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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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CITY OF KENNEWICK,	Petitioner,)Docket TR-050967
v.)Volume VI
)Pages 273-385
<hr/>)
PORT OF BENTON and TRI-CITY AND	Respondents.)
OLYMPIA RAILROAD,)
)
<hr/>)
CITY OF KENNEWICK,	Petitioner,)Docket TR-040664
v.) (Consolidated)
)
UNION PACIFIC RAILROAD,	Respondent.)
)
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A hearing in the above-entitled matter was held at 9:30 a.m. on Friday, October 20, 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.

UNION PACIFIC RAILROAD, by Carolyn L. Larson, Attorney at Law, Kilmer Voorhees & Laurick, 732 N.W. 19th Avenue, Portland, Oregon 97209.

Barbara L. Nelson, CCR
Court Reporter

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1 COMMISSION STAFF, by Jonathan Thompson,
2 Assistant Attorney General, 1400 S.W. Evergreen Park
3 Drive, S.W., P.O. Box 40128, Olympia, Washington
4 98504-0128.

5 BNSF RAILWAY COMPANY, by Kevin
6 MacDougall, Attorney at Law, Montgomery Scarp
7 MacDougall, 1218 Third Avenue, Seattle, Washington
8 98101.

9 TRI-CITY AND OLYMPIA RAILROAD, by
10 Brandon Johnson, Attorney at Law, Minnick-Hayner,
11 P.S., 249 West Alder, P.O. Box 1757, Walla Walla,
12 Washington 99362.

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1 JUDGE CLARK: Good morning. It's
2 approximately 9:30, a.m., October 20th, 2006, in the
3 Commission's hearing room in Olympia, Washington.
4 This is the time and the place set for continuation
5 of the hearing in Dockets TR-040664 and Docket
6 TR-050967.

7 Patricia Clark, Administrative Law Judge for
8 the Commission, presiding. The record should reflect
9 that Counsel for the City of Kennewick, Union Pacific
10 Railroad, TCRY, BNSF and Commission Staff are present
11 for this morning's proceeding.

12 When we recessed yesterday afternoon, we had
13 interrupted the presentation of the City of
14 Kennewick's case and reserved the presentation of two
15 witnesses for today -- I believe two witnesses?
16 Correct. Thank you. And so unless there are
17 preliminary matters, we will resume with the City of
18 Kennewick's case. Are there any preliminary matters?

19 MR. ZIOBRO: The City has just one.

20 JUDGE CLARK: Yes.

21 MR. ZIOBRO: Yesterday we presented a draft
22 or unsigned settlement agreement between the City and
23 Port of Benton.

24 JUDGE CLARK: Yes.

25 MR. ZIOBRO: And it was the recommendation

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1 that we not file it until it is signed and complete.
2 And yesterday, Exhibit 3 was missing, which was a
3 legal description of the actual crossing that the
4 Port is granting to the City of Kennewick.

5 JUDGE CLARK: Yes.

6 MR. ZIOBRO: I did receive an e-mail from
7 the Port's attorney. At the time of execution, it
8 was not drafted, and so it would be impossible to
9 have a full and complete version of that agreement
10 for filing.

11 I wanted to let the parties know. And since
12 we're trying to get a complete document, perhaps what
13 might happen faster is if the lawyers prepared a
14 stipulation and order and filed it on Monday. That
15 may occur before a legal is drafted and a full and
16 complete settlement agreement is filed, but I would
17 do whatever best assisted the Commission and the
18 parties.

19 JUDGE CLARK: All right. Does anyone have
20 any input on this issue? I don't think having the
21 legal description of the crossing -- I'm somewhat
22 surprised that the parties are willing to execute an
23 incomplete document, but that having been said, I
24 don't think the missing legal description is going to
25 be critical for the purpose for which it's presented,

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1 which is simply to represent, I assume, that the
2 interest of the Port of Benton and City of Kennewick
3 and -- Cities of Kennewick and Richland has now been
4 satisfied. Is that the sole purpose?

5 MR. ZIOBRO: That is correct, Your Honor.

6 JUDGE CLARK: All right. Is there any party
7 who believes their interest will be adversely
8 affected by not having an adequate opportunity to
9 review the legal description? People are shaking
10 their heads negatively, which is not picked up
11 particularly well by the microphones, but -- all
12 right. It doesn't appear that that would create a
13 problem.

14 So when you have an executed document, I
15 think that would be fine. And then I would simply
16 suggest that when you do obtain Exhibit 3, that you
17 file that. I do not believe it's necessary for you
18 to have to go through filing a separate stipulation
19 regarding that particular topic between you and the
20 Port of Benton Counsel, Mr. Jonson.

21 MR. ZIOBRO: Great, thank you.

22 JUDGE CLARK: And are you ready to call your
23 next witness?

24 MR. ZIOBRO: City's ready.

25 JUDGE CLARK: Thank you.

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1 MR. ZIOBRO: City calls John Darrington.

2 JUDGE CLARK: Thank you.

3 Whereupon,

4 JOHN C. DARRINGTON,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7 JUDGE CLARK: Thank you. Please be seated.

8 Mr. Ziobro.

9 MR. ZIOBRO: Thank you, Your Honor.

10

11 DIRECT EXAMINATION

12 BY MR. ZIOBRO:

13 Q. Good morning. Can you state your name for
14 the record and spell your last, please?

15 A. My name is John C. Darrington,
16 D-a-r-r-i-n-g-t-o-n.

17 Q. And can you tell the Commission how you're
18 employed?

19 A. I'm the city manager of Richland,
20 Washington.

21 Q. And have you previously prepared and filed
22 testimony in this matter?

23 A. I have.

24 Q. And have you had an opportunity to review
25 that testimony since it was signed in June of 2006?

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1 A. Yes, I reviewed it again this morning.

2 Q. Okay. Is there anything in that testimony
3 that is either inaccurate or that you would like to
4 change as you sit here today?

5 A. No, there's not.

6 MR. ZIOBRO: Thank you. I offer Mr.
7 Darrington for cross-examination.

8 JUDGE CLARK: All right. Thank you. Just
9 to facilitate cross-examination, if you could provide
10 Mr. Darrington with a copy of his pre-filed
11 testimony, just in case there are any references to
12 specific pages, that might be helpful. Thank you.
13 Ms. Larson.

14 MS. LARSON: Thank you.

15

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

17 BY MS. LARSON:

18 Q. Good morning, Mr. Darrington.

19 A. Good morning.

20 Q. My questions of you pertain to your -- the
21 answer to Question Number Five, in which you were
22 asked about the benefits of this Center Parkway
23 Extension to the City of Richland. And your response
24 was that it would facilitate new commercial and
25 retail development along Tapteal Drive, and also that

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1 the improved traffic circulation would enhance local
2 residents' quality of life by making their trips to
3 the Tapteal Business Park easier and safer.

4 My questions have to do with that latter
5 sentence. If I may approach you with this map, I
6 would like some further explanation.

7 JUDGE CLARK: Okay. Before you approach
8 him, could you indicate for the record what exhibit
9 you're --

10 MS. LARSON: Exhibit Number 2.

11 JUDGE CLARK: Thank you.

12 MS. LARSON: May I borrow your microphone?

13 MR. ZIOBRO: Yep.

14 Q. Mr. Darrington, when you said that the
15 improved traffic circulation would enhance local
16 residents' quality of life by making their trips to
17 the Tapteal Business Park easier and safer, were any
18 of those residents that you were talking about
19 depicted on Exhibit 2?

20 A. This is a very early map. There's much more
21 development that's occurred than what is shown on the
22 map.

23 Q. Okay. But where -- which residents were you
24 talking about that would have easier access to
25 Tapteal Business Park over this crossing? Are they

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1 depicted on -- are their homes depicted on this map?

2 A. No, I think the statement has to do with the
3 general public that would utilize these two retail
4 commercial areas, whether they be in Richland or in
5 Kennewick, so it would be more of an area-wide type
6 of facilitation.

7 Q. What kind of trips did you have in mind when
8 you're talking about facilitating trips to Tapteal?
9 Coming from where?

10 A. Well, the people could be coming from the
11 Gage area here by the mall, going across to the
12 Tapteal business area, or people could be coming in
13 from the Tapteal business area and going across
14 Center Parkway into the mall.

15 Q. When you were considering residents' quality
16 of life by making this trip easier, did you also
17 consider the quality of life of the residents who
18 live in the development that is between the Port of
19 Benton tracks and the Union Pacific tracks, that
20 triangular area?

21 A. Yes.

22 Q. With the present application that provides
23 for four railroad crossings, wouldn't that push
24 refrigerator cars closer to all those residents?

25 A. You know, I think that's possible.

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1 Obviously, we don't make the decisions on where the
2 Union Pacific puts their cars, but certainly that is
3 possible.

4 Q. Was that taken into consideration when
5 proposing a four-track crossing?

6 A. You mean the impact on the citizens?

7 Q. Yes.

8 A. I believe it was.

9 MS. LARSON: Thank you. No further
10 questions.

11 JUDGE CLARK: Any inquiry, Mr. Johnson?

12 MR. JOHNSON: Yes, I do, Your Honor. Thank
13 you.

14

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

16 BY MR. JOHNSON:

17 Q. Would it be a fair statement, Mr.
18 Darrington, that the primary benefit here for the
19 City of Richland is economic?

20 A. There are some economic -- you know, there's
21 two sides to it. There's the economic benefits and
22 then there's the traffic flow benefits.

23 Q. And the economic benefit is to further
24 development of the business area on Tapteal?

25 A. Well, I think not only Tapteal, but would

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1 facilitate development along Gage. There's some
2 areas of retail that are further west on Gage that
3 could be benefited by this crossing at Center
4 Parkway, but I think primarily it would be the
5 Tapteal area.

6 Q. And that Tapteal area is developing right
7 now without the crossing; isn't that true?

8 A. It has developed to an extent, but there's
9 still a lot of area that hasn't developed yet.

10 Q. But it's a fair statement, isn't it, over
11 the last few years, the development just continues to
12 creep along west along Tapteal; isn't that right? In
13 fact, the map that you were looking at, Exhibit 2,
14 you said was old, because it didn't show all of the
15 development that's there now.

16 A. That's correct, it does not show all the
17 development that's there.

18 Q. And that map was -- the date on that is June
19 2004, so that's only two years ago; correct?

20 A. The map that I was just shown?

21 Q. Yeah, if you look at the very bottom
22 right-hand corner, it looks like it was provided by
23 SCM Consultants, and it's really small font, but it
24 looks like June 2004 to me.

25 A. Yes, it does say June 2004, if I can read --

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1 yes, it does. So your question, again? Excuse me.

2 Q. Is that since June 2004, there's been -- you
3 said this was an -- you called this an older,
4 out-of-date map?

5 A. Yes, that's right.

6 Q. So development is occurring right now?

7 A. There has been some development. Macy's
8 Furniture Store's gone in, there's another furniture
9 store under construction, and there's also -- well,
10 those are the two. Those are the two that are --
11 there's one furniture store under construction. The
12 other one is in place, the Macy's. It's been there
13 about a year.

14 Q. And the quality of life you were referring
15 to was the ease that residents would have in
16 traveling from one commercial zone to the other?

17 A. Yes.

18 Q. How did you measure that benefit?

19 A. I think the measure of the benefit is the
20 increase in retail sales. The way I view it is that
21 if you have adequate transportation between the
22 Tapteal development and the mall development, it
23 makes the economic core, the synergy of a retail
24 area, operate more like one, rather than two separate
25 areas. So it has a real plus benefit to both of the

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1 retail centers, the one in Kennewick and the one in
2 Richland.

3 Q. So the benefit is more to the retail
4 centers? Because your statement is that it would,
5 and I'll quote you, enhance local residents' quality
6 of life?

7 A. Oh, without a doubt. And I can explain
8 that. What that means is, in terms of how we finance
9 things in local government, we have property taxes,
10 we have utility taxes, and we have sales and use
11 taxes, and the sales and use taxes are based upon
12 point of sale, so if we're able to develop more
13 retail within our area and have a solid retail area,
14 then that generates money that we can use to hire
15 more police officers, more fire fighters, to keep up
16 city parks and playgrounds, and to just improve the
17 quality of life of all of our citizens.

18 Q. So it will make it easier for them to spend
19 money, and the more money they spend, the better off
20 they are, in a roundabout way?

21 A. Yes, in a roundabout way, that's true.
22 That's one way that they could help pay for the
23 infrastructure of government that's there to support
24 them.

25 Q. But there's no doubt that that development,

0288

1 that growth, is occurring even today without the
2 crossing?

3 A. There is some level of growth that is
4 occurring, but there is a lot of area that is still
5 open.

6 Q. You also state that adding -- extending
7 Center Parkway will make these trips not only easier,
8 but safer. Tell me how residents who now travel
9 across a railroad crossing over four tracks that
10 includes switching activity is safer?

11 A. I guess, from my observation, the switching
12 that occurs there is -- it's infrequent at best.
13 Now, I speak from the context of somebody who was the
14 city manager of Gillette, Wyoming, where there was a
15 lot of switching that occurred in the downtown area,
16 and someone who was a city manager of Rawlins,
17 Wyoming, where there's a lot of switching in the
18 downtown area. This is relatively minor in
19 comparison to those situations.

20 Q. Okay. But that doesn't answer my question.
21 The question is how does having residents go over
22 railroad crossings that include switching activity,
23 regardless of the volume of switching activity, how
24 is that safer than not going over a railroad
25 crossing?

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1 A. Well, I think volume is a real key to this.
2 If there's a lot of volume, there's a lot of train
3 traffic. Then there are a lot of opportunities, if I
4 could use that term, for a conflict between rail
5 traffic and vehicular traffic. But my point is that
6 there isn't a great deal, in comparison to my
7 experience in other areas.

