150189 related to a petition filed by Burlington
9 Northern Santa Fe Railroad for closure of a grade
10 crossing at Valley View Road in Whatcom County. In
11 advance of the hearing the parties stipulated to the
12 admission of all the prefiled testimony and exhibits so
13 I will go over those briefly now.

14 The first is B-1, then GH-1T, RW-12 through
15 RW-3CX, SN-1T through SN-3, KB-1T through KB-5T, PB-1T
16 through PB-6, JR-1T through JR-2, RM-1T through RM-6,
17 HH-1T through HH-13CX, and PC-1T through PC-10CX.

18 So this morning's proceedings are going to be
19 BNSF's witnesses testify first, followed by Commission
20 Staff's witnesses and then Whatcom County's witnesses.
21 Just for the record, we are at the Whatcom County
22 Courthouse in Bellingham, and we will also be here this
23 evening for the public comment hearing that's scheduled
24 to begin at 6 p.m.

25 So let's start by taking short appearances.

1 Please state your name and who you represent for the
2 record, beginning with BNSF.

3 MS. ENDRES: Good morning, Your Honor.
4 Kelsey Endres on behalf of BNSF.

5 JUDGE PEARSON: Thank you. For Staff?

6 MR. BEATTIE: Julian Beattie, Assistant
7 Attorney General representing Commission Staff.

8 JUDGE PEARSON: Okay. And for the
9 county?

10 MR. GIBSON: I'm Dan Gibson from the
11 Whatcom County Prosecutor's Office representing Whatcom
12 County.

13 JUDGE PEARSON: Thank you. So our first
14 witness, Richard Wagner, is already on the stand so we
15 can get started with testimony. Mr. Wagner, if you
16 will please stand and raise your right hand.

17
18 RICHARD WAGNER,
19 having been duly sworn, testified as follows:

20
21 JUDGE PEARSON: Please state your name
22 and spell your last name for the record.

23 A. Richard Wagner, W-a-g-n-e-r.

24 MS. ENDRES: Does Your Honor have any
25 preference whether we stay here or come up to the

CROSS-EXAMINATION BY BEATTIE/WAGNER 17

1 podium?

2 JUDGE PEARSON: I don't have any
3 preference. I can hear you fine.
4
5

6 DIRECT EXAMINATION

7 BY MS. ENDRES:

8 Q. Good morning, Mr. Wagner. Can you please
9 state your position with BNSF Railway?

10 A. Manager of public projects for the Northwest
11 Division. I serve Idaho, Washington, and British
12 Columbia.

13 Q. Do you have a copy there with you of your
14 prefiled testimony this morning?

15 A. Yes, I do.

16 Q. And is that true and correct as though you
17 were testifying today?

18 A. Yes.

19 MR. BEATTIE: Thank you, Judge Pearson.
20

21 CROSS-EXAMINATION

22 BY MR. BEATTIE:

23 Q. Good morning, Mr. Wagner. My name is Julian
24 Beattie and I'm with Commission Staff. And so this
25 morning I'd like to start off with just a few

CROSS-EXAMINATION BY BEATTIE/WAGNER 18

1 questions, very simple questions to clarify the record,
2 and then I'll move into more substantive type
3 questions.

4 So if you could first turn to Page 3 of your
5 testimony, Line 19.

6 A. Yes.

7 Q. Sir, here you testified that you participated
8 in a Crossing Safety Assessment. So just for clarity
9 of the record, is what you describe as a Crossing
10 Safety Assessment also known as a diagnostic review?

11 A. Formally a diagnostic review is relative to a
12 quiet zone, not necessarily -- but the term is kind of
13 used by everybody as a diagnostic. So, yes, diagnostic
14 would be appropriate.

15 Q. Okay. Well, let me approach it from this
16 angle, then. Staff witness Paul Curl refers in his
17 testimony to a diagnostic review that occurred in July
18 of 2014. Are you and Mr. Curl referring to the same
19 event when you use the term Crossing Safety Assessment?

20 A. Yes.

21 Q. Thank you. Next, on the same page, Line 26,
22 here you testify that the Intalco project will allow
23 trains to meet and pass, quote, without blocking the
24 mainline, end quote.

25 You would agree that the term "mainline" could

CROSS-EXAMINATION BY BEATTIE/WAGNER 19

1 refer to the Bellingham Subdivision which runs roughly
2 parallel to I-5 or it could refer to the Cherry Point
3 Subdivision which runs to the industrial facilities out
4 west. So when you use the term "mainline" here in your
5 testimony, which are you referring to, the mainline in
6 the Bellingham Subdivision or the mainline on the
7 Cherry Point Subdivision?

8 A. This is Line 26 on Page 3?

9 Q. Correct.

10 A. In this instance, that would be -- it would
11 be -- actually, it would be both because you're keeping
12 both the mainline on the Cherry Point which is -- yeah,
13 it would be both, mainline and the Bellingham
14 Subdivision.

15 Q. Thank you. So next I'd ask you to turn to
16 Page 4. On Line 3 you testified, "This work will allow
17 trains to exit the Bellingham Subdivision mainline and
18 allow passenger and higher priority freight trains to
19 clear through the Custer area."

20 And I'm wondering if you can help me
21 understand BNSF's priority system. What do you mean by
22 a higher priority freight train?

23 A. Well, I guess I would prefer that Mr. Haag
24 qualify what is meant by priority trains because my
25 knowledge is kind of limited. We run trains for high

CROSS-EXAMINATION BY BEATTIE/WAGNER 20

1 priority customers such as UPS, and that would be
2 considered a high priority train. There may be other
3 products that would fall into that area, but just the
4 basic knowledge that I have, it would be -- high
5 priority customers, it would be based on customers and
6 passenger trains. The Cascade is probably the second
7 highest, Cascade runs, passenger runs up to Vancouver
8 are probably the highest -- second highest priority
9 train, I believe. It's going to be up there in the top
10 five at least.

11 **Q. Thank you, sir. If I could next have you turn**
12 **to Page 7. At Line 18 you describe why you believe**
13 **that closure in this case is the best, quote/unquote**
14 **alternative.**

15 **So if I could have you, sir, please explain**
16 **what other alternatives BNSF considered in this case.**

17 A. My pages are marked differently. I'm sorry,
18 sir, I've lost track of where we're at. I mean, my
19 numbering here is different. At the bottom of the
20 page, is that the page number? I'm showing 7.

21 **Q. Correct.**

22 A. Richard Wagner 7, Richard Wagner 8.

23 **Q. Correct. And at Line 18 you're posed the**
24 **question, "Why close a crossing, as opposed to other**
25 **alternatives?"**

CROSS-EXAMINATION BY BEATTIE/WAGNER 21

1 A. Oh, okay, there we go, that's actually 9. Did
2 you say Page 9?

3 Q. Perhaps I could just ask you what alternatives
4 BNSF considered in this case.

5 A. What other --

6 Q. Apart from a crossing closure.

7 A. None. This is always the first option. We
8 made no plans for any other than seeking the closure of
9 the crossing.

10 Q. Okay, thank you, sir. I'm a bit hesitant to
11 call out a page number, but on my Page 8 of your
12 testimony --

13 A. You said page 8?

14 Q. Correct.

15 MS. ENDRES: Your Honor, I have an extra
16 set of testimony.

17 JUDGE PEARSON: Please.

18 A. Yeah, it's the same. Which line is that?

19 Q. (BY MR. BEATTIE) I'm looking at Line 26.
20 Here you testify, "Per the Manual on Uniform Traffic
21 Control Devices, Valley View Road is considered a
22 low-volume road." And I'd like to probe for a minute
23 your use of the term "low-volume road."

24 A. Uh-huh.

25 Q. It's my understanding, according to the

CROSS-EXAMINATION BY BEATTIE/WAGNER 22

1 manual, the standards for traffic control devices at
2 grade crossings are virtually identical for those roads
3 that are not considered low-volume roads. Therefore,
4 wouldn't you agree that when you're using the term
5 "low-volume road" in your testimony you're using it in
6 a colloquial sense as opposed to a strictly technical
7 sense as that term is used in the manual?

8 A. Yes, except that we cite the actual count, the
9 parameters of what a low-volume road is or low-volume
10 traffic route is, and it's less than 400.

11 Q. But you would agree that you're not using it
12 in a strictly technical sense?

13 A. Yes, yes.

14 Q. Thank you. Turning back to Page 5, here
15 starting at Line 8 you're asked, "What are the lengths
16 of the trains that will occupy the siding track once it
17 is put in use?" You answer, "The average length of a
18 train is a mile or more. The siding track will be able
19 to accommodate most trains to our existing customers on
20 the Cherry Point Subdivision."

21 Focusing on your term "most trains," is it
22 your testimony, then, that some trains would not be
23 accommodated by the siding track?

24 A. Let's see. I think that probably Mr. Haag
25 would be better to answer that question. My knowledge

CROSS-EXAMINATION BY BEATTIE/WAGNER 23

1 of the customers that we have, unless they change their
2 facilities, that would increase the length of the
3 trains, I believe. But Mr. Haag would be a better
4 resource to answer that question.

5 But in my opinion, yes, unless there's
6 added -- unless the facilities add track length, which
7 would accommodate longer trains, yes, this will
8 adequately serve those customers that we currently
9 have.

10 **Q. Okay, but I just want to be clear. I**
11 **understand Mr. Haag may be able to answer the question**
12 **better, but you cannot commit on the record that all**
13 **trains will definitely fit on the siding once it's**
14 **expanded?**

15 A. That's why we designed it for the length. We
16 designed it to serve the customers that we currently
17 have. So yes, the existing customers that we have, it
18 will serve those customers. So, yes, their trains will
19 fit in that site.

20 **Q. There's a chance, however, that a train could**
21 **stop not on the siding but actually on the mainline?**

22 A. Yes, sure. Again, though, that's train
23 operations, so why that would happen or how that would
24 happen, I can't speak to that. I don't believe I did
25 speak to that actually.

CROSS-EXAMINATION BY BEATTIE/WAGNER

24

1 **Q. What I'm getting at is the Ham Road crossing**
2 **will remain open; correct?**

3 A. Oh, yes, yes.

4 **Q. If, hypothetically, a train was too big for**
5 **the siding and therefore stopped on the mainline, isn't**
6 **it possible that that train could block the Ham Road**
7 **crossing?**

8 A. We wouldn't operate it that way. There's a
9 lot more length on the main than there is on the
10 siding.

11 **Q. So it's your assertion that no trains will be**
12 **blocking the mainline --**

13 A. At Ham.

14 **Q. -- at Ham?**

15 A. I would say yes, but Mr. Haag could speak to
16 that better. He knows about train handling, I don't.
17 There's considerably more length on the main than there
18 is on the siding, if that were the case. But I don't
19 believe that that would happen.

20 **Q. So your answer, sir, is yes, no trains will be**
21 **blocking the mainline at Ham?**

22 A. Yes, no trains would be blocking the mainline
23 at Ham.

24 **Q. Thank you.**

25 A. Sorry it took so long to get there.

CROSS-EXAMINATION BY BEATTIE/WAGNER

25

1 Q. I'd like to move into my final series of
2 questions. One of the issues in this case is
3 mitigating actions; correct?

4 A. Uh-huh.

5 Q. So my next series of questions is designed to
6 help the parties take final positions in post-hearing
7 briefing on what mitigations should occur.

8 A. Uh-huh.

9 Q. So I'd like to go through a list of mitigation
10 actions that have been proposed at various points in
11 the parties' respective testimonies, and ask you for
12 BNSF's official position on each proposed action. So
13 I'd like to start with the Ham-Arnie crossing.

14 A. Yes.

15 Q. The proposal is to install flashing lights,
16 gates, pavement markings, stop lines and increased
17 signage at the crossing.

18 A. BNSF supports this.

19 Q. Construct stop refuges?

20 A. BNSF does not support that. Our Traffic
21 Impact Study indicates that they're not required or
22 needed.

23 Q. Not required or needed?

24 A. Or needed, yes.

25 Q. Widen the crossing?

CROSS-EXAMINATION BY BEATTIE/WAGNER 26

1 A. There's no reason to widen the crossing, so
2 no. The crossing is adequate for the road surface, the
3 traveling surface of the road. So widening it, we
4 would not support that.

5 Q. Thank you. Moving on to the south approach to
6 the Valley View crossing.

7 A. Yes.

8 Q. The one that is at issue in this proceeding.
9 So we're talking about traveling northbound from the
10 Valley View-Arnie intersection. First proposal,
11 install signage at the Valley View Road-Arnie Road
12 intersection, specifically one sign at the south
13 approach, one at the east approach, and one at the west
14 approach.

15 A. BNSF supports that, yes.

16 Q. Final proposal, construct a cul-de-sac north
17 of Arnie Road prior to the bridge on Valley View Road.

18 A. BNSF does not support that mitigation. Should
19 I explain why?

20 Q. Are you aware that BNSF's petition proposed
21 this mitigation?

22 A. Yes, I understand that.

23 Q. What, then, is the reason for no longer
24 supporting this mitigation?

25 A. The reason would be because private property

CROSS-EXAMINATION BY BEATTIE/WAGNER 27

1 is held on both sides. There's already current access
2 to the private property which are used as fields for
3 farming, and the only people who would need access
4 there would be those people farming it. They have
5 adequate room to turn any vehicles or farm equipment
6 around once they get up the road prior to the closed
7 crossing.

8 So a cul-de-sac would only be constructed if
9 you were going to have public vehicles and there was
10 going to be public access to the road. We're proposing
11 that there not be any public access to Valley View on
12 the south approach to the crossing.

13 **Q. Thank you. Now I'd like to move on to the**
14 **north approach with the understanding that you'll stop**
15 **me if there's anything else you want to say about**
16 **mitigation actions that I haven't mentioned.**

17 A. Sure.

18 **Q. So now we're talking about approaching the**
19 **crossing from the Valley View-Creasey intersection.**
20 **You're familiar with the area?**

21 A. Yes, you bet.

22 **Q. First proposal, install signage at the**
23 **intersections of Creasey Road and Valley View Road,**
24 **parenthetically, one at the north approach.**

25 A. We support that, yes.

CROSS-EXAMINATION BY BEATTIE/WAGNER

28

1 Q. Next proposal, redesign an intersection at
2 Valley View Road and Creasey Road to allow design
3 vehicles to turn around.

4 A. Yes, we do support that.

5 Q. Hypothetically, and I use the word
6 "hypothetical" because this was not in anybody's
7 testimony, but answer if you can. What is BNSF's
8 position on a hypothetical cul-de-sac just north of the
9 proposed closed crossing as in the cul-de-sac that
10 would allow vehicles to turn around if they do not turn
11 around at the Creasey intersection and instead proceed
12 down to the closed crossing and find themselves faced
13 with the barrier?

14 A. BNSF wouldn't support that, and mainly
15 because, again, private property owned on both sides.
16 There's one residence beyond Creasey and opposite of
17 that residence is open fields that already have access
18 to them. The only people that would be up there would
19 be the resident and guests, and then farming of the
20 property across on the -- I guess it would be the
21 northeast quadrant of the existing crossing.

22 Q. Thank you, sir. Finally, moving on to the
23 Main Street-Portal Way intersection. There's a
24 proposal for active warning devices and signals at the
25 Main Street crossing remaining in place.

CROSS-EXAMINATION BY BEATTIE/WAGNER**29**

1 A. Yes, BNSF supports this.

2 **Q. Thank you. Next proposal, construct a**
3 **southbound right turn lane at Portal Way and Main**
4 **Street.**

5 A. Yes, BNSF supports this.

6 **Q. Construct stop refuges?**

7 A. BNSF does not -- they're not indicated in our
8 Traffic Impact Study, that they would be advantageous.

9 **Q. How about widening the crossing?**

10 A. There would be no need to. The current width
11 of the crossing meets the traveling surface, so no.

12 **Q. Finally, traffic signals at the intersection.**

13 A. BNSF does not support that. Again, the
14 Traffic Impact Study indicates that. Excuse me, may I
15 correct?

16 **Q. You may.**

17 A. Actually, I think there was rebuttal testimony
18 by Mr. Bialobreski.

19 MR. BEATTIE: That's all the questions I
20 have. Thank you, sir.

21 JUDGE PEARSON: I just have one
22 question, Mr. Wagner. So in your testimony you're
23 saying that traffic should be rerouted to either the
24 Ham or the Main Street crossings; correct?

