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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK,

Petitioner,

v.

UNION PACIFIC RAILROAD,

Respondent.

.....

CITY OF KENNEWICK,

Petitioner,

v.

PORT OF BENTON and TRI-CITY &
OLYMPIA RAILROAD,

Respondent.

DOCKET NO. TR-040664

CITY OF KENNEWICK'S
SUPPLEMENTAL BRIEF

DOCKET NO. TR-050967

CITY OF KENNEWICK'S
SUPPLEMENTAL BRIEF

I. REQUEST FOR RELIEF

The City of Kennewick ("City") reaffirms its request for the Commission to grant an order directing the construction of an at-grade crossing over the Union Pacific Railroad ("UPRR") spur and Port of Benton spur operated by Tri-City and Olympic Railroad ("TCRR").

II. SUMMARY OF ARGUMENT

An at-grade crossing should be approved by the Commission because it is not

1 practicable to cross above or below the four existing tracks. The City has the discretion to
2 determine whether the extension of Center Parkway is best for the community. It is not the
3 role of the railroads nor the Commission to second-guess this decision. Second, the cost of
4 an at-grade crossing is approximately \$3 million. A below-grade crossing is at least \$9
5 million. The City of Kennewick and its partner, the City of Richland, have determined that
6 the difference is cost prohibitive. At the same time, the City has established that Center
7 Parkway can be extended and configured in a manner that allows Railroad operations to
8 continue. While there may be an inconvenience, alterations can be made to the existing
9 siding that will mitigate the impacts to the Railroads' operations. At the same time,
10 concerns about the quality of the proposed extension and significant vehicle delays during
11 railroad operations are unfounded.

14 III. SCOPE OF PROCEEDINGS

15 Through the course of the hearing, counsel for UPRR and TCRR made numerous
16 references to the scope of the hearing being limited exclusively to the Commission
17 looking at the street alignment as if there were four crossings that remain unaltered. This
18 appeared to be an attempt to tie the City to one design without any alternatives or
19 modifications. (See generally Transcript 133:22-25; 134:13-20; 135:8-12; 136:12-25;
20 140:12-25; 167:16-25; 168:1-11). Oddly enough, the same parameters did not hold true
21 for UPRR's expert. Regardless, efforts by the Railroads to limit testimony in this manner
22 are erroneous. The petition procedure provides, in relevant part:

24 Whenever . . . the municipal authorities of a city, . . . desire to extend a highway
25 across a railroad at-grade, they shall file a written petition with the commission,
setting forth the reasons why the crossing cannot be made either above or below
grade . . . If it finds that it is not practicable to cross the railroad or highway either

1 above or below grade, the commission shall enter a written order in the cause,
2 either granting or denying the right to construct a grade crossing at the point in
question. . . .

3 RCW 81.53.030 (1961).

4 There is no requirement to have final design drawings with a petition. The purpose
5 of the hearing is to determine whether an above or below grade crossing is practicable.
6 The only burden on the City is to set forth the reasons why the crossing cannot be made
7 above or below ground. Therefore, efforts to try to limit the evidence that may be
8 considered by the Commission or to have the Commission disregard design alternatives
9 are in error.
10

11 Further, at the conclusion of the hearing, the Commission has the liberty to enter
12 an order based on the findings which shall:

13 Specify whether the highway shall continue at grade or whether it shall be changed
14 to crossover under the railroad in its existing location or at some other point, . . . *or*
15 *any other change that the Commission may find advisable or necessary.*

16 RCW 81.53.070 (1961).

17 Clearly, the Commission may consider the testimony before it and specify if the
18 crossing shall continue at-grade, change in location, or make any other change it may find
19 advisable or necessary.
20

21 **IV. FACTORS THAT DETERMINE WHETHER AN UNDER
22 OR OVER-GRADE PASSING ARE PRACTICABLE**

23 The statutorily mandated factors that shall be taken into consideration include:

- 24 1. The amount and character of travel on the railroad and on the highway;
25 2. The grade and alignment of the railroad and the highway;

- 1 3. The cost of separating grades;
- 2 4. The topography of the country; and
- 3 5. All other circumstances and conditions naturally involved in such an
- 4 inquiry.

