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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK,)	
)	Docket TR-050967
Petitioner,)	Volume IV
v.)	Pages 47-96
)	
PORT OF BENTON and TRI-CITY AND)	
OLYMPIA RAILROAD,)	
Respondents.)	
_____)
)	
CITY OF KENNEWICK,)	Docket TR-040664
)	
Petitioner,)	
v.)	(Consolidated)
)	
UNION PACIFIC RAILROAD,)	
)	
Respondent.)	
_____)

A pre-hearing in the above-entitled matter was held at 1:30 p.m. on Monday, October 16, 2006, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge PATRICIA CLARK.

The parties present were as follows:

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

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

Barbara L. Nelson, CCR
Court Reporter

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

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

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

13 TRI-CITY AND OLYMPIA RAILROAD, by
14 Brandon Johnson, Attorney at Law, Minnick-Hayner,
15 P.S., 249 West Alder, P.O. Box 1757, Walla Walla,
16 Washington 99362 (via teleconference bridge.)

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1 JUDGE CLARK: Okay. It's approximately 1:30
2 p.m., October 16th, 2006, in the Commission's hearing
3 room in Olympia, Washington. This is the time and
4 the place set for a pre-hearing conference in the
5 matter of the City of Kennewick versus Union Pacific
6 Railroad, given Docket Number TR-040664, and City of
7 Kennewick versus Port of Benton and Tri-City and
8 Olympic Railroad, given Docket Number TR-050967.

9 Patricia Clark, Administrative Law Judge for
10 the Commission, presiding. Notice of this
11 pre-hearing conference was scheduled on April 19th,
12 2006. That notice modified Order Number Five in this
13 proceeding, issued on January 19th, 2006.

14 What I will do next is take appearances on
15 behalf of the parties. And because all parties, with
16 the exception of the Commission Staff, are appearing
17 telephonically, I need you to remember to speak a
18 little more loudly and slowly than you would
19 ordinarily speak, to ensure that everyone can hear
20 you. And so that the court reporter is able to make
21 an accurate transcript, you need to state your name
22 before you speak so that you she can attribute your
23 words of wisdom to you.

24 I'll take the appearance first on behalf of
25 the City of Kennewick.

0050

1 MR. ZIOBRO: Good afternoon. John Ziobro,
2 Z-i-o-b-r-o, for the City of Kennewick.

3 JUDGE CLARK: Thank you. Appearing on
4 behalf of Union Pacific Railroad?

5 MS. LARSON: Carolyn Larson, appearing for
6 Union Pacific.

7 JUDGE CLARK: Port of Benton?

8 MR. JONSON: Daryl Jonson, D-a-r-y-l
9 J-o-n-s-o-n, appearing for the Port of Benton.

10 JUDGE CLARK: Thank you. Appearing on
11 behalf of Tri-City and Olympic Railroad?

12 MR. JOHNSON: Brandon Johnson,
13 J-o-h-n-s-o-n. And it's Tri-City and Olympia
14 Railroad.

15 JUDGE CLARK: Thank you. And appearing on
16 behalf of BNSF Railway Company?

17 MR. MacDOUGALL: Kevin MacDougall,
18 M-a-c-D-o-u-g-a-l-l, on behalf of BNSF Railway
19 Company.

20 JUDGE CLARK: Thank you. And appearing on
21 behalf of the Commission Staff?

22 MR. THOMPSON: For Commission Staff,
23 Jonathan Thompson, Assistant Attorney General.

24 JUDGE CLARK: Thank you. We have a couple
25 of preliminary matters. Let me just run through the

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1 script for this afternoon's pre-hearing conference.

2 I distributed a draft exhibit list to
3 everyone in advance of the pre-hearing conference,
4 and I wanted to let you know that that exhibit list
5 was prepared using the order in which each party will
6 present its case. The order of witnesses was taken
7 from the pre-hearing disclosures made by the parties,
8 and then the exhibits were numbered consecutively.

9 If a cross examination exhibit will be used
10 with more than one witness, it is listed and numbered
11 under the first witness to testify using that
12 exhibit. It may be used again, obviously, by other
13 parties. And I bring that to your attention simply
14 because Union Pacific Railway -- Railroad had
15 indicated it might tentatively use certain exhibits
16 with one witness and perhaps with another. So that's
17 listed under the first exhibit.

18 The second thing we're going to do this
19 afternoon is address the pre-hearing conference
20 disclosures of each party, and I'm going to address
21 those in the order in which I took your appearance.
22 When we've completed that, we'll look at any
23 corrections I need to make to the exhibit list.

24 Then we have two outstanding motions that
25 are somewhat related. There is a motion to strike

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1 filed by the City of Kennewick and, filed this
2 morning, a motion to allow prepared testimony filed
3 by BNSF.

4 I'd like to then consider stipulations
5 regarding the admission of exhibits or other issues,
6 and finally, I'll address any other procedural
7 matters that the parties wish to address this
8 afternoon.

9 Are there any questions before we proceed?
10 All right. Hearing nothing, I'm going to turn first
11 to the pre-hearing disclosures made by the City of
12 Kennewick. And Mr. Ziobro, I need exhibit titles for
13 Exhibits 12, attached to the prepared testimony of
14 Mr. Plummer, and Exhibits 21 through 31, attached to
15 the exhibits of Mr. Leathers.

16 MR. ZIOBRO: Twelve, 21 through 31?

17 JUDGE CLARK: Yes, please.

18 MR. ZIOBRO: Would you like those on the
19 record now or electronically?

20 JUDGE CLARK: It would be helpful to have
21 those now, if it's possible. If it's not possible, I
22 can take them later electronically.

23 MR. ZIOBRO: Well, I could do it. Again,
24 John Ziobro, City of Kennewick. In your 12, you
25 refer to Exhibit 6. Is that 6, as disclosed by the

0053

1 City?

2 JUDGE CLARK: Yes.

3 MR. ZIOBRO: I'm still a little confused on
4 how you cross-referenced them.

5 JUDGE CLARK: What I did was simply try to
6 take your exhibits. The exhibits are numbered
7 consecutively in our proceedings.

8 MR. ZIOBRO: Correct.

9 JUDGE CLARK: For example, you may have an
10 Exhibit 4 and Union Pacific may have an Exhibit 4.

11 MR. ZIOBRO: Right.

12 JUDGE CLARK: But we can only have one
13 Exhibit 4.

14 MR. ZIOBRO: Right.

15 JUDGE CLARK: So I've simply taken the
16 pre-hearing disclosures, placed those witnesses in
17 the order in which you cited they would testify, and
18 numbered their exhibits.

19 MR. ZIOBRO: Is there a way for you to
20 cross-reference your Number 12 with my disclosure?
21 If you have the number on my disclosure, it would be
22 real easy.

23 JUDGE CLARK: Well, this is attached to the
24 pre-filed testimony of Mr. Plummer. It's the very
25 last exhibit attached to Mr. Plummer's testimony.

