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1 P R O C E E D I N G S

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3 JUDGE WALLIS: Let's be on the record,
4 please. This prehearing conference will please come to
5 order. This is a conference in the matter of
6 Commission Docket No. TR-040664, under the name of
7 Kennewick versus Union Pacific Railroad. This
8 conference is being held in Olympia, Washington before
9 Administrative Law Judge C. Robert Wallis. I would
10 like to get appearances for our record, please,
11 beginning with the City of Kennewick.

12 MR. ZIOBRO: Thank you. John Ziobro,
13 Z-i-o-b-r-o, Kennewick city attorney. I'm joined by
14 Peter Beaudry, B-e-a-u-d-r-y, public works director;
15 Steve Plummer, P-l-u-m-m-e-r, project engineer.

16 MS. LARSON: And I'm Carolyn Larson, attorney
17 for Union Pacific Railroad Company.

18 MS. JOHNSTON: Sally G. Johnston, assistant
19 attorney general.

20 JUDGE WALLIS: Very well. The prehearing
21 conference schedule has been extended once or twice to
22 afford the parties an opportunity to engage in
23 discussions about resolving the issues in this matter.
24 Let me ask for the record whether the parties have been
25 able to reach resolution or otherwise what the status

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1 of the discussions are.

2 MR. ZIOBRO: We are continuing to work
3 towards a resolution. However, I think that we have
4 continued this hearing two times, and we would like to
5 keep moving forward with a hearing schedule, but we are
6 also continuing negotiation discussions with the hope
7 of a resolution before ever going to a full hearing.

8 JUDGE WALLIS: Ms. Larson, do you have
9 anything to add?

10 MS. LARSON: No. I think that's correct. I
11 agree with that.

12 JUDGE WALLIS: In terms of process, there was
13 an indication that the parties might desire discovery;
14 is that correct?

15 MS. LARSON: Yes.

16 JUDGE WALLIS: What is the nature of the
17 discovery that would be undertaken pursuant to
18 Commission rules if the discovery rule were invoked?

19 MS. LARSON: Specifically, I would be
20 interested in having copies of any traffic study that
21 have been performed by the City and any study of
22 alternatives to this grade crossing; also whether there
23 have been any studies about having a grade-separated
24 crossing in lieu of this at-grade crossing.

25 I'm also interested in whether there are any

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1 contracts between the City and anyone else that deal
2 with any promises to have a crossing at this location.

3 JUDGE WALLIS: Mr. Ziobro, are those
4 documents that a discovery order would be necessary for
5 the City to provide?

6 MR. ZIOBRO: I don't think we need an order.
7 I think we can provide everything Ms. Larson has
8 identified, and if for some reason she wasn't satisfied
9 with the response, maybe we could revisit this, but I
10 think we can provide her everything.

11 I think we can quickly address whether we can
12 go at grade. There is a PUD power station that we
13 think would prohibit us from going below grade at the
14 site, but we can provide any detail that would support
15 that.

16 JUDGE WALLIS: Ms. Larson, would that satisfy
17 your interests?

18 MS. LARSON: Yes, I think it would.

19 JUDGE WALLIS: I will make a note in the
20 prehearing order of this discussion, and if the parties
21 were to notify me that a discovery order is required
22 and state the reason for that, and if you are unable to
23 resolve matters without one, one will be entered.

24 MS. LARSON: That sounds fine, Your Honor.

25 MR. ZIOBRO: Your Honor, as far as the City

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1 is concerned, I think our discovery would be focused
2 on -- Ms. Larson and I had a conversation about this
3 yesterday -- nonattorney client discussions about
4 alternative options for relocating the spur that may
5 have been discussed by UP, and we are going to explore
6 any analysis they've performed, and I think our
7 discussions with UP will come out naturally in the
8 course of any hearing that we have.

9 JUDGE WALLIS: Very well. Ms. Larson, would
10 it be true that no order would be necessary in order
11 for you to provide that information?

12 MS. LARSON: Well, we already are providing
13 certain information. Actually, I believe that the
14 issue of alternate locations is outside the scope of
15 this proceeding. I believe that the only issue that
16 can be decided in this proceeding is whether a crossing
17 can be ordered for this location, whether a crossing
18 can safely be sited at that location, and it would be
19 beyond the scope of the proceeding as to whether
20 interchange operations could take place in other
21 locations in the state.

22 So having said that, we still have been and
23 would continue to discuss alternatives with the City of
24 Kennewick and City of Richland, and I don't expect that
25 I would need any order to do that.

