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 1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

 2 COMMISSION

 3 CITY OF FIFE, )

 )

 4 Petitioner, )

 )

 5 vs. ) DOCKET NO. TR-100098

 ) Volume I

 6 UNION PACIFIC RAILROAD, ) Pages 1 - 25

 )

 7 Respondent. )

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 9 A prehearing conference in the above matter

10 was held on May 19, 2010, at 3:00 p.m. at 1300 South

11 Evergreen Park Drive Southwest, Olympia, Washington,

12 before Administrative Law Judge PATRICIA CLARK.

13

14 The parties were present as follows:

15 CITY OF FIFE, by LOREN D. COMBS (via bridge

 line), City Attorney, VSI Law Group, 3600 Port of

16 Tacoma Road, Suite 311, Tacoma, Washington 98424;

 telephone, (253) 922-5464.

17

 UNION PACIFIC RAILROAD COMPANY, by CAROLYN

18 DUNN (via bridge line), Attorney at Law, Dunn, Carney,

 Allen, Higgins & Tongue, 851 Southwest Sixth Avenue,

19 Suite 1500, Portland, Oregon 97204; telephone, (503)

 417-5462.

20

 WASHINGTON UTILITIES AND TRANSPORTATION

21 COMMISSION, by FRONDA WOODS, Assistant Attorney

 General, 1400 South Evergreen Park Drive Southwest,

22 Post Office Box 40128, Olympia, Washington 98504;

 telephone, (360) 664-1225.

23

 Kathryn T. Wilson, CCR

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25 Court Reporter

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

 2 JUDGE CLARK: Good afternoon. It's

 3 approximately three p.m. on May 19th, 2010, in the

 4 Commission's hearing room in Olympia, Washington. This

 5 is the time and place set for a prehearing conference

 6 in the matter of the City of Fife, petitioner, versus

 7 Union Pacific Railroad, respondent, given Docket No.

 8 TR-100098, Patricia Clark, administrative law judge for

 9 the Commission presiding.

10 This matter came before the Commission on

11 January 13th, 2010, when the City of Fife filed with

12 the Commission a petition to open a pedestrian only

13 at-grade crossing at 54th Avenue East in the City of

14 Fife. The City of Fife asserts that there is a need to

15 construct a new crossing to accommodate increased

16 pedestrian traffic due to increased development in the

17 area.

18 On January 25th, 2010, the Commission issued

19 a letter to Union Pacific Railroad notifying them of

20 the petition and requesting that they respond within 20

21 days with their position regarding the petition. On

22 February 12th, 2010, Union Pacific Railroad filed its

23 opposition to the position.

24 At this time, I'm going to take appearances

25 on behalf of the parties, and when we have attorneys

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 1 appear for the first time, I request what we call a

 2 full appearance; that is, I'm requesting your name,

 3 your address, your phone number, your fax number, and

 4 your e-mail address, and as the petitioner in the

 5 proceeding, I'm going to commence first with the City

 6 of Fife.

 7 MR. COMBS: This is Loren Combs, L-o-r-e-n,

 8 C-o-m-b-s, appearing on behalf of City of Fife. My

 9 business address is 3600 Port Of Tacoma Road, Suite

10 311, Tacoma, Washington, 98424. My telephone office is

11 (253) 922-5464. My fax number is (253) 922-5848, and

12 my e-mail address is ldc@vsilawgroup.com.

13 JUDGE CLARK: Thank you, Mr. Combs.

14 Appearing on behalf of Union Pacific Railroad?

15 MS. LARSON: It's Carolyn Larson,

16 C-a-r-o-l-y-n, L-a-r-s-o-n for the law firm of Dunn,

17 Carney, Allen, Higgins and Tongue. The address is 851

18 Southwest Sixth Avenue, Suite 1500, Portland, Oregon,

19 97204. My phone number is (503) 417-5462. The fax is

20 (503) 224-7324, and my e-mail address is

21 clarson@dunncarney.com.

22 JUDGE CLARK: Can I ask you to repeat your

23 phone number for me, please?

24 MS. LARSON: (503) 417-5462.

25 JUDGE CLARK: Thank you, very much.

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 1 Appearing on behalf of the Commission regulatory staff?