0054

1 MR. ZIOBRO: Okay.

2 JUDGE CLARK: And it looks like -- and I
3 don't know. It has a schematic that looks like a --

4 MR. ZIOBRO: Sure. It's -- yeah, let me
5 give you a description.

6 JUDGE CLARK: A roundabout? Okay. Cool.

7 MR. ZIOBRO: That's a schematic of the
8 Center Parkway Extension with a roundabout at the
9 intersection of Center Parkway and Gage Boulevard.

10 JUDGE CLARK: And that's the title you'd
11 like me to use?

12 MR. ZIOBRO: Well, you might -- you could
13 probably shorten it to schematic showing roundabout.
14 I think the parties will be able to identify that.

15 JUDGE CLARK: All right.

16 MS. LARSON: Was that a two-page exhibit?

17 JUDGE CLARK: I have it as a one-page
18 exhibit, Ms. Larson.

19 MS. LARSON: Okay.

20 JUDGE CLARK: Mr. Ziobro, is it more than
21 one page?

22 MR. ZIOBRO: It's one page.

23 JUDGE CLARK: All right. And then, Mr.
24 Leathers. You had a number of cross-examination
25 exhibits that you used in your pre-hearing

0055

1 disclosures.

2 MR. ZIOBRO: Correct.

3 JUDGE CLARK: The first one -- and you can
4 tell from the exhibit list that these are a series of
5 photographs.

6 MR. ZIOBRO: Yep.

7 JUDGE CLARK: The first one is an aerial
8 photograph, and each of these is one page. Do you
9 have a title for these exhibits?

10 MS. LARSON: Your Honor, are you addressing
11 me?

12 JUDGE CLARK: No, I'm addressing Mr. Ziobro,
13 because he's the individual who submitted these
14 cross-examination exhibits.

15 MS. LARSON: Okay.

16 JUDGE CLARK: Thank you.

17 MR. ZIOBRO: Okay. The first one, just so
18 we're clear, the first one is the references in
19 yellow boxes, the six or seven follow-up photos?

20 JUDGE CLARK: That's correct.

21 MR. ZIOBRO: Okay. The first one is -- why
22 don't we just call it aerial photo of proposed
23 extension and surrounding infrastructure.

24 JUDGE CLARK: All right. And then the next
25 photograph?

0056

1 MR. ZIOBRO: The next one I have shows the
2 end of Center Parkway and two carts on the track.

3 JUDGE CLARK: Yes.

4 MR. ZIOBRO: Okay. Why don't we call that
5 northern exposure -- or northern viewpoint of
6 switching operations from Center Parkway.

7 JUDGE CLARK: All right. What I have
8 identified as Exhibit 23, Photo Number Two.

9 MR. ZIOBRO: You're ready for the next one?

10 JUDGE CLARK: Yes.

11 MR. ZIOBRO: The one I have, just before I
12 identify it, is a southern view of the Holiday Inn
13 Express.

14 JUDGE CLARK: That's not what's next in your
15 order, I don't think, anyway. Oh, wait, there's the
16 sign. I see. It's Photo Number Two?

17 MR. ZIOBRO: Yes.

18 JUDGE CLARK: All right. Thank you.

19 MR. ZIOBRO: That would be -- let's just
20 call it photo from switching operation, southern view
21 towards Holiday Inn Express.

22 JUDGE CLARK: All right. And the next one?

23 MR. ZIOBRO: I have that as, in the yellow
24 box on the top left, Photo Three.

25 JUDGE CLARK: Correct.

0057

1 MR. ZIOBRO: Photo from existing trackage
2 facing south, towards Holiday Inn Express.

3 MR. JOHNSON: Your Honor and John, this is
4 Brandon Johnson. Are you sure that's not facing
5 north?

6 MR. ZIOBRO: You're right. That is facing
7 north. I apologize.

8 MR. THOMPSON: This is John Thompson. I
9 think that would be the case with the prior photo, as
10 well.

11 MR. ZIOBRO: You're correct. I apologize.

12 MR. JOHNSON: This is Brandon Johnson again.
13 Then I think on 22, it's actually southern, isn't it?
14 You're facing away from the river on --

15 MR. ZIOBRO: Correct.

16 JUDGE CLARK: Okay. So 22 is a photograph
17 of southern viewpoint of switching operations from
18 Center Parkway?

19 MR. ZIOBRO: Correct.

20 JUDGE CLARK: And Exhibit 3 is photograph
21 from switching operation, northern view toward
22 Holiday Inn Express. Twenty-four, photograph from
23 existing trackage facing north toward Holiday Inn
24 Express.

25 MR. ZIOBRO: Correct.

0058

1 JUDGE CLARK: Which brings us to Exhibit 25.

2 MR. ZIOBRO: Which is Photo Four in the
3 upper left-hand corner?

4 JUDGE CLARK: Yes.

5 MR. ZIOBRO: That is -- let's call that
6 southern view of switching operation from Tapteal
7 Drive.

8 JUDGE CLARK: Exhibit 26.

9 MR. ZIOBRO: That's Photo Five?

10 JUDGE CLARK: Correct.

11 MR. ZIOBRO: Let's call that southern view
12 of switching operation and Holiday Express from
13 Tapteal Drive.

14 JUDGE CLARK: Exhibit 27?

15 MR. ZIOBRO: P.U.D. substation.

16 JUDGE CLARK: Exhibit 28? It says Photo
17 Seven in the upper left-hand corner.

18 MR. ZIOBRO: Correct. Photo of switching
19 operation and residential storage, vehicle storage.

20 JUDGE CLARK: Exhibit 29?

21 MR. ZIOBRO: Aerial photo with roundabout
22 and extension overlay.

23 JUDGE CLARK: Exhibit 30?

24 MR. ZIOBRO: Aerial photo with path through
25 Columbia Center Mall parking lot to Columbia Center

0059

1 Boulevard.

2 MS. LARSON: To which boulevard?

3 MR. ZIOBRO: Columbia Center Boulevard.

4 JUDGE CLARK: And finally, Exhibit 31.

5 MR. ZIOBRO: Aerial photo showing connection
6 from Center Parkway to Tapteal Drive, to Columbia
7 Center Boulevard and mall parking lot.

8 JUDGE CLARK: Okay. Then the next thing we
9 need to address, Mr. Ziobro, is your witness list.
10 The Commission determined in this proceeding that
11 there would be pre-filed testimony, not oral
12 testimony in this proceeding, and there are a number
13 of orders and notices issued by the Commission that
14 address that particular issue.

15 In addition, the Commission granted numerous
16 extensions of time requested by the parties to submit
17 that pre-filed testimony. I don't have any pre-filed
18 testimony for either Mr. Wayne Short and, I'm not
19 certain how to say this, but Mr. Kurt Reichelt?