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1 JUDGE WALLIS: Very well. I have indicated
2 the circumstances under which an order invoking the
3 discovery rule could be provided, so we will leave that
4 at that.

5 Are there any other procedural issues or
6 concerns that the parties have that you would like to
7 raise at this time? Let the record show there is no
8 response. Have the parties consulted about a tentative
9 schedule?

10 MS. LARSON: John Ziobro and I tentatively
11 discussed a schedule yesterday afternoon. We were
12 looking at, perhaps, 60 days to identify the issues
13 that we will be facing and determine whether any of
14 those can be simplified, and going out on a parallel
15 front, we were looking at a period for discovery.

16 Frankly, from my standpoint, I would need to
17 look at the traffic study that is provided by the City
18 and review that with our engineering people to see
19 whether we would need to get an engineering study of
20 our own, a traffic study of our own for that crossing,
21 so I would like to have sufficient time to be able to
22 both review what the City has provided and, in turn, so
23 we can share such information with the City that we
24 have enough time to hire an engineering firm to do a
25 traffic study if that's needed.

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1 JUDGE WALLIS: Where does that put us on the
2 calendar; into January?

3 MS. LARSON: I would think near the end of
4 January, yes.

5 MR. ZIOBRO: That's appropriate from the
6 City's perspective.

7 JUDGE WALLIS: If this matter does go to
8 hearing, do the parties have an estimate of the time
9 that would be required to try it?

10 MR. ZIOBRO: Your Honor, we have described
11 providing a certain amount of the testimony in written
12 form in advance to help streamline or shorten the
13 actual hearing time. It would also reduce the number
14 of witnesses that would need to travel. I'm thinking
15 we can do it in a day or less, but Ms. Larson and I
16 have not discussed how long it would take, so I would
17 be interested in hearing her thoughts on that.

18 MS. LARSON: It would seem to me, certainly
19 the witnesses for the railroad would take less than
20 half a day. I guess I'm just not so sure how long it
21 would take for the City to put on its testimony, but if
22 you also think it would take less than half a day, I
23 would certainly agree with your estimate.

24 MR. ZIOBRO: I think we are pretty close. I
25 think we could block it two days and certainly not be

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1 at risk of going over that.

2 MS. LARSON: I agree with that.

3 JUDGE WALLIS: Does Staff have an estimate of
4 the time that would be required for its presentation,
5 if any?

6 MR. NIZAM: Based on prior experience, less
7 than one day for the total hearing.

8 JUDGE WALLIS: In terms of prefiled
9 testimony, have you discussed a time frame and an order
10 of presentation relating to that?

11 MS. LARSON: No, we haven't. Although,
12 perhaps if we were going to go in the natural order, it
13 would seem appropriate for the City to file it first
14 and then for the Railroad to and the WUTC staff, if
15 they are also participating, giving testimony too to
16 file later.

17 JUDGE WALLIS: Let's go off the record for
18 just a moment so we can discuss issues relating to
19 schedule.

20 (Discussion off the record.)

21 JUDGE WALLIS: During a discussion held off
22 the record, we discussed the timing of schedule in this
23 docket, and allowing the parties approximately 60 days
24 to identify issues and pursue discovery, that gets us
25 to the end of January. The parties have indicated a

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1 desire to file written testimony in advance of the
2 hearing on the following approximate schedule:

3 The City testimony would be filed in late
4 February. The Commission staff testimony would be
5 filed approximately two weeks after that. The Railroad
6 testimony would be filed approximately two weeks after
7 that. Then there will be an opportunity for the City
8 to file rebuttal approximately two to three weeks after
9 that, and then we will consult the Commission rules
10 relating to the filing of dispositive motions to assure
11 that parties have an opportunity to make a filing or
12 else will establish a deadline that would meet the
13 parties' needs, and from that, we will determine the
14 schedule of the hearing.

15 By my rough estimate, it looks like it will
16 be sometime during late April or May. Does that work
17 for the parties?

18 MS. LARSON: Yes, it does.

19 MR. ZIOBRO: It works for the City also.

20 JUDGE WALLIS: Is there anything else that
21 the parties would like to discuss?

22 MR. ZIOBRO: Nothing further from the City.

23 MS. LARSON: Nothing from me either, thank
24 you.

25 MS. JOHNSTON: Your Honor, I would like to

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1 add an additional assistant attorney general to make an
2 appearance in this docket, and that would be Jonathan
3 Thompson. His name appears on the Notice of Prehearing
4 Conference. Thank you.

5 JUDGE WALLIS: We will note that appearance.
6 Thank you all very much.

7 (Prehearing conference concluded at 1:50 p.m.)

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