25 A. Correct.

CROSS-EXAMINATION BY BEATTIE/WAGNER 30

1 JUDGE PEARSON: Have you conducted a
2 safety evaluation or a diagnostic evaluation of either
3 of those crossings in the last 18 months?

4 A. No.

5 JUDGE PEARSON: Okay, thank you.
6 Does anyone else have any questions for
7 Mr. Wagner?

8 Okay, you may step down. Mr. Haag is our next
9 witness?

10 MS. ENDRES: Your Honor, I wonder if it
11 might be helpful for us to put up one of our blown-up
12 area maps on the easel just for reference.

13 JUDGE PEARSON: Sure.

14 GRANT HAAG,
15 having been duly sworn, testified as follows:

16
17 JUDGE PEARSON: Please go ahead and
18 state your name and spell your last name for the
19 record.

20 A. Grant Haag, H-a-a-g.

21 JUDGE PEARSON: Thank you.

22 DIRECT EXAMINATION

23 BY MS. ENDRES:

24 Q. Good morning, Mr. Haag. Would you please
25

CROSS-EXAMINATION BY BEATTIE/HAAG**31**

1 **state your position with BNSF.**

2 A. I'm Terminal Superintendent of the Greater
3 Seattle Terminal Complex with BNSF Railway.

4 **Q. Do you have a copy of your prefiled testimony**
5 **there with you?**

6 A. I do.

7 **Q. And is that testimony true and accurate as**
8 **though you were testifying today?**

9 A. Yes.

10
11 **CROSS-EXAMINATION**

12 **BY MR. BEATTIE:**

13 **Q. Good morning, Mr. Haag.**

14 A. Good morning.

15 **Q. Would you please turn to Page 4 of your**
16 **prefiled testimony. At Line 18 you testify, "This work**
17 **will allow trains to exit the mainline and allow**
18 **passenger in the higher priority freight trains to**
19 **clear through the Custer area, as well."**

20 **So I'm wondering if you could help me with the**
21 **concept of "higher priority train."**

22 A. Certainly. So we talked about the opportunity
23 on the Bellingham as well as on our Cherry Point sub
24 there. And the highest priority that we have on the
25 Bellingham is our Amtrak trains that run north-south

CROSS-EXAMINATION BY BEATTIE/HAAG

32

1 through Vancouver, B.C. and south.

2 Q. Okay, thank you. So is it your testimony that
3 some trains will use the proposed Intalco siding
4 expansion for meet and pass purposes on the Bellingham
5 mainline?

6 A. They will be used to clear the Bellingham
7 mainline.

8 Q. Okay. So it's not simply for meet and pass
9 purposes for Cherry Point customers, it's also being
10 used -- the proposed siding will also be used to clear
11 the Bellingham mainline as you say?

12 A. Correct.

13 Q. Thank you for that clarification. I just have
14 one more question for you.

15 On Page 6, very first line you testify,
16 "Currently, the train count through Valley View Road
17 averages about four trains per day, for a total of
18 eight trips through the crossing."

19 Do these eight trains run seven days per week?

20 A. Typically, yes. So on average it's eight,
21 eight trains per day. There may be days where there
22 are less or there are more, but on average it is eight
23 trains per day.

24 Q. Thank you. And I want to amend my statement.
25 I actually have another question for you.

REDIRECT EXAMINATION BY ENDRES/HAAG

33

1 I was asking your colleague about whether all
2 trains, all of your customers' trains will be able to
3 fit on the expanded siding. Can you confirm that on
4 the record, that all trains will be able to fit, not
5 most but all?

6 A. Sure. So for the trains that run into our
7 Cherry Point Subdivision there or that would go by that
8 siding, yes, that's currently constructed in our
9 transportation plan that all trains would fit at the
10 siding in the proposed length.

11 Q. Therefore, under current assumptions you can
12 also commit that the Ham Road crossing will not be
13 blocked?

14 A. Not by plan, correct.

15 MR. BEATTIE: Thank you, Mr. Haag,
16 that's all I have.

17 MS. ENDRES: I do have one.

REDIRECT EXAMINATION

18
19
20 BY MS. ENDRES:

21 Q. I just wanted to clarify, you were asked by
22 the UTC attorney about the priority differences for
23 freight trains, and you and Mr. Wagner both testified
24 that passenger service trains had the highest priority.

25 Can you explain a little bit more whether

REDIRECT EXAMINATION BY ENDRES/HAAG**34**

1 **there are any priority differences between freight**
2 **trains of what they carry?**

3 A. Sure. Yes, there are different priorities
4 amongst freight trains with intermodal being the
5 highest priority in general.

6 JUDGE PEARSON: What was that word you
7 just said?

8 A. Intermodal.

9 JUDGE PEARSON: Can you explain what
10 that is?

11 A. Sure. So that is going to be the trains that
12 you see with trailers on them, on the flat cars.

13 JUDGE PEARSON: Okay.

14 A. On this line we do not run pure intermodal
15 trains on the Bellingham Sub in question. We do have
16 what we call a slot plan, so times that we try to run
17 trains in order to meet for inter-change-up in Canada
18 with the CN and those types of things. So we do
19 prioritize by that way on the Bellingham Sub.

20 MS. ENDRES: Thank you.

21 JUDGE PEARSON: I just have a few
22 questions for you. So you stated in your testimony
23 that the average length of trains is increasing. So
24 can you just explain why that is, why the trains in
25 this area are increasing in length?

REDIRECT EXAMINATION BY ENDRES/HAAG 35

1 A. Sure. So it's really about efficiency and
2 mainline capacity. So if we increase the length of the
3 trains it decreases the amount of trains that we run.

4 JUDGE PEARSON: Okay. You also stated
5 on Page 2, Line 25 of your testimony that BNSF
6 experienced backlogging of trains as recently as 2014.
7 So were trains in this particular area being
8 backlogged?

9 A. Yes. I was not here at that time but I do
10 understand that there was congestion in this area as
11 well.

12 JUDGE PEARSON: Okay. And do you know
13 what types of trains were being backlogged in this
14 area, what commodities they were carrying?

15 A. I could not speak directly to that
16 specifically here.

17 JUDGE PEARSON: So on Page 6, Lines 1
18 through 2 of your testimony, you stated there are four
19 trains per day for a total of eight trips servicing six
20 different customers. Who are those six customers?

21 A. The six customers there are BP, we have our
22 Phillips 66, Praxair.

23 JUDGE PEARSON: P-r-a-x?

24 A. Yes. Petrogas.

25 JUDGE PEARSON: Petrogas?

REDIRECT EXAMINATION BY ENDRES/HAAG 36

1 A. Correct. And I would have to review the other
2 two.

3 JUDGE PEARSON: Okay. If you could get
4 that information to me --

5 A. Sure.

6 JUDGE PEARSON: -- about the other two
7 customers. We can go ahead and characterize that as a
8 bench request. That is the first bench request.

9 So you also stated that the road could be
10 blocked for hours. How many crew or personnel do you
11 have stationed at the train when it's blocking the
12 road?

13 A. So it depends. We have two road switchers
14 that work there. Each of those have three crew
15 members. On the through trains that come through, each
16 of those have two crew members.

17 JUDGE PEARSON: And is the crossing
18 regularly blocked now at Valley View Road?

19 A. It is -- we do switch over that crossing,
20 meaning with a road switcher there, that would move the
21 cars between the two tracks. So between the two tracks
22 that are there, we do switch cars in that area which
23 leads to the crossing being blocked.

24 JUDGE PEARSON: And how often does that
25 happen and for how long when it happens?

REDIRECT EXAMINATION BY ENDRES/HAAG 37

1 A. It happens seven days a week and it
2 typically -- we do clear up while we're switching
3 there. So at any one time it could be 15 minutes
4 maybe, and then we would clear up.

5 JUDGE PEARSON: On Page 3 of your
6 testimony you state that there's \$189 million for
7 railroad capacity in Washington in 2015 and that BNSF
8 is investing \$6 billion in capacity commitments. So do
9 you have an idea of how much of those investments are
10 being allocated for safety improvements?

11 A. I do not have that breakdown.

12 JUDGE PEARSON: Okay, thank you. That's
13 all I have. Anyone else have any questions for
14 Mr. Haag? Okay, you may step down.

15 Are you going to be calling Mr. Bialobreski?

16 MS. ENDRES: Yes.

17 JUDGE PEARSON: Mr. Bialobreski, if you
18 could please wherever you are stand and raise your
19 right hand.

20
21 KURT BIALOBRESKI,

22 (Present telephonically)

23 having been duly sworn, testified as follows:

24 JUDGE PEARSON: If you could please
25 state your name and spell your last name for the

DIRECT EXAMINATION BY ENDRES/BIALOBRESKI 38

1 record.

2 A. Kurt Bialobreski, B-i-a-l-o-b-r-e-s-k-i.

3 JUDGE PEARSON: Thank you.

4
5 DIRECT EXAMINATION

6 BY MS. ENDRES:

7 Q. Good morning, Mr. Bialobreski. This is Kelsey
8 Endres, the attorney for BNSF.

9 A. Good afternoon here.

10 Q. Can you hear us okay?

11 A. We're good now.

12 Q. Can you please state for the record the
13 company that you work for and your position.

14 A. I work for Hanson Professional Services and I
15 manage our Traffic Engineering Services.

16 Q. Do you have a copy of your prefiled testimony,
17 your supplemental testimony, your rebuttal testimony,
18 and the exhibit that accompanied that Traffic Impact
19 Study there with you?

20 A. Yes, I do.

21 Q. And is your testimony true and correct as
22 though you were restating it here today?

23 A. Yes, it is.

24 Q. At this time I'm going to turn you over to the
25 attorneys for the other parties and they'll be asking

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 39

1 you some questions. If you could please do your very
2 best to speak up. We have you on speaker phone but
3 we're in a rather large conference room and we would
4 all appreciate it.

5 A. No problem.

CROSS-EXAMINATION

9 BY MR. BEATTIE:

10 Q. Mr. Bialobreski, my name is Julian Beattie,
11 I'm an attorney representing the Commission Staff in
12 this proceeding. I'd like to ask you a few questions
13 about the Traffic Impact Study that is in the record as
14 Exhibit KB-3.

15 A. Okay.

16 Q. If you could turn to Page 5 of your study,
17 please.

18 A. Okay.

19 Q. Full first paragraph you state that the
20 meet-pass siding track is needed to provide a safe area
21 to perform mandated regulatory inspections.

22 What mandated regulatory inspections are you
23 referring to?

24 A. It was my understanding that the trains needed
25 inspected prior to them moving into the area where

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 40

1 they're servicing customers and delivering goods. And
2 that's what we were stating.

3 Q. But you are not familiar with any specific
4 regulations that call for inspections in this area?

5 A. Not personally. I read that I believe in a
6 document provided by BNSF.

7 Q. You're testifying to your understanding.

8 A. Yes.

9 Q. Thank you. Now, if you could please turn to
10 Page 12. Under Table 2, you testified about a metric
11 known as exposure factor; correct?

12 A. Yes.

13 Q. And exposure factor is calculated by
14 multiplying average daily traffic by average number of
15 trains coming through a crossing each day; correct?

16 A. Yes.

17 Q. And on Page 12 it's your testimony that,
18 quote, The exposure factors are reduced when the Valley
19 View Road-Cherry Point crossing is closed, which means
20 that, quote, The study area is generally less likely to
21 have vehicle-train conflicts when the crossing is
22 closed. Is that right?

23 A. Yes.

24 Q. But, sir, isn't it true that any decrease in
25 exposure factor within the study area will simply be

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 41

1 **offset by an increase in exposure outside the study**
2 **area?**

3 A. Not necessarily between origin and
4 destination. The vehicles that are traveling, some
5 will be absorbed within the system, if that makes
6 sense.

7 **Q. But you can't speak to this particular case**
8 **then?**

9 A. Well, I can't speak to the very specific
10 location that they would be absorbed by, but because
11 Valley View is there and there's a convenience
12 associated with that, people are calculating that risk
13 themselves of what the danger precaution is to cross
14 the crossing. And essentially when it's closed there
15 is a chance that they may find an alternate route that
16 is not to that same land use within the study area that
17 does not require them to cross. Or they may even be
18 crossing multiple times. And so essentially when we
19 redistribute traffic across the entire system, there
20 would be some loss and some loss of -- there's some
21 origin and destination that may or may not cause them
22 to cross, or they may not cross the tracks multiple
23 times any longer.

24 **Q. Okay, I understand your testimony, but you**
25 **would still agree, then, that you cannot assert a net**

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 42

1 **decrease in exposure factor for this given project;**
2 **correct?**

3 A. For this given project or across the entire
4 system in the area?

5 **Q. I'm not sure what distinction you're drawing.**
6 **If there's a distinction --**

7 A. By "the project" I mean specifically the
8 siding at the closure of Valley View as in Valley View
9 crossing or are you talking about the other crossings
10 that you have listed right there?

11 **Q. Let me approach it from this angle.**

12 You assert a decrease in exposure factor due
13 to the closure of Valley View Road; correct?

14 A. Yes.

15 **Q. But you cannot affirmatively tell me that that**
16 **won't simply increase exposure factor by an equal**
17 **measure somewhere else; correct?**

18 A. You know, I wouldn't say that it wouldn't
19 increase by equal measure. It will be -- we do project
20 that it will decrease slightly.

21 **Q. So your testimony, then --**

22 A. Many times changes in travel patterns.

23 **Q. So your testimony today, then, is that the**
24 **closure of the Valley View crossing will result in a**
25 **net decrease in the metric known as exposure factor?**

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 43

1 A. Yes. We project it too. It is light, though.

2 Q. Could you repeat your last statement? It's
3 very light?

4 A. Yes, we do project it to slightly decrease.

5 Q. Last question, then. How can a car get from
6 one side of the Intalco yard to the other side without
7 crossing at least one set of railroad tracks at some
8 point in the trip?

9 A. Let me pull up a map, please. So can you
10 physically tell me where the Intalco yards would be?
11 My understanding is essentially it's only where the
12 siding is.

13 Q. Sir, do you have a full set of exhibits at
14 your disposal?

15 A. I do.

16 Q. There's an exhibit -- one second, please.

17 A. I think I can explain this a different way, if
18 that helps. If you looked at a map, and specifically
19 we're considering areas maybe near Custer and by Portal
20 Way, the intersection of Main Street and Arnie Road, in
21 that general area, as it stands now, it could be
22 possible that if I was in Custer and I wanted to go up
23 to the area directly by -- to the Landview, to the
24 private residents, I believe, that's currently north of
25 the Valley View crossing, that I would cross the Main

CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 44

1 Street and then cross Valley View, I would proceed, I
2 would turn left, say, or turn to head westbound on Main
3 Street and cross the track. I would take Main Street
4 then north -- or at Arnie Road and I would head north
5 and go across the Valley View track, and then end up at
6 a residence to the north end of the -- or just in
7 between there and I believe it's Creasey Road.

8 **Q. Sir, I heard you say that you would cross a**
9 **set of tracks. And that's my point. How could you get**
10 **from one side to the other without crossing a track**
11 **somewhere?**

12 A. If you'd let me finish I can explain that. So
13 that would basically be two crossings and two exposure
14 factors, two exposure factor calculations that we knew
15 that trip would cause. So we would essentially sum
16 those, so we're crossing twice.

