

SERVICE DATE

JUL - 3 1996

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UNION PACIFIC RAILROAD COMPANY,)	
)	
Petitioner,)	DOCKET NO. TR-950177
)	
v.)	
)	
SPOKANE COUNTY,)	COMMISSION DECISION AND
)	ORDER GRANTING PETITION;
)	MODIFYING INITIAL ORDER;
Respondent.)	CLOSING SHANNON ROAD
)	CROSSING; AUTHORIZING STAY
.....)	

Nature of Proceeding: This is a petition by Union Pacific Railroad Company for closure of the crossing at grade of Shannon Road by tracks of the Union Pacific Railroad in Spokane County, Washington.

Initial Order: Administrative Law Judge John Prusia entered an initial order that would deny the petition, finding that present and future need justify the crossing.

Post-hearing process: Commission Staff and the Railroad both petition for administrative review. They contend that the dangers at the crossing outweigh public need; that public access may be served by nearby crossings; and that it is error to consider future need in determining whether a crossing shall be closed or remain open. Commission Staff asks that the crossing be closed unconditionally; the Railroad asks that the crossing be closed or in the alternative be allowed to remain open only if the County requests that the crossing be improved and that electronic signals be installed prior to commencement of construction of new development already authorized for the area. The County did not answer the petition.

Commission: The crossing is shown to be dangerous and to be incapable of safely handling an increase in traffic flow. The Shannon Road crossing should be closed or improved and signalized to protect the public. Need is indicated on the record for an improved crossing either at Shannon Road or nearby to handle traffic from development that is proposed and that the County has already approved for the area. The initial order is reversed and the crossing is ordered closed. This order may be stayed for 120 days to allow the parties to formulate and present an agreed plan to accomplish needed changes to serve approved and planned development. The Commission will consider a further stay if a plan is presented that would protect the public safety and welfare and satisfy the public interest.

Appearances: Carolyn Larson, attorney, Portland, Oregon, represented petitioner Union Pacific Railroad. Ross Kelley, assistant county engineer, Spokane, represented Spokane County. Shannon E. Smith, assistant attorney general, represented Commission Staff.

(1) A poorly configured, poorly protected, little-used crossing of a narrow gravel road with main line railroad tracks should be closed when a safer crossing is readily available, although somewhat less convenient.

(2) Availability of a poorly configured, poorly protected, little-used crossing of a narrow gravel road with main line railroad tracks as an alternative route in the event emergency vehicles block the primary access road is an important consideration, but does not outweigh danger posed by the crossing on a daily basis to persons in motor vehicles using the crossing.

(3) The Commission cannot in a closure proceeding order reconfiguration and signalization to a crossing when the record of the proceeding contains insufficient evidence on which to base specific provisions.

(4) When the Commission believes that affected interests may be able to resolve a contested matter in a more comprehensive way than the record permits, it may stay the effect of its order and allow parties to pursue an agreed resolution.

(5) The Commission may impose reasonable conditions upon a stay of a Commission order to assure that the public safety is protected while parties pursue alternative dispute resolution.

(6) If a crossing is closed, a petition to reopen the crossing may be considered on a showing of changed circumstances.

MEMORANDUM

This case concerns the proposed closure of the Shannon Road railroad grade crossing in Spokane County, east of Spokane, Washington. On January 30, 1995, Union Pacific Railroad Company ("Union Pacific" or "Railroad") petitioned the Commission for closure of this crossing. The petition states that this crossing is a narrow gravel road not necessary to serve the existing land uses, and that there are roads on each side of the railroad tracks that connect to signalized crossings.

Spokane County notified the Commission that it would not waive a hearing, and the matter was set for hearing. On January 3, 1996, the Commission consolidated this case for hearing with Docket Nos. TR-950175 and TR-950176, which are petitions by Union Pacific for closure of nearby crossings on the same railroad line. A hearing was held in Spokane on January 30, 1996, at which all of the parties and some members of the public offered testimony. An individual order was entered for each of the proceedings.

The Crossing and Current Surroundings and Uses

A rather extensive discussion of facts is needed to set the scene for the parties' contentions and the Commission's action. The Shannon Road crossing is located in Spokane County at Railroad Milepost 10.10, east of the city of Spokane. The tracks run in an east-west direction at the point where Shannon Road crosses them. The tracks are to the north of and parallel to Interstate 90 in the vicinity of the Shannon crossing.

The vicinity of the crossing is shown in Figure 1 (from Exhibits 4 and 13). Shannon Road crosses the tracks at a right angle. Immediately north of the crossing, Shannon Road makes an abrupt turn to the west and parallels the tracks for approximately a quarter mile. The roadway then meanders north and west, first as Houk Street and then as Mansfield Road, until it intersects with Pines Road. Pines Road is a north/south arterial that crosses the same tracks about one-half mile west of the Shannon Road Crossing. Pines Road is congested at times. The roadway intersection of Pines with Mansfield is not signalized.