8 Q. But you'd agree, would you not, a road that
9 doesn't have a railroad crossing is going to have a
10 less opportunity for railcar and automobile
11 collisions than a road that does have a railroad
12 crossing?

13 A. That's correct.

14 Q. The goal of this is to increase traffic in
15 the area; correct? I mean, that's the primary goal
16 for everything you've talked about, increasing
17 business, alleviating congestion. The whole idea
18 here is to get more cars using this road; is that a
19 fair statement?

20 A. I think that's part of the rationale. We
21 want to have a circular traffic pattern between
22 Columbia Park -- or Columbia Center Boulevard and
23 Center Parkway. Any -- any transportation system
24 that has a circular movement to it can move traffic
25 more efficiently and better and safer than if you

0290

1 just have one way to move traffic.

2 Q. And that will be achieved by putting more
3 cars on this new road?

4 A. There are some benefits to the two areas if
5 we put traffic on that road, yes.

6 MR. JOHNSON: That's all the questions I
7 have.

8 JUDGE CLARK: Any inquiry, Mr. MacDougall?

9 MR. MacDOUGALL: I have no questions, Your
10 Honor. Thank you.

11 JUDGE CLARK: Mr. Thompson.

12 MR. THOMPSON: Yeah, I just have a few
13 clarifying questions.

14

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

16 BY MR. THOMPSON:

17 Q. My name's Jonathan Thompson, and I'm the
18 lawyer for the Commission Staff, so --

19 A. Okay. Thank you.

20 Q. On page two of your testimony, Mr.
21 Darrington, Question Number Four, where it says, Can
22 you explain how this project will be funded, you say
23 it will be -- that they'll be funded through a
24 combination of city revenues, private land donations
25 and privately financed improvements and state and

0291

1 federal transportation grants.

2 I take it that the private land donations
3 part is -- does that refer to donated right-of-way by
4 the property owners?

5 A. That's correct.

6 Q. And what does the privately-financed
7 improvements refer to?

8 A. I believe that refers to the section of
9 Center Parkway from Tapteal Drive to the railroad
10 that has been completed by Mr. Young, the developer
11 in Tapteal.

12 Q. Was that through sort of an impact fee sort
13 of arrangement or for --

14 A. He -- in order to develop that parcel that
15 has the Holiday Inn Express, he was required to
16 extend the street for that purpose.

17 Q. I see. And you've mentioned his name in
18 another part of your testimony. Maybe if we could
19 refer again to the Exhibit Number 2?

20 A. Okay.

21 Q. The map -- or aerial photo, rather. You've
22 referred to his name as the property owner, and then
23 also to Tapteal Business Park. Are those sort of one
24 and the same?

25 A. Yes.

0292

1 Q. Okay.

2 A. He is the owner of the Tapteal Business Park
3 that he has not already sold to other parties or
4 leased to other parties. I'm not sure of his
5 relationship with the other parties, the financial
6 relationship, but I assume that there's either a
7 long-term lease or a sale.

8 Q. Okay. And does it -- what's the extent of
9 that Tapteal Business Park?

10 A. It goes all the way to the -- I guess that
11 would be to the west, which would be to Steptoe.

12 Q. And then on the east, what, to?

13 A. It would go to Columbia Center Boulevard. I
14 believe that that's the other end of it, is right at
15 that point.

16 Q. Okay.

17 A. And then it's bordered by the canal on the
18 north.

19 Q. What -- when you refer to state and federal
20 transportation grants, which -- what type of grants
21 are you referring to?

22 A. TIB grants, and I think we have a curb grant
23 in there, as well.

24 Q. Okay. Do you know what the criteria are for
25 those grants?

0293

1 A. I wouldn't be the best one to testify on
2 that. There's probably others that have been here
3 that could have answered those questions better than
4 myself.

5 Q. Okay. And just one clarifying question.
6 Neither of the cities at this point are -- or perhaps
7 ever, I don't know, are asking the railroad to pay
8 for any of the construction or improvements that are
9 being proposed here; correct?

10 A. That's correct.

11 MR. THOMPSON: Okay. Thank you. That's all
12 I have.

13 JUDGE CLARK: I have just a couple of
14 questions so that I can visualize this.

15

16 E X A M I N A T I O N

17 BY JUDGE CLARK:

18 Q. In response to some inquiry from Mr. Johnson
19 and Mr. Thompson, you were talking about the
20 additional development in this particular area. When
21 I look at Exhibit 2, is the Macy's Furniture Store
22 and the furniture store that's under construction to
23 the west of the Holiday Inn Express, or where is that
24 located?

25 A. The Macy's store would be located to the

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1 west of the Center Parkway, in this area right here.
2 The furniture store that's under construction is
3 really right next to it, to the east. Then I don't
4 think this is showing Circuit City. It's hard for me
5 to tell, because --

6 Q. Okay. The record should reflect that Mr.
7 Darrington is referring to that area on Exhibit 2
8 which is north of Tapteal Drive and slightly north
9 and east of the Holiday Inn Express and Home Depot.
10 And that was my other question. You mentioned
11 Circuit City. That is some other development that
12 has been generated along this area?

13 A. Yes, that's correct. Circuit City and
14 Staples are two other developments that have been in
15 place there for some time, which really surprises me,
16 because I would think this June 2004 map would pick
17 those up, because they've been -- they've been in
18 place prior to 2004.

19 Q. They were in place prior to 2004?

20 A. That's correct.

21 Q. All right. In response to some inquiry from
22 Ms. Larson regarding the residents in the area that
23 would be benefiting from this particular road
24 extension, you indicated that the map didn't reflect
25 some of those. Is there additional residential

0295

1 development in this area, as well, that is not
2 reflected on Exhibit 2, and if there is, where is
3 that located?

4 A. There is -- there is residential
5 development, but it's quite a ways away from Center
6 Parkway. It would be more over -- this is Steptoe
7 Drive.

8 Q. Right.

9 A. -- or Street through here, so it would be to
10 the west of it up on Bella Rive. There's some
11 residential development, which would be, what, a mile
12 or so from Center Parkway. Most of the development
13 in this area has been commercial.

14 Q. All right. I think my other questions have
15 been answered, but let me check. Oh, that was the
16 other thing I was interested in, was some
17 approximation of the distances, and I'm interested
18 in, if you know, approximately how far it is from
19 Center Parkway to Columbia Center Boulevard?

20 A. Hmm. Approximately, I would say, a quarter
21 of a mile.

22 Q. Quarter of a mile?

23 A. Now, that's purely a guess.

24 Q. I understand.

25 A. I'm not an engineer.

0296

1 Q. I'm not asking for --

2 A. Okay.

3 Q. -- for miles and decimal points or
4 something.

5 A. Okay. Thank you.

6 Q. I just wanted to know approximately how far
7 that is. And if you know, approximately how far is
8 it from Center Parkway to Steptoe Street?

9 A. I believe that's about three-quarters of a
10 mile.

11 JUDGE CLARK: Thank you very much. I
12 appreciate that clarification. Is there any
13 redirect?

14 MR. ZIOBRO: I may have two questions, Your
15 Honor.

16

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

18 BY MR. ZIOBRO:

19 Q. I'm going to hand you what's been marked as
20 Exhibit 21. I'm going to represent to the Commission
21 that that's a more updated aerial map of the area.
22 Could you start with identifying the structure that
23 appears to be north of what's marked by a yellow box
24 as Exhibit 4?

25 A. You mean as Photo Number 4?

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1 Q. Yeah.

2 A. That is Macy's Home Furnishings.

3 Q. Okay. And then the new furniture store
4 that's under construction, can you identify where
5 that is in relation to the Macy's you've identified?

6 A. It's due east of Macy's.

7 Q. Would it be close to where the photo five
8 box is on that exhibit?

9 A. Yes. Yes, sir.

10 Q. Okay. And then if you can, if you recognize
11 it, can you identify where Circuit City is located?

12 A. I can see it. Circuit City would be the
13 next building to the east.

14 MR. ZIOBRO: Okay. Thank you.

15 JUDGE CLARK: You might want to just
16 describe for the clarity of the record a little bit
17 more about where Mr. Darrington's referring on the
18 map so that the record is clear.

19 Q. If you were to draw a line from Macy's to
20 where the new furniture store is to Circuit City,
21 would it essentially be a straight line that runs
22 parallel to Tapteal Drive?

23 A. That's correct.

24 Q. It would in essence, then, be the three
25 adjacent lots to one another on Tapteal?

0298

1 A. Yes, sir.

2 Q. Okay.

3 JUDGE CLARK: And just for the clarity of
4 the record, Tapteal Drive is the roadway that is
5 indicated on this aerial photograph as being
6 partially covered by the designation of Photo Number
7 Five?

8 MR. ZIOBRO: That is correct.

9 Q. Mr. Darrington, are you involved at all in
10 any of the discussions with potential developers on
11 Tapteal Drive?

12 A. You mean specific or with, like, Mr. Young?
13 I mean, we have regular meetings with Mr. Young.

14 Q. Have you had feedback on the importance of
15 this extension from Mr. Young or any other developers
16 in the area?

17 A. Yes, sir.

18 Q. Could you describe what type of comments or
19 what the comment is related to this proposed
20 extension and how it affects the development in the
21 area?

22 A. Mr. Young, and I might say even the fellow
23 who has developed the Holiday Inn Express I think has
24 some additional lots there, have led us to believe
25 that the failure of Center Parkway to go through is a

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1 real encumbrance to their ability to develop the
2 commercial property in the Tapteal Business Park, and
3 that, if this was to go through, then that would
4 facilitate greatly their efforts to expand that
5 retail center.

6 MR. ZIOBRO: Thank you. I have no further
7 questions.

8 JUDGE CLARK: Thank you for your testimony,
9 Mr. Darrington. Mr. Ziobro, would you call your next
10 witness, please?

11 MR. ZIOBRO: Your Honor, I'm about 90
12 percent sure Mr. Short's in the room, but he had a
13 beard last time I saw him.

14 MR. SHORT: Yes, I am.

15 MR. ZIOBRO: City calls Mr. Short.

16 JUDGE CLARK: Mr. Short, would you raise
17 your right hand, please?

18 Whereupon,

19 WAYNE GORDON SHORT,
20 having been first duly sworn, was called as a witness
21 herein and was examined and testified as follows:

22 JUDGE CLARK: Thank you. Please be seated.

23

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

25 BY MR. ZIOBRO:

0300

1 Q. Good morning, Mr. Short.

2 A. Good morning.

3 Q. Can you state your name for the record,
4 please?

5 A. Wayne Gordon Short.

6 Q. Tell us how you're employed.

7 A. I am a vice president with HDR Engineering.

8 Q. Without the beard, you look like a very
9 young man for a vice president in a company.

10 A. Thank you.

11 Q. Have you previously submitted testimony in
12 this matter?

13 A. Yes, sir.

14 Q. I noticed you don't have it in front of you.
15 I'm going to hand you a copy of that. And you filed
16 this very recently; correct?

17 A. Yes.

18 Q. And you've had an opportunity to review it?

19 A. Yes, I have.

20 Q. And is there any corrections or errata that
21 needs to be made to that document?

22 A. No.

23 MR. ZIOBRO: Thank you. I'd like to offer
24 Mr. Short for cross-examination.

25 JUDGE CLARK: Thank you. Ms. Larson.

0301

1

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

3 BY MS. LARSON:

4 Q. Good morning, Mr. Short. I have some
5 questions for you about the exhibits that are
6 attached to your testimony. Those exhibits do not
7 show railroad right-of-way property lines, do they?

8 JUDGE CLARK: Do you have those exhibits?

9 THE WITNESS: Not with me.

10 MR. ZIOBRO: Would it help if I put --

11 JUDGE CLARK: We have them. We don't need
12 that. But if you could give him a copy of the
13 documents, it's a two-page document that we have
14 marked as Exhibit 49, I think it would help Mr.
15 Short.

16 THE WITNESS: If I may, I brought a copy in
17 my briefcase.

18 MR. ZIOBRO: You're more prepared than I,
19 Mr. Short, on that one.

20 JUDGE CLARK: All right.

21 THE WITNESS: Okay. The question, again?

22 Q. Are the railroad property lines shown on
23 this exhibit?

24 A. Partially, they are. I can see --

25 Q. Can you describe to me where they are? I

0302

1 don't see any myself.

2 A. Well, you can see the cul-de-sac on the
3 drawing and you can see grading -- from the
4 cul-de-sac, there's a number of lot lines, okay.
5 Adjacent -- parallel to the track, perpendicular to
6 the lot lines, you see the railroad right-of-way
7 lines for the Tri-City Railroad, as well as Union
8 Pacific's main line right-of-way.

9 Q. What about on the north side?

10 A. On the north side, they don't show extending
11 all the way through. They basically end at the name
12 -- the call-out on the drawing says end track removal
13 station 1285, plus 35.43.

14 Q. And on the north side of the right-of-way,
15 does it show the property line for the Port of
16 Benton's right-of-way?

17 A. Yes, it does. You can see there's a
18 call-out that says Richland-Kennewick City Line. I
19 believe that is also their right-of-way line.

20 Q. How wide would that make the Port's
21 right-of-way?

22 A. Based on the scale of the drawing, it looks
23 like it appears to be approximately a hundred foot
24 wide.

25 Q. Have you personally been to this site?

0303

1 A. Yes, I have.

2 Q. There's quite an elevation difference, isn't
3 there, between the railroad and the Office Depot
4 site?

5 A. Yes, there is.

6 Q. In your proposed traffic track extension, is
7 there room for a retaining wall or slope easements
8 within the existing right-of-way?

9 A. This was developed at the conceptual level.
10 We really didn't proceed with preliminary or final
11 engineering. I think we could probably fit it in.
12 It is an opinion, yes.