17 So now if I'm in Custer again and Valley View
18 is closed, I would go north on Portal Way up to Creasey
19 Road and I would cross the tracks there, I would cross
20 the mainline there. And then I would head south on
21 Valley View Road to that private entrance or to that
22 private residence or land use. So basically what I'm
23 trying to -- so then I'm only crossing the tracks one
24 time, so the exposure factor for the overall system is
25 decreased. So that's the general idea there.

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 45

1 Because right now what's happening with
2 residents are essentially they're calculating the risk
3 versus the convenience of crossing the tracks twice.
4 And so what they're saying is -- what the general
5 public, the traveling public is doing is saying you
6 know what, I'll cross the mainline at Main Street and
7 then cross the Valley View crossings and go north.
8 Whereas, once we take that away, they're essentially
9 only just crossing the mainline once and not crossing
10 Valley View again.

11 **Q. I think I understand your testimony. You're**
12 **saying that the way you get to a net decrease in**
13 **exposure factor is by crossing tracks once as opposed**
14 **to twice somewhere in some kind of hypothetical trip;**
15 **that's your testimony?**

16 A. Yes, sir.

17 **Q. Okay, thank you.**

18 A. You're welcome.

19 MR. BEATTIE: Your Honor, that's all the
20 questions I have for this witness.

21 JUDGE PEARSON: Thank you. Go ahead.

CROSS-EXAMINATION

22
23
24 BY MR. GIBSON:

25 **Q. Mr. Bialobreski, my name is Dan Gibson and I**

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 46

1 **represent Whatcom County in this matter. Just a couple**
2 **questions.**

3 A. Can you speak up? I can barely hear you.

4 **Q. Does that help?**

5 A. Much better, thank you.

6 **Q. Just from a traffic perspective, would you**
7 **agree that Valley View is a better road than Ham Road?**

8 A. There are left curves in it, which would
9 basically make it inherently easier to travel because
10 you could probably go a little bit faster. So from
11 that standpoint I would say that that would be the only
12 way I would consider it to be a better road than Ham
13 Road. They both provide similar north-south access.
14 Actually, Ham Road provides better access to Birch
15 Bay-Lynden Road, which is one of the major arterials in
16 the area, whereas, Valley View essentially is only
17 providing access to Portal Way and to the Sand Point.

18 **Q. Just so summarize, Valley View is a straighter**
19 **road, it doesn't have a 90-degree curve; correct?**

20 A. Correct. It provides better -- the term that
21 we use a lot of times is either continuity or driver
22 expectations for way finding, where a straight road or
23 left turns is a little bit easier for way finding but
24 not necessarily inherently a better road.

25 **Q. It's also a wider road, correct, by about a**

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 47

1 **couple feet?**

2 A. I believe so. I'll have to verify what we
3 wrote in other testimony. I know it's posted in the
4 Traffic Impact Study. I just wanted to make sure I'm
5 giving the same answer. On the Traffic Impact Study I
6 think the difference is 22. 18 feet we have listed.

7 Q. So just in terms of emergency response
8 vehicles, it would be typically easier to respond at a
9 more rapid rate down a straight road that's wider as
10 opposed to a narrow road that has a 90-degree curve;
11 fair enough to say?

12 A. Yes.

13 Q. Just switching gears to a different topic,
14 you've indicated in your testimony, and I believe this
15 is at Page 2 of your rebuttal testimony, you've
16 indicated that you checked with Ferndale School
17 District and because the Ferndale School District
18 indicated no buses used the Valley View crossing, you
19 assumed that no buses used the Valley View crossing; is
20 that correct?

21 A. Yes.

22 Q. Did you check with any of the private schools
23 that provide bus service to students in the area?

24 A. We did not.

25 Q. Okay. So if there are in fact private schools

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 48

1 that do use this crossing, you simply overlooked that;
2 is that fair to say?

3 A. We did not consider it.

4 Q. Okay. If you found out, for example, that
5 there was private school transportation over this
6 crossing, would that affect your calculus at all?

7 A. It would not affect our recommendation.

8 MR. GIBSON: Thank you. I have no
9 further questions at this time.

10 JUDGE PEARSON: Okay, thank you. I just
11 have a couple questions, Mr. Bialobreski. This is
12 Judge Pearson.

13 On Page 6 of the Traffic Impact Study, it
14 states that Hanson -- this is in quotations --
15 explained to Ms. Apana that the closure of Valley View
16 would allow for improvement that would keep stopped
17 trains from queuing across the Ham-Arnie Road crossing.

18 So my question is, what is the capacity for
19 train volume before the crossing at Ham Road would
20 again be blocked for queuing purposes?

21 A. Excuse me, could you speak up? That was kind
22 of mumbled. I apologize.

23 JUDGE PEARSON: So what is the capacity
24 for train volume --

25 A. What page did you reference?

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 49

1 JUDGE PEARSON: It's Page 6 of the
2 Traffic Impact Study where it addresses improvements
3 that would keep stopped trains from queuing across the
4 Ham- Arnie Road crossing.

5 A. Okay.

6 JUDGE PEARSON: And my question is, what
7 is the capacity for train volume before the Ham-Arnie
8 Road crossing would again be blocked for queuing
9 purposes?

10 A. I believe the study says one unit train at a
11 time.

12 JUDGE PEARSON: If Valley View is
13 presently being blocked, which it sounds like it is,
14 how would closing the crossing at Valley View keep
15 trains from queuing across the Ham Road crossing?

16 A. They would be able to pull over into the
17 siding and then trains would be able to go back and
18 forth across. And so what I explained to Ms. Apana is
19 that the only way it's not blocked is if there's a
20 train that is going through. And then it's only
21 blocked if a train goes through. There wouldn't be a
22 train that sits there currently. It would wait for the
23 inspections and things that we noted before.

24 JUDGE PEARSON: Okay, thank you. And in
25 your testimony you made recommendations for both the

CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 50

1 Ham and the Main Street crossings. Mr. Wagner stated
2 that he had not done a safety or diagnostic evaluation
3 at either of those crossings.

4 Have you conducted a safety or diagnostic
5 evaluation at either of those crossings?

6 A. Briefly in the report and the Traffic Impact
7 Study, we went through and looked at what would be
8 warranted as far as improvements. And I believe in the
9 testimony from -- or our rebuttal testimony to
10 Mr. Curl, we agreed with the recommendations that would
11 need to be for the improvements that would be at the
12 Ham Road intersection minus the stop refuge for the bus
13 vehicles, the bus traffic.

14 At the Main Street intersection we actually
15 recommended that there be a southbound right turn lane
16 installed in order to make sure that cars did not --
17 because that would be the -- the southbound right there
18 would be where we would expect the majority or a fair
19 number of vehicles that are rerouted to come back
20 across the Main Street tracks. And we have recommended
21 that a right turn lane be installed there in order to
22 let them queue up and let the vehicles queue up and not
23 block Portal Way for through traffic, which is a safety
24 improvement in and of itself.

25 We also looked at sight distance at the gates

1 if lights weren't working for the Ham Road and Portal
2 Way intersection, and I believe we found those to be
3 sufficient. Even though we won't necessarily need
4 them, some would be active gates instead of passive.

5 We also looked at whether or not a traffic
6 signal would be required at the intersection of Main
7 and Portal Way due to proximity to the crossing. And
8 per the Manual on Uniform Traffic Control Devices,
9 Number 9, we do not believe that would be required.

10 JUDGE PEARSON: Okay, thank you. That's
11 all I have.

12 MS. ENDRES: One quick follow-up, if I
13 may.

14
15 REDIRECT EXAMINATION

16 BY MS. ENDRES:

17 **Q. Mr. Bialobreski, you were just asked a**
18 **question or two about whether you performed any safety**
19 **or diagnostic evaluation at Ham or Main. Just so the**
20 **record is clear and we all understand, as part of what**
21 **you did in the Traffic Impact Study, did you analyze**
22 **whether those alternate crossings could safely**
23 **accommodate the rerouted traffic?**

24 A. You know, realistically in terms of from a
25 traffic engineering perspective, there really isn't

1 that much more traffic going across those crossings,
2 and so we don't expect their usage essentially to
3 change too much. So we don't see that there would be
4 any additional increase in -- the traffic volumes
5 wouldn't have any safety hazards in and of themselves.
6 And that's why we did the exposure factor calculation.

7 We actually, even with that, some of the past
8 crashes that -- we looked at the records for the
9 crashes at the crossings from the FRA inventory, and
10 that hasn't really happened in the last five years so
11 we didn't project or use any prediction models.

12 **Q. So can those alternate crossings safely**
13 **accommodate any rerouted traffic?**

14 A. Yes, I would say so.

15 MS. ENDRES: Thank you.

16 JUDGE PEARSON: Okay, thank you. So is
17 Mr. Bordenave present?

18 MS. ENDRES: Mr. Bialobreski, nobody
19 else has questions for you. Thank you very much for
20 your time.

21 PIERRE BORDENAVE,
22 having been duly sworn, testified as follows:

23
24 JUDGE PEARSON: State your name and
25 spell your last name for the record.

DIRECT EXAMINATION BY ENDRES/BORDENAVE 53

1 A. Pierre Bordenave, B-o-r-d-e-n-a-v-e.

3 DIRECT EXAMINATION

4 BY MS. ENDRES:

5 Q. Good morning, Mr. Bordenave. For the record,
6 can you please state the company that you work for and
7 what position you hold.

8 A. I'm the Vice President of Environmental
9 Services Group for JL Patterson and Associates,
10 Incorporated, and we work for the BNSF Railway Company.

11 Q. And in a nutshell, what services does JL
12 Patterson provide to BNSF?

13 A. Our environmental evaluations, environmental
14 studies, permitting, permit management and
15 environmental construction management.

16 Q. Do you have a copy of your prefiled testimony
17 there that you submitted?

18 A. I do.

19 Q. Is your prefiled testimony true and accurate
20 as though you were testifying the same this morning?

21 A. Yes.

22 MS. ENDRES: Thank you.

24 CROSS-EXAMINATION

25 BY MR. GIBSON:

CROSS-EXAMINATION BY GIBSON/BORDENAVE 54

1 Q. Dan Gibson here for Whatcom County. Just a
2 couple of questions.

3 Have you reviewed the testimony or the
4 prefiled testimony of Roland Middleton?

5 A. Yes, I have.

6 Q. Looking at the bottom of Page 2 of your
7 prefiled rebuttal testimony, Lines 20 through 25, you
8 assert that, "The Intalco Yard Expansion Project is not
9 related to projected improvements identified for the
10 GPT."

11 How do you explain to the layperson how a
12 development in about the same location serving
13 customers out at Cherry Point is distinctly different
14 from what GPT was proposing?

15 A. Actually, they're two separate projects, and
16 GPT is proposing a project that would be served by a
17 different set of additional tracks, a second mainline,
18 and significant other improvements.

19 And your question is how would I describe this
20 to a layperson. I would put it in the perspective of,
21 let's say there was a highway being proposed by the
22 State through the County or in the City of Bellingham.
23 That takes a number of years to evaluate, identify
24 alternatives analyses, get the permits, and get the
25 design correct. In the meantime, the City or the

CROSS-EXAMINATION BY GIBSON/BORDENAVE 55

1 County has identified a local traffic problem or local
2 traffic issue that needs to be addressed and decides
3 that it needs to improve an arterial within that
4 footprint of the highway.

5 Those are two separate projects serving
6 separate needs and requirements and so they would be
7 done at different times and rates. You'd expect the
8 arterial improvements that address safety concerns or
9 traffic concerns would be done prior to a larger
10 footprint project such as a highway.

11 **Q. In that same vein, is the project about which**
12 **we are speaking here, the Intalco Yard Project, is that**
13 **primarily to serve the mainline of the Bellingham**
14 **Subdivision or the customers at Cherry Point?**

15 A. It's to primarily serve the Cherry Point
16 Subdivision, because right now there is a siding that
17 requires, as in my testimony, requires multiple
18 switches and changes at that Intalco Yard to break
19 trains up instead of having a full-length train.
20 Full-length trains would need to stay on the mainline,
21 thus completely clear the entire mainline before
22 another train can come out.

23 **Q. Which mainline are we speaking of?**

24 A. The Cherry Point mainline.

25 **Q. So just in terms of, say, a proportion of**

CROSS-EXAMINATION BY GIBSON/BORDENAVE 56

1 benefit, what is the proportion of benefit by the
2 proposed improvements which would require Valley View
3 closure, what's the proportion of benefits to the
4 Cherry Point customers versus the proportion of benefit
5 to the Bellingham Subdivision mainline?

6 A. I would have to defer to BNSF, their
7 operations folks, as far as that. From what I
8 understand and the reason we performed the analyses and
9 the permitting for this, it was primarily to address
10 the taking full trains off of the mainline, on the
11 Cherry Point Subdivision mainline.

12 Q. And did you have an opportunity to examine the
13 environmental documents, environmental impact documents
14 that have been submitted previously with regard to the
15 customers out at Cherry Point? The report, for
16 example, from Mainline Management indicated that no
17 further mitigation would be needed because of the
18 ability to use the mainline for the benefit of the
19 Cherry Point customers without additional improvements.

20 A. So the question is have I had an opportunity
21 to review those documents, for what project are we
22 talking about?

23 Q. That would have been the previous project
24 completed for the benefit of the Cherry Point customers
25 within the past several years.

CROSS-EXAMINATION BY GIBSON/BORDENAVE 57

1 A. I'm not -- this is for all Cherry Point
2 customers or for a specific Cherry Point customer?

3 **Q. Specific Cherry Point customers.**

4 A. Okay. So in addressing -- BNSF has its
5 operational needs, and a customer who is identifying a
6 siding or a loop track or a storage track of their own
7 on their own property, that would be separate from
8 BNSF's needs for operational safety and capacity.

9 **Q. So you're saying one could reconcile one**
10 **report saying no further improvements needed, but BNSF**
11 **then saying, well, that may be true for them but we**
12 **need additional improvements?**

13 A. Yeah. Another company would not speak for
14 BNSF, yes.

15 MR. GIBSON: Thank you. I have nothing
16 further.

17 JUDGE PEARSON: Okay, thank you. I just
18 have one question, Mr. Bordenave.

19 Do you have access to the March 19, 2014 BNSF
20 Application to the Army Corps of Engineers?

21 A. Right here I don't, but my company actually
22 performed that work and filed that permit application.

23 JUDGE PEARSON: Can you provide that to
24 me?

25 A. Sure.

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1 JUDGE PEARSON: Okay. So I will label
2 that as my second bench request. That's all I have.

3 Anything further?

4 MS. ENDRES: Nothing further.

5 JUDGE PEARSON: You can step down. Why
6 don't we take a five-minute recess and go off the
7 record.

8 (Recess taken.)

9 JUDGE PEARSON: Back on the record.
10 Mr. Curl is on the witness stand.

11
12 PAUL CURL,

13 having been duly sworn, testified as follows:

14
15 JUDGE PEARSON: State your name and
16 spell your last name for the record.

17 A. My name is Paul Curl, C-u-r-l.

18
19 DIRECT EXAMINATION

20 BY MR. BEATTIE:

21 Q. Good morning, Mr. Curl. If you could please
22 introduce yourself a little more. Tell us your
23 position and your role in this case.

24 A. Yes. I'm a Senior Policy Specialist with the
25 Commission. I primarily worked in the railroad safety

DIRECT EXAMINATION BY BEATTIE/CURL

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1 section. I was the primary investigator in this
2 particular case and have sponsored testimony which
3 states the Commission Staff's position on this case.

4 **Q. And that's the testimony that has been**
5 **admitted as Exhibit PC-1T?**

6 A. Yes.

7 **Q. Do you wish to make any changes to your**
8 **prefiled testimony this morning?**

9 A. Yes. I have two changes. The first change is
10 on Page 5 beginning at Line 10. And there I testified
11 that BNSF operates four trains per day over the
12 crossing. There are actually four loaded trains coming
13 in and four empty trains coming out for a total of
14 eight trains per day.