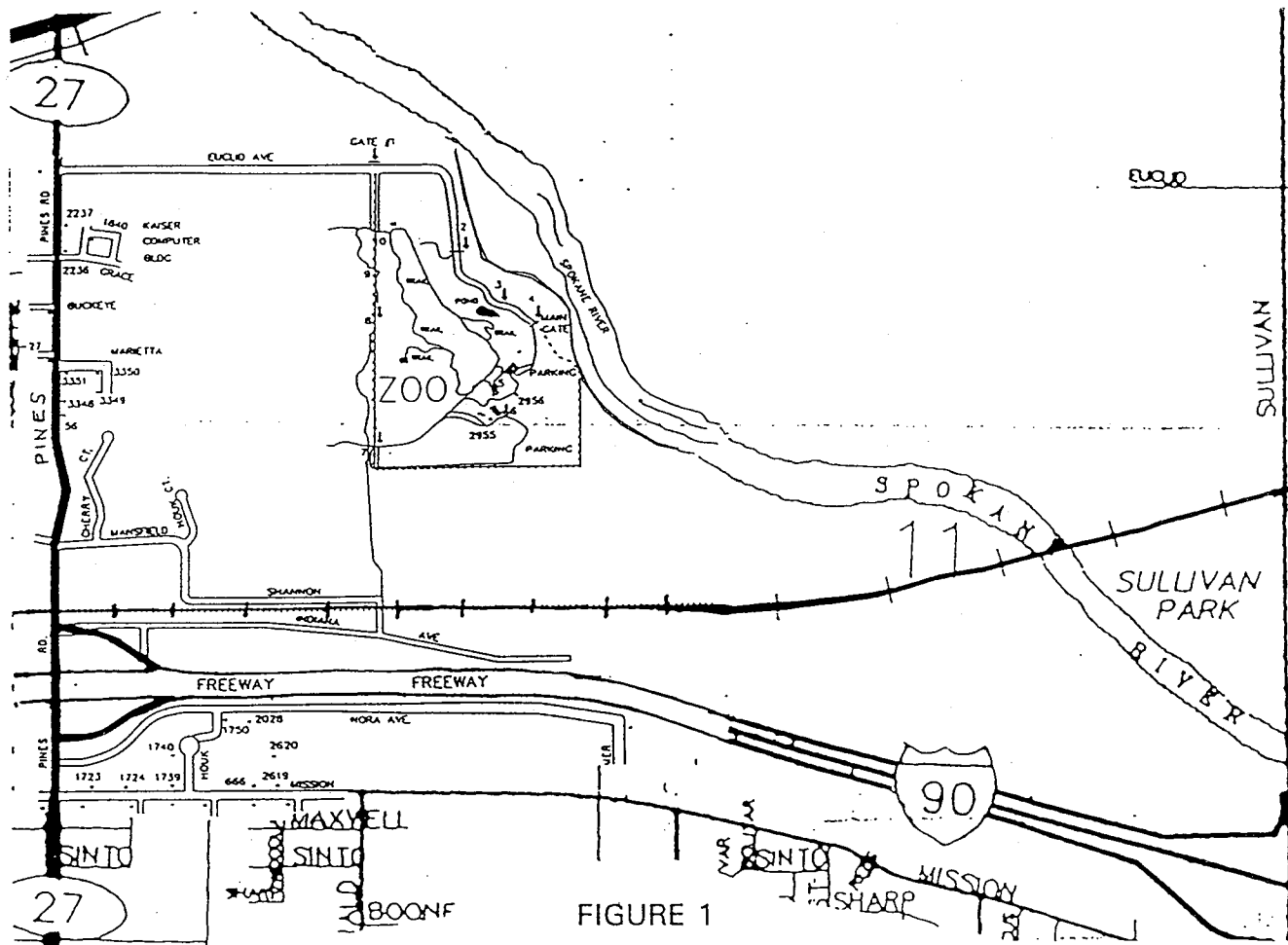
South of the crossing, Shannon Road runs north-south for about 200 feet until it joins Indiana Avenue in a "T" intersection. Indiana Avenue at that location is a spur running east from Pines Road between and parallel to the tracks and I-90.

The area to the east of the crossing is vacant land. To the west of the crossing, north of the tracks, lies a residential neighborhood consisting mostly of apartment complexes, along the meandering roadway (Shannon/Houk/ Mansfield) that runs from the crossing to Pines Road. The Shannon Road crossing provides one of two exits from the neighborhood, the other being at the intersection of Pines Road and Mansfield Road. To the west of the crossing, south of the tracks, there is some light industrial and commercial development along Indiana Avenue.

In the vicinity of the crossing, Shannon Road is unpaved. It is a narrow gravel road with no curbs or sidewalks. Approximately 50 vehicles per day use the Shannon crossing. The crossing's principal current use is as a short-cut between the residential neighborhood northwest of the crossing and businesses south of the crossing. The Shannon Road crossing is protected only by crossbuck signs. No witness was aware of any accidents that have occurred at the Shannon Road crossing.

A single set of tracks crosses Shannon Road. They are Union Pacific's main line from Spokane to Eastport, Idaho, where the Railroad interchanges with the Canadian Pacific Railway. Approximately four heavy-tonnage trains, usually consisting of 100 cars or more, travel over the crossing at variable times each night, seven days a week. In addition, five days a week a switch engine train of approximately ten cars moves over the crossing twice a day, and the Coeur d'Alene local, also with about ten cars, moves over the crossing twice a day. In addition, two extra trains carrying grain or ore move over the crossing each week. The speed of trains across the Shannon Road crossing is about 20 miles per hour.