20 MR. ZIOBRO: Correct.

21 JUDGE CLARK: All right. And because you
22 don't have pre-filed testimony of that, you need to
23 show cause why oral testimony of these witnesses
24 should be permitted.

25 MR. ZIOBRO: Do you want it in the form of a

0060

1 motion or on the record?

2 JUDGE CLARK: Well, I think it needs to be
3 on the record, because the hearing starts Thursday.

4 MR. ZIOBRO: Correct. Quite simply, Your
5 Honor, it would be in the form of rebuttal testimony,
6 based upon testimony received from Tri-City and
7 Olympic Rail and Union Pacific. It's in response to
8 issues raised by their witnesses.

9 JUDGE CLARK: All right. There is no
10 provision in the Commission's procedural schedule for
11 rebuttal testimony in this proceeding, either.
12 Ordinarily, when the Commission has pre-filed
13 testimony and exhibits, if rebuttal testimony is
14 permitted, it is also built into the schedule, so
15 that your rebuttal testimony is also pre-filed.

16 MR. ZIOBRO: And I'm familiar with that,
17 Your Honor. In looking back at the schedule, and
18 possibly other attorneys will confirm this, it just
19 did not come up when we entered into the -- when we
20 discussed this at the pre-hearing conference and set
21 the schedule. And from my perspective, that became
22 open-ended.

23 JUDGE CLARK: All right. Well, I'm just
24 curious why this came up at -- when I issued the
25 notice having everyone provide pre-hearing

0061

1 disclosures? It didn't come up when the parties
2 pre-filed their testimony at that juncture?

3 MR. ZIOBRO: I don't believe it was ever
4 discussed. Again, this is John Ziobro, for the City.

5 JUDGE CLARK: All right. Do the other
6 parties have an objection to having the oral
7 testimony -- having the oral testimony of these
8 witnesses presented during the hearing Thursday and
9 Friday?

10 MR. JONSON: This is Daryl Jonson, with Port
11 of Benton. I have no objection to it.

12 JUDGE CLARK: Is there anyone else?

13 MS. LARSON: This is Carolyn Larson, for
14 Union Pacific. I -- to my mind, it's not -- it's
15 hard to distinguish cross-examination from rebuttal,
16 to some certain extent, when you're trying to get at
17 the facts here, so since we certainly don't pre-file
18 our cross-examination testimony, it -- I can
19 understand the City's position in not believing that
20 it should need to be pre-filing rebuttal testimony.

21 JUDGE CLARK: Is there anyone else who wants
22 to be heard on this?

23 MR. JOHNSON: This is Brandon Johnson, for
24 Tri-City and Olympia Railroad. I agree with Mr.
25 Ziobro. I have no specific recollection of talking

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1 about rebuttal testimony. I would ask, if it's
2 possible, just to put everybody on the same footing,
3 I don't know how long his proposed testimony is, but
4 we still do have a few days. And with e-mails and
5 that we couldn't get at least some sort of outline
6 what the witnesses will be testifying about.

7 JUDGE CLARK: Mr. Ziobro, is that possible?

8 MR. ZIOBRO: I could probably -- I could do
9 one of two things. I could make the disclosure on
10 the record. I think I could have pre-filed
11 testimony, or the lion's share of it by end of
12 business tomorrow. If it helps, I can briefly
13 summarize the areas that they would testify, and if
14 the parties feel the need to have it in written form,
15 I can sure make an attempt to do that.

16 JUDGE CLARK: All right. Why don't you go
17 ahead.

18 MR. ZIOBRO: And Mr. Short and Mr. Reichelt
19 would be duplicative. I really anticipate only
20 calling one of them. But for those of you that are
21 familiar with the testimony, I believe Lloyd
22 Leathers, possibly John Trumbull, and Randy Peterson
23 testified in their direct regarding switching
24 operations and impacts and delays associated with
25 parking cars over a portion or all of Center Parkway

0063

1 during switching operations, which would result in
2 long delays for cars at the intersection, or at the
3 proposed extension.

4 Either -- most likely Wayne Short or Mr.
5 Reichelt would testify to two things. One would be
6 their familiarity with other switching operations in
7 the state where these types of delays occur. Second,
8 you will notice that in the exhibits attached to the
9 testimony of Steve Plummer, which is the exhibit
10 referred to as -- it's sheet two of three and three
11 of three. They're schematics prepared by HDR. They
12 were actually prepared by Mr. Reichelt. And they
13 show proposed extensions to the sidelines or
14 switching lines of both Tri-City and UP that proposes
15 areas where they can extend those lines, or I guess
16 they call them path lines, so that they can switch
17 cars without blocking the proposed Center Parkway
18 Extension.

19 So it would rebut the suggestion that -- of
20 both UP and Tri-City that they would be limited to
21 the number of cars, and it would rebut the
22 proposition that the cars would, for all intents and
23 purposes, remain on Center Parkway during switching
24 operations and causing the delays.

25 And they would probably elaborate or at

0064

1 least walk the Commission through the exhibit
2 attached to Steve Plummer's testimony, showing how
3 the switching maneuver could be accomplished, which
4 could also tend to rebut the testimony of -- it was
5 either Mr. Leathers or Trumbull who discussed the
6 actual maneuvering to effectuate the switching. That
7 would be the -- almost entirely what their testimony
8 would be.

9 JUDGE CLARK: All right. I'd like to hear
10 first from Ms. Larson, because you are sponsoring two
11 of the witnesses that the rebuttal testimony would
12 address, and I'd like to know whether or not you
13 believe that oral description places you at a
14 disadvantage or if you would be adversely affected if
15 the oral testimony were permitted or -- which you've
16 indicated you haven't, but whether you also would be
17 interested in having a written outline or a more
18 detailed description or if you're satisfied with Mr.
19 Ziobro's description?

20 MS. LARSON: I would like to have -- this is
21 Carolyn Larson. I would like to have pre-filed
22 testimony, if that is -- if that's possible by the
23 end of the day tomorrow, as Mr. Ziobro offered. I'm
24 not -- I do not feel that I am prejudiced by this
25 kind of testimony. I think I anticipated that there

0065

1 would be, if not by cross-examination, that in some
2 manner, that these issues would be fleshed out at the
3 hearing.

4 JUDGE CLARK: All right. And then the
5 second witness is one that would be rebutting --
6 you'd be rebutting testimony presented by the
7 Tri-City and Olympia Railroad. So I'd like to hear
8 from Mr. Johnson.

9 MR. JOHNSON: Yes, Your Honor. This is
10 Brandon Johnson. I think, basically, Mr. Peterson's
11 testimony was that he'd use the pre-filed testimony
12 from the UP witnesses and agree regarding the method
13 of switching. So I think my statements would echo
14 Ms. Larson's.

15 JUDGE CLARK: All right. I'm going to allow
16 this oral testimony, provided you can come up with
17 pre-filed -- some form of pre-filed, at least
18 outlining the late witnesses, Mr. Ziobro, and I'm
19 going to take you up on your offer to do that by the
20 end of today. That seems pretty tight to me.