13 Q. What is the elevation difference? Do you
14 have any recollection?

15 A. I believe we were talking about raising or
16 lowering the tracks by four to six feet. I would
17 have to check on that one. It's been a while since
18 we've worked on this job. It's been 2002.

19 Q. I also noticed that it appears the -- one of
20 the new switches that you have proposed is on a
21 curve, the one on the Port of Benton track that is to
22 the west, the west edge of the new siding; is that
23 true?

24 A. It's on a tangent within the curve. In
25 other words, we took -- we've taken the curve,

0304

1 flattened it out so we could drop the switch in. So
2 technically, it's not in the curve.

3 Q. And on the east end of that siding, is that
4 switch within 150 feet of the bridge?

5 A. Well, let me give you a precise answer here.
6 It's within 50 feet -- it's 50 feet -- 50 feet from
7 the bridge.

8 Q. Are you aware that Union Pacific has
9 engineering standards that do not allow switches
10 closer than 150 feet from the edge of a bridge?

11 A. Yes, I am, and they also have numerous
12 locations where they have those situations and we
13 typically would put a walkway on that. I'm a former
14 UP --

15 Q. It's been about almost 20 years since you
16 were with UP; is that right?

17 A. That's correct.

18 Q. And do you know the reason why Union Pacific
19 doesn't like switches close to bridges?

20 A. Well, there's a number of reasons. One is,
21 of course, the switchmen out there walking the track,
22 safety. Other one is any time you have a switch
23 located near a bridge, you have issues with
24 maintenance and construction.

25 Q. Isn't there also a concern that switches are

0305

1 a point where derailments can occur, and so having a
2 switch close to a bridge could create a greater risk
3 of a train derailing on the bridge?

4 A. Well, as with all things, there's a number
5 of conditions that affect that. Speed of the track
6 is a prime concern in the situation you described.
7 This track is not a high-speed mainline track. It's
8 a very low-speed, you know, light industrial branch
9 line with primarily switching movements across it, so
10 the risk of a derailment at this location because of
11 the switch itself, in my opinion, is pretty minor.

12 Q. So you don't think that's one of Union
13 Pacific's reasons for not wanting a switch within 150
14 feet of a bridge?

15 A. In this location, the reason doesn't
16 increase the risk of derailment, in my opinion, that
17 significantly.

18 Q. Significantly. Is there any way to quantify
19 that?

20 A. Well, no, it's really very difficult to say
21 why derailment happens when you're operating over a
22 turnout. Speed of the turnout's restricted to ten
23 miles an hour. Now, is it because the switch was
24 there or is it because the track wasn't maintained or
25 is it because the wheel fell off the train or was it

0306

1 because the train crew didn't properly handle the
2 cars? There's a lot of reasons for a derailment to
3 happen. It can happen on a tangent track in the
4 middle of Nebraska.

5 Q. You testified that there's other locations
6 where there are turnouts on curves, but would you say
7 that, simply because the situation exists someplace
8 else, that that makes it a good reason to continue
9 that practice?

10 A. As with all standards, with all guidelines,
11 you know, you have to have a practical approach to
12 what you're doing. In particular, a project I did
13 for Union Pacific down at the Port of Seattle, their
14 rail dock at Pier 15 and a half, every one of those
15 seven and a half turnouts, number seven turnouts were
16 actually physically placed in the curve and there was
17 a total of, if I remember, nine or ten turnouts.
18 Now, that's a situation where the Port felt property
19 was extremely valuable and space is extremely
20 limited, and an alternative would be not to develop
21 the Terminal 18 project on Harbor Island that the
22 Port of Seattle spent \$280 million on.

23 So there's always exceptions to the rule,
24 and it's my job, as a professional engineer, to
25 analyze the risk and determine if it's acceptable.

0307

1 Q. Would either of your track alternatives
2 provide as much room for car storage as currently
3 exists at Richland Junction?

4 A. No.

5 Q. Did you do any noise study to assess how
6 much diminution of noise there would be for
7 residences if the switching operations were simply
8 moved to the east side of Center Parkway?

9 A. Not to my knowledge.

10 Q. Did you do any assessment of the impact on
11 the Holiday Inn Express if those interchange tracks
12 were placed on the east side of Center Parkway -- or
13 Center Extension?

14 A. There again, not to my knowledge.

15 Q. Thank you. That's all my questions.

16 A. Thank you.

17 JUDGE CLARK: Any inquiry, Mr. Johnson?

18 MR. JOHNSON: Yes. Thank you, Your Honor.

19

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

21 BY MR. JOHNSON:

22 Q. Are you familiar with the City's petitions
23 in this matter?

24 A. Somewhat, yes.

25 Q. Do you know if those petitions ask the

0308

1 Commission to make a ruling that would require any of
2 the railroads involved to adopt these track
3 alternatives?

4 A. Not to my knowledge.

5 MR. JOHNSON: That's all I have.

6 JUDGE CLARK: Any inquiry, Mr. MacDougall?

7 MR. MacDOUGALL: No, Your Honor. Thank you.

8 JUDGE CLARK: Mr. Thompson.

9 MR. THOMPSON: None. Thank you.

10

11 E X A M I N A T I O N

12 BY JUDGE CLARK:

13 Q. I have, I think, just a couple of questions
14 for you, Mr. Short, to make sure I understand what
15 the testimony is.

16 Okay. I'm looking at the bottom of page
17 seven, and it's in response to your Question Number
18 11, where you're describing some of the other
19 at-grade operations that are located within the state
20 of Washington. And I'm particularly interested in
21 the one that you discussed first, which is the one in
22 Tacoma across East D Street.

23 A. Yes.

24 Q. You indicated, about line 23, that the
25 street is currently being grade separated?

0309

1 A. Yes, it is.

2 Q. Okay. So that particular crossing is being
3 converted from an at-grade to a separated?

4 A. Yes, after 20 years of active planning to
5 get a grade separated, yes.

6 Q. Okay. So the current operations that occur
7 at this particular crossing are currently occurring
8 at grade?

9 A. Yes.

10 Q. They're ongoing. There are some switching
11 operations now at that --

12 A. Absolutely.

13 Q. Okay. So now you've piqued my curiosity.
14 After spending 20 years to get this crossing at
15 grade, why is it now be switched to grade separated?

16 A. Because as the area has developed and
17 increased traffic on the rail line, the Port of
18 Tacoma and Ports of Seattle, business has grown
19 tremendously. We've also added the Sounder commuter
20 rail traffic down there and the state Cascades Amtrak
21 service has grown in this area. It's now become so
22 congested at that crossing, it's literally closed 45
23 minutes any hour of the day. Now, that situation was
24 pretty much the way it was when I got here 13 years
25 ago from Houston, Texas, and you know, finally got

0310

1 funding for that project at the -- with the Fast
2 Corridor program a few years back.

3 Q. I see. And when you talk about this one
4 being converted to grade separated, is it above or
5 below grade?

6 A. The road goes above the tracks in this
7 location.

8 JUDGE CLARK: All right. Thank you. I
9 appreciate that. Any redirect, Mr. Ziobro?

10 MR. ZIOBRO: No, I don't think so. Thank
11 you.

12 JUDGE CLARK: Thank you for your testimony.

13 THE WITNESS: Thank you.

14 MR. JOHNSON: Your Honor, could I request we
15 take a two-minute recess?

16 JUDGE CLARK: Actually, this would be an
17 appropriate time for a ten to 15-minute recess.

18 MR. JOHNSON: That would be even better.
19 Thank you, Your Honor.

20 (Recess taken.)

21 JUDGE CLARK: All right. We're back on the
22 record. Mr. Ziobro.

23 MR. ZIOBRO: Yes, Your Honor, the City's
24 concluded its presentation of evidence.

25 JUDGE CLARK: Thank you. Ms. Larson.

0311

1 MS. LARSON: I would like to call Lloyd
2 Leathers.

3 JUDGE CLARK: Thank you.
4 Whereupon,

5 LLOYD L. LEATHERS,
6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8 JUDGE CLARK: Thank you. Please be seated.
9

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

11 BY MS. LARSON:

12 Q. Good morning, Mr. Leathers.

13 A. Good morning.

14 Q. Would you please state your full name and
15 business address for the record?

16 A. My name is Lloyd L. Leathers, my business
17 address is P.O. Box 69, Hermiston, Oregon, 97838.

18 Q. Thank you. Were you asked by me to review
19 how the City of Kennewick's proposal for a new
20 crossing would affect UP's use of its interchange
21 tracks?

22 A. Yes, I reviewed it many times.

23 Q. And did you prepare exhibits in this case,
24 including testimony and exhibits that were marked A,
25 B, C, D and E?

0312

1 A. Yes, I do have some exhibits, yes.

2 Q. Do you have any changes or corrections to
3 those exhibits?

4 A. No.

5 Q. Are they true and correct, to the best of
6 your knowledge?

7 A. Yes.

8 Q. If I asked you the same questions today as I
9 did when you prepared your testimony originally,
10 would your answers be the same?

11 A. Some of the car counts have fluctuated.

12 Q. Since the --

13 A. Since the original statements were made,
14 yes.

15 Q. Okay. To illustrate some of the testimony
16 that you have given before, we'll be using this dry
17 erase board. I will not ask you any questions in
18 addition to what is in the written testimony, but
19 simply want you to illustrate what the movements were
20 that were depicted in that testimony.

21 A. Okay.

22 JUDGE CLARK: And I just want to caution
23 you, Mr. Leathers. If you're standing next to the
24 exhibit, unless you're relatively close to the
25 microphone, it's going to be difficult for us to pick

0313

1 up your testimony.

2 THE WITNESS: Okay.

3 Q. You stated on page two, beginning at lines
4 25 and 26, that the procedure for Union Pacific
5 picking up and setting out cars would vary depending
6 on how many cars were waiting for UP on the UP pass?

7 A. Correct.

8 Q. You said if the cars to be picked up weren't
9 too numerous, the switch crew, which is approaching
10 from the east, would connect into the standing cars
11 waiting for pickup on the UP line.

12 A. That's correct. If the car --

13 Q. What are you showing there with the yellow?

14 A. The yellow is the cars waiting to be picked
15 up.

16 JUDGE CLARK: Well, the record should
17 reflect that you have placed a yellow railcar on the
18 UP pass line.

19 THE WITNESS: The black square would
20 indicate a locomotive, also placed on the -- coming
21 into the siding.

22 JUDGE CLARK: Thank you.

23 THE WITNESS: And the other yellow is the
24 cars being pulled in from Wallula for the Tri-City
25 Railroad.

0314

1 JUDGE CLARK: Thank you.

2 Q. Excuse me. Would it be better to use a
3 different color for those being picked up and
4 delivered?

5 A. Any kind of peach or orange color is the
6 cars being delivered from us.

7 JUDGE CLARK: Thank you.

8 Q. You had stated that the first step would be
9 that the switch crew, which is approaching from the
10 east, would connect into the standing cars waiting
11 for pickup on the UP pass?

12 A. That's correct.

13 Q. And that the switch engine would then
14 continue westbound until the cars being delivered to
15 the Tri-Cities cleared the switch at the east end of
16 the pass. Then it would proceed westbound beyond the
17 switch at the west end of the UP pass onto the tail
18 track of the UP main?

19 A. That's correct. As we're moving into the
20 pass, we'd cut off the cars that belonged to the
21 Tri-City Railroad for interchange and we would shove
22 the other cars out, line the switch and proceed back
23 the main line.

24 Q. With the locomotive on the front?

25 A. With the locomotive on the east end of the

0315

1 cars proceeding back to Wallula.

2 JUDGE CLARK: Okay.

3 Q. What is the -- the procedure, if there's
4 more than nine or ten cars to pick up would be what?
5 Why don't you use longer strips of metallic to show
6 that.

7 A. We would still proceed and couple into the
8 cars and we would pull them east out onto the main
9 line.

10 Q. You can show that. And the next step?

11 A. At that point, we'd line the switch and
12 would shove the cars that we pulled out that were too
13 long to run around, we would shove those down --

14 Q. With the locomotive?

15 A. -- with the locomotive onto the Tri-City
16 Railroad. At that point, we would cut them off, make
17 a reverse movement eastward, come back out. We'd
18 come back out and then we'd line the switch again and
19 pull into the pass, basically doing the same thing we
20 did on the inbound. We would cut these cars off for
21 the Tri-City Railroad to come get and we would take
22 the engine, come back out onto the tail track, line
23 the switch, proceed east, and then we would recouple
24 to the cars on the Tri-City Railroad and then we
25 would head back to Wallula and onto Hinkle with the

0316

1 cars.

2 Q. If the crossing were in place, can you redo
3 that maneuver to show what you would do to
4 accommodate -- to deal with the fact that you've got
5 a crossing?

6 A. Well, the crossing would reduce the amount
7 of cars we could hold out there from probably 45 to
8 35, 30, because it would take out 615 feet of track,
9 and it's roughly ten 65-foot cars. Now, what we'd
10 have to do, it would cause us to have to shove the
11 cars farther west down along the neighborhood where
12 we've had the complaints for the reefers,
13 refrigerated cars running and disturbing the
14 neighbors. That's the -- one of the negative, the
15 loss of the cars and the fact you'd have to shove
16 them farther west.

17 Q. Let's see. You stated in your testimony on
18 page three that if UP had more than ten cars to pick
19 up -- why don't you use a longer strip. Would you
20 demonstrate how you'd have to deal with those cars
21 with the crossing in place? You'd stated that if UP
22 had more than ten cars to pick up, it would cross
23 Center Parkway up to eight times?

24 A. More than -- with this crossing in place
25 with the existing tracks, with more than ten cars

0317

1 where you couldn't just push them out on the tail
2 track and bring them back, you'd have to cross the
3 crossing with the power.