 2 MS. WOODS: Good afternoon, Your Honor. I'm

 3 Fronda Woods, assistant attorney general. My address

 4 is Washington Attorney General's Office, Utilities and

 5 Transportation Division, PO Box 40128. The street

 6 address is 1400 South Evergreen Park Drive Southwest,

 7 and for both, it's Olympia, Washington, 98504-0218. My

 8 telephone number is area code (360) 664-1225. My fax

 9 number is area code (360) 586-5522, and my e-mail is

10 fwoods@utc.wa.gov.

11 JUDGE CLARK: Thank you, Ms. Woods. The

12 prehearing conference in this matter was initially

13 scheduled to convene on May 3rd. On April 30th, the

14 parties all filed a joint request for continuance of a

15 prehearing conference indicating they were engaging in

16 settlement negotiations, and they believed they could

17 resolve their differences regarding this matter, so the

18 prehearing conference was rescheduled to this time and

19 date, and so the first matter that I would like to

20 address that may certainly tie into how we deal with

21 other issues this afternoon is what is the status of

22 the parties' settlement negotiations, and then, of

23 course, linked to that is how the parties want to

24 proceed with the evidentiary matters that are at issue

25 in this case.

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 1 MR. COMBS: If I may lead off on this one, I

 2 believe the settlement negotiations are ongoing, will

 3 bear fruit eventually, but they are not complete, and I

 4 believe the attorneys for all parties agree that the

 5 Court should go ahead and set a schedule, including

 6 hearing times, but give us a few more weeks to try to

 7 present an agreed order to you for your consideration,

 8 and I believe Assistant Attorney General Woods has in

 9 her possession a recommended schedule laid out that

10 will give us sufficient time to try to finish the

11 negotiations, and I think I speak for all three parties

12 that we believe a negotiated settlement is in the best

13 interest of justice and the health and safety of the

14 people involved, and what we are exploring, Your Honor,

15 is not a temporary solution but a permanent solution,

16 and that takes a little more time than we anticipated

17 because it may involve elements that require the

18 Railroad to get some approval from their home office

19 back east, and it requires some elements that my city

20 manager can't approve but it has to be approved by the

21 council, which only meets a couple of times a month, so

22 I respectfully request a little more time, and I'm

23 going to ask the other parties to weigh in on whether

24 or not what I said is accurate and Ms. Woods to present

25 the suggested time schedule.

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 1 JUDGE CLARK: Thank you, Mr. Combs, and I

 2 always check with all parties before we decide how to

 3 proceed, so you needn't be concerned about that.

 4 MR. COMBS: Thank you, Your Honor.

 5 JUDGE CLARK: Ms. Larson?

 6 MS. LARSON: Yes, Your Honor, I agree with

 7 what Loren Combs has stated as to the state of our

 8 negotiations and confirm that I have also reviewed the

 9 schedule that Fronda Woods has proposed and on behalf

10 of Union Pacific agree to that proposed schedule.

11 JUDGE CLARK: Ms. Woods?

12 MS. WOODS: Thank you, Your Honor. I agree

13 with what both counsel have stated, and I will present

14 the schedule that we e-mailed about.

15 The first date would be a deadline for filing

16 some kind of document that would resolve the case if

17 resolution is possible, and that would be Friday, July

18 9th. We may need to discuss a little bit more what

19 kind of document that would be, but assuming there is

20 an agreement, we would file something by July 9th.

21 If agreement is not possible, then we would

22 proceed with dates leading to a hearing. We discussed

23 the possibility of filing prefiled testimony, so the

24 schedule that I'm going to describe has dates for those

25 filings. Monday, August 19th, would be the date for

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 1 the petitioner, the City of Fife, to file prefiled

 2 written direct testimony and associated exhibits.

 3 JUDGE CLARK: Can you repeat that date for

 4 me, please?

 5 MS. WOODS: August 19th.

 6 JUDGE CLARK: Thank you.

 7 MS. WOODS: Following that, September 3rd

 8 would be the date for the respondent's prefiled written

 9 direct testimony on behalf of Union Pacific and on

10 behalf of UTC staff. Following that, September 24th,

11 the date for rebuttal testimony and exhibits, if any,

12 to be filed, and I should clarify, rebuttal testimony

13 and rebuttal exhibits. Following that, if it suits

14 Your Honor, would be the week of October 11th for a

15 hearing, and I believe that we wouldn't anticipate a

16 hearing to last more than one day.