15 The second change I intended to make was on
16 Page 2 beginning at Line 20. And I testified there
17 that up to three school buses a day travel over the
18 crossing. That was based on information that I got
19 from BNSF's original petition. I had intended to
20 change my testimony to say that there are no school
21 buses over the crossing. However, I was onsite
22 yesterday about 3:00 in the afternoon, and there was a
23 private school bus using a full-size school bus from
24 Lynden Christian School using the crossing. So I at
25 this time would not change my testimony. The testimony

DIRECT EXAMINATION BY BEATTIE/CURL 60

1 says up to three a day. I think that's probably
2 accurate and I do not intend to change the testimony.

3 JUDGE PEARSON: What page is that on?

4 A. Page 2, beginning on Line 20.

5 JUDGE PEARSON: I don't see that on my
6 Page 2.

7 A. I don't either.

8 MR. GIBSON: Your Honor, I believe that
9 might be on Page 5.

10 JUDGE PEARSON: Thank you. There it is,
11 okay.

12 **Q. (BY MR. BEATTIE) Just to be clear, you are**
13 **maintaining your original testimony which states up to**
14 **three school buses travel over the crossing daily;**
15 **correct?**

16 A. I think that's probably more accurate than no
17 school buses.

18 **Q. Based on your personal observations at the**
19 **crossing which occurred yesterday?**

20 A. That's correct.

21 **Q. Thank you. Before I turn you over for**
22 **cross-examination, if you could please turn to Page 26**
23 **of your testimony.**

24 A. Yes.

25 **Q. Starting at Line 1, you were asked whether the**

DIRECT EXAMINATION BY BEATTIE/CURL

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1 traffic study, which in my understanding refers to the
2 traffic study filed by Kurt Bialobreski, the witness
3 who testified earlier, and you were asked about safety
4 improvements on Valley View Road. And you note that
5 the traffic study recommends redesigning the
6 intersection of Valley View Road and Creasey Road to
7 allow a design vehicle to turn around. Do I have that
8 correct?

9 A. Yes.

10 Q. You were next asked whether you support that
11 approach, and it's your testimony that you don't
12 because you believe the County should decide what to do
13 with the north approach to the crossing, which is the
14 approach coming from the Creasey-Valley View
15 intersection.

16 Is it still your testimony that you don't have
17 an opinion because you think the County should decide?

18 A. I truly believe that there ought to be a
19 cul-de-sac constructed at the crossing. I think
20 earlier testimony said there was just one residence
21 there, but I counted at least five access roads off of
22 Valley View Road between Creasey and the existing
23 crossing.

24 I think my recommendation would be to build a
25 barricade right at the crossing as close as you can to

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1 the crossing which gives property owners access along
2 Valley View Road to their property. I'm not sure how
3 just reconstructing Creasey Road gives access to the
4 property owners. I think it's about three-tenths of a
5 mile between Creasey Road and the crossing, 1,500 feet.
6 There's a lot of property there and I would support a
7 cul-de-sac at the crossing. I understand that's a
8 difficulty because of private ownership, but I think
9 that's the best solution in this case.

10 **Q. Would you support a cul-de-sac at the crossing**
11 **in addition to redesigning the Creasey intersection or**
12 **in lieu of redesigning the Creasey intersection?**

13 A. In lieu of. I don't believe it's necessary to
14 reconstruct Creasey Road if you have a cul-de-sac at
15 the crossing.

16 **Q. So with regard to your original testimony,**
17 **would you like to replace leaving it up to Whatcom**
18 **County with your new recommendation or would you still**
19 **leave it up to Whatcom County with what we might call**
20 **some advisory testimony about the cul-de-sac?**

21 A. It would have to be advisory, as the road will
22 continue to belong to Whatcom County. They still
23 certainly will have a better idea of how they would
24 like to protect the property owners along the remainder
25 of the road if the crossing is closed. I would

1 consider it advisory.

2 Is that your question?

3 **Q. Yes, thank you. And just so we're clear for**
4 **the record in case people have different understandings**
5 **of this term, I'm speaking as a layperson, what is a**
6 **cul-de-sac?**

7 A. Well, a cul-de-sac is a turnaround area
8 designed -- there's usually a design vehicle in mind
9 such as a 50-foot truck or a school bus, something
10 along that line. And a cul-de-sac is designed for that
11 design vehicle to be able to turn around and go back
12 the other way.

13 **Q. Thank you. Any other changes to your prefiled**
14 **testimony?**

15 A. No.

16 MR. BEATTIE: Your Honor, Mr. Curl is
17 available for cross-examination.

18 JUDGE PEARSON: Thank you.

19

20 CROSS-EXAMINATION

21 BY MS. ENDRES:

22 **Q. Good morning, Mr. Curl, thank you for being**
23 **here today.**

24 I'm going to ask you some questions specific
25 to some of the mitigation that's been discussed and

1 proposed so far, but before I do that I'd like to ask
2 you a few questions just about your background.

3 I know you have a long history with the UTC.
4 You've been involved in quite a number of crossing
5 closure cases. Is my understanding correct that you've
6 been involved in previous cases, been involved in a
7 petition to close a crossing for the justification
8 similar to this one where the railroad or a railroad
9 needed to install a siding track which would then place
10 a railroad crossing across the siding track in one or
11 other sets of tracks as well?

12 A. Yes.

13 Q. And is my understanding correct from your
14 testimony that from the UTC staff perspective, that
15 type of public crossing is then considered, I think the
16 terminology that you used in your testimony to be ultra
17 hazardous or extra hazardous or just in some way more
18 dangerous than the type of normal railroad crossing
19 that motorists might typically encounter?

20 A. Well, it's not necessarily just adding a
21 second track that makes it extraordinarily hazardous.
22 All crossings are inherently dangerous. Some are more
23 dangerous than others. So adding a second track, we
24 have hundreds of crossings that have two tracks on
25 them.

1 The thing or the issue that makes this
2 particularly hazardous is that the railroad intends to
3 block the crossing for extended periods of time, and
4 that leads to behavior that is unsafe. That's the
5 reason. Not necessarily just the second track, it's
6 the stopping and blocking the crossing that makes it
7 hazardous.

8 **Q. And in the other petitions that you've been**
9 **involved in, has the UTC typically recommended closure**
10 **in that case because of the construction or extension**
11 **of a siding track?**

12 A. Yes.

13 **Q. Do you yourself have a degree in traffic**
14 **engineering?**

15 A. I do not.

16 **Q. I take it that you reviewed Mr. Bialobreski's**
17 **prefiled testimony and the Traffic Impact Study?**

18 A. Yes.

19 **Q. Did you also have an opportunity to review the**
20 **county traffic engineer's response to the Traffic**
21 **Impact Study? I believe that was Mr. Rutan.**

22 A. Yes.

23 **Q. And my understanding, and I'd also like to**
24 **know if it's yours, is that Mr. Rutan raised the issue**
25 **of emergency response, and we'll talk about that a**

1 little bit more with the County witnesses, but are you
2 aware of anything, any issues that Mr. Rutan raised
3 with the Traffic Impact Study that have been wanting to
4 make sure that emergency response time was addressed?

5 A. No.

6 Q. Now, in your testimony, Mr. Curl, you raise a
7 number of mitigation options that were not proposed
8 either in the petition to close the crossing or by
9 other of the two licensed traffic engineers that have
10 submitted testimony today. And I'd like to walk
11 through those with you to make sure that I understand
12 what they are and what the justification is so that the
13 record is clear.

14 Your testimony on Page 21 reflects that you
15 raised the proposal of whether stop refuges should be
16 constructed at Main Street and Portal; is that right?

17 A. Yes.

18 Q. And is that something that in your opinion
19 needs to be done or are you wanting to make sure that
20 the traffic engineers address that one way or the
21 other?

22 A. I'm not recommending that that mitigation be
23 done. I would defer to the traffic engineer in that
24 case.

25 Q. Okay. And is it your understanding that

1 Mr. Bialobreski, his opinion is that the stop refuge
2 would not be necessary. Is that your understanding?

3 A. I read his opinion. I don't necessarily agree
4 with his reasoning, but I do agree with his conclusion.

5 Q. Another one of the proposals that you raised
6 to be considered that had not been raised by other
7 traffic engineers was whether to widen the crossing at
8 Portal Way.

9 And as a preliminary question one of the
10 proposals that was submitted in the Traffic Impact
11 Study that Mr. Rutan appeared to agree with was to
12 create an additional turn lane for motorists traveling
13 south or southeast onto Portal who would then make a
14 right-hand turn onto Main. Your proposal to consider
15 to widen the crossing at Portal Way, is that regardless
16 of whether the extra turn lane would be installed?

17 A. Are you referring to Main Street, not Portal
18 Way? There's no crossing on Portal Way.

19 Q. Yes. Main Street is close to Portal Way, the
20 crossing there?

21 A. That's correct.

22 Q. So your proposal to consider widening that
23 crossing is independent from whether a turn lane is
24 installed on Portal?

25 A. Well, I've taken a second look at the Main

1 Street crossing, and it is a narrow road if you just
2 look at the fog lines, but it has sufficient shoulders
3 that you could comfortably cross there. I'm not as
4 concerned about the width of the road at Main Street,
5 as my testimony would indicate.

6 Q. So on the topic of whether to widen the
7 crossing at Main Street, do you defer to the traffic
8 engineer similar to the issue of whether to construct
9 stop refuges?

10 A. I do.

11 Q. The third issue that you suggested be
12 considered that wasn't put forth in the petition or in
13 the Traffic Impact Study or Mr. Rutan's testimony has
14 to do with whether to install a traffic signal at
15 Portal Way. Mr. Bialobreski, as you saw, indicated
16 that as part of the traffic study that was considered
17 and due to the traffic volume, he did not feel that
18 that was necessary at the intersection.

19 Is that also something that you defer to the
20 traffic engineers on?

21 A. Yes.

22 Q. Is there anything else in Mr. Bialobreski's
23 recommendations, in the traffic study that you disagree
24 with at this time with mitigation?

25 A. I do disagree with the widening the road at

1 Ham Road. I think that that road, even though I'm not
2 a traffic engineer, I believe it's a safety issue, not
3 a traffic issue. And maybe I can give you an example.

4 Yesterday I was onsite at the Ham Road
5 crossing. There was a pickup truck approaching from
6 one direction, a motor vehicle of a passenger car
7 approaching from the other direction. The pickup
8 stopped and allowed the car to go across the crossing
9 just like it was a one-way bridge. And I've driven
10 across that crossing several times and it's not
11 comfortable, it feels too tight. And I don't think
12 this has anything to do with traffic engineering, I
13 think it has to do with safety engineering. And I
14 don't believe that you can cross -- if you were to meet
15 a bus, for instance, at that crossing, you were meeting
16 and passing right on the crossing, I think there's a
17 hazard of -- potential hazard of a vehicle driving off
18 the side of the crossing, perhaps fouling the traffic
19 in some way, a broken axle.

20 So I stick by my recommendation that we should
21 widen the road at Ham Road, preferably to 22 feet wide
22 that's currently 18 feet. There's plenty of crossing
23 surface there and the crossing surface is 24 feet,
24 widen the road. And I'm not talking about a great
25 distance here, maybe starting 50 feet on each side of

1 the crossing and gradually widen the road so that it
2 becomes 22 feet at the crossing and motorists could
3 comfortably pass and meet each other at the crossing.
4 That's my recommendation.

5 Q. As part of our analysis of that proposal, is
6 there any type of content -- one of the exhibits you
7 submitted was an excerpt from, for example, the U.S.
8 DOT Railroad Highway Grade Crossing Handbook. Is there
9 anything within that that you're aware of that supports
10 that widening that crossing would be appropriate or
11 necessary?

12 A. No.

13 Q. Your understanding is that lights and gates,
14 if the judge grants BNSF's petition, one of the
15 mitigation options that BNSF has proposed is to install
16 lights and gates at the Ham crossing. That's your
17 understanding?

18 A. Yes.

19 Q. And would the installation of lights and gates
20 appease your concern that motorists might choose the
21 railroad crossing to pass each other?

22 A. Well, I don't think that changes anything, no.
23 I still think it's just not comfortable for two
24 vehicles to meet and pass on top of that crossing.
25 It's just too scenario, it just feels too scenario.

1 **Q. That narrowness exists today; right?**

2 A. That's correct.

3 **Q. In other words, vehicles that may encounter**
4 **one another, as long as that crossing's existed will**
5 **have encountered that same scenario?**

6 A. That's correct, but the AADT currently is 211.
7 Mr. Bialobreski is projecting that that will increase
8 by 50 percent to something in excess of 300. Also now
9 I've learned that a private school bus will be using
10 that in addition to public school buses that already
11 use the Ham Road crossing. And so I don't think the
12 lights and gates addresses the problem that I've
13 referenced in my testimony.

14 **Q. Have you done any type of calculation relating**
15 **to the increase in the AADT at Ham as relates to**
16 **whether the crossing should be widened?**

17 A. No.

18 **Q. And after you observed the private school bus**
19 **at the crossing yesterday, did you get in contact with**
20 **the private school district to see what alternate route**
21 **they might take if the crossing is closed?**

22 A. No.

23 **Q. The MUTCD is a resource that the UTC along**
24 **with the railroad or other jurisdictions used as a**
25 **guide to determine what type of signage are appropriate**

1 at railroad crossings. Am I understanding that right?

2 A. Oh, I think it's a little more than a guide.
3 I think they are standards.

4 Q. Okay, fair enough. And within those standards
5 contain different signage, I guess, requirements for
6 various traffic conditions; is that right?

7 A. Yes.

8 Q. Is there any type of signage within the MUTCD
9 that you're aware of that might be something that you
10 would suggest to install at the Ham Road crossing if it
11 is not widened to discourage or direct motorists not to
12 meet and cross at the crossing itself?

13 A. I'm not aware of anything right off the top of
14 my head.

15 Q. Can we agree that once lights and gates are
16 installed at a crossing that it's illegal for motorists
17 to enter the crossing when the active devices are
18 triggered?

19 A. Yes, we can agree to that.

20 Q. Is there anything else in the Traffic Impact
21 Study's recommendations or those raised in the parties'
22 prefiled testimony that you disagree with that we
23 haven't discussed?

24 A. Only what I discussed with Mr. Beattie which
25 had to do with how do you block the crossing and how

1 much of Valley View Road will continue to be accessible
2 to property owners.

3 **Q. Has there been any discussion to your**
4 **knowledge in the diagnostic meeting or the safety**
5 **assessment or however we term that meeting between BNSF**
6 **and the County and the UTC of whether to convert the**
7 **segments of public roadway approaching Valley View to**
8 **private roads if the crossing itself is closed?**

9 A. I'm not aware of any discussion like that, no.

10 **Q. Would that impact your analysis at all if**
11 **those segments are converted to private roadways?**

12 A. Well, the County's view on what they want to
13 do with their own road will impact how I feel about it.
14 This is their road and it really has nothing to do with
15 safety, it really has to do with access to property
16 along the road.

17 **Q. So if it's not a County owned roadway then**
18 **this issue from your perspective is no longer one that**
19 **needs to be resolved?**

20 A. That's correct. I don't have jurisdiction any
21 longer if it's a private road.

22 **Q. My last question, Mr. Curl, is because since**
23 **you submitted your testimony we've had some additional**
24 **materials become part of the record. We've had the**
25 **updated SEPA materials, Mr. Bialobreski 's response to**

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1 what you submitted.

2 Is it still your opinion or the UTC staff's
3 opinion that BNSF's petition to close the Valley View
4 crossing should be granted?