5 RCW 81.53.020 (1961).

6 There are very few reported cases that elaborate on additional factors that may be
7 taken into consideration. These proceedings evolved into consideration of several
8 additional factors that may or may not impact practicability. These factors include: (1)
9 impact to the neighborhood, (2) roadway standards, (3) the impact to railroad operations,
10 (4) crossing delays, (5) airbrake checks, (6) alleged vehicle crossing delays, and (6) the
11 measure of safety provided by the City's proposal to seek a quiet zone under the FRA.
12 These potential factors will be evaluated following analysis of the statutory factors.

13 One factor the courts have recognized is the usage of the track. *State ex rel.*
14 *Spokane International Railroad v. Kuykendall*, 128 Wn.88 (1924) (granting a proposed
15 crossing at-grade over a spur track that would not be used in excess of four times per day).
16 The fact that there may be no engineering obstacles is not the primary concern of the
17 Commission or courts that review Commission decisions. *Id.* at 92. Rather, financial
18 obstructions and public expense must be taken into consideration. *Id.* at 93.

19 In affirming an at-grade crossing, the *Kuykendall* court held that there did not
20 appear to be any great danger from the operation of trains across the proposed grade
21 crossing of a "mere spur track with but a few trains operating daily thereon. . . ." *Id.* at 97.
22 Thus, an over or under crossing was not practical. The same could be said of the crossing
23
24
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1 at issue before this Commission. A review of the statutorily enumerated factors further
2 demonstrates that an above or below grade crossing is not practicable.

3 **(1) The Amount in Character of Travel on the Railroad and on the**
4 **Highway.**

5 **a. Character of vehicle travel.**

6 One of the primary motives for extending Center Parkway is to enhance economic
7 development by improving traffic flow between Gage Boulevard, Tapteal Drive and
8 Columbia Center Boulevard. Existing traffic flow around and through the Columbia
9 Center Mall area is hampered by the indirect route to return to Columbia Center
10 Boulevard from Gage Boulevard, a lack of a convenient route to access Tapteal Drive to
11 the north, and direct route access to SR 240. (Plummer Testimony, Exhibit 1, SCM
12 Design Report, Page 3) (Deskins Testimony 5:19-20).

14 The project would also relieve present and future traffic congestion from Columbia
15 Center Boulevard, now running over 40,000 vehicles per day (“VPD”). (Hammond
16 Testimony 2:17-18). Because of the high traffic count, delays at Columbia Center
17 Boulevard, a major arterial are a concern. (Transcript 146:17-18). In addition to the
18 baseline traffic counts, during the holiday season there is a 25% increase on traffic on
19 Columbia Center Boulevard and entry into the Mall is two and a half times greater.
20 (Transcript 193:18-25, 194:1-3). This project would also help relieve these peak period
21 impacts.
22

23 Current traffic on the Center Parkway extension is 800 VPD with a projection at
24 the opening of the project of 2,200 VPD. (Deskins Testimony 3:23-24). Extrapolating
25 growth rates, Deskins determined there would be 2,600 VPD after five years and 3,060

1 VPD 10 years after opening. (Deskins Testimony 4:1-2). The figure would increase to
2 4,250 VPD by year 2023. (Plummer Testimony 6:18-19).

3 Neighboring property developers have revealed in discussions with the Richland
4 City Manager that the failure to extend Center Parkway has been an encumbrance on the
5 property developer's ability to develop in the Tapteal Business Park and extending the
6 road will facilitate their efforts to expand that retail center. (Transcript 298:22-25, 299:1-
7 5). Regardless, the City's motivation for this crossing has no bearing on practicability
8 because the necessity of the crossing is not subject to scrutiny. RCW 81.53.020, *State ex*
9 *rel. City of Toppenish v. Public Service Commission*, 114 Wash. 3d 307 (1921). Thus, the
10 character of travel and the desire to change the character of travel weighs in favor of the
11 City.
12