17 JUDGE CLARK: Does that conclude...?

18 MS. WOODS: We also put in our schedule a

19 date for posthearing briefs. We weren't sure whether

20 the briefing schedule would include a prehearing brief

21 or just posthearing briefs. This is still new to me,

22 so I'm not entirely sure what the preference would be.

23 JUDGE CLARK: Well, the Commission generally

24 does not have prehearing briefs unless we entertain an

25 exceptionally novel legal issue and the tribunal

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 1 requests prehearing briefs, so ordinarily what we have

 2 is just posthearing briefs. I can also let the parties

 3 know we don't have to have posthearing briefs in every

 4 single case. Parties, however, seem to prefer that

 5 method to making closing argument immediately at the

 6 conclusion of their case.

 7 So we usually do set a deadline for

 8 posthearing briefs, and then as the case proceeds,

 9 depending on the factual circumstances, we may decide

10 to vacate that at some future date, but it's not a bad

11 idea to have the date reserved.

12 MS. WOODS: Thank you, Your Honor. The date

13 that we had for that would have been the week of

14 October 25th.

15 JUDGE CLARK: Do you have any other elements

16 of the procedural schedule?

17 MS. LARSON: Excuse me, Your Honor, if I may,

18 and I apologize for not noticing this earlier, but

19 October 11th, I will not be in the country, so it would

20 have to be someone else from our firm representing

21 Union Pacific if we do need to go to hearing on that

22 date.

23 JUDGE CLARK: Actually, no one will be at the

24 Commission at that date either. Although it has not

25 yet been enacted, the legislature proposed and the

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 1 governor assigned a bill enacting legislation to reduce

 2 budgetary expenses in the State of Washington and

 3 designated ten days, including October 11th, as furlow

 4 days in which the agency is required to be closed. So

 5 in defense of the schedule that's presented by the

 6 parties, I will let you know that does not take place

 7 until after July 1, so it is probably not noted on many

 8 calendars yet, but this is a date that the agency will

 9 be closed, but I am aware of that for the purpose of

10 the Commission's hearing calendar.

11 We could move the hearing to another date.

12 It wouldn't work for Union Pacific anyway so it's sort

13 of moot, but when would you be available? Are you

14 available later in that week or not at all in that

15 week?

16 MS. LARSON: Not at all in that week.

17 JUDGE CLARK: What I'm going to suggest that

18 we do then is I'm going to take just a few minutes off

19 record and I am going to leave the hearing room, and

20 I'm going to allow the parties to discuss an alternate

21 hearing date, and generally speaking, if the parties

22 can agree on the procedural schedule, I'm fine with

23 that and I generally adopt them. I'm here. It doesn't

24 make any difference if I'm sitting in hearing or doing

25 something else. It doesn't matter to me what the dates

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 1 are. I would like the parties to work those out if you

 2 can, and I'll vacate the hearing room and let you take

 3 a few moments off record to come up with an alternate

 4 date.

 5 MS. LARSON: Thank you, Your Honor.

 6 MR. COMBS: Thank you, Your Honor.

 7 JUDGE CLARK: Are there any questions before

 8 we go to recess?

 9 (Recess.)

10 JUDGE CLARK: Have the parties had an

11 adequate opportunity to confer and have been able to

12 agree on an evidentiary hearing date in this matter?

13 I'm going to turn to you, Ms. Woods.

14 MS. WOODS: Your Honor, first I would like to

15 clarify that one of the dates that I stated I stated

16 incorrectly, and that was the date where Petitioner

17 Fife's testimony would be due. I meant to say August

18 16th, not the 19th.

19 We conferred about a possible hearing date,

20 and we would like to propose the week of October 25th

21 but not the 25th itself. Any other day that week.

22 JUDGE CLARK: All right.

23 MS. WOODS: Posthearing briefs to be due two

24 weeks later.

25 JUDGE CLARK: So that would make posthearing

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 1 briefs due on November 9th. Would that work for the

 2 parties?