4 Q. Why don't you show it?

5 A. You have to come in here with the power, and
6 then you'd have to pull everything back out, so you'd
7 be light power going across the crossing, then you'd
8 pull it all back again crossing the crossing, and
9 then you'd still have to shove it on the Tri-City
10 Railroad up towards Hanford, up that way, you'd push
11 across the crossing here, you'd have to secure the
12 cars, as prescribed by the rules, then you'd have to
13 cut off, cross the crossing again, come back out with
14 these cars. Then you'd come back across this
15 crossing again to put the cars we're delivering to
16 the Tri-City Railroad east -- west of the crossing.
17 You come out as before onto the main line. You cross
18 the crossing again to come back out to this switch
19 with the light power. Then you have to cross the
20 crossing again with the light power to get to this
21 cut of cars. Then you'd have to cross the crossing
22 for the eighth time to go to Wallula.

23 So you'd be on the crossing -- you could be
24 on the crossing up to eight times, based on how many
25 cars you're handling.

0318

1 MS. LARSON: Thank you. I offer this
2 witness for cross-examination.

3 JUDGE CLARK: Thank you, Mr. Leathers. That
4 was very helpful. Trying to visualize all of those
5 movements was a little complicated for me. Thank
6 you.

7 Mr. Johnson, do you have any inquiry?

8 MR. JOHNSON: No questions, Your Honor.

9 JUDGE CLARK: Mr. MacDougall.

10 MR. MacDOUGALL: No questions, Your Honor.

11 JUDGE CLARK: Mr. Thompson.

12

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

14 BY MR. THOMPSON:

15 Q. Just one clarifying question. When you're
16 describing these movements going on under the
17 scenario where there's a crossing built on that
18 location, would the -- is it your understanding that
19 the crossing gates would be down during the entire
20 eight passes over the crossing?

21 A. No, the crossing gates should be set up to
22 raise when you clear the circuits. You've got to --
23 you can't leave your cars within 250 feet of the
24 crossing. So when you got it in the clear, they
25 would go down. Then we'd have to move slowly towards

0319

1 them to activate them again. They should go up.

2 Q. Okay. So there would be opportunities for
3 -- there would be opportunities for cars to get
4 across -- sort of between the different movements?

5 A. Unless there's too many cars, yes, there
6 would be opportunities.

7 Q. About how long of a window would there be
8 for vehicles to get across?

9 A. By the time we secured it, ten, 15 minutes,
10 from the time we tied everything down and cut off.

11 Q. And about how long would the entire -- that
12 entire switching movement take?

13 A. I'd say with that many cars in that move,
14 you could have an hour and 30 minutes in it by the
15 time you did everything that you're supposed to do.

16 Q. And how often -- I think you indicated that
17 the situation where you'd have eight movements would
18 occur something like two times a month?

19 A. Probably, yes.

20 Q. Okay. What about in the case where there's
21 fewer cars and you can do all of the movements on the
22 UP main and the UP pass tracks? About how long would
23 that movement take under the situation where the
24 crossing is constructed?

25 A. Probably 35 minutes.

0320

1 Q. Okay.

2 A. Forty minutes, depending on, you know, how
3 the traffic is. Now, we're doing it now in 35
4 minutes or so without any traffic, because we don't
5 have a crossing there.

6 Q. Okay. Are the gates down the entire 35
7 minutes there?

8 A. I doubt they would -- no, not if they were
9 250 feet from it, they should not be down when we
10 couple into it to push it out. They will be down
11 while -- you're hanging onto the cars you're bringing
12 out, so however long it takes to charge the cars, the
13 air system up on the cars you're coupling into and
14 take the brakes off, the crossing's going to be
15 blocked for that length of time.

16 MR. THOMPSON: I see. Okay. Thank you very
17 much.

18

19 E X A M I N A T I O N

20 BY JUDGE CLARK:

21 Q. Okay. Now you've talked about all kinds of
22 other things that I need a little more help with.

23 A. Sorry.

24 Q. No, that's fine, actually. I want to make
25 sure I understand what the testimony is, but -- and I

0321

1 know you're very familiar with this, but I'm not
2 familiar with some of these terms. I know you
3 weren't here for yesterday's testimony, but one of
4 the topics that came up was the conducting air brake
5 inspection. And you don't have to go back to the
6 demonstrative exhibit, but if you could just explain
7 to me when these air brake inspections would take
8 place, if there is more than one?

9 A. We would do everything possible to clear the
10 crossing before we did an air test.

11 Q. Okay.

12 A. Because states have laws about how long you
13 can block crossings, and we're not going to get
14 involved in that. We need to clear the crossing. So
15 the air test, unless the track was totally full, we
16 would move the cars back far enough to get off the
17 crossing to do the air test. So the actual air test
18 wouldn't be a problem.

19 The only thing that would slow us down is
20 charging the brakes up initially to move the cars,
21 because when you cut away from a railcar, the brake
22 system applies. So you've got to charge them up and
23 take the hand brakes off, which is a manual process.
24 He walks down and releases the hand brakes so he can
25 push them off far enough to get out of the circuit.

0322

1 And the chances are they're probably already out far
2 enough. I doubt we'll ever leave them -- unless
3 there's too many cars anywhere close, we'll be off
4 the circuit.

5 So the air test, I would not block a
6 crossing to do an air test unless it was an
7 emergency.

8 Q. Okay. And could you explain to me when in
9 this operation of switching cars you would conduct
10 that test and whether it would be conducted more than
11 once?

12 A. Once you -- if there's 15 cars there and we
13 do our initial inspection, as required by the FRA --

14 Q. Okay.

15 A. -- and our air test, that air test, as long
16 as we don't break them up or switch them around, is
17 good for four hours. So once we've done that and we
18 move the cars around, we would not do it again,
19 unless, for some reason, we were broke down or didn't
20 get back to them to recharge the system within the
21 four-hour time limit. So we'd do it one time on that
22 cut of cars and we'd be headed out toward Wallula.

23 Q. Okay. Then the other thing you said was the
24 amount of time to do everything you're supposed to
25 do, and this was in response to some inquiry from Mr.

0323

1 Thompson. You said if you do everything you're
2 supposed to do, that switch would take 35 to 40
3 minutes. So could you just explain to me a little
4 bit about what you mean when you say do everything
5 you're supposed to do?

6 A. Okay. When you initially come to a joint on
7 the cars, the conductor has to -- or the brakeman has
8 to get off and cut the air into the cars, couple the
9 hoses, turn the air on from the locomotive, and he
10 has to release any hand brakes that are on there.
11 Then he has to go down to the other end and protect
12 the move. When you're shoving those cars out, you've
13 got to have somebody on the point.

14 So from the time he would do that and shove
15 out and cut the other cars off and secure them
16 according to the rules, which is you have to tie a
17 sufficient number of hand brakes to hold the cars,
18 the ones we're cutting off, the ones we're
19 delivering, and then you have to go through a
20 procedure where the engineer releases the brakes and
21 you sit there and make sure they're not going to
22 roll, even with the brakes. You have to make sure
23 the hand brakes can hold them. You can't rely on the
24 air brakes. So whatever time that takes, ten, 12, 13
25 minutes to do all that. Then you cut off, shove out.

0324

1 I was talking about the time, 35 minutes the way it
2 is right now to shove out and do all that and be out
3 of there.

4 Q. Right. And you indicated that it would take
5 35 to 40 minutes with no crossing?

6 A. Right.

7 Q. Would it be increase the amount of time it
8 would take if there were a crossing?

9 A. Not unless the cars were in two cuts, no.

10 Q. Okay. Then that's the second questions that
11 I have.

12 JUDGE CLARK: Ms. Larson, could you please
13 give Mr. Leathers a copy of Exhibit 2, which is the
14 aerial photograph? Unless you have a copy?

15 THE WITNESS: I have one.

16 Q. You have one. Wonderful. Okay. One of the
17 concerns that was raised in this proceeding is about
18 holding those reefer cars and the noise that comes
19 from them. If you could explain to me on this aerial
20 photograph where those reefer cars would be stored
21 under the current switching operations? If you can
22 demonstrate approximately where that -- those cars
23 would be stored?

24 A. You see where it says Richland and Kennewick
25 on the dotted line there?

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1 Q. Yes.

2 A. Okay. Right there is where the switch
3 separates. We shove those cars just barely in the
4 clear there, so you see that open area between the
5 main line and the Tri-City Railroad?

6 Q. Right. And you're talking about going onto
7 the Port of Benton main?

8 A. Yeah.

9 Q. Okay.

10 A. Well, we don't put on the Port of Benton,
11 but what I'm saying is we try and keep the running
12 reefers away from those houses you see down in there.

13 Q. Right.

14 A. So we cut them off up there and, when the
15 road crossing goes in, we'll have to shove them west
16 farther.

17 Q. Okay. Now I'm looking -- it's going to have
18 to go west farther. Now, do you see on this aerial
19 photograph where it says Center Parkway?

20 A. Yes, Your Honor.

21 Q. That shows you where the street would go
22 through. And can you approximate, giving me some
23 kind of gauge with an intersecting street or
24 something to indicate approximately where those
25 reefers would go in order to get 250 feet away from

0326

1 that crossing?

2 A. See where the first of the homes starts,
3 that cul-de-sac right there?

4 Q. Yes.

5 A. It would be almost dead even with that
6 before we could get away from that crossing.

7 Q. Okay. Thank you. And that would be the
8 beginning of the reefer cars or the end?

9 A. Correct. What the Tri-City and us have been
10 trying to do is keep the loaded ones that are running
11 up farther, farther east. The beginning of the
12 reefers that -- the east end of the loaded reefers
13 would be right there.

14 Q. All right.

15 A. And the rest of them would be west of that.

16 Q. Okay. Thank you very much. I appreciate
17 your testimony.

18 JUDGE CLARK: Is there redirect?

19 MS. LARSON: No.

20 JUDGE CLARK: Oh, I'm sorry. Mr. Ziobro.
21 I'm sorry.

22 MR. ZIOBRO: That's okay, Your Honor.

23 JUDGE CLARK: No, I just wanted to make sure
24 that I got my questions answered, and that threw me
25 off when I took myself out of order in order to

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1 clarify.

2

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

4 BY MR. ZIOBRO:

5 Q. Good morning, Mr. Leathers.

6 A. Good morning.

7 Q. Would you agree with me, if the Center
8 Parkway Extension went through, that the railroads
9 would find ways to adapt to make switching operations
10 work?

11 A. I would agree, but it would -- at some point
12 of operation, it would be a real hardship.

13 Q. If it went through, you would try to adapt?

14 A. Yes.

15 Q. Okay. I noticed, when you did your
16 demonstration, that the cars were left near the gray
17 vertical line, which I assume is the Center Parkway
18 Extension?

19 A. Yes.

20 Q. And so if you came in to pick the cars up
21 the way it was first demonstrated, it would show a
22 blockage of the proposed Center Parkway, as you were
23 demonstrating this?

24 A. As I was demonstrating, yes, but I would --
25 we would -- my policy with the crew would be to leave

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1 them up there far enough up that we could get light
2 power.

3 Q. Right. So when I say we'd find ways to
4 adapt, if they left the cars further west, there
5 would be a crossing of Center Parkway, but you
6 wouldn't be linking while on top of Center Parkway?

7 A. Correct.

8 Q. And that would be a way to adapt. And while
9 that was occurring, the crossing guard would be up
10 and the traffic could go through?

11 A. Provided you had enough room with the cars
12 that are behind you, yes.

13 Q. So in many instances, you wouldn't have to
14 conduct the coupling or the linking of cars on top of
15 Center Parkway?

16 A. I agree.

17 Q. Okay. And then you indicated, for the
18 shorter exchanges, you have a 35 to 40-minute
19 procedure?

20 A. Correct.

21 Q. How many breaks during that 35 to 40-minute
22 procedure would the rail crossing be up if Center
23 Parkway was punched through?

24 A. It would be up -- it would be up -- well,
25 other than when we first went over it, it would be up

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1 until we came back. I mean, it would only be down
2 twice.

3 Q. For how long?

4 A. As I said, just however long it took for
5 them to tie them out and go back up, we'd be off of
6 it. Not very long.

7 Q. Yesterday, we talked a lot about drivers'
8 expectations and people getting frustrated when
9 they're sitting behind a crossing guard, but in the
10 35 to 40-minute scenario you just described, this
11 would just be pretty much like an ordinary crossing,
12 where you wait a few minutes, arms go up, cars go
13 through?

14 A. That's correct. Without any trouble, we
15 would be off the crossing. If we had air trouble, we
16 might be blocking it, but normally we'd be off.

17 Q. Perfect. Now, if we had the longer cars, it
18 would take an hour to an hour and a half, according
19 to your testimony?

20 A. (Nodding.)

21 Q. They don't record head nods very well, Mr.
22 Leathers, so --

23 A. Yes, it would take an hour to an hour and a
24 half, but we would not have the crossing blocked for
25 that length of time.

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1 Q. How many times -- and maybe you can take us
2 through more than one movement, but how many
3 opportunities would there be for the crossing guard
4 to come up so that traffic could pass?

5 A. Same amount of opportunity as there would be
6 when they went down. They'd come back up eight
7 times.

8 Q. Okay. And again, when the arm is down and
9 traffic is blocked, for what type of duration are we
10 talking about?

11 A. I don't know how long it takes from the
12 time. Whatever time it takes to shove over. Maybe
13 two or three minutes.

14 Q. Two or three minutes, okay. So then there
15 was kind of a feel yesterday that cars would be
16 sitting on Center Parkway for several minutes, maybe
17 even 20 minutes, waiting to pass. Is that not true?

18 A. I wouldn't be on there for 20 minutes,
19 because we've been fined before. We would do our
20 best to push the cars off the crossing.

21 Q. Okay. So again, the scenario where the
22 driver is caught behind the arm and becoming
23 frustrated is an unlikely one?

24 A. With the current operation, yes.

25 Q. Okay. So when we talk about someone trapped

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1 behind an arm and doing something foolish, like
2 trying to go through the crossing gate, we're not
3 talking about a situation where that will occur
4 regularly?