The nearest crossing to the west of Shannon Road is at Pines Road, about one-half mile to the west. Pines Road crosses the tracks at grade, and is controlled by flashing lights and cantilevers. The nearest crossing to the east of the Shannon Road crossing is at Sullivan Road, about one and one-half miles to the east. Sullivan Road is a grade-separated overcrossing. Presently there is no direct access between Shannon Road and Sullivan Road.



Development Activity in the Vicinity

Proposals to develop parcels of land on both sides of the tracks between Pines Road and Sullivan Road are actively in the planning stage. Several projects already have been approved. These projects include the following.

1. A regional mall has been approved for an area northwest of the intersection of I-90 and Sullivan Road, between the tracks and I-90. Associated with that, an extension of Indiana Avenue eastward to Sullivan Road has been approved. When the extension is completed, Indiana Avenue will connect Sullivan Road and Pines Road. Construction of Indiana Avenue and the mall are scheduled to begin in the spring of 1996. When Indiana Avenue is completed, the Shannon Road crossing will lie on an alternate route connecting Pines Road to the mall.

2. A vacant 40-acre parcel lying north of the portion of Shannon Road that parallels the tracks on the north side, known as the Lawson-Gunning property, has been rezoned to permit single family homes. The developers of that parcel presently are seeking another rezoning which would permit much denser land use, and plan to build apartment complexes on the site. The developers are in the process of preparing an environmental impact study, including the effects of traffic that the development would generate on nearby roads and the signalization that may be necessary at the Shannon crossing. Although it is not part of the current rezone application, the current thinking of the property owners is that if their and other proposed developments occur, Shannon Road probably would be moved 200 to 300 feet north through the Lawson-Gunning property, where it would connect with a new north/south street which would cross the tracks at the Shannon Avenue crossing. The new road would be an extension of McDonald Road, which already exists south of I-90.

3. Inland Empire Paper Company owns 230 acres lying northeast of the crossing, bounded on the south by the tracks and on the north and east by the Spokane River. The parcel is called "Maribeu Point." The Walk in the Wild Zoo has occupied part of the parcel for the last 20 years or so. The zoo has closed and is moving to Idaho, freeing the area for development. The paper company began a master planning process for the property in the fall of 1995. It will donate 71 acres of the site to a nonprofit organization called Maribeu Point, Incorporated, to develop a community complex and locate the YMCA and other facilities. The group envisions a community complex which would provide an educational center for the community colleges and the East Valley School District, as well as a performing arts center and a senior center. The YMCA has committed to a facility that would include an aquatic center, a teen center, and substantial play areas. The group also envisions an amphitheater and a trail system. It envisions the location as a focal point for the whole Spokane valley, offering recreational, entertainment, and educational opportunities. Surrounding the core would be a future commercial and future residential area, possibly a future R.V. park, a hotel complex, and a business park. They have a commitment from a major ice arena.

The Initial Order

The initial order determined that the crossing should remain open. It found that the evidence of convenience and need outweighs the evidence of dangers of leaving this crossing open. It found that there is a present need for the Shannon Road crossing for alternate access in the event of fires in the existing residential area along Houk and Mansfield.

The order also found the existence of dangers in the crossing. It stated that it

has considered the dangers inherent in all grade crossings and in particular features of this crossing. The L-shaped configuration makes the Shannon Road crossing particularly hazardous. A motorist approaching from the north does not have a clear view of the tracks until the vehicle enters the railroad right of way and is nearly upon the tracks. The short roadway on the north presents a hazard if several vehicles are approaching the crossing from that direction at the same time, in that the first vehicle could be trapped upon the tracks and unable to back up. These features will make the crossing increasingly dangerous as usage increases. Another particular hazard is the lack of any electronic crossing warning signals or even stop signs.

On balance, the order determined that need for the crossing as an alternate access for fire protection and as an escape route requires that the crossing remain open.

Petitions for Review

The Commission Staff asks that the order be reversed and that the crossing be closed. Staff urges that the asserted need for an escape route does not differ from situations in residential subdivisions where cul-de-sac development also offers only one route of access and egress. It contends that fire and other emergency access is available through the primary access routes. Finally, it contends that the Commission must consider only present traffic need for the crossing rather than future, speculative need.

Union Pacific accepts the ruling that the crossing is needed as an alternative for emergency access and escape. It opposes the result of the initial order, however -- an unconditional ruling that the crossing remain open. The Railroad cites testimony by Mr. Brueggeman, Spokane County traffic engineer, that traffic would have to increase substantially before the crossing would become a County priority for signalization. The Railroad argues that public safety will be compromised if traffic increases without signalization of the crossing.

The Railroad notes that the Commission may require improvement of the crossing as a condition of allowing it to remain open¹ and asks that the Commission condition any denial of its petition for closure conditional upon application by the County for authority to reengineer and signalize the crossing before the County authorizes developments that would increase crossing use.

Spokane County did not answer the petition for administrative review.

Discussion and Decision

The Commission is the principal agency charged with protecting the public safety at railroad crossings, under the guidance of standards established by the legislature and the courts. The initial order thoroughly analyzed prior decisions outlining the Commission's authority and stating its discretion to evaluate dangers in making its decisions.²

Here, the question appears to be whether the present public need for alternate emergency access and egress (or the danger imposed on the public from a lack of that access and egress) outweigh danger to the public from allowing the crossing to remain open without any planned improvements during a period of expected rapid growth in vehicle traffic.