13
14 **b. Character of Train Travel.**

15 UPRR switching operations occur five days a week, Monday through Friday.
16 (Transcript 335:15-24). Operations largely occur before 8:00 in the morning and after
17 10:00 at night. (Transcript 331:17-20). BNSF Railway Company ("BNSF") drops off cars
18 in the evening and they are picked up in the morning, with Fridays and Saturdays off.
19 (Transcript 263:22-25, 264:1-4). The speed of the trains during switching is generally
20 around 10 mph (Transcript 164:1-10, 305:20-23). UPRR's expert also conceded that the
21 train speeds, generally below 15 mph are less likely to produce a very severe train-vehicle
22 collision. (Transcript 245:1-25).
23

24 In the course of the hearing, attempts were made to draw comparisons between a
25 recent below-grade crossing project in Kennewick and the Center Parkway extension. For

1 the Columbia Center Boulevard under-grade crossing, traffic was in the high 20,000's to
2 low 30,000's vehicles per day. BNSF's trains passed this location between 8 to 10 times
3 per day and were projected to increase to 20 to 22 trains per day. In addition, the BNSF
4 trains were passing at speeds of 45 to 49 mph. (Transcript 145:10-19).

5 UPRR's expert, Randy Hammond, made several concessions related to the
6 character of train travel:
7

- 8 (1) It was hard to criticize the City if it took the speed of the trains into
9 consideration on deciding whether to go at-grade or below-grade at the
10 proposed location (Transcript 250:1-8);
- 11 (2) there is an issue of technical feasibility compared to one of economic
12 feasibility (Transcript 250:9-10);
- 13 (3) trains at 45 mph do greater damage than trains at 10 mph and is a factor
14 worth considering in determining the necessity of a below-grade crossing
15 versus an at-grade crossing (Transcript 249:19-25, 250:1-5);
- 16 (4) moving the siding off of the Center Parkway extension could significantly
17 reduce delays at the crossing (Transcript 252:15-25);
- 18 (5) no weekend switching is a factor that the City could justifiably rely upon in
19 deciding whether it should install an above or at-grade crossing (Transcript
20 250:16-22);
- 21 (6) by relocating some of the siding operations so that it would not be on any
22 part of Center Parkway would reduce some of the safety concerns
articulated in the HNTB Report (Transcript 252:6-14); and
- 23 (7) it is technically feasible to provide a grade separation, but it may not be
economically desirable, given the light level of traffic upon a roadway and
the low train speeds. (Transcript 250:11-16).

24 These concessions all reinforce the City's position.

- 25 (2) **The Grade and Alignment of the Railroad and the Highway.**
 - a. **Highway.**

1 Center Parkway extension will begin at Gage Boulevard at elevation of 447.35 and
2 ends at Tapteal Drive 1,669 feet, .13 miles, away at an elevation of 409.29 for a difference
3 in elevation of 38.06 feet. (Kaufman Testimony 3:6-15). Moving north from Gage Blvd.,
4 the first two UPRR tracks are at rail elevations of 446.60 and 446.65 feet; the next set of
5 UPRR tracks are at elevations of 446.07 and 446.07; the first set of TCRR tracks are at
6 elevations of 442.60 and 442.49 feet; and the last set of TCRR tracks are at 442.69 and
7 442.55 feet. (Kaufman Testimony 3:10-15). Contrary to the pre-filed testimony of
8 Raymond Wright, the change in elevation from the closest UPRR track to the TCRR track
9 is 3.47 feet. This is a 1.76% change in grade over the 197-foot span.

11 Raymond Wright testified “there is over a four-foot difference in elevation
12 between the closest UPRR and Port of Benton tracks creating over a 9% grade between
13 the two.” (Wright Testimony 4:2-4). This testimony is in direct conflict with the City’s
14 testimony. There is no 9% change in grade between these two tracks. This is simply not an
15 accurate assessment of the change in elevation of the existing track. At best, Wright’s
16 testimony is overstated. Otherwise, it is simply an error in calculation. The only 9%
17 change in grade is between the two UPRR tracks over a distance of 15 feet.