21 MR. ZIOBRO: Actually, I think my offer was
22 end of business Tuesday, but --

23 JUDGE CLARK: End of business Tuesday. I
24 didn't mean to attribute something to you you weren't
25 able to comply with. So we will make it 5:00 p.m.

0066

1 on Tuesday. You also have in your pre-hearing
2 disclosures a number of exhibits that you intended to
3 use as, I believe, supplemental direct, and is this
4 also in the form of rebuttal?

5 MR. ZIOBRO: More than anything, Your Honor,
6 it's to give the lay of the land to the Commission so
7 that they can understand the operation. So I don't
8 think it would be rebuttal; I think it would just
9 clarify some of the operations that are occurring now
10 and how this project would relieve congestion or
11 benefit the area.

12 JUDGE CLARK: All right. Well, I'm curious
13 about those exhibits, because they look like they've
14 been in existence for some time, and I'm curious why
15 they weren't pre-filed with the testimony of your
16 witnesses.

17 MR. ZIOBRO: Most of the aerials we just
18 discussed were shot -- well --

19 JUDGE CLARK: I'm not talking about the
20 aerials; I'm talking about the additional exhibits
21 that are not on the exhibit list. For example, there
22 is a Center Parkway underpass conceptual estimate of
23 additional cost.

24 MR. ZIOBRO: Oh, that's in response to the
25 testimony of -- I think it's Raymond Wright, provided

0067

1 by UP, when he questioned the cost for the undergrade
2 extension. And to be fair, Your Honor, I mailed that
3 out to the parties at least two months ago. When I
4 read Mr. Wright's testimony, I told them that I would
5 be supplementing my testimony. Again, without the
6 ability to have rebuttal, I wasn't sure how to
7 proceed, but the parties are certainly on notice that
8 I was going to use that exhibit.

9 JUDGE CLARK: And you intend to use that --
10 if it's permitted, you would use that with Mr.
11 Wright?

12 MR. ZIOBRO: Well, I'd use it -- Steve
13 Plummer would simply testify that if the City bid
14 this project out, that's what they'd base their bid
15 on.

16 JUDGE CLARK: All right. So it would be an
17 additional exhibit attached to the testimony of Mr.
18 Plummer?

19 MR. ZIOBRO: Correct.

20 JUDGE CLARK: All right. I'm going to allow
21 that one. I'll need to revise the exhibit list, but
22 that will become -- it is not now, and you'll get
23 this hopefully by the close of today, the revised
24 list, but it will become Exhibit Number 13.

25 The next one that I have that is new that

0068

1 was not designated as cross-examination is -- it has
2 the City of Kennewick letterhead. It's a workshop,
3 Agenda Item Number Two. The meeting date is August
4 27th, 2002. And so I'm curious why this one wasn't
5 pre-filed.

6 MR. ZIOBRO: Mostly, because at the time
7 that we submitted our testimony, we didn't think
8 efforts to fund this project would become relevant.
9 And frankly, Your Honor, the chance of that exhibit
10 being used is slight, but to the extent there's any
11 questions about how long the City's been working on
12 this project, what efforts have been made to come up
13 with an alternative that could be agreeable to the
14 parties, this document, as well as the City's
15 six-year transportation plan, which will follow that
16 document, are just to rebut any concerns about how
17 long the City's been working on this, how long
18 they've been planning for it.

19 JUDGE CLARK: All right. Well, at this
20 juncture, I'm not going to mark that for
21 identification purposes. It appears that that's
22 adequately addressed in the pre-filed testimony of a
23 number of witnesses.

24 The next exhibit I have is not actually the
25 six-year transportation improvement program, which is

0069

1 also, I think, adequately referenced and pre-filed,
2 but rather the rev program application.

3 MR. ZIOBRO: That would address any
4 questions about grants or funds the City's applied
5 for that might be in jeopardy, and that's also
6 referenced in the testimony, and chances are I
7 wouldn't need to use it unless there was questions
8 raised on cross-examination about funding sources and
9 any funds that are in jeopardy.

10 JUDGE CLARK: Okay. At this juncture, I'm
11 not going to allow those additional exhibits. If the
12 need for them you believe becomes critical during the
13 course of the hearing, you'll need to raise that at
14 the time. But at this juncture, I'm not inclined to
15 allow any of the additional testimony. It looks like
16 it was testimony that easily could have been
17 submitted in the pre-filed testimony. Let's see.
18 And I believe that concludes all of the pre-hearing
19 disclosures for the City of Kennewick. Thank you,
20 Mr. Ziobro, I appreciate your help.

21 MR. ZIOBRO: You're welcome.

22 MR. JOHNSON: Your Honor, this is Brandon
23 Johnson. Could I interrupt for one moment?

24 JUDGE CLARK: Yes, you may.

25 MR. JOHNSON: The one new exhibit you

0070

1 indicated you were going to make, the new Number 13?

2 JUDGE CLARK: Yes.

3 MR. JOHNSON: Would it be at all possible to
4 make that Number 44 instead? Maybe I jumped the gun,
5 but I already put my binder together and I already
6 have everything in order.

7 JUDGE CLARK: I have no problem making that
8 Number 44.

9 MR. JOHNSON: I guess it would be 45. I'm
10 sorry. Just so I don't have to go back and redo
11 this.

12 JUDGE CLARK: I don't have a problem, and
13 that means I no longer have to renumber the remainder
14 of the exhibits, so that makes my life easier, as
15 well. Thank you.

16 All right. The next one I have is for the
17 Union Pacific Railroad, and I just need exhibit
18 titles for some of the exhibits that are attached,
19 first to Mr. Leathers' testimony. I need an exhibit
20 title for Exhibit 16.

21 MS. LARSON: I would call that Richland
22 Junction track print.

23 JUDGE CLARK: Okay. And is there a
24 typographical error in Exhibit 17?

25 MS. LARSON: Yes.

0071

1 JUDGE CLARK: And it should be TCRY?

2 MS. LARSON: That's right.

3 JUDGE CLARK: All right. Thank you. And
4 then I have, just a minute, one more. Oh, Exhibit
5 33, attached to Mr. Trumbull's testimony.

6 MS. LARSON: I would call that aerial of
7 houses and tracks at Richland Junction.

8 JUDGE CLARK: Thank you, Ms. Larson. I
9 think that's all I have, all the questions I have for
10 Union Pacific Railroad.

11 I don't have any pre-filed testimony or
12 response to pre-hearing disclosures from the Port of
13 Benton, but Mr. Jonson, if you're interested in
14 cross-examining at the hearing, of course that's not
15 precluded.

16 I don't have any cross-examination exhibits
17 for Tri-City and Olympia Railroad, and so we're good
18 there.

19 All right. The next thing I think that --
20 oh, are there any other corrections that we need to
21 make to the exhibit list? Anything else come to the
22 attention of the parties when you were reviewing it?