 3 MS. LARSON: Yes, Your Honor.

 4 MR. COMBS: Yes, Your Honor.

 5 MS. WOODS: Yes, it does.

 6 JUDGE CLARK: Let me make sure I have all of

 7 these dates correct. What I have is the first document

 8 is a document wherein, and we can discuss this further,

 9 but if the parties believe they are able to resolve

10 their issues without hearing, they would file documents

11 with the Commission on July 9th.

12 If the parties are unable to reach agreement,

13 the City of Fife would file prefiled testimony and

14 exhibits. On August 16th, 2010, the UTC staff and the

15 Union Pacific Railroad would file prefiled responsive

16 testimony and exhibits on September 3, 2010. Prefiled

17 rebuttal testimony and exhibits would be filed by the

18 City of Fife on September 24th, 2010, and the hearing,

19 if the parties are amenable to this -- we don't like to

20 start hearing on Mondays anyway, so it's probably a

21 good thing that October 25th doesn't work for the

22 parties, and I would suggest that we schedule the

23 hearing for October 26th, 2010, and then posthearing

24 briefs would be due two weeks thereafter on November

25 9th, 2010. Have I accurately reflected the parties'

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 1 agreement regarding the procedural schedule?

 2 MR. COMBS: Yes, Your Honor, for the City

 3 petitioner.

 4 JUDGE CLARK: Ms. Larson?

 5 MS. LARSON: Yes, with one question. I was

 6 noting in restating the schedule you said rebuttal

 7 testimony by the City, but I was wondering if in case

 8 Union Pacific and the UTC staff were not in agreement

 9 on their stance whether they would have the opportunity

10 to rebut the other's testimony.

11 JUDGE CLARK: Yes. I will give you that

12 opportunity if you wish, and I will make the

13 appropriate modification to the date, and you would

14 like that opportunity to be on the same date as

15 rebuttal?

16 MS. LARSON: Yes. With that modification, I

17 agree with everything that's been proposed.

18 JUDGE CLARK: Ms. Woods, does that

19 memorialize the agreement?

20 MS. WOODS: Yes, it does, Your Honor.

21 JUDGE CLARK: Then I have just a couple of

22 questions for the parties. There are occasions where

23 the commissioners schedule a public comment hearing and

24 the Commission travels to generally the location of the

25 proposed petition or application, and in this case, it

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 1 would most likely a hearing would be held in Fife if

 2 the Commission were to take public comments in this

 3 particular proceeding.

 4 If we proceed to the hearing phase of this

 5 case, do the parties find a need for a public comment

 6 hearing in this matter? I'll hear from you first,

 7 Mr. Combs, please.

 8 MR. COMBS: Your Honor, I think a public

 9 meeting aspect of this would be a good idea simply

10 because it involves the heart of the residential area,

11 the city, and the people I'm certain would like to feel

12 that their viewpoint has been heard. I think it goes

13 to the integrity of the process as well, the appearance

14 of fairness and citizens input. Although you may not

15 get anything you wouldn't otherwise hear from the

16 parties, I think the appearance of justice is just as

17 important as justice itself. So I think it would be

18 helpful.

19 JUDGE CLARK: We usually hear lots and lots

20 of things at public comment hearings that we don't hear

21 from the parties.

22 MR. COMBS: I can only imagine.

23 JUDGE CLARK: Ms. Larson?

24 MS. LARSON: Union Pacific Railroad doesn't

25 have any objection to a public comment hearing.

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 1 JUDGE CLARK: Ms. Woods?

 2 MS. WOODS: I'm getting agreement from UTC

 3 staff that a public comment hearing would be a good

 4 thing.

 5 JUDGE CLARK: What we will do then is have to

 6 leave it somewhat flexible in terms of a hearing date

 7 because what we will have to do is find an appropriate

 8 location for a public comment hearing. Our public

 9 comment hearings are typically held in the evening

10 after the working hours to give people an opportunity

11 to come after work if they do work a day schedule, so

12 we will have to come up with a location and date and

13 time in the City of Fife.

14 If the parties can give me a few alternate

15 dates in terms of evenings that you would be available,

16 that would be very helpful to help us find a physical

17 location. If I look at a hearing date of October 26th,

18 I would suggest that we conduct our public comment

19 hearing somewhat close to that date, and we have to

20 remember, of course, that we have Ms. Larson out of the

21 country so we can't get too close to that.