5 A. Yes.

6 MS. ENDRES: Thank you. That's all I
7 have.

8 JUDGE PEARSON: Does anyone else have
9 any questions for Mr. Curl?

10 MS. ENDRES: Yes, Judge.

11
12 **REDIRECT EXAMINATION**

13 BY MR. BEATTIE:

14 Q. Mr. Curl, with respect to the redesign of
15 Creasey Road -- excuse me, the intersection of Valley
16 View and Creasey, are you aware of any plans to install
17 a gate blocking access to Valley View Road from
18 Creasey?

19 A. I did read that somewhere in the testimony,
20 I'm sorry, I don't remember exactly where, but I
21 believe Mr. Wagner had suggested that there would be a
22 locked gate installed on Valley View Road that would be
23 just south of Creasey Road and that property owners
24 would be able to unlock that gate and access their
25 property. And I believe that was Mr. Wagner's

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1 testimony.

2 **Q. Let's just assume it is. What is UTC's staff**
3 **position to a locked gate just south of the**
4 **intersection?**

5 A. Well, they're not fail-safe. They can be left
6 open. There is a residence south of where the gate
7 would be installed. If there were an emergency at that
8 property, how would the emergency vehicles get through.
9 So there are issues with using a locked gate. They're
10 appropriate in some circumstances. I'm not sure
11 they're appropriate in this case.

12 **Q. When there's an emergency, the person driving**
13 **that emergency vehicle does not distinguish between**
14 **private and public roads; is that correct?**

15 A. I'm not an emergency responder but that would
16 seem logical, yeah.

17 MR. BEATTIE: That's all I have, Judge,
18 thank you.

19 JUDGE PEARSON: Thank you. Mr. Curl, I
20 do have some questions for you but I'm going to reserve
21 those and recall you a little bit later after --
22 they're related to what the County witnesses are going
23 to testify to.

24 A. Okay.

25 JUDGE PEARSON: Thank you, you may step

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1 down. Mr. Rutan?

2 JOE RUTAN,

3 having been duly sworn, testified as follows:

4
5 JUDGE PEARSON: State your name,
6 spelling your last name for the record.

7 A. My name is Joe Rutan, R-u-t-a-n.

8
9 DIRECT EXAMINATION

10 BY MR. GIBSON:

11 **Q. Mr. Rutan, what is your profession?**

12 A. I am a professional licensed engineer. I'm
13 the County Engineer for Whatcom County and the
14 Assistant Director of Public Works.

15 **Q. Do you have with you a copy of your prefilled**
16 **testimony?**

17 A. Yes, I do.

18 **Q. And is it a true and accurate statement today**
19 **as it was when you submitted it?**

20 A. Yes, it is.

21 **Q. I'm going to show you what has been previously**
22 **been marked and admitted as I believe JR-2 and just ask**
23 **you to briefly identify what that is for the record.**

24 A. That is a map of the northwest corner of
25 Whatcom County with the Valley View crossing located in

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1 the center of the map.

2 Q. I take it that's accurate as to scale?

3 A. Yes, it's accurate as to scale. That was
4 produced yesterday by our GIS staff so it is the most
5 recent map we would have of the county.

6 Q. Mr. Rutan, I think this is an appropriate time
7 to explore some of the aspects of mitigation in this
8 case. Rather than me doing that, I'd defer to
9 Mr. Beattie and Ms. Endres who will have a number of
10 questions in regard to that.

11
12 CROSS-EXAMINATION

13 BY MR. BEATTIE:

14 Q. Mr. Rutan, my name is Julian Beattie and I
15 represent the Commission Staff. And I'm going to go
16 through a list of mitigations that had been proposed at
17 various points in this record and ask you for the
18 County's position on each mitigation.

19 A. Excellent.

20 Q. And with respect to each mitigation in
21 addition to stating whether the County supports or does
22 not support the mitigation, if you could provide a
23 rationale to that extent, that would be most helpful.

24 A. Certainly.

25 Q. Starting with the Ham-Arnie crossing, the

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1 **proposal is to install flashing lights, gates,**
2 **pavement, stoplights and increase signage at the**
3 **crossing?**

4 A. We would support that.

5 **Q. What about constructing stop refuges?**

6 A. Obviously that would be additional safety. We
7 look at this -- the County looked at this closure in
8 several ways. One way was if this is a development
9 generating this much traffic, what would we require of
10 that development. We do that quite often so we need to
11 make sure that we're fair to everyone.

12 So when looking at the mitigation that was
13 proposed by the Railroad, it was consistent with what
14 would be required for a development of that, so that
15 was beyond -- that additional widening on Ham would be
16 beyond what we would require. I'd also mention that
17 the road is 18 feet at that point so having the
18 crossing wider than the road would help us when we
19 eventually sometime get around to widening the road,
20 but that is not anywhere on the horizon.

21 **Q. Perhaps we're talking about two different**
22 **mitigations. One is stop refuges and the other one is**
23 **more generally widening the road.**

24 A. Right. The stop refuge, we don't have an
25 accident history out there that would show that that

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1 would be a requirement.

2 **Q. And with respect to widening the road, your**
3 **position is also that that is not necessary?**

4 A. Obviously, as a County Engineer I would like
5 roads -- you know, wider is always necessary, but the
6 reality is we have an 18-foot-wide road there so
7 widening out the crossing isn't necessarily something
8 that is going to provide a corridor of safety there.
9 But we do support the additional signing, striping and
10 lighting. We feel that that is an upgrade to that
11 intersection.

12 **Q. And gates?**

13 A. Correct.

14 **Q. If I may, I'd like to move on to the south**
15 **approach to Valley View crossing, and by that I mean**
16 **the approach from the Valley View-Arnie Road**
17 **intersection. The proposal here is to install signage**
18 **at the Valley View-Arnie Road, specifically one sign at**
19 **the south approach, one at the east approach, and one**
20 **at the west approach?**

21 A. We would certainly support that.

22 **Q. Does the County support constructing a**
23 **cul-de-sac north of Arnie Road prior to the bridge on**
24 **Valley View Road?**

25 A. The Manual of Uniform Traffic Control Devices

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1 would require a turnaround, not necessarily a
2 cul-de-sac. That's one design of a turnaround and
3 generally the biggest, and I would not propose a
4 cul-de-sac here. A hammerhead would be more
5 appropriate. But per the Manual of Traffic Uniform
6 Controlled Devices, a turnaround is required.

7 Now, this breaches into something that was
8 spoken about. If this closure occurs, we have a bridge
9 there. We also have the area from the north. And
10 we've had lots of discussions of if this crossing
11 closes, how are we going to manage those roads? Should
12 they remain as open public roads, should they remain as
13 private roads? Should we remove the bridge over Dakota
14 Creek, which is a fish-bearing creek, and open up that
15 additional habitat for fish?

16 So based upon the outcome of this, we could be
17 exploring how to manage those roads and potentially
18 either continue as open public roads, we could maintain
19 the right-of-way but make them for private use only,
20 which is very common in the county, or we could vacate
21 it totally based upon a request from the adjoining
22 landowners. If the landowner owns both sides of that
23 road, there's a good chance that a vacation could
24 occur, and that means the road and the right-of-way.

25 So some of those things, how we would manage

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1 this in the future, is based upon that closure, which
2 I'll just jump ahead, goes to the issue of the closure
3 on the north side. We -- sorry.

4 **Q. If we could just get to that in a moment. So**
5 **is it your testimony, then, that you would not support**
6 **any specific mitigation being ordered by Utilities and**
7 **Transportation Commission in an order closing --**

8 A. The Manual of Uniform Traffic Control Devices
9 would require a turnaround on that road because it's
10 more than 200 feet of the road. So it will require a
11 turnaround.

12 **Q. Are we still talking about Valley View --**

13 A. North of Arnie just south of the bridge.

14 **Q. Okay.**

15 A. The MUTCD would require that if it remains a
16 public road.

17 **Q. I see. And so essentially what you're telling**
18 **me is that you are not decided as to -- and when I say**
19 **"you" I mean the County, is not decided as to what**
20 **specific mitigation should be ordered, although you**
21 **agree that some mitigation is necessary?**

22 A. Absolutely. The application came in and it
23 said there would be a cul-de-sac at that location. I
24 took that to be a colloquial term for a turnaround, so
25 yes, we would support a turnaround north of Arnie Road

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1 just south of the bridge, absolutely.

2 **Q. You used the term "hammerhead"?**

3 A. Yes.

4 **Q. Can you tell me what that is?**

5 A. It's allows for a three-point turn. It's just
6 pavement. You see them very often at the end of
7 dead-end roads. It's just a wide enough area that
8 allows an ambulance, fire truck, a UPS truck to turn
9 around and not to have back up.

10 **Q. Okay, I think I understand. So you would**
11 **support some sort of turnaround just south of the**
12 **bridge?**

13 A. Correct.

14 **Q. Cul-de-sac may have a technical term. I'm**
15 **still not quite clear on that.**

16 A. Yes. A cul-de-sac is one of the turnarounds
17 that would be acceptable design. It is more common in
18 an urban environment and it would be very uncommon in a
19 rural environment like this.

20 **Q. But the County's perspective is that there**
21 **could be another option?**

22 A. Absolutely.

23 **Q. In terms of no turnaround and close the road**
24 **completely to the public road?**

25 A. If after this occurs the landowners approach

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1 us, because we don't propose these, the landowners do,
2 if the landowners come to us and propose to vacate that
3 or to abandon the road to a private road, then it's a
4 different issue. But at the time of the closure it's a
5 public road and it will require, per the MUTCD, a
6 turnaround.

7 **Q. Okay, thank you. I think the record is**
8 **sufficiently clear on that point.**

9 **So I can now let you jump ahead to the Creasey**
10 **Road approach, and by that I mean the approach from the**
11 **Creasey Road, the Valley View intersection proceeding**
12 **south to the proposed closed crossing.**

13 A. Yes. When this originally came in, you know,
14 myself and my traffic staff looked at this, and we
15 wanted the cul-de-sac or a turnaround on Valley View
16 down by the railroad tracks, as Mr. Curl was saying.
17 As we got to talking and looking at the system out
18 there, we had Creasey Road also that is a dead-end road
19 there. And we felt that a turnaround at the
20 intersection of Creasey and Valley View would provide a
21 better overall turnaroundability for the area. It also
22 then provides that turnaround if indeed Valley View
23 were to become private or to be vacated in the future.

24 **Q. So the County's position is that the best**
25 **mitigation option at the Creasey intersection is to**

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1 **redesign the intersection to allow design vehicles to**
2 **turn around?**

3 A. Correct.

4 **Q. And the second half of your answer is that a**
5 **cul-de-sac just north of the crossing is not warranted?**

6 A. We feel that the redesign up at the
7 intersection to allow a vehicle to turn around up there
8 will provide more opportunity for the vehicles in the
9 area to turn around and use the area. It's less likely
10 someone will drive down Valley View. Now, it is
11 against the MUTCD, the MUTCD would require that
12 roundabout, but as a County Engineer looking at the
13 system, I feel that providing a roundabout for Creasey
14 and Valley View is better than providing one just for
15 Valley View.

16 **Q. What about the option of having both a**
17 **roundabout at the intersection and one just north of**
18 **the crossing?**

19 A. That would be -- I don't think I would be
20 comfortable requiring that, because that would be
21 beyond what would be consistent with other developments
22 of the same size or generating the same traffic. The
23 amount of mitigation that they're proposing here for
24 the additional traffic is consistent. It does not
25 address the issue of additional travel time.

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1 **Q. What is the distance from the Creasey-Valley**
2 **View intersection to the crossing, if you know?**

3 A. You know, looking at this, if that's a mile,
4 I'm guessing maybe a quarter mile.

5 **Q. What is the County's position on the locked**
6 **gate just south of the Creasey-Valley View Road**
7 **intersection?**

8 A. For that to occur -- well, we would not allow
9 a locked gate on a public road, ain't going to happen.
10 For that to occur, that would have to go in front of
11 the council and that would have to be made a private
12 road. So that's one of the options. And that's a very
13 legitimate potential outcome for this would be for the
14 adjoining property owners to petition the County and
15 make that a private road, which is also very common out
16 in the county.

17 **Q. But taking things in sequence for purposes of**
18 **this proceeding only, the County's position is that the**
19 **Creasey intersection should be redesigned to make it a**
20 **roundabout?**

21 A. We would prefer the Creasey intersection to be
22 redesigned to allow for the design vehicles to turn
23 around there. We feel that will provide more
24 opportunity and would provide a safer network than
25 building it down a quarter mile down on Valley View.

CROSS-EXAMINATION BY BEATTIE/RUTAN

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1 Q. Thank you. And finally, with respect to the
2 Creasey intersection, does the County support
3 installing signage at this intersection, specifically
4 one sign at the north approach to the crossing?

5 A. Absolutely.

6 Q. Moving on to the Main Street-Portal Way
7 intersection, if I can. What is the County's position
8 with regard to active warning devices and signals at
9 the Main Street crossing remaining in place?

10 A. Very much support that. They're functioning
11 very well.

12 Q. What is the County's position with regard to
13 constructing a southbound right turn lane at Portal Way
14 and Main Street?

15 A. We think that will be a legitimate mitigation
16 effort and support it.

17 Q. What is the County's position with regard to
18 signalizing the entire intersection?

19 A. Currently it does not meet warrants for a
20 signal so I would not be able to recommend that. And
21 that includes the additional traffic from the closure.

22 Q. Okay, thank you. And with respect to the Main
23 Street crossing, does the County support constructing
24 stop refuges?

25 A. We have nothing that would tell us that that

CROSS-EXAMINATION BY BEATTIE/RUTAN

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1 would currently be needed. Certainly we would never
2 prevent the railroad from going out and constructing
3 those refuges, but there's nothing that we can hang our
4 hat on right now that show those would be required.

5 **Q. And finally, widening the crossing.**

6 A. Well, the addition of a right-hand turn lane
7 widens it out, and as noted, even though the pavement
8 area is quite wide, even though the lanes are striped
9 narrow to provide traffic calming, to get people to
10 drive a little bit slower down through there, so
11 there's sufficient pavement area for that crossing.

12 **Q. You're saying constructing a southbound turn**
13 **lane, which the County supports, would widen the**
14 **crossing on the Portal side, but on the Valley View**
15 **side of Main Street you do not support widening?**

16 A. We feel -- we don't see a need for that. And
17 certainly there's no data coming out of that
18 intersection that would show us that that is currently
19 a need or would be a need with the additional traffic.

20 **Q. I'm almost finished here. If I could just**
21 **return to Creasey for one moment. It occurs to me that**
22 **I may not completely understand what the term**
23 **"redesign" means to you as the County. I think you**
24 **mentioned a roundabout, but I just want to return to**
25 **that one more time. And if you could explain to me**

CROSS-EXAMINATION BY ENDRES/RUTAN**88**

1 **precisely what you're envisioning.**

2 A. Sure. Redesign to me meant they would submit
3 a design to the County and we would review it and
4 approve it and work through that with them. So I don't
5 know what that is now. If I said cul-de-sac, I'm
6 sorry, it was a mistake. It is a redesign to allow for
7 a design vehicle to move through there, and we would
8 let the traffic engineers work through our process to
9 make that happen. I wouldn't want to predispose a
10 design right now.

11 **Q. Thank you. That's very helpful.**

12 MR. BEATTIE: Those are all the
13 questions I have, thank you.

14
15 **CROSS-EXAMINATION**

16 **BY MS. ENDRES:**

17 **Q. Good morning, Mr. Rutan, thank you for being**
18 **here today. I'm going to jump around on you a little**
19 **bit which tends to happen when you go second because**
20 **your colleague has raised some good points to follow up**
21 **on.**

22 **The process of potentially converting part of**
23 **the public road on Valley View to private, you**
24 **mentioned that that would involve a request from the**
25 **adjoining landowners?**

CROSS-EXAMINATION BY ENDRES/RUTAN**89**

1 A. It is driven by the abutting landowners, yes.

2 **Q. And do you know how many landowners would be**
3 **affected?**

4 A. I do remember looking at an assessor's map,
5 and it was just a couple. It was not a large number of
6 landowners, which is why when we looked at this, okay,
7 how is this going to develop potentially after this
8 closes, you know, we were trying to keep those things
9 in line.