23 MS. LARSON: I guess I have a question about
24 some of the cross-examination exhibits that were
25 listed by the City to be using, for instance, with

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1 Lloyd Leathers. I am speaking about Exhibits 19 and
2 20.

3 JUDGE CLARK: Okay.

4 MS. LARSON: My question is, in
5 cross-examination, is the scope of the
6 cross-examination limited to the scope of the direct
7 testimony? Because I do not believe that either of
8 those Exhibits, 19 or 20, respond to anything in Mr.
9 Leathers' direct testimony.

10 JUDGE CLARK: Right, and that sounds --
11 ordinarily, the scope of cross-examination is limited
12 to the scope of direct, and that is an issue that we
13 can address when we go to the admission of those
14 exhibits. We can either address that at this
15 juncture or, if the parties are unwilling or unable
16 to stipulate to some or all of the exhibits, we can
17 address those one-by-one at the hearing on Thursday
18 and Friday. So it wouldn't be a correction to the
19 exhibit list; it's just a question --

20 MS. LARSON: Right, admissibility issue.

21 JUDGE CLARK: All right. I'm going to
22 address the admissibility I think probably a little
23 bit later. What we also have in a pre-hearing
24 conference disclosure from BNSF Railway Company was
25 an indication that an individual would appear and

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1 present oral testimony. And I need to check and make
2 sure that -- I believe that request is withdrawn by
3 the motion to accept prepared testimony; is that
4 correct?

5 MR. MacDOUGALL: I'm sorry, this is Kevin
6 MacDougall. The last portion there that you
7 indicated, motion to withdraw, I'm not exactly
8 familiar with what you're referring to.

9 JUDGE CLARK: Well, I'm not speaking to a
10 motion to withdraw. You filed first in your
11 pre-hearing disclosure an indication that you would
12 be calling a witness to present oral testimony.

13 MR. MacDOUGALL: Yes.

14 JUDGE CLARK: That, of course, drew a motion
15 to strike from the City of Kennewick. And after the
16 motion to strike from City of Kennewick was received,
17 I received your motion to accept prepared testimony.

18 MR. MacDOUGALL: That's correct.

19 JUDGE CLARK: Somy question is, am I
20 assuming that the request for oral testimony is
21 withdrawn, or the oral notice, whatever you want to
22 call your pre-hearing disclosure?

23 MR. MacDOUGALL: We would prefer -- BNSF
24 would prefer to present Mr. Labberton's testimony
25 orally on Thursday or Friday.

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1 JUDGE CLARK: Rather than the prepared
2 testimony you presented?

3 MR. MacDOUGALL: Well, the prepared
4 testimony is acceptable, as well. However, Mr.
5 Labberton could go into a little bit more detail
6 during prepared testimony -- or during oral
7 examination, I should say. I'm sorry.

8 JUDGE CLARK: And you're talking about
9 additional oral direct, Mr. MacDougall?

10 MR. MacDOUGALL: Yes, that is correct, and
11 approximately ten minutes.

12 JUDGE CLARK: All right. Then that does
13 bring us -- I think they're linked, but I'd like to
14 hear about the motion to strike filed by the City of
15 Kennewick, and I'm going to turn to you first, Mr.
16 Ziobro. With the motion to accept prepared testimony
17 filed by BNSF, do you wish to retain your motion to
18 strike?

19 MR. ZIOBRO: Well, I certainly wish to
20 retain it with regard to the names that are listed in
21 the pre-hearing disclosures of BNSF.

22 JUDGE CLARK: All right.

23 MR. ZIOBRO: Is it my understanding that Mr.
24 MacDougall's not opposing striking those names that
25 did not appear -- that appear on the BNSF Railway

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1 pre-hearing disclosure that are not now being offered
2 as testimony? I need you to clarify that.

3 MR. MacDOUGALL: Those names --

4 JUDGE CLARK: Mr. MacDougall, you need to
5 identify yourself.

6 MR. MacDOUGALL: I apologize. Kevin
7 MacDougall. The specific names that were included on
8 the disclosure are not -- we're not proposing to
9 present those witnesses. They are unavailable, which
10 was referenced in the disclosure itself, that they
11 have prior commitments. I tried to make them
12 available for next week. They're not available.
13 Therefore, one of the local operations department
14 individuals, Mr. James Labberton, is the one who
15 we're proposing to present the approximately ten
16 minutes of testimony from regarding the operational
17 effects and the property ownership issues, which are
18 essentially addressed, as well, in the Union Pacific
19 testimony, but we wanted to try and present our own
20 testimony for a very, very short period of time, as
21 well.

22 JUDGE CLARK: Mr. Ziobro.

23 MR. ZIOBRO: Yes, John Ziobro, for the City.
24 I think I'm probably not misstating the parties'
25 belief that there would be some entitlement to

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1 supplementing pre-filed written direct testimony. I
2 was under that impression. There may be others
3 involved in the call that are under that impression.

4 The only area I'm struggling with is I
5 appreciate the fact that Mr. MacDougall has offered
6 what amounts to three substantive questions with
7 regard to Mr. Labberton, but also advises he may have
8 as much as ten to 15 minutes of testimony in addition
9 to that, which I'm not sure that's what was intended
10 here, but at the same time, I think I will be
11 straying beyond the City's direct testimony for
12 purposes of at least giving some demonstrative
13 evidence to the Commission, which I think is helpful.
14 So I have mixed feelings about this.

15 You know, I'm now committed to providing my
16 additional testimony, which sounds like it needs to
17 be mostly in full by 5:00 tomorrow for the HDR
18 employees. I'm sensing there would be objection if I
19 asked four questions and reserved ten minutes. I
20 just want to make sure that whatever the City is
21 being held to by the Commission applies to the other
22 parties. And I don't have a sense right now, if I
23 get testimony of Wayne Short to the parties by 5:00
24 Friday, if I can't get all of that in, if I'm going
25 to be able to reserve ten or 15 minutes, as BNSF

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1 Railway has. That's my reservation.

2 JUDGE CLARK: Did you misspeak and indicate
3 you'd get that testimony by 5:00 Tuesday? Not
4 Friday.

5 MR. ZIOBRO: I'm sorry. Tuesday, yes.

6 JUDGE CLARK: Okay. All right. Well, I'm
7 -- given what the Commission has -- action that the
8 Commission has taken thus far in its orders and
9 notices, I want to very narrowly construe the right
10 to present this additional testimony. I am going to
11 accept the testimony of BNSF as late-filed prepared
12 testimony, based on the rationale presented in their
13 motion. However, we're not going to allow additional
14 oral direct testimony of the witnesses.

15 And I am holding you to the same standard
16 that I held the City of Kennewick, in that the only
17 information that might be allowed would be some
18 rebuttal testimony, and that will be something we'll
19 have to address at the hearing, depending on how the
20 testimony proceeds. So the prepared testimony of Mr.
21 Labberton will become -- I believe it's Exhibit 46,
22 and I will add that to the witness list.