Any crossing is dangerous, as the legislature has provided and the courts have affirmed. Here, additional dangers abound. The road at the crossing is unpaved. The crossing has no electronic signals nor even a stop sign protecting it and the County plans no petition for signalization. The roadway makes an abrupt turn to the north of the crossing, restricting drivers' ability to see trains on the track and oncoming traffic, and limiting the holding capacity of the road. Trains traverse the crossing relatively infrequently, which lulls drivers into a sense of complacency.

(1,2) Based on present circumstances, the Commission believes that the crossing should be closed. Use of the crossing now is as an alternate to paved, improved and signalized crossings or as a short cut to avoid longer travels to improved crossings. Only 50 vehicles daily use the crossing -- some two per hour on a 24-hour average. Because primary access via safer routes is readily available, albeit less convenient for some travelers, the Commission believes that the additional access provided by the crossing is desirable but not essential and that the dangers posed by the crossing outweigh the need for additional access. As the Commission Staff witness testified, controverting the fire department statement of

¹Department of Transportation v. Snohomish County, 35 Wn.2d 247, 212 P.2d 829 (1949)

²The Commission notes the extensive discussions of judicial and prior Commission cases in the initial order and adopts those references as though included herein.

emergency need, in the event of a major conflagration in the affected territory the lack of alternate access could impede but would not prevent truly essential ingress and egress. Land use in the affected territory appears to be within County standards for single-access traffic patterns.

An aspect of this crossing causing particular concern is that substantial development is already approved for the territory that it serves, which according to the evidence will increase the demand for alternate access and will increase motor vehicle traffic at the crossing -- yet the County has no plans to seek crossing improvements or signals.³ It is untenable because of public safety concerns that the existing crossing serve even a moderate increase in traffic.

(3) The record does not provide sufficient information for the Commission to determine an appropriate crossing configuration or signalization pattern that would protect the public safety short of total closure. We thus do not have the option of merely deciding what improvements are required to balance need with safety and directing their completion.

For the protection of the public, the crossing as now configured and protected should be closed. The Commission understands, however, the concerns of fire officials, the concerns of developers whose plans may rely on access afforded by the crossing, and the practical limitations of governmental budgets. We also accept the Commission Staff opinion that the crossing may safely remain open for a limited period while longer range plans are completed and implemented. Installation of stop signs at the crossing should be required as a condition to such temporary use.

(4,5) All of the engineering witnesses agreed that crossing improvements would be essential to handle expected vehicle traffic growth. The Commission believes that if the parties engage in earnest discussions they should be able to resolve differences and reach accommodations that will satisfy public safety requirements and provide for crossing improvements. Consequently, the Commission will stay the closure requirement of this order for 120 days to allow those discussions to take place. The stay will be conditional upon some additional protection being installed at the crossing. For the stay to be effective, the County shall certify to the Commission within 14 days after the date of this order that it has installed stop signs requiring oncoming motor vehicle traffic to stop before traversing the crossing. This provision is reasonably necessary to lessen the danger at the existing crossing while discussions are taking place regarding longer-term solutions.

The Commission asks Commission Staff to be the convening party, i.e., to take the initiative in arranging the first discussion session. At a minimum, the parties' discussions must address the engineering and funding of safe means to permit emergency

³Evidence at the hearing indicated that the best location for the crossing for future traffic patterns, after further area development, might be nearby and not at the existing Shannon Road location.

access at the crossing without endangering the public. This might involve some interim improvements to the crossing; some enhancements of signage at the crossing; "breakaway" gates as suggested by witnesses; and/or other means to provide needed public protection.

The parties should consider, if not decide, longer-range needs for public crossings in the area. Several alternative engineering solutions were offered on the record, including redesigning approaches to the existing crossing and relocating the crossing, in addition to the addition of signalization and perhaps automatic gates. A grade separation was also mentioned as a possibility, albeit limited by engineering requirements. If the parties do not resolve long-range crossing plans, they should conduct such long range planning as may be necessary to determine whether their recommended short range plans are consistent with long range needs and to determine a schedule for completing detailed longer-range plans and crossing modifications.

It appears important that landowners and developers participate in discussions. Their concepts of need for improvements and the concepts of means to achieve them may differ from those of the County, the Railroad, and the Commission Staff. It is important that affected interests at least understand the perspectives of others and it is preferable for the parties to achieve consensus. Finally, it is important that all the parties have a realistic understanding of alternative means to satisfy the requirements of safety; of the costs, of the availability of funding to meet those costs, and to have the opportunity to participate in discussions of needed improvements and of creative ways to assure funding for those improvements.

The parties may submit an agreed proposal to the Commission for its review under this docket number within the time specified in this order. The stay will then continue for such additional time as the Commission requires to review and act upon the proposal. If the Commission approves an interim proposal or a variation thereof, it may limit the approval to a finite period pending solution of longer-range needs. As appropriate, the Commission may modify this order to allow the crossing to remain open, may impose conditions on closure, or may modify the proposal as needed for public safety, while longer term plans are being concluded and implemented.