5 A. No.

6 Q. Okay. And likewise, we're not talking about
7 situations where people are stuck there for several
8 minutes at a time and try to make a U-turn and turn
9 around?

10 A. That's correct.

11 Q. It would be much like any other crossing
12 where a long train of cars takes up some time in your
13 day, and drivers, with expectations of rail
14 crossings, this would be very similar to any other
15 expectation a driver would have?

16 A. That's correct.

17 Q. And this would occur largely in the morning,
18 before 8:00?

19 A. We're out there about 10:00 at night.

20 Q. Ten at night. So --

21 A. Tri-City Railroad comes over in the morning,
22 I believe, is when they're coming over.

23 Q. So let's put this in the context of
24 rush-hour traffic. These operations wouldn't impact
25 rush-hour traffic?

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1 A. No, not ours.

2 Q. Again, do you shop much? You don't look
3 like someone that spends a lot of time at Nordstrom,
4 but maybe your wife does?

5 A. Yeah, yeah, she has a tendency to shop a
6 little.

7 Q. Those that go to malls, and maybe you've
8 been to one during the holiday season, they're not
9 going to have to worry about this switching operation
10 at 10:00 at night?

11 A. That's correct.

12 Q. Now, we do have to worry about Midnight
13 Madness, but that's one day a year. Okay. Do you
14 have existing right-of-way that would allow you to
15 extend any of these pass lines?

16 A. The UP pass is within nine cars of Steptoe.
17 You couldn't go any farther. If you went down there,
18 then your tail track for running around the cars
19 would be gone.

20 Q. Okay. But you kind of partner with Tri-City
21 Rail for some of these operations?

22 A. Yes.

23 Q. Do they have additional right-of-way that
24 would allow to extend some of the switching
25 operations on their tracks?

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1 A. You'd have to ask them that. I don't know
2 what the right-of-way situation is with the Tri-City
3 Railroad.

4 Q. If they had it and you worked it out, would
5 you be able -- would you use it?

6 A. If they allowed us to.

7 Q. Okay. But again --

8 A. Hypothetically, yeah.

9 Q. -- let's be -- we try to partner these
10 things?

11 A. Yes.

12 Q. If they offered, you would accept, you'd
13 build a little extra trackage and it would alleviate
14 some of the lost track concerns that have been
15 articulated by you in your testimony?

16 A. Yes.

17 Q. Okay. Let's talk about some things we could
18 do east of the proposed Center Parkway. Does UP have
19 right-of-way so that they could put a pass line, and
20 I'm signaling --

21 MS. LARSON: Excuse me. Objection. This is
22 not within the scope of direct.

23 MR. ZIOBRO: It's all about switching
24 operations, Your Honor.

25 JUDGE CLARK: Where are you going with this

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1 line of inquiry, Mr. Ziobro? Are you talking about

2 --

3 MR. ZIOBRO: I was going to ask if they can

4 --

5 JUDGE CLARK: Let me ask my question before
6 you answer it.

7 MR. ZIOBRO: Oh, sorry.

8 JUDGE CLARK: I'll probably get a better
9 answer. Are you talking about switching operations
10 the way they are in the application filed by the City
11 or are you talking about alternate switching
12 operations?

13 MR. ZIOBRO: Alternate switching operations
14 if Center Parkway goes through.

15 JUDGE CLARK: Okay. The objection is
16 sustained.

17 Q. Okay. I counted the number of days from
18 your ledger of cars that you prepared. And I'm going
19 to go to your prior testimony, but I think your
20 updated testimony is similar. I counted, in
21 September, you dropped off 20 cars. Does that sound
22 about right?

23 A. I believe it is.

24 JUDGE CLARK: Which exhibit are you
25 referring to, Mr. Ziobro?

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1 MR. ZIOBRO: I'm starting with Exhibit B.

2 JUDGE CLARK: Seventeen?

3 MR. ZIOBRO: Exhibit B.

4 JUDGE CLARK: Okay. Which is?

5 MR. ZIOBRO: Seventeen.

6 JUDGE CLARK: Okay. Thank you very much.

7 MR. ZIOBRO: All right.

8 Q. I'm not going to ask you to do this here,
9 but I went through and I counted all the days in
10 September, and I got 20. Would that sound about
11 right?

12 A. No, it doesn't sound right to me, not when
13 you include five days a week. I would have to look
14 at your exhibit to see what you're looking at.

15 Q. Okay. Well, I think you just answered my
16 question. Operations occur five days a week?

17 A. Five days a week, plus the Tri-City Railroad
18 comes in on Saturday sometimes.

19 Q. UP operations are five days a week?

20 A. Right.

21 Q. Can you tell us what those five days are?

22 A. Monday through Friday.

23 Q. Okay. So the weekends, no UP activity?

24 A. At this point, yes.

25 Q. Okay.

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1 A. I mean no.

2 Q. I think we understand what you intended.

3 You indicated, in a portion of your testimony, that
4 you do try to be mindful of the neighbors that are
5 parked in the -- looks like the housing development's
6 pretty much a triangle between Tri-City's line and
7 your line?

8 A. Yes.

9 Q. But other than trying to not park near them,
10 that hasn't compelled you to remove these operations,
11 has it?

12 A. The petitions have. They haven't compelled
13 us.

14 Q. So the neighbors have petitioned you?

15 A. I've had petitions in hedges where the
16 neighbors have got together -- which is down the line
17 -- about running reefers. So we're very careful
18 about it and we don't want to upset the neighborhood.

19 Q. Right. But what I'm asking you is you've
20 got complaints from the people in the neighborhood
21 right here; correct?

22 A. Some.

23 Q. And it hasn't compelled UP to move their
24 switching operations?

25 A. It's compelled us to keep them up towards

0337

1 the east end so they don't have to listen to them.

2 Q. But that's not my question. My question is
3 it has not compelled you to move the switching
4 operations?

5 A. It has compelled me to make sure they don't
6 have reefers by them. No, we've made adjustments so
7 that they don't have to complain about them.

8 Q. Right. But you haven't relocated switching
9 operations?

10 A. No.

11 Q. Okay. And the truth is it's a fact of life
12 if you build a house next to a rail line, you're
13 going to hear trains?

14 A. True.

15 Q. You're going to hear those trains until the
16 track is removed and it's abandoned. It's just a
17 fact of life.

18 A. Correct.

19 Q. And while you may try to mitigate that, UP's
20 still in the business of making money?

21 A. True.

22 Q. And you're going to continue those
23 operations until it's either impractical or not
24 profitable; correct?

25 A. Correct.

0338

1 Q. Okay. We've talked a lot about refrigerated
2 cars at this area. What are these refrigerated cars
3 holding?

4 A. Mostly all frozen potatoes.

5 Q. Where is the destination of those potatoes?

6 A. They go all over the country and the world.
7 I mean, they go to -- a lot of them are McDonald's
8 fries.

9 Q. Okay.

10 A. Tater Tots.

11 Q. And are you familiar with the Railex
12 facility?

13 A. Yes, I am.

14 Q. Can the Railex facility handle your frozen
15 potato cars that are being parked at this location?

16 A. Railex facility primarily handles non-frozen
17 products.

18 Q. Can it handle your potatoes?

19 A. I don't -- it -- yeah, it could.

20 Q. Could it be that the Railex facility will be
21 competition for the refrigerated or frozen products
22 that are at this location now?

23 MS. LARSON: Objection. This is beyond the
24 scope of direct.

25 MR. ZIOBRO: It has to do with the volume of

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1 trains and the future predicted impact on activity at
2 this location.

3 JUDGE CLARK: And are you -- is there a
4 specific portion of Mr. Leathers' testimony that
5 you're referring to?

6 MR. ZIOBRO: Page four, line 13, he
7 indicates they expect switching activities to
8 increase.

9 JUDGE CLARK: Your objection is overruled.

10 MR. ZIOBRO: Thank you, Your Honor.

11 Q. That is your testimony, you expect switching
12 operations to increase?

13 A. Based on the Hanford -- based on what has
14 got to happen eventually or is supposed to happen
15 with Hanford.

16 Q. But facilities like Railex could also
17 alleviate the burdens associated with an increase in
18 rail activity at this location?

19 A. I can't -- physically, yeah, I suppose they
20 could, but I have no way of knowing whether Lanwest
21 or whatever would switch frozen product -- this train
22 does not handle frozen product at all.

23 Q. Okay. But my point is it could be one of
24 those things -- your increase in traffic that you
25 testified to on page four, line 13, is somewhat

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1 speculative?

2 A. Yes.

3 Q. You hope that traffic increases?

4 A. Yes.

5 Q. And there are also alternatives and
6 alternative facilities that could handle this
7 increase?

8 A. They could truck it all, but they're not
9 going to.

10 Q. It's not efficient, but, like Railex, that's
11 an express route to the East Coast; correct?

12 A. Correct.

13 Q. I'm just making the point, there are other
14 modes of transportation or facilities that could be
15 used to move train cars when you say you're hoping
16 for increased activity?

17 A. But that's not where the increase is going
18 to come from. That's what I'm saying.

19 MR. ZIOBRO: Very well. Thank you. I have
20 no further questions.

21 JUDGE CLARK: Now redirect.

22 MS. LARSON: Yes.

23

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

25 BY MS. LARSON:

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1 Q. Mr. Ziobro asked you about opportunities for
2 increased rail traffic in the future, and you began
3 to answer Hanford. What was the remainder of your
4 answer going to be?

5 A. Well, depending on how much money's
6 allocated, there's going to be various ways that
7 they're going to dispose of the nuclear -- spent
8 nuclear waste and things out of Hanford, and we're
9 hoping to have a partnership with the Tri-City
10 Railroad on the product that's going to have to come
11 in, if they use vitrification or whatever they decide
12 to do with it to handle the waste they're going to
13 have to store.

14 MR. ZIOBRO: Your Honor, I'm going to object
15 to the question and answer as it is beyond the scope
16 of my cross. We did not talk about vitrification and
17 nuclear waste as an increase in activity at this
18 location.

19 JUDGE CLARK: I don't need you to respond,
20 Ms. Larson. It's overruled.

21 Q. What would Union Pacific haul to Hanford for
22 vitrification?

23 A. Probably the sand product to make the glass
24 to encase the -- that's the increased business that
25 they were talking to me about, is possibly the stuff

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1 to vitrify the nuclear waste.

2 MS. LARSON: Thank you. No further
3 questions.

4 JUDGE CLARK: Thank you for your testimony,
5 Mr. Leathers. And does that conclude the
6 presentation?

7 MS. LARSON: Yes, that concludes Union
8 Pacific's testimony.

9 JUDGE CLARK: Thank you. Mr. Johnson.

10 MR. JOHNSON: Thank you, Your Honor. At
11 this time, the Tri-City and Olympia Railroad would
12 call Randolph Peterson.

13 JUDGE CLARK: Thank you.
14 Whereupon,

15 RANDOLPH VERNER PETERSON,
16 having been first duly sworn, was called as a witness
17 herein and was examined and testified as follows:

18 JUDGE CLARK: Thank you. Please be seated,
19 Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21

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

23 BY MR. JOHNSON:

24 Q. Good morning, Mr. Peterson. Would you
25 please, for the record, state your full name,

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1 spelling your last name?

2 A. Randolph Verner Peterson, spelled

3 P-e-t-e-r-s-o-n.

4 Q. Could you state your business address and
5 your job title?

6 A. Address, 2579 Stevens Drive, Richland,
7 Washington, 99352. Manager of the Tri-City Railroad
8 Company.

9 Q. In the context of this hearing, did you have
10 an opportunity to prepare pre-filed written
11 testimony?

12 A. Yes.

13 Q. Have you had a chance to review that
14 testimony?

15 A. Yes.

16 Q. If I were to ask you those same questions
17 today, would you provide the same answers?

18 A. Well, with a couple clarifications, if I
19 might.

20 Q. What are those clarifications, please?

21 A. One would be an update to current rail
22 traffic being handled at Richland Junction. The
23 information in my testimony was current through May,
24 and we've now got the third quarter put together, so
25 it would be a different number today than --

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1 Q. Do you happen to know those numbers as you
2 sit there?

3 A. I do. Third quarter was 1,880 cars, that's
4 July, August, September, which would increase the
5 monthly average to 620 cars. And I think the -- and
6 the numbers were different for earlier in the year,
7 lower.

8 Q. Any other clarifications?

9 A. Oh, yes. Without rereading my comments
10 about -- I think one of the questions here was did I
11 concur with Mr. Leathers' testimony, and at the time
12 I thought that I did, but I think it's maybe more of
13 a misunderstanding. It's always been my
14 understanding that the City's application was --
15 included a proposal for a silent crossing, and I
16 always understood that the -- while the activity was
17 going to be conducted at the Richland Junction, the
18 switching activity at the Richland Junction, that the
19 gates would be down and the crossing would be a
20 hundred percent protected, so that it seems that
21 there's a difference of opinion now between my
22 concurring with Mr. Leathers, in which I just heard
23 his testimony indicating that it's his understanding
24 that the gates would be up. Other than those two, I
25 -- nothing else.

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1 MR. JOHNSON: I would offer Mr. Peterson for
2 cross-examination.

3 JUDGE CLARK: All right. Ms. Larson.

4

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

6 BY MS. LARSON:

7 Q. Mr. Peterson, a witness for the City
8 yesterday asked whether the Railex train would result
9 in reduced traffic for Tri-City. Do you have an
10 opinion on that?