19 Further, if the grade crossing is permitted, the City has made clear that the
20 roadway elevation and trackage can be smoothed out to create a better road. For example,
21 where the 9% change exists between the two UPRR tracks, one track can be lowered three
22 inches, the other raised by three inches. UPRR experts confirmed that it is possible to raise
23 and lower tracks consistent with Kaufman’s testimony. (Transcript 224: 9-18). This would
24 alleviate most, if not all, concerns raised by UPRR’s experts related to problems with
25

1 roadway elevation (Transcript 215:13-25, 216:1-25, 217:1-11). Regardless, if the existing
2 tracks remained, HNTB's expert conceded that the WSDOT manual did not absolutely
3 mandate a maximum grade of 7% for a minor arterial, only that it is a guideline.

4 (Transcript 255:10-21). As indicated above, the Commission can make findings that
5 require changes as it may find advisable or necessary. To the extent the roadway profile is
6 an issue, the remedy lies in the scope of approval.
7

8 **b. Railroad.**

9 The grade and alignment of the railroad track is largely unremarkable. The grade
10 and alignment of the railroad is only impacted if the siding is relocated. However, the City
11 has addressed, or at a minimum, demonstrated that alignment and grade issues for siding
12 can be resolved.
13

14 Through HDR, the City introduced testimony that the siding operations could be
15 moved east of the proposed Center Parkway extension. While at the conceptual level, the
16 siding could be installed even though there are elevation changes and some curvature in
17 proposed siding locations. (Transcript 300:15-25, 304:1-2). In the HDR proposal, the
18 siding would be within 50 feet of the bridge over Columbia Center Boulevard. However,
19 Wayne Short has offered an opinion that while there may be some general policies against
20 locating this close to a bridge for switching operations under 10 mph, the chance of
21 derailment is slight. (Transcript 304:3-25, 305:1-17).
22

23 **(3) The Cost of Separating Grades.**

24 **a. Over-Grade Crossing.**
25

1 An over grade crossing would require a 23-foot clearance, plus the height of the
2 structure, approximately five feet. This would require roadway slopes in excess of the
3 maximum allowed by design standards for the two cities and therefore was not
4 considered. (SCM Report, Page 20). UPRR's expert acknowledges that an over-grade
5 crossing was dismissed based on the City's qualitative analysis. (Wright Testimony 4:23-
6 24). There was no disagreement in the record with this opinion.

8 **b. Under-Grade Crossing.**

9 **City's Evidence.** The City has provided three estimates to construct an under-
10 grade crossing: (1) \$15 to \$20 million (Plummer Testimony 8:13); (2) the SCM report
11 estimates is in excess of \$10 million (SCM Report, Page 20); and (3) Steve Plummer's
12 revised estimate of \$9,427,522 (Exhibit 45). However, numerous variables exist that could
13 impact the cost of Plummer's revised estimate. These include:
14

- 15 • Construction of 20 to 30-foot high retaining walls.
- 16 • Compensation for the loss of existing Center Parkway from Tapteal Drive
17 including access to the Holiday Inn Express.
- 18 • Reconstruction of the Holiday Inn Express Hotel parking lot.
- 19 • Access to the commercial property west of Center Parkway would be eliminated.
- 20 • PUD's grounding grid for their substation would need to be removed and a
21 temporary one installed and a replacement grid constructed in order to build the
22 retaining wall.
- 23 • Access to the PUD substation from Center Parkway would likely be eliminated;
Alternative access to the substation would need to be acquired from the Mall.
- 24 • It is possible that the entire substation would need to be partially or entirely
25 moved.
- Access to the Mall pad sites would be impacted.

1 (Plummer Testimony 10:11-25 through 11:1-5). Given these factors, the lowest estimate
2 of \$9.4 million is likely to be exceeded. If it turned out that the PUD power substation
3 needed to be relocated, the projected cost is between \$2.8 to \$3.2 million and would take
4 nearly 18 months to accomplish once agreements were finalized. (SCM Report, Page 11).
5

6 **Opposition's Evidence.** There is no evidence in the record, that disputes the range
7 of under-grade construction costs submitted by the City. UPRR has offered an opinion
8 through Raymond Wright that an under-crossing would be feasible, but no cost estimate
9 was provided by Wright. Wright testified, "It would be expensive, but not necessarily
10 more expensive than lowering UPRR's tracks three to four feet for a distance of 3,000
11 feet." (Wright Testimony 4:24-25, 5:1). This is the only testimony provided by any
12 Railroad on the cost of an under-grade crossing. However, contrary to Mr. Wright, Randy
13 Hammond testified excavation of this magnitude was not required. (Transcript 254:13-25,
14 255:1). Further, slight modifications to the track were feasible that would smooth out the
15 ride at a significantly lower cost. (Transcript 248:16-18).
16