(6) If the parties fail to reach and present an agreement acceptable to all in the allotted time, the stay will expire without further Commission action and the crossing must be closed. It should be clear, however, that if the crossing is closed the County may petition for it to be reopened at any time upon a showing of changed circumstances -- i.e., that need exists and that the public safety will be sufficiently protected.

This resolution is offered as a means to meet all of the interests described on the record -- private development, local government, railroad, and public safety -- and to provide incentive for all affected interests to participate in developing a solution that satisfies those interests. Any risk to public safety from a stay of closure is minimized by requiring an immediate and interim improvement to the crossing by installation of stop signs; by requiring

parties to consider a short term solution that protects public safety if time is required to perfect a lasting solution, by anticipating a limited time for any short term solution that keeps the crossing open to the public, and by encouraging parties to look at longer-range needs and to pursue short-run solutions consistent with long range solutions.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

FINDINGS OF FACT

1. On January 30, 1995, Union Pacific Railroad Company petitioned the Commission for closure of the Shannon Road crossing at Milepost 10.10 on the Union Pacific railroad in Spokane County, east of the city of Spokane. The petition states that Union Pacific seeks authority to close the crossing because the crossing is a narrow gravel road that is not necessary to serve existing land uses, and that parallel roads on each side of the railroad connect to a signalized crossing.
2. John Turnbull testified for the Union Pacific in support of the petition. Mr. Turnbull is Manager of Industry and Public Projects for the company. He has held the position for five years. He is based in Nampa, Idaho. His job responsibilities encompass the states of Washington, Oregon, Idaho, and Montana, working with state and local governments on crossing and safety projects, and also working with new industrial customers. There are approximately 40 road crossings along a 20 mile stretch in this part of Spokane County, more than half of which have only passive signalization such as crossbucks and stop signs. Putting lights and gates on all of them would be very expensive. Mr. Turnbull is on a team that is working to consolidate crossings and close unnecessary crossings.
3. Mr. Turnbull is familiar with the Shannon Road crossing. The roads in the Shannon Road crossing area are shown in Exhibit 4. The exhibit shows that the tracks run in an east-west direction, parallel to and a short distance north of Interstate 90 in the area of the Shannon Road crossing. The nearest crossing to the west is at Pines Road, approximately one-half mile to the west. Shannon Road runs north-south across the tracks. Approximately 200 feet south of the tracks it joins Indiana Avenue in a "T" intersection. Indiana Avenue parallels the railroad, and runs westward from the intersection with Shannon Road until it connects to Pines Road just south of the Pines Road crossing. Going north from the crossing, the roadway meanders, first westerly as Shannon Road, then northerly as Houk, and finally westerly as Mansfield until it intersects with Pines Road a few hundred feet north of the Pines Road crossing. The next crossing to the east of the Shannon crossing is an overcrossing at Sullivan Road, about two miles to the east of Pines Road.

4. The roadway that meanders between the Shannon Road crossing and Pines Road on the north side of the tracks passes through an area of small acreages and apartment house complexes. Before reaching the crossing from the west, Shannon Road parallels the tracks along the northern boundary of the right of way for about a quarter mile, then makes a sharp turn across the tracks, and then intersects with Indiana Avenue. The only signals at the crossing are railroad crossbucks.

5. On the south or Indiana Avenue side of the crossing, there are some businesses. The only people who use the crossing regularly appear to be people who live in the apartment complexes north of the tracks and work in those businesses south of the tracks. The property to the north of the crossing presently is zoned rural residential and light industrial. Keeping the crossing open is not necessary to accommodate uses that are allowed by that zoning.

6. If more vehicles begin to use this crossing, the potential for accidents is great because of the crossing's existing configuration and protection. When a vehicle approaching the crossing from the north turns so that the driver can look down the tracks, the person is virtually on the tracks. The proper procedure for achieving crossing improvements would be a petition for reconfiguration, and for either a gated crossing with electronic signals or an over or under crossing. If Shannon Road were reconfigured to eliminate the sharp right angle turn, it would make it safer. Widening and paving the road and installing electronic signals also would make the crossing safer.

7. The crossing at Pines Road has flashing lights and cantilever gates to warn of approaching trains and protect motor vehicle traffic. It is a much safer crossing than the existing Shannon Road crossing for that reason.

8. Ray McDeid testified for Union Pacific in support of the petition. Mr. McDeid is a contract employee of the Union Pacific. He worked for the Union Pacific for 38 years, until retiring from the claims agent position in Spokane two years ago. In his job as a claims representative he investigated, handled, and settled liability claims resulting from grade crossing accidents and employee injuries. He is familiar with the Union Pacific crossings in the Spokane area.

9. The track is a mainline track from Spokane to Eastport, Idaho, where the Union Pacific interchanges with the Canadian Pacific. The track presently is used only by freight trains. At the Shannon Road crossing, the trains operate at a maximum speed of 20 miles per hour. A small train of ten cars would take 500 feet to stop at that speed. Longer trains would take farther to stop. Approximately four heavy tonnage trains, usually consisting of 100 cars or more, travel over the crossing at variable times each night, seven days a week. In addition, five days a week a switch engine train of approximately ten cars moves over the crossing twice a day, and the Coeur d'Alene local, also with about ten cars, moves over the crossing twice a day. In addition, two extra trains carrying grain or ores move over the crossing each week.