23 MR. THOMPSON: Your Honor, this is Jonathan
24 Thompson. If I could make a suggestion. It wasn't
25 clear to me whether -- well, one possibility might be

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1 that the -- that the BNSF Railway might be allowed
2 the same opportunity to supplement by tomorrow
3 afternoon, and the only reason I would suggest that
4 is because one of the issues that the Commission's
5 directed to look at statutorily, under 81.53.020, it
6 says, In determining whether a separation of grades
7 is practicable, the Commission shall take into
8 consideration the amount and character of travel on
9 the railroad, and as well as on the highway.

10 So it seems like a fairly important thing
11 for the Commission to have a record of, BNSF's
12 switching operations, and it does seem like a pretty
13 straight ahead factual issue, so I don't know that
14 it's particularly prejudicial to the City, and I just
15 -- it's pretty slim, what BNSF has filed so far, so I
16 think maybe it would be helpful to the record to have
17 more elaboration on the switching movements of BNSF.

18 JUDGE CLARK: All right. Mr. MacDougall, we
19 do have, then, an alternative, a practical
20 alternative. Is it possible for you to supplement
21 the testimony of Mr. Labberton by 5:00 p.m. tomorrow
22 afternoon with the testimony that you would have
23 elicited from him during your ten to 15 minutes of
24 oral direct examination?

25 MR. MacDOUGALL: Yes, of course that is

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1 possible.

2 JUDGE CLARK: All right. Then I'm going to
3 allow that supplemental testimony. It needs to be
4 filed and served by 5:00 p.m. tomorrow afternoon.
5 And for both you and Mr. Ziobro, you should know that
6 you can serve electronically and follow with a hard
7 copy the next day. I think that would be very
8 helpful. And you can electronically serve the other
9 parties, as well, and I think that's important to
10 note, because the hearing is Thursday. So the more
11 time the parties have that, I think the more helpful
12 it will be. And it will certainly be more helpful to
13 me.

14 All right. Then I believe the last thing
15 that I need to address is whether or not the parties
16 are willing to stipulate to the admission of any or
17 all of the exhibits in advance of hearing, or if this
18 is an issue you want to address as we call each
19 witness? I'll call on you first, Mr. Ziobro.

20 MR. ZIOBRO: Your Honor, I've reviewed the
21 exhibits. I don't see surprises in any of them. I
22 frankly don't have any objections to any of the
23 exhibits submitted by the parties.

24 JUDGE CLARK: Okay. So you would stipulate
25 to their admission? And I realize I'm placing you in

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1 a somewhat awkward position, because we don't have
2 the supplemental testimony of Mr. Labberton, so
3 obviously we can't address that one, and we don't
4 have your supplemental testimony yet, so we can't
5 address at least a couple of these.

6 MR. ZIOBRO: Correct.

7 JUDGE CLARK: Ms. Larson.

8 MS. LARSON: I am not at this point willing
9 to stipulate to the admissibility of Exhibits 19, 20,
10 and 35, simply because I believe that they go beyond
11 the scope of the direct testimony of those witnesses.
12 Oh, I'm sorry, and 36, too.

13 JUDGE CLARK: Okay. Nineteen, 20 --

14 MS. LARSON: Thirty-five and 36.

15 JUDGE CLARK: Right. I'm just getting there
16 on the exhibit list. I'm slow. Thirty-five and 36.
17 But you have no objection to the admission of the
18 remainder?

19 MS. LARSON: That is correct.

20 JUDGE CLARK: All right. And Mr. Daryl
21 Jonson?

22 MR. JONSON: I have no objection to the
23 admission of any of them, Port of Benton.

24 JUDGE CLARK: Thank you. Mr. Brandon
25 Johnson?

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1 MR. JOHNSON: Thank you, Your Honor. This
2 is Brandon Johnson for Tri-City and Olympia Railroad.
3 I would join in Ms. Larson's objection. Otherwise, I
4 have no other objection.

5 JUDGE CLARK: Mr. MacDougall.

6 MR. MacDOUGALL: Thank you, Your Honor.
7 BNSF would like to reserve objection to admission to
8 the hearing dates.

9 JUDGE CLARK: To all exhibits?

10 MR. MacDOUGALL: I apologize. I can't give
11 you specific exhibit numbers right this second. I
12 had it in front of me a second ago. I guess I would
13 -- I could give you specific exhibit numbers by the
14 end of the day today, once I can pull the exhibits
15 back up, but without looking at them right in front
16 of me -- I can get those to you later today.
17 Whatever would be best for Your Honor.

18 JUDGE CLARK: All right. Mr. Thompson.

19 MR. THOMPSON: No objections to any of the
20 exhibits from Staff.

21 JUDGE CLARK: All right. Well, it sounds
22 like we're going to have to address that issue at
23 hearing. I was kind of hoping to not have to jump
24 through all those little procedural hoops, but
25 unfortunately we don't have unanimity on that issue,

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1 so I'll have to hold off on that.

2 Do the parties have any other procedural
3 matters that they would like to address at this
4 afternoon's pre-hearing conference?

5 MS. LARSON: This is Carolyn Larson. Yes, I
6 do.

7 JUDGE CLARK: Yes.

8 MS. LARSON: In preparing for this hearing
9 and noticing that it's been a year since my witness,
10 Lloyd Leathers, submitted his testimony, I realized
11 that his exhibits, which listed car counts, were all
12 information from 2005. And it seemed to me a natural
13 question that he would be asked if those trends are
14 the same during 2006.

15 I did get similar car count information for
16 2006 that could be submitted along with his
17 testimony. In fact, I had prepared last week a
18 motion to supplement his testimony to deal with 2006
19 figures. Unfortunately, Lloyd Leathers had a death
20 in his family last week and I have been totally
21 unable to reach him, so I wasn't able to get him to,
22 you know, to approve changes to his testimony, which
23 I felt like I needed to do.

24 I guess I just wanted to discuss with the
25 parties whether we should just leave it as it is and

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1 deal with 2005 numbers, or whether it would be
2 helpful to have the 2006 figures for cars
3 interchanged between the TCRY and Union Pacific
4 during the most recent six months versus that time
5 frame in 2005.

6 JUDGE CLARK: Mr. Ziobro.

7 MR. ZIOBRO: I wasn't clear on Ms. Larson's
8 explanation. Are you suggesting it will be
9 supplemental oral testimony at the time of hearing?

10 MS. LARSON: Well, it could be -- we
11 certainly could have -- would have two exhibits that
12 would provide very similar information to the
13 exhibits which -- Exhibits B and C, which were 17 and
14 18 of his testimony last year, except it would be for
15 a more recent time frame. And then, for his
16 testimony itself, I had envisioned submitting a
17 red-lined version of that testimony, which would
18 provide supplementary information as to the most
19 recent time frame. Not changing the prior, but
20 adding what that meant for 2006.