17 The SCM Report has never been an exclusive option. It should be noted that the
18 HDR drawings submitted through the testimony of Wayne Short are dated February 18,
19 2002, and produced to all parties through discovery. UPRR's expert did not evaluate this
20 alternative at-grade option. UPRR has simply introduced testimony that one at-grade
21 option approximates the costs of a below-grade crossing without addressing other options.
22

23 **c. At-Grade Crossing.**

24 **City's Evidence.** The cost of the preferred SCM Design, Alternative (No. 2), is
25 \$1,771,000 with an additional \$1,110,000 for construction of additional passing tracks

1 between Columbia Center Boulevard and Center Parkway. (SCM Report, Page 24). The
2 total figure would be \$2,881,000.

3 Through the testimony of Steve Plummer, the City offered a projected cost of an
4 at-grade crossing to be approximately \$2 million, inclusive of the gates, as well as
5 construction of the road. (Transcript 149:22-25, 150:1-6). Projected costs for a silent at-
6 grade crossing is estimated at \$500,000 (Plummer Testimony 8:1-9). If the City were to
7 work with the Railroad to change the vertical alignment of the tracks by raising or
8 lowering as needed for a smooth ride, those costs would be additional. (Transcript 170:1-
9 25, 171:1-11). This cost has not been projected. There is no estimate of minor
10 modification to the trackage but even UPRR's expert conceded that this cost is
11 significantly less than HNTB's proposal. (Transcript 248:24-25, 249:1-4).

12
13 **Evidence in Opposition.** UPRR's expert testified that a grade separation would
14 not necessarily cost more than the total cost of realigning and reconstructing the tracks
15 and installing signals to accommodate the grade crossing at the proposed location. (Wright
16 Testimony 3:8-12). However, this testimony is simply misleading because it is based upon
17 belief that the track would need to be lowered three to four feet for a distance of 3,000
18 feet. (Wright Testimony 4:24-25, 5:1).

19
20 During the hearing, UPRR's expert, Randy Hammond, conceded that HNTB's
21 proposed change in profile was greatly exaggerated and that it was feasible to raise one
22 track by three inches and lower one track by three inches and it would adjust the profile of
23 the roadway. Not only was it feasible, it would cost significantly less. (Transcript 248:9-
24 23). Further, when considering the modest change in elevations proposed by City
25

1 witnesses, Randy Hammond conceded the cost of the at-grade crossing was significantly
2 reduced, creating a bigger disparity between the cost of an at-grade crossing versus the
3 cost of a sub-grade crossing. (Transcript 248:24-25, 249:1-4, 253:22-25, 254:1-12).

4 Finally, Randy Hammond conceded that the option of removing three to four feet
5 of earth over a span of 3,000 feet would be the most drastic alteration of the track that has
6 been discussed by any party and that there were certainly less drastic alternatives.
7 (Transcript 254:22-25, 255:1). This option is not necessary and more viable options exist.

8
9 **(4) The Topography of the Country.**

10 **City's Evidence.** The length of the proposed roadway from Gage Boulevard to
11 Tapteal Drive is 1670 linear feet. The elevation at Gage Boulevard is 447.5 feet, the
12 elevation at Tapteal Drive is 409.39 for a net difference of 38 feet, 11 inches. (Plummer
13 Testimony 7:6-11). As indicated above, the topography makes an over-grade crossing
14 impractical. Likewise, the topography makes an under-grade crossing very costly.

15
16 In considering the topography of the proposed grade crossing, the City was also
17 required to look at the Benton Public Utility District electrical substation, relocating a
18 business, and possibly other businesses, as well as reducing access to viable commercial
19 properties and possibly access to the existing Holiday Inn Express. (Transcript 144:4-16).