10. No witness was aware of any accidents at the Shannon Road crossing within the past 20 years.

11. Robert Brueggeman testified for Spokane County in opposition to the petition. Mr. Brueggeman is the traffic engineer for Spokane County. He represents the county in dealings with the railroad and state agencies for funding of rail protection projects. He is familiar with the Shannon Road crossing. Approximately 50 cars a day use the crossing. Given the current uses of the crossing, the only need for the crossing is secondary access to the existing apartments in the area for emergency protection. In the witness' opinion, if Shannon Road were taken further north before making the existing crossing, rather than having a sharp right angle onto the crossing, and if gates and electronic signals were installed, safety at the crossing would be improved. The county does not have current plans to signalize the crossing.

12. The county has been involved in discussions of potential projects in the areas north of the tracks that currently are zoned rural residential and light industrial. Mr. Brueggeman first became aware of discussions of a multi-family project a year and a half ago, and recently read about a proposed community center. If a development like the latter were authorized, the county would not recommend use of the crossing in its present configuration. The only advantage to leaving it open would be for emergency service to the existing development as a secondary approach for fire protection or for residents to get out if the other entrance to this area were blocked. The fire district's witness addresses that district's concerns. The county road department's main interest in keeping the crossing open is because of the potential for future development. Mr. Brueggeman believes that it is easier to keep an existing crossing open than to close one and try to get another opened. Traffic over the crossing would have to increase substantially before the crossing would become a county priority for signalization.

13. South of the tracks, Indiana Avenue is being extended to serve a regional mall. Construction of a five-lane roadway was to begin in the spring of 1996. Extension of Indiana Avenue will provide access to Shannon Road from Sullivan Road. It may increase use of the crossing.

14. Pines Road in the vicinity of its crossing is experiencing difficulty carrying traffic, to the point of being in a stalled condition during peak hours. Diverting traffic from Shannon Road to Pines would worsen the problem.

15. Gary Harder testified for Commission Staff in support of the petition. Mr. Harder is rail carrier compliance specialist with the Commission in Olympia. He enforces statutes, rules, and standards dealing with railroad grade crossing safety and railroad employee safety, clearance rules, track standards, and equipment standards. Mr. Harder is familiar with the Shannon Road crossing. He last visited it in the fall of 1995. There were no stop signs at the crossing.

16. One of the Commission's railroad inspectors, Jerry Buxton, did a field analysis of the proposed closure. As part of the investigation, he prepared a report (Exhibit 9). Photographs taken as part of the report show that Shannon Road is a narrow gravel road that runs northerly-southerly at the crossing. The only signals at the crossing are sawbuck signs (crossbucks). Looking to the east from the crossing, the land is undeveloped. Looking to the west, there are industrial-type buildings to the south. Commission Staff believes that the Shannon Road crossing should be closed, and that it serves little purpose at this time. Construction of Indiana Avenue is unlikely to impact use of Shannon Road because motorists would be likely to access the mall from the west using Pines Road, where there is a signal at Indiana, rather than traveling through the residential area on Shannon Road. The crossing does serve as an alternate access for emergency vehicles, but access from Pines Road could be cleared in a relatively short amount of time.

17. If the time frame for development of the area north of the tracks were a little more certain, Mr. Harder might accept leaving the existing Shannon crossing in place as an alternate access to the area. Because the time lines are unknown, he supports closure now because of the serious potential for accidents. Crossing accidents usually happen to local people who use the crossing regularly, who become familiar with it and used to seeing no trains coming, and are in a hurry and careless at some time when there is a train. The county and the developers could work out the best solution for the future as far as crossing location and configuration are concerned as part of the planning process. A good option would be to have a proposed I-90 interchange at Evergreen Road be extended and go over the tracks, providing access to the north. Mr. Harder believes that if the Shannon crossing were closed now and no crossing were allowed until safety issues were fully addressed, it is more likely that there would be an improved crossing in the area before traffic increased. An overcrossing probably would cost from two to five million dollars. Signalizing Shannon Road probably would cost about \$130,000.

18. Karl Bold testified as a public witness, representing the Spokane Valley Fire Department. Mr. Bold has been the assistant fire chief for nine years. The department serves the area of the Shannon Road crossing. The department opposes closure of the Shannon crossing. There are only two access routes to the residential area on Mansfield and Houk, one off Pines Road and the other on the Shannon crossing. The area is mostly large apartments, with dense construction. If there is a major fire north of Mansfield, five-inch fire hoses would have to be stretched across Mansfield and would block the road completely. Most cars cannot drive over those lines, and the department cannot drive over them with its trucks because the weight of the trucks would split the hoses. If the department needs to bring in additional trucks, it would bring them in through the Shannon crossing unless it cleared a pathway for the additional vehicles. Existence of another route of egress for residents would allow them to leave in their cars and lessen the possibility of a traffic jam in the area.

19. Possible extension of Indiana Avenue, coupled with a Shannon Road crossing, would improve the department's response time because it could bring equipment from its station on Sullivan, just north of the river, down Indiana Avenue and across the Shannon Road crossing. If the zoo area is developed as a community center, the department believes that second access into the area will definitely be needed.