22 MR. COMBS: Your Honor, I dropped out of the

23 call for a moment. My phone decided it was tired of

24 working and shut down for a couple of minutes. The

25 last I heard was that you were looking for a night

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 1 meeting time, and then when I came back on, you were

 2 indicating it needed to be close to the hearing.

 3 JUDGE CLARK: So let me fill you in a little

 4 bit. We do schedule our public comment hearings in the

 5 evening so that people who work a day shift are able to

 6 come and present comment in the evening, and we have to

 7 find an appropriate location for that hearing in the

 8 City of Fife. It does take a little bit of time to

 9 make those logistical details, so if I could get a few

10 alternate dates that the parties are available for an

11 evening hearing somewhere in the nexus of the

12 evidentiary hearing, that would be helpful. We do try

13 to hold them relatively close to the evidentiary

14 hearing, and we do have to be cognizant that Ms. Larson

15 is going to be out of the country at least sometime

16 before that is my recollection, so we have to be

17 sensitive to that particular issue, and I do also need

18 to correct you, Mr. Combs. It's not a meeting. It's

19 an actual public hearing and we take testimony. We

20 swear the witnesses in, and so it's a little more

21 formal than the meetings that are conducted by the

22 Commission. It's probably not a distinction that you

23 draw, but trust me, it's one that's very close to our

24 hearts.

25 MR. COMBS: That's fine. I appreciate you

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 1 clarifying that for me.

 2 JUDGE CLARK: No problem. Do the parties

 3 have any evenings that they would like to suggest?

 4 Would you like to take a few moments off record to

 5 confer?

 6 MR. COMBS: Your Honor, just a thought. I

 7 don't know if anyone would have an objection to having

 8 the public hearing on city property, but on Wednesday

 9 of that week, the city counsel chambers is available,

10 which is set up so there is a dias for the Commission,

11 and it's set up so you can have this kind of proceeding

12 relatively easily because it's where public hearings

13 are normally held in the city, and that can be made

14 available, but it's not available on Tuesday the 26th,

15 but if we could shift the hearing to later in that

16 week, we could have the public hearing for the citizens

17 on the Wednesday and maybe the hearing on Thursday and

18 Friday is just a suggestion, but I know do know that

19 room is available, and it's set up nicely for this.

20 JUDGE CLARK: Does anyone have an objection

21 to holding a public comment hearing in city counsel

22 chambers; Ms. Larson?

23 MS. LARSON: Your Honor, I have no objection.

24 JUDGE CLARK: Ms. Woods?

25 MS. WOODS: No objection.

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 1 JUDGE CLARK: That would be fantastic.

 2 Actually, those facilities usually work extremely well.

 3 They are adequately lit. There is adequate parking,

 4 and they meet our needs in terms of configuration and

 5 it's certainly less work on our part, and while it's

 6 preferable that we do it the day before the hearing,

 7 it's not necessary, and I don't think doing it the

 8 following evening would be any problem at all

 9 whatsoever.

10 So what I would like to do, Mr. Combs, is put

11 the ball in your court and ask you to make the

12 necessary arrangements to reserve the city counsel

13 chambers for us on October 27th, and then if you can

14 e-mail me the details, we will insure that all the

15 details, our address, etcetera, are included in our

16 notice of the public comment hearing, and I greatly

17 appreciate your offer.

18 MR. COMBS: You are welcome. The room does

19 work well, Your Honor, so I'm glad it works for

20 everyone else.

21 JUDGE CLARK: I think that's an excellent

22 suggestion. Unless the parties have something else on

23 the procedural schedule, I'm going to adopt the

24 procedural schedule proposed by the parties.

25 There are a couple of other procedural

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 1 deadlines that we frequently include in our schedule,

 2 and I don't believe they are necessary in a proceeding

 3 of this complexity, so I'm not going to include them

 4 and overly complicate things that aren't, and I would

 5 like to return now to the documents that would be

 6 necessary for the parties to file on July 9th if you

 7 are able to reach agreement.