20
21 **Evidence in Opposition.** In pre-filed testimony, Raymond Wright, testified that
22 extending Center Parkway without changing the elevation of the four railroad tracks
23 would result in a six-up, then down changes of grade across the four tracks, creating a
24 very uneven roadway surface, and violating several roadway engineering standards.
25 (Wright Testimony 3:25-26, 4:1-2).

1 The value of the HNTB Report is diminished because minor modifications can be
2 made to smooth-out the roadway profile. Wright also assumed that three of the existing
3 railroad tracks at the Richland junction would be removed, leaving only the Port's main
4 track. Wright opined that the abandonment and removal of the existing tracks would be
5 problematic for railroad switching operations and car storage. (HNTB Report, Page 12).
6 Little to no weight should be given to this testimony because the City has produced less
7 costly design alternatives that include switching operations.
8

9 Further, Randy Hammond conceded that HNTB relied upon a projected roadway
10 profile presented in the SCM Report, *not* the actual profile. It is noteworthy that counsel
11 for UPRR attempted to tie City witnesses to testimony limited to crossing four tracks as
12 they lie today, yet UPRR's own expert failed to do so. This testimony lacks relevance,
13 insight, and persuasive value.
14

15 **(5) All Other Circumstances and Conditions Naturally Involved in Such**
16 **an Inquiry.**

17 **Neighborhood Impact.** UPRR receives complaints regarding the refrigerated car
18 noise but has not felt compelled to relocate its operations in response to these complaints.
19 Lloyd Leathers is familiar with these complaints and confirmed that UPRR tries not to
20 park near the homes. (Transcript 336:9-25, 337:1-10). Regardless, UPRR is within its
21 legal right to extend the siding deeper into the neighborhood. (Transcript 235:3-22). In
22 addition, John Trumbull conceded that a silent crossing could be granted and would
23 mitigate some of the train horn noise concerns. (Transcript 232:24-25, 233:1-8). This
24 would provide some benefit to nearby homeowners. (Transcript 234:12-15). Irrespective,
25 these impacts are not a basis to deny the crossing.

1 The general rule of a land grant for railway purposes is that it conveys the right to
2 use such land, not only for the passage of trains, but for the maintenance of structures and
3 machinery as may be required for railway purposes. *Smith et ux. v. Northern Pacific*
4 *Railway Company*, 50 Mont. 539, 148 P.393 (1919). In fact, the only time a railroad might
5 be precluded from expansion of activity within its right-of-way is when it is not in
6 furtherance of necessary railroad operations or committed for safety reasons. *Jones v.*
7 *Union Pacific Railroad Company*, 79 Cal.App.4th 1053 (2000). Nothing in the record
8 suggests that there is an improper usage of the siding or that moving siding operations
9 deeper into a neighborhood is not in furtherance of necessary operations.
10

11 **Governing Standards for the Proposed Roadway.** The City Traffic Engineer
12 has offered testimony that the elevation changes in the proposed extension complies with
13 Washington State Department of Transportation (“WSDOT”) guidelines. (Deskins
14 Testimony 7:4-8). Further, when approach grades are not level, the site specific analysis
15 for rail clearance is necessary. (Deskins Testimony 8:23-25, 9:1).
16

17 UPRR’s expert has suggested the proposed extension of Center Parkway will not
18 comply with highway standards. However, there are urban arterial streets throughout
19 Washington, including the City of Kennewick which have grades that exceed 7%. For
20 example, on 10th Avenue approaching Olympia Street there is an 8% grade for almost 200
21 feet; on Garfield Street, there is a 300-foot segment at 15% grade, followed by a 400-foot
22 segment at 8% grade which carries over 4,000 vehicles per day. While not desirable, these
23 instances occur. (Deskins Testimony 6:23-25, 7:1-3).
24
25

1 With the elevations unchanged, there would be an uneven roadway, but the profile
2 is very similar to a raised crosswalk used for traffic calming that would include warning
3 signs and a speed reduction. Regardless, the tracks could be crossed by all vehicles,
4 including low boy tractor trailer rigs. (Deskins Testimony 9:6-11).