20. Crash gates at the Shannon Road crossing might allow for emergency access, but the record is not clear as to what a crash gate is. The department would not want to burst through wooden barriers with its fire trucks. A gate activated by an opticom system could work for the department, but it would not let other traffic out. The department would like to be able to funnel other traffic out of the area, to clear the streets for its equipment. It prefers a plan that allows private vehicles the opportunity to escape. The record does not demonstrate whether some kind of "crash gate" or other mechanism could eliminate the present need for keeping the crossing open as a secondary fire access route.

21. Tony Lazanis testified as a public witness in opposition to closure of the crossing. Mr. Lazanis lives in the Spokane Valley east of Spokane. He opposes closure of any crossings. He believes that they are convenient and make fire response easier. Gates would make the crossings safer.

22. Todd Whipple, Spokane, testified as a public witness in opposition to closure of the crossing. Mr. Whipple represents the landowners that are north of and adjacent to the tracks, and is authorized to speak on their behalf. He is a licensed engineer, and his specialty is traffic and transportation.

23. There are problems with alternate access into the area. The intersection at Mansfield and Pines Road is unsignalized and too congested, and will require mitigation. The Spokane River is a natural boundary on the north and east, and trying to cross a river is environmentally difficult.

24. With the decision by the Walk in the Wild Zoo to move to Idaho, there have been significant land use changes within this area north of the tracks within the past year. A master plan for the area is being developed by Empire Paper, a major land owner. The master plan includes a community center, which would include the YMCA, an amphitheater, an open area, a business area, an ice rink, and additional future recreational businesses. The proposal is called Maribeu Point. As part of the plan, McDonald Road, which is in a direct line with the crossing going south, would be extended across the railroad tracks and north into the community center. Project development is in its infancy. As it goes through the land development process, rezoning will be applied for, traffic studies will be conducted, and a determination will be made regarding what kind of access is required.

25. The existing rezone of the Lawson-Gunning property, north of Shannon and west of McDonald Road extended, identified the Shannon crossing as necessary to serve even the less dense development then proposed, because the intersection at Mansfield and Pines did not have the available capacity to provide access to the property. An open Shannon Road crossing is a condition for allowing the already-approved use to go forward. A rezone application for the property has been filed, to rezone it from RR-10 to UR-22, which would allow multi-family development; the current proposal is for 800 units. Because of congestion problems on Pines, it is likely that residents would use the Shannon crossing to access the mall. The developer presently assumes that should the development occur, the Shannon crossing probably will be realigned by moving Shannon Avenue 200 to 300 feet to the north and intersecting it with McDonald Road extended, which would eliminate the existing side-by-side crossing intersection.

26. The Maribeu project will increase the number of vehicles accessing this area to the 14,000 to 28,000 per day range. With that number of vehicles, there will be an increased need for vehicular access to Pine and Indiana. The Maribeu plan postulates a crossing at the Shannon Road location and another between Shannon Road and the mall site. The Commission has not approved installation of an additional crossing and will consider such a plan only pursuant to some future proceeding pursuant to pertinent legal requirements.

27. Cathy Ramm, Spokane, testified as a public witness, representing Inland Empire Paper Company. Maribeu Point consists of about 230 acres owned by the company. It is bounded by the Railroad's tracks to the south and the Spokane River to the east and north. The company began a master planning process for the property in the fall of 1995, after the Walk in the Wild Zoo made a firm commitment to leave the property.

28. Existing rural zoning reflects the zoo. Inland Empire Paper will donate 71 acres of the site to a nonprofit organization called Maribeu Point, Incorporated, to develop a community complex and locate a YMCA and other facilities. The group envisions a community complex which would provide an educational center for the community colleges and the East Valley School District, as well as a performing arts center and a senior center. The YMCA has committed to a facility that would include an aquatic center, a teen center, and substantial play areas. The group also envisions an amphitheater and a trail system. It envisions the location as a focal point for the whole Spokane valley, offering recreational, entertainment, and educational opportunities. Surrounding the core would be a future commercial and future residential area, possibly a future R.V. park, a hotel complex, and a business park. Developers also have a commitment for a major ice arena.

29. The Shannon crossing is important to the Maribeu Point plan. Without a crossing in approximately that location, the planned development could be delayed, because without it there would be only one way in and out. In addition to Shannon Road, developers will be requesting another crossing about a half mile east of Shannon Road. They explored the possibility of aligning the second crossing with the interchange at Evergreen and

I-90, and were told that it would be impossible to connect with Evergreen because the grade separation between the tracks and the intersection at Evergreen and Indiana is too great to allow Evergreen to cross the tracks at grade. They also looked into the possibility of a grade separated crossing, which appeared possible at the eastern end of the site, but it would not work well with the development south of the tracks and its road system. Also, there is a huge drainage area there. Developers also looked at the cost of undercrossings, and determined that the cost made them not feasible. They are considering only a grade crossings with full signalization.

30. Developers have been moving rapidly since the zoo committed to move, and significant community leaders are involved. The county commissioners have embraced the proposal. The company was scheduled to apply to the County in February 1996 to get the rezoning process started. Construction will begin on the nonprofit portion as soon as the approval processes is completed. Closure of Shannon Road at the crossing could create timing problems. If developers could be assured that the Shannon crossing would be available, then a developer could come forward and commit to doing the improvement for a fully signalized crossing, and everyone's timing needs could be met. Ms. Ramm is concerned that closing the existing crossing and reapplying for an improved crossing could take several years.