 8 The Commission does have rules governing

 9 settlements, and that's what we would file. We would

10 like the parties to file, Mr. Combs, rather than a

11 proposed order resolving the issues, and the

12 Commission's rules, if my memory serves me correctly,

13 and it may not, are at WAC 480-07, I believe 740, maybe

14 730 to 750, those three rules, and according to the

15 Commission's settlement rules, you need to file a

16 settlement itself and a narrative in support of that

17 demonstrating how the settlement resolves the issues

18 that the parties have resolved, so we ordinarily see

19 when parties have reached a settlement.

20 MR. COMBS: We will follow the administrative

21 code in that regard, Your Honor. That's not a problem.

22 JUDGE CLARK: Ms. Woods?

23 MS. WOODS: Your Honor, among ourselves, we

24 had also discussed another possibility. The petition

25 in this case was filed to open a new at-grade

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 1 pedestrian crossing. As I understand it, it's possible

 2 that there could be an agreed resolution that would not

 3 involve opening a new crossing, so another possibility

 4 that we discussed would be for the City to file an

 5 unopposed motion to withdraw the current petition and

 6 then file a new petition describing whatever the agreed

 7 resolution would be.

 8 JUDGE CLARK: Well, that is certainly a

 9 simpler resolution if the parties are able to reach

10 that agreement. That is a process we recently followed

11 in a case involving Meeker Southern Railroad, and if

12 the petitioner no longer wishes the Commission to open

13 a new at-grade crossing and are able to reach

14 resolution on different terms and conditions, perhaps

15 modifying some existing crossing or some other

16 alternative where the crossing is no longer at grade,

17 then they certainly can do that. You can file a motion

18 to withdraw the current petition and you can refile the

19 petition under the other terms and conditions. In that

20 case, it is unlikely to ever reach the administrative

21 law division unless there is opposition to that

22 petition, so while I don't favor either alternative, I

23 can certainly tell you that the alternative Ms. Woods

24 proposed is simpler and it's probably faster.

25 MR. COMBS: Your Honor, with that being said,

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 1 perhaps you could give clarity on another issue. The

 2 existing at-grade motor vehicle crossing was handled

 3 under WUTC Docket No. TR-961394, and if we were to

 4 reach an alternative solution, it would be within the

 5 scope of that approval that was granted by the UTC.

 6 So would that then trigger the need to go

 7 under that old file, or would an alternative suggestion

 8 suggested by the attorney general's office be the

 9 appropriate approach?

10 JUDGE CLARK: Procedurally, I believe you

11 could do either. If, however, you chose to go under

12 the '96 docket, I think it would be more complicated.

13 You would have to file a motion to reopen the closed

14 docket and then wait until the Commission granted your

15 motion to reopen that closed docket and then file

16 whatever you wanted to file in the old docket, and you

17 may have noticed that the first two numbers in these

18 dockets are the number of the year in which the

19 petition or application or other documents is filed, so

20 you really would be asking the Commission to resolve in

21 a 1996 case matters that arose in the year 2010. So I

22 think it would probably be faster and simpler if you

23 followed the latter approach and filed a new petition

24 in 2010.

25 MR. COMBS: Except the issues of the '96

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 1 order are still open and they involve an Indian tribe.

 2 JUDGE CLARK: The docket is not closed?

 3 MR. COMBS: No. The issues involved spell

 4 out how the at-grade crossing would end up eventually

 5 being closed, and those conditions preceding to the

 6 closure haven't been met, but in our proposed

 7 settlement, they would be.

 8 In a perfect world that this settlement went

 9 through the way we think it might, it would eventually

10 result in the closure of the at-grade crossing. So

11 that's one of my concerns is under the old docket, the

12 Puyallup Indian Tribe was involved, and they were in

13 favor of the permanent closure upon occurrences of

14 these conditions that would occur sometime in the

15 future.

16 Well, those conditions would still have to

17 happen as part of this settlement also for that road to

18 be closed, so if we opened up a new file number that

19 resulted in essence new conditions to the closure, the

20 permanent closure of the at-grade crossing, it seems

21 like we have two cases that are dealing with a very

22 similar issue, so that's why I ask the question,

23 because they are, and correct me if I'm wrong, Carolyn,

24 in this analysis, but I think they are linked in that

25 regard.

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 1 But I'm open. This is an area that I

 2 appreciate the wisdom of everyone involved having done

 3 this much more than I, from the UTC and the

 4 administrative law judge's wisdom. I'm not sure which

 5 procedure to follow given the nature of the '96 docket

 6 number involving a lot of the same facts.