5
6 The speed of the Center Parkway extension will not exceed 35 mph, but will likely
7 be posted lower. The .58 foot total vertical climb of the 9% grade, between the two UPRR
8 tracks, a distance of approximately 15 feet would be considered minimal and would be
9 less than what would be encountered on most commercial approaches. (Kaufman
10 Testimony 4:6-9). The ride may not be smooth, depending upon the final design, but even
11 if the tracks are untouched, the street can be built within acceptable standards. Most
12 important, the tracks can be altered to smooth out the roadway and the Commission can
13 take this into consideration and address it in its order.
14

15 **Impact to Railroad Operations.** The City does not concede that impacts to rail
16 operations is a factor that relates to practicability of a below-grade crossing. Assuming for
17 the sake of argument it is a factor, the best evidence is that there will be an inconvenience
18 to the railroads when there is a high volume of cars to exchange. John Trumbull best
19 summarized the impact to the railroads. He testified that the new grade crossing will only
20 make “extra work.” (Trumbull Testimony 3:10-17). It will not prohibit the work.
21

22 If the crossing goes in, UPRR will lose the ability to use 615 feet of the UPRR
23 pass (the width of the crossing itself, plus 250 feet on either side of the crossing), and will
24 not be able to handle more than 30 to 33 cars on the UPRR pass. However, during the last
25 six months there were only three occasions when UPRR delivered over 33 cars to Tri-City

1 Railroad. (Leathers Testimony 4:17-21). UPRR would still be able to deliver as many cars
2 as they are now capable of delivering, it just means installation of a derail and more
3 switching for the UPRR and TCRY. (Leathers Testimony 4:21-23).

4 Finally, if the crossing is granted, the City has made it clear it is willing to work
5 with the railroad to relocate siding as necessary and come up with modifications of the
6 tract to make the roadway smooth as an enhancement to both railroad operations and
7 traffic conditions. (Transcript 165:10-24). While UPRR witnesses have offered testimony
8 that the Center Parkway extension would impact siding operations, they have also
9 conceded that extending trackage within their right-of-way would allow the recovery of
10 lost trackage and mitigate the impacts of this project. (Transcript 228:4-23).

11
12 **Airbrake Checks.** John Trumbull testified that UPRR would be unable to move
13 cars off the roadway to perform airbrake inspections. However, Trumbull was not sure
14 how many times the airbrakes are required to be inspected during a switching maneuver.
15 (Transcript 229:3-21). Trumbull also testified in direct testimony that the crossings would
16 be blocked while the railroad crew performs the federally required airbrake tests,
17 including walking both sides of the train. (Trumbull Testimony 3:18-23).

18
19 Lloyd Leathers originally testified the crossing will be blocked for a considerable
20 period of time while the receiving railroad puts the train together and performs airbrake
21 tests while the cars are sitting on top of the crossing. (Leathers Testimony 5:1-3).
22 However, at the hearing, Leathers made clear that airbrake tests only need to occur once
23 every four hours, so long as they do not break up the cars or switch them around.
24
25

1 Therefore, it would be done one time on that cut of cars when it was headed out toward
2 Wallula. (Transcript 322:14-22).

3 James Labberton of BNSF testified that once the entire pickup is made or the train
4 is completed, then the inspection of airbrakes takes place and it is possible that the
5 maneuver can be performed so that the airbrake inspection occurred while the train was
6 off the Center Parkway crossing, reducing delay times at the intersection. (Transcript
7 264:23-25, 265:1-18).

9 Finally, UPRR would do everything possible to clear the crossing before any
10 airbrake tests were conducted. (Transcript 321:2-10). Airbrake tests could occur after
11 UPRR clears the crossing unless the track was totally full. Thus, in most instances, the
12 proposed roadway would not be blocked for this purpose. (Transcript 321:12-18). While
13 airbrake tests could also cause the arms to remain down, Leathers would not block a
14 crossing to do an airbrake test “unless it was an emergency.” (Transcript 322:1-7).

16 **Crossing Delays.** All three Railroads offered testimony that the proposed crossing
17 would impact switching operations and cause delays and backup at the proposed at-grade
18 crossing. (Leathers Testimony 5:1-3) (Peterson Testimony 6:25-28, 7:3-6, 8:22-30), and
19 (Labberton Testimony 3:16-17, 3:24-27).