11 A. Oh, no, not at all. Actually, we support
12 the project. And I'd be happy to expound on it if
13 you'd like.

14 Q. Yes, please.

15 A. The Railex project is a dedicated rail
16 service to the East Coast for fresh food products,
17 agricultural products only, at a premium
18 transportation mode, competing with truck traffic for
19 fresh onions, fresh potatoes, and fresh apples or
20 fruits. There's been prior testimony that it would
21 possibly be utilized for frozen food. Under no
22 circumstances can I see that ConAgra would be
23 interested, economically, to truck from their
24 manufacturing plant, from their fry plant, which is
25 on our line, traffic to blend with a frozen train, a

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1 fresh dedicated high-priority train, expensive train,
2 because the frozen is not as time-sensitive as
3 apples, fresh apples, and they wouldn't -- I just
4 cannot imagine that they would make -- it makes no
5 economic sense. So the ConAgra folks would not do
6 that.

7 Q. Thank you. Since the date of your signed
8 testimony, do you have any update in rail traffic or
9 do you foresee changes in rail traffic in the future?

10 A. Yeah, I think that the numbers show that our
11 traffic has grown about 20 percent since the first
12 part of '06. We foresee it continuing to grow at a
13 minimum of that rate. And I can cite specific new
14 projects, if that's appropriate.

15 MS. LARSON: Thank you. That concludes my
16 questions.

17 JUDGE CLARK: Any inquiry, Mr. MacDougall?

18 MR. MacDOUGALL: No questions, Your Honor.

19 JUDGE CLARK: Any inquiry, Mr. -- oh, I
20 probably shouldn't call on you next. Would you
21 rather go before Mr. Ziobro or after? Ordinarily, I
22 do Staff last.

23 MR. THOMPSON: I think it would probably be
24 better if I go after.

25 JUDGE CLARK: All right. Mr. Ziobro, I want

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1 to be very careful I don't neglect you again.

2 MR. ZIOBRO: Thank you, Your Honor.

3

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

5 BY MR. ZIOBRO:

6 Q. Good morning, Mr. Peterson. Is it safe to
7 say extending Center Parkway could impact your
8 business?

9 A. Impact it in -- negatively impact it or --
10 I'm not sure that I understand that total question.

11 Q. Why don't we start with that. Could it
12 negatively impact your business?

13 A. It could negatively -- it could cost us --
14 potentially be more costly for us to conduct
15 switching activities, particularly, as I had just
16 mentioned earlier, if it would become our
17 responsibilities to put in a system. If the crossing
18 system that was -- that the city is -- the cities are
19 actually asking for, which is not what I thought that
20 I read your petition to be, calls for the gates to be
21 open during switching activities. That would
22 absolutely have a negative impact on us.

23 Q. Okay. I'm just asking about the -- the
24 extension of the street could have a negative impact?

25 A. It would have a negative impact, in

0348

1 particularly in the situation if -- if we're talking
2 about putting in a crossing system that has trip
3 blocks within 250 feet of the street.

4 Q. Okay.

5 A. And it would also extend the amount of time
6 substantially for our switching operations.

7 Q. Okay. On page three, starting at line six,
8 do you have your testimony in front of you?

9 A. I do.

10 Q. Can you turn to page three and start on line
11 six. You indicate you're not aware of the finalized
12 plan for the Center Parkway Extension?

13 A. That's correct.

14 Q. Okay. If the finalized plan allowed you to
15 recover lost trackage, would that help mitigate the
16 impacts of this project?

17 A. Lost trackage?

18 Q. Yes.

19 A. Is the City's plan, then, to reduce our
20 trackage? Is that what you're saying?

21 Q. Well, let's back into this. Center
22 Parkway's going to cross part of your track?

23 A. Two of them, as it's drawn here.

24 Q. Right.

25 A. Are you indicating that that means we lose

0349

1 that track?

2 Q. You wouldn't be parking trains on that
3 track?

4 A. That's just what I had said earlier, that it
5 was my understanding that your proposal was --
6 included a silent crossing, which has other issues
7 relating to that, but that the gates would be down,
8 the crossings would be a hundred percent protected
9 during switching activities. In that case, it would
10 have less impact, negative impact on us, other than
11 it becomes our assumption of responsibility to
12 maintain those crossing gates once they are
13 installed. And so, therefore, there's an expense, an
14 obvious direct expense that becomes our
15 responsibility, yes.

16 Q. On page seven, you discuss some of the
17 delays that would occur that would block traffic on
18 Center Parkway?

19 A. Yes.

20 Q. Is it your testimony that the delays would
21 be from beginning to end of a switching maneuver, or
22 would you concur with Mr. Leathers, who just
23 testified there would be opportunities for the arms
24 to come up and traffic to clear?

25 A. I have to disagree with concurring with Mr.

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1 Leathers, like I had indicated, that -- since hearing
2 his testimony, not that I'm disputing his testimony
3 at all, that it's certainly changed my understanding
4 of what I thought the City's petition was, including
5 the -- there would be a hundred percent protection
6 during all switching activities. And Mr. Leathers'
7 testimony seems to indicate that he believes that
8 state law actually would prohibit the cars being --
9 blocking a crossing.

10 So I defer to further review of the state's
11 statutes, I guess, that I'm not familiar with at this
12 point to know whether, by default, that's the case.
13 If that was the case, see, what you have to
14 understand is that TCRY, Mr. Leathers is speaking for
15 the Union Pacific portion of it only, and we also
16 serve the BNSF, so there's three railroads that are
17 working there, and because we're serving both of
18 them, our -- when we get to the interchange to do our
19 portion of the business, we're dealing with not only
20 UP traffic, but also BN traffic, and we are kind of
21 like the local milkman. We have to prepare the cars
22 for delivery at destination, and both the BNSF and
23 the Union Pacific are delivering to us for that
24 purpose from their yards. So there is more for us to
25 do than either the BNSF and the Union Pacific.

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1 Q. Would you agree with me that when the cars
2 are dropped off, they're not going to be dropped off
3 by UP or BN on the roadway where Center Parkway
4 exists?

5 A. No, I would not.

6 Q. So you believe, from an operational point of
7 view, when the cars come in, they're going to be
8 dropped right on Center Parkway?

9 A. It was my -- again, it was my understanding
10 that your petition included a hundred percent
11 protection and gates down during the entire switching
12 operation, and in that case, there is -- the major
13 impact in that case is the additional cost that we
14 will incur on the crossing gates on our tracks.

15 Should, however, it be the case that that
16 isn't what your intention is with your petition and
17 that you're actually intending that the gates would
18 be open and that it would be our responsibility to
19 adjust for open gates, the impact would be severe.

20 Q. Let me try this another way. What time of
21 the day does UP drop off cars?

22 A. In the -- it's, I believe, in the evening.
23 I'm not quite sure of the time.

24 Q. When does Tri-City pick them up?

25 A. We normally make our runs in the morning.

0352

1 Q. Okay.

2 A. Mid-morning, usually leaving the interchange
3 by noon.

4 Q. When the cars are dropped off by UP, they're
5 not going to be dropped off on Center Parkway, are
6 they?

7 A. Are you referring to the Center Parkway
8 proposed crossing location?

9 Q. Correct.

10 A. I have -- I can't tell you where they drop
11 them off. Depending on the amount of cars.

12 MR. ZIOBRO: Thank you. I have no further
13 questions.

14 JUDGE CLARK: Mr. Thompson.

15

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

17 BY MR. THOMPSON:

18 Q. Yeah, Mr. Peterson, I'm just trying to get a
19 handle on what you said about the difference in your
20 understanding and what Mr. Leathers testified to
21 about the -- well, I guess underlying your testimony
22 is an expectation that there would be -- that the
23 gates on the crossings would be down the entire time
24 that any switching operation was going on; right?

25 A. That's correct.

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1 Q. Do you understand that -- is that a
2 requirement to obtain a silent crossing, in your
3 understanding?

4 A. It's a very good question, Mr. Thompson. I
5 have limited knowledge about silent crossings, and
6 the -- so I'm happy to share with you what that is.
7 Silent crossings have to be applied for by the
8 municipality directly from the Federal Railroad
9 Administration, and there is a process that the
10 municipalities must go through to, you know, to make
11 application, subject to FRA review and approval.

12 It's my understanding, and I've attended a
13 number of meetings on the subject of silent crossings
14 presented by the FRA, that they don't issue them
15 crossing by crossing. They actually -- what they do
16 is the application has to be made for a silent zone.
17 And if there are other crossings within this zone,
18 those also have to be applied for to be made silent.
19 And in this particular case, it would undoubtedly
20 include the crossing at Steptoe Road having to become
21 included in that quiet zone.

22 A baseline for application is that there is
23 -- it is mandated a hundred percent protection. In
24 other words, all lanes of traffic are covered by
25 gates. That's without question. And therefore, my

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1 original analysis of how it would be impacting our
2 actual switching activities when we're in the --
3 doing our switching business with the hundred percent
4 protection, it doesn't -- you know, the biggest
5 impact on us, obviously, at that -- you know, under
6 that scenario, is the additional maintenance of the
7 actual crossing equipment that gets transferred to
8 the responsibility of the railroad.

9 Q. Isn't there always a maintenance requirement
10 on the railroad with any kind of signals?

11 A. Yeah, crossing, yeah. But there are none
12 there now, so if you -- if we pick up four and UP
13 picks up four, that's eight gates that would be -- or
14 two, two and two.

15 Q. Okay. So when you're talking about the
16 negative impact of -- on your business of the putting
17 in gates sufficient to obtain a silent crossing,
18 you're just talking about the added maintenance cost
19 of additional gates; is that right?

20 A. Yes, it's the responsibility -- you know,
21 it's the responsibility of the municipality to
22 actually foot the bill, if you might, for the
23 acquisition or the purchase and the installation of
24 the equipment. Upon acceptance of the equipment,
25 then it becomes the responsibility of the railroad to

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1 maintain the equipment, and that's some statute that
2 I'm -- I can't cite, but that's how I believe that it
3 works in the state of Washington.

4 Q. Okay. It sounded -- I was trying to figure
5 out whether you were saying that there was an actual
6 impact on your operations that you had hadn't
7 anticipated if, in fact, there were times during the
8 switching operation that the gates would go up and
9 traffic would be able to come through. Is that
10 right? Is that another impact you're talking about?

11 A. If the -- if the end result would be a case
12 as described by Mr. Leathers, in which the trips
13 would be installed 250 feet on each side of the road
14 crossing --

15 Q. Let me stop you there. A trip, in other
16 words, when the train gets to that point, the gate
17 goes up?

18 A. Or down.

19 Q. Or down. Okay. Go ahead.

20 A. And if that would be the case, that would be
21 -- what I was attempting to explain is that that
22 would be a different -- that's a different scenario
23 than I had understood was in the application of the
24 City's for -- I understood that the gates would be
25 down during -- a hundred percent of the time during

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1 our switching operations, when we were inside the
2 switched block, so if that's not the case and the
3 gates go up every time we move past 250 feet one way
4 or the other past each of the tracks, those gates
5 will be, in our particular case, be going up and down
6 all the time and will cause us to a very interesting
7 situation to be able to manage both the BN traffic,
8 as well as the Union Pacific traffic as we come down
9 to pick up both at the same time.

10 Q. What do you mean? I'm sorry, I don't
11 understand what you mean by both at the same time.

12 A. Well --

13 Q. Let me ask you this. Do the -- is the
14 switching here sequenced so that there's, you know,
15 Union Pacific activity going on at one time and then
16 BNSF activity at another time?

17 A. And then TCRY a third time.

18 Q. Okay. So what do you mean occurring at the
19 same time, then?

20 A. What I mean is that the UP comes and picks
21 up and drops, the BN comes and picks up and drops,
22 and then, third, we come and pick up and drop, but we
23 pick up both UP and BN when we come down, because we
24 normally come down or attempt to come down only to
25 the interchange once a day.

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1 So when I say both or at the same time,
2 we're dealing with -- at the same time that we come
3 to the interchange, we're dealing with picking up and
4 dropping both BN equipment, BNSF, excuse me, and
5 Union Pacific equipment.

6 So in Mr. Leathers' case, he crosses, as an
7 example, when he has a lot of cars, he was explaining
8 that he crosses his interchange, you know, the
9 proposed interchange eight times. The BN, in their
10 case, with heavy traffic, would cross ours eight
11 times, and we most likely would -- I don't know how
12 many times, if -- but a lot, and we could be there
13 all day or a good portion of the morning if we have
14 to keep crossings open 250 feet on each side of the
15 road.

16 Q. Explain -- I guess I still don't understand
17 that, because if there's a trip that's 250 feet from
18 the crossing, isn't it just sort of automatic when
19 the gates go up and down? I mean, why can't you just
20 go about your business and then let the automatic
21 gates do what they do?

22 A. Well, they do, but if there's -- as in the
23 example that Mr. Leathers pointed out, if you're
24 dealing with a number of cars, then there's less room
25 to work. So in the case that both the UP and the

0358

1 BNSF would have a large amount of cars for that size
2 of an interchange, the long green slip that you see
3 there that is being parked on our line that are UP
4 cars may not be able to be parked there because those
5 actually might be BNSF cars, so he wouldn't have a
6 spot to put them. And therefore, his example would
7 be altered because of the BNSF traffic that has been
8 dropped there prior, and we have not got there to
9 clear it yet.

10 So it's not so easy to foresee into the
11 future as to what the exact situation might be. But
12 back to your question of why would that impact you
13 whether the gates come up or down, because it has to
14 do with car cuts and the amount of clarity that you
15 want to leave for -- open on the -- you know, for
16 being able to not do -- not block those crossings, if
17 you might, as long as the gates are down.

18 but if there's a state statute that we have
19 to deal with that requires the gates to be open, that
20 I'm not familiar with, and then all of a sudden
21 there's a -- that creates a different situation, it
22 causes us to make a lot smaller cuts.