31. John D. Konen, Spokane, testified as a public witness, representing the owners of the Lawson-Gunning property. He is an employee of David Evans and Associates. The property is a 40-acre parcel immediately north of Shannon Avenue where it borders the tracks. The whole valley around this area is being urbanized. This area has remained an anomaly because of the zoo, which essentially took the area out of circulation for 20 years. His clients have authorized him to commit their property into a development pattern seeking UR-22 zoning, which allows about 20 to 22 units per acre. They have in mind a court apartment complex. They had a pre-development conference with the county in July or August 1995. They are now preparing an Environmental Impact Statement ("EIS"), which should be completed in three to four months. Traffic is an element of an EIS. The county will require them to address the installation of gates at the crossing as part of the EIS.

32. The Shannon Road crossing is an important element of the Evans project. The project might not be completed if the crossing were permanently closed. Under Spokane County's road standard, developments on a dead end road are limited to 100 apartment homes or 50 single family homes. There are already so many apartments in the area that the Lawson-Gunning apartment proposal could not meet that threshold. Mr. Konen feels that because their process is already well under way, the Evans project is "vested."

33. Developers investigated the possibility of an undercrossing or overcrossing on this stretch of the tracks. The road that is to be constructed to the south, Indiana Avenue, is not far enough from the tracks to afford an easy way to either go under or above the tracks without raising or lowering the tracks. Indiana Avenue is only 150 to

200 feet south of the tracks in the vicinity of the Shannon Road crossing. The County has already approved Indiana Avenue's design. Plans for construction of the avenue and drainage areas are already under way.

34. Chris Ashenbrenner, Spokane, testified as a public witness in opposition to closure, representing the Lawson-Gunning landowners. The planning process for a zone change and the State Environmental Policy Act ("SEPA") require a lengthy opportunity for interested agencies to make comments. In Spokane County, the landowner is required to go to various agencies and attempt to reach agreements that will satisfy their concerns. The landowners are already going through that process. They have had extensive discussions with the State Department of Transportation. Because of air quality problems along Pines, the department does not want more traffic routed there. Completion of planned developments north of the tracks may depend on the Shannon Road crossing remaining open or the construction of an alternate grade or grade-separated crossing.

35. David Carlson, Spokane, testified as a public witness in opposition to closure, representing Hanson Industries, Incorporated. His company is one of those developing the area south and east of the Shannon Road crossing. The proposed regional mall will begin construction in the spring of 1996. Plans of Indiana Avenue have been approved. It would not be possible to build an undercrossing or overcrossing from Indiana across the tracks at any point along Indiana. At its farthest point, which is at Shannon Road, Indiana will be about 200 feet from the tracks. Hanson's project is not dependent on the Shannon crossing remaining open, but connecting development of the area north of the tracks with that south of the tracks would have some positive economic impact on it.

36. Installation of stop signs requiring oncoming motor vehicle traffic to stop before using the crossing would improve safety for the existing use of the crossing sufficient to permit a stay of closure allowing parties to pursue consensus regarding short and long-term improvements to the crossing.

37. After the record closed, the Commission received a letter from Karl Bold dated February 1, 1996. The letter is a follow-up to Mr. Bold's testimony. The letter is rejected as untimely and cannot be considered.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties to this petition.

2. The existing crossing at grade at Shannon Road on the Union Pacific railroad line east of Spokane is hazardous. Existing need for alternate emergency access and egress does not outweigh the hazards of the present crossing. The increased public hazard

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resulting from reasonably expected increases in motor vehicle traffic over the existing Shannon Road crossing substantially outweighs the public convenience and need for the crossing and makes it untenable that the crossing remain open to handle increased traffic in its present configuration.

3. The Shannon Road crossing should be closed.

4. The parties to this proceeding should be afforded a stay of 120 days in which to develop, in consultation with other interested persons, both short-term and longer-term plans for protecting public safety at the Shannon Road crossing by closing, partially closing, relocating, replacing, and/or reconstructing and signalizing the existing crossing. Additional time may be granted by letter by the Secretary of the Commission upon a showing that the parties have made substantial progress toward agreement and that substantial likelihood exists that the additional time requested will produce the needed agreement. A condition of the stay is that the County certify within 14 days after the date of this order that stop signs have been erected at Shannon Road directing all oncoming motor vehicle traffic to stop before proceeding across the crossing. If parties reach agreement, the stay shall continue for such further time as may be needed for the Commission to act upon the proposal. If the parties fail to reach agreement in the allowed time, including any extension granted hereunder, the stay will expire and the crossing must be closed without further order of the Commission.

ORDER

THE COMMISSION ORDERS That

1. The petition of Union Pacific Railroad Company for closure of the Shannon Road crossing at Milepost 10.10 on the Union Pacific railroad in Spokane County, east of the city of Spokane, is Granted.

2. In accordance with Finding of Fact No. 36 and Conclusion of Law No. 4, if stop signs are erected at the crossing, this order shall be stayed for a period of 120 days, or such longer time as the Commission may authorize by letter from the Secretary, for

the parties to develop and present to the Commission appropriate agreed plans for public protection at the crossing.

DATED at Olympia, Washington, and effective this 3rd day of July 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


SHARON L. NELSON, Chairman


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).