10 **Q. Has the County had any discussions at all with**
11 **any of those landowners?**

12 A. Not with the landowners, simply internal.

13 **Q. How long does that process usually take? And**
14 **the process I'm referring to is the decision to have**
15 **the public road converted to private.**

16 A. If indeed it were converted to private it
17 would have to go in front of our council. There would
18 be a public hearing. So it's introduced, two weeks
19 later there's a public hearing, and potentially
20 decisions at that point.

21 **Q. As a traffic engineer with this being one of**
22 **the options that the County considered and when part of**
23 **what we're discussing today is what mitigation the**
24 **Court may order or if the judge would order the parties**
25 **to present a joint proposal to the Commission within a**

CROSS-EXAMINATION BY ENDRES/RUTAN

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1 certain amount of time, would you think it appropriate,
2 given that this looks like an option that is worth
3 exploring with the private landowners, to order and
4 proceed with constructing a turnaround or making
5 changes to the Valley View Road under the assumption
6 that it would remain public? Does that make sense?

7 And the reason I ask is because Mr. Beattie
8 mentioned the sequence of this and what the County's
9 position is. And if I'm understanding your testimony
10 correctly, it seems like from the County's perspective
11 it could make sense, if the landowners prefer, to
12 convert part of Valley View on either side to a public
13 roadway, which then would no longer be maintained by
14 the County.

15 When we're looking at the order and the
16 sequence and how this might play out, would it be your
17 opinion that if the judge granted the petition that she
18 permit the parties to explore conversion to a private
19 crossing with the adjacent landowners, or in your
20 opinion as a Traffic Engineer, I just want to make sure
21 I'm understanding you that the judge should order that
22 the roads be upgraded per the MUTCD while they're
23 public regardless of whether they're then relatively
24 shortly converted to a private road. Does that make
25 sense?

CROSS-EXAMINATION BY ENDRES/RUTAN**91**

1 A. Yes, and I prefer the second one, just because
2 we have gone through lots of right-of-way proceedings,
3 and just because you initiate a right of way proceeding
4 doesn't mean that it actually occurs. And we've
5 actually had right-of-way proceedings that are approved
6 and then the applicants never pay the fees, we actually
7 have to pay money to do it. So there's too many "ifs"
8 and too much risk to the public to not install them at
9 the point. But that is why I was willing to recommend
10 or accept the redesign of Creasey and Valley View for
11 the reasons I mentioned.

12 **Q. And without, then, constructing some kind of**
13 **turnaround?**

14 A. Without doing something further south on
15 Valley View. That would then allow for, if the roads
16 continued as is then we have an appropriate turnaround
17 there that provides that ability for two roads, not
18 just one. And if indeed in the future if the status
19 were to change to private or to vacate it, then we have
20 that facility there to account for it.

21 **Q. Do you know what the fee is, by the way, that**
22 **you just mentioned?**

23 A. For road vacation -- I mean for road
24 abandonment I don't know, it's a couple hundred bucks.
25 For vacation, if they actually vacate the property,

CROSS-EXAMINATION BY ENDRES/RUTAN

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1 they have to buy the property back at market value, so
2 that is something that I wouldn't be able to give you
3 without having a real estate agent.

4 MS. ENDRES: Your Honor, may I change
5 the exhibit on the board?

6 JUDGE PEARSON: Sure.

7 A. I would also just add that what the owners out
8 there may decide to do today may be different,
9 different owners 20 years from now. So this vacation,
10 if indeed this were to change, could happen immediately
11 after or it could happen 50 years from now.

12 Q. (BY MS. ENDRES) Mr. Rutan, can you see that
13 board okay?

14 A. Well enough.

15 Q. I put it up just because it gives us a little
16 more of a zoomed-in view of the roads and approaches on
17 Valley View.

18 A. I'm actually holding the smaller copy.

19 Q. Okay, fair enough. So I understand your
20 position about why a redesign at the Creasey and Valley
21 View intersection may be appropriate without then a
22 turnaround just north of the tracks. If we look at
23 south of the tracks, south of the crossing just north
24 of Arnie, that seems to me to be a much shorter
25 distance there.

CROSS-EXAMINATION BY ENDRES/RUTAN**93**

1 A. Yes, it is.

2 **Q. And I can kind of see on this map, is that the**
3 **bridge, it looks like there's a little screen that goes**
4 **to the Valley View Road?**

5 A. Correct. That is the California Creek, yes.

6 **Q. And is there space in between Arnie Road and**
7 **the bridge for some type of turnaround?**

8 A. You know, I'll just go back to that road would
9 be closed up at the railroad, so it will remain a
10 public road even if you put the cul-de-sac. You know,
11 we need access to that bridge. We need -- you know, so
12 even if you put that cul-de-sac before that bridge,
13 we're going to have to drive through that cul-de-sac up
14 to that bridge and maintain that bridge up until such
15 time that maybe we decide to remove that bridge.

16 **Q. And I apologize because I think I**
17 **misremembered where you recommended that a turnaround**
18 **be installed. So your recommendation is that a**
19 **turnaround be installed in between the bridge and the**
20 **closed crossing itself?**

21 A. Correct.

22 **Q. Is there any way to redesign the intersection**
23 **of Arnie and Valley View in a similar way to Creasey**
24 **and Valley View so that vehicles could turn around**
25 **without constructing --**

CROSS-EXAMINATION BY ENDRES/RUTAN**94**

1 A. Well, there certainly would, but the reason
2 wouldn't be there because the reason to do it up at
3 Valley View and Creasey was it was providing two roads.
4 Here, doing it in the intersection you're providing for
5 one road, doing it out of the intersection you're
6 providing it for one road, so.

7 **Q. You mentioned that one of the ways you**
8 **approached this was to look at it like the County or a**
9 **development was being built generating a certain amount**
10 **of traffic.**

11 A. Correct.

12 **Q. And one of the main points that your prefiled**
13 **testimony raised wasn't so much in response to anything**
14 **specifically contained within the Traffic Impact Study**
15 **but it raised the issue of impact on emergency response**
16 **time. And I know we'll have some more testimony from**
17 **the fire chief. But any time a traffic-related project**
18 **is completed, whether it's to build a new subdivision**
19 **or rerouting traffic for some kind of construction**
20 **project, isn't there always potentially some impact on**
21 **emergency response time?**

22 A. Yes, potentially. In most cases we're
23 building stuff, so response time is lessened because
24 we're creating networks, not undoing networks.

25 **Q. But sometimes there can be some increase in**

CROSS-EXAMINATION BY ENDRES/RUTAN

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1 emergency response times for many construction
2 projects?

3 A. Certainly, it's possible.

4 Q. And again, I warned you I'm going to jump
5 around a little bit so I do appreciate your patience.

6 Do you agree with Mr. Bialobreski's opinion
7 that the alternate crossings could safely accommodate
8 rerouted traffic should the Valley View crossing be
9 closed?

10 A. Yes, I do. The volumes on these roads out
11 here are relatively small and there is a large amount
12 of capacity available on those roads.

13 Q. One of the points that Mr. Bialobreski made --
14 and by the way, I'm assuming you did have an
15 opportunity to review all of Mr. Bialobreski's
16 testimony?

17 A. Yes.

18 Q. Was that from a traffic planning or engineer's
19 perspective, that in general the objective is to
20 maintain response times, and I'm talking about
21 emergency response times, similar to the current
22 district response times. At the very least you
23 recommend not creating a response time greater than the
24 longest response time being served by the impacted
25 responders.

CROSS-EXAMINATION BY ENDRES/RUTAN

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1 Do you agree with that statement?

2 A. Yes. Nothing really there to disagree with.

3 Q. We've heard testimony today, and you've been
4 here this morning, that part of the justification for
5 expanding the siding track is to allow trains to meet
6 and pass or clear the mainline, and that there may be
7 trains parked across or on the siding for extended
8 periods of time.

9 For a traffic planning purpose, would you then
10 recommend to emergency responders that even if the
11 crossing were to remain open, given the potential for
12 long delays that they plan alternate routes anyway?

13 A. I would -- I think they should, any time
14 they're dealing with crossing a railroad anywhere in
15 this county, we have 49 crossings, they should be aware
16 of alternate routes. So I would say yes, in 49
17 locations in the county.

18 Q. So one thing that distinguishes this
19 particular crossing from those other 49, and we've had
20 one of our earlier witnesses, I think Mr. Curl
21 explained, this isn't a scenario that simply just
22 involves two sets of tracks, that we would see
23 everywhere that this is a track that's really similar
24 to a parking space for trains, so the delay here may be
25 much longer, we heard testimony maybe up to hours.

CROSS-EXAMINATION BY ENDRES/RUTAN**97**

1 A. Well, at 15 minutes, my understanding is they
2 can block a public road for 15 minutes, and after that
3 they have to move the train. Which is why they're
4 coming in to ask to close this, because they can't
5 block it for hours like you're saying.

6 **Q. I'm going to ask you to make an assumption**
7 **that that law does not require that trains move in less**
8 **than 15 minutes and that if the crossing remains open,**
9 **a train may be parked there for hours at a time. Just**
10 **assume. Let's just set that aside and whether it**
11 **applies.**

12 A. Okay.

13 **Q. Assuming that a train may be parked there for**
14 **hours, would you recommend that emergency responders**
15 **plan an alternate route specific to this crossing**
16 **because of its special characteristic?**

17 A. The issue there isn't the responders, it's why
18 is the train sitting there for more than 15 minutes.
19 So my answer is the same as before. At any crossing
20 they should have -- because if that can happen here it
21 can happen at any crossing.

22 **Q. And I'm not -- I apologize if I'm not asking**
23 **this very eloquently. What I think we can agree with**
24 **is that this crossing is going to have special or**
25 **unique characteristics that are going to distinguish it**

CROSS-EXAMINATION BY ENDRES/RUTAN**98**

1 from other crossings. And so whether it's a fair idea
2 or a good idea or whether this law applies, if you have
3 information that the Railroad's trains may be across
4 just this specific crossing for hours at a time,
5 regardless of whether you think they should or anyone
6 thinks they should but they may be, when you're
7 planning traffic?

8 A. My answer is the same. There's 49 crossings.
9 At any one of those crossings you're going to have a
10 train sitting up there for 15 minutes. If you're
11 driving an ambulance you're not going to want to sit
12 and wait for 15 minutes. So any of these locations, I
13 would recommend they have an alternate route around.
14 And that's not specific to here, that's specific to
15 everywhere.

16 Q. One of the issues that was raised somewhere in
17 the prefiled testimony was whether the County believes
18 that an overpass should be built. Is that something
19 that the County recommends?

20 A. I don't feel that it would -- obviously
21 separated crossings are always safer. And as County
22 Engineer and as a dad and having kids driving, I want
23 separated crossings. Do I feel as County Engineer I
24 have some legitimate ability to ask that of the
25 Railroad per this project? No, I don't.

CROSS-EXAMINATION BY ENDRES/RUTAN

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1 Q. When County engineers are referencing things
2 like the Railway Grade Crossing Handbook, it provides
3 some factors to consider to determine whether the cost
4 of an overpass is justified under the traffic flow
5 levels; is that right?

6 A. Yes.

7 Q. And using that analysis and given that the
8 traffic counts that the County collected that were
9 consistent with the Traffic Impact Study, does that
10 justify a recommended overpass?

11 A. I haven't run that analysis, but based on the
12 low volumes out here and the lack of accident history,
13 no, I don't believe that that would lead to that
14 recommendation.

15 Q. In the Railroad's petition to close the
16 crossing, a gentleman named Shiraz Balolia is the only
17 adjacent parcel owner identified.

18 A. Okay.

19 Q. In the public comments on the last page,
20 Mr. Balolia stated that he had no objection to this
21 project. Are you aware of any other adjacent parcel
22 owners who opposed the project?

23 A. No, I'm not.

24 MS. ENDRES: I think that's all I have,
25 Mr. Rutan. I thank you again for your time.

RECROSS-EXAMINATION BY BEATTIE/RUTAN 100

1 JUDGE PEARSON: Anything further?

2 RECROSS-EXAMINATION

3 BY MR. BEATTIE:

4 Q. Mr. Rutan, I think I'm a little confused now
5 as to where the turnaround is envisioned to be. And
6 we're talking about the Arnie Valley View approach?

7 A. Yes.

8 Q. Is it closer to the crossing or further from
9 the crossing with respect to the bridge?

10 A. I'm glad we circled around back to that
11 because there was some confusion. The petition states
12 that it would be south of the bridge so before the
13 bridge. We are okay with that. We would still need
14 access out of that turnaround to the bridge. Our
15 maintenance crews will still go up there, we don't
16 necessarily need the public up there, but we would
17 still need to do that. And if that is more than 200
18 feet from the intersection from per the MUTCD, that
19 will require some form of turnaround.

20 MR. BEATTIE: Thank you.

21 JUDGE PEARSON: Thank you. You may step
22 down. Mr. Middleton?

23 MR. GIBSON: If I could, Your Honor, Mr.
24 Hollander has driven down from North Whatcom Fire and
25 Rescue, and if the parties are amenable to it I would

DIRECT EXAMINATION BY GIBSON/HOLLANDER 101

1 like to take him out of order at this time.

2 JUDGE PEARSON: That's fine with me.

3
4 HENRY HOLLANDER,

5 having been duly sworn, testified as follows:

6
7 JUDGE PEARSON: Your name, spelling your
8 last name for the record.

9 A. Henry Hollander. H-o-l-l-a-n-d-e-r.

10
11 DIRECT EXAMINATION

12 BY MR. GIBSON:

13 **Q. Mr. Hollander, what is your profession?**

14 A. I'm a Division Chief with the North Whatcom
15 Fire and Rescue.

16 **Q. And specifically what does that mean?**

17 A. Specifically what does that mean. Our tasks
18 are split. Our Division Chiefs are like an Assistant
19 Chief, so we take our tasks and split them up. So we
20 have a Division Chief in charge of staff and we have a
21 Division Chief in charge of Facilities and Apparatus
22 and Support. And that's the position that I hold.

23 **Q. Do you have with you a copy of your prefilled**
24 **testimony in this matter?**

25 A. I do.

CROSS-EXAMINATION BY ENDRES/HOLLANDER 102

1 Q. And have you had a chance to review that?

2 A. I did.

3 Q. Does it appear to be accurate and true?

4 A. It appears to be, yes.

5 Q. Just one thing I would like to clarify with
6 you before I turn you over to the attorneys for
7 cross-examination, something that you and I spoke
8 about.

9 Is it your intent here today to speak in
10 opposition or in support of the closure, or simply to
11 provide information that the judge uses to analyze what
12 needs to be done?

13 A. Just simply to provide information.

14 MR. GIBSON: Thank you very much.

15
16 CROSS-EXAMINATION

17 BY MS. ENDRES:

18 Q. Good morning, Chief Hollander, thank you for
19 being here this morning. You had an opportunity to sit
20 here while Mr. Rutan was being questioned?

21 A. The later part of it, yeah.

22 Q. Okay. I'd like to start with something that
23 he and I discussed or tried to discuss. In the event
24 that this particular crossing is kept open, you
25 understand that there's an existing siding track that

CROSS-EXAMINATION BY ENDRES/HOLLANDER 103

1 is going to be extended across the road and that the
2 Railroad will be using that track to basically park
3 trains so that other trains on the mainline can move
4 more freely.

5 A. Uh-huh.

6 Q. The scenario that I posed to Mr. Rutan had to
7 do with what or how the emergency response may alter
8 its approach to this crossing or homes near this
9 crossing with the knowledge that the crossing may be
10 extended or may be blocked for substantially longer
11 times than the other railroad crossings that emergency
12 responders use.