 7 JUDGE CLARK: There is one other factor that

 8 kind of troubles me a little bit about this factual

 9 scenario, Mr. Combs, and that is you've indicated there

10 was a party in the prior proceeding who doesn't have

11 any notice whatsoever regarding the outcome of this

12 particular proceeding, and so now we've sort of

13 elevated this to some constitutional issues of due

14 process and notice and the opportunity to be heard in

15 this matter.

16 I'm thinking maybe this is not a topic that

17 we can appropriately address sort of shooting from the

18 hip in a prehearing conference, and perhaps it would be

19 helpful for the parties to have some further

20 discussions on this topic benefited by some further

21 research, but I am troubled if there is an outcome in

22 this case that would affect the rights and obligations

23 of parties who are not even present in our current

24 proceeding.

25 MR. COMBS: Your Honor, just so you know, the

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 1 Indian tribe is aware of this process that's going on

 2 for the new application and have been advised and have

 3 been advised again, even as late as yesterday, of

 4 today's conference, and they have chosen not to

 5 intervene because they have no objection to it. The

 6 settlement involved in the old case, which they also

 7 supported, only the UP objected in the '96 case.

 8 As between the tribe and the UP, the tribe

 9 was not objecting to the WUTC order, but they are aware

10 of the current pedestrian crossing application, have no

11 objection. Both the UTC staff and I on separate

12 occasions have contacted the tribe on this, and they

13 have not requested intervention status. Otherwise, we

14 would have delayed the prehearing conference to make

15 sure they had plenty of time to be involved, but it

16 does complicate matters, at least at first glance, if

17 we need to deal with the '96 case, I think your

18 concerns are very well founded that we now have someone

19 that has direct interest in the outcome of that case

20 and were impacting the end result of that case by any

21 settlement reached that involved the closure of the

22 at-grade crossing.

23 So further research may be necessary, and

24 the three parties will need to think this through and

25 may need to seek further guidance from Your Honor on

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 1 this, but I wanted to assure you that all of the

 2 parties have made sure that the tribe has been kept in

 3 the loop on this both formally and informally.

 4 JUDGE CLARK: All right. Well, it sounds to

 5 me it would probably be a good idea for the parties to

 6 further discuss this issue and decide an appropriate

 7 route and an appropriate docket in which you want to

 8 file any resolution you are able to reach, so I'm just

 9 going to defer that, and we'll cross that bridge when

10 we get there. July 9th seems a long way to me right

11 now, but I will offer myself if you have procedural

12 questions, not substantive questions, I'm certainly

13 available and willing to try to assist with that if I

14 can.

15 MR. COMBS: Thank you, Your Honor.

16 JUDGE CLARK: Are there other procedural

17 matters the parties would like us to address this

18 afternoon? Mr. Combs?

19 MR. COMBS: Not from the City of Fife, Your

20 Honor.

21 JUDGE CLARK: Ms. Larson?

22 MS. LARSON: No, Your Honor.

23 JUDGE CLARK: Ms. Woods?

24 MS. WOODS: No, Your Honor.

25 JUDGE CLARK: I just have a procedural

0025

 1 matter. Any documents that you file in this

 2 proceeding, it is necessary for you to file an original

 3 and five copies. Do the parties see any need for

 4 discovery in this proceeding?

 5 MS. LARSON: Yes, Your Honor. If we did not

 6 reach agreement, I would need some discovery from the

 7 City.

 8 JUDGE CLARK: Mr. Combs, do you have any

 9 objection to the Commission invoking its discovery

10 rules?

11 MR. COMBS: No, Your Honor. I think it's

12 appropriate if needed.

13 JUDGE CLARK: Ms. Woods?

14 MS. WOODS: No, Your Honor, no objection.

15 JUDGE CLARK: Is there anything further to be

16 heard on the record this afternoon?

17 MR. COMBS: Not from the City's perspective,

18 Your Honor.

19 MS. LARSON: Not from Union Pacific's

20 perspective either, Your Honor.

21 JUDGE CLARK: Ms. Woods?

22 MS. WOODS: Not from UTC Staff's perspective,

23 Your Honor.

24 JUDGE CLARK: Thank you. We are adjourned.

25