23 Q. When you say a cut, are you talking about
24 where there's too many cars to --

25 A. Yes.

0359

1 Q. -- fit within the existing storage?

2 A. Yes.

3 Q. Is that occurring under -- would that occur
4 based on the amount of business you're doing now?

5 A. It doesn't -- I can't -- it could, yes.

6 Q. Because I understood Mr. Leathers' testimony
7 to be that that green strip that's shown on the
8 demonstrative exhibit is sort of the longest length
9 of cars that BN would deliver, something like two
10 times a month, whereas more typical would be the
11 yellow strip?

12 A. You mean UP?

13 Q. UP, sorry, yes. Am I right about that? Is
14 that your understanding, as well?

15 A. Yes, I think that Mr. Leathers is
16 testifying to loaded -- the traditional business that
17 has been historically interchanged with the TCRY in
18 the previous three or four years. As we look into --
19 and in that case scenario, those would mostly be
20 refrigerated railcars. However, we have handled
21 longer trains of building materials for other
22 projects that are happening up north, too.

23 So I'm trying to answer your question. For
24 most of the time, on historical business, if we have
25 been able to -- we've been able to manage quite

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1 finely with the way that the interchange is laid out
2 now, handling both the BNSF volume and the UPR
3 volume. If that answers your question.

4 Q. Yes. I guess I understood Mr. Leathers'
5 testimony to show that if the crossing were extended
6 -- or if the road were extended at this location,
7 they could simply move their cars further down the
8 existing trackage and avoid being within 250 feet of
9 that proposed road extension?

10 A. Yeah. You know, Mr. Thompson, I've never
11 looked at where 250 feet puts us as it relates to the
12 actual switch on our line going south, but it -- but
13 based on -- so I'm not sure whether the 250 feet
14 would actually put the switch inside the 250 feet or
15 outside the 250 feet. That's something that we just
16 haven't looked at because I always have assumed that
17 the application included us not being -- gates not
18 coming up while interchange activity was happening.

19 Q. So you --

20 A. You see our line's a lot shorter there to
21 the switch. It comes to the point the two lines come
22 together a lot closer to the proposed road crossing
23 than in the case of the tracks on the UP. So you
24 have more room on both sides on the UP tracks where
25 the road crosses to do the cuts than you do on the

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1 TCRY tracks.

2 See, and just to expound on it just for a
3 second, there's also the BNSF interchange agreement
4 that we have with BNSF is on our tracks and not on
5 the UPR tracks. So we don't interchange business, we
6 don't utilize the Union Pacific tracks to interchange
7 BNSF business. We use our tracks only.

8 Q. Well, let me go back. To me, looking at the
9 the drawing that's on the board there, I don't know
10 if it's to scale, but it looks to me like both tracks
11 have about equal amount of siding. Am I wrong?

12 A. You're wrong. The UP tracks are much
13 longer.

14 Q. Okay.

15 A. That is not to scale.

16 Q. But it seems to me, Mr. Leathers -- you were
17 talking about that you hadn't analyzed this situation
18 the way Mr. Leathers did because you didn't
19 understand that there would be a need to clear cars
20 250 feet from the crossing. But would you agree with
21 me that Mr. Leathers has done that analysis and has
22 apparently concluded that it is possible to put cars
23 within the existing trackage?

24 A. I don't disagree with his testimony on that
25 at all from his railroad activities on his line.

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1 Q. All right. But he was also talking about
2 the circumstance in which it's necessary for UP to
3 use the Port and TCRY facilities; right?

4 A. Yes. It's like -- maybe if you think of it
5 like driveways. We let the UP use our driveway, but
6 the UP doesn't let us use their driveway to do BNSF
7 business. It's not Lloyd's issue.

8 Q. All right.

9 A. So our switching activities with BNSF are
10 limited to our driveway or our tracks only.

11 MR. THOMPSON: Okay. Well, partly because
12 I'm still baffled, I'm going to stop my questions
13 there.

14 JUDGE CLARK: Okay. Let's see if I can muck
15 it up.

16

17 E X A M I N A T I O N

18 BY JUDGE CLARK:

19 Q. What I'm interested in is talking about how
20 your operations would be different from the way they
21 are today. And I think the way that I'm going to
22 understand this the best, if you're willing to
23 indulge me, is to have you go to the demonstrative
24 exhibit, which is up there. You have a lovely array
25 of colors that you may use to assign to BNSF and you

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1 can assign whatever you like to UPRR and whatever you
2 like to Tri-City and Olympia.

3 What I'd like you to do is set up for me the
4 way the operations look. UPRR has left its cars
5 there for you to pick up. What does the scene look
6 like now when you show up in the morning to pick up
7 that traffic? And I'd like you to use whatever
8 traffic would be typical for you in terms of BNSF
9 cars and UPRR cars. You willing to do that?

10 A. I'm willing to do that with the
11 understanding that it's not I that shows up; it's our
12 locomotive train crew.

13 Q. Oh, I don't mean you personally. I mean
14 Tri-City and Olympia Railroad. And so you're
15 explaining to me that you may have limited experience
16 demonstrating what that will look like?

17 A. Yes, and may have to take the liberty to ask
18 for Mr. Leathers' assistance when it gets
19 complicated.

20 Q. Okay. All right. If you could try that,
21 please, and whenever you're away from the microphone,
22 we have a very difficult time hearing you, so if you
23 want to arrange everything and then return to the
24 microphone and just tell me what you've done, that
25 would be helpful.

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1 It doesn't look like the demonstrative
2 exhibit is cooperating with --

3 A. Yeah.

4 Q. Okay. If you could explain to me. I
5 understand the black is the locomotive. And then, if
6 you could explain to me what you've designated as the
7 other colors there?

8 A. The green and orange we're going to use as
9 the BNSF cars that we're bringing down.

10 Q. Okay.

11 A. Or bringing to the interchange.

12 Q. Okay. And the yellow?

13 A. I thought that's appropriate, because that's
14 their colors.

15 Q. Okay. That is appropriate. Thank you. And
16 the yellow is?

17 A. The yellow is the UP cars.

18 Q. Okay. Great.

19 A. So we're on our way in the morning, 9:30,
20 heading to the interchange.

21 Q. Okay. And --

22 A. Now, these cars would -- I'm sorry.

23 Q. Okay. And there are other cars that are
24 sitting there. The green cars that are sitting on
25 the port pass and the yellow cars that are sitting on

0365

1 the UP pass, are those the cars that you're going to
2 pick up?

3 A. Yes.

4 Q. Okay. Please proceed.

5 A. Okay.

6 Q. You might have to just sit down and tell me
7 what you're doing, because, otherwise, I think you're
8 going to be blocking the exhibit.

9 A. Okay. So we're not going to move the train?

10 Q. Well, we are going to move the train, but
11 you're going to probably have to sit down and tell me
12 what you're doing first. Would I be correct in
13 assuming that what you're going to do is come down
14 the port main to pick up -- would you pick up the
15 cars on the port pass first?

16 A. Well, they may, depending on -- they may,
17 depending -- see, the cars down at the interchange --

18 Q. Yes.

19 A. -- may be empties --

20 Q. Okay.

21 A. -- or they may be loads.

22 Q. Okay.

23 A. They may be full.

24 Q. Okay.

25 A. Or they may be both.

0366

1 Q. Okay.

2 A. So what the object is is that we want to get
3 them as organized as possible when we leave the
4 interchange for spotting them or delivering them up
5 the line and leaving the cars -- splitting the cars
6 up coming down to the interchange, okay.

7 Now, I've lined out the cars coming down in
8 -- that they're already grouped in blocks of BNSF or
9 UP, but that's not the case. There's a mixture.

10 Q. Okay.

11 A. Because we don't -- we don't put them
12 together in blocks, because let's say we stop at
13 ConAgra and pick up their loaded frozen french fries.
14 They have both cars going out that we're giving to
15 the BNSF and they have cars that we're giving to the
16 Union Pacific, so we pick up seven cars from their
17 seven doors or -- and then we go over to another cold
18 storage facility, Henningston Cold Storage, and they
19 have the similar situation. So they don't have the
20 trackage at their plants for us to block them into,
21 at that location, to block them into groups of what
22 we're going to put all the BN cars together and all
23 the UP cars together. So even -- I'm just saying,
24 even though they're in colors here, they're all mixed
25 up.

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1 Q. Got it.

2 A. So when we get to the interchange --

3 Q. Okay. You can go ahead, if you want to now,
4 and move the train, if you want it. Whatever helps.

5 MR. JOHNSON: Your Honor, could I make a
6 suggestion?

7 JUDGE CLARK: Please.

8 MR. JOHNSON: Perhaps Mr. Peterson could
9 stay at the microphone and describe movements, and
10 then either myself or, if Mr. Leathers was willing,
11 with his experience -- someone else could move them
12 as he describes it? Would that be -- it's just a
13 thought. Maybe that would be helpful. Maybe I'll
14 not offer any more suggestions.

15 JUDGE CLARK: That would be very helpful.

16 THE WITNESS: Excellent. Now, Lloyd, the
17 train at this point is not moving, so please conduct
18 your air test.

19 Q. Okay. What would you -- how would you like
20 the traffic to now proceed to the intersection here
21 or interchange?

22 A. Well, we're going to come down the main with
23 the locomotive, and so that we don't have to move
24 those colors, because they're not always -- they're
25 not going to be all blocked up, like I mentioned,

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1 anyway, maybe just move the locomotive down, and we
2 need to shove those -- and assuming that we have both
3 BNSF and UP cars on our train, we need to move the
4 BNSF cars up the line.

5 Q. Okay. So the record should reflect he's
6 taken the locomotive down the port main.

7 A. Yeah, and move it up the siding. No, just
8 ahead of the switch, yeah. So we've got that out of
9 the way. Then we come back down --

10 Q. Shove the cars up the port pass. Okay.
11 Thank you.

12 A. Then we come back down to the switch, stop,
13 get out, throw the switch, and we might want to move
14 the UP cars first. Yeah, then we come down, throw
15 the UP switch, push the UP cars back to give us some
16 room there.

17 MR. ZIOBRO: Your Honor, I'm going to
18 object. I think Mr. Leathers is anticipating the
19 testimony and moving the trains, and I think it's
20 assisting Mr. Peterson. I think Mr. Johnson should
21 be the one --

22 THE WITNESS: His assistance is appreciated.

23 JUDGE CLARK: You're concerned because Mr.
24 Leathers is moving the magnets?

25 MR. ZIOBRO: No, he's making eye contact and

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1 it looks to me like he's anticipating the moves, and
2 I don't think he's an appropriate person to do that.

3 JUDGE CLARK: Okay.

4 MR. JOHNSON: Your Honor, if I could be
5 allowed -- I think the point of all of this is to try
6 to give the Commission a clear understanding of what
7 occurs, and the two people with the most knowledge in
8 this room as to what actually happens out there and
9 who can best convey that information to the
10 Commission are the two people attempting to do it,
11 and that's our goal.

12 JUDGE CLARK: Okay. Well, we have kind of
13 an awkward situation here, Mr. Ziobro, because you do
14 understand that this whole exercise is being
15 conducted for my benefit. So I'm not really sure who
16 would be able to respond to your objection. But what
17 I'm concerned about is the -- simply where the cars
18 are going. And I hope that you understand that I am
19 not influenced by any eye contact that Mr. Leathers
20 may be having with Mr. Peterson. I'm interested in
21 the movement of the cars on the demonstrative
22 exhibit.

23 MR. ZIOBRO: Well, I would like to make a
24 record that I believe any of the lawyers could move
25 the magnets, and to the extent that Mr. Leathers is

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1 assisting, it amounts to testimony. He's taken the
2 stand. I -- this needs to be Mr. Peterson's
3 testimony, and that Mr. Johnson or anyone else could
4 help move the cars, and it would -- it would remove
5 any possibility that Mr. Peterson is being influenced
6 by the gestures or movements of Mr. Leathers. That's
7 my objection.

8 JUDGE CLARK: This is certainly an unusual
9 objection, but I think it is certainly fine for
10 anyone to move the cars. If you don't have objection
11 to moving the cars, Mr. Johnson, I mean, it seems to
12 me it doesn't make any difference who does it.

13 MR. JOHNSON: Am I allowed to make eye
14 contact with Mr. Peterson?

15 JUDGE CLARK: You're allowed to make eye
16 contact with Mr. Peterson. I mean, I'm a little
17 perplexed by this, but we'll accommodate Mr. Ziobro.

18 MR. ZIOBRO: Would you like me to make a
19 record as to what I observed?

20 JUDGE CLARK: Mr. Ziobro, we have
21 accommodated your objection. It is not necessary for
22 you to do anything further.

23 Q. All right. We now have Union Pacific cars
24 sitting on the Union Pacific pass siding with the
25 locomotive, okay. And Mr. Peterson, you're going to

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1 have to get close to that microphone or we're not
2 going to be able to catch any of the comments about
3 where the cars are supposed to go next.

4 A. I'm trying to think about that.

5 Q. Okay. I just want to let you know that when
6 you're talking, you need to be close to the
7 microphone.

8 A. So -- and again, let me just preface, I'm
9 not the expert train folks that we have operating our
10 trains, so I'm going to work through this probably a
11 bit more slowly.

12 Q. Okay. That's fine.

13 A. So now we'll unhook from the Union Pacific
14 cars and go back to the -- we'll go back to the
15 switch and then up the TCRY line, okay, because --
16 no, the main line, because we have now positioned the
17 cars for us to pick up that we're going to be taking
18 back with us --

19 Q. Right.

20 A. -- at the end of the two sidings.

21 Q. Got it. Okay. So then?

22 A. So we're now -- our job now is -- or the
23 task now is to put the cars that we're leaving on the
24 appropriate tracks.

25 Q. Okay. If I may ask a question?

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1 A. You may.

2 Q. Some of the cars that are attached to the
3 locomotive are cars that you will be now leaving
4 somewhere along this interchange?