13 What's your thought on that?

14 A. What is my thought on that?

15 Q. Yes. Would you recommend that for emergency
16 response planning purposes that alternate routes be
17 used?

18 A. If we knew that trains were going to be parked
19 there for extended periods of time, do we know what
20 days or hours?

21 Q. No, sir.

22 A. Just randomly just block off the road --

23 Q. Yes, just based on trains --

24 A. -- and we knew that, we would make our crews
25 aware of that fact. You can see the track from Peace

CROSS-EXAMINATION BY ENDRES/HOLLANDER 104

1 Portal, so we would slow down. And if we visually saw
2 a train there then we would take an alternate route
3 depending, again, where we're coming from and where
4 we're going, because we could be coming from any
5 direction and going to any direction.

6 **Q. So for stations that may be dispatched or**
7 **responders coming from any direction there, it sounds**
8 **like then it may be the exception that responders would**
9 **have a clear sight of the crossing itself. For**
10 **responders who don't have that benefit, would you**
11 **recommend that there be some type of policy change or**
12 **communication within emergency response to simply avoid**
13 **the crossing in the first place?**

14 A. I'm not sure if we would -- a lot of our
15 dispatches are CAD oriented in a CAD program, so it
16 wouldn't be a policy change, it would be a CAD or
17 computer-aided dispatch change.

18 **Q. And it sounds like that would be something**
19 **that would be a consideration?**

20 A. It would be a consideration, yeah, sure. If
21 we knew the road was blocked we wouldn't go that way.

22 **Q. Obviously it may take longer to get to the**
23 **crossing, find it blocked, turn around and then just**
24 **take an alternate route?**

25 A. Right.

CROSS-EXAMINATION BY ENDRES/HOLLANDER 105

1 Q. We submitted a number of potential exhibits
2 for your cross-examination this morning. Did you have
3 a chance to take a look at any of those?

4 A. No.

5 MS. ENDRES: Your Honor, may I hand the
6 chief one of the exhibits?

7 JUDGE PEARSON: Yes.

8 Q. (BY MS. ENDRES) Mr. Hollander, this was
9 premarked Exhibit 4CX for your testimony. And could
10 you take a moment and look at that and tell me if
11 that's a document that you're familiar with? That's
12 titled the Capital Facilities Plan for North Whatcom
13 County and Fire. Have you seen that before?

14 A. Yeah, this looks like a piece of the document.

15 Q. Okay. So North Whatcom Fire and Rescue, that
16 is your department?

17 A. That's correct.

18 Q. The excerpt of this, if you'll turn to the
19 second page, contains different, it looks to me like
20 response time objectives for different types of -- here
21 they're labeled tiers for different areas within your
22 jurisdiction?

23 A. Correct.

24 Q. The homes around the Valley View crossing, are
25 you able to tell us whether those fall under Tier 1,

CROSS-EXAMINATION BY ENDRES/HOLLANDER 106

1 **Tier 2 or Tier 3?**

2 A. That would be Tier 3 because it's rural. But
3 this is not our adopted level. We have a revised
4 adopted level of service. You have an older version.

5 Q. So this version, just for the record, states
6 that the level or the goal or the objective is response
7 time to rural areas within 12 minutes 90 percent of the
8 time for arrival of the first few fire engine
9 companies.

10 Your testimony this morning is that that
11 actually is not the current accurate objective; is that
12 right?

13 A. Correct. The times are the same but it's 80
14 percent of the time is what was changed. And that's in
15 line with the NFPA standards or national standards.

16 Q. So on the next page of this document it also
17 includes a Tier 4 which is remote. Are those for
18 residences or businesses that are even further from a
19 responding station than what would fall under Tier 3?

20 A. Correct. We have 200 square miles of area and
21 some of it is very remote.

22 Q. Okay. So for even more remote locations,
23 there's a longer response time objective.

24 A. Well, there's a goal.

25 Q. Or a goal, okay. So Valley View actually

CROSS-EXAMINATION BY ENDRES/HOLLANDER 107

1 isn't even the furthest type of tier that the North
2 Whatcom County Fire District services; is that right?

3 A. Correct.

4 Q. Before I hand you one of the other exhibits,
5 it's actually just an article that explains a new
6 Automatic First Response Agreement between the North
7 Whatcom Fire and Rescue and Whatcom County Fire
8 District 7. Do you know what the Automatic First
9 Response Agreement is between those two departments?

10 A. Between North Whatcom and Fire District 7,
11 that goes back to a staffing plan that has changed
12 since then when our pay station was in the City of
13 Lynden. So District 7 would come out to the Laurel
14 area for us because they physically had staffed
15 stations closer than we did. And then in exchange we
16 would go to the Bay Road area because we were staffed
17 closer than they were.

18 Q. So let me back up a minute for those here who
19 don't have the benefit of looking at these documents.

20 The southern boundary of your fire district is
21 Bay Road which is -- it may even be on that map up
22 there. It's not too far south of this railroad
23 crossing?

24 A. Correct.

25 Q. And do you have some type of mutual aid

CROSS-EXAMINATION BY ENDRES/HOLLANDER 108

1 agreement with, then, the fire emergency response
2 district whose boundary stops -- whose northern
3 boundary is at Bay Road?

4 A. Yeah, it's the center of the road, so actually
5 we service the north side and District 7 services the
6 south side of Bay Road.

7 Q. Okay. And for dispatch purposes, then, is
8 there some type of mutual aid agreement between the two
9 where if North Whatcom responding station can't respond
10 as quickly as the responding station from District 7,
11 that the dispatch may then dispatch the responders from
12 7 to get there first?

13 A. Sort of. It's not done by time, it's done by
14 availability. So if we don't have an apparatus
15 available then the automatic CAD system starts
16 searching for the next closest station. So it is
17 conceivable that if our first two ambulances are tied
18 up on aid calls that they will call for a District 7
19 ambulance.

20 Q. Okay. So I think one thing I'm trying to
21 understand here is if the crossing is closed, or if
22 it's not closed, and there's some type of emergency
23 call to one of the residences in Valley View in this
24 area, are there different stations that may be
25 dispatched, or would it only come from one?

CROSS-EXAMINATION BY ENDRES/HOLLANDER 109

1 A. There's an order of stations. And it
2 typically goes closest and then further, further,
3 further away. So in this case -- and then it's also
4 kind of the west side of Custer, those residents in
5 there would be serviced from the Birch Bay-Lynden
6 station, Station 63. However, 20 to 25 percent of the
7 time they're already on another call when a call comes
8 in so then the next station is Blaine Road on Odell,
9 Station 61. So they would be coming down the freeway,
10 getting off the Birch Bay-Lynden Road, and then
11 typically they would take Peace Portal to the road
12 you're talking about, Valley View, to get up --
13 depending on what the address is of the customer.

14 **Q. So that dispatch process or those alternate**
15 **stations you just described, that's the same process**
16 **whether or not the crossing is closed?**

17 A. Yeah. If the crossing closes then we would
18 have to go in and change, possibly change our station
19 order.

20 **Q. Okay.**

21 A. But we have the ability to do that.

22 **Q. Okay. You just mentioned, and I think in your**
23 **testimony you mentioned maybe two or three different**
24 **staffed fire stations, and you just mentioned in your**
25 **testimony Odell Road. Is that Station 61?**

CROSS-EXAMINATION BY ENDRES/HOLLANDER 110

1 A. 61 is Odell Road, and 63, Birch Bay-Lynden
2 Road, are staffed. And District 7 just recently
3 staffed 46 which is on Brown Road.

4 **Q. So 46 is Brown Road. Your testimony relating**
5 **to Odell Road, Station 61, this is on Page 2 of your**
6 **testimony, stated that closing Valley View could add up**
7 **to three minutes response time from Station 61 if**
8 **responding to Valley View south of the closure.**

9 How did you calculate that additional time?

10 A. I said three minutes or did I say one to three
11 minutes?

12 **Q. I think you said at up to three minutes. And**
13 **the reason I ask is when I looked up Mapquest it**
14 **labeled it as one. So that's where my question is**
15 **coming from. Where is the three minutes?**

16 A. It just depends exactly where you got to go
17 and where you're coming from and how far you have to
18 drive around. Three would be probably the extreme.

19 **Q. Even with that additional increase in response**
20 **time, does that still fall within the response time**
21 **objectives that your group has adopted?**

22 A. That is considered within.

23 **Q. There are also volunteer stations throughout**
24 **your district.**

25 A. Correct.

CROSS-EXAMINATION BY ENDRES/HOLLANDER 111

1 Q. And are some of those closer to this crossing
2 than --

3 A. The closest one we currently have is the
4 Custer station, but it became inactive about three
5 years ago, and that building is currently for sale and
6 not being used as a fire station.

7 Q. And I'm going to ask you about that station in
8 just a minute. You call that the Custer station?

9 A. Custer station, 64.

10 Q. Volunteer stations, is there one at Station
11 65? Is that closer?

12 A. There's a 65 at Haynie.

13 Q. Is that closer than the Staff Station 61?

14 A. To what?

15 Q. To the Valley View crossing area.

16 A. Well, no. I would say 61 is probably a little
17 closer.

18 Q. What about 68, Delta?

19 A. 68 is our most active volunteer station. We
20 do get a really good response out of that. It's going
21 to be a little bit longer than Blaine.

22 Q. And then what about Station 62, Semiahmoo;
23 might that be dispatched?

24 A. Not very likely. It's pretty far out.

25 Q. The volunteer stations, they all house at

CROSS-EXAMINATION BY ENDRES/HOLLANDER 112

1 **least one aid unit and fire engine; is that right?**

2 A. For most of the 12 stations we have, that's
3 correct. There might be an exception in there.

4 **Q. Did you calculate additional response time for**
5 **any of the volunteer stations?**

6 A. In our response calculations, there is added
7 time for them to get from their house to the station in
8 our averages.

9 **Q. Okay. So even with adding that response time,**
10 **would that still meet the district's objective?**

11 A. Again, it depends who is coming from where and
12 where they're going.

13 **Q. Might there be an occasion where more than one**
14 **station is dispatched?**

15 A. Absolutely. Any time there's CPR or an
16 unconscious we send two units just because of the
17 manpower that's required to do CPR and ventilations.
18 Sometimes there's three.

19 **Q. One of the points that you raise in your**
20 **prefiled testimony had to do with the curve on Ham Road**
21 **or Arnie Road, which I think you can see on that map**
22 **there, and whether responders would be able to navigate**
23 **that curve safely.**

24 A. Yeah, we can do it safely. It's a narrower
25 road, you have to go slower. It's just not our first

CROSS-EXAMINATION BY ENDRES/HOLLANDER 113

1 road of choice. Valley View would be our first road of
2 choice.

3 Q. So if Valley View crossing is closed and there
4 was an incident to the south and assuming that dispatch
5 called out a unit from Station 63, would it then take
6 Ham Road?

7 A. That would probably be the recommended, yeah.

8 Q. If pursuant to the Mutual Aid Agreement
9 dispatch called out responders from District 7 because
10 District 7 is to the south of the railroad crossing, if
11 the call comes from the south of the railroad crossing,
12 there wouldn't be any impact on District 7's response
13 time, would there?

14 A. No, because they wouldn't be crossing the
15 railroad tracks.

16 Q. And if the call goes out to Station 63 or one
17 of the stations north of the crossing or an incident or
18 a call placed north of the crossing, there wouldn't be
19 any impact on emergency response time in that scenario,
20 would there?

21 A. Correct.

22 Q. You also stated in your prefiled testimony
23 that Fire District 7 station at Brown Road, you said
24 that was Station 46?

25 A. Uh-huh.

CROSS-EXAMINATION BY ENDRES/HOLLANDER 114

1 Q. That that could add up to three minutes
2 response time if responding. Is that also the one to
3 three minute range?

4 A. Yeah. Again, depending where the address is
5 and the exact location, sure.

6 Q. And how did you calculate that addition? Was
7 it just looking at the map online?

8 A. Just looking at the map, yeah.

9 Q. Your testimony stated that for Fire District
10 7, Station 45, which is at Grandview Road?

11 A. Correct.

12 Q. That that might be one of the stations that
13 would be dispatched to an emergency call?

14 A. That is our first out ALS response unit. So
15 any ALS response calls in our district, that would be
16 our first ambulance we get. The second one would come
17 from Smith Road.

18 Q. And Station 45, it sounds like, confirms to
19 you that they don't expect any impact on emergency
20 response?

21 A. That's what I read.

22 Q. Chief, one of the exhibits we also provided
23 for your cross-examination is exhibit HH-3CX entitled
24 Annual Report 2014 for North Whatcom Fire and Rescue.

25 Have you seen a copy of that document before

CROSS-EXAMINATION BY ENDRES/HOLLANDER 115

1 in your job?

2 A. I have seen it before, yes.

3 Q. If you could for me turn to Page 8 of that
4 document. Do you have that there?

5 A. Yep.

6 Q. In your testimony you explain that time is of
7 the essence when responding to a fire. And I don't
8 think anybody would disagree with that. Looking at
9 Page 8 of this exhibit, it indicates that of all the
10 responses that your district responds to, that fire
11 calls made up 4 percent of the calls.

12 Does that percentage sound about right to you?

13 A. Yeah, that's correct. Of course, you would
14 have to add in the false alarms because those are fire
15 calls. So yeah, it could be closer to 10 percent with
16 four of them being actual fires. But what we respond
17 to -- what we are requested to respond to and what we
18 arrive to are not always the same thing. So this is
19 what we are actually arriving to. So 4 percent were
20 working fires.

21 Q. And I do see on this same chart it says false
22 alarms 7 percent. Is that the false alarm you just
23 referred to?

24 A. Correct.

25 Q. I'd like to talk for a minute about the

CROSS-EXAMINATION BY ENDRES/HOLLANDER 116

1 station that is for sale at the Custer station.

2 A. Yes.

3 Q. And that one when it was open was actually
4 very close to this crossing just across Portal. Has
5 the fire district discussed taking that station off the
6 market and opening it up again if Valley View crossing
7 is closed?

8 A. Not at any of the meetings I've attended.

9 Q. Is that something that you would think about
10 raising if the crossing is closed?

11 A. I think we need to readdress it, yeah. The
12 largest problem is not the facility, it's getting the
13 people to volunteer. Volunteerism has declined
14 nationally so it's getting more and more difficult to
15 get volunteer firefighters.

16 Q. Page 4 of the exhibit you have lists a number
17 of -- it's a roster of members. Do you have that
18 there?

19 A. Yep.

20 Q. It lists two columns of firefighters and two
21 columns of volunteer firefighters. And it looks like
22 the volunteer firefighters outnumber the career
23 firefighters by a decent amount there.

24 A. That's correct.

25 Q. Is it your understanding that the approximate

CROSS-EXAMINATION BY ENDRES/HOLLANDER 117

1 number of volunteer firefighters on this is still
2 decreasing or is that something that you see more
3 broadly over a number of years?

4 A. In the last few years it's been steadily
5 decreasing. So typically for every one we bring on
6 we've been losing two.

7 Q. And even with that factored in to this
8 consideration, it's your projection that with closing
9 Valley View, the impact on emergency response times
10 would still allow your district to meet its response
11 time objectives for a Tier 3 community?

12 A. Could you rephrase that question?

13 Q. Sure. You said earlier that even if the
14 crossing is closed and there's some implication on
15 emergency response times from one to three minutes
16 more, that the fire district would still be within its
17 stated objectives for responding within 12 minutes 80
18 percent of the time?