21 JUDGE CLARK: All right. Let me ask you,
22 then, Ms. Larson, if you've already prepared these
23 documents, is this something you can file and serve
24 by 5:00 p.m. tomorrow afternoon?

25 MS. LARSON: Yes, except that I haven't --

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1 unfortunately, my client has not seen these yet,
2 because, as I say, I've been unable to reach him. So
3 it could be -- I guess I'm relatively certain that
4 the changes are correct, but, you know, since he's
5 the one signing the testimony, I would like for him
6 to see it.

7 I mean, I could certainly -- I could send it
8 to everyone today, with the understanding that it's
9 draft proposed revisions and that obviously he hasn't
10 signed it yet and there might be some other changes
11 if he saw it and saw that there was something wrong
12 with the number crunching, but that would, of course,
13 give everyone as much notice as possible if I filed
14 my motion on the changes today.

15 JUDGE CLARK: Well, I don't think it's
16 necessary, since you've raised this orally, to file a
17 motion in addition. And so what I'm mostly concerned
18 about is we now have several parties who are going to
19 be supplementing their testimony, and I'm simply
20 concerned about everyone getting that to the other
21 parties and to me in adequate time to review it and
22 prepare for the hearing.

23 So I'm -- but I understand, if there has
24 been a death in Mr. Leathers' family, that it has
25 certainly impacted your ability to consult with your

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1 client. So I'm going to give you until tomorrow
2 afternoon at 5:00 p.m., like everyone else, to submit
3 those revisions. If that is an inadequate amount of
4 time for you to be able to consult, then you'll need
5 to take whatever action you feel is appropriate at
6 that junction. Are there --

7 MS. LARSON: This is Carolyn Larson again.
8 So you would prefer that I try for another 24 hours
9 to reach him, rather than submit today what I think
10 will probably be satisfactory?

11 JUDGE CLARK: Well, I don't think there's
12 any need for you to do it today.

13 MS. LARSON: Okay.

14 JUDGE CLARK: And I'm trying to give you an
15 adequate opportunity, given the circumstances of your
16 client, to try to give him the opportunity to review
17 that. If everyone is willing to accept the testimony
18 of the other two parties by 5:00 p.m. tomorrow
19 afternoon, I don't believe they'll be adversely
20 impacted if they don't get yours today, so I'm just
21 trying to give you an adequate opportunity to consult
22 before you have to submit that.

23 MS. LARSON: Okay.

24 JUDGE CLARK: Obviously, a filing deadline
25 is a deadline.

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1 MS. LARSON: Right.

2 JUDGE CLARK: If you want to do it earlier,
3 that's fine, but later isn't fine.

4 MS. LARSON: Right. Now, if that were done,
5 is there a way for us to handle this so that we don't
6 have to renumber all exhibits?

7 JUDGE CLARK: We're not going to do that. I
8 do like -- I believe it was Mr. Johnson's suggestion.
9 And what we're going to do is tack on these numbers
10 out of order.

11 MS. LARSON: Okay.

12 JUDGE CLARK: So if you would simply, when
13 you submit this either this afternoon or tomorrow or
14 whenever you submit this document, if you will simply
15 let me know the order in which you'll address these,
16 I will be able to appropriately number them and add
17 them to the exhibit list. And they will go with Mr.
18 Leathers' testimony?

19 MS. LARSON: That's correct.

20 JUDGE CLARK: All right. Are there any
21 other procedural matters that we need to address?

22 MR. ZIOBRO: John Ziobro, for the City, Your
23 Honor.

24 JUDGE CLARK: Yes.

25 MR. ZIOBRO: The City's bringing a large

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1 amount of people down to the hearing, and while I
2 respect the mental impressions of every lawyer that's
3 involved in this, if there are, and I'm thinking
4 particularly of the city managers, no need to
5 cross-examine them, I would prefer not making them
6 travel just to authenticate or appear for
7 cross-examination.

8 JUDGE CLARK: So that you would have them
9 appear telephonically to --

10 MR. ZIOBRO: Well, as an alternative, yeah,
11 I would seek to do that. I just -- I have a feeling
12 that, even if they are cross-examined, you're not
13 looking at more than five or ten minutes of
14 cross-examination. None of their evidence is
15 technical. It has more to do with some of the
16 justification for wanting to extend Center Parkway.

17 JUDGE CLARK: All right. Then, by 5:00 p.m.
18 tomorrow afternoon, the parties also need to indicate
19 whether or not they have cross-examination for any of
20 the witnesses. That would apply not only to the City
21 of Kennewick's witnesses, but any other witnesses.
22 If there are no witnesses for which cross-examination
23 will be presented, I assume, then, that no one will
24 object to the admission of their testimony, and we
25 can jump through that rather ministerial task in the

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1 form of a stipulation.

2 MS. LARSON: This is Carolyn Larson. I did
3 have cross-examination questions both for Mr.
4 Darrington and for Mr. Hammond. I guess the question
5 is whether they would need to be physically present
6 for those cross-examination questions. So as you can
7 tell from the cross-examination exhibits that I had
8 proposed to use, I was intending to ask them about
9 portions of their testimony that deal with those
10 photographs, so I was envisioning them being there,
11 but I could think through whether there'd be a more
12 efficient way for those questions to be asked and
13 answered without requiring their presence.

14 JUDGE CLARK: Well, my recollection, and
15 please correct me if it's wrong, is you were
16 uncertain if you were going to use those photographs
17 with Mr. Darrington and you were reasonably certain
18 you were going to use those with Mr. Hammond; is that
19 correct?

20 MS. LARSON: I know that I was going to use
21 Exhibit 2 with Mr. Darrington, and it was less clear
22 to me whether I'd use 3 or 4. It would depend upon
23 whether his -- the scope of his direct testimony was
24 expanded in any way. If it were not -- if he had no
25 more direct testimony, then I was only going to use

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1 Exhibit 2.

2 JUDGE CLARK: And then you would use 2, 3
3 and 4 with Mr. Hammond?

4 MS. LARSON: Yes.

5 JUDGE CLARK: Well, I think that, to the
6 extent that there is examination on the photographs,
7 it would be relatively difficult to do that over the
8 phone. I think that's going to be kind of a
9 difficult thing to do, Mr. Ziobro.

10 MR. ZIOBRO: That's understandable, Your
11 Honor.

12 JUDGE CLARK: And to follow. If the
13 documents weren't photographs, I think that we could
14 probably track Mr. Darrington's testimony pretty
15 easily. So I think that that answers your question.

16 MS. LARSON: Although I'll think -- because
17 I can certainly understand the City's desire not to
18 have two people come out, go across the state to only
19 answer two or three or four questions, I will think
20 between now and 5:00 p.m. tomorrow about whether
21 there's an alternate way that I can get this
22 information.

23 JUDGE CLARK: All right. Thank you. I
24 appreciate that, and I'm certain the City of
25 Kennewick appreciates the savings that that would

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1 inure to the City.