5 A. It's all of them.

6 Q. You will be leaving all of those cars?

7 A. All of those cars that we're bringing down
8 to the interchange --

9 Q. Okay.

10 A. -- are going to be left at the interchange,
11 and they are comprised of either empty cars --
12 they're either empty or they have loads.

13 Q. Okay. Fine. All right. Thank you.

14 A. So now, depending on -- depending on --
15 depending on what cars are closest to the locomotive
16 and how long -- how many cars we have, we'll -- we're
17 going to make an assumption, and I'm happy to make
18 other assumptions, as well, but we're just going to
19 make assumption that the first three cars are to go
20 outbound BNSF, the next two cars are going to be
21 outbound UP, the next three cars are going to be
22 outbound BNSF, and the next ten cars are going to be
23 outbound UP, or two cars.

24 Q. Okay.

25 A. Three, two, three, two. So that would be

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1 ten cars. So we're going to come down, and what
2 we're going to do is, at some point, not necessarily
3 at any specific point, we will cut -- we will
4 actually cut the three BNSF cars off from the rest of
5 the cars.

6 Q. Right.

7 A. We will have to put -- we put hand brakes on
8 the cars that we're leaving --

9 Q. Okay.

10 A. -- and their air brakes set. Because we
11 don't go out onto the UP line, that's their driveway,
12 to place the BNSF cars for pickup.

13 Q. Right.

14 A. So we have to have a short enough cut of
15 cars to not have to go out onto the UP track.

16 Q. Okay.

17 A. So we'll bring those three cars down that
18 now fit past the switch and up the siding a ways, and
19 cut away from those cars, set the hand brakes, and
20 bring the locomotive back down, throw the switches,
21 go back up, grab the two UP cars and the next three
22 BNSF cars, and we'll bring five cars down. And the
23 reason that we bring five cars down is because that's
24 -- we're pushing the railroad envelope, if you might,
25 but we are -- that forces us out onto the UP track,

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1 but we're actually spotting UP cars. So we don't go
2 far enough to put the BNSF cars on the UP track, but
3 they clear our switch, and we push the other three
4 BNSF cars up and set them with the other -- the first
5 three that we set. We unhook, set the hand brakes,
6 come back down with the two UP cars and place the two
7 UP cars for pickup on the UP track, disconnect, come
8 back to the switch, go back up the main line and pick
9 up the last two UP cars, come back down our main,
10 throw the switches, come back on the UP siding, and
11 we then have placed -- we've now accomplished placing
12 the cars that we've brought down and separated them
13 between BNSF and UP, and we have placed them at the
14 interchange.

15 Now the task changes to picking up the cars
16 that we are going to bring back, okay. So we'll come
17 down, as Brandon is -- you're doing good.

18 MR. JOHNSON: If this career doesn't work
19 out, maybe I'll --

20 THE WITNESS: We come down the UP track,
21 throw the switch, back in, pick those up, connect,
22 bring those back down the main, clear the crossing,
23 get out, throw the switches, go back up our track,
24 get out, stop the train, throw the switch, back up
25 our siding, and hook onto the BNSF cars that are --

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1 that have been dropped for us to pick up, and now
2 we've connected the UP cars with the BNSF cars with
3 our locomotive and we head away from the interchange.

4 Q. Okay. And I think that it wasn't inaccurate
5 for you to say that you crossed what would be the
6 extension of the roadway a bunch of times.

7 Okay. Now, I hope that we don't have to do
8 this again, because I can see how difficult that was,
9 but would it be fair for me to assume that those
10 operations would have to be changed if the gates were
11 open and you had to leave clearance, 250 feet on
12 either side of that crossing?

13 A. Yes.

14 JUDGE CLARK: Okay. Thank you. Returning
15 to your former career, Mr. Johnson, do you have
16 redirect?

17 MR. JOHNSON: I do not, Your Honor. Thank
18 you.

19 JUDGE CLARK: All right. Thank you very
20 much for your testimony, Mr. Peterson.

21 THE WITNESS: Mm-hmm.

22 JUDGE CLARK: Is there anything further to
23 be considered on this record? I believe that's the
24 conclusion of the presentation of all our witnesses;
25 is that correct?

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1 MR. JOHNSON: Nothing from Tri-City and
2 Olympia Railroad, Your Honor.

3 JUDGE CLARK: Mr. Ziobro.

4 MR. ZIOBRO: Nothing from the City.

5 MS. LARSON: Nothing from Union Pacific,
6 either.

7 JUDGE CLARK: All right. Mr. Thompson.

8 MR. THOMPSON: Nothing from Staff.

9 JUDGE CLARK: All right. And Mr.
10 MacDougall, I'm assuming, since you're shaking your
11 head, that you concur?

12 MR. MacDOUGALL: That's correct, Your Honor.
13 Nothing from BNSF.

14 JUDGE CLARK: All right. And do the parties
15 wish the opportunity to file post-hearing briefs?
16 Mr. Ziobro.

17 MR. ZIOBRO: If there were any questions
18 from the Commission that were specifically needed to
19 be addressed, I would offer to do it. I don't
20 anticipate the need for that without a specific
21 inquiry.

22 JUDGE CLARK: All right. Ms. Larson.

23 MS. LARSON: Well, I assumed that we were
24 obligated to file post-hearing briefs, so the
25 opportunity to not file one is kind of a surprise to

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1 me, I must admit. I am -- I'm ready to go with
2 what's on the record.

3 JUDGE CLARK: All right. Mr. Johnson.

4 MR. JOHNSON: I am also surprised, but I
5 think, based on everything we have, unless there's a
6 topic that the Commission would like to see something
7 on, I also would be comfortable with the record that
8 we've made the last couple days.

9 JUDGE CLARK: Mr. MacDougall.

10 MR. MacDOUGALL: I would agree with Mr.
11 Johnson.

12 JUDGE CLARK: Mr. Thompson.

13 MR. THOMPSON: Well, for Staff's part, I
14 would just say that we had anticipated doing
15 post-hearing briefing, but it depends on the needs of
16 the bench, and if the other parties feel that it's
17 adequate not to have post-hearing briefing, I
18 wouldn't want to burden them with that need to
19 respond to what we would file, and if the bench feels
20 that -- comfortable not having briefing from Staff,
21 then I suppose we'd be willing to dispense with it.

22 JUDGE CLARK: Well, the reason I'm asking
23 this question is, first, there is no briefing
24 schedule that was established by the administrative
25 law judges assigned to this case before me, so that's

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1 why I was assuming that it was not mandatory in this
2 particular case. The reason for that I do not know.

3 But any briefing that would be conducted
4 would be, first of all, if the parties feel the need
5 to somehow emphasize how their position in this case
6 complies with the state law that is applicable to the
7 facts of this case, and that has been cited several
8 times in the record and I could repeat it again if
9 anyone feels it's necessary.

10 There was a new legal issue that was raised
11 in my mind by the testimony of Mr. Leathers and Mr.
12 Peterson, and that is whether there is a conflict or
13 a potential conflict between a state statute
14 regarding whether these crossings need to be open or
15 not and the requirements from the FRA in order to get
16 approval for a silent crossing. It sounds like there
17 is at least the potential for some conflict between
18 the state statute and the FRA, and it would be very
19 helpful to me to have briefing at least on that
20 particular issue.

21 The briefs will not be mandatory. They will
22 be discretionary. So if you do not feel that it will
23 benefit your client to file such a brief, then you're
24 not going to be required to file one, at least to the
25 extent it would be the application of state law to

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1 the facts of the case.

2 I do want to hear from everyone on the
3 potential conflict between the state statute and the
4 FRA, and hopefully that will alleviate any burden
5 that any party doesn't want to undertake. Do you
6 understand? Mr. Thompson.

7 MR. THOMPSON: When you're talking about the
8 conflict between the silent crossing and the state
9 statute, I think -- you're talking about a state
10 requirement that a crossing not be blocked for a
11 period of time?

12 JUDGE CLARK: If I knew what I were talking
13 about --

14 MR. THOMPSON: Okay.

15 JUDGE CLARK: -- I probably wouldn't be
16 asking for briefing. What I'm trying to do is
17 reconcile the testimony that was given by Mr.
18 Leathers that there is a state statute that would
19 require this crossing to be open, and I'm not sure
20 exactly under what circumstances that crossing would
21 be open. I guess it has something to do with whether
22 or not operations are being conducted with trains
23 actually physically being on the crossing itself and
24 the distance from that, the 250 feet from that, and
25 reconciling that with the testimony of Mr. Peterson

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1 that, in order to obtain a silent at-grade crossing
2 approval for this particular project, that the
3 crossing would have to be one hundred percent
4 protected. So it's not going to be a hundred percent
5 protected if the gates are going up and down during
6 the switching operations. So that's where I need the
7 clarification.

8 MR. THOMPSON: Okay.

9 JUDGE CLARK: All right. And in addition to
10 that, if the parties want to file briefing that would
11 support their position about how their -- the facts
12 that they've presented in the record today would meet
13 the statutory standard, you're welcome to do that.
14 You are not obligated. Mr. Johnson.

15 MR. JOHNSON: Yes, if -- can we, as the
16 Respondents -- and maybe I'm getting the cart in
17 front of the horse, and if so, I apologize, but
18 assuming there's a deadline for that discretionary
19 type briefing from the City, as they're the
20 Petitioner, it's their burden, would there then be --
21 I don't want to spend my client's money to do
22 briefing in response to briefing that doesn't exist,
23 so will we be given a period of time --

24 JUDGE CLARK: Yes, yes. And so my first
25 question is for the briefing on the legal

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1 requirements, whether there is a conflict or not
2 between the state statute and the FRA requirements, I
3 need to know approximately how much time the parties
4 feel you need to prepare that briefing. This is the
5 non-discretionary briefing. If you want to take a
6 few minutes off record to confer, we can do that.
7 Just in case you -- I mean, I haven't forgotten it's
8 lunch time. I'm trying to conclude so that we can
9 just adjourn.

10 Mr. Ziobro, do you have an indication of how
11 long it might take you to prepare such a briefing?

12 MR. ZIOBRO: Within 30 days, I think I can
13 brief all the issues.

14 JUDGE CLARK: Okay. Ms. Larson.

15 MS. LARSON: I was thinking three weeks, so
16 certainly less than 30 days.

17 MR. THOMPSON: Well, personally, I guess I'd
18 favor a month for post-hearing briefs.

19 JUDGE CLARK: Okay. All right. Then I'm
20 going to establish a deadline of 30 days for the
21 parties to submit simultaneous briefs on the first
22 issue. The second round of briefing would be
23 discretionary, and that, of course, would start with
24 the City of Kennewick.

25 Mr. Ziobro, you do not have to make a

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1 decision today about whether or not you're interested
2 in that discretionary briefing. I want to make sure
3 you have an adequate opportunity to consider the
4 record and discuss this with your client as you so
5 wish. But I would like to know how far after the
6 30-day mandatory briefing you would need to prepare
7 discretionary briefing if you elected to do so?

8 MR. ZIOBRO: May I ask a question of our
9 court reporter?

10 JUDGE CLARK: Of course. We'll take a
11 moment off record.

12 MR. ZIOBRO: Thank you.

13 (Discussion off the record.)

14 JUDGE CLARK: We can go back on. All right,
15 Mr. Ziobro.

16 MR. ZIOBRO: I believe the City can have the
17 second round of briefing completed 30 days after the
18 deadline for the first round of briefing.

19 JUDGE CLARK: All right. And I'm assuming
20 responsive briefing, if any is filed -- excuse me,
21 how long would the parties need for that second round
22 of briefing, responsive briefing?

23 MR. JOHNSON: I would just say 30 days seems
24 to be a preferred number right now. We could go 30,
25 30, 30.

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1 JUDGE CLARK: Okay. All right. Well, I
2 don't have a calendar with me. I will do a
3 post-hearing order that will memorialize dates on the
4 calendar that hopefully will follow and comply with
5 days of the week, which I will have a much better
6 opportunity to do if I consult with a calendar. And
7 hopefully we'll lay out a little more in detail the
8 briefing that might be helpful to the parties.

9 Is there anything further that we need to
10 consider on this morning's record?

11 MS. LARSON: Yes, Your Honor. I've got a
12 question.

13 JUDGE CLARK: Ms. Larson.

14 MS. LARSON: For the 30-day simultaneous
15 briefing, does that mean we should wait till the 30th
16 day to file the brief?

17 JUDGE CLARK: No, that's the deadline. You
18 can always do things early, you just can't do them
19 late.

20 MS. LARSON: But should we not serve
21 parties? Are you wanting to get our opinions without
22 --

23 JUDGE CLARK: No, no, no, that's fine. And
24 my interest -- when I say simultaneous briefing, I
25 just want you to understand that this is not what I

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1 would consider to be an issue where the parties may
2 have an adversarial position, so you wouldn't get
3 initial briefing and responsive briefing. This is a
4 pure legal issue about what the requirements are from
5 the FRA to get silent grade crossing and what the
6 state requirements are about keeping crossing gates
7 open and the distances, and so I don't foresee anyone
8 has an adversarial position regarding this particular
9 issue. The law is what it is and the FRA
10 requirements are what they are.

11 MR. JOHNSON: Assuming that someone like Mr.
12 Thompson, who's very bright and capable and
13 understands these issues because of his role, was to
14 file something ahead of the 30 days and we completely
15 agreed with his analysis, would it be okay for us to
16 simply indicate that?

17 JUDGE CLARK: Yes, and if you want to -- if
18 the parties want to work cooperatively on this
19 particular issue and end up filing a single brief, I
20 mean, all of you could concur that this is an issue
21 that you could address together. And it might be
22 appropriate to say thank you on the record for the
23 gracious compliment.

24 MR. THOMPSON: Yeah, flattery will get you
25 everywhere.

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1 JUDGE CLARK: All right. Is it clear to
2 everyone? All right. We're adjourned.

3 (Proceedings adjourned at 12:10 p.m.)

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