19 A. Yeah, I think so, because there isn't a lot of
20 call volume in that area. Obviously it's a rural area.

21 Q. The last page of your prefiled testimony
22 states that the fire district's goal is generally to
23 reduce response times within the limits of safety,
24 which we can appreciate. When emergency response
25 vehicles are responding to an incident and they have

CROSS-EXAMINATION BY ENDRES/HOLLANDER 118

1 their lights and flashers on, they're allowed to exceed
2 normally posted speed limits; is that right?

3 A. Correct.

4 Q. And does that include when they're crossing
5 railroad tracks?

6 A. You know, I don't know that. We're going to
7 slow down when we go over railroad tracks or all our
8 tools and hoses are going to be falling off the fire
9 trucks. So it's going to be a safety thing just to
10 slow down for the bumps.

11 Q. If the crossing were to remain open and there
12 was an incident, there was a vehicle-train collision or
13 pedestrian-train injury or fatality, is that something
14 that your district would be called out to respond to?

15 A. Most likely.

16 Q. And in your 20-plus year career as a
17 firefighter, have you ever responded to a train-car or
18 pedestrian crash or collision before?

19 A. I have.

20 Q. In your understanding, you understand that
21 closing the Valley View railroad crossing would
22 eliminate that potential at this location?

23 A. I don't know if I could agree with that. I
24 mean, if a person was walking across the railroad track
25 you could still have -- I understand the risk would be

CROSS-EXAMINATION BY ENDRES/HOLLANDER 119

1 less but I don't think it would be eliminated.
2 Obviously no vehicle-train collisions would happen if
3 it was closed.

4 **Q. There's a safety benefit to be said for that,**
5 **isn't there?**

6 A. Could be.

7 MS. ENDRES: That's all I have. Thank
8 you very much for your time.

9 JUDGE PEARSON: Anyone else have any
10 questions for Mr. Hollander? Before we call the next
11 witness I do need to take a very brief recess, just
12 about three minutes, so we'll go off the record.

13 (Recess taken.)

14 JUDGE PEARSON: Back on the record.
15 Mr. Middleton?

16 ROLAND MIDDLETON,
17 having been duly sworn, testified as follows:

18
19 JUDGE PEARSON: Please state your name,
20 spelling your last name for the record.

21 A. Roland Middleton, M-i-d-d-l-e-t-o-n.

22 DIRECT EXAMINATION

23 BY MR. GIBSON:

24 **Q. Mr. Middleton, you have with you a copy of**
25

DIRECT EXAMINATION BY GIBSON/MIDDLETON 120

1 **your previously submitted testimony?**

2 A. Yes, I do.

3 **Q. Is it true and accurate?**

4 A. Yes.

5 **Q. I'm going to ask you, by virtue of the fact**
6 **that Mr. Bordenave subsequently submitted materials in**
7 **appended testimony today, can you provide just a bit of**
8 **background for the posture in which you came into this**
9 **matter and just to kind of explain where you were**
10 **coming from?**

11 A. I'm currently the Special Programs Manager for
12 Whatcom County Public Works. My previous job or one of
13 my previous jobs with Whatcom County for over 15 years
14 was the SEPA official for Whatcom County. I lead the
15 Project Development Group for Public Works and assist
16 with permit issues, land use issues specific to Public
17 Works Department.

18 A question came up with regard to the
19 crossing. As is typical, the County Engineer will ask
20 me to review things. One of the questions that I had
21 was a procedural issue with regard to the Statement
22 Policy Act and that I put in my prefiled testimony.
23 That was followed up by some testimony by Bordenave,
24 and answering the questions that I raised in my
25 previous testimony.

DIRECT EXAMINATION BY GIBSON/MIDDLETON 121

1 **Q. And how do you reconcile the two, where you**
2 **started the work and where you ended up?**

3 A. Needing additional information, essentially.
4 The refineries, BP Refinery and ConocoPhillips, both
5 added oil trains to their facility. They stated in
6 their applications that no additional rail would be
7 needed for their applications. In addition, Gateway
8 Pacific Terminals stated that they would need
9 additional rail at what is now the Intalco or Custer,
10 essentially the project, and that the Valley View
11 crossing would likely need to be closed.

12 We are just questioning is this actually for
13 the Cherry Point customers entirely or inclusive, or is
14 it specific just starting off and building a portion of
15 the Gateway Pacific Terminals ahead of time without
16 having the super review done for Gateway Pacific. And
17 that was the question that we had and that was the
18 essence of my testimony previously. And that was
19 answered by Burlington Northern that it is actually a
20 separate project having to do with the safety of the
21 Custer mainline and it's not a pre- construction of
22 what's needed for Gateway Pacific Terminals.

23 **Q. So your concern is with regard to the SEPA**
24 **that has been addressed?**

25 A. Yes. And the lead agency for the State

EXAMINATION BY JUDGE PEARSON/HAAG 122

1 Environmental Policy Act, the Department of Ecology,
2 has subsequently now issued a Determination of
3 Non-Significance for this project.

4 MR. GIBSON: I have no further
5 questions.

6 MS. ENDRES: I have no questions, Your
7 Honor.

8 JUDGE PEARSON: Okay, thank you. I
9 don't have any questions either so you may step down.

10 I'd like to recall Mr. Haag at this point
11 because I have some additional questions. You may be
12 seated. I remind you that you're under oath.

13
14 GRANT HAAG,
15 having been reminded of oath, testified as follows:
16

17 JUDGE PEARSON: While we were off the
18 record Ms. Endres stated that you had an answer to my
19 earlier questions as to the six customers were that
20 currently use the Cherry Point mainline and cross the
21 Valley View crossing?

22 A. Yes, ma'am. So the two additional are Energy
23 Logistics and Intalco. Would you like me to list the
24 prior four as well?

25 JUDGE PEARSON: I have those written

EXAMINATION BY JUDGE PEARSON/HAAG 123

1 down.

2 So I just have some questions because I want
3 to clarify. I became confused over the course of the
4 hearing.

5 A. Sure.

6 JUDGE PEARSON: So earlier you and
7 Mr. Wagner both with respect to addressing high
8 priority customers such as Amtrak and UPS and the
9 intermodal, is it true, though, that none of those
10 customers run on the Cherry Point line?

11 A. Correct.

12 JUDGE PEARSON: So who are the higher
13 priority customers on the Cherry Point line?

14 A. So specifically would be our unit train
15 customers. But one thing to understand in regards to
16 how rail traffic works is Cherry Point includes the
17 Bellingham sub, the Bellingham sub includes the Cherry
18 Point sub. And you can actually draw that further out
19 to the Seattle sub which is below it as well.

20 JUDGE PEARSON: Can you explain that to
21 me a little bit more about how the trains on Cherry
22 Point mainline block or delay the trains on the Valley
23 View mainline?

24 A. Sure, yeah. So if you have one siding
25 capacity taken out by a train, say on the Bellingham,

EXAMINATION BY JUDGE PEARSON/HAAG 124

1 it's going to make a longer meet/pass point for other
2 trains on the Bellingham, so that's going to make you
3 hold one train back further while another one comes.
4 It's basically like a one-lane road, so then the siding
5 is for passing locations. So if you don't have the
6 opportunity to go ahead and pull in at this Valley View
7 Road proposed expansion, then you have to hold that
8 train back at a different side which then impacts your
9 velocity on those lines.

10 JUDGE PEARSON: I see.

11 So my other question is the testimony clearly
12 shows that there are four trains that make two trips
13 per day on the Cherry Point mainline right now;
14 correct?

15 A. On average.

16 JUDGE PEARSON: On average, okay. And
17 it sounds like from the testimony that the need to park
18 trains on the siding is to get out of the way of other
19 trains that are coming through on the mainline? That's
20 the reason for parking them there?

21 A. Yes. So both on the Bellingham and on the
22 Cherry Point.

23 JUDGE PEARSON: Okay. So on the Cherry
24 Point line, who is parking there and whose way are they
25 getting out of and why?

EXAMINATION BY JUDGE PEARSON/HAAG 125

1 A. In the proposed siding, how that would work,
2 is that what you're asking?

3 JUDGE PEARSON: Or currently.

4 A. So currently those tracks, remember we have a
5 train that comes from Everett that goes up there for
6 the customers. And that train would then break into
7 two pieces on the two sidings they have up there, and
8 that would be used to switch, like we talked about
9 earlier, over that crossing currently. If we needed to
10 we could put a unit train in there for some of the
11 customers to break into the two crossings as well, but
12 that is not as viable.

13 JUDGE PEARSON: So with the new siding
14 and if the crossing is closed, who will be parking
15 there and why? Whose way are they getting out of?

16 A. Sure. So there's a couple answers to that.
17 With the unit trains that come in and out --

18 JUDGE PEARSON: And what are the unit
19 trains? What does that mean and who do they belong to?

20 A. A unit train is one train of all the same cars
21 for one customer.

22 JUDGE PEARSON: So they don't break down
23 is what you're saying?

24 A. Correct. So from the origin to the
25 destination, that train is going to stay intact. Where

EXAMINATION BY JUDGE PEARSON/HAAG 126

1 how the network works otherwise, it gets re-switched
2 out at different locations across the system to go
3 towards the locations that are closer to the
4 destination.

5 JUDGE PEARSON: Okay. So you're saying
6 it's a unit train, but what type of train? What
7 freight are they carrying, the ones that will be
8 parking?

9 A. The unit trains that currently utilize Cherry
10 Point are crude oil trains.

11 JUDGE PEARSON: Okay. You're saying one
12 oil train will get out of the way of another oil train?

13 A. Yes. So to come into the facility you're
14 going to have an empty train leaving after it's
15 unloaded and a loaded train coming in. So it will
16 allow them to pass each other on the Cherry Point.

17 JUDGE PEARSON: So the empty train might
18 get out of the way of the full train or the other way
19 around?

20 A. It would make the same concept. So whether
21 the empty goes in the siding and the load holds the
22 main, which would be what we would typically do, or the
23 other way around.

24 JUDGE PEARSON: Okay. I was just
25 curious who had the priority in that situation, I

EXAMINATION BY JUDGE PEARSON/HAAG 127

1 guess. Because it sounded like from the testimony
2 today that there are trains that will be getting out of
3 the way of higher priority trains.

4 A. Sure. So in that situation you'd have to open
5 up a room at the facility so the empty would have to
6 leave before the load could come in. Does that make
7 sense?

8 JUDGE PEARSON: Okay. So it has more to
9 do with how the oil companies are doing business than
10 one train or type of commodity necessarily having
11 priority over another type of commodity?

12 A. At that location. But we do prioritize our
13 trains in regards to what they're carrying. So we
14 talked about intermodal trains having higher priority.

15 JUDGE PEARSON: Right. I understand
16 that, but that doesn't apply here, right?

17 A. Not on the Cherry Point line.

18 JUDGE PEARSON: Not on the Cherry Point
19 line, okay. That's what I was wondering.

20 So if the oil trains are parked on the siding
21 and they're full, what type of security measures are in
22 place for that?

23 A. In regards to how the train is secured?

24 JUDGE PEARSON: Yes.

25 A. Okay. So we have guidelines that are in place

EXAMINATION BY JUDGE PEARSON/HAAG 128

1 on any train that's secured. We have locks on the cabs
2 of the engines. Typically, so we could park that
3 without a crew there. It depends on if a crew is
4 there. If a crew is not there, which I'm assuming is
5 what you're asking, the cabs of the locomotives are
6 locked with a key, as well as the brakes tied, based on
7 the grade at the location and how heavy the train is.

8 So what that does is trains have air brakes
9 but they also have manual brakes, so the crew then ties
10 the manual brakes on each car to ensure that those hold
11 the train when they leave, as a safety precaution.

12 JUDGE PEARSON: Are there crew there
13 that are providing security?

14 A. Is there a crew located on --

15 JUDGE PEARSON: Is it manned? Yes, are
16 the oil trains --

17 A. No. It doesn't have to be.

18 JUDGE PEARSON: It doesn't have to be?

19 A. Correct.

20 JUDGE PEARSON: Okay. I think that's
21 all the questions that I have, thank you.

22 Mr. Curl, if you could come back up, I have a
23 couple questions for you. I'll remind you that you're
24 still under oath.

25

EXAMINATION BY JUDGE PEARSON/CURL 129

1 PAUL CURL,

2 having been reminded of oath, testified as follows:

3
4 JUDGE PEARSON: So this relates to
5 Mr. Middleton's prefiled testimony and Mr. Bordenave's
6 prefiled testimony.

7 With respect to the recommendation issued by
8 the Army Corps of Engineers, have you reviewed BNSF's
9 March 19, 2014 application on which that recommendation
10 was based?

11 A. Yes, I have.

12 JUDGE PEARSON: Okay. And in your
13 opinion with respect to the Department of Ecology's
14 SEPA Determination of Non-Significance, what level of
15 review or scrutiny is appropriate for the Commission to
16 apply?

17 A. Once the Determination of Non-Significance is
18 issued, we're done with it.

19 JUDGE PEARSON: So we accept it at face
20 value?

21 A. That's correct.

22 JUDGE PEARSON: Okay. So historically
23 there's never been an instance where the commission has
24 challenged a SEPA Determination of Non-Significance?

25 A. I can't say never, but within my memory, no.

EXAMINATION BY JUDGE PEARSON/CURL 130

1 JUDGE PEARSON: Okay. Would that be
2 something you could look into for me and find out if
3 that's ever happened before?

4 A. Yes.

5 JUDGE PEARSON: Thank you very much.
6 That's all I have for you.

7 Unless there's anything further, that
8 concludes the evidentiary portion of the hearing, but
9 before we go off the record I want to discuss due dates
10 for the bench requests that I issued.

11 The first one which is a list of customers,
12 that's been addressed on the record today. So I will
13 label the next one as my first bench request which is
14 the BNSF's March 19, 2014 application to the Army Corps
15 of Engineers. Ms. Enders, do you have an estimation of
16 when you can provide that to me?

17 MS. ENDRES: I think generally the rules
18 provide for ten days, but I would think we can get it
19 within a week.

20 JUDGE PEARSON: Okay, that sounds good.
21 We can just say ten days, that's fine with me.

22 And then I have a couple of follow-up
23 questions that I'll just characterize as bench
24 requests. I would like some written documentation from
25 BNSF about what the clear definition of higher priority

1 freight is and how the priority system works.

2 MS. ENDRES: I'm sorry, say again?

3 JUDGE PEARSON: I'd like a clear
4 definition of what higher priority freight is and
5 something in writing that talks about the priority
6 system.

7 MS. ENDRES: Just in general?

8 JUDGE PEARSON: Yes. And then also I
9 don't believe that Mr. Haag was able to answer the
10 question about which trains were backlogged in 2014 in
11 Whatcom County, about where they were backlogged and
12 what freight they were carrying. So I'd like an answer
13 to that question too, and we can label that Bench
14 Request Number 3.

15 And ten days is December 11th. We can push it
16 out to the 12th, we don't have to count today. So if
17 you can get those to me electronically and also filed
18 with the records center, of course.

19 Is there anything else before we go off the
20 record from any other parties?

21 MR. BEATTIE: Yes, Judge Pearson. You
22 asked Mr. Curl a question about his knowledge with
23 respect to SEPA documentation.

24 JUDGE PEARSON: Oh, I did, I'm sorry.
25 That should be Bench Request Number 4.

1 MR. BEATTIE: And will that also be due
2 on December 12th?

3 JUDGE PEARSON: Yes.

4 MR. BEATTIE: Thank you.

5 MS. ENDRES: I'm sorry, what was that
6 specific request?

7 JUDGE PEARSON: I wanted to know if the
8 Commission has ever challenged a SEPA Determination of
9 Non-Significance.

10 Anything else?

11 MS. ENDRES: I'm assuming for that last
12 bench request, that's only directed to the UTC?

13 JUDGE PEARSON: That's correct.

14 If there's nothing further we will be off the
15 record until the public comment hearing later this
16 evening at 6:00. Thank you.

17 (Proceedings concluded at 12:32 p.m.)
18
19
20
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24
25