2 Are there any other matters that we need to
3 address this afternoon?

4 MS. LARSON: Yes. In talking about the
5 scope of our direct testimony, one thing that I had
6 been thinking I was going to do, and I believe this
7 is something that we had talked about in prior
8 pre-hearing conferences, was having some sort of
9 demonstrative exhibit to explain how the switching
10 operations take place.

11 I have an enlarged copy of the first exhibit
12 to Mr. Leathers' testimony, which I was hoping could
13 be mounted on a dry erase board, which are metallic
14 -- which are magnetic, and then, with magnets, be
15 able to show the stages of how cars are switched now
16 and how they'd be switched in the future with the
17 crossing in place, and I wanted to verify that this
18 kind of testimony is permissible.

19 JUDGE CLARK: Well, that's certainly not a
20 topic that I noted when I reviewed the transcripts of
21 the pre-hearing conferences thus far. However, it
22 does sound like a demonstrative exhibit on this
23 particular topic would be helpful, given the number
24 of tracks and the number of railroads that are
25 involved and the switching operations that we will be

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1 addressing, so I think that would be helpful.

2 MS. LARSON: Does the Commission already
3 have a large dry erase board, you know, that's
4 magnetic, or would I need to bring one with me?

5 JUDGE CLARK: We have a large board.
6 Whether or not it's magnetic, I do not know, and so
7 --

8 MS. LARSON: Is there someone who I could
9 speak to maybe after this pre-hearing conference to
10 find out?

11 JUDGE CLARK: Yes, if you'll just remain on
12 the line, I will get you an appropriate name and
13 number.

14 MS. LARSON: Okay.

15 JUDGE CLARK: I mean, anyone else can stay
16 on the line if you're interested in this particular
17 conversation. Any other matters that we need to
18 address before hearing?

19 MS. LARSON: I guess I was wondering whether
20 witnesses are excluded when they're not testifying?

21 JUDGE CLARK: I'm not going to sequester
22 witnesses.

23 MS. LARSON: And the location of the
24 hearing, is that in your large meeting area, where
25 the Commission meets, or where would it be?

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1 JUDGE CLARK: Yes, that's in room 206, if
2 you're familiar with the Commission. In you're not
3 familiar with the Commission and our location, there
4 are directions on our Web site that you can obtain so
5 that you can get to the Commission's offices. When
6 you reach the Commission's offices, you'll need to
7 sign in with the reception, and there are stairs
8 immediately to your right. If you follow those, that
9 will be the location of the hearing, in room 206.

10 MS. LARSON: What time will it be?

11 JUDGE CLARK: 9:30.

12 MR. ZIOBRO: Your Honor, John Ziobro, for
13 the City.

14 JUDGE CLARK: Yes, Mr. Ziobro.

15 MR. ZIOBRO: In talking about procedure, I'm
16 assuming you're going to allow an opportunity for
17 some opening remarks by the parties?

18 JUDGE CLARK: Well, ordinarily we do not
19 have opening statements or closing statements in the
20 Commission's proceedings.

21 MR. ZIOBRO: Very good. I just thought, if
22 we did, there's people that might be able to drive
23 down the morning of. 9:30's going to cut it close,
24 but if we weren't actually taking testimony till
25 10:00 or 10:30 -- but that's understandable. That

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1 answers my question.

2 JUDGE CLARK: All right.

3 MS. LARSON: I guess one other question.

4 There is still an outstanding motion to dismiss in
5 this matter that was filed by the Port in February,
6 and I don't believe there was any ruling on it.

7 JUDGE CLARK: All right. Yes, I did notice
8 that on the Commission's docket sheets, and I will
9 have to consult with the administrative law judge
10 assigned to this case before I became assigned.

11 MS. LARSON: Carolyn Larson again. I think
12 I also -- I'm not sure whether the Port has already
13 settled this matter or whether it's still an active
14 participant.

15 MR. JONSON: This is Daryl Jonson, from the
16 Port. John, where are we?

17 JUDGE CLARK: Nothing like being put on the
18 spot.

19 MR. ZIOBRO: Oh, that's okay. I was waiting
20 for Daryl to bring this up. The City of Kennewick
21 has approved a settlement agreement with the Port of
22 Benton. For various reasons, mostly joint funding,
23 we decided to have the signature of the City of
24 Richland on that agreement, and their city council
25 meets -- it's either tonight or tomorrow night.

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1 MR. JONSON: Tomorrow night.

2 MR. ZIOBRO: I expect it to be executed
3 tomorrow night, and that this will conclude any
4 issues between the City and the Port. And I think if
5 that occurs, the Port and the City will enter some
6 form of stipulation that will also resolve the
7 pending motion.

8 JUDGE CLARK: Okay.

9 MR. JONSON: This is Daryl Jonson, for the
10 Port. If I could address that. It's our position
11 that the proceeding is moot because the Port -- the
12 City can't take this right to cross our track unless
13 we agree to it. If we agree to it, then the Port has
14 no interest in it further. We do want to support our
15 lessee, the Tri-City Railway, but we do not intend to
16 participate in this proceeding any further either
17 way, because we don't -- whether to build the thing
18 is up to the City, and while we probably have some
19 strong opinions about that, I don't know that that's
20 within the purview of the Commission.

21 So as it stands, we have agreed with the
22 City of Kennewick, and if Richland endorses the
23 agreement, we would not -- we will not participate
24 any further, the Port won't.

25 MR. THOMPSON: This is Jonathan Thompson,

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1 for the Staff. Would the Tri-City and Olympia
2 Railroad still participate in that event?

3 MR. JOHNSON: This is Brandon Johnson. Yes,
4 yes, we will. The proposed agreement, at least as
5 far as I know, between the City and the Port of
6 Benton is subject to the rights of the railroad.

7 MR. JONSON: This is Daryl Jonson, of the
8 Port. That is correct. We -- the agreement was
9 prepared by us, is there to protect both the rights
10 of the Port and Tri-City Railway. And if that
11 agreement is signed as it now stands, we would
12 consider that that issue adequately protects the
13 Port, certainly subject to the right of the railroad
14 to proceed to protect its interest.

15 MR. THOMPSON: Thank you.

16 JUDGE CLARK: Thank you. And that -- if you
17 could -- Mr. Ziobro, if you could indicate again when
18 that meeting is?

19 MR. ZIOBRO: Tuesday night, I believe they
20 start at 6:30 or 7:00, and so I suppose, along with
21 the other disclosures that need to be made -- well, I
22 guess I can't get that Tuesday by 5:00, but that
23 could be the first item of business Thursday morning,
24 if there's a stipulation to enter.

25 JUDGE CLARK: All right. Now, if the

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1 parties are able to reach agreement, you can file the
2 stipulation at the onset of the hearing.

3 Are there additional matters? All right.

4 Hearing nothing, we're adjourned.

5 (Hearing adjourned at 2:39 p.m.)

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