21 However, under UPRR’s rules, cars cannot be set out within 250 feet of a crossing.
22 While this will shorten the usable portion of UPRR’s track, it also mitigates the possibility
23 of railroad cars being parked on the track during any portion of switching operations.
24 (Transcript 222:14-21).

1 Even where a belief in delays was expressed by Randy Peterson, he based his
2 testimony on assumptions made related to FRA requirements for a silent crossing. It is
3 also in direct conflict with the testimony of Lloyd Leathers.

4 Lloyd Leathers destroyed Railroad concerns about safety and crossing delays
5 when he testified to the following:
6

- 7 (1) UPRR does not leave cars within 250 feet of the crossing so that when the
8 cars got clear the street would be open. (Transcript 318:15-25, 319:1).
- 9 (2) A window would exist for vehicles to cross Center Parkway would be 10 to
10 15 minutes between switching maneuvers. (Transcript 319:7-10).
- 11 (3) The activities required for UPRR's switching operations would not
12 increase in duration if Center Parkway was extended, unless the cars "were
13 in two cuts." (Transcript 324:1-9).
- 14 (4) If the Center Parkway extension is granted it would be Leathers' policy to
15 have crews leave the cars far enough away to be clear of Center Parkway
16 so that traffic could pass. (Transcript 327:20-25, 328:1-12).
- 17 (5) During the 35-40 minute UPRR switching procedure, the crossing guard
18 would only be down twice for "however long it took for the them to tie
19 them out and go back up, we'd be off of it. Not very long." (Transcript
20 328:21-25, 329:1-6).
- 21 (6) For the longer switches that could take up to an hour and a half, the
22 proposed extension could be passed as many as eight times. However, the
23 crossing arm would only be down for two to three minutes at a time. It
24 would not be for 20 minutes or more. (Transcript 329:17-25, 330:1-17).

21 Contrary to the testimony of Leathers, Peterson testified that he believed that the
22 City's proposal included a silent crossing which would in essence allow Tri-City Railroad
23 to park cars on the proposed extension and leave the gates down for long as necessary for
24 Tri-City Railroad to complete its switching operations. (Transcript 349:2-15, 349:20-25,
25 350:1-25). While speaking in detail about impacts to switching operations, Peterson's

1 answer was qualified. He made clear that he would try to describe switching activities,
2 “with the understanding that it’s not I that shows up; it’s our locomotive train crew.”
3 (Transcript 363:10-12).

4 Peterson indicated that between switching BNSF and UPRR equipment, his crew
5 could be there a good portion of the morning if they have to keep crossing Center
6 Parkway with the arms up whenever they were 250 feet from the track. (Transcript 357:1-
7 15). He also conceded that if there is a statute that requires them to work with the gates
8 open, Tri-City Railroad will have to make smaller cuts to fit within the existing storage.
9 (Transcript 358:18-25, 359:1-2).

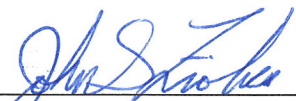
11 V. CONCLUSION

12 The only burden on the City is to demonstrate that an under or over-grade crossing
13 is not practicable. The evidence before the Commission makes clear, the four tracks can
14 be crossed as they sit, modified to smooth out the proposed roadway, and extended to
15 relocate switching away from the proposed roadway to mitigate impacts to switching and
16 reduce crossing delays.

17 Most, if not all parties, agreed that they would work with the City for the best end
18 product. Regardless, the worst that can be said by the Railroads is that the proposed
19 project will create an inconvenience. Going into the hearing, there was also a belief that
20 this project would create delays on the proposed roadway in excess of 30 minutes. That
21 testimony has been placed in serious doubt. In fact, it has been replaced with testimony
22 that the delays may be no different than any standard at-grade crossing.
23
24
25

1 Finally, the City has demonstrated that an at-grade crossing will cost
2 approximately \$3 million. An under-grade crossing will cost at least \$9.4 million. The fact
3 that an under-grade crossing is feasible does not diminish the economic reality. The Cities
4 have determined that these tracks operating at the current level at low speeds do not justify
5 an under-grade crossing. For these reasons, an at-grade crossing is proper.
6

7 Respectfully submitted this 19th day of December, 